



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. EDS 13866-19

AGENCY DKT. NO. 2020-30604

B.C. AND K.C. ON BEHALF OF K.C.,¹

Petitioners,

v.

**MORRIS SCHOOL DISTRICT BOARD
OF EDUCATION,**

Respondent.

Andrew DeLaney, Esq., for petitioner B.C.

Katherine A. Gilfillan, Esq., for respondent (Schenck, Price, Smith & King,
attorneys)

Record Closed: May 15, 2025

Decided: May 28, 2025

BEFORE **MARGARET M. MONACO**, ALJ:

STATEMENT OF THE CASE

This matter arises under the Individuals with Disabilities Education Act, 20 U.S.C. § 1400, et seq., and the implementing federal and State regulations. B.C., the father of

¹ On February 9, 2024, K.C. and K.C. withdrew their claims in this matter.

student K.C., asserts that the Morris School District Board of Education (the District) failed to provide K.C. with a free appropriate public education (FAPE) and seeks reimbursement of tuition and costs related to K.C.'s unilateral placement at the Craig School.

PROCEDURAL HISTORY

This matter, which was originally commenced by K.C.'s parents, has a protracted procedural history.² On August 30, 2019, B.C. and K.C. on behalf of K.C. filed a due process petition seeking reimbursement of tuition and costs related to K.C.'s unilateral placement at the Craig School during the 2017–2018, 2018–2019, and 2019–2020 school years. On or about October 15, 2019, the District filed its Answer to the due process petition, and the matter was transferred to the Office of Administrative Law (OAL) 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 -18.4.

A prehearing conference was held on October 29, 2019, during which the hearing was scheduled for April 14, 17, and 22, 2020. The hearing was adjourned at the parties' joint request, and later hearing dates scheduled for June 17, June 19, July 15, September 1, and September 2, 2020, were also adjourned at the parties' request or at the parents' request with the District's consent. The hearing commenced on November 20, 2020, and continued on December 15 and 18, 2020, and March 3 and 5, 2021.³ The District completed its case in chief on December 15, 2020.

The hearing scheduled for April 20, 23, and 30, 2021, and later rescheduled for July 6, 9, and 13, 2021, was adjourned at the parents' request. The hearing was rescheduled for September 20, October 1, and October 4, 2021, but was adjourned at the parties' joint request due to ongoing settlement discussions. The hearing was rescheduled for December 2, 2021, which was also adjourned at the parties' joint request due to ongoing settlement discussions and the unavailability of the parents' expert

² The parents separated in May 2013 and were divorced in July 2019.

³ On December 7, 2020, I issued an Order addressing discovery matters.

witness. The hearing scheduled for March 30, and April 1, 2022, and later rescheduled for June 28, 29, and 30, 2022, was adjourned at the parties' joint request and rescheduled for November 21, 28, and 29, 2022.

On October 14, 2022, the parents' former attorney, David Giles, Esq., filed a motion for leave to withdraw as counsel, which the District opposed. By letter dated November 7, 2022, Anthony Arturi, Esq., entered his appearance on behalf of B.C. and requested that the matter be carried for two weeks "to see if B.C. and K.C. can come to an agreement that might resolve the conflict issue that Mr. Giles has raised." On November 9, 2022, I granted the extension of time and directed that any opposition by either B.C. or K.C. must be filed by November 23, 2022. On November 23, 2022, counsel for B.C. filed a brief joining the District's objection to Mr. Giles's motion, after which Mr. Giles submitted a reply to the opposition. In view of the pending motion, I granted the parties' request to adjourn the hearing scheduled for November 21 and 28, 2022, and the November 29, 2022 hearing date was converted to oral argument on the motion. On November 29, 2022, at the request of B.C.'s attorney and Mr. Giles, and without objection by the District, oral argument was adjourned to afford B.C. time to file an order to show cause in the Superior Court, Family Division, to resolve the parents' disagreement regarding how to proceed in this matter. The pending motion was held in abeyance, and the hearing was rescheduled for March 17, 27, and 29, 2023.

On January 10, February 6, and March 28, 2023, telephone conferences were held with Mr. Giles, Ms. Gilfillan, and Mr. Arturi, during which the March 17, 27, and 29, 2023 hearing was adjourned at the parties' request due to pending mediation in the family court. The hearing was rescheduled for April 18, April 28, and May 2, 2023. On April 6, 2023, a telephone conference was held with Mr. Giles, Ms. Gilfillan, Mr. Arturi, and K.C.'s family law attorney, Janet Porro, Esq., during which the April 18, April 28, and May 2, 2023 hearing was adjourned at the parties' request due to pending matters involving the family court. The hearing was rescheduled for August 30, August 31, and September 15, 2023, and a telephone status conference was scheduled for June 6, 2023. Although Mr. Giles, Ms. Gilfillan, and Ms. Porro called in for the June 6, 2023 telephone conference, Mr. Arturi did not appear. On June 6, 2023, Mr. Arturi, along with Mr. Giles and Ms. Gilfillan, were informed by e-mail that the telephone conference was rescheduled for June 9, 2023, due

to Mr. Arturi's non-appearance. Although Ms. Gilfillan and Ms. Porro called in for the June 9, 2023, telephone conference, Mr. Arturi and Mr. Giles did not appear. On June 9, 2023, Mr. Giles sent an e-mail explaining the reason for his non-appearance. No correspondence was received regarding Mr. Arturi's failure to appear on June 6 and 9, 2023.

On June 14, 2023, I issued an Order, which was sent to Mr. Arturi and K.C., along with Mr. Giles and Ms. Gilfillan. That Order directed that the telephone conference was rescheduled to June 19, 2023, at 2:00 p.m.; participation in the telephone conference was mandatory; Ms. Porro was permitted to participate in the conference at the option of K.C. and in addition to or in lieu of K.C.; Mr. Arturi must notify the undersigned and the parties prior to the telephone conference if there had been a change in B.C.'s representation; and that notification must include confirmation from B.C. of the change in representation, and confirmation that notice of the telephone conference had been provided to B.C. and/or the new representative. On June 19, 2023, Mr. Giles and Ms. Gilfillan called in for the telephone conference. There was no appearance by Mr. Arturi or B.C., and no appearance by K.C. or a representative on her behalf. No correspondence was received regarding their failure to appear. On July 17, 2023, I issued an Order granting Mr. Giles's motion for leave to withdraw as counsel for the parents. The Order further directed that the hearing was scheduled for August 30, August 31, and September 15, 2023, via Zoom, and petitioners' appearance at the hearing was required to avoid dismissal of the due process petition.

By letter dated August 7, 2023, Mr. Arturi advised that he only entered an appearance on behalf of B.C. to oppose prior counsel's motion, and he informed B.C. that the parents will need to retain new counsel to complete the hearing. The letter further articulated Mr. Arturi's understanding that the parents' expert was not available for the upcoming hearing dates. By letter dated August 14, 2023, I informed the parents and counsel for the District that the service list would be adjusted to reflect that K.C. and B.C. were proceeding pro se and that, in view of Mr. Arturi's letter, the August 30 and 31, 2023 hearing dates would be adjourned at the parents' request but the September 15, 2023 hearing would remain as scheduled. By letter dated September 14, 2023, Andrew DeLaney, Esq., entered "a limited appearance . . . strictly for settlement or status

purposes.” On September 15, 2023, a Zoom proceeding was held with K.C., B.C., Ms. Gilfillan, Mr. DeLaney, and K.C.’s family law attorney. The hearing scheduled for that date was adjourned at the parties’ request and rescheduled on a peremptory basis for an in-person hearing on November 20, 21, and 22, 2023.

By letter dated September 20, 2023, Paul Carvelli, Esq., entered his appearance on behalf of B.C. and advised that he was not available on the scheduled hearing dates. I adjourned the hearing at B.C.’s request, and the hearing was rescheduled on a peremptory basis for December 13 and December 20, 2023, and January 26, 2024. On November 8, 2023, Sarah Zuba, Esq., entered her appearance on behalf of K.C. On November 10, 2023, Mr. DeLaney filed a substitution of attorney regarding his representation of B.C. The hearing continued on December 13 and 20, 2024.

In January 2024, student K.C. attained eighteen years of age. The hearing scheduled for January 26, 2024, was adjourned at the request of student K.C., who requested additional time to obtain counsel regarding her rights. By letter dated February 9, 2024, Ms. Zuba advised that both K.C. and student K.C. were withdrawing all claims in this matter. K.C.’s father, B.C., did not withdraw his claims, and the hearing continued on March 19, 2024.

During a telephone conference on March 14, 2024, Mr. DeLaney advised that B.C. may call another expert witness. On April 24, 2024, I issued an Order granting the District’s motion to exclude and bar the proposed expert’s testimony and report based on the five-day disclosure rule.

On or about April 5, 2024, B.C. issued a subpoena to Dr. Jill Brooks, who had testified on behalf of the parents over the course of several days before student K.C. turned eighteen years of age. Dr. Brooks filed a motion to quash the subpoena, which I granted on July 29, 2024.

The hearing dates scheduled for February 15, April 24, May 10, and June 3, 2024, were adjourned at B.C.’s request, and the March 21 and August 21, 2024 hearing dates were adjourned at the District’s request. The hearing continued on August 13, August

19, August 22, and October 8, 2024. The hearing scheduled for January 29, 2025, was adjourned at the parties' joint request and rescheduled to May 1, 2025. The May 1, 2025, hearing was adjourned at B.C.'s request and rescheduled to May 15, 2025. Subsequently, the parties submitted post-hearing submissions in support of their respective positions, and oral summations were entertained on May 15, 2025, on which date the record closed.

FACTUAL DISCUSSION

Based upon a review of the testimony and the documentary evidence presented, and having had the opportunity to observe the demeanor of the witnesses and assess their credibility, I **FIND** the following **FACTS** and accept as **FACT** the testimony set forth below:

At the time the Petition was filed, student K.C. was thirteen years of age and a rising eighth-grade student. K.C. attended school in the District continuously from February 2009 through the end of the 2016–2017 school year. (J-35 at ¶ 2.) During the 2016–2017 school year, K.C. was enrolled in the fifth grade and attended Normandy Park School (NPS). (*Id.* at ¶ 3.) The parents unilaterally placed K.C. at the Craig School (Craig) after the conclusion of her fifth-grade year. (*Id.* at ¶ 4.) K.C. attended Craig for sixth, seventh, and eighth grade.

2013–2014 School Year (Second Grade)

In or around October 2013, the parents provided the District with a summary of a report from a privately retained neuropsychologist, Dr. Jill Brooks (Brooks), which included the results of psychological and educational assessments. (J-35 at ¶ 5; J-3.) Brooks had evaluated K.C. in September 2013. (J-3.) On October 29, 2013, the parent referred K.C. to the Child Study Team (CST) for evaluation to determine her eligibility for special education and related services. (J-35 at ¶ 5; J-4.)

On November 14, 2013, the CST held an evaluation determination meeting, which the parents attended. (J-5.) The CST accepted the cognitive portion of Brooks's report

and “took into consideration the educational component” of her assessment. (*Ibid.*) The initial evaluation plan for K.C. also included an occupational therapy (OT) evaluation, a social assessment, and input from K.C.’s psychiatrist to be provided by the parents. (J-5; J-35 at ¶ 6.)

The District conducted an OT evaluation on January 9, 2014, which revealed that K.C. demonstrated delays in the areas of fine motor, gross motor, and visual motor development that would impact her ability to complete classroom activities in an age-appropriate manner. (J-6.) The District conducted a social assessment on January 24, 2014, during which the parent reported that K.C. expressed anxiety regarding school and the parents’ separation and divorce. (J-7.) The District also received a letter from Dr. Michael Giuliano dated January 23, 2014, which provided a diagnosis of attention deficit/hyperactivity disorder, predominantly inattentive type (ADHD), and recommended a 504 Plan. (J-8.)

On February 6, 2014, an eligibility conference was held. The participants at the meeting included case manager/school psychologist Janis Golob; special education teacher Christopher Miller; a general education teacher; learning disabilities teacher consultant (LDTC) Socorro Santana; the OT therapist and social worker who conducted the assessments; the principal; and the parents. (J-9.) K.C. was found eligible for special education and related services under the category of “other health impairment” (OHI) based on her diagnosis of ADHD. (J-9; see J-35 at ¶ 7.) On February 6, 2014, the District also held an IEP meeting. (J-10.) The February 6, 2014 IEP, which started February 7, 2014, and ended February 5, 2015, provided for K.C.’s placement in a pull-out resource room for mathematics and group OT for thirty minutes every six-day cycle. It further provided consultation for English language arts (ELA) support in the general education classroom, access to school-based counseling on an as-needed basis, and various modifications in the general and special education settings. (J-10; see J-35 at ¶ 8.) The parents signed the IEP.

Christopher Miller (Miller) was K.C.’s special education teacher in the resource room for math. He explained that it was a replacement class that targeted grade-level and common-core standards. Miller testified that he saw “a lot of growth and a decrease

in anxiety” after K.C. moved from the bigger class to the replacement class, and “[w]ith accommodations there was growth of mathematical concepts.” He stated that math fact fluency was “not an area of growth.” Miller described that they worked on math fact fluency and continued to use accommodations like a calculator or number grid, along with visual strategies, such as “touchpoints.”

2014–2015 School Year (Third Grade)

In November 2014, the District recommended that a physical therapy (PT) evaluation be conducted, which was completed on or about December 12, 2014. (J-35 at ¶ 9; see J-11.) On February 5, 2015, the District held an IEP meeting. (J-12.) The participants at the meeting included case manager/school psychologist Golob; special education teacher Miller; a general education teacher; OT and PT therapists; LDTC Santana; the principal; and the parents. The February 5, 2015 IEP, which started February 6, 2015, and ended February 4, 2016, continued K.C.’s placement in the resource room for math and group OT for thirty minutes every six-day cycle. The IEP also provided for group PT for thirty minutes every six-day cycle. (J-12; see J-35 at ¶ 10.) The parents signed the IEP.

K.C.’s June 2015 report card for third grade includes a rating system: “I” for “Independently uses skill,” “P” for “Progressing and developing,” and “E” for “Experiencing difficulty.” (R-2.) Regarding her reading skills, K.C. received five Is and sixteen Ps. Regarding her writing skills, K.C. received six Is and nine Ps. In math, which Miller rated, K.C. received fourteen Is and eleven Ps regarding her number sense and numerical operations skills; two Is and two Ps regarding her mathematical processes and problem-solving skills; four Is regarding her data analysis, probability, and discrete math skills; and nine Is and seven Ps regarding her geometry and measurement skills. K.C. received three Is and two Ps regarding her listening/speaking skills; nine Is and three Ps regarding her social and emotional development skills; seven Is and one P regarding her work-study habits skills; all Ps in her science skills; three Is and three Ps regarding her PE/health skills; four Is and one P regarding her art skills; two Is and three Ps regarding her vocal music skills; and four Is and five Ps regarding her media literacy skills. No category was rated as “[e]xperiencing difficulty.” The report card included a letter from K.C. to her

parents which states, in part, that “the area I have grown the most in is reading,” and “I have gotten better at math.” Her goal for the following year was to learn more about science and math, and she expressed, “I can’t wait till next year!”

K.C.’s IEP Progress Report for the fourth grading period contains a rating system, including, among others, “LP” for “Limited Progress,” “P” for “Progressing,” and “M” for “Mastered.” (R-3.) K.C. received two Ms and five Ps regarding her OT goal/objectives, and two Ms and three Ps as to her PT goal/objectives. In her ELA Writing goal/objectives, she received two Ms and one P. K.C. received one M and three Ps in the mathematics objectives regarding her number sense and calculation goal; three Ps in the mathematics objectives regarding her geometry-related goal; and two Ms and one P in the mathematics objectives regarding her selecting and using tools of measurement goal. No category was rated as “[l]imited [p]rogress.” The Progress Report notes that K.C. “has mastered many mathematical concepts,” and “she has improved her confidence to take on new and challenging tasks that in the past would have caused much anxiety.” It further documents that K.C. scored 5/72 during the beginning-of-the-year math assessment and 42/74 during the end-of-the-year assessment.

2015–2016 School Year (Fourth Grade)

On January 28, 2016, the District held an IEP meeting. (J-13.) The participants at the meeting included school psychologist/case manager Golob; special education teacher Miller; general education teacher Sarah Mahony; K.C.’s PT and OT therapists; the principal; and the parents. The January 28, 2016 IEP, which started January 28, 2016, and ended January 27, 2017, provided for pull-out resource replacement for math, group OT for thirty minutes every six-day cycle, and group PT for thirty minutes every six-day cycle. The IEP also provided for in-class resource (support) for ELA, and individual counseling for fifteen minutes every six-day cycle. (J-13; see J-35 at ¶11.)

The Present Levels of Academic and Functional Performance (PLAFP) by general education teacher Mahony states:

[K.C.] . . . is working more independently, although there is still a need for refocusing and small groups throughout the

day. [K.C.] began the year reading on a [Developmental Reading Assessment (DRA)] level 38 and recently moved to a DRA level 40. She has terrific fluency at this level and we are working to expose her to a variety of other genres, especially nonfiction, through guided reading and strategy groups. Her comprehension at this level is our main focus with a lens on summarizing and reflection. [K.C.] is encouraged to continue working more with her technology programs, especially with the i-Ready program to help her reach her individual goals.

The PLAFP for reading states:

[K.C.] began the year reading at a DRA level 38 (i.e., approximate end of 3rd grade level) and recently moved to a DRA level 40 (i.e., approximate end of 4th grade level). According to i-Ready assessment data, [K.C.] is reading at a late 4th grade level for non-fiction texts and a 7th grade level for literature. She scored at a late 4th grade level for vocabulary. [K.C.] can write a narrative story that includes a beginning, middle, and end. She utilizes dialogue and descriptive language in her writing. When completing an expository essay, [K.C.] does not independently research and gather information. In addition, as evidenced by teacher observation and writing draft samples, she does not incorporate information into her writing without extensive prompting.

The PLAFP for mathematics by special education teacher Miller states:

[K.C.] solves multi-digit addition and subtraction problems with and without regrouping using a Touch Math number line. She relies less on manipulatives and number lines than in previous years; however, utilizes the Touch Math number line for solely challenging facts. [K.C.] has mastered her x0, x1, and x3 facts. She can use her double facts to solve her x2 facts. As evidenced by assessment data, [K.C.] can multiply multi-digit numbers by 1 digit with assistance and the use of a multiplication grid. In the beginning of the year, [K.C.] was not able to read and write numbers to the millions. Now, as evidenced by assessment data, [K.C.] can read and write numbers to the millions. [K.C.] can identify time to the nearest hour (with guidance). [K.C.] does not consistently tell time to the nearest minute and/or solve elapsed time problems. [K.C.] can create a graph to represent data. As evidenced by assessment data, [K.C.] does not interpret data (i.e., answer questions “how many more ___ are there than; how many

total were surveyed; etc.). [K.C.] uses a multiplication table to solve multiplication facts. She does not independently use a multiplication table to solve basic division facts.

Miller testified that K.C. was then utilizing different strategies, primarily ones that could be done without manipulatives or number lines, and “focusing on transitioning to things that she could create on her own, that she could either draw or have on the numbers with the [t]ouch[p]oints,” which are part of the “touch math program.” Those “tools were put in place . . . because [they] were developing fluency.”

The PLAFP for OT states in part:

[K.C.] has also been working on her throwing and catching skills. She is consistently throwing accurately at a target or peer that is four feet away. She does continue to require verbal cues to maintain her visual focus on the ball as it approaches her face. Interestingly some days [K.C.] does not flinch as [the] ball approaches her and on other days she reverts to being fearful of the ball.

The PLAFP for PT states in part:

[K.C.] has demonstrated improvements in her coordination for more complex motor skills such as skipping and jumping jacks. She is also developing improved confidence when catching a ball When [K.C.] was observed in PE class, she was noted to participate in the group games, but she did have some difficulties during the warm ups Although [K.C.] has made great gains in catching a ball, she is still very cautious with balls coming at her. For example, she was able to successfully catch a 9” or 2” ball up to 100% of the time in recent sessions that was tossed or bounced to her. When the PT altered the throwing pattern to reflect a windmill softball pitch style, but without increasing force or speed significantly, [K.C.] immediately brought her hands toward her face as she was not experienced with this style. She is still encouraged to keep her palms facing up rather than hit the ball down in a protective manner. She is encouraged to rest her elbow near her hips, but without squeezing her arms against her trunk for stability. She is also encouraged to slightly bend her fingers when preparing to catch a ball.

The “Concerns of the Parent” section states:

[K.C.’s mother] stated [that] . . . “[K.C.] is a very bright, articulate and sensitive child who works very hard as a 4th grader at [NPS], despite her multiple learning difficulties in writing and math, and challenges with fine motor and gross motor function. I would love to see her less anxiety-filled with regard to participating in gym and in fulfilling her day to day academic responsibilities. If she is riddled with anxiety and low self-esteem, the likelihood of her learning is severely reduced.”

[B.C.] stated [that] . . . “[K.C.] has expressed concerns about gym. She doesn’t like to be difficult or doing something unpopular. She is responsible and competitive. Gym is a real concern for me and I don’t think that visual therapy is going to start that fast. Her anxiety about gym is impacting her self-esteem which increases her anxiety even more. She is very self protective.” [B.C.] also expressed concern about [K.C.] going to the District’s middle school in a few years and wondered about how she would do in such a large environment.

The IEP also documents that, “[a]t times, [K.C.’s] anxiety impacts her school performance,” and “[w]hen she is feeling comfortable and less anxious, she more readily participates in classroom discussions and activities and is better able to complete tasks.”

The IEP includes goals/objectives for writing, mathematics, social/emotional/behavioral, OT, and PT. It includes the following modifications in the general and special education classrooms:

Break tasks and assignments down into manageable parts and help [K.C.] organize and prioritize assignments when necessary

Provide break if [K.C.] appears to be overwhelmed

Provide feedback to Student

Writing on a slant board, vertical surface or while on her stomach when appropriate

Reduce auditory and visual distractions

Provide study guides when possible and appropriate

Provide graphic organizers, models, manipulatives, pictures/charts, personalized examples, and a calculator when needed and appropriate

Check for understanding and repeat, review, clarify or reword directions, instructions and information when necessary

Repeat directions quietly, have the student repeat and explain directions

Opportunities for kinesthetic learning

Preferential seating if appropriate

Miller described that he had input in creating the goals and objectives based on K.C.'s present levels of achievement. He agreed with the recommendation to continue pull-out resource room for math based on K.C.'s "present levels and . . . what the data was showing through assessments, teacher observations, and the progression she was making with accommodations and . . . anxiety." The parents signed the IEP.

Miller was also K.C.'s in-class support teacher for ELA. Miller would collaborate with Mahony, and they would co-teach the class. They would review the needs of the students and create guided reading groups. Miller collaborated with Mahony regarding lesson planning, assessments, and class configuration concerning how the reading-writing workshop model looked for the classified and non-classified students. Miller collaborated with Mahony to complete K.C.'s report cards. He described that they would utilize multiple measures regarding the grades, including formal and informal data from test assessments, i-Ready diagnostic scores, observational notes from guided reading and different sessions, and writing samples.

On the State Grade 4 English Language Arts/Literacy Assessment (ELA assessment), K.C. scored 782 and at Performance Level 4, which corresponds to "Met Expectations." (J-37.) On the State Mathematic Assessment (math assessment), K.C. scored 726 and at Performance Level 3, which corresponds to "Approached Expectations." (Ibid.)

In K.C.'s June 2016 report card for fourth grade, she received eight Is and nineteen Ps in her math number sense and numerical operation skills; all Ps in her mathematical processes and problem solving, patterns and algebra, and data analysis, probability, and discrete math skills; and six Is and thirteen Ps in her geometry and measurement skills. K.C. received eighteen Is and one P in her reading skills, and nineteen Is and two Ps in her writing skills. She received four Is and one P in her listening/speaking skills; eight Is and four Ps in her social and emotional development skills; six Is and two Ps in her work study habits skills; all Ps in science; two Is and four Ps in her PE/health skills; all Is in art; one I and four Ps in her vocal music skills; and four Is and five Ps in her media literacy skills. (R-7.) No category was rated as "[e]xperiencing difficulty."

In her IEP Progress Report for the June marking period, K.C. was rated as progressing satisfactorily in all of her writing goals/objectives. In math, she was rated as either achieved or progressing satisfactorily in four goals and their related objectives, and progressing gradually in the four objectives related to the goal of using decimal notation for fractions and comparing decimals to the equivalent fraction. K.C. was rated as either achieved or progressing satisfactory in her OT goals/objectives and rated as progressing satisfactorily in her PT goal/objectives, including the objectives related to catching a ball. (R-8.)

2016–2017 School Year (Fifth Grade)

During fifth grade, Miller continued to be K.C.'s math resource room teacher. He believed that there were six students in the class. He also continued to be K.C.'s in-class support teacher in Mahony's class.

The i-Ready is an assessment tool that the District uses. It is a computerized program in which the students complete informal assessments, and the program creates an individualized instructional path based on the student's levels of performance on the assessment, which the students are encouraged to do and assigned certain minutes to do. K.C. scored on or above level on the September 19, 2016 i-Ready reading test (R-43), and one level below on the September 20, 2016 i-Ready math test. (P-47.)

K.C.'s triennial evaluation due date was February 26, 2017. (J-35 at ¶ 12.) On November 17, 2016, an evaluation planning meeting was held. (See J-35 at ¶ 12; J-14; R-9.) The participants at the meeting included general education teacher Mahony; special education teacher Miller; LDTC Santana; case manager/school psychologist Golob; a PT therapist; and the parents. The reevaluation planning document reflects that K.C. "was reading at an independent DRA level 40 and her [i-Ready] scores indicate on grade level performance in language arts and one year below grade level in math." (J-14.) K.C.'s mother testified that she believed the teachers spoke about K.C.'s performance at the meeting, and they reported that "K.C. was performing well." The team determined that "additional assessment information [was] required to determine if [K.C.] continue[d] to have a disability which adversely affects [her] educational performance." (J-14; see J-35 at ¶ 13.) The parents indicated that they would have K.C. privately re-evaluated by professionals outside of school in the areas of cognition and educational/academic achievement (Dr. Brooks), and it was agreed that the District would conduct OT and PT assessments. (See J-35 at ¶ 14; J-14.)

On December 7, 2016, case manager Golob sent an e-mail to the parents "checking in . . . to see if [the parents] were able to schedule the assessments with Dr. Brooks," and requesting that the parents advise "when it is schedule[d]" and "forward an update from the psychiatrist about any diagnosis that may pertain to [K.C.] when it is available." (R-9.)

On December 19, 2016, the District conducted an OT evaluation. (J-35 at ¶ 14; see J-15.) According to the OT evaluation report, K.C. was "currently participating in the highest language arts group within her [general education] classroom, and easily completing her written tasks," and she demonstrated "minimal deficits" in the areas of fine motor and visual motor/visual perceptual development. (J-15.)

On January 3, 2017, the District conducted a PT evaluation. (J-35 at ¶ 14; see J-16.) According to the PT evaluation report, K.C.'s "gross motor skills have improved significantly over the past several years"; K.C.'s PT "sessions were a combined pull out and push into PE model"; K.C. "has had a much better experience in physical education class this year"; and K.C. reported that "she feels comfortable negotiating the classroom,

cafe, art room and bus.” (J-16.)

On January 3, 2017, the District sent notice to the parents that K.C.’s re-evaluation eligibility meeting was scheduled for January 12, 2017. (J-17.) On January 5, 2017, the District agreed to postpone the meeting at the parents’ request in order to permit time for Brooks to conduct her evaluation of K.C. (J-35 at ¶ 16; see J-17.) On January 5, 2017, case manager Golob sent an e-mail to the parents, which states in part:

As you requested, we will postpone [K.C.’s] re-evaluation eligibility and IEP meeting until she is evaluated privately outside of school by the neuropsychologist who you had evaluate her three years ago. Based on the evaluation plan that you consented to in November 2016, the occupational and physical therapy assessments have been completed by . . . District therapists. Once you provide us with the results from the neuropsychological assessment and any pertinent updated medical information, the IEP Team, including both of you, will convene to review the results and discuss if [K.C.] continues to be eligible for special education and related services. If she meets the criteria for eligibility, we will discuss and develop an IEP for the remainder of her time at [NPS] as well as the beginning of her education at Frelinghuysen [Middle School (FMS)] with input from a representative from the middle school. In the meantime, she will continue with her current educational plan.

Please forward any results and information as soon as it is available. If you have any questions, please give me a call . . . or email me

[J-17.]

K.C.’s mother testified that at this point the parents did not have an appointment scheduled with Brooks for K.C.’s evaluation. Although K.C.’s January 28, 2016 IEP had an end date of January 27, 2017, the District continued to provide K.C. with the services outlined in the IEP through the end of the 2016–2017 school year.

In or around March 2017, the District offered to conduct the psychological and educational evaluations in lieu of Brooks as that evaluation had not yet been completed. (J-35 at ¶ 17; see J-18.) K.C.’s mother agreed that the District offered to conduct those evaluations, and the parents declined the District’s offer. She explained that Brooks had

conducted a full neuropsychological evaluation in the past, and the parents wanted to have “sort of an apple-to-apples comparison of where she was three years prior and then three years later.”

On March 30, 2017, case manager Golob sent an e-mail to K.C.’s mother, which states in part:

I just wanted to follow up with you about [K.C.’s] re-evaluation. You mentioned that [K.C.] was not going to be evaluated by Dr. Jill Brooks but that you were going to speak with [K.C.’s father] about whether or not another professional would do an evaluation outside of school or you would request for us to do school based cognitive and education evaluations during school hours.

What are your thoughts? Please let me know so we can plan accordingly.

[J-18.]

K.C.’s mother testified, “At that point the sticking point was that K.C.’s dad did not want [K.C.] to be evaluated for ADHD,” and Brooks would not agree to do the assessment without doing the full battery of tests that she typically does.

On April 6, 2017, case manager Golob sent an e-mail to K.C.’s mother inquiring, “Any thoughts about the re-evaluation process for [K.C.]?” (J-18.)

In or around April 7, 2017, K.C.’s mother requested that the District again extend the time for K.C.’s re-evaluation eligibility/IEP meeting, as the private testing had not been completed, and the parents had not received feedback from a local psychiatrist relative to his assessment of K.C. (J-35 at ¶ 18; see J-19.) On April 7, 2017, K.C.’s mother sent an e-mail to case manager Golob, which advised:

After all this, [K.C.’s father] has agreed to have [K.C.] re-evaluated for ADD by a local psychiatrist whom he has approved of verbally. The doctor is Dr. Brian Fennelly. This seems like it will be the most expedient solution towards renewing her IEP.

So I have that scheduled for April 17. Hope we can continue to have our extension from the school district until then. Please advise if I need to write another letter requesting our extension be “extended” again.

[J-19.]

On April 17, 2017, case manager Golob sent an e-mail to K.C.’s mother, which states in part:

How did things go at the doctor’s appointment today? Did Dr. Fennelly give you any feedback? Are you and [K.C.’s father] still having educational and cognitive assessments or a neuropsychological assessment completed with [K.C.] outside of school?

Thanks for the information and please let me know about the feedback as well as the assessments.

[J-19; see J-35 at ¶ 19.]

K.C.’s mother replied later that day and advised:

I met with Dr. Bryan Fennelly today to give him my input about [K.C.’s] educational difficulties, as a parent, which [K.C.’s father] decided to opt out of [K.C.] will be meeting with Dr. Fennelly tomorrow I will get his feedback (and diagnosis) immediately afterward. So, I will let you know as soon as I know. I am trying to get this done as expediently as I can.

At the moment, we don’t have a plan to do the educational testing outside and I am hoping that we can proceed with updating her IEP based on a presumed (continued) diagnosis of ADD by Dr. Fennelly.

[J-19; see J-35 at ¶ 19.]

On April 21, 2017, case manager Golob followed up a verbal conversation that she had with K.C.’s mother on April 19, 2017. (J-35 at ¶ 20; see J-19.) Specifically, on April 21, 2017, case manager Golob sent an e-mail to K.C.’s mother, which states in part:

I’m glad we bumped into each other at [NPS] and had a chance to speak Wednesday morning. I understand that you

have not received any feedback yet from Dr. Fennelly and that you will let me know as soon as you get that. You also mentioned that you were going to contact one of the two neuropsychologists that you and [K.C.'s father] are considering to complete a full assessment with [K.C.]. Have you been able to schedule that yet? If so, when will that be completed? We will be better able to plan once we have everything.

[J-19; see J-35 at ¶ 20.]

K.C.'s mother testified that an evaluation took place with Dr. Fennelly, the parents never received a report from him, and the parents never provided any information to the District regarding an ADHD diagnosis. She further indicated that, as of Golob's April 21, 2017 e-mail, the parents did not have an appointment scheduled with Brooks, and she was then considering other neuropsychologists.

On May 1, 2017, case manager Golob sent an e-mail to K.C.'s mother, which states in part:

I'm checking in with you about the status of information from Dr. Fennelly and also checking to see if K.C. was evaluated by the neuropsychologist yet?

Please let me know as soon as possibl[e] so we can plan accordingly.

[J-19; see J-35 at ¶ 21.]

On May 17, 2017, K.C.'s mother sent an e-mail to case manager Golob, which states:

As promised, I told you I would be following up with you . . . about proceeding with educational/neuropsychological testing for [K.C.].

Because [K.C.] is transitioning to middle school and three years have passed since [K.C.] was last evaluated by Dr. Jill Brooks, my husband and I decided to go ahead and do comprehensive testing through an outside neuropsychologist once again.

Right now, [K.C.] is scheduled to be tested at the earliest possible date with Dr. Jill Brooks at the end of May/beginning of June.

.....

Dr. Brooks' report on [K.C.] will not be available until late July or August, unfortunately.

I realize that this is less than ideal from the standpoint of getting her IEP together for the 2017/2018 school year and for this I apologize.

If there is any other information that you need, please don't hesitate to let me know.

[J-20; see J-35 at ¶ 22.]

On June 12, 2017, case manager Golob and LDTC Santana sent a letter to the parents, which advised:

As you are aware, we are still in the process of determining your child's continued eligibility for special education and related-services. This re-determination of eligibility process began in November 2016. Since then, we have made every effort to honor your multiple requests to delay our eligibility determination (and, with it, the potential development of an IEP) in order to accommodate your desire to obtain evaluation reports from your private evaluator(s). We continue to oblige your postponement requests. However, we must make clear that in the interim we are unable [to] re-affirm [K.C.'s] eligibility for special education and related-services or proceed with the development of a program, assuming that [K.C.] is ultimately found eligible for same. We trust, therefore, that you will make every effort to ensure that we are soon provided with the evaluation reports and updated medical information that will permit us to move forward in this process.

Please let me know if you wish to discuss this further. If you have any questions, please contact us. As parents of a student with a disability, you have protections under the procedural safeguards of Chapter 14. A copy of these safeguards has been enclosed here.

[J-21; see J-35 at ¶ 23.]

The District received no response to this correspondence.

K.C.'s IEP Progress Report as of January 2017 indicates that she had achieved or was progressing satisfactorily in her writing goals/objectives. In math, she was rated as either achieved or progressing satisfactory in her goals/objectives except two objectives related to the goal of using decimal notation for fractions and comparing decimals to the equivalent fraction, in which she was rated as progressing gradually. She achieved all of her social/emotional/behavioral goal/objectives, including objectives related to anxiety. K.C. was rated as either achieved or progressing satisfactorily in her OT and PT goals/objectives, including objectives relating to catching a ball. (R-12.)

On the i-Ready math testing, K.C. scored less than one level below (Level 4) on the January 17, 2017 test, and more than one level below (Level 3) on the May 18, 2017 test. (P-47.) On the May 18, 2017 math testing, she scored at Level 4 in number and operations and in algebra and algebraic thinking, and she scored at Level 3 in measurement and data and geometry. On the i-Ready reading testing, K.C. scored on or above level on the January 19, 2017, and May 18, 2017 tests. (R-43.)

On the State Grade 5 Spring 2017 ELA assessment, K.C. scored 750 and at Performance Level 4 (750 to 799), which corresponds to "Met Expectations." (R-14.) She approached expectations in literacy text; she did not yet meet or partially met expectations in informational text; and she met or exceeded expectations in vocabulary, writing expression, and knowledge and use of language conventions. On the math assessment, K.C. scored 722 and at Performance Level 2 (700 to 724), which corresponds to "Partially Met Expectations." (*ibid.*) She approached expectations in modeling and application, and she did not meet or partially met expectations in major content, additional and supporting content, and expressing mathematical reasoning.

In her June 2017 Grade 5 report card, K.C. received a rating of 3 (the student meets grade-level benchmark standards) in all areas of reading except one, where she received a 4 (the student independently and consistently exceeds grade-level benchmark standards). (R-13.) In math, she received three 3s, fourteen 2s (the student demonstrates progress toward meeting grade-level benchmark standards), and five 1s

(the student demonstrates limited progress toward meeting grade-level benchmark standards). K.C. received all 3s in social studies and all 4s in art. She received three 2s and one 3 in science; two 2s and two 3s in music; and three 2s and one 3 in library/media. K.C. received all 4s in PE. Regarding behaviors that support lifelong learning skills, she received four outstanding, nine satisfactory, three progressing, and zero needs improvement. The “Teacher Comments” in June state:

Over the year, [K.C.] has improved her math fact fluency. Currently, she is 62% fluent across multiplication and division facts. [K.C.] will benefit from practicing her math facts over the summer using flash cards and computer based math games. With the use of a graphic organizer, [K.C.] is able to make equivalent fractions and add/subtract fractions and mixed numbers with unlike denominators. [K.C.] can divide 3 digit dividends by one digit divisors with the assistance of a multiplication grid. [K.C.] continues to work on multiplication of multi-digit numbers. Currently, she performs multi-digit multiplication with guidance and modeling. [K.C.’s] writing has continued to improve significantly this year as she has developed her author’s voice. In reading, [K.C.] has continued to be an avid reader and that has resulted in her reaching an independent 50 DRA level.

Miller testified that K.C. progressed in reading between fourth and fifth grade. She progressed with comprehension and the ability to write and construct paragraphs. K.C. “excelled in her narrative writings” and “improved in her nonfiction and informative writings.” At one point, K.C. was placed in the highest guided reading group because of her reading level and scores on the DRA. K.C. was working at grade level in reading and writing at the end of fifth grade. She was working at grade level in certain areas in math and approaching grade level in other math areas.

On July 10, 2017, case manager Golob sent an e-mail to the parents stating, “I’m just checking in with you both to see if Dr. Brooks and her colleagues have finished testing [K.C.] and if they did, is a report available yet.” (J-22; see J-35 at ¶ 24.) She noted that, although she was “in and out during the summer,” the parents could call her or send her an e-mail.

On August 7, 2017, the director of pupil services, Jessica Neu (Neu), sent a letter

to the parents, which advised:

We have still not received any evaluation reports for eligibility determination of special education for your daughter, [K.C.]. You will recall that the (re) eligibility process began in November. At that time, you declined consent for the District to utilize its own personnel to evaluate [K.C.] and indicated a desire to utilize your own private evaluators.

Since then, numerous attempts have [been] made by the [CST] to contact you regarding your request to utilize your outside private evaluator reports. Without this information, an eligibility meeting cannot take place to determine if special education services are required. Unfortunately, the District has received no report information. Moreover, it has not alternatively [been] found that no additional data [is] needed to determine whether [K.C.] continues to be a child with a disability. As such, it cannot be established that [K.C.] continues to be eligible to [receive] special education and related services. Thus, she will not be entering [FMS] with an IEP for the 2017–2018 school year. If you have any concerns regarding her educational needs and would like to re-refer her for special education services, please send a brief letter in writing to Marc Gold, House Supervisor at FMS

Please let me know if you wish to discuss this further. If you have any questions, please contact us As parents of a student with a disability, you have protections under the procedural safeguards of Chapter 14. A copy of these safeguards has been enclosed here.

[J-23; see J-35 at ¶ 25.]

At the time Nue issued her letter, the District did not possess K.C.’s scores on the State testing. (R-14.)

K.C.’s mother testified that the parents received Brooks’s report in “the very last days of July,” and later testified that she believed they received Brooks’s report in late July, but it might have been the first couple of days in August. The parents received Brooks’s summary report before Neu’s August 7, 2017 letter. K.C.’s mother described that what they received was a “topline” of Brooks’s results. She testified that, as of August 7, 2017, the parents “just had the topline[;] however, that . . . was what we anticipated we would be giving the school district, that . . . topline [f]or the purposes of IEP planning.”

The parents did not call or e-mail anyone in the District in response to Nue's letter. The parents did not inform the District that they had the results of Brooks's testing or offer to provide it. K.C.'s mother acknowledged that this information was not provided to the District until October 2017.

By letter dated August 22, 2017, the parents informed the principal at FMS as follows:

Our child, [K.C.] . . . is currently scheduled to attend [FMS] starting this September.

Very recently, my husband and I attended a meeting with Dr. Jill Brooks, Ph.D. and clinical neuropsychologist, to review Dr. Brooks' summary of [K.C.'s] most recent comprehensive educational testing. Dr. Brooks presented us with the topline results. My husband and I then discussed these results in light of the proposed school placement for [K.C.] at [FMS].

This letter is to provide you with 10 day notice of our intention to unilaterally place [K.C.] Accordingly, we intend to hold the . . . District responsible for full tuition, related services and transportation, based on denial of FAPE due to lack of meaningful progress, as evidenced in [the] neuropsychological testing.

[K.C.] will be attending The Craig School, effective Wednesday, September 6, 2017.

[J-24; see J-35 at ¶ 26.]

According to Craig's application form, K.C.'s mother signed the form on August 23, 2017 for K.C.'s sixth-grade year. (P-23.) The parents provided Brooks's summary or topline report to Craig before the start of the school year.

On August 24, 2017, director of pupil services Neu sent a letter to the parents acknowledging receipt of their letter and advising:

As per our letter sent to you on August 7, 2017, [K.C.] has not been found eligible for special education and related services. We, therefore, accept your communication . . . as a referral to the [CST]. The CST at [FMS] will reach out to shortly to

schedule an identification meeting.

If you have any questions in the meantime, please feel free to reach out to me directly

[J-25; see J-35 at ¶ 27.]

2017–2018 School Year (Sixth Grade)

Christina Kraft (Kraft), a school psychologist at FMS, was initially assigned as K.C.'s case manager. Heywood was a member of K.C.'s IEP team as the LDTC and worked with Kraft. On August 29, 2017, Kraft contacted the parents in an attempt to schedule an initial identification/evaluation planning meeting for K.C. (J-35 at ¶ 28; see J-26.) Kraft proposed meeting dates on September 7, 8, 11, and 12, 2017, but the parents were unavailable on these dates. (See R-17; R-18; R-19; R-20; R-21; R-22; R-23; R-25; R-28.) On September 11, 2017, Kraft sent an e-mail to the parents requesting that the parents "discuss an option" and "confirm . . . a date prior to Sept 22 regarding an Initial Planning Meeting for [K.C.]." (R-25.) Kraft sent a follow-up e-mail to the parents on September 15, 2017, "checking in to see if [the parents] were able to choose a date prior to 9/22 . . . to hold a meeting on [K.C.]." (Ibid.) On September 20, 2017, Kraft sent a letter to the parents, which states in part:

Given that my latest correspondence has gone unanswered, it has resulted in a delay [of] the scheduling of an Initial Planning Meeting on your child's behalf. Pursuant to N.J.A.C. 6A:14, "a district board of education shall take steps to ensure that the parent is given the opportunity to participate in meetings regarding the identification, evaluation, classification, educational placement of, or the provision of a free, appropriate public education to the student." An Initial Evaluation Meeting should have occurred within 20 days of the receipt of a referral. Your attendance is necessary to the outcome of this meeting.

Kindly respond directly with a mutually agreed upon date, so we can continue with the IEP referral process.

[R-28.]

Heywood became K.C.'s case manager between October 3 and October 27, 2017.

Heywood reviewed K.C.'s cumulative file, which contains her general education records (e.g., report cards, general education diagnostic scores, DRAs), and K.C.'s special education file (e.g., previous testing, IEPs, progress reports). She also spoke with Miller and one of K.C.'s general education teachers at NPS.

Ultimately, due to the parents' schedules, the evaluation planning meeting was not able to be held until October 27, 2017. (J-35 at ¶¶ 29; see R-29; R-30; R-31; R-32; R-34.) The participants at the initial identification and evaluation planning meeting included school psychologist Kraft, case manager/LDTC Heywood, director of pupil services Neu, a general education teacher, and K.C.'s mother. (J-27.) B.C. did not attend the meeting. The score report for the assessment conducted by Brooks was provided to the District at the meeting. (J-35 at ¶¶ 32.) Brooks's report indicates that she re-evaluated K.C. on June 1 and 5, 2017. (J-30.) In connection with that meeting, the parties agreed to an updated social history and a supplemental educational evaluation. (See J-35 at ¶¶ 29; J-27; R-35; R-36.) The evaluation planning document states that Brooks's report "needs to be reviewed by the team," and a "psychiatric" report to be "provided by the family." (J-27.)

Heywood testified that the District initially proposed an educational evaluation, a psychological evaluation, and a psychiatric evaluation, along with a social history. At the meeting, K.C.'s mother provided Brooks's report, and Heywood reviewed the educational evaluations done by Brooks. Heywood described that evaluations were proposed because there were two areas of potential eligibility, OHI and "specific learning disability" (SLD). Based on K.C.'s previous scores and her file, Heywood wanted to get more information about K.C.'s math performance because it was an area of relative weakness for her, and Brooks's report did not provide enough evaluation tools to determine an SLD in math. An educational evaluation was proposed to look at that specific area. The team discussed Brooks's assessment with respect to K.C.'s social and emotional functioning. Heywood explained that a psychiatric evaluation was proposed to confirm K.C.'s previous diagnosis of ADHD to support a classification of OHI, and because of the things that were mentioned regarding K.C.'s social and emotional functioning and the parents' concerns. K.C.'s mother advised that the parents would provide the psychiatric evaluation.

Heywood conducted an educational evaluation on December 6, 2017. (J-35 at ¶¶

31; see J-29.) The school social worker conducted a social history on December 21, 2017. (J-35 at ¶ 30; see J-28.) The parents did not provide a psychiatric report to the District.

The January 2018 IEP

On January 30, 2018, the District held an eligibility and IEP meeting. (See J-35 at ¶ 33; J-31; J-32.) The participants at the meeting included a general education teacher; a special education teacher; school psychologist Kraft; case manager/LDTC Heywood; director of pupil services Neu; the social worker who completed the social history assessment; an OT specialist; a PT therapist; and B.C. K.C.'s mother did not attend the meeting. Brooks's complete report was provided to the District on January 30, 2018, the date of the eligibility/IEP meeting. (J-35 at ¶ 32; see J-30.)

K.C. was determined eligible for special education and related services under the category of SLD based on Heywood's testing. (See J-32.) The District proposed an initial IEP for K.C. for the remainder of her sixth-grade year and to January 29, 2019 (seventh grade). (J-35 at ¶ 34; see J-32.) The IEP was considered an initial IEP since K.C.'s eligibility had lapsed, and the parents' consent was required to implement the IEP.

The IEP provided for K.C.'s placement at FMS. It also provided pull-out resource replacement for math; group OT for thirty minutes weekly; group PT for thirty minutes weekly; individual counseling for thirty minutes weekly; and special transportation. (J-32.) The IEP includes goals/objectives for math, social/emotional/behavioral, OT, and PT. It also includes the following modifications in the general and special education classrooms:

Break tasks and assignments down into manageable parts and help [K.C.] organize and prioritize assignments when necessary

Provide break if [K.C.] appears to be overwhelmed

Provide feedback to student

Writing on a slant board, vertical surface or while on her stomach when appropriate

Reduce auditory and visual distractions

Provide study guides when possible and appropriate

Provide graphic organizers, models, manipulatives, pictures/charts, personalized examples, and a calculator when needed and appropriate

Check for understanding and repeat, review, clarify or reword directions, instructions and information when necessary

Repeat directions quietly, have the student repeat and explain directions

Opportunities kinesthetic learning

Provide extra time for assignments, tests, written work and projects when necessary

Word prediction

Voice typing

Heywood was responsible for writing the IEP as K.C.'s case manager, and she led the IEP meeting, during which she explained what the proposed IEP was based on. Heywood testified that the offered pull-out resource replacement for math was a small-group math program, which is taught by a special education teacher certified in special education and math. The curriculum would be modified to K.C.'s needs, and she would receive specialized instruction that is multi-sensory in nature. The pull-out resource replacement math class was discussed at the meeting, the program was explained to B.C., and the sixth-grade resource replacement math teacher was present at the meeting. The team proposed OT and PT based upon the evaluations that the District had conducted. Based on the information contained in Brooks's report and Heywood's conversations with Miller, the team proposed addressing K.C.'s reported anxiety by individual counseling services for thirty minutes weekly. The in-class support for ELA contained in K.C.'s prior IEP was removed. Heywood noted that K.C. was offered a spot in the District's honor program for ELA. The goals and objectives in the IEP were developed in conjunction with Miller's feedback from K.C.'s performance the previous year, and based on Heywood's testing, K.C.'s areas of relative weakness, and the OT and PT evaluations. The social/emotional/behavioral goals were developed due to concerns about anxiety. The team did not agree with Brooks's recommendation that K.C.

attend a therapeutic school and believed that the District could provide the academic and counseling supports in conjunction with a FAPE in the public school. Heywood noted that Craig does not advertise itself as a therapeutic school, but as a school for students with learning disabilities. She further explained that the District looks for the least restrictive environment (LRE) in which the student can make appropriate and meaningful educational progress, and the LRE for K.C., who has excellent reading, verbal, and social skills, would be with her general education peers for most of her day in the local middle school.

Heywood testified that B.C. did not express any concerns regarding the proposed program at the meeting. He did not question any of the proposed goals or objectives and did not ask for other goals and objectives to be added. B.C. also did not question any matters regarding the related services. Heywood noted that the “concerns of parents” section in the IEP was carried over from K.C.’s previous IEP. At the conclusion of the meeting, B.C. did not sign the IEP.

On February 22, 2018, Heywood forwarded a copy of the proposed IEP to K.C.’s mother in response to her request. (R-38.) By letter dated March 13, 2018, Heywood sent a letter to the parents advising that she had not received a response to the proposed IEP presented on January 30, 2018, and enclosing an updated version of the IEP “outlining [an] Extended School Year (ESY) for [K.C.] in the area of mathematics,” and “updat[ing] the section regarding ‘Options Considered and Rejected.’” (R-39; R-40.) The IEP includes an ESY program and related services consisting of a daily pull-out resource replacement class for math, and group OT and PT for thirty minutes weekly, from July 9, 2018 to August 10, 2018. (J-32.) Heywood explained that the ESY was offered to prevent regression. She indicated that with a student having difficulty in working memory, and especially a student having difficulty with math facts and working memory, the District wanted to ensure that K.C. did not regress to the point that she could not recoup commensurate with her typical peers. Heywood did not receive a response from the parents to her correspondence.

By letter dated May 14, 2018, Heywood informed the parents as follows:

Please accept this communication as likely the final

communication regarding your child's . . . educational program and placement for the current 2017–18 school year. You will recall that the district proposed an [IEP] for [K.C.] during a January 30, 2018 IEP meeting, providing . . . [K.C.'s father] with multiple copies of the draft IEP, Parental Rights, and other documents, and shortly thereafter, providing . . . [K.C.'s mother] with the same items via email.

We were very clear in explaining to you that, since an initial IEP was being offered to [K.C.], services pursuant to that program could not be implemented without, at least, one of you providing formal consent. Notwithstanding, both of you appear to have disregarded the district's initial offering in January, its modified offering in March, and the copious follow-up communications (sent via phone, email, and regular mail) over the past several months. At this point, the district must interpret your silence as a rejection of its offer of special education and related services.

We should make you aware that, in light of your consistent unresponsiveness and unwillingness to work together regarding [K.C.'s] education, you have given the district grounds to oppose any future request for reimbursement in connection with [K.C.'s] placement at the highly restrictive and, in the estimation of the district's educational experts, inappropriate special education school she is currently attending.

Absent your initiation, you will receive no further communications from us on the topics of [K.C.'s] educational program or placement.

[R-41.]

K.C.'s mother did not have a specific recollection of contacting Heywood in response to this correspondence. The parents never signed the IEP. K.C. remained at Craig for the entirety of her sixth-grade year at the parents' expense. (J-35 at ¶ 35.)

2018–2019 School Year (Seventh Grade)

K.C.'s mother signed a contract with Craig on August 1, 2018, for K.C.'s seventh-grade year. (R-68.) K.C.'s mother testified that, “[b]ased on how well [K.C.] was doing in sixth grade and how happy she was, [the parents] decided to re-enroll her for seventh grade at Craig[.]” B.C. testified that K.C. was at Craig for seventh grade “[b]ecause she’s

doing well [and] . . . doing far better than she had been and there was no reason to disrupt that.” He did not consider putting her at FMS “[b]ecause the . . . accommodations at Craig were just in a different league,” and in his view K.C.’s math skills improved at a faster pace at Craig, and she was confident.

The office of the parents’ then attorney sent a letter to District counsel dated August 31, 2018, which states:

[The parents] wish to inform the district, as they have communicated repeatedly, that they disagree with the proposed IEP. They believe the in-district placement proposed is inappropriate. [K.C.] has thrived at [the] Craig School. Given her anxiety and learning challenges, the small, structured and supportive nature of the program is the appropriate placement for her.

[The parents] intend to keep [K.C.] at Craig and request that the district continue to pay for the out-of-district placement.

[P-13.]

The January 30, 2018 IEP expired on January 29, 2019. K.C. remained at Craig for seventh grade at the parents’ expense. (J-35 at ¶ 35.)

2019–2020 School Year (Eighth Grade)

On August 7, 2019, the parents sent a letter to the FMS principal “request[ing] information about what kind of services and support [K.C.] might receive at [FMS] in 8[th] grade and whether there is the possibility of an appropriate program for her in the 2019–2020 school year.” The letter further advised, “In the event there is not an appropriate program for [K.C.], we will enroll her once again at the Craig School and seek reimbursement from the . . . District.” (J-33; see J-35 at ¶ 36.) K.C.’s mother testified that she requested a meeting at FMS prior to eighth grade “because [the parents] were inclined to have K.C. continue [at Craig] for eighth grade, but [K.C.’s mother] also felt like why don’t we hear what the School District has to say and . . . if there [was] any specific program that they have that [the parents] should know about and that they can describe and describe the success of it.”

The parents' letter was forwarded to and received by the director of pupil services, Marc Gold (Gold), on August 20, 2019. Gold has held the position of director of pupil services since August 2019 and previously served for three years as a house supervisor at FMS, a position that essentially functions as a vice principal. (See R-53.) Gold's understanding of the parents' letter was that they were looking to gather more information about what services and programs the District had at FMS. In response, a meeting was arranged, which was held on August 28, 2019. (J-35 at ¶ 37; see J-34.) K.C.'s mother, a supervisor of special education (grades 6 to 12), and Gold attended the meeting, which lasted approximately half an hour. At the meeting, K.C.'s mother discussed some things that were going on with K.C., and Gold explained what FMS would look like for an individual such as K.C. That discussion involved a general overview of the scope and sequence of classes at FMS; the curriculum a child might be exposed to; what an honors class, resource-room class, and in-class support looked like; and the extracurricular activities and counseling services available to FMS students. Gold also informed K.C.'s mother of the steps needed to be taken if she wanted to have K.C. referred to the CST. Gold offered undisputed testimony that K.C.'s mother did not state that the parents were requesting an IEP from the District or that she wanted the District to evaluate K.C. K.C.'s mother did not provide Gold with any records, evaluations, or written information regarding K.C.'s functioning at Craig. Gold credibly testified that K.C.'s mother made it clear that she had no intention of enrolling K.C. in the District; she intended to keep K.C. at Craig; and she was looking for how the District could pay for that placement. On August 31, 2019, Gold sent an e-mail to K.C.'s mother memorializing discussions at the meeting, including the steps needed to be taken to determine whether K.C. was eligible for special education and related services. (J-34.) Gold did not receive a response to his e-mail, including any request that the District evaluate K.C. or propose an IEP for the 2019–2020 school year.

K.C.'s mother testified that the parents made the decision to have K.C. attend Craig for eighth grade because “[t]here was no IEP for [the parents] to consider for eighth grade [and the parents] would have had to re-enroll her and then have her evaluated, and then if she was found to be eligible, an IEP would be proposed, and [K.C.] was doing so well at Craig, . . . she was progressing really nicely and even getting more confident in

math, and it just felt to [the parents] that this was the right placement for her.” K.C.’s mother signed a contract with Craig on September 4, 2019, for K.C.’s eighth-grade year. (R-69.) K.C. attended Craig through the end of eighth grade at the parents’ expense.

THE TESTIMONY

Apart from the evidence that forms the foundation of the above findings of fact, a summary of other testimony follows.

Danae Heywood

Heywood testified on behalf of the District and was qualified as an expert in learning disabilities and educational assessments/testing within the purview of an LDTC. (See R-51.) Heywood holds certifications as an LDTC, an elementary education teacher (K–5), a teacher of students with disabilities, an English teacher (6–12), and a supervisor. She is also certified in Orton-Gillingham. Heywood has a master’s degree in special and elementary education and is currently in the process of securing her doctorate degree. In connection with her LDTC certificate, Heywood took post-graduate credits in educational diagnostician work and the New Jersey special education code, along with courses regarding teaching students with reading disabilities. She was trained in the administration of various standardized educational assessments and the interpretation of other standardized assessments.

Heywood started teaching in New Jersey in 2007 and taught for six years before becoming an LDTC. She was a special education teacher at NPS teaching kindergarten through fifth grade. After completing her certificate as an LDTC in the summer of 2013, Heywood assumed the role of a CST member under that certificate. She worked as an LDTC at FMS for six years. During her career, Heywood has case managed hundreds of students; she has drafted IEPs for hundreds of students as a case manager; and she has tested hundreds of students as an LDTC. She is currently employed by the District as the supervisor of special education (pre-K–5) and is in her second year of that position.

Heywood testified that, in classifying a student, evaluations play a “large part,

though not all of the classification process.” Those evaluative tools “help us determine a child’s academic and cognitive level of functioning,” and the team also considers functional data from the classroom (e.g., classroom performance, the student’s daily work, teacher input, informal and formal assessments). Heywood explained that if a student “continue[s] to make progress to the point where we have questions [on] whether they still need a specialized program then we have an obligation to then propose evaluations and evaluate the student in an effort to ensure that . . . there is still an eligibility category to have a specialized program under.” Heywood stated that the team did not have sufficient evidence to classify K.C. in October 2017 without further assessments. Regarding the November 17, 2016 evaluation planning document indicating that K.C. was one year below grade level in math, Heywood testified that one year below grade level in math is not sufficient to keep a child classified “because . . . we have students that function . . . in the general education curriculum at different levels based on their relative strengths and weaknesses,” and “we need more evidence than just one grade level below because when we look at a student’s educational performance compared to their IQ one grade level below does not qualify as a significant discrepancy[.]” K.C.’s fifth -grade State testing was also insufficient to classify K.C. because the Code stipulates that “if . . . we are looking at a specific learning disability we have to have a severe discrepancy between the cognitive and educational performance and we didn’t have . . . updated assessments that would fall under the categories of the Code . . . for those purposes.”

Heywood testified that the team considered Brooks’s report at the January 2018 eligibility meeting and accepted her cognitive scores (i.e., the psychological portion of the report), which revealed that K.C. had a full-scale intelligence quotient (FSIQ) of 87 and a General Ability Index (GAI) of 97. She explained that the District utilizes an ability-achievement discrepancy analysis when classifying a student under the category of SLD. In undertaking this analysis, the District uses the student’s FSIQ or GAI, which is the ability to perform without the cognitive composite scores that make up the working memory and the processing speed indexes factored into the student’s cognitive profile. The District utilizes a 1.5 standard deviation or 22 points from the FSIQ/GAI as to each of the categories in the Code to determine whether an SLD exists. When the team was considering K.C.’s eligibility, it looked at both her FSIQ and her GAI compared to her achievement scores. The team utilized the GAI score “because . . . the team felt as

though that was an appropriate look at her cognitive profile without the [w]orking [m]emory and the [p]rocessing [s]peed and that we would be able to accommodate for those and therefore we should withhold those from considering whether there was a learning disability.” Heywood explained that “when we take those out of the equation . . . [K.C.’s] cognitive ability increases and we thought that was a better indication of who she is . . . as a learner.” The team proposed classification under the category of SLD based on the discrepancy between K.C.’s math performance and GAI. Heywood explained that the team used K.C.’s math calculation skills score (72) derived from her testing utilizing the Woodcock-Johnson IV Tests of Achievement, which is a category under the Code that can be used to determine the severe discrepancy, and compared it to K.C.’s GAI (97). Had the District utilized K.C.’s FSIQ (87) with the math calculation score (72), it would not have been a significant enough discrepancy to classify K.C.

Based on Brooks’s report, K.C. would not have met the criteria for classification. Heywood explained that the team did not have sufficient evidence from the Wechsler Individual Achievement Test (WIAT) that Brooks administered to meet one of the disability criteria in the Code, and the team was not able to confirm K.C. as OHI based on ADHD because it did not have current documentation from a medical doctor. She further explained that Brooks took K.C.’s highest composite score on her IQ test, which was her Verbal Comprehension Index (VCI), to perform the ability-achievement discrepancy analysis. Heywood testified that it is inappropriate to compare verbal abilities to math abilities, and the VCI score relates to a student’s reading abilities. She explained that math is a visual-spatial skill, and the research indicates that the Visual Spatial Index (VSI) corresponds to a student’s math abilities. According to Brooks’s testing, K.C.’s VSI was 84 and in the low-average range. Heywood further testified that, according to the Code, there are specific categories by which the District can classify a student under SLD. The District can classify a student based on a discrepancy between the student’s math problem-solving and his/her cognitive functioning. According to Brooks’s WIAT testing, K.C.’s math problem-solving was a standard score of 80, and that score with K.C.’s GAI of 97 does not meet the 1.5 deviation standard. Math fluency and numerical operations are not categories under the Code by which the District can classify in the severe discrepancy model, but these scores made Heywood suspect that there was a possible math disability, which caused the need for her further testing.

Heywood testified that Brooks's recommendations were considered in the modification section of the IEP. Heywood did not agree with Brooks's assessment that K.C. presented with a specific learning disorder with impairment in reading and written expression. She noted that K.C.'s written expression score on the WIAT is 97, and utilizing K.C.'s FSIQ, her GAI, or her VCI, it is insufficient to provide an SLD under the discrepancy model. Regarding Brooks's recommendation that K.C. should be educated with children who present with language-based learning issues, Heywood explained that language-based learning disabilities are disabilities that manifest in difficulties in reading and writing (e.g., dyslexia, dysgraphia). She noted that, according to Brooks's report, K.C.'s reading comprehension is a 105, and her written expression is a 97, both of which are commensurate with K.C.'s verbal ability index. Regarding Brooks's recommendation for classes with a small teacher-student ratio, Heywood testified that the IEP meets that recommendation because the District proposed a math class with a small teacher-student ratio not to exceed twelve students with a teacher and at least one assistant. To the best of her recollection, that class then had five students and K.C. would have been the sixth. Regarding Brooks's recommendation concerning classmates whose cognitive abilities and challenges are similar to K.C.'s, Heywood described that this is not reflective of the real world. Regarding Brooks's recommendation that K.C. should be provided an executive skills program, Heywood testified that if the teacher in the small math class notices an issue with executive functioning skills, the teacher works with the student individually and they come up with organization systems that work for them. Heywood also did not "see too much in testing [K.C.] that indicated a lack of executive functioning[.]" "[W]hen testing and meeting with [K.C.] . . . her work was organized," and K.C. "indicated that she . . . could function without too much assistance with regard to organization and executive functioning skills."

Heywood opined that the proposed January 30, 2018 IEP offered K.C. the opportunity to make meaningful and significant educational progress in her program. Heywood's opinion that the IEP was appropriate and offered a FAPE is based on her evaluation in conjunction with Brooks's cognitive scores, the social history, and meeting and talking with K.C. Heywood had also reviewed K.C.'s prior general and special education records. Heywood further opined that the IEP included meaningful goals for

K.C. in sixth grade “[b]ecause we utilized all of the data points that we had in order to develop areas where we knew that there were relative weaknesses for K.C. and in order to work on moving along to make meaningful educational progress.”

Christopher Miller

Miller is currently the principal of NPS, a position that he has held for three years. He commenced employment at NPS in or around the 2013–2014 school year as a special education teacher and the ESY coordinator. He holds certifications as a P–3 teacher, an elementary education teacher (K–6), a teacher of students with disabilities (K–12), a supervisor, and a principal. He has a master’s degree in teaching behavioral analysis, which was a dual certification program in special and general education with emphasis on applied behavior analysis.

During the two and a half years that Miller worked with K.C., she appeared as a “happy kid, very sweet [and] creative.” Her attitude toward math “would ebb and flow”; they “really worked on it”; and “[i]t was an area . . . that challenged” K.C. Miller tried to celebrate her progress in the math classroom and foster a growth mindset each step of the way and explained the importance for K.C. “to see success and . . . to build confidence[.]” Math was never K.C.’s favorite subject. She preferred ELA.

Miller had conversations with K.C.’s parents regarding her anxiety, primarily with K.C.’s mother. There was a time in fifth grade when K.C.’s mother expressed her belief that gym was the source of K.C.’s anxiety. Miller was aware that K.C. did not enjoy gym. Miller referenced a “gym incident,” which he understood involved students “being competitive” and that “being seen as making K.C. feel uncomfortable,” after which Mahony spoke to some of the students in the gym class along with K.C. From what he could remember, the issue was resolved and gym got better for K.C. The PT therapist was in the gym with K.C. and seemed to be working on the skills to make her feel more confident. The PE teacher also did work to ensure that K.C. felt safe and comfortable.

Miller testified that K.C. exhibited anxiousness. Miller had conversations with K.C. in fifth grade about her anxiety, which never necessarily had one origin. At times it would

be because of something that happened at home or at school, something she experienced on the ride over in the morning, how she was feeling toward a certain problem, or if there was a test. Regarding how K.C.'s anxiety manifested itself in the resource room, Miller stated that he "would say teary-eyed, shaky," but that was usually during testing and they would then work "through ways . . . to break down problems, . . . talk it through, provid[e] accommodations, [and] . . . that sort of thing." He indicated that "[t]here were times in ELA [when] . . . [K.C.] showed [anxiety], but definitely the anxiety appeared more . . . during testing situations specifically when she would find something challenging[.]" Miller described that Mahony had a system where K.C. could go to Mahony and/or write a note to Mahony during the class if K.C. needed to talk and they would talk outside of the classroom about what was bothering her. The teachers would also talk through tasks, break large assignments and tasks into small manageable steps, and work through K.C.'s anxiousness within the classroom or outside of the classroom through conversation. In his view, the things that they did "were working for [K.C.]" K.C. never had to leave the classroom and see the counselor due to her anxiety. During the years that Miller educated K.C., he did not observe "crippling" or "debilitating" anxiety. Miller noted that the January 2016 IEP addressed K.C.'s anxiety. It included modifications to address her anxiety (i.e., break tasks and assignments down into manageable parts, prioritize assignments when necessary, provide break if K.C. appeared to be overwhelmed); it developed a goal under social/emotional/behavioral that addressed her anxiety; and K.C. also had counselling.

Miller stated that there were times in fifth grade when K.C. was late for school. Miller did not recall the specific number, but he did remember it to be something that stood out in his memory. He had communications with the parent about K.C.'s tardiness, which would be related to different reasons. Miller noticed that K.C. had issues with attention. He testified that they "put in tools and ways . . . to manage it" in the classroom and the resource room, including breaking tests down into manageable units, creating devices or mechanisms for her to know that she was able to talk through a situation and take a break when needed, and finding a way in testing situations to make her feel comfortable doing what she can because testing "was an area of anxiety." In Miller's opinion, the accommodations and strategies used to address attentional issues were successful to use with K.C. Miller testified that organization was "not a strength" for K.C., but he did

not remember it as “an extreme” or “huge” difficulty for K.C. He described that K.C. was “developing and progressing” in organization, and K.C. “would not be someone that you could pick out specifically for organization” difficulties. The strategies or accommodations that he utilized with K.C. regarding organization in fifth grade included prioritizing assignments and breaking assignments into manageable units. K.C. had a binder in math where they organized materials; she had a portfolio in the classroom; and the universal organizational tool for the entire class was the contract. In his opinion, those were successful approaches or tools to use with K.C. relative to her organization in fifth grade.

Miller testified that the fact that K.C. had ones and twos on her fifth-grade report card did “[n]ot . . . alone” indicate to him that K.C. was a student with a disability in math. He noted that it is a general education report card and students receive ratings of one through four. The fact that she scored below grade level on the i-Ready, and scored below grade expectations on the State testing, did not change Miller’s belief that K.C. was working on grade level and on grade-level materials in math at the end of fifth grade. Miller did not see K.C.’s math skills rating at the grade/age equivalents reported in Brooks’s and Heywood’s reports. He testified that math fact fluency was “an area of difficulty” for K.C., it was an area where “she was not showing . . . as much growth and we consistently . . . worked on that.” The assessments he gave were grade-level assessments, and he understood that the accommodations that K.C. would have to access those grade-level skills would not be available during the standardized testing by Brooks and Heywood. Miller’s testing would be with those accommodations to help with K.C.’s areas of difficulty and fact fluency. Utilization of a calculator or a multiplication grid would be a standard accommodation. Miller permitted K.C. to utilize a calculator because of the levels reported on her fact fluency. He explained that “we were developing fact fluency,” and “[t]hat’s an accommodation to help ensure that we are able to target grade-level standards and . . . more complex and advanced skills that would be extremely impeded by . . . fact fluency . . . so that we’d . . . be able to continue to go forth in her goals and . . . the grade-level standards.” He would not provide a calculator for math fluency assessments but to assess other standards.

Miller testified that K.C.’s father suggested to him that K.C. was not going to FMS, which Miller believed occurred at the move-up ceremony at the end of fifth grade.

Lisa Markman-Pithers

Markman-Pithers testified on behalf of the District and was qualified as an expert in psychology with experience in psychological assessments. She has been a New Jersey licensed practicing psychologist since 2015 and a New Jersey licensed school psychologist since 2002. Markman-Pithers holds a master's and a Ph.D. in developmental psychology and is a certified ADHD professional. She has been employed by the District for eight months as a case manager and a school psychologist. She was initially hired for a maternity-leave position and served in that position from the end of November 2019 to February 2020. (See R-52.) Markman-Pithers has administered over 100 psychological or educational assessments to children during her educational and professional time. In addition to conducting assessments, she also has experience in interpreting standardized assessments in the area of cognition performed by other professionals.

Markman-Pithers reviewed Brooks's 2013 report, during which Brooks administered the Wechsler Intelligence Scale for Children–Fourth Edition (WISC-IV). (J-3.) She noted that the report states that the assessments were administered by Brooks's office, and it is not clear which assessments Brooks administered. The list of assessments administered "seemed extensive" to Markman-Pithers and was a concern because "if you're looking for a disability . . . you would look at . . . the intelligence versus the achievement test and then from there you would then do additional testing, but . . . it looks as though these tests were so many that [they] were actually looking for something." She had a concern regarding the behavioral observation portion of Brooks's report because it "doesn't seem to cover all the testing that was conducted" and "doesn't give us a clear understanding of . . . how [K.C.'s] behavior was when—what tests were maybe considered more difficult for [K.C.] or her behavior was different." Markman-Pithers noted that it is "rare to see someone for multiple testing to behave the same way consistently."

Markman-Pithers reviewed Brooks's 2017 report. (J-30.) She again believed that a lot of assessments were conducted. Additionally, according to the report, Brooks did not conduct the assessments herself but supervised her technician. Brooks administered

the Wechsler Intelligence Scale for Children–Fifth Edition (WISC-V). Markman-Pithers explained the differences between the WISC-IV and the WISC-V. The perceptual reasoning subtest in the WISC-IV was changed in the WISC-V and broken into two categories, i.e., visual-spatial and fluid reasoning. Working memory was also slightly changed. Working memory in the WISC-IV was based more on auditory working memory, and it is both visual and auditory memory in the WISC-V. The WISC-V manual states that the WISC-V scores are slightly lower than the WISC-IV scores.

Markman-Pithers explained that the FSIQ in the WISC-V is a combination of five different indexes; the VCI, the VSI, the fluid reasoning index, the working memory index, and the processing speed index. The VCI measures a student’s verbal abilities and verbal reasoning, and it is related to the academic area of verbal comprehension. The VSI measures a student’s visual spatial abilities, and it is related to “some conceptual things of geometry” and possibly other mathematics. The fluid reasoning index looks at quantitative abilities and novel problem-solving, and it is related to “some type of mathematical” area. Working memory is short-term memory, i.e., how long a student can store something and then repeat it. Processing speed involves how quickly a student can scan items and complete certain tasks.

Markman-Pithers explained that the ability-achievement discrepancy analysis looks at whether there is a discrepancy between a student’s cognitive and achievement abilities for purposes of determining whether the student has some type of learning disability in need of special education services. She testified that the measure of cognitive ability that is typically used when performing the discrepancy analysis is the student’s FSIQ, which is “recommended in the WISC-V as a measure.” She added that “[i]f that does not seem to be completely representative it is completely appropriate to use” the GAI. Markman-Pithers explained that the GAI “is sometimes used when suspicion of working memory and processing speed is interfering with [the student’s] overall abilities and so you can use this to kind of look at [the student’s] general abilities and have a fairer representation” regarding the student’s actual intellectual functioning.

Regarding Brooks’s use of K.C.’s VCI score for the ability-achievement discrepancy analysis, Markman-Pithers stated that using the VCI score is not appropriate

“[b]ecause that only measures a certain point of [the student’s] intelligence [and] [i]t does not really represent the full-scale of [the student’s] intelligence,” which is “what you use to look at the discrepancies . . . in terms of [the students’] academic achievement and what you would expect them to have, the difference.” She testified that K.C.’s VCI score measured “K.C.’s strength,” but it does not represent “her overall intelligence.” Markman-Pithers disagreed with Brooks’s statement that she utilized the VCI because there was a large discrepancy between K.C.’s VCI and VSI. She explained, “there is a difference between [K.C.’s] VCI and the VSI meaning that she is much stronger in verbal than she is in visual spatial, but I don’t think that means that the VCI then represents her full-scale IQ or any representation of an IQ.” Markman-Pithers also noted that the VCI is comprised of only two tests, i.e., a vocabulary test and a similarities test. Markman-Pithers opined that the GAI score most accurately represents K.C.’s overall intelligence “[b]ecause it is evident that her processing speed and working memory are working on how she performed for her full-scale IQ and [Markman-Pithers did not] think that’s accurate, that [it] is representative of her . . . cognitive abilities based on her other scores.” She would use the GAI because “[w]hen you look at intelligence you really want to look at . . . the cumulative functioning of a person[.]”

Brooks’s report indicates that she performed a predicted-difference method of analysis regarding the WIAT testing. The predicted scores are based on the information that Brooks inputted, and the VCI was used. Markman-Pithers testified that the predicted scores would be lower if Brooks had utilized K.C.’s FSIQ or her GAI. She further indicated that there is no correlation between a student’s VCI and math fluency. Markman-Pithers also explained that math fluency and general mathematics are not listed categories in the Code in which a district can find a student eligible under the category of SLD.

Markman-Pithers stated that Brooks diagnosed K.C. with ADHD but only included a general description of ADHD from the Diagnostic and Statistical Manual of Mental Disorders (DSM). Brooks’s report does not address how the ADHD impacts K.C. specifically, and in Markman-Pithers’s experience the DSM is not used to determine a student’s eligibility for special education and related services. Based on K.C.’s scores on the WIAT, Markman-Pithers did not agree with Brooks’s determination that K.C. had a specific learning disorder with impairment in reading. Brooks’s suggestion that K.C. had

challenges in oral reading fluency and reading comprehension is also not supported by her testing. Regarding Brooks's diagnosis of a specific learning disorder with impairment in mathematics, Markman-Pithers testified that she believed that K.C. had "challenges with mathematics," but noted that, in determining an SLD for a student in the area of mathematics, it must be 1.5 standard deviations different from the cognitive score. She did not agree that K.C. had a specific learning disability with impairment in written expression since her written expression score on the WIAT was in the average domain.

Markman-Pithers is familiar with the term "language-based learning issues" and has worked with students who have struggled with language-based learning issues. She described that such students demonstrate difficulty understanding directions and what is being told to them, and difficulty being able to express themselves and ask for help. Markman-Pithers opined that there is nothing in Brooks's report that indicates that K.C. presents with a language-based learning issue. She explained that, if the student had a language-based learning issue or difficulty, the specific tests or subtests that she would expect to see impacted would be oral language, listening comprehension, reading comprehension, and oral expression.

Markman-Pithers disagreed with Brooks's recommendation regarding an out-of-district placement. She testified that K.C.'s testing scores do not show that she needs an out-of-district placement, and Markman-Pithers did not believe that K.C. presented with language-based learning issues. Regarding Brooks's recommendation that the program should provide classmates whose cognitive abilities and challenges are similar to K.C.'s, Markman-Pithers testified that "it would appear that . . . linking her with a homogeneous class may not be the best thing for her." Rather, she believed that "having a heterogeneous class may provide for more abilities to be [subject to] exposure and since [K.C.] does have a range with the verbal you would want to make sure that . . . was being challenged as well as her issues with math being addressed." Regarding Brooks's recommendation that K.C. should be in an academic environment surrounded by peers with the same learning challenges, Markman-Pithers testified, K.C. "shows that she could function in a regular classroom based on her scores[,] . . . I don't think that this would give her the independence [and] I think it would make her a more dependent student instead of an independent student." Regarding Brooks's recommendations regarding classroom

accommodations, Markman-Pithers described that some of the accommodations are just good teaching, meaning that a teacher would be able to address certain needs within the classroom, such as making sure the student knows their homework, being clear about the day, and giving extra time if needed. Regarding Brooks's recommendation regarding an executive skills program, Markman-Pithers testified that there was nothing in the WISC and the WIAT scores that indicates that K.C. had issues with executive functioning; there was nothing in the scores that would suggest that further testing was warranted in the area of executive functioning; and the scores do not suggest that K.C. required a specific executive skills program. Markman-Pithers disagreed with Brooks's statement that K.C. presents with symptomatology associated with generalized anxiety disorder due to the contrary statements throughout Brooks's report.

B.C.

K.C.'s father, B.C., described that K.C. had motor delays when she was enrolled in kindergarten, and in second grade the District "latched onto . . . [K.C.'s] lack of memory registers for math," her inability to do calculations, and noticed motor problems with the way she held a pencil. He stated that K.C. also had "issues with any kind of movement around her," which "would cause her a lot of distress . . . in gym or on the bus," and "a lot of noise or excitement . . . causes her to freeze and . . . not be confident in . . . what she does."

B.C. testified that, in the fourth and fifth grades at NPS, K.C.'s "performance . . . in a lot of areas declined relative to her . . . peer group"; "[s]he was slipping further and further behind" in addition, subtraction, multiplication, and division; and "even though she was in a breakout group . . . it wasn't sinking in." According to B.C., Miller "would sort of bully her in front of [the] small breakout group," saying that K.C. was not trying or needed to try harder. Miller also "didn't let . . . or encourage [K.C.] to use the type of calculator that she would have needed lacking those memory registers," and "it would hurt her confidence" when she got the answer wrong. K.C.'s grades in English were "very average" and "didn't reflect her talent or her strength or her effort" in B.C.'s view. K.C. relayed to B.C. in fourth and fifth grades that she was afraid of gym and frightened of the dodgeball games. B.C. observed that K.C. could not track balls. He testified that gym

was “humiliating [for K.C.] because kids would not pick her because she would freak out in these ball games,” she would “cover her face and . . . her head to protect herself and . . . the kids would make fun of it and they would pick her last[.]” There were absences or delays in K.C. getting to school because it was a gym day. In sixth grade, after K.C. was at Craig, she relayed to B.C. that at NPS “she felt that [she] saw these balls being shot from cannons at [her] face.” According to B.C., he brought up the problem that K.C. was having in gym at the 2015 and 2016 IEP meetings and requested an accommodation for gym class. He objected to the fact that the District was not “making accommodations in gym where she was being excluded from . . . the ball games,” and the District responded that it had only one gym program and could not accommodate K.C.

B.C. understood that the reason the District did not offer an IEP when K.C. was going into sixth grade was because “Brooks was taking her reports in order of her clients and . . . she’s very thorough and she was in the eyes of the District late with the report, [which] . . . was out of the parents’ control and certainly [the parents] didn’t want her to rush or . . . issue an improper report.” He believed Brooks’s report “came out in . . . early August” 2017. B.C. described that the parents spoke to Brooks on the telephone regarding what they should do, and Brooks “unequivocally” advised that the parents “should absolutely get her into Craig” if they could, Craig “would be the best thing that ever happened to [K.C.] and . . . conversely [FMS] would be a disaster for [her] especially with no accommodations, but . . . even with accommodations[.]” Regarding Brooks’s advice, B.C. described that the parents had experience with Craig, which had “done an amazing job” with their son, K.C. had been to Craig to visit and for functions, and K.C. “was comfortable with it.” He testified that Craig “was a perfect placement for [K.C.] if they would take her,” which Craig did, and K.C. started at Craig around Labor Day 2017.

B.C. had been to FMS “many times” and articulated his belief that FMS was not equipped to educate K.C. without an IEP. His belief was based on the treatment of K.C.’s brother at FMS, “from what Brooks had said about [FMS] versus Craig, [the parents’] familiarity with Craig, [and] the combination— . . . the gym, . . . the decline in math, the decline in reading comprehension, . . . the whole package that her confidence would have been just destroyed at [FMS] right from the get go [and] . . . [s]he wouldn’t have been able to concentrate on anything.” B.C. did not feel that K.C. would have been able to perform

academically at FMS “without accommodations and . . . probably not even with the accommodations that [the District had] given [the parents] which were meager.”

B.C. testified that, after K.C. started at Craig, she was “incredibly relieved at home,” “a little more relaxed,” and she “would talk about what had happened that week[.]” During K.C.’s first week at Craig, the school “boosted her to seventh and eighth -grade English . . . even though she [was] in sixth grade”; K.C. “lit up like a candle because . . . she was for the first time in her life recognized for . . . a talent”; and “that just caused her to brighten in all of her subjects because . . . [at NPS] [s]he was made to believe that she was a mediocre below-average English student[.]” At Craig, K.C. “was in an element . . . where kids had disabilities like she had,” she was “surrounded by people that had real accommodations and she felt she could learn more from the other students because they could talk to each other with commonality.” Craig immediately recognized K.C.’s art, which was posted around the school, and individuals would compliment her displayed artwork. K.C. volunteered for the talent show. The class size was “a bit smaller,” with eight to nine students. Craig had binders where everything was in the same order for every class, which was “very helpful to kids with executive skills problems[.]” K.C. would get to sit in the front row in class and there were speakers in the classroom. She was excused from sports and had gym accommodations beginning in sixth grade. B.C. had contacted Craig’s administrator, Mr. Furlong, because K.C. was “in tears” and “starting to not want to go to Craig the day of . . . gym”; B.C. explained K.C.’s issues with balls; and Mr. Furlong “immediately took her out of those games or activities.”⁴ B.C. noticed a change in K.C.’s willingness to go to school from fifth to sixth grade, particularly after the gym accommodation, which was made very early in the year, and he also noticed an academic change. K.C. got much better in English, even in the tougher class. Craig allowed and encouraged K.C. to use a calculator for math.

B.C. testified that during K.C.’s sixth-grade year, the District “offered an IEP essentially reversing what they said in the letter that she wasn’t entitled to special services [and] . . . kind of reinstated what she had at [NPS] as a proposal[.]” He stated that the IEP offered was not acceptable, and that “[i]t was better than no IEP, but . . . already

⁴ Niles Furlong testified that B.C. contacted him in the fall of K.C.’s eighth-grade year regarding concerns about gym, after which the entire class was changed into more of a fitness class.

[K.C.] was making progress at Craig and . . . her confidence was far better at Craig and . . . she'd gotten the gym accommodation at Craig right away." B.C. described that the District offered "the same old accommodations" and "the same as the old IEP[.]" B.C. did not know if NPS had recommended K.C. for sixth-grade honors English. He had reason to believe that K.C. would not tell Brooks the truth when she was interviewed in 2017 as part of Brooks's evaluation. B.C. testified that K.C. "was not very self-aware and she would often get facts wrong . . . and get the situation wrong." B.C. acknowledged that he signed the IEPs that did not include gym accommodations and did not previously file a petition for due process about the lack of gym accommodations. He acknowledged that the parents' separation impacted K.C.'s anxiety, and there were times when K.C. perceived that her brother made her more anxious.

B.C. is familiar with the IEP process, including the re-evaluation of a student. According to B.C., he did not understand at the time of the November 2016 re-evaluation meeting that the CST required Brooks's report to help them determine whether K.C. continued to be a student with a disability who required an IEP. B.C. did not recall having a discussion with K.C.'s mother about having someone from the school evaluate K.C. for her eligibility, and he did not recall having a discussion with anyone at NPS about the District doing the assessments that Brooks was going to do. He did not recall a dispute with K.C.'s mother between November 2016 and March 2017 over whether Brooks would perform the evaluation or what assessments Brooks would conduct. He did not recall if K.C. was seen by Dr. Fennelly. He did not recall responding to Golob's June 12, 2017 letter, and did not recall if he responded to Golob's July 10, 2017 e-mail asking about the status of Brooks's report. B.C. believed that he decided that K.C. would not attend public middle school after receiving the August 7, 2017 letter. He did not recall if he had any discussions with K.C.'s mother before August 7, 2017, about K.C. not attending FMS. B.C. did not recall advising Miller at the end of K.C.'s fifth-grade year that K.C. was never going to attend the public middle school. He did not recall if K.C.'s testing with Brooks had been completed by August 7, 2017. B.C. had a copy of Brooks's report in August 2017 and did not know when the report was provided to the District. He did not recall contacting the District and asking it not to declassify K.C. after receiving the August 7, 2017 letter. B.C. also did not recall whether he contacted the District after the January 30, 2018 IEP meeting to advise that there were concerns not reflected in the IEP. B.C.

testified that K.C.'s mother would generally take the lead regarding communications with the District on behalf of K.C.

Ms. C.

K.C.'s mother (Ms. C.) testified that K.C. expressed concerns to her about attending NPS. She described that early on, after K.C. started kindergarten, K.C. was "having difficulty with the homework," she "started being very nervous," and a "kind of anxiety . . . started to sort of crop up." Ms. C. noticed and K.C. expressed less excitement about going to school in kindergarten. K.C.'s anxiety became more pronounced in first grade, and it got worse as she moved to second and then to third grade. Beginning in or around second grade, K.C. exhibited reluctance to go to school. She refused to take the school bus, and Ms. C. would drive her to school. Ms. C. would have trouble getting K.C. in and out of the car; K.C. would be in tears; and Ms. C. would have to park the car and "talk her down off the ledge and kind of bribe her to . . . go into school." K.C. was tardy eleven times in third grade, thirty-eight times in fourth grade, and forty times in fifth grade. Ms. C. described that K.C.'s classmates teased her and made her feel embarrassed that she was slow. In gym class during fourth and fifth grades, K.C. was always the last person picked for an activity or team; K.C. relayed hearing someone say "throw the dodgeball at her"; and K.C. was terrified of the "crack the whip" exercise because the other children were bigger and stronger than she was. The District did not make any gym accommodations for K.C. in fifth grade but Ms. C. believed that at times the PT session happened at the same time as gym. Homework was a huge issue for K.C., she had tremendous resistance, and she would be crying and upset. K.C. relayed to Ms. C. on numerous occasions that she felt like she was dumb, that the other students observed and commented that she was not capable and not as fast as they were, and it was an environment where she did not feel successful and smart. In math class, the teacher would have K.C. come up to the board to do a problem, which she could not do, and it was mortifying for her and made her feel like she was not smart and not able to do the work. Classmates would comment on K.C. biting her lip or cuticles, and K.C. felt like she was the "odd kid." Ms. C. testified that K.C. was unhappy and anxious at NPS, she did not feel successful, and she did not feel confident that she was retaining the material. K.C. did not consistently present as someone who was absorbing the content, and Ms. C.

did not have the sense that K.C. was feeling in command of the material that she was learning, feeling confident, and fitting in.

Ms. C. testified that after the parents received Brooks's report in late July, they reviewed the results together, they "were very surprised that K.C. was not making great progress in certain areas, . . . [they] were already worried about her functioning in middle school and . . . K.C. was very nervous about middle school." She described that "when [the parents] looked at those results and consulted with Dr. Brooks . . . [the parents] just felt like [they] needed to . . . have K.C. start sixth grade in a different environment that would be much smaller, smaller classrooms with . . . a much higher ratio of teacher to student[.]" According to Ms. C., prior to receiving Brooks's results, K.C. was going to FMS, which is where her older brother attended school.

Ms. C. described that the parents had no warning regarding the District's declassification decision. According to Ms. C., between November 17, 2016, and August 7, 2017, the District did not communicate a deadline for submission of Brooks's evaluation report. The parents received no communication before the August 7, 2017 letter indicating that the special education designation would be withdrawn if they did not submit the report by a definitive date. Ms. C. did not view Golob's June 12, 2017 letter as a warning given the fact that Ms. C. knew at that time that K.C. was going to be evaluated and the parents would have a report; she had informed Golob that Brooks's report would not be available until late July or August; Golob said that would be fine; and there was no deadline date in the letter. Ms. C. acknowledged that, based on Golob's June letter, she knew that she needed to get the District some kind of a report from a doctor or other individual to continue K.C.'s eligibility and without that information K.C. would not receive an IEP. She also acknowledged that between November 17, 2016, and August 7, 2017, she had "[q]uite a few" discussions or communications with Golob or individuals at the District about getting the evaluations completed, the District had offered to conduct the evaluations, and the parents declined that invitation.

Ms. C. testified that, after "[r]eceiving [the August 7, 2017] letter[.]" in addition to reviewing the test results from Dr. Brooks, [the parents] came to a conclusion that [they] would . . . try to find K.C. [a] place in a school that was going to give her a better chance

of being successful and feeling confident and . . . comfortable at school.” She stated, “[W]e were recognizing that the results of this report from Dr. Brooks reflected a lack of progress and at the same time, we were being told by the School District . . . [that] K.C.’s not even eligible for special ed,” and the District was “kind of dumping her, and that added . . . to our impetus to . . . place her . . . in Craig[.]” The “door was being closed by the District as far as [the parents] were concerned, and [the parents] were also very anxious to get [K.C.] started on a program that was going to be more appropriate for her needs.” Ms. C. acknowledged that she did contact Nue or any other District employee after receiving the August 7 letter. She described that the parents’ reading of the letter was that it could not be established that K.C. continued to be eligible to receive special education and related services, and she interpreted the advice that K.C. would not be entering FMS with an IEP as a final answer from the District.

Ms. C. testified that the parents contacted Craig in late August. According to Ms. C., she did not reach out to Craig or make any inquiries before receiving Brooks’s report. The parents were familiar with Craig because their oldest son attended the school. The parents chose Craig because they were really impressed with the progress that their oldest son had made, the parents knew things about Craig, and it was one of the schools recommended by Brooks. Ms. C. provided Brooks’s summary or topline report to Craig prior to K.C. attending the school.

Ms. C. described that Craig had very small classroom sizes, with six students being the average class size for that grade. It had an FM speaker system, which helped students with ADHD and auditory and processing issues. Craig also had a consistent system of a notebook with tabs, which was very organized and helpful for students with executive functioning difficulties. Students would know where to look for homework, they could go to the tab for each subject, and everything was organized with learning aids and reminder sheets. The teachers were trained in special education and used kinesthetic learning practices. Craig made accommodations for K.C. in gym. Craig placed K.C. in a seventh-grade writing class when she started at the school and that “was the first time that [K.C.] felt successful and . . . acknowledged for her intelligence.” There was a marked difference regarding K.C. when she attended Craig. Ms. C. observed that K.C. was happy, felt like she belonged, and had command of the material. There were no battles

or confusion about homework; K.C. loved going to school; she was not tardy; there was no school refusal; and there were no reports of bullying or issues of her fitting in. K.C. immediately felt that she was with peers who were like her, that she belonged, and that she could feel successful in that environment.

Ms. C. stated that the IEP offered when K.C. was in sixth grade was not sufficient and not acceptable. She testified that the IEP was similar to what K.C. had at NPS, which “in [the parents’] eyes had not worked, . . . [and] why would we pull her out of Craig where she was now really kind of feeling like a success and feeling comfortable.” The parents did not accept the IEP because they “were seeing evidence of K.C. thriving for the first time in years” at Craig. Craig “was an environment where she was thriving, and what was being offered by the School District . . . felt regressive in comparison.” Ms. C. stated, “[a]t that point the differences and the benefits of the kind of environment at Craig had become evident to [the parents].” Ms. C. was not aware that the IEP included kinesthetic learning as a modification, and she agreed that K.C. did not receive PT or OT at Craig.

Ms. C. acknowledged that she is familiar with the evaluation and IEP process. She denied speaking for a substantial period about private schools for K.C. but indicated that she would not be surprised if she asked Brooks before her testing whether she thought K.C. might need to go to a private school. Ms. C. acknowledged that she advised Brooks during an interview on December 14, 2016, that she “thinks Craig may be a good fit for [K.C.]” (R-59 at 9.) She agreed that Brooks’s notes of her interview on May 30, 2017, state, “Willow School, Craig School, Cambridge School, Waldorf School are possible options.” (Id. at 3.) Ms. C. testified that she might have brought up possibilities and asked Brooks what she thought about those schools, but they were not schools that the parents were pursuing. According to Ms. C., she did not have serious discussions with Brooks about K.C. going to a private school until the parents received her report in late July. Regarding homework at NPS, she agreed that going between the parents’ households was challenging for K.C., and at times K.C. had some difficulty doing homework at B.C.’s house. Ms. C. was aware that K.C. got into an advanced language arts class in the District for sixth grade and described that K.C. was excited when she received the letter advising her about that class.

Dr. Jill Brooks

Brooks testified on behalf of B.C. and was qualified as an expert in clinical neuropsychology. She holds a master's degree in speech pathology and a Ph.D. in counseling psychology. Brooks has held a psychology license in New Jersey since 1992 and holds a certification of clinical competence in speech pathology. She has been in private practice since 2004. (See P-18.)

Brooks evaluated K.C. in 2003 and authored a report regarding her evaluation. (J-3.) In connection with her evaluations, Brooks completes the clinical interviews, the IQ testing using the WISC, the case conceptualization, and the feedback sessions. The other testing is administered by a psychometrist in her office, who also scores those tests, under Brooks's supervision. On the WISC-IV, K.C. scored in the high-average range in the VCI, and the average range in perceptual reasoning. (Id. at J-050.) K.C. scored in the low-average range for working memory, and the borderline range for processing speed. Her FSIQ was in the low-average range, and her GAI was "solidly in the average range[.]" On the WIAT-III, K.C. scored in the average range in the composites for oral language, total reading, basic reading, and math fluency. She scored below average in the reading comprehension and fluency, written expression, and mathematics composites. Her total achievement was in the average range. (Id. at J-051.) In completing the ability-achievement discrepancy analysis, Brooks utilized K.C.'s VCI score, rather than the FSIQ or the GAI, because there was "a large gap of 22 points between her verbal comprehension and her perceptual reasoning scores," and Brooks "felt that [the VCI] was the most robust ability score and would be the most appropriate measure of [K.C.'s] intelligence." Using the VCI, there was a significant difference in the composite scores in the areas of total reading, basic reading, reading comprehension and fluency, written expression, mathematics, and math fluency. (Id. at J-054.) Brooks also testified about other tests administered in 2013. Using the DSM-5, Brooks diagnosed K.C. with ADHD combined type, specific learning disorders with impairment in reading, written expression, and mathematics, and an adjustment disorder with anxiety. She recommended, among other things, that K.C. be classified and provided an intensive multi-sensory learning program in her areas of challenge, along with some environmental changes in the classroom to minimize K.C.'s distractibility and enhance her attention. She

also recommended an out-of-school academic coach for executive skills and referred K.C. to a private therapist to work on stress and anxiety.

Brooks evaluated K.C. in June 2017 and prepared a report regarding her evaluation. (J-30.) On the WISC-V, K.C.'s VCI and fluid reasoning composite scores were in the average range; her VSI and working memory were in the low-average range; her processing speed was in the very low range; and her FSIQ was in the low-average range. (J-30 at J-209.) Brooks testified that the composite testing showed that there is a relative strength in verbal skills, there are relative challenges in spatial processing, and attention and working memory issues remain. Regarding the WISC-V subtests (Id. at J-211), Brooks testified that vocabulary remains strong, but you now see a lower score in verbal reasoning. Brooks looks at the similarity or reasoning score to see if there are changes because it can affect reading comprehension along with listening comprehension as information becomes more complex. K.C. still had a relative challenge in knowledge of factual information, and her social comprehension of everyday problems appeared to be stronger for her. She still experienced difficulties in the visual spatial task of block designs, which involves executive and spatial skills. There was not much of a change in working memory, which is "a challenge," and she had very low scores relating to processing speed. Brooks testified that K.C. experiences slow processing and difficulty doing anything rapid, and her scores are consistently low for processing anything that is timed, whether it is math, rapid naming, or visual spatial. Regarding the Ancillary Index, K.C.'s scores were in the low average range in quantitative reasoning, auditory working memory, and non-verbal; the average range in general ability; and the very low range in cognitive proficiency, which is a measure of how efficiently a student can learn. (Id. at J-213.) Regarding the Complementary Index, Brooks testified that naming speed is a "very significant challenge" for K.C. K.C. scored in the very low range in naming speed and storage and retrieval, and in the low-average range in symbol translation, which Brooks stated is part of working memory and involves translating symbols into words. (Id. at J-214.)

On the WIAT-III, K.C.'s composite scores were in the average range in oral language, total reading, basic reading, reading comprehension and fluency, and written expression. She remained below average in mathematics and was low in math fluency.

Her total achievement remained average. (J-30 at J-214.) Brooks testified that K.C. demonstrated improvement in oral language, total reading, basic reading, reading, reading fluency and comprehension, and written expression. Math appeared to be comparable to her prior testing, and there may be some increased processing and slowing issues as to math fluency. K.C.'s total achievement remained about the same. Regarding the subtests (Id. at J-215), Brooks described that listening comprehension improved; reading comprehension remained about the same in terms of percentiles but the grade level and age-equivalent scores increased; math problem solving remained in the same range; and sentence composition and word reading improved significantly. Brooks testified that the essay composition appeared to be a bit more challenging for K.C. but was in the average range; her pseudo-word decoding score improved; and her numerical operations is essentially in the same confidence range, along with oral expression, which improved from a percentile and grade-equivalent standpoint. K.C.'s oral fluency was in the same confidence range but appeared improved, as well as spelling. Math fluency "still remains challenging for her." Regarding the oral reading fluency subtest, K.C.'s reading accuracy and reading rate increased. (Id. at J-216.) Regarding the listening comprehension subtest, K.C. was above average in receptive vocabulary and average in oral discourse comprehension. (Ibid.) She was also average in sentencing combining and sentence building. (Ibid.) Regarding the essay composition subtest (Id. at J-217), K.C. was average in word count and below average in theme development and text organization, which Brooks described as "more the executive skill piece of writing[.]" Brooks did not know when and how theme development and organization is taught in the District. Regarding the oral expression subtest, K.C. was average in expressive vocabulary, oral word fluency, and sentence repetition. (Ibid.)

In completing the ability-achievement discrepancy analysis, Brooks used K.C.'s VCI score which, according to her report, "represented the most robust measure of [K.C.'s] overall intelligence." (J-30 at J-218.) Brooks's report states that the VCI "measures the ability to access and apply acquired word knowledge utilizing verbal concept formation, reasoning and expression." (Id. at J-209) Brooks testified that she used the VCI "because of the challenges with visual spatial skills." She did not use the GAI "because in the calculation we still have the very, very significant and low spatial score that is different than the other two scores, both the [VCI] as well as . . . the GAI."

This analysis revealed significant differences in math problem solving, numerical operations, and mathematics. (Ibid.)

After a break in testimony, Brooks testified that “[i]t didn’t make sense to [her] that [she] had utilized the VCI this time, for this report.” After looking at her record, she “realized that [she] had used the GAI in this ability achievement discrepancy analysis, and not the VCI.” She looked at the printout from the WISC because “on those pages are where [she] find[s] . . . if there was a discrepancy analysis between the [FSIQ] and the GAI,” and “if the GAI was higher and significant, that’s when you would use the GAI.” The score report shows that there is a significant difference between K.C.’s FSIQ and GAI. Brooks testified that there was an “error” in her testimony and her report that the VCI was used in the ability-achievement discrepancy analysis. The scores in her report are based on using the VCI. Brooks also looked at the WIAT printout, which confirmed that the GAI was used. Brooks provided score reports for the WISC testing on June 1, 2017, and the WIAT testing on June 5, 2017. (J-36.) The reports reflect that they were run on June 14, 2017. The predicted WIAT scores in Brooks’s report using the VCI are higher than the predicted scores in J-36 using the GAI. Brooks testified that her report reported the VCI, which she thought “wasn’t appropriate,” and “there was an error because now that we had moved to the WISC-5, and we had the addition of fluid reasoning, that . . . was going to set off the . . . impact of the visual spatial.” Brooks thought that she should have reported the GAI in her report. The ability-achievement discrepancy analysis using the GAI revealed significant differences in the same math areas as in her report (i.e., math problem solving, numerical operations, mathematics) and revealed a significant difference in math fluency. Brooks could not articulate a reason why math fluency was not listed as a category in her report. Brooks explained that utilizing the VCI, rather than the GAI, fails to note achievement areas of strength (i.e., scores on the WIAT greater than the predicted score) in the areas of word reading, decoding, total reading, and basic reading.

On the Test of Written Language–Fourth Edition, K.C. scored in the above-average range in the contrived writing, spontaneous writing, and overall writing composites. (J-30 at J-219.) Regarding the subtests, K.C. scored above average in vocabulary, punctuation, and story composition; average in spelling, logical sentences, and contextual

conventions; and superior in sentence combining. (ibid.) On the Gray Oral Reading Tests–Fifth Edition, K.C.’s scores increased from the 2013 testing. (Id. at J-220.) Brooks testified that K.C.’s oral reading rate increased and got faster; her accuracy, fluency and comprehension had not changed appreciably; and her comprehension remains low. Regarding the Comprehensive Test of Phonological Processing–Second Edition (Id. at J-220, J-221), Brooks testified that difficulties remain at the phonological level and K.C.’s score had dropped. She stated that there appeared to be a drop in phonological memory (i.e., the ability to remember phonological sound-symbol relationships); K.C. had consistent difficulty with rapid naming, which were her lowest scores; there were increased challenges in memory for digits; and the phoneme isolation subtest was “problematic.” Regarding her other testing, Brooks testified that she started to see some increased difficulties in the area of memory and in the context of an executive functioning framework. On the list-learning task, K.C. had more difficulty with locking in her attention than she did on her prior testing. Her scores dropped when provided with cues, and she was not able to make use of the executive or semantic cues to facilitate performance. Regarding her nonverbal memory, K.C. continued to experience difficulties with recall, her approach remained fragmented, and she had difficulties with organization, planning, and capturing the big picture. K.C.’s verbal fluency and her single-word receptive and expressive vocabulary scores were consistent with her prior scores, and her single-word receptive and expressive vocabulary remained strong. Brooks described that K.C. experienced difficulties with copying a complex geometric design, and she approached the test in a fragmented way consistent with some of her visual spatial and executive difficulties, but her score was now in the average range. According to Brooks, K.C. experienced many difficulties with a moderate indication of ADHD on a computerized test involving continuous auditory attention, and she experienced difficulties relating to variability in her response times and her ability to sustain attention on the visual continuous-attention computer testing. Fine motor skill challenges remained in both hands; there was improvement from the impaired range in her motor speed; and her tapping was faster. K.C.’s fine motor skills and dexterity remained in the impaired range with her dominant hand, and in the borderline range for her non-dominant hand. Her previous scores were in the impaired range for both hands. K.C.’s grip-strength scores improved and were now in the borderline range, rather than the impaired range. Her written intelligibility was judged to be good.

On the self-report measure of self-esteem, K.C.'s self-esteem increased from average to above average. Her reported academic and parent/home self-esteem was above average, and her general and social self-esteem was average. (J-30 at J-223.) On the Children's Measure of Obsessive-Compulsive Symptoms, Brooks testified that K.C.'s intrusive-thoughts score was in the high-average range, and such thought patterns affect attention and concentration. (Ibid.) K.C. did not report any concerns in the self-report measures of anxiety and depression. Brooks indicated that on the Millon Pre-Adolescent Clinical Inventory, K.C. endorsed "very few, minimal problematic thoughts or feelings or behaviors in any of the content areas." According to Brooks, K.C. "appears to be someone who tries to present herself in a way that is confident in her abilities"; "she tends to be a pleaser"; "she wants everything . . . to go well"; and she had "a tendency to underreport difficulties[.]" Brooks stated that K.C. endorsed current hyperactivity and inattentiveness on this measure, and K.C. "was feeling most challenged in the school environment in academic and social issues." Conners-3 questionnaires were completed by K.C., her parents, and teachers Mahony and Miller. K.C. did not note any challenges in the questionnaire. Her mother reported above-average difficulties in attention, hyperactivity/impulsivity, learning problems, and family/peer relations, and B.C. reported above-average difficulties in family/peer relations. The teachers reported above-average difficulties in attention, learning problems associated with executive skills, executive functioning, and family/peer relations. (J-30 at J-224.) On the Behavior Rating Inventory of Executive Functioning, Second Edition, K.C. did not perceive difficulties with executive skills, except an above-average perception in the area of self-monitoring. K.C.'s mother reported difficulties with shifting or transitions and emotional regulation, and B.C. did not report any clinically significant difficulties. The teachers reported difficulties with shifting, emotional control, initiating a task, working memory, planning and organization, emotional regulation, and the global executive composite. (Id. at J-225.)

Based on her evaluation, Brooks continued to diagnose K.C. with ADHD combined type, and specific learning disorders with impairment in reading, written expression, and mathematics. She also diagnosed K.C. with a generalized anxiety disorder. Brooks did not recall which DSM-5 characteristics listed in her report K.C. demonstrated that formed the basis for her generalized anxiety disorder diagnosis. She agreed that this information

would be important to include in her report. Brooks testified that she recommended an out-of-district school that could target K.C.'s learning, attention, executive skills, and processing disorder. Her report also states that an out-of-district placement "in a therapeutic school is warranted at this time." (J-30 at J-235.) Brooks stated that she recommended an out-of-district placement because "she was concerned . . . about [K.C.] . . . transitioning to the middle school" in general and FMS in particular. According to Brooks, she had completed observations of two other students at FMS. Although Brooks recalled that her observations were of a general education class, she could not state when the observations were done, what classes she observed, and how many classes she observed. Brooks's concerns "were the size of the class, the transitions in between classes being very busy [and] . . . K.C.'s ability to navigate the school . . . within a large classroom environment, where more executive skills were going to be required." She stated that the middle school "would go faster than [K.C.] would be able to manage from a processing standpoint," and Brooks was concerned about "her ability to navigate from a spatial standpoint." Brooks "was unclear if [K.C.'s] needs would be met in the executive skill area or in her . . . being able to move from class to class, reorient from an executive skill standpoint, and deal with transitions and change without that kicking up her difficulties with anxiety." Brooks's described concerns related to a middle school in general and FMS.

Brooks believed that K.C. should remain classified. According to Brooks, she is familiar with the eligibility criteria for determining whether a student is eligible for special education and related services. Her "understanding of the criteria is that there is either a severe ability . . . achievement discrepancy, or that there has not been a response to treatment or evidence-based intervention, or that there are challenges related to processing within the context of identifying strengths and weaknesses." Based on the documents provided by the parents, Brooks believed that K.C.'s ADHD had an adverse effect on her educational performance, stating that "when there are difficulties with being able to attend in the moment, or sustain your attention over time, that has an impact on your working memory," and "working memory and memory skills are . . . part of the foundation for new learning." Brooks opined that K.C.'s specific learning disorder in math had an adverse effect on her educational performance because "it limited her ability to make reasonable progress in the area of mathematics." She noted that K.C.'s 2016 State

assessment in math (J-37) shows that her score “is at a level of approaching expectation as opposed to meeting expectations or exceeding.”

Brooks reviewed the January 30, 2018 IEP in preparation for her testimony. She opined that an IEP would not be appropriate for K.C. if the IEP offered K.C. special education instructional services only in math and not other subjects. Brooks’s “concerns are that this is someone who has received in class-support in the area of written expression [and she] . . . would be concerned about her ability to manage factual writing.” She further stated that “[n]othing is specified about her skill sets within [s]cience and [s]ocial studies, dealing with foreign language [and] [b]ecause of the underlying processing issues that [Brooks] believe[d] relate at the . . . phonological level, [Brooks] think[s] it would have been important to address those, about how she would be served in those . . . gen ed environments.” Brooks stated that a program in which K.C. is receiving special education support only in math class does not meet her recommendations because Brooks was recommending “a more intensive level of support academically, throughout the school day, not just in one class.” Brooks did not recommend counselling in school. She recommended therapy by an outside counselor and referral to a psychiatrist.

Brooks conducted an evaluation of K.C. in January 2020, including an observation at Craig, and issued a report after the parents’ feedback on February 27, 2020. (P-17.) The stated purpose of that evaluation was to “provide guidance for high school.” (Ibid.) Brook opined that Craig was an appropriate placement for K.C. in eighth grade.

Brooks acknowledged that she is not a medical doctor, a certified teacher, or a licensed OT or PT therapist. She acknowledged that she had never been directly employed by a school district, never been responsible for any special education programming within a public school system, and never served on a CST. Brooks never attended any of K.C.’s IEP meetings and did not attend the November 2016 reevaluation planning meeting. Brooks acknowledged that she used the DSM for her diagnoses in 2013 and 2017, and she did not utilize the New Jersey special education code when discussing K.C.’s disabilities.

Brooks testified that she observed K.C. at Craig because the parents were requesting guidance for high school, and Brooks “felt it was important to go into the school to observe how [K.C.] was doing in school in order to make those kinds of recommendations.” Regarding why she felt that it was necessary to go to the school and observe K.C. after obtaining information about K.C. and her schooling during the parents’ interviews, she testified that “there has always been some differences of opinion between the parents . . . with education of the students in the family and [Brooks] felt that it would be important . . . to get some information from the people who were actually involved with teaching her” and “ascertain how she was truly doing in this environment.” Brooks agreed that part of that observation and interviews with the teachers was to confirm some of the information that was given to her by the parents. She agreed that the information she would gather from a school observation (e.g., the student’s functioning in a specific subject area, interaction with other students, ability to keep up with the work, attention) is very important in terms of the student’s functioning in school. Brooks acknowledged that she never observed K.C. when she was attending school in the District.

Brooks did not recall when the parents first contacted her about conducting the 2017 evaluation. Brooks interviewed K.C.’s mother on December 14, 2016. (R-59.) Brooks’s notes state, “Evaluations need to be done for the children.” Brooks could not state whether this was the first time the parent contacted her about doing the 2017 evaluation “because sometimes parents come in for an interview and say they want testing . . . in the future and then testing is not followed through with.” She noted that historically K.C.’s mother has contacted her about evaluating the children and the evaluations did not occur due to “[a] difference of opinion between the parents about the need for the evaluation.” Brooks’s notes state, “Mom thinks Craig may be a good fit for her.” Brooks did recall the nature of the discussion and just recorded what the mother shared. Brooks’s notes reflect that K.C.’s mother reported that K.C. was “incredibly resilient”; “[e]xtremely creative, verbal and insightful”; “[v]ery dynamic in her learning and becoming very engaged”; and “[c]onfident in her artwork.” She also reported that K.C. was “better able to cope with school-based anxiety now” and has good friends in and out of school. K.C.’s mother reported that K.C.’s reading comprehension was “very good,” her attention and executive skills were “pretty good,” and she was “[g]etting good OT and PT at school.” Brooks recorded the mother’s advice that the year before K.C. was very

flustered trying to solve a problem on the board, Miller tried to push her through this, and K.C. felt humiliated. Brooks had never met Miller, and she was unable to confirm the accuracy of the mother's advice. Brooks's notes do not reflect that K.C.'s mother advised that the school was waiting for her evaluation to determine K.C.'s eligibility. Brooks would have recorded in her notes if the parent had advised that her evaluation was going to be a part of the District's re-evaluation.

Brooks interviewed K.C.'s mother on May 30, 2017. Her notes of the interview state, "Mom is concerned about [K.C.] during these Middle School years," and "Willow School, Craig School, Cambridge School [and] Waldorf School are possible options." (R-59.) Brooks testified that K.C.'s mother mentioned those schools. Brooks did not recall if she had any conversations with the mother about those schools. According to her notes, K.C.'s mother advised that "[i]n class support is more executive skills on how to write," and K.C.'s "organization and ability to manage her own homework has significantly improved." She also reported that B.C. does not do homework with the kids on Thursday evening, but Brooks was unable to validate that advice. K.C.'s mother expressed concerns about bullying in school, but Brooks did not receive any documents from the school indicating that K.C. was the victim of bullying. At the time of this interview, Brooks was not aware that the parents had promised the District that she would perform the evaluation to determine K.C.'s eligibility, and the District had been waiting since November 2016 for her report. Brooks agreed that a school district cannot simply label a student disabled without back-up information.

Brooks interviewed K.C. on May 31, 2017. K.C. reported that things were "going great" at NPS and she had "great friends there so that makes it fun." (R-59.) She reported that some of the kids in gym "are not so nice always, but [she] ignore[s] it," and gym was "good." K.C. reported that she was "practicing catching a ball, throwing it off the wall and catching it," and "[i]t's pretty good," and that she has been teaching a younger girl in PT to skip/catch a ball. She reported that "[m]ath is better"; she will be in a small math group next year; she prefers being in a smaller group; and there are only three other students in the smaller class. She reported receiving a letter from the school indicating that she got into advanced language arts next year. Regarding stress in the classroom, K.C. reported that she just goes into the bathroom and takes a deep breath, which Brooks

stated is a type of coping mechanism. Brooks agreed that it would be important to note if she had any concerns regarding the validity of the information K.C. relayed.

Brooks opined that the parents' divorce proceeding impacted K.C.'s anxiety in 2013 and 2017. As part of the 2017 evaluation she did not observe K.C. in school, and did not have any discussions with school staff members, including regarding whether K.C. was exhibiting any signs of anxiety in school or how K.C.'s anxiety was being addressed in school.

Regarding her 2017 evaluation, Brooks administered the WISC and a psychometrist administered the other testing. Brooks was in a separate room when those tests were administered, and she did not observe that testing, including K.C.'s behaviors during the testing. After the testing is completed, Brooks discusses with the tester what went on during the testing. No accommodations or modifications were made for K.C. regarding the WISC and WIAT testing since Brooks must adhere to the standardized protocol. Brooks described the general process she used in 2013 and 2017 regarding the testing scores. Brooks or a psychometrist enters the data into a data summary sheet. (See R-61.) The data is then inputted into the computer after Brooks has checked all the scoring. Brooks usually runs a score report within several weeks after the entire testing is completed. The date of the report on a score report represents the date that the score report was run.

Brooks produced other documentation after her initial testimony. In addition to the score reports that she had produced during her prior testimony relating to the June 2017 testing dated June 14, 2017, which utilized K.C.'s GAI score for the discrepancy analysis (J-36), Brooks produced a WISC score report regarding the June 2017 testing dated July 11, 2017. (R-60.) Brooks did not know why a separate WISC score report was run in July or the reason that a WIAT score report was not run. Regarding the June 2017 testing, Brooks also produced a WIAT score report dated December 16, 2020, or two days before her earlier testimony, that used the GAI score. (R-63.) Brooks acknowledged that, utilizing the GAI score, K.C. did not present in 2017 with specific learning disorders with impairment in reading and written expression.

The produced documentation includes WISC and WIAT score reports relating to K.C.'s initial evaluation in 2013 dated October 1, 2013. (R-62.) The score report includes an ability-achievement discrepancy analysis using both the GAI and the VCI scores. Brooks did not recall why she ran both or why she did not utilize the FSIQ score. Brooks used the VCI score in her report. Brooks produced a data summary sheet regarding this evaluation. (R-61.) She acknowledged that the summary sheet and her report include different WISC scores (i.e., block design, picture concepts, matrix reasoning, picture completion), which Brooks stated are mistakes in moving the data from the summary sheet into her report.

The October 1, 2013 and June 5, 2017 WIAT score reports include growth scores (i.e., the growth from one testing to the next), which are not recorded in Brooks's reports. Brooks agreed that comparing growth scores would demonstrate K.C.'s growth in a particular area with "limited reliability" because a trend would not be established until three or more data points. A comparison of K.C.'s growth scores in 2013 (R-62) to her growth scores in 2017 (R-63) reveals that K.C.'s scores had increased in every area measured on the WIAT.

Suzanne Olimpio

Olimpio testified as a rebuttal witness on behalf of the District and was qualified as an expert in special education, learning disabilities and school psychology. She holds a master's degree in counseling and is certified as a school psychologist, a supervisor, a principal, and a superintendent. She worked as a school psychologist from 1992 to 2007; a supervisor of special services from 2007 to 2010; and a director of pupil personnel services from 2010 to 2014. Olimpio worked for the District from 2014 to 2019 as a director of special services and then as the assistant superintendent of special services. She is currently the interim director in another school district. (See R-71.)

As a school psychologist, Olimpio was a member of various CSTs and had worked on CSTs from pre-K through high school. She has case managed hundreds of students and written hundreds of IEPs throughout her career. In her roles as the director of special services and the assistant superintendent of special services, Olimpio oversaw the CSTs,

the special education teachers, and the special education programs. She was responsible for developing special education programs and developed classes for students with autism and language and learning disabilities. Olimpio has administered hundreds of standardized psychological assessments. She has taught special education law classes for approximately three years. Olimpio has also participated in numerous monitoring processes and audits by the New Jersey the Department of Education regarding IEP process compliance, classification rates, and adequate yearly progress. Olimpio was honored by the New Jersey Coalition for Inclusive Education.

Prior to her retirement from the District, Olimpio was aware that K.C. was identified as a student with a disability under the classification of OHI based on her ADHD. She reviewed records relating to this matter including, among others, the testing that was conducted when K.C. was initially classified, numerous e-mails between District staff and the parent, the testing performed by Brooks and Heywood, and the proposed January 2018 IEP.

Regarding the November 2016 evaluation planning meeting, Olimpio testified that K.C. was initially classified based on an ADHD diagnosis “[h]owever, she was making progress, meeting her goals and objectives, and the District had wanted to do additional testing to see if she was still eligible, because the way she was performing in the classroom and meeting her goals and objectives without additional testing she would no longer be eligible.” She understood that the purpose of the November 2016 meeting was because K.C. was going to be declassified without additional testing. Olimpio noted that the results of the State testing would not have been available at the time of the November 2016 meeting.

Olimpio described that the District used the i-Ready on a regular basis, which is “more of a benchmark assessment” and “really to monitor student progress throughout the year so they can identify any skill deficits that a teacher may want to work with a student on.” She testified that the fact that K.C. was performing one year below grade level in math on the i-Ready would not in and of itself make her eligible for classification under the IDEA. Olimpio explained that “in a typical class you have students, like when you look at the bell-shaped curve, you have students at the 25th to the 75th percentile

[s]o you could have a student . . . at the 25th percentile who could be a year below.”

Olimpio reviewed Brooks’s 2013 testing. She opined that nothing in that testing would have supported K.C.’s classification under the category of SLD in 2017. Olimpio noted that Brooks did not test math. She explained that there were a couple of subtests in the WISC-IV that typically trigger an evaluator to do math testing (e.g., block design, picture completion), and those subtest scores were average. Olimpio stated that the verbal comprehension tests typically relate to language arts, and the student’s performance in reading, writing, and passage comprehension. The visual perceptual tests are usually more connected to math; the block design tests visual perception skills; and “a student who does well in that block design is not typically having a math disability, or it’s not pointing to one.” Students who do poorly on picture completion, which is another visual perceptual test, sometimes have difficulty in math. K.C.’s test scores in those areas were “solidly average.”

Olimpio reviewed the OT and PT evaluations that the District performed after the November 2016 meeting. She testified that there was no indication in the OT evaluation and its findings that K.C. had a disability that required classification. Olimpio further explained that she would not use an OT or a PT evaluation to determine eligibility for special education because those evaluations do not test for a disability category. Rather, OT and PT evaluations are “looking to see if [the student] need[s] the related services of fine motor and gross motor skills . . . [t]o help them access their education.” Olimpio added that the only time you would use a PT evaluation to determine eligibility is if the student was physically disabled (e.g., a child with cerebral palsy). Olimpio opined that, based on her review of the OT and PT evaluations, K.C. would not be eligible for classification under the IDEA.

Olimpio reviewed K.C.’s progress reports, which “showed that she was accessing the curriculum and making adequate yearly progress” toward her goals and objectives. She opined that it would have been inappropriate for the CST to have classified K.C. at that point based on her prior diagnosis of ADHD “because she was accessing the curriculum, and she was particularly strong in language arts [s]o if the classification was OHI, we would have seen” the impact of that disability “across all academic areas.” Based

on her review of the documents, K.C. was making adequate yearly progress, and K.C.'s attention issues were not significantly impacting her performance.

Regarding Brooks's 2017 report indicating that she utilized the comparison between K.C.'s VCI score and her academic functioning for purposes of determining a discrepancy, Olimpio testified that school districts typically utilize the FSIQ "[b]ecause it's taking into account the student's total functioning and their potential as opposed to one skill area that could be deficient within the subtest[.]" Olimpio noted that the training materials indicate that you are not supposed to use one subtest, and the VCI does not relate to any mathematical testing that would be administered. Olimpio explained that the GAI takes out the areas of processing speed and working memory such that it does not become a factor in the student's accurate portrayal of their IQ. Regarding the results of Brooks's June 2017 testing using the GAI as a comparator and listing a significant difference for math problem-solving, Olimpio testified that the listed 18-point difference would not be sufficient to classify a student under the category of SLD. Regarding Brooks's listed significant differences for numerical operations, mathematics and math fluency, Olimpio stated that these areas are not recognized categories under the New Jersey Code for classification of a student under the category of SLD. Olimpio opined that, based on Brooks's report regarding the GAI comparator, coupled with the PT and OT evaluations, there would have been no basis to classify K.C. She further opined that the District had a basis to classify K.C. predicated on Heywood's testing.

Based upon the evaluations and the documents she reviewed, Olimpio opined that the January 2018 IEP offered K.C. a FAPE. She stated that the IEP provided that K.C. would attend a resource center math class in lieu of the general education math class. That class would involve the general education curriculum and the State standards, and the class would include a limited number of students, which is determined by the special education code. The maximum number of students at that time was eight, and an aide was required for a class with nine to a maximum twelve students. Olimpio opined that K.C.'s math disability, as determined by Heywood's testing, could be addressed in the replacement math class, which would provide specially designed instruction to address that disability while allowing K.C. to stay in her home school in the general education setting for most of the day. She explained that specialized instruction refers to using the

grade level standards but giving the instruction in a different way so that the student can access the curriculum (e.g., chunking a problem). The IEP includes goals and objectives related to K.C.'s deficit in math. The District offered PT and OT services related to those evaluations and the IEP includes goals and objectives for both areas. Olimpio had reviewed numerous e-mails from the parents to the principal and the school counselor reporting that K.C. had anxiety, and the parents' concern that it impacted her in school. The offered IEP provides individual counseling one time weekly regarding that issue and includes social/emotional/behavioral goals and objectives related to K.C.'s anxiety, which Olimpio opined were appropriate for K.C. at the time the IEP was written based on the e-mails she reviewed and Brooks's report. Olimpio testified that the IEP provided accommodations for attention difficulties. She noted that K.C. would be in a smaller class for math with the ability to redirect K.C. and ensure that she was on task. Olimpio further stated that most of the listed modifications in the IEP applied to attention difficulties, including break tasks and assignments down into manageable parts and help the student organize and prioritize assignments when necessary; provide breaks if the student is overwhelmed; provide feedback to the student; reduce auditory and visual distractions; provide graphic organizers; check for understanding and repeat review and clarify directions; repeat directions quietly and have the student repeat and explain the directions; and opportunities for kinesthetic learning (i.e., using manipulatives and giving sensory feedback).

Olimpio testified that at the time there were approximately 900 students at FMS, but the school is structured "like three mini schools within the larger context of the school." She described that there are three houses; the students have certain teachers within those specific houses who meet regularly to discuss the progress of their students in the house; and each house has a counsellor and an administrator assigned to it.

Olimpio has been to Craig multiple times, she has observed multiple classes, and she met with the Craig director "a long time ago[.]" She described that Craig "really talk[s] a lot about using [a] multi-sensory approach, using Wilson and Orton throughout the day," and most of the students during her visit had a language-based learning disability. Olimpio opined that Craig was not appropriate for K.C. in light of the testing that was done. Based on Brooks's testing, Olimpio did not see anything that indicated that K.C. presented

with a language-based disability, which she stated “was actually a strength of [K.C.] all the way through[.]” Olimpio did not “feel [that Craig] was a match” for K.C., and K.C. “did not need that type of program.” Olimpio testified that K.C.’s math disability could have “adequately been addressed in the resource center, and she would have been able to be with her non-disabled peers, participate in all the activities that they have in the school while having her math disability addressed.” Olimpio has viewed 100 out-of-district placements and, “when it comes to the area of math, . . . [she] think[s] that the public school is very well suited to work with a student who has a math disability.” She added that at Craig K.C. would not have the opportunity to be educated in the LRE, which “is obviously one of our obligations.” K.C. would not be with her non-disabled peers. She would be going to a school that is not in town, which limits her ability to participate in assemblies, and after school activities can be hard if the schedule is different. Olimpio also testified that Craig is not a therapeutic school. It does not specialize in conditions such as anxiety, and it does not have licensed mental health providers overseen by psychiatrists etc., which are typically seen in a therapeutic school.

Olimpio testified that a CST cannot continue to treat a student as disabled if the student does not meet the eligibility criterion, and a student who no longer meets the criterion for classification must be declassified. She explained that there could be a formal meeting to declassify a student, but it is not required by law. Olimpio described that, instead of having the IEP meeting just to declassify, “very often what we would do is have an identification meeting to propose additional evaluations to see if the student” still had a disability.

LEGAL DISCUSSION AND CONCLUSIONS

The IDEA provides federal funds to assist participating states in educating disabled children. Hendrick Hudson Cent. Sch. Dist. Bd. of Educ. v. Rowley, 458 U.S. 176, 179–80 (1982). One of the purposes of the IDEA is “to ensure that all children with disabilities have available to them a [FAPE] 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). A “child with a disability” means a child “with intellectual disabilities, hearing impairments (including

deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance . . . , orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities” and “who, by reason thereof, needs special education and related services.” 20 U.S.C. § 1401(3)(A).

Pursuant to N.J.A.C. 6A:14-3.5(c), “[a] student shall be determined eligible and classified ‘eligible for special education and related services’ under this chapter when it is determined that the student has one or more of the disabilities defined in (c)1 through 14 below, the disability adversely affects the student’s educational performance, and the student is in need of special education and related services.” The listed categories include OHI and SLD. OHI is defined as “a disability characterized by having limited strength, vitality, or alertness, including a heightened alertness with respect to the educational environment, due to chronic or acute health problems, such as attention deficit hyperactivity disorder, . . . that adversely affects a student’s educational performance.” N.J.A.C. 6A:14-3.5(c)(9). The regulation directs that “[a] medical assessment documenting the health problem is required.” *Ibid.* SLD means “a disorder in one or more of the basic psychological processes involved in understanding or using language, spoken or written, that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions, such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.” N.J.A.C. 6A:14-3.5(c)(12). In this regard, an SLD “can be determined when a severe discrepancy is found between the student’s current achievement and intellectual ability in one or more of the following areas: (1) Basic reading skills; (2) Reading comprehension; (3) Oral expression; (4) Listening comprehension; (5) Mathematical calculation; (6) Mathematical problem solving; (7) Written expression; and (8) Reading fluency.” N.J.A.C. 6A:14-3.5(c)(12)(i).

To qualify for federal financial assistance, New Jersey must effectuate procedures that ensure that all children with disabilities residing in the state have available to them a FAPE consisting of special education and related services provided in conformity with an IEP. 20 U.S.C. §§ 1401(9), 1412(a)(1). The responsibility to provide a FAPE rests with the local public-school district. N.J.A.C. 6A:14-1.1(d). The district shoulders the burden of proving that a FAPE has been offered. N.J.S.A. 18A:46-1.1.

A FAPE includes both “special education” and “related services.” 20 U.S.C. § 1401(9). “Special education” is “specially designed instruction . . . to meet the unique needs of a child with a disability” and “related services” are the support services “required to assist a child . . . to benefit from” that instruction. 20 U.S.C. § 1401(26)(A) and (29). The FAPE mandate requires the provision of “personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction.” Rowley, 458 U.S. at 203.

The IEP has been described as “the centerpiece of the statute’s education delivery system for disabled children.” Honig v. Doe, 484 U.S. 305, 311 (1988). It is the means by which special education and related services are “tailored to the unique needs” of a particular student. Rowley, 458 U.S. at 181. An IEP must be in effect at the beginning of each school year and be reviewed at least annually. 20 U.S.C. § 1414 (d)(2) and (4); N.J.A.C. 6A:14-3.7(a)(1) and (i). It must “be drafted in compliance with a detailed set of procedures,” which “emphasize collaboration among parents and educators and require careful consideration of the child’s individual circumstances.” Andrew F. v. Douglas Cty. Sch. Dist. RE-1, 580 U.S. 386, 391 (2017). The IEP team shall review any lack of expected progress toward the annual goals and in the general curriculum; the results of any reevaluation; information about the student, including information provided by the parents, current classroom-based assessments and observations, and the observations of teachers and related-services providers; the student’s anticipated needs; and other relevant matters. N.J.A.C. 6A:14-3.7(j). In the words of the New Jersey Supreme Court, “[w]ithout an adequately drafted IEP, it would be difficult, if not impossible, to measure a child’s progress, a measurement that is necessary to determine changes to be made in the next IEP.” Lascari v. Bd. of Educ. of Ramapo Indian Hills Reg’l High Sch. Dist., 116 N.J. 30, 48 (1989).

In order “[t]o meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” Andrew F., 580 U.S. at 399. The United States Supreme Court has recognized that “this standard is markedly more demanding than the ‘merely more than de minimis’ test[.]” Id. at 402. In addressing the quantum of educational benefit

required, the Third Circuit has also made clear that more than a “trivial” or “de minimis” educational benefit is required and articulated that the appropriate standard is whether the IEP is reasonably calculated to enable the child to receive “meaningful” educational benefits. Dunn v. Downingtown Area Sch. Dist., 904 F.3d 248, 254 (3d Cir. 2018); S.H. v. State-Operated Sch. Dist. of Newark, 336 F.3d 260, 271 (3d Cir. 2003); T.R. v. Kingwood Bd. of Educ., 205 F.3d 572, 577 (3d Cir. 2000); Ridgewood Bd. of Educ. v. N.E., 172 F.3d 238, 247 (3d Cir. 1999). The determination of whether a given IEP has satisfied the required standard must be assessed in light of the child’s intellectual potential and individual abilities. Dunn, 904 F.3d at 254; T.R., 205 F.3d at 578; Ridgewood, 172 F.3d at 247–48.

“The IEP must aim to enable the child to make progress,” and the “‘reasonably calculated’ qualification reflects a recognition that crafting an appropriate program of education requires a prospective judgment by school officials.” Endrew F., 580 U.S. at 399. The issue of whether an IEP is appropriate is fact sensitive in nature. In connection with this determination, “the focus should be on the IEP actually offered and not on one that the school board could have provided if it had been so inclined.” Lascari, 116 N.J. at 30. It is necessary to “determine the appropriateness of an IEP as of the time it was made[.]” D.S. v. Bayonne Bd. of Educ., 602 F.3d 553, 564–65 (3d Cir. 2010). “[E]vidence acquired subsequently to the creation of an IEP” should “only” be used “to evaluate the reasonableness of the school district’s decisions at the time that they were made.” Id. at 565. “Neither the statute nor reason countenance ‘Monday Morning Quarterbacking’ in evaluating the appropriateness of a child’s placement.” Fuhrman v. E. Hanover Bd. of Educ., 993 F.2d 1031, 1040 (3d Cir. 1993). In other words, “the appropriateness of a student’s placement must be assessed in terms of its appropriateness at the time it is created and not at some later date when one has the benefit of the child’s actual experience.” Id. at 1041.

The adequacy of a given IEP will turn “on the unique circumstances of the child for whom it was created.” Endrew F., 580 U.S. at 404. The Endrew F. Court observed that the “absence of a bright-line rule . . . should not be mistaken for ‘an invitation to the courts to substitute their own notions of sound educational policy for those of the school authorities which they review.’” Ibid. (quoting Rowley, 458 U.S. at 206). This “deference

is based on the application of expertise and the exercise of judgment by school authorities,” who are vested “with responsibility for decisions of critical importance to the life of a disabled child.” Endrew F., 137 U.S. at 404. In this regard, “[a] reviewing court may fairly expect those authorities to be able to offer a cogent and responsive explanation for their decisions that shows the IEP is reasonably calculated to enable the child to make progress appropriate in light of his circumstances.” Ibid.

In accordance with the IDEA, children with disabilities are to be educated in the LRE. 20 U.S.C. § 1412(a)(5); N.J.A.C. 6A:14-1.1(b)(5). Specifically, “[t]o the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are [to be] educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment [should] occur[] only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.” 20 U.S.C. § 1412(a)(5)(A); see N.J.A.C. 6A:14-4.2. Consideration is given to whether the student can be educated in a regular classroom with supplementary aids and services, a comparison of benefits provided in a regular education class versus a special education class, and the potentially beneficial or harmful effects that placement may have on the student with disabilities or other students in the class. N.J.A.C. 6A:14-4.2(a)(8). The Third Circuit has interpreted this mainstreaming requirement to require that a disabled child should be placed in the LRE that will provide the child with “a meaningful educational benefit.” T.R., 205 F.3d at 578. The Third Circuit has further explained that the LRE “is the one that, to the greatest extent possible, satisfactorily educates disabled children together with children who are not disabled, in the same school the disabled child would attend if the child were not disabled.” S.H., 336 F.3d at 265 (quoting Carlisle Area Sch. v. Scott P., 62 F.3d 520, 535 (3d Cir. 1995)).

A multi-disciplinary re-evaluation of a classified student must be completed every three years “to determine whether the student continues to be a student with a disability” unless the parent and the school district agree to waive the re-evaluation. N.J.A.C. 6A:14-3.8(a); see 20 U.S.C. § 1414(a)(2)(B)(ii). In connection with that re-evaluation “[t]he IEP team shall review existing evaluation data on the student, including . . . [e]valuations and information provided by the parents; . . . [c]urrent classroom based assessments and

observations; and . . . [o]bservations by teachers and related services providers[.]” N.J.A.C. 6A:14-3.8(b); see 20 U.S.C. § 1414(c)(1)(A). “On the basis of that review, and input from the student’s parents, the IEP team shall identify what additional data, if any, are needed to determine . . . [w]hether the student continues to have a disability” that adversely affects the student’s educational performance, and the student is in need of special education and related services. N.J.A.C. 6A:14-3.8(b)(2)(i); see 20 U.S.C. § 1414(c)(1)(B)(i). Additionally, based on that review, the IEP team shall identify what additional data, if any, are needed to determine “[t]he present levels of academic achievement and functional performance, and educational and related developmental needs of the student,” and “how they should appropriately be addressed in the student’s IEP,” along with “[w]hether any additions or modifications to the special education and related services are needed to enable the student with a disability to meet annual goals set out in the IEP and to participate, as appropriate, in the general education curriculum.” N.J.A.C. 6A:14-3.8(b)(2)(ii)–(iv); see 20 U.S.C. § 1414(c)(1)(B)(ii)–(iv). A school district “shall evaluate a child with a disability in accordance with [20 U.S.C. § 1414] before determining that the child is no longer a child with a disability.” 20 U.S.C. § 1414(c)(5)(A); see 34 CFR 300.305(e)(1). Prior to conducting any assessment as part of a re-evaluation of a student with a disability, the school district must obtain consent from the parent. N.J.A.C. 6A:14-3.8(c). The district “may request a due process hearing” if the district is unable to obtain required consent to conduct a re-evaluation. N.J.A.C. 6A:14-2.7(b). “When a reevaluation is completed . . . [a] meeting of the student’s IEP team . . . shall be conducted to determine whether the student continues to be a student with a disability” and, “[i]f the student remains eligible, an IEP team meeting . . . shall be conducted to review and revise the student’s IEP.” N.J.A.C. 6A:14-3.8(f)

There is a two-part inquiry when reviewing alleged violations of the IDEA: whether the district “complied with the procedures set forth in the Act” and whether the IEP “developed through the Act’s procedures [is] reasonably calculated to enable the child to receive educational benefits.” Rowley, 458 U.S. 206–07. Not all procedural violations will rise to a substantive deprivation of FAPE. Rather, this forum may find that a child did not receive a FAPE “only if the procedural inadequacies . . . impeded the child’s right to a free appropriate public education”; “significantly impeded the parents’ opportunity to participate in the decision making process regarding the provision of a [FAPE] to the

parents' child"; or "caused a deprivation of educational benefits." 20 U.S.C. 1415(f)(3)(E)(ii); see N.J.A.C. 6A:14-2.7(k).

In evaluating whether the District has satisfied its required burden, it is necessary for me to assess and weigh the credibility of the witnesses. Credibility is the value that a finder of the facts gives to a witness's testimony. It requires an overall assessment of the witness's testimony in view of its rationality, internal consistency, and the manner in which it "hangs together" with the other evidence. Carbo v. United States, 314 F.2d 718, 749 (9th Cir. 1963). "Testimony to be believed must not only proceed from the mouth of a credible witness but must be credible in itself," in that "[i]t must be such as the common experience and observation of mankind can approve as probable in the circumstances." In re Perrone, 5 N.J. 514, 522 (1950). A trier of fact may reject testimony as "inherently incredible" and may also reject testimony when "it is inconsistent with other testimony or with common experience" or "overborne" by the testimony of other witnesses. Congleton v. Pura-Tex Stone Corp., 53 N.J. Super. 282, 287 (App. Div. 1958).

It is further necessary to evaluate and weigh the competing expert testimony offered at the hearing. It is within the province of the finder of facts to determine the credibility, weight, and probative value of the expert testimony. State v. Frost, 242 N.J. Super. 601, 615 (App. Div.), certif. denied, 127 N.J. 321 (1990); Rubanick v. Witco Chem. Corp., 242 N.J. Super. 36, 48 (App. Div. 1990), modified on other grounds and remanded, 125 N.J. 421 (1991). It is well settled that "[t]he weight to which an expert opinion is entitled can rise no higher than the facts and reasoning upon which that opinion is predicated." Johnson v. Salem Corp., 97 N.J. 78, 91 (1984) (citation omitted). An expert's opinion must be "supported by factual evidence or other data." Townsend v. Pierre, 221 N.J. 36, 53–54 (2015) (citation omitted). The expert must "be able to identify the factual bases for their conclusions, explain their methodology, and demonstrate that both the factual bases and the methodology are reliable." Id. at 55 (citation omitted). An expert's conclusion may not be "based merely on unfounded speculation and unquantified possibilities." Ibid. (citations omitted). In other words, the expert must "give the why and wherefore of his or her opinion, rather than a mere conclusion." State v. Townsend, 186 N.J. 473, 494 (2006) (citation omitted).

It is against this backdrop that the parent's claims are considered.

First Claim—Declassification

In the Petition, the parent alleges that “[b]y declassifying K.C. and discontinuing her IEP without completing a reevaluation or convening an IEP team meeting, the District failed to offer K.C. FAPE for the 2017–2018 school year” entitling the parent to reimbursement of tuition and costs incurred in unilaterally placing K.C. at Craig for the 2017–2018 school year. (First Claim.) (J-1 at ¶¶45, 47.) The District contends that the parent's claim that it improperly declassified K.C. is time-barred.

The IDEA includes a time limitation in which a due process petition must be filed. 20 U.S.C. § 1415(f)(3)(C) directs that that the initiating party “shall request an impartial due process hearing within 2 years of the date the parent or agency knew or should have known about the alleged action that forms the basis of the complaint” unless the state law specifies a different limitations period. 20 U.S.C. § 1415(f)(3)(D) sets forth two exceptions to this timeline and provides:

The timeline . . . shall not apply to a parent if the parent was prevented from requesting the hearing due to—

- (a) specific misrepresentations by the local educational agency that it had resolved the problem forming the basis of the complaint; or
- (b) the local educational agency's withholding of information from the parent that was required under this part [20 USCS §§ 1411 et seq.] to be provided to the parent.

The New Jersey regulation includes similar provisions. N.J.A.C 6A:14-2.7(a)(1) directs:

A request for a due process hearing shall be filed within two years of the date the party knew, or should have known, about the alleged action that forms the basis for the due process petition. The two-year period for filing for a due process hearing may be extended by an administrative law judge if:

- (a) A district board of education specifically misrepresented to the parent that the subject matter of the dispute was resolved to the parent's satisfaction; or
- (b) The district board of education withheld information that was required by law to be provided to the parent.

A party “cannot escape [the] statute of limitations by invoking equitable tolling doctrines recognized under state law,” such as the continuing violation doctrine. D.K. v. Abington Sch. Dist., 696 F.3d 233, 248 (3d Cir. 2012). Rather, a party “can argue only for the application of one of the statutory exceptions[.]” Ibid.

Turning to the within matter, the record is replete with written correspondence from the District to the parents regarding the need for them to submit Brooks’s report or documentation from another professional for purposes of determining K.C.’s eligibility for special education and related services. The District’s June 12, 2017 letter further warned the parents of the consequence in failing to provide this information. See J-21 (“We continue to oblige your postponement requests. However, we must make clear that in the interim we are unable [to] re-affirm [K.C.’s] eligibility for special education and related services or proceed with the development of a program, assuming that [K.C.] is ultimately found eligible for same.”) Based on the parents’ failure to provide this information, the Director of Pupil Services informed the parents by letter dated August 7, 2017, that “it cannot be established that [K.C.] continues to be eligible to [receive] special education and related services [and] [t]hus, she will not be entering [FMS] with an IEP for the 2017–2018 school year.” (J-23.) Accordingly, the parents clearly knew or should have known by August 7, 2017 of the District’s action, which forms the basis of their claim regarding K.C.’s eligibility. Indeed, K.C.’s mother testified that she interpreted the advice in the August 7, 2017 letter that K.C. would not be entering FMS with an IEP as the District’s final answer, and the parents informed the District, via letter dated August 22, 2017, of their intention to unilaterally place K.C. at Craig and to hold the District responsible for tuition and costs relating to that placement. Notwithstanding this, and the passage of another full year of schooling at Craig, the parents did not file the instant due process petition challenging, among other things, the District’s declassification of K.C. until August 30, 2019 or more than two years after the District’s August 7, 2017 letter.

B.C. does not allege, and no evidence supports, that the District misrepresented to the parents that it had resolved the problem forming the basis of their declassification claim. The record reveals no communication by the parents in response to the August 7, 2017 letter except for their unilateral placement notice on August 22, 2017. Likewise, the record is bereft of any evidence or allegation that the District withheld information from the parents that it was required by law to provide.

I **CONCLUDE** that B.C.'s First Claim is time-barred and neither exception to the time limitation applies. Accordingly, I **CONCLUDE** that B.C.'s claim challenging K.C.'s declassification should be dismissed. I further **CONCLUDE** that B.C. is not entitled to reimbursement relating to K.C.'s unilateral placement at Craig during the 2017–2018 school year to the extent that is based on the District's action on August 7, 2017.

Although dismissal is plainly warranted based on the parents' failure to timely file for a due process hearing, I **CONCLUDE** that, even if the claim is considered, the evidence fails to establish that relief in B.C.'s favor is appropriate.

B.C. contends that the District improperly declassified K.C. and failed to fulfill its obligation to provide her with an IEP for the start of sixth grade. B.C. maintains that the IDEA requires that a child may only be declassified after a comprehensive evaluation and a determination by the IEP team that the child no longer meets the criteria for eligibility, citing 20 U.S.C. §1414(c), 34 C.F.R. §300.305(e) and N.J.A.C. 6A:14-3.8(f). B.C. argues that the District's August 2017 declassification of K.C. was premature and incomplete; the District proceeded despite the absence of the pending report from Brooks and without offering to wait, reschedule, or take any alternative steps to ensure the evaluation was complete; the District never notified the parents that a failure to provide the report by a certain date would result in declassification; and the District's action deprived the parents of an opportunity to object or request a delay. B.C. asserts that proceeding without the full evaluative picture constitutes a procedural violation that significantly impeded the parents' opportunity to participate, and unilaterally terminating K.C.'s eligibility not only violated procedural safeguards but also substantively denied K.C. a FAPE.

It is well settled that a procedural violation of the IDEA is not a per se denial of a FAPE. Rather, this forum may find that a child did not receive a FAPE “only if the procedural inadequacies . . . impeded the child’s right to a [FAPE]”; “significantly impeded the parents’ opportunity to participate in the decision making process regarding the provision of a [FAPE] to the parents’ child”; or “caused a deprivation of educational benefits.” 20 U.S.C. 1415(f)(3)(E)(ii); see N.J.A.C. 6A:14-2.7(k). Thus, in order to recover, the evidence “must demonstrate that the District violated the IDEA in a way that caused a substantive harm - either by depriving [K.C.] of an educational benefit or significantly impeding the Parents’ participation in the decision-making process regarding [K.C.’s] education.” C.H. v. Cape Henlopen Sch. Dist., 606 F.3d 59, 67 (3d Cir. 2010). See also D.S., 602 F.3d at 565 (“A procedural violation is actionable under the IDEA only if it results in a loss of educational opportunity for the student, seriously deprives parents of their participation rights, or causes a deprivation of educational benefits”).

I **CONCLUDE** that, to the extent there were any procedural shortcomings on the part of the District by failing to give the parents more time, by not holding an eligibility or other meeting prior to declassifying K.C., or by not having an IEP in place at the start of the 2017–2018 school year, the evidence fails to establish that any such procedural violation falls within any of the required prongs and resulted in a deprivation of K.C.’s or the parents’ substantive rights. Accordingly, I **CONCLUDE** that any procedural violations, to the extent they occurred, did not rise to the level of the denial of a FAPE.

Initially, I found the testimony offered by Heywood, Olimpio, Markman-Pithers, and Miller to be credible and persuasive. The record demonstrates that the re-evaluation planning meeting for K.C. was held on November 17, 2016, more than two months before her January 28, 2016 IEP was set to expire. The credible evidence establishes that, as of the re-evaluation planning meeting, the Team did not have sufficient information without further assessments to determine if K.C. remained a student with a disability requiring specialized instruction. The Team agreed to the parents’ request to procure the cognition and educational/academic achievement assessment through their own evaluator (Brooks), and it was agreed that the District would conduct the OT and PT assessments. The later OT and PT evaluations that the District conducted also did not alone support classification. Despite the District’s numerous correspondence regarding

the need to submit Brooks's report or other documentation in support of K.C.'s continued eligibility, and notwithstanding the District's renewed offer to perform the testing, which the parents refused, the parents failed to provide the agreed upon assessment by Brooks, or a medical diagnosis from a psychiatrist to support K.C.'s ADHD diagnosis, as of the District's August 7, 2017 letter or more than eight months after the re-evaluation planning meeting. And the District specifically informed the parents of the need for the promised assessment and any updated information to enable the District to determine K.C.'s eligibility and, if eligible, to develop an IEP.

Simply put, the parents' failure to provide Brooks's evaluation or a medical diagnosis from a psychiatrist impeded the District's good faith efforts to determine K.C.'s eligibility and, in turn, resulted in the delayed development of an IEP for the 2017–2018 school year. Indeed, although the parents were in possession of Brooks's topline results since late July or early August, and before the August 7, 2017 letter, the parents did not provide this information to the District until October 27, 2017. Apart from the parents' August 22, 2017 letter advising the District their intention to unilaterally place K.C. at Craig, the record includes no communication by the parents in response to the August 7, 2017 letter. And, the parents' August 22, 2017 letter did not contest K.C.'s declassification or lack of an IEP for the upcoming school year but instead stated that the parents "intend to hold the . . . District responsible for full tuition, related services and transportation, based on denial of FAPE due to lack of meaningful progress, as evidenced in [the] neuropsychological testing." (J-24.) The alleged "denial of FAPE due to lack of meaningful progress" when K.C. was a student in the District is not an issue raised in the within due process petition.

The record demonstrates that the parents had a full opportunity to participate in the evaluation process. Although an IEP was not developed for the upcoming school year, the parents, and not the District, continually delayed the eligibility meeting and the development of an IEP (if eligible), and the parents ultimately terminated the process by sending their unilateral placement letter. Plainly, a school district should not be "liable for procedural violations that are thrust upon it by uncooperative parents." C.H., 606 F.3d at 69. See E.P. v. N. Arlington Bd. of Educ., 2019 U.S. Dist. LEXIS 55443, *28-29 (D. N.J. 2019) (rejecting the argument that the district violated the IDEA in failing to conduct a re-

evaluation of the student prior to declassification where the parent refused to meet with the district to discuss a formal re-evaluation of the student). The record is further devoid of evidence that K.C. suffered any educational loss. The due process petition includes no claim suggesting that K.C. did not receive a FAPE during her tenure as a student in the District. Additionally, although K.C.'s IEP expired in January 2017, it is undisputed that K.C. continued to receive all of the same services and programming throughout the 2016–2017 school year. See C.H., 606 F.3d at 69 (“declin[ing] to hold as a matter of law that any specific period of time without an IEP is a denial of a FAPE in the absence of specific evidence of an educational deprivation”).

Significantly, even if the parents had provided Brooks’s report to the District in a timely fashion, the District witnesses offered compelling testimony that Brooks’s evaluation did not support classification under the category of SLD. The witnesses persuasively explained that in undertaking the discrepancy analysis, K.C.’s FSIQ or GAI should be used, not her VCI, and the discrepancies Brooks found in math did not qualify for classification under the SLD category. It is further undisputed that, although K.C. had been previously classified under the category of OHI, the parents did not supply the required updated medical diagnosis to support the continuation of that classification. Although I found Brooks to be a sincere witness, her articulated belief that K.C. should have remained classified is overborn by the testimony offered by the District witnesses. For example, Brooks’s testimony casts doubt about her knowledge concerning the classification criterion. Brooks also did not reference the special education code when considering K.C.’s disabilities but rather the DSM-V. The strength of Brooks’s testimony was further undermined by the various score reports produced during the hearing, along with the results of some of her own testing.

Beyond this, the core of the IDEA “is the cooperative process that it establishes between parents and schools.” Schaffer v. Weast, 546 U.S. 49, 53 (2005). The Third Circuit has recognized that “[t]he IDEA was not intended to fund private school tuition for the children of parents who have not first given the public school a good faith opportunity to meet its obligations,” and parents have an “obligation to cooperate and assist in the formulation of an IEP[.]” C.H., 606 F.3d at 72. Although a court or a hearing officer may require a district to reimburse parents for the cost of a private placement if the district had

not made a FAPE available to the child in a timely manner prior to that enrollment, 20 U.S.C. § 1412(a)(10)(C)(ii), even in that case, which is not the situation here, reimbursement for a private school placement may be reduced or denied “upon a judicial finding of unreasonableness with respect to actions taken by the parents.” 20 U.S.C. § 1412(a)(10)(C)(iii)(III); see N.J.A.C. 6A:14-2.10(c)(4). See M.S. v. Mullica Twp. Bd. of Educ., 485 F. Supp. 2d 555, 568 (D.N.J. 2007), aff’d, 263 Fed. Appx. 264 (3rd Cir. 2008) (denying reimbursement where the parent’s refusal to cooperate with the CST unreasonably prevented the development of an IEP). In sum, the parents’ unreasonable actions further warrant the denial of tuition reimbursement.

Second Claim—The January 2018 IEP

In the Petition, the parent alleges that the “the District did not offer K.C. an appropriate IEP or placement for the 2018–2019 school year,” and “[b]y failing to offer K.C. an appropriate IEP and placement for the 2018–2019 school year, the District failed to offer her FAPE” entitling the parent to reimbursement of tuition and costs incurred in unilaterally placing K.C. at Craig for the 2018–2019 school year. (Second Claim.) (J-1 at ¶¶ 60, 64, 66.)

B.C. maintains that the IEP offered midway into K.C.’s sixth grade was not only belated but failed to provide a FAPE. B.C. argues that the IEP failed to account for the full range of K.C.’s educational disabilities (e.g., ADHD, slow processing speed, specific learning disabilities in reading and math, executive functioning deficits, anxiety), and provided only a pull-out math class. B.C. contends that the IEP reinstated the same limited services from K.C.’s elementary years, which had failed to address her needs; omitted accommodations for P.E.; and ignored transition planning and supports required to help K.C. navigate FMS (e.g., class transitions, locker use, and crowded hallways). B.C. further asserts that K.C.’s placement at FMS was inappropriate given her need for a smaller, more structured, and supportive learning environment. The District contends that it appropriately identified K.C.’s needs, academically, emotionally and with respect to PT and OT services, and offered K.C. a FAPE through the January 30, 2018 IEP.

Initially, the record fails to support B.C.’s claim that the District was responsible for any delay in offering the IEP. Rather, although Kraft contacted the parents on August 29,

2017, to schedule an initial identification/evaluation planning meeting for K.C. and offered various proposed meeting dates as early as September 7, 2017, the meeting could not be held until October 27, 2017, due to the parents' schedules. Accordingly, any delay in offering the IEP is squarely attributable to the parents' actions.

The pivotal issue is whether the January 30, 2018 IEP was "reasonably calculated to enable K.C. to make progress appropriate in light of K.C.'s circumstances," Endrew F., 580 U.S. at 399, and reasonably calculated to enable K.C. to receive "meaningful" educational benefits considering her intellectual potential. Dunn, 904 F.3d at 254; S.H., 336 F.3d at 271; T.R., 205 F.3d at 577–78; Ridgewood Bd., 172 F.3d at 247–48.

In support of the appropriateness of the IEP, the District offered testimony by witnesses who possessed first-hand knowledge regarding K.C.'s progress, and K.C.'s needs at the time the IEP was offered. The District offered testimony by Heywood, who served as K.C.'s case manager, and had direct involvement in the IEP meeting and the preparation of the IEP in issue. Heywood also reviewed K.C.'s general and special education files and performed the educational evaluation that formed the basis for K.C.'s classification. Miller, who served as K.C.'s resource replacement math teacher after she was classified in second grade, and later as her ELA in-class support teacher, testified about K.C.'s performance during the years that he taught her. Olimpio offered expert testimony regarding the appropriateness of the IEP. In short, I found each of these witnesses to be highly qualified, devoted professionals, and credible witnesses. The record further includes vast documentation regarding K.C.'s performance over the years, including report cards, progress reports, and testing.

In judging the strength of the competing expert testimony, I find that the scales tip in favor of Heywood and Olimpio. Simply put, I found Brooks's conclusions and the reasoning underlying her conclusions to be overborne by those offered by Heywood and Olimpio and, on balance, I afford greater weight to their testimony and opinions in support of the January 2018 IEP. I found the testimony of the District's witnesses to be credible, persuasive, and corroborated by other offered evidence, and the strength and credibility of this testimony was not, in my view, undermined by counsel's thorough cross-examination. Heywood and Olimpio offered persuasive and credible testimony regarding

the services and accommodations needed based on the evaluations conducted, including Brooks's evaluation, and how K.C.'s identified needs are adequately addressed in the IEP.

For her part, Brooks's testimony regarding the appropriateness of K.C. attending FMS was limited to two observations that she had made at FMS at some unknown time, for two different unknown students that involved an unknown number or type of classes. Although Brooks expressed concern over the "size of the class," that the middle school "would go faster," and K.C.'s "ability to navigate the school" and "deal with transitions and change without that kicking up her difficulties with anxiety," she made clear that these concerns did not relate simply to FMS but to middle schools in general. Regarding the appropriateness of the January 2018 IEP, Brooks opined that the singular resource class for math was insufficient because K.C. had previously received in-class support in the area of written expression. However, this testimony is at odds with what K.C. and Ms. C. had reported on K.C.'s writing and/or reading abilities and the results of Brooks's own testing. Although Brooks further faulted the IEP for not having anything specified about K.C.'s skill sets within science and social studies or foreign language as K.C.'s "underlying processing issues" at the phonological level would have been important in those classes, Brooks's testing reveals that K.C.'s word reading, pseudoword decoding, and basic reading skills, which relate to her phonemic awareness, were all scored as being significantly discrepant from her GAI in a positive manner. And, although Brooks diagnosed K.C. with a generalized anxiety disorder, she acknowledged that her recommendations did not include school counseling but only outside counseling and a referral to a psychiatrist. Brooks also did not interview any District staff to confirm the accuracy of the parents' verbal reports, and she never observed K.C. in the District's program.

Succinctly stated, a canvas of B.C.'s testimony raises substantial doubt as to the accuracy and reliability of his testimony and the weight to be afforded to his version of the events. B.C. was unable to recall many events and the timeline when events occurred. Other testimony was either unsupported by the record or inconsistent with evidence in the record and B.C.'s own testimony. For example, in response to positive reports that K.C. had relayed to Brooks, B.C. testified that K.C. was not reliable regarding relaying

facts. However, B.C. apparently accepted the accuracy of K.C.'s alleged reports about what was occurring in gym class, math class, and ELA in support of why the District's program was inappropriate. I further found B.C.'s portrayal of K.C.'s teachers to be inherently improbable and incredible. Although much of B.C.'s testimony centered around NPS's alleged failure to accommodate K.C. in gym, the parents undisputedly signed the prior IEPs and never previously filed for due process regarding any requested gym accommodation. Brooks's evaluation also does not include any recommendations regarding gym. Although I do not doubt the devoted commitment by both parents concerning K.C.'s education, a comparison between the District's and Craig's programs is irrelevant to the adequacy of the District's proposed IEP and whether it offered K.C. a FAPE. H.W. v. Highland Park Bd. of Educ., 108 Fed. Appx. 731, 733 (3d Cir 2004).

The credible testimony by Heywood, Olimpio, and Miller establishes that the IEP was reasonably calculated to enable K.C. to make appropriate progress and receive meaningful educational benefits in the LRE. The IEP appropriately addressed K.C.'s math disability. It provided K.C.'s placement in a pull-out resource replacement class for math, which is taught by a special education teacher certified in special education and math. The curriculum would be modified to K.C.'s needs, and K.C. would receive specialized instruction. The class had a small teacher-student ratio, which would enable the teacher to redirect K.C., ensure that she was on task, and work individually with K.C. regarding any noticed issues with executive functioning skills. The in-class support for ELA contained in K.C.'s prior IEP was removed. Her progress with reading and writing had progressed to the point where she was recommended to attend an honors-level English class.

Based on the evaluations conducted, the IEP provided PT and OT services. K.C.'s reported anxiety was addressed through the provision of individual counseling for thirty minutes weekly. The IEP included modifications in the general and special education classrooms that, among other things, addressed any attention difficulties. The goals and objectives in the IEP were developed in conjunction with Miller's feedback from K.C.'s performance the previous year, and based on Heywood's testing, the OT and PT evaluations, and information obtained relating to K.C.'s anxiety. Heywood credibly explained that the IEP included meaningful goals "[b]ecause we utilized all of the data

points that we had in order to develop areas where we knew that there were relative weaknesses for K.C. and in order to work on moving along to make meaningful educational progress.” An ESY program consisting of a daily pull-out resource replacement class for math and group OT and PT was offered to prevent regression. Heywood further persuasively testified that the LRE for K.C., who has excellent reading, verbal, and social skills, would be with her general education peers for most of her day in the local middle school.

In sum, the District “offer[ed] a cogent and responsive explanation for their decisions that shows the IEP is reasonably calculated to enable [K.C.] to make progress appropriate in light of his circumstances.” Endrew F., 137 U.S. 404. The evidence demonstrates direct correlations from the evaluations to the services and accommodations to the goals and objectives. Additionally, the testimony and documentary evidence demonstrate that K.C. made significant progress between her initial classification in 2014, and the conclusion of fifth grade in 2017, as evidenced by her report cards, progress reports, Brooks’s testing, and K.C.’s “growth scores.” The offered program and services were reasonably calculated to allow K.C. to make the same meaningful progress that she did during that time frame.

I **CONCLUDE** that the January 30, 2018 IEP adequately and appropriately addressed K.C.’s individualized academic, emotional, PT, and OT needs. I **CONCLUDE** that the IEP was reasonably calculated to enable K.C. to make appropriate progress in light of her circumstances, and reasonably calculated to provide significant learning and meaningful educational benefits to K.C. I **CONCLUDE** that the District sustained its burden of proving, by a preponderance of the credible evidence, that the January 30, 2018 IEP was appropriate and provided a FAPE to K.C. Accordingly, I **CONCLUDE** that B.C.’s Second Claim should be dismissed, and B.C. is not entitled to reimbursement relating to K.C.’s unilateral placement at Craig for sixth grade and through the effective period of the IEP (i.e., January 30, 2018 to January 29, 2019).

Third Claim—Development of IEP for the 2019–2020 school year

In the Petition, the parent alleges that, “[b]y failing to develop an IEP for K.C. or otherwise offer her an appropriate placement for the 2019–2020 school year, the District

failed to offer her FAPE” entitling the parent to reimbursement of tuition and costs that the parent will incur in unilaterally placing K.C. at Craig for the 2019–2020 school year (Third Claim.) (J-1 at ¶¶ 75,77.)

A school district is obligated to have an IEP in place at the beginning of the school year “for each child with a disability in the agency’s jurisdiction[.]” 20 U.S.C. § 1414(d)(2)(A); see N.J.A.C. 6A:14-3.7(a)(1) (providing that “[a]t the beginning of each school year, the district board of education shall have an IEP in effect for every student who is receiving special education and related services from the district board of education”). However, if a parent unilaterally places the child in a private school, the student does not have a right to all the services the public school would provide, and the public school district is not obligated to develop an IEP for that child each year. See 20 U.S.C. § 1412(a)(10)(A)(i) (describing school district’s responsibilities for children enrolled in private school, which do not include maintaining an IEP). Rather, to trigger a school district’s responsibility to offer an IEP, the parent must request the district to develop an IEP or conduct an evaluation, or the parent must seek to enroll the student in the public school. See Moorestown Bd. of Educ. v. S.D., 811 F. Supp. 2d 1057 (D. N.J. 2011). In this regard, although the IDEA “does not require the school district of residence to provide a FAPE to an unenrolled student residing in its district,” if “a parent either re-enrolls their child in the public school or requests evaluations with the intention of re-enrolling the student, the public school is required to evaluate the child and develop an IEP for the purposes of proposing a FAPE.” I.H. v. Cumberland Valley Sch. Dist., 842 F. Supp. 2d 762, 772 (M.D. Pa. 2012). Similarly, the court in Moorestown recognized that “the statutory scheme indicates that while a district need not continue developing IEPs for a child who has unilaterally withdrawn from the public school, if the parents request evaluations because they would like to re-enroll him in the district, the district’s obligation to develop a new IEP is renewed.” 811 F. Supp. 2d at 1076.

In D.P. v. Council Rock Sch. Dist., 482 Fed. Appx. 669 (3d Cir. 2012), the parent informed the district by letter dated June 27, 2008, of her intention to withdraw D.P. from the district on July 11, 2008, and enroll him for the upcoming 2008–2009 school year at the Comprehensive Learning Center (CLC), a private school for children with autism. Id. at 671. Although the IEP team met on June 16, 2008, and July 31, 2008, a new IEP was not approved, and the parent’s decision to unilaterally enroll D.P. at CLC and not convene

an IEP team meeting resulted in the expiration of D.P.'s IEP on January 21, 2009. Ibid. According to the parent, D.P. thrived at CLC but suffered two tragedies in December 2008 (i.e., the family's house burned down, D.P.'s father passed away). Ibid. On April 1, 2009, D.P.'s mother notified the school district through counsel of her intent to seek a due process hearing alleging that it failed to offer D.P. a FAPE for the 2008–2009 school year and seeking reimbursement for the cost of tuition at CLC for the entire academic year. Ibid. The hearing officer determined that the district fulfilled its legal obligations under the IDEA for the 2008–2009 school year and denied reimbursement of tuition costs, and the District Court entered summary judgment in favor of the district. Ibid.

On appeal, the parent alleged that the District Court erred by holding that the district satisfied its obligation to provide D.P. with a FAPE for the second half of the 2008–2009 school year and denying tuition reimbursement for that period. D.P., 482 Fed. Appx. at 672. The parent did not dispute the hearing officer's determination that the IEP offered to D.P. at the beginning of the 2008–2009 school year was adequate, but asserted that when the IEP expired mid-year, given the two tragedies D.P. suffered in December 2008, the district had a duty to update the IEP to place him at CLC because transitioning out of CLC would disrupt his education. Ibid. The Third Circuit disagreed. It held that "if a student is enrolled at a private school because of a parent's unilateral decision, the school district does not maintain an obligation to provide an IEP." Ibid. Although the court recognized a parent's right "to request a reevaluation of the student's IEP at any time," which "the school district must complete," it also recognized that "this obligation is contingent on the parent's request." Id. at 673. The Third Circuit noted that the parent "never requested that [the district] perform a reevaluation of D.P.'s IEP and never informed the school district of an intent to reenroll D.P. in public school," and the "IEP in place at the beginning of the 2008–2009 school year provided D.P. with a FAPE." Ibid. The court held that "[w]hen D.P. enrolled at CLC in July 2008, the school district was no longer required to update his IEP because '[a] school district is only required to continue developing IEPs for a disabled child no longer attending its schools when a prior year's IEP for the child is under administrative or judicial review.'" Ibid. (quoting M.M. ex rel. D.M. v. Sch. Dist. of Greenville Cnty., 303 F.3d 523, 536 (4th Cir. 2002)). The Third Circuit "agree[d] with the District Court that, without notification of an intent to reenroll in public school, the school district was under no obligation to update D.P.'s IEP to account

for the events that occurred in December 2008.” D.P., 482 Fed. Appx. at 673. Accordingly, the court held that “[b]ecause the District Court did not err in concluding that [the district] satisfied its obligation to provide D.P. with a FAPE for the second half of the 2008–2009 school year,” the parent was “not entitled to reimbursement for his unilateral placement at CLC for that time period.” Ibid.

Here, the IEP proposed on January 30, 2018, expired on January 29, 2019, and was not under administrative or judicial review when it expired. Accordingly, I **CONCLUDE** that the District was under no obligation to develop an IEP for K.C. for the remainder of the 2018–2019 school year. I further **CONCLUDE** that, because the District did not have a duty to create an IEP for K.C. for the second half of the 2018–2019 school year, the District did not fail in its responsibility to provide K.C. a FAPE, and B.C. is not entitled to tuition reimbursement for that period.

Regarding the 2019–2020 school year, the parents were entitled to request an evaluation or an IEP meeting at any time but did not request either. The parents also never communicated with the District about re-enrolling K.C. for the 2019–2020 school year. The parents’ August 7, 2019 letter did not request an evaluation or an IEP, and did not manifest an intention to re-enroll K.C. in the District. Rather, it simply stated that the parents were “request[ing] information about what kind of services and support [K.C.] might receive at [FMS] in 8[th] grade and whether there is the possibility of an appropriate program for her in the 2019–2020 school year.” See A.B. v. Abington Sch. Dist., 841 Fed. Appx. 392, 396 (3d Cir. 2021) (“Just as ‘general expressions of concern’ do not ‘constitute a ‘parental request for evaluation’ under the plain terms of the statute,” citing D.K. ex rel. Stephen K. and Lisa K. v. Abington Sch. Dist., 696 F.3d 233, 247 n.5 (3d Cir. 2012), “Parent’s general inquiry about programs did not trigger the District’s IDEA obligations either”) Although a meeting occurred with the director of pupil services on August 28, 2019, that discussion merely involved a general conversation about the classes, activities and the like at FMS. During that meeting, the parent did not request an evaluation or an IEP, and did not state an intention to re-enroll K.C. in the District. And, despite the director specifically informing K.C.’s mother at the meeting and in a later e-mail of the steps needed to be taken to secure an evaluation or IEP for K.C., the parents did respond to this advice and did not request the District to evaluate K.C. or propose an IEP for the

2019–2020 school year.


I **CONCLUDE** that neither the parents’ August 7, 2019 letter nor the later meeting with the director of special services triggered the District’s responsibilities under the IDEA to evaluate K.C. or to develop an IEP for the 2019–2020 school year. I further **CONCLUDE** that, because the District did not have a duty to create an IEP for K.C. for the 2019–2020 school year, the District did not fail in its responsibility to provide K.C. a FAPE. Accordingly, I **CONCLUDE** that B.C.’s Third Claim should be dismissed, and B.C. is not entitled to reimbursement relating to K.C.’s unilateral placement at Craig during the 2019–2020 school year.

ORDER

Based upon the foregoing, I **ORDER** that the due process petition be and hereby is **DISMISSED**, and the requested relief be and hereby is **DENIED**.

This decision is final pursuant to 20 U.S.C. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2025) 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 (2025). 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.

May 28, 2025
DATE



MARGARET M. MONACO, ALJ

Date Received at Agency _____

Date Mailed to Parties: _____

jb

APPENDIX

Witnesses

For Petitioner:

Jill Brooks

B.C.

Neils Furlong

K.C.

For Respondent:

Danae Heywood

Christopher Miller

Lisa Markman-Pithers

Marc Gold

Suzanne Olimpio

Exhibits in Evidence

Joint:

- J-1 Due process petition
- J-2 Answer
- J-3 Report by Dr. Jill Brooks dated October 22, 2013, and Neuropsychological Evaluation
- J-4 E-mails dated October 29, 2013
- J-5 Evaluation Determination Plan; meeting on November 14, 2013
- J-6 Occupational Therapy Evaluation dated January 9, 2014
- J-7 Social Assessment; interview on January 24, 2014
- J-8 Letter from Michael Giuliano, M.D., dated January 23, 2014
- J-9 Eligibility Conference Report; meeting on February 6, 2014
- J-10 February 6, 2014 IEP
- J-11 Physical Therapy Evaluation; evaluation on December 12, 2014
- J-12 February 5, 2015 IEP

- J-13 January 28, 2016 IEP
- J-14 Reevaluation Planning document; meeting on November 17, 2016
- J-15 Occupational Therapy Evaluation; evaluation on December 19, 2016
- J-16 Physical Therapy Evaluation; evaluation on January 3, 2017
- J-17 Invitation to Eligibility Meeting dated January 3, 2017, and e-mails dated January 5, 2017
- J-18 E-mails dated March 30 and April 6, 2017
- J-19 E-mails dated April 7, April 17, April 21 and May 1, 2017
- J-20 E-mail from parent dated May 17, 2017
- J-21 Letter to parents dated June 12, 2017
- J-22 E-mail to parents dated July 10, 2017
- J-23 Letter to parents dated August 7, 2017
- J-24 Parents' letter to FMS principal dated August 22, 2017
- J-25 Letter to parents dated August 24, 2017
- J-26 E-mail to parents dated August 29, 2017
- J-27 Evaluation Planning document dated October 27, 2017
- J-28 Social History dated December 21, 2017
- J-29 Educational Evaluation; evaluation on December 6, 2017
- J-30 Dr. Brooks's 2017 report
- J-31 Invitation to Eligibility Meeting dated January 18, 2018
- J-32 January 30, 2018 IEP
- J-33 Parents' letter to FMS Principal dated August 7, 2019
- J-34 E-mail to parent dated August 31, 2019
- J-35 Joint Stipulation of Facts
- J-36 WISC-V and WIAT-III Score Reports and fax cover sheet from Dr. Brooks dated December 18, 2020
- J-37 2015–2016 State assessment reports

For Petitioner:

- P-1 to P-4 No exhibit admitted
- P-5 E-mails dated October 21, 2016, and July 25, 2018
- P-6 No exhibit admitted
- P-7 E-mail dated June 5, 2017

P-8	E-mail dated June 8, 2017
P-9 to P-12	No exhibit admitted
P-13	Letter to Katherine Gilfillan, Esq., from Rebecca Rosenfeld, Esq., dated August 31, 2018
P-14 to P-16	No exhibit admitted
P-17	Dr. Brooks's 2020 Neuropsychological Reassessment Report
P-18	Curriculum Vitae of Dr. Jill Brooks
P-19 to P-22	No exhibit admitted
P-23	Craig School Application Form
P-24 to P-26	No exhibit admitted
P-27	Student Schedules
P-28 to P-30	No exhibit admitted
P-31	Student evaluation reports
P-32	No exhibit admitted
P-33	Attendance records
P-34	Attendance records
P-35 to P-37	No exhibit admitted
P-38	Letter from the Craig School dated April 6, 2020, regarding tuition for the 2017–2018 school year
P-39	Letter from the Craig School dated April 6, 2020, regarding tuition for the 2018–2019 school year
P-40	Letter from the Craig School dated October 2, 2020, regarding tuition for the 2019–2020 school year
P-41	Invoice regarding Summer 2018 tuition
P-42	Letter from the Craig School dated February 5, 2019, regarding 2018 summer tuition
P-43	Invoice regarding Summer 2019 tuition
P-44	Letter from the Craig School dated July 1, 2020, regarding 2019 summer tuition
P-45	Checks
P-46	Uber receipts
P-47	I-Ready Student Profile Reports

For Respondent:

- R-1 No exhibit admitted
- R-2 Third Grade Report Card, June 2015
- R-3 Progress Reports for 2014–2015
- R-4 to R-6 No exhibit admitted
- R-7 Fourth Grade Report Card, June 2016
- R-8 Progress Reports for 2015–2016
- R-9 E-mails dated October 21, October 23, October 24, and December 7, 2016
- R-10 No exhibit admitted
- R- 11 J. Golob notes dated January 5, 2017
- R-12 Progress Reports for 2016–2017
- R-13 Fifth Grade Report Card, June 2017
- R-14 Spring 2017 State assessments
- R-15 No exhibit admitted
- R-16 No exhibit admitted
- R-17 Invitation to Identification and Evaluation Planning meeting dated August 29, 2017
- R-18 E-mail dated September 5, 2017
- R-19 E-mail dated September. 6, 2017
- R-20 Invitation to Identification and Evaluation Planning meeting dated September 6, 2017
- R-21 E-mail dated September 6, 2017
- R-22 E-mail dated September 7, 2017
- R-23 Invitation to Identification and Evaluation Planning meeting dated September 7, 2017
- R-24 No exhibit admitted
- R-25 E-mails dated September 11 and 15, 2017
- R-26 Student Transfer Verification Form
- R-27 E-mail dated September 20, 2017
- R-28 Letter to parents dated September 20, 2017
- R-29 E-mail dated September 20, 2017
- R-30 E-mail dated September 26, 2017

- R-31 E-mails dated September 20, 25, 26 and 28, 2017
- R-32 E-mail dated September 29, 2017
- R-33 Requisition for Academic/Health Records
- R-34 Invitation to Identification and Evaluation Planning meeting dated October 3, 2017
- R-35 E-mail dated October 30, 2017
- R-36 E-mails dated November 1, 2, 6, 7, 30, 2018, and January 11, 2018
- R-37 E-mails dated January 31, 2018
- R-38 Letter to parent dated February 22, 2018
- R-39 Letter to parents dated March 13, 2018
- R-40 E-mail dated March 16, 2018
- R-41 Letter to parents dated May 14, 2018
- R-42 No exhibit admitted
- R-43 I-Ready Student Profile Report
- R-44 Letter to parents dated September 19, 2017
- R-45 No exhibit admitted
- R-46 Reading and math assessments; October 10, 2017 test date
- R-47 Reading and math assessments; May 22, 2018 test date
- R-48 Reading and math assessments; October 1, 2018 and May 21, 2019 test dates
- R-49 Reading and math assessments; September 24, 2019 test date
- R-50 No exhibit admitted
- R-51 Resume of Danae Heywood
- R-52 Resume of Lisa Markman-Pithers
- R-53 Resume of Marc Gold
- R-54 to R-58 No exhibit admitted
- R-59 Dr. Brooks's notes from file
- R-60 Score report for 2017 WISC-V dated July 11, 2017
- R-61 Data sheet and notes
- R-62 Score Report for 2013 WISC IV and WIAT dated October 1, 2013
- R-63 Score Report for 2017 WIAT dated December 16, 2020
- R-64 Score Report for 2020 WIAT dated February 6, 2020
- R-65 Score Report for 2020 WISC-V dated January 16, 2020

- R-66 Ms. C.'s testimony notes
- R-67 Craig Contract, 6th grade
- R-68 Craig Contract, 7th grade
- R-69 Craig Contract, 8th grade
- R-70 E-mail to parent dated August 31, 2019
- R-71 Curriculum Vitae of Suzanne Olimpio