



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

DECISION

OAL DKT. NO. EDS 07848-17

AGENCY DKT. NO. 2015-23003

M.B. AND S.B. ON BEHALF OF L.B.,

Petitioners,

v.

CINNAMINSON TOWNSHIP

BOARD OF EDUCATION,

Respondent.

Hillary Freeman, Esq., for petitioners (Law Offices of Hillary Freeman, attorneys)

Jared S. Shure, Esq., for respondent (Methfessel & Werbel, attorneys)

Record Closed: June 19, 2019

Decided: July 18, 2019

BEFORE **JOSEPH A. ASCIONE**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioners M.B. and S.B. on behalf of their daughter L.B. requested a due-process hearing seeking reimbursement for a unilateral out-of-district placement to provide L.B. with a free appropriate public education (FAPE) at her present location at the Orchard Friends School (Orchard Friends). The petition also seeks reimbursement for tuition for school years ending 2017 and 2018 and the summer of 2017 extended

school year (ESY) from the Cinnaminson Township Board of Education (Board or Cinnaminson). The petition also seeks a determination that the Board violated the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400 et seq., Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, Title II of the Americans with Disabilities Act (ADA), 42 U.S.C. § 12101 et seq., the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 et al., and N.J.A.C. 6A:14, et seq. as they apply to L.B. The respondent alleges that it provided FAPE in the least restrictive environment. On December 22, 2015, in a previous proceeding against the Cinnaminson Township Board of Education (hereinafter “District” or “Respondent”), M.B., on behalf of her daughter, L.B., filed for due process to prevent the District from declassifying L.B. The matter was heard by the Honorable Laura Sanders, ALJ, who ruled in M.B.’s favor, reversing the declassification of L.B. but ordering a change of placement to a less restrictive setting. On April 26, 2017, petitioners M.B. and S.B., L.B.’s adoptive mother, requested another due-process hearing seeking the development of an appropriate individualized education program (IEP) for L.B. and an award for compensatory education. The petition also requested the court compel the District to comply with L.B.’s stay-put rights. After filing, petitioners unilaterally placed L.B. at Orchard Friends, a private school for children with language learning differences, and amended their petition to also seek reimbursement for the private placement. Respondent asserts that it provided L.B. with a FAPE in the least restrictive environment and that L.B.’s IEP complied with Judge Sanders’s order. Petitioners contend that L.B.’s IEP did not comply with Judge Sanders’s order, and denied L.B. a FAPE because it did not appropriately address her weaknesses.

The New Jersey Department of Education, Office of Special Education Programs, transferred the matter to the Office of Administrative Law (OAL) as a contested case on June 5, 2017. Settlement efforts were unsuccessful, and hearing dates were originally scheduled to begin on December 5, 2017. However, both parties requested an adjournment to finalize expert evaluations and reports. On January 30, 2018, respondent moved for partial summary disposition, seeking a finding that the actions of the Office of Special Education Policy and Procedure’s in June 2017 resolved the implementation of Judge Sanders’s order, thereby leading to a conclusion that FAPE was provided and had been implemented. On March 5, 2018, petitioners filed

opposition to that partial-summary-disposition motion, and the tribunal reserved decision. The matter proceeded to a hearing. The matter was heard on April 23, May 8, May 22, May 30, and July 31, 2018. Prior to the issuance of a decision, the undersigned took an extended medical leave, and the parties consented to waive the reassignment of the within matter to another administrative law judge. On May 23, 2019, the undersigned requested additional documentation from the parties. The record closed on June 19, 2019, following the receipt of the requested documents.

FACTUAL DISCUSSION

L.B., a nine-year-old student who currently resides in Cinnaminson Township, has multiple diagnoses, including autism spectrum disorder, executive function and frontal lobe disorder, dyslexia, disorder of written expression, visuospatial deficits, adjustment disorder, attention deficit hyperactivity disorder, central auditory perceptual deficits, and fourth nerve palsy. (J-101 at 24; P-3 at 17). L.B. also has anxiety and social-skills deficits. (J-101).

In April 2012, the District found L.B. eligible for special education and related services and classified her under the category of “autistic.” Since then, she has transitioned into a variety of different placements, including a self-contained preschool, developmental kindergarten, and transitional first grade in a general-education setting, and resource-room instruction for language arts and math during her second- and third-grade years.

On August 27, 2014, a private central auditory processing evaluation, conducted by audiologist Megan Pavlick, Au.D., revealed that L.B. had auditory perceptual deficits in both ears. Dr. Pavlick made several recommendations, including supplementing verbal instruction with visual cues, emphasizing oral instruction, minimizing background noise, providing an FM amplification system, using computer-based programs to practice auditory directions, and providing speech therapy to develop compensatory strategies and strengthen non-speech listening skills. In turn, the District provided L.B. with an F.M. system, but there is no evidence that any other recommendations were implemented.

In early 2015, when L.B. was in first grade, the District performed its triennial reevaluation of L.B., which included psychological, educational, and speech/language evaluations. According to the District's testing, L.B. scored in the average range on all assessments. However, the testing revealed deficits in personal interactions, oral vocabulary, and auditory reasoning. This indicated weaknesses in expressive language and her ability to effectively communicate with peers, understand implied language, or make inferences. Notably, while L.B. scored in the average range on all subtests on her psychological testing, the evaluator, Kristen DaSanto, replaced L.B.'s vocabulary score, in which she scored in the below-average range, with the information subtest, in which she displayed average performance. Had this subtest not been replaced, L.B. would have performed in the below-average range in verbal comprehension.

Based on L.B.'s academic performance in the resource placement during first grade and her average results on her 2015 triennial reevaluations, the District proposed declassification on March 17, 2015, contending that L.B.'s disabilities no longer had an adverse effect on her on educational performance. Petitioners did not agree to the declassification, and, instead, requested that the District provide L.B. with a neuropsychological evaluation, to which the District agreed.

In the summer of 2015, Sarah Allen, Ph.D., conducted a neuropsychological evaluation of L.B. The results of the evaluations revealed poor cognitive control and flexibility, as well as poor self-monitoring and visual processing deficits. These results were described as consistent with prior abnormal electroencephalogram (EEG) findings and fourth nerve palsy. Dr. Allen also expressed concern that L.B. was experiencing significant anxiety in the classroom. Some of Dr. Allen's recommendations included transitioning L.B. to an inclusive setting with monitoring and supports, cognitive behavioral therapy as part of school counseling, and modification of visual stimuli.

Despite the results and recommendations in Dr. Allen's report and the District's own speech/language evaluation, which showed deficits in expressive language, on September 24, 2015, the District again attempted to declassify L.B.

In response, petitioners obtained a private speech/language evaluation from Marcie Fountaine (Fountaine), a speech pathologist at Princeton Speech-Language & Learning Center. In December 2015, Fountaine conducted a myriad of assessments to determine L.B.'s language and social communication skills. L.B.'s speech/language assessment revealed deficits in phonemic decoding (PR=23), reading comprehension (PR=25) and accuracy (PR=16), and written expression. L.B. also struggled with higher level perspective taking (PR=7), and had weak problem-solving skills (PR=9). To address L.B.'s language deficits and her previously identified weaknesses in auditory processing and executive functioning, Fountaine primarily recommended structured, multi-sensory instruction with academically matched peers and frequent opportunities for small group work with an emphasis on decoding and spelling. Further, Fountaine recommended direct speech therapy once a week to address her language and auditory processing deficits and participation in a social communication group once a week with a professional with expertise in social cognition and language development.

On December 22, 2015, after receiving Fountaine's evaluation report, petitioners filed for due process to prevent the District from declassifying L.B. and to invoke L.B.'s stay-put rights. The Honorable Laura Sanders (Sanders), Acting Director and Chief Administrative Law Judge, heard the matter, and on December 28, 2016, ruled in favor of petitioners, ordering the reversal of L.B.'s declassification. Judge Sanders attributed L.B.'s progress to the benefits she received from the structured environment of the resource room, including the use of components of the Orton-Gillingham program to address her decoding deficits. She found that L.B.'s supported performance in the resource setting could not be used as proof that she could succeed without those services.

However, based on expert testimony and reports outlining L.B.'s strengths and progress in the resource setting, Judge Sanders concluded that L.B. "should be moved to the general education classroom in English, Mathematics and Language Arts, upon the completion of an IEP that provides her with goals and supports to address her weaknesses." She included a list of recommendations that the District could incorporate into L.B.'s IEP to support her success in that setting. These recommendations included "more time to complete various activities, role-playing

activities to address problem solving, a social skills group to improve her ability to respond appropriately in less structured situations, an added emphasis on multi-sensory approaches, and additional programming aimed at teaching proper sequencing, and assistance of a teacher trained in special education.” Judge Sanders cautioned the District to pay careful attention to “the emotional impacts of switching to a larger, faster class, where the rules may be less familiar.”

In response to Judge Sanders’s order, on January 24, 2017, Julia Bates contacted petitioners to set up an IEP meeting. Due to petitioners’ limited availability during the month of February, an IEP meeting was ultimately held on March 7, 2017, wherein the District provided petitioners with a draft IEP for L.B. As ordered, the District proposed changing L.B.’s placement to a less restrictive setting. In addition to in-class support (ICS) for science and social studies, L.B.’s 2016–17 IEP included ICS for language arts, math, and writing. L.B. would also receive individual speech therapy for thirty minutes a week and participate in a social-skills group. The IEP also provided for the use of an FM system and various modifications, such as additional time to complete classroom tests/quizzes and the use of graphic organizers. Notably, L.B.’s initial proposed IEP did not include the use of multi-sensory instruction, and the District also changed her classification from autistic to other health impaired.

Further, L.B.’s proposed IEP included limited goals and objectives in all subject areas. For social studies and science, her IEP included one goal to address test-taking strategies, and her math goals related to solving word problems using different operations. Despite identified deficits in decoding, reading comprehension, and written expression, L.B.’s IEP only included one reading and writing goal, neither of which addressed these specific deficits. L.B.’s speech/language goals addressed sequence of events, oral presentation of directions, problem solving, and figurative language. Although L.B.’s IEP did not provide for counseling services, a social/emotional goal was added to help L.B. appropriately express negative emotions in school.

Petitioners did not sign the proposed IEP. While they verbally rejected L.B.’s IEP during the March 7, 2017, IEP meeting, they requested an opportunity to provide comments and recommendations of changes that needed to be made. On April 6,

2017, petitioners, through their legal counsel, sent a letter to the District recommending various changes to the proposed IEP. The major recommended substantive changes included the addition of a behavior intervention plan; the addition of goals and objectives for writing, social skills and speech; and the use of a multisensory approach. Petitioners also wrote a statement that they requested to be included in the “concerns of the parent” section of the IEP. In this statement, petitioners outlined L.B.’s areas of weaknesses and expressed concern that the District was not fully recognizing L.B.’s needs. They also included their concerns about L.B.’s frequent urinary-tract infections.

In response to petitioners’ recommendations, the District made stylistic changes to the IEP and added more detail to some of L.B.’s goals and objectives. Further, three modifications were added to L.B.’s IEP: “emphasize multi-sensory presentation of data,” “use of small groups within classroom,” and “allow additional time for processing.” However, the District did not develop a behavior plan as petitioners recommended, nor did they include additional writing, social-skills, or speech/language goals. Significantly, the District did not include any of petitioners’ concerns in the IEP.

On or about April 14, 2017, Julia Bates, L.B.’s case manager, sent L.B.’s amended IEP to petitioners. The District also submitted L.B.’s IEP to the OSEPP, the department responsible for ensuring implementation of Judge Sanders’s order. Petitioners did not provide any additional feedback to the District’s proposed changes; rather, on April 26, 2017, they filed for due process, challenging the appropriateness of the District’s proposed IEP and requesting compensatory education.

Throughout the 2016–17 school year, while both the Sanders decision and this current matter were pending, the District administered the Fountas & Pinnell Benchmark Assessment Systems to L.B. to test her oral reading skills. Overall, her oral reading scores were in the satisfactory range, with L.B. performing better on fictional text than non-fiction. Her oral reading level progressed from a mid-third-grade level (O) to an end-of-third-grade level (P) while she was in resource placement. According to the District’s records, L.B.’s reading levels were more advanced than those of any other student in the resource placement. During that time, her teachers reported L.B.’s

increased frustration with “the slow pace and constant repetition and reteaching” in the resource setting.

Pursuant to the 2016–17 IEP, L.B. transitioned into ICS for math, language arts, and writing on April 28, 2017. L.B.’s reading teacher reported that her transition into the ICS setting was “seamless.” L.B. displayed “confidence and a positive attitude” and was an active participant in small group. However, she struggled with vocabulary and parts of speech. In writing, her rubric score increased by a half point, but her writing continued to lack detail and contained spelling and grammatical errors. L.B.’s ICS math teacher identified multiplication and computation skills as L.B.’s strengths. However, L.B. required individual intervention with geometric vocabulary and homework assignments. L.B. scored a 73 on her end-of-year math assessment, which was given to all general-education students. According to Bates, L.B. was “well behaved and a model student in the large, ICS setting.” L.B.’s report cards reflect that she maintained an A average in all her classes, despite the transition into ICS. However, she was only in ICS for math and language arts for six weeks at the end of the school year, and, as the District’s experts testified, she was not graded on assignments for which she had no previous exposure.

On May 8, 2017, OSEPP informed petitioners that the matter was closed “[b]ased on the District’s submission of an appropriate IEP within a less-restrictive setting.”

On June 20, 2017, the District held a second IEP meeting for L.B., in which it offered essentially an identical IEP as that offered in March.

On July 21, 2017, petitioners, in a letter from legal counsel, informed the District that they did not believe the proposed program was appropriate to meet L.B.’s needs and expressed their intent to unilaterally place L.B. at Orchard Friends if both parties could not reach a resolution within ten days. In response, the District scheduled another IEP meeting on July 26, 2017, to discuss L.B.’s placement for the fall. While all parties attended with legal counsel, no further changes were made to L.B.’s IEP.

Since the parties were unable to reach a resolution, petitioners unilaterally placed L.B. at Orchard Friends for the 2017–18 school year. Orchard Friends is a non-sectarian, research-based, multi-sensory private school that educates children with language-based learning difficulties. Class sizes are small, typically four to five students per class.

On September 7, 2017, Orchard Friends assessed L.B.'s academic levels using i-Ready, a computer-based assessment tool. L.B. scored at a level two for her overall math performance, indicating a need for intensive intervention “focused on skills and concepts related to quantitative reasoning and representation.” Overall, L.B. performed at a level three for reading skills. Her Lexile score of 665 revealed that L.B. was reading between a third- and fourth-grade reading level. However, she scored significantly below grade level in fundamental decoding skills, in which she performed at a level one.

Orchard Friends also provided L.B. with a speech/language evaluation. L.B. was given the Comprehensive Test of Phonological Processing (CTOPP-2) to test how well she utilized phonological information. There, L.B. scored below the average range in phonological awareness (PR=12) and rapid naming (PR=12), both indicators of dyslexia.¹ Notably, L.B.'s performance fell within the poor range (PR=2) for the Elision subtest, which assesses a student's ability to delete a phonological segment from spoken words to form other words. The evaluator noted that L.B. had weaknesses in working memory and word retrieval.

L.B. was also evaluated using the Test of Problem Solving 3 (A Test of Reasoning in Context) to assess her critical-thinking skills using language strategies based in logic and experience. She scored in the below-average range for making inferences (PR=9) and determining causes (PR=6). The evaluator viewed the results as consistent with L.B.'s 2015 speech/language evaluation performed by Fountaine. She commented, “Most subtest scores were below previous testing, which would be expected when deficit areas have not been addressed coupled with the student being

¹ See the “The New Jersey Dyslexia Handbook: A Guide to Early Literacy Development & Reading Struggles,” found at <https://www.state.nj.us/education/specialed/dyslexia/NJDyslexiaHandbook.pdf>, last visited June 24, 2019.

compared to older same aged peers.” L.B.’s weakest area was in determining causes, while relative strengths were observed in sequencing (PR=42) and making predictions (PR=25).

Based on the results of L.B.’s testing, Orchard Friends developed an IEP for L.B., which was signed by petitioners on November 16, 2017. In addition to the small-group multi-sensory Orton-Gillingham instruction offered to all students at Orchard Friends, L.B.’s Orchard Friends IEP provided for thirty minutes of individual speech therapy once a week, forty minutes of social competency once a week, and extended school year services. L.B.’s Orchard Friends IEP called for various modifications, instructional strategies, and assistive-technology devices, such as the use of iPads and Chromebooks. Notably, L.B.’s Orchard Friends IEP did not include a behavior intervention plan, despite teachers reporting some behavioral challenges, such as a negative attitude and a lack of motivation.

The goals and objectives on L.B.’s Orchard Friends IEP specifically targeted her areas of weakness. Pursuant to L.B.’s IEP, she would participate in the Fast Forward program for thirty minutes daily to address her auditory-processing deficits. Her goals for the Fast Forward program targeted listening accuracy, auditory sequencing, visual-spatial memory, phonological fluency, memory and accuracy, sustained attention, and vocabulary. L.B.’s social-competency goals addressed her inability to make inferences in social situations by helping her understand the perspectives of others and increasing her awareness to hidden social rules. Her speech-therapy goals also provided remediation for her lack of language-based reasoning and addressed her decoding deficits. Moreover, L.B.’s IEP also provided reading goals to address decoding, making inferences, and building vocabulary. Additionally, Orchard Friends used the Framing Your Thoughts program to address L.B.’s writing challenges. Her writing goals targeted her weaknesses in introductions, closures, and spelling. However, except for the speech-therapy goals, the goals and objectives on L.B.’s IEP were not measurable.

While attending Orchard Friends, L.B.’s i-Ready math scores increased from a 424 in the fall to a 438 in the winter. However, her reading scores decreased from 523 to 505.

In the fall of 2017, petitioners obtained independent neuropsychological and speech/language evaluations for L.B.

Dr. Daniel DaSilva, Ph.D., (Dr. DaSilva) from Morris Psychological Group conducted the independent neuropsychological evaluation of L.B. It consisted of an observation and various assessments. On October 30, 2017, Dr. DaSilva observed the District's proposed ICS program. During the observation he observed three groups working on graphic organizers in the ICS writing class of approximately twenty students. Dr. DaSilva reported that the "room was somewhat loud and the conversation from the other groups was somewhat distracting." The special-education teacher provided individualized assistance to the students in her group. Similarly, one-on-one support was offered in the ICS math setting, which was significantly quieter than the ICS writing class.

Dr. DaSilva also observed L.B. in her current placement at Orchard Friends on November 7, 2017. The school consisted of a total of seventeen students, with four to six students per class. Per Beth Donnelly, the head of the school, the teachers were all special-education certified and Orton-Gillingham trained. According to Donnelly, L.B.'s program at Orchard Friends was developed to address her central auditory processing disorder (CAPD) and autism spectrum disorder (ASD) profile. She explained that the eventual goal was to return L.B. back to District. Donnelly reported that L.B. came into the program with a "low math level but moved and advanced quickly." Donnelly described L.B. as resistant but "cognitively and socially on the ball." She believes that L.B.'s fear of failure causes her to "push back," but attributes her improved executive functioning to the school's FastForward program.

Dr. DaSilva observed L.B. during math class, in which students were given very direct instruction in a small-group setting. L.B. then transitioned to the FastForward program, where she worked independently upon arrival. During a group reading assignment, L.B. was unable to identify the correct answer, even with teacher prompting. L.B.'s language arts teacher reported that she experienced difficulties in writing, reading fluency, and reading comprehension. Her teacher attributes her poor

written responses to fixating too much on her spelling mistakes. According to L.B.'s teacher, L.B. receives Orton-Gillingham instruction in all classes, particularly to address her vocabulary deficits.

Following the observations, Dr. DaSilva used a variety of assessment tools to test L.B.'s intellectual functioning, core achievement, attention/executive matrix, core language functioning, sensorimotor functioning, and behavioral functioning. L.B.'s overall full-scale IQ of 88, as measured by the Wechsler Intelligence Scale for Children (WISC-V), fell in the low-average range. This was mostly impacted by her extremely poor performance on the visuospatial problem solving task (PR=<1), in which she fell in the very low range, as compared to her average performance in 2015. As a result, her visual-spatial index fell in the very low range (PR=5). L.B.'s visual-spatial deficiencies were evident throughout all of the assessments, including the neurocognitive and memory batteries. On the intelligence testing, L.B. also performed in the low-average range for verbal comprehension (PR=23), exhibiting weaknesses in expressive vocabulary.

L.B.'s overall reading skills, as measured by the Wechsler Individual Achievement Test (WIAT-III) fell in the lower end of average range (PR=21), with weaknesses in spelling (PR=19) and decoding (PR=14). Conversely, Dr. DaSilva's testing revealed that L.B.'s math skills fell neatly within the average range.

Regarding executive functioning, Dr. DaSilva diagnosed L.B. with an executive disorder, manifesting primarily in her output modulation, with specific deficits in self-monitoring. He noted that L.B.'s deficient self-monitoring skills coupled with her tendency to rush make her error prone and careless.

Based on the neuropsychological testing, her profile was "significant for indicators clearly consistent with dyslexia." For example, she exhibited weaknesses in phonological processing and fluency and was impaired in speeded naming. According to Dr. DaSilva, these deficits "form the core of her reading difficulties evident in her weak decoding and spelling." This was also evidenced in the in-class observation, where she struggled to extract relevant information from the text.

Dr. DaSilva noted significant concerns in L.B.'s behavioral/psychological screening, indicative of depression. Dr. DaSilva attributes this, at least in part, to L.B.'s lack of social contacts. While the teachers at Orchard Friends did not share similar concerns at the time the rating scales were completed, L.B. has since displayed a significant increase in behavior problems in the school setting. In January 2018, L.B.'s teachers at Orchard Friends reported that she has become increasingly defiant, engaging in work refusal, tantrums, verbal outbursts, and overall exhibiting a negative attitude. L.B.'s teachers began to track her behaviors in a behavioral log. However, Dr. DaSilva noted that while behavioral factors may exacerbate her difficulties at school, her frustrations are more likely associated with her areas of deficiencies.

Based on L.B.'s overall profile, Dr. DaSilva diagnosed her with autism spectrum disorder (by history), executive function and frontal lobe disorder, dyslexia, disorder of written expression, visuospatial deficits, and adjustment disorder. To address L.B.'s multifaceted deficiencies, Dr. DaSilva recommended "a small, specialized and nurturing learning environment with individualized support and instruction" with a "smaller teacher-student ratio" than is typical in an ICS model. According to Dr. DaSilva, L.B. needs a multi-modal and multisensory research-based reading program infused throughout the day to remediate her weaknesses in decoding, spelling, and writing. Other program recommendations included assistive-technology devices, metacognitive training, guided peer interactions, and various modifications to her program. Dr. DaSilva also suggested an occupational-therapy evaluation and participation in speech/language therapy.

On November 30, 2017, as part of an independent speech/language reevaluation, Fountaine, of Princeton Speech-Language & Learning Center, conducted an in-class observation of L.B. in her placement at Orchard Friends. Fountaine observed L.B. in her social-skills group, where the Social Thinking and Zones of Regulation curriculums were infused throughout her program. During L.B.'s social-skills class, which consisted of six students, she received direct instruction and frequent practice on essential social concepts. Fountaine noted in her evaluation report, "Previous testing results (2015) indicated weaknesses in these specific areas (e.g.,

nonverbal cues, perspectives of others, etc.) and it was clear that she had benefited from this direct instruction as her responses to questions posed by the clinician were accurate.”

Fountaine also observed L.B. in writing class, where the teacher used visual supports through the Framing Your Thoughts program to assist with developing descriptive-language skills. She also received assistance with brainstorming for a written assignment. L.B. actively participated in class and appeared to complete her classwork appropriately.

On December 5 and 7, 2017, Fountaine administered several assessments to L.B. to test her language and social communication skills. L.B. exhibited strengths in figurative language, but she demonstrated a weak ability to make age-appropriate inferences (PR=16), and her skills in this area were significantly lower than in 2015. Fountaine administered the Gray Oral Reading Test-5 (GORT-5), which revealed that L.B. had poor reading accuracy (PR=5) and below average reading fluency (PR=9). Accordingly, her overall reading skills fell in the below-average range (PR=14). Fountaine expressed concern that L.B.’s skills in this area had gotten worse since her 2015 evaluation, in which she fell in the 16th-percentile rank for accuracy and the 25th-percentile rank for fluency. Further, L.B.’s overall writing skills fell in the below-average range, with frequent spelling errors throughout. Moreover, her written product demonstrated that she did not understand critical information in the picture scene. According to Fountaine, L.B. had made little progress in her written-expression abilities since 2015.

Regarding L.B.’s social communication, Fountaine described her conversations as “one-sided.” As in 2015, L.B. lacked information-gathering skills and her conversations were often difficult to follow. On the social language development test, L.B. demonstrated improvements in perspective taking, problem solving, and supporting peers. All these subtests fell within the average range, as compared to her impaired-to-below-average performance in these areas during the 2015 assessment. Fountaine attributed L.B.’s progress to the direct social-skills instruction she received at Orchard Friends using the Social Thinking curriculum. However, when these skills were

assessed through natural interactions, she continued to struggle with grasping the “big picture” of social interactions.

Fountaine recommended continued use of intensive, multi-sensory instruction, specifically, visual supports, incorporated throughout L.B.’s school day. She reported that the appropriate use of these supports was observed at Orchard Friends through the use of the Orton-Gillingham reading program and Framing Your Thoughts activities. Fountaine also recommended that L.B. continue to receive individual, direct speech/language therapy once a week to address her auditory-processing, narrative-development and inferencing skills and participate in a weekly social communication group to target her social cognition and language development. She found the programs utilized at Orchard Friends to be appropriate to meet L.B.’s needs in this area.

FACTUAL DISCUSSION

Arlene Goldfarb (Goldfarb)

Goldfarb has a bachelor’s degree in speech pathology and audiology, with a master’s degree in special education. Goldfarb is a certified learning disabilities teacher consultant and educational diagnostician. She is certified as a general-education and special-education teacher and has worked as a general-education teacher in private schools. In the Cinnaminson School District, Goldfarb has served in the role of learning disabilities teacher consultant (LDTC) and case manager and is now the supervisor of Special Education Services.

As supervisor, she observes and evaluates all non-tenured special-education teachers in the District and critiques their evaluations. In Goldfarb’s supervisory role, she reviews IEPs before IEP meetings to ensure that all pertinent parts are included, checks for cohesiveness, and verifies that there are corresponding goals for each area of weakness identified in the Present Levels of Academic Achievement and Functional Performance (PLAAFP). Goldfarb was qualified as an expert in learning disabilities, special education, general education, and programming for students with learning

disabilities. The tribunal accepted her as an expert in general special education and of the learning disabled.

During the hearing she was presented with L.B.'s 2016–17 and 2017–18 IEPs to review. Goldfarb explained that prior to the 2016–17 IEP, L.B. was in a resource setting for reading and math and in a general-education setting for science, social studies, and specials. She testified that the District's resource placement is for students who are at least one year below grade level. Teachers in the resource setting cover the same curriculum but at a slower pace, as appropriate for the students in the class.

L.B. was moved to in-class support (ICS) math and reading in April 2017 because of Judge Sanders's December 2016 order. As a result of her change in placement, L.B. was in ICS math and reading for approximately six weeks at the end of the school year. L.B. remained in ICS science and social studies throughout the year. Goldfarb explained that ICS is a general-education placement co-taught by a general-education and a special-education teacher. While the ICS classroom moves at the pace of a general-education classroom, the special-education teacher offers support where needed. Small-group instruction is also provided in the ICS setting. Generally, students in ICS are performing around grade level, and basic-skills classes are offered to those students slightly below grade level.

Goldfarb testified to her familiarity with L.B. as a student. She was the LDTC on L.B.'s initial child study team. Over the years, Goldfarb casually observed L.B. at various times when she was in both the resource and general-education setting and has had discussions with her teachers regarding her progress. However, Goldfarb testified that she has never formally observed L.B. in either setting, because as a supervisor she typically does not observe students unless there is a request for an evaluation.

Goldfarb testified that L.B.'s 2016–17 IEP was based on her teacher's recommendations, which supported the proposed placement, and assessments, which revealed that she was performing at grade level. L.B. also received A's in her ICS

science and social-studies classes, performing well on multiple-choice problems and short answers. Goldfarb stated that L.B.'s performance in ICS science and social studies was evidence that L.B.'s reading, comprehension, and vocabulary were excellent and that she could perform at grade level in a general-education setting.

Goldfarb testified that L.B. received 90s in most subjects during the 2016–17 school year, even after her transition to the ICS setting. The exception was in writing, where she scored a 1 in the first marking period and a 1.5 in the second and third marking periods on her writing rubric. Writing was L.B.'s weakest skill area. The ICS classroom provided L.B. with daily writing support to address her writing deficits. She also maintained that peer modeling in the ICS setting helped to improve L.B.'s writing skills. In contrast, L.B. did not receive the benefit of peer modeling in the resource setting, since most of the students performed below her writing level.

Goldfarb explained that the Fountas & Pinnell Benchmark Assessment Systems (F&P) is a functional reading assessment and has some elements of subjectivity, it is used for progress monitoring. Professionals administering the F&P may give support to the student during the assessment, but this is noted in the reading record and the student does not receive credit when assisted. Additionally, students taking the F&P may not return to the text for information.

York, L.B.'s language arts teacher, administered the F&P to all students in her class, including L.B. When L.B.'s IEP was proposed, her reading level on the February 2017 F&P was at level P, an end-of-third-grade reading level. By the end of the school year, her reading level on the F&P had increased to level Q, which is an early-fourth-grade reading level. Since L.B. was reading at grade level prior to leaving Cinnaminson, Goldfarb questioned the accuracy of the reading assessments at Orchard Friends, which indicated that she was reading at an end-of-third-grade reading level.

Goldfarb prefers the F&P to the Wechsler Individual Achievement Test (WIAT), the reading assessment administered by Dr. DaSilva. According to Goldfarb, although the WIAT is a standardized test, the assessment still leaves room for subjectivity. Goldfarb considers the F&P the gold standard for reading assessments. In her current

position as supervisor, Goldfarb no longer administers assessments on a regular basis, so she has never personally used the F&P or observed its administration by another professional. However, Goldfarb is trained to give any reading assessment, and she testified that since all reading inventories are similar, she is qualified to give an opinion on the quality of the assessment based on a review of the testing protocol.

The District has an appropriate bathroom plan in place for L.B. to address incontinence issues. She claims incontinence has not been an issue at school for L.B., even though she had not verified this with L.B.'s teachers in over a year. Goldfarb also defended the appropriateness of L.B.'s social-skills curriculum, which she reported was based on Fountaine's recommendations. Although she initially reported that L.B. received Michelle Garcia Winner's Social Thinking Methodology, which focuses on social-skills vocabulary and concepts, she later acknowledged that she was unsure of the exact program utilized by the District.

Recently, Goldfarb reviewed L.B.'s file, including teacher comments, evaluations, assessments and IEPs. At her supervisor's request, Goldfarb wrote "rebuttals" to the independent evaluations and commented on L.B.'s current IEP and placement. Goldfarb explained that it is a general practice of the District to document disagreements in writing. Goldfarb compared her rebuttals to a meta-analysis, in which a researcher conducts a study to summarize findings from previous research or secondary sources, as contrasted with an evaluation, which is based on first-hand observations and assessments. As such, her rebuttals were based solely on a review of records and not input from teachers or parents.

Goldfarb's rebuttal to Dr. DaSilva's independent neuropsychological evaluation criticized Dr. DaSilva's evaluation because he only interviewed L.B.'s teachers at Orchard Friends. Goldfarb opined that a proper comprehensive evaluation should have also included input from L.B.'s teachers at Cinnaminson. Goldfarb testified that while she similarly did not speak with L.B.'s teachers at Orchard Friends before writing her rebuttable, this was justified because she was not performing an evaluation on L.B. Additionally, Goldfarb testified that Dr. DaSilva did not have a complete picture of L.B.'s capabilities because he was unable to observe her in the ICS setting in Cinnaminson.

Goldfarb questioned Dr. DaSilva's dyslexia diagnosis. Although Goldfarb is not qualified to diagnose dyslexia, she does diagnose dyslexic students with reading disabilities. Goldfarb also develops educational programming for dyslexic students. Goldfarb testified that dyslexia may manifest in different ways. She explained that a student with dyslexia only qualifies for special education and related services if the disability has an impact on their ability to learn. According to Goldfarb, there is no evidence in L.B.'s educational record that dyslexia had an educational impact in reading. In Goldfarb's opinion, a reading disorder is inconsistent with the results of L.B.'s reading assessments from kindergarten through third grade. L.B. has consistently scored high on her DRAs, reading with over 98 percent accuracy. Additionally, during the 2016–17 school year, L.B.'s overall reading scores on the F&P improved from level N (mid third grade) to level Q (beginning of fourth). The test also indicated proficiency with making inferences. Goldfarb testified that while L.B. may have dyslexia in written language, she does not believe she has it in reading or math.

Goldfarb testified that even if L.B. were dyslexic, her IEP was still appropriate because “any diagnosis in and of itself does not cause placement. Placement is based on educational need.” Goldfarb explained that if L.B. is dyslexic, she compensates well, and a diagnosis alone does not warrant her placement in a resource room or out-of-district.

Dr. DaSilva also diagnosed L.B. with a disorder of written expression. While Goldfarb agreed that writing is a weakness for L.B., she believes that the ICS setting would provide an opportunity for peer modeling of quality writing samples. Goldfarb testified that L.B. would be less likely to improve her writing skills in the resource setting. According to Goldfarb, L.B. made some progress in written expression during the 2016–17 school year.

In reviewing the results of the WIAT, administered by Dr. DaSilva, and L.B.'s math records, Goldfarb concluded that there was no evidence that L.B. had a math disorder. L.B. performed in the average range on the math assessments, even for math fluency. She is strong in math concepts and math facts, as evidenced by her grades.

L.B. received a 73 on her end-of-year math assessment for general-education students, despite spending most of the year in resource placement.

Dr. DaSilva and Dr. Allen, another neuropsychologist contracted by the District, both diagnosed L.B. with an executive-functioning and frontal-lobe disorder. Although Goldfarb has never diagnosed these disorders, she testified that L.B.'s evaluation results and reports from her teachers were inconsistent with these diagnoses. For example, a weak working memory is usually indicative of deficits in executive functioning, yet, L.B. performed in the average range for this subtest. Additionally, deficits on standardized testing do not always manifest in the classroom. Goldfarb explained that classroom manifestations of executive-functioning and frontal-lobe disorder are weak working memory, inability to start or stay on task, and inability to stay organized, skills which were not a problem for L.B. L.B.'s third-grade teachers did not report any concerns with executive functioning. In fact, comments on L.B.'s IEP indicated that she was capable of working independently.

Throughout her testimony, Goldfarb maintained that L.B.'s accommodations, such as repeating, rewording, and rereading problems, were not indicative of an executive-functioning disorder; rather, these were strategies used as accommodations from which most students could benefit. However, on cross-examination, Goldfarb acknowledged that L.B.'s inability to write clear, coherent, organized paragraphs could indicate executive-functioning deficits. Goldfarb testified that even if L.B. had an executive-functioning or frontal-lobe disorder, the two-teacher model of the ICS placement was appropriate to address her needs.

Goldfarb testified that Dr. DaSilva's report had unexplained contradictions. For example, L.B. was extremely talkative with Dr. DaSilva during her evaluation, yet her parents reported that she was unable to have conversations with her family or articulate her thoughts with adults. Goldfarb was skeptical that L.B.'s behaviors stemmed from her inability to communicate, since her teachers reported that she is conversational and communicates her needs well. Additionally, Goldfarb suggested that the fact that she works well in groups, as reported by her teachers, contradicts statements on Dr. DaSilva's report that she "cannot maintain dialogue." There was also a disconnect

between L.B.'s levels at the District and those at Orchard Friends. While Goldfarb did not discuss the report with Dr. DaSilva or review it with L.B.'s teachers, she testified that Dr. DaSilva, as the evaluator, should have clarified these discrepancies.

Goldfarb raised similar criticisms of Fountaine's speech/language evaluation. Like Dr. DaSilva, Fountaine was unable to observe L.B. in the ICS setting at Cinnaminson and did not speak with L.B.'s teachers from the District. Goldfarb testified that the reading assessment used by Fountaine, the Gray Oral Reading Test (GORT), was not as comprehensive as the F&P. According to Goldfarb, the GORT is more akin to a screener than a reading assessment. Goldfarb explained that the passages on the F&P are much longer than those on the GORT, allowing for a better sample of the student's ability. Therefore, Goldfarb questioned the legitimacy of Fountaine's predictions based on the short passages contained in the GORT. Goldfarb testified that L.B. did well with the longer passages of the F&P and in her benchmark assessments, which were completed independently.

Unlike the GORT, which is based on a "cold read," students taking the F&P are given the topic of the passage prior to starting the exam, which Goldfarb described as a positive attribute of the assessment. She also criticized the GORT for its lack of a miscue analysis or differentiating between errors on the exam, as it is important to note which errors stem from comprehension deficits. According to Goldfarb, the purpose of the evaluation is to assess whether the student is comprehending the passages. Since the errors on the GORT are not explained, as they are in the F&P, those reviewing the assessment will not know whether the child comprehended the passage. Moreover, Goldfarb noted that there was no evidence that L.B.'s errors were due to decoding. According to Goldfarb, good readers are those that comprehend what they read and are not necessarily accurate readers. Nonetheless, Goldfarb testified that the District's testing did not show a regression in reading accuracy.

Goldfarb explained that fluency and accuracy were tested on both assessments. Goldfarb described fluency as the words per minute read accurately. The fluency rate is obtained by counting how long it takes to read the passage and subtracting the errors. However, Goldfarb went on to criticize the GORT for adding a speed component to the

assessment. Goldfarb testified that L.B. scored in the average range for fluency on the F&P. Unlike the F&P, the instructions on the GORT advise the students to read as fast and accurately as possible. Goldfarb attributed L.B.'s increased errors on the GORT to the added pressure of time, which affected accuracy. L.B. read with 99 percent accuracy on the September 2016 F&P.

Goldfarb described the Test of Written Language (TOWL) as a functional assessment, administered by Fountaine, as opposed to a standardized test. Goldfarb explained that to properly evaluate a learning disability, the student should also be given a standardized assessment, to identify present levels of performance, and information should be collected from the teacher. Students taking the TOWL are given fifteen minutes to produce a written product describing a picture prompt and a story. The TOWL assesses how well the student can describe the picture in an organized, systematic way and produce a coherent writing passage. Goldfarb disagreed with Fountaine's determination, based on the results of the TOWL, that L.B. did not make steady progress in writing. Goldfarb's opinion was based on L.B.'s teacher's comments, indicating that she worked independently on her classroom writing tasks. However, the writing samples that Goldfarb referenced were all short responses, not lengthy writing passages.

Goldfarb recently spoke with Bates, L.B.'s case manager, regarding the appropriate assessment for a reevaluation of L.B. Goldfarb opined that the Kaufman Test would be an appropriate assessment since it contains a comprehensive test for written expression, unlike the Woodcock-Johnson. Goldfarb explained that the District could also administer the Woodcock-Johnson, but used the Kaufman written-expression subtest. Goldfarb testified that although Dr. DaSilva recently administered the WIAT, he did not give L.B. the test for written expression, which she described as a "big oversight."

Goldfarb's observed L.B. at Orchard Friends on April 10 and 12, 2018. Goldfarb conducted these evaluations at her supervisor's request to determine if the placement at Orchard Friends was appropriate and whether the independent evaluations were accurate. Although Bates, L.B.'s case manager, also could have conducted the

observation, Goldfarb, who admittedly does not know L.B. personally, had more availability at the time. Goldfarb testified that she requested to observe L.B.'s program approximately three weeks before the hearing. While she requested in advance to observe L.B. in an academic setting, she was unable to do so on either day.

On the first day of observations, Goldfarb observed L.B. participating in the Fast Forward program. According to Goldfarb, Fast Forward is an excellent program, also utilized by the District, to help students who struggle with reading. The vast majority of the students at Orchard Friends participate in Fast Forward. During Goldfarb's observation, L.B. and three other students were seated at computers, with the assistance of a teacher and an aide. Goldfarb testified that without teacher assistance, L.B. put forth minimal effort in the program. Goldfarb testified that she was denied access to the data from L.B.'s Fast Forward assessments. She was provided a graph that tracked her progress. According to the graph, L.B. started at a low level, made some progress, and then plateaued for a while. Goldfarb testified that this pattern was not unusual, and explained that she spoke with Pearl, L.B.'s speech pathologist, social-skills coach, and an expert on the Fast Forward program, about ways to address the plateauing.

Orchard Friends recommended that she come back on April 12 to observe L.B. in an academic setting. However, when she arrived, the staff informed her that there had been a change of scheduling due to a field trip. During the second observation, L.B. was late to class, arriving during "collections," where the class discusses daily reminders and events. Goldfarb observed L.B. in yoga class, in which she refused to participate. According to Goldfarb, L.B. showed minimal engagement with the yoga program after about twenty-five minutes. The yoga teacher asked all the students to provide a word check-in to gauge their emotions, but skipped over L.B. When L.B. was finally asked to identify her feelings, she simply shrugged her shoulders. L.B. also refused to follow instructions at the end of the class. Finally, L.B. transitioned to art, which she enjoyed. Goldfarb noted that she only had social interactions with one other student in class.

Goldfarb intended to observe L.B. in an academic setting, yet, did not get an opportunity to do so. She testified that while she did not follow up with L.B.'s teachers at Orchard Friends regarding her progress, she did speak at length with Pearl about her reading levels.

Goldfarb's primary knowledge of L.B.'s performance at Orchard Friends was based on her limited observations, prior evaluations, progress reports, and L.B.'s i-Ready scores. From those sources, Goldfarb opined that L.B. was a very different child than she was at Cinnaminson. At Orchard Friends, she was more withdrawn and had developed behavior problems that were not exhibited previously. Goldfarb testified that she attributed these challenges in the new setting to not being around typical peers to challenge her academically. Pearl informed Goldfarb that she did not agree with this assessment.

Goldfarb commented on L.B.'s Orchard Friends IEP. Primarily, Goldfarb was concerned that the i-Ready computer program, utilized by Orchard Friends to determine L.B.'s strengths and weakness, was not an accurate measurement of her present levels of performance. One criticism was that the i-Ready program is a reading screening not a comprehensive reading inventory. Goldfarb claims that this computer program is less informative than a reading inventory because there is no way to evaluate the student's effort during the assessment, as compared to educational assessments that are administered one-to-one.

Since the i-Ready program was used to develop her goals, they were set to much lower levels than her third-grade IEP goals at the District. Although Goldfarb acknowledged her lack of familiarity with the i-Ready program, she opined that it was not an official evaluation and needed to be viewed in light of L.B.'s functional performance in class. The i-Ready, administered in September of L.B.'s fourth-grade year, placed her at a third-grade reading level. While she scored on grade level for high-frequency words and vocabulary, she was at a third-grade level for comprehension and a first-grade level for phonics and decoding. Due to the results of i-Ready, Orchard Friends assigned her third-grade reading and writing material and first-grade math work. While Goldfarb testified that it is always appropriate to give students work at their level,

she maintained that the i-Ready did not provide an accurate measurement of L.B.'s levels. Goldfarb also indicated that L.B.'s goals on her Orchard Friends IEP were not measurable, making it difficult to determine progress.

Based on Orchard Friends' own assessment, L.B.'s i-Ready reading scores indicated that she had not made progress from September to January, during which time she attended Orchard Friends. Her phonics remained at a level 1, which indicated that she needed improvement in that area. Similarly, her literature comprehension remained at grade 2. While L.B.'s vocabulary scores increased from grade 3 to grade 4, she was still not performing on grade level.

Goldfarb opined that L.B.'s curriculum at Orchard Friends is inappropriate to provide her with FAPE. Goldfarb's main criticism of L.B.'s Orchard Friends' program was that it did not provide her the benefit of being educated with typical peers. Goldfarb posited that the more restrictive environment would have a negative impact on L.B.'s self-esteem, because she knew she was capable of doing well in the ICS setting. Additionally, the program also lacked scope and sequence. An appropriate program should offer a unified curriculum, which any teacher can supplement. Goldfarb testified that an appropriate program for L.B. would be in a general-education setting at a public school.

Goldfarb's opinions dispute medical findings based on the District's gradings and teacher assessments. She acknowledges her absence of expertise in the medical area, but disputes Dr. Allen's and Dr. DaSilva's findings. She supports her position with grading from assessments that are themselves questioned. She acknowledges her limited knowledge of the student and the i-Ready assessments, yet, offers criticism of the assessments. The criticism and arguments are weak. Because of these factors, this tribunal discredits her critical assessment of petitioners' experts.

Julia Bates (Bates)

Bates has a bachelor's degree in education and a master's in learning disabilities. She is a certified elementary general-education teacher and special-

education teacher and is also a certified LDTC. She has been working as an LDTC since 2000 and has acted as L.B.'s case manager since the beginning of the 2015–16 school year. Bates was accepted as an expert in the development of IEPs, learning disabilities, and special education.

In preparation for trial, Bates reviewed L.B.'s IEPs and Dr. DaSilva's report, but did not review any other documents to refresh her memory regarding L.B.'s various IEP meetings. While Bates admitted that she could not recall comments from L.B.'s teachers regarding her progress, nor many of the details of L.B.'s IEP meetings, she nevertheless maintained that the District's proposed IEPs were appropriate.

During the hearing, Bates was presented with an email exchange that showed that she attempted to schedule an IEP meeting for L.B. on January 24, 2017. This meeting did not take place until March 8, 2017, due to scheduling conflicts between the District and the parent.

Bates testified that during the March 8 IEP meeting she gave the parents a draft IEP, and L.B.'s teachers discussed her present levels and progress. L.B.'s parents expressed their concerns with the IEP, including the proposed change to her placement at the end of the year. The parents did not sign the IEP, informing the District that they would send proposed changes.

Bates testified that the District received the proposed changes on or about April 6, 2017, almost a month after L.B.'s IEP meeting. Some of the parents' proposed changes were incorporated into the IEP, such as a social-skills group and social-emotional goals. Bates explained that although parents are members of the IEP team, the District does not have to implement every requested change. Additionally, Bates testified that many of the requested changes in the parents' letter were unclear, and, therefore, she did not address them in the IEP. She testified that she did not reach out to the parents to clarify their comments because she expected this to be done through the attorneys, since the case was in litigation.

Some of the major recommendations that were not incorporated into L.B.'s IEP were the addition of a behavior intervention plan, changing L.B.'s goals to make them more measurable, and documenting the parents' concerns. Bates also did not amend the minimum speech-therapy sessions to give the therapist flexibility with scheduling, and, kept L.B.'s IEP based on Judge Sanders's order which was to expire in June.

Bates testified that L.B.'s teachers reported some problem behaviors, such as L.B.'s becoming frustrated. As a result, York created a behavior contract for her. Bates explained that while the behavior contract benefited L.B., her behaviors were not so significant that they impacted her education. Hence, despite the parents' recommendation that a behavior intervention plan be included on L.B.'s IEP, Bates determined that this was not needed.

Bates could not recall why the parents' concerns were not included on L.B.'s IEP. She acknowledged that she did not follow up with the parents' concerns, and, decided unilaterally not to include them.

In response to the parents' comments and recommendations regarding L.B.'s IEP, Bates handwrote draft changes onto the proposed IEP. Many of the changes regarding the specifics of L.B.'s goals and objectives were not included in the finalized IEP. For example, L.B.'s parents found it important to include whether the goal would be achieved independently or with assistance. Although Bates included this recommendation on the handwritten revisions, it was not included on the final IEP.

Bates testified that she did not develop L.B.'s goals and objectives independently, rather she collaborated with Scola to identify the appropriate goals for L.B. Bates explained that L.B.'s goals were developed using an IEP software program based on her needs, including recommendations from Fountaine's speech/language report. However, on cross-examination, she acknowledged that she did not fully understand L.B.'s needs, even though this was her responsibility as case manager. While Bates admitted that L.B.'s goals were not measurable and could have been adjusted by inserting a Word document into the IEP, she explained that she did not know how to alter the IEP goals in that way.

Bates also testified that although data for social-emotional goals can be collected in the form of tallies or checkmarks, she did not know whether data was collected to determine if L.B. was meeting her goals in this area.

Bates testified that after she sent the parents the amended IEP incorporating some of the parents' recommendations, neither the parents nor their attorney contacted the District again regarding any lingering concerns. According to Bates, had the parents responded to the amended IEP, she would have considered their comments and made changes to accommodate them as appropriate.

Bates drafted a second IEP for L.B. for the 2017–18 school year to present to L.B.'s parents at the annual review meeting, held on June 20, 2017. In attendance were members of the child study team, the speech therapist, L.B.'s parents with counsel, and Scola. Bates testified that while she does not recall the details of the meeting, she remembers that L.B.'s teachers discussed her progress and went over recommendations for programming for the following school year. Bates testified that, again, L.B.'s parents did not sign the IEP and did not follow up with the District after the meeting to address any concerns. However, on cross-examination, she admitted that L.B.'s parents had ongoing dialogue with the District about their concerns and would consistently express their disagreements at L.B.'s IEP meetings. Bates testified that there was never a time that she did not know the parents' concerns regarding L.B.'s IEP and educational needs.

Bates testified regarding L.B.'s transition from resource placement into ICS. She explained that her ICS teachers needed to "catch her up," because, while the curriculum in the two settings was the same, the material was taught in a different sequence and topics were covered at different times.

Bates testified that on July 21, 2017, L.B.'s parents sent the District a letter informing them of their intent to unilaterally place L.B. at Orchard Friends. The District responded with a letter, dated July 25, 2017, declining to reimburse the parents for a unilateral placement, but offering to hold an additional IEP meeting to discuss the

parents' concerns and L.B.'s placement. Bates could not recall what transpired at the meeting, but, testified that the parents did not contact the school after the meeting. Further, Bates was never contacted by anyone from Orchard Friends to discuss L.B.

In 2015, Bates administered the Woodcock-Johnson III (WJ-III) to L.B., which she explained is a standardized academic-achievement assessment designed to assess the student's strengths and weaknesses in reading, writing, and math as compared to age-level peers. Bates testified that the results of L.B.'s 2015 evaluations, including the WJ-III, were used to develop her 2016–17 and 2017–18 IEPs. Although L.B. received curriculum-based assessments from her teachers, the District did not provide any further standardized assessments to develop her IEPs.

Bates testified that as an LDTC she is qualified to administer and review the WIAT, a standardized assessment used by Dr. DaSilva that assesses reading, writing, and math. According to Bates, L.B. performed in the average range on all subtests on the WIAT, except for one, in which she scored below average. Bates explained that Dr. DaSilva's use of the term "low-average range" to describe L.B.'s scores that fell in the average range was inappropriate because this terminology is not used on the WIAT. Bates testified that she agrees with the results of the WIAT. Dr. DaSilva's report did not change Bates's opinion as to the appropriateness of L.B.'s IEP, since her educational testing confirmed that she fell within the average range.

Bates testified that she was directed by the District's attorney to write a report describing why she believed L.B. was offered a FAPE at the District. Bates explained that although her report, along with the reports from other District employees, was not dated, she was not instructed to not include a date. Bates testified that based on Judge Sanders's order, L.B.'s performance on achievement testing, and her functional performance in class, her 2016–17 and 2017–18 IEPs were appropriate. However, at the prior hearing to determine eligibility, Bates testified that L.B. should not be eligible for special education and related services, and she continued to maintain that she does not need specialized instruction, which she defined as replacement instruction in a resource room. Bates opined that L.B. needs only academic support and modifications.

Kristy DeSanto (DeSanto)

DeSanto has a bachelor's degree in psychology and a master's degree in counseling and school psychology. DeSanto was qualified as an expert in school psychology.

In January 2015, DeSanto administered the Wechsler Intelligence Scale for Children IV (WISC-IV) to L.B., to assess her overall cognitive abilities, and the Behavior Assessment System for Children (BASC), which looks at social-emotional behaviors. As part of the evaluation, DeSanto conducted a student interview, which provides additional information and helps build rapport. DeSanto testified that she did not perceive anything inappropriate or out of the ordinary during L.B.'s interview. Further, she testified that the results of the assessment appeared to be a valid measurement of her cognitive ability because L.B. was cooperative, focused, and understood all the directions during the assessment.

During testimony, DeSanto provided a detailed explanation of the WISC and its subtests. The WISC-IV is broken down into four categories: verbal comprehension index (VCI), perceptual reasoning index (PRI), working memory index (WMI), and processing speed index (PSI). DeSanto explained that verbal comprehension measures general knowledge and perceptual reasoning measures visual motor coordination. Working memory is the ability to obtain, manipulate, and output information, and processing speed is how quickly the student can perform the task accurately. The average of these indexes and corresponding subtests is the student's full-scale IQ (FSIQ). L.B.'s FSIQ was a 103, which fell within the average range, or equal to the majority of students the same age. DeSanto testified that a student's FSIQ, which generally remains the same after second grade, is a good predictor of success.

L.B. scored a 95 on her verbal comprehension index (VCI), which is also within average range. However, there was a question at trial as to whether this score was purposely inflated. DeSanto testified that the VCI normally consists of three subtests: similarities, vocabulary, and comprehension. However, DeSanto conducted an additional-information subtest due to the slight discrepancy in testing, with L.B.'s

vocabulary scores being the only subtest that fell below average range. DeSanto explained that the vocabulary subtest is more concrete than the other two subtests, which rely on abstract or higher-level thinking. DeSanto testified that she followed the WISC protocol and administered an additional-information subtest, which tests similar skills, to determine why the vocabulary subtest fell below the average range. Specifically, the vocabulary test assesses vocabulary, whereas the information subtest, which also requires the student to provide a definition of a word or term, tests general-knowledge ability. The WISC-IV protocol allows examiners to make substitutions at their discretion. According to DeSanto, she substituted L.B.'s information score for her vocabulary score since it fell more in line with her other scores. She denied making this substitution to inflate L.B.'s testing results. DeSanto acknowledged that while it is best practice to explain any discrepancies or substitutions that occurred on the evaluation, she did not provide this explanation on her report. DeSanto testified that had she not made the substitution, L.B.'s VCI score would have fallen in the below-average range, but her FSIQ would have remained in the average range.

DeSanto also administered the BASC, which are rating scales that assess the student's social and emotional behavior and functioning. The assessment is based on parent and teacher ratings of the student and is highly subjective. Based on the responses, it is determined whether the student's behaviors pose no concerns or whether the student is at risk or within clinically significant range. According to DeSanto, the BASC is not a diagnostic test, but rather is meant to flag areas of concern. However, physicians can use the results to make a diagnosis. DeSanto testified that normally the scores given by parents and teachers on the BASC are similar, but with L.B., the scoring was dramatically different, with the parents identifying at-risk and clinically significant behaviors.

According to DeSanto, L.B.'s psychological evaluation supported the ICS placement because her skills fell within the average range. Additionally, L.B.'s teacher reported limited behavioral concerns on the BASC. However, on cross-examination, DeSanto acknowledged that the only teacher who filled out the BASC was Collier, L.B.'s ICS science and social-studies teacher. Further, L.B.'s classroom behaviors during the

2015 evaluation were used to determine the appropriateness of placement for the 2016–17 and 2017–18 school years, without updated behavioral assessment.

DeSanto testified that she is qualified to administer and interpret the evaluations given by Dr. DaSilva, except for the WIAT, which LDTCs interpret. DeSanto questioned the validity of the Youth Self Report (YSR/11-18) administered by Dr. DaSilva, which is similar to the BASC, but from the student's perspective. The YSR/11-18 was intended for children eleven through eighteen years of age. DeSanto testified that since L.B. had just turned ten when the evaluation was administered, some of the questions, which were designed for older students, may not have been on her cognitive level.

During testimony, DeSanto also reviewed the results of the WISC-IV administered by Dr. DaSilva. She explained that on this assessment there was a nine-point discrepancy between L.B.'s non-verbal (block design) and verbal abilities (visual puzzles), which would invalidate her scores on the visual-spatial index. Block design looks at the student's visual motor coordination, their non-verbal ability. According to DeSanto, this would in turn invalidate L.B.'s overall FSIQ. DeSanto testified that Dr. DaSilva should have given an additional assessment to determine the student's visual motor coordination, and to see whether it was consistent with the other assessments.

According to DeSanto, about a month before the hearing, the director of Special Services, Barbara Scola, instructed her to write a report giving her opinion about whether the District offered L.B. a FAPE during the 2016–17 and 2017–18 school years. Santo testified that based on the results of L.B.'s 2015 evaluations, in which she scored in the average range, the IEPs offered by the District were appropriate. She also opined that L.B.'s cooperative nature during testing and her ability to understand the material presented to her were evidence that she would do well in an ICS setting.

Sean Agin (Agin)

Agin was qualified as a specialist in elementary education and a teacher of the handicapped. Agin was L.B.'s teacher for resource-room reading, language arts, and

writing during the 2016–17 school year and briefly taught her in-class support mathematics from April 2017 until the end of the school year.

According to Agin, the resource-room setting was small-group instruction, in which the pace of the normal class was “slowed down” to fit the students’ academic needs. Agin described L.B. as a top student and leader in the resource-room language-arts class. Although writing was a weakness for L.B., her writing skills were more advanced than those of the other students in the resource placement. Agin testified that L.B. was not being challenged in the resource room. However, on cross-examination, Agin admitted that he could have modified the classwork in the resource setting to make it more challenging for L.B.

Socially, L.B. maintained friendships and helped her peers when needed. However, she would sometimes get frustrated with the other students when “they didn’t respond the way she would’ve responded.” Agin could not recall any atypical conflict occurring between L.B. and her peers.

Per L.B.’s IEP, she transferred into the ICS math setting in April 2017. Agin estimated that there were approximately fifteen instructional classes during the time L.B. attended ICS math. Although L.B. had gaps in knowledge when entering ICS, Agin testified that this is typical of students coming from a resource setting, due to the slower pace of instruction. Since ICS is delivered by two teachers, Agin was able to work with L.B. individually to help to “catch her up” to the current math unit. Rereading and rewording word problems were strategies utilized in ICS to assist L.B. in understanding the question posed. Since L.B. only attended ICS math for a short time, Agin could not give an opinion as to her progress in the class. However, Agin testified that he believed the placement was appropriate for her because “she was demonstrating the ability to do a lot of skills that [the ICS] kids were working on.” This was evidenced by her performance on the spiral reviews at the beginning of each class, in which students were given math problems of various rigor to keep current for PARCC testing. From what Agin could recall, L.B. was strong with fraction work and multiplication.

Agin provided information about L.B.'s present levels of performance for her 2016–17 IEP. He also worked collaboratively with his co-teacher, Liz Bongiovanni, to select goals and objectives to address her weaknesses in reading, language arts, and writing.

At the end of the 2016–17 school year, L.B. scored a 73 on her end-of-year math assessment. This assessment was administered to all general-education and ICS students to measure their growth through the year and help determine placement for the following year. Since the end-of-year assessment covered material from the beginning of the school year, Agin opined that L.B. performed well on this assessment, considering she was in resource placement for most of the school year. However, Agin acknowledged that he was not sure whether the material on the assessment was taught in the resource setting.

Agin also wrote L.B.'s math present levels and needs in her 2017–18 IEP and helped select her goals and objectives from a drop-down menu. Agin explained that the math goals on the 2017–18 IEP remained the same as the previous year because L.B. transferred into the ICS setting at the end of the school year and did not have an opportunity to progress on those goals.

Agin testified that L.B. was organized and was able to start tasks independently. L.B. adhered to the bathroom routines in both settings with no incident and had no behavioral issues that would necessitate a behavioral intervention plan. She engaged in age-appropriate behaviors, and there were no noticeable differences in her behavior between the two settings.

Kimberly York (York)

York was admitted as an expert in special education. York taught L.B. in ICS social studies and science for the duration of the 2016–17 school year, resource math until April 2017, and ICS reading, language arts, and writing from April 2017 until the end of the school year.

York contributed to L.B.'s present-level statements on the 2016–17 IEP and helped with the goals and objectives in math. York also contributed to the math goals and objectives in the 2017–18 IEP. The math goals and objectives remained the same as the previous year's goals because there was inadequate time to address the goals in her IEP due to the short time she was in ICS math.

York testified that there were approximately ten students in the resource math room. According to York, L.B. was more capable academically than her peers in the resource placement; she could work faster and apply topics at a more advanced level. Consequently, the pace of the curriculum frustrated her. L.B. was a top student in resource math and, therefore, lacked the benefit of peer modeling. Since she was more advanced than her peers in the resource room, York provided daily, individual instruction at her level of learning. York testified that she believed, at that time, that L.B. would benefit from an ICS setting where she could be challenged. This belief was also based on L.B.'s performance in her ICS science and social-studies classes, where she required minimal assistance and received "fantastic" scores. Although York had not previously taught L.B. in reading and writing, she testified that she was able to observe her reading and writing skills in both ICS science and social-studies classes, even though those skills were never specifically assessed in those classes. York acknowledged that placing L.B. in a different resource room with more appropriately matched peers was not considered by the team, because there was only one resource room for third grade.

York testified that L.B. experienced a smooth transition into ICS reading, writing, and language arts in April 2017. York estimated that there were about eighteen students in the ICS rooms, four of whom were classified. L.B. was very organized in the ICS setting and could start tasks independently. York noted that the gaps in L.B.'s knowledge upon entering the ICS room were typical for students transitioning from the resource room. To address the gaps in learning, York would work with L.B. in a small group and not hold her accountable for material to which she was not previously exposed. Additionally, when L.B. had difficulty with her homework, York would work with her the next day to make sure she understood her mistakes.

York was unable to identify L.B.'s disabilities; she recalled that her weaknesses in written expression, decoding, and phonetic awareness were comparable to those of the other students in the ICS language-arts class. York described L.B.'s reading ability as average, but, testified that her reading and writing skills were comparable to the "basic-skills students" who needed additional supports. Notably, York identified writing as a weakness for L.B., describing it as a "problematic area." Although she received A's on her spelling tests, spelling was also an area of weakness for L.B. To address L.B.'s weaknesses, York worked with her in small groups.

York testified that L.B. had strong participation in both resource and ICS classes, although she was "more at ease" in the ICS setting. While York could not recall any behavior that was atypical for her age, she also acknowledged that L.B. maintained a daily behavior tracker which tracked her progress on meeting her social emotional goals. According to York, L.B. adhered to the hourly bathroom routine without incident.

York testified that in her professional opinion, based on L.B.'s high level of class participation and academic performance, the ICS placement was appropriate to meet her needs. For example, L.B.'s average grades were higher than those of many of the other students in the ICS setting. According to York, L.B.'s work samples and report-card grades evidenced that she made progress in ICS social studies and science during the 2016–17 school year. L.B. received a 72 average on her end-of-year language-arts benchmark, which was administered to only general-education and ICS students. York described her grades as "fantastic," considering she came from a resource setting. At the end of the 2016–17 school year, L.B. also achieved grade-level proficiency on the F&P Reading Inventory, which tested reading comprehension and accuracy. However, York testified that L.B.'s writing grades remained below grade-level expectations.

L.B. had a multi-sensory learning style and needed material presented in a variety of different ways to achieve success with learning. York testified that she utilized multi-sensory instruction with L.B. in a small-group setting for language arts, as recommended by Dr. DaSilva and Fountaine. This included breaking apart words, visualizing, highlighting, and chunking. York found these strategies to be successful with L.B., who used them independently and gained confidence in her abilities over a

short period of time in ICS language arts. However, on cross-examination, York acknowledged that her training with multi-sensory instruction was limited to a two-week seminar on Wilson Reading, which she attended seven years ago. While she used some of the Wilson strategies with L.B., she admittedly did not use the program itself.

According to York, Dr. DaSilva and Fountaine's reports were both completed after L.B. was no longer attending the Cinnaminson school district, and neither evaluator contacted York regarding L.B.'s performance in her classes. During the hearing, York was presented with L.B.'s independent speech/language evaluation, administered by Fountaine, which revealed a significant decrease in her ability to make inferences from the previous assessment, which was administered in 2015. York testified that she was surprised by the findings, since L.B. did not present with the same challenges in her classes. However, York agreed with the evaluators' observations that L.B. fell below the average range in writing.

York was also presented with L.B.'s private audiological report, in which L.B. was diagnosed with a central auditory processing disorder (CAPD). According to York, L.B. exhibited some difficulties associated with CAPD, which were addressed through the two-teacher model in small group and by using an FM system.

York also reviewed L.B.'s May 2017 PARCC assessments, in which L.B. was approaching expectations (level 3) in math and had only partially met expectations (level 2) in language arts and literacy. York did not know what topics on the PARCC were covered in L.B.'s resource placement.

Despite the updated evaluation reports and PARCC results, York did not change her opinion regarding the appropriateness of the ICS setting for L.B., as she explained that L.B. "thrived in it."

Barbara Scola (Scola)

At the time of the testimony, Barbara Scola was the District's director of Special Services, a position she held for five years. In her role as director, she was responsible

for the hiring of special-education teachers, ensuring that their instruction was correct, managing their professional development, overseeing child study teams, ensuring that programs and services were appropriate, and addressing due-process petitions against the district.

Scola testified that she was involved in some capacity with all three of petitioners' children, who were all classified as autistic prior to her employment with the District. Scola denied taking any discriminatory or retaliatory actions against the family. She also denied excluding the parents from the IEP process or failing to consider their opinions. According to Scola, the District's attempts to declassify the children were based on testing, which revealed that they no longer needed special-education services. The District proposed declassifying L.B.'s brother, D., in 2013, prior to Scola's employment at Cinnaminson. Scola testified that independent evaluations confirmed that D. was no longer in need of special-education services.

In 2015, the District proposed declassifying L.B. Her parents invoked their due-process rights, and during the hearing Scola testified that L.B. did not need special-education services. Even though Scola did not believe L.B. needed additional assistance at the time, as a courtesy to the parents, the District offered L.B. ICS under a 504 plan. Scola acknowledged that Judge Sanders disagreed with her judgment, determining that L.B. remained eligible for special-education services. Scola testified to her belief that this was a "compromised position" by the judge.

Finally, Scola testified about the District's proposed declassification of L.B.'s sister, Y., in 2018. According to Scola, the District considered the parents' input regarding Y.'s continued eligibility, but nevertheless decided that declassification was appropriate based on her performance in the general-education setting. Following the proposed declassification, the parents requested independent evaluations. The District filed for due process to deny the evaluations. Scola conceded that this was the only time that the District has ever filed against a parent to deny evaluations. In turn, the parents filed for due process to dispute the denial of eligibility. Scola testified that the District is not obligated to defer to an independent evaluation if it does not agree with its findings. Further, Scola admitted that the District could have conducted additional

assessments to test Y.'s social skills and pragmatics, yet these were not proposed until after due process was filed.

Regarding L.B.'s most recent independent evaluations, an initial speech/language evaluation was conducted on L.B. by Princeton Speech-Language & Learning Center in December 2015, and L.B. was reevaluated by Fountaine in December 2017. The 2017 speech/language report found that L.B. had regressed from the previous evaluation. Scola testified that since the data showed that L.B. was on grade level when she left the District, the regression occurred during her four months attending Orchard Friends.

Scola testified that in the summer of 2016, L.B.'s parents requested an independent neuropsychological evaluation of L.B., although she could not recall if this request was made in writing. According to Scola, the District normally does not offer students neuropsychological evaluations without a parent request. In an effort to work collaboratively with the parents, the District retained Dr. DaSilva to conduct the evaluation. Scola testified that Dr. DaSilva only observed the District's ICS program once L.B. was no longer in the District.

Scola testified that there was a long wait for the neuropsychological report, and that when the District received it, the report was incomplete. On a phone conference with Dr. DaSilva, he discussed two data points with Scola, the NEPSY, a developmental neuropsychological assessment, and the CTOPP results. According to Scola, Dr. DaSilva informed her that the NEPSY revealed that L.B. performed better with greater demands, which he attributed to a weakness in executive functioning. Based on the results of the CTOPP, Scola admitted during her testimony that L.B. could be dyslexic. However, according to Scola, Dr. DaSilva did not consider that L.B. was reading on grade level, which she believed indicated that if she was dyslexic it was not impacting her academic performance. Dr. DaSilva informed Scola that he did not have any intention of making recommendations or any "intentions of stepping on any land mines." Dr. Da Silva communicated to Scola that Orchard Friends was a "cozy" school, and he would like his own special-needs son to attend.

During her testimony, Scola discussed the results of the PARCC testing. According to Scola, the PARCC gives information on the individual students and is also a reflection of the school and teachers. Scola admitted that ideally the PARCC ensures that all students are learning the same material to prepare them for the post-secondary environment. Scola opined that L.B.'s low performance on PARCC testing may have resulted from her time in the resource placement. Generally, students in the resource rooms are not exposed to all topics covered on the PARCC, or are exposed to them in less depth than students in the ICS room. On cross-examination, Scola testified that even though L.B. worked at a faster pace than her peers in the resource room, she was uncertain what topics she covered to prepare her for PARCC testing.

Scola testified that throughout her tenure as director of Special Services, she has never dealt with another family who has challenged the child study team's decisions to the extent of L.B.'s family. While the team considers the parents' input, the child study team's ultimate decision, they believe, is in the best interest of the child. Scola also testified that L.B.'s parents declined the District's invitation to observe L.B. in school.

Scola directed the District's employees to write reports for the hearing, but, did not instruct them on what to write.

Scola testified to the circumstances around the termination of Educational Services Unit (ESU) services for L.B. According to Scola, to be eligible for ESU services, the child cannot be enrolled in the District and must be privately placed by the parent. Scola testified that upon receiving a records request from the ESU, she contacted Orchard Friends for more information. Scola believes that she spoke to the director of Orchard Friends, who was unaware that L.B. was still on the District's rolls. Scola testified that Orchard Friends gave her the impression that L.B.'s parents had lied about withdrawing L.B. from the District. On November 8, 2017, after the phone conversation with Orchard Friends, Scola wrote a letter to the ESU, informing them that L.B. had not been withdrawn from the District. That same day, the ESU suspended L.B.'s services.

Scola testified that she forwarded the ESU suspension letter to Julia Bates, L.B.'s case manager. Scola was presented with her email to Bates, explaining that the family was "outed" from receiving services. The email chain ended with a comment from Scola—"little pleasures." Scola acknowledged that this was a "poor choice of words" on her part, but, denied that the statement was made out of malice. She stated that she would feel that way "about anyone that lied and got caught." Scola testified that the email was written out of "frustration of always having difficulties," and indicated that the parents were very difficult to work with because "they don't ever see it from the District's point of view."

Nevertheless, Scola testified that L.B. was not entitled to ESU services because since the parents had not withdrawn L.B., she was not privately placed. On cross-examination, Scola admitted that the District never paid for L.B. to attend Orchard Friends, and that while L.B. attended Orchard Friends, she was not receiving services from the District. Scola testified that while the placement was a "unilateral placement," it was neither private nor public because the case was in litigation.

Scola acknowledges that the District never denied parents' requests for evaluations except for this family. The District attempted to declassify all the children of the family at different times. Scola acknowledges that the parents were difficult to deal with, yet Scola denies any discrimination or malice toward the family. She went out of her way to point out that because the family did not withdraw from the school, they were not entitled to County benefits as a private pay, yet the District did not pay for Orchard Friends. Finally, after successfully ensuring the termination of County benefits, she gloated, "Little pleasures." While malice may be too strong a word to attribute to Ms. Scola's actions, this tribunal is concerned by the District personnel's view of the parents of this student. Scola described that she had never dealt with another family who had so challenged the child study team's decisions, stating, "they don't ever see it from the District's point of view." The parents are advocating for their child's educational needs, not the needs of the District. The relationship between the parents and District personnel deteriorated to the point that the District refused to pay for the out-of-district placement but went out of its way to ensure that the family received no County benefits while the parents paid out of pocket for their child's education with no guarantee they

would be reimbursed. For these reasons, Scola's testimony is indicative of a failure of the District's obligation to provide a free appropriate public education. This tribunal does not question that a District can dispute the best educational benefit for the student. Judge Sanders recognized some of the District's concerns and provided them with some discretion. The District took the direction from this tribunal, and facially inserted additional language in the proposed IEP, and then failed to place appropriate goals to address the tribunal's concerns.

Daniel DaSilva, Ph.D. (Dr. DaSilva)

Dr. DaSilva has a bachelor's degree in psychology, a master's degree in education with a specialty in counseling, and a Ph.D. in clinical psychology. Dr. DaSilva completed a two-year fellowship in pediatric neuropsychology, and, works as a pediatric and aviation neuropsychologist at Morris Psychological Group, where he is a partner. He is also on the executive board of the New Jersey Psychological Association and is an officer in the US Air Force. Dr. DaSilva was admitted as an expert in neuropsychology.

A pediatric neuropsychological evaluation provides a more refined assessment of the memory system and executive functions than a traditional school-based psychological assessment. Pediatric neuropsychological evaluations also give a more comprehensive assessment of core language functioning and core visual special sensory motor functioning, which sheds light on overall IQ and how the memory system operates.

In 2017, Dr. DaSilva conducted an independent neuropsychological assessment of L.B. Dr. DaSilva conducts a "blind observation" prior to meeting the student, so his presence during the school day does not impact the child's behavior. Dr. DaSilva administers the evaluations, which include a student interview, and collects behavioral data from various sources, including parents, teachers, and the child. He then scores the evaluations and writes his report. Dr. DaSilva reviewed his findings with Ms. Scola and Ms. Bates. He found that all sources used during the evaluation were accurate and reliable.

L.B.'s evaluations revealed a multi-faceted profile with elements of executive dysfunction, sensory motor and visual motor dysfunction, and core language difficulties. Those dysfunctions manifested in aspects of her memory performance and IQ. These dysfunctions had an impact on her overall adaptive functioning.

L.B.'s attention concentration index, or focused attention, was within normal range, and her ability to sustain attention was above average. Dr. DaSilva explained that L.B.'s auditory attention became stronger as the work became more demanding. Her brain took a more relaxed approach with mundane activities, but, drew upon more resources in the face of higher demands.

The executive system, which is in the front half of the brain, governs output, while the posterior portions of the brain process incoming information. Dr. DaSilva testified that L.B. exhibited output deficits, including difficulties with inhibition and self-monitoring. L.B. was administered the NEPSY-II to measure inhibitory control, cognitive flexibility, and self-monitoring. Here, she had to name an array of squares and circles. Dr. DaSilva emphasized that for a child her age, her performance on this task should have been perfect or near perfect. Instead, she made many errors throughout due to self-monitoring. L.B. scored within the 2nd to 5th percentile for her accuracy. This can manifest daily as "careless mistakes" or a risk for carelessness.

Self-modulation and self-monitoring are difficult skills to teach in the abstract. These executive functions must be taught in-vivo, with a curriculum-based or program approach in the classroom. Motivation is a key component in self-monitoring. He explained that students with executive-functioning deficits need extended time, not just because they process at a different speed, but also because they need to focus on skill development with the hope that it will become internalized. He stated that the research shows that this must be done through a curriculum-based approach.

On the design-fluency task, L.B. had to produce as many different designs as she could in a certain time span, under different conditions. L.B. struggled to fluently produce different designs. This indicates that her psychomotor fluency was weak.

On testing on semantic fluency, a posterior brain function, L.B. scored within normal range. L.B. showed severe impairment with phonological fluency, an anterior brain function. There, she had to name as many words as she could that began with a certain letter sound. Dr. DaSilva explained that there was a large discrepancy between her semantic and phonological fluency.

Dr. DaSilva noted in his testimony that L.B.'s areas of weakness, phonological and psychomotor fluency, as well as pencil and paper tasks, indicate frontal-lobe-based fluency issues. In an educational environment, this can affect the rate and efficiency of her output, primarily having implications in spelling or written expression. Regarding adaptive functioning, Dr. DaSilva expected L.B. to have challenges completing tasks in a timely manner relative to her peers. These deficits could also manifest as behavior challenges in the classroom.

Dr. DaSilva also administered the Wisconsin Card Sorting Test (WCST). There, she showed a weakness in concept formation. However, her method of responding suggested appropriate cognitive flexibility. Dr. DaSilva testified that while L.B. could generate conceptual categories, she couldn't follow through with them enough to be efficient in her problem solving.

Based on his findings, L.B. had an executive disorder, a disorder of self-monitoring and weakness in concept formation. Dr. DaSilva noted that the clinician at Children's Specialized Hospital who evaluated her in 2015 also identified a weakness in executive functioning.

Dr. DaSilva disputed DeSanto's testimony, stating that IQ scores of children, unlike adults, can fluctuate over time. He explained that in accounting for these changes, the scales on the WISC have different norms for every three months of development. However, unless there has been an injury, changes in IQ should be small.

L.B.'s results on the language domain on the NEPSY were at the lower end of the average range on phonological processing. This deficiency results in spelling and reading issues. While L.B. did not have an impairment in this area, her skills were on the weaker side. However, she did show impairment in speeded naming, where she was very prone to error. Dr. DaSilva explained that L.B.'s accuracy and performance were both impaired on this task. Even without time pressure, she was still error prone, showing no increase in accuracy. Dr. DaSilva found an impairment in phonological fluency and speeded access to language labels, both indicators of dyslexia. L.B. struggles with spelling and decoding.

L.B. performed in the high-average range on the comprehension subtest, which relies heavily on working-memory focused attention. There, L.B. was able to comprehend instructions and follow multi-step commands.

The NEPSY was used to assess sensory motor and visual and spatial functions. Dr. DaSilva tested for manual praxis and kinesthetic functioning, or the body's ability to perceive one's own position in space. L.B. performed well on this assessment, indicating a lack of praxis issues. However, her motor accuracy was weak. L.B.'s speed was also on the lower end of average. Based on these findings, Dr. DaSilva concluded that L.B. has visual motor weakness. Dr. DaSilva opined that L.B.'s visual motor weakness, combined with her other fluency and processing-speed issues, would make writing demands difficult. To write neatly, L.B. will have to exert more energy than her peers. Dr. DaSilva suggested that while occupational therapy may be helpful, the school could accommodate L.B. by allowing her to type her work. Dr. DaSilva testified that he did not assess L.B.'s writing because Fountaine, who specialized in this area, was administering a comprehensive speech/language evaluation.

L.B.'s impairment in visual motor integration was also exhibited in the memory battery. There, her verbal memory was within normal range, but her visual memory was impaired. L.B. performed well with multiple-choice questions, with her ability to recognize target words rising above average. Dr. DaSilva opined that L.B.'s verbal learning is a relative asset for her. However, L.B. performed in the low-average range for design memory, a form of visual learning.

Due to L.B.'s weakness in visual learning, she needs more verbally mediated strategies. This learning style cannot be at the exclusion of visual strategies, since "we live in a visual world." He explained that verbal explanations need to be provided to facilitate the visual learning piece, which will help with learning and memory. L.B. has a relative strength in auditory verbal learning and memory, so hearing the information helps with her learning storage.

L.B.'s visual motor integration was also tested on the WISC-V. There, the block design subtest assesses the student's ability to replicate a two-dimensional representation of a design using three-dimensional blocks. L.B. performed poorly on this subtest, which was the only motor component on the assessment. Dr. DaSilva stated that the WISC protocol provides the examiner with latitude to replace subtests. However, this should only be utilized when a test is invalidated or if the child cannot perform the test for some extraneous reason, such as a behavioral outburst. L.B.'s poor performance alone did not warrant a replacement of the subtest.

Dr. DaSilva questioned the appropriateness of Ms. DeSanto's decision to replace a subtest in L.B.'s 2015 psychological assessment. He explained that the verbal comprehension index (VCI) is one of four components that feed the FSIQ on the WISC. The VCI is comprised typically of three subtests: similarities, vocabulary, and comprehension. Ms. DaSanto administered a supplemental-information subtest because L.B.'s vocabulary score was below average. Dr. DaSilva opined that this was not a legitimate reason to warrant a substitution in scores. He explained that the vocabulary subtest, which was only one scale score different from the other subtests, was not a substantial departure from the other scores. However, this substitution explains the discrepancy between L.B.'s 2015 and 2017 WISC results. Since Dr. DaSilva did not make any substitutions during testing, L.B. performed in the lower end of the average range in verbal comprehension, as compared to her average performance in this area in the 2015 assessment.

Both scores fell within the average range; the distinction is important due to the wide range for average performance. Statistically, a student who is performing within

the average range is anywhere between the 16th and 84th percentiles. Functionally, a child performing at the 16th percentile looks very different from a child performing at the 84th percentile. Dr. DaSilva explained if the substitution were not made, L.B.'s FSIQ would have fallen in the lower end of the average range.

Dr. DaSilva also conducted a behavior psychological screening, the YSR. The YSR consists of behavioral checklists completed by the student, the teachers, and the parents to indicate whether the child engages in certain behaviors. Although the test is designed for students between the ages of eleven and eighteen, Dr. DaSilva explained that the test, which has a downward extension, consists of straightforward questions that were easy for L.B. to understand.

On the YSR, L.B. admitted to experiencing social difficulties. Both L.B. and her parents identified a lack of friends as an issue. According to Dr. DaSilva, L.B.'s weakness with inferencing and "reading between the lines" puts her at risk of increased difficulties interacting with peers, especially given the nuances of communication between teenage girls. While Dr. DaSilva could not recall whether L.B.'s teachers identified this as concern, he acknowledged that her functional performance in the classroom from a social standpoint is relevant. Dr. DaSilva recommended opportunities for L.B. to interact with peers in supervised and guided way.

Dr. DaSilva stated that according to the parents' reporting on the YSR, L.B.'s attention problems were in the clinical range. While he did not observe L.B. at home, he found that her dialogue during the student interview was atypical. The Orchard Friends director's description of L.B. as being "socially on the ball" appears to contrast with her parents' reporting of social difficulties. Dr. DaSilva explained that although L.B. appears conversant and friendly, her conversations are circular, and she struggles with being elaborate and maintaining substance. He did not observe her having any meaningful interactions with peers at Orchard Friends, and, was unsure whether she had any at Cinnaminson.

Pamela Carpenter and Caroline Mackey, L.B.'s current teachers at Orchard Friends, completed the teacher rating scale on the YSR. Ms. Carpenter reported having

significant concerns about externalizing behaviors. Dr. DaSilva explained that children who externalize distress can often display disruptive behaviors. Since only one of L.B.'s teachers reported these concerns, he hypothesized that the subject matter in that class was most likely more challenging for L.B. He noted that externalizing behaviors are manifestations of frustration and need to be properly addressed.

Dr. DaSilva testified regarding his observation of L.B. at Orchard Friends. He observed her in the language-arts classroom, where she had difficulty with higher level language and abstraction. At the time of the observation, L.B. was working on the Fast Forward Program. Dr. DaSilva noticed L.B.'s weakness in inferential reasoning as compared to her peers. Her responses to the reading passage were "concrete" and "off base," and she did not understand the underlying message to the article. Dr. DaSilva was not surprised by this observation, since the totality of his findings indicated that she had difficulties with non-verbal and visual motor processing. These skills originate from the right hemisphere of the brain, which help add nuance to language, such as making inferences. Children with right-hemisphere deficits can be very concrete, and, are often unable to read facial expressions or pick up on other non-verbal cues. Dr. DaSilva explained that even in testing, L.B. was unable to recognize non-verbal cues of disinterest.

Dr. DaSilva reported that L.B.'s "expressive and receptive language skills were grossly intact"; he explained that this meant she was capable of basic comprehension and expressive abilities in simple conversations during his evaluations. However, he testified that during his observation of L.B. at Orchard Friends, he noticed some issues with receptive and expressive language during language arts.

Dr. DaSilva confirmed L.B.'s previous diagnosis of autism spectrum disorder. While he did not specifically test for autism, he testified that he found no compelling evidence to dispute the appropriateness of the diagnosis. Based on the totality of his findings from the testing and observations, Dr. DaSilva diagnosed L.B. with executive-functioning and frontal-lobe disorder and dyslexia. He also found that L.B.'s "disabilities impact her adaptive functioning in the educational environment," necessitating specific interventions and accommodations.

Dr. DaSilva recommended the use of multi-sensory instruction infused throughout the day to address L.B.'s dyslexia. He explained that as the paradigm shifts from learning to read, to reading to learn, L.B. must be provided consistent, daily support in all subjects. The research indicates that multi-modal and multi-sensory instruction is the best tool for advancing reading skills. While Dr. DaSilva does not endorse a specific program, he emphasized that L.B. does need a research-based, validated program applied with consistency and simultaneous presentation. Further, he was skeptical that the phrase contained in L.B.'s IEP, "emphasizing multi-sensory instruction," fulfilled this criterion. He testified that the term "emphasize" did not imply the application of a specific program.

Dr. DaSilva disagreed with the District's witnesses, who described L.B. as performing in the average range throughout her assessments. He testified that L.B. exhibited weaknesses and strengths in almost every domain in testing. He explained that L.B. has "holes throughout their profile." The use of a single modality of learning is inappropriate.

Dr. DaSilva recommends a "small specialized and nurturing learning environment with specialized support and instruction." He testified that L.B. responds well to individualized instruction and would benefit from a smaller teacher-to-student ratio than that in the ICS model. He explained that Orchard Friends creates this environment for L.B. In Dr. DaSilva's opinion, sustained individualized instruction is compromised in the ICS model, especially because the balance for attention is not always equitable. For example, during his observation of the ICS classroom at Cinnaminson, he noticed that while the special-education teachers worked with students one-on-one, they were not circulating among groups effectively to meet all the students' needs. In a smaller environment, the educators can respond to students quicker to offer them support. Further, Dr. DaSilva testified that an ICS setting is not ideal to address students with multi-sensory needs.

Marcie Fountaine (Fountaine)

Fountaine is currently the director of Speech-Language Pathology at Princeton Speech-Language & Learning Center. As director her responsibilities include treatment and evaluations of clients, managing intakes, supervising clinicians and making recommendations. Fountaine received her bachelor's degree in communication sciences and disorders and a master's degree in speech-language pathology. She is certified as a speech-language pathologist, with a certificate of clinical competence through the American Speech-Language-Hearing Association (ASHA). Fountaine has completed continuing-education courses in Social Thinking, Zones of Regulation, executive functioning, collaborative and proactive solutions, and dyslexia. Fountaine was admitted as an expert in the field of speech-language pathology.

In December 2015, Fountaine performed a comprehensive language and social communication evaluation of L.B. She specifically focused on reading and writing. L.B. was eight years old and a second-grader. Fountaine gathered historical information from the parents, who indicated a history of language delays and struggles with reading and writing in school. Fountaine reviewed L.B.'s previous evaluation reports and diagnoses. She used this information to design appropriate assessments.

She evaluated L.B. in the areas of reading, higher level language, writing, and social communication, using mostly standardized tests, which set age-based norms. The GORT was administered to test reading fluency as well as comprehension; the TOWL was used to test L.B.'s writing skills; the Test of Language Competence was used to measure higher level language; and the Test of Word Reading Efficiency evaluated decoding skills. Receptive and expressive language were tested using the Peabody Picture Vocabulary Test, the Expressive Vocabulary Test, and the Test of Narrative Language.

L.B.'s 2015's speech/language assessment revealed strong receptive and expressive abilities. L.B. performed well in a structured environment with clear expectations and when information was presented in short chunks. While L.B. could process sentence-level information, she struggled when information became more

implicit, requiring the ability to make inferences. L.B. had weaknesses in reading accuracy, written expression, high level language, and social communication. L.B. struggled with expressing stories in an organized manner and perspective taking. L.B. had decoding deficits, which impacted her reading accuracy and overall comprehension. Decoding deficits should be addressed using multi-sensory systemic instruction, such as Orton-Gillingham or Wilson Reading. At the speech/language evaluation, L.B. was still learning how to read and needed to work on intensive reading instruction. Fountaine opined that without receiving multi-sensory instruction, L.B. would likely not progress, or would progress slowly.

Large-group settings contribute to increased background noise, which interfere with the ability to process auditory signals. In a small group, some of these distractions are automatically eliminated. An FM system amplifies the signal in the classroom; it is an accommodation, not a remediation. Treatment for auditory-processing deficits includes developing compensatory strategies, such as building visualization skills or practicing verbal rehearsal to repeat information.

Fountaine recommended small-group, multi-sensory instruction. In the 2015 evaluation report, Fountaine recommended that the District provide L.B. with academically matched peers or students with similar academic or learning profiles. This included students who struggled with reading, writing, and social communication difficulties.

The ICS model efficacy for L.B. would depend on the class, the number of students in the room, and whether multi-sensory supports were consistently utilized. Fountaine never observed L.B. in the ICS setting. However, she did opine that L.B. would struggle in an ICS setting due to her auditory-processing deficits and her overall profile, which included weaknesses in reading, writing, and executive functioning.

As decoding is a basic reading skill, an ICS classroom would be an inappropriate setting to teach a fourth-grade student decoding. Fountaine opined that students with decoding deficits need individualized intervention to make progress. Lack of basic decoding skills jeopardizes comprehension, as fourth-grade students shift from “learning

to read, to reading to learn.” Fountaine testified that academic instruction is balanced between auditory means and reading, and L.B. had deficits in both areas. Even if the ICS teacher could provide her with one-to-one instruction in the back of the room, not only would she fall behind in the current lesson, but she would also struggle due to her auditory deficits. Additionally, since L.B. had deficits with non-verbal interpretation, she would struggle with “reading the room” for social cues when transitioning back to the large-group setting.

L.B.’s 2016–17 IEP, drafted approximately a year and half after her evaluation, reflected weekly speech therapy with a minimum of three sessions a month. Fountaine testified that three sessions of speech therapy a month was inappropriate because a break in services would result in utilizing sessions to reteach previous concepts. Since L.B. needed consistency with intervention strategies, this would interfere with her progress.

Thirty-minutes of weekly individual speech-therapy sessions would have been sufficient to address L.B.’s higher level language skills; this was not enough time to also target her social communication deficits. Fountaine testified that to appropriately address both social communication and language, L.B. required approximately an hour to an hour and a half of weekly speech therapy.

Fountaine testified that the “Needs” section of L.B.’s 2016–17 IEP did not accurately reflect her needs in speech/language, reading, or writing. Social communication, writing, and reading were not listed as speech/language needs. Notably, the “Needs” section did not list L.B.’s deficits in social communication or decoding, nor were there any goals to address these deficiencies. Moreover, L.B.’s writing goals were vague and did not identify the type of multi-sensory supports that would be utilized.

L.B.’s 2016–17 IEP also did not adequately address her social communication deficits. While the IEP indicated that L.B. would participate in a social-skills group, it failed to describe what skills she would learn, the frequency and duration of the group lessons, and the person responsible for monitoring progress. Nor did her IEP contain

any goals related to the social-skills group. Fountaine testified that L.B. needed at least one hour a week of direct social communication instruction, ideally using the Social Thinking curriculum. Fountaine recommended that the hour of social skills should be separate from L.B.'s speech-therapy sessions.

L.B.'s IEP listed "emphasize multi-sensory presentation of data" as a modification, but, did include any further information about how this would be incorporated throughout her day. Fountaine testified that ideally the same system, such as Wilson Reading or Orton-Gillingham, would be used throughout the day. Varying approaches would interfere with L.B.'s learning, since she struggles with integrating information. Fountaine opined that specific information about the multi-sensory approach should be listed as goals on L.B.'s IEP.

While most of L.B.'s goals on the 2016–17 IEP were measurable, they lacked important foundational skills. For example, L.B.'s reading goals were aimed at higher level comprehension skills, but, failed to include the more important foundational skill of reading accuracy. Also, L.B.'s IEP writing goals did not address some deficits, such as her weakness with opening and closing information.

L.B.'s speech/language goals were appropriate to address her auditory-processing deficits as long as she was working on those goals one-to-one. However, the speech/language goals did not address L.B.'s deficits with inferencing. To adequately address both auditory processing and inferencing, L.B. should have received thirty minutes of speech therapy twice a week—one session for auditory processing and the other for inferencing.

The 2016–17 IEP did not conform to Judge Sanders's order because it did not provide L.B. with the goals and supports to address her weaknesses. Fountaine questioned the appropriateness of the District's move to the ICS classroom. Moving L.B. at the end of the school year created additional challenges.

In December 2017, Fountaine conducted a second evaluation of L.B. L.B. had been attending Orchard Friends for approximately three months. Fountaine testified

that she did not conduct the same assessments as the first evaluation; rather, she primarily focused on L.B.'s areas of weakness, such as higher-level language, reading, writing, and social communication. Fountaine repeated the Test of Language Competency, the GORT, the TOWL, the Social Language Development Test, and the Behavioral Language Assessment Form.

In the two years that lapsed between the two evaluations, L.B.'s scores in multiple areas decreased or remained the same. For example, L.B.'s higher level language skills with inferencing were weak, and she showed a regression in this area from 2015. On the 2017 speech/language evaluation, there were two separate assessments that tested L.B.'s ability to make inferences, each testing different skills. She scored in the below-average range on the Clinical Evaluation of Language Fundamentals, which measures the ability to make inferences purely from a language standpoint, whereas she scored in the average range in her ability to use non-verbal information to make inferences. Fountaine testified that the presence of goals related to inferencing on L.B.'s 2016–17 IEP was evidence that L.B. struggled with making inferences.

L.B.'s reading profile remained mostly unchanged from the previous assessment, as she continued to struggle with reading accuracy. She testified that if L.B. had received the appropriate supports, her scores should have improved.

L.B.'s writing skills also remained the same, falling in the below-average range. She continued to make spelling errors and was unable to present a fully organized, coherent narrative. Her writing lacked detail and she was unable to follow what was being asked. Fountaine opined that when a student's scores have not improved, it is not appropriate to place them in a large-group environment.

Fountaine testified that since L.B. was in the District for most of the time between assessments, it is not reasonable that her regression occurred in the three months she attended Orchard Friends. She noted that this is particularly true since scoring is done by age groups, and L.B.'s score five months prior probably would have fallen in the same category.

Fontaine's knowledge of the District's ICS class was based solely on Dr. DaSilva's report. She testified that according to Dr. DaSilva's report, the District's ICS room had twenty children and was loud even when the class was broken into small groups. The program lacked consistent structure and use of multi-sensory instruction. Fontaine testified that these were critical for L.B.'s success, because one whole modality of learning—understanding spoken language—was compromised. Since L.B. was at risk of falling behind when classwork was presented orally, she needed consistent visual supports to assist with processing auditory information.

Fontaine did not observe the District's ICS room, she conducted an observation on L.B. at Orchard Friends as part of her 2017 speech/language evaluation. She observed L.B. in her social-skills group at Orchard Friends. She opined that L.B.'s regression could not have occurred at Orchard Friends. She testified that during her observation of L.B. at Orchard Friends she observed L.B. participating in Social Thinking curriculum and Zones of Regulation in a small-group setting, in which the students focused on the non-verbal language of a television show. According to Fontaine, who was trained by the founder of the Social Thinking curriculum, both programs were implemented correctly. In the 2017 speech/language evaluation, the one area in which L.B. made progress was being able to identify emotions. Fontaine attributed L.B.'s progress in this area to her training at Orchard Friends. According to Fontaine, her progress in this area could not have been attributed to her program at Cinnaminson because there was no evidence in her IEP goals that she was getting instruction in that area.

Fontaine also discussed her observation of L.B.'s writing class at Orchard Friends, which per her recommendation was a small-group, structured setting of about five students. According to Fontaine, the social-emotional supports seemed to be carried over throughout all content areas, and there was consistent use of multi-sensory instruction, such as the use of visual frameworks for writing paragraphs. "Framing your Thoughts" was an additional program in L.B.'s writing class, which used visual supports to teach parts of the sentence and add descriptive language. Fontaine found this program appropriate for L.B. to assist her with elaborating in writing and provide her an

opportunity to use her newly learned vocabulary in a structured way. During this observation, L.B. completed the task correctly.

Consistent with the Orchard Friends program brochure, the school addressed learning challenges through hands-on experiences across all disciplines, provided a supportive setting, maintained small classes where staff individualized each student's curriculum, and utilized language-enriched academic and social programs that promoted self-knowledge, self-esteem, and the ability to self-advocate. L.B., who has a language-based disability, fits into the class of students that Orchard Friends serves, and many of the programs offered, such as speech/language services, individualized academics, Social Thinking, and Orton-Gillingham instruction, were programs recommended by Fountaine. Additionally, Orchard Friends offered the Fast Forward program, a computer-based program aimed at improving auditory processing and phonologic awareness, the foundational skills for decoding. Although Fountaine did not observe this at the school, Dr. DaSilva described the program in his report.

Overall, Fountaine found that the goals, strategies, modifications, and supports offered at Orchard Friends were appropriate from a speech/language perspective. However, she acknowledged that the criteria lacked specifically measurable goals. Fountaine found L.B.'s 2017–18 IEP at Orchard Friends appropriate and consistent with her recommendations.

During the hearing, Fountaine was presented with Dr. DaSilva's neuropsychological report and commented on the findings. Dr. DaSilva observed the District's ICS classroom (L.B. was not in the District at the time). Dr. DaSilva reported that the desks were arranged in groups with three teachers in the room: a general-education teacher, a special-education teacher, and a student teacher. According to his report, the students had graphic organizers, but the instruction was mostly communicated verbally, and even in the smaller groups conversations were loud and distracting. Fountaine testified that the arrangement of the classroom into groups is problematic for students like L.B., with auditory-processing deficits. While the FM system amplifies the signal, it does not eliminate the background noise. She explained that while students with auditory-processing deficits may be taught to compensate,

there was no evidence in L.B.'s IEP that the District was working on this skill with her. Even with small-group instruction, the ICS classroom environment most likely would not be conducive to L.B.'s learning. Fountaine agreed with Dr. DaSilva that a class with a smaller student-to-teacher ratio was more appropriate for L.B. than an ICS model.

Fountaine agreed with many of Dr. DaSilva's other recommendations, such as multi-modal, research-based reading and math support integrated throughout the day, metacognitive training (learning to become aware of the student's weaknesses within the scope of executive functioning), emphasizing task completion, minimizing visual-based transcription, facilitating interactions with peers, and access to a keyboard device to allow focus on the quality of the written product. According to Fountaine, these services and supports were not offered to L.B. at the District.

S.M.

S.M. is the non-biological mother of L.B., having known her since L.B. was one. S.M. attended every IEP meeting, communicated with L.B.'s teachers, worked with her at home, and is familiar with L.B.'s performance and needs. Neither she nor her wife observed L.B. in the ICS setting.

Beth DePerna of Burlington County recommended that the family apply for extra services through the Burlington County Educational Services Unit. L.B.'s parents consented to have her evaluated for services at no cost to them. S.M. testified that the family discussed the details of the litigation and the unilateral placement with Ms. DePerna. S.M. testified that she knew that the District would be informed about the application for ESU services, as the family signed the consent for school records. S.M. was surprised by the email exchange regarding the termination of the ESU services. She did not misrepresent the circumstances and felt that the District wasn't willing to work with the family.

S.M. testified that she sent the ten-day-notice letter to the District, advising them of L.B.'s unilateral placement and the family's continued willingness to work with the District. She believed the unilateral placement was in the best interest of L.B. because

previous attempts to work with the District had been unsuccessful. For example, despite obtaining independent evaluations, the District did not follow the recommendations of the evaluators.

FACTUAL FINDINGS

1. L.B., a nine-year-old student, who currently resides in Cinnaminson Township, has multiple diagnoses, including autism spectrum disorder, executive-function and frontal-lobe disorder, dyslexia, disorder of written expression, visuospatial deficits, adjustment disorder, attention deficit hyperactivity disorder, central auditory perceptual deficits, and fourth-nerve palsy. (J-101 at 24; P-3 at 17.) L.B. also has anxiety and social-skills deficits. (J-101.) She is entitled to special-education services.
2. In 2012, L.B. was found eligible for special education and related services under the category of autistic.
3. In August 2014, a private central auditory processing evaluation was administered by Dr. Pavlick, which revealed that L.B. had auditory perceptual deficits in both ears. He recommended, among other things, the use of an FM system and multisensory instruction, including visual cues and emphasis on oral instruction.
4. In second grade, L.B. struggled with oral reading fluency and spelling.
5. L.B. performed in the average range on her 2015 reevaluations, but the testing revealed deficits in social skills, expressive language, oral vocabulary, and auditory reasoning.
6. On March 17, 2015, the District proposed to declassify L.B. and did not prepare an IEP. They offered some 504 accommodations, contending that her disabilities no longer had an adverse effect on her educational performance.

7. Dr. Allen conducted L.B.'s independent neuropsychological evaluation in 2015, and recommended placement in an inclusive setting with monitoring and supports and the modification of visual stimuli to address her visual processing deficits.
8. On September 24, 2015, the District confirmed L.B.'s declassification.
9. In December 2015, Fontaine conducted a private speech/language evaluation on L.B. It found that L.B. had weaknesses in decoding, comprehension, reading accuracy, and written expression. The private speech/language evaluation also revealed social-skills deficits. Fontaine recommended that L.B. receive small-group multi-sensory instruction to address her decoding and spelling deficits, and speech therapy once a week to address her language and auditory processing deficits.
10. Fontaine also recommended that L.B. participate in a social communication group.
11. Judge Sanders reversed L.B.'s declassification and ordered L.B. to be placed in a less restrictive environment with supports and services to address her areas of weakness.
12. Judge Sanders included a list of recommendations that the District should include in L.B.'s IEP.
13. L.B. scored in the satisfactory range for reading accuracy on the F&P, but she had low oral reading fluency. Based on L.B.'s oral reading fluency scores on the F&P, the Hasbrouck manual recommended participation in a fluency program. (See C-1.)
14. The District's proposed IEP for L.B. included ICS for language arts, math and writing, individual speech therapy, and participation in a social-skills group.

15. L.B.'s proposed IEP did not have goals and objectives to meet all her areas of weakness in reading and writing.
16. L.B.'s 2016–17 IEP did not offer a specific program for multisensory instruction to address L.B.'s decoding deficits.
17. The social-skills group listed on L.B.'s IEP did not have any goals and objectives related to her areas of weakness.
18. Petitioners rejected L.B.'s proposed IEP at the March 7, 2017, IEP meeting.
19. Pursuant to the 2016–17 IEP, L.B. transitioned into ICS for math, language arts, and writing on April 28, 2017.
20. On June 20, 2017, the District offered L.B. the same IEP for the 2017–18 school year.
21. Petitioner's July 21, 2017, letter informing the District of their intent to unilaterally place L.B. at Orchard Friends complied with the ten-day-notice requirement.
22. When L.B. began Orchard Friends during the 2017–18 school year, she had significant deficits in her decoding skills.
23. The speech/language evaluation conducted by Orchard Friends revealed L.B.'s deficits in phonological awareness, rapid naming and elision, all indicators of dyslexia.
24. L.B.'s 2017 neurological evaluation conducted by Dr. DaSilva confirmed that L.B. was dyslexic.

25. Consistent with Fountaine's findings in 2015, L.B.'s Orchard Friends evaluations also revealed deficits in social communication, such as her ability to make inferences and determine causes.

26. The IEP offered to L.B. by Orchard Friends included goals and objectives to target each of L.B.'s areas of weakness.

27. Orchard Friends provided L.B. with Orton-Gillingham multisensory reading instruction incorporated throughout her day to address her decoding and vocabulary deficits and auditory and visual weaknesses.

28. While at Orchard Friends, L.B. participated in the Fast Forward program to help her compensate for her auditory processing deficits.

29. Orchard Friends provided L.B. with speech therapy to remediate her language-based deficits and a separate social-skills program to help her with her inferencing skills and to understand peer perspectives.

30. L.B. had an increase in problem behaviors at Orchard Friends.

31. According to L.B.'s independent neuropsychological evaluation, conducted by Dr. DaSilva, L.B. has extremely poor visual motor skills.

32. L.B.'s neuropsychological testing also revealed deficiencies in verbal comprehension, spelling and decoding, phonological processing, and fluency.

33. Dr. DaSilva recommended a small, specialized learning environment for L.B. with individualized support and instruction.

34. Dr. DaSilva found that the use of a specific multisensory, research-based reading program infused throughout the school day was necessary to address L.B.'s deficits in decoding, spelling, and writing.

35. Ms. Fountaine conducted an updated speech/language evaluation in December 2017, which revealed a regression in L.B.'s reading accuracy and fluency.

36. L.B.'s updated speech/language evaluation showed no improvement in her writing skills.

37. The District had indications as early as 2015 of L.B.'s deficits, from the report of Fountaine and, specifically, in her reading fluency speeds. The Hasbrouck-Tindal assessment in the fall of 2016 and spring of 2017 reflected very weak percentiles. The 2016 scoring at 57 fell well below the 50th percentile, and the 2017 scoring at 63.5 reflected close to the bottom 25th percentile. (See C-1.) The District's action in this regard is reflective of the District's inability to provide meaningful educational assistance.

38. Bates acknowledged she did not follow up with the parents regarding their concerns with the IEP, and, decided unilaterally not to include them.

39. Goldfarb acknowledged her lack of knowledge of L.B. She disputed Dr. DaSilva's medical diagnosis regarding dyslexia, at the same time acknowledging that she was incompetent to diagnose dyslexia.

40. Scola acknowledged her difficulty with the family.

41. The District's 2017 IEP lacked specifically measurable goals.

42. The District took the direction from Judge Sanders' previous order, and facially inserted additional language in the proposed 2017 IEP, and, then failed to place appropriate goals to address the tribunal's concerns.

43. Placement in the ICS classroom complied with concepts of the least restrictive environment, however due to L.B.'s auditory processing deficiency as well as inference difficulties, the aides had deficient guidance as to the best

actions to take to assist L.B. to address her educational needs in the larger classroom setting.

LEGAL DISCUSSION

The Individuals with Disabilities Education Act (IDEA) provides federal funds to assist participating states in educating disabled children. Hendrick Hudson Cent. Sch. Dist. Bd. of Educ. v. Rowley, 458 U.S. 176, 179 (1982). One of purposes of the IDEA is “to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living.” 20 U.S.C. § 1400(d)(1)(A). To qualify for this financial assistance, New Jersey must effectuate procedures that ensure that all children with disabilities residing in the state have available to them a FAPE through a uniquely tailored individualized education program (IEP) in the least restrictive environment. 20 U.S.C. §§ 1401(9)(D), 1412(a)(1); Honig v. Doe, 484 U.S. 305, 338 (1988). The responsibility to provide a FAPE rests with the local public-school district, which bears the burden of proving that a FAPE has been offered. 20 U.S.C. § 1401(9); N.J.A.C. 6A:14-1.1(d); N.J.S.A. 18A:46-1.1; see also G.S. v. Cranbury Twp. Bd. of Educ., 2011 U.S. Dist. LEXIS 44933, *6 (D.N.J. 2011) (New Jersey uniquely places the burden of proof and production on the school district).

In Endrew F. v. Douglas County School District RE-1, 137 S. Ct. 988, 1001 (2017), the United States Supreme Court construed the FAPE mandate to require school districts to provide “an educational program reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” The Court’s holding in Endrew F. largely mirrored the Third Circuit’s long-established FAPE standard, which requires that school districts provide an educational program that is “reasonably calculated to enable the child to receive meaningful educational benefits in light of the student’s intellectual potential and individual abilities.” Dunn v. Downingtown Area Sch. Dist. (In re K.D.), 904 F.3d 248, 254 (3rd Cir. 2018) (quoting Ridley Sch. Dist. v. M.R., 680 F.3d 260, 269 (3rd. Cir. 2012)). In addressing the quantum of educational

benefit, the Third Circuit has made clear that more than a “trivial” or “de minimis” educational benefit is required, and the appropriate standard is whether the IEP provides for “significant learning” and confers “meaningful benefit” to the child. Endrew F., 137 S. Ct. at 1000–01; T.R. v. Kingwood Twp. Bd. of Educ., 205 F.3d 572, 577 (3d Cir. 2000); Ridgewood Bd. of Educ. v. N.E. ex rel. M.E., 172 F.3d 238, 247 (3d Cir. 1999), superseded by statute on other grounds as recognized by P.P. v. W. Chester Area Sch. Dist., 585 F.3d 727 (3d Cir. 2009); Polk v. Cent. Susquehanna Intermediate Unit 16, 853 F.2d 171, 180, 182–84 (3d Cir. 1988). Hence, an appropriate educational program will likely “produce progress, not regression or trivial educational advancement.” Dunn, 904 F.3d at 254 (quoting Ridley, 680 F.3d at 269).

The FAPE requirement is not “a bad faith or egregious circumstances standard,” Ridgewood, 172 F.3d at 249, and, therefore, is not “abridged because the [school] district’s behavior did not rise to the level of slothfulness or bad faith.” Ibid. (quoting M.C. ex rel. J.C. v. Cent. Reg’l Sch. Dist., 81 F.3d 389, 397 (3d Cir. 1996)). Nor is the child’s entitlement to special education dependent on the parents’ vigilance; rather, it is the school district’s responsibility “to ascertain the child’s educational needs, respond to deficiencies, and place him or her accordingly.” M.C., 81 F.3d at 397.

However, “although the IEP must provide the student with a ‘basic floor of opportunity,’ it does not have to provide ‘the optimal level of services,’ or incorporate every program requested by the child’s parents.” Ridley, 680 F.3d at 269. Hence, while the state must provide an education that offers significant learning, it need not “maximize the potential of every handicapped child.” Ibid. A court reviewing an IEP must determine whether it is “*reasonable*, not whether the court regards it as ideal.” Endrew F., 137 S. Ct. at 999. “A program need not and cannot guarantee a student’s academic progress.” S.C. v. Oxford Area Sch. Dist., 2018 U.S. App. LEXIS 31086, *6 (3d Cir. 2018) (citing Endrew F., 137 S. Ct. at 999). Hence, the IEP must be “judged prospectively so that any lack of progress under a particular IEP . . . does not render that IEP inappropriate.” Carlisle Area Sch. v. Scott P., 62 F.3d 520, 530 (3d Cir. 1995).

The IDEA’s FAPE requirement also includes a mainstreaming component, requiring education in the least restrictive environment. S.H. v. State-Operated Sch.

Dist., 336 F.3d 260, 265 (3rd Cir. 2003); 20 U.S.C. § 1412(a)(5)(A). “The least restrictive environment is the one that, to the greatest extent possible, satisfactorily educates disabled children together with children who are not disabled, in the same school the disabled child would attend if the child were not disabled.” S.H., 336 F.3d at 265 (quoting Carlisle, 62 F.3d at 535).

Are L.B.’s 2016–17 and 2017–18 IEPs developed by Cinnaminson reasonably calculated to provide L.B. with a FAPE in the least restrictive environment?

The District initially proposed the declassification of L.B. with placement in the general student population. The parents’ brought a due-process petition, and Judge Sanders directed that L.B. be continued as eligible for special education and related services and be provided with an appropriate IEP. ALJ Sanders’s order instructed the District to transition L.B. into a less restrictive environment and provided a list of recommendations that the District could incorporate into L.B.’s IEP to support her success in that setting. The use of the phrase “could include” suggests that the list was neither mandatory nor exhaustive. However, it is apparent that the District should have seriously considered incorporating these recommendations into L.B.’s IEP, since they were based on the recommendations in the Fountaine evaluation report.

To address L.B.’s decoding, visual processing, and auditory processing deficits, Judge Sanders suggested that the District provide L.B. with “added emphasis on multi-sensory approaches.” She also recommended role-playing and a social-skills group to address her social communication weaknesses.

The District did comply with Judge Sanders’s order insofar as it moved L.B. to a less restrictive setting. At the time of the order, L.B. was academically more advanced than her peers in the resource setting, and she had also shown success in ICS science and social studies, where she maintained an A average throughout the school year. Further, the independent neuropsychological evaluation recommended that she transition to the ICS setting. Similarly, Fountaine, the speech pathologist who conducted L.B.’s speech/language evaluation, recommended small-group instruction with academically matched peers. While the 2017 independent evaluations revealed

additional information about L.B.'s disabilities and deficits, which precipitated the evaluators to recommend a more restrictive placement, this has no bearing on the IEPs developed prior to that time. The IEP need only be reasonably calculated to provide a FAPE, based on the information known to the District at the time of its development. Hence, according to the information and knowledge available to Judge Sanders and the District at the time the 2016–17 and 2017–18 IEPs were developed, the ICS setting was an appropriate placement.

However, while L.B.'s IEP accounted for the proper change of placement into the District's ICS classrooms, it was not tailored to address L.B.'s specific needs and weaknesses in that setting.

From as early as 2014, when L.B. was diagnosed with auditory processing deficits, the District was aware that the use of multisensory instruction was critical in addressing L.B.'s needs. At that time, the audiologist recommended multisensory instruction in the form of “visual cues” and an emphasis on “oral instruction,” which would assist L.B. to store and retrieve information more efficiently. L.B.'s 2015 neurological evaluation also revealed deficits in visual processing, and the neurologist who conducted the evaluation recommended modification of visual stimuli. L.B.'s 2015 independent speech/language evaluation revealed decoding and spelling deficits, which impacted her ability to read and write. To address her multi-faceted profile, the speech pathologist, Fountaine, recommended structured, multi-sensory instruction.

The District had knowledge of all of this information when it developed L.B.'s 2016–17 and 2017–18 IEPs. Despite this knowledge, and Judge Sanders's order instructing the District to add more emphasis to L.B.'s multi-sensory instruction, there is no evidence that L.B.'s program would include appropriate multi-sensory instruction. In fact, the initial proposed IEP did not include any language related to multi-sensory instruction. Even when petitioners raised this as a necessary inclusion in L.B.'s programming, the District simply included the language “emphasize multi-sensory presentation of data” as a modification on L.B.'s IEP.

While this language sounds similar to the language used in Judge Sanders's order, it has a profoundly different meaning. Prior to Judge Sanders's order, L.B. had already received multisensory instruction in second grade, using a portion of the Orton-Gillingham program to address her decoding deficits. What Judge Sanders instructed the District to do was add more emphasis to what L.B. was already receiving. The incorporation of what on the surface appeared to be similar language did not make the program appropriate. L.B.'s IEP contained no further information about what program would be utilized, how the program would be implemented, what her goals and objectives were, and how her progress would be monitored. Moreover, the multi-sensory instruction provided for L.B. pursuant to her 2016–17 IEP seemed no different than what was done in the past. Notably, a full research-based, multisensory program was never utilized. Ms. York, who had very limited training on multi-sensory approaches, only used Wilson strategies with L.B. during language arts. The District offered no evidence that L.B. had access to multi-sensory instruction throughout her day.

L.B.'s program at Cinnaminson lacked proper social communication training. Again, to superficially meet the recommendations in Judge Sanders's order, the District added "social-skills group" as one line in L.B.'s IEP under supplementary aids and services, and, additionally, included it as a modification. However, as with the multi-sensory instruction, no further information was given regarding the frequency or duration of the social-skills group, what skills would be targeted, and who would be responsible for monitoring progress. According to the District's own evaluations, L.B. showed weakness in her ability to communicate effectively, understand implied language, and make inferences. Her speech/language evaluations confirmed that these were areas of deficiencies, with L.B. scoring below average in higher level perspective taking and problem solving. Yet, the District did not develop any goals and objectives to address these areas of concern within the social-skills group. L.B.'s IEP included one social/emotional/behavioral goal to help L.B. maintain acceptable school behavior by identifying and appropriately using a coping skill to respond to a negative emotion. While some of L.B.'s social weaknesses are listed parenthetically under her social/emotional/behavioral goal as targeted coping skills, this goal is more appropriately a counseling goal to address the anxiety and frustration she was

experiencing at school. The import of addressing her deficiencies in these areas as a language-based need was to help her develop social relationships with peers and be able to communicate effectively in all types of social situations. There is no evidence that her social-skills group addressed weaknesses in these areas.

Not only did L.B.'s IEP lack goals and objectives to address her decoding and social-skills deficits, her writing goals also lacked content. Writing was identified by L.B.'s teachers as her weakest area, yet her IEP only included one vague goal, to increase her writing rubric by one point. While her short-term writing objectives included a list of writing strategies that should be utilized to achieve that goal, the IEP included no specifically measurable goals and objectives to address these skills and her areas of weaknesses. L.B.'s writing goals and objectives should have specifically addressed her weakness in inferencing and determining causes in open-ended questions, problem solving, planning and organizing her writing, introductions and conclusions, and vocabulary.

Vocabulary was identified as a major area of concern for L.B. in all subject areas, and, remarkably, her IEP was lacking any goals and objectives to address this deficit. Her IEP also lacked goals to address her deficiencies in auditory reasoning, auditory processing, and visual processing. The District needed to provide L.B. with specific strategies to help her compensate for these deficits.

As L.B.'s IEP was implemented towards the end of the school year, the IEP offered by the District at her annual review meeting in June remained the same.

The District maintains that L.B.'s functional performance and progress in the ICS setting, such as her grades and reading levels on the F&P, was evidence that the 2016–17 and 2017–18 IEPs offered L.B. a FAPE. However, L.B.'s IEP was only implemented six weeks prior to the conclusion of the school year. Given L.B.'s short stay in the ICS setting, coupled with typical end-of-school-year occurrences such as trips, activities, shortened days, and minimal assignments, there was not enough time to determine whether she made progress under her new IEP, as her ICS teacher, Mr. Agin, admitted during testimony. Further, due to the transition, L.B. was not graded on material to

which she had no previous exposure. Her exposure to the material covered in ICS appeared to be limited, as evidenced by L.B.'s new struggles with homework, needing extra assistance to become "caught up" with classroom material and her minimally passing grade on the end-of-year assessment.

Contrary to the District's position, Dr. DaSilva and Fontaine could not have possibly observed and considered L.B.'s functional performance in the District's ICS setting if she was no longer enrolled in the District at the time of the evaluations.

The District is, however, correct in asserting that the new information provided by Dr. DaSilva and Fontaine's testing, conducted long after the 2016–17 and 2017–18 IEPs were proposed, cannot be used to show the inadequacies of L.B.'s IEPs. Courts are not permitted to engage in "Monday morning quarterbacking" and second guess "the decisions of a school district with information to which it could not possibly have had access at the time it made those decisions." Fuhrmann v. E. Hanover Bd. of Educ., 993 F.2d 1031, 1040 (3rd Cir. 1993); Susan N. v. Wilson Sch. Dist., 70 F.3d 751, 762 (3rd Cir. 1995). However, the District has not fulfilled its burden of proof to show that based on the knowledge and information that was available at the time, it provided L.B. with an appropriate IEP to address her areas of deficits.

I **CONCLUDE** that L.B.'s 2016–17 and 2017–18 IEPs offered by the District were not reasonably calculated to provide L.B. with a FAPE.

Parents may also seek compensatory education for their child if they believe he or she has been denied a FAPE. "Courts, in the exercise of their broad discretion, may award [compensatory education] to whatever extent necessary to make up for the child's loss of progress and to restore the child to the educational path he or she would have traveled but for the deprivation." G.L. v. Ligonier Valley Sch. Dist. Auth., 802 F.3d 601, 625 (3rd Cir. 2015). "A disabled student's right to compensatory education accrues when the school knows or should know that the student is receiving an inappropriate education." D.K. v. Abington Sch. Dist., 696 F.3d 233, 249 (3d Cir. 2012) (citing P.P. v. W. Chester Area Sch. Dist., 585 F.3d 727 (3d Cir. 2009)). A child who has been deprived of a FAPE is "entitled to compensatory education for a period equal

to the period of deprivation, excluding only the time reasonably required for the school district to rectify the problem.” Ibid.

Judge Sanders’s order mandated the District to provide compensatory education for the period of deprivation prior to the order. Pursuant to the order, the District was required to move L.B. to a less restrictive environment and draft an appropriate IEP to support her in her areas of weakness. Judge Sanders’s order effectively put the District on notice that its existing program was deficient. Despite the recommendations of the independent evaluators and Judge Sanders’s list of suggestions, the District’s proposed IEPs were not reasonably calculated to enable L.B. to make meaningful progress. OSEPP did close the earlier matter based upon the submittal of the April 2017 IEP and the financial settlement reached. Nothing provided by respondent supports that OSEPP’s closing of the earlier matter is intended to be the law of the case in regard to the factual findings herein. OSEPP, however, made no factual finding regarding whether FAPE was provided by the proposed April 2017 IEP. OSEPP has the jurisdiction to enforce Judge Sanders’s order, but its closing of the matter has no bearing on the factual determination of whether the implementation of the IEP provides FAPE. It is for this reason that the motion for partial summary decision is **DENIED**. This decision is not enforcing Judge Sanders’s order,

I **CONCLUDE** that L.B. is entitled to compensatory education for the period of deprivation. While petitioners suggest that this period should start from January 2017, commencing with Judge Sanders’s order, the standard for compensatory education allows the school district a reasonable time to rectify the problem. At the end of January, the District contacted petitioners to schedule an IEP meeting. There is no evidence in the record to indicate what communications took place prior to this time, and petitioners do not assert that this was an unreasonable delay. Due to scheduling conflicts between the parties, and by no fault of the District, the IEP meeting could not be held until March 7, 2017. At that time, the District offered a proposed IEP, and petitioners requested a chance to provide further recommendations. Petitioners did not provide the District with their input until April 6, 2017, almost a full month after the meeting. Based on petitioners’ suggestions, the District made several amendments to L.B.’s IEP, which was provided to petitioners on April 14, 2017. This IEP was submitted

to the Department of Education as evidence of compliance with Judge Sanders's order. While L.B.'s IEP was not implemented until several months after the order, petitioners contributed equally to the delay.

I **CONCLUDE** that the District's liability for compensatory education begins on the later of April 28, 2017, when L.B.'s finalized IEP was proposed and implemented, or on the day after the compensatory education and damages were previously settled.

Congress intended for disabled children to receive a FAPE within the public-school system or in a private school chosen collaboratively with the parents and school officials. Florence Cnty. Sch. Dis. Four v. Carter, 510 U.S. 7, 11 (1993). However, there are times when this collaboration fails, and "parents who disagree with the proposed IEP are faced with a choice: go along with the IEP to the detriment of their child if it turns out to be inappropriate or pay for what they consider to be the appropriate placement." Ibid. (quoting Sch. Comm. of Burlington v. Dep't of Educ. of Mass., 471 U.S. 359, 370 (1985)). Nevertheless, parents who "unilaterally change their child's placement . . . without the consent of state or local school officials, do so at their own financial risk." Florence, 510 U.S. at 15 (quoting Burlington, 471 U.S. at 373–74).

Parents who unilaterally place their child in a private school while invoking their due-process rights may be entitled to reimbursement if it is determined that "the district had not made a free, appropriate public education available to that student in a timely manner prior to that enrollment and that the private placement is appropriate." N.J.A.C. 6A:14-2.10(b); 34 C.F.R. § 300.148(c) (2018); see also Sch. Comm. of Burlington v. Dep't of Educ., 471 U.S. 359, 369 (1985). The test for reimbursement for unilateral private placements is a two-pronged inquiry: First, the court must determine if the district provided the student with a FAPE, and then, only if the district failed in its obligation, does the court need to ask whether the private placement is appropriate. T.R. ex rel. N.R. v. Kingwood Twp. Bd. of Educ., 205 F.3d 572, 582 (3rd Cir. 2000).

The second prong of this inquiry is a reference to the substantive standard for an appropriate education. R.S. & M.S. v. Somerville Bd. of Educ., 2011 U.S. Dist. LEXIS 748, *29 (D.N.J. 2011). The Supreme Court has recently clarified that to meet the

substantive standard of a FAPE, a “school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” Endrew F., 137 S. Ct. at 999; see also L.H. v. Hamilton Cty. Dep’t of Educ., 900 F.3d 779, 791 (6th Cir. 2018) (quoting Endrew F. in applying the substantive standard for the second prong of the unilateral-placement reimbursement analysis). The Third Circuit has always had a heightened standard, holding that an IEP must provide a disabled child with “significant learning” and confer a “meaningful benefit.” Polk v. Central Susquehanna Intermediate Unit 16, 853 F.2d 171, 184 (3d Cir. 1988); see also Mary Courtney T. v. Sch. Dist., 575 F.3d 235, 242 (3d Cir. 2009) (noting that a private placement is appropriate when it provides significant learning and confers meaningful benefit) (quoting Lauren W. v. DeFlaminis, 480 F.3d 259, 276 (3d Cir. 2007)).

Private placements are not held to the same standards as the public schools, and the procedural requirements of a FAPE do not apply. Florence, 510 U.S. at 13. Therefore, a parent seeking reimbursement for a unilateral placement need only show that the private placement “provides significant learning and confers meaningful benefit.” Mary Courtney T., 575 F.3d at 242 (quoting Lauren W. v. DeFlaminis, 480 F.3d 259, 276 (3d Cir. 2007)); see also Florence, 510 U.S. at 11 (quoting Rowley, 458 U.S. at 207 (parent need only show that the private school placement is “reasonably calculated to enable the child to receive educational benefits))).

I **CONCLUDE** that the IEPs offered by the District denied L.B. a FAPE. The second prong in the analysis is whether L.B.’s program at Orchard Friends provided L.B. with significant learning and conferred a meaningful benefit.

There is no clear authority in the Third Circuit regarding who has the burden to prove the appropriateness of the unilateral placements. The Supreme Court in Schaffer v. Weast, 546 U.S. 49, 57–58 (2005), held that in IDEA cases, “absent some reason to believe that Congress intended otherwise,” the burden of proof lies with “the party seeking relief.” Following the Third Circuit’s decision in L.E. v. Ramsey Bd. of Educ., 435 F.3d 384 (3d Cir. 2006), applying the Schaffer holding to all aspects of IEP challenges, New Jersey enacted legislation to place the burden of proof for IEP-related claims on the school district. See N.J.S.A. 18A:46-1.1. However, the New Jersey

statute shifting the burden to the State applies only to the “identification, evaluation, reevaluation, classification, educational placement, the provision of a free, appropriate public education, or disciplinary action, of a child with a disability,” all areas in which the IDEA places the responsibility squarely on the school district. Unlike these areas of education, the appropriateness of a unilateral placement is beyond the public-school district’s control, and there is no indication that the New Jersey Legislature intended to shift the burden to the school in this regard. Therefore, Schaffer and Ramsey are controlling, and the burden remains with the parents to show that the unilateral placement was proper. See also R.S. & M.S. v. Somerville Bd. of Educ., 2011 U.S. Dist. LEXIS 748, *22–23 (D.N.J. 2011) (assuming that the parents have the burden of proving their entitlement to relief for unilateral placements); B.C. v. Wall Twp. Bd. of Educ., 2013 U.S. Dist. LEXIS 175180, *16 (D.N.J. 2013) (parents must demonstrate that their unilateral placement is appropriate).

The District’s main argument against the appropriateness of the program at Orchard Friends is that L.B. would not receive instruction with typical peers. However, this argument fails because the IDEA’s least-restrictive-environment requirement does not apply to parents’ unilateral placements. Moorestown Twp. Bd. of Educ. v. S.D., 811 F. Supp. 2d 1057, 1078 (D.N.J. 2011) (stating that unilateral placements are not required to meet the demands of a FAPE). The legislative purpose of the least-restrictive-environment, or mainstreaming, requirement in the IDEA was to prevent public schools from excluding disabled students. Rose v. Chester Cnty. Intermediate Unit, 1996 U.S. Dist. LEXIS 6105, *28 (E.D. Pa. 1996) (quoting Rowley, 458 U.S. at 191). Applying this requirement to a parent’s unilateral placement “does not address the problem that Congress sought to eliminate.” Ibid. Additionally, as other circuits have recognized, due to the nature of private placements, “inflexibly requiring that the parents secure a private school that is nonrestrictive, or at least as nonrestrictive as the FAPE-denying public school, would undermine the right of unilateral withdrawal the Supreme Court recognized in Burlington.” See also M.M. & I.F. v. New York City Dep’t of Educ., 26 F. Supp. 3d 249, 258 (S.D.N.Y. 2014) (indicating that there is no requirement in the Second Circuit for parents to find the least restrictive private placement).

Likewise, petitioners need not show that the goals and objectives in L.B.'s Orchard Friends IEP were measurable. This is a FAPE requirement imposed on public school districts that does not apply to private placements. Mary Courtney T., 575 F.3d at 242 (“[A] private school placement may be proper and confer meaningful benefit despite the private school’s failure to provide an IEP or meet state educational standards.”); West Windsor-Plainsboro Reg’l Sch. Dist. Bd. of Educ. v. M.F. ex rel. A.F., 2011 U.S. Dist. LEXIS 21827, at *12 (D.N.J. 2011) (“[T]he standard a [private] placement must meet in order to be ‘proper’ is less strict than the standard used to evaluate whether a school district’s IEP and placement are appropriate.”).

Petitioners must show that they meet the substantive standard of a FAPE. The District argues that the parents’ unilateral placement did not meet this standard because L.B. regressed in several academic areas and showed an increase in behavior problems since attending Orchard Friends.

Indeed, there is very little evidence in the record that shows that L.B. made significant progress in her current placement. When Orchard Friends retested L.B. in January 2018 using the i-Ready program, her levels remained the same. She made minimal progress in math and her score decreased in reading. Further, according to Dr. DaSilva, L.B. began to display an increase in behavior problems in school. Her teachers reported increased defiant behavior, including work refusal and outbursts. This behavior was observed by Ms. Goldfarb during yoga instruction, wherein L.B. refused to participate for the duration of the class and responded poorly to redirection.

Fontaine’s testing revealed that the one area in which L.B. has progressed since attending Orchard Friends is her social skills, which Fontaine attributed directly to the school’s integrated use of the Zones of Regulation and Social Thinking curriculum. Fontaine also testified that the decrease in reading scores should not be attributable to Orchard Friends. Petitioners have not submitted any other evidence to show that L.B. has made the anticipated progress in her Orchard Friends program.

While the Third Circuit has considered progress in the private setting as a proxy to determine whether a unilateral placement was appropriate, the Supreme Court case

in Florence is clear that courts should analyze the appropriateness of the private placement with the same substantive FAPE standard that is applied to public schools: whether the program offered is “reasonably calculated” to enable a child to make progress appropriate in light of the child’s circumstances. 510 U.S. at 11; H.L. v. Downingtown Area Sch. Dist., 2015 U.S. App. LEXIS 9742, *14 (3d Cir. 2015). The Third Circuit elevates that FAPE standard to ensure that the educational benefit must be meaningful. Therefore, irrespective of L.B.’s progress at Orchard Friends, whether the program was appropriate will depend on if the IEP offered at the private placement was reasonably calculated to provide L.B. a meaningful benefit.

An appropriate program is one that is tailored to meet the unique needs of the student. Endrew F., 137 S. Ct. at 994 (quoting Rowley, 458 U.S. at 994). L.B.’s Orchard Friends IEP did just that by providing her with a program to target each of her areas of weakness. L.B. received Orton-Gillingham instruction incorporated throughout her day to address her weaknesses in decoding and vocabulary. Additionally, Orchard Friends offered L.B. the Framing Your Thoughts curriculum to help her plan and organize her writing. At Orchard Friends, she also participated daily in the Fast Forward Language program to help her compensate for her auditory processing deficits. The goals of the program were to improve her listening accuracy, auditory sequencing and recognition, memory, phonological fluency, and vocabulary, all areas of weakness for L.B. As Fountaine testified, L.B.’s social-skills deficits were addressed through the school’s comprehensive social-skills curriculum, including programs like Zones of Regulation, Social Thinking Curriculum, and the Theory of Mind. Fountaine attributed L.B.’s social-skills progress specifically to the curriculum offered at Orchard Friends and found that the goals and objectives listed in L.B.’s IEP were appropriate to meet her needs. Dr. DaSilva also testified that Orchard Friends provided the small structured environment conducive to her success.

Education, however, is not an exact science, and unfortunately, it does not appear that L.B. progressed as expected. Nevertheless, a parent’s unilateral placement should not be judged by a higher standard than the public school entrusted to educate the student in the first instance. Therefore, I decline to use the benefit of hindsight to find that the parents’ unilateral placement was not appropriate. Instead, I **CONCLUDE**

that L.B.'s Orchard Friends IEP was tailored to meet her unique needs and was reasonably calculated to enable her to make meaningful progress in light of her circumstances. I **CONCLUDE** the parents' unilateral placement was proper under the IDEA.

Even where a district violated its obligations under the IDEA and the unilateral placement was appropriate, courts retain broad discretion to reduce or deny reimbursement in order to balance the equities. Forest Grove Sch. Dist. v. T.A., 557 U.S. 230, 246–47 (2009). These equitable considerations emphasize the IDEA's intent to establish a collaborative IEP process and are rooted in the underlying concept that parents should afford the district an opportunity to fulfill its obligation to provide the disabled student with a free appropriate education. Pursuant to the New Jersey Administrative Code, administrative law judges should consider four factors in determining whether to reduce or deny reimbursement for an otherwise qualifying unilateral placement:

1. If at the most recent IEP meeting that the parents attended prior to the removal of the student from the public school, the parents did not inform the IEP team that they were rejecting the IEP proposed by the district;
2. At least 10 business days (including any holidays that occur on a business day) prior to the removal of the student from the public school, the parents did not give written notice to the district board of education of their concerns or intent to enroll their child in a nonpublic school;
3. If prior to the parents' removal of the student from the public school, the district proposed a reevaluation of the student and provided notice. . . but the parents did not make the student available for such evaluation; or
4. Upon a judicial finding of unreasonableness with respect to actions taken by the parents.

[N.J.A.C. 6A:14-2.10(c); see 34 C.F.R. § 300.148 (2018).]²

² The Code also provides for several exceptions in which reimbursement cannot be denied including, if "1. The parent is illiterate and cannot write in English; 2. Compliance with the notice requirement . . . would likely result in physical or serious emotional harm to the student; 3. The school prevented the

It is undisputed that petitioners fulfilled the notice requirements for L.B.'s unilateral placement. They rejected the IEP proposed at the March 7, 2017, meeting, and they provided timely notification of their intent to unilaterally place L.B. at Orchard Friends.

The District, however, contends that petitioners' actions were unreasonable because they did not give the District a fair opportunity to implement the proposed IEP. The District cites L.B. v. Cinnaminson Township Board of Education, EDS 14389-15, Final Decision (March 30, 2017), <http://njlaw.rutgers.edu/collections/oal/>, to support its position that the parents were required to give the District an opportunity to execute the IEP. However, the facts in L.B. are not analogous to the present matter. L.B. attended an out-of-district placement consistent with a settlement agreement from a previous school district. When L.B. moved to the Cinnaminson school district, the District attempted to evaluate her and offered a similar program, in-district, which the parents rejected. There, I found that the parents exhibited a lack of cooperation and denied the District an opportunity to educate L.B.

In the present matter, L.B. attended Cinnaminson from the commencement of her education. During her time in the District, the relationship between her parents and the District was strained. There were various incidents that occurred over the years that led the parents to distrust the District, including the District's attempts to declassify L.B. Petitioners expended time and resources to file for due process to compel the District to continue providing her special-education services and to develop an appropriate IEP. Despite this order, the District's initial proposed IEP failed to include any reference to multi-sensory instruction, which all evaluators agreed was necessary for L.B. to make educational progress. Even after petitioners sent the District their recommendations consistent with the evaluations, the District made only superficial and minor changes to L.B.'s IEP.

parent from providing such notice; or 4. The parent had not received written notice according to N.J.A.C. 6A:14-2.3(e) and (f) of the notice requirement” N.J.A.C. 6A:14-2.10(d)(1)–(4).

Further, the District asserts that petitioners were uncooperative with the IEP process because they delayed the IEP, took over a month to provide feedback on L.B.'s proposed IEP, and filed for due process on the amended IEP without contacting the District to express their remaining concerns with L.B.'s programming. There is no evidence that petitioners' delay in meeting or providing the District with feedback was done in bad faith. Rather, petitioners were cooperative throughout the process, responding to the District's correspondence, attending every meeting, and allowing the District's staff to observe L.B. in her new placement.

The District claims that petitioners were obligated to give the District's proposed IEPs a "fair shot." Petitioners had no such obligation. Petitioners appropriately utilized their due-process rights to challenge what they believed to be an inappropriate IEP. While petitioners could have reached out to the District to inquire as to why the District did not incorporate the substantive changes in L.B.'s IEP prior to filing for due process, they were under no obligation to do so.

If the District was unclear about petitioners' requested changes listed in the April 6, 2017, correspondence, the case manager or counsel for the District could have reached out to petitioners to seek clarification. Even after due process was filed, the District made no attempt to make further changes to L.B.'s IEP.

I **CONCLUDE** that petitioners were cooperative with the District and their actions were reasonable given the circumstances.

I **CONCLUDE** that petitioners are entitled to full reimbursement for Orchard Friends for the following periods: the 2017–18 school year; the 2018 extended school year; the 2018–19 school year; and the 2019 extended school year.

Section 504 of the Rehabilitation Act provides:

No otherwise qualified individual with a disability in the United States . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any

program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service.

[29 U.S.C. § 794(a).]

As with the IDEA, Section 504 also has its own FAPE requirement. 34 C.F.R. § 104.33 (2018). As the Court explained in C.G. v. Pennsylvania Dep't of Educ., 734 F.3d 229, 235 (3d Cir. 2013), failure to provide a FAPE “generally violates [the Rehabilitation Act] because it deprives disabled students of a benefit that non-disabled students receive simply by attending school in the normal course—a free, appropriate public education.” In distinguishing the IDEA from the Rehabilitation Act, the Third Circuit has said, “the IDEA governs the affirmative duty to provide a public education to disabled students, while the [Rehabilitation Act] embod[ies] the negative prohibition against depriving disabled students of public education.” C.G. v. Pa. Dep't of Educ., 734 F.3d 229, 234 (3d Cir. 2013) (citing W.B. v. Matula, 67 F.3d 484, 492–93 (3d Cir. 1995)). As such, “the IDEA provides a remedy for ‘inappropriate educational placement decisions, regardless of discrimination,’ while the [Rehabilitation Act] prohibit[s] and provide[s] a remedy for discrimination.” Ibid. (citing Hornstine v. Twp. of Moorestown, 263 F. Supp. 2d 887, 901 (D.N.J. 2003)).

Section 504 creates “a private right of action for aggrieved individuals” and authorizes damages. Lane v. Pena, 518 U.S. 187, 205 (1996). However, where “the gravamen of a complaint seeks redress for a school’s failure to provide a FAPE,” an aggrieved party must exhaust administrative remedies prior to pursuing a claim in federal district court. Fry v. Napoleon Cmty. Sch., 137 S. Ct. 743, 755 (2017); see also Wellman v. Butler Area Sch. Dist., 877 F.3d 125, 133 (3d Cir. 2017) (holding that claims related to the implementation of an IEP are subject to exhaustion). After the administrative process has been exhausted, parties may seek relief in district court that is otherwise not available in the administrative proceedings, such as compensatory damages. Batchelor v. Rose Tree Media Sch. Dist., 759 F.3d 266, n.15 (3d Cir. 2014).

In addition to administrative remedies available under the IDEA, petitioners also seek costs expended during trial. While this tribunal does not have the authority to

award damages, I **CONCLUDE** that petitioners are the prevailing party, have appropriately exhausted the administrative process, and may pursue their claims in federal court.

The parents should be mindful of the District's and the legislation's general precepts of least restrictive environment; if the parents find that L.B. is not progressing as they hoped, they should consider further discussion with the District to obtain services in a less restrictive environment that contemplates L.B.'s needs related to the auditory surrounds that improve her educational experience. Finally, I wish to apologize for the long delay in awaiting my return from medical leave to address this decision, and thank the parents and counsel for their forbearance and patience.

ORDER

It is hereby **ORDERED** that respondent's motion for partial summary decision as to OSEPP's closing of the prior due-process hearing is **DENIED**.

Based on the above conclusions that respondent's 2017 IEPs fail to provide a free appropriate public education and that petitioners' unilateral placement of L.B. at Orchard Friends is justified, it is hereby **ORDERED** that petitioners' claim for reimbursement of the expenses of the private placement for L.B. at Orchard Friends for school years ending 2017, 2018, and 2019, expenses of extended school years 2017, 2018, and 2019, and attendant costs is **GRANTED**.

This decision is final pursuant to 20 U.S.C. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2019) and is appealable by filing a complaint and bringing a civil action either in the Law Division of the Superior Court of New Jersey or in a district court of the United States. 20 U.S.C. § 1415(i)(2); 34 C.F.R. § 300.516 (2019). If the parent or adult student feels that this decision is not being fully implemented with respect to program or services, this concern should be communicated in writing to the Director, Office of Special Education Programs.



July 18, 2019
DATE

JOSEPH A. ASCIONE, ALJ

Date Received at Agency

Date Mailed to Parties:

WITNESSES

For petitioners:

Dr. Daniel DaSilva, Ph.D.

Marcie Fontaine

For respondent:

Julie Bates, Cinnaminson Township, Child Study Team Case Manager

Kristen DeSanto, Cinnaminson Township, Teacher

Arlene Goldfarb, Cinnaminson Township, Director of Special Education

Sean Agin, Cinnaminson Township, Teacher Resource Room

Kimberly York, Cinnaminson Township, ICS Teacher

Barbara Scola, Cinnaminson Township, ICS Teacher Social Studies

EXHIBITS

For petitioners:

- | | |
|------|---|
| P-1 | CV, Fontaine |
| P-2 | Fontaine Evaluation 12/9/15 |
| R-3 | Fontaine Evaluation 2/1/18 |
| P-4 | CV, DaSilva |
| P-5 | Transcript Bates 9/28/16 |
| P-6 | Transcript Goldfarb 9/28/16 |
| P-7 | Transcript Scola 9/28/16 |
| P-8 | Orchard Friends-Curriculum Grades K–8
Social Studies (NOT IN EVIDENCE) |
| P-9 | Orchard Friends-Curriculum Grades K–8
Mathematics (NOT IN EVIDENCE) |
| P-10 | Orchard Friends-Curriculum Grades K–8 |

- English and Language Arts (NOT IN EVIDENCE)
- P-11 Orchard Friends-Curriculum Grades K–8 Science (NOT IN EVIDENCE)
- P-12 L.B.’s Fountas & Pinnell Benchmark Assessment System 2 9/20/16 (NOT IN EVIDENCE)
- P-13 Transcript Ross 9/19/16
- P-14 L.B.’s Mathematics Assessment Spring 2017
- P-15 REM Audiology Evaluation 12/14/17

For respondent:

- R-1 Through and including R-24 (NOT IN EVIDENCE)
- R-25 IEP, 5/13/2014
- R-26 Independent Audiologic and Central Auditory Processing Evaluation, 8/27/2014 (Meghan Pavlick)
- R-27 Notice of Agreement, 9/4/2014 (NOT IN EVIDENCE)
- R-28 Physical Therapy Reevaluation, 9/29/2014 (Kara Neal) (NOT IN EVIDENCE)
- R-29 Psychological Evaluation, 1/29/2015, with 4/2/2015 addendum (Kristy DeSanto)
- R-30 Speech and Language Evaluation, 2/5/2015 (Catherine Mellwig Jenkins) (NOT IN EVIDENCE)
- R-31 Educational Evaluation, 2/6/2015 (Julie Bates)
- R-32 To R-35 inclusive (NOT IN EVIDENCE)
- R-36 Independent Comprehensive Language and Social Communication Evaluation, 12/2015

- R-37 To R-44 inclusive (NOT IN EVIDENCE)
- R-45 Judge Sanders's Decision, 12/28/2016
- R-46 Urology nurse practitioner's note, 1/9/2017
(NOT IN EVIDENCE)
- R-47 Email chain regarding IEP meeting, 1/24–
2/2/2017
- R-48 Meeting invitation, 2/15/2017 (NOT IN
EVIDENCE)
- R-49 504 eligibility documents, 2/22/2017 (NOT IN
EVIDENCE)
- R-50 IEP, 3/7/2017
- R-51 IEP with case manager revisions
- R-52 Petitioners' response to proposed IEP, sent to
Board Solicitor on 4/6/2017
- R-53 Revised IEP
- R-54 Correspondence enclosing IEP, 4/14/2017
- R-55 Correspondence from OSEPP, 5/8/2017 (NOT
IN EVIDENCE)
- R-56 Correspondence from OSEPP, 5/11/2017
(NOT IN EVIDENCE)
- R-57 Work samples (Math) 2016–2017
- R-58 Grade comparisons, 2016–2017
- R-59 F&P chart and testing, 2016–2017
- R-60 End-of-year oral reading fluency test, 2016–
2017
- R-61 End-of-year reading comprehension
benchmark, 2016-2017
- R-62 Work samples, ELA, 2016–2017 (NOT IN
EVIDENCE)
- R-63 Teachers' notes, ELA, 2016–2017 (NOT IN
EVIDENCE)
- R-64 Work samples, Social Studies, 2016–2017

- R-65 Work samples, Science, 2016–2017
- R-66 Social Skills Progress Report, 2016–2017
(NOT IN EVIDENCE)
- R-67 Report card, 2016–2017
- R-68 To R-71 inclusive (NOT IN EVIDENCE)
- R-72 IEP, 6/20/2017
- R-73 Correspondence from OSEPP, 6/27/2017
(NOT IN EVIDENCE)
- R-74 Correspondence enclosing IEP, 7/5/2017 (NOT
IN EVIDENCE)
- R-75 Unilateral placement letter, 7/21/2017
- R-76 Settlement agreement, 7/24/2017 (NOT IN
EVIDENCE)
- R-77 Response to unilateral placement letter,
7/25/2017
- R-78 IEP, 7/26/2017
- R-79 Correspondence to Petitioners' counsel
regarding 504 meeting and consent to speak
with urologist, 8/24/2017 (NOT IN EVIDENCE)
- R-80 Email chain regarding unilateral placement,
8/30-31/2017
- R-81 CHOP health disclosure form, 8/31/2017
- R-82 Correspondence from Petitioners' counsel
refusing to execute health disclosure form,
8/31/2017 (NOT IN EVIDENCE)
- R-83 Demand for documents, 9/12/2017 (NOT IN
EVIDENCE)
- R-84 Subpoenaed records from Orchard Friends
School, October 2017
- R-85 To R94 inclusive (NOT IN EVIDENCE)
- R-95 Orchard Friends Documents, provided by
Petitioners' counsel, April 2018

R-96	To R-100 (NOT IN EVIDENCE)
R-101	DaSilva report
R-102	Subpoena Duces Tecum – DaSilva (NOT IN EVIDENCE)
R-103	Goldfarb FAPE report
R-104	To R-108 (NOT IN EVIDENCE)
R-109	Bates report
R-110	DeSanto report (NOT IN EVIDENCE) Ruled a Net Opinion
R-111	CV – Sean Agin
R-112	CV – Sarah Levin Allen (NOT IN EVIDENCE)
R-113	CV – Julie Bates
R-114	CV – E. Bongiovanni (NOT IN EVIDENCE)
R-115	CV – Robert Constantino (NOT IN EVIDENCE)
R-116	CV – Kristy DeSanto
R-117	CV – Arlene Goldfarb
R-118	To R-124 (NOT IN EVIDENCE)
R-125	CV – Barbara Scola
R-126	CV – Kimberly York
R-127	Marcie Fountaine report and file
R-128	Goldfarb rebuttal – Fountaine
R-129	OFS behavior log
R-130	OFS work samples
R-131	OFS curricula
R-132	Additional F&P testing
R-133	I-Ready Assessment from Orchard Friends August 2017–18
R-134	Manual Protocol
R-135	Dr. DaSilva's response
R-136	DeSanto's WISC
R-137	Full Scale IQ calculations

EXHIBITS REQUESTED BY ALJ

Various documents were requested by the tribunal in May 2019, and the parties provided those documents. Respondent also provided a certification from a new special education director. Most of the submitted exhibits were not included in the record. There was one exhibit that the tribunal has included. It appeared as part of Exhibit C and it includes twelve pages of that exhibit. The exhibit reflects reading-testing results, as well as report cards. It is marked as C-1. The reference to the scores of 57 and 63.5 in the fact findings reflect the correct calculation of scores from the testing.