

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. EDS 10882-17

AGENCY DKT. 2017 26577

K.S. ON BEHALF OF L.S.,

Petitioners,

v.

NORTHFIELD CITY BOARD OF EDUCATION,

Respondent.

AND

OAL DKT. NO. EDS 10885-17

AGENCY DKT. 2018 26672

NORTHFIELD CITY BOARD OF EDUCATION,

Petitioner,

v.

K.S. ON BEHALF OF L.S.,

Respondents.

(CONSOLIDATED)

Bradley Flynn, Esq., for L.S. (Montgomery Law, L.L.C., attorneys)

Paul C. Kalac, Esq., for Northfield City Board of Education (Schwartz, Simon,
Edelstein, and Celso, L.L.C., attorneys)

Record Closed: January 9, 2019

Decided: January 28, 2019

BEFORE **CATHERINE A. TUOHY, ALJ:**

STATEMENT OF THE CASE

In accordance with the provisions of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C.A. § 1415, K.S. has requested a due process hearing on behalf of her daughter, L.S. who is classified as eligible for special education and related services. Petitioner disputes the District's proposed IEP, seeks a functional behavioral assessment (FBA) and reimbursement for a psychological evaluation. Respondent has requested a due process hearing to deny petitioner's request for independent evaluations. At issue is whether the District provided L.S. with a Free and Appropriate Public Education (F.A.P.E.) in the least restrictive environment (LRE).

PROCEDURAL HISTORY

On June 30, 2017 petitioner on behalf of her minor student, filed a due process petition with the Office of Special Education Programs (OSEP) seeking independent evaluations, a functional behavior assessment (FBA) and the development of an IEP. On July 12, 2017 respondent filed a due process petition with OSEP denying petitioner's request for independent evaluations. The matters were transmitted from the Office of Special Education to the Office of Administrative Law (OAL) for a final determination and filed on August 1, 2017 pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13. On September 29, 2017 the parties engaged in a case management conference and it was agreed that the matters involved identical parties, facts and issues and therefore should be consolidated. An Order of Consolidation was entered on October 3, 2017 pursuant to N.J.A.C. 1:1-17.3(a). Thereafter, petitioner filed an amended due process petition dated November 3, 2017. By letter dated December 14, 2017 petitioner further amended their due process petition to request only one independent evaluation, a FBA, and reimbursement for the psychological evaluation of Ms. Janice Kingsbury. The matters were heard on January 8, January 10, January 12, February 1, February 9, March 1, March 6 and May 16, 2018. Closing briefs were submitted on December 21, 2018 and the record closed on January 9, 2019.

FACTUAL DISCUSSIONS AND FINDINGS

The parties stipulated to the following facts (J-4):

1. L.S.'s date of birth is April 18, 2006.
2. L.S. is currently an eleven-year-old, nine-month student.
3. She began her attendance at the Northfield City Middle School as a fifth grade, general education student, beginning September 2016. The parent contacted the District Administration in October 2016 regarding her concerns about L.S.'s academics in math and her well-being.
4. She is currently a sixth- grade student at the Northfield City Middle School for the 2017-2018 schooling year.
5. On January 31, 2017, L.S.'s parent, K.S., sent an e-mail to Janice Albrecht, Child Study Team Secretary, requesting a child study team evaluation of L.S.
6. On February 1, 2017, Vicky Georges, School Psychologist, sent K.S. a written "Invitation for Initial Identification and Evaluation Planning" meeting notice. Same written notice invited K.S. to a meeting scheduled for February 27, 2017 to decide whether an evaluation is warranted to determine if the student has a disability which adversely affects the student's educational performance and is in need of special education and related services, or speech-language services only.
7. On February 27, 2017, an initial identification and evaluation planning meeting was held in the District. As a result of the meeting, the District proposed that an evaluation is not warranted to determine if the student has a disability.
8. On February 27, 2017, a written notice was provided to the parent by Kim Zaretsky, School Social Worker, describing the reasons for the District's determination not to evaluate L.S. at that time.

9. On February 27, 2017, the District proposed to implement Intervention and Referral Services ("I & RS") to L.S. to address any emotional and academic concerns discussed at the February 27, 2017 meeting. Counseling services by Ms. Zaretsky were part of the I & RS strategy.
10. On February 28, 2017, Ms. Zaretsky provided her initial counseling session to L.S. as part of the I & RS services.
11. On or about April 6 to April 10, 2017, L.S. was admitted to and attended Inspira Hospital's Bridgeton, New Jersey campus in-patient psychiatric unit because she expressed suicidal ideations.
12. On April 11, 2017, Vicky Georges, School Psychologist/Coordinator of Special Services, sent K.S. a letter stating the District is concerned about L.S.'s educational and emotional needs based upon recent circumstances, including her hospitalization, and, because of this, the District will reconvene an initial identification and evaluation planning meeting to determine what initial evaluations are appropriate for K.S. Same April 11, 2017 letter invited parent to attend meeting on May 8, 2017.
13. On April 11, 2017, a meeting was held with Mr. Morrison, School Principal, K.S., L.S., and Kim Zaretsky to discuss L.S.'s return to school. As a result of that meeting, the District and K.S. developed a transition/safety plan for L.S.'s return to school. That plan involved L.S. receiving a specialized lunch arrangement in which L.S. could eat lunch alone in the library if she so chose, continuation of daily counseling service as needed, rearrangement of scheduling for English-Language Arts and Mathematics classes to allow student to attend Atlanticare intensive outpatient programming in the afternoon, no requirement to attend gym class if student felt uncomfortable, and the student will be allowed to stay a few minutes after each class so the hallways are clear, and she could be a few minutes late to her next class, but that lateness would be excusable as part of the plan.

14. L.S. returned to Northfield Community Middle School on April 24, 2017.
15. Also, on April 24, 2017, Vicky Georges, School Psychologist, sent a written notice to K.S. inviting her to attend a meeting on May 8, 2017. The purpose of the meeting is to decide whether an evaluation is warranted to determine if the student has a disability which adversely affects the student's educational performance and is in need of special education and related services, or speech-language services only.
16. On May 8, 2017, an initial identification and evaluation planning meeting was held in the District. As a result of the meeting, the District proposed that an evaluation is warranted to determine if the student has a disability.
17. On May 8, 2017, K.S. signed written consent to have the following initial evaluations administered to L.S. Social history, Educational, Psychological, and Psychiatric.
18. On May 9, 2017, Kim Zaretsky, School Social Worker, sent K.S. a letter inviting her to attend an initial eligibility determination and IEP development meeting. That meeting's date was scheduled for June 12, 2017.
19. On May 10, 2017, Kim Zaretsky administered a social assessment to L.S. Ms. Zaretsky provided a written report of her assessment.
20. On May 17, 2017, Brooke Parsons, Learning Disabilities Teacher-Consultant (LDT-C) administered a confidential learning evaluation to L.S. Ms. Parsons provided a written report of her evaluation.
21. On May 24, 2017, Vicky Georges administered a Psychological evaluation to L.S. Ms. Georges provided a written report of her evaluation.

22. On June 6, 2017, Janice Albrecht, CST Secretary, sent a letter to K.S. enclosing copies of L.S.'s Child Study Team evaluations. Same letter indicated those evaluations would be utilized to determine eligibility for special education and services for L.S. at the June 12, 2017 collaborative conference.
23. On June 12, 2017, K.S. and District personnel attended an initial eligibility determination and IEP development meeting. At the June 12, 2017 meeting, the District determined that L.S. was eligible to receive special education and related services.
24. On June 12, 2017, Kim Zaretsky developed a written eligibility statement summary and provided that document to K.S. The same document determined L.S. was eligible for special education and related services under the classification of "Emotionally Disturbed".
25. Also, on June 12, 2017, the District developed and offered L.S. an initial IEP. Same initial IEP offered L.S. special education in a pull-out resource class for mathematics, a subject for which she demonstrated a documented weakness. Same IEP also offered L.S. social studies in the multiple disabilities class. This social studies class was taught by a special education teacher who had experience with students who suffered from emotional problems. The placement in that class was more for emotional support than academic support.
26. The June 12, 2017 initial IEP also offered the related service of individual counseling.
27. On June 12, 2017 K.S. signed written consent to implement the June 12, 2017 IEP.
28. On June 29, 2017, K.S.'s counsel, Bradley Flynn, Esq. of Montgomery Law, LLC filed a due process petition against the District alleging, among other things (child find violations and entitlement to compensatory education.)

29. On July 6, 2017, Thomas C. O'Reilly, MD, of Medford Family Psychiatry, LLC, completed a psychiatric evaluation of L.S. Same psychiatric evaluation was the one for which K.S. provided written consent to administer at the May 8, 2017 initial identification and evaluation planning meeting.
30. On July 31, 2017, the parties participated in a Mediation session at the Northfield Community Middle School. Same Mediation session was a result of the June 29, 2017 due process petition filed by K.S.'s counsel against the District.
31. No resolution of the dispute was reached at the Mediation session, and the matter was transmitted for a settlement conference before an administrative law judge in the New Jersey Office of Administrative Law for August 31, 2017.
32. On or about August 6, 2017, both parties received a copy of Dr. O'Reilly's written report based upon his July 6, 2017 assessment of L.S.
33. On August 31, 2017, the parties met for a settlement conference before the Honorable Susan A. Scarola, ALJ. No final resolution of the dispute was reached; however, the parties reached an interim agreement to have a follow-up IEP meeting on September 12, 2017 based upon the new information contained in Dr. O'Reilly's psychiatric report.
34. Also, as part of the August 31, 2017 interim agreement, the District agreed to provide L.S. with a one on one aide and continuation of individual counseling services beginning with the first day of school in September 2017.
35. On September 12, 2017, the parties met for the follow-up IEP meeting. At the September 12, 2017 follow-up IEP meeting, the District again determined L.S. was eligible for special education and related services. The District offered L.S. a revised IEP which contained additional services based upon the information provided in Dr. O'Reilly's written report.

36. K.S., through her counsel, challenged the appropriateness of the September 12, 2017 IEP.
37. On November 3, 2017, K.S.'s counsel provided an amended complaint which modified the relief sought in the June 29, 2017 original petition for due process.
38. On November 29, 2017, the parties participated in a telephone conference call with The Honorable Catherine A. Tuohy in which discussions were had regarding the modified relief sought by petitioner.
39. On December 14, 2017, petitioner's counsel sent a letter to Judge Tuohy confirming the modified request for relief which included an independent functional behavioral assessment (FBA) and reimbursement for Janice Kingsbury's December 15, 2017 psychoeducational evaluation/written report of L.S.

Testimony

Kim Zaretsky testified on behalf of the respondent. She is the school social worker for the Northfield Community School and has been employed by the Northfield Board of Education since September 2012. She was previously employed by the Jersey City Board of Education as a school social worker for four years. She is part of the child study team and case manages sixth, seventh and eighth grade special education students. Her duties as the school social worker include offering counselling for students in need. She is also the liaison for families in need, homeless students and foster families in the District and coordinates donations, arranges for transportation and ensures that homeless student's rights are protected. Ms. Zaretsky has other clinical experience and has worked as a therapist for Tri-City Peoples Corporation in East Orange, New Jersey from 2002-2003; as a program coordinator and therapist at Northern Westchester Hospital Center in Mt. Kisco, New York from 2000-2002; and as an intensive out-patient therapist at the Renfrew Center of Northern New Jersey in Allendale, New Jersey from 1999-2000 (R-1).

As a case manager for the respondent she is responsible for managing the IEP's for approximately fifty special education students in sixth through eighth grade and making sure that the IEP's are being followed and services implemented. She works with the parents and teachers and offers supports as necessary. The students she works with have different types of disabling conditions including emotionally disturbed; multiply disabled; autistic; other health impaired; and specific learning disability. She is also a member of the child study team (CST) which is a group of professionals employed by the school district to provide evaluative and consultative services and provide testing and services as needed to any students having difficulties in the school setting. She is a member of the CST as a social worker. The other members of the CST are Dr. Vicky Georges, the school psychologist and coordinator of special services, and Brooke Parsons, the learning consultant. The CST is comprised of the school social worker, the school psychologist and the learning consultant.

Ms. Zaretsky also provides counselling and support to students depending on their needs and whatever emotional difficulties may arise at school with their peers or problems at home or would impact their day at school. She has provided these counselling services since becoming employed with the Northfield Board of Education and previously provided counselling services while she was a school social worker in Jersey City. On a weekly basis she provides counselling services to an average of fifteen to twenty students.

Ms. Zaretsky is also a member of the IEP team which is the CST. An IEP is a plan developed by the CST after evaluations have been conducted which usually include a learning and psychological evaluation and a social assessment. Sometimes other evaluations are needed such as a psychiatric evaluation, a speech evaluation or an occupational evaluation. It is a plan devised by the CST to provide services to the student according to their needs in a more comfortable learning environment so that they can have their educational needs met. An IEP meeting includes the CST and the teachers of the student. There is an annual review of the IEP to evaluate how a student is doing and to see if any changes need to be made to the plan. There are also re-evaluation IEP meetings that are conducted every three years to see if a child is still eligible for special education services. She attends IEP meetings and estimates she has attended four-hundred IEP meetings in the course of her ten years as a school social worker. The

learning consultant and school psychologist have a larger role in the development of the plan at the IEP meeting. She attends the IEP meeting as both the school social worker and the student's caseworker. When she attends the IEP meeting as a case manager she is responsible for making sure the IEP is implemented on the child's behalf and evaluating the IEP to ensure it is compliant with the law.

Ms. Zaretsky was accepted as an expert in the development, implementation and evaluation of special education programs on behalf of educationally disabled children.

Ms. Zaretsky has known L.S. since she first met her on February 28, 2017 when she was in fifth grade. L.S. is now in sixth grade. She met L.S.'s mother K.S. on February 27, 2017 at the CST meeting. L.S. had been meeting with the school guidance counsellor, Lisa Harvey for support since she was a new student who had transferred to the Northfield school that September 2016. Ms. Harvey meets with each new student in September and assigns them a peer buddy to show them around, answer questions they may have and to eat lunch with them.

On January 31, 2017 K.S. requested the CST to do an evaluation for her daughter L.S. and confirmed her request in an email directed to Janis Albrecht, the secretary for the CST (R-2). The next day, on February 1, 2017, an Invitation for an Initial Identification and Evaluation Planning Meeting was sent by Dr. Vicky Georges, the school psychologist to K.S. scheduling the meeting for February 27, 2017 (R-3). The purpose of the meeting was to decide whether an evaluation was warranted to determine if the student has a disability which adversely affects the student's educational performance and is in need of special education and related services, or speech language services only. If it was decided that an evaluation was warranted, the District would propose the nature and scope of the assessments to be conducted (R-3). The meeting took place on February 27, 2017 and was attended by nine individuals, L.S.'s mother, K.S., and eight school district employees including L.S.'s fifth grade general education teachers: Linda Levitt Doyle (English language arts), Dianne Bennett (science), Patsy Stonelake (social studies), and Denise Zuccarino (math); the CST members: Brooke Parsons (learning consultant); Dr. Vicky Georges (school psychologist); Kim Zaretsky (school social worker); and Lisa Harvey (guidance counsellor) (R-4, page 4).

As a result of the February 27, 2017 identification meeting, the District found that an evaluation of L.S. was not warranted to determine if she had a disability (R-4). The Initial Identification and Evaluation Planning – Evaluation Not Warranted notice dated February 27, 2017 provided to K.S. was authored by Ms. Zaretsky but was the result of the collaborative effort of the team (R-4). It was decided that they would refer L.S. to Intervention and Referral Services instead. L.S.'s teachers did not find that she was having any great difficulties educationally and her math teacher indicated that L.S. was performing at grade level, although her mom was concerned with her math performance. A lot of the concerns involved a trauma/abuse that L.S. had suffered as a seven-year old. L.S.'s mother had been proactive in getting L.S. services outside of school. L.S. was seeing a therapist, Barbara Lamb, weekly and was also being treated by a nurse practitioner who prescribed psychiatric medications for L.S. Since her emotional needs were being addressed outside the school setting and L.S.'s teachers believed she was performing satisfactorily academically, the District believed intervention strategies would be helpful to L.S. Although L.S.'s mother was upset that L.S. had suffered the emotional trauma, she indicated that L.S. had a good relationship with her therapist. The mother's main concern was with math and that she believed L.S. had 'dyscalculia', a difficulty with math and numbers. Although the school district did not believe testing was warranted, they agreed to provide intervention and referral services to L.S. which included various strategies to assist L.S. including counselling by Ms. Zaretsky; one on one math instruction to L.S. which involved L.S. being tutored by the math teacher; reducing the amount of homework and questions on the test and additional tutoring in math during encore period which is an extended period of coursework that changes each day. Students can be pulled out of that class and receive instruction in whatever they need during the encore period. Counselling services began February 28, 2017 and Ms. Zaretsky maintained a written log of her contacts with L.S. (R-5, J-2).

Ms. Zaretsky had received a telephone call from K.S. on February 27, 2017 after meeting her at the CST meeting. K.S. wanted Ms. Zaretsky to introduce herself to L.S. and let her know that she can come and see her if she needs support. L.S. was struggling to adjust to the school. K.S. also advised Ms. Zaretsky that L.S. was receiving outside counseling once a week for the past year with Barbara Lamb, MSW. Also L.S. had been

meeting with the guidance counselor, Lisa Harvey and K.S. wanted L.S. to be able to meet with Ms. Zaretsky for support, should L.S. become upset during the school day. Ms. Harvey's office is next to Ms. Zaretsky and if one of them was not available a student could see the other as needed. Ms. Zaretsky advised K.S. that she would introduce herself to L.S. and that K.S. could reach out to her at any time if she had any particular concerns about L.S. (J-2).

Counselling services began with L.S. February 28, 2017 through December 14, 2017 generally lasting approximately twenty minutes. Anything noteworthy she would write down. In general, L.S. felt socially isolated at times as it was hard being at a new school. Ms. Zaretsky had an open-door policy to see L.S. when she needed. Ms. Zaretsky met regularly with L.S. and always provided assistance when L.S. requested to see her. On March 23, 2017, L.S. was quite depressed and Ms. Zaretsky met with L.S. twice that day. L.S. had been visiting her relatives in Florida and was upset to be back home. Prior to this session, L.S. had needed encouragement to go to class and had reported that some students had been bothering her since October 2016 although L.S. would not tell Ms. Zaretsky the names of those students. Ms. Zaretsky advised L.S. that it is important to report this to the principal and that she could help her do so. Ms. Zaretsky contacted K.S. to advise her that she was concerned about L.S. and that L.S. was depressed and discussed feelings relating to her traumatic history. Ms. Zaretsky discussed with K.S. that L.S. be evaluated for a partial care program. K.S. advised Ms. Zaretsky that L.S. has been tearful and depressed at home and she was considering having L.S. evaluated. K.S. is a psychiatric nurse at Atlanticare and is aware of available programs. K.S. was going to contact Atlanticare and would follow up with Ms. Zaretsky afterwards.

A partial care program or an IOP is an intensive outpatient program that is usually a few hours a day for group therapy and where a psychiatrist is on staff for medication and evaluation as needed. When L.S. returned from Florida, Ms. Zaretsky noticed a dramatic decline in L.S.'s mood. She was concerned that L.S. was depressed and frequently crying and that Ms. Zaretsky's counselling sessions were not helping her as they had in the past. On March 24, 2017, L.S. visited Ms. Zaretsky's office twice, once for forty-five minutes and a second time for fifteen minutes. Ms. Zaretsky contacted K.S.

also on March 24, 2017 to see if she had contacted Atlanticare. Ms. Zaretsky encouraged her to contact them as L.S.'s depression had significantly worsened since returning from Florida.

Ms. Zaretsky also advised K.S. that she had just learned that L.S. was cutting her stomach and arms superficially with a paperclip. K.S. was aware of this behavior and L.S. had cut herself in the past. Ms. Zaretsky obtained permission from K.S. to contact L.S.'s therapist, Barbara Lamb to express her concerns. Ms. Zaretsky contacted Ms. Lamb the same day and discussed L.S.'s deterioration in mood, the cutting behavior and how the school can support L.S. Ms. Lamb agreed that L.S. needed a higher level of care such as an IOP. Ms. Zaretsky met with L.S. twice on March 27, 2017 and contacted K.S. who indicated that she was awaiting a return call from Atlanticare and that L.S. was tearful at home and isolating and has not wanted to see her friends. Ms. Zaretsky advised K.S. that she will continue to meet L.S. as often as necessary and requested that K.S. keep her advised regarding Atlanticare.

Ms. Zaretsky continued to meet with L.S. on March 28, 29 and 30 for support. On April 3, 2017 Ms. Zaretsky had a three-hour counselling session with L.S. wherein L.S. was very depressed and Ms. Zaretsky had concerns for L.S.'s safety. L.S. also identified the students who had been harassing her since October 2016. Ms. Zaretsky contacted the principal, Kevin Morrison and Lisa Harvey who was the HIB coordinator who met with L.S. with Ms. Zaretsky present for support. Ms. Zaretsky contacted K.S. and requested she come to the school and take L.S. to be evaluated psychiatrically. They suggested she go to CHOP (Children's Hospital of Pennsylvania) which has a child and adolescent psychiatric unit which would be a more comfortable environment to be evaluated than a general psychiatric in-patient unit which includes adults and can be a traumatic experience for a child. On April 3, K.S. contacted Ms. Zaretsky after the school day had ended as she had given K.S. her cell number for L.S. to speak to her for support which she did.

On April 4, 2017 K.S. updated Ms. Zaretsky that L.S. was evaluated by a psychiatrist and that she would be admitted. However, there were insurance issues so L.S. had to be admitted in a psychiatric unit in New Jersey and was admitted to a

psychiatric unit in Inspira in Bridgeton, New Jersey for suicidal ideations. L.S. was hospitalized for five days. K.S. kept Ms. Zaretsky updated and she believed K.S. and L.S. felt comfortable with the services provided by Ms. Zaretsky.

On April 11, 2017 there was a meeting to plan for L.S.'s transition from her in-patient stay back to school and to come up with a plan to make L.S. feel as safe and comfortable as possible, especially in light of the harassment allegations L.S. had made. L.S. did not want to have lunch in the cafeteria so she would have lunch in the library. Daily counselling would be provided. Her schedule was rearranged so that her math and ELA courses were switched to the morning to allow her to be transported to Atlanticare in the afternoon for an out-patient program without missing her core subjects. L.S. felt uncomfortable going to gym because some of the boys she felt uncomfortable with were in this class. Therefore, she did not have to go to gym or health class. None of the students that L.S. reported would be in any of her classes. The school was willing to do everything they could to make L.S. feel safe and comfortable. L.S. was allowed to remain in each class a few minutes after it ended until the hallway was clear of students even though she would arrive a few minutes late for her next class. It was decided that K.S. would keep L.S. home for the rest of the week and that she would return to school after spring break on April 24, 2017.

On April 11, 2017 a letter from Dr. Georges was sent to K.S. to reconvene an evaluation planning meeting for May 5, 2017 to discuss what evaluations would be appropriate in light of L.S.'s hospitalization and her educational and emotional needs (R-6). On April 24, 2017 an Invitation for Initial Identification and Evaluation Planning Meeting scheduled for May 8, 2017 was sent to K.S. (R-7). That letter was similar to R-3. The meeting occurred on May 8, 2017 and it was attended by the CST as well as mother K.S. and L.S.'s general education teachers (R-8, page 4). At the meeting it was decided that an evaluation was warranted and that a social history evaluation, learning evaluation, psychological and psychiatric evaluation of L.S. would be conducted at the Districts' expense. The mother, K.S. consented to these proposed evaluations (R-8, page 5). On April 27, 2017 Ms. Zaretsky spoke with the principal, Mr. Morrison to request that a staff member escort L.S. to her special classes and lunch since L.S. was uncomfortable walking to these classes. Ms. Zaretsky had been escorting L.S. but her schedule did not

allow for that. The principal assigned Ms. Sotak and Ms. Blum as aides to escort L.S. (R-5).

Mr. Morrison was careful to separate the students L.S. claimed were bothering her away from L.S. when they changed her schedule around. They also changed L.S.'s homeroom teacher to Mrs. Nash when they changed her math class from Ms. Zuccarino's general education math class to a basic skills math class that was taught by Mrs. Nash. L.S. first class was math and it was beneficial she would have Mrs. Nash for homeroom and then have her first class for math so she did not have to switch classes. Basic skills have an extra teacher present in the class to offer additional instruction and support. L.S. attended Atlanticare therapy five times a week as an out-patient which was why the District changed L.S.'s schedule

Ms. Zaretsky had permission to speak with L.S.'s caseworker at Atlanticare who advised L.S. was making gains and opening up. K.S. advised Ms. Zaretsky that L.S. was more engaged in the home environment since the Atlanticare program began (R-8, page 2).

On May 9, 2017 Ms. Zaretsky sent K.S. an "Invitation for Initial Eligibility Determination and IEP Development" meeting scheduled for June 12, 2017 (R-9). The process was expedited for L.S. and the evaluations were done as quickly as possible to allow for a plan to be in place for September for L.S. On May 10, 2017 Ms. Zaretsky prepared the social assessment of L.S. (R-10). The highlights of the evaluation were L.S.'s history of trauma, her parents' divorce and that she had no contact with her father. L.S. had been treating with Barbara Lamb for about one year. A learning evaluation was conducted by Brook Parson (R-11). A psychological report was prepared by Dr. Vicky Georges (R-12). The CST secretary, Janice Albrecht sent K.S. copies of all of the CST evaluations under cover letter dated June 6, 2017 (R-13). An eligibility meeting was scheduled for June 12, 2017 to determine whether L.S. receive special education and related services. The testing results were discussed as was L.S.'s difficulties with math. They came up with a draft IEP. The psychiatric evaluation was still pending and was not completed because it was delayed due to miscommunication between K.S. and the psychiatrist's office. She prepared the eligibility statement summary (R-14). As of June

12, 2017, the District used all data available to it at that time, even though they did not have the results from the psychiatric evaluation. There was still enough information to determine L.S. to be eligible for special education and related services.

L.S. disability category was determined to be “Emotionally Disturbed”. The services offered to L.S. included a pull-out math class which would be a smaller group math class than the basic skills math class. Also, the pull-out math class is a special education math class taught by a special education teacher. There is more one on one attention and they move at a slower pace. L.S. was not recommended for any other special education academic core classes. She needed counselling services. The District also proposed having the special education teacher who taught the multiply disabled class, Ms. Duran, be L.S. homeroom teacher. L.S. would also receive extra help from Ms. Duran in any academic area with one on one attention. There are a lot of aides in the room. L.S. would also receive assistance from Ms. Duran in social studies class, more for emotional support than academic support. The IEP for L.S. was developed on June 12, 2017 (R-15) and it was explained to K.S. All questions K.S. asked were answered by the team. The last page of the IEP is the consent to implement the IEP which K.S. signed on June 12, 2017. An IEP cannot be implemented without the written permission of the parent. There was no indication on June 12, 2017 that the parent was dissatisfied in any way with the IEP.

L.S.’s fifth grade report card for the 2016-2017 school year indicated that her final grade in math was a “C”; health was a “B”; Spanish a “B+”; ELA was an “A”-; science a “C”; and social studies a “B+” (R-16). Although L.S. received a “C” in math, she received all A’s and B’s in her other courses which were all mainstream courses. Her lowest grade was in math, the class in which she demonstrated the most weakness. That is the class the District offered special education services for along with social studies for emotional purposes. The student daily attendance report (R-28) indicates that for the 2016-17 school year L.S. had twenty-seven days unexcused tardy. Children attend 180 days of school a year. L.S. had fourteen and half unexcused absences for the year. Ms. Zaretsky knows L.S. was hospitalized but that should have been an excused absence and L.S. did go visit family in Florida during the school year but she really did not know why L.S. was absent those days.

Ms. Zaretsky was aware that there was a due process petition filed on June 29, 2017 challenging the June 12, 2017 IEP developed by the District. The parent did not contact the District with any complaints regarding the June 12, 2017 IEP prior to the filing of the due process petition. Ms. Zaretsky was surprised since the parent had consented to the IEP. A psychiatric evaluation of L.S. was conducted by Dr. O'Reilly on July 6, 2017 (R-17). K.S. had previously consented to the psychiatric evaluation on May 8, 2017 (R-8, page 5). Ms. Zaretsky saw the evaluation when she returned to school in September. Dr. Vicky Georges, the school psychologist and the coordinator of special services reviewed the evaluation prior to September. A settlement conference before an Administrative Law Judge (ALJ) was conducted on August 31, 2017 and as a result, an interim agreement was reached to meet and develop a new IEP and consider the psychiatric evaluation in the development of the new IEP. On September 12, 2017 a meeting was conducted and a new IEP was developed which incorporated the recommendations contained in the psychiatric evaluation (R-19). The Eligibility Statement Summary was drafted by Dr. Vicky George on September 12, 2017 and found L.S. eligible for special education and related services with the classification being "Emotionally Disturbed" (R-18). This was the same classification as was found in the June 12, 2017 classification meeting. The IEP arising from the September 12, 2017 meeting has yet to be implemented (R-19).

Dr. O'Reilly's psychiatric evaluation contained eight recommendations (R-17, page 6). The first recommendation made by Dr. O'Reilly was that L.S. continue with her outside the District individual therapy and psychiatric medication management. This responsibility is a parental responsibility. The second recommendation was that individual therapy should continue to address coping with depression, anxiety, processing past trauma and progressing academically and socially. This is also a parental responsibility. The third recommendation was that L.S. was prescribed an anti-depressant Pristiq and was doing well on the medication without side effects. This is also a parental responsibility. The fourth recommendation was that educationally, symptoms of attention deficit hyperactivity disorder should continue to be monitored and shared with her care providers. There were some comments in documents provided that were consistent with the diagnosis of ADHD, as well as those contained in K.S.'s

responses. The District has not seen any evidence of ADHD to report to L.S.'s health care providers. The fifth recommendation of Dr. O'Reilly was based on L.S. voicing a strong desire not to return to school because of a history of bullying with sexually harassing threats, including reports of threats of rape. Thus if L.S. is to continue in her current school district, Dr. O'Reilly recommended an aide to shadow L.S. to ensure appropriate behavior and interactions with her peers. The District has provided L.S. with two aides who shadow her the entire school day. Recommendation six states that L.S. should meet with the CST counselling staff to ensure that her interactions with peers are appropriate. L.S. continues to be provided counselling by Ms. Zaretsky as documented in the contact log (R-5). Ms. Zaretsky saw L.S. for counselling ten times in September 2017. Repetitive topics L.S. discussed was that she did not want to be in school and asked regularly to go home. L.S. discussed her peer interactions and that she hates math class and does not understand math and that no one is helping her.

This school year, since September 2017, Ms. Zaretsky has not seen any of the previous type of depressive behavior that L.S. evidenced during that time period between March 23, 2017 up to L.S.'s hospitalization in early April 2017. Ms. Zaretsky continued to provide counselling to L.S. for October and November 2017. There was a memorable session on October 25, 2017 where L.S. told Ms. Zaretsky that L.S.'s friend told her to kill herself (R-5). However, when Ms. Zaretsky discussed the conversation with L.S. it was clear her friend did not tell her to kill herself. They were in science class and the science instructor told the class not to drink the chemicals. They were kidding and said they would, to see if the teacher was serious. L.S.'s friend said that she could just drink bleach. Ms. Zaretsky attempted to point out that the conversation was in jest and that in fact her friend did not say that L.S. should kill herself. L.S. got angry with Ms. Zaretsky and asked her if she could hear herself as to what she was saying.

Dr. O'Reilly's seventh recommendation was that L.S. have evidence-based treatment for post-traumatic stress disorder including trauma focused cognitive behavioral therapy. L.S. should have a therapist who has expertise in this type of therapy. This recommendation is also a parental responsibility. The eighth recommendation of Dr. O'Reilly is that if L.S. struggles with attendance, there should be consideration of a modified day schedule to allow her to remain on school grounds for part of the day, with the remainder provided through homebound instruction. L.S. has been attending school

for the 2017-2018 school year and there has been no request by the parent for homebound instruction. All of the recommendations made by Dr. O'Reilly that had to do with the school were followed.

A new IEP was prepared for L.S. dated September 12, 2017 that incorporated the recommendations of Dr. O'Reilly (R-19). This IEP was offered to be implemented for the 2017 – 2018 school year. The first page of the IEP had a section entitled "Special Alerts" which stated that L.S. would have supervision to avoid contact with a student that has triggered emotional distress in the past. L.S. would be assigned two part-time personal aides, one in the morning and one in the afternoon to shadow her, monitor interactions and assist her in social settings, during transitions, and in the classroom. Furthermore, L.S. would start her day in the self-contained multiply disabled program with Mrs. Doran for fifteen minutes to provide L.S. with a transition period from home, help organize her day and provide her with a safe space if needed (R-19, page 1). Mrs. Doran is the special education teacher who had experience with children with behavioral and emotional needs. The summary of special education programs and related services to be provided to L.S. included the following: L.S. was also to receive a pull-out resource replacement math class once a day for sixty minutes daily from September 4, 2017 through June 11, 2018. This was the same math pull-out resource math class that was offered in the June IEP for the same reasons (R-19, page 2). L.S. was also to be placed in the special class multiple disabilities for study skills once daily for forty minutes. This was an opportunity for L.S. to go into Mrs. Doran's classroom for help in any academic subject in which she needed help. L.S. was also assigned two part-time personal aides every day for 210 minutes each. She was also to receive individual counseling services twice a week for thirty minutes with Ms. Zaretsky. She could also see her more if the need arose. Prior to this September 12, 2017 IEP, Mrs. Zaretsky had been seeing L.S. for counselling services since February 28, 2017. L.S. was also to receive behavioral intervention services in a group once daily for fifteen minutes. This was for support for L.S. to check in with Mrs. Doran and set the tone for the day and assist her in any needs she may have prior to the school day starting (R-19, page 2).

The IEP listed concerns of the parent as wanting L.S. accompanied by an adult at all times to monitor interactions with other students and prevent inappropriate and hurtful

comments to her by other students (R-19, page 5). This was done by the District even prior to the September 12, 2017 IEP. L.S. did not need special education for her ELA, science, or social studies, but she did need it for math which was offered by the District in the IEP. At the September 12, 2017 IEP meeting K.S. and her counsel participated in the meeting and their concerns were discussed.

Based upon all of the educational data available as of September 12, 2017 in Ms. Zaretsky's expert opinion, the IEP would provide L.S. with educational benefits and is appropriate to meet L.S.'s special education needs. The District is ready, willing and able to implement the September 12, 2017 IEP on L.S.'s educational behalf. This IEP has not been implemented to date because the parent has not given the District permission to do so.

On cross-examination, Ms. Zaretsky stated that she did not know L.S. in 2016. She started providing counselling services in February 2017 and learned that L.S. had a history of emotional trauma. She had a good rapport with L.S. L.S. lived in Florida when she was younger. Before moving to the District, she resided in Lower Township. L.S.'s fifth grade report card indicated that: in the first marking period she received a "B" in math; the second marking period she received a "C" with factor "11" noted indicating poor test results; the third marking period L.S. received a "D-" in math with a factor "13", inattentive in class and "11" poor test results; and in the fourth marking period received a "C". L.S. also received a "C" for the fourth period in science (R-16). In the first marking period for gym and ELA there was a factor "15" noted which indicated that homework/classwork was not turned in. In science for the first marking period L.S. had a factor "20" noted which indicates trouble following directions. The second marking period in science she was inattentive in class and in social studies she had poor test results. The third marking period in science there was a factor "17" noted indicating that she did not work to her ability and a factor "13" that she was inattentive in class and in social studies a factor "14" noted that her homework or classwork was late (R-16).

The June 12, 2017 IEP meeting found that L.S. was eligible for special education services following an initial referral on April 21, 2017 (R-15). However, the parent had requested that L.S. be evaluated by the CST on January 31, 2017 because she believed

L.S. had dyscalculia in that she struggles to the point of tears in math and has trouble remembering math facts and always suffered from a lack of focus (R-2, page 1). An evaluation and planning meeting was conducted on February 27, 2017 and the District found that an evaluation was not warranted in that L.S. was not in need of special education and related services as she did not have a disability which adversely affected her educational performance (J-1, R-4). Ms. Zaretsky authored the document and is familiar with it. The District was aware that L.S. had been in therapy for two years and had a release to speak to L.S. therapist. L.S. had difficulty with math facts and had emotional issues. Due to L.S.'s current performance and outside factors, the CST recommended I&RS for L.S. as well as seeing a pediatrician for a potential ADD or ADHD diagnosis. The CST would meet with K.S. at a later time if the interventions were not effective, to see if evaluations would be warranted. The biggest concerns were L.S.'s emotional needs which may have been impacting on her performance. As a result of the February 27, 2017 meeting, the District decided that it was not going to test L.S. but offer I&RS. Although L.S. had a history of trauma she was seeing a psychiatrist outside of school. It was not clear in February 27, 2017 that L.S. was clinically depressed. However, after L.S.'s hospitalization, the District was very concerned about L.S. An Initial Identification and Evaluation Planning meeting took place on May 8, 2017 and the District found that an evaluation was warranted (R-8).

Ms. Zaretsky was directed to an email K.S. wrote to the guidance counsellor, Lisa Harvey on October 11, 2016 (P-16) that L.S. had emotional concerns and that although she has not attempted suicide in the past, L.S. has engaged in self-harm (P-16). Ms. Zaretsky was not aware of this email and had not seen it previously. However, K.S. did make the District aware that L.S. had emotional problems back in October 2016 by sending this email to Ms. Zaretsky's colleague, the guidance counsellor, Mrs. Harvey.

On March 23, 2017, Ms. Zaretsky's contact log indicates that she met with L.S. twice that day because L.S.'s emotional state was quite depressed. On March 24, 2017 Ms. Zaretsky learned from a counselling session that L.S. had engaged in self injurious behavior and reached out to K.S. to advise her of same (J-2).

L.S. was late twenty-seven times and absent fourteen times for the 2016-2017 school year (R-28). The District did not reach out to the parent to develop a plan to get

L.S. to school on time or develop a truancy elimination plan. Ms. Zaretsky was in frequent contact with L.S.'s mother and if L.S. was late she was sure there was a reason.

The social assessment of L.S. (R-10) was conducted and the written report prepared by Ms. Zaretsky on May 10, 2017 and used to help develop the IEP. She noted that L.S. has emotional issues and that her behavior in class can sometimes be challenging. L.S. struggled in math and struggles with depression. L.S. was sexually abused by her oldest step-brother when she was seven years old.

As of June 12, 2017, the IEP was effective as of the date it was signed by the parent (R-15, page 2). However, there were only three days left in the school year and both the District and the parent did not want to change L.S.'s classes for three days so it was agreed that the IEP would be implemented in September (R-14, page 2). L.S. was classified as emotionally disturbed. No behavioral intervention plan was needed (R-15, page 1). Even though the teachers reported that L.S. was showing some challenging behaviors in the classroom, including refusal to do work, difficulty staying on task, oppositional defiance, and attention seeking behaviors, the IEP indicated that no behavioral interventions were appropriate at the time (R-15, page 7). The district did not conduct a functional behavioral assessment. L.S.'s IEP math goals do not include that L.S. has trouble with math facts, that is, rote memorization of multiplication, division addition or subtraction although she did (R-15, page 7). Although L.S. had a June 12, 2017 IEP, the District developed another one in September to include the recommendations contained in the psychiatric evaluation of Dr. O'Reilly.

The September 12, 2017 IEP indicates that "The student's behavior impedes his or her learning or that of others. Appropriate strategies and supports are included within the Modifications and Supplementary Aids and Services section" (R-19, page 6). However, there is no behavioral intervention plan in the September 12, 2017 IEP (R-19, page 8). Ms. Zaretsky explained that the intervention that the district was going to implement was the fifteen-minute morning check in period with Mrs. Doran in the multiply disabled class. The IEP identifies six goals: four for math and two for social, emotional and behavioral issues. Goals 5 and 6 do not deal with L.S.'s actual behavior.

The goals do not address her resistance to school work. There is nothing indicating how L.S.'s emotions are directly impacting her ability to do math specifically. (R-19, pages 8-9).

The September 12, 2017 IEP provides for Supplementary Aids and Services for "Reinforcing of Personal, Social, Behavioral, and Academic Learning Goals" (R-19, page 11). The IEP sets forth "How the Student's Disability Affects his or her Involvement and Progress in the General Education Curriculum: L.S. needs a program that will fit her emotional needs. She is displaying emotional concerns where L.S. may appear to be disinterested in participating and unmotivated in completing school work. She also presents with depressed mood and school related anxiety. Her performance in the classroom is inconsistent which warrants the need for specialized programming that provides consistency with interventions to her emotional needs." (R-19, page 6). The IEP also sets forth the "Rationale for Removal from General Education" and to "Identify the supplementary aids and services that were considered to implement the student's annual goals. Explain why they are not appropriate to meet the student's needs in the general education class: A general education class for mathematics with in class support was considered and deemed not adequate for L.S. Although L.S. displays slight delays in mathematics, her emotional approach to math tasks prevents her from being able to complete tasks without considerable help. L.S. often verbalizes that she is incapable of completing math assignments and her self-esteem is affected as a result. L.S. would benefit from a small group pull-out Learning Resource Program (LRP) setting in mathematics where her needs can be addressed. Additionally, L.S. requires significant emotional support through her day. In addition to the counseling services provided for her, it was deemed appropriate to provide her with a period of pull-out support in the district's self-contained program to reinforce study skills, provide help with assignments and tests, and mentoring opportunities for L.S. (R-19, page 12).

The September 12, 2017 IEP was not implemented because the District did not have permission to implement the IEP. Parent was challenging the IEP with the filing of the due process petition. The District was still providing services under the June IEP.

L.S.'s sixth grade report card indicates that she has a "C+" in social studies with a factor "15" noted indicating that her homework/classwork is not turned in (R-20)

The entry in her contact log for September 19, 2017 indicated that Ms. Zaretsky contacted K.S. to advise her that L.S. told her about a dream she had the night before where L.S. cut herself and then someone burned her body. L.S. had a further counseling session on September 25, 2017 wherein L.S. was angry and said she has an IEP and that the lawyer wanted somethings changed and the school is ignoring her IEP. L.S. said she cannot do math and just sits in the class not doing anything (J-2). On October 11, 2017, L.S. in a counselling session advised Ms. Zaretsky that she hates math and cannot do it and asked Ms. Zaretsky to please not make her go to math class. Ms. Zaretsky explained that the math teachers are there to help, but L.S. cursed and said "That's bullshit. No one helps me." L.S. does curse in her meetings with Ms. Zaretsky. She does not often correct her because she wants L.S. to feel comfortable expressing herself in their counselling sessions and L.S. is sensitive. Ms. Zaretsky did not believe the swearing was indicative of a behavioral problem since she does not do so in the classroom or to her peers. Ms. Zaretsky believes L.S. is trying to act as an adult and wants to be treated as an adult and that is the reason L.S. will curse.

On October 12, 2017 L.S.'s aide, Mrs. Haines came to Ms. Zaretsky, to advise her that L.S. was huddled in a corner of the bleachers during gym class that day and while students were playing football the ball fell in the area where L.S. was curled up. L.S. was not participating in gym at this point and often refused to participate and just sat or laid down on the bleachers. She met with L.S. on October 12, 2017 and L.S. told her she was not allowed to participate in gym. Ms. Zaretsky did a reality check and asked her did she refuse to participate because sometimes L.S. misperceives or misinterprets what was said to her, for instance like the incident with her friend and the bleach comment. L.S. cursed and then took her phone out and refused to put it away when Ms. Zaretsky asked her to and requested to go back to class. Ms. Zaretsky spoke to Mr. Heyman the gym teacher about L.S.'s participating in gym class. He indicated that he always encourages L.S. to participate but she chooses to sit on the bleachers. She will make a comment that she is taking a new medication for her depression and he does not want to push her due

to her labile mood. Ms. Zaretsky let Mr. Heyman know that K.S. wants her daughter to participate in gym

A log entry for October 17, 2017 indicates Ms. Zuccarino the math teacher reported that L.S. was texting in class and students are not supposed to be using their phones in class. Ms. Zaretsky spoke to K.S. who indicated she would speak to L.S. about following the rules. In a counselling session dated October 24, 2017 L.S. said she was walking home from the library a few weeks ago and a boy who was in a car being driven by his father slowed down and yelled out the window at her “whore”. She did not know who the boy was or if he attended the school. There was not much Ms. Zaretsky could do. An entry for October 27, 2017 indicates L.S. ran away twice from her aide and teacher while at a sixth-grade trip to Birch Grove park. She was not following directions.

On December 6, 2017 L.S. told Ms. Zaretsky that a boy in class gave her the finger and made a comment to her but Ms. Ingram, L.S.’s aide did not hear anything, and she was next to L.S. On December 14, 2017 there is a log entry that L.S. was crying in the bathroom and sitting on the floor as a result of making an inappropriate comment to Mr. Law about cancer. In response Mr. Law said that L.S. should respect adults irrespective of her legal matter. Ms. Zaretsky contacted K.S. to discuss the incident. Although K.S. was upset Mr. Law brought up the legal matter, L.S. was wrong for making the inappropriate comment.

It was agreed that the parent reached out to the District regarding L.S.’s emotional concerns in October 2016. Ms. Zaretsky was not aware of K.S.’s request for a math tutor for L.S. in November 2016. There were no referrals in October 2016. Ms. Doyle never contacted her about L.S. emotional needs in October. Mrs. Harvey the guidance counsellor also never reached out to Ms. Zaretsky in October 2016 regarding any concerns or evaluations. In the month of November, Ms. Zuccarino did not reach out to her regarding any math concerns for L.S.

The Initial Identification and Evaluation Planning meeting of February 27, 2017

On re-direct examination it was reiterated that the initial IEP of June 12, 2017 was not implemented because there were only three days left in the school year. Although L.S. was tardy twenty-seven times most of them unexcused tardys were less than ten minutes. Being late by three to five minutes would not require an action plan. Ms. Zaretsky does not know why L.S. was late for school, but knows the school was bending over backwards to make L.S. comfortable. Arrangements were made to have the aide waiting for L.S. when she got dropped off at school and then they would wait a little bit to make sure the crowds thinned out so L.S. would feel comfortable walking to her class.

If they had decided to test L.S. on February 27, 2017, the District would have ninety days to complete the testing and develop the IEP. If the District took the full ninety days it is allowed, an IEP would not have had to have been done until May 27, 2017 which is only about two weeks earlier than the District completed the June IEP. The District timely evaluated L.S. and developed an appropriate IEP. The counselling Ms. Zaretsky provides is helpful to L.S.

Chelsey Ingram testified on behalf of the Northfield Board of Education. She is currently employed at the Northfield Community School as a one on one aide to L.S. since October 2017. She applied for the job for a personal aide position with the Northfield Community School that was posted on their website. She interviewed with the principal and was offered the job. She first met L.S. in mid-October 2017 with the child's mother. She is assigned to L.S. five days a week from 8:00 a.m. to 11:30 a.m. three and a half hours per day, seventeen and a half hours per week. Her duties are to accompany L.S. in the hallways, to all of her classes, and the bathroom. She also provides any guidance that L.S. may need and is there as a resource for her. Ms. Ingram graduated from Rowan University and also obtained her masters in school psychology. She is currently pursuing her educational specialist degree from Rowan and anticipates receiving same in May 2019 (R-24). Her goal is to be a school psychologist.

Ms. Ingram arrives at work by 8:00 a.m. The doors open at 8:00 a.m. and students can arrive between 8:00 a.m. through 8:10 a.m. L.S. arrives after 8:10 a.m. and usually arrives between 8:15 a.m. - 8:30 a.m. which is considered tardy. If L.S. arrived on time, before 8:09 a.m., Ms. Ingram would meet her and walk her inside to her locker and walk her to homeroom which starts at 8:00 a.m. and lasts until 8:15 a.m. In homeroom, the

teacher takes attendance and various information is exchanged as to what is going on in school. After homeroom, they would go to her locker to get her things for encore which is built into sixth grade 8:17a.m. – 8:59 a.m. for forty-two minutes daily. Each subject rotates weekly. The encore class is taught by whoever teaches her academic class. Besides the teacher, she would be the only other adult in the encore class of approximately fifteen to nineteen students. When L.S. arrives late she usually misses homeroom and misses a portion of the encore class. After 8:20 a.m. Ms. Ingram will move indoors to wait for L.S. Ms. Ingram waits outside for L.S. from 8:00 a.m. – 8:20 a.m. and then goes inside and waits for her by the reception desk. The receptionist has cameras to see when L.S. arrives and then Ms. Ingram will walk into the lobby to meet her. If she arrives by 8:25 a.m. they go upstairs, L.S. gets breakfast which takes a minute or two and then they walk to her locker. L.S. will get her notebooks for her encore class and then walks to her encore class with her breakfast. L.S. would get to encore by 8:30 and then eats her breakfast which takes five to ten minutes. After she eats, she is able to devote her full attention to the lesson which could be approximately eighteen to twenty-three minutes after the class has begun, which is not helpful to L.S.

As her aide in encore, Ms. Ingram is there as a resource and just waits with her while the teacher is catching up. Ms. Ingram believes she has a good working relationship with L.S. Sometimes L.S. offers resistance by telling Ms. Ingram to ‘sush’ if she is trying to give guidance. Math is L.S.’s least favorite subject and it is hard for L.S. to get started. Encore is a lighter class and L.S. is able to catch-up with her work. L.S. says she does not want to be there or makes a sarcastic remark to herself or to Ms. Ingram. It does not affect the other students, mostly herself and maybe the teacher who will come over and get her started. After encore they go to her locker and get her things for her specials for the day: gym, music, financial literacy, music and Spanish, which rotate. All periods are forty-two minutes except core subjects which are ELA, math, science and social studies which are one hour and twenty-six minutes. Three academic subjects are taught a day. There are A and B scheduling days and the classes rotate. Gym and music are the specials that L.S. has at the current time. In music class there are about fifteen to seventeen students. Ms. Ingram shadows L.S. and is with her in class. L.S. attends music on time at 9:01 a.m. They take extra time at L.S.’s locker and wait for the crowd to pass. This is an accommodation that was made for L.S. In music she takes notes but

L.S. does not participate in singing or playing an instrument by herself in class. When she has to perform by herself she will not participate. The teacher encourages her to participate and advises L.S. that it would affect her grade, but she still does not participate. L.S. will practice the instrument with the group but will not perform solo. During music class, Ms. Ingram sits diagonally behind L.S. In music class there is one other aide for a student. Ms. Ingram had no other concerns for L.S. in music class except her lack of participation in the solo singing and playing of instruments. Financial literacy was a special class last semester. L.S. did her work in that class. Once in a while, L.S. would say that she did not want to be there. She was not disruptive, and this did not affect the class or teacher. In financial literacy, Ms. Ingram sat two rows behind L.S.

L.S. is allowed to go to the nurses' office to change for gym. Initially she was changing in the nurses' office. However, for January and February she has not been bringing her gym clothes. She can still participate if she is wearing sneakers but not when she is wearing a boot with a heel. Then she just sits down on the bench. Ms. Ingram encourages L.S. to participate and to bring her gym clothes. When she did go change in the nurses' office she would always miss the exercise warm up in the beginning of the class. L.S. will participate in gym if it is an activity she likes, for example, basketball. She has her own team with her friends and is engaged and will not come over to Ms. Ingram or the other aide. While in gym class, Ms. Ingram is on the bleachers and she is with her all the time. If L.S. has to go to the bathroom, she always comes to Ms. Ingram and asks her first.

After gym ends at 9:43 a.m., L.S. has ELA at 9:45 a.m. to 11:11 a.m. Mrs. Polak is L.S.'s current ELA teacher. The ELA class has seventeen students. There is also a basic skills teacher for English in the class, Mr. Defony, who assists Ms. Polack teaching and assisting students. There is also a Spanish teacher to assist the non-English speaking students. Ms. Ingram sits behind L.S. and on a diagonal. L.S. is creative and likes to read and write. Her friends are in the class and she seem to like this class. If Ms. Ingram complements her writing, L.S. will say it is not good. L.S. says she does not want to be there. Ms. Ingram says L.S. is very smart and creative and she tries to encourage her. Two girls and a boy she is friends with are in her ELA class. They make jokes and help each other. L.S. usually participates in ELA and is more engaged and raises her

hand. She is very good at creative writing. In Ms. Ingrams' opinion, the ELA class is the right class for L.S. After ELA they go to her locker and get her things for Math class which is taught by Ms. Zuccarino. There are about seventeen to eighteen students in math which goes from 11:13 a.m. – 12:35 p.m. Mrs. Ewing is a special education teacher in math and offers support for special education students. Ms. Ingram is in math for about twenty minutes and then she is relieved and the other one on one aide for L.S. comes in, Mrs. Turon. Ms. Ingram sits next to L.S. in math. They start out with exercises and reviewing the previous day's lesson. L.S. does not like math. L.S. is negative and makes comments that she is not good at math and that she is a failure. If L.S. doodles, Ms. Ingram will try to re-direct L.S. or try and warn her before the teacher, Ms. Zuccarino, comes over and tells L.S. to put it away and do her work. L.S. seems to be understanding geometry better. Ms. Ingram does not believe the math class is right for L.S. She believes a smaller class with one on one instruction would be better for L.S. Mrs. Turon has made comments to Mrs. Ingram that L.S. is distracted in math. They touch base with each other as to how L.S.'s day is going. Whenever L.S. goes to the bathroom she takes longer than other students who usually take two to three minutes.

On cross-examination Ms. Ingram stated she enjoys working with L.S., although she can be resistant at times as well as disrespectful and sarcastic. L.S. struggles in math and sometimes some of L.S.'s behavior is disrupting her learning. She has not read L.S.'s IEP. Ms. Ingram tries to encourage L.S. and is emotionally supportive when she makes negative comments. She has been L.S.'s aide since mid-October and escorts her to class because of her emotional needs and bullying concerns. Most of the kids do not have a one on one aide, only children with special needs.

Jennifer Turon testified on behalf of the District. She is employed by the Northfield Community School as a one to one aide for L.S. for half the school day from 11:30 a.m. - 2:50 p.m. She assists L.S. with instructional and non-instructional activities assigned by the teacher. She worked two years as a first and second grade teacher in Maryland. She has been a substitute teacher and a basic skills instructor for eighth grade math and ELA at the Northfield Community School. She has a teaching certificate and is certified to teach kindergarten through eighth grade in New Jersey since 1998 (R-25). She met L.S. in May 2017 when the principal had asked her to walk L.S. to and from her

specials. In the middle of October 2017, she became L.S. one on one aide. She starts at 11:30 a.m. and shadows L.S. the entire time. When Ms. Turon arrives, L.S. is already in math class. She relieves the morning aide and it is a seamless transition. Math ends at 12:35 p.m., Ms. Zuccarino is the math teacher and has fifteen students in the class. Mrs. Ewing is the in-class resource teacher for special education and is a special education teacher. There are three adults and fifteen students in the math class. L.S. regularly attends math class but she does not like math and puts herself down a lot because she cannot do the work. This interferes with her ability to learn math. Ms. Turon tries to help her and maintain a positive attitude, but sometimes L.S. shuts her out. Sometimes Ms. Zuccarino will come over and ask if she needs some help. Mrs. Turon is there to help L.S. and will keep trying. L.S. does not participate in math class. It is her least favorite class. Ms. Turon is also her aide in social studies and science. L.S. participates in social studies and science and is not as negative in those classes, as she is in math. L.S. does not like noise and will tell other students to be quiet, but she does not disrupt class. L.S. was offered math assistance by Ms. Zuccarino but L.S. has not taken it. Ms. Turon believes a smaller math class would be beneficial to L.S. A pull-out math resource class would be beneficial to L.S. Her current math class is not appropriate for L.S. Part of L.S.'s safety plan is to leave class a little early before the rest of the students are in the hallway. After they go to her locker, they go to lunch together in a separate classroom. L.S. does not like the noise in the cafeteria so the District has made a special arrangement for her for lunch. L.S. has the option of eating with her peers in the cafeteria but she has not exercised that option. After lunch they walk back to L.S.'s locker and get the materials she needs and walks either to science or social studies. There are eighteen students in science taught by Mr. Law and Mr. DeMarco is a classroom aide and works with everyone. L.S. enjoys science and participates in class. Ms. Turon is about five feet away from L.S. She has friends in that class. The social studies teacher is Ms. McClay and Mr. DeMarco are the classroom aide. L.S. enjoys social studies and participates a lot in that class. They leave class early at 2:45 p.m. although school ends at 2:50 p.m. They go to her locker and she walks her out. That is also part of L.S.'s safety plan. L.S. gets picked up by her mother or whoever is getting her that day.

On cross-examination Ms. Turon says she knows L.S. well from working with her. She knows of L.S.'s emotional issues only from what she observes from working with her. She was not aware of L.S.'s history of emotional trauma or that L.S. had a history of sexual abuse. Ms. Turon was not aware of the fact that L.S. was hospitalized for self-injurious behavior and for suicidal ideations. She was not aware that L.S. has cut herself. She did not know any of these things and she has never seen L.S.'s IEP. Mrs. Turon was only told to keep L.S. safe and was not told the reasons why. Just that she should keep a close eye on her and walk with her in the halls. She had met with Ms. Zaretsky but was not informed of L.S.'s background. If she saw L.S. having a bad day or having emotional problems, she would bring her to Ms. Zaretsky. L.S. has told her classmates to shut up if they are being really loud in class. The teacher will tell everyone to calm down and get back on task. L.S. has told Mrs. Turon that she was being bullied by other students. Prior to working with L.S., Ms. Turon was not aware that there was a history of bullying or that L.S. was being harassed. Ms. Turon has not heard any of the children cursing at L.S., calling her a whore, or giving L.S. 'the finger'. Mrs. Turon never heard any of the children saying anything like that to L.S. and Mrs. Turon sits right there with L.S. L.S. has said she 'sucks' in Math. Instead of doing her math, she doodles and does not listen to Mrs. Turon who tells her to get back to work. Her resistance to doing her math is interfering with her ability to learn math. Math is hard for L.S. and her current placement is not appropriate. She should be in a pull-out class for math.

Linda Levitt Doyle testified on behalf of the Northfield Board of Education. She has been employed by the District for nine years and has been teaching fifth grade ELA for the past two years. The prior seven years she was a basic skills instructor for ELA and math. As a basic skills teacher, she would go into a class and support the teacher by either giving direct instruction or working with the students in smaller groups. Prior to teaching in Northfield, Ms. Doyle taught fourth grade in the Brigantine public school for eleven years. She was also a supplemental reading assistance (SRA) teacher for first grade in Brigantine. She has a standard N.J. teaching certificate for grades kindergarten through eighth grade and is highly qualified in kindergarten through fifth in all subjects (R-21).

Ms. Doyle has known L.S. and her mother K.S., since September 2016 when L.S. became a student in her fifth grade ELA class. L.S. was in her homeroom class that went from 8:10 a.m. to 8:20 a.m. and then in her first period ELA class that went from 8:25 a.m. to 9:42 a.m. There were thirteen students in her class and two other adults including a special education teacher for support of the special education students in the class and another one on one aide for a special education student. The class met five days a week and there was also additional ELA instruction of approximately two hours per week for writing blocks and informational text reading. L.S. attendance was unremarkable in that she did not recall her being absent. Her behavior was erratic in that some days L.S. was happy, almost elated and other days she was not happy and in a solemn mood. Her attitude towards learning also was inconsistent. Sometimes L.S. was engaged and on task in the class and participating and other times she would not participate and shut down. When L.S. did participate she was on grade level or above. Her writing skills were excellent, and she enjoyed creative writing. She did not always follow the prompts given by the teacher and would go off topic. Ms. Doyle felt L.S. would 'push the envelope' regarding school appropriate writing and dark topics. Ms. Doyle recalls reaching out to K.S. regarding her concerns. L.S. got moodier as the months progressed and was unwilling to comply with the class rules and did not participate, however L.S. was not disruptive to the class. In April L.S. was switched from her first period ELA class to her fourth period ELA class because the district wanted to separate L.S. from another student in the class. L.S. attended fourth period ELA from April until the end of the school year. That class had seventeen students and another co-teacher, Joe Defony a basic skills instructor. L.S.'s behavior improved in that she seemed more comfortable in this class as there were more girls in the class. L.S. still experienced highs and lows and still would push back and basically Ms. Doyle had the same concerns in fourth period as first period ELA. L.S.'s reading was on grade level and her writing skills were excellent. Ms. Doyle was of the opinion that L.S. could handle the rigors of the fifth grade regular ELA class.

Ms. Doyle attended the June 12, 2017 eligibility/IEP conference as L.S.'s general education teacher. L.S. was found eligible for special education and related services under the category "Emotionally Disturbed" and the least restrictive placement was for L.S. to receive pull-out math LRP (learning resource placement) and placement in the multiply disabled class for social studies and homeroom. As related services, L.S. would

receive counseling twice a month (R-14 & R-15). The June 12, 2017 IEP did not provide for special education services for ELA.

On cross-examination, Ms. Doyle indicated that she was aware L.S. had emotional issues however she was not aware that she had a history of sexual trauma or a history of suicidal ideations. The CST did not discuss that with her. Ms. Doyle did receive an email from K.S indicating that her daughter was having difficulty adjusting to her new school and has a history of trauma (P-15). On January 13, 2017, Ms. Doyle sent K.S. an email forwarding a story L.S. had written in class the first line of which began “The World Painted in Blood” because she wanted K.S. to be aware of its dark subject contents. Although the story contained a lot of dialogue which Ms. Doyle had previously instructed the students to use sparingly because it was hard for the reader to follow, she was more concerned with L.S. emotional wellbeing. Ms. Doyle also emailed K.S. on January 13, 2017 that L.S. failed her vocabulary/spelling test but that she was more concerned with L.S.’s emotional wellbeing (P-15). Although Ms. Doyle did not write the June 12, 2017 IEP, she provided input. Under the present levels of achievement section for ‘writing’ suggestions are provided as to how L.S. can improve (R-15, page 4). However, L.S. did not need special education services for ELA.

Although Ms. Doyle had worked with L.S. from September to the end of the school year and had concerns for L.S.’s emotional state, she never referred L.S. to the CST for an evaluation.

Kristen Polak testified on behalf of the Northfield Board of Education. She has been employed by the Northfield Board of Education for twenty-seven years and currently teaches sixth grade ELA (R-22). She met L.S. and her mother K.S. in September 2017. Ms. Polak is L.S.’s sixth grade ELA teacher for the 2017 – 2018 school year. There are fifteen students in the class. L.S. has consistently attended class which meets from 9:45 a.m. – 11:10 a.m. five days a week. There is also an ‘encore’ period every three weeks for five days for ELA. There are two other adults in the class, Mr. Defony who is a basic skills instructor who supports Ms. Polak, and Ms. Ingram, the one on one aide for L.S. Ms. Ingram became L.S.’s one to one aide in October 2017 and prior to Ms. Ingram, Mrs. Haines was L.S.’s aide since September. L.S. regularly attends her class most every

day. L.S. is not late to Ms. Polak's class although she knows she arrives late to school in the morning. L.S. is a normal eleven-year old who will be chatty at times but will stop when asked. L.S. does write at the top of her paper that she is not a good student and makes disparaging remarks about herself such as she cannot spell or that she is not a good student. Ms. Polak will tell L.S. that she knows that is not true and that she is a very capable student. L.S. does not volunteer in class but when called on she will participate and is insightful and has a lot of positive things to say. L.S.'s strength is her writing and she is very creative and does a beautiful job. L.S. is doing well in her class. Ms. Polak has had concerns about the contents of L.S. writings as she is sometimes off topic and her writings are school inappropriate. Ms. Polak recalled a story L.S. wrote which involved a family of geese who killed other geese. Ms. Polak may have spoken to Ms. Zaretsky about this. There was also another narrative L.S. wrote suggesting an inappropriate sexual relationship between a minor and an adult. Ms. Polak advised her that she was pushing the envelope but L.S. did not think anything was wrong with her essay. The only time Ms. Polak spoke with L.S.'s mother about any concerns was regarding a book that L.S. wanted to read which Ms. Polak thought was too old for L.S. Ms. Polak sent K.S. a link and since then L.S. has used age appropriate books from the school library. Before that, L.S. had told Ms. Polak that she did not have any appropriate books at home. L.S. has two girl friends in her ELA class. L.S. is able to handle the academic rigor of her mainstream sixth grade ELA class. Her current placement this year is meeting her needs.

On cross-examination, Ms. Polak admitted that she is familiar with special education and has attended quite a few IEP meetings. She has gotten to know L.S. as her teacher this year and is aware that L.S. has emotional issues. Ms. Polak was not aware that L.S. was sexually molested. She was not aware that L.S. had a history of self-injurious behavior. She was aware that L.S. had suicidal ideations and was hospitalized as an in-patient in April 2017. The CST has not spoken to Ms. Polak about L.S.'s risk for self-harm. L.S. has low self-esteem. L.S.'s writing was concerning to Ms. Polak as she did not follow the rules regarding school appropriate topics. It was also concerning to Ms. Polak that L.S. wrote a story about sexual molestation.

Brooke Parsons testified on behalf of the petitioner. She is employed by the Northfield Board of Education since September 2016. Ms. Parsons graduated from

Stockton University with a double major in elementary education and dance. She has a masters' degree in special education and a LDTC (learning disabilities teacher consultant) certification and a supervisor's endorsement. Learning evaluations are used as part of the process in developing an IEP. She has done approximately two hundred learning evaluations. Prior to Northfield she worked in Hamilton Township. She has drafted or helped draft hundreds of IEPs.

Ms. Parsons became familiar with L.S. in February 2017 when K.S. requested a meeting with the CST because L.S. was struggling in Math. Ms. Parsons learned L.S. had a history of mental health issues at the first planning meeting. She did not recall if she knew L.S. had a history of self-harm or suicidal ideations at the first planning meeting. Ms. Parsons recalled being advised that L.S. had a history of sexual abuse by her step-brother. She conducted a learning evaluation of L.S. on May 17, 2017 and prepared a report (R-11). As part of her evaluation, Ms. Parsons gathered data from various sources including a review of L.S. records, report cards and progress reports. She interviewed L.S., L.S.'s teachers and L.S.'s mother. Ms. Parsons also observed L.S. in the classroom. She also conducted an assessment of L.S. using the Wechsler Individual Achievement Test Third Edition (WIAT – III) and the Test of Silent Contextual Reading Fluency (TOSCRF). The teacher observations were with L.S.'s current teachers. Ms. Parsons interviewed Linda Doyle, L.S.'s ELA teacher and Ms. Zuccarino and Ms. Nash, L.S.'s math teachers. The teachers were concerned with L.S. performance in math and her math facts. Her teacher recommended math tutoring as well as a mentor in that she believed L.S. would do better if she had more attention in the math fact area. The WIAT-III is a national standardized academic ability assessment. L.S. was slightly below average in math problem solving (R-11, page 3). L.S. over-analyzes math problems and thinks outside of the box. L.S. had trouble telling time on an analog clock which was not unusual since children nowadays use digital. L.S. had trouble with math expression, abstract patterns, fractions, geometrical concepts, place value and the order of operations. L.S.'s IEP (R-15) Present Level of Academic Performance (PLAP) identifies areas of concern and current performance. The description that is contained in the PLAP are based on teacher input and her learning evaluation. The District was going to use Ms. Parsons evaluation as well as all the evaluations in formulating a program for L.S. and developing her IEP. L.S. was committed in a hospital for suicidal ideations and missed some time

from school. The writing portion of the PLAP (R-15, page 4) was contributed by Ms. Parsons. She was aware that L.S. wrote on dark topics but was not aware of the specific topics being dead parents, a geese family killing another geese family or sexual molestation.

The IEP contained goals and objectives for L.S. (R-15, page 7). Goal one was that L.S. will measure and/or sketch angles and solve five subtraction problems to find unknown angles on a diagram in real-world and mathematical problems. Goal two was that L.S. will graph points on the coordinate plane to solve real-world and mathematical problems using two axis and a coordinate system that corresponds. Goal three is for place values and goal four was for fractions. These goals represent math weaknesses that with strategies and coping skills, L.S. will do well. As far as L.S.'s behavior, Ms. Parsons has not been involved with L.S. this year. However, last year she was aware that L.S. displayed negative behavior to get a reaction and was sometimes oppositionally defiant.

From September 2016 up until February 2017 none of L.S.'s teachers ever recommended an evaluation of L.S. or a referral to the CST.

On cross-examination, Ms. Parsons stated that she supported the program the District proposed for L.S. which included an IEP for a pull-out math. L.S. has foundational skills and does not show large concerns in math, however her emotional state impedes her performance in math. The regular math class L.S. has been in has approximately twenty-two students in the class with no modifications or accommodations and not as much individualized attention. The pull-out math class that is proposed would have five students in the class and have modifications and accommodations and much more individualized attention for L.S. including coping skills for the larger setting in math. The IEP offered for L.S. did not offer any other special education for any of her other academic courses because L.S. did not display a need for special education in the other courses. L.S. needs to be in the general education setting where she will flourish. Any instructional assistance needed in the other classes could be addressed as a tier one intervention which is done in the classroom.

L.S. needs separate counselling for her emotional needs and is classified as emotionally disturbed.

Lisa Harvey testified on behalf of the parent. She is employed by the Northfield Board of Education as a guidance counsellor. She is also the anti-bullying specialist for the school. She is familiar with special education and how to make referrals to the CST. L.S. had emotional concerns at school. K.S. had reported that L.S. had a history of self-harm, cutting herself and suicidal ideations requiring her in-patient hospitalization. She was made aware by K.S. that L.S. was sexually molested by her step-brother. Ms. Harvey has not read L.S.'s IEP. In the fall of 2016, Ms. Harvey met with L.S. approximately six times on various issues including L.S. being upset with classmates calling her names. She is familiar with the HIB (Harassment Intimidation and Bullying) procedures. When someone reports being subjected to name calling or harassment of any nature, she would listen to the allegation reported by the person, interview the witnesses, the victim and the alleged perpetrator. If it was found that there was harassment or bullying, the District would take steps to stop the bullying and or harassment. In the fall, K.S. reported to Ms. Harvey that some children in class were calling L.S. names.

Ms. Harvey prepared a HIB report dated April 13, 2017. This report was prepared as a result of L.S. reporting in April, two incidents that occurred in September or October 2016. (P-9, page 1). L.S. reported that she was walking home from school and some boys called her derogatory names referring to sexual acts and behavior (P-9, pages 12-13) The other incident L.S. reported occurred in the school atrium and involved an eighth-grade student who sat next to her and rubbed her thigh and made a comment about touching her breast (P-9, pages 12-13). L.S. gave Ms. Harvey the names of the boys involved, and they were interviewed. However, Ms. Harvey was not able to corroborate what L.S.'s reported. There was no finding that the students harassed L.S. or that the eighth grader groped L.S. There were remedial measures implemented to relieve L.S.'s anxiety including allowing L.S. to eat lunch in the library and allowing her to leave her classes a few minutes early to avoid the crowds in the hallway (P-9, page 3).

L.S. wrote in her report that the boys said

“choke on a dick and die, slut, whore, skank – told me that I cry myself to sleep at night. While walking home outside of school he jumped in front of me and cornered me against the wall outside 4th grade. (G was with me and saw the whole thing) Kid named R (5th grade) was videotaping it. Nico told me to kill myself, go home drink bleach cut yourself and die. Other 6th, 7th and 8th grade walk home and say things. I don’t know his name”.

(P-9, pages 12 -13).

The April 13, 2017 HIB report was the first time the District did a HIB investigation regarding L.S. Usually an investigation is commenced within ten days of receiving a report of bullying. L.S. had reported name calling to Ms. Harvey before April 2017 on October 10, 2016. K.S. sent Ms. Harvey an email on October 11, 2016 stating as follows:

“Hello Lisa, my name is K.S. We have already spoken on a few occasions. I am the mother of L.S. L.S. told me yesterday that there is a child in her homeroom class (Doyle) named Niko, who told her to “kill herself” yesterday. As my daughter is going through a lot in her life, I do not take kindly to those words. She told me that she responded by saying that he shouldn’t tell “suicidal” people that. (by the way, she has not attempted suicide in the past but she has engaged in self harm). He told her if she failed at a suicide attempt, she should “try harder”, and that he would “build her a coffin”. I understand that children can be mean and that they say inappropriate things, but I would like this addressed, please. I am not naive and therefore asked my daughter what transpired leading up to these comments. She said there was a conversation between her and another female classmate and he interjected into that conversation. It was unclear to me what she was talking about, so I’m sure there was something else that occurred. In that case, if she did say something inappropriate to him, I would like to be informed so I could address that, as well. I don’t want my child to insult anyone else’s children, either!! Thank you”

(P-16, page 3).

Ms. Harvey did respond to K.S. the same day advising K.S. that she spoke to the children and they all had different stories and they denied that they said what L.S. claimed they said. However, she did advise the children that talks of death and suicide are delicate and should be handled with sensitivity. Ms. Harvey did not reprimand anyone and did not consider this a bullying incident.

K.S. did advise Ms. Harvey that L.S. has engaged in self harm in the past. Ms. Harvey did not refer L.S. to the CST for an evaluation or a threat assessment. Ms. Harvey did not believe L.S. was a threat to herself. Ms. Harvey was aware from conversations with K.S. that L.S. was in counselling. Furthermore, Ms. Zaretsky was meeting with L.S.

Ms. Harvey interviewed the alleged bully who said that L.S. was mean to him in gym and the hallway and punched him in the back of the head (P-9, page 17). She did not advise K.S. of this because it was something reported in April that occurred months before. He was not making this report as a victim, but he was describing his relationship with L.S.

Ms. Harvey was aware that L.S. had emotional issues. L.S. came to Ms. Harvey's office to discuss some of her emotional issues. Ms. Harvey was aware that L.S. was having a hard time in math. She was not aware that L.S. was writing stories about morbid topics.

On cross-examination, Ms. Harvey said that the HIB policy came into effect in approximately 2011 and she received training as the antibullying specialist. Once a report is made, she advises the principal and speaks to the alleged victim, witnesses and the alleged bully and completes an investigation within ten days. She forwards this to the principal who can agree or disagree with her findings, then forwarded to the superintendent and then to the school board. The parents are notified that there is an investigation and are advised of the results. She is aware that there is an avenue of appeal if the parents are not satisfied with the investigation. The principal, Mr. Morrison agreed with Ms. Harvey's findings that this was not a HIB incident. After the fall of 2016, the next time she had contact with L.S. was in February 2017 and then again when L.S. came to her regarding wearing a nose ring in April 2017.

A child attends school for 1,260 hours per year if they have perfect attendance. For the 2016-2017, school year Ms. Harvey had one hour and twenty minutes contact with L.S.

C.O. testified on behalf of the parent. He is the boyfriend of K.S. L.S. is his step-child functionally, not legally. He is self employed as a physician. He has three children ages thirteen, eleven and eight years of age, two of whom have autism and have IEPs. He has known L.S. approximately one and a half years. L.S. suffers from anxiety and depression resulting from the post-traumatic stress of the sexual assault by her step-brother when she was seven years old. She has engaged in self injurious behavior and has had suicidal ideations as part of her depression. C.O. is skeptical that L.S. has a borderline personality disorder since that diagnosis is not made until the later teen years.

When L.S. first started school in Northfield in September 2016, she was excited about starting a new school and being an older student and having some independence in being able to bike to school. However, around October 2016 he began to notice that L.S. was not as eager to go to school, not as interested in being with her friends and was becoming more withdrawn. She was not completing her tasks and was not interested in extra-curricular activities like basketball which at one point she was interested in. She was having a harder time completing her homework. Month by month it was a steady decline. She was happier on days off. Her somatic complaints of dizziness and headaches increased throughout the year that led to absences. In January the time off was beneficial but when she went back to school she had a harder time going. She was very anxious and depressed in January and struggled mostly with math. They had a college student tutor L.S. Her complaints of dizziness, headaches and upset stomach were a manifestation of her emotional issues. There was some discussion with K.S. and her teacher and guidance counsellor in October regarding a tutor for math. In February K.S. attended an eligibility meeting and K.S. was not eligible. In March L.S.'s emotional state had worsened and interfered with her school work. In April, L.S. was really having a hard time dealing with her peers and boys in the upper grades. There were lots of verbal abuse and threats and some episodes where they put their hands on her and pushed her against the wall. Neither he nor K.S. received any telephone calls regarding bullying from the District. In April, school had become so difficult for L.S. she was presenting with suicidal ideations and was not allowed to return to school until she was cleared by a psychiatrist. This lead to a two-night stay at Children's Hospital and an in-patient hospitalization at Inspira. L.S. missed school when she was an in-patient. Part

of L.S.'s treatment/discharge plan was that she would attend an intensive out-patient plan for eight weeks. In June the District developed an IEP for L.S. K.S. made the District aware of L.S.'s condition and L.S.'s therapist was in contact with the school.

On cross-examination, C.O. testified that he lives with K.S. and L.S. since the summer of 2016. His three children live part-time in the same house in Northfield. His children live part-time with him and part-time with their mother. They go to school in Linwood. Prior to moving in with C.O., L.S. and K.S. lived for nine months with K.S.'s mother in an apartment in Lower Township. Prior to that time, L.S. and her mother lived in Lower Township with her adoptive father and three step-siblings. The oldest step-brother was removed from the home after sexually molesting L.S. when she was seven years old. L.S. continued to reside with her mother, her adopted father and the remaining two siblings for approximately two more years. L.S. attended kindergarten through fourth grade at the Lower Township School District. The social assessment that was done as part of the development of an IEP indicates that L.S. was sexually molested by her step-brother when she was living in Lower Township (R-10). L.S. has been in therapy with Barbara Lamb, a licensed clinical social worker, since shortly after the assault occurred. He believes the trauma of the sexual assault caused L.S.'s post-traumatic stress disorder. L.S. had developed friendships while attending school and living in Lower Township. C.O. believed it was particularly difficult for L.S. to be separated from her adoptive father. It is difficult for any child to have a change in home, a change in family and a change in school and especially difficult for a child who suffers from post-traumatic stress disorder. L.S. gets along with his children pretty well, but L.S. initially fought a lot with his oldest child about space, privacy issues, and how they spoke to each other. This was frequent when they first moved in, but they get along fairly well now.

C.O. admitted that it was possible that some of the difficulties L.S. was experiencing with his children could have impacted how L.S. was doing in school. However, she was initially excited to go to school the first few weeks and by October – November she had difficulty getting out of bed. He never observed L.S. in school and he never spoke to any of her teachers or school personnel. He has no parental rights regarding L.S.

C.O. was told by K.S. that the bullying occurred but he had no direct knowledge regarding these claims. He is aware that there was a June 12, 2017 IEP meeting which he attended and that K.S. signed that IEP. K.S. filed a due process petition because it was not based on a full battery of testing that was felt to be required. The school did not accept responsibility for the assault at school and that it was felt that the entire year of education that year was lost for educational purposes. C.O. admitted that he has no knowledge as to whether any actual assaults of L.S. occurred at Northfield in the school year 2016-2017. His knowledge is based upon what L.S. told her mother K.S. Although he does not take everything L.S. says at face value, she is an excellent speaker and precocious. Even if some of what she relayed was embellished, it would still be cause for concern.

K.S. is the mother of L.S. and testified on behalf of the petitioner. K.S. is a practical nurse who works for the Recovery Center of America, a drug addiction program. She attended college at Cape May County Technical School.

L.S. is her only child who she describes as articulate, artistic, headstrong and emotionally fragile due to the emotional trauma she sustained when she was sexually molested by her step-brother when she was seven years old and he was thirteen years old. She was previously married to L.S.'s adopted father who lives in Cape May County, but they are now divorced and L.S. has no contact with him. K.S. is not currently married but resides with C.O. who acts as a parental figure to L.S.

K.S. advised several members of the District that L.S. had a history of trauma including Ms. Doyle, Ms. Harvey and members of the CST. K.S. was not initially concerned about L.S. emotional state since L.S. had been in therapy and was stable. L.S. seemed happy to be going to a new school. L.S. had other emotional issues including PTSD; depression and anxiety. L.S. was emotionally labile – her emotions were all over the Board and easily triggered. L.S. had a history of self-harm that began when she was eight years old. She would cut herself with an object such as a scissors. This behavior had subsided after years of therapy. K.S. advised the District about L.S.'s self-injurious behavior in October 2016, shortly after L.S. began attending school in the District in fifth grade. K.S. wanted to ensure her daughters safety. L.S. also had a history

of suicidal ideations. L.S. had difficulty in math. She cannot advance in math because she has not received the foundational skills upon which to build. Multiplication, division, fractions, decimals are all difficult for L.S. and she has difficulty with her times tables. K.S. and C.O. would spend anywhere from one to three hours trying to assist L.S. with her math homework. L.S. becomes frustrated and self-deprecating. K.S. discussed L.S.'s educational needs with the District in the beginning of fifth grade in October 2016. K.S. sent L.S. math teacher, Ms. Zuccarino an email October 11, 2016 requesting a tutor (P-16, page 2). Ms. Zuccarino offered to help L.S. during the school day as well as offering eighth grade mentors to tutor L.S. No offers to evaluate or refer L.S. were made or any interventions offered. L.S. also has difficulties in other areas of academics such as ELA.

K.S. also brought her concerns regarding L.S.'s emotional issues to the District's attention via email to Lisa Harvey, the guidance counsellor on October 11, 2016 (P-16, page 3). K.S. was writing to advise that a boy in class had told K.S. to kill herself. K.S. advised that L.S. was going through a lot in her life and although she has not attempted suicide, L.S. has engaged in self harm. This was the first time K.S. advised the District that L.S. had a history of self-harm. K.S. wanted the matter addressed because she was concerned that the goading would encourage L.S. to engage in self harm as she had done in the past. L.S. continued to be seen by her therapist Barbara Lamb.

Although she is creative in her writing, she does not follow directions or stay on task. L.S. does what she wants to do.

K.S. sent Ms. Doyle an email on November 2, 2016 advising her that L.S. had an issue with the teacher claiming the teacher was picking on her. In the email K.S. advised that L.S. is having difficulty adjusting to her new surroundings and has had a history of trauma which K.S. was trying to fix. K.S. did acknowledge that it was unacceptable for L.S. to be turning in incomplete assignments and that if L.S. was a behavior problem, she would expect the teacher to reach out to her (P-16, page 4).

On November 3, 2016 Ms. Zuccarino emailed K.S. the name of a good math teacher, Ms. Nash who was a fifth-grade math teacher at the school who was interested

in tutoring. K.S. replied by email November 4, 2016 thanking Ms. Zuccarino and stated she hoped the tutoring would benefit L.S. since she needs a lot of help in math and gets really frustrated and tearful and loses confidence in herself (R-16, page 6). K.S. did not hire Ms. Nash because she could not afford her rate of fifty dollars per hour. K.S. ended up hiring a college student to tutor L.S. for nine to twelve hours per week at fifteen dollars per hour. The District did not provide tutoring for L.S., they left it up to K.S. to make the arrangements and pay for the tutoring services.

On January 17, 2017 Ms. Doyle emailed K.S. that L.S. was not following directions for the assignment which required a narrative writing and L.S. was writing in dialogue (P-16, page 9). The story L.S. was writing was titled "The World Painted in Blood" and K.S. admitted that it was not normal for a child L.S.'s age to be so macabre. L.S.'s teacher was concerned since she wrote the story in school. K.S. shared the story with L.S.'s therapist (P-16, page 11). K.S. signed releases that would allow Ms. Lamb to communicate with L.S. teachers (P-16, page 17).

A constant theme for L.S. was that she hated school and she did not want to be in school. L.S. would frequently text her mother from school to come pick her up. Numerous text messages were sent between K.S. and L.S. on October 17, 2017 while L.S. was in the school bathroom having an anxiety attack as a result of not finishing her math test. (P-13, page 3). There were other texts wherein L.S. is requesting to be picked up and K.S. responds that she has to stay in school and learn. L.S. uses profanity in her various texts, which although K.S. does not condone this language, she wishes to keep the lines of communication open with her daughter. L.S. also complains about her aides in the text messages (P-13).

L.S. made a complaint about boys bothering her in math class and the principal Mr. Morris requested that L.S. make a written report as to what happened. L.S. said the aide was present and did nothing. L.S. wrote the report dated December 6, 2017 (P-14) and took a picture of the letter with her phone and showed K.S. K.S. contacted the school about the letter.

On January 31, 2017 K.S. sent an email to Janis Albright requesting a CST evaluation for L.S. because she struggles to the point of tears in math and K.S. thought she may suffer from dyscalculia (R-2; P-16, page 18).

There were various emails between Ms. Harvey, K.S. and Barbara Lamb dated February 15 and 16, 2017 regarding L.S.'s wearing a nose ring and black lipstick (P-16, page 22). K.S. felt L.S. needs to express herself but wanted the therapists' opinion on the issue. However, Barbara Lamb felt that the negative attention she was receiving was not conducive to her positive self-esteem and a risk to her psychological health (P-16, page 26).

K.S. emailed Barbara Lamb February 16, 2017 that she keeps telling L.S. how important she is to her and how much she loves her and does not want to lose her (P-16, page 27).

K.S. was denied a psychological evaluation by the school but they gave her the name of a psychologist if K.S. felt that she needed an evaluation.

On March 9, 2017 K.S. emailed Dr. Georges, Ms. Zaretsky and Mr. Bretones as a follow up to their meeting and requested that she be provided with a written plan as to what is being done with regards to K.S. (P-16, page 30). Brooke Parsons responded to K.S. via email dated March 10, 2017 regarding the plan for L.S. for Intervention and Referral Services which was to start on March 13, 2017. Also, K.S. was encouraged to see L.S.'s doctor as to whether she has an ADD or ADHD diagnosis (P-16, page 31).

L.S. was hospitalized for suicidal ideations two days at CHOP and five at Inspira. Ms. Zaretsky had notified K.S. that L.S. had suicidal ideations and engaged in self harm. K.S. opted to take L.S. to CHOP because they have a pediatric psychiatric unit as she did not want L.S. in an adult psychiatric unit. L.S. missed school during her hospitalization. After her discharge, L.S. attended an Intensive Outpatient Program (IOP) at Atlantic are Adolescent Behavioral Center commencing April 18, 2017 through June.

K.S. sent Ms. Harvey, the guidance counsellor and the HIB specialist, an email dated April 11, 2017 inquiring as to the status of the HIB investigation she was conducting based on L.S.'s reports of being harassed. (P-16, page 45).

A safety plan was prepared for L.S. once she returned to school on April 24, 2017, following her inpatient hospitalization, that provided for various accommodations for L.S. (P-16, page 50). The accommodations included allowing her to eat lunch in the library, changing her schedule so that math would be at the beginning of the day, so she would not miss math class when she was picked up early to go the IOP program and that she would be allowed to leave her classes a few minutes late and arrive a few minutes late to her next class. Mr. Morrison sent K.S. an email on April 24, 2017 advising her that he was happy L.S. was back in school and that Ms. Zaretsky followed up with L.S. a few times and that L.S. received her new schedule which also started that day. Her schedule had to be changed to keep her separate from the students she had reported bullying her and to allow her to go to IOP in the afternoon. Mr. Morrison also advised K.S. that the HIB documents she requested were going to the Board of Education and that he would be able to give her more information after the Board meeting on May 1, 2017.

The first IEP for L.S. was dated June 12, 2017 and had an initial referral date of April 21, 2017 with an initial consent to evaluate date of May 8, 2017. The initial IEP eligibility determination and initial IEP meeting was June 12, 2017 (R-15). The projected start date was June 12, 2017 and the projected end date was June 11, 2018. K.S. signed the IEP giving her consent to implement this IEP. There was no behavior intervention plan included in this IEP. K.S. believed that this IEP was implemented and that it would begin in September after summer break because there were only a few days left in the school year. When L.S. returned to school in September, K.S. expected that the IEP would have been implemented. She never withdrew her consent to the IEP. The District never revoked the IEP.

K.S. never knew that L.S. wrote a story about a family of geese killing another family of geese or the story about sexual molestation. No one from the school advised her that L.S. wrote these stories. K.S. learned about it when she heard the testimony during the course of this hearing. This is not a normal story for an eleven-year old to write

about. If she had been provided a copy, she may have provided a copy to L.S.'s therapist. A mandatory reporter is one who must report suspicions of abuse.

Once K.S. retained an attorney, communication with the District drastically diminished. Ms. Zaretsky will still call K.S. if she feels L.S. is more depressed than usual.

K.S. never was advised that L.S. was the aggressor in a HIB investigation or that she hit another student in the back of the head. She only learned of this during the course of the hearing. K.S. was in the waiting room and Ms. Pollock, L.S.'s current ELA teacher, made a comment that the District employees should not talk to K.S. because she is the enemy. K.S. believes the District was trying to intimidate her. K.S. said it is nerve wracking enough to be here without that kind of commentary.

Behaviorally at the present time L.S. is depressed. She is miserable at school and does not want to go to school. It is hard to get L.S. to go to school. K.S. has a babysitter dropping off L.S. to school and picking her up when K.S. has to work twelve-hour shifts. L.S. is very intelligent, although she struggles with math, and has the capability to do better than she is doing. L.S.'s emotions and anxiety get in the way of her success. K.S. believes L.S. requires an IEP to succeed.

On cross-examination K.S. stated she believes the IEP is insufficient for L.S.'s needs and lacks measurements to make sure she is making proper strides in her education. There are not enough emotional supports. She is seeking whatever it takes to make sure L.S. reaches her goals. It may be impossible for L.S. to stay in Northfield given her current level of anxiety whenever she is in the school. K.S. has looked at the Brookefield Academy and the Sage Day School as potential out-of-district placements. L.S. needs an appropriate and therapeutic placement. It was pointed out that the due process petition did not specifically request an out-of-district placement as part of the relief petitioner was seeking and that therefore she would be precluded from obtaining an out-of-district placement.

K.S. attended the June 12, 2017 IEP meeting which was attended by numerous district employees evidenced by the sign in sheet. K.S. participated in the meeting not

as a member of the team but as a parent. She did not have counsel present at that meeting. L.S.' needs not being addressed sufficiently were L.S.'s severe school anxiety. There were no measurable goals set forth to see if L.S. was reaching goals. Ms. Zaretsky was providing counselling to address L.S. emotional needs from February 27, 2016 all the way through the school year. L.S. needs more emotional support even when she is in class. The aids are not making a difference academically or emotionally. Although K.S. does not know what actually occurs in class, her daughter reports that the aids do not help her or control students that are being disruptive or saying inappropriate things to L.S. and they do not help her with the academic work in class. On June 12, 2017 she signed the initial IEP for it to be implemented in September 2017. Seventeen days later on June 29, 2017 she filed a due process petition challenging the IEP and requesting additional evaluations because the IEP was weak. She sought legal counsel to guide her in the process because she had time to think about it and thought she was not well versed enough in this area to proceed without counsel. The psychiatric report was not done before the IEP and was not done until July 6, 2017 because the District did not send over the payment voucher. There was some confusion as to the scheduling of the psychiatric examination. Two one to one aides were assigned to L.S. as a result of the mediation August 31, 2017 and it was agreed that they would have another IEP meeting on September 12, 2017. The psychiatric evaluation that was received over the summer would be incorporated in the new IEP, the one to one aids and all the items discussed at the June 12, 2017 IEP meeting would be included. In effect the September 12, 2017 IEP was a do over of the June 12, 2017 IEP based on all the new information available. K.S. and her boyfriend and Mr. Flynn attended the September 12, 2017 IEP meeting at which time L.S. was determined to be eligible to receive special education and related services and an IEP was offered including a one to one aide; counselling; and pull-out resource class for math. The pull-out resource class was smaller, six to eight students and offered more individualized attention for L.S. which would benefit L.S. L.S. was bright enough to remain in the mainstream for the remainder of her academic subjects. The IEP also offered L.S. fifteen minutes each morning to start her day with Ms. Duran the special education teacher.

K.S. said the IEP was deficient. She said the aids did not know L.S.'s history of trauma and did not know what signs to look for. They did not know that she had a history

of self- injurious behavior or suicidal ideations. Although the District says the bullying was “alleged” K.S. believed that something happened to L.S. to cause her from being happy going to school to having to having to fight with her to get her to go to school and be on this downward emotional spiral. The aids do not help L.S. with her class work, monitor her actions or assist her in social settings. The aids do not help keep the classroom orderly enough and allow distracting and inappropriate behavior from other students when they are supposed to be a buffer for L.S. The aids do not help L.S. in the classroom or in social settings. She heard the testimony of both aids Ms. Turon and Ms. Ingram who never heard anything inappropriate being said. K.S. does not believe them.

In March or April of 2017, the District completed the HIB report and investigation and found that there was no HIB. Yet K.S. said her daughter reported to her in October 2016 that she was being harassed. It was gradual as reflected in the emails K.S. sent to the District. K.S. said that Ms. Harvey’s response was initially that the other children’s accounts differed wildly from what L.S. claimed. At some point Ms. Harvey stated that L.S. should try to fit in. K.S. said this is why she requested Ms. Zaretsky to take over L.S. case rather than Ms. Harvey because K.S. was not happy with Ms. Harveys response to L.S. claims of bullying that she should fit in. However, Ms. Zaretsky did not take over L.S.’s case until February 27, 2017.

On January 31, 2017 K.S. initially requested a referral to the CST. On February 1, 2017 the District invited K.S. to attend an initial identification and evaluation planning meeting that did occur on February 27, 2017.

R-4 is a written explanation as to why an evaluation was not warranted following K.S. request for a referral. Intervention and referral services were offered to L.S. which included counselling services and assistance in math.

Ms. Zaretsky’s March 23 and 24, 2017 log entries indicated that L.S.’s depression significantly worsened since she returned from Florida. According to K.S., nothing happened in Florida to cause this and that it was L.S.’s return to school that caused the depression. L.S. was happy being with family in Florida and had a good time. K.S. sent L.S. an eleven- year old with emotional issues to Florida alone. She stayed with her

mother and sister in Florida. K.S. paid for a flight attendant to accompany L.S. on the plane.

Even though K.S. has not consented to the implementation of the September 12, 2017 the District has provided L.S. and continues to provide L.S. counselling services and the two one to one aides.

K.S. was contacted by Ms. Zaretsky and advised on March 24, 2017 that L.S. was cutting herself superficially with a paperclip and reported that she was having suicidal ideations and that she wanted to kill herself. L.S. stated to K.S. that she wanted to kill herself and that she had a plan that she wanted to cut her wrists. This prompted K.S. to have a crisis screening of L.S. which warranted L.S.'s psychiatric inpatient hospitalization. L.S. had never been hospitalized for suicidal ideations in the past, although she had engaged in self harm initially after she was sexually assaulted, but this behavior had subsided.

In November 2016, K.S. via email requested information from Ms. Zuccarino regarding a math tutor for L.S. Ms. Zuccarino gave her Ms. Nash's contact information.

As a result of not being able to afford the fifty dollars per hour tutoring services offered by Ms. Nash, K.S. hired a college student named Beyonce to tutor L.S. in math and provide caretaker duties such as transporting L.S. to and from school on days that K.S. worked. Beyonce worked an average of nine to twelve hours per week, for fifteen dollars per hour from December 1, 2017 through early April for approximately four months and prior to L.S. entering Inspira at Bridgeton.

L.S. was texting K.S. during the school day. She was leaving class and going to the bathroom to text K.S. Copies of the various texts were provided in P-13. L.S. was cursing the teachers and aids in the texts. She was in the bathroom for extended periods of time which is evidence of noncompliant behavior. This behavior did not present itself prior to her attendance at the Northfield school. K.S. believes the issue of being harassed reactivated her past trauma. Initially L.S. liked going to school and was excited to go to school and ride her bike to school.

Ms. Harvey sent an email dated April 11, 2017 to K.S. in response to K.S.'s email requesting an update on the status of the HIB investigation (P-16, page 48). The HIB investigation began the day L.S. reported the incident to Ms. Zaretsky on April 3, 2017. K.S. was advised that Ms. Zaretsky, Mr. Morrison and L.S. met with L.S. and she advised them what happened. They also asked L.S. to write down what happened, where, when and who was involved. Ms. Zaretsky sat with L.S. while she did this. The witnesses L.S. named were all questioned that day also. The superintendent was notified and would receive the report once it was completed. The parents of the children L.S. reported were all notified, and the allegations explained to them. Ms. Harvey further advised that the investigation report would be provided to Mr. Morrison, then to Mr. Bretones and then reported to the school board (P-16, page 48). K.S. questioned the validity of this email because during the course of this hearing she learned for the first time that L.S. had struck another child in the back of the head. K.S. was never advised by Ms. Harvey or anyone from the District that L.S. had been the aggressor in an incident with another student so she doubted whether Ms. Harvey told the parents of the children involved with L.S. K.S. also requested a copy of the written complaint her daughter made and did not receive a copy of same.

K.S. did receive a redacted copy of the District's report prepared as the result of the HIB investigation which concluded that there had been no HIB. She did not file an appeal or follow-up with the District regarding this report or that she believed she did not receive a complete report. She explained that she did not because she was dealing with a lot at the time including working full-time and L.S. being involved in the IOP at Atlanticare. K.S. is aware that since she did not file an appeal challenging the HIB report, the District's investigation report stands.

At the February 27, 2017 meeting, L.S. was not in crisis or exhibiting any self-harming behaviors such as cutting herself.

Although the District decided not to test L.S. at that meeting, they provided an Intervention and Referral services plan to provide L.S. counselling and math support.

After L.S. was discharged from her inpatient psychiatric hospitalization at Inspira, the District devised a safety plan for L.S. which included seven accommodations for L.S. upon her return to school on April 24, 2017 (P-16, page 50). These included allowing L.S. to eat lunch in the library; changing math to the beginning of the day so she would not miss math when she was picked up early to attend her IOP at Atlanticare; opting out of PARCC testing; having health in marking period four; morning check into homeroom and then see Ms. Zaretsky; allowing L.S. to leave class a few minutes late from class and arrive a few minutes late to the next class; and sit near the teacher.

K.S. said she was somewhat satisfied with this safety plan, although they did request an aid which was denied. However, one month to the day, on May 24, 2017, L.S. was placed in a gym class with the same boys she had claimed were bothering her because they had combined gym classes. There was nothing in writing that L.S. was to be separate from the alleged aggressors written in the safety plan although K.S. said it was discussed in the meeting. She did not follow-up with Mr. Morrison that he left out from the safety plan the fact that L.S. was to be kept separate from those children.

Ms. Zaretsky spoke to the principal, Mr. Morrison on April 27, 2017 regarding having an aid walk L.S. to and from specials and lunch since Ms. Zaretsky had been doing same but her schedule no longer permitted her to continue doing this. The principal assigned Ms. Sotak as the aide to walk L.S. to and from specials and Ms. Blum as the aide to escort L.S. to and from the library for lunch (R-5, page 6). K.S. was not aware that L.S. had been assigned any aides at this time and her daughter did not advise her of the same. K.S. never heard of Ms. Sotak or Ms. Blum.

L.S. is tardy to school so often because it is very difficult to get her out of bed because she has such school anxiety. K.S. was able to get her to school a few minutes late and she did not miss a lot of school except for the hospitalization. L.S. is currently on anti-anxiety and anti-depressant medication.

K.S. believes L.S. needs more one on one instruction for math. Even though the IEP calls for L.S. to receive a pull-out resource for math which would provide L.S. with the more one on one instruction in math she needs, K.S. has not consented to the IEP

because she feels that the District still does not provide L.S. with sufficient supports. L.S. has the same math teacher again and does not understand what Ms. Zuccarino is teaching. Perhaps a different math teacher would be more effective for L.S.

Although both aids said they did not know L.S.'s psychiatric and medical history, they did know they were assigned to L.S. to assist her and keep her safe. L.S. is still receiving the services of counselling and a one to one aide.

On redirect, K.S. said she signed the June 12, 2017 IEP because she wanted L.S. to receive services and it was a good starting point. Counsel reviewed it and found it to be inadequate. She was not aware of procedures for challenging the IEP when she signed the IEP. K.S. never intended to revoke the June 12, 2017 IEP by filing the due process petition. She believed they were revisiting the June 12, 2017 IEP at the September IEP meeting. L.S. does not have any IEP in place at the present time.

The IEP is not the only item K.S. is challenging in this case. K.S. does not believe the District handled the HIB investigation appropriately. K.S. also believes the District took too long to formulate an IEP.

K.S. believes they raised the out-of-district placement issue at the September IEP meeting.

The psychiatric evaluation was not scheduled until July because the school did not provide the doctor's office with the payment voucher (P-16, page 52). The District did not have the psychiatric report when it prepared the IEP for L.S. in June 2017.

L.S. aides did not collect any data on L.S. No data was collected by her counsellors.

K.S. believes L.S. has some borderline personality disorder symptomology. K.S. does not believe L.S. is making up the allegations of what is happening at school. If she was making these things up, that would be equally concerning.

The anti-bullying plan was only prepared after L.S.'s discharge from the psychiatric hospitalization, despite the October 11, 2017 email to Ms. Harvey. K.S. admitted that she was not familiar with the HIB procedures.

K.S. sent L.S. to Florida when she was ten because she was stressed out and wanted to go away. She had emotional issues before her trip to Florida. She stayed with K.S.'s family in Florida and had a good time. Nothing traumatic happened in Florida.

The September 12, 2017 (J-3, page 2) draft IEP provided for a pull-out resource replacement class for math, but this IEP is not in place and L.S. is only in general education math at this time.

The report from the psychiatrist was received after the initial June IEP and the September 12, 2017 IEP revised and incorporated the psychiatrists' recommendations and the one on one aide as well as adding social and emotional goals (R-19, page 9). By challenging the IEP the District could not implement it, and this is why to this day L.S. does not have an IEP although the District remains ready, willing and able to implement the September 12, 2017 IEP.

K.S. signed the June 12, 2017 IEP and believed that IEP should have been implemented.

Janice Wills- Kingsbury testified on behalf of the petitioner. She is employed by the Learning Well, LLC a clinical organization that represents children and provides educational services such as psychological evaluations. She has worked for the Learning Well for approximately one year but has been involved in public education since 1996. She also works independently from the Learning Well in providing independent evaluations for a number of school districts in New Jersey. She provides IEP counselling and provides reading instruction in the Wilson Reading program for a number of districts. She has a BA in special education, a MA in school counselling and is an Educational Specialist in school psychology (P-10).

Ms. Kingsbury was accepted as an expert in special education and school psychology.

Ms. Kingsbury evaluated L.S. on November 18, 2017 at the offices of the Learning Well in Florence, New Jersey and prepared a report based on her evaluation and her review of all of L.S.'s student records (P-11). She used the WISC V intelligence test, the Woodcock Johnson IV test of achievement and the Behavioral Assessment System for Children (BASC) in her evaluation of L.S.

There were a number of concerns regarding L.S.'s IEP. Her IEP did not contain a Behavior Intervention Plan and there was no Functional Behavioral Assessment (FBA) conducted of L.S. There was a limited amount of counselling provided, two times per month, which was not sufficient given the severity of L.S.'s behavior problems. She had significant behaviors and was reported to have been shutting down and not participating in class, being oppositional, not interacting with her peers and regressing in her skills. There were concerns regarding her mental health. Positive behavior implementations should have been identified to address these behaviors to avoid a meltdown or crisis situation. Her IEP should have contained a BIP.

Ms. Kingsbury reviewed Dr. O'Reilly's psychiatric report which factored into her evaluation. L.S. anxiety was so severe she did not want to leave home. She was hospitalized for self-injurious behavior and suicidal ideations. L.S. was diagnosed with post-traumatic stress disorder, depressive disorder and social anxiety disorder. ADHA and borderline personality disorder were also possible diagnoses that were considered that had to be ruled out. Ms. Kingsbury felt that there was a very strong possibility that L.S. suffers from a borderline personality disorder. These diagnoses interfered with her educational performance. L.S. feels persecuted and is not interacting with her peers and is noncompliant with her teachers and aides.

Ms. Kingsbury's clinical observations were that L.S. had little self-esteem and high levels of self-loathing. L.S. thinks she is stupid, has no confidence and gives up easily because she has no confidence in her abilities. She is hesitant to take risks because she thinks people would make fun of her. Ms. Kingsbury interviewed L.S. and L.S. does not

feel that she can be successful in her current school. Her perception is that she has been bullied and that she is not liked, respected or supported in school. L.S. tries to escape and does so by going into the bathroom.

On December 4, 2017 Ms. Kingsbury observed L.S. in her math class. L.S. was sitting in the back of the class with her aide. L.S. did not interact with anyone even the aide who L.S. rolled her eyes at when the aide gave her direction. L.S. was partnered with another child but did not acknowledge the other child. The aide was trying to assist L.S. L.S. left the room to go to the bathroom and appeared to be panicking. Ms. Kingsbury did not know whether it was because she was present, but L.S. did not come back to class for a while.

Ms. Kingsbury used the BASC rating form for L.S. and both her math teacher and parent filled out the form. L.S. scores were “clinically significant” for Depression, Internalizing problems, Withdrawal and Adaptability which means a follow up is warranted. L.S. scores were “at risk” for Anxiety, Attention problems, School problems, learning problems, Adaptive skills, Social Skills, Leadership, Study skills, and Functional communication which indicate that follow up may be necessary (P-11, page 4). L.S.’s teacher reported that L.S. has difficulty comprehending and completing schoolwork in a variety of academic areas. The parent ratings regarding behaviors fell at the “clinically significant” range compared to the teacher’s rating which fell more often at the ‘at risk’ level. The parent reported that L.S. displays a high number of disruptive, impulsive and uncontrolled behaviors.

The WISC-V test indicated that L.S. has excellent cognitive skills and her full-scale IQ was 113 which is in the high average range. She also was high average in her verbal comprehension, visual spatial skills, working memory and processing speed (P-11, page 7). The test of achievement is the Woodcock Johnson test and in math L.S. was performing at a 3.1 grade level - three grade levels below the average sixth grader (P-11, page 8). She probably always had a difficulty with math but as the material has gotten more difficult she has fallen more behind. L.S. does not have pre-algebra skills and has no skills regarding the order of operations in math. Math facts are rote learned.

L.S. misinterprets things that are said to her. She does not have a sense of identity and this is the age where children start to develop a peer group. L.S. is trying to be as different as possible when other children her age are trying to fit in and be more like each other and being more accepted. L.S. is going in the opposite direction. Ms. Kingsbury stated that she believes that L.S. has an irrational thought process in how she perceives things, others, herself and has a lot of cognitive distortions. She does not have coping mechanisms, and this is why she engages in cutting behavior. Most psychiatrists are hesitant to put the label of borderline personality disorder on a child of this age although L.S. has all the behaviors of a borderline personality disorder. She is not relating to anyone. This is impacting her education.

L.S.'s classroom aides should have known about L.S.'s IEP classification and history of trauma, self-inflicted injuries, suicidal ideations and hospitalization. The CST, the case manager and/or the building principal should have advised the aides. They are there to make the student's experience better and keep her safe. L.S. probably should have had only one aide given her difficulty relating to people and adjusting to new situations.

Ms. Kingsbury is familiar with the child find process. Typically, any person familiar with the student can commence the process. Usually the first process is the referral to the intervention and referral services prior to the referral to the CST. Ms. Kingsbury believes L.S. should have been referred to the CST sooner than she was. She reviewed the IEP dated June 12, 2017. She believes L.S. should have been referred to intervention services in the beginning of the school year when her mother reached out to the District regarding her math difficulties.

Ms. Kingsbury believes that L.S. needs an IEP based on the fact that her math skills are below grade level and her emotionality interferes with her ability to be successful academically and socially. Her IEP should have contained a Behavior Intervention Plan because of the number of behaviors. There was no strategy for dealing with L.S.'s behaviors or identification of the triggers, no behavioral reinforcement, nothing identified as to what to do if there was a crisis or what to do if she displayed cutting behaviors or

suicidal ideations. The District should have done a functional behavioral assessment. Counselling two times per month for the level of crisis L.S. exhibited was not sufficient.

Ms. Kingsbury made recommendations that L.S. be considered for a therapeutic school environment where she can get the appropriate counselling. This type of disability personality disorder responds to cognitive behavioral therapy. It is a more clinical behavior therapy than that which can be offered in a public school. She needs to be rewired in her way of thinking (P-11, page 16). Ms. Kingsbury outlined her recommendations for L.S. based on her psychological evaluation (P-11, page 17). She basically needs to go out-of-district to a place like the Princeton Behavioral Health Center or the Brookfield Academy.

On cross-examination, it was brought out that Ms. Kingsbury has testified four times as an expert at a due process hearing. She has represented both parents and districts equally and the subject matter concerned issues of eligibility, the appropriateness of an IEP and compensatory education. She has not previously recommended an out-of-district placement for a student before this case. She usually describes the type of environment she recommends without specifically stating an out-of-district placement was required or specifically what placement. Dr. Kingsbury reviewed the psychiatric report of Thomas O'Reilly M.D. and the IEP dated June 12, 2017 (P-11, page 2). She did not review the psychological report or the social assessment of L.S. that was done in May 2017. This was not provided to her. The June 12, 2017 IEP states that L.S. is currently placed in sixth grade and attends the Resource Math class one time daily for sixty minutes. L.S. is also placed in a special education multiple disabilities class for social studies two times per week. The school provides individual counselling services two times monthly for thirty-minute sessions. L.S. is eligible for special education and related services under the classification category "Emotionally Disturbed" (P-11, page 13).

Ms. Kingsbury had no specific critique of the IEP as set forth in the summary portion of her expert report (P-11, page 13). She makes recommendations as to what she believes is appropriate. She believes that L.S. needs a therapeutic setting the level of which is not available in most public -school settings. Also, L.S.'s placement in the multiple disabilities class is inappropriate with her IQ being in the high average range, no matter what the District's reason was for placing her there. The counselling services

offered at two times per month is inadequate for L.S. Ms. Kingsbury was not aware that the first time the mother sought a referral to the CST was January 31, 2017 (R-2). Her understanding was that L.S. was not referred to the CST even though she had trouble with math. The math resource room is more restrictive. Ms. Kingsbury reviewed the September 12, 2017 IEP that was offered but did not critique the September 12, 2017 before she recommended an out-of-district placement. The therapeutic intervention L.S. requires cannot be provided in the public school setting regardless of the academic placement. Interventions should have been done before now and at this point she needs a new environment where she can be supported and receive the counselling that she needs. Having an aide sitting next to her further isolates L.S. from her peers. She does not have a single friend in the school district. Ms. Kingsbury was asked whether she realized it was the parent who requested L.S. be assigned a one to one aide in August 2017, which she was.

A new IEP was drafted dated September 12, 2017 (R-19) which Ms. Kingsbury reviewed although she did not identify it in her report. She agreed that academically, the math resource room was appropriate to address L.S. math weaknesses. This IEP differs in that L.S. has behavior intervention services in a group and has special class multiple disabilities for study skills. The September 12, 2017 IEP offered counselling two times per week for eight times per month. There are more services offered in the September 12, 2017 IEP including the personal individual aid and behavior intervention services (R-19). Ms. Kingsbury stated that these services were without substance in that there was no BIP done for L.S.

Ms. Kingsbury was asked what led her to her conclusion that the September 12, 2017 IEP was inappropriate and that L.S. required an out-of-district placement. Ms. Kingsbury stated that the type of counselling L.S. needs cannot be delivered in the public-school setting in that L.S. needs cognitive behavioral therapy. L.S. feels that so much has occurred in her current setting with so little support that she has shut down and now needs a therapeutic environment where she feels supported and will take risks. Ms. Kingsbury explained that she is not saying that the District has not tried or that L.S.'s perceptions are accurate, but nevertheless these are L.S. perceptions that she is not supported in the school, that she does not have friendships, that people do not like her

and that she cannot succeed. To change these perceptions, Ms. Kingsbury is of the opinion that L.S. needs cognitive behavioral therapy, which to her knowledge, is not provided in any public school. A clinical psychologist or clinical counsellor trained in cognitive behavioral therapy would deliver these services. School counsellors are typically not trained in this area. Ms. Kingsbury was aware that L.S. had counselling with Kim Zaretsky and stated that L.S. did like Zaretsky but that she was still not feeling successful and did not want to come to school, no matter how many times L.S. saw Zaretsky for counselling.

The child has shut down and the opportunity to integrate L.S. into the school has passed. She needs a more therapeutic environment to turn things around before it is too late. She is eleven years old and is cutting herself. The child needs intensive help. She has already been in a psychiatric hospital for suicidal ideations. Ms. Kingsbury observed L.S. one time for eighty minutes. The teachers who have had L.S. have testified that she is a very good writer, she is social and an active participant in some of her classes. Ms. Kingsbury said that is not what L.S. or her mother reports. L.S. has an irrational thought process and there is some paranoia, irrational thinking, some feelings of persecution, elaboration and embellishment. Ms. Kingsbury agrees that this profile indicates that L.S. may be embellishing what L.S. perceives is happening in school, however it is still her perception. Ms. Kingsbury believed a child's perception and feelings are significant enough that they should be allowed to negate an IEP and allow the child to go to an out-of-district placement if it is so severe and is a personality disorder. She agrees that a district cannot allow a child to go out-of-district just because they do not like the school, that is not what she is saying. However, in Mrs. Kingsbury's opinion L.S. has an emerging borderline personality disorder and needs intensive help. Ms. Kingsbury is aware following L.S.'s return to school in early April 2017 after the psychiatric hospitalization, the District implemented interventions to address L.S. emotional needs. Ms. Kingsbury believes a Behavioral Intervention Plan should have been implemented and data collected to see what worked in limiting the problem behaviors. The whole child needs to be fixed not just the math problem by placing her in the math resource room. Also, the counselling should have been tied to goals and objectives and data should have been collected.

Ms. Kingsbury recommended L.S. be placed at the Brookfield Academy or Princeton Behavioral Health. She was not aware that the due process petition did not seek an out-of-district placement. She is suggesting a therapeutic placement which would be an out-of-district placement. L.S. is three years behind in math according to Ms. Kingsbury's testing that was done in December 2017, yet she was not comparing it to any previous testing, so it is unknown if L.S. actually 'regressed' in math.

On redirect examination, Ms. Kingsbury did not specifically recommend an out-of-district placement just that it be therapeutic, and the parties can decide where that might be depending on openings and consent of the parents. Usually she does not name a specific school in her report because it might not be available.

On June 12, 2017, the parent signed the IEP consent to implement and the IEP is implemented. Litigation does not revoke the consent as far as she was aware. Ms. Kingsbury believes L.S. needs a more restrictive placement. The District tried to implement a therapeutic placement, but L.S. needs more. Timeliness is another issue, but she believes the District tried to provide a therapeutic environment.

Credibility is the value a fact finder assigns to the testimony of a witness, and it contemplates an overall assessment of the witness's story considering its rationality, consistency, and how it comports with other evidence. Carbo v. United States, 314 F.2d 718 (9th Cir. 1963); see In re Polk, 90 N.J. 550 (1982). Credibility findings "are often influenced by matters such as observations of the character and demeanor of witnesses and common human experience that are not transmitted by the record." State v. Locurto, 157 N.J. 463 (1999). A fact finder is expected to base decisions on credibility on his or her common sense, intuition or experience. Barnes v. United States, 412 U.S. 837 (1973). A trier of fact may reject testimony because it is inherently incredible, or because it is inconsistent with other testimony or with common experience, or because it is overborne by other testimony. Congleton v. Pura-Tex Stone Corp., 53 N.J. Super 282, 287 (App. Div. 1958).

K.S. testified credibly, however she had no first-hand knowledge as to what transpired in school aside from what was relayed to her by her daughter, L.S. Likewise,

C.O. was also a credible witness, but had no direct knowledge as to what went on in school. Petitioner's expert, Ms. Kingsbury testified credibly, but relied on what was relayed to her by K.S. and L.S. Ms. Kingsbury did testify that L.S. has an irrational thought process, feelings of persecution and some paranoia and that L.S. may be embellishing what L.S. perceives is happening in school. L.S. misinterprets things that are said to her and has a lot of cognitive distortions.

The District employees all testified credibly and were familiar with the facts and their respective direct contacts with L.S. throughout the school day as well as their direct contacts with K.S. regarding her parental concerns. The testimony was detailed as far as L.S.'s performance in school; L.S.'s interactions with her teachers, aides and peers; L.S.'s history and emotional decline; and the various interventions and proposals made by the District to address L.S.'s educational and social/emotional needs.

Based upon due consideration of the testimonial and documentary evidence presented at this hearing, and having had the opportunity to observe the demeanor of the witnesses and assess their credibility, I **FIND** the following in addition to the stipulated **FACTS**:

L.S. had been under the care of a therapist as well as a psychiatric nurse for a number of years as a result of a sexual assault by her step-brother when L.S. was seven years old.

L.S. started fifth grade in respondent's district in September 2016 when her and her mother K.S. moved in with her mother's boyfriend, C.O., who also had three children.

Ms. Harvey, the guidance counsellor, addressed K.S.'s concerns of an incident involving L.S. and another student in October 2016.

The District found that evaluations were not warranted at the initial identification and planning meeting held on February 27, 2017 as L.S. teachers did not find that L.S. was having any great difficulty educationally and she was performing at grade level even

in math, which was the area in which L.S.'s mother had expressed concern. L.S. emotional issues were being addressed outside the school setting. L.S. had been seeing a therapist, Barbara Lamb weekly and was also being treated by a nurse practitioner who prescribed psychiatric medications for L.S.

The District provided I&RS to L.S. including counselling services with Ms. Zaretsky which began February 28, 2017 and continued through December 14, 2017. Ms. Zaretsky maintained a written log of her contacts with L.S. (R-5, J-2). Additional recommendations were made to have L.S. tutored by the math teacher and receive assistance in math during the encore period.

Ms. Zaretsky provided numerous counselling sessions to L.S. whenever L.S. needed to come see her. On or about March 23, 2017, L.S. was significantly more depressed and Ms. Zaretsky contacted K.S. to discuss having L.S. evaluated for a partial care program. Ms. Zaretsky had also learned that L.S. had been engaging in self-injurious behavior. Ms. Zaretsky continued to meet with L.S. on March 28, 29 and 30 for support. On April 3, 2017 Ms. Zaretsky had a three-hour counselling session with L.S. wherein L.S. was very depressed and Ms. Zaretsky had concerns for L.S.'s safety. Ms. Zaretsky contacted K.S. to come to school and take L.S. for a psychiatric evaluation. L.S. was hospitalized for suicidal ideations at Inspira Hospital's Bridgeton, New Jersey in-patient psychiatric unit from April 6 to April 10, 2017.

On April 3, 2017 L.S. identified the students she claimed were harassing her since October 2016 and Ms. Zaretsky took L.S. to meet with the principal, Kevin Morrison and the guidance counsellor, Lisa Harvey, the anti-bullying specialist for the school. An HIB investigation was conducted by Ms. Harvey and a report prepared dated April 13, 2017. Ms. Harvey was not able to corroborate what L.S. reported. The principal agreed with Ms. Harvey's findings that this was not a HIB incident. The report was sent to the superintendent and then to the school board. The parents were notified of an investigation and the results of same. There is an avenue of appeal if a parent is not satisfied with the investigation. K.S. did not file an appeal.

Following L.S.'s return to school following her psychiatric hospitalization, the district implemented various measures in an effort to make L.S. feel safe including a specialized lunch arrangement; continuation of daily counselling; rearrangement of her core classes to a morning schedule so that L.S. could attend the IOP program at Atlanticare in the afternoon; no requirement to attend gym class if L.S. felt uncomfortable; and allowing her to stay later after class and be a little late for her next class in order for her to transition in empty or clear hallways. The principal assigned Mrs. Sotak and Ms. Blum as aides to escort L.S. to her classes, specials and lunch. Mr. Morrison was also careful to separate the students L.S. claimed were bothering her away from L.S. Also, L.S.'s math class was switched to a basic skills class which has an extra teacher present in the class to offer additional instruction and support.

Following L.S.'s psychiatric hospitalization, the District reconvened an initial identification and evaluation meeting on May 8, 2017 and found that evaluations of L.S. were warranted. Social history, educational, psychological and psychiatric evaluations were found to be warranted and subsequently conducted. On June 12, 2017 an initial eligibility and IEP development meeting was conducted and L.S. was deemed eligible for special education and related services under the classification of "Emotionally Disturbed". K.S. consented to the June 12, 2017 IEP developed at that meeting (R-15). The pull-out resource math class was the only special education class recommended by the IEP team. The remainder of L.S.'s academic core courses were to remain in the general education setting. Counselling services were recommended. A recommendation was made that L.S. be placed in the multiple disabilities class for social studies more for emotional support than academic support as Ms. Duran was a special education teacher familiar with children with emotional and behavioral problems and could assist L.S.

L.S. is a talented and creative writer, does well in her classes, except she struggles with math. L.S.'s fifth grade report card for the 2016–2017 school year indicated that her final grade in math was a "C"; health was a "B"; Spanish was a "B+"; ELA was an "A"; science a "C"; and social studies a "B+" (R-16). She does have friends she socializes with in class and gym. She is an active participant in some of her classes.

L.S. was not disruptive in class and did not exhibit any behaviors that interfered with the learning of others in the classroom.

L.S.'s disability affected her involvement and progress in the general education curriculum and impeded her learning (R-19, page 6). L.S. was found to need a program that would fit her emotional needs. She was displaying emotional concerns where L.S. may appear to be disinterested in participating and unmotivated in completing school work. She also presented with a depressed mood and school related anxiety. Her performance in the classroom was inconsistent which warranted the need for specialized programming that provided consistency with interventions to her social/emotional needs (R-19, page 6). Appropriate strategies and supports were included in the Modifications and Supplementary Aids and Services section of the IEP (R-19, pages 10 – 11).

L.S. was not placed in a pull-out resource math class in September 2017 as was called for in the June 12, 2017 IEP. The pull-out math class is a much smaller group and is a special education math class taught by a special education teacher. There is more one on one attention and the class move at a slower pace. L.S. remained in the general education basic skills math class for sixth grade even though K.S. consented to the implementation of the June 12, 2017 IEP and never revoked her consent.

Another IEP meeting was convened on September 12, 2017 after the parties were in receipt of the psychiatric evaluation of Dr. O'Reilly (R-19). Dr. O'Reilly diagnosed L.S. with Post Traumatic Stress Disorder, depression and anxiety.

All of Dr. O'Reilly's recommendations that were the school's responsibility were incorporated into the September 12, 2017 IEP (R-19). The revised IEP again classified L.S. as "Emotionally Disturbed" and again recommended a pull-out replacement special education math class for L.S. The IEP provided for two part-time personal aides, one in the morning and one in the afternoon, to shadow L.S., monitor interactions and assist her in social settings, during transitions and in the classroom. The aides assisted L.S. throughout the school day, from the time L.S. arrived at school in the morning until she was picked up at the end of the school day. This IEP was offered to be implemented for the 2017–2018 school year. The first page of the IEP had a section entitled "Special

Alerts” which stated that L.S. would have supervision to avoid contact with a student that has triggered emotional distress in the past. L.S. would start her day in the self-contained multiply disabled program with Mrs. Doran for fifteen minutes to provide L.S. with a transition period from home, help organize her day and provide her with a safe space if needed (R-19, page 1). The summary of special education programs and related services to be provided to L.S. included the following: L.S. was also to receive a pull-out resource replacement math class once a day for sixty minutes daily from September 4, 2017 through June 11, 2018. This was the same math pull-out resource math class that was offered in the June IEP for the same reasons (R-19, page 2). L.S. was also to be placed in the special class multiple disabilities for study skills once daily for forty minutes. This was an opportunity for L.S. to go into Mrs. Doran’s classroom for help in any academic subject in which she needed help. L.S. was also assigned two part-time personal aides every day for 210 minutes each. She was also to receive individual counseling services twice a week for thirty minutes with Ms. Zaretsky. She could also see her more if the need arose. Prior to this September 12, 2017 IEP, Mrs. Zaretsky had been seeing L.S. for counselling services since February 28, 2017. L.S. was also to receive behavioral intervention services in a group, once daily for fifteen minutes. This was for support for L.S. to check in with Mrs. Doran and set the tone for the day and assist her in any needs she may have prior to the school day starting (R-19, page 2). K.S. has not consented to the implementation of the September 12, 2017 IEP.

Chelsea Ingram is the morning personal aide for L.S. She has a Masters’ in psychology and is currently pursuing her education specialist degree from Rowan University. She accompanies L.S. to all of her classes, in the hallway and to the bathroom. She meets L.S. as soon as L.S. arrives at school and provides her with any guidance that L.S. needs and is there as a resource for L.S. Jennifer Turon is the afternoon personal aide assigned to L.S. who also shadows L.S. and makes sure she is safe. She also assists L.S. with instructional and non-instructional activities. Ms. Turon has been a substitute teacher and a basic skills instructor for eighth grade math and ELA at the Northfield school. She is certified to teach kindergarten through eighth grade in New Jersey.

Ms. Ingram and Ms. Turon have not observed or heard any one act inappropriately to L.S. at any time.

Kim Zaretsky, the school social worker and case manager for respondent was accepted as an expert in the development, implementation and evaluation of special education programs on behalf of educationally disabled children. In Ms. Zaretsky's expert opinion, based upon all of the educational data available on September 12, 2017, the September 12, 2017 IEP offered was appropriate to meet L.S.'s special education needs.

Ms. Kingsbury, petitioner's expert was accepted as an expert in special education and school psychology. She testified that usually the first step in the process is to refer a child for I&RS before a referral to the CST is made.

Ms. Kingsbury testified that L.S. misinterprets things that are said to her and has an irrational thought process in how she perceives things, others and herself. L.S. has a lot of cognitive distortions.

Ms. Kingsbury believes that L.S. has an emerging borderline personality disorder and that this type of disability personality disorder responds to cognitive behavioral therapy. It is more clinical and therapeutic than can be offered in a public school. A clinical psychologist or clinical counsellor trained in cognitive behavioral therapy would deliver these services. School counsellors are typically not trained in this area.

Ms. Kingsbury agreed that academically, the math resource room was appropriate to address L.S. math weaknesses, however the therapeutic intervention L.S. requires cannot be provided in the public school setting regardless of the academic placement. Ms. Kingsbury believed that the District tried to provide a therapeutic environment for L.S.

Dr. O'Reilly recommended, among other things, that L.S. have evidenced-based treatment for post-traumatic stress disorder including trauma focused cognitive behavioral therapy. L.S. should have a therapist who has expertise in this type of therapy (R-17, page 6). This recommendation was considered a parental responsibility.

LEGAL ANALYSIS AND CONCLUSION

State and federal laws require local public-school districts to identify, classify and provide a free and appropriate public education (FAPE) to children with disabilities. 20 U.S.C.A. § 1412; N.J.S.A. 18A:46-8, -9. As a recipient of federal funds under the IDEA, the State of New Jersey has a policy that assures all children with disabilities the right to FAPE. 20 U.S.C.A. § 1412. The responsibility to provide FAPE, including special education and related services, rests with the local public-school district. 20 U.S.C.A. § 1401(9); N.J.A.C. 6A:14-1.1(d). In accordance with N.J.S.A. 18A:46-1.1, the burden of proving that FAPE has been offered likewise rests with school personnel. FAPE is an education that is “specially designed to meet the unique needs of the handicapped child, supported by such services as are necessary to permit the child to benefit from the instruction. G.B. v. Bridgewater-Raritan Reg’l Bd. of Educ., 2009 U.S. Dist. LEXIS 15671, *5 (D.N.J. Feb. 27, 2009) (citing Hendrick Hudson Cent. Sch. Dist. Bd. of Educ. v. Rowley, 458 U.S. 176, 189, 102 S. Ct. 3034, 3042, 73 L. Ed. 2d 690, 701 (1982)). FAPE includes special education and related services that are provided at public expense under public supervision and direction and without charge; that meet the standards of the State Educational Agency; that include an appropriate preschool, elementary and secondary school education; and that are provided in conformity with an IEP as required under 20 U.S.C.A. § 1414(d).

In order to provide a FAPE, a school district must develop and implement an IEP. N.J.A.C. 6A:14-3.7. An IEP is “a comprehensive statement of the educational needs of a handicapped child and the specially designed instruction and related services to be employed to meet those needs.” Sch. Comm. of Burlington v. Dep’t of Educ. of Mass., 471 U.S. 359, 368, 105 S. Ct. 1996, 2002, 85 L. Ed. 2d 385, 394 (1985).

The IEP is an agreement between the parties that specifies how special education and related services will be delivered. 20 U.S.C. § 1414(d)(1)(A). It is the vehicle through which a child receives FAPE. D.S. v. Bayonne Bd. of Educ., 602 F.3d 553, 557 (2010); Lascari v. Bd. of Educ. of the Ramapo-Indian Hills Reg’l Sch. Dist., 116 N.J. 30 (1989). A meeting to develop the IEP must be held within thirty calendar days of a determination

that a student is eligible for special education and related services. N.J.A.C. 6A:14-3.7(a). The regulation goes on to provide that:

An IEP shall be in effect before special education and related services are provided to a student with a disability and such IEP shall be implemented as soon as possible following the IEP meeting . . . at the beginning of each school year, the district board of education shall have in effect an IEP for every student who is receiving special education and related services from the District

[N.J.A.C. 6A:14-3.7(a)(10).]

Federal law is complied with when a local school board provides a handicapped child with a personalized education program and sufficient support services to confer some educational benefits on the child. Rowley. In Rowley the Court determined that although the Act mandates that states provide a certain level of education, it does not require states to provide services that necessarily maximize a disabled child's potential. Instead, the IDEA requires a school district to provide a basic floor of opportunity. Carlisle Area Sch. v. Scott P., 62 F.3d 520, 533-34 (3d Cir. 1995). While our courts have consistently held that the IDEA does not mandate an optimal level of services, an IEP must provide meaningful access to education, and confer some educational benefit upon the child. Rowley, 458 U.S. at 192. In order to be appropriate, the educational benefit conferred must be more than trivial. Ridgewood Bd. of Educ. v. N.E., 172 F.3d 238 (3d Cir. 1999). The central legal issue is whether the educational services and program offered are sufficient to confer an educational benefit that is meaningful and significant and, therefore, not de minimus, in nature. Lascari v. Ramapo Indian Hills Regional Sch. Dist., 116 N.J. 30 (1989). To meet its obligation to deliver FAPE, a school district must offer an IEP that is reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. Endrew F. v. Douglas Cnty. Sch. Dist., 580 U.S. (2017); 137 S.Ct. 988; 197 LEd 2d 335.

The educational opportunities provided by a public-school system will differ from student to student, based upon the "myriad of factors that might affect a particular student's ability to assimilate information presented in the classroom." Rowley, 458 U.S.

at 198. The Rowley Court recognized that measuring educational benefit is a fact-sensitive, highly individualized inquiry, and that “[i]t is clear that the benefits obtainable by children at one end of the spectrum will differ dramatically from those obtainable by children at the other end, with infinite variation in-between.” Id. at 202.

The IDEA also includes a mainstreaming requirement requiring education in the “least restrictive environment.” 20 U.S.C.A. § 1412(a)(5) mandates that

[t]o the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

The law describes a continuum of placement options, ranging from mainstreaming in a regular public school setting as least restrictive, to enrollment in a residential private school as most restrictive. 34 C.F.R. § 300.115 (2015); N.J.A.C. 6A:14-4.3. Federal regulations further require that placement must be “as close as possible to the child’s home.” 34 C.F.R. § 300.116(b)(3) (2015); N.J.A.C. 6A:14-4.2; Oberti v. Clementon Bd. of Educ., 789 F. Supp. 1322 (D.N.J. 1992).

Courts in this Circuit have interpreted this mainstreaming requirement as mandating education in the least restrictive environment that will provide meaningful educational benefit. “The least restrictive environment is the one that, to the greatest extent possible, satisfactorily educates disabled children together with children who are not disabled, in the same school the disabled child would attend if the child were not disabled.” Carlisle Area Sch. v. Scott P., 62 F.3d 520, 535 (3d Cir. 1995), cert. den. sub. nom., Scott P. v. Carlisle Area Sch. Dist., 517 U.S. 1135, 116 S. Ct. 1419, 134 L. Ed. 2d 544 (1996).

L.S. was classified as emotionally disturbed and deemed eligible to receive special education and related services at the June 12, 2017 IEP meeting following social, psychological and educational evaluations. The IEP team found that the only academic

subject that L.S. required a special education class was for math, an area in which she had demonstrated weakness. The District recommended the special education pull-out replacement class for math be provided in that the class is smaller, moves at a slower pace, provides for more one on one instruction and is taught by a special education teacher. The general education class for mathematics with in class support was considered by the IEP team and deemed not adequate for L.S. Although L.S. displayed slight delays in math, her emotional approach to math tasks prevented her from being able to complete tasks without considerable help. L.S. often verbalized that she was incapable of completing math assignments and her self-esteem was affected as a result. Therefore, it was determined that L.S. would benefit from the small group special education learning resource pull-out program for math. The September 12, 2017 IEP likewise called for the special education pull-out replacement class for math and included the recommendations contained in the psychiatric evaluation of Dr. O'Reilly that was received after the June 12, 2017 IEP meeting. Aside from the pull-out replacement class for math, the remainder of L.S.'s classes were to remain in the general education setting which was the least restrictive environment in that she continued to be educated with her non-disabled peers. L.S. was intelligent and would thrive in the general education setting.

The extensive record in this case supports the fact that that the District made a good faith effort to comply with all applicable laws. The District was responsive to all concerns raised by K.S. regarding L.S. The District went to great lengths to ensure that L.S. felt supported and safe in school by providing counselling services and the one to one aides. The evaluations conducted by the District following L.S.'s psychiatric hospitalization was reasonable and appropriate to determine L.S.'s suspected disability and her needs. The proposed IEP of September 12, 2017 was reasonable and appropriate to meet L.S. special education needs.

Based upon the testimony and documentary evidence, I **CONCLUDE** that the District provided L.S. with FAPE, in that the proposed September 12, 2017 IEP was appropriate to meet L.S.'s educational needs for the 2017-2018 school year and was reasonably calculated to enable L.S. to make progress appropriate in light of her circumstances in the least restrictive environment.

Petitioner's request for an independent Functional Behavioral Assessment (FBA)

Petitioner seeks to compel the District to obtain an FBA of L.S. The CST determined that the necessary evaluations required to be conducted to determine whether L.S. was a student with a disability in need of special education and related services were a Social history, Educational, Psychological and Psychiatric evaluation. These evaluations were all performed and considered in devising the September 12, 2017 IEP. A functional behavior assessment was not conducted, and a behavior intervention plan was not determined to be required. The IEP team considered the fact that L.S.'s performance in the classroom was inconsistent which warranted the need for specialized programming that provided consistency with interventions to her social/emotional needs (R-19, page 6). Appropriate strategies and supports were included in the Modifications and Supplementary Aids and Services section of the IEP (R-19, pages 10 – 11).

Functional behavior assessments and behavior intervention plans are not required components of the IEP under 34 CFR 300.320. 71 Fed Reg. 46,629 (2006). In developing an IEP, the IDEA requires that the IEP team address behavior management whenever a student's behavior is interfering with the child's ability to benefit from his educational programming. Specifically, the IDEA states that the IEP team must consider the child's need for the use of "positive behavioral interventions and supports" in the case of a student with a disability whose "behavior impedes his learning or that of others." 34 CFR 300.324 (a)(2)(i). While an FBA may help the IEP team address behavioral issues, the IDEA does not require the IEP team to conduct an FBA in order to meet this requirement. 71 Fed Reg. 46,683 (2006). The IDEA's only mention of the functional behavior assessment method is in 20 U.S.C. § 1415(k)(1)(D) which requires use of that technique when a disabled student, who is already being educated pursuant to an IEP, continues to exhibit behavioral problems. This neither precludes nor requires use of a functional behavior assessment in initial disability evaluations. As with all evaluations, the component testing mechanisms must be determined on a case-by-case basis depending on the suspected disability and the student's needs. See 20 U.S.C. § 1414(b)(2)(A) – (C); 34 C.F.R. § 300.304(b)(1) – (3).

Therefore, I **CONCLUDE** that petitioner is not entitled to an independent FBA of L.S.

Child Find Claim

Petitioner parent also alleges claims against the District arising from the requirement in Federal Law that local public-school districts locate and identify children in need of special education services. Known as “child find,” the requirements of 20 U.S.C. §1412(a)(3)(A) provide for the implementation of policies and procedures designed to ensure that “[a]ll children with disabilities residing in the State, ...regardless of the severity of their disabilities, and who are in need of special education and related services, are identified, located and evaluated...” See also: 34 C.F.R. §300.111; N.J.A.C. 6A:14-3.3.

Respondent had a continuing obligation under the IDEA to identify and evaluate students reasonably suspected of having a disability. P.P. ex rel. Michael P. v. West Chester Area Sch. Dist., 585 F.3d 727, 738 (3d Cir. 2009). But case law interpreting this obligation has recognized that it is not, and cannot be, the intent of the law that school districts locate and service each and every struggling student. The courts have recognized that “the IDEA is not an absolute liability statute and the ‘child find’ provision does not ensure that every child with a disability will be found.” J.S. v Scarsdale Union Free Sch. Dist., 826 F. Supp. 2d 635, 660(S.D.N.Y. 2011), quoting A.P. v. Woodstock Bd. of Educ., 572 F. Supp. 2d 221 (D.C. Ct. 2008). The courts have moreover recognized that where a disability is not clear, the student or her parents have some obligation to bring their concerns to the school district’s attention. See e.g. B.J. v River Vale Bd. of Educ., EDS 1335-06, Final Decision (June 19, 2007) <http://njlaw.rutgers.edu/collections/oal/>>.

Petitioner’s arguments that the District failed to meet its obligations to timely identify L.S. as a special education student are not persuasive. L.S. was new to the District when she started fifth grade in September 2016 in the general education setting. She had not been previously classified as eligible for special education and related services in her prior school district. She was performing at grade level in all of her subjects although she struggled in math. In October 2016, K.S. contacted Ms. Harvey about an incident in school involving L.S. and a boy in her homeroom who allegedly told L.S. to kill herself. K.S. advised Ms. Harvey that L.S. has been going through a lot in her life and had engaged in self-harm in the past (P-16, page 3). Ms. Harvey responded back

to K.S. the same day advising that she had spoken with the children involved and they denied saying that. Ms. Harvey advised the children that talks of death and suicide are delicate and should be handled with sensitivity.

L.S. was referred to the CST by her mother on January 31, 2017. At an initial identification and planning meeting held on February 27, 2017, the CST found that evaluations were not warranted at that time and recommended I&RS for L.S. as well as seeing a pediatrician regarding ADD or ADHD. She was performing at grade level or above in her general education classes for social studies, science and ELA, but was struggling in math and had emotional issues. L.S. had been under the care of a therapist who she had been seeing for two years. It was agreed that the CST would meet again if the intervention services were not effective.

Ms. Zaretsky began providing counselling services to L.S. as part of the I&RS beginning on February 28, 2017. Following L.S.'s psychiatric hospitalization on April 6, 2017 for suicidal ideations, the District had concerns for L.S. educational and emotional needs and reconvened an initial identification and evaluation planning meeting of the CST to determine what evaluations were appropriate for K.S. The CST meeting occurred on May 8, 2017 and the District determined that social history, educational, psychological and psychiatric evaluations were warranted to determine if L.S. had a disability. On June 12, 2017 the District conducted an initial eligibility meeting and determined that L.S. was eligible to receive special education and related services under the classification of "Emotionally Disturbed". The District acted promptly and appropriately with the information known to it at the time and completed the evaluations and developed an IEP in less than the ninety days allowed to accomplish same.

I **CONCLUDE** that the District has met its "child find" obligations set forth in the IDEA in identifying and classifying L.S. as a student in need of special education and related services.

Compensatory Education

Petitioner also seeks compensatory education. L.S. was found eligible for special education and related services and an IEP dated June 12, 2017 was offered by the District and consented to by the parent, K.S. on the same date. The June 12, 2017 IEP provided that L.S. would receive a pull-out Resource Replacement for Math, once per day for sixty minutes from September 4, 2017 – June 11, 2018 (R-15, page 1). Petitioner filed a due process petition on June 29, 2017 (J-4, paragraph 28) after having consented to the June 12, 2017 IEP. Petitioner then filed an amended due process petition November 3, 2017. L.S. has remained in a general education math class for the 2017-2018 academic year.

The “stay-put” provision under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C.A. § 1400, et seq. provides in relevant part that “during the pendency of any proceedings conducted pursuant to this section, unless the State or local educational agency and the parents otherwise agree, the child shall remain in the then-current educational placement of the child.” 20 U.S.C.A. § 1415(j).

The relevant IDEA regulation and its counterpart in the New Jersey Administrative Code reinforce that a child remain in his or her current educational placement “during the pendency of any administrative or judicial proceeding regarding a due process complaint.” 34 C.F.R. § 300.518(a) (2016); N.J.A.C. 6A:14-2.7(u). The stay-put provisions’ purpose is to maintain the status quo for the child while the dispute over the IEP remains unresolved. Ringwood Bd. of Educ. v. K.H.J., 469 F.Supp.2d 267, 270–71 (D.N.J. 2006).

As the term “current educational placement” is not defined within the IDEA, the Third Circuit standard is that “the dispositive factor in deciding a child’s ‘current educational placement’ should be the [IEP] . . . actually functioning when the ‘stay put’ is invoked.” Drinker v. Colonial Sch. Dist., 78 F.3d 859, 867 (3d Cir. 1996) (citing the unpublished Woods ex rel. T.W. v. N.J. Dep’t of Educ., No. 93-5123, 20 IDELR 439, 440 (3d Cir. Sept. 17, 1993)); see also Susquenita Sch. Dist. v. Raelee S. by Heidi S. & Byron S., 96 F.3d 78, 83 (3d Cir. 1996) (restating the standard that the terms of the IEP are dispositive of the student’s “current educational placement”). The Third Circuit stressed that the stay-put provision of the IDEA assures stability and consistency in the student’s education by preserving the status quo of the student’s current educational placement until the proceedings under the IDEA are finalized. Drinker, 78 F.3d 859.

The June 12, 2017 IEP was consented to by the parent, K.S. on June 12, 2017. Both parties agreed that since there were only a few days left in the school year, the June 12, 2017 IEP would be implemented on the first day of school in September 2017. It is clear that the last agreed upon placement for L.S. was in the special education pull-out replacement math class, despite petitioner's filing for due process.

The placement in effect for L.S. when the request for due process was made was the pull-out replacement class for math, yet L.S. remained in the general education math class. The proposed IEP dated September 12, 2017 likewise called for the pull-out replacement class for math, but that IEP has not been implemented since petitioner has not consented to same. There was ample testimony that the special education pull-out replacement class for math was the appropriate class for L.S. Since the June 12, 2017 IEP in effect as of the date of the filing of the due process petition called for L.S.'s placement in the pull-out replacement class for math it was the last agreed upon placement. L.S. should have been receiving her math instruction as of September 4, 2017 in the special education pull-out replacement math class.

I **CONCLUDE** that petitioner is entitled to compensatory education for math instruction.

Out-of-District Placement –

Petitioner's expert, Ms. Kingsbury has recommended that L.S. be placed in a therapeutic setting where she can receive cognitive behavioral therapy. Although her expert report did not specifically make an out of district recommendation, Ms. Kingsbury testified that cognitive behavioral therapy is something that is not provided in the public schools. That is the reason she testified that an out-of-district placement would be necessary. However, petitioner did not plead an out-of-district placement as the relief sought in her due process petition filed June 29, 2017 or in the subsequent amended due process petition filed November 3, 2017. The regulations provide that "[a] request for due process hearing...serves as notice to the respondent of the issues in the due process complaint." N.J.A.C. 6A:14-2.7(f). This notice is especially important because in New

Jersey, the school district has the burden of proof and the burden of moving forward. See: N.J.S.A. 18A:46-1.1. Pursuant to N.J.A.C. 6A:14-2.7(i), a petition of appeal can be amended with consent of the Board, or via application to the Administrative Law Judge. The District has not consented to any amendment of the due process complaint to include as relief a request for an out-of-district placement and in fact has gone to great lengths throughout the course of this hearing to point out that no such relief was requested and therefore was precluded. In addition, Petitioner has not filed any application to amend her petition.

Accordingly, I **CONCLUDE** that the petitioner is not entitled to an order directing an out-of-district placement for L.S.

Reimbursement for Expert Fees –

Petitioner also seeks reimbursement for the expert fees incurred in the hiring of her expert, Ms. Janice Wills Kingsbury, who prepared a psychological evaluation of L.S. The OAL does not have the authority to award expert fees as relief to petitioner. As one ALJ has explained,

[t]he general rule is that parties to litigation bear their own costs. The IDEA provides an exception to that rule and allows “the court” discretion to award reasonable attorney’s fees as part of costs to parents of a child with a disability where they prevail in IDEA-based litigation. 20 U.S.C.A. § 1415(i)(3)(B). See also John T. ex rel. Paul T. v. Delaware Cnty. Intermediate Unit, 318 F.3d 545, 555 (3d Cir. 2003) (citations omitted) and J.H.R. v. Bd. of Educ. of East Brunswick, 308 N.J. Super. 100 (App. Div. 1998), holding that the Superior Court also has subject matter jurisdiction to consider a prevailing parent’s claim for attorney’s fees under IDEA. Note, that in Arlington Cent. Sch. Dist. Board of Educ. v. Murphy, 548 U.S. (2006), the Supreme Court held that, while pursuant to 20 U.S.C.A. § 1415(i)(3)(B), Courts have discretion to award reasonable attorney’s fees to prevailing parents, the IDEA does not allow such parents to recover fees for services rendered by experts. (Arlington Central School District essentially reverses Chang v. Bd. of Educ. of Glen Ridge Twp., 685 F. Supp. 96 (U.S.D.C. N.J. 1988), to the extent that that earlier district court decision allowed expert witness fees

to parents who prevailed relative to placement of their handicapped child.)

Pursuant to the above-cited N.J.A.C. 6A:14-2.7(a), ALJs have authority to decide certain issues in Special Education cases. However, the OAL is part of the executive, not the judicial, branch and the OAL is not a "court" within the intent of the above-cited section of the IDEA. ALJs are executive branch judges. Consequently, ALJs do not have authority to grant claims for attorney's (or expert's) fees in Special Education cases. See N.J.S.A. 52:14F-1, -4.

[W.Z. ex rel. G.Z. v. Princeton Reg'l Bd. of Educ., EDS 2563-07, Decision (April 26, 2007), <<http://njlaw.rutgers.edu/collections/oal/>>.]

Therefore, I **CONCLUDE** that petitioner's claims for reimbursement of Ms. Kingsbury's fees are denied.

ORDER

Based on the foregoing, petitioner K.S.'s request for due process is **DENIED** and the petition is **DISMISSED**, except that petitioner's request for compensatory education for the deprivation of the pull-out replacement math instruction from September 4, 2017 is **GRANTED**. The District's petition denying petitioner's request for independent evaluations is **GRANTED**.

This decision is final pursuant to 20 U.S.C. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2018) 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 (2018). 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 Programs.

January 28, 2019

DATE

CATHERINE A. TUOHY, ALJ

Date Received at Agency:

January 28, 2019 (emailed)

Date Mailed to Parties:

January 28, 2019 (emailed)

/mel

APPENDIX

Witnesses

For Petitioner:

Brooke Parsons
Lisa Harvey
C.O.
K.S.
Janice Wills-Kingsbury

For Respondent:

Kim Zaretsky
Chelsey Ingram
Jennifer Turon
Linda Levitt Doyle
Kristen Polak

Exhibits

Joint:

- J-1 February 1, 2017 notice from Vicky Georges to K.S.; February 27, 2017 notice from Kim Zaretsky to K.S.; April 11, 2017 letter from Vicky Georges to K.S.; April 24, 2017 notice by Vicky Georges to K.S.; May 8, 2017 notice from Kim Zaretsky to K.S.; May 9, 2017 notice from Kim Zaretsky to K.S.; and June 6, 2017 letter from Janice Albrecht to L.S. (twenty pages)
- J-2 Contact Log of Kim Zaretsky regarding counselling sessions with L.S. (twenty-one pages)
- J-3 September 12, 2017 IEP (eighteen pages)
- J-4 Stipulation of Facts (six pages)

For Petitioner:

- P-9 Northfield Community School District HIB Policy Reporting Form (twenty-five pages)
- P-10 C.V. of Janice Wills-Kingsbury (three pages)
- P-11 Psychological Evaluation of Janice Wills-Kingsbury, The Learning Well, L.L.C. (twenty pages)
- P-12 BASC 3 Evaluation (two pages)
- P-13 Various emails between K.S. and L.S. (twenty-three pages)
- P-14 Letter from L.S. dated December 6, 2017 (two pages)
- P-16 Emails between parent and the District (sixty-five pages)

For Respondent:

- R-1 Resume of Kim Zaretsky (two pages)
- R-2 January 31, 2017 email from K.S. to L.S.
- R-3 February 1, 2017 notice from Vicky Georges to K.S. (three pages)
- R-4 February 27, 2017 notice from Kim Zaretsky to K.S. (four pages)
- R-5 (J-2) Contact Log of Kim Zaretsky regarding counselling sessions with L.S. (twenty-one pages)
- R-6 (J-1) April 11, 2017 letter from Vicky Georges to K.S.
- R-7 (J-1) April 24, 2017 notice by Vicky Georges to K.S. (three pages)
- R-8 (J-1) May 8, 2017 notice from Kim Zaretsky to K.S. (five pages)
- R-9 (J-1) May 9, 2017 notice from Kim Zaretsky to K.S. (three pages)
- R-10 Social Assessment by Kim Zaretsky dated May 10, 2017 (three pages)
- R-11 Confidential Learning Evaluation by Brooke Parsons, LDT-C, dated May 17, 2017 (ten pages)
- R-12 Psychological Report by Vicky Georges, dated May 24, 2017 (seven pages)
- R-14 June 12, 2017 Eligibility Statement Written Summary
- R-15 June 12, 2017 Initial IEP signed by parent (fifteen pages)
- R-16 L.S. Fifth grade report card 2016-2017 (two pages)

- R-17 Psychiatric Evaluation by Thomas C. O'Reilly, M.D. dated July 6, 2017 (six pages)
- R-18 September 12, 2017 Eligibility Statement Written Summary (three pages)
- R-19 (J-3) September 12, 2017 2nd Initial IEP provided to K.S. (eighteen pages)
- R-21 Resume of Linda Doyle (three pages)
- R-22 Resume of Kristin Polak (two pages)
- R-24 Resume of Chelsey Ingram
- R-25 Resume of Jennifer Turon
- R-28 2016-2017 Student Daily Attendance Report (five pages)