***State of New Jersey***
OFFICE OF ADMINISTRATIVE LAW

**FINAL DECISION**
OAL DKT. NO. EDS 00782-24
AGENCY DKT. NO. 2024-36888

**J.G. AND C.G. ON BEHALF OF B.G.,**
Petitioners,
v.
**CLIFTON CITY BOARD OF EDUCATION,**
Respondent.

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**Michael I. Inzelbuch**, Esq., for petitioners (Law Office of Michael I. Inzelbuch, attorneys)

**Jessika Kleen**, Esq., for respondent (Machado Law Group, attorneys)

Record Closed: March 3, 2025 Decided: April 4, 2025

BEFORE **R. TALI EPSTEIN**, ALJ:

## STATEMENT OF THE CASE

Petitioners unilaterally placed B.G., who is eligible for special education and related services, in an out-of-district, private school before allowing B.G. to attend the district school under an individualized education program ("IEP") that was inappropriate and did not provide her with a free, appropriate public education ("FAPE"). Are petitioners entitled to reimbursement from respondent for B.G.'s unilateral placement at an

appropriate out-of-district placement for the 2023−2024 and 2024−2025 school years and, thereafter, until such time as respondent offers B.G. an IEP that provides her with a FAPE? Yes. Under N.J.A.C. § 6A:14-2.10(b), the tribunal may require respondent to reimburse parents for the costs of private placement.

## PROCEDURAL HISTORY

Petitioners J.G. and C.G., on behalf of their minor daughter B.G. (collectively, "petitioners"), filed a request for due process petition (the "Petition") with the Office of Special Education Programs, New Jersey Department of Education, on December 29, 2023.

The Department of Education transmitted the contested case under N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13 to the Office of Administrative Law, where it was filed on January 19, 2024.

Respondent Clifton City Board of Education (or the "District") filed an answer to the Petition on January 8, 2024. On January 5, 2024, the parties met for a resolution session but were unable to resolve the matter. On January 23, 2024, the parties appeared for a settlement conference before ALJ Tricia Caliguire, but they were unable to reach a settlement of their dispute. The matter was then assigned to ALJ Jude Tiscornia on January 23, 2024 and reassigned to me on July 1, 2024. I entered a prehearing order on August 27, 2024, and the matter was set for hearing on dates requested by counsel. With the Tribunal's permission, petitioners filed an unopposed amendment to the Petition on August 29, 2024. Respondent timely filed its answer to the amended pleading on September 3, 2024.

In advance of the hearing, the parties submitted a joint stipulation of facts (J-39).[1] The in-person hearing took place over the course of five days on September 9, 2024, September 10, 2024, September 20, 2024, November 19, 2024, and November 20, 2024. The parties requested to file post-hearing submissions following receipt of the transcripts

[1] The parties further stipulated that Paragraph 18 of J-39 contained an inadvertent error in that the word "not" was incorrectly inserted in the last sentence and should be omitted.

and subsequently requested a further extension of time to submit their closing briefs. The parties' respective submissions were received on March 3, 2025, and I closed the record on that date.

## FINDINGS OF FACT AND FACTUAL DISCUSSION

Based on the testimony presented at the hearing, my assessment of its credibility and weight, the documents admitted in evidence, and my assessment of their sufficiency, I **FIND** the following **FACTS**:

B.G. is an eleven-year-old, rising sixth-grade student. From pre-school through the conclusion of fourth grade, B.G. attended Yeshiva K'Tana of Passaic, a private parochial school in Passaic, New Jersey ("Yeshiva K'Tana"). When B.G. was in second grade, she was deemed eligible for special education and was receiving supplemental special education under an Individual Service Plan ("ISP") at Yeshiva K'Tana.[2] (J-3.)

In early 2023, while B.G. was in her second semester of fourth grade, Yeshiva K'Tana suggested to petitioners that they "should be looking at other options" for their daughter and recommended that B.G. undergo a neuropsychological evaluation. As explained by B.G.'s mother, C.G., the parochial school was concerned about B.G.'s lack of progress, notwithstanding the classroom and private interventions she was receiving ("before [B.G.] was going to . . . make the jump into higher grades where the gap would just [be] widened, they wanted to sit down with us to tell us that we should be looking at other options for her"). (Tr. 2, 128:9−16.) Accordingly, petitioners arranged for a neuropsychological evaluation of their daughter, which was conducted on February 19, 2023, and March 3, 2023, by Beth Rabinovitz, Ph.D. ("Dr. Rabinovitz"), a clinical neuropsychologist and assistant professor of psychology in psychiatry at Weill Cornell Medicine/New York Presbyterian.

At about the same time, petitioners were made aware of the Shalshelet School, a private parochial school located in Tenafly, New Jersey, for children with language-based

[2] As opposed to an IEP, which is offered to eligible students who enroll in public schools, an ISP outlines services and support for eligible students who attend private schools.

learning differences ("Shalshelet"). Because there were limited spots available at Shalshelet for the upcoming academic year, and petitioners did not want to risk losing a spot at this potential placement, they submitted B.G.'s application to Shalshelet in March 2023. (Tr.2, 129:2−16.)

B.G. was accepted to Shalshelet on May 17, 2023 (J-30), and petitioners submitted the required $3,500 fee to hold her spot for the upcoming academic year. The registration form signed by petitioners provided that if they accepted a public placement for B.G., then they would be released from any further obligation to Shalshelet.[3] (Ibid.)

Thereafter, petitioners retained counsel to guide them through the process of securing an appropriate educational placement for B.G. In connection with those efforts, petitioners pursued public placement for their daughter. On July 20, 2023, petitioners registered B.G. for the 2023–2024 school year in the District.[4] (J-1; J-2.) They also requested a return of their deposit monies from Shalshelet but ultimately decided to donate the monies to Shalshelet. While petitioners had not reached a decision at that time regarding their daughter's fifth-grade placement, they agreed that "once they saw the school and what they were doing [they] thought it was a very worthy cause for charity."[5] (Tr. 2, 160:6−24.)

In connection with B.G.'s registration in the District, petitioners provided the District with a copy of B.G.'s ISP (J-3) and the comprehensive report from B.G.'s neuropsychological evaluation. (J-4.) As was clearly noted in the ISP, the "service plan end date" had elapsed several months earlier (on January 3, 2023), approximately the same time that Yeshiva K'Tana acknowledged its concern about B.G.'s lack of continued progress under the program that was being provided to her.

[3] While the form inartfully refers to B.G.'s "enrollment," at the time the form was signed – five months before the start of the 2023−2024 school year – B.G. **was not** committed to attending Shalshelet, as evidenced by the conditional language referenced above, and as confirmed by C.G.'s testimony.

[4] References herein to T1, T2, T3, T4 and T5 are to the transcripts from the first, second, third, fourth and fifth day of the hearing, respectively.

[5] At the hearing, Shalshelet's head of school confirmed that the payment made by petitioners was "shifted" from "registration payment to donation" and recorded as such in the school's general operating account. She further confirmed that the payment **was not** subsequently applied as a credit against B.G.'s tuition for the 2023/2024 school year when B.G. enrolled in September 2023. (Tr. 4., 171:7−172:3.)

Under the expired ISP, B.G. was receiving "pull-out," supplemental instruction in a "special education classroom" in language arts and math, one time per week for forty minutes in each subject under the classification category of Specific Learning Disability ("SLD"). The ISP noted that B.G. also received "private Wilson instruction" and had made "notable progress in this area" when the annual review was performed in January 2022. However, by early 2023, the consensus among the Yeshiva K'Tana staff and petitioners, as confirmed by Dr. Rabinovitz, was that B.G. required additional and more comprehensive school-based interventions and accommodations to progress academically. Indeed, Dr. Rabinovitz noted in her report that B.G. was dyslexic and would "require daily[,] individual reading instruction using a phonics-based curriculum" from a specialist using a "multi-sensory approach." (J-4.) Further, Dr. Rabinovitz's report confirmed continuing weaknesses in reading accuracy, fluency and comprehension, as well as written expression and mathematics, with the former identified as the "primary area of academic concern." (Ibid.) Of significant note, Dr. Rabinovitz reported that B.G. "exhibited difficulties sustaining and regulating attention" during the one-on-one evaluation. (Ibid.)

On August 22, 2023, C.G. emailed Linda Chavez ("Chavez"), the District's supervisor of special services, advising that "[n]obody [from the District] has reached out to us yet and [B.G.] needs an IEP to start the school year." C.G.'s email noted that B.G. showed signs of dyslexia, required significant services and requested that the District advise if it needed any additional information. (J-1.)

Chavez responded to C.G. the next day, advising that she was on vacation but "saw [her] email" and confirmed that B.G. was "enrolled" in the District. (P-43.) Chavez further advised that "in accordance with [B.G.]'s most recent service plan, she will be placed in a resource room for Language Arts and Math," and the Child Study Team would be in touch "within the first several days of school to take the appropriate first steps." (J-39, ¶ 7.) No mention was made of the fact that the ISP had expired. Nor did the District make any attempt to contact the Passaic County Education Services Commission to obtain an updated service plan.[6]

[6] The District's case manager acknowledged that updated ISPs are requested of the Commission by the District, but the District failed to do so in this case. (Tr. 1, 269:1−5.)

C.G. replied to Chavez the following day. C.G. explained that B.G.'s "previous service plan did not work for her, and that is why we registered her with the public school system." (P-43.) C.G. further requested that the District develop an IEP for B.G. because "she needs significant services, a lot more than she received previously." C.G. also explained that the reason they registered B.G. in the District on July 12 was to allow time "to assess the situation and determine the appropriate program" for B.G. (J-39, ¶ 8.)

Yet no one from the District made any attempt to contact B.G.'s teachers at Yeshiva K'Tana or speak with anyone at Passaic County who was involved with the development of B.G.'s ISP. Nor did C.G. receive any response from the District to her August 23, 2023 email.

On August 25, 2023, petitioners notified the District via e-mail of their intention to unilaterally place B.G. at Shalshelet and "continue to seek public placement that is appropriate for [B.G.] that has yet to be offered." Petitioners' August 25, 2023 email also requested tuition and transportation reimbursement from the District with respect to B.G.'s unilateral placement at Shalshelet. (Ibid., ¶ 9.) Again, there was no response from the District.

On September 11, 2023, Alison Jasinski ("Jasinski"), District school psychologist, emailed B.G.'s father, J.G., advising that she "will be the case manager" for B.G. Jasinski's email invited J.G. to a "Transfer IEP and Re-evaluation for your daughter" via "Google Meet" on September 14 or September 19. (J-5.) J.G. responded to Jasinski's email that same day, providing Jasinski with contact information for the parents' lawyer and asking Jasinski to coordinate the meeting time with their lawyer. (Ibid.)

Due to scheduling conflicts affecting the parties' respective counsel, the IEP meeting was not held until November 17, 2023 (the "November 2023 IEP meeting"). Petitioners, however, fully cooperated with the District's request for their consent to conduct four evaluations of their daughter.

On October 11, 2023, petitioners provided electronic consent for the following requested evaluations: (1) speech and language; (2) educational; (3) assistive

technology; and (4) social assessment. (J-39, ¶ 12.) Petitioners also agreed to waive the required re-evaluation planning meeting and further provided their consent for the District to observe B.G. in her unilateral placement at Shalshelet. (Ibid.)

Laura Lazar ("Lazar"), the District's speech and language pathologist, conducted a speech and language evaluation of B.G. on October 20, 2023. Lazar administered the Test of Language Development−Intermediate: Fifth Edition (TOLD-I:5) to measure B.G.'s oral language abilities. In five of the six core subtests that comprise the TOLD-I-5, B.G. scored "Below Average" on three subtests, "Borderline Impaired or Delayed" on two subtests and "Average" (at the 37th percentile) on one subtest. B.G.'s "overall spoken language skills," as measured by the TOLD-I:5, fell within the "Borderline Impaired or Delayed" range. (J-13.) Her spoken language index "correspond[ed] to a percentile rank of 5." (Ibid.)

Lazar also administered the Comprehensive Assessment of Spoken Language−Second Edition (CASL-2), another tool used to assess oral language skills. B.G.'s percentile rankings on the CASL-2 core tests ranged from the 13th to the 68th percentile. B.G.'s General Language Ability Index score using the CASL-2, indicating her general spoken language skills, was at the 27th percentile when compared to age-level peers. (Ibid.)

Other testing administered by Lazar revealed that B.G.'s "auditory memory skills are an area of significant weakness." (Ibid.)

Based on her "formal testing and functional observations" of B.G., Lazar concluded that B.G.'s "expressive and receptive skills" were "below age-level expectations." (Ibid.)

Melanie Tuhari ("Tuhari"), the District's LDTC, conducted an educational evaluation of B.G. on October 25, 2023. Tuhari assessed B.G. with "selected Achievement Tests of the Woodcock-Johnson IV that measure abilities associated with academic achievement." (J-14.) B.G. scored in the "very low range," with a shockingly low percentile rank of one, on the cluster of tests measuring her abilities in reading achievement. B.G. also scored in the "very low range," at the 1st percentile, on the cluster

of tests providing "a comprehensive measure of math achievement." (Ibid.) On the cluster of tests providing "a comprehensive measure of written language achievement," B.G. scored at a second-grade equivalent, three grade levels behind where she was expected to be. (Ibid.)

Julianne Podolski ("Podolski"), a District social worker, conducted a social history interview of B.G. on October 25, 2023. Podolski noted that B.G.'s self-esteem and confidence were "negatively affected by her struggle with reading" and that "[s]he can become easily frustrated." (J-16.)

Amy Ferranti ("Ferranti"), the District's speech-language pathologist and assistive technology integration coach, conducted the assistive technology evaluation of B.G. on October 27, 2023. Ferranti reported that B.G. "struggles with reading and writing skills." (J-15.) Ferranti acknowledged that B.G.'s writing "is at the sentence level and paragraphs of 2−5 sentences." (Ibid.) Ferranti recommended that a "text-to-speech application" be utilized for sentence and paragraph writing assignments. (Ibid.)

The District's observations at Shalshelet took place on October 24 and October 30, 2023. (J-39, ¶ 16.)

On October 24, 2023, Chavez observed B.G.'s reading and math classes at Shalshelet. Jasinski joined Chavez for the reading class observation, and Tuhari joined Chavez for the math class observation. Susan Caplan ("Caplan"), the parents' private LDTC, was also present for the October 24, 2023, observation of B.G.'s reading and math classes. Chavez returned to Shalshelet on October 30, 2023, with Ferranti to observe B.G.'s writing class.

As was observed by the District representatives and Caplan at Shalshelet, there were three students, including B.G., in her reading and math classes. There was a total of six students in B.G.'s writing class, one of whom was absent on the day of the observation. By all accounts, B.G. was observed to be focused and engaged in the lessons while receiving close instruction from her teachers, and she did not exhibit signs of distractibility in the small classroom setting at Shalshelet.

**The November 2023 IEP**

At the November 2023 IEP meeting, B.G. was found eligible for special education and related services under the eligibility category of SLD in reading comprehension and math.

There was no dispute among the District's experts that B.G. was "performing significantly below grade level in Reading." (J-16.) Indeed, the November 2023 IEP reiterated the alarming findings of the District's evaluator (Tuhari) that B.G.'s achievement test score on the "Broad Reading cluster" was in the "very low range," at the **1st percentile**. Similarly concerning, the IEP further reported that B.G.'s performance in "Broad Mathematics" was also in the "very low range," at the **1st percentile**. (Ibid.)

Although the IEP acknowledged that B.G.'s writing skills were only at the second-grade level (three grade levels behind) and at the **4th percentile**, the SLD designation failed to address B.G.'s significant delays in writing. (Ibid.)

In determining that B.G. exhibited a "significant discrepancy between [her] cognitive ability and her achievement scores in the areas of Reading Comprehension and Mathematics Calculation," the IEP noted that it accepted Dr. Rabinovitz's finding that B.G.'s "Full Scale IQ score" was eighty. (Ibid.) At the hearing, Jasinski confirmed that the IEP team "accepted" Dr. Rabinovitz's report. (Tr. 1, 270:5−7.) The IEP, however, neglected to reference Dr. Rabinovitz's diagnosis of B.G.'s dyslexia.

The District proposed placing B.G. in a self-contained LLD-M class for fifth grade, and related services were offered.[7] Notably, the IEP recognized the benefit of a "smaller class" with special education provided at a "slower pace," with "repetition" and "multi-sensory learning strategies" to address B.G.'s "significant academic weaknesses." (J-16.) The IEP acknowledged that B.G.'s individual needs could not be met in a general education classroom. A determination regarding Extended School Year ("ESY") services was deferred, and the IEP noted that a further IEP team meeting would be held in late

[7] Under the November 2023 IEP, the same services offered to B.G. in fifth grade would continue in the sixth grade, and the "services end" date was November 17, 2024.

spring to review B.G.'s "progression/regression over holiday breaks." (Ibid.) There was no evidence presented by the District that the IEP team met in the "late spring" to discuss ESY services for B.G.

Speech and language therapy was recommended "twice per week for thirty[-] minute sessions: once individually and once in a small group." (Ibid.) Individual sessions with a reading specialist were offered three times per week for forty-five-minute sessions. (Ibid.) The IEP also accepted the assistive technology recommendations made by Ferranti in her evaluation report. (Ibid.) Goals and objectives for the one-year IEP term included "read[ing] and comprehend[ing] literature at the high end of grades 2−3 text complexity band independently and proficiently," writing "opinion pieces on topics and texts, supporting a point of view with reasons and information," and writing "narratives to develop real or imaginative experiences or events using effective technique, descriptive details, and clear event sequences by using narrative techniques, such as dialogue . . . ." (Ibid.)

As noted by Caplan, the goals and objectives identified in the November 2023 IEP were not individualized to B.G. and bore no relationship to her learning profile at that time. Notwithstanding that B.G. was at the "mid first" grade level and dyslexic, she was expected to be "read[ing] and comprehend[ing] literature at the high end of the grades 2−3 text" and doing so "independently" and "proficiently" within the IEP's one-year term. (Tr. 2, 52:13−53:15; J-16.) Given B.G.'s severe weaknesses in reading comprehension and writing, the IEP's stated goals of writing detailed "narratives" and "opinion pieces" that were structured in a way that grouped ideas to support the writer's purpose were plainly unrealistic. (Tr. 2, 51:25−52:9; J-16.)

Under the IEP's "Notice Requirements" section, wherein the District was required to "[d]escribe any options considered and the reasons those options were rejected," there was no indication that the District considered (and rejected) the unilateral placement. (J-16.) Elsewhere in the IEP, under a "General Description" heading discussing B.G.'s present levels of academic achievement and functional performance, the District noted that "the private placement refused to share progress reporting with the District at this time." (Ibid.) At the hearing, that statement was proven to be false. Shalshelet's head

of school, Shulamit Roth ("Roth"), credibly testified, as supported by her contemporaneous email to the District (J-30 at 928), that she never "refused" to provide the District with any information it requested concerning B.G. To the contrary, Shalshelet cooperated in arranging for multiple District staff to observe B.G.'s classrooms over the course of two days, and Roth promptly responded (on the same day) to the District's request for "B.G.'s recent progress report" by advising that the requested documentation was issued twice-yearly and did not presently exist but she "would be glad" to provide it as soon as it was available and shared with B.G.'s parents. (Ibid.)

When cross-examined on this issue, Jasinski unconvincingly defended her use of the word "refused" to mean that Shalshelet "did not provide [the not yet available progress reporting] at that time." (Tr. 1, 240:8−9.) Chavez also ultimately conceded that Shalshelet was "cooperative" (Tr. 1, 122:6) and that "refusal was a strong word." (Tr. 1, 121:6.) More accurately, I **FIND** that it was a false assertion. Further, I **FIND** that, as evidenced by the IEP, the District failed to consider and explain why Shalshelet was rejected as the appropriate placement for B.G.

Upon hearing the District's proposal, petitioners raised concerns at the November 2023 IEP meeting regarding: (1) the class size of the proposed LLD-M[8] classroom; (2) the insufficient amount of specialized reading and writing instruction; and (3) the inappropriateness of the goals and objectives for B.G. (J-39, ¶ 19.)

With respect to petitioners' concern regarding class size, there is no dispute that class size was a subject of discussion at the November 2023 IEP meeting. C.G. testified that the discussion arose when petitioners were told that Helene Smith-Gentilello ("Gentilello"), the special education teacher who attended the November 2023 IEP meeting, would be B.G.'s teacher. (Tr. 2, 135:22−136:2.) Indeed, Jasinski recalled that, in response to a question posed by Caplan or petitioners' counsel, petitioners were advised at the meeting that there were sixteen students in Gentilello's fifth-grade LLD-M class. (Tr. 1, 294:12−19.) That is what prompted petitioners to express their concern that the class size of the proposed placement was inappropriate for B.G. Petitioners

[8] LLD-M is an acronym for Learning/Language Disabilities−Mild to Moderate.

requested to observe the LLD-M classroom that the District was proposing and advised the District that B.G. would remain at Shalshelet until such time as they had an opportunity to do so. (J-39, ¶ 19.)

While the District did not advise of its position on the appropriateness of Shalshelet as a placement for B.G., the District "agreed to also investigate out of district options for [B.G.] including the Craig School and Banyan School" (J-16) and "offered to consider the Craig School and the Banyan School as a placement for B.G." (J-39, ¶ 19.)

On December 4, 2023, Jasinski "contacted the parents of B.G. to release records to both the Banyan and Craig schools." (J-39, ¶ 20.) J.G. responded on the same day that they were "not interested" and were "very happy with our current school." (Ibid.) There was no further communication from Jasinski, and she did not follow up with B.G.'s parents after receiving their reply.

When asked on cross-examination why her husband responded in that manner, C.G. reiterated petitioners' reasoning as elicited in her direct examination: When the District asked for the records release to those schools, it was in the middle of both the academic year and B.G.'s studies at Shalshelet. While C.G. was "open to any possibilities," she "didn't believe that it would be good to uproot [B.G] again" by "switch[ing] schools in the middle of the year." (Tr. 2, 142:11−143:3; 151:4−13.) Nor was the District recommending either placement at that time, as confirmed by Chavez. (Tr. 1, 103:10−20.) Based on the testimony of C.G. and Chavez, and as supported by Jasinski's decision not to pursue the matter further, petitioners' response to Jasinski's December 4, 2023, was not unreasonable.

The following day, on December 5, 2023, C.G., accompanied by Caplan, observed the District's proposed LLD-M classroom and subsequently reported their concerns to the District. (J-39, ¶ 21.) In an email dated December 12, 2023 B.G.'s parents rejected the November 2023 IEP and proposed an in-district program. The e-mail stated that while J.G. and C.G. agreed that B.G. was eligible for special education, they were rejecting the special education program offered by the District for the following, non-exhaustive reasons:

- Class size is too large
- Instructional reading group is too large
- The students in the reading group did not appear to have mastered the previously taught skills in order to be successful at this level
- There was no praise or positive reinforcement provided to any of the students in the classroom during the one[-]hour observation
- There is no multi-sensory writing or math program used
- The writing objective on the board [that] "students will write an opinion paragraph on the debate topic" is significantly above [B.G.'s] level
- No instructional support was provided to the seven children working independently on chrome books for one hour
- At the IEP meeting, we were told that the district grade level math text is used in the classroom. As demonstrated [in the District's] evaluations, B.G. is performing at significantly below grade level and requires a modified and multi-sensory approach to math.

[J-39, ¶ 22.]

At the hearing, Caplan testified that she made the same observations of the proposed LLD-M classroom. Caplan further opined that use of a grade-level math text would be inappropriate for B.G. Indeed, the District's own evaluations of B.G. and B.G.'s "Broad Mathematics" testing scores in the "very low range" (at the 1st percentile) supported Caplan's conclusion.

While the District presented Gentilello (the LLD-M teacher) as a rebuttal witness to contest Caplan's observations, the District does not dispute that there were fourteen students in Gentilello's fifth-grade LLD-M classroom on the day of the December 5, 2023, observation.[9] Accordingly, and as further supported by the testimony of C.G. and Caplan

[9] The District witnesses presented inconsistent testimony regarding the actual class size of the LLD-M classroom that was presented to B.G.'s parents for observation. Jasinski recalled that there were sixteen students in the class, but Gentilello testified that there were fourteen students in her classroom. Whether the class size of the proposed LLD-M classroom was fourteen or sixteen students is inconsequential to the Tribunal's determination regarding the District's provision of a FAPE.

regarding the class size of the proposed LLD-M classroom,[10] I **FIND** that the District was proposing that B.G. be placed in an LLD-M classroom with fourteen to sixteen students, the latter being the maximum allowable class size.

Jasinski acknowledged that she did not respond to petitioners' December 12, 2023 email. Nor did anyone at the District make any attempt to address or rectify the areas of concern raised by petitioners with respect to the November 2023 IEP. Accordingly, on December 29, 2023, petitioners filed for due process.

Petitioners, however, continued to provide additional information to the District regarding B.G.'s progress, including further testing results obtained in connection with more recent evaluations of B.G. that occurred after the November 2023 IEP meeting.

On May 9, 2024, petitioners provided the District with an evaluation report completed by Melanie Feller ("Feller"), a private speech and language pathologist, regarding her testing of B.G. on January 18, 2024. (P-104.)

Feller noted that as a rising sixth-grader, B.G. was "at a pivotal time in her educational career" and "needs to find success in the classroom . . . before she simply gives up on the process and stops engaging in her educational career." (Ibid.) Based on the testing she administered to B.G., Feller found that B.G. exhibited "profound challenges" in many areas, including reading comprehension and written expression. Feller concluded that "[d]aily reading and writing intervention in the form of very small groups is necessary to support continued growth in those areas." (Ibid.) Accordingly, Feller recommended B.G.'s continued placement at Shalshelet.

On May 15, 2024, approximately one week after receiving Feller's evaluation report, Jasinski advised petitioners that she would schedule an IEP meeting to discuss the same. (J-39, ¶ 27.) This was the first time that Jasinski communicated with petitioners

[10] In contrast to Caplan and C.G., the District witnesses were unable to recall with specificity the discussion that occurred at the November 2023 meeting regarding the number of students that would be in the LLD-M classroom they were proposing for B.G.

since failing to respond to petitioners' December 12, 2023 email identifying their list of concerns with the District's proposed placement for their daughter.

On May 16, 2024, petitioners also provided the District with a private psychological evaluation of B.G. completed by Elliott Koffler ("Dr. Koffler"), a veteran school psychologist with over thirty years of experience. Koffler emphasized that "one to one" or "very small-uniformly 'leveled' group instruction in the reading/writing program" was critical to B.G.'s "need to build self-confidence in her literary and math skills as rapidly as possible." (J-17, emphasis in original.)

At the hearing, Dr. Koffler echoed Feller's opinion that because B.G. was already in the middle of fifth grade (when he evaluated her), there remained a limited window for intervention for B.G. to achieve proficiency with basic core skills in reading, writing and math before she became overwhelmed by the middle-school curricula. Dr. Koffler stressed that B.G. was entering fifth grade as a "virtual non-reader." (Tr. 4, 17:12.) Coupled with her significant learning challenges and distractibility issues, Dr. Koffler opined that a classroom with fourteen to sixteen students would be an inappropriate placement for B.G. (Tr.4, 19:15−21:3.) Expert opinions provided by Roth and Dr. Rabinovitz were in accord.

Roth explained that a class of fourteen to sixteen students would be inappropriate for B.G. because of her "very significant learning challenges and distractibility." (Tr. 4, 141:7−13.) Using lay vernacular, Roth opined that B.G. "would get lost both in the language and in the learning" in a classroom of fourteen to sixteen children. (Tr. 4, 141:12−15.)

Dr. Rabinovitz also pointed to the inherent distractibility element of a classroom comprised of fourteen to sixteen students that would impede B.G.'s ability to be successful in that environment. Dr. Rabinovitz further opined that, given B.G.'s "attentional difficulties," coupled with her "overall academic weaknesses" and need for "evidence-based reading intervention," a one-to-one or very small class size was required throughout the day to deliver individualized instruction. (Tr. 4, 67:9−68:9.)

On cross-examination, Dr. Rabinovitz made clear that her opinion, based on her clinical experience (which included classroom observations), did not change if, within that class size, B.G. would have been placed in a four to six student group for more individualized instruction: "There's distractibility that comes with the differentiated instruction in a classroom of that size." (Tr. 4, 91:6−12.) Dr. Rabinovitz further noted that in her prior placement, B.G. had received reading instruction in a small group of six and continued to struggle "with the teachers noting the distractibility as one of the reasons why she was struggling." (Tr. 4, 3:21−74:2.)

On June 4, 2024, petitioners provided the District with a private educational evaluation completed by Caplan regarding testing she administered to B.G. following the November 2023 IEP. Caplan's report highlighted the severity of B.G.'s dyslexia and reiterated that B.G. "requires not only a highly structured, multi-sensory approach to Reading, Written Language and Math, but a highly integrated approach where the reading skills and written language skills are applied to all areas of the curriculum." (J-19.) Based on her observations of B.G. at Shalshelet and speaking with B.G. about her experience at Shalshelet, Caplan's recommendation was that B.G. remain at Shalshelet "where she can continue to receive the highly individualized, systematic, multi-sensory instruction which is documented to be the most effective method of teaching students with Dyslexia, and where the highly structured, small group instruction, in all subjects, addresses not only her language based disability but her noted attentional weaknesses as well." (J-19.)

**The June 2024 (Amended) IEP**

On June 6, 2024, Jasinski requested that petitioners provide "report cards or progress reports" from B.G.'s unilateral placement. Petitioners provided the requested documentation on June 10, 2024, and the District convened an IEP meeting the following day to discuss the new evaluations and consider B.G.'s progress (the "June 2024 IEP meeting"). Petitioners provided the requested documentation on June 10, 2024, and the District convened an IEP meeting the following day to discuss the new evaluations and consider B.G.'s progress (the "June 2024 IEP meeting"). (J-39, ¶ 31, J-20.) The District determined that amendments to the November 2023 IEP were necessary and generated

a new IEP with an implementation date of June 12, 2024 (the "June 2024 IEP"). (J-21.) The services' end date of November 17, 2024, did not change from the prior IEP.

Jasinski also confirmed that in developing the June 2024 IEP, the District IEP team "accepted" Dr. Koffler's recommendation that B.G. receive instruction in "a very small" group setting. Yet no changes were made to that part of the IEP that proposed placement in the District's LLD-M classroom. (J-21.) The June 2024 IEP also included the offer by the District to "consider out-of-district placements." (J-21.) However, there is no mention of Shalshelet as a potential out-of-district placement to be considered by the District. Only the Craig School and the Banyan School are referenced in the June 2024 IEP.

As summarized by Jasinski, the amendments that were included in the June 2024 IEP "increased the speech services from twice a week to three times a week, . . . added counseling once a week and social skills once a week, . . . added some goals in regards to executive functioning, . . . added counseling goals, . . . added modifications and accommodations related to the difficulties noted with [B.G.'s] attention . . . updated some of the goals to more meet [B.G.'s] academic levels." (Tr. 1, 216:7−22; J-21.)

Petitioners did not accept the proposed June 2024 IEP; however, they did execute releases for B.G.'s records to be sent to Craig School and the Banyan School, the two out-of-district placements offered for consideration by the District. (J-39, ¶ 33.)

On July 10, 2024, and July 23, 2024, C.G. and Jasinski toured the Craig School and the Banyan School. (J-39, ¶ 34.) On August 1, 2024, petitioners corresponded with Jasinski and rejected both options. (J-24.) Their August 1, 2024 correspondence identified issues with both schools that led petitioners to conclude that neither school was appropriate to support B.G.'s needs. As some examples, petitioners pointed to the "learning group size" at Banyan for reading and math. At four to six students, it was "larger than what [B.G.] needs for skills[-]based instruction." Petitioners also noted that "the reading sessions at Banyan are only 60 minutes long, which is insufficient time for [B.G.] to learn, practice and internalize the material." Petitioners further stated their concern regarding the negative social and emotional impact on B.G. of not having "peers with whom to socialize." At the hearing, C.G. also provided unrefuted testimony that when

she observed Banyan with Jasinski, a school representative advised C.G. that Banyan catered to "a large ASD population."[11] (Tr. 1, 166:1−6.) Uncertainties regarding the quality and consistency of the reading instruction at Banyan were also raised by petitioners, as it was unclear whether the Banyan teachers "are Wilson certified or trained on the job by the reading specialist." (Ibid.)

Regarding the Craig School, petitioners advised that "the size of the learning cohort is similarly concerning" and that B.G. needed to be in "an even smaller group (than five students) for effective learning." Petitioners also raised concerns that the math curriculum at the Craig School was not multi-sensory, the class size (at eight students) was too large, and the pre-algebra material was too advanced for B.G. and could not be individualized for B.G., "whose skills are significantly below grade level." Finally, petitioners noted that the Craig School "does not offer one-on-one support for students who require more help or do not fit into the available groups." (J-39, ¶ 35.) C.G. further clarified at the hearing that the Craig representatives advised that if a child needed a class size smaller than eight or a lower student-to-teacher ratio, then Craig is "not the right placement." (Tr. 1, 166:6−10; 167:4−8.) Jasinski, who accompanied C.G. on the tour of the not-state-approved school, offered no evidence to refute any of C.G.'s observations and concerns.

However, Jasinski did acknowledge that she received petitioners' August 1, 2024 correspondence identifying their concerns with the Craig and Banyan schools and failed to respond to the same. (Tr. 1, 254:19−25.) At first, Jasinski defended her inaction by stating that she "was on vacation" when she received the email. When asked why she did not respond to petitioners' concerns in mid-August when she returned from vacation, Jasinski stated that she knew that the matter "was going to court" and "was going to be settled" there. (Tr. 1, 256:9−16.) Petitioners' counsel then established with Jasinski that she failed to respond to at least four substantive communications from petitioners, noting their concerns from December 2023 through August 2024. (Tr. 1, 219:6−12; 220:1−8; 231:3−5.)

[11] ASD is an acronym for Autism Spectrum Disorder.

Jasinski further acknowledged her obligation as a case manager to respond to parents and conceded that no one told her not to communicate with petitioners. (Tr. 1, 222:20−223:2.)[12] Jasinski testified that when she received petitioners' December 2023 email listing their concerns with the November 2023 IEP, she "wanted to schedule a meeting" but was told by Chavez that petitioners did not want to meet. (Tr. 1, 228:12−28.) When questioned by petitioners' counsel, Chavez did "not recall." (Tr. 5, 166:9−11; 171:17−196.)[13] However, both District witnesses admitted that there was no communication from them to petitioners following petitioners' December 2023 email rejecting the November 2023 IEP until mid-May 2024, when the June IEP meeting was scheduled. C.G. also testified credibly that "at no point at all" did she (or J.G.) say "we wouldn't meet." (Tr. 2, 130:18−21.) ("We were happy to discuss anything and wanted to hear responses to our concerns that we proposed.")

On August 29, 2024, with the District's consent and the Tribunal's permission, petitioners filed an amendment to the Petition. The amendment expanded petitioners' request for due process to include their challenge to the June 2024 IEP, in addition to their challenge to the November 2023 IEP (the "Amended Petition").

Based on the foregoing, I **FIND** that neither the November 2023 IEP nor the June 2024 IEP (together, the "IEPs") was reasonably calculated to enable B.G. to make meaningful progress in light of her circumstances. I further **FIND** that throughout the IEP process, petitioners acted reasonably. They were cooperative, responsive to the District, and forthcoming with information concerning their daughter.

I further **FIND** that had the District been able to provide B.G. with an appropriate fifth-grade program for the 2023−2024 school year or an appropriate sixth-grade program for the 2024−2025 school year that accommodated B.G.'s educational needs,

[12] Chavez also acknowledged that it was Jasinski's obligation as a case manager to respond to petitioners' concerns. (Tr. 1, 170: 7-11; 171: 3-10.)

[13] Notably, Chavez also could not recall if she gave an opinion regarding class size at the November 2023 IEP meeting when petitioners raised pivotal concerns about the proposed classroom setting being too large. (Tr. 1, 84:12−17.) Indeed, Chavez did not recall much about that discussion and agreed with petitioners' counsel that she did "not recall saying much at the meeting." (Tr. 1, 88:12−91:23.)

petitioners would have agreed to a public placement and enrolled B.G. in the District. (Tr. 2, 146:19−22.)

Unfortunately, the District was not able to do that. Based on this Tribunal's factual findings, the in-district LLD-M program proposed in the IEPs was insufficient and not tailored to address B.G.'s individualized needs. As noted above, among other deficiencies, the educational programming proposed by the District failed to provide a classroom setting in which B.G., who was entering fifth grade as "a virtual non-reader" and with "limitations in basic and sustained attention," could make meaningful progress. (Tr. 4, 17:12; J-4) The IEPs further failed to account for the severity of B.G.'s dyslexia and her need for more individualized reading instruction, which could not be delivered in a classroom of fourteen to sixteen students (even while grouped in smaller cohorts) in a manner that would allow B.G. to make meaningful progress. The IEPs also failed to address B.G.'s writing deficits, and the writing goals set forth for her were patently unachievable.

**B.G.'s Progress and Educational Programming at Shalshelet**

In contrast to the proposed in-district program, Shalshelet provides the small classroom setting that B.G. requires to make meaningful progress. Shalshelet delivers multi-sensory instruction in reading, writing and math that, as observed by Caplan, is "highly unique." (Tr. 2, 65:9−11.) "The PAF [Preventing Academic Failure] reading program employed at Shalshelet "incorporates phonics, writing and spelling, and reading comprehension into every single lesson. . . benchmark assessments" are used, and students do not move on in the program unless the skill is learned. (Tr. 2, 65:11−15.) "[I]t is explicit instruction through mastery. It is not taught to the group. It is taught to the individual and if the individual – whether even if it's a three to one cannot do what the other two are doing, they will break that into a one-on-one, so they meet the individual needs of the students." (Tr. 2, 65:19−25.) Math is delivered using a multi-sensory approach to teach basic concepts. (Tr. 4, 181:5−6.)

At Shalshelet, B.G. also receives support from an occupational therapist who assists with B.G.'s executive functioning skills. B.G.'s reading classes at Shalshelet are

eighty minutes long. In addition, B.G. attends "a second class for writing instruction." Each writing lesson is forty minutes and delivered four times per week. Social studies and science classes are also included in B.G.'s curriculum. B.G. also receives individualized counseling weekly, speech and language services once a week for thirty minutes in a group of two, and direct speech and language therapy. (Tr. 4, 126:22−132:8.)

Since the time that B.G. has been attending Shalshelet, she has made significant progress in her reading and writing skills. Having started at Shalshelet as a "virtual non-reader," she now "considers herself a reader" and reads books for pleasure. (Tr. 1, 29:18−30:16; 145:9−10.) In writing, she has progressed from writing "disorganized and very simplistic" sentences to "multi-part complex sentences within a flow of a paragraph." (Tr. 4, 139:24−140:6; Tr. 2, 145:19-20.) Her math skills have also improved. She has gained confidence and has finally "felt success." As reported by C.G., "she's like a different kid." (Tr. 2, 146:2−7.) Progress reporting and standardized testing performed while B.G. was at Shalshelet, as explained by Shalshelet's head of school, confirm that B.G. has "progressed in reading, spelling, writing, math, language skills, across − across all areas." (Tr. 4, 142:4−146:23; see also, Tr. 3, 218:20-222.5 and P-105 (noting substantial improvements in B.G.'s CELF-5 scoring.)

It is indisputable that B.G.'s current placement is providing her with individualized instruction, in a nurturing environment, to meet her on her current academic level. Based on reporting from Shalshelet, as corroborated by C.G.'s observations, it is likely that Shalshelet will continue to deliver meaningful educational benefits to B.G.

Currently, B.G. is completing her second year of attendance at Shalshelet and is a rising seventh grader. As reflected in the record before the Tribunal, the last IEP for B.G. is the June 2024 IEP. The "end date" of the June 2024 IEP elapsed on November 17, 2024. (J-21.)

## LEGAL ANALYSIS AND CONCLUSIONS

This case arises under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1401 et seq., which makes available federal funds to assist states in providing an education for children with disabilities. Receipt of those funds is contingent upon a state's compliance with the goals and requirements of the IDEA. Lascari v. Bd. of Educ. of Ramapo-Indian Hills Reg. Sch. Dist., 116 N.J. 30, 33 (1989).

### The Applicable Law

As a recipient of federal funds under the IDEA, the State of New Jersey must have a policy that assures that all children with disabilities receive a FAPE. 20 U.S.C. §1412. FAPE includes special education and related services. 20 U.S.C. §1401(9); N.J.A.C. 6A:14-1.1 et seq. The responsibility to deliver these services rests with the local public school district. N.J.A.C. 6A:14-1.1(d). To fulfill its obligation to deliver a FAPE, the District must offer an educational program "reasonably calculated to enable [E.B.] to make progress appropriate in light of [her] circumstances." Endrew F. v. Douglas Cnty. Sch. Dist., 580 U.S. 386, 399 (2017).

The IEP is the vehicle by which the local public school district provides each eligible student with an IDEA-mandated FAPE. Shore Reg'l High Sch. Bd. of Educ. v. P.S. ex rel. P.S., 381 F.3d 194, 198 (3d Cir. 2004) (citing 20 U.S.C. § 1414(d)). The IEP spells out how a school will meet an individual disabled student's educational needs. Y.B. v. Howell Twp. Bd. of Educ., 4 F.4th 196, 198 (3d Cir. 2021). Among other requirements, an IEP must include a statement of the "child's present levels of academic achievement and functional performance," consider the impact of that child's disability on his/her ability to be involved and "progress in the general education curriculum," offer "measurable annual goals" to "enable the child to . . . make progress in the general educational curriculum," and describe "supplementary aids and services . . . provided to the child" to meet those goals. 20 U.S.C. § 1414(d)(1)(A)(i)(I), (II)(aa), (IV). The educational benefit conferred to the student through an IEP must be "meaningful." Polk v. Cent. Susquehanna Intermediate Unit 16, 853 F.2d 171, 180 (3d Cir. 1988).

The IDEA further requires that disabled children be provided a FAPE in the least restrictive environment ("LRE"). 20 U.S.C. § 1412(a)(5). While an IEP cannot be judged by whether it provides an eligible student with the "optimal level of services," (Carlisle Area Sch. v. Scott P., 62 F.3d 520, 533−34 (3d Cir. 1995)), it must provide "more than a trivial benefit" and be reasonably calculated to confer "significant learning" in light of the particular student's individual abilities. Ridgewood Bd. of Educ. v. N.E., 172 F.3d at 247.

Stated differently, to satisfy its obligation to provide an eligible student with a FAPE, the District must offer "educational instruction specifically designed to meet the unique needs of the [disabled] child, supported by such services as are necessary to permit that child 'to benefit' from the instruction." Polk, 835 F.2d at 180.

The District bears the burden of proving that it offered a FAPE. N.J.S.A. 18A:46-1.1. It must be able to offer "a cogent and responsive explanation for [its] decisions that demonstrates that the IEP meets the requisite standard. Endrew F., 580 U.S. at 404. Further, the District must collaborate with parents (and vice versa) to design an appropriate IEP. 20 U.S.C. § 1414 (d)(1)(B); see also N.J.A.C. 6A:14-2.3; N.J.A.C. 6A:14-3.7(b). This mandated, collaborative process reflects a recognition that the development of a sufficiently individualized program of education necessarily involves a "fact-intensive" inquiry that is "informed not only by the expertise of school officials, but also by the input of the child's parents." Endrew F., 580 U.S. at 399−400.

A parent who believes that a school district has not provided their child with a FAPE as required under IDEA may request a due process hearing. See Lascari, 116 N.J. 30 at 36 (citing applicable New Jersey state regulations). The parent need only place the appropriateness of the IEP at issue, shifting the burden to the school district to prove that the IEP was indeed appropriate. The focus of the inquiry is on "the IEP actually offered and not one that the school board could have provided if it had been so inclined." Id. at 46.

In a situation where a child has been unilaterally placed by his or her parents in an educational setting other than as provided in the IEP, reimbursement may be available to the parents for tuition and related expenses (e.g., transportation) if the school district "fails

to meet its burden of establishing the appropriateness of its program." Under that scenario, where the school district cannot demonstrate by a preponderance of the evidence that it offered the student a FAPE, the burden shifts back to the parents to establish that they unilaterally placed their child in an "appropriate" program. T.R. ex rel. N.R. v. Kingwood Twp. Bd. of Educ., 205 F.3d 572, 582 (3rd Cir. 2000) (explaining the test for reimbursement for unilateral private placement as a two-pronged inquiry).

Private placements are not held to the same standard as public schools when determining whether they are "appropriate." W. Windsor-Plainsboro Reg'l Sch. Dist., Bd. of Educ. v. M.F. & M.F., 2011 U.S. Dist. LEXIS 21827, *25 (D.N.J. Mar. 4, 2011). ("[T]he standard a [private] placement must meet in order to be 'proper' is less strict than the standard used to evaluate whether a school district's IEP and placement are appropriate.") Private placement is appropriate if the education provided by the private school is determined to be "reasonably calculated to enable the child to receive educational benefits." Madison Bd. of Educ. v. S.V. ex rel. C.V., 2020 U.S. Dist. LEXIS 155644, *9–10 (D.N.J. Aug. 26, 2020).

Even where a district violated its obligations under the IDEA and the unilateral placement was appropriate, courts retain discretion to reduce or deny reimbursement if the equities so warrant. Forest Grove Sch. Dist. v. T.A., 557 U.S. 230, 246−47, 129 S. Ct. 2484, 2496 (2009). Specifically, under the IDEA and the corresponding New Jersey regulation, the cost of reimbursement **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) (emphasis added); N.J.A.C. 6A:14-2.10(c)(4). The "discretionary nature of the IDEA's equitable limitations is reflected in the plain language of the statute, which provides that the cost of reimbursement 'may be reduced or denied' for lack of adequate notice [or for unreasonable conduct], rather than must be denied." L.K. v. Randolph Twp. Bd. of Educ., 2021 U.S. Dist. LEXIS 100987, *14 (D.N.J. May 27, 2021) (internal citations omitted.); see also Madison Bd. of Educ. v. S.V. ex rel. C.V., 2020 U.S. Dist. LEXIS 155644, *13–14 (D.N.J. Aug. 26, 2020) (Parents acted reasonably and were entitled to full reimbursement for private placement.)

**The November 2023 and June 2024 IEPs ("IEPs") Failed to Provide B.G. With a FAPE**

The gravamen of Amended Petition for due process is that the District failed to provide B.G. with a FAPE. Petitioners also fault the District for its failure to timely perform evaluations of B.G., and additional allegations of deficiencies in the District's approach to the evaluative process are alluded to in petitioners' Post-Hearing Brief. As the Tribunal finds that the IEPs' content (or lack thereof) is insufficient to meet B.G.'s educational needs and provide a FAPE, I will consider petitioners' arguments, *infra*, in the context of substantive deficiencies in the IEPs resulting from a flawed evaluative process.

Turning to the crux of the parties' dispute, it is noteworthy that there is no disagreement that B.G. presented with severe weaknesses in reading, math and writing. The parties also agree that B.G.'s functional levels in all of those areas upon entering fifth grade would be well below grade level. Indeed, the District's testing of B.G. confirmed that she ranked in the 1st percentile in reading and math achievement, as compared with age-level peers. Nor do the parties contest that B.G. requires specialized instruction in a self-contained, smaller class setting with a low student-to-teacher ratio to make meaningful progress. They do, however, have different opinions on what constitutes a "smaller class."

The District's position is that the proposed LLD-M classroom, with a class size of fourteen to sixteen, qualifies as a "small" class size." In support of its claim, the District cites N.J.A.C. § 6A:14-4.7(e) which states that the instructional size of an LLD-M program, with an aide in the classroom, "shall not exceed the limits" of "11 to 16" students. However, it does not follow that a classroom of fourteen to sixteen students constitutes a "smaller class" size, which was identified by the District to be a criterion that was necessary for B.G. to make meaningful progress.

The District argues that "[p]etitioners have produced no evidence . . . that B.G. required something different than § 6A:14-4.7(e)." (Resp'ts' Post-Hearing Br. at 18.) The District's argument fails. First, it is the District's burden to prove that the proposed educational placement is appropriate for B.G. Second, there is ample evidence in the

record that supports the conclusion that B.G. "required something different" than what the District proposed to allow her to make meaningful progress.

The District's presentation of its case-in-chief relied on the testimony of two witnesses: Chavez and Jasinski. Chavez was designated as an expert witness, and Jasinski was proffered as a fact witness.[14] Neither witness had any direct engagement with B.G. In contrast to petitioners' experts, neither Chavez nor Jasinski had performed a personal evaluation of B.G. Their only interaction with B.G. was observing her at Shalshelet. Yet both witnesses offered conclusory opinions that the in-district program proposed in the IEPs was appropriate for B.G. Indeed, the basis of Chavez's opinion that B.G. could make meaningful progress in the proposed in-district placement was premised on the conclusory inference she made from the fact that she did not observe anything during her observations of B.G. at Shalshelet that would lead her to conclude that B.G. could not make meaningful progress in a class size of ten to sixteen.[15] (Tr. 1, 187:11−23.)

Similarly, as elicited by the District's attorney on direct examination, Jasinski's testimony that the District's proposed program allowed B.G. to make meaningful progress derived from Jasinski's conclusion that, based on her review of the evaluation reports, there were no indications therein that B.G. could not make meaningful progress in a class size of ten to sixteen. (Tr. 1, 194:19−23.) While Jasinski's opinion testimony can be considered under N.J.A.C. 1.1-15.9(a), it was not compelling.

I am also not persuaded by the District's conclusory reasoning that because B.G. was observed at Shalshelet not to be distracted in a class size of three students (with the District observers in the classroom) that she would not be distracted and be able to make meaningful progress in the District's LLD-M classroom with fourteen to sixteen students.

[14] The District presented Chavez as an expert in special education, eligibility, IEP development, special education programming and as an LDTC.

[15] It is also noteworthy that Chavez does not recall sharing her "opinion" with petitioners when they raised a concern regarding class size at the November 2023 IEP meeting (*supra* fn 13), but C.G. confirmed that the District never provided a response to their concern. (Tr. 2, 136:3−5.)

The District chose to rest its case without offering testimony from any of its staff who evaluated B.G. As set forth above, those evaluations revealed that B.G. was entering fifth grade with abysmally low-ranking achievement percentiles – at the 1st percentile in reading and math and the 4th percentile in writing. On their face, the District evaluations provide evidence that supports petitioners' due process claims.

Additionally, petitioners presented several expert witnesses, all of whom conducted private evaluations of B.G. and delivered opinions based on their personal knowledge and assessments of B.G. In that regard, I found the expert testimony provided by petitioners' witnesses more persuasive, and I accept their collective opinion that in light of B.G.'s severe deficiencies and issues with focus and distractibility, she would not be able to make meaningful progress in an LLD-M classroom with fourteen or sixteen students, even if grouped in smaller cohorts of five students for reading.

Alternatively, and inconsistently, the District argues that the LLD-M classrooms ranged in class size and the program offered to B.G. was less than fourteen to sixteen students. But the District's post-hoc argument is contradicted by the statement in the November 2023 IEP that confirms that "[B.G.]'s parents and their LDTC, Susan Caplan, have agreed to observe **the** LLD-M classroom on December 5th at 1:30 pm." (J-16, emphasis added.) There is no dispute that the LLD-M classroom selected by the District and presented to petitioners and their LDTC for observation on December 5, 2023, was Gentilello's fifth-grade LLD-M class. Nor is there any dispute that there were fourteen students in the classroom during the observation.[16]

Accordingly, I **CONCLUDE** that the LLD-M classroom proposed in the IEPs was inappropriate for B.G., and the District failed to meet its burden of proving that it offered B.G. a FAPE.

While the foregoing deficiency alone is case determinative, the IEPs suffered from additional infirmities related to content (and lack thereof).

[16] The preponderance of the evidence also supports the conclusion that there were no smaller LLD-M classrooms for fifth-grade students in the District when the November 2023 IEP was developed. It also would explain why the District offered to consider Banyan and Craig, private schools that offered class sizes much smaller than Gentilello's LLD-M classroom.

Goals and Objectives

As outlined in the November 2023 IEP, the District set goals and objectives for B.G. that were plainly unachievable for her. Notwithstanding the District's knowledge of B.G.'s severe weaknesses and grade-level delays in both reading and writing, the District expected B.G., who was entering fifth grade as a virtual non-reader, "to be able to write "narratives" with "descriptive details and clear event sequences" "by using narrative techniques such as dialogue, description and pacing . . ." (J-16.) As Caplan explained, at the time the November 2023 IEP was written, B.G. "could barely read, and writing is a higher form of expression than reading. If you don't know what words look like and you can't picture them in your mind you can't write them." (Tr. 2, 52:3−9.) Chavez's insistence, in response to a question from the Tribunal, that this goal would be "appropriate" even for a student "who could not write a sentence," lacked credulity. (Tr. 5, 118:6−10.)

Considering the District's acknowledgement that B.G. was beginning the 2023 school year with a reading achievement score at the 1st percentile, it was similarly unrealistic for the District to expect B.G. "to be able to write an opinion piece on topics or texts, supporting a point of view with readings and information, and creating an organization structure in which related ideas are grouped to support the writer's purpose." (J-16.) Chavez's rebuttal testimony that the goal was appropriate for B.G. because it could be met by expressing her opinion "in one sentence" (Tr. 5, 119:5−7) is simply incredible and at odds with the plain language contained in the IEP.

As yet another example of an inappropriate goal that was not reasonably achievable, the November 2023 IEP expected B.G. to "read and comprehend information texts, including history/social studies, science, and technical texts, at the high end of grades 2−3 independently and proficiently." (J-16.) Again, this goal failed to account for the fact that B.G. was entering fifth grade as a virtual non-reader. While the June 2024 IEP was similarly deficient in that it included the same goals as the November 2023 IEP, the reading level was lowered from "the high end of grades 2−3" to "the high end of grades 1−2." (J-21.) Given that B.G. had made some progress in reading at Shalshelet by the time of the June 2024 IEP, the District's decision to *lower* her reading level evidences the

inappropriateness of the prior reading goal, which was set when the District had knowledge that B.G. was beginning the academic year as a virtual non-reader.

Based on the above, I **CONCLUDE** that the goals and objectives in the IEPs were unreasonable in that they failed to account for B.G.'s individual needs and, thus, deprived B.G. of a FAPE.

Missing Content

The IEPs were further lacking in content. B.G.'s eligibility classification is completely missing from the face page of the November 2023 IEP. While that error is corrected in the June 2024 IEP, neither IEP reflects B.G.'s dyslexia diagnosis and the severity of her condition. Also missing in both IEPs is any consideration (or rejection) of Shalshelet as an appropriate out-of-district placement.

Under N.J.A.C. 6A:14-2.3(g)(3), the District is required to describe the options considered and the reasons those options were rejected. There is no dispute that petitioners requested that the District determine Shalshelet to be the appropriate, out-of-district educational placement for B.G. Yet the IEPs fail to mention if Shalshelet was considered and, if so, the reasons why it was rejected. (J-16 at 155; J-21 at 242.)

When questioned about this deficiency in the IEPs and whether the District actually considered Shalshelet, Chavez's responses were less than clear, and her testimony was evasive. Referring to language in the IEPs that stated that "the full continuum of special education programs were considered but rejected," Chavez claimed that "the full continuum" would "imply" consideration of, and "encompass," Shalshelet. (Tr. 1, 114:3−12.) Chavez also testified that "technically a hospital would be in the full continuum." (Tr. 1, 115:12−13.)

Chavez was unable, or unwilling, to provide straightforward testimony to confirm that the District specifically considered Shalshelet as a potential placement for B.G. (See, e.g., Tr. 1, 112:23−113:4.) Nor do the IEPs "describe" the educational program at Shalshelet or detail "the reasons" Shalshelet was rejected as an option. The District's

failure to refer to Shalshelet by name is highlighted by the fact that the IEPs specifically mention the District's offer to investigate the Craig and Banyan schools. Thus, I **CONCLUDE** that the IEPs did not comply with the content requirement of N.J.A.C. 6A:14-2.3(g)(3).

Based on the foregoing, I **CONCLUDE** that the IEPs were not reasonably calculated to enable B.G. to receive meaningful educational benefits, and the District has not met its burden of proving that it provided B.G. with a FAPE.

Having concluded that the IEPs failed to provide B.G. with a FAPE, I will consider petitioners' claim for reimbursement related to the unilateral placement.

**Petitioners' Entitlement to Reimbursement**

When the district fails to provide an eligible student with a FAPE, reimbursement for unilateral placement is a recognized remedy if the placement is determined to be "appropriate." 20 U.S.C. § 1412(a)(10)(C)(ii); 34 C.F.R. § 300.148(c); N.J.A.C. 6A:14-2.10(b). The parent bears the burden of demonstrating that the private placement is appropriate. See Madison Bd. of Educ., 2020 U.S. Dist. LEXIS 155644, *6.

In determining whether a unilateral placement is appropriate, a parent need not show that a private placement maximizes their child's potential. Rather, to meet the standard of appropriateness, a private placement must only meet the threshold requirement that the placement be "reasonably calculated to enable the child to receive educational benefits" and cannot have provided "no educational benefit." See E. Brunswick Twp. Bd. of Educ. v. D.S., 2023 U.S. Dist. LEXIS 130736, *32 (.D.N.J., Jul. 8, 2023.)

The District argues that Shalshelet is an inappropriate placement for B.G. because "the staffing practices at Shalshelet – relying on personnel with only TSSLD[17] certification - directly undermine the quality of instruction and the overall educational

[17] TSSLD is an acronym for "Teacher of Student with Speech and Language Disabilities," a New York State-issued certification required for speech-language pathologists.

progress of students like B.G." (Resp't's Post-Hearing Br. at 35.) The District alleges that (1) "[n]one of B.G.'s teachers at Shalshelet held a general or special education teaching certificate"; (2) Koffler and Rabinovitz testified that B.G. "required instruction from a certified special education teacher in order to make meaningful educational progress"; and (3) "B.G.'s minimal academic progress and failure to meet even the substandard goals set by the institution" evidence the deficiency of the Shalshelet instructors. (Ibid.)

As a preliminary matter, the Tribunal notes that the District provides two transcript citations to support its assertions. Each citation is to rebuttal testimony provided by Chavez, ostensibly as support for (3), but neither conclusively establishes the truth of the District's categorical statement that B.G. made "minimal progress" at Shalshelet.[18] To the contrary, based on the preponderance of evidence presented, as discussed above, I found that B.G. made significant progress at Shalshelet.

Even assuming all of the District's assertions are correct, it does not compel a determination that Shalshelet is an inappropriate unilateral placement for B.G. As set forth above, in the reimbursement context, a unilateral, private placement need not adhere to the certification requirements required for teachers to provide special education in the State's public schools. See, e.g., W. Windsor-Plainsboro Reg'l Sch. Dist. Bd. of Educ. v. M.F. & M.F., 2011 U.S. Dist. LEXIS 21827, *25 (D.N.J. Mar. 4, 2011) ("[T]he standard a private placement must meet in order to be 'proper' is less strict than the standard used to evaluate whether a school's IEP and placement are appropriate.") Nor is it necessary for petitioners to establish that the unilateral, private placement provides B.G. with a FAPE. The law in the Third Circuit is well established that "the state-standards portion of the FAPE requirement applies only to the school districts charged with providing an education in the first place." Madison Bd. of Educ. v. S.S., 2019 U.S. Dist. LEXIS 160861, *10 (D.N.J. Sept. 19, 2019) (citing T.R. v. Kingwood Twp. Bd. of Educ., 205 F.3d 572 (3d Cir. 2000)). Thus, "parents are entitled to reimbursement even when a school lacks state approval." Id. (alterations omitted); see also Warren G. v. Cumberland Cnty. Sch. Dist., 190 F.3d 80, 83 (3d Cir. 1999). ("[A] private school's failure to meet state

[18] Chavez's rebuttal opinion was also contradicted by the District's LDT-C, Tuhari. (Tr.3, 24:9-25:18.)

educational standards is not a bar to reimbursement under the IDEA.") "So long as a school board has failed to provide a FAPE, an ALJ's determination that a unilateral placement is appropriate is generally sufficient to withstand an attack on the program's scholastic status." Madison Bd. of Educ., at*10.

The credible testimonial and empirical evidence presented at the hearing leaves no doubt that within the span of less than a year, B.G. progressed from a frustrated, "virtual non-reader" to a confident reader of "graphic books" and "novels." (Tr. 2, 24:29−30:16.) Indeed, none of the District witnesses who observed B.G. at her unilateral placement noted any shortcomings in their contemporaneous observation notes with the instruction B.G. was receiving at Shalshelet. To the contrary, prior to the hearing, they accepted reports by petitioners' expert and from Shalshelet that confirmed that B.G.'s skills had improved; she was progressing academically and experiencing growth in social and emotional areas as well. As C.G. observed, "[B.G.]'s like a different kid. She's happier, she's less frustrated, and she knows who she is, what she's capable of, and she knows that − she's felt success, and she knows that she can continue growing." (Tr. 2, 146:3−7.)

Nor is there any disagreement between the parties that B.G. needs a small classroom setting, with individualized instruction and a multi-sensory approach, which is exactly what she is receiving at Shalshelet, a school that is specifically designed for "kids with language-based learning disabilities," like B.G. (Tr. 4, 131:23−132:1.) Put simply, there is ample evidence in the record to support the conclusion that B.G. is making notable progress at Shalshelet and benefiting from the instructional programming available to her in that placement. Thus, I **CONCLUDE** that petitioners have met their burden of demonstrating that B.G.'s placement at Shalshelet is reasonably calculated to enable [B.G.] to receive educational benefits" and is the LRE under the unique circumstances presented by B.G.'s constellation of learning weaknesses and a learning profile that supports her need for highly individualized instruction in a small classroom setting. See, e.g., Florence Cnty. Sch. Dist. Four v. Carter, 510 U.S. 7, 11 (1989). As such, I further **CONCLUDE** that Shalshelet is an appropriate private placement and is, therefore, eligible for reimbursement.

**The Equities Do Not Warrant Reduction Or Denial Of Reimbursement**

Having determined that Shalshelet meets the threshold "appropriateness" standard, the Tribunal now turns to the last step of the analysis – whether the equities, under the circumstances presented here, favor granting petitioners' request for tuition reimbursement.

As noted above, under the IDEA, courts "may require [a local education] agency to reimburse the parents for the cost of [private school] enrollment" upon a finding that "the agency 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). The IDEA, and the corresponding New Jersey regulation, further provide that reimbursement for private school enrollment may be "reduced or denied . . . upon a judicial finding of unreasonableness with respect to actions taken by the parents." 20 US.C. §1412(a)(10)(C)(iii)(III); N.J.A.C. 6A:14-2.10(c)(4). The authority to grant reimbursement is discretionary, and the Tribunal has broad discretion to consider the range of all relevant facts in determining whether awarding relief is equitable.

While a determination of "unreasonableness" is fact-specific, in this jurisdiction, administrative law judges ("ALJs") have reduced or denied tuition reimbursement where the parents failed to comply with certain requirements and/or have intentionally impeded or prevented the district from discharging its obligation to provide the student with a FAPE. Specifically, where parents failed either to timely reject the proposed IEP (and identify their concerns with the proposed programming), provide the mandated ten-day written notice under N.J.A.C. 6A:14-2.10(c)(4), and/or to make the child available for evaluation, the District Court has upheld an ALJ's decision to reduce or deny tuition reimbursement. See, e.g., I.G. et al. v. Linden City Bd. of Educ., 2021U.S. Dist. LEXIS 1070076 (D.N.J. Jun. 8, 2021) (upholding ALJ's conclusion based on the fact-specific finding that parents did not collaborate with the district and, thus, acted unreasonably). Conversely, where the parents engaged in the IEP process, observed the District's proposed placement, and were not obstructionist or otherwise uncooperative, the District Court has reversed an ALJ's denial of tuition reimbursement. See, e.g., M.I. v. North Hunterdon-Voorhees Reg'l High Sch. Dist. Bd. of Educ.,2021 U.S. Dist. LEXIS 83468 (D.N.J. Apr. 30, 2021) (rejecting

ALJ's conclusion that parent acted unreasonably based on ALJ's erroneous finding that there was a "lack of collaboration" which was "not supported by the record.")[19]

In balancing the equities here, the Tribunal is guided by the undisputed record evidence that petitioners cooperated with the District from the time they decided to pursue public placement for B.G. and throughout the District's evaluative process of their daughter. On the same day that they registered B.G. in the District, on July 20, 2023, petitioners voluntarily supplied the District with Dr. Rabinovitz's neuropsychological report and the ISP under which B.G. had been receiving services and was failing to make progress at her prior private placement. The next day, Chavez acknowledged receipt of the materials from petitioners and advised that "[a] case manager will contact [petitioners] closer to the start of school." (J-1.)

On August 22, 2023, when petitioners still had not heard from anyone at the District, they emailed Chavez again, noting their concern. Petitioners reiterated – as detailed in Dr. Rabinovitz's comprehensive report – that B.G. required significant services, and she needed an IEP to start the school year. (J-1.) But when Chavez responded, advising petitioners that the District planned to have B.G. start fifth grade with a comparable program to the failed program she had received at her private placement, petitioners again expressed their concern and asked, again, for the District to develop an IEP. (J-39, ¶ 8.) When it became evident that the District was not going to be able to propose an individualized special education program for B.G. before the start of the school year, parents provided notice of their intent to unilaterally place B.G. at Shalshelet when the school year started. (J-39, ¶ 9.) The notice of unilateral placement was provided on August 25, 2023, and no response was received from the District until September 11, 2023, when the District's case manager introduced herself for the purpose of setting up an IEP meeting. (J-5.) Under the circumstances, it cannot be said that petitioners acted unreasonably in placing their severely dyslexic daughter at a specialized

[19] In North Hunterdon-Voorhees, the parent did not dispute that she provided late notice of the unilateral placement, but she challenged the "complete denial" of tuition reimbursement. In finding that the record did not support a lack of collaboration or parent's obstructionist conduct, the District Court agreed with the parent in awarding "partial reimbursement" to account for parent's admitted non-compliance with the relevant notice requirement. Unlike the timeline in North Hunterdon-Voorhees, because of scheduling issues affecting both parties here, the first IEP meeting for B.G. did not occur until months after the unilateral placement.

school to begin fifth grade while they "*continue[d]* to seek a public placement that is appropriate for [B.G.]" as explicitly stated in their notice to the District. (J-39, ¶ 9, emphasis added.) The unilateral placement notice was provided more than ten days prior to B.G.'s enrollment at Shalshelet.[20]

The District does not dispute that petitioners were cooperative during the ensuing IEP process. The members of the District's IEP team who testified at the hearing were uniform in their agreement that petitioners acted in a "cooperative" manner, providing consents for all four evaluations requested by the District. (Tr. 1, 86:2-8; Tr. 1, 123:13-124:7; Tr. 3, 70:15-71:3; Tr. 3, 138:18-19; Tr. 3, 149:7-8.) The record also establishes that petitioners: (1) provided consent for the District to observe B.G. at her private placement; (2) participated in the IEP meetings, together with their LDT-C and counsel; (3) were forthcoming with information regarding B.G., including the release of progress reporting from Shalshelet; and (4) continued to supply the District with updated private evaluations and testing concerning their daughter, as the reports were made available to them. C.G. further testified that she took time off work to observe the District's proposed LLD-M classroom and showed a vested interest in pursuing an appropriate public placement for her daughter in the District. (Tr. 2, 132:5−10.) C.G. also accompanied the District's case manager on tours of the Craig and Banyan schools over the summer, as she was "open to any possibilities" for an appropriate placement for B.G.'s then-upcoming sixth-grade year. (Tr. 2, 143:1−3.)

In addition to voicing their concerns at the IEP meetings, petitioners also communicated in writing with the District detailing issues and shortcomings with the District's proposed educational program that made it inappropriate to meet B.G.'s individualized needs. (J-39, ¶ 22, ¶ 35.)

On the other hand, the record also reflects evidence of the District's failures to address, much less to acknowledge, petitioners' stated concerns. (See, e.g., Tr. 1, 219:10−220:8.) The case manager conceded that she did not attempt any communication with petitioners to address the detailed concerns they communicated to

[20] The District does not assert a violation of the ten-day notice provision as a basis for denying tuition reimbursement.

her following C.G.'s observation of the District's proposed LLD-M classroom. (Tr. 1, 219:6−12; 220:1−8; 231:3−5.) Indeed, no one from the District initially responded to petitioners' notice of unilateral placement until seventeen days later (September 11, 2023), when the case manager contacted petitioners for the first time to schedule an IEP meeting. (J-5.) While the Tribunal acknowledges the District's argument that, under N.J.A.C. 6A:14-4.1(m), the District had until September 18, 2023 to offer B.G. a FAPE (Resp'ts' Post-Hearing Br. at 13), that does not explain or excuse why the District made no attempt prior to September 18, 2023 to obtain information from B.G.'s prior placement (or her private tutor), or contact the Commission that issued the expired ISP for an updated plan, or respond to petitioners' inquiry if the District needed them to provide any additional information to inform the District's formulation of an appropriate IEP for B.G. Further, even under the alternative scenario where the District had until October 18, 2023 to provide B.G. with a District IEP and a FAPE (ibid. at fn. 4), the District only first requested petitioners' consent to perform evaluations of B.G. on October 11, 2023 and did not complete the requested evaluations until November 1, 2023.

Further, that the IEP meeting did not occur until mid-November 2023 was **not** the result of any "bad faith" conduct on the part of petitioners, as the District now suggests. (Ibid. at 13.) Indeed, the parties previously stipulated that the IEP meeting needed to be rescheduled for November because "counsel for the District and Petitioners were in another trial together" in another matter. (J-39, ¶ 15.)

That petitioners unilaterally placed B.G. at Shalshelet because they disagreed that the District's placement for their daughter – as initially proposed, in a resource room for language arts and math only, or as subsequently proposed, in an LLD-M class with fourteen to sixteen students – provided her with a FAPE, does not establish, as the District claims, that "Petitioners did not cooperate as required by law in the IEP process." (Resp'ts' Post-Hearing Br. at 13.) The District cites to C.H. by Hayes v. Cape Henlopen, 606 F.3d 59, 72 (3d Cir. 2010) to support its assertion that petitioners are not entitled to tuition reimbursement because they had "already made up their minds about which school [i.e., Shalshelet] they thought was appropriate" and did not give the District a chance to provide B.G. with a FAPE. (Ibid. at 26.) But the decision to deny tuition reimbursement in Cape Henlopen turned on facts that are manifestly different from those presented here.

In Cape Henlopen, it was established that the parents acted uncooperatively to "delay[] the IEP meeting until after classes began" in order to assert a procedural violation by the district that justified their decision to unilaterally place their child in private school. Id. at 69. No evidence exists here to support a finding that petitioners obstructed or delayed the District's development of an IEP for B.G. To the contrary, the evidence preponderates in favor of petitioners' cooperative conduct throughout the IEP process. In essence, the District asks that the Tribunal fault petitioners for vigorously advocating for their daughter and not simply agreeing to whatever the District presented, whether appropriate for their daughter or not. The Tribunal rejects the District's position and finds that petitioners' advocacy was not unreasonable. Petitioners' conduct did not obstruct the District from developing an appropriate IEP, nor did their actions in any way cause the District to develop the inappropriate IEPs at issue here.

The District cites to several unilateral placement cases where reimbursement was denied and argues that the same result should be obtained here. In each case, the parents were the "impediment to participation in the evaluation of [the student's] disabilities and the development of an appropriate IEP." C.H. v. Cape Henlopen Sch. Dist., 606 F.3d at 91. In J.F. & J.F. obo J.F. v. Byram Twp. Bd. of Educ., 2020 WL 2499815 (3d Cir. May 14, 2020), in addition to adopting factual and credibility findings made by the ALJ that established the parent's failure to collaborate with the district, the reviewing court noted the parent's violation of the ten-day notice rule as the primary basis for denying tuition reimbursement. Id. (Parent placed student at private placement without informing district that student would not attend the in-district school or that parents would seek reimbursement for their expenses.) In T.P. and P.P. obo J.P. v. Bernards Twp. Bd. of Educ., OAL Dkt. No. EDS 6476-03 (Mar. 12, 2004), the ALJ found that parents' notice of unilateral placement without first advising the district of the modifications she was seeking to the IEP constituted a failure to collaborate, as contemplated under the IDEA. Similarly, in R.G. obo E.G. v. Glen Ridge Bd. of Educ., OAL Dkt. No. EDS 03714-04 (Mar. 17, 2005), the ALJ concluded that petitioner was obliged to notify the district of the modifications she was seeking in the IEP instead of just giving notice of the unilateral placement. The ALJ noted that had petitioner done so, there was sufficient opportunity before the start of the school year for the district to address the

alleged deficiencies. Further, in stark contrast to the facts here, in R.G., there was no communication from the parent that she was rejecting the IEP, and it went into effect.

Unlike the cases relied on by the District, the matter before the Tribunal is plainly not a case where the parents failed to collaborate or deprived the District of an opportunity to provide a FAPE. The record is clear that they were very vocal about the deficiencies in the proposed program, and notwithstanding that petitioners repeatedly raised their concerns − chief among them was the LLD-M class size − the District's case manager neglected to respond to petitioners' attempted communications with her.[21] As discussed above, the Tribunal was not persuaded by Jasinski's reasoning for failing to communicate with petitioners and address their concerns.

At the hearing, Jasinski testified that she believed that "[petitioners] never intended to place B.G. in public schools" for two reasons: 1) they hired an attorney before the District developed a program for B.G.; and 2) they unilaterally placed B.G. at Shalshelet before the District presented its program. (Tr. 1, 192:16−18; 194:5−9.)

As to the former, the Tribunal found that C.G. testified credibly that petitioners retained a special education lawyer to guide them through the process of securing an appropriate placement for B.G. and that they would have sent B.G. to public school if the program was appropriate. (Tr. 2, 132:19−24; 146:19−22.) Moreover, contrary to the District's assertion (Resp'ts' Post-Hearing Br. at 29), hiring a lawyer to provide legal advice and ensure that their and B.G.'s rights were enforced is not evidence of a "litigation tactic," irrespective of when the decision was made to seek legal counsel. Regarding the latter, as discussed above, the Tribunal finds that petitioners did not act unreasonably when they unilaterally placed their daughter at Shalshelet. Thus, the Tribunal declines to accept Jasinski's inference.

Likewise, the Tribunal rejects the District's assertion that "[petitioners'] actions suggest a deliberate effort to fabricate the appearance of compliance while covertly

[21] The District also had ample time yet failed to rectify the class size issue by identifying a smaller self-contained District placement for B.G. between the November 2023 IEP and the amended June 2024 IEP.

committing to a predetermined private placement for B.G." (Resp'ts' Post-Hearing Br. at 29.) Petitioners' early interest in Shalshelet and initial pursuit of a private placement, prior to registering at the District, is not a basis for denying their request for tuition reimbursement. On the record presented, the Tribunal does not credit the District's supposition that petitioners devised and engaged in a plot to get the District to fund the costs and expenses associated with sending B.G. to private school by pretending to be interested in a public placement and recruiting Shalshelet, a relatively newly formed school for the learning disabled with designated status as a 501(c)(3) organization, to assist with their shifty scheme by pretending to accept petitioners' deposit fee as a donation. C.G. offered a credible explanation for petitioners' actions, and the Tribunal found that petitioners' conduct, at all relevant times, was reasonable under the circumstances. Regardless, "the reasonableness inquiry focuses not on the parents' subjective intent, but on their actual conduct and its consequences for the timely completion of the evaluation and IEP." K. E. v. N. Highlands Reg'l Bd. of Educ., 840 Fed. Appx. 705, 712 (3d Cir. 2020).

While the District correctly notes that it is unreasonable for a parent to thwart the collaborative process and prevent the District from meeting its IDEA obligation to develop an appropriate IEP, equally clear is that there is no requirement that a disabled child must "try out" the public school before considering a private placement where, as here, the District failed to offer an in-district program that provided B.G. a FAPE. See, id. at 711−12 (recognizing that "denial of reimbursement on the ground that [parents] were 'intractable' . . . for refusing to enroll their child in a [public] school . . . and requiring them to 'go along with the IEP' they believe 'to be inappropriate'" is contrary to the protections afforded to parents under the IDEA.)

On balance, in the exercise of its discretion and taking into consideration the full record, the Tribunal **CONCLUDES** that the equities justify petitioners' request for tuition reimbursement from the District. The District offered no conclusive evidence to rebut C.G.'s testimony, which established that petitioners did not act unreasonably under the circumstances and did not engage in any conduct that prevented the District from offering B.G. an appropriate IEP. See, e.g., Madison Bd. of Educ. v. S.V. ex rel. C.V., 2020 U.S. Dist. LEXIS 155644 (D.N.J. Aug. 26, 2020) (finding parents' actions reasonable and

awarding reimbursement for unilateral placement); K.E. v. N. Highlands, 840 Fed. Appx. at 712 (for parents' conduct to be considered reasonable they "need not prefer the public school or enroll their child there when they have a reasonable basis to believe the placement being offered is inadequate or unsafe—or, as here, where no IEP has been prepared"); but c.f., C.H. v. Henlopen, 606 F.3d at 71 (where petitioners' delays and obstructions of the IEP process "substantially precluded any possibility that the District could timely develop an appropriate IEP" such that the district was "not first given . . . a good faith opportunity to meet its obligations.")

For all of the foregoing reasons, I **CONCLUDE** that petitioners are entitled to full reimbursement for the costs of B.G.'s private placement at Shalshelet.

As set forth above, the IEPs failed to provide B.G. with a FAPE for the 2023−2024 school year and the current 2024−2025 school year (the June 2024 IEP end date for services lapsed on November 17, 2024). Accordingly, I **CONCLUDE** that petitioners' due process petition should be **GRANTED**, in part, and that the IEPs be amended to provide for B.G.'s placement at Shalshelet. I further **CONCLUDE** that petitioners are entitled to reimbursement from the District for the tuition they paid to Shalshelet for B.G.'s attendance for the 2023–2024 school year and the current 2024−2025 school year and related transportation costs, and the District shall be responsible for any tuition payments owed to Shalshelet and related transportation costs in connection with B.G.'s current enrollment until such time as a new IEP is developed.

## ORDER

Based on the foregoing, I **ORDER** that petitioners' Amended Petition is **GRANTED**, in part, and the following relief is **ORDERED**:

1. The District shall reimburse petitioners for the costs of B.G.'s placement at Shalshelet, including tuition and transportation to and from school, for the 2023−2024 and 2024−2025 school years, subject to proof of payment of all costs sought to be reimbursed;

2. The District shall be responsible for the costs of B.G.'s placement, including tuition and transportation to and from school, until such time as a new IEP
3. Petitioners and the District are directed to meet within thirty (30) days of this decision, or as soon as practicable, to begin the process of re-evaluating B.G., including, but not limited to, the areas of reading and writing, math and speech, and developing a new IEP that is appropriate for B.G., considers ESY services, and is reflective of her present levels of academic ability and disabilities;
4. Until such time as a new IEP is developed that is individualized to B.G.'s needs and an appropriate placement is determined, the District will continue to be responsible for reimbursing the tuition and transportation costs associated with B.G.'s current attendance at Shalshelet.

It is further **ORDERED** that any and all other requests for relief as set forth in petitioners' due process petition, if not addressed above, are **DENIED**, including petitioners' unsupported request for an award of compensatory education and reimbursement of any other costs and expenses.

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 (2024). If the parent or adult student feels that this decision is not being fully implemented with respect to program or services, this concern should be communicated in writing to the Director, Office of Special Education.

April 4, 2025
DATE

**R. TALI EPSTEIN**, ALJ

Date Received at Agency April 8, 2025

Date Mailed to Parties: April 8, 2025

cc

# APPENDIX

## List of Witnesses

For petitioner:

C.G., Parent of B.G.
Susan Caplan, M.Ed., LDT-C
Melanie Feller, M.A., CCC-SLP, DIR-Expert, IMH-E
Dr. Elliott Koffler, M.A., School Psychologist
Dr. Beth Rabinovitz, Ph.D.
Shulamit Roth, M.S., CCC-SLP
Heather Rotolo, Coordinating Supervisor of Special Services
Melanie Tuhari, LDT-C
Helene Smith-Gentilello, Special Education Teacher
Nicole Suarez, Teacher/Reading Specialist

For respondent:

Linda Chavez, Supervisor of Special Education
Alison Jasinski, NY/NJ Certified School Psychologist
Helene Smith-Gentilello, Special Education Teacher

## Exhibits[22]

Joint Exhibits:

J-1 Email Correspondence from Parent, re: ISP and IEP Request, dated July 20, 2023, and August 22, 2023
J-2 District Registration Record
J-3 Individualized Service Plan, dated January 4, 2022

[22] The nonsequential numbering of exhibits reflects the fact that numerous pre-marked exhibits were (1) neither identified nor offered into evidence; or (2) the same exhibit was already offered into evidence under a "J" designation.

J-4 Private Neuropsychological Evaluation of Dr. Beth B. Rabinovitz, Ph.D., Clinical Neuropsychologist, Assistant Professor of Psychology in Psychiatry at Weill Cornell Medicine, dated February 19, 2023, and March 3, 2023

J-5 E-Mail Correspondence, re: Coordination of IEP Meeting, dated September 11, 2023

J-7 October 2023 Classroom Observations Report by Linda Chavez, Supervisor of Special Education

J-8 Linda Chavez Resume

J-13 Speech and Language Evaluation of Laura Lazar, MA, CCC-SLP, dated November 1, 2023

J-14 Educational Report of Melanie Tuhari, LDT-C , dated October 25, 2023

J-15 Assistive Technology Evaluation of Amy Ferranti, MA, CCC-SLP, dated November 1, 2023

J-16 November 17, 2023 Eligibility/IEP Meeting and Proposed IEP

J-17 Private Psychological Report of Elliot Koffler, MA, dated November 22, 2023

J-18 December 5, 2023 Observation of Ms. Gentilello's Class at School #16 by Alison Jasinski, School Psychologist

J-19 Private Evaluation of Susan K. Caplan, M.Ed., LDT-C, dated December 8, 2023

J-21 June 11, 2024 IEP

J-24 Email Correspondence from Parents to Jasinski, re: Banyan and Craig Schools Are Not Appropriate with Parental Concerns and Information, dated August 1, 2024

J-25 Subpoena and Response of Melanie Feller, MA, CCC-SLP, DIR-Expert, IMH-E, Alphabet Soup Speech Consultants LLC, with protocols

J-26 Subpoena and Response of Elliot Koffler, MA, School Psychologist, with protocols

J-27 Subpoena and Response of Susan K. Caplan, M.Ed., LDT-C, with protocols

J-30 Yeshivat Shalshelet Subpoena, Letters and Responses

J-31 Alison Jasinski Resume

J-32 Email from Susan K. Caplan to Jessica Kleen, Esq., re: transmittal of documents

J-35 Unilateral Placement Notice (2023−2024 SY), dated August 25, 2023

J-37 Unilateral Placement Notice (2024−2025 SY), dated August 19, 2024

J-39 Parties' Joint Stipulation of Facts.

For petitioner:

P-32 Social History Assessment of Julianne Podolski, MSW, LSW, School Social Worker, October 25, 2023

P-35 October 24, 2023 Classroom Observation Report by Alison Jasinski, School Psychologist

P-41 Bio of Dr. Beth Rabinovitz, Ph.D., Weill Cornell Psychiatry

P-43 Email Correspondence from Parent to District Staff, re: Request for Special Ed. Services and IEP, dated August 23, 2023

P-65 Email from Parent to Alison Jasinski attaching Susan K. Caplan, M.Ed., LDT-C, December 8, 2023 Preliminary Score Report, dated December 17, 2023 LDT-C, December 8, 2023, Preliminary Score Report, dated December 17, 2023

P-68 Email Correspondence from Parent to Alison Jasinski attaching January 18, 2024 Speech and Language Evaluation of Melanie Feller, MA, CCC-SLP, DIR-Expert, IMH-E, dated May 9, 2024

P-70 Email Correspondence from Alison Jasinski to Parent with Meeting Link for June 11, 2024 IEP Meeting, dated June 4, 2024

P-71 Email Correspondence from Alison Jasinski to Parent Requesting Documents, dated June 6, 2024

P-72 Email Correspondence from Parent to Alison Jasinski attaching Requested Documents, dated June 10, 2024

P-79 Email Correspondence from Parent to Alison Jasinski attaching Speech and Language Re-Evaluation of Melanie Feller, MA, CCC-SLP, DIR-Expert, IMH-E, dated August 30, 2024

P-88 Shalshelet 1st and 2nd Semester Progress Reporting (2023−2024 SY)

P-92 Shalshelet Spring Student Data Report (2023-2024 SY)

P-95 Shalshelet Administration Bios

P-96 Shalshelet Instructional Staff Resumes

P-98 December 5, 2023 Observation of Proposed LLD Class for B.G. Clifton by Schools of Susan K. Caplan, M.Ed., LDT-C

P-99 Preliminary Score Report of Susan K. Caplan, M.Ed., LDT-C, dated December 8, 2023

P-100 Educational Evaluation of Susan K. Caplan, M.Ed., LDT-C, dated December 8, 2023

P-101 Educational Update of Susan K. Caplan, M.Ed., LDT-C, dated August 26, 2024

P-103 Curriculum Vitae of Susan K. Caplan, M.Ed., LDT-C

P-104 Speech and Language Evaluation of Melanie Feller, MA, CCC-SLP, DIR-Expert, IMH-E Alphabet Soup Speech Consultants, LLC, dated January 18, 2024)

P-105 Speech and Language Re-Evaluation of Melanie Feller, MA, CCC-SLP, DIR-Expert, IMH-E Alphabet Soup Speech Consultants, LLC, dated August 29, 2024

P-106 Curriculum Vitae of Melanie Feller, MA, CCC-SLP, DIR-Expert, IMH-E Alphabet Soup Speech Consultants, LLC

P-108 Curriculum Vitae of Elliott Koffler, MA, School Psychologist

P-113 Clifton Department of Special Services – Educational Impact of Speech Difficulties−Classroom Report, dated November 2, 2023

For respondent:

R-1 Email Correspondence Between Counsel, re: Coordinating IEP Meeting Date, September 29, 2023

R-2 Email Correspondence Between Counsel, re: Rescheduling IEP Meeting Date, dated October 10, 2023

R-6 Email Correspondence Between Counsel Attaching Email Correspondence between Petitioners and the District, re: B.G. IEP and Eligibility, dated December 12, 2023