



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. EDS 08837-19

AGENCY DKT. NO. 2019-30010

CONSOLIDATED

K.K.¹ ON BEHALF OF A.W.,

Petitioner,

v.

GLOUCESTER CITY BOARD OF EDUCATION,

Respondent.

K.K. ON BEHALF OF R.M.,

Petitioner,

v.

GLOUCESTER CITY BOARD OF EDUCATION,

Respondent.

OAL DKT. NO. EDS 08838-19

AGENCY DKT. NO. 2019-30011

Robert C. Thurston, Esq., for petitioner (Thurston Law Offices, LLC, attorneys)

William C. Morlock, Esq., for respondent (Parker McCay, attorneys)

Record Closed: February 14, 2020

Decided: March 9, 2020

BEFORE JUDITH LIEBERMAN, ALJ:

¹ Petitioner is referred to as "K.K.M" in the parties' submissions; however, these matters were transmitted to OAL with petitioner identified as "K.K."

STATEMENT OF THE CASE

Petitioner, K.K., is the Kinship Legal Guardian of adult child A.W. and minor child R.M., who are sisters. On behalf of A.W. and R.M., petitioner contends that respondent, Gloucester City Board of Education (Board or District), denied A.W. and R.M. a free appropriate public education (FAPE) as required by the Individuals with Disabilities Education Act (IDEA). She alleges that the District's failure also constituted a violation of Section 504 of the Rehabilitation Act, the Americans with Disabilities Act, and the New Jersey Law Against Discrimination. She seeks compensatory education for A.W. and R.M., monetary damages, and attorney's fees.

PROCEDURAL HISTORY

On May 30, 2019, petitioner requested mediation and a due-process hearing, pursuant to N.J.A.C. 6A:14-2.6 and N.J.A.C. 6A:14-2.7, with the Office of Special Education Programs of the New Jersey Department of Education (OSEP), for both matters. The matters were transmitted by OSEP to the Office of Administrative Law (OAL), where they were filed on July 1, 2019. The matters were consolidated on July 31, 2019. A hearing on the consolidated matters was conducted over four days, December 6, 2019, December 20, 2019, January 3, 2020, and January 27, 2020. A final hearing was conducted on February 14, 2020, to discuss, among other matters, the stipulation of facts submitted by the parties on January 27, 2020.

FACTUAL DISCUSSION AND FINDINGS

The parties jointly stipulated to the following. I, therefore, **FIND** the following as **FACT**:

1. A.W., whose date of birth is January 3, 2001, is a child with a disability, primary diagnosis of other health impairment—diabetes.
2. R.M., whose date of birth is May 2, 2002, is a child with a disability, primary diagnosis of other health impairment—other medical condition.

3. A.W. and R.M. are eligible for special education and related services under the IDEA and New Jersey's special education law.
4. The District is a local educational agency (LEA) as that term is defined by 20 U.S.C. § 1401(19) and 34 C.F.R. § 300.28 (2019).
5. The District receives federal funding under the IDEA.
6. The District received federal funding under the IDEA for A.W. and R.M. during the 2018–2019 school year.
7. A.W. has had an individualized education program (IEP) since she entered the Gloucester City Public School District.
8. A.W.'s most recent agreed-to IEP is dated March 29, 2017, and is the active and "stay put" IEP.
9. R.M. has had an IEP since she entered the Gloucester City Public School District.
10. R.M.'s most recent agreed-to IEP is dated May 15, 2017, and is the active and "stay put" IEP.
11. On or about November 19, 2017, petitioner on behalf of A.W. and R.M. filed Requests for Due Process Hearings against the District.
12. The due-process cases initiated on November 19, 2017, proceeded from that date until the conclusion of hearings on November 19, 2018.
13. Post-hearing briefs on the due-process cases initiated on November 19, 2017, were submitted on December 19, 2018.

14. On April 17, 2018, Administrative Law Judge Lisa James-Beavers issued an Order requiring that the District fund independent educational evaluations (IEEs) for A.W. and R.M.
15. The IEEs were conducted between June and July 2018.
16. On August 14, 2018, IEP meetings were held for A.W. and R.M.
17. August 15, 2018, was the first day of the trial of the due-process cases initiated on November 19, 2017.
18. On August 15, 2018, the District presented copies of the August 14, 2018, proposed IEPs for A.W. and R.M. to petitioner. This was the first time petitioner was able to review the proposed IEPs.
19. Petitioner rejected the August 14, 2018, proposed IEPs for A.W. and R.M.
20. On October 11, 2018, the U.S. Circuit Court for the Third Circuit entered an Order granting petitioner's motion enjoining the District from disenrolling A.W. and R.M. temporarily until a full panel of the court could review the motion. The Order was to stay in place until further Order of the Third Circuit.
21. On May 16, 2019, the District's counsel wrote a letter to Judge Kugler acknowledging that the District would not disenroll A.W. and R.M. for the remainder of the 2018–2019 school year. (There was a typographical error in that the letter referred to the 2019–2020 school year.)
22. On July 2, 2019, the District wrote to petitioner, advising that as of that date A.W. and R.M. were disenrolled from the District.
23. On March 27, 2019, A.W. sustained an injury to her finger while playing softball on a team.

Testimony

The following is not a verbatim recitation of the testimony. Rather, it is a summary of the testimony and evidence that I found helpful to resolving the issues presented in this matter.

For Respondent:

Kristen Charles is a certified guidance counselor and has been employed by the Gloucester City School District for twelve years. She is assigned to students in specific grades. She provides supports in response to students' academic, social, and emotional needs. She also serves as a liaison to individuals and entities outside the school, such as medical experts, the Division of Child Protection and Permanency, and education providers. Charles was not involved with special education students' IEPs.

Charles and petitioner K.K. were colleagues, as K.K. worked at the school. R.M. was in the tenth grade and was assigned to Charles during the 2018–2019 school year. She did not work with A.W. during the 2018–2019 school year because she was not assigned to eleventh-grade students that year. She worked with A.W. during the prior school year.

Charles described R.M. as a sweet girl who was very kind, well-mannered, and kind-hearted. She described A.W. as just as sweet as R.M. and as a very good girl. Neither girl had disciplinary issues; both were kind and conscientious. Charles was somewhat familiar with the circumstances of the girls' lives before K.K. became their guardian. She did not know many details but was aware that their lives had been tumultuous, but had improved with K.K. Charles was not familiar with the girls' diagnoses or the precise therapeutic interventions utilized at the treatment facilities they attended. Although Charles was not a member of R.M.'s child study team (CST), she was aware that R.M. had an IEP. The CST would approach her when guidance counseling was needed.

R.M. missed a portion of school during the 2018–2019 school year. On two occasions she was admitted to a full-day outpatient mental-health treatment program. Because these were full-day programs, R.M. did not attend school while she attended the programs. The mental-health treatment provider selected an outside education provider for R.M. The school paid for the selected education provider but was not permitted to send its teachers to the facility. The school deferred to the student’s schedules in those other settings as well as the grades awarded by outside education providers. R.M.’s instruction was considered to be “homebound.” Students with IEPs who are on homebound instruction received ten hours of instruction per week.

The first outpatient treatment program was at Princeton House from April 10, 2019, through May 3, 2019. This occurred during a ten-day school break, thus, ten of those days did not correspond to missed school days. R.M. was expected to return to school on May 9, 2019. Charles emailed all of R.M.’s teachers to ask them to excuse her for any work she missed. Charles knew R.M. was under stress and she did not want the teachers to tell R.M. that her assignments were overdue just as she returned to class. R.M. had just left a mental-health facility; she was in a fragile condition; and Charles did not want to impose more stress upon her. She would have done the same for any other student in this situation.

Charles wanted the teachers to wait until they received R.M.’s grades from the outside education provider. They would then decide how to proceed, including determining which assignments she would be required to make up. In her email to the teachers, Charles wrote:

[R.M.] was receiving educational services from an outside provider. Her grades during that time period should be marked as excused and if the provider sends us the grades I will forward them along to replace the excused grades. Also, please allow her to use the stress ball I gave her while in class. If at any time today she appears to need a break or counseling please send her down to guidance or CST.
[R-60.²]

² Many of respondent’s exhibits are multiple pages in length and are not numbered in a consistent fashion. References to a specific page of an exhibit utilize the pagination found within that exhibit, where possible.

The outside education provider sent R.M.'s grades to the school. On May 10, 2019, Charles forwarded them to R.M.'s teachers. The grades ranged from 79% to 91% in seven classes. Ibid.

On May 9, K.K. sent an email to Charles in which she advised that R.M. had been "getting worse" after the behavioral program. She had a "meltdown in the car" because K.K. told her to put something away. Ibid. Charles spoke with R.M., who reported having suicidal thoughts in the past but not at that time. Charles then advised K.K. that she spoke with R.M., who "assured [her] multiple times that she is not currently having any thoughts of self-harm or suicidal ideation but I want to inform you that she shared she has had these thoughts previously. We talked at length and [R.M.] knows she can come here or to the CST office at any time for support. . . . [I]f there is any way that I can assist with mental health referrals please feel free to reach out." Ibid. K.K. thanked Charles and did not communicate further about this.

On June 3, Charles advised R.M.'s teachers that R.M. would miss class due to her full-time attendance at another mental-health treatment program. She started the program on May 31, 2019. Ibid. The teachers were asked to forward to Charles any work that was not posted on "Google Classroom," a computer-based communication tool. Charles would forward the assignments to R.M.'s outside education provider, Brookfield Schools. Brookfield would provide a maximum of ten hours of instruction per week. One of R.M.'s teachers advised that R.M. was caught up with the work assignments and another wrote to Charles that R.M.'s grades in her class were good. Ibid. Charles advised that the CST approved her being excused from final exams due to the stress.

Charles explained that a student's IEP need not provide that a student may be excused from final exams. Students with mental-health issues were commonly excused from final exams because they are very stressful. This applied to students who did not have IEPs. When a student is excused from an exam, his grades are calculated as if the exam had not occurred. This is different from a "zero" grade on an exam, which is factored into the student's final-average grade.

A.W. received mental-health treatment from an outside provider on a part-time basis starting January 7, 2019. It lasted six to eight weeks. Ibid. During that time, she attended school four hours per day, which constituted a full school day. Additional instruction was, thus, not required.

Petitioner did not complain to Charles about the educational instruction R.M. received while attending the outpatient mental-health treatment program or about A.W.'s half-day treatment and school schedule. Petitioner did not complain about the girls' academic or mental-health status other than on May 9, 2019, when she asked Charles to speak with R.M.

Students' grades are issued by no one other than their teachers. The decision to change a grade is left to the teacher's discretion. A teacher might change a grade if a student did extra work to improve a score or submitted a late assignment. A student might be permitted to retake a test because of anxiety or be allowed to correct answers. Charles was unaware that the grades of any student, including R.M. and A.W., were changed by guidance counselors or administrators.

Charles explained that the school principal sent "In Danger of Failure" letters at the end of the first half of the year to any student who had a D average or lower in one or more courses. A "D" grade was 73 or lower; 65 or above was considered a passing grade. The letters were not sent because there was a risk that the student would not have enough credits to graduate. Rather, it was a proactive measure intended to generate discussion among the student, parents, and counselors to prevent further problems during the second half of the year. These letters were sent to petitioner because R.M. and A.W. each had a grade of D or lower in one course. P-27; P-28. Petitioner did not contact Charles about the letters. Charles was not aware that petitioner contacted anyone else about the letters.

Charles was unaware that R.M. and A.W.'s residence was at issue until a coworker who was required to testify in a legal proceeding discussed it with Charles. The coworker said she was nervous about testifying. Charles was not otherwise advised about the legal issue or pending litigation. R.M. remained on her caseload through the end of the 2018–

2019 school year. She learned that R.M. was no longer on her caseload during the summer after the school year ended. She was never instructed or otherwise told to treat R.M. or any student differently for this reason.

Charles was not involved with the determination to advance R.M. to the eleventh grade at the end of the 2018–2019 school year. The determination to advance a student to the next grade is based upon the student’s credit count. A student must earn a predetermined number of credits to advance to the next grade. Each course is accorded a certain number of credits, which the student earns upon passing a course. In high school, a student would not be held back a full grade if he did not pass all classes. Rather, he would advance with respect to the classes he passed but not those he failed. The student could still graduate on time if he were to supplement classes by way of summer courses or other measures, as necessary.

Tamie Hobbs is a certified school social worker and case manager and social worker for the CST. Hobbs participated in an average minimum of 150 IEP meetings per year and served as case manager for an average of seventy students per year. In her capacity as case manager, she conducted student eligibility meetings, wrote IEPs in conjunction with the IEP team, monitored education programs, and communicated with teachers, other members of the CST, and service providers. Assessments and evaluations prepared by service providers, such as physical and occupational therapists, psychologists, learning consultants, and other professionals, were utilized when writing IEPs. The assessments and evaluations were used to develop programming for the student, based on his or her needs. Hobbs interpreted these reports when drafting an IEP. As a school social worker, Hobbs served as part of the CST, conducted social and family histories and evaluations, examined how the student functioned in and outside school, and provided counseling services to students in school. Hobbs testified as an expert concerning the identification, evaluation, and classification of special education students and the development, implementation, and oversight of IEPs.

Hobbs was the case manager for A.W. and R.M. during the 2018–2019 school year. (R-27; R-45). She was R.M.’s case manager during the 2017–2018 school year. She knew petitioner because they worked in the same school. Petitioner was a security

guard in the school. Hobbs believed K.K. was honest. Hobbs described A.W. as a very hard-working, sweet girl who struggled with academics. She made a good effort with her schoolwork and made use of modifications. She was also involved with school activities. Hobbs described R.M. as a sweet, good girl who always tried hard and sought assistance when she had questions. She was not as mature or savvy socially as A.W. or her peers. Hobbs was not aware that the girls had behavioral issues. Hobbs indicated that A.W. and R.M. had a “rough existence” that involved domestic violence and homelessness. They came to Gloucester City in 2013. The school conducted assessments of A.W. and R.M. in 2014. Hobbs discussed A.W. and R.M. as follows:

A.W.

A.W. was classified as “other health impaired” because she had diabetes and attention deficit hyperactivity disorder. Neither the IEP team nor the CST determined that her disability was related to deficits of articulation or fluency. Although there were concerns about her articulation abilities, she was not eligible for special education under the classification of “communication impaired.”

An IEP reevaluation and annual review meeting for A.W. was conducted on March 29, 2017. Petitioner and A.W. participated in the meeting. R-26 at 84. Hobbs was not A.W.’s case manager at that time. A.W.’s teachers reported on A.W.’s progress and behavior in class, as well as her strengths and weaknesses, and her needs for the following year. The new IEP, which began on September 1, 2017, and ended on June 25, 2018, provided for special education services and related services of nursing services, because she had diabetes, and speech and language services. Although the “Statement of Related Services” provided that she would visit the nurse for blood-sugar monitoring five times per day for ten minutes per visit, she was permitted to visit the nurse whenever she needed, including if she needed a drink or snack.

Speech and language services were to be provided by way of twenty-five-minute group sessions, three times per month. R-26 at 286. A.W.’s classes were conducted in the general education classroom and taught by a general education teacher. A special education teacher was in the classroom to provide support to the special education

students in the class. A.W. also attended a support-skills class, which had no more than nine students and was taught by a special education teacher. The students received extra time to complete assignments, were able to correct their work to increase their grades, and were able to retake tests. The teacher provided additional assistance with skills the students needed to succeed in their general education cases, including, among other things, editing, modeling of concepts, and organizational skills. The students were also able to speak with their general education teachers when they needed to discuss an aspect of that teacher's class or get additional help.

The 2017 IEP identified modifications that would be provided to A.W. in her classes. They included, but were not limited to, extra time to complete assignments, written responses and testing, retesting for credit, detailed explanations of instructions, frequent provision of feedback, and use of a calculator. The modifications were needed to enable A.W. to access the curriculum.³ The 2017 IEP also provided for "Supplementary Aides and Services" including "unlimited access to school nurse for blood sugar checks or treatment, snack for hypoglycemia; unlimited access to lavatories and drinking fountains, allowance to carry water; adjustment to attendance policy—allow time to make up work." R-26 at 297. With respect to "Participation in Districtwide and Statewide Assessment Program," the IEP provided for small-group assessments and testing, extra time as needed, "repeat, clarify or reword directions," and use of calculator and mathematics tools. R-26 at 298.

After the 2017–2018 school year, A.W. advanced to the next grade because she passed her classes and earned the necessary credits to progress. In 2018, independent evaluations were conducted pursuant to an order issued by Administrative Law Judge Lisa James-Beavers in a prior matter involving the same parties. Petitioner selected Donna M. Lewis, Ed.S., LDT/C, to conduct an educational evaluation. She issued a report dated July 13, 2018, in which she wrote that petitioner reported that she was concerned

³ Hobbs explained that "access to curriculum" referred to a student's capacity to participate in the education process and learn. Modifications would be required to address deficits that prevent a student from being able to participate in the education process and learn. It is neither "perfection" nor correlates to a "medical model" for treatment of those deficits

about some of A.W.'s abilities: "knowing her right/left, spelling, dressing, personal hygiene, forgetfulness and the ability to calculate her blood sugar." R-32 at 2.

Lewis administered the Woodcock-Johnson IV Tests of Achievement and Test of Oral Language (WJ-IV). She wrote that an

overview of [A.W.'s] skill development across the reading, writing, and math areas was in the Very Limited range of achievement. It includes measures of oral sight-word reading skill, reasoning with math story problems, and spelling ability. Her national percentile rank of 2 means that she scored only higher than about 2 percent of the seventeen-year-old children nationally. This equals an age equivalent of 9 years and 5 months. The average percentile range on the WJ-IV is 25–75.

[R-32 at 14.]

Lewis included in her report instructional strategies to assist A.W. She wrote:

Provide brain and movement breaks so that she can process new information better especially in long lectures. She appears to learn better using a bi-modal visual/auditory approach in large/small groups. Extra time for testing in class, completing assignments and NJ-PARCC and standardized assessments. Ability to retake tests to improve her grade or if she is feeling sick or has missed an important test/exam.

[Id. at 15.]

Lewis also recommended "a consistent structured multi-sensory reading/language program to develop skills that were not developed in the elementary grades." Ibid. Lewis further recommended that "[l]istening skills are improved if directions and important information could be repeated, clarified and written clues [sic] on board or posted for her. Note taking will be difficult so copies of teacher notes, outlines will be helpful/study guides, too. Provide her extra time to process info and for her to respond orally and answer questions." Ibid. Lewis also recommended that A.W. independently read more and make use of computer aides and auditory books.

With respect to writing skills, Lewis recommended the use of graphic organizers, use of spell check and a spelling notebook, extra time for written expression, and use of a journal to be shared with an adult reader. With respect to math skills, Lewis opined that reading skills would help with word problems and A.W. “might” need to number and separate the parts of word problems “so that she continues to be successful.” Id. at 15–16. Computer systems, such as IXL, “might support math fluency,” and calculator use is “most important at this time for test/quizzes, homework and standardized testing.” Id. at 16. Lewis also noted specific math problems with which A.W. needed more assistance.

Hobbs did not dispute Lewis’ conclusions and recommendations. She noted that a 2014 District evaluation, which used a substantially similar test methodology, generated a percentile rank of 3. The similar scores did not mean that A.W. did not progress academically because the scores are normed with respect to age and growth. She acknowledged that A.W.’s score correlated to that of a student who was nine years, five months old.

The recommendations were in line with the CST’s determinations concerning A.W.’s needs and the provisions in the 2017 IEP. Lewis did not recommend an out-of-district placement or a different placement within the District. Moreover, the District provided all of the accommodations and tools recommended by Lewis. It used multi-sensory techniques such as providing directions and information orally and in a visual form. A.W. could access instructions from a computer while instructions were given orally, and she could listen while reading a story. Study guides and other methodologies were also provided for in the 2017 IEP. Each student’s laptop computer included text-to-speech software and all students used graphic organizers. A.W. had access to auditory books, the school actively encouraged students to read more, and the District provided the writing-skills tools identified by Lewis. For math skills, the District used IXL in all classes and all students including A.W. were trained to use it and could access it through their laptops. A.W. was also permitted to use a calculator.

A.W. was automatically permitted extra time for testing and any assignments without having to request additional time, and she could retake tests. Further, a special education teacher in the classroom provided the modifications A.W. needed, including

breaks. A.W.'s teachers would check in with her to see if she needed breaks and A.W. could request breaks.

Lewis' account of her observations during testing and petitioner's reported concerns about A.W. were inconsistent with Hobbs' observations of A.W. At school, A.W. did not present herself in this manner. Hobbs did not observe A.W. being forgetful, and she was clean and well groomed. She dressed herself and tended to her personal hygiene before and after gym class without an aide; she did not have assistance when using the bathroom; and she monitored her diabetes. Hobbs acknowledged that she did not observe A.W. while she dressed or tended to her personal hygiene or diabetes at school. She also acknowledged that she interacted with A.W. infrequently during the 2018–2019 school year. She estimated they interacted approximately five times per marking period because nothing more was required. They greeted each other when passing in the school hallways. However, Hobbs was not advised of these or related problems or concerned by others at the school.

On June 28, 2018, Rizza Miro-Lemonakis, M.A., CCC-SLP (Miro⁴), conducted a speech and language evaluation of A.W. in response to Judge James-Beavers' order. Petitioner selected Miro for the evaluation. Miro wrote that A.W. "reached all early developmental milestones within normal limits. However, she demonstrated articulation deficits and a learning disability." R-33 at 400. She concluded, "Results indicated severe articulation deficits secondary to dysarthria of speech . . . [which] is a neurological speech disorder that presents as a slow, effortful and slurred speech pattern due to muscle weakness." Id. at 406.

Miro recommended A.W. receive individual speech and language therapy sessions of thirty minutes each, twice each week, "secondary to her dysarthria diagnosis." R-33 at 408. She also recommended A.W. be seen by a speech-language pathologist with expertise in motor speech disorders such as dysarthria, and a pediatric audiologist who specializes in central auditory processing, to rule out a central auditory processing

⁴ Throughout the hearing, counsel and witnesses referred to Ms. Miro-Lemonakis as Ms. Miro.

disorder (CAPD). She added that A.W. “may benefit” from working with a certified reading specialist “to work on phonological awareness skills and decoding.” Ibid.

Hobbs agreed that A.W. had noticeable articulation deficits; however, she did not have difficulty understanding A.W. She conversed with A.W. easily and did not need to ask for clarification. No one reported that the speech deficit adversely impacted A.W.’s ability to access her curriculum, meaning there was no evidence that it adversely impacted her ability to participate, understand, and learn. A.W. was not bullied or otherwise treated differently because of her speech. This is different from deficits that require medical treatment. In-school therapy would address the former issue; outpatient speech therapy would address medical issues.

Miro’s findings did not indicate that A.W. should have been deemed “speech and language impaired.” That category is distinct from those for which a special education IEP is appropriate. A finding of dysarthria was insufficient for this classification. Hobbs was not involved with IEPs for speech and language deficits and deferred to the District’s speech and language therapist, Rosemarie Fitzpatrick.

Hobbs noted that Miro did not indicate that her recommendations needed to be implemented to enable A.W. to access her curriculum as opposed to medical treatment. Miro did not indicate that a reading specialist for phonological awareness was necessary. Nor did she recommend an out-of-district placement for A.W. or indicate that the recommended therapy should be provided by school providers rather than medical providers. Miro did not question the speech therapy provided by the District or indicate that it was insufficient. With respect to the recommendation that an evaluation of possible CAPD be conducted, Hobbs stated that the District did not conduct this type of evaluation for any of its students.

A.W.’s senior primary mental-health therapist recommended extensions of assignments missed during her treatment programs; provision of tutoring opportunities; access to a guidance counselor or other in-school therapeutic supports; and use of coping mechanisms in school, such as a stress ball. The District provided these accommodations. R-76.

After receiving the IEEs, the District convened a meeting to review and revise A.W.'s IEP for the 2018–2019 school year. Petitioner and A.W. participated. Hobbs was unable to attend the meeting, as it was scheduled to be conducted on a day when she was unavailable. The CST reviewed and considered the independent evaluations in developing the IEP, which was to include transition services intended to help A.W. develop and achieve goals for the future. R-27. The IEP that was developed mirrored the 2017 IEP with respect to placement, accommodations, and modifications but included new goals and objectives. It retained modifications, including measures to enable A.W. to address her diabetes, and included updated classes and related services. Speech and language therapy was to be conducted twenty-five times per year, twenty-five minutes per session. Id. at 19/28, 26/28.

The IEP's goals included articulation improvements with respect to specific sounds and all blend phenomes and auditory processing skills; an "increase [of] her semantic language skills[;]" an understanding and application of the "knowledge of sounds, letters and words in written English to become [an] independent and fluent reader[] and . . . read[ing] a variety of materials and texts with fluency and comprehension." R-27 at 15–16/28. The IEP goals also included writing in "clear, concise, organized language that varies in content and form for different audiences and purposes," and developing "organizational skills so that projects and assignments can be completed on time[.]" Id. at 17/28. Finally, she was to "[s]olve systems of equations in two variables[.]" Id. at 18/28. Each goal was to be achieved "with 80 percent accuracy as measured by varied assessments." R-27.

Petitioner did not agree to the 2018–2019 IEP. The District was thus not able to implement it, and A.W.'s 2017 IEP was the "stay put" IEP during the 2018–2019 school year.

A.W. passed all of her classes for the 2018–2019 school year.⁵ All her classes, other than support skills, were with general education students and the general education

⁵ All grades, including for tests, projects and homework, were entered into a computer program by A.W.'s teachers. Total grades were calculated by the program. R-52.

curriculum. She did the same work and was graded in the same manner as the other students. Hobbs noted that AW.'s final grade in Algebra II was 86 and the lowest final grade was 72, for History. R-50. Hobbs described the latter grade as "pretty good." She explained that, since A.W. was able to achieve passing grades in her classes, she was able to achieve the standards of the classroom. This was one of the IEP goals.

R.M.

R.M.'s 2017 IEP identified her primary disability as "other health impaired." R-44. In the 2017–2018 school year, her English I, Algebra I, and World History classes were pull-out resource classes in the special education classroom. Her biology class was in the general education classroom with a supplemental support paraprofessional. She received individual speech and language related services three times per month, twenty-five minutes per session.

During the IEP meeting for the 2017 IEP, petitioner requested a less restrictive program for R.M. The IEP team "considered a self-contained program, pullout resource program and a supplemental support program" for R.M. R-44 at 320. The determined that a less restrictive program was more appropriate:

A self-contained program was considered too restrictive at this time as [R.M.] has made marked process this past school year and seems ready for a less restrictive program. It was determined that a combination of pull-out resource and supplemental support would meet R.M.'s needs. [R.M.] is a conscientious student who typically completed assigned work and she will ask for help if having difficulty understanding a concept. Emotionally, she seems more confident and she expresses a desire for [a] less restrictive program. Her program will continue to be monitored and adjustments will be made as needed.

[Ibid.]

The 2017 IEP-provided modifications were to be implemented "for the student to be involved and progress in the general education and special education setting[.]" Id. at 315. They included, but were not limited to: provide extra time to complete assignments

and for testing, oral, and written responses; provision of reduced assignments and study guides for tests and exams; have tests, quizzes, or assignments read to R.M. as needed; retest for credit or to make corrections; provide short instructions and explain in detail as needed; break tasks/skills into small steps; use of calculator; provide hands-on learning activities; provide frequent feedback; make frequent checks for work/assignment completion. Id. at 315–16. Hobbs considered these modifications to be rather standard. She implemented the modifications for R.M. when she read tests to her. Hobbs also did this for other students.

Accommodations with respect to districtwide and statewide testing were also enumerated in the 2017 IEP. They included administration of the test in a small group, in a separate room; additional time as needed; provision of frequent breaks; repetition, clarification, or rewording of directions; read directions to R.M. out loud; use of calculator and mathematics tools. Id. at 318.

On July 14, 2018, Donna M. Lewis, Ed.S., LDT/C, issued an educational evaluation report for R.M. The evaluation was conducted pursuant to Judge James-Beavers' order and petitioner selected Lewis. Lewis wrote that petitioner reported that R.M.'s speech impediment had not improved and "that while she was in a self-contained classroom she was receiving all A's but now, since she has been mainstreamed, her grades are plummeting." R-46 at 364. Petitioner also reported that R.M. lacked sufficient motor skills, was disorganized, did not act her age, and still played with dolls. Ibid.

Lewis administered a battery of tests. A "Brief Achievement" score, which was an overview of her skill development across reading, writing, and math, was in the "Very Limited" range. Id. at 378. Her national percentage rank was .5. This indicated that she scored better than approximately 1 percent of the sixteen-year-old children nationally. Lewis wrote that this equated to an age of eight years and seven months. The average percentile range was 25 to 75 percent. Ibid.

Lewis recommended instructional strategies for R.M.:

Provide brain and movement breaks so that she can process new information better especially in long lectures. She appears to learn better using at least bi-modal visual/auditory approach in large/small groups. Extra time for testing in class, completing assignments and NJ-PARCC and standardized assessments. Retesting for credit would be helpful, too.

[ibid.]

Hobbs testified that these strategies were similar to those Lewis recommended for A.W. in her July 13, 2018, evaluation report. R-32 at 15. As with A.W., Lewis recommended “a consistent structured multi-sensory reading/language program to develop skills that were not developed in the elementary grades.” R-46 at 379. Lewis also recommended:

Listening skills are improved if directions and important information could be repeated, clarified and written clues [sic] on board or posted for her. Note taking will be difficult so copies of teacher notes, outlines will be helpful/study guides, too. Provide her extra time to process info and for her to respond orally and answer questions.

. . .

She needs to listen to the passages but she must read along following the written words. Extra instruction on phoneme-grapheme relationships to improve reading rate. Frequent reading fluency drills to train her to attend so she can improve reading rate.

[ibid.]

With respect to writing skills, Lewis recommended the use of graphic organizers, use of spell check and a spelling notebook, extra time for written expression, and use of a journal to be shared with an adult reader. With respect to math skills, Lewis opined that reading skills would help with word problems and R.M. “might” need to number and separate the parts of word problems “so that she continues to be successful.” Ibid. Computer systems, such as IXL and Xtra Math, “might support math fluency,” and

calculator use is “most important at this time for test/quizzes, homework and standardized testing.” Ibid. R.M. may benefit from highlighting operation signs in different colors. Lewis also noted specific math problems with which she needed more assistance.

Hobbs explained there is a significant difference between self-contained and general education classrooms. Only special education students are in a self-contained classroom and the small group of students remains the same. This presents fewer opportunities for interaction and socialization with peers. Also, the special education classes offer more individualized programming at a much slower pace than a general education classroom. As a result, special education students might not meet all of the general education curriculum standards. It is, therefore, much easier for a special education student to receive A grades in a self-contained classroom than in a general education classroom.

General education classes provide students with the least restrictive environment, are more difficult, and expose the students to a greater number of peers and social interactions. When a special education student is in a general education class, he is provided the opportunity to be with his more “typically developing peers” and have more opportunities to socialize with them. Tr. of December 6, 2019 (Tr. 1) at 291:9. If R.M. were exhibiting the behaviors about which petitioner complained—playing with dolls and not acting her age—this socialization opportunity would be beneficial to her. Further, the general education classes challenge the students more than in the more restrictive environment. R.M. was exposed to the general education standards for her grade level and her courses, with modifications to enable her to succeed in the more difficult setting.

Hobbs testified that Lewis’ recommendations were in line with the CST’s determinations concerning R.M.’s needs. As it did for A.W., the District provided all of the accommodations and tools recommended by Lewis. Lewis did not recommend an out-of-district placement or a different placement within the District for R.M.

On June 28 2018, Miro conducted a speech and language evaluation for R.M. pursuant to Judge James-Beavers’ order. Petitioner selected Miro for the evaluation. She observed R.M. during an Algebra I resource class taught by a special education

teacher who was assisted by a paraprofessional. The teacher told Miro that R.M. consistently participated in class and rarely failed to turn in her homework. The teacher also reported that R.M. needed “constant practice and multiple repetitions[.]” Miro observed R.M. volunteer to answer a question. She provided the correct answer but the teacher asked her to clarify her answer because she had difficulty understanding her. After then, R.M. “raised her hand or called out most of the answers. R.M. participated the most out of any other student[.]” Id. at 403.

Miro wrote in her clinical summary:

Formal and informal testing showed relative strengths in expressive vocabulary skills (both in labeling and defining words), following multi-step directions, putting sentences together in a grammatically-correct way when provided a scrambled sentence, and determining relationships between words. In auditory language processing skills, she did best with Cohesion, where she listens to a story and answers questions about them [sic].

[Id.] at 409.]

Miro added that R.M.’s “receptive vocabulary skills were below average, as was her ability to categorize vocabulary words, describe pictures using complex sentences, and repeat sentences.” Ibid. Miro opined that R.M.’s performance in sentence-repetition tasks “is severely impacted by her speech deficits and language deficits, and that these scores do not just represent a deficit in memory skills. Because [R.M.] has difficulty formulating syntactically-correct sentences and articulating words correctly, she has difficulty repeating complex sentences accurately as well.” Ibid. R.M.’s “biggest deficits” were in the areas of phonological awareness and structured writing. Ibid.

Miro also concluded that R.M. had “severe articulation deficits secondary to dysarthria of speech.” This is a “neurological speech disorder that presents as a slow, effortful, and slurred speech pattern due to muscle weakness.” R-47 at 408. R.M.’s “articulation skills are in the poorest range for her age and is [sic] characterized by hypernasality, marked decrease in strength and articulatory movement, imprecise production of consonants and a generally weak and garbled quality of speech.” Id. at 409.

Miro recommended individual speech-language therapy with a speech pathologist experienced in targeting motor speech disorders such as dysarthria. She recommended two sessions per week, each one hour long. She noted that R.M.'s classroom placement appeared to be appropriate, as she needed constant support in the classroom. She recommended a reading specialist to help R.M. with phonological-awareness skills, and that her writing skills be addressed within the classroom setting, on a one-to-one basis. Id. at 410.

Hobbs noted that Miro did not recommend a change in R.M.'s programming, an out-of-district placement, or placement in another school within the District. Rather, Miro wrote that R.M.'s classroom placement was appropriate. Also, Miro did not state whether the therapy she recommended was required to enable R.M. to access her curriculum, and thus should be provided by the school, or whether it should instead be provided by a medical professional.

On June 13, 2018, and June 18, 2018, Christen Russell, MS, BCBA, conducted a court-ordered functional behavior assessment of R.M. Petitioner selected Russell. Russell wrote that petitioner reported that R.M. would "shut down" and not respond when faced with something she does not like. R.M. destroyed items in the house and, when corrected, would say things like she is stupid and everyone hated her. She also picked at her body and bit her arm when upset. Petitioner also reported that R.M. had run away from home, and did not know how to independently bathe or brush her teeth. R-47 at 389.

Russell described R.M.'s extremely difficult family history and background. She wrote that R.M.'s challenging behaviors were "unfounded as none were observed during direct observations nor interviews." Id. at 392. She concluded that R.M. "would benefit from intensive, therapeutic behavioral and medical care . . . to develop treatment plans, opportunities for group experiences and socialization, ongoing opportunities to actively explore new interests and activities, and the use of coping strategies and self-management skills." Ibid.

Russell concluded that R.M. was not receiving services as enumerated in her May 15, 2017, IEP. Ibid. She recommended that all school staff receive training to consistently address R.M.'s challenging behaviors. Russell also recommended intensive counseling and a functional analysis conducted by a board-certified behavior analyst. She also recommended that R.M.'s IEP goals and objectives be updated "to ensure that all objectives are measurable, quantifiable and have independence as part of mastery criteria." Id. at 392–93. She observed that R.M.'s IEP contained objectives with a variety of criteria, and some criteria were as low as 70%. Finally, she recommended school-based counseling to "increase self-esteem, identify and express emotions, triggers and replacement behaviors." Id. at 393.

With respect to Russell's conclusions, Hobbs noted that Russell found that the reports of R.M.'s challenging behaviors were unfounded. Hobbs was surprised that petitioner said that R.M. could not bathe herself or brush her teeth, as she never observed R.M. exhibit this type of behavior and was unaware that it had occurred at school. No one at school reported such behavior. R.M. does not have an aide or other support to help her with activities of daily living. She independently uses the bathroom at school and changes her clothes for gym class. She also gets her own lunch without assistance and was independent with respect to all other activities. Overall, she was independent in school and would ask for assistance if she needed it. The school does not provide intensive counseling services. The school did not request a functional analysis, as no functional behavior issues were observed at school and petitioner did not request this type of analysis.

With respect to Russell's recommendation concerning an updated IEP, Hobbs explained that the District had offered an IEP with updated goals after the report was reviewed. Petitioner did not approve the updated IEP, thus, the District could not implement it. Hobbs noted that Russell did not recommend an out-of-district placement or placement in a different school within the District.

On June 12, 2018, Marni Ehrlich, OTR/L, conducted a court-ordered occupational therapy evaluation. Petitioner selected Ehrlich for the evaluation. She found that R.M. was "easy to talk with despite articulation errors." R-49 at 400. She demonstrated

“difficulties in the area of visual motor integration and visual perception skills.” Id. at 399. This impacts “independence with academics and self-help skills.” Ibid. She had difficulty with functional skills such as opening her locker, organizing her materials, and getting to class on time. R.M. demonstrated abilities consistent with those of a younger child. She required direction from adults to complete chores, personal care, and academic tasks. She tested “significantly low on the VMI” and her “perceptual skills” were “significantly impaired compared to younger children.” Ibid. Ehrlich recommended educational and IQ testing to develop recommendations for functional outcomes and educational planning. She needed assistance with development of life skills and occupational therapy to develop self-help, perceptual, work-readiness, and executive-function skills. An additional recommendation was, “Consult with the team will be important to provide input on ways to modify an[d] accommodate the educational plan.” Id. at 400.

Hobbs testified that these areas were addressed in R.M.’s classes by way of modifications. An in-class-support teacher provided assistance. Support-skills class provided assistance with executive functioning such as planning, starting, prioritizing, and completing assignments and time management. Extra time was provided for the students as needed. The support-skills teacher provided “continual assistance” with whichever needs the students had. Tr. 1 at 319:14.

On August 2, 2018, R.M. and petitioner were invited to an August 14, 2018, meeting to review and revise R.M.’s IEP. Both participated in the meeting. Hobbs was unable to attend the meeting, as it was scheduled to be conducted on a day she was unavailable. R.M.’s teachers reported on her progress and the independent evaluations were reviewed. Petitioner reported that she became frustrated at times because R.M. would not ask for help; did not complete homework; and would say she had gotten help at school. Petitioner expressed concerns about R.M.’s speech and wanted her to be more confident. These concerns were included in the 2018 IEP under the heading “Present Levels of Academic Achievement and Functional Performance” (PLAAFP). R-45 at 3/29. That section also included an entry that the speech therapist addressed petitioner’s concerns about R.M.’s speech “within the goals and objectives of the IEP.” Ibid. The 2018 IEP provided for supplemental support, in-class support, and pull-out

replacement. Id. at 24/29. As a related service, she was to receive twenty-five individual speech and language therapy sessions, twenty-five minutes per session. Ibid.

The classification, modifications, and placement provisions in the 2018 IEP mirrored the 2017 IEP. The goals in the 2017 IEP were no longer relevant. After an annual review and receipt of teachers' input concerning the students' progress throughout the year, the goals were revised for the 2018 IEP. The District could not implement the 2018 IEP because petitioner did not agree to it. Thus, the 2017 IEP remained the effective IEP for the 2018–2019 school year.

Hobbs testified that none of the evaluations conducted for R.M., including those conducted pursuant to Judge James-Beavers' order, contradicted the programming in the 2017–2018 IEP or the proposed 2018–2019 IEP. The evaluations confirmed that the District's programs for the students were appropriate.

Hobbs noted that, with respect to social, emotional, and adaptive skills, she was neither advised nor aware of any manifestations of issues that presented at school. She would have been advised if R.M. had such problems. During the 2018–2019 school year, R.M. had an articulation problem that was worse than A.W.'s and sometimes required clarification. However, this did not prevent conversation with R.M. R.M. gave oral presentations and participated in her classes.

R.M. was not required to take her final exams at the end of the 2018–2019 school year because school personnel were concerned about the likely stress R.M. would suffer if she were required to take the tests. Given that she had significant emotional issues, and final exams are just one measure of a student's performance, school personnel determined to instead review her performance throughout the year. She had done the work for her courses and passed each marking period throughout the year. Because she had demonstrated sufficient progress and success in her classes, it was unnecessary to require her to endure the stress associated with final exams while she was already experiencing significant emotional distress. It would have been cruel to require her to take the exams. If, however, the absence of the test scores would have adversely impacted her, a different decision might have been reached. However, she, in fact, could

have failed her exams without suffering an adverse impact. Thus, it was determined that the exams were not necessary under the circumstances.

R.M. passed all of her classes for the 2018–2019 school year. R-55. R.M.’s geometry grade was 85 and her English grade was 76. Hobbs described both as “great.” R.M. struggled in her history class, where her grade was 68.⁶ Hobbs explained that, although R.M. struggled a little more than A.W., she passed her general education classes and “held her own.” It was preferable for a student to be in the least restrictive environment with her typically developing peers, and passing those classes, rather than getting all A grades in more restrictive classes. Hobbs noted that R.M. passed all her classes while struggling with mental-health issues.

An annual review was not conducted for A.W. and R.M. at the end of the 2018–2019 school year. The next meeting would have been conducted by August 13, 2019. However, Hobbs was notified in July that A.W. and R.M. were no longer enrolled in the school district. Hobbs called petitioner and offered to assist her when she met with personnel in the new school district. She did not usually offer to assist parents who changed school districts. Petitioner replied that she was not aware of the change in school district. Hobbs told petitioner that if A.W. and R.M. remained in the school district, she would hold IEP meetings in August, when the annual reviews were due.⁷

Hobbs was asked if a review meeting should have been conducted during the 2018–2019 school year, while the 2017 IEP was the “stay put” IEP. She explained that the prior proceeding before Judge James Beavers “still had been ongoing and that was part of what was going on within the trial, that IEP that was written and ordered by her and we still don’t have a ruling on that trial, so that’s . . . why another IEP hadn’t been conducted.” Tr. 2 at 298:14–18. Had a review been conducted, the students’ grades would have been examined to determine if they had met curriculum standards.

⁶ R.M.’s grades were calculated using data provided by teachers, who input that data into a computer program. The program calculates the total grade for each class. R-57.

⁷ The date for the annual review of A.W.’s 2017–2018 IEP was March 28, 2018, because the IEP was dated March 29, 2017. The District “tried on a number of occasions to hold an annual review with [K.K.]; however, she cancelled the meetings.” Tr. of December 20, 2019 (Tr. 2) at 294:2–4. Thus, the annual review was not held until August 2018.

Hobbs concluded that A.W. and R.M. were provided a FAPE in the least restrictive environment. They made “fantastic progress” and were successful in a setting with their non-disabled peers.

On cross-examination, Hobbs acknowledged that she was aware that the District pursued disenrollment of R.M. and A.W. since approximately fall 2017. This did not impact the provision of services to the students. Hobbs also acknowledged that the 2018 IEP meeting attendance sign-in sheet did not include a space for K.K., and A.W.’s name was not on the form. Hobbs did not know why these items were missing; however, she noted that the District had started using a new program for the creation of IEPs and this was the first one for which the program was used. Perhaps there was an error in the use of the new program.

Parent involvement is an important part of the student-evaluation process. The parent’s observations of the student’s behavior at home can be relevant, depending upon the evaluation at issue. However, not all behaviors in the home can impact performance at school. Also, Hobbs noted that petitioner stated during the 2017 IEP meeting that she wanted R.M. to be considered for a less restrictive placement. R-44 at 306.

Hobbs clarified that, while math skills are necessary to calculate A.W.’s insulin needs, the modifications provided in the IEPs are intended to address how the disease impacts A.W.’s education. As such, A.W. is able to react to her condition as needed throughout the school day. The school nurse is charged with addressing the medical aspect of the disease. Nonetheless, Hobbs understood, based upon reports from A.W.’s teacher, that A.W. is very good at using a calculator. Hobbs added that a calculator is an appropriate tool that is used by many students to overcome deficits in math skills. She analogized it to the use of a computer-based spell-check program.

Hobbs was asked whether A.W.’s failure to pass her driver’s-license test indicated a lack of cognitive or memory skills. Hobbs replied that many students fail, regardless of the presence of deficits. A variety of factors lead to failure, including self-imposed stress. Thus, the District offers the test at school so that students are not required to report to the Division of Motor Vehicles (DMV) to take the test. The District permits the test to be taken

by hand, rather than on a computer, which is required at the DMV, and permits additional time for completion of the test. If A.W. were unable to pass the test, it would be considered when developing transition planning for her.

Rosemarie Fitzpatrick is employed by the District as a speech-language pathologist. She is a licensed speech pathologist and holds a speech-language specialist certificate, a supervisor of education certificate, and a certificate of clinical competency through the American Speech-Language-Hearing Association. With the District, her duties include assessing, diagnosing, and treating language and communication disorders, conducting speech and language evaluations, and participating in eligibility and IEP meetings. While employed by the District for over eight years, she conducted hundreds of speech and language evaluations. She participated in hundreds of eligibility and IEP meetings. She was qualified as an expert in the prior litigation between these parties before Judge James-Beavers. She was qualified as an expert in speech and language pathology and therapy for this matter.

Fitzpatrick knew petitioner because they worked together. Petitioner was always very friendly and they chatted daily. They talked about their families and other subjects. Fitzpatrick liked petitioner.

The District's goal with respect to students with speech and language disorders is for them to be able to access learning. A student would be classified as eligible for speech and language services when the disorder impacts his access to education. By way of example, education would be impacted when a student does not participate in school because he is self-conscious of sound errors or the disorder impacts how he relays his thoughts in class. The school's goal in that instance would be to enable him to access his education, not perfect his speech. Conversely, the presence of a sound error alone, without a corresponding adverse impact on access to education, would be insufficient for the provision of speech and language services by the school. An outside provider would be appropriate.

Fitzpatrick participated in the 2018 IEP meetings for A.W. and R.M. She spoke with their teachers and reviewed Miro's independent evaluation report; prior IEPs,

including goals and objectives; and the PLAAPFs as summarized by the prior speech pathologist. She developed IEP goals, objectives to support A.W. and R.M.'s needs as identified by Miro, and service delivery models for both IEPs. Her recommendations were based on the needs identified by Miro. She did not conduct a speech-language evaluation for A.W. or R.M., nor did she serve as their speech-therapy provider.

Fitzpatrick observed both students in their classes during the fall of 2018. She observed A.W. in her history class. A.W. did not know she was being observed. A.W. voluntarily raised her hand to answer questions. When called upon by the teacher, she provided accurate answers to questions. She performed better than all other students in the class when inputting information into the computer. The teacher complimented A.W. and said she was ready for an exam. Fitzpatrick understood A.W. and no one in the classroom asked her to clarify something she said or otherwise indicated an inability to understand her. Fitzpatrick was very impressed with A.W. Her speech and language skills did not adversely impact her ability to access her education.

Fitzpatrick observed R.M. in her sports marketing class. R.M. did not know she was being observed. She eagerly and repeatedly participated in the class, raising her hand to participate, while other students did not participate. She sat at a computer and appeared happy and excited. Her teacher and peers understood her. On occasion, the teacher repeated what R.M. said to ensure proper understanding; however, neither her teacher nor anyone else asked her to repeat herself and there was no miscommunication or misunderstanding. R.M. was "hyper nasal," which means air came out of her nose while she spoke, when it should not have. This is not required for the production of most sounds. Fitzpatrick believed this was R.M.'s primary problem. This was the first time Fitzpatrick heard R.M. speak, and she was able to understand her. In sum, R.M. seemed like a sweet, happy, and content person who enjoyed her class. Her speech and language skills did not adversely impact her ability to access her education.

Miro determined that A.W. and R.M. had dysarthria, which means that damage to their brains caused muscles that produce speech to be weak. Speech therapy will not fix a neurological deficit like this. Therapy, instead, is intended to help compensate for the deficit.

Fitzpatrick noted that Miro did not write that her recommendations were necessary to enable A.W. and R.M. to access their education. Fitzpatrick had never recommended such therapy for other people with similar profiles, and she did not believe Miro's recommendations were needed for A.W. and R.M. to access their education. Both had made progress toward their goals, which was indicative that the proper services had been delivered to them. Moreover, the therapy sessions could not have been school-based, as they would have taken the students out of school too long. As both A.W. and R.M. needed to be in class, such therapy would have had to be received outside school. Further, neuro-muscular therapy, which Miro recommended, is very fatiguing and, thus, would likely adversely impact their school performance.

Fitzpatrick disagreed with Miro's methodology and believed her practices were incomplete. She reviewed video recordings and observed classroom activity and did not administer an oral-mechanism examination. An evaluator must personally examine oral motor ability and movement to determine what is happening in the speaker's mouth that causes dysarthria. Without that observation, an expert cannot determine the cause of the problem. Fitzpatrick was "uncomfortable" with Miro's reporting of some standardized measures because she did not provide composite scores when the students performed at a higher level rather than when they performed poorly. This is required to determine whether a student qualified for speech services. Miro also did not explain how she determined that A.W.'s intelligibility rate with an unfamiliar listener was less than 60 percent.

Fitzpatrick further noted that Miro did not provide support for her statement about R.M.'s emotional and social immaturity or explain how this was relevant. R-47 at 408. She did not explain why she came to this conclusion or provide relevant information that explained why this correlated to a need to provide "social communication support like pragmatic skills." Tr. of January 3, 2020 (Tr. 3) at 136:22–23. Miro noted only one instance in which someone did not understand R.M. Fitzpatrick considered Miro's use of the term "baby talk" to be inflammatory. Miro should have described the problem. Had Fitzpatrick written the report, she would have written that R.M. seemed hyper-nasal and presented with articulation errors but is typically understandable to communication partners. She would not have described a student in this manner, and she rarely read

reports that used language like this. Fitzpatrick did not contest Miro's data or findings with respect to the students' difficulties.

During the August 2018 IEP meeting, Fitzpatrick told petitioner the service delivery was appropriate, but that she understood K.K.'s desire that the girls receive more therapy. At that time, A.W.'s group session and R.M.'s individual session were conducted once per week. Fitzpatrick offered to group A.W. and R.M. together so they could have therapy sessions twice per week. They would be able to work and practice at home together, as their goals and objectives were almost identical. Petitioner rejected this proposal because the girls did not work together well. She did not request anything further. Nonetheless, the District worked beyond the limits of the 2017–2018 IEP. The goals and objectives Fitzpatrick developed for A.W.'s and R.M.'s 2018–2019 IEPs were controlling during that school year, notwithstanding petitioner's refusal to approve the IEPs.

The District maintained "SEMI" logs that recorded when speech and language services were provided to A.W. and R.M. The attendance records were used to obtain reimbursement from Medicaid. During the 2018–2019 school year, A.W. attended fourteen therapy sessions and was "not present" for fifteen sessions. R-75. The fifteen sessions were marked as "student not present." Ibid. This meant A.W. was absent from school, the session was preempted by another school activity or function, or A.W. simply did not attend. R.M. attended fifteen therapy sessions and was "not present" for fourteen sessions. R-82. The SEMI logs indicated that they each missed two sessions for other reasons. R-75; R-82. Fitzpatrick explained this could indicate the student had another reason to not attend, such as required attendance at an IEP meeting. High-school students were responsible for reporting to their speech and language therapy sessions in the same manner as for all of their classes. While the therapists proactively attempted to ensure that students attended their therapy sessions, this was more difficult in the high-school setting, and therapists will not routinely pull a student out of the classroom.

R.M.'s former speech therapist, Adams, prepared and maintained records and data, including an Annual Report, documenting achievement of goals and objectives during the 2018–2019 school year. R-103 at 1–22. Fitzpatrick was Adams' supervisor while she was a graduate student and during her clinical fellowship, during which Adams

worked at the school. After that, Fitzpatrick mentored Adams. Adams completed, among other reports, an Annual Review⁸ that identified goals: improvement of articulation of specific sounds and all blend phenomes, improvement of auditory processing skills, improvement of syntactic language skills, and improvement of semantic language relationships. Id. at 1–2. These goal categories were followed by enumerated objectives for each goal. The therapist recorded R.M.’s progress with respect to each enumerated objective and determined that she achieved a level of success greater than 80 percent, which was “greater than mastery,” in all areas except self-monitoring and conversational speech. Her scores were 70 and 0 percent with respect to conversation, and 56 and 44 percent with respect to self-monitoring. The record indicates that R.M. did not get to one of the objectives within the syntactic-language-skill area. Fitzpatrick considered this to be significant progress, as R.M. achieved gains in all areas. The only concern was the failure to carry this growth into conversation.

A.W.’s Annual Review was structured in the same manner as R.M.’s. R-103 at 35–36.⁹ It reported significant progress with respect to articulation of specific sounds, as she was at “mastery level.” By way of example, A.W. achieved a score of 100% with respect to “cluster reduction,” the blending of sounds reduced to a single consonant. Id. at 36. The report did not include data concerning conversation and self-reporting within the articulation goal. This suggested A.W. and her therapist did not get to that level of instruction. A.W. scored “above mastery” in all but one area within the auditory-processing-skills area; the lower score was 73 percent, while 80 percent was the required score for “mastery.” She scored 100% in the semantic-language-skills area. Although A.W. did not get to all sounds, this was not unusual given the amount of work she was given during the year. Fitzpatrick considered these scores to be indicative of great progress. Generally, a student is not expected to achieve 100% with respect to all goals, and few people achieve 100% in every area. She noted that the school does not attempt to “cure” problems; rather, its goal is for students to be functional in an area.

⁸ The Annual Review portion of the report included an “Activity Narrative” that detailed progress with respect to individual objectives.

⁹ Page number 36 is the first page of the Annual Review; page number 35 is the second page.

Fitzpatrick explained that the speech and language therapy sessions addressed the goals and objectives in the 2017 IEP, as well as additional goals and objectives. A.W. and R.M. made progress in speech-therapy sessions and, based upon the data reviewed by Fitzpatrick, they appeared to do very well during the 2018–2019 school year. However, the former speech therapist advised that, while they did well in the therapy room, they did not do as well outside the therapy room. Fitzpatrick stressed that practicing at home was an important part of the process to translate skills outside the classroom. In sum, Fitzpatrick concluded that A.W. and R.M. made “really great” and “excellent” progress. Tr. 3 at 69:24 to 70:2. “Not all students made this level of progress in a year.” Tr. 3 at 69:25 to 70:1. She noted that they did better than most students and did so while attending approximately half of the assigned sessions. Normally, it not unusual for students to not get to all sounds, given the amount of work to do. She concluded that the services offered to A.W. and R.M. were appropriate, and both made progress.

On cross-examination, Fitzpatrick explained a notation on one of the data sheets concerning R.M.: “8 words - p - p - p ++ really hard for her → either substituted or omitted words.” R-103 at 5. She explained that this note corresponded to the objective, “Will demonstrate the ability to accurately repeat sentences of increasing length and complexity.” Ibid. The note indicated it was difficult for R.M. to repeat an eight-word sentence. She may have substituted or omitted words when attempting to repeat the sentence. On November 7, 2018, R.M. did this successfully ten out of fourteen attempts; on November 14, 2018, she only succeeded twice out of five attempts. She, thus, did worse the second time.

The therapist wrote another note about R.M.: “Started with typing a paragraph, spent ten minutes typing one sentence. Kept giving her verbal prompts and questions on things she could include, but kept saying ‘I have no idea,’ ‘I can’t do more.’ Very reluctant to even try finally got more out of her. Activity took fifteen minutes to write three sentences. But structure/grammar was good except [misspelled] Arkansas.” Id. at 11. Fitzpatrick believed it was not normal for a student this age to need ten minutes to type a sentence. However, it seemed that R.M. had difficulty coming up with an idea to write about. She noted that the objective was to formulate a well-written sentence, and R.M.

scored 90 percent with respect to qualitative data. Fitzpatrick noted that the therapist highlighted R.M.'s reluctance rather than ability.

Fitzpatrick acknowledged that she did not conduct a speech and language evaluation of A.W. or R.M. and she was not their therapy provider. She observed them during only one forty-minute class each. Their therapist, Ms. Adams, did not report to Fitzpatrick; however, Fitzpatrick was Adams' mentor and supervisor from her time as a graduate student working in the District through her clinical fellowship year. Adams left the District during the 2018–2019 school year. Therapist O'Donnell began her employment with the District at the start of that school year.

When questioned about the potential that therapy service dates were inaccurately recorded in the SEMI reports, Fitzpatrick explained that the District would not be paid by Medicaid if the student was not present. All performed services must be recorded in the SEMI report. The school would not send a therapist to an inpatient treatment center, so as not to interrupt medical care. The District is not responsible for making up missed services caused by the student's absence. She believed the reports were accurately completed by the therapists, who maintained their own attendance records, and that the form itself is designed in such a way that errors are unlikely.

A student who was to have three therapy sessions per month would ultimately have twenty-five sessions per year. Fitzpatrick observed that the SEMI reports showed that A.W. did not receive speech and language services from April 10, 2019, until May 15, 2019. R-75. The record reflects that only two sessions were scheduled in September 2018, April 2019, and May 2019, and four in February 2019 and March 2019. Ibid. R.M. did not receive services after April 3, 2019. R-82. Two sessions per month were listed as having been scheduled for R.M. in April and May 2019. No sessions were listed as having been scheduled between April 3, 2019, and May 29, 2019, when R.M. received therapy. Ibid. Therapist Adams left the District on April 11, 2019. O'Donnell worked through the end of the school year. Because O'Donnell had a full caseload before Adams left, adjustments needed to be made to enable her to provide services to Adams' students. Service provision does not continue past the beginning of June due to multiple end-of-year activities.

For Petitioner:

R.M. was in the tenth grade during the 2018–2019 school year. She liked her school and teachers and had friends there. She listed the courses she took that year and explained that she was at the Princeton House during the school year. No teachers offered classes to her while she was at Princeton House and she had no homework assignments.

R.M. reached out to some of her teachers to discuss this. On April 11, 2109, she sent an email¹⁰ to her teacher, Mr. Hagan, to advise that she would not be in school for two weeks. She apologized for her absence. P-1. Hagan replied that she need not apologize and she should use Google Classroom to keep up with classwork. Ibid. R.M. attempted to do this but she did not understand the assignments and no one explained them to her. R.M. sent a similar email to her physical science teacher. P-2. He did not give her work assignments and no one at Princeton House taught her physical science. R.M. communicated with her math teacher and indicated in her email that she was “doing work” and A.W. would turn in a completed assignment for her. P-3.¹¹ R.M. also advised the teacher of her scores on assignments and the teacher replied that she would put the grades into PowerSchool. Ibid. R.M. testified that the math teacher did not send additional work after the email exchange. R.M. wrote to her Spanish teacher that she was “trying to do all my make-up work for every class[.]” P-4.¹² The teacher replied, asking if R.M. received a quiz that the teacher shared with her. R.M. replied that she had not checked but she would do so. Ibid. R.M. testified that the Spanish teacher did not give her work while she was at Princeton House, and no one at Princeton House gave her work. R.M. wrote to her United States History I teacher, “I have been doing the work you had assigned and I am really sorry I can’t be in class I miss everyone there[.]” P-5.¹³ R.M. wrote seventeen days later, “I have been doing your work and I am trying to get

¹⁰ Through a Gmail account used by students to communicate with teachers.

¹¹ The exchange between R.M. and the math teacher is incomplete; sentences written by each are cut off before they end.

¹² This email exchange is also incomplete; the remainder of R.M. statement to the teacher is missing, as is the teacher’s reply.

¹³ The remainder of this sentence is cut off.

caught up on all the missing work that I had miss[ed].” Ibid. The teacher thanked R.M. for letting her know. R.M. testified that makeup work for History I was not sent to her and no one came to Princeton House to teach her history. Similarly, no one came to Princeton House to teach her English and the teacher did not send assignments. It was mostly “book work,” and the teacher did not send any pages or tell R.M. which pages to work on.

When R.M. returned to school, she felt “great” because she liked school and was with her friends and teachers. She was told by someone on her CST that she did not have to complete the schoolwork she missed while away. She wanted to make up her missed work. She was also told she was not required to take final exams but that she would still finish tenth grade. She did not have speech therapy after she returned to school.

R.M. explained that she was alerted to her speech-therapy sessions when someone would call for her or report to her classroom to take her to the session. If she was not called to report to the session, she could remain in her classroom. She was not responsible for remembering the session schedule or for independently reporting to sessions. She never reported to a session to find that the instructor was not there.

R.M. was asked to read an excerpt of a functional behavior assessment report written about her. R-48 at 389. She read the substance of the excerpt correctly. She testified that her English grade last year was approximately 90.

On cross-examination, R.M. clarified that she knew Princeton House sent her grades to her school, as someone there told her this. On redirect examination, she testified that there were no classes while she was at Princeton House and no assignments that were graded. They just advised the school of the work she did on particular subjects.

A.W. testified that she likes school and her teachers and does not like to be absent. She listed each of her classes. She went to Princeton House on a part-time basis from approximately December 2018 through February 2019. She attended school during the first part of the day, then went to Princeton House. She did not address some schoolwork while at Princeton House and did not “really” have homework while there. She asked her

teachers for makeup work and they said it was “fine.” She was not required to make up her missed work.

A.W. has type 1 diabetes. Her condition depends upon her sugar. She can become shaky and feel “weird” if it is low, in which case she needs to eat. If high, she becomes thirsty, needs to use the bathroom, and needs insulin. A sugar level of 170–180 is appropriate for her. She must know how much food she has eaten and sometimes she forgets. She must calculate how much insulin she needs by adding carbohydrates and applying a math formula. She uses a calculator to do this. Sometimes it is difficult to calculate if her blood-sugar level has spiked or dropped. She could go to the school nurse at any time to address her needs, whether she needed food or help checking her blood sugar. Someone would walk her to the nurse. She was always able to do this. She testified that she is responsible with respect to monitoring her blood sugar.

A.W. liked her speech-therapy sessions. She was required to remember the day of the week the sessions were to be conducted. In 2018–2019, she was called down to the therapy session or would report to the session during her supports-skills class. She would let her teacher know that she had a scheduled therapy session and the teacher would send her to the session. She forgot to go to therapy “once in a blue moon.” She recalled that she may have missed a session when she was not at school or was out sick, although she was not sure. If the session teacher was not there when A.W. arrived, she would return to class. A.W. did not know how often that happened. During speech-therapy sessions, the class would review what they needed to do. A.W. would stay after class to do her assignments.

A.W. was asked to read an excerpt of the Lewis’ report (R-32). She struggled a little but read the entire excerpt aloud. She received a B grade in English last year.

A.W. socializes with friends. She goes to their houses and goes to movies with her friends, among other activities.

K.K. is A.W. and R.M.’s kinship legal guardian. K.K. had developed a relationship with A.W. and R.M. through school, where she worked in a security-personnel capacity.

She has a background in law enforcement. She initially became their foster parent, after which A.W. and R.M. lived with her full time. She subsequently became their kinship legal guardian, which gave her the authority to make decisions concerning their welfare.

K.K. filed her first due-process complaint in November 2017, with the goal of keeping A.W. and R.M. in their then-current school and to obtain for them the services they were due. K.K. believed they “absolutely” were not receiving the services they needed. In December 2017 the District started to try to disenroll A.W. and R.M. It issued letters in which it indicated they would be disenrolled; interrupted their sports activities; and initiated a lawsuit to achieve disenrollment.

In April 2018, Judge James-Beavers ordered independent evaluations of A.W. and R.M. Judge James-Beavers directed the parties to review the evaluations and discuss whether the matters could be resolved by way of an IEP. This was in association with K.K.’s November 2017 due-process complaint.

The evaluations began in April 2018. K.K. participated in the independent evaluations by ensuring that A.W. and R.M. were able to meet the evaluators and answering any questions asked by the evaluators. She met with independent evaluators Lewis, Miro, Erlich, and Russell.

K.K. reported to Russell that R.M. was “quiet and friendly” and hid behind furniture and put her head and shoulders down when she “shut down” in response to things she did not like. R-48 at 389. K.K. reported that R.M. picked scabs and her hair and bit her arm. She also destroyed items. When corrected, R.M. would state that she is “stupid” and “everyone hates” her. Ibid. K.K. also reported that R.M. did not know how to independently bathe or brush her teeth. She limits her food, and wants to stay small and not grow up.

K.K. reported that R.M. ran away from her biological mother’s house, and also when she first was placed with K.K. K.K. relayed information about R.M.’s difficult experiences while she lived with her biological parents.

K.K. also reported that R.M. saw her biological mother often and was allowed supervised visits with her biological father, who was not allowed to contact R.M. The father had not had contact with R.M. during the year before K.K.'s report to Russell. When R.M.'s biological mother obtained custody of R.M.'s brother, R.M. asked why she was not included.

K.K. described R.M.'s speech as "poor" and sometimes sounding very "nasal" and like "gibberish." Sometimes it seemed "foreign" and people have asked whether she is from another country. K.K. could not understand R.M. when they first met. After living together five years, K.K. is better able to understand her; however, K.K.'s son still does not understand her.

K.K. participated in the August 14, 2018, IEP meetings for A.W. and R.M. by telephone. The hearing before Judge James-Beavers began the following day. K.K. was given a proposed IEP while she was in the courtroom for the hearing. The proposed IEP did not differ from the prior IEP except it possibly offered a "couple extra minutes" of speech therapy for R.M. Nothing was incorporated from the independent evaluations. K.K. did not agree to the proposed IEP. She understood that by rejecting the proposed IEPs for A.W. and R.M., the 2017 IEPs would remain in effect.

On October 11, 2018, K.K. received a copy of an Order issued by Third Circuit Judge Shwartz temporarily enjoining the District from disenrolling A.W. and R.M. pending a review by a full panel of the Third Circuit Court of K.K.'s motion for an injunction. P-24. K.K. understood that this meant A.W. and R.M. were permitted to remain in the school and their special education services would continue. K.K. was also aware that, on May 16, 2019, counsel for the District advised that A.W. and R.M. would remain in their District school through the end of the 2018–2019 school year.¹⁴ P-22. Services provided by way of the 2017 IEPs would continue to be provided during the school year.

¹⁴ K.K. understood that the letter incorrectly referred to the 2019–2020 school year and was intended to apply to the 2018–2019 school year.

During the school year, A.W. attended Princeton House. K.K. “believed” she attended Princeton House four or five hours during the school day, three days per week. She reported to school in the morning and was transported to Princeton House by a driver who was paid by insurance and Princeton House. A.W. departed school between approximately 11:20 and noon, depending upon when the driver arrived. K.K. did not remember the date when A.W. began going to Princeton House; she recalled it was sometime in the fall. She believed A.W. went there for a “couple” months.

A.W. told K.K. she did schoolwork, art, and music while at Princeton House. Schoolwork was given to her by Princeton House staff. K.K. was not informed that District teachers sent work to A.W. She believed perhaps one of her seven teachers sent work. K.K. assumed A.W. missed schoolwork during this time because a lot of her teachers did not give her work assignments to help her keep up with her classes. However, K.K. did not know the nature of the work she was given while at Princeton house.

K.K. did not receive a progress or final report from Princeton House. She spoke with personnel there and was told that A.W. was doing well and doing her work but they did not provide specific information. District personnel were not present at those meetings. The District did not provide a report to K.K. concerning what A.W. did while at Princeton House. She never discussed this with the District and was not invited to meetings with the District to discuss A.W.’s work or other matters.

R.M. attended Princeton House on a full-time basis, five days per week. K.K. estimated this occurred between February and April 2019. R.M. was picked up at school in the morning. She may have attended homeroom and a first-period class before she departed for Princeton House; however, K.K. did not recall this with certainty. She was transported to her house from Princeton House at the end of the day.

R.M. told K.K. that she did whatever schoolwork was given to her while at Princeton House. K.K. did not receive reports from Princeton House or the District concerning R.M.’s work. Princeton House did not issue a final report; however, K.K. may have received a letter indicating that R.M. completed the program. She did not receive anything that addressed R.M.’s grades.

K.K. believed R.M. did not bring home schoolwork to show to K.K. She recalled seeing documents that addressed psychological issues, but nothing like math or science work. R.M. missed schoolwork and tests from the District. K.K. believed she did not make up assignments or tests. R.M. told K.K. that, after she returned to school sometime in April, speech therapy did not resume through the end of the year.

K.K. expressed concerns about A.W. and R.M.'s education during the 2018–2019 school year. She mentioned a concern about a test grade or missing assignment to a coworker, or asked if there were anything she could do to help raise their grades or help them prepare for tests. When asked about specific discussions, she said she spoke with Ms. Gorelli and complained about the quantity of R.M.'s speech therapy during the August 14, 2018, IEP meeting. Although she testified that others at the IEP meeting acknowledged her statements, K.K. did not identify who did so.

K.K. used her phone to take screenshot photos of A.W.'s and R.M.'s attendance and grade records. A.W. and R.M. accessed the records on their laptops, using their online school accounts. She took the photographs after the 2018–2019 school year, because they showed grades from the fourth marking period. R.M.'s record reflected a 40% grade on an exam for college United States History I and a final grade for the first marking period of 62% for the same class. P-12. This caused K.K. to be concerned, as it showed that R.M. had not performed well in the class.

K.K. referenced a final grade of 91%. P-17. She noted that the lines on the document indicated missing work or test grades. Ibid. K.K. was concerned that the final grade was high even though half of the work assignments were not done or were missing. K.K. believed that a student received a grade of zero for work that was missing. K.K. believed R.M. nearly failed most of her classes, thus, did not understand how she received A and B grades after having been at Princeton House. K.K. was not given an explanation for the grades. She believed R.M. was given grades of 100 without having to do the work, which caused her grades to go up.

K.K. believed neither A.W. nor R.M. was where she should have been with respect to speech, academics, or social or psychological development. There were gaps in their

speech therapy, ranging from three weeks to one month, when the therapist was unavailable and there was not a replacement. K.K. believed R.M. did not write well and was unable to form complete sentences and did not spell well. She referred to a handwritten note by R.M. that she believed evidenced her poor writing and spelling skills. P-18. R.M. shut down often, played with dolls, and watched cartoons. She carried her dolls in her purse when she went to school. K.K. discussed this with R.M. but said, “that’s on her.” K.K. did not want to discourage her, given what she has been through.

K.K. added that A.W. lacked skills such as knowing right from left and reading words. She referred to a college application on which A.W. misspelled a basic word. P-19. K.K. described A.W.’s simple math skills as “completely horrible,” and explained that A.W. needed to have “stellar” math skills to properly manage her diabetes. She could not calculate ratios or percentages needed to determine her food and insulin needs. She could not make change, and once left food in the oven too long. K.K. believed A.W. performed poorly at a job due to her low skill level, and that this caused her work hours to be reduced. K.K. did not see A.W.’s work review; however, A.W. told her that she did not do well and was only permitted to work as a cashier once or twice. Although A.W. did not explain to K.K. why she no longer worked as a cashier, K.K. surmised it was because A.W. did not perform well.

A.W. also exhibited behaviors that caused K.K. concern. She picked at her body when she was dealing with difficult circumstances, such as when her biological mother moved out of state or when she feared she would be required to leave her school. A.W. was very quiet and internalized everything. K.K. was frightened by this, as she would not be able to know what A.W. was thinking.

K.K. believed that A.W. was prohibited from participating in cheerleading and softball during the 2018–2019 school year. She was permitted to participate during prior school years. A.W. participated in cheerleading during the summer of 2018 and continued to do so for a couple months after the school year began. K.K. did not refer to specific dates, but noted that A.W. was not allowed to participate in the first pep rally, which she believed was in September. K.K. believed this was associated with the

District's attempts to disenroll A.W. and R.M.; however, no one told K.K. why A.W. was not permitted to participate in cheerleading.

K.K. could not recall with certainty when A.W. participated in softball. She initially stated that she assumed A.W. did not participate during the 2018–2019 school year because she was not permitted to participate in cheerleading that year. A.W. called K.K., crying, during the 2017–2018 school year and said that Mrs. Ernst told her she could not participate. For this reason, A.W. did not sign up for softball for 2018–2019.

K.K. also testified that the new athletic director, Kristin Kellogg, telephoned K.K. to tell her that A.W. was not allowed to participate in cheerleading and was not eligible to participate in sports because she was being disenrolled from the District. K.K. did not recall the date of the telephone call.

On cross-examination, K.K. was asked whether A.W. injured a finger while playing softball and went to the emergency room for treatment. She did not recall that A.W. injured her finger or visited the emergency room. She also clarified that, during her testimony concerning A.W.'s school activities, she surmised, but did not know, that A.W. did not play softball.

K.K. received undated letters from the school principal concerning A.W. and R.M. The principal wrote, "As a result of a review of the first 3 marking period grades earned by your child we continue to be concerned for your child's likelihood of successfully passing all of the courses that they are enrolled in this school year and optimizing their potential to graduate within four years of entering high school." P-27; P-28. The principal recommended that K.K. reach out to A.W.'s and R.M.'s guidance counselors to "ensure that you fully understand what your child must achieve for both the 4th marking period and final exams in order to pass all courses." Ibid. K.K. was not sure when she received the letters, although she recalled receiving them later in the 2018–2019 school year. She believed the letters conveyed that A.W. and R.M. were not going to advance to the next grade. She was confused because she previously understood that they had passed their classes. An extended school year, summer school, was not suggested for either A.W. or

R.M. She did not attempt to contact a guidance counselor in response to the letter or to discuss her concerns.

With respect to final exams, K.K. did not know whether A.W. was required to take her exams. She was not aware that the school determined to exempt R.M. because of her mental-health issues. She believed they received grades of zero if they did not complete an assignment or a test, as represented by a dash mark on their grade sheets. When questioned further, she clarified that she did not know whether R.M. received grades of zero for the final exams that she did not take.

K.K. was asked about her testimony that R.M. did not receive speech services after she returned to school from Princeton House in April 2019. Upon reviewing records generated by Charles, the guidance counselor, she acknowledged that R.M. received inpatient mental-health services outside school at Jefferson Health from April 10, 2019, through May 3, 2019. R-60. She did not remember that R.M. attended the other program until asked about it. She did not remember the dates R.M. attended either program. She did not remember whether both programs were full time, although she testified that she made the decision to send A.W. and R.M. to the programs.

K.K., not the school, determined to send R.M. to both Princeton House and Jefferson Health. A.W. and R.M. suffered mental-health issues stemming from their prior difficult circumstances, which included but were not limited to homelessness, moving between motels and shelters, and possibly assault.

K.K. did not know whether Princeton House and Jefferson Health provided educational programming to A.W. and R.M. She did not know whether the programs sent information about educational programs to the District. She did not invite anyone from the school to attend the intake meeting she had with Princeton House staff. She did not recall having discussed with school personnel her concerns about the girls' education while they attended Princeton House. She did not know or ask whether the school sent teachers to Princeton House.

K.K. was asked about Lewis' finding that A.W. able to solve simple addition and subtraction problems. She was not surprised by this finding given that A.W. was able to use a calculator.

K.K. was asked if she filed her initial complaint against the District in response to the residency issue raised by the District. She was asked about her testimony during a September 26, 2018, hearing in a prior matter involving petitioner, A.W., R.M., and the District, in which she testified that she was motivated by a desire to prevent the girls from having to switch schools. She testified that she had multiple motivations for filing her complaint.

K.K. testified that she was vigilant about communicating with teachers. She sent emails in which she asked them to send work home and noted that there were missing work assignments. The teachers replied, but nothing was ever done. K.K. acknowledged that, during the 2017 IEP meeting, K.K. said that she wanted R.M. to be in a less restrictive environment. She did not recall that, during the 2018 IEP meeting, Fitzsimmons offered to pair R.M. and A.W. for speech therapy in order to provide them twice the amount of therapy they would receive individually.

A.W. and R.M. received speech therapy outside of school. K.K. arranged for this therapy, which they received while they also received speech therapy in school. While she believed Ott suggested there was no hope for improvement, K.K. believed R.M. had improved, and it has become easier to understand her. R.M. still had bad moments and needed to repeat herself when speaking with strangers; however, K.K. has seen improvements.

K.K. was asked about her reports concerning R.M.'s behavior. She did not recall whether anyone from the school told her that R.M. picked at her arms while at school. K.K. was told that R.M. shut down while at school. K.K. recalled discussing R.M.'s hygiene with the school nurse, but did not recall if the conversation occurred during the 2018–2019 school year.

K.K. expressed concern and sadness about the girls' security and emotional health. Their biological mother moved away during the 2018–2019 school year. This was difficult for the girls, as was the possibility that they would need to attend a new school. These circumstances, in part, motivated K.K. to send them for treatment. Also, A.W. revealed, during the 2018–2019 school year, that she was the victim of abuse by a family friend over a period of years. This was another reason for A.W.'s treatment.

Additional Findings

It is the obligation of the fact finder to weigh the credibility of the witnesses before making a decision. Credibility is the value that a fact finder gives to a witness' testimony. Credibility is best described as that quality of testimony or evidence that makes it worthy of belief. "Testimony to be believed must not only proceed from the mouth of a credible witness but must be credible in itself. It must be such as the common experience and observation of mankind can approve as probable in the circumstances." In re Estate of Perrone, 5 N.J. 514, 522 (1950). To assess credibility, the fact finder should consider the witness' interest in the outcome, motive, or bias. A trier of fact may reject testimony because it is inherently incredible, or because it is inconsistent with other testimony or with common experience, or because it is overborne by other testimony. Congleton v. Pura-Tex Stone Corp., 53 N.J. Super. 282, 287 (App. Div. 1958).

In determining credibility, I am aware that the District employees would want to support the program they developed for A.W. and R.M. and would believe that the District's program would provide them with FAPE. I am also aware that petitioner believes that what she seeks is in the best interest of A.W. and R.M. In addition to considering each witness' interest in the outcome of the matter, I observed their demeanor, tone, and physical actions. I also considered the accuracy of their recollection; their ability to know and recall relevant facts and information; the reasonableness of their testimony; their demeanor, willingness, or reluctance to testify; their candor or evasiveness; any inconsistent or contradictory statements; and the inherent believability of their testimony.

With respect to petitioner, it is clear, and no one contests, that she genuinely cares for A.W. and R.M. and was motivated by a genuine desire to protect and provide for them.

This was evident when she emotionally testified about the girls' extremely difficult past and her concern about how a change in school district might adversely impact them. However, she did not testify in a wholly consistent or factually driven manner with respect to fundamental areas of inquiry. By way of example, she did not remember that R.M. attended two inpatient mental-health treatment programs. She did not remember the school year during which A.W. was not permitted to play softball or the circumstances that led to her not being able to play. She did not remember that A.W. sustained an injury while playing softball and, when presented with evidence that documented an injury, remained unable to recall facts concerning the injury.

Furthermore, petitioner did not offer demonstrable facts or reliable evidence to support several important assertions and did not adequately explain inconsistent behaviors. Her contention about the girls' academic progress was based on her assumption that they would receive a "zero" grade on a test or assignment they were not required to complete. She did not explain why she reached this conclusion and did not discuss it with school personnel. She did not respond to the principal's letters concerning the possibility that the girls might fail one or more classes, notwithstanding the request in the letters that she contact the guidance counselor. Similarly, she offered little explanation concerning her rejection of the proposed 2018–2019 IEPs other than to say that they were not much different from the prior year's IEPs. Although this caused the prior IEPs to remain in effect, petitioner did not testify or offer evidence to show that she attempted to continue to work with the school to address the IEPs or otherwise modify the girls' programs. Further, she did not accept an offer that would have effectively doubled the amount of speech therapy each girl received.

When questioned about her inability to recall apparently important facts about the girls or inquire of school personnel about matters that she claims concerned her, she became defensive and offered excuses. By way of example, when confronted by evidence that showed that A.W. played softball at the time when petitioner claimed she was prohibited from playing, petitioner defensively explained that she surmised that A.W. was prohibited based on her understanding of separate circumstances. Her explanation of the other circumstances, however, was inconsistent, unsupported by detailed facts, and largely did not "hang together." For all of these reasons, although it is undisputed

that petitioner cared for A.W. and R.M., I cannot find her testimony to be wholly credible as it is based on assumptions and is not supported by a recollection of essential facts.

A.W. and R.M. both testified well. They both understood the questions asked of them and demonstrated their desire to testify truthfully. Both were calm and pleasant throughout their testimony, notwithstanding that their counsel asked them to answer math questions or read aloud while on the witness stand. Both girls had a noticeable speech impediment,¹⁵ but I could understand both of them throughout their testimony. Both girls seemed to be lovely people who smiled freely and wanted to do their very best.

Kristen Charles testified in a calm, clear, and professional manner. She demonstrated a thorough understanding of her area of responsibility and distinguished her role from that of other school staff members. She also provided support for her substantive testimony, which was based on her expertise and personal experience. There were no significant inconsistencies or other areas of concern that would call her reliability into question. For these reasons, I find her testimony to be credible.

Tami Hobbs also testified calmly, clearly, and in a professional manner. She answered multiple repetitive questions with patience and calmly reiterated her testimony over an extended cross-examination. She demonstrated her knowledge of the areas at issue and the facts of this case. There were no significant inconsistencies or areas of concern in her testimony that would call her reliability into question. I find her testimony to be credible.

Rosemarie Fitzpatrick demonstrated that she is exceptionally well versed in the areas of speech pathology and therapy. She demonstrated a high level of expertise in these areas. She explained relevant and complicated concepts clearly and thoroughly and in a professional manner. She shed light on important areas of inquiry. There were no significant inconsistencies or areas of concern in her testimony that would call her reliability into question. I find her testimony to be credible.

¹⁵ "Impediment" is used here as a generic term to describe some degree of difficulty with production of clear speech.

Before making additional factual findings, petitioner's objection to the admissibility of R-103, the records that document A.W. and R.M.'s speech-therapy progress, must be addressed. Petitioner argues that the document must not be admitted into evidence due to a lack of foundation and proof of authenticity. She also argues that it was not produced in accord with the rules governing discovery. Respondent argues that the document satisfied the rules governing authentication and its reliability was demonstrated during the hearing. Also, the document was produced in compliance with the discovery rules. Finally, if the document is not admissible, the facts and data relied upon by Fitzpatrick in conjunction with her role as an expert witness need not be admissible for the expert's testimony to be admissible.

Petitioner's argument that the document was produced in violation of the discovery rule is without merit. She makes this argument in her post-hearing submission notwithstanding that this issue was previously addressed in response to a motion she filed on November 30, 2019. In that motion, she sought an order excluding all of respondent's evidence, based on her assertion that respondent violated N.J.A.C. 1:6A-10.1, the "five day" discovery rule, which provides that all discovery shall be completed no later than five business days before the date of the hearing. R-103 was included among the documents petitioner sought to exclude. In an Order dated December 3, 2019, I denied petitioner's motion. Thus, this argument has already been addressed and petitioner had no cause to raise it again in her post-hearing brief.¹⁶

N.J.R.E. 803(c)(6) addresses the admissibility of records such as this. It provides:

A statement contained in a writing or other record of acts, events, conditions, and, subject to Rule 808, opinions or diagnoses, made at or near the time of observation by a person with actual knowledge or from information supplied by such a person, if the writing or other record was made in the regular course of business and it was the regular practice of that business to make it, unless the sources of information or

¹⁶ I note that, while petitioner supplied excerpts of the transcript of the January 3, 2020, hearing in this matter, during which the admissibility of R-103 was discussed, a page of the transcript was not included. That page, 28, includes the portion of the colloquy during which I confirmed that this document was the subject of a prior discovery motion and petitioner was not the victim of a surprise document production during the hearing, as she was provided the document prior to the first day of hearing.

the method, purpose or circumstances of preparation indicate that it is not trustworthy.

Fitzpatrick, testifying as an expert in speech and language pathology and therapy, discussed the entries in R-103. She explained the substantive therapies and the manner in which progress was tracked by A.W. and R.M.'s speech and language therapist. She also explained, in great detail, how the documents recorded A.W.'s and R.M.'s progress and the meaning and import of their success in each area. She also explained the routine nature of this report. Fitzpatrick's testimony was uncontroverted. There is no evidence suggesting that the record is untrustworthy or otherwise unreliable. It is admissible pursuant to N.J.R.E. 803(c)(6).

Also, pursuant to N.J.R.E. 703, the "facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing." See also N.J.A.C. 1:1-15.9(b) (If a witness is testifying as an expert, testimony of that witness in the form of opinions or inferences is admissible if such testimony will assist the judge to understand the evidence or determine a fact in issue and the judge finds the opinions or inferences are: 1. Based on facts and data perceived by or made known to the witness at or before the hearing; and 2. Within the scope of the special knowledge, skill, experience or training possessed by the witness). In Troum v. Newark Beth Israel Medical Center, 338 N.J. Super. 1, 27 (App. Div.), certif. denied, 168 N.J. 295 (2001), a physician's testimony was admissible when it was based on facts supplied by others and his own training and experience. See also Vitrano by Vitrano v. Schiffman, 305 N.J. Super. 572, 577 (App. Div. 1997) (physician expert relied upon facts in operating surgeon's report). Fitzpatrick relied upon the data contained in the reports to reach her conclusion about A.W.'s and R.M.'s success and the propriety of the speech and language therapy services provided to them by the District. Thus, even if R-103 were inadmissible, her testimony concerning the substance of the document is admissible.

Based upon consideration of the testimonial and documentary evidence presented at the hearing, including R-103, and having had an opportunity to observe the witnesses and to assess their credibility, I **FIND** the following **FACTS**:

Grading and advancement to next grade level

1. Teachers input their students' grades into computer-generated grade-management programs. No one else issues grades and only teachers can change a student's grade.
2. When a student is excused from an assignment or exam, final grades are calculated as if the assignment or exam had not occurred. The student does not receive a "zero" grade.
3. Students with and without IEPs have been excused from completing assignments or taking tests when necessary.
4. A high-school student receives credit for the classes he passes. He will advance to the next grade level with respect to the subjects he passed even if he did not pass all of his classes.
5. R.M. attended two inpatient mental-health programs in April, May, and June of the 2018–2019 school year.
6. The District could not provide educational or speech-therapy services to R.M. while she attended the inpatient programs. The programs selected the education providers. The school paid for the providers but was not permitted to interact with the provision of education by those providers.
7. A.W. attended an outpatient mental-health treatment program on a part-time basis during the 2018–2019 school year, beginning in January 2019.
8. A.W. and R.M. were excused from completing assignments and taking tests that they missed due to their mental-health treatment programs. They were not penalized and did not need the assignments and test scores to pass their classes.

9. A.W. and R.M. advanced to the next grade levels at the end of the 2017–2018 school year because, based upon the scores reported by their teachers, they passed their classes and earned the necessary credits to progress.
10. A.W. and R.M. passed all of their classes for the 2018–2019 school year.
11. None of the independent evaluators recommended a change of programming or placement for A.W. or R.M., whether a placement outside the district or a different placement within the District.
12. A.W.'s and R.M.'s proposed 2018–2019 IEPs included appropriate recommendations made by Miro, the independent speech and language evaluator.
13. Miro did not write in her report that her recommendations were intended to enable A.W. and R.M. to access their curriculum.
14. A.W. and R.M. could typically be understood when they spoke and their speech deficits did not adversely impact their ability to access their curriculum.
15. Miro's analysis was incomplete because she did not personally examine A.W.'s and R.M.'s oral motor ability and movement.
16. The District did not include the recommendations that were not designed to enable A.W. or R.M. to access their curriculum or that were not appropriate in the school setting: the District does not conduct central-auditory-processing-disorder evaluations for any of its students; dysarthria is not appropriately addressed by way of school speech therapy because it is caused by damage to the brain that weakens the muscles that produce speech; some proposed therapies would have required A.W. and R.M. to miss an inappropriate amount of class time and would have caused them to be fatigued while in class.
17. Petitioner rejected an offer to allow A.W. and R.M. to have speech therapy together, which would have doubled their sessions to twice per week.

18. R.M. progressed in all speech-therapy areas, having achieved “greater than mastery” levels in all except self-monitoring and conversation.
19. A.W. achieved “mastery” or “above mastery” levels in all skill areas except conversation and self-reporting.
20. SEMI logs show that A.W. and R.M. were provided or offered thirty-one therapy sessions during the 2018–2019 school year. This exceeds the number of sessions authorized in either the 2017–2018 or 2018–2019 IEPs. They missed speech therapy due to absences from school, attendance at another school activity, or failure to report to therapy. They each missed two sessions for other reasons.
21. The District incorporated the accommodations recommended by A.W.’s mental-health provider: extensions of assignments missed during her treatment programs, tutoring, access to a guidance counselor or other in-school therapeutic supports, and use of coping mechanisms such as a stress ball.
22. A.W.’s proposed 2018–2019 IEP included the accommodations and tools recommended in her educational evaluation.
23. R.M.’s proposed 2018–2019 IEP included the accommodations and tools recommended in her educational evaluation.
24. R.M. was independent at school and there was no evidence of behavioral challenges that required amendments to her IEP or other responsive measures.
25. The recommendations in R.M.’s independent occupational therapy evaluation were addressed by way of modifications and assistance provided by an in-class teacher and R.M.’s support-skills class.

26. General education classes offered the least restrictive environment for R.M. and exposed her to greater opportunities for social interaction with her typically developing peers.

27. The District's creation and implementation of the IEPs and issuance of grades to A.W. and R.M. were not adversely impacted by petitioner's attempt to keep them in the school district and the associated litigation.

28. Petitioner did not contact the District in response to "In Danger of Failure" letters or to ask for IEP meetings after August 14, 2018.

29. A.W. had unlimited access to nursing services and other accommodations needed to address her diabetes.

LEGAL ANALYSIS AND CONCLUSIONS

The issue presented is whether the Board provided A.W. and R.M. with FAPE for the 2018–2019 school year. Petitioner contends, with respect to the proposed 2018–2019 IEPs, that the District did not incorporate the recommendations contained in the independent evaluations and reduced the amount of speech and language therapy for A.W. and R.M. She contends that the District was obligated to conduct an IEP meeting after she rejected the proposed 2018–2019 IEPs. She further argues that the District violated the stay-put IEPs when it modified classroom settings, hourly requirements, classes, goals, and services. In particular, she contends that the District reduced A.W.'s and R.M.'s total number of minutes of speech therapy by fifty and was not authorized by the IEPs to permit them to miss work assignments or final exams. She claims that the District did not demonstrate that A.W. and R.M. satisfied the goals in their stay-put IEPs, and were advanced to the next grade despite their failing to meet standards. Petitioner seeks compensatory education and services "for the entire 2018–2019 school year in the area of math, language arts, science, social studies, speech therapy, tutoring to assist the students to get to grade level, and counseling." Pet'r's Br. at 38.

The District contends that the programs developed for A.W. and R.M. were designed to allow them to obtain meaningful educational benefit and implemented all applicable recommendations by the independent experts. It contends that there is no evidence that their placement within the District was inappropriate or even questioned. Both girls passed their classes, which were in the least restrictive environments. A.W. and R.M. exceeded their speech and language goals notwithstanding the fact that they missed a substantial amount of school due to their attendance at mental-health treatment programs. The District's unimpeached expert testified that these services were appropriate and successful. The expert also testified that the analysis conducted by the independent speech evaluator was incomplete and that the evaluator did not recommend measures needed for A.W. and R.M. to access their education. Further, A.W. had full access to all necessary nursing services and the District complied with its obligations concerning IEP meetings and implementation.

The IDEA requires that a state receiving federal education funding provide a FAPE to disabled children. 20 U.S.C. § 1412(a)(1). School districts provide a FAPE by designing and administering a program of individualized instruction that is set forth in an IEP. 20 U.S.C. § 1414(d). In order 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 consisting of special education and related services provided in conformity with an IEP. 20 U.S.C. §§ 1401(9), 1412(a)(1). The responsibility to provide a FAPE rests with the local public school district. 20 U.S.C. § 1401(9); N.J.A.C. 6A:14-1.1(d). The district bears the burden of proving that a FAPE has been offered. N.J.S.A. 18A:46-1.1.

The United States Supreme Court held that the IDEA “requires an educational program reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” Endrew F. v. Douglas Cty. Sch. Dist. RE-1, 137 S. Ct. 988, 1001 (2017). The Third Circuit determined that Endrew F.’s language “mirrors [its] longstanding formulation [that] the educational program ‘must be 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., 904 F.3d 248, 254 (3d Cir. 2018) (quoting Ridley Sch. Dist. v. M.R., 680 F.3d 260, 269 (3d

Cir. 2012)). In addressing the quantum of educational benefit required, 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. T.R. v. Kingwood Twp. Bd. of Educ., 205 F.3d 572, 577 (3d Cir. 2000); Ridgewood Bd. of Educ. v. N.E., 172 F.3d 238, 247 (3d Cir. 1999); Polk v. Cent. Susquehanna Intermediate Unit 16, 853 F.2d 171, 180, 182–84 (3d Cir. 1988), cert. den. sub. nom., Cent. Columbia Sch. Dist. v. Polk, 488 U.S. 1030 (1989).

The IDEA thus does not require that the District maximize A.W.’s and R.M.’s potential or provide them the best education possible. Instead, the IDEA requires a school district to provide a basic floor of opportunity. Carlisle Area Sch. v. Scott P., 62 F.3d 520, 533–34 (3d Cir. 1995). The District will have satisfied the requirements of law by providing A.W. and R.M. with personalized instruction and sufficient support services “as are necessary to permit [them] ‘to benefit’ from the instruction.” G.B. v. Bridgewater-Raritan Reg’l Bd. of Educ., 2009 U.S. Dist. LEXIS 15671, *5 (D.N.J. Feb. 27, 2009) (citing Hendrick Hudson Cent. Sch. Dist. Bd. of Educ. v. Rowley, 458 U.S. 176, 189 (1982)).

The appropriateness of an IEP must be determined as of the time it is made, and the reasonableness of the school district’s proposed program should be judged only on the basis of the evidence known to the school district at the time at which the offer was made. D.S. v. Bayonne Bd. of Educ., 602 F.3d 553, 564–65 (3d Cir. 2010). When determining the appropriateness of any given IEP, a court’s focus should be on the IEP actually offered by the board and not upon an IEP that it could have offered. Lascari v. Bd. of Educ. of Ramapo Indian Hills Reg’l High Sch. Dist., 116 N.J. 30, 47 (1989).

An IEP must be in effect at the beginning of each school year and be reviewed at least annually. 20 U.S.C. § 1414(d)(2) and (4); N.J.A.C. 6A:14-3.7. A complete IEP must contain a detailed statement of annual goals and objectives. N.J.A.C. 6A:14-3.7(e)(2). It must contain both academic and functional goals that are, as appropriate, related to the Core Curriculum Content Standards of the general-education curriculum and “be measurable,” so both parents and educational personnel can be apprised of “the expected level of achievement attendant to each goal.” Ibid. Such “measurable annual

goals shall include benchmarks or short-term objectives” related to meeting the student’s needs. N.J.A.C. 6A:14-3.7(e)(3).

Any plan must involve the least restrictive environment (LRE). To the maximum extent appropriate, students are to be educated with children who do not have a disability. 20 U.S.C. § 1412(a)(5)(A); N.J.A.C. 6A:14-4.2(a). The Third Circuit applies a two-part test to assessing LRE compliance: (i) whether education in the regular classroom, with the use of supplementary aids and services, can be achieved satisfactorily; and (ii) if placement outside of a regular classroom is necessary, whether the school has mainstreamed the child to the maximum extent appropriate, i.e., whether the school has made efforts to include the child in school programs with non-disabled children whenever possible. Oberti v. Bd. of Educ. of Clementon Sch. Dist., 995 F.2d 1204, 1215–17 (3d Cir. 1993). Although Congress preferred education in the regular classroom, it also recognized that such an environment is not suitable for every student. Rowley, 458 U.S. at 181, n.4 (1982).

Where, as here, implementation is challenged, there must be a showing of significant failure with respect to the IEP:

[T]o prevail on a claim under the IDEA, a party challenging the implementation of an IEP must show more than a de minimis failure to implement all elements of that IEP, and, instead, must demonstrate that the school board or other authorities failed to implement substantial or significant provisions of the IEP. This approach affords local agencies some flexibility in implementing IEP’s, but it still holds those agencies accountable for material failures and for providing the disabled child a meaningful educational benefit.

[Houston Indep. Sch. Dist. v. Bobby R., 200 F.3d 341, 349 (5th Cir. 2000).]

See also Fisher v. Stafford Twp. Bd. of Educ., 289 F. App’x 520 (3d Cir. 2008); Schoenbach v. District of Columbia, 309 F.Supp.2d 71, 83 n.10 (D.D.C. 2004) (“failure to implement all services outlined in an IEP does not constitute a per se violation”); Melissa S. v. Sch. Dist. of Pittsburgh, 183 Fed. App’x 184, 187–88 (3d Cir. 2006) (assuming the

student was impermissibly left alone several times, “this is not the kind of substantial or significant failure to implement an IEP that constitutes a violation of the IDEA”).

Here, the controlling IEPs are the 2017 “stay-put” IEPs, as petitioner rejected the proposed 2018–2019 IEPs for A.W. and R.M. The proposed IEPs were prepared and presented to petitioner in August 2018, prior to the start of the 2018–2019 school year.¹⁷ Because she rejected the proposed IEPs, the preexisting IEPs remained the controlling documents. They contained detailed statements of A.W.’s and R.M.’s goals and objectives, which were measurable. They included benchmarks and short-term objectives that correlated to A.W.’s and R.M.’s needs.

Petitioner claims that the proposed IEPs failed to incorporate the modifications and accommodations recommended by the independent evaluators. None of the evaluators recommended an out-of-district placement or a different placement within the District. To the extent a specific recommendation was not incorporated, the District’s witnesses provided unimpeached and uncontradicted testimony that explained why the recommendations were inappropriate. In particular, the speech and language evaluation recommended therapies that are inappropriate within the school setting; would have taken the girls away from class for too long; and would have unduly fatigued the girls. The recommended therapy was appropriate for a setting other than school. Indeed, the evaluator did not indicate that her recommendation was intended to enable the girls to access their education as opposed to achieve medical therapy. Further, the evaluator did not conduct the necessary physical exam before she reached her conclusions.

A.W.’s and R.M.’s grades and their teachers’ reports document their success. Although petitioner vaguely claims that the girls’ grades were manipulated and, thus, their success was exaggerated, there is no evidence of this. The grades as reported by the teachers and the teachers’ notes and emails corroborate their progress. The speech therapist’s Annual Reports and supporting documents, as explained by expert Fitzpatrick,

¹⁷ As discussed above, the proposed IEPs were presented to petitioner while litigation in a preceding matter involving A.W., R.M., and the District was pending before the OAL. That matter involved school years prior to 2018–2019. Petitioner did not file the instant due-process petitions until May 30, 2019, as the end of the school year approached.

comprehensively document A.W.'s and R.M.'s speech goals and objectives; the work they engaged in in pursuit of achieving the goals and objectives; and their significant achievements in this regard.

Petitioner argues that the reduction of speech therapy by fifty minutes each, over the course of the school year, constitutes a denial of FAPE. The SEMI logs show that each girl was provided or offered thirty-one therapy sessions during the 2018–2019 school year. This exceeds the number of sessions authorized in either the 2017–2018 or 2018–2019 IEPs. Petitioner also claims that there were gaps in the provision of speech therapy to A.W. and R.M. However, the absences were due to absences from school, attendance at another school activity, or failure to report to therapy. They each missed two sessions for other reasons.

To the extent that petitioner claims that other aspects of A.W.'s and R.M.'s IEPs were violated, the only specific claims concern the District's decision to excuse them from some assignments and exams after they attended mental-health programs. Petitioner did not cite to any language in the IEP or elsewhere that prohibits the District from making an adjustment such as this when faced with extraordinary circumstances. The District's witnesses credibly testified that A.W. and R.M. were not penalized in response to missing assignments or exams, and that neither needed these grades to secure a passing grade in their classes. The District's witnesses also credibly testified that this is an appropriate measure that need not be included in a student's IEP and that has been employed with respect to general education students. This testimony is uncontroverted. This action by the District was motivated by a genuine and appropriate concern for A.W.'s and R.M.'s mental health.

For all of the foregoing reasons, I **CONCLUDE** that, while it is understandable that petitioner feels that the District could have done more,¹⁸ the District has met all of its obligations under the IDEA and New Jersey statutes and regulations. Petitioner offered

¹⁸ It is noteworthy that petitioner, who was engaged in ongoing litigation with the District in which she challenged its determination that A.W. and R.M. were ineligible to continue as students in the District due to their residency, did not file the due-process complaints in this matter until just prior to the end of the school year at issue, rather than close in time to the date when the offending IEPs were proposed.

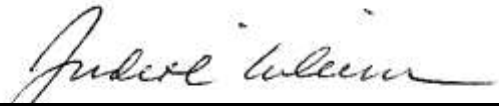
mere conjecture to posit the notion that the District failed in this regard. Even if there were minor lapses in case management from time to time, the IEPs in place were reasonably calculated to enable A.W. and R.M. to receive meaningful educational benefits in light of their potential and abilities. The IEPs provided them with educational programs suitable for their classifications and were implemented appropriately. Indeed, not only did the IEPs confer a substantial educational benefit to A.W. and R.M., they provided meaningful educational and academic progress, leading to their success.

Finally, petitioner charges that the District was required to convene another set of IEP meetings after she rejected the proposed 2018–2019 IEPs. The IEP team must generally review the child’s IEP periodically, and at least annually, to determine whether the annual goals are being achieved, and revise the IEP as appropriate to address any lack of expected progress toward the annual goals and in the general education curriculum. 20 U.S.C. § 1414(d)(4); see also 34 C.F.R. § 300.324(b)(ii) (2019) (mirroring the statutory language). Pursuant to N.J.A.C. 6A:14-3.7(i), an IEP team shall meet annually or more often if necessary “to review and revise the IEP and determine placement.” An IEP team shall also review “any lack of expected progress toward the annual goals and in the general education curriculum, where appropriate.” N.J.A.C. 6A:14-3.7(j)(1). Thus, a district must revise a student's IEP more often than annually if there is “any lack of expected progress toward the annual goals.” If, at any time between annual meetings, an IEP team member, including a parent, wishes to revise the IEP, that team member can request an IEP team meeting, and the IDEA sets forth detailed procedures governing the IEP revision process. See 20 U.S.C. § 1415; 34 C.F.R. §§ 300.320–24 (2019).

Here, the District complied with its obligation to conduct annual IEP reviews. Petitioner did not request or otherwise indicate a need for another review or revision to the IEP after the August 2018 IEP meetings. Accordingly, I **CONCLUDE** that the District did not err as asserted by petitioner.

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 Policy and Dispute Resolution.

March 9, 2020
DATE



JUDITH LIEBERMAN, ALJ

Date Received at Agency _____

Date Mailed to Parties: _____

JL

APPENDIX

LIST OF WITNESSES

For petitioner:

K.K.

A.W.

R.M.

For respondent:

Kristen Charles

Tamie Hobbs

Rosemarie Fitzpatrick

LIST OF EXHIBITS

For petitioner:

- P-1 Email correspondence
- P-2 Email correspondence
- P-3 Email correspondence
- P-4 Email correspondence
- P-5 Email correspondence
- P-6 Email correspondence
- P-7 Email correspondence
- P-8 Screenshot of online attendance record
- P-9 Screenshot of online attendance record
- P-10 Screenshot of online attendance record
- P-11 Screenshot of online attendance record
- P-12 Screenshot of online grade history
- P-13 Screenshot of online grade report
- P-14 Screenshot of online grade report

- P-16 Screenshot of online Student Score Detail
- P-17 Screenshot of online final grade report
- P-18 Handwritten note by R.M.
- P-19 College form completed by A.W.
- P-20 Notice concerning final week of 2018–2019 school year
- P-21 October 9, 2018, correspondence to counsel for petitioner from counsel for respondent
- P-22 May 16, 2019, correspondence to Hon. Robert B. Kugler, U.S.D.J., from counsel for respondent
- P-23 July 2, 2019, correspondence to petitioner from Dr. Dennis Vespe
- P-24 October 11, 2018, Order issued by Hon. Patty Shwartz, Third Circuit Judge
- P-27 “In Danger of Failure” letter to petitioner, regarding A.W., from Principal Sean P. Gorman
- P-28 “In Danger of Failure” letter to petitioner, regarding R.M., from Principal Sean P. Gorman

For respondent:

- R-20 A.W. Eligibility and Collaborative Assessments 2014
- R-26 A.W. IEP March 29, 2017
- R-27 A.W. IEP August 14, 2018
- R-28 A.W. letter regarding progress June 13, 2016
- R-32 A.W. Educational Evaluation July 13, 2018
- R-33 A.W. Speech and Language Evaluation June 28, 2018
- R-34 R.M. Eligibility and Collaborative Assessments
- R-44 R.M. IEP May 15, 2017
- R-45 R.M. IEP August 14, 2018
- R-46 R.M. Educational Evaluation July 14, 2018
- R-47 R.M. Speech and Language Evaluation June 28, 2018
- R-48 R.M. Functional Behavior Assessment June 18, 2018
- R-49 R.M. Occupational Therapy Evaluation June 12, 2018
- R-50 A.W. school schedule 2018–2019
- R-52 A.W. detailed grades by class 2018–2019

- R-55 R.M. school schedule 2018–2019
- R-57 R.M. detailed grades by class 2018–2019
- R-60 Emails from Charles regarding homebound May, June 2019
- R-61 Certification of Dr. Curry and exhibits September 3, 2019
- R-64 R.M. and A.W. Oaks Counseling November 14, 20178
- R-75 A.W. SEMI Service Log Report
- R-76 A.W. Princeton House Discharge
- R-82 R.M. SEMI Service Log Report
- R-84 Tamie Hobbs resume
- R-88 Rosemarie Fitzpatrick resume
- R-95 Kristen Charles resume
- R-103 Speech therapy progress reports