



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. EDS 09200-22

AGENCY DKT. NO. 2023-34907

A.L. AND N.L. ON BEHALF OF M.L.,

Petitioners,

v.

HOWELL TOWNSHIP BOARD

OF EDUCATION,

Respondent.

Staci J. Greenwald, Esq., for petitioners (Sussan, Greenwald & Wesler,
attorneys)

Jodi S. Howlett, Esq., for respondent (Cleary, Giacobbe, Alfieri & Jacobs, LLC,
attorneys)

Record Closed: November 2, 2023

Decided: December 4, 2023

BEFORE **KIMBERLEY M. WILSON, ALJ**:

STATEMENT OF THE CASE

A.L. and N.L., on behalf of their daughter, M.L., a student diagnosed with a specific learning disability, filed a request for a due process hearing after they unilaterally placed

M.L. in an out-of-district school in October 2022. The issues are whether respondent Howell Township Board of Education (the District) provided M.L. with a free and appropriate public education (FAPE) and if not, based on issues with M.L.'s individualized education plan (IEP), an out-of-district placement at respondent's expense is appropriate for M.L.

PROCEDURAL HISTORY

On or around August 31, 2022, A.L. and N.L. filed a Petition for Due Process with the Office of Special Education Programs. The matter was transmitted to the Office of Administrative Law (OAL), where it was filed as a contested case on October 13, 2022. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -23.

The Honorable Leslie Z. Celentano, ALJ held a settlement conference on October 20, 2022. Other settlement conferences were scheduled for November 28, 2022, and December 12, 2022, both of which were adjourned. A second settlement conference was scheduled for January 23, 2023, which was not successful. On January 27, 2023, a prehearing conference was held to schedule hearing dates and status conference dates and times.

Hearings were held on April 19, 2023; April 20, 2023; May 4, 2023; and May 5, 2023. After the parties submitted post-hearing summation briefs and joint stipulations of fact, the record closed on November 2, 2023.

FACTUAL DISCUSSION AND FINDINGS

The following **FACTS** are not in dispute, and so I **FIND**:

1. M.L. resides in Howell with her parents, A.L. and N.L. The District is the local educational agency charged with providing M.L. a FAPE.

2. On or around December 10, 2018, during M.L.'s first grade year, N.L. sent a letter to the child study team¹ requesting a meeting to determine if M.L. was eligible to be evaluated for special education services. (J-2.) N.L. was concerned that M.L. may have a learning disability. (Ibid.)
3. On or around January 10, 2019, the Greenville Elementary School (Greenville) Child Study Team (CST)² recommended educational and psychological evaluations to determine whether M.L. had a disability. (J-4.)
4. On or around February 28, 2019, Melissa Rice completed an educational evaluation for M.L. (J-7.) Rice administered the Woodcock Johnson IV Tests of Achievement to determine M.L.'s scholastic aptitude and academic achievement. (Id. at 3-4.) M.L. scored in the average range on oral expression, listening comprehension and phonetic coding; low average range on speed of lexical access and math calculation skills; low range on math problem solving; and very low range on basic reading and written expression. (Id. at 10.)
5. Rice also administered the Young Children's Achievement Test, which measures achievement levels for preschool, kindergarten and first graders. (Id. at 7.) Rice used this test to assess M.L.'s general information, reading, mathematics, writing and spoken language skills. (Ibid.) M.L.'s early achievement composite on this test was in the poor range. (Id. at 10.)
6. On or around March 8, 2019, Susan S. Stoia, Psy.D. completed a psychological evaluation for M.L. (J-6.) Dr. Stoia found that M.L.'s full scale intelligence quotient (IQ) fell within the average range when compared to other same age children based on the Wechsler Intelligence Scale for Children-Fifth Edition. (Id. at 3.)

¹ The letter does not specify the child study team to whom the letter is addressed.

² M.L. had two CSTs, one when she attended Greenville Elementary School and another one when she attended Ramtown Elementary School. No distinction will be made between the two CSTs.

7. Pursuant to a March 18, 2019, IEP, the CST determined that M.L. was eligible for special education and related services based on a specific learning disability, characterized by a severe discrepancy between the student's current achievement and intellectual ability in basic reading skills, mathematical problem solving and written expression. (J-8 at 1, 4.) The academic supports for M.L. were placing her in a mild/moderate learning or language disabilities (LLD) class for language arts and providing pull-out resource replacement for math. (Ibid.)
8. The March 18, 2019 IEP's annual measurable academic and/or functional goals for M.L. in reading were the following: (i) identifying and producing twenty-six letter sounds with 80% success; (ii) decoding 80% of the words when presented with up to five words from reading narratives or specific informational texts; and (iii) recognizing and reading up to thirty high-frequency words from reading narratives and/or specific informational texts with 80% success. (Ibid.) A.L. consented to implement the March 18, 2019, IEP that same day. (J-8.)
9. On or around May 28, 2019, the CST issued an updated IEP for M.L. (J-9.) M.L.'s academic supports in the May 28, 2019, IEP included the following: (i) forty minutes ten times weekly in the LLD class for language arts; (ii) forty minutes nine times weekly of pull-out resource replacement in math; (iii) forty minutes nine times weekly in the LLD class for math; (iv) forty minutes five times weekly of supplementary support in science or social studies; and (v) forty minutes four times weekly in the LLD class for writing. (Id. at 1.) The annual measurable academic and/or functional goals in the May 28, 2019, IEP were the same as those contained in the March 18, 2019, IEP. (Ibid.) N.L. consented to the proposed changes in the May 28, 2019, IEP. (J-10.)

10. According to the May 28, 2019, IEP, M.L. was reading at an independent level B, which is a kindergarten reading level, based on the Fountas and Pinnell³ Benchmark Assessment (Fountas and Pinnell). (J-9 at 4.)
11. On or around June 17, 2019, the District sent A.L. and N.L. a progress report. (J-11.) M.L. was progressing satisfactorily on her goals of identifying and producing twenty-six letter sounds, correctly decoding up to five words from reading narratives or specific informational texts, and recognizing and reading up to thirty high-frequency words from reading narratives and/or specific informational words. (Id. at 1-2.)
12. On or around December 9, 2019, during M.L.'s second grade year, the District sent A.L. and N.L. a progress report. (J-12.) M.L. was progressing satisfactorily on her goals of identifying and producing twenty-six letter sounds, correctly decoding up to five words from reading narratives or specific informational texts, and recognizing and reading up to thirty high-frequency words from reading narratives and/or specific informational words, and she was expected to achieve each of the goals. (Id. at 1-2.)
13. Pursuant to an IEP dated March 9, 2020, M.L.'s academic supports increased. (J-13.) M.L. was to receive the following academic supports: (i) forty minutes ten times each week in the LLD class for language arts; (ii) forty minutes nine times each week in the LLD class for math; (iii) forty minutes five times a week of supplementary support in science or social studies; (iv) forty minutes four times each week in the LLD class for writing; and (v) twenty-five minutes of group counselling twice a month. (Id. at 1.) M.L. was also eligible for an extended school year (ESY) special education program. (Ibid.)

³ The Fountas & Pinnell Benchmark Assessment Systems are "accurate and reliable tools to identify the instructional and independent reading levels of all students and document student progress through one-on-one formative and summative assessments." See <https://www.fountasandpinnell.com/assessment/>.

14. The March 9, 2020, IEP included the following annual measurable academic and/or functional goals in reading: (i) correctly decoding words from reading narratives or specific informational texts from content subject areas with 80% success with moderate assistance; and (ii) immediately recognizing and reading high-frequency words with 80% success. (Id. at 8.) This IEP included a writing goal of correctly spelling words in writing assignments from her reading literature and content subject areas with 80% success. (Ibid.) Finally, this IEP included a social, emotional and behavioral goal. (Id. at 9.) N.L. consented to implementing the March 9, 2020, IEP.
15. According to the March 9, 2020, IEP, M.L. was reading at an independent level D, based on the Fountas and Pinnell scale. (J-13 at 5.)
16. On or around March 16, 2020, the District sent A.L. and N.L. a progress report. (J-14.) M.L. achieved her goal of identifying and producing twenty-six letter sounds and recognizing and reading up to thirty high-frequency words from reading narratives and/or specific informational words. (Id. at 1, 2.) M.L. was progressing satisfactorily on her goal of correctly decoding up to five words from reading narratives or specific informational texts and was expected to achieve that goal. (Id. at 1.)
17. On or around May 15, 2020, Lynn M. Coco, Principal of Greenville, sent A.L. and N.L. a letter stating that M.L. was not engaged or completing assignments in the remote learning setting. (J-23.)
18. On or around June 15, 2020, the District sent A.L. and N.L. a progress report. (J-15.) M.L.'s reading goals were to correctly decode words when presented with words from reading narratives or specific informational texts and to immediately recognize and read high-frequency words. (Id. at 1.) The CST noted comments, rather than indicating progress on the goals.

(Ibid.) The progress report included one writing goal, that M.L. would spell words her teacher selected from literature and content areas correctly in written assignments. (Id. at 3.) The comment in the report noted that M.L. was successful with building words following learned sound/symbol relationships. (Ibid.)

19. On or around August 3, 2020, the District sent A.L. and N.L. a progress report. (J-16.) This report did not include any reading goals for M.L. (Ibid.) M.L.'s writing goals were to use correct ending punctuation for all sentences and use correct capitalization in her writing assignments. (Id. at 3.) M.L. achieved her goal of using correct punctuation, and she was progressing satisfactorily on using correct capitalization. (Ibid.)
20. On or around December 9, 2020, during M.L.'s third grade year, the District sent A.L. and N.L. a progress report. (J-17.) According to the report, M.L. was progressing gradually on her reading goals of correctly decoding words when presented with words from reading narratives or specific informational texts and immediately recognizing and reading high-frequency words. (Id. at 1-2.) M.L. was also progressing gradually on her writing goal, which was M.L. would spell words her teacher selected from literature and content areas correctly in written assignments. (Id. at 3.) The report noted throughout that there was no progress reporting on these goals and objectives in August, as A.L. and N.L. declined ESY for M.L. (J-17.)
21. On or around February 10, 2021, the Ramtown Elementary School (Ramtown) CST sent A.L. and N.L. a letter about reevaluating M.L.'s IEP. (J-20.) The CST decided to move M.L.'s reevaluation date ahead by a year to explore other areas of suspected weakness because M.L. was experiencing anxiety in school and had limited time in school. (Id. at 2.) The CST proposed educational, speech and language and occupational

therapy evaluations. (Ibid.) N.L. consented to all of the proposed evaluations for M.L. (J-22.)

22. Pursuant to an IEP dated February 10, 2021, the Ramtown CST proposed that M.L. receive in-class resource support for science and social studies, along with the other programs and services that the CST included in M.L.'s March 9, 2020, IEP. (J-21.) N.L. was concerned about M.L.'s reading skills and ensuring that M.L. was receiving adequate support in that area. (Id. at 5.) During the meeting, it was noted that M.L. was becoming more anxious with her writing tasks. (Id. at 6.)
23. The annual measurable academic and/or functional goals in the February 10, 2021, IEP for reading were that M.L. would correctly decode thirteen of fifteen words three out of five times when presented with fifteen words from reading narratives or specific informational text from her content area subjects and she would read and recognize and read words from a list of fifty high-frequency words taken from reading narratives and/or specific informational words from M.L.'s content subject matter areas four out of five assessment times. (Id. at 8.) M.L.'s writing goal in science and social studies was to spell ten words correctly from her reading literature and content area subjects four out of five assessment opportunities. (Id. at 10.) This IEP also contained a social, emotional and behavioral goal. (Ibid.)
24. The February 10, 2021, IEP included a recommendation for ESY. (Ibid.) N.L. consented to implement the February 10, 2021, IEP on February 22, 2021. (Ibid.)
25. On or around March 17, 2021, the Ramtown CST sent A.L. and N.L. a progress report. (J-24.) M.L. was progressing satisfactorily on her reading goal of correctly decoding words when presented with words from reading narratives or specific informational texts. (Id. at 1.) M.L. was progressing gradually on her goal of immediately recognizing and reading high-

frequency words. (Id. at 2.) As for her writing goal, M.L. was progressing satisfactorily on spelling words from reading literature and content area subjects correctly in written assignments. (Id. at 3.)

26. On or around March 22, 2021, the Ramtown CST sent A.L. and N.L. a progress report. (J-25.) M.L.'s progress in this report was identical to the March 17, 2021, progress report. (Id. at 1, 2, 3.)
27. Pursuant to an IEP dated April 12, 2021, M.L.'s previous programs and services continued, and she was also to receive speech and language therapy for twenty-five minutes each week. (J-28.) The annual measurable academic and/or functional goals in this IEP for reading, and writing were the same as the February 10, 2021, IEP. (Id. at 12-13.) The April 12, 2021, IEP also included a social, emotional and behavioral goal. (Id. at 14-15.)
28. The April 12, 2021, IEP included a recommendation for ESY. (Id. at 1.) N.L. consented to implement the April 12, 2021, IEP on April 19, 2021. (J-28.)
29. On or around June 16, 2021, the Ramtown CST sent A.L. and N.L. a progress report. (J-29.) M.L. was progressing satisfactorily on her reading goals of correctly decoding thirteen out of fifteen words from reading narratives or specific informational texts from her content area subjects and immediately recognizing and reading from a list of fifty high-frequency words. (Id. at 1.) M.L. was also progressing satisfactorily on her writing goal of spelling ten words from her reading literature and content area subjects correctly in written assignments. (Id. at 3.)
30. On or around October 27, 2021, during M.L.'s fourth grade year, the Ramtown CST met with N.L. regarding M.L.'s behavior at home and school (J-31.) M.L. was experiencing anxiety and academic difficulties, especially in reading. (Ibid.) The CST gave N.L. strategies and suggestions, and they

also recommended individual counseling. (Ibid.) N.L. rejected individual counseling for M.L. but agreed to allow M.L. to visit the District's psychiatrist. (Ibid.)

31. On or around November 17, 2021, the Ramtown CST sent a letter to A.L. and N.L. for a December 1, 2021, meeting to review M.L.'s IEP. (J-33.)
32. Pursuant to an IEP dated December 1, 2021, M.L.'s programs and special services were amended to include individual counseling services once a week for twenty minutes. (J-34.) The annual measurable academic and/or functional goals in this IEP for reading were that M.L. would spell words created with diagraphs correctly with 80% accuracy four out of five times and would correctly decode thirteen out of fifteen words from reading narratives or specific informational tests from M.L.'s content area subjects. (Id. at 11.) M.L.'s writing goal was to use correct ending punctuation with 80% accuracy four out of five times in her writing assignments. (Id. at 12.) This IEP also included a social, emotional and behavioral goal, along with a goal for social studies and science that M.L. would identify the main idea or theme from a narrative or informational test with 80% accuracy four out of five times. (Id. at 13.)
33. The December 1, 2021, IEP included a recommendation for ESY for M.L. (Id. at 1.) M.L.'s reading level on the Fountas and Pinnell scale was a level D, which was the equivalent of first grade. (Id. at 8.)
34. On or around December 6, 2021, the Ramtown CST sent A.L. and N.L. a progress report. (J-35.) M.L. was progressing satisfactorily on her reading goal of correctly decoding thirteen out of fifteen words from reading narratives or specific informational texts from her content area subjects. (Id. at 1.) The comments included that M.L. was expected to reach that goal. (Ibid.) M.L. was also progressing satisfactorily on her reading goal of

immediately recognizing and reading from a list of fifty high-frequency words. (Id. at 2.) The comments on this goal also indicated that M.L. was expected to reach this goal. (Ibid.) M.L. was also progressing satisfactorily on her writing goal of spelling ten words from her reading literature and content area subjects correctly in written assignments. (Id. at 4.) For all three of these goals, the report stated that the CST could not assess M.L.'s progress in August because M.L. did not attend ESY. (Id. at 1, 2, 4.)

35. On or around December 8, 2021, the Ramtown CST sent to A.L. and N.L. a progress report. (J-36.) The reading and reading goals in this report were identical to those in the December 6, 2021, progress report. (Id. at 1, 2, 3.) The assessments on M.L.'s progress on these goals were also identical to the December 6, 2021, progress report. (Ibid.)
36. On or around December 13, 2021, the Ramtown CST sent A.L. and N.L. a progress report that was similar to the December 8, 2021, report regarding M.L.'s goals and objectives and the assessment regarding her progress on those goals. (J-37.)
37. On or around March 2, 2022, the Ramtown CST sent a letter to A.L. and N.L. requesting to amend M.L.'s IEP without a meeting. (J-41.)
38. In an IEP dated March 3, 2022, M.L.'s annual measurable academic and/or functional goals for reading, writing and other for social studies and science were the same. (J-42 at 11-13.) This IEP included a social, emotional and behavioral goal. (Id. at 12-13) and recommended ESY. (Id. at 1.)
39. The CST recommended a behavior plan to assist M.L. with her classroom behaviors. (Id. at 18.) A.L. agreed to implement the March 3, 2022, IEP. (J-42.)

40. On or around March 14, 2022, the Ramtown CST sent a progress report to A.L. and N.L. (J-43.) M.L. was progressing satisfactorily on her reading goal of correctly spelling words with digraphs with 80% accuracy. (Id. at 1.) She was also progressing satisfactorily on her goal of correctly spelling thirteen of fifteen words from reading narratives or specific informational texts. (Id. at 2.) M.L. was progressing satisfactorily on her writing goal of using correct ending punctuation for sentences with 80% accuracy on her writing assignments. (Id. at 4.)
41. On or around March 16, 2022, the District sent a progress report to A.L. and N.L. (J-44.) The goals and objectives and the assessments on M.L.'s progress on each of them were the same as the March 14, 2022, progress report. A difference on the March 16, 2022, progress report was a notation that M.L. was expected to achieve her goal of correctly decoding thirteen of fifteen words from reading narratives or specific informational texts. (Id. at 2.)
42. On August 11, 2022, Greenwald sent a letter to Howlett, enclosing a copy of a June 9, 2022, report from Marisa Brunner, M.S., CCC-SLP, WDP, ADHD-RSP of Beyond Communication. (P-3.) According to Greenwald, Brunner diagnosed M.L. with language disorder and severe dyslexia. (Ibid.) A.L. and N.L. had significant concerns regarding the appropriateness of M.L.'s program and requested that the District begin exploring out of district placements for M.L. (Ibid.)
43. On October 7, 2022, Greenwald sent a letter to Howlett, advising that as of October 24, 2022, N.L. and A.L. would be placing M.L. at The Academy, a special education school in Holmdel, New Jersey. (P-4.) Greenwald requested that the District place M.L. at The Academy and reimburse N.L. and A.L. for the costs of placement. (Ibid.)

Testimony

Several District employees testified about the claims in the Petition for Due Process. They are:

Tamara Coffey (Coffey), Social Worker for the District. As a case manager, she develops and monitors students' IEPs to ensure that they are followed and tracks student progress. She works at Greenville, which services children in pre-kindergarten three to second grade, and Ramtown, which services children in third to fifth grade. She is a licensed New Jersey social worker.

Jenna Rockwell (Rockwell), Learning Consultant and Case Manager for the CST at Ramtown. She became M.L.'s case manager in M.L.'s fourth grade year.

Shannon McCreight (McCreight), Resource Center Teacher at Ramtown. She has been a learning and/or language disabled teacher for twenty-seven years. She is certified in the Wilson Reading System⁴ (Wilson) and taught M.L. during her third grade year.

Dorothea Fernandez (Fernandez), Director of Pupil Services for the District. She has served as Director, overseeing the special education department, since 2018, and before then she was a supervisor of special education for the District.

Three witnesses testified on behalf of petitioners. They are **Ann Gradman (Gradman)**, the Director and teacher at The Academy, a private school that educates nontraditional learners, including students with dyslexia and ADHD; **N.L.**, M.L.'s mother,

⁴ The Wilson Reading System "is designed for students in grades 2-12 and adults with word-level deficits who are not making sufficient progress through their current intervention; have been unable to learn with other teaching strategies; or who require more intensive structured literacy instruction due to a language-based learning disability, such as dyslexia." See <https://www.wilsonlanguage.com/programs/wilson-reading-system/>.

and **Marisa Brunner** (Brunner), Speech-Language Pathologist employed by Beyond Communications.

The following discussion is not a summary of all testimony, but an encapsulation of the testimony relevant to a determination of whether the District provided M.L. FAPE based on each of M.L.'s academic years.

For respondent

First Grade (2018-2019)

M.L. tested very low on passage comprehension in the 2019 educational evaluation. (J-7.) M.L. could have been found eligible for special services based on reading comprehension, but Coffey did not know why M.L. was not found eligible for those services. M.L.'s educational goals for comprehension in her May 28, 2019, IEP included goals for M.L. to work on her letter sounds, decoding skills and high frequency words. Once reading mastery was accomplished, the District could then work on M.L.'s comprehension skills.

According to Coffey, M.L.'s May 28, 2019, IEP was created to address changes that the CST wanted to make to the March 19, 2019, IEP. In the March 19, 2019, IEP, M.L. was in the learning and language disabilities⁵ (LLD) classroom for language arts and in the pull-out resource replacement for math. For the May 28, 2019, IEP, M.L. would be in the LLD classroom for math, writing and language arts and would receive supplementary support in the general education classroom, where a paraprofessional would work with M.L. for science and social studies. (J-9.) M.L. would receive eighty minutes of language arts. These changes to M.L.'s IEP would begin at the beginning of second grade.

⁵ The LLD classroom is a small group classroom with one special education teacher and up to sixteen students. Coffey describes the classroom as an intensive program that focuses on students' deficits.

Second Grade (2019-2020)

Coffey stated the CST recommended counseling services for M.L. in the March 9, 2020, IEP because she was having anxiety in the classroom and difficulty expressing her emotions. (J-13.) M.L. was not able to apply coping skills to deal with her emotions. The CST also recommended ESY⁶ for M.L., but M.L. did not attend. (*Ibid.*) According to Fernandez, the March 9, 2020, IEP indicated two competing issues, the first of which was M.L.'s reading difficulties and the second were social-emotional needs that had to be met. Those social-emotional issues did not allow M.L. to be fully engaged in her instruction.

According to Coffey, the difference in M.L.'s Fountas and Pinnell score from the May 28, 2019, IEP to the March 9, 2020, IEP showed that M.L. made progress. The B assessment is for an emergent reader starting to figure out letter sounds and combine them. A "D" assessment shows that M.L. can put words together and decode independently.

Third Grade (2020-2021)

In September 2020, when M.L. was a third grader at Ramtown, Coffey began working with M.L. as her caseworker. Coffey knew that M.L. had an average IQ with strengths in some verbal areas, such as sentence repetition and listening comprehension. M.L.'s basic reading and written expression scores were in the very low range.

For this school year, District special education students attended school four days a week. The entire District operated virtually on Wednesdays, and the remaining four days were in person in the morning, with virtual instruction in the afternoon. McCreight, M.L.'s LLD teacher, testified that on those Wednesdays with virtual instruction, M.L.'s attendance was sporadic and her participation was not as steady as it was when she was physically in school. (R-12.) McCreight was available each day from 1:30 p.m. to 2:30

⁶ According to Coffey, an extended school year program is a six-week program during summer break where students continue reviewing what they have learned during the academic year so that they will retain and maintain the skills that they have learned.

p.m. for additional instruction, and she requested that M.L. participate in the Zoom session. (R-9 at 0296.) M.L. did this a limited number of times. M.L. missed the afternoon Zoom sessions for a variety of reasons, including riding lessons and playing with her dog. (Id. at 313, 314.) N.L. never advised McCreight that M.L. was unable to attend the afternoon Zoom sessions because of M.L.'s anxiety. McCreight did not believe that N.L. was purposefully trying to keep M.L. from the Zoom sessions. This after-school work would have been helpful to M.L., because she needed the repetition. According to McCreight, M.L. was not super confident in her reading or writing skills, but she did see progress in M.L.'s reading or language arts skills.

McCreight had thirteen students in her class, all third graders. M.L. began her Wilson levels at 1.1, and she advanced to level 1.6. McCreight provided M.L. with sixty minutes of Wilson instruction in language arts, with about thirty minutes of direct instruction. M.L. received additional time reviewing and reinforcing skills with a paraprofessional. According to McCreight, M.L. did not complete homework, even though McCreight assigned homework to her. N.L. told McCreight that it was a challenge to get M.L. to do her homework. In the classroom, M.L. never refused to do any work for McCreight.

Fernandez spoke to members of the CST, who were concerned that M.L. was not taking full advantage of the time in virtual learning. The CST was trying to ensure that M.L.'s needs were being met, and they were having difficulty with the parents, who had refused the recommendation for counselling. The CST believed that it was able to meet M.L.'s reading skill needs, but without counseling to support her mental health and social-emotional learning, there was a barrier to learning. The CST could not make the reading progress because of those distractions.

In the February 10, 2021, IEP, Coffey stated the CST modified the services for M.L. for her science and social studies to in-class resource, which was a change from having a paraprofessional with M.L. to having a special education teacher in the general education classroom. The CST felt that M.L. needed more support in the classroom

because M.L. indicated some anxiety, particularly with writing tasks. A teacher present in the general education classroom would allow her to break down the materials, reteach certain skills and provide M.L. with strategies. This was a modification anticipated for M.L.'s fourth grade school year.

Coffey and the Ramtown CST wished to reevaluate M.L. for special education services in 2021, a year earlier, because the District observed some areas of weaknesses. Coffey testified that there were concerns about M.L.'s progress in reading, her handwriting and some visual conceptual concerns. The District proposed educational, speech and language and occupational therapy evaluations, and A.L. and N.L. consented to these evaluations.

In M.L.'s March 2021 educational evaluation, the evaluator noted that M.L. was able to identify twenty-one of twenty-four consonant sounds, three of five short vowel sounds and five digraphs. (J-27 at 2.) The March 16, 2020, progress report for M.L. indicates that M.L. has identified and produced twenty-six letter sounds as an achieved goal. (J-14 at 1.) Coffey testified that the difference between the testing results is that M.L. may have mastered the skill but did not retain it.

According to McCreight, M.L.'s writing progressed in March through May 2022. M.L. was more willing to write on her own. Even though she did not make recommendations for an appropriate program for M.L., Rockwell believed that the program suggested for M.L. in the April 12, 2021, IEP was appropriate.

M.L.'s third-grade report card for the 2020-2021 school year indicated that M.L. was progressing toward the standard in integrated language arts, reading, writing and math. (J-25.) M.L. was meeting grade-level standards in her social studies, science and health courses. (*Ibid.*) According to Coffey, M.L. was below grade-level expectations but was continuing to make progress towards those standards.

Fourth grade (2021-2022)

Academics

There were about twelve students in M.L.'s fourth grade self-contained class. For M.L.'s general education social studies and science classes, there were about twenty students in the class. There were two to three students in M.L.'s Wilson group during fourth grade, and they were all reading at a level D on the Fountas and Pinnell scale. Rockwell said that even though M.L.'s IEP indicated that she was to receive direct instruction from the teacher for eighty minutes, the teacher may have been working with another reading group. M.L. would have been doing independent work during that time.

For the December 1, 2021, IEP, N.L., who attended the December 1, 2021, CST meeting, did not express any concerns about the proposed academic program for M.L. and she did not request any additional academic supports for her. In the December 1, 2021, IEP, N.L. expressed concerns about M.L.'s reading. The District recommended individual counseling for M.L., but N.L. refused that counseling after the December 1, 2021, IEP meeting.

In the March 8, 2022, IEP, Coffey noted that M.L. was reading at a Fountas and Pinnell scale independent level D, reading at a rate of nine words per minute with 90% accuracy. (J-42 at 8.) M.L. had not made any progress in her fluency from June 2019 through December 2019. The March 10, 2020, IEP⁷ and March 8, 2022, IEP did not include any fluency goals for M.L. Coffey identified M.L.'s fluency as an area of weakness that the District did not include in M.L.'s IEPs, and she was not sure why it was not included. Rockwell testified that M.L.'s functioning was so low that she was not at a point that she could put words together to be fluent in reading. According to Rockwell, the CST found that basic reading, rather than fluency, was a more significant deficiency.

Coffey stated that writing was a significant weakness for M.L. From her educational evaluation in 2021, M.L.'s written expression was very low, testing below the

⁷ During cross-examination, counsel referred to this exhibit as J-28, rather than J-13.

one percentile rank. The writing goal in the April 12, 2021, IEP targeted a skill, namely spelling, that would lead M.L. to improve her writing overall. According to Coffey, M.L.'s spelling was inhibiting her ability to express her thoughts. The District could work on editing and improving M.L.'s editing and capitalization once M.L. could express her thoughts.

Another of M.L.'s weaknesses was decoding. In two years, from the May 28, 2019, IEP, to the March 8, 2022, IEP, M.L. progressed two levels, from an independent B to a level D on the Fountas and Pinnell scale. Level D is a first grade level. At the beginning of fourth grade, M.L. should have been reading at a P/Q level on the Fountas and Pinnell scale. From the March 9, 2020, IEP, M.L.'s language arts teacher administered the Fountas and Pinnell assessment, and M.L. was reading at an independent level D, which is reading with 95% accuracy with excellent comprehension. Coffey stated that from March 2020 until March 2022, M.L. had made no progress according to Fountas and Pinnell scale.

There were no comprehension goals in the May 28, 2019, IEP or the April 12, 2021, IEP. Rockwell said that the CST did not know whether M.L. had an actual deficit in reading comprehension because M.L. was unable to read the test. Rockwell knew that M.L. was able to comprehend items orally. Rockwell testified that it was necessary for M.L. to work on basic reading skills before addressing other skills, such as fluency and comprehension. For fluency, M.L. needed to master sight words, and for comprehension, M.L. needed to learn to start to read.

M.L. did not attend the ESY program during summer 2021. The CST expressed concern that M.L. did not participate, and when M.L. returned to school that fall, Fernandez said it was like starting all over again because M.L. lost so many skills over the summer.

Rockwell acknowledged that M.L. did not make progress in reading or fluency from March 2020 to March 2022. The CST reinforced significantly with N.L. that regression

would occur if M.L. did not attend ESY. They also reinforced the need for M.L. to do her homework and to continue to practice her skills.

The CST also advised Fernandez about their concerns that M.L. had a number of absences and did not remain in school the entire day. M.L. would leave school early often. (R-14.) A.L. and N.L. used different rewards during the school day that interfered with the school's program, such as allowing M.L. to play outside or go out for ice cream.

Behavioral

In October 2021, Rockwell met with A.L., N.L., Coffey and other CST members to discuss M.L.'s behavior at home and school. (J-31.) M.L. was experiencing anxiety and having academic difficulties, particularly in reading. (Ibid.) The District recommended individual counselling for M.L., and A.L. and N.L. rejected that recommendation. After this meeting, the District recommended a psychiatric/neurological evaluation for M.L. (J-32.) Among the issues that M.L. was having included a physical altercation with another student and meltdowns in the classroom. N.L. advised Rockwell that she and A.L. did not agree with individual, school-based counselling for M.L. and a psychiatric evaluation for M.L. was not done.

M.L.'s IEP included twice monthly social skills counseling groups, which would take place during lunchtime. The point of the sessions were to help the students identify their emotions and use coping skills so that the students were ready to focus and learn. The CST believed that this would be good for M.L. because she was shutting down and not participating in the classroom. M.L. would indicate that she was feeling anxious as well, and there were times that it was difficult for A.L. and N.L. to get M.L. to school.

M.L. attended the counseling services the District offered to her for the first half of the school year, but around December, M.L. began refusing to attend. Rockwell testified to the same. When the session facilitators went to gather the students who would participate in the services, M.L. would either shake her head, verbally refuse or would just

ignore them, not acknowledging them. According to Rockwell, they did not force M.L. to attend the therapy session. They offered to meet with M.L. individually if she did not wish to be part of the group. The CST spoke to A.L. and N.L. about M.L. refusing to participate, and in her conversations with A.L. and N.L., they indicated that they were nervous about what M.L. may say during the counseling session, prompting a phone call to the New Jersey Department of Children and Families, Division of Child Protection & Permanency. The parents did not want M.L. participating in the counseling.

Rockwell described M.L.'s classroom behaviors as a refusal do her work, walking around the classroom, hiding in other classrooms when walking back into the hallway, inappropriate language and disrespectful behavior towards the teacher. In March 2022, Rockwell documented incidents where M.L. refused to do her work or go to therapy and had emotional issues with her friends. (J-39.) Rockwell looked for other therapies for M.L. and recommended a local therapist who worked with horses, since M.L. liked horses and animals. Rockwell said that N.L. never reported back to her that she followed up with that recommendation.

Rockwell and the CST recommended a behavior plan for M.L. in the March 9, 2022, IEP, and according to Rockwell, M.L.'s behavior did not improve. M.L.'s behavior, her anxiety and refusal to do work had an adverse impact on M.L.'s ability to make progress, as they all impacted M.L.'s ability to complete tasks in the classroom. The CST believed that if it focused on M.L.'s behaviors, that would help with M.L.'s academics. Coffey testified that there was a connection between M.L.'s ability to learn and the behaviors she exhibited. Generally, students who are focused, positive and feel good about themselves are ready to learn. Coffey did not believe that M.L. went to school ready to learn.

Assessment of the Brunner Report

Rockwell reviewed the Brunner report. Rockwell was present with Brunner when she observed M.L. in school. Brunner did not meet with Rockwell before Brunner

prepared her report, and Brunner asked Rockwell which Wilson lesson the students were on. Rockwell said many of Brunner's recommendations were supports that M.L. was already receiving in the classroom, such as academic instruction in small groups, Wilson lessons by certified Wilson instructors and direct instruction and language skills.

Rockwell attributed the deficiencies in M.L.'s learning ability to the COVID-19 pandemic and remote learning and M.L.'s failure to attend ESY. Rockwell believed with the appropriate emotional supports, attending ESY and the academic program provided, M.L. was making progress and would continue to do so.

Fernandez also reviewed the Brunner report and found that the District was already providing the recommendations in that report. The District was providing academic instruction in small groups, both in the LLD and general education classrooms. (P-1 at 27.) Fernandez was confident the District's teachers had the credentials that Brunner recommended. (*Ibid.*) The District exceeded Brunner's recommendation of no less than 120 minutes of class time with direct instruction. (*Ibid.*) The recommendation of sessions with semantic skills, structured narrative language intervention and comprehensive instructions was already incorporated into the speech and language therapist's work. (*Id.* at 28.) Brunner's recommendation regarding expressive language was incorporated into M.L.'s program. (*Ibid.*) The District's speech therapist had incorporated Brunner's recommendations for vocabulary and language therapy. (*Ibid.*) Fernandez believed that the District was providing structured literacy instruction to M.L. (*Id.* at 29.) The District matched Brunner's recommendation for daily structured literacy instruction for forty-five to sixty minutes. (*Ibid.*) Brunner's recommendations regarding connected texts, vocabulary, fluency and comprehension were already embedded in the District's literacy program. (*Id.* at 30.) M.L.'s speech therapist was working with her twice each week on specific phonological phonemic awareness training. (*Ibid.*) The District has access to Learning Ally, along with BookShare. (*Id.* at 31.) Finally, Brunner recommended Project Read and Framing Your Thoughts for basic writing skills. (*Ibid.*) Fernandez testified that the District's teachers are trained in both programs, and the

District created a blended program with Wilson instruction as the primary program that incorporates both programs.

Fernandez agreed with Brunner's recommendation that M.L. not have long breaks of structured practice, as the District recommended ESY for M.L. Fernandez believed that all of these recommendations were similar to the recommendations already in place for M.L.

The Academy

Fernandez reviewed M.L.'s records from The Academy. The Academy's student greatness plan for M.L. provided basic information, but it did not provide any quantifiable or measurable information. (R-32.)

The Academy is not an approved private school for special education students. It is not a school that the District would consider for students with special needs. Based on the information Fernandez received from The Academy, she believed that the District was providing M.L. with a more comprehensive program. Fernandez was concerned that M.L. was not receiving the structured literacy program that she needed.

McCreight reviewed M.L.'s records from The Academy, and what she saw in those records was similar to what M.L. was able to do when she left Ramtown. McCreight believed that if she had the opportunity to continue to work with M.L., M.L. would have continued making progress.

For petitioner

According to Gradman, all of the reading and math instruction at The Academy is done in small groups or individually based on the student's need. There are eight students from third through eighth grade at The Academy, some of whom were placed there through their public school district. There are two fully certified teachers at The

Academy, including Gradman, and a paraprofessional. School is held year-round. The Academy is not a State-approved school for special education and related services.

M.L. has made great progress in the Wilson program, starting at level 1.1 in October 2022 and 2.4 in May 2023. Gradman worked with M.L. individually because there were no other students on M.L.'s Wilson level. Gradman did not see M.L. having any behavioral issues and seldom missed school.

Gradman testified that it is important that students at The Academy attend regularly. The Academy is a year-round school because students with dyslexia need structured literacy instruction regularly. The consistency with the instruction is essential to continue academic progress.

Gradman admitted that the District provided M.L. more time in direct daily instruction for structured literacy than The Academy did.

N.L. is M.L.'s mother. She had a neurodevelopmental evaluation conducted of M.L. when M.L. was in first grade because M.L. was struggling in school. (J-3.) M.L. had behavior issues, and she needed extra help. N.L. was trying to figure out what was going on with her. N.L. said that she gave this evaluation to the CST.

According to N.L., M.L. did not receive any Wilson lessons during her second grade. N.L. requested Wilson, and she was told that Wilson was not available in second grade because the District did not have any certified teachers. M.L. would receive Wilson in the third grade.

During the second grade, N.L. said that M.L. floundered her way through academically, and M.L. would have frequent meltdowns and fight with her sister at home. N.L. said that she would read to M.L. when M.L. allowed, and they attempted to do homework. N.L. said that the homework wasn't a reinforcement of the work done during

the day. M.L. did not know how to complete the homework because there were new skills. N.L. described M.L. as uncooperative.

Between M.L.'s second and third grade, M.L. did not attend ESY because it was virtual learning, which was a problem for M.L. N.L. said that it was difficult to get M.L. to sit. The following summer, between third and fourth grade, M.L. did not attend ESY because M.L. was not emotionally available. N.L. said that M.L. needed a break from school. N.L. acknowledged that M.L. would have benefited from the academics, but M.L. was not mentally or emotionally ready to attend school.

N.L. rejected the District's recommendation that M.L. receive individual counselling during M.L.'s fourth grade because M.L. received outside counselling. M.L. would make up stories, and she was concerned about what M.L. would say. N.L. agreed to have M.L. see the school psychiatrist, but M.L. did not attend. N.L. said that she was given a list of providers and told that the District would not pay for the services.

N.L. described M.L.'s fourth grade as insane. M.L. struggled, and teachers were not able to contain M.L. In one instance, M.L. refused to go to the principal's office to address some sort of behavior, and they cleared the classroom and brought the principal to the classroom. In a second incident, M.L. refused to return to her classroom and wandered the hallway. N.L. said that the District tried to make M.L. feel comfortable, and she believed that the District had M.L.'s best interests in mind. It just wasn't what M.L. needed.

N.L. said that she and A.L. decided to place M.L. at The Academy because she was ten years old and could not read. She described all of M.L.'s teachers as amazing, particularly McCreight. M.L. still has a little bit of outburst at The Academy and at home, but she is willing to go to school and wants to be there.

N.L. was willing to allow M.L. to play outside and go to horseback riding rather than participate in virtual instruction based on recommendations from M.L.'s therapist and

pediatrician, who advised that M.L. needed breaks. (R-9.) N.L. did not provide the District with any documentation from M.L.'s therapist or pediatrician indicating that M.L. needed to take breaks or miss instruction. N.L. said that M.L. missed school every now and then. She did not believe that M.L. would have made additional progress if she had attended the afternoon virtual sessions, because a Zoom session was not ideal for teaching M.L.

N.L. mentioned that for those days that M.L. left school early when she was in fourth grade, in many instances, M.L. would not go to school unless N.L. told M.L. that she would get picked up early. (R-19.) N.L. understood that M.L. would be missing instruction, but she said that M.L. would be making progress in social and emotional areas.

By January 2022, M.L. had already missed ten days of school. (R-15.) N.L. described this as M.L.'s fourth grade and her worst year. M.L. tortured her teacher, Mr. Brum, and N.L. said it was M.L.'s most stressful year.

N.L. admitted that M.L. was not available for learning at times because of M.L.'s emotional difficulties. N.L. testified that during a meeting to discuss options for M.L. with Rockwell and Brum, it was mentioned that if M.L.'s behavior continued to escalate, M.L. would be placed in a school with emotional issues like hers. N.L. began looking for other schools for M.L. Brunner provided N.L. with The Academy as a potential placement for M.L.

Marisa Brunner, a speech-language pathologist employed by Beyond Communication, was a qualified expert in speech pathology and evaluating students with language-based learning disabilities. Brunner is a level 1 certified Wilson dyslexia practitioner. Brunner does not have a teaching certificate or experience teaching in a classroom, including teaching reading in a classroom setting. She has taught students how to read using structured literacy intervention in private therapy or group settings. She has not drafted an IEP, even though she has made recommendations contained within them. She has never served as a member of a CST.

In June 2022, Brunner administered a variety of tests to M.L. (P-1 at 16-24.) Based on that testing, Brunner found that M.L. read at a level lower than an independent Level D based on the Fountas and Pinnell scale. Fluency was a significant issue for M.L. Based on her testing, Brunner opined that M.L. required an intensive program throughout the course of her academic day. According to Brunner:

The Wilson instructor was doing what they were supposed to do, and it just wasn't enough, and across the time intervals of her first child study team testing, her second child study team testing and then continually through testing with me, the improvement just wasn't there, and the gap appeared to be growing wider, and that did create a sense of urgency clinically, because of course she's already ten years old and a non-reader, really essentially a non-reader.

[T4 85:18 to 86:2.]

Brunner concluded that M.L. had not made meaningful progress and required a more intensive program, such as Wilson, at a higher frequency and intensity. Brunner noted that M.L.'s dyslexia was so severe that even though M.L.'s teacher was good, the program was not appropriate for M.L.

When Brunner observed M.L. at The Academy in February 2023, she found that the Wilson Fluency Program was added to M.L.'s literacy instruction, something the District did not provide. Brunner recommended this program in her expert opinion. M.L. had gone from step 1.4 in Wilson in October 2022 to step 2.1 in February 2023. Based on this observation, Brunner did not believe that the District's program was meeting M.L.'s academic needs.

Brunner's first recommendation for M.L.'s education was that she receive all academic instruction in small groups. (P-1 at 27.) Brunner later testified that she recommended structured literacy instruction in small groups with peers with similar needs

when available or in one-to-one settings. Brunner acknowledged that any student with a language-based disability would benefit from one-to-one instruction.

To her knowledge, M.L. was participating in the LLD classroom for language arts and math, but M.L. was in a general education classroom for science and social studies, where the information would not be presented to M.L. at her instructional reading level. On cross-examination, Brunner acknowledged that she did not know how the material was being presented to M.L. in her science and social studies classes, because Brunner did not speak to the certified special education teacher serving as in-class support for M.L. in those courses.

Brunner's second recommendation was that all of M.L.'s teachers should know and be sensitive to language disorders and language-based learning disabilities, particularly the impact they have on M.L.'s learning experience. (*Ibid.*) When asked on cross-examination how the District and the teachers working with M.L. were not meeting this recommendation, Brunner stated, "Well, I'm not saying that they're not." (T4 113:1-4.) Brunner said that it did not appear that the District's teachers were meeting this criterion because M.L. was placed in an in-class support model, which she believed was not appropriate for M.L. Brunner would have expected to see goals and objectives in M.L.'s IEP aligned with certain features of M.L.'s language disorder and dyslexia. Brunner later acknowledged that she did not observe M.L. in the in-class support model setting and could not speak to M.L.'s experience in that setting.

Brunner's third recommendation was that a significant part of M.L.'s school day should be devoted to direct instruction in language skills across listening, speaking, reading and writing modalities, with at least 120 minutes per day of class time devoted to each. (P-1 at 27.) Brunner stated that M.L. was only receiving forty minutes of direct structured literacy instruction; the remaining forty minutes was not at the same intensity and structured multi-sensory instruction appropriate to fit M.L.'s severe learning disability. M.L. was not receiving the same cues or reinforcement strategies, which contradicted her

Wilson instruction. According to Brunner, students who are dyslexic need consistency and a rule-based approach throughout.

During cross-examination, Brunner stated that during her February 2023 observation of M.L. at The Academy, M.L. was receiving sixty minutes a day of structured literacy instruction, half of what Brunner recommended in her report. (P-6.) M.L. was receiving an additional thirty minutes of writing instruction, for a total of ninety minutes. Brunner testified that she found the ninety minutes to be sufficient because the time is used exclusively for highly-intensive structured systematic and multi-sensory literacy and language-based literacy instruction.

Brunner's fifth recommendation was that M.L. receive speech and language therapy sessions focusing on expressive language at the discourse level. (P-1 at 28.) Brunner understood that M.L. was not receiving that support, even though M.L. did receive those services from the District.

Brunner's seventeenth recommendation was that M.L. should be provided ESY with the same structured literacy and language intervention programs she receives during the academic year. (Id. at 31.) She noted in her report that "the nature of [M.L.'s] language and learning disability is such that long breaks in structured practice can be seriously detrimental to forward progress." (Ibid.)

Brunner acknowledged that she is not an educational consultant. Her representations about the services the District provided to M.L. in the in-class support model were an assumption based on the fact that M.L. was not making progress. Brunner agreed that a student who continually missed time away from their lesson would progress at a slower rate than a student regularly attending their lessons. She acknowledged that the level of a student's engagement matters and a lack of engagement would stifle M.L.'s progress. All of the representations she made about the District's program, except the lesson that she observed, were based upon data and M.L.'s functional performance or progress.

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).

Having had the opportunity to hear and view all of the witnesses during their testimony and review the exhibits, I accept the testimony from Coffey, Rockwell, McCreight, Fernandez, Gradman and N.L. as credible. Each of these witnesses were professional and testified consistently and forthrightly about M.L., whether as case managers, supervisors, educators or parent, and their respective work to educate M.L.

I generally accept Brunner's testimony as credible, as she was also professional and consistent in her testimony. Brunner, however, was qualified as an expert in speech pathology and evaluating students with language-based learning disabilities; she acknowledged that she is not an educational consultant and does not have a teaching certificate. For those reasons, she cannot opine on whether the District provided FAPE, as she is not qualified to make such a determination, and her testimony whether the District provided FAPE will not be considered.

Accordingly, I **FIND** the following additional **FACTS**:

1. M.L.'s May 28, 2019, IEP was created to address changes that the CST wanted to make to the March 19, 2019, IEP.
2. Based on M.L.'s Fountas and Pinnell score from the May 28, 2019, IEP to the March 9, 2020, IEP, M.L. made progress in reading.
3. The CST recommended counseling services for M.L. in the March 9, 2020, IEP because M.L. was having anxiety in the classroom and difficulty expressing her emotions. M.L. was not able to apply coping skills to deal with her emotions.
4. During M.L.'s third grade year, District special education students attended school four days a week. The entire District operated virtually on Wednesdays, and the remaining four days were in person in the morning with virtual instruction in the afternoon.
5. M.L.'s attendance on Wednesdays for virtual instruction was sporadic, and her participation was not as steady as it was when M.L. was physically in school. McCreight was available each day from 1:30 p.m. to 2:30 p.m. for additional instruction, and she requested that M.L. participate in the Zoom session. M.L. did this a limited number of times. M.L. missed the afternoon Zoom sessions for a variety of reasons, including riding lessons and playing with her dog.
6. McCreight provided M.L. with sixty minutes of Wilson instruction in language arts, with about thirty minutes of direct instruction. M.L. received additional time reviewing and reinforcing skills with a paraprofessional. M.L. began at Wilson level 1.1 and advanced to level 1.6.

7. During M.L.'s third grade year, M.L. did not complete homework, even though McCreight assigned homework to her. In the classroom, M.L. never refused to do any work for McCreight.
8. In the February 10, 2021, IEP, the CST modified services for M.L. for her science and social studies to in-class resource, which was a change from having a paraprofessional with M.L. to having a special education teacher in the general education classroom. A teacher present in the general education classroom would allow M.L. to break down the materials, reteach certain skills and provide M.L. with strategies. This change was anticipated for M.L.'s fourth grade school year.
9. The CST reevaluated M.L. for special education services in 2021, a year earlier, because the District observed some areas of weaknesses in reading, handwriting and visual conceptual concerns.
10. In M.L.'s March 2021 educational evaluation, the evaluator noted that M.L. was able to identify twenty-one of twenty-four consonant sounds, three of five short vowel sounds and five digraphs. M.L. was able to identify and produce twenty-six letter sounds, an achieved goal.
11. M.L.'s writing progressed from March to May 2022. M.L. was more willing to write independently.
12. M.L.'s third grade report card indicated that M.L. was progressing toward the standard in integrated language arts, reading, writing and math. M.L. was meeting grade-level standard in social studies, science and health. M.L. was below grade-level expectations but continued to make progress towards those standards.

13. During M.L.'s fourth grade year, even though M.L.'s IEP indicated that she was to receive Wilson direct instruction from her teacher for eighty minutes, the teacher may have been working with another reading group, with M.L. working independently.
14. In the December 1, 2021, IEP, the CST recommended individual counseling for M.L., but N.L. refused that counseling after the December 1, 2021, IEP meeting.
15. The March 10, 2020, IEP and March 8, 2022, IEP did not include any fluency goals. M.L.'s functioning was so low that she could not put words together to be fluent in writing. The CST believed that basic reading, rather than fluency was a more significant deficiency.
16. The writing goal in the April 12, 2021, IEP targeted M.L.'s spelling, which the CST believed would lead M.L. to improve her overall writing.
17. From March 2020 until March 2022, M.L. did not make progress based on the Fountas and Pinnell scale. During that same time, M.L. did not make progress in reading or fluency.
18. During her fourth grade year, M.L. attended the group counselling services the District offered for the first half of the year, but around December, M.L. began refusing to attend. When the session facilitators went to gather the students participating in the services, M.L. would either shake her head, verbally refuse or ignore them. The facilitators would not force M.L. to attend.
19. M.L.'s behavior in the classroom included refusing to do her work, walking around the classroom, hiding in other classrooms when walking in the hallway, inappropriate language and disrespectful behavior toward the

teacher. The District looked for other therapies for M.L. and provided a recommendation for a local therapist who worked with horses. N.L. never reported back to her that she followed up with that recommendation.

20. The CST recommended a behavior plan for M.L. in the March 9, 2022, IEP. M.L.'s behavior did not improve.
21. The District provided M.L. more time in direct daily instruction for structured literacy than The Academy did.
22. M.L. never attended ESY, despite the CST's recommendations in the March 9, 2020; February 10, 2021; April 12, 2021; December 1, 2021; and March 3, 2022, IEPs.

LEGAL ANALYSIS AND CONCLUSIONS OF LAW

Under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1401, et seq., federal funds are available to assist states in providing an education for children with disabilities. Receipt of those funds is contingent upon a state's compliance with the goals and requirements of the IDEA. Lascari v. Bd. of Educ. of Ramapo Indian Hills Reg. High Sch. Dist., 116 N.J. 30, 34 (1989). As a recipient of federal funds under the IDEA, the State must have a policy that assures that all children with disabilities will receive a FAPE. 20 U.S.C. §1412. FAPE includes special education and related services. 20 U.S.C. §1401(9); N.J.A.C. 6A:14-1.1.

The responsibility to deliver special education and related services rests with the local public school district. See N.J.A.C. 6A:14-1.1(d). To meet its obligation to deliver FAPE, the school district must offer M.L. "an educational program reasonably calculated to enable [her] to make progress appropriate in light of [her] circumstances." Endrew F. v. Douglas Cnty. Sch. Dist., 580 U.S. 386, 403 (2017).

For a school district to provide FAPE to a disabled child under the IDEA they must develop and implement an IEP — a “comprehensive statement of the educational needs of a handicapped child and the specially designed instruction and related services to be employed to meet those needs.” Sch. Comm. of Burlington v. Dep’t of Educ. of Mass., 471 U.S. 359, 368 (1985). An IEP is to be developed by a district’s child study team in conjunction with the parents of the child. See N.J.A.C. 6A:14-2.3; N.J.A.C. 6A:14-3.7(b).

An IEP must contain “a statement of detailed measurable annual academic and functional goals that shall be related, as appropriate, to the New Jersey Student Learning Standards through the general education curriculum unless otherwise required according to the student's educational needs, or appropriate, student-specific functional needs. For all students, the annual academic and functional goals shall be measurable and apprise parents and educational personnel providing special education and related services to the student of the expected level of achievement attendant to each goal.” N.J.A.C. 6A:14-3.7(e)(2).

Finally, the District has the burden of proof and production in a due process hearing determining whether a student received a FAPE. N.J.S.A. 18A:46-1.1.

From M.L.’s first-grade year through her fourth-grade year, her CST proposed seven different IEPs to address M.L.’s academic and behavioral needs. With each IEP, the CST’s goals and objectives for M.L. advanced her academic progress, particularly in reading, and the CST added goals and objectives in other areas, including writing, science, social studies and behavior. Meanwhile, the District regularly advised A.L. and N.L. about M.L.’s IEP goals and objectives and M.L.’s progress on each.

From the testimony from District representatives, the CST was aware of M.L.’s academic and behavioral challenges as M.L. progressed through school and tailored each IEPs to address those issues as they arose. For instance, when the supports in the March 18, 2019, IEP were insufficient, the CST issued an updated IEP, the May 28, 2019, IEP. In February 2021, the CST moved M.L.’s reevaluations ahead by a year to address

other areas of suspected weakness, along with anxiety. When M.L.'s classroom behavior became an issue in her fourth-grade year, the CST recommended individual counseling, which A.L. and N.L. rejected, and a behavior plan. The CST issued two IEPs for M.L. in her third-grade year, the February 10, 2021, IEP and the April 12, 2021, IEP, and two IEPs in M.L.'s fourth-grade year, which were the December 1, 2021, IEP and March 2, 2022, IEP. It is clear that the District proposed goals and objectives for M.L. in its IEPs to advance M.L.'s education, and N.L. described the District's teachers, particularly McCreight, in her own words as amazing.

Petitioners argue generally that M.L.'s inability to read is sufficient evidence that the District's IEPs for M.L. were not reasonably calculated for her to make progress, and therefore, the District did not provide M.L. with a FAPE. An example is the fact that for a period of time, M.L.'s IEPs did not include fluency or comprehension goals. Petitioners also noted instances where arguably M.L. did not make progress, based on her Fountas and Pinnell score or her fluency from second to fourth grade. Despite this, petitioners never rejected any of M.L.'s IEPs; they generally raised concerns during the IEP meetings, which were reflected in the IEPs themselves.

Petitioners' argument regarding her reading ability, which could be equated to a lack of progress, is not availing here. A student's slow progress on its own does not indicate that an IEP was deficient. K.D. v. Downingtown Area School. Dist., 904 F.3d 248, 255 (3d Cir. 2018). The inquiry is whether the IEP is reasonable, not whether it is ideal. Ibid. (citing Endrew F., 580 U.S. at 399.) As discussed above, the time and attention that the CST provided to M.L. through the seven IEPs is obvious and apparent. The IEPs the District provided were reasonable.

Finally, even if, for the sake of argument, M.L.'s reading ability and lack of progress were factors to consider for whether the District provided M.L. a FAPE, M.L.'s failure to attend ESY for three consecutive summers and failure to receive individual counselling, recommendations from the CST, undoubtedly affected her academic progress. Petitioners' own witnesses reiterated the need for M.L. to receive repeated, reinforced

instruction to ensure that she did not lose any skills over the summer. They also confirmed that M.L.'s emotional issues were such that she did not come to school each day, particularly in her fourth-grade year, ready to learn. Students will not make academic progress if they come to school and are not ready to learn.

For the foregoing reasons, the District has satisfied its burden of proof, showing that it provided M.L. with an educational program that was reasonably calculated to enable her to make progress appropriate in light of her circumstances. Accordingly, I **CONCLUDE** that the District provided M.L. with a FAPE. Because the District provided M.L. with a FAPE, it is not necessary to determine whether an out-of-district placement at the District's expense is appropriate. I **CONCLUDE** that an out-of-district placement is not appropriate.

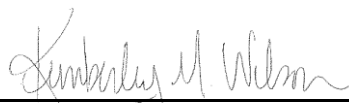
ORDER

It is **ORDERED** that because the District provided M.L. with a FAPE, an out-of-district placement for M.L. is **DENIED**. Any request for compensatory relief is also **DENIED**.

This decision is final pursuant to 20 U.S.C. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2022) 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 (2022). 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.

December 4, 2023

DATE



KIMBERLEY M. WILSON , ALJ

Date Received at Agency:

Date Mailed to Parties:

KMW/cb

APPENDIX

WITNESSES

For petitioner

Ann Gradman
N.L.
Marisa Brunner

For respondent

Tamara Coffee, Social Worker
Jenna Rockwell, Learning Consultant
Shannon McCreight, Resource Center Teacher

EXHIBITS

Jointly submitted

- J-1 Howell Board of Education Intervention and Referral Services Discussion
- J-2 Letter from N.L. to Child Study Team dated December 10, 2018
- J-3 Child Evaluation Center Pediatric Neurodevelopment Evaluation for M.L. dated January 9, 2019
- J-4 Greenville Child Study Team Initial Identification and Evaluation Planning- Proposed Action letter to N.L. and A.L. dated January 10, 2019
- J-5 Greenville Consent for Initial Evaluation dated January 10, 2019
- J-6 Howell Township Public Schools Psychological Evaluation for M.L. dated March 8, 2019
- J-7 Howell Township Public Schools Educational Evaluation for M.L. dated February 28, 2019
- J-8 Greenville Child Study Team Independent Education Program dated March 18, 2019

- J-9 Greenville Child Study Team Independent Education Program dated May 28, 2019
- J-10 Greenville IEP Amendment Consent Form
- J-11 Howell Township Public Schools Progress Report for IEP Goals and Objectives dated June 17, 2019
- J-12 Howell Township Public Schools Progress Report for IEP Goals and Objectives dated December 9, 2019
- J-13 Greenville Child Study Team Independent Education Program dated March 9, 2020
- J-14 Howell Township Public Schools Progress Report for IEP Goals and Objectives dated March 16, 2010
- J-15 Howell Township Public Schools Progress Report for IEP Goals and Objectives dated June 15, 2020
- J-16 Howell Township Public Schools Progress Report for IEP Goals and Objectives dated August 3, 2020
- J-17 Howell Township Public Schools Progress Report for IEP Goals and Objectives dated December 9, 2020
- J-18 Email from Rae Ann Caswell, Office Assistant at Ramtown, to Ramtown Staff regarding students returning to in-person learning on January 25, 2021 dated January 22, 2021
- J-19 Email from N.L. to Shannon McCreight regarding early dismissal for M.L. dated January 26, 2021
- J-20 Ramtown Child Study Team Reevaluation Planning Notice dated February 10, 2021
- J-21 Ramtown Child Study Team Individualized Education Program dated February 10, 2021
- J-22 Ramtown Reevaluation Planning-Consent for Additional Assessment dated February 22, 2021
- J-23 Howell Township Public Schools Occupational Therapy Evaluation for M.L.
- J-24 Ramtown Progress Report for IEP Goals and Objectives dated March 17, 2021

- J-25 Ramtown Progress Report for IEP Goals and Objectives dated March 22, 2021
- J-26 Howell Township Public Schools Initial Language Evaluation Report dated March 24, 2021
- J-27 Howell Township Public Schools Educational Evaluation dated March 25, 2021
- J-28 Ramtown Child Study Team Individualized Education Program dated April 12, 2021
- J-29 Ramtown Progress Report for IEP Goals and Objectives dated June 16, 2021
- J-30 Email from Amanda Campanaro to Tamara Coffey regarding counselling goals for Ramtown and Greenville schools dated October 12, 2021
- J-31 Howell Township Public Schools Conference Record dated October 27, 2021
- J-32 Request for Psychiatric/Neurological Evaluation dated October 29, 2021
- J-33 Ramtown Child Study Team Invitation for Annual Review of IEP dated November 17, 2021
- J-34 Howell Township Public Schools Individualized Education Program dated December 1, 2021
- J-35 Ramtown Progress Report for IEP Goals and Objectives dated December 6, 2021
- J-36 Howell Township Public Schools Progress Report for IEP Goals and Objectives dated December 8, 2021
- J-37 Ramtown Child Study Team Progress Report for IEP Goals and Objectives dated December 13, 2021
- J-38 Email from Jenna Rockwell, Learning Disabilities Teacher-Consultant, to Melissa Sweet regarding M.L. dated January 6, 2022
- J-39 Contact Data Log regarding M.L.
- J-40 Data Collection Sheet
- J-41 Ramtown Child Study Team Request to Amend an IEP without a Meeting dated March 2, 2022

- J-42 Ramtown Child Study Team Individualized Education Program dated March 8, 2022
- J-43 Ramtown Child Study Team Progress Report for IEP Goals and Objectives dated March 14, 2022
- J-44 Howell Township Public Schools Progress Report for IEP Goals and Objectives dated March 16, 2022
- J-45 Break Contract dated May 6, 2022
- J-46 2022-2023 Progress Report for M.L.

For petitioners

- P-1 Comprehensive Oral and Written Language Evaluation from Marisa Brunner, CCC-SLP, WDP, ADHD-RSP
- P-2 Curriculum Vitae from Marisa Brunner, CCC-SLP, WDP, ADHD-RSP
- P-3 Letter from Staci J. Greenwald, Esq. to Jodi Howlett, Esq. dated August 11, 2022
- P-4 Letter from Staci J. Greenwald, Esq. to Jodi Howlett, Esq. dated October 7, 2022
- P-5 Curriculum Vitae from Ann L. Gradman
- P-6 Observation Report from Marisa Brunner, CCC-SLP, WDP, ADHD-RSP
- P-7 The New Jersey Dyslexia Handbook
- P-8 Fountas & Pinnell – Instructional level expectations for reading and leveled text chart

For respondent's

- R-1 Not in evidence
- R-2 Not in evidence
- R-3 Not in evidence
- R-4 Letter from Lynn M. Coco to A.L. and N.L. dated January 20, 2022
- R-5 Not in evidence
- R-6 Not in evidence
- R-7 Not in evidence

- R-8 Email from N.L. to Shannon McCreight dated December 14, 2020
- R-9 Emails to/from N.L. to/from Shannon McCreight dated November 23, 2020
- R-10 Child Study Team Parent Contact Log
- R-11 Social Skills Group Data
- R-12 Shannon McCreight Remote Learning Plan
- R-13 Not in evidence
- R-14 2021-2022 School Year Attendance Log
- R-15 Letter from Albert J. Bohrer to A.L. and N.L. dated January 27, 2022
- R-16 Caselite Intervention Scheduling and Documentation Data
- R-17 Not in evidence
- R-18 Correspondence between N.L. and District regarding NJSLA testing
- R-19 Start Strong Assessment Data
- R-20 Not in evidence
- R-21 Not in evidence
- R-22 M.L.'s third grade report card
- R-23 Letter from Coco to N.L. and A.L. dated May 15, 2020
- R-24 Not in evidence
- R-25 Not in evidence
- R-26 M.L.'s third grade (2020-2021) attendance records
- R-27 Emails regarding DCP&P referral dated January 10, 2022
- R-28 Not in evidence
- R-29 Not in evidence
- R-30 Not in evidence
- R-31 Emails between S. Purpura and N.L. and A.L. dated April 5, 2019
- R-32 Student Greatness Plan for M.L. from The Academy dated November 2, 2022
- R-33 2022-2023 Weekly Greatness Reports for M.L. from The Academy
- R-34 Greatness Plan-Mid-Year Check-In from The Academy dated February 3, 2023
- R-35 Correspondence between The Academy and Brunner