State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION
OAL DKT. NO. EDS 00789-24
AGENCY REF NO. 2024-36772

M.S. AND M.S. ON BEHALF OF M.S.,
Petitioners,
v.
SCOTCH PLAINS-FANWOOD REGIONAL BOARD OF EDUCATION,
Respondent.

Sharyn Gallatin, Esq., for petitioners (Freeman Law Offices, attorneys)

Nathanya G. Simon, Esq., for respondent (Scarinci Hollenback, LLC, attorneys)

Record Closed: November 26, 2024 Decided: December 4, 2024

BEFORE **NANCI G. STOKES**, ALJ:

STATEMENT OF THE CASE

Respondent did not propose an IEP or reevaluate M.S., a child unilaterally placed out-of-district, because petitioners neither reenrolled M.S. nor intended to return to the district. Did the respondent fail to provide M.S. with a free appropriate public education (FAPE)? No. Parents of unilaterally-placed children must indicate their willingness to consider in-district programming before requiring such action by a school district. Moorestown Twp. Bd. of Educ. v. S.D., 811 F. Supp. 2d 1057, 1069 (D.N.J. 2011).

PROCEDURAL HISTORY

On November 21, 2023, M.S.'s parents, M.S. and M.S. (petitioners), filed a due process petition with the Department of Education (DOE), Office of Special Education (OSE), on behalf of their minor child, M.S., a student in the twelfth grade. In their complaint against the Scotch Plains-Fanwood Board of Education (Board or District), petitioners allege, among other things, that from the 2016−17 through the 2023−24 school years the Board failed to provide M.S. with appropriate special education and related services in violation of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§ 1400 to 1484(a) and 34 C.F.R. § 300.500 (2024). However, the petition acknowledges that an administrative law judge (ALJ) dismissed an earlier complaint against the Board for failing to provide FAPE to M.S. for school years 2016−17 through 2018−19.

Petitioners acknowledge that the IDEA's two-year statute of limitations under 20 U.S.C. § 1415(b)(6)(B) bars claims against the District for the time before November 21, 2021, based on the petition's filing date. Therefore, the petition focuses on the District's asserted inaction as to the 2021−22, 2022−23, and 2023−24 school years and seeks relief concerning that period. Specifically, petitioners maintain that because the Board failed to develop or offer a program calculated to provide M.S. with FAPE, they are entitled to reimbursement for tuition at the Cambridge School (Cambridge), costs, and expenses, including attorney's fees.

In turn, the Board answered the petition, asserting that offering M.S. such a program was not required, and that no reimbursement was due to petitioners.

On January 19, 2024, the OSE transmitted the case to the Office of Administrative Law (OAL) as a contested case under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15, and the act establishing the OAL, N.J.S.A. 52:14F-1 to -23, for a hearing under the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6, and the Special Education Program, N.J.A.C. 1:6A-1.1 to -18.5.

I scheduled a telephone prehearing conference for February 8, 2024. At that time, the parties asserted that no disputed material facts existed, and sought time to file

cross-motions for summary decision. I scheduled a hearing for August 19, 2024, to permit motions requested by the parties.

The Board filed its motion on June 25, 2024, and petitioners filed their motion on June 26, 2024. Per the parties' request, I extended the times for additional motion submissions and adjourned the hearing to September 10, 2024. The parties filed their replies on July 25, 2024. On August 6, 2024, I denied the parties' cross-motions for summary decision, concluding that a hearing was needed because material facts existed.

I conducted hearings on September 10 and October 28, 2024. The record closed on November 26, 2024, following receipt of post-hearing briefs per the parties' request.

FINDINGS OF FACT

Based upon the testimony provided and my assessment of its credibility, together with the documents submitted and my evaluation of their sufficiency, I make the following **FINDINGS** of **FACT**:

Background

Many of the background facts are undisputed and found in evidentiary documents supplied by the parties.

M.S. is seventeen and attended a private school, Cambridge, from the 2019−20 school year through the 2023−24 school year. Cambridge is in Pennington, New Jersey, outside the District.

The District last developed an individualized education program (IEP) under the IDEA for M.S. in February 2019, with an end date of February 20, 2020. J-1. The District classified M.S. as eligible for special education and related services under the classification of "specific learning disorder" with impairment seen in reading and math. Id. at 3. M.S. has dyslexia and attention-deficit/hyperactivity disorder (ADHD). M.S. still resides in the District.

The District's IEP called for an annual review on February 11, 2020, and her triennial reevaluation for February 14, 2020. Id. at 1.

The IEP included in-class resources in math, writing, science, and social studies and pullout resource replacement in reading, decoding, and language arts. Further, the IEP called for assistive technology training. Modifications included preferential seating, modified assignments to avoid frustration, reading all test directions orally, extra time for test taking without deductions for spelling, grammar, or formatting errors, providing vocabulary in advance of social studies and science classes, multistep directions with reminders, using text-to-speech software, and study guides. Id. at 14.

In 2019 petitioners challenged whether the IEPs for the 2016−17, 2017−18, and 2018−19 school years provided M.S. with a FAPE as required under the IDEA.

After filing their June 12, 2019, due process petition, petitioners unilaterally placed M.S. at Cambridge, a private school focusing on language-based learning challenges. Indeed, M.S. did not attend a District school after June 2019, and the District did not report M.S. to the DOE on its student register again. M.S. graduated from Cambridge on time, is attending college, and sought no transition services from the District.

On October 29, 2020, the Honorable Jude-Anthony Tiscornia, ALJ, dismissed petitioners' June 2019 due process petition, finding that the District provided M.S. with a FAPE. That decision also concluded that Cambridge was unnecessary and inappropriate for M.S. Still, the decision covered a period different than the years at issue here. R-3.

On January 28, 2021, petitioners filed an appeal of ALJ Tiscornia's decision in federal district court. On May 20, 2024, the U.S. District Court issued an opinion upholding ALJ Tiscornia's decision and dismissing petitioners' appeal. R-4.

Contact Between the Parties

On December 6, 2019, case manager Dr. Stephanie Cooper wrote to M.S.'s mother, trying to schedule a reevaluation meeting for December 16, 2019, well before M.S.'s triennial revaluation date in February 2020. Having not received a response from M.S.'s mother by

December 16, 2019, Cooper emailed her again to schedule a meeting for December 17, or 18, 2019. J-2.

That day, M.S.'s mother responded to advise the District that reevaluation communications between the parties should be through attorneys. Still, parental consent was necessary for certain District actions.

2020−21 School Year

On January 24, 2020, District counsel forwarded a reevaluation planning action form and consent for a neuropsychological reevaluation of M.S. to petitioners' attorney. J-3. Notably, the proposed action form states that "Parents requested that reevaluation planning for [M.S.] proceed through an attorney. As a result, a formal meeting was not held."

On February 3, 2020, Dr. Cooper emailed petitioner seeking dates to conduct M.S.'s annual-review meeting. J-4.

M.S.'s mother signed the reevaluation consent form on February 7, 2020, which she forwarded to Dr. Cooper by email with several dates for M.S.'s reevaluations. J-5.

On February 7, 2020, Dr. Cooper replied, stating that her earlier email requested annual-review meeting dates, not reevaluations, and again requested that petitioners provide dates for that meeting. Dr. Cooper also advised petitioner that she would get back to her with reevaluation information. J-4.

M.S.'s mother forwarded Dr. Cooper's annual-meeting request to her attorney, asking whether she should schedule a meeting time or get guidance on how to reply. On February 6, 2020, counsel explained why the District wanted to schedule the annual meeting and advised that he saw "no harm" in providing dates to the District to maintain "consistency in cooperating" with the District. Id. at 3. M.S.'s mother advised she would "BCC" her attorney with her reply.

On February 10, 2020, Dr. Cooper advised M.S.'s mother that she reviewed the signed consent form and that the box next to the neuropsychological evaluation requested

by the child study team (CST) team was unchecked. The proposed reevaluation action form specified that the CST sought only this reevaluation. Further, Dr. Cooper reminded petitioner that the annual review was due the next day, and she requested that petitioner advise when they could meet. Id. at 8.

M.S.'s mother replied on February 10, 2020, with an updated form, checking off the requested neuropsychological reevaluation. She also highlighted that the District previously performed a neuropsychological evaluation in May 2018 and asked several questions about the reevaluation. Specifically, she wanted to know whether the District intended to perform a full or partial assessment, whether a specific doctor would perform the evaluation or if the parties could "come to a mutual decision on who would be best," and whether this was the only testing needed. M.S.'s mother did not identify a doctor she and her husband found acceptable. She also explained that she and her husband were willing to meet but were unclear as to why the District needed a face-to-face meeting given their consent to test M.S. Ibid. Yet petitioners' attorney explained the reason for the annual meeting in his February 6, 2020, email. Petitioners gave no dates to the District for the annual meeting. Notably, petitioners previously supplied evaluation dates for M.S. absent such questions.

On February 19, 2020, Dr. Cooper advised the petitioner that the director of special services (Director), Lisa Rebimbas, contacted the attorneys regarding her questions and that they would contact her regarding the reevaluations. However, the District offers no written response addressing the petitioner's questions.

On March 9, 2020, under Executive Order No. 103, the Governor of the State of New Jersey first declared a State of Emergency caused by COVID-19.[1]

On March 17, 2020, the OAL stopped in-person proceedings due to the COVID-19 pandemic and conducted hearings via Zoom. COVID-19 undoubtedly led to delays in the case before Judge Tiscornia and scheduling difficulties.

[1] The Governor extended the State of Emergency through subsequent Executive Orders. The Governor and New Jersey Legislature ended most Executive Orders thirty days from June 4, 2021. However, in January 2022, the Governor again declared a State of Emergency in the face of the Omicron variant, which did not end until March 7, 2022. https://www.nj.gov/infobank/eo/056murphy/approved/eo_archive.shtml.

In-person evaluations, like the neuropsychological evaluation sought by the District, were unavailable until 2021 because of the pandemic. Most schools, private or public, utilized virtual instruction for the remainder of the 2019−20 school year.

On August 21, 2020, petitioners' attorney wrote to the District's attorney explaining that no one responded to petitioner's "questions or anything else related to [M.S.'s] reevaluation or an IEP for 2020−21." J-6. Further, the letter stated:

> [T]he parties have been unable to reach an agreement regarding [M.S.'s] programming and placement, previously. In the event that we are unable to resolve this matter amicably over the next ten business days, [petitioners] will be forced to maintain [M.S.'s] unilateral placement at Cambridge School for the upcoming school year and continue said placement for as long as it remains appropriate.
>
> [Ibid.]

Petitioners also reserved their right to seek reimbursement because of that placement.

The District never consented to M.S.'s unilateral placement at Cambridge.

The parents did not withdraw their consent to reevaluate M.S.

No additional written communication during 2020 addressed the annual meeting or reevaluation. Notably, Judge Tiscornia's decision came several months after counsel's August 21, 2020, letter.

No annual meeting or reevaluation took place. Undeniably, petitioners knew that the District failed to complete M.S.'s reevaluation or conduct the annual meeting in 2020. However, they filed their due process petition in November 2023.

2021−22 School Year

On August 12, 2021, petitioners' counsel again wrote to the District's attorney, reiterating that petitioner provided a signed consent for the neuropsychological evaluation

in February 2020 and the District failed to contact petitioners about a meeting "or anything else related to the reevaluation or an IEP for 2020−21. The same applies for the 2021−22 school year. As such, the matter remains unresolved." J-7. As with the prior letter, counsel advised that if the parties were unable to resolve the matter amicably within ten business days, petitioners would be forced to maintain the Cambridge unilateral placement and seek tuition reimbursement and costs. He explained that the parties' disagreement centered on M.S.'s need for a program including "structured literacy, specific and measurable goals/objectives, and accommodations for dyslexia" and her parents' belief that the District did not provide this per their experts. Ibid. Yet the ALJ concluded that the District provided M.S. with a FAPE and considered petitioners' experts. R-3.

On August 17, 2021, the District's attorney responded to petitioners' counsel, acknowledging receipt of the August 12, 2021, letter stating:

> [T]he District has [been] and continues to be more than willing to work with you and your client for the development of an amicable plan for M.S. to access a free appropriate public education in the least restrictive environment. I am more than happy to contact my client to arrange a meeting for such a discussion on a date and time of mutual convenience. Given the time of year that you sent your letter, I am not sure that we could hold the meeting within the ten [day] limit that you arbitrarily set. I trust that you will be flexible with setting a mutually convenient date and time.
>
> Further, please note that from the start of this matter to date, the District has been ready and willing to provide M.S. with an appropriate in-district program. I've had several conversations with you about M.S.'s return to District for her education. On each occasion of such conversation, there was a flat rejection and so the unilateral placement continued. It was the [parents'] decision to make and continue the unilateral placement even after the Administrative Law Court ruled that the District met its legal obligations of offering a free appropriate public education in the least restrictive environment. Before you took a further appeal, further discussions about her return to the District occurred, which again were flatly rejected by you.
>
> Therefore, if you and your clients are sincere about meeting and working towards the development of a mutually agreeable IEP program and placement, the District continues to be also willing to make that offer to you. The District continues to reject the unilateral placement and does not accept any responsibility,

> financial or otherwise, for the [parents'] decision to continue the unilateral placement in the out-of-district school at this time.
>
> Thank you very much for your anticipated cooperation in the further handling of this matter. After further consultation with my client, we will propose a date and time to meet.
>
> [J-8.]

Petitioners' counsel did not respond. Indeed, neither petitioners nor their attorney responded to District counsel's statement that they were unwilling to consider an in-district program. The August 12, 2021, letter from petitioners' counsel also did not request that the reevaluation be undertaken, ask for an IEP meeting or its development, or indicate an interest in returning to the District.

On August 23, 2021, Cambridge provided petitioners with a contract addendum for the 2021−22 academic-year tuition, totaling $51,950. P-8. On September 7, 2021, petitioners signed the Cambridge tuition contract addendum. Ibid.

The District did not formalize a meeting date for petitioners. However, petitioners did not reach out to the District again during the 2021−22 school year.

2022−23 School Year

On August 12, 2022, Cambridge forwarded the contract addendum setting forth the tuition for the 2022−23 school year, totaling $53,500. P-10.

On August 16, 2022, petitioners' counsel again wrote to the District's attorney, stating:

> As you know, the parties have been unable to reach an agreement regarding M.S.'s programming and placement, previously. As of this writing, the District has still not offered an appropriate IEP for the upcoming school year. Please be advised that in the event we are unable to resolve this matter amicably over the next ten (10) business days, petitioners will be forced to maintain M.S.'s unilateral placement at the Cambridge School for the upcoming school year and continue said placement for as long as it means appropriate.

[J-9.]

Again, counsel advised that petitioners reserved their right to seek tuition reimbursement and costs.

On August 22, 2022, the District's counsel wrote petitioners' attorney, reiterating the District's willingness to work with the parents to develop an appropriate plan to provide FAPE in the least restrictive environment (LRE). J-10 at 1. However, she highlighted that the parents have repeatedly and unreasonably rejected the District's prior offers to facilitate M.S.'s return to the District, despite Judge Tiscornia's decision, and their unwillingness to accept any offer besides continuing the unilateral placement at Cambridge. Further, "[p]rior requests to meet have been unanswered." Ibid. However, if the parents were interested in meeting to discuss and develop an IEP, they must supply updated and complete records for the past two years from Cambridge at least ten days before any meeting, "including any evaluations, testing, emails, report cards, disciplinary incident reports, and any other relevant documents." Id. at 2.

On August 23, 2022, petitioners' attorney responded, acknowledging her receipt of the August 22, 2022, letter and stating that she was unaware of any regulation, case, or other requirement that permits the District to refuse a request for an IEP meeting or make that request conditional upon receipt of records, and sought support for the District's request. J-11. Her letter continues, stating:

> Otherwise, my clients would once again request an IEP meeting be scheduled to discuss programming for the upcoming school year, again within ten days of the original request. Otherwise, they will have no choice but to unilaterally place M.S. and preserve all rights to seek reimbursement.
>
> [Ibid.]

Still, counsel's letter did not address her clients' unwillingness to consider in-district programming or failure to respond to prior requests to meet.

The parties' attorneys had a telephone conference on August 23, 2022. The District's counsel memorialized the discussion, stating:

> As we discussed, the basis for the request for updated information and evaluations comes from the code requirements that a copy of the evaluation reports and documentation and information that will be used for determination of eligibility and revisions to the IEP shall be provided at least ten days prior to the meeting. See N.J.A.C. 6A:14-3.5 and 3.8. We discussed this issue, and you have indicated that while you do not accept that analysis, you will work with your clients to provide as much updated information as possible prior to the scheduled meeting.
>
> Further, we discussed the fact that the District is unable to have staff available within the ten days of receipt [of the August 16, 2022, letter] requesting a meeting, however, I have tentatively scheduled an IEP meeting for September 6, 2022, at 10:00 a.m., which is prior to the first day of school for students. Upon further conversation with my client when staff are available, if it is possible we may be able to move that meeting into the last week of August, we may need to change the time for that morning, however, please continue to hold September 6 pending confirmation and receipt of official notice.
>
> [J-12.]

Petitioners sent no records and did not respond to District counsel's letter. The District sent no formal notice scheduling an IEP meeting.

On September 1, 2022, petitioners signed the contract addendum for Cambridge. P-10.

On September 12, 2022, the District's computer system identified a progress report and class schedule for M.S., including a study hall and electives. J-20. Notably, the schedule identified in-class resources for science, English, global perspectives, and trigonometry. The progress report also noted that M.S. was absent from class for two days.

During the school year, the District forwarded many emails to petitioners directed at all parents of enrolled students or the "Scotch Plains-Fanwood (SPF) Community." P-13.

2023−24 School Year

During the school year, the District continued to forward emails to petitioners directed at all parents of enrolled students. Ibid. The District provided no document stating that it "disenrolled" M.S.

The District received a letter from petitioners on August 15, 2023.[2] Still, petitioners did not re-register M.S. with the District.

On August 29, 2023, petitioners signed Cambridge's contract addendum for the 2023−24 school year. P-11; P-12.

On September 5, 2023, the Director responded to petitioners' August letter, noting that the previous due process petition resulted in a judge's determination that the District's program provided M.S. with FAPE in the LRE. J-13. The Director noted that it offered the parents an IEP meeting the previous year before the start of school. She continued that offer, noting:

> Once again, if you are seriously interested in participating in an IEP meeting in good faith and recognize the "stay put" continues to be in the District, then a meeting will be scheduled to update [M.S.'s] information and possibly conduct updated evaluations.
>
> Therefore, please re-register in the District and provide a copy of all student records, reports, and documentation from the current placement and upon receipt, a member of the child study team will contact you to schedule an eligibility and IEP meeting.
>
> [Ibid.]

Yet, petitioners did not supply records, re-enroll M.S., or respond to the District's letter.

[2] The District requested copies of all written communications between the parties during discovery. Yet, the petitioners did not provide their August letter during discovery but attempted to supply it at the hearing, which I disallowed as untimely and prejudicial per the District's objection.

On December 14, 2023, District's counsel again wrote to petitioners' attorney to convey the District's continued offer despite petitioners' failure to re-register M.S. in the District. J-14. Specifically, counsel provided an authorization to be signed by M.S.'s parents to "release and obtain all information from the Cambridge school and any other provider that has supplied educational, behavioral, social, etc., services to M.S. since she left the school district." Ibid. In addition, she supplied a request for reevaluation that M.S.'s parents could sign without a meeting. However, the District was also willing to convene a reevaluation meeting. Lastly, counsel offered to discuss any changes to the plan with petitioners' counsel absent a meeting.

On December 15, 2023, petitioner signed the neuropsychological reevaluation form, which their attorney sent to District's counsel on December 20, 2023. J-15. However, the release requested "all records, emails, documents, work samples, tests that involve M.S.," which the petitioners' counsel advised that her clients felt was too broad and requested the District explain why emails were necessary to develop an IEP. Ibid. However, petitioners would consent to the release of evaluations, health records, discipline records, child study team, and permanent records. Yet, the petitioners did not sign or return the consent form for those materials.

On December 20, 2023, District counsel advised that she would forward the evaluation consent to the Director. J-16. Counsel also explained that the document request sought only emails between the parents and school staff who have been providing services to the student, as these "emails provide additional relevant information regarding the student's performance (academic, behavioral, social) in real-time" not typically in the student's file. Ibid.

On January 4, 2024, the petitioner's counsel forwarded documents from Cambridge, including a final progress report, end-of-year Wilson Assessment of Decoding and Encoding, end-of-year Word Identification and Spelling Test, and reading assessment for ninth through eleventh grades. P-1 through P-4; J-17. According to these records, ordinarily maintained for all students, M.S. received all A's in her coursework, and her math, reading, and spelling test scores generally improved yearly. Petitioner's counsel also provided a progress report from the first marking period for the 2023−24 school year, noting that M.S. was taking honors classes in twelfth grade. P-4.

On the same date, counsel provided a privately obtained assessments performed in 2022. See, e.g., P-6. Still, these materials were incomplete, as M.S.'s mother agreed to provide her consent to allow the District to obtain more documentation, which she did not give.

On January 9, 2024, petitioners' counsel wrote to the District's attorney, highlighting that letters from the District on August 22, 2022, and September 5, 2023, only offered an IEP meeting after the parents reregistered M.S. in the District or after supplying two years of records. J-19. Counsel requested that the District supply any offer it made to schedule an IEP meeting during M.S.'s unilateral placement absent such prerequisites. However, no other written correspondence by the District or its attorney offered to schedule an IEP meeting.

Testimony

Dr. Lisa Rebimbas

Dr. Rebimbas testified on behalf of the District. Dr. Rebimbas qualified as an expert in curriculum instruction, school leadership, special education, and administration. As the director of Special Services since 2016, she oversees approximately 200 District employees, including CST members. The District has approximately 6,000 students, with 1,000 classified students receiving special education services within eight schools.

Dr. Rebimbas described the interactions with the parents in this case as unusual, feeling like a "chess game" during litigation. Significantly, this case represented the only case she handled where party communication was between attorneys. This requirement made it difficult for the District to follow standard procedures in arranging meetings or reevaluations, typically between parents, the case manager, or the Director.

The primary reason that the 2020 reevaluation did not occur was COVID-19. However, the parents filed an appeal of Judge Tiscornia's opinion in 2021, which indicated to the District that the parents did not wish M.S. to return to the District for her education or reevaluation. The parents also did not request that the neuropsychological reevaluation

move forward. Dr. Rebimbas was unsure if M.S.'s mother had received an answer to her reevaluation questions, but the reevaluation process was to proceed through attorneys at petitioner's request. Further, the District's reevaluation request was clearly for only a neuropsychologist, not other evaluations.

Dr. Rebimbas was familiar with the correspondence between counsel in this case because counsel shared those documents and her conversations with petitioners' attorney. Dr. Rebimbas understood that the petitioners were unwilling to consider in-district programming and refused to consider other possibilities than continued placement at Cambridge, as stated in the District counsel's letter. None of the letters from petitioners' attorney plainly stated that they wanted M.S. to come back to the District, and Dr. Rebimbas did not believe they wished her to do so. Similarly, the offered September 6, 2022, IEP meeting did not take place because Dr. Rebimbas understood that the parents did not want to convene as with other meetings. Petitioners did not supply updated records before the meeting date, and the most current records the District possessed were from M.S.'s seventh-grade school year. Still, Dr. Rebimbas acknowledges that she had no interaction with the parents during this period.

Although the District responded to the parents' August 2023 letter in September 2023, there was no response from petitioners until after the District's attorney reached out again in December 2023. Yet, petitioners insisted they had no obligation to supply records or reenroll M.S. before the District scheduled an IEP meeting.

Typically, a student coming into the District from another educational placement will complete an online registration that will identify whether the student has an IEP. If so, the District has thirty days to convene an IEP meeting. Next, the District seeks parental consent to obtain records from the prior school and asks the parents to share anything relevant to creating an appropriate education program, like private evaluations or other services the student may receive outside school. Parents often have school records and the IEP, which they can share more quickly than the prior school. Absent current records from the student's previous educational experiences or other services, the District has insufficient information to create an appropriate program in an IEP.

Dr. Rebimbas asks for emails between the parents and the school professionals working with the student, as those emails often provide information not contained in the official school records. Indeed, the email request here was not atypical.

Upon finally receiving records in January 2024, the District thought that the parents were seeking transition services that might be available to M.S. following high school. While petitioners supplied some records in 2024, they did not request that the District schedule an IEP meeting or reevaluations of M.S. at that time. Soon after receiving records in January 2024, the District learned that M.S. was graduating and would attend college in the fall of 2024. In other words, M.S.'s parents supplied records, albeit incomplete materials, in M.S.'s senior year with only a few months of high school left. Thus, Dr. Rebimbas had no reason to believe M.S. wanted to return or was returning to the District for the last part of her senior year.

Because M.S. was in-district for several years with an IEP, M.S. remains within the District's computer system with parental access to the "Power School" portal. The District has nine schools in its digital student management system, eight schools corresponding to the District's physical schools, and a data repository called the "Evaluation School." The District uses the Evaluation School to maintain records, including IEPs, of students in unilateral placements and preschool students in the special education eligibility evaluation process. In other words, students the District did not consider "enrolled." 84:19-85:18. Dr. Rebimbas was unclear whether the District had sent M.S.'s parents the September 12, 2022, progress report and schedule. Regardless, the noted schedule and progress report were available to M.S.'s parents on the portal, but they never contacted the District to discuss the schedule. 1T57:5-57:16. Still, no IEP existed that year, and M.S. was not on the District's student register.

Dr. Rebimbas felt the parents were not cooperative, collaborative, or reasonable. She highlighted that the August demand to "resolve the parties' differences" within ten days was sent at the worst possible time for school districts about to start the new academic year. While it notified the District of the unilateral placement, the time frame was untenable, and it was less than the thirty days a District would usually have to schedule an IEP meeting upon a student's registration as a transfer student. Thus, Dr. Rebimbas viewed such a demand as unreasonable and not indicative of a sincere request. Petitioners did not supply

M.S.'s records until months before her high school graduation, despite prior requests and having these materials well before January 2024. M.S. last attended a District school in the Spring of 2019. Thus, the school had no current information necessary to develop an appropriate educational program for M.S.

On September 18, 2019, Dr. Rebimbas observed M.S. at Cambridge, her first time at the school. She noted that Cambridge was not providing modifications or accommodations within its IEP to M.S. In subsequent years Dr. Rebimbas observed Cambridge two other times unrelated to M.S. and similarly noted that Cambridge was not implementing similar modifications or accommodations to assist students.

The District's high school has a structured literacy program with "scaffolding" through other subjects as the student needs it, including using multisensory approaches, smaller tasks, recycling, and pre-teaching, in-class resources, pull-out resources, and specialized supplemental reading instruction for decoding and reading comprehension. Typically, a District will place a student out-of-district when an in-district program cannot meet a child's needs. When an out-of-district student is successful and progresses, like M.S., the goal should be to return the student to the least restrictive environment, the public school. In sum, Dr. Rebimbas felt that M.S. would have been successful in the District.

Ms. Maria Gonzales

Ms. Gonzales has served as the head of school at Cambridge since 2015 and has worked there for more than twenty years. She has a speech and language certification issued through the DOE and is qualified as an expert in that field. Ms. Gonzales has her American Speech-Language-Hearing Association (ASHA) certification required by New Jersey to provide speech services and has decades of experience working with students struggling with literacy. Early literacy skills, such as letter-sound knowledge and phonological awareness, involve speech processing, and developing those skills correlates to successful readers. Given her experience and ASHA certification, Ms. Gonzales also qualified as an expert regarding students facing reading challenges. However, Ms. Gonzales does not initially diagnose students with dyslexia, like M.S., and did not teach M.S. at Cambridge.

Notably, all Cambridge teachers are trained in the Wilson reading program, and approximately ninety percent of Cambridge's teachers are certified following a more intensive Wilson instructional program. Most teachers M.S. had during her tenure at Cambridge have teaching certifications issued by the DOE in the subjects they taught, but not all. Still, all had Wilson training, and structured literacy skills could be used in reading across all subjects.

Wilson involves twelve levels or steps that do not correlate to a student's grade level. Once a student reaches mastery level in one step, they can proceed to the next step. M.S. tested out or mastered all twelve steps by her junior year.

Ms. Gonzales did not qualify as an expert in special education or possess a DOE teaching certification. Still, in her position at Cambridge, she reviews and approves students' progress reports, like those for M.S. P-1 through P-4. She did not administer the testing at Cambridge supplied by petitioners but collaborated with the educators who did before approving and finalizing the reports. In that capacity, she could authenticate M.S.'s progress reports and provide credible testimony concerning Cambridge and the Wilson program in place for M.S., even though she did not teach M.S. Notably, Cambridge never prepared an IEP for M.S. while enrolled at the school.

M.S. did well each year and progressed to the next grade. She graduated on time and was valedictorian of her class. Given M.S.'s success, Ms. Gonzales believes Cambridge, which focuses on reading-challenged students, including those with dyslexia like M.S., was an appropriate placement.

Still, Ms. Gonzales did not contact the District during M.S.'s Cambridge placement. Indeed, she did not discuss whether M.S. could return to the District, given her significant progress and testing out of Wilson. Cambridge does not provide State-required testing for public students to graduate; that would fall on the school district of residence if needed. Regardless, M.S. applied for and was accepted at Ithaca College with her Cambridge transcript, despite its lack of State approval as a private school for students with disabilities.

M.S.'s Mother, M.S.

M.S.'s mother noticed her daughter's struggles with reading beginning in kindergarten and developed concerns about M.S.'s reading level compared to her grade level. Petitioners maintain they only sought to bridge that gap through their actions, including M.S.'s unilateral placement at Cambridge.

M.S.'s mother reviewed the correspondence in this case between counsel, which she acknowledged receiving when the letters were sent. The letter from her attorney included a "cc" to petitioners, and her attorney supplied the letters from the District's counsel.

Petitioners disagree that they refused to consider in-district programming. Instead, M.S.'s mother maintains that she and her husband always intended to return M.S. to the District to complete her education to have a more typical high school experience, especially socially, but the District offered no IEP. However, M.S.'s mother's certification supplied with their motion for summary decision inconsistently states that the sole reason she and her husband enrolled M.S. at Cambridge for the 2021−22 school year was the District's failure to answer her questions about the neuropsychological reevaluation that the District requested. C-1. She further maintains that she attempted to reengage the District to move forward with reevaluations, but her efforts were met with silence.

Despite years of creating IEPs with the District for M.S., including the last one ending in February 2020, M.S.'s mother incredibly testified that she did not believe a student could return to the District at any point other than before the school year started. She explained that this was why they first contacted the District in August before each school year, despite the District counsel's explanation that this timeframe was challenging for the District. Instead, M.S. believed that the District only needed ten days to start the process for M.S.'s return rather than giving the District more time. 2T159:8-14

However, Cambridge advised petitioners each year that the Cambridge tuition contract would terminate if litigation with the public school district were resolved, and an appropriate program was developed. Petitioners would only be responsible for payment for days that M.S. was enrolled at Cambridge. P-8, P-10, and P-12. In other words, contrary to M.S.'s mother's testimony, M.S. could return to the District after petitioners signed the Cambridge contract and school began.

In 2023, M.S.'s mother corresponded with the District herself because petitioners were no longer engaging counsel. Instead, petitioners were waiting for a decision on their challenge to Judge Tiscornia's decision, not actively litigating with the District. Still, they signed the Cambridge contract addendum before hearing from the District or seeking a response. Upon receiving the District's September 5, 2023, letter, petitioners again retained their prior attorney. Yet, the petitioners did not respond or act as the District requested, nor did their attorney. Indeed, their attorney only responded months later when the District's counsel again reached out, attempting to work with petitioners.

Although petitioners never re-registered M.S. in the District after enrolling at Cambridge, they continued to receive emails from the District school. The parents maintain that this was because their daughter was still enrolled in the District. Yet, they signed contracts and paid tuition for Cambridge, re-enrolling M.S. at Cambridge each year. Further, M.S.'s mother acknowledged that M.S. did not attend the District's school during the years in question "because she was enrolled in another school." 2T158:17-20.

M.S.'s mother credibly testified to the financial hardship her daughter's private-school education caused the family.

Additional Findings

Here, I **FIND** that Dr. Rebimbas' testimony was persuasive and credible as to the District's efforts and difficulties working with petitioners. Dr. Rebimbas testified clearly, professionally, reasonably, and with confidence. Her testimony corroborated the statements in the District attorney's letters, supporting the District's belief that petitioners were not intending to return M.S. to the District for her education and had no desire to meet in a collaborative way.

In contrast, I do not **FIND** that M.S.'s mother's testimony was persuasive. Many of her statements contradicted the evidentiary record and insufficiently justified petitioners' actions or inactions in collaborating with the District.

To be sure, the District did not develop or offer an IEP for M.S. or reevaluate her in the 2021−22, 2022−23, or 2023−24 school years.

Yet, M.S.'s parents did not register their daughter in the District after her June 2019 unilateral placement at Cambridge, which would have shown their intent to return M.S. to an in-district program. Petitioners suggest that emails from the District confirmed that M.S. remained enrolled in the District, excusing their inaction and further supporting the District's failures. Undeniably, the contract with Cambridge expired at the end of each school year, leaving the choice to re-enroll at Cambridge with the petitioners. Still, they took no steps to formally re-register or return M.S. to the District with adequate time or information necessary to develop an appropriate program. Regardless, I **FIND** that petitioners knew that they enrolled M.S. at Cambridge each year, not the District.

While school registration is one way to evidence an intent to return to a school district, little else petitioners did show that consideration. M.S.'s mother initially ignored the District's request to schedule a reevaluation meeting in 2019 and then directed a process typically between parents and District staff to continue through attorneys. She also never supplied annual meeting dates for 2020, even though her attorney suggested that she do so to be "cooperative." Instead, she questioned why such a meeting was necessary.

Although petitioners consented to a neuropsychological reevaluation in February 2020, it was not at their request; it was the District's. Petitioners' request that the reevaluation process move forward "through attorneys" does not equate to their "request" for an evaluation, and no follow up about the reevaluation occurred until August 2020 through counsel when communicating that petitioners would continue the unilateral placement. Still, that correspondence and their counsel's letter in August 2021 did not ask the District to reevaluate M.S., ask the District to conduct an IEP meeting, or otherwise indicate petitioners' intent to return M.S. to the District. Thus, I **FIND** the petitioners' assertion that their decision to enroll M.S. at Cambridge was due to a failed reevaluation or lack of an IEP unconvincing.

I also **FIND** that the last-minute timing of the parents' notices to the District regarding the continuation of M.S.'s unilateral Cambridge placement was not collaborative. If M.S.'s parents had been sincere in their hope that the District would evaluate their daughter and develop an appropriate IEP, they would not have given the

District only "ten days to resolve the matter" within weeks of the new school year. Noting that the reevaluation did not occur or that an IEP was not in place is not a clear request to complete such tasks, especially given petitioners' failure to state that they would ever consider in-district programming.

Indeed, there was no response to the District's attorney's correspondence on August 17, 2021, or August 22, 2022, or the District's September 5, 2023, letter addressing petitioners' refusal to consider in-district programming or provide records. Petitioners made no attempt to "correct the record" or offer credible evidence challenging District counsel's statements that their attorney conveyed petitioners' "flat-out rejection" of in-district programming. M.S.'s mother's efforts to later re-engage the District about reevaluations were not direct, and she was not "met with silence," as she suggests.

A specific parental request for an IEP meeting occurred on August 23, 2022. Still, this request provided an unreasonable caveat that the meeting be conducted by August 26, 2022, within ten days of their original request, or in the next three days. Regardless, I do not believe M.S.'s parents intended to meet on September 6, 2022, or would remove M.S. from Cambridge. They did not respond, follow up, try to confirm, or supply any records before the meeting as reasonably requested by the District on August 23, 2022. Even though they questioned the need for Cambridge staff emails, they did not supply other records they agreed to provide or the consent to release the records their attorney stated they would supply. Further, petitioners signed the contract for Cambridge on September 1, 2022, before the proposed meeting date.

Absent records from Cambridge and the amount of time since M.S. attended an in-district school, the District had no current information that would allow the District to develop an appropriate program for M.S. The District requested Cambridge records and any relevant materials regarding M.S. in August 2022, September 2023, and December 2023 in attempts to schedule a productive IEP meeting but received none until January 2024, including private evaluations completed in 2022 and after filing the current due process petition.

When counsel supplied records in 2024, they were incomplete. Given the lack of complete materials and knowledge that M.S. was graduating, slated to attend college,

and not seeking transition services from the District, I **FIND** it reasonable for the District not to believe that M.S., Cambridge's valedictorian, would consider a return to the District with only a few months left of high school. Indeed, the District would still need time to conduct the reevaluation, if still needed, and schedule an IEP meeting to even propose an IEP for M.S.

In sum, I **FIND** that a preponderance of the evidence exists that petitioners were uncooperative after they unilaterally placed M.S. at Cambridge and never expressed a clear intent to consider in-district programming. In other words, the request to conduct an IEP meeting in 2022 or mentioning the reevaluation sought by the District was little more than an attempt to preserve their ability to seek reimbursement for their unilateral placement of M.S. at Cambridge.

Still, I **FIND** that M.S.'s records demonstrate that she was successful at Cambridge in a program addressing her reading-based challenges, and that she graduated on time in June 2024 even without accommodations available in the District. In this regard, Ms. Gonzales was sincere and thoughtful during her testimony, which I found convincing. In other words, the Cambridge placement was designed to meet M.S.'s needs, especially in reading, even if the District's program was also appropriate.

DISCUSSION AND CONCLUSIONS OF LAW

The Legislature enacted the IDEA, 20 U.S.C. §§ 1400 to 1487, to ensure that all disabled school-age children receive a FAPE. 20 U.S.C. § 1400(d)(1)(A). New Jersey's corresponding statutes and regulations have the same intentions. N.J.S.A. 18A:46-1 to -55; N.J.A.C. 6A:14-1.1 to -10.2. A FAPE is one that "emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living." 20 U.S.C. § 1400(d)(1)(A); see Lascari v. Bd. of Educ. of the Ramapo Indian Hills Reg'l High Sch. Dist., 116 N.J. 30, 34 (1989).

Undeniably, school districts typically must create programming and IEPs for the students domiciled in their district. See 20 U.S.C. § 1414(d)(2)(A). Significantly, the IDEA envisions a collaborative process between the parents and district in creating a disabled

child's educational programming. Hendrick Hudson Cent. Sch. Dist. v. Rowley, 458 U.S. 176 (1982).

However, once a parent unilaterally places a child in a private school, the district's obligation to that student changes. See 20 U.S.C. § 1412(a)(10)(A)(i) (requiring equitable participation without referencing the need for IEPs). Indeed, under 34 C.F.R. §300.131, the child-find obligations of locating, identifying, and evaluating parentally-placed private school children fall on the local education authority (LEA) for the private school's location. Federal regulations require the LEA of the private school's location to develop and implement "a services plan" for each private school child with a disability designated by the LEA to "receive special education and related services." 34 C.F.R. §300.132; 20 U.S.C. 1412(a)(10)(A). New Jersey similarly places the responsibility to provide services to eligible private school students with disabilities on the "district of attendance," not the district of residence. N.J.A.C. 6A:14-6.1(a)(1); see also N.J.A.C. 6A:14-6.1(c) (placing the child-find obligations for students attending nonpublic schools located within the school district of attendance, not the school district of residence of the student). Undeniably, Cambridge is not located in the District.

Unless the unilaterally placed student subsequently re-enrolls or requests an evaluation or an IEP to evidence an intent to return to the district, the district has no requirement to provide FAPE under the IDEA. Moorestown, 811 F. Supp. 2d at 1069; D.P. ex rel. Maria P. v. Council Rock Sch. Dist., 482 F. App'x 669, 673 (3d Cir. 2012); A.B. v. Abington Sch. Dist., 440 F. Supp. 3d 428 (E.D. Pa. 2020), aff'd 841 F. App'x 392 (3d Cir. 2021). The first question in determining "whether a district violated its FAPE obligations by failing to propose a special education program for [a unilaterally-placed student in a private school] is whether the parent made a 'request' pursuant to the IDEA." Abington, 440 F. Supp. 3d at 435.

Still, enrollment is not required before requesting that a school district offer FAPE, but the duty to prepare an IEP is triggered when a parent also communicates their intent to re-enroll their child in the district's schools. Council Rock, 482 F. App'x at 672−73. While "[a] parent is entitled to request a reevaluation of the student's IEP at any time, . . . this obligation is contingent on the parent's request." Id. at 673. The Council Rock court concluded that "without notification of an intent to reenroll in public school, the school

district was under no obligation to update [the student's] IEP . . . ." Ibid. In other words, when a parent makes clear their intent to keep the child enrolled in the private school, the local education authority (district) where the child resides is not required to make FAPE available to the child. Moorestown, 811 F. Supp. 2d at 1071 (citing the August 14, 2006, Office of Special Education and Rehabilitative Services' comments to the 2006 IDEA amendments, 71 Fed. Reg. 46540-01, 46593).

In Moorestown, the district's obligation to develop a new IEP for a unilaterally placed child arose when the parents asked the district to reevaluate their child and develop an IEP to determine if the child could return to the district. 811 F. Supp. 2d at 1076; see Abington, 440 F. Supp. at 436 (highlighting the hearing officer's critical findings that the parent had no intent to remove the child from private school and reenroll him in the district). Notably, courts construe a "request" narrowly, requiring an objective manifestation of intent to consider in-district programming. Moorestown, 811 F. Supp. 2d. at 1067; see also Abington, 440 F. Supp. at 435−36 (requiring more than a parent's request for information about in-district programming for an unenrolled student to trigger the district's obligation to offer a FAPE).

A school district typically has thirty days to develop an IEP for a student transferring from another New Jersey school to the district, like M.S., not ten days. See N.J.A.C. 6A:14-4.1(g)(1) (requiring the district to "conduct all necessary assessments and, within [thirty] days of the date the student enrolls in the school district, develop and implement a new IEP for the student). Further, as the District did here, the new school must take steps to "promptly obtain the [transferring] student's records, including the current IEP and supporting documentation, from the previous school district." N.J.A.C. 6A:14-4.1(g)(3). As part of the reevaluation process to assess continued special education eligibility and need for services or modifications, "[t]he IEP team shall review existing evaluation data on the student, including: (i.) Evaluations and information provided by the parents; (ii.) Current classroom based assessments and observations; and (iii.) Observations by teachers and related services providers . . . ." N.J.A.C. 6A:14-3.8(b)(1) (emphasis added.)

Under N.J.A.C. 6A:14-2.10(a), a board of education is not required to pay for the cost of education of a "student with a disability if the district made available a free,

appropriate public education and the parents elected to enroll the student in a nonpublic school . . . for students with disabilities." Still, this provision presumes that the District had an obligation to provide a FAPE, which I **CONCLUDE** it did not here. Indeed, I found that the parents did not express a clear intent to return M.S. to the District, especially to counter the assertion that they rejected any program not continuing M.S. at Cambridge. Instead, each letter manifested their intent to keep M.S. at Cambridge unless the parties resolved their vague differences in ten days just before the school year would begin. A clear request for an IEP meeting, as first made in 2022, was not coupled with a sincere desire to discuss in-district programming with current information about M.S.'s education and evaluations. Additional years similarly included no timely response to the District's reasonable requests for information that would allow the District to develop an appropriate IEP.

Petitioners assert that the District denied M.S. a FAPE by not developing an IEP or reevaluating M.S. Under N.J.A.C. 6A:14-2.10(b), an ALJ can order a district to reimburse the parents of a student who received prior special education services in the district for the cost of enrollment in a non-public school when the district did not make a FAPE "available to the student in a timely manner prior to enrollment and . . . the private placement is appropriate." Ibid.; Florence Cnty. Sch. Dist. Four v. Carter by & Through Carter, 510 U.S. 7 (1993). Given my conclusion that the District did not have an obligation to create an IEP or reevaluate petitioners' unenrolled unilaterally placed child under the circumstances here, I further **CONCLUDE** that there was no denial of FAPE.

Even if the District should have convened an IEP meeting once requested in 2022 or 2023 or even followed its own recommendation to reevaluate M.S., to consider that failure a procedural violation of the District's IDEA FAPE obligations to M.S., the District must have deprived M.S. of educational benefits or opportunity or significantly impeded the parents' participation in the IEP process. 20 U.S.C. § 1415(f)(3)(E)(ii); C.H., 606 F.3d at 66−67. When that harm exists, the parents still must meet certain criteria for reimbursement of costs associated with the private placement.

Initially, the private placement must be appropriate. N.J.A.C. 6A:14-2.10(b). However, the private school need not meet the 20 U.S.C. § 1401 definition of a "free appropriate public education" applicable to public schools, meet the standards of the

State educational agency, or be a State-approved school. Florence, 510 U.S. at 13−14. Instead, the private-school placement "need only be reasonably calculated to enable the child to receive educational benefit." Id. at 11; Madison Bd. of Educ. v. S.V. ex rel. C.V., 2020 U.S. Dist. LEXIS 155644, *9–10 (D.N.J 2020). Here, I found that M.S. succeeded at Cambridge, a program focused on addressing her reading disability, even without the District's modifications and accommodations in M.S.'s prior IEPs. Thus, I **CONCLUDE** that a preponderance of the evidence exists to demonstrate that Cambridge was an appropriate placement for M.S.

However, I must also consider the parents' actions and unreasonableness, if any, before making any award for tuition reimbursement or costs associated with Cambridge if the District failed to offer M.S. a required FAPE. N.J.A.C. 6A:14-2.10(c); see also C.H. v. Cape Henlopen Sch. Dist., 606 F.3d 59, 72 (3d Cir. 2010) (holding that parents must give the "public school a good faith opportunity to meet its obligations" under the IDEA).

Indeed, N.J.A.C. 6A:14-2.10(c) allows an ALJ to reduce or deny the cost of reimbursement following a denial of FAPE:

> 1. If, at the most recent IEP meeting that the parents attended prior to the removal of the student from the public school, the parents did not inform the IEP team that they were rejecting the IEP proposed by the district board of education;
>
> 2. If, at least 10 business days (including any holidays that occur on a business day) prior to the removal of the student from the public school, the parents did not give written notice to the district board of education of their concerns or intent to enroll their child in a nonpublic school;
>
> 3. If, prior to the parents' removal of the student from the public school, the district board of education proposed a reevaluation of the student and provided notice pursuant to N.J.A.C. 6A:14-2.3(g) and (h), but the parents did not make the student available for the reevaluation; or
>
> 4. Upon a judicial finding of unreasonableness with respect to actions taken by the parents.

Petitioners provided notice of their intent to enroll M.S. at Cambridge each year, ten business days before signing the Cambridge contract. Arguably, their letters shed little light on their concerns, especially given Judge Tiscornia's decision in the District's

favor. Still, I **CONCLUDE** that sections N.J.A.C. 6A:14-2.10(c)(1), (2), and (3) are not applicable here. Instead, the vagueness of the August notification letters to the District further supports the unreasonableness of the petitioners' actions under N.J.A.C. 6A:14-2.10(c)(4).

Indeed, "a common sense understanding of the basis for the ten-day written-notice requirement is to afford the parties, in the context of a collaborative effort, an opportunity to resolve the issues of the provision of FAPE without the need for a private placement for which the District had no input." K.S. & M.S. ex rel. A.S. v. Summit City Bd. of Educ., EDS 09012-12, Final Decision (Nov. 5, 2012), https://njlaw.rutgers.edu/collections/oal/.

When parents "disregard[] their obligation to cooperate and assist in the formulation of an IEP, . . . courts [have] the authority to equitably reduce or eliminate tuition reimbursement." C.H., 606 F.3d at 72. Here, I found that the parents did not cooperate with the District after unilaterally placing M.S. at Cambridge. They did not provide annual meeting dates, and encumbered the reevaluation process. When the District responded to their ambiguous letters within weeks of the school year's start, petitioners chose not to respond or to dispute their obligation to be collaborative or their refusal to consider in-district programming. Notably, petitioners did not timely supply requested records, even those they agreed to provide, significantly frustrating the District's ability to propose an appropriate program for M.S. Indeed, I **CONCLUDE** that the equities favor the District here under N.J.A.C. 6A:14-2.10(c)(4) and that petitioners acted unreasonably. Florence, 510 U.S. at 11. Thus, I **CONCLUDE** that the parents' petition should be dismissed, and that reimbursement of costs associated with Cambridge for the 2021−22, 2022−23, or 2023−24 school year is unwarranted.

ORDER

Given my findings of fact and conclusions of law, I **ORDER** that the petition is dismissed absent the District's obligations to reevaluate or develop an IEP for M.S., and that reimbursement for Cambridge School is unwarranted.

This decision is final pursuant to 20 U.S.C. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2024) 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 (2024). 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, 2024

DATE

NANCI G. STOKES, ALJ

Date Received at Agency December 4, 2024

Date Mailed to Parties: December 4, 2024

ljb

APPENDIX

Witnesses

For Petitioners:

M.S.
Ms. Lisa Gonzales

For Respondent:

Dr. Lisa Rebimbas

Exhibits

For Petitioners:

P-1 2020−2021 Final Progress Report, EOY WADE, EOY WIST and reading assessment
P-2 2021−2022 Final Progress Report, EOY WADE, and EOY WIST
P-3 2022−2023 Final Progress Report and EOY WADE/WIST (combined)
P-4 2023−2024 Cambridge School Upper School Progress Report
P-5 Not in evidence+
P-6 July and August 2022 Private Learning Evaluation by Dr. Matthews
P-7 Fall 2021 to Spring 2022 Cambridge Tuition Agreement Summary Report
P-8 August 23, 2021, Cambridge School Contract Addendum 2021−2022 academic year
P-9 Fall 2022 to Spring 2023 Cambridge Tuition Agreement Summary Report
P-10 August 12, 2022, Cambridge School Contract Addendum 2022−2023 academic year
P-11 Fall 2023 to Spring 2024 Cambridge Tuition Agreement Summary Report
P-12 August 29, 2023, Cambridge School Contract Addendum 2023−2024 academic year
P-13 Emails from Scotch Plains-Fanwood School District to M.S.'s mother from September 2022 to July 2024
P-14 Not in evidence

P-15 C.V. of Ellen Gonzales, MS, CCC-SLP

For Respondent:

R-1 September 18, 2019, Observation Report by Dr. Rebimbas
R-2 Resume of Dr. Rebimbas
R-3 October 2020 Administrative Law Judge Tiscornia's Opinion
R-4 May 2024 U.S. District Court Judge Neals's Opinion
R-5 New Jersey School Register Guidance

Joint:

J-1 February 2019 to February 2020 M.S.'s Individualized Education Plan
J-2 December 16, 2019, email exchange between the parent and Dr. Cooper re: parents' request for communication to be through the attorneys
J-3 January 24, 2020, letter to Ms. Freemen from Ms. Simon with Re-Evaluation Planning Proposed Action and Consent Form attached to the letter
J-4 February 2020 email exchange between Dr. Cooper and the parents, reevaluation requests
J-5 February 7, 2020, signed Re-Evaluation Consent (attachment from parent's email 2/07/2020 at 2:25 p.m.)
J-6 August 21, 2020, letter to Ms. Simon from Mr. Mondadori
J-7 August 12, 2021, letter to Ms. Simon from Mr. Mondadori
J-8 August 17, 2021, letter to Mr. Mondadori and Ms. Freeman from Ms. Simon
J-9 August 16, 2022, letter to Ms. Simon from Ms. Freeman
J-10 August 22, 2022, letter to Ms. Freeman from Ms. Simon
J-11 August 23, 2022, letter to Ms. Simon from Ms. Freeman
J-12 August 23, 2022, letter to Ms. Freeman from Ms. Simon
J-13 September 5, 2023, letter to the parents from Dr. Rebimbas
J-14 December 14, 2024, letter to Ms. Freeman from Ms. Simon, with the following attachments: Authorization to Release/Obtain Information; Request for Re-Evaluation; and Consent for Re-Evaluation Assessment
J-15 December 20, 2023, email to Ms. Simon from Ms. Freeman with the Consent for Re-Evaluation signed by the parents attached to the email
J-16 December 20, 2023, email to Ms. Freemen from Ms. Simon responding to 12/20/23 email

J-17 January 4, 2024, email to Ms. Simon from Ms. Freeman stating the following items were attached to the email: “2020−2021 Final Progress Report, EOY WADE, EOY WIST & Reading Assessment: 2021−2022 Final Progress Report, EOY WADE & EOY WIST; 2022−2023 Final Progress Report & EOY WADE/WISK (combined); and 2023−2024 First Marking Period.”

J-18 January 4, 2024, email to Ms. Simon from Ms. Freeman stating the following items were attached to the email: “two (2) private evaluations from 2022 that were administered to assess M.S.’s need for accommodations on the SAT, ACT, etc.”

J-19 January 9, 2024, letter to Ms. Simon from Ms. Freeman

J-20 September 12, 2022, email with M.S.’s 2022−23 schedule and progress report

Tribunal

C-1 M.S.’s mother’s certification dated July 25, 2024