



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

**FINAL DECISION**

**TEANECK BOARD OF EDUCATION,**

Petitioner,

v.

**A.L. AND I.L. ON BEHALF OF L.L.,**

Respondents.

OAL DKT. No. EDS 08205-18

AGENCY DKT. NO. 2019-28092

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**A.L. and I.L. ON BEHALF OF L.L.,**

Petitioners,

v.

**TEANECK BOARD OF EDUCATION,**

Respondent.

OAL DKT. NO. EDS 08213-18

AGENCY DKT. NO. 2018-27988

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**Beth A. Callahan**, Esq., for petitioners<sup>1</sup> (Callahan & Fusco, LLC, attorneys)

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

Record Closed: March 5, 2021

Decided: May 4, 2021

BEFORE **ELISSA MIZZONE TESTA**, ALJ:

**STATEMENT OF THE CASE**

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<sup>1</sup> Throughout this Final Decision, A.L. and I.L. o/b/o L.L. will be referred to as the Petitioners or by their initials, even though they are identified as Respondents in the caption under Docket No. 08205-18.

Petitioners, A.L. and I.L. on behalf of L.L., filed a Due Process Petition on May 9, 2018, with the Office of Special Education Policy and Procedure (“OSEP”), under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§1400 to 1482, alleging that the Respondent, Teaneck Board of Education (“The District”), failed to provide L.L. with Free Appropriate Public Education (“FAPE”) for fifth and sixth grade, as well as, offered an inappropriate program for the 2018-2019 school year. The Due Process Petition was filed seeking reimbursement for a unilateral placement of this student in a therapeutic, residential treatment program at Villa Santa Maria (“VSM”). Respondent filed a Due Process Cross-Petition on May 21, 2018, with OSEP, seeking an order requiring L.L. to undergo the requested evaluations by the District necessary for the District to assess the educational need and the appropriate placement and programming for L.L.

### **PROCEDURAL HISTORY**

The matters were transmitted to the Office of Administrative Law (“OAL”) on June 7, 2018 and June 11, 2018. An Amended Due Process Petition was filed by Petitioners with the OAL on August 29, 2018, under Docket No. 08213-18. The matters were consolidated on June 13, 2019. In -person hearings were conducted on November 21, 2018, November 26, 2018, April 30, 2019, May 1, 2019, June 12, 2019 and July 29, 2019. Hearings were held via Zoom on May 29, 2020 and June 8, 2020.<sup>2</sup> Counsel was permitted to obtain transcripts and file written summations. The record was closed on March 5, 2021.

For the purpose of an accurate depiction of the procedural history in the case, it should be noted that a Final Decision on an Emergent Application was entered by the undersigned on June 18, 2018 pertaining to this matter bearing Docket. No. 07900-18. Petitioners sought immediate out of district placement in particular, VSM in Cedar Crest, New Mexico, as they believed the minor, L.L. posed a danger to self and others. The ruling was that Petitioners were unable to satisfy the standards set forth in Crowe v. DeGioia, 90 N.J. 126, 132-34 (1982) and thus the emergent application was denied.

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<sup>2</sup> The Covid-19 Pandemic and meaningful, intermittent settlement negotiations caused delay in completion of the hearings in this matter.

## **ARGUMENTS**

The Petitioners' position is that the District's program was inappropriate to meet L.L.'s individualized educational, emotional, and behavioral needs. L.L.'s IEP for the 2017-2018, (R-33) and proposed IEP for the 2018-2019 School Year, (R-51), failed to provide L.L. with FAPE.

An out-of-district placement was sought by Petitioners because they had sought help from numerous professionals and L.L.'s Child Study Team ("CST") and the Petitioners felt the CST ignored the constant behavioral issues, admitted their plans did not work, and failed to comply with the most basic of IEP requirements, progress reporting. A.L. requested a day placement before having to put her daughter in an out of state residential treatment facility. The Petitioners argue that the district had no idea how to help L.L. learn, develop social and emotional skills, and become an independent student, further alleging that the district downplayed this students' issues because they had no training in Reactive Attachment Disorder (RAD) and failed L.L. and her family for years.

Petitioners' position is that VSM is able to treat L.L.'s significant RAD and trauma-based needs and help L.L. to become available to learn and progress academically, socially and emotionally. A component of the program is family counseling and training in hopes that L.L. could return home and L.L.'s parents, siblings, and caregivers will be safe and have the tools to develop positive relationships with L.L. and be able to support L.L.'s academic and social successes. (P-34). L.L. requires a small structured therapeutic environment.

Petitioners' allege that L.L. is a danger to herself and L.L.'s family and that the school district has failed to address any of the parents' concerns and failed to address this student's academic and emotional needs. They further allege that the district failed to consider the parents input, as well as, the numerous documents they provided from the professionals that worked closely with L.L. L.L. failed to make meaningful educational or social progress during the 2016-2017 school year and the 2017- 2018 school year. They

argue that L.L. regressed behaviorally during the 2017-2018 school year and that the school district was not taking seriously her pattern of mood dysregulation and maladaptive behavior in and out of school.

The District's position is that the IEPs provided L.L. with FAPE and that L.L. made meaningful educational progress in all the years, in particular 5<sup>th</sup> and 6<sup>th</sup> grade, prior to L.L.'s removal from the Teaneck School District and this was consistent with L.L.'s IQ. According to the District, despite an IQ of 81, L.L. earned average to above average grades. (R-20 and R-43). The District fully believes that the unilateral therapeutic residential placement is based solely on issues related to home, L.L.'s relationship with her siblings and mother, and L.L.'s issues surrounding gender identity and hormone blockers. The District further argues that the parents have at all times been uncooperative, i.e. refusing risk assessments, refusing to consent to evaluations and not keeping IEP scheduled meetings.

The District believes that L.L. was not placed at VSM for education reasons but rather for behavioral issues stemming out of the home, not the school. Further that VSM is not equipped to meet L.L.'s educational needs. While at VSM, L.L. has regressed both academically and emotionally. The District's argues that they provided L.L. with FAPE in the least restrictive environment and that the District should not be held responsible for the cost of the Petitioners' unilateral placement approximately 2000 miles away from the Petitioners' home.

The issues to be addressed by way of this decision are whether the District provided L.L. with FAPE in the least restrictive environment; whether the district provided L.L. with an appropriate program for the fifth and sixth grade school years that would provide L.L. with meaningful educational progress; and whether the Petitioners' unilateral placement at VSM was reasonable and appropriate.

## **STATEMENT OF FACTS**

The **FACTS** herein are as follows:

L.L. is currently fourteen years-old and was born on September 5, 2006. L.L.'s legal initials are N.L. and L.L. and is gender fluid. L.L. was adopted at age three from Ethiopia by her parents, A.L. and I.L. L.L. has two other adopted siblings, a younger sister and a baby brother born about 2 to 3 years ago. L.L. is currently a 9<sup>th</sup> grade student. L.L. is and has been eligible for Special Education and Related Services under the Classification of Other Health Impaired. (R-51). The District has identified L.L. as having a diagnosis of RAD, Post-Traumatic Stress Disorder ("PTSD"), Attentive Deficit Hyperactivity Disorder ("ADHD"), and Gender Dysphoria. (R-15). The diagnosis was confirmed by the District's Psychiatrist, Dr. Nagy. (R-15). Petitioner argues that in addition to the diagnosis identified by the District, L.L. has also been diagnosed with a Neurodevelopment Disorder: Intellectual Disability, or at best, Borderline Intellectual Functioning. (P-23). L.L. has been classified as eligible for such services since April 1, 2011. L.L. first entered the Teaneck public school in 2013 as a second grader. On August 1, 2018, L.L.'s parents unilaterally placed L.L. at VSM in Cedar Crest, New Mexico; L.L.'s home is Teaneck, New Jersey.

## **TESTIMONY**

### **A.L.**

A.L. is L.L.'s mother. A.L. obtained her Bachelor of Science in Health Service Management from Robert Morris College in Pittsburgh, Pennsylvania. She obtained her Master of Science in elementary education from Hunter College in New York. She previously taught second through fourth grade in the public schools of the South Bronx and Washington Heights. A.L. testified that she and her husband applied to the Ethiopia adoption program and were matched with L.L. They<sup>3</sup> were advised that she was a three-

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<sup>3</sup> Throughout the testimony of A.L., "they" refers to A.L. and her husband, I.L.

year-old girl, born on September 5, 2006, and did not speak English. In December of 2009, they flew to Ethiopia where they were shown L.L.'s first orphanage. It had no running water or electricity, and there were mosquito nets on the beds. They met L.L.'s biological mother on the trip who informed the parents that she could not provide for L.L. financially, that L.L.'s father had passed away, and that she wanted the family to feed her and give her an education. Prior to meeting the biological mother, the parents met L.L. for two hours at the orphanage.

A.L. testified that many of L.L.'s behaviors at home, such as imitating baby behaviors, began to occur shortly after her baby brother came into the home. L.L. also has a nine-year-old transgender sister from Korea who transitioned from being a boy to a girl several years ago, sometime around first grade. Like her sister, and her babysitter, in 2016, L.L. herself at times identified as a boy despite being born with female reproductive organs, and in August of 2016, L.L.'s parents authorized surgery to insert hormone blockers to suppress the onset of puberty. This was surgery that L.L. was nervous about. Thereafter, at the request of L.L.'s mother, the District provided training to teachers regarding L.L. gender transition. A few months later, L.L. returned to identifying as a girl, her biological gender.

A.L. testified that when L.L. got to New Jersey, her and her husband observed that there was no stranger danger. L.L. would talk to every stranger and would be willing to go home with them. She also ate everything possible. L.L. had giardia, and she had trouble sleeping. She stated that they also noticed in the beginning that L.L. had trouble with accepting the word "No." (Emphasis added). She would scream, and was unable to transition from one activity to the next. She was unable to co-regulate meaning when she was upset, she would not turn to her family for hugs or comfort and was unable to calm down.

As early as the Spring of 2010, A.L. and her husband sought out a therapist for L.L. for the attachment issues. The parents tried numerous therapists who were unable to help L.L. At the time, L.L. was seven years old. L.L. was evaluated by Dr. Bacher-Weidman and was diagnosed with Reactive Attachment Issues. (R-1). This evaluation was shared with the Teaneck Board of Education Child Study Team.

L.L. first entered the Teaneck public school in 2013 as a second grader. A.L. testified that during the transition phase from Teaneck Charter School to Teaneck public school, the parents observed L.L. again having difficulty with the word “No,” constant screaming, difficulty with transitions, and inability to calm down. On more than one incident, the Petitioners had to call the police to come to the house and help calm her down.

In 2013, A.L. and her husband were concerned that L.L. was not reading and was concerned with L.L.’s speech and occupational therapy. In fourth grade, L.L. was not doing homework, struggling with classwork, and giving attitude to her teachers. A.L. testified that they were unable to get L.L. to do work at home and that the District did not help with this. A.L. stated that the behaviors were increasing in fifth grade. There was an incident where L.L. stole pizza tickets which resulted in a three-day home suspension. A.L. claimed that there was never a meeting to discuss whether that behavior was related to her disability and that Ms. Benitez, L.L.’s fifth grade teacher, expressed concerns to A.L. and her husband about L.L.’s behavior and the attitude L.L. gave her. A.L. testified that during the mid-year IEP meeting, Ms. Benitez did not want L.L. in her classroom and advised that L.L. belonged in the Learning-Disabled class. Following the meeting, L.L.’s Language Arts class with Ms. Benitez was moved to a Resource Room so she would have less time with Ms. Benitez and receive more help from those individuals in the Resource Room.

As to specific documented behavior of L.L., A.L. testified that she was never informed from anyone at the school regarding an incident where L.L. was refusing to wear her seatbelt on the bus anymore. And, that A.L. was not informed by anyone from the school about an April letter regarding a student exposing himself to L.L. and making inappropriate sexual requests to L.L. L.L. informed her of this incident and wanted A.L. to contact Ms. Cookie, the head of the after-school program. According to A.L., Ms. Cookie advised that she contacted Mr. Avery, the Vice Principal of Thomas Jefferson, about the issue and in turn was advised that he looked through the video footage and did not see any of what L.L. reported actually happening. A.L. assumed that L.L. lied.

There was no disciplinary action taken.

A.L. also stated that she was unaware of the October 25, 2017 incident related to someone calling L.L. transgender. She only learned of these events through L.L., not the District. A.L. went on to explain that she had contact with Ms. Rooter, L.L.'s Math teacher in sixth grade. Ms. Rooter advised that she had a hard time with L.L. Ms. Rooter stated that L.L. was not listening, was not doing classwork, was often getting kicked out of class, was disrespectful, would stay in the bathroom foreextended periods of time, and would hold the classroom door shut so Ms. Rooter could not get out.

A.L. stated that she was not contacted nor informed regarding the incident in sixth grade where L.L. was talking like an infant child and ignored the attempts at redirection. She was assigned recess detention without the parents knowing. L.L. did not show up for detention and faced no disciplinary action for it. A.L. testified that she was not contacted about the November 1, 2017 incident where L.L. wrote a note and passed it to another student during a quiz that was talking about twerking. Mr. Rooter called for an Administrator and sent L.L. to her Child Study Team.

In fifth grade, A.L. testified she was informed that L.L. was not doing her homework, was making inappropriate sexual comments to one of the teachers and was not listening to teachers at aftercare. There was an ineffective behavior plan in place where she only received rewards two or three times. A.L. alleges that the district did not share any data on the effectiveness of the behavior plan and that there was no communication with Mr. Morrison, L.L.'s school counselor, about L.L.'s counseling, and he did not send progress notes or reports about counseling.

A.L. testified that they attended four IEP meetings during the fifth grade year because they were concerned about her progress. A.L. alleges she was unaware that L.L. would leave class and go to Mr. Morrison's office, L.L.'s school counselor, nor did she have any input into the goals and objectives that they were working on in counseling.

A.L. went on to state that she and her husband brought in books and their own therapist to IEP meetings to inform the district about RAD. L.L. was also distracting



students in aftercare from completing their homework so much that aftercare moved her. A.L. testified that L.L.'s fifth grade Standardized Test Scores were in performance level two. L.L.'s reading score was 38 when the expectation was 50, her writing score was 10 when the expectation was 35, and in math, she required additional support.

A.L. alleges that they never received quarterly reporting on her IEP goals or objective data on whether L.L. was doing her work more often in fifth or sixth grade. The harassment, intimation, bullying report was never shared with the parents. Further, A.L. stated that there is no documentation for sixth grade about how many times L.L. would leave the classroom. A.L. testified that she consented to have hormone blockers implanted in 2016. She stated that L.L. was identifying as a boy then subsequently a girl. L.L. started working with a Psychotherapist, Julie N. Saperstein, in June 2016 to address her severe emotional and behavioral issues. (P-4).

In December 2016, the District put in place a Behavioral Intervention Plan. (R-19). Also at this time, upon Petitioners' request, L.L. was also provided a tutor that L.L. refused to work with. At the time, the Petitioners were represented by Advocate Susan Vericco. The District's Social Worker, Evan Morrison also set up a weekly check in with L.L. Thereafter, on February 16, 2017, after a safe zone was established, a lunch group was established, a BIP was put in place and tutoring was put into place. The District, with the Petitioners' written consent, amended L.L.'s IEP to provide for a pull-out resource replacement for Language Arts, (R-23). The Petitioners attended the February 16, 2017 IEP with Verrico and the Petitioners signed and consented to the IEP. (R-23).

The Petitioners requested an out of district placement the summer before sixth grade. According to A.L., it was because they felt L.L. needed a therapeutic day school. On June 6, 2017, A.L. stated that Saperstein sent a letter to the school district, (R-29). It was recommended at that time that L.L. attend a Day Treatment Special Education School and she received no call or a response to this letter. (R-29)(P-2). An IEP meeting was held on July 14, 2017, wherein L.L.'s placement for the 2017-2018 school year, her 6<sup>th</sup> grade year was discussed. (R-33). Petitioners attended this meeting with an attorney. At the IEP meeting, A.L. provided the CST with a letter from Outpatient Treatment Providers with diagnostic information. (P-23). At the meeting, the parents requested an out of

district placement because the district program was not meeting L.L.'s individualized needs. A.L. voiced her concerns regarding L.L.'s placement and stated that L.L. needed a therapeutic and structured school setting. The District did not refer L.L. to any out of district placements. The District proposed an in-class resource support program at Thomas Jefferson Middle School science and social studies. (R-33). L.L. would also receive pull-out replacement in Math and Language Arts; in class resource support for science and social studies; social skills counseling in group once per week; group speech services once per week; individual counseling once per week; and extended school year services. (R-33). A.L. testified that this IEP was not challenged.

On August 15, 2017, the District amended the IEP without a meeting. (R-37). It was amended to include a one-to-one aide. (R-33). A.L. testified that she was concerned because she was unaware of the training that the aide had. A.L. testified that at one point the aide was giving L.L. answers to a test. Despite her concerns, A.L. signed the consent indicating agreement to the amended IEP for 6<sup>th</sup> grade on August 28, 2017. Counsel for Petitioners were present and it was agreed and memorialized that L.L.'s current IEP would run through October 20, 2017 at which time another meeting would be held.

L.L.'s concerning behavior continued. L.L. joined the choir but would show up late or not show up at all. The choir teacher called A.L. to advise that L.L. was not attending and that they did not know what to do with her. In November of 2017, A.L. advised the choir teacher that L.L. has serious emotional issues that may impact her participation in choir. According to A.L., the District did not advise A.L. that L.L. was no longer participating in choir the rest of the year.

A.L. testified that she shared (P-20)<sup>4</sup>, Dr. Yun's Neuropsychological Report, with the CST and (P-23) the letter outlining L.L.'s various diagnoses and recommendation for treatment and A.L. alleged that the District did not make any changes to the IEP or request further information. A.L. also stated that she shared (R-27), the letter from Mary Carney,

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<sup>4</sup> The report being referenced is the Neuropsychological Report at the Farleigh Dickenson University Center for Psychological Services in November and December 2017. The report recommended that L.L. be placed in a full-time outpatient program geared toward working with children who struggle in cognitive, academic, as well as socio-emotional difficulties. It also recommended that L.L. receive therapeutic services to address emotional and behavioral limitations. This would be accomplished by small group instruction tailored to L.L.'s unique needs.

Psychiatric Nurse Practitioner, diagnosing L.L. with post-traumatic stress disorder and the District did not implement or consider the recommendations in the letter. A.L. argued that the District did not implement any of the things suggested within that letter or have a discussion with Ms. Carney.

In sixth grade, her Standardized Testing Scores were in level one which was lower than fifth grade. The Petitioner's maintained the same concerns with regard to homework completion, aggression, and accepting "No" in sixth grade. A.L. testified that at home L.L. was a danger to her younger siblings exhibiting violence towards them beyond that of a normal sibling relationship, giving the baby a sharpened pencil, and not listening to adults with their limitations. In one incident, A.L. gave L.L.'s younger sister L.L.'s bathing suit by mistake, and L.L. threatened to cut it off of her body. A.L. testified that there was an incident in May of 2018 where L.L. threw rocks at the house and hit a window to the point the entire window needed to be replaced. A.L. called the police following that incident and L.L. attended school that day. The District requested to do a risk assessment to which A.L. did not consent based on the advice of Saperstein. L.L. spoke to Saperstein within the week regarding that incident.

A.L. testified that in sixth grade, A.L. communicated with the District through emails, telephone calls, and in person conversations. The Lunch Bunch, behavior plans, and check-ins with Evan Morrison, a member of L.L.'s CST, did not result in emotional progress for L.L. The behaviors were getting worse at home and in school and A.L. testified that the District did not document academic progress with regard to L.L.'s Special Education Services or regarding progress in sixth grade.

A.L. stated that L.L. hurt her siblings, never took responsibility, did not display remorse and lied all the time. The Petitioners' sought residential treatment because of concerns for L.L.'s safety. She would run away when she got upset. She ran away for a half hour to a neighbor's house and returned right as A.L. was going to call the police. They continued with private therapy, and A.L. testified that the private therapist, Saperstein, agreed that the behaviors were getting worse.

It should be noted that on February 12, 2018, Beth Callahan became Petitioners' new Attorney and a meeting was requested. An IEP meeting was held on April 17, 2018. The CST proposed placing L.L. in the Language Disabilities Class at Thomas Jefferson Middle School for the 2018-2019 school year. Pursuant to the proposal, L.L. would receive Pull-Out Resource Replacement Instruction in Language Arts. Additionally, L.L. would continue to receive the following services: group counseling once per week; individual counseling once per week; speech and language services once per week; the services of a 1:1 aide; and Extended School Year Services.

Prior to April 2018, Petitioners had been researching residential placements that deal with RAD. A.L. called eleven schools. They applied to six schools and L.L. was accepted at two. A.L. testified that they selected VSM. Petitioners had visited VSM on their own sometime between April and May 2018. It should be noted that on April 16, 2018, just prior to the IEP meeting, Petitioners provided a letter from Saperstein to the CST on L.L.'s behalf. The letter was to inform the CST that the years of outpatient psychological therapies, medication management, and in-home services, across a multitude of therapeutic modalities, had resulted in little to no improvement. In sum, L.L. required an out-of-district, specialized, residential, special education/therapeutic setting. The recommendation was for the VSM. A.L. testified that Saperstein and herself chose VSM because the program helps L.L. work through her emotions not just teaching her how to behave. A.L. testified that L.L. was placed in the residential program in August 2018 and the district was notified around the same time. A.L. testified that she decided to place L.L. residentially because she was spiraling emotionally, academically, and behaviorally. She testified that the district did not do anything while L.L. was spiraling. A.L. testified that L.L.'s relationship with her siblings was aggressive and difficult.

A.L. testified that she had visited the program since L.L. has been there. The first part of the program is teaching the children to trust that adults are going to take care of them. Thus, dealing with the RAD. The second stage of the program is "we do together" and the third stage is "we do on our own." (Emphasis added). There is a parent training component to the program where they Skype three times a week. Once a week there is therapy with L.L. and her therapist for an hour and a half.

As per A.L., VSM did testing when L.L. arrived. They determined she was in the below average range for math. Her reading skills were in the average range and some in below average. A.L. was advised that L.L. is in seventh grade but at the third or fourth grade level. (P-30) (P-31).

According to A.L., L.L. was progressing at VSM in that she was showing remorse for kicking, hitting, stealing from her family, and tormenting her seven year old sister. A.L. went on to describe the program's therapeutic holds. When a child is getting agitated or becomes a safety risk, they ask if the child is okay. Then they fold the child's arms across their body and hold them from the back. The parents are always informed if this occurs. She has had months where she was in therapeutic holds several times a day and months where it was only once in the entire month. It indicates that she is not able to calm down on her own without becoming a safety risk to herself and others.

### **Sandra Beckford**

Sandra Beckford testified on behalf of the District. She is the Supervisor of Special Services for the Teaneck Board of Education and has held that position for three years. Prior to that she was a Case Manager in Teaneck for fifteen years. Beckford is familiar with L.L. through the Extended School Year program (ESY). She has reviewed L.L.'s schools records, evaluations and IEPs. Beckford discussed a Psychological evaluation completed in 2016 by Region Five (R-13). The Psychologist who had completed the report found that L.L. met the criteria for specific learning disability, other health impaired and was diagnosed with attention deficits. L.L.'s IQ was documented at 81. This is the low average range, ranking her in the 10<sup>th</sup> percentile of students her age. (R-13).

Beckford testified that in fifth grade, L.L.'s IEP provided in-class support for science, social studies and math and she was receiving a replacement language arts class. (R-18). An in-class support class has 23-24 students, 9 of which are classified. There is a General Education Teacher and a Certified Special Education Teacher in the classroom. The replacement math class is a self-contained classroom for students who are struggling several grade levels below the General Educational model. The curriculum is modified and taught at the pace level of the student with accommodations. There were

six students in L.L.'s pull-out resource classroom. Beckford testified that during the fifth grade, L.L. was receiving group counseling once weekly for thirty minutes which focused on social emotional goals, weekly group therapy, door to door transportation and an extended school year as per L.L.'s IEP. (R-18). L.L. was also provided a Behavioral Intervention Plan focusing on homework completion. (R-19). Counsel stipulated to R-23, the mid-year IEP dated February of 2017. The District with the petitioners' written consent, amended L.L.'s IEP to provide for a pull-out resource replacement for Language Arts. (R-23). It should be noted that the Petitioners' attended the February 16, 2017 IEP with Petitioners' then advocate Susan Verrico and the Petitioners signed and consented to the February 16, 2017 IEP. This pullout resource replacement for language arts would be a self-contained classroom taught by a Certified Special Education Teacher and modified according to the student's needs. The February 16, 2017 IEP stated that the IEP team would reconvene an IEP meeting in May of 2017 to discuss progress and a future program.

Beckford testified to R-33, the July 14, 2017 IEP for sixth grade. Ms. Beckford attended this IEP meeting. Nothing changed from R-23, the February 2017 IEP and R-33, the July 2017 IEP in terms of programming. The parents requested the latter meeting because they wanted the Child Study Team to consider an out of district placement for L.L. The parents provided additional documentation for the team to consider from Out-Patient Treatment Providers. Social, emotional, and behavioral considerations were discussed at the IEP meeting. Beckford testified that the District felt L.L. was maturing and making progress, getting along with her peers, understanding the rules of the school, expressing a level of comfort with her counselor, enjoying her classes, and exhibiting an appropriate demeanor. She testified to the behavioral incidents that occurred in December of 2016. (R-21). This incident involved a pizza sale in the lobby. L.L. where at, she stole tickets for the pizza that were required to be purchased. She received out of school suspension for three days. She had another incident in March of 2017 where she was riding the bus and refused to put on her seatbelt. L.L. also made an accusation against another student which resulted in a harassment intimidation and bullying report. L.L. reported that a student exposed himself in front of her and made disturbing comments. Beckford explained that the district conducted an investigation and determined that the allegation was un-founded and L.L. admitted that she made it up. There was another

discipline report of L.L. teasing some one in the math classroom. There was a second discipline report of L.L. misbehaving in the math classroom. There was a third discipline report from the math classroom where L.L. ripped up paper during a quiz and passed it to another student. In spite of the infractions above, Beckford testified that during this time L.L.'s attendance was very good and L.L. continued to perform well in school.

Beckford testified that the purpose for the request to amend the IEP without a meeting, R-37, was to consider the addition of a personal one to one aide for L.L. and adding a counseling session. The parents agreed to the amendment.

Beckford testified that in preparation for the October 2017 end date of the Amended IEP, the District made numerous attempts to schedule an IEP meeting in the beginning of the 2017-2018 school year, prior to October 20, 2017. (R-41). Written notices were sent to Petitioners on five different dates from September 14, 2017 through January 5, 2018. (R-41). Multiple telephone calls were also attempted. (R-41). An IEP meeting was scheduled for October 24, 2017, however Petitioners cancelled same. On January 17, 2018, the District was forced to convene an IEP meeting. Petitioners were noticed of same, but did not attend. At said meeting, the CST maintained her current placement. (R-41).

Beckford went on to testify that R-50 is the Draft IEP, and R-51 is the April 2018 Final IEP for sixth grade going into seventh grade. The mother attended the April 17, 2018 meeting. There were no changes from the January 2018 IEP to the April 2018 IEP. According to Beckford, the parents presented a letter to the district which outlined concerns they were having with L.L. at home. They provided a letter from the therapist that articulated the treatment she was providing to L.L. was not working and she required intensive services. The parents requested more intensive services and a residential placement.

Beckford testified that in an attempt to appropriately address Petitioners' request, they proposed that L.L. undergo a complete evaluation, including an Educational, Speech/Language, Psychological, Social History, Neurological and Functional Behavioral Assessment (R-52). Petitioners refused to allow the evaluations and the District could

not further evaluate L.L. The parents presented evaluations from outside and the district wanted to get their own information. The outcome of the evaluations could change the District's position on placement for the child. Beckford was questioned about (R-63), which is the Consent Form in order to conduct certain evaluations of L.L. The District had consent from the Petitioners to conduct a Social History Evaluation, this was completed. There was also consent to perform a Neurological Evaluation. As for the pPsychological Evaluation, the Petitioners requested that different testing be done than that which was being asked for by the District. Beckford testified that this request by the Petitioners was not unreasonable because if you conduct two of the same tests within the same year, they could negate each other. Beckford was unsure why the Neurological and Psychological Evaluations were not conducted, but she believed it was because the initial Due Process Petition was filed. After the Petitions were filed with the OAL, the Petitioners agreed to permit L.L. to undergo a Social History Assessment, and upon the Petitioners dictating the testing of a Psychological evaluation. (R-63). The restrictions were put in place out of Petitioners concerns that the District would not consider their personal Neurological examination. Consent was not given for any of the other evaluations, thus the District could not further evaluate L.L. and the Petitioners continued to seek placement at VSM.

The district was put on notice that L.L. could potentially be a danger to herself and others sometime in April of 2018. (R-67). Upon receipt of a letter dated May 9, 2018 from Saperstein, the District requested to conduct a Risk Assessment. (R-54).

On cross-examination, Beckford testified that she does not have any specific training in RAD. She agreed that an IEP is supposed to have objective, measurable goals, and that a school district is supposed to report on those goals quarterly. With respect to L.L., she was not aware that the parents did not receive quarterly reporting on L.L.'s goals and objectives for fifth or sixth grade. She reviewed L.L.'s file and did not see any documents reporting on her goals and objectives for fifth grade, thus counsel was not able to view same. She agreed that if this was the case, that would be a violation of L.L.'s rights as a Special Education student. She did not know if the goals and objectives were copied consistently and provided to the parents for sixth grade. Beckford further testified that when evaluations of a student occur there should be someone with expertise in the child's



disability evaluating that child. She did not know what type of training Dr. Petrozzino, Dr. Jennifer Papachristou, and the Psychiatrist for the District had with regard to RAD. The person who created the Behavior Intervention Plan is not a Board Certified Behavioral Analyst. When an evaluation is presented by a parent for consideration, the District will review the evaluation and make a determination about whether they will accept the evaluation or parts of it. She believes that the District has the right to accept or reject the evaluation.

Beckford stated that she reviewed the tests that the District administered. They administered the Woodcock Johnson WISC which were standardized and typical in the field. Beckford stated that Dr. Yun's Observation Report, which was initiated by the Petitioners' and shared with the District (P-20), was not mentioned in either IEP, R-50 or R-51. Nor did either of those IEPs include why the District rejected the reporting that was there.

When a student is classified for Special Education there are goals and objectives with regard to emotional needs. Counseling would have something to do with social emotional goals. Evan Morrison was the counselor for fifth and sixth grade. She did not know what Mr. Morrison's training was with regard to RAD. The District keeps logs on when the counseling occurs. Those logs are not part of the student's file. Upon review, there was not any documentation for fifth grade on her counseling and whether it was successful. Beckford stated that she took a cursory look over L.L.'s progress report for her sixth-grade goals and objectives and did not know how many goals and objectives she met or did not meet. She admitted that she could not say whether the progress was meaningful in the program that L.L. had in the sixth grade. Beckford further reviewed the Behavior Intervention Plan to see if it was successful. The behaviorist has the specific data with regard to the success of the BIP, and according to Beckford, that information is not part of the student's file.

She testified that both IEPs, R-50 and R-51, should have reflected that the parents shared an Independent evaluation, but it did not. She admitted that the IEP with the objective measurable goals and objectives is the primary component of communication between the family and the District as far as what the child is receiving and how the child

is doing towards those goals and objectives. Beckford went on to testify that students with average or below average IQ's, if given the proper set of services, can learn and that an IQ is not determinative of whether a student can progress academically.

With regard to the IEP of February 16, 2017, there is no criteria listed for how the goals were going to be measured. (R-23). The measurements for the goals are listed later, on page nine of the IEP. Beckford testified that the measurement is supposed to be written within the goal and the criteria for meeting that goal should be within the goal. Also, "75% percent success" is not objective data because one person could think something is successful and another could think differently. A parent would be able to see the rubric and how they goals are being measured through progress reports, teacher/parent conferences, communications via telephone. A telephone call is not objective and measurable. However, a parent teacher conference where they discuss work samples is an objective measurement of progress towards goals. Beckford was never at any of the parent/teacher conferences and is unaware if the parents ever saw a rubric.

Beckford pointed out that that there is no description of the prior year's counseling and what was achieved in the proposed IEP for the current school year (R-51) and that there should be a summary from every provider in a child's IEP and the fact that there wasn't one in (R-51) is a deficiency in the IEP. There is nothing in the IEP that discusses what had been achieved in the prior IEP. (R-51). The description in the IEP with regard to counseling is not signed by anyone so it is unknown whether the counselor contributed that part or the case manager. Beckford does not know if it was the counselor who wrote the opinion about L.L.'s social and emotional behavior because it is not signed.

### **Evan Morrison**

Even Morrison testified on behalf of the District. Morrison is employed as the CST School Social Worker. He obtained his Master's Degree in Social Work from Columbia University. Morrison met L.L. when she transitioned from Whittier Elementary School (September 2016). Through his four years working in the Teaneck School District, he has

been assigned to the Thomas Jefferson Middle School and the Hawthorne Elementary School.

Morrison testified that in September 2016, fifth grade, he provided group counseling to L.L. in a Friday lunch group for one hour. In the group, he would begin with an ice breaker. Then he would ask “what would you do if...” questions. For an example: “what would you do if a new student came to the school, how would support him or her?” He also saw L.L. on an individual, as-needed basis which was not formalized in the IEP. Morrison was considered one of L.L.’s “go to” staff members. L.L. was also given a number of other “go to” staff members to utilize if she needed any help. He recalled her parents also having Ms. Verrico, their advocate, who was there to assist with the transition and IEP process. The Petitioners advised Morrison that if any gender identity issues came up, they wanted to be informed. L.L.’s gender identity issues did not come up during the group sessions.

Morrison testified that in sixth grade, they added individual counseling one time per week for thirty minutes to the IEP. The sixth grade group therapy was a continuation of the same therapy L.L. was receiving in fifth grade. According to Morrison, the issue of gender identity did not arise during the sixth grade group sessions. Morrison explained that during the individual sessions, Morrison had L.L. describe any situations that may cause her stress, how she feels and how she reacts to those settings. Finally, they worked on developing methods to cope and deal appropriately with stressful situations. Morrison noted progress from fifth grade into sixth grade. In fifth grade she frequently sought out Morrison for help or to tell him that the work was too much. She visited his office four-six times per week. In sixth grade the visits were less frequent. She would not seek his attention as often. In fifth grade it was harder for L.L. to move on and go back to class when she was having a tough moment. In sixth grade, it was easier, thus progress was being made. Morrison documented this progress at the time. He testified that with respect to his quarterly due dates, he discards the notes/logs after a certain period of time. Morrison also provided homework help if L.L. needed it, particularly with math. In fifth grade, L.L. was more immature as far as understanding the usefulness of school. In sixth grade, she began to make the connection that being a student is important, and she

needs to do her best. She learned in sixth grade she cannot just camp out in Morrison's office and became more self sufficient.

The social, emotional, behavioral section of the IEP was Morrison's responsibility. (R-52) Morrison acknowledged that they were still working on the same things from fifth to sixth grade. He was working on getting L.L. to stay in the classroom and to prevent work avoidance situations. He wrote the same goals for the seventh grade because L.L. was still not at the point of independently coping and using the skills in isolation without an adult prompting her. In fifth grade, L.L. was defensive and would give reasons why off task behaviors were appropriate. In sixth grade, she received redirection positively and made efforts to apply new social emotional skills. This was based off of teacher reporting and Morrison's own observations in dealing with L.L.

Upon cross-examination Morrison testified that in preparing to counsel L.L., he did not review any documents that the parents shared with the CST. He only reviewed the fourth grade IEP moving onto fifth grade. He acknowledged that the parents had done a nice job in being assertive, proactive, and reaching out to the CST at the beginning of the fifth grade. There was an ongoing dialog with regard to parental concerns and supporting L.L. academically, socially, and emotionally. He did not reach out or involve the parents in any of the counseling sessions for fifth or sixth grade. As stated earlier, Petitioners had asked Morrison that if any gender identity issues came up, they wanted to be informed. Thus, it would not be unreasonable for Morrison not to have reached out to or involved the Petitioners with the counseling session with L.L. unless there was a problem. Any information Morrison had with regard to homework completion and doing work at home he obtained from L.L. or the teachers. Morrison was not aware that homework completion was a day to day issue. He was aware that the teachers had mentioned homework being a problem. Morrison testified that there were times when L.L. would lie about completing homework. He was aware of the incident when L.L. stole tickets for pizza. He was aware of her being oppositional and resistant with teachers. L.L. did not discuss her family or personal relationships in counseling. She did not bring up being aggressive or hitting her younger siblings. L.L. did not talk about misbehaving at home and not listening to her parents.

The Petitioners gave Morrison authority to speak with Saperstein, L.L.'s outside therapist, which he did on two or three occasions. He was unable to recall what Saperstein was treating L.L. for but was confident that his discussions with Saperstein were primarily academic based on his expressing what L.L. was presenting to him as far as her concerns, i.e., the teachers were giving her too much or the work is frustrating. An open dialogue was had with Saperstein. Morrison testified that he did not witness any inappropriate behaviors from L.L. during the lunch group counseling sessions. In Morrison's opinion, L.L. was a totally fine, well-adjusted kid. He was aware of certain disruptive incidences involving L.L. such as L.L. going to the bathroom for an extended period of time and having to add an aide to the bathroom to make sure she came out faster.

Morrison did not participate in the IEP meeting that determined what L.L. needed for sixth grade. Morrison testified that the goals and objectives reporting for fifth grade were available but never provided to the Petitioners. Morrison does not have specific training with RAD and he was not aware of anyone on L.L.'s team that had expertise in the area of RAD. The Petitioners were able to view the written input for the synopsis Morrison gave in the IEP from fifth and sixth grade. Morrison explained that he kept the same goals for fifth and sixth grade because at the end of fifth grade, L.L. was still struggling to describe situations that are challenging or stressful to her. She was not in a place to independently apply coping skills and identifying what challenges her at school. He did not review any documentation from psychologist Dr. Renky. He saw a letter at the end of sixth grade from Saperstein regarding ideation and health and safety concerns. He also reviewed Dr. Yun's neuropsychological counseling report. Morrison was aware that L.L. was on the low end of the I.Q. scale.

Morrison testified that he wrote out the goals and objectives that cover fifth and sixth grade. (R-46). The progress report starts in August of 2017. Morrison does not work in the summer and, therefore, would not have had input and did not write progress report covering August 2017. He intended to write the same goals for the seventh-grade school year because L.L. was still working on the bottom end, 11.3, of independently applying social and academic conflict situation strategies. He previously kept data on when L.L. was successful at achieving the designated goals at 80% but subsequently threw those

notes away based on his practice. During the 2017-2018 school year, Morrison's case load was 60-65 students. The structured observations for purposes of preparing goals and objectives and examining progress was completed in Morrison's office, during lunch group, and then in sixth grade. He does not have any documentation regarding progress towards goals. The only form of documentation is a mental tally of how many times a week L.L. would visit Morrison in his office. Morrison was not a participant in the behavior plan.

### **Joseph McGill**

Joseph McGill is the chief executive officer of VSM responsible for the overall operation of the program both administratively and clinically, and he is also responsible for all admissions.<sup>5</sup> McGill completed his undergraduate work at the University of Mexico obtaining his bachelor's degree in psychology. He completed his master's in counseling. He opened Villa in 1981, and his focus has been residential treatment with children, focusing on attachment work for the last thirty years. He identified P-29 as an excerpt from a book titled "Creating Capacity for Attachment", that he co-wrote with other professionals in the attachment field. The only certification that VSM holds is in Dyadic Developmental Psychotherapy (DDP). They have been licensed as a behavioral practitioner through the Children Youth and Families Department of New Mexico for 60 years. They are accredited through advanced education, and they are an approved school with the California State Department of Education, but not the New Jersey State Department of Education. According to McGill, VSM has an estimated 50% of their students with IEPs placed there by the student's public school district; no specific school district was identified. VSM has students from California, Utah, New York, Florida, and Texas. VSM receives insurance payments from one out of the fourteen students. VSM has a national provider identifier for purposes of billing insurance. McGill testified that he is aware that the Petitioners' have applied to their insurance company for coverage for the VSM program, and that it was denied.

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<sup>5</sup> McGill was not admitted as an expert in the field of psychology or any other medical field and was not admitted as an expert with respect to Reactive Attachment Disorder. McGill was presented as a fact witness.

McGuill was involved in the admission of L.L. to VSM. During admissions, he reviewed all of the reports that came in, collateral information, and any psychological evaluations. He spoke with people that have worked with L.L. in a professional setting and other therapists. He interviewed the parents about L.L.'s life from day one. According to McGill, L.L. fit a lot of the symptomatic aspects of RAD such as controlling behaviors, inability to emotionally connect to family members, and an inability to respond to limit setting. He believed it was also relevant that L.L. had pathogenic care meaning abuse and neglect and an inability to accept parenting. She is also unable to handle limit setting, and she demonstrated levels of aggression in terms of threatening other children in the home and family members. With RAD, a child who is in crisis will not respond like a typical child. They will not seek the care and comfort of an adult during a time of crisis. Instead, they resist it. With L.L., McGill was aware that she had been adopted from Ethiopia after spending time in an institution or orphanage that was subpar.

McGuill testified that the team determined that L.L. needed to work on emotional regulation, affect regulation, connections, emotional attunement, and moral development. With attachment disorder and L.L., empathy is a huge cornerstone. Typically, when attachment disorder is not treated, you see the development of antisocial personality disorder.

McGuill described when L.L. first began at VSM. She was placed in the shadow program side by side with another adult. The child sleeps next to staff meaning there is always somebody awake and accessible to the child at all hours. There is a milieu which is the environment where the children live and have their daily living activities and groups. In the milieu the ratio is one adult to two and a half students. They have 195 days of school, and the school day runs from 9:00a.m. to 3:00p.m. Milieu counselors are not required to have a Bachelor's degree but most do. They are trained internally on a specific DDP model in the classrooms on a weekly basis. L.L.'s team is Michelle Baca the therapist, the milieu counselors who are on staff 24/7 365 days a year, the regular education teacher and special education teacher, Dr. Greg the director of education, and Dr. Boyd, psychiatrist. L.L.'s model does not change whether she is in the classroom, therapy, or the milieu because the approach needs to be consistent. McGill explained

that when treating attachment disorder, it cannot be compartmentalized. In L.L.'s case, because she cannot accept or respond to limits, cannot emotionally tolerate limits, and cannot connect, she would obligate the compartmentalization. She will act a certain way in front of one person and another way in front of a different adult. She becomes a moving target where they would be unable to get a focus on her targeted treatment which will impact her ability to be stable and to connect. They were also working on determining where to get leverage with L.L. They cannot make that determination until they have a secure base of attachment because giving leverage with rewards or applying punishment or consequence will not be successful until that secure base is reached.

McGuill testified that when L.L. is aggressive, VSM uses their guiding principles. They use a "closeness with space" model when the child is not responding to limits, they bring them in close to an adult to help regulate generally and emotionally. The theory is that through the dysregulation, the child needs an adult and the adult's closeness much like an infant so they will have L.L. come sit in a chair next to an adult. If she resists, the adult will pull a chair up next to her. McGuill experienced L.L. needing to be brought in close during the separation interview which expands over a two-day period at the time of admission. She was fine during the first hour of the interview then when she found out she was going to be side by side with an adult, she showed resistance.

He stated that L.L.'s program has a therapy component, school component, and family therapy component. The family component is important for L.L. because the ultimate goal is re-integration with the family. The family is also part of L.L.'s treatment team to learn the treatment model and to show L.L. she and other staff members have a relationship with her parents. They utilize Skype with the families for their hour and a half of family therapy each week. Additionally, the milieu counselors make social calls that occur twice a week through Skype. The program also has three phases of treatment: trust of care, trust of control, and trust of self. Currently, L.L. is in the upper end of trust of care, touching some trust of control. A typical twelve-year-old would be learning how to become independent from adults. In L.L.'s case, she lacks the attachment foundation. Typically, when the child has been in the program for a year, they will start discussing a level down program or return home. The team has these discussions every 6-8 weeks during the treatment team meetings. The average student is in the program for two years. They have



worked with school districts when they are discharging students that are returning to the public school. Those school districts that contract with VSM will typically be involved in leading the IEPs.

McGuill testified that at the time of his testimony, VSM has 14 students, and they are licensed to have 32. The students range from ages eight through fifteen. They have 50 full-time staff plus four or five consultants. The treatment model necessitates this large of a staff because of the level of closeness and intensity that is required. The current students range from grades three to eleven with three teachers on staff. They utilize a scaffolding method where more than one grade can be grouped in a classroom. They are taught four core subject areas and rotate throughout the day. There are two classrooms plus a milieu classroom for students who cannot be in a regular special education classroom. L.L. is in the regular special education classroom. The classrooms are divided into an A group and B group. The division is based on grade and developmental stage. There may be a student who is cognitively lower than another child.

The sleeping arrangements are dorm style with three wings that separate boys and girls. L.L. has a private bedroom with awake staff outside of the bedroom. School has a library that is inside the educational building. They do not have a school nurse or a gym but they provide health education. The facility is located on 12 acres of land, and they have an astro-turf ball field, hiking trails, and recreational outdoor activities where the children get their physical activity and attend outings. The children are involved in physical activity three times per week, and there is a consulting physical education teacher. Dr. Gregg is the designated principal of the school. All therapists at VSM are required to have a Master's degree licensure. They contract out with a psychologist who is in the school weekly and sometimes more if they are going to do testing. All staff is trained in CPR and first aid, and there is a medical director on call 24/7 as well as being on campus one day per week. VSM does regular progress reporting every six to eight weeks.

The preliminary treatment plan dated September 19, 2018, is VSM's progress report/ treatment plan for L.L. (P-28) The plan estimated that L.L. would be in the program eleven to eighteen months. This changed after actually seeing her, working with her, and

seeing the progress she was making.<sup>6</sup>

The philosophy at VSM is for the children to heavily rely upon an adult for their most basic needs. McGuill testified the children are be fully relying on adults to meet every single need. ; i.e. brushing teeth and tying shoes. After attending VSM for a year, academically L.L. was functioning at 4<sup>th</sup> grade level and emotionally as a three or four year old. This is a regression from when L.L. began at VSM. While enrolled at VSM, L.L. was using profanity toward staff, something she did not do in the Teaneck School District. L.L. has issues with getting ready for school, an issue she did not have as of November 2018, as evidenced by L.L.'s attendance record. L.L. was also no longer compliant in the classroom. L.L. was also regressing to the point of kicking chairs, not being able to connect to people, and hurting staff.

### **Michelle Baca**

Michelle Baca testified on behalf of the Petitioners. She is a licensed master social worker. She obtained her undergraduate degree in psychology. Prior to VSM, she worked at a private school for three-four years. She worked at University of New Mexico Hospital as a hospital social worker, and then a school socialworker at the Public Academy for Performing Arts. Baca does not hold a certification from any state department of education. As a school social worker, she would meet with students who had IEPs for thirty to sixty minutes. She is working on getting her LCSW which requires 3600 hours of direct services. She began working at VSM in October of 2018 and began working with L.L. in November of 2018.

Prior to working with clients at VSM, Baca was introduced to the DDP model and given the DDP primer to read as well as "Creating the Capacityfor Attachment" book. This is a book that McGuill co-authored pertaining to the attachment field. An excerpt from this book was identified as (P-29). She was taught about RAD right away through staff and observation of students, and the behaviors that come with it such as aggression and explicit behavior. She was trained on how to handle situations where a child is escalated.

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<sup>6</sup> L.L. was discharged from VSM in May or June of 2020.

She also received hands on training.

At VSM, Art Beckerweidman is the clinician who supervises Baca on a weekly basis. According to Baca, Beckerweidman is the person who played a large part in developing the DDP treatment modality. While on duty, Baca does walk arounds, she is in the school setting, she meets with clients, she meets with family for therapy, and she facilitates group therapy on a weekly basis. With regard to L.L., Baca is her individual and family therapist. She serves as a point of contact for the parent. Monday through Friday, the students are in class, and Baca will sit in the classroom observing or assisting her students with their homework. After school, she will spend some time in the house connecting with the students or outside during P.E. There are thirty minute check in groups where each child gets a chance to say where they are at internally and physically. It is important for her to be involved at all these different stages because it helps her to paint a larger picture of how the student is currently functioning. It also reminds the students that her role is not just to be there for them as a therapist but instead to be there for them all the time.

Baca testified that her relationship with L.L. did not start out as a good relationship. When Baca first got involved with L.L., L.L. would refuse to go to Baca's office. Baca was doing co-therapy with L.L.'s previous therapist Shirley Cornet, and L.L. did not want Baca in the room. When Baca would attempt to get L.L. for therapy, L.L. would refuse and curse at her and say things such as "try me." L.L. would sit in silence for 45 minutes for the first month until she started to warm up. A month later L.L. was still refusing. They started telling her that she did not need to talk, she could just go to the office and color or listen to music. Eventually L.L. went willingly but there are still instances where she will refuse but she will verbalize why she does not want to go to therapy. The progression to the good rapport was very slow. Baca also runs a group every Wednesday with all of the students. L.L. expresses more active refusal in group and does not engage a lot. There was instance where L.L. was visibly upset and expressed that she did not want to participate in group. Baca gave her the worksheet that they were going to be working on that day and told L.L. she did not have to participate but at the end she gave Baca the completed worksheet and asked if they could look at it later which was progress. The milieu staff is with L.L. all day. They provide her with one on one support when

needed, and they assist in the classroom and help her transition from the classroom to lunch. The theory being relying on adults to meet every single need. The counselors are looking to build trust and develop a relationship which was triggering for L.L. This level of care is therapeutically necessary because L.L. did not experience this care in infancy or early childhood. Since she did not experience it, she stopped relying on it which created a deep rooted hatred for the care giver figure. L.L. specifically has an anger toward adults and care givers because her individual needs were not met when she was younger which is a barrier to her developing relationships.

Baca testified that she has witnessed L.L. not doing well with newer staff. In order to help, they use her strong adult relationships to form new adult relationships. As an example, Baca would invite a new staff member to an individual session and let L.L. know that they are going to get to know her. Baca will utilize her relationship to form the new relationship. Baca also facilitates weekly family therapy sessions. L.L. is brought in for the second half of the family sessions because it is important for Baca to speak with the parents freely about their past experiences without L.L. in the room. The parents reported L.L. physically harming her younger sister and being reckless with the younger brother. The goal for L.L.'s family therapy is creating and maintaining a connection with the parents that has been lacking. Because they are getting into deeper topics in therapy, it has been harder for L.L. to remain regulated. Due to the one on one support, she is able to complete work at the VSM.

Baca has seen L.L. in the classroom and observed that when L.L. has a staff member sitting with her she can stay focused on task and remain calm and interested in what she is doing. (Within the classroom there is one teacher and three to four milieu staff members. The students are split in two groups with four to five students in each. L.L. is in the younger group of children because of her cognitive level. Baca testified that L.L. has been put in therapeutic holds. According to Baca an overarching trigger for L.L. is peer interaction. There are a few kids who will start picking on her or targeting her. This gets her frustrated and she will yell, engage with that peer, stand up, charge at the student, or attempt to walk out of the room. When one student is picking on another, they do not automatically remove that student. They work with them to figure out how to handle the situation. In one particular instance where a student was picking on L.L., that

student was put in a therapeutic hold. L.L. was clearly upset, standing with her fists balled. She stayed a distance away to let the adults handle the situation and then she escalated from there and ran out of the room. Baca had to chase her out of the room. When she caught up with her, she grabbed L.L.'s hands and apologized for what the boy had said and let her know that she cared. She told L.L. to let her take care of it. They exited the school building and got some fresh air.

Baca testified that L.L. got upset when a student said something about her being black and from Ethiopia. She started swinging her arms around and kicking her legs when the staff member tried to hold her hands. It required two other staff members to safely restrain her. A single adult initiates the therapeutic hold when they have determined that the child is unsafe and over the top aggressive. They come in and grab or take the arms, put one over the other in front of the child's chest, and depending on whether or not the child is kicking and being violent, another adult may come in and put their arms around the thighs to bring the child to the ground. The adult who initiated the hold will be laying on the chest restraining the arms and the other adult will be holding the upper part of the leg and the lower part of the leg as to not put any pressure on the knees to harm the child. This is not done as a punishment. It is done to keep the child safe. While the hold is taking place, the adult is reminding the child that they are there for them. Once the child is regulated, they will discuss what happened that caused the hold and how to prevent it going forward.

Baca testified that Dr. Scott Blackwell is the psychologist who performs assessments at VSM<sup>7</sup>. The program is not based on a levels or points system because the children are given everything that they need regardless of their behavior because punishments and rewards do not work for L.L. L.L.'s therapy has not been able to successfully address any of her aggression in the home setting during a family session because she is not ready for that yet. According to Baca, with RAD, a lot of what has occurred in the home was traumatizing for the parents and the child and the accountability is not there. There is too much shame which is what they are seeing with L.L. L.L.'s

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<sup>7</sup> Dr. Scott Blackwell was not presented as a witness at the Hearing.

relationship with her parents has grown stronger because they can laugh together and enjoy each other which was not there in the beginning. Most of the behaviors discussed by Baca were those that occurred in L.L.'s home, prior to coming to VSM. Very little is mentioned as to the behaviors of L.L. from the Teaneck School L.L. attended.

Baca testified that L.L.'s mother came to visit VSM in March of 2019, and they began working on L.L.'s life book. L.L. was now open to hearing about her history in Ethiopia and her family members. She was able to work on the book for a few hours and A.L. checked in on her every 15 minutes. Baca explained that it is important for L.L. to have a safe place where she can discuss her feelings because she has not had the opportunity to process the feelings that came with those experiences. There is a disconnect between her internal processing and her emotions and memories.

Baca testified to P-34, L.L.'s master treatment plan. She did not diagnose L.L. Baca transferred the information from the DSM based on the information from the DSM5. The current symptoms and behavior section outlines what L.L. presented with upon admission. Baca updates this information every 6-8 weeks. If L.L. is put in a hold, the details, severity, and processing of the hold is kept in a separate document that is reviewed weekly. The goals with the family are improving. There are times where there is a successful family session and everyone's connected and times where there is a disconnect. If there is a topic that L.L. cannot or refuses to talk about, they will not force her to talk. They will meet her where she is to show her that there is consistency and a safe place.

The overall attitude that all staff at VSM use on a daily basis is PLACE: Playful, Loving and Limit Setting, Acceptance, Curiosity, and Empathy. Teaching L.L. that relationships and connections are important changes her behavior in the classroom setting. If she has a really great relationship with the teacher, she is more likely to be able to sit down and work on her homework or class work because of that relationship. When L.L. is struggling to get her work completed, they will ask her what she needs. If she says she needs to get moving, they will take her on a walk and bring her right back to her work to get it done. It comes back to the theory of letting her trust adults. She is not

permitted to use this as an avoidance strategy.

Baca testified that she was advised that L.L. was aggressive in her prior school and that L.L. had a hard time with girls at her school by way bullying and harassment. These problems continued at VSM. For example, Baca testified that there was a comment made about L.L. that triggered her which was that she was a poor black person that should go back to Africa and hang herself. That incident occurred about a week before Baca testified on June 12, 2019, approximately ten months into L.L.'s stay at VSM, According to Baca, this it was not the first time that such a comment was made. There has been comments made about the way she looks, her weight, her trauma, and her family. In such instances, the children are brought together to address what happened. Each child will speak their peace in it and then it is a process of being open and empathetic and then utilizing those skills to come to a resolve. As a result of the incident, L.L. did not have to go into a therapeutic hold. Baca estimated that L.L. has been in 40-50 therapeutic holds since she started.

Baca testified that when a student is placed at VSM, the behavioral issues and significant behaviors are not seen at the beginning of the stay. It is referred to as the honeymoon period where the child is compliant towards the beginning. According to Baca, this is what happened with L.L. The therapeutic opportunities that resulted from the racial comments presented an opportunity for growth and progress. L.L. is understanding relationships better and she is understanding when there are hard times with other individuals, howto understand people. At the time of Baca's testimony, L.L. was functioning at the fourth-grade level academically and a three or four year old emotionally.

### **Linda Gregg**

Dr. Linda Gregg testified on behalf of the Petitioners. She has a Bachelor's degree from UCLA in speech communication, a master's degree in education from California State University in Los Angeles, and a doctorate from South Eastern University in educational administration. (P-26). Gregg stated she was an associate professor of multi-cultural special education, and then worked as a consultant for approximately ten years with the

Leadership and Learning Center. Gregg testified that the Leadership and Learning Center works with school districts to provide professional development to teachers, schools, districts and administrators. Gregg stated that she currently works in several small, charter and public schools and is also an independent consultant at VSM. Gregg testified that she is the director of their educational program, and her responsibilities include, educational compliance, accreditation, and professional development. Gregg stated that she has been with VSM for approximately sixteen years. Gregg spends roughly one day a week (approximately eight hours per week) at VSM for IEP's, observations and compliance checks. Gregg's primary practice areas are compliance and professional development, which includes accreditation checks, making sure IEP's and ILP's are appropriately written, however, professional training is not the primary reason why she is with VSM. She is not at VSM on a daily or consistent basis.

Gregg testified that L.L. has an ILP (Individualized Learning Plan), which is the State requirement in this given situation.<sup>8</sup> Gregg stated that if a student is placed by a school district, she works directly with the school to make sure that there is an IEP that is collaborative between VSM and their school district, within the first thirty days of enrollment. Gregg testified that she participates in all of the IEP meetings. Gregg stated that VSM is certified in advanced education and Children Youth and Family Development. Advanced Ed is the group that assures the school is in compliance with standard rules such as teacher licensing, classroom instruction, use of materials and technology.

Gregg's role with L.L. is to make sure she is receiving appropriate instruction and assessments at the school. When students enroll at VSM, they are given a KeyMath and a Woodcock Reading Mastery Test by Pearson. (P-30 and P-31). In addition, teachers use quizzes and rubric based assessments to analyze a student's level. L.L. was given both the KeyMath and Woodcock Reading Mastery assessments.

In her role as the education director, she reviews the evaluations completed by the students. Regarding the Woodcock Reading Mastery Test, Gregg indicated that the purpose of the test was to get a baseline of all of the students at the beginning of each

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<sup>8</sup> A. IEP nor an ILP was produced to the District and not presented as evidence in during the hearing.



year. From reviewing L.L.'s results, Gregg noted she saw several areas that were below the grade level, however, her word identification score was high. Gregg viewed L.L.'s score summary and indicated she scored a 6.3 in basic skills after being enrolled in the school for approximately one month. Gregg said she was most concerned about L.L.'s reading comprehension as her results indicated she can recognize and read the words, but has trouble comprehending at the end of a sentence or paragraph. Gregg said her role with L.L. has been to focus on reading comprehension.

Gregg testified that the teaching staff are licensed teachers with between ten to twenty years of special education experience. VSM only has one special education and only one general education teacher for all students. The only special education teacher, teaches math and science to all 13 kids and the only general education teacher, teaches English Language Arts and Social Studies to all 13 kids. VSM does not offer classes for each separate grade. Gregg went on to describe an educational day at VSM. He indicated that class starts at 9:00 AM, the students meet with their Milieu counselor, and they are split because groups A and B. L.L.'s day would start off with language arts between 9:00 –10:15 A.M, followed by a break. Next the students would do physical activities that the occupational therapist recommends. After physical activities, L.L. would have social studies until 11:45 A.M, followed by lunch. Lunch is set up family style and the Milieu counselors are seated with them, and food is served by the dining staff. Following lunch, there is group sitting time in the Milieu, so all of the students can talk together, and announcements can be made by the staff. At 12:45 L.L. would have math class, followed by a break and then science class. The school has a blended learning style, where part of the instruction is given by the teacher and the other is provided by a form of technology. Students might be working in pairs, or with an adult, depending on the student's needs. At 3:00 P.M. when classes are over, the students have physical education outdoors.

Gregg has observed L.L. in all of her classes, approximately once every week. Gregg testified that based on her direct observation of L.L. in the classroom, her test scores were an accurate reflection of her skill level. When a student is lacking in a certain area, the school will make specific accommodations to meet their needs, such as more one-on-one instruction or more electronic learning. For L.L. specifically, they have provided her with examples and models to better understand the material she is learning, L.L. is

learning to read sentence by sentence and receiving additional guidance from teachers who are available in the classroom. Gregg testified that to measure a student's progress, the teacher's use different measures of evaluation, such as the baseline assessment, end of chapter/unit assessments and quarterly testing. All of the student assessments are kept inside of their composition books. Sometimes students are grouped by age, ability level or a mixture of the two, which can change throughout the school year. L.L. was in a language arts class with younger students in 2019 because it was appropriate for her ability level to be placed in a class with third graders.

An individual learning plan is prepared for a student at the beginning of the school year. Gregg testified that she did not know why an ILP was not produced for L.L. Gregg has seen two different versions of the ILP for L.L., as the students are given two per year. The components of an ILP include: the child's name, DOB, grade level, and in some cases, assessment results from KeyMath or Woodcock Reading are listed as well. If the student works with an occupational therapist or language pathologist, that will be indicated as well.

Gregg did not review L.L.'s most recent IEP prior to working with her, however she viewed the IEP over the course of the school year. Gregg's reading evaluation of L.L. is inconsistent with what the district identifies her reading level as. Reading comprehension is the main concern, however, according to Gregg, the district does not specify that in their evaluation. Gregg identifies language in the IEP that she finds to be unrealistic based on what they knew about her reading level at that time. The IEP was asking L.L. to interpret information she read, and due to her lack of reading comprehension skills, this would be a difficult task.

L.L. had a KeyMath evaluation, given to understand her baseline skills in math. Her first KeyMath assessment was completed in September of 2018. Based on L.L.'s results, her math level specifically in numeration, appeared to be low for her age, roughly a second grade, fifth month level. L.L.'s total basic concept level was at a 2.9 and basic operations at a 3.4, which evaluated her ability to make mental computations. Gregg observed L.L. in math at least once a week. Gregg identified Common Core as a set of standards for testing so when comparing state by state, the information being compared

would be the same. Gregg testified that L.L. has been given special considerations for her “significant issues” with her math skills, including examples, problem sets broken into smaller increments, and an assistant guiding her with supportive language. She is also given more hands on materials as they seem to work better for her, and she works best with one on one instruction. L.L. also uses a Promethean Board, which is a similar concept to a smart board, that has engaging programs for her to work through.

Gregg testified that L.L.’s emotional support, especially in her math class, has been the key to her making successes. L.L. still demonstrates refusing to do an assignments just as she did when in the Teaneck School District.

Gregg stated that L.L.’s progress is measured through the post assessment, as well as quizzes and tests that are given to her. There is also an analytic program that is used to measure progress online. L.L.’s progress is shared with her parents through a program called Jump Rope, team meetings and telephone calls. The students also receive quarterly report cards. L.L.’s parents also receive individualized learning plans on a quarterly basis that includes her goals and scores.

Gregg stated that the Milieu staff, therapeutic staff and educational staff all communicate about L.L. through team meetings, typically held every six weeks, that also include the families. There are also communication logs with notes about L.L. The therapist comes into the classroom and observes, and if there are any issues, there will be a conversation with the teacher and teaching assistant. The Milieu counselors are the people who help her get ready in the morning, attends group sessions with L.L. and is present in class with her as well.

Gregg testified that bullying is handled by the teachers and the student who are bullying others will typically be isolated, and the therapist will be notified. All bullying is documented. Gregg stated that racial slurs have been made towards L.L. Gregg described an incident where a student was making racial slurs to other students, however, she does not know when this incident occurred. Gregg indicated that these incidents are recorded in the communication logs, and Gregg saw three involving L.L. Aside from the incidents recorded in the communication logs, Gregg is not aware of any other incidents where

racial remarks were made towards L.L. Gregg never witnessed any of these incidents herself.

Gregg stated that L.L. changed groups at some point during the 2018- 2019 school year, and she believes she started with the older group and moved to the younger group. Gregg stated that since there are different grade levels in different classes, they have textbooks and e-textbooks to work with, that provides different content for different grade levels.

### **Julie Saperstein**

A certification of direct testimony was put into evidence on May 28, 2020 for Julie Saperstein. (PT-2). This was done in order to accommodate Saperstein's medical conditions and streamline the testimony. Below is a copy of that certification:

1. I am Julie N. Saperstein. I am the psychotherapist for Nessa "Liam" Leibowitz, who was under my care from June 2016 until August 2018.
2. I hereby certify that I suffer from psoriatic arthritis, asthma, COPD, migraine complex, and osteoporosis, leading to acute and chronic, bilateral pelvic and rib breaks.
3. I take the following medications: Fasenra, Cosentyx, Otezla, and Methylprednisolone, which suppress my immune system. As such, I must avoid public places as much as possible and even more so since the outbreak of the COVID-19 virus.
4. Some days I am unable to walk at all or leave my house. My illness has not impaired my ability to provide therapy to my patients unless I am hospitalized or incapacitated by my illness. I always make it a point to conduct a telehealth session or make up sessions as soon as possible.
5. During the course of my testimony, I may cough frequently from asthma or need to take a couple of breaks to use the bathroom as I am on a diuretic to

control swelling from edema.

6. I built a small home office to accommodate my patients, which allows me to continue to work.
7. None of the medications I take impact my ability to testify or to answer any questions.
8. I have been working in social services with adults and adolescents with co-occurring disorders and substance abuse, since 1997. I became an LSW in 2014 and a LCSW in 2016. I tend to take very difficult cases, involving mood disorders, personality disorders, PTSD, and severe emotion dysregulation. This includes cases where other therapists have not been successful and, thus, refer their treatment resistant clients and their families to me. My area of specialty is Dialectical Behavioral Therapy.
9. I have worked with many clients as well as their respective child study teams. I have been able to develop collaborative relationships with my clients' CST and private day placement's home team in order to provide services that meet the child's particular needs. I have been trained in DBT and used it with clients for close to 10 years. Dialectical behavior therapy (DBT) is an evidence-based[1] psychotherapy that began with efforts to treat borderline personality disorder (also known as Emotional Instability Disorder).[2] There is evidence that DBT can be useful in treating mood disorders, suicidal ideation, and for change in behavioral patterns such as self-harm, and substance abuse.[3] DBT evolved into a process in which the therapist and client work with acceptance and change-oriented strategies. Ultimately, this balances and synthesizes them in a manner comparable to the philosophical dialectical process of hypothesis and antithesis, followed by synthesis.[2]
10. This approach was developed by Marsha Linehan, PhD to help people increase their emotional and cognitive regulation by learning about the triggers that lead to reactive states and helping to assess which coping skills to apply in the sequence of events, thoughts, feelings, urges and actions to help avoid undesired behaviors.

11. Marsha M. Linehan, a psychology researcher at the University of Washington, developed DBT as a modified form of cognitive behavioral therapy (CBT) in the late 1980s[4] to treat people with borderline personality disorder and chronically suicidal individuals. Research on its effectiveness in treating other conditions has been fruitful;[5] DBT has been used by practitioners to treat people with depression, drug and alcohol problems,[6] post-traumatic stress disorder (PTSD),[7] traumatic brain injuries (TBI), binge-eating disorder,[1] and mood disorders.[8][9] Research indicates DBT might help patients with symptoms and behaviors associated with spectrum mood disorders, including self-injury.[10] Recent work also suggests its effectiveness with sexual-abuse survivors[11] and chemical dependency.[12]
12. DBT combines standard cognitive-behavioral techniques for emotion regulation and reality-testing with concepts of distress tolerance, acceptance, and mindful awareness largely derived from contemplative meditative practice. DBT is based upon the biosocial theory of mental illness and is the first therapy that has been experimentally demonstrated to be generally effective in treating BPD.[13][14] The first randomized clinical trial of DBT showed reduced rates of suicidal gestures, psychiatric hospitalizations, and treatment drop-outs when compared to treatment as usual.[9] DBT is the evidenced-based definitive treatment of choice for Borderline Personality Disorder.
13. In working with L.L., I was provided with her long history of trauma. My treatment plan was originally based on her initial presentation. However, as she deteriorated and was being further assessed by a multitude of professionals, a fuller picture of the complexity and severity of this case more clearly formed. Her diagnoses included Attention Deficit /Hyperactivity Disorder (Combined Type), Post Traumatic Stress Disorder, Reactive Attachment Disorder, Intellectual Disability (Unspecified Type) and Oppositional Defiance Disorder. DBT is the type of therapy I attempted with L.L. with the goal being for L.L. to use skills to be better able to calm herself, make appropriate social choices, be able to develop appropriate

relationships, respect boundaries of her teachers and her parents and regulate her emotions both in daily life and in crisis.

14. Throughout the two years I worked with her and her family, I saw brief moments that seemed like the methods were working and then sessions where it seemed like we had not done any of the therapy at all. When L.L. was in my office, she could engage in some of the techniques occasionally, but was unable to practice those techniques in real stress situations more than once or twice.
15. L.L. was unable to retain or generalize the simplest DBT skills, examples of which include Wise Mind, TIPP, STOP, Self-Soothe with Crisis Kits, Distraction, and Mindfulness of others. TIPP Temperature, Intense Exercise, Paced Breathing and Paired muscle relaxation is a skill that engages your para-sympathetic nervous system to reduce the arousal accompanied with emotion dysregulation. One example of L.L. misunderstanding and not using this skill as taught was she ran away; did not tell anyone she was leaving and just took off. She relayed to me that she was “using intense exercise”. We reshaped the skill with boundaries, but it never became a useful or permanent intervention.
16. On April 6, 2017, I contacted the case manager Ms. West on LL’s behalf to share with her some of the disturbing behaviors I was concerned about and that I was recommending an out of district therapeutic program for L.L. ( R-70 RO839) I never received a response. I had been working with this family for close to a year.
17. On June 6, 2017, I sent a follow up letter to the school district, which is (R29). I again recommended at that time a day treatment special education school and I was aware that
18. E.A.L was requesting that from the Teaneck Child Study Team. I received no call or response to this letter. (R-29)
19. As part of my graduate level course work, I learned about typical development of human behavior and development. Additionally, my training was further advanced in post graduate work for DBT adapted to

adolescents. I was trained under the auspices of Behavioral Tech, LLC by Alec Miller and Jill Rathus, who are premier experts at the Montefiore Hospital DBT program. I referenced a document used in their training that sets forth "What's Typical for Adolescents and What's Cause for Concern". The District kept telling the parents that L.L. was behaving typically, and I strongly disagreed.

20. As part of my treatment of L.L., I worked closely with Mary Carney APN, who is a psychiatric nurse practitioner. She was monitoring Liam's medication and working with the family. Mary Carney specializes in children from international adoptions with Reactive Attachment Disorder. We had consulted and both recommended at that time to the school district a therapeutic day school for Liam. I was given a copy of Mary Carney's letter which is May 9, 2017 (R27) and I agreed with the recommendation. This letter's recommendation was in accord with my letter (R29). The District failed to consider any out of district day placement for L.L., despite two health professionals closely involved with her treatment making that recommendation.
21. When the District refused to consider an out of district placement, the parents wanted to have my input and collaboration with the school to assist L.L.
22. During L.L.'s sixth grade year in 2017-2018, I attempted to share my expertise with the school district and explained in the one phone call I had with Mr. Evan Morrison, the school counselor, that L.L. needed a significant amount of support and coordination of therapeutic interventions. I shared with Mr. Morrison that L.L. seemed to connect to some of the Distress Tolerance skills I taught her, which I had recommended be implemented with L.L. in school. Mr. Morrison seemed very excited by my recommendations to use her sensory crisis kit, ice packs and paced breathing in order to help her reduce anxious or agitated arousal, and was willing to ask her if her behaviors were Wise Mind, to help her make better choices. However, the implementation either never happened or was not used consistently, which is required for behavioral change to be sustained.



Although I fully admit that DBT, despite my best efforts and that of this family, did not allow L.L to achieve the goals, set forth for her, I do believe that had the school implemented a similar methodology or there had been a coordination of services, it would have had a better chance because of repetition and real life situation implementation. I offered my assistance and never heard from the District again. My original recommendation was for a therapeutic day placement for the end of 5<sup>th</sup> grade and starting 6<sup>th</sup> grade, which is the natural first line of defense. However, L.L. proceeded through 6<sup>th</sup> grade in the public school and by the Spring of 2018, it was clear that she needed services to address her issues 24 hours a day and that first and foremost her Reactive Attachment Disorder and PTSD needed to be addressed.

23. On April 16, 2018, I wrote a letter to the school district, which is before the court as R 49, setting forth my recommendations for L.L. to attend Villa Santa Maria. I was never contacted by the CST to discuss my recommendation and why I, as L.L.'s therapist who had worked with her for two years, was making a recommendation for this placement.
24. I was so concerned about her behavior as being reported to me both by L.L. and her mother that I followed up with another letter, dated May 9, 2018, which is R54 before the court. It was and continues to be my professional opinion that L.L. regressed behaviorally during the 2017-2018 school year and that the school district was not taking seriously her pattern of mood dysregulation and maladaptive behavior in and out of school. I received no call from a case manager or Mr. Morrison following this letter.
25. L.L.'s academic, social, emotional and behavioral deterioration in the 2017-2018 year was evidenced by numerous incidents (P 4) including, but not limited to, chronic defiance of basic rules in school and at home, a marked decrease in grades, bullying and being physically aggressive with her sister, refusing to follow even the most basic safety precautions with her baby brother, hypersexuality in all spheres of her life and a complete disregard or understanding of the consequences of her actions, combined with a lack of empathy or remorse.

26. In the Spring of 2018, L.L. was a danger to herself and to her family. L.L.'s report card reflects the impact her emotional decline was clearly having on her academics. (R43).
27. My May 9, 2018 letter essentially reiterated and emphasized my recommendation in April. I was deeply concerned about the May 3, 2018 incident where L.L. was throwing rocks through the window of her home in (R53) police reports. After receiving my letter on May 9, 2018, the District's response that they were going to conduct a "risk assessment" was inappropriate and untimely, as that should have been done the year before and would have put L.L. on the defensive and potentially increased her risky behavior. In response to the denial of an assessment of that type, the District then proceeded to offer the identical program and resources it had the year before. The social and emotional goals and objectives for the 7<sup>th</sup> grade IEP were identical, despite the fact that they had not been mastered in 5<sup>th</sup> or 6<sup>th</sup> grade. (R51)
28. One of the significant factors in my recommendation for L.L. to be placed in a residential treatment program was the Neuropsychological report by Dr. Yun (R42). Dr. Yun's report highlighted the significant academic and social emotional deficits L.L. was contending with. It was abundantly clear that the services being provided to L.L., as per her IEP to address her academic deficiencies, which were comorbid with her emotional deficiencies and decline, had not resulted in any improvement. Dr. Yun's detailed observation of L.L. shows me that L.L. was not by any means receiving the type or amount of support warranted by her behavior and lack of focus (R42). L.L.'s outburst, yelling to teachers in class, watching music videos when she was supposed to be helping her partner, and telling staff she loved them are not appropriate behaviors for a sixth grade student (R42 pages 6 and 7 November 30, 2017).
29. I continued to treat L.L. remotely from her YMCA summer camp and was made aware that her oppositional behaviors and explosive moods continued at camp. I spoke with Amanda Ptak BSN, RN MS-CAM, who would initiate the calls with E.A.L, L.L., and myself from Camp. I reviewed

her August 16, 2018 letter in which L.L. continued to act immaturely, was disobedient, talked back, and purposefully annoyed other staff and campers. L.L. also continued her preoccupation and hypersexuality, making comments about other female campers and counselors' bodies. (P24). I was not at all surprised by this report and was frankly surprised that she was not sent home from Camp. Luckily, Nurse Ptak had significant experience with students with special needs and was able to help manage L.L. for the summer. Our calls became more and more difficult as L.L. refused to speak to me or discuss any of the issues that arose at Camp. Her demeanor was aggressive and defensive on the phone with E.A.L and I. My opinion, articulated in my April and May letters, was only reinforced during the Summer of 2018.

30. I reviewed the IEP goals and objectives from Spring of 2016-2017 and 2017-2018 and I agree with Mr. Morrison that L.L. did not meet those goals. The fourth to fifth grade IEP (R17) does not have social emotional goals (R-39) that deal with homework frustration etc. and were never met. Then, the next IEP has the three social emotional goals starting with (R18) and these goals are not met or changed thereafter.
31. Her academic failure, for grade level appropriate markers, was exhibited in session numerous times when I attempted to do a reading exercise with L.L. where she read short blurbs, meant to teach DBT skills to children and adolescents. L.L. could not successfully read the material. This was true from the end of 5<sup>th</sup> grade and heading into 7<sup>th</sup> grade. Additionally, her handwriting, spelling and verbal expressions were regressed for someone her age.
32. I treated Liam from June 2016 through August 2018 when she was placed at Villa Santa Maria, a therapeutic residential treatment center and school specializing in children suffering from Reactive Attachment Disorder. I was involved in the decision-making process with the family and attempted to share my opinion with the school district. I recommended that L.L. attend a therapeutic day placement, which the District refused and then was forced, due to escalating unsafe behaviors, to recommend a residential therapeutic

school placement. Although I stopped treating Liam in 2018, I continue to see E.A.L. for therapy on an as needed basis so I have been kept up to date on Liam's needs and progress.

33. I have reviewed all of my notes regarding Liam, which are before the court, as Petitioners' exhibit 5. It is important for all persons reviewing those notes to know that they are not exhaustive and are taken for insurance purposes to document that treatment has occurred. They are not detailed as to everything that was occurring during the sessions, but, served to document the sessions and the basic issues raised. When I refer to safety, it is referring to my assessment of L.L. as suicidal or homicidal, which is required in notes. It does not refer to the many ways in which L.L., her friends and family were not safe in a broader context related to impulsivity, poor judgment and poor reality testing, which when left untreated are risk factors for harm to self and others.

34. E.A.L. was involved in every session for the two years. She served as a very involved parent and reliable informant. E.A.L. desperately wanted to help her child and sought help from me, the psychiatric nurse practitioner, the school district, and various outside therapists and evaluators. Over and over, she asserted that she felt the District did not believe her or did not show the level of concern they should be showing for the behaviors L.L. was exhibiting. E.A.L. reported that she believed L.L. was manipulating district personnel and playing the adults against one another. It was my experience with L.L. when I discussed her oppositional, mean, or dangerous behavior that she attempted to present a much more typical self than was her actual reality. Even inside her efforts to look like the "good" patient, student, daughter, her distress, disinhibition, and impulsive at-risk behaviors were abundantly clear. It is my professional opinion that L.L. exhibited emotional dysregulation that rose to the level of her being dangerous to herself and her family. And, L.L. did not have the cognitive ability to understand the consequences of her behavior, did not understand how the things she said or did could impact others and showed no remorse or empathy.

35. In preparation for this testimony, it was the request of this provider, that I review the notes from the therapeutic services provided by the school district, specifically Mr. Evan Morrison. It was represented to me that Mr. Morrison did not have any treatment notes, that no progress report was provided for the fifth-grade school year, and that any progress he talked about came from his "mental notes". As a LCSW, we are taught that you must keep therapeutic notes for a minimum of seven years. It is concerning that Mr. Morrison discarded notes and that reporting was inconsistent. Mr. Morrison agreed, however, that L.L. failed to meet social emotional goals in fifth grade, and while he worked with her in sixth grade.
36. I have reviewed the IEP's and District documents. It is clear that the well-meaning efforts of the District were unsuccessful and yet, Liam had the same social and emotional goals for 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> grade.
37. The parents shared an exhaustive amount of information with the school district, for the years I worked with them and the District refused to collaborate with L.L.'s private providers. It is my professional opinion that without residential treatment for the 2018-2019 and 2019-2020 school years, L.L.'s behaviors and academics would have continued to decline. Outpatient, school-based therapy, and the special education services offered were insufficient to address her complex needs.
38. It is critical that the Court understand the complex, trauma-based issues L.L. has and the years that parents are trying to help. These issues resulted in daily at risk, impulsive behaviors that have traumatized this family significantly. It is this therapist's opinion that had the parents not sent L.L. to Villa Santa Maria at the time they had, L.L. would have continued to decline, putting herself and her family at further risk.

Saperstein proceeded to give live testimony on behalf of the Petitioners. Saperstein was admitted as an expert as a licensed clinical social worker, and she was L.L.'s psychotherapist from 2016-2018. Saperstein started working in 1997 with an international non-profit treating addicts and their families. Most of the adolescents she treated had co-

occurring disorders and histories of trauma. She then had an internship at Bergen Regional Medical Center (now Hackensack Meridian Hospital) where she dealt with people with a history of trauma and multiple co-occurring disorders.

Saperstein also worked at Jewish Family Service of Clifton and Passaic, where she was trained in family therapy and had clients from "Project Sara," which is a program for sexual assault and domestic violence victims. Saperstein testified that her license is up to date and still in effect, and she is still treating patients at this time. Saperstein testified that in her work history and her private practice, she has treated multiple children and adults with a history of trauma, who have been adopted. She also was asked to co-lead a session about treatment modalities that can be used with adopted children/adults with trauma. Saperstein was asked about dialectical behavioral therapy, and whether or not she has used that therapy in her practice with regard to students like L.L. who have been diagnosed with RAD as well as other multiple disabilities. Saperstein explained that she has treated many adolescents and pre-teens with emotion dysregulation, but perhaps not the same diagnosis and treatment as L.L. Saperstein testified that she saw L.L. once a week for two years. Towards the end of the two years, in 2018, L.L. started to refuse to come, and a family session was done in place of a meeting with L.L.

Saperstein has never worked for a school district and she is not a social worker. Saperstein's area of expertise is in psychotherapy. Saperstein testified that she uses a host of methods during treatment, including cognitive behavioral therapy and psychodynamic work. She is a patient centered therapist.

Saperstein testified that she never observed, had seen or visited VSM or observed L.L. in the Teaneck Public School. Further, she testified that she never spoke with anyone from VSM. In fact, Saperstein testified that her recommendation that L.L. attend VSM was based solely on speaking with A.L., the information the Petitioners provided her, review of the website, and review of one email from the director of VSM whose name she could not recall. She reported that she had access to L.L.'s IEPs for fourth, fifth and sixth grade, and that the District was going to use the same one for seventh grade.

Saperstein was asked about a letter she wrote to the CST at the Teaneck Public Schools, dated June 6, 2017, (R-29). At this point, Saperstein was seeing L.L. for approximately one year. In her letter, it states “it has become clear to her parents and treatment providers that she requires a higher level of education that can only be provided in a day treatment program.” Saperstein testified that she suggested a day treatment program to see if that would work to keep the child in the home. (R-29).

Saperstein was presented with a letter she wrote to the Teaneck Public Schools district dated April 16, 2018, (R-49). Stated in the letter- “it is the treatment team’s recommendation that this youth requires an out of district specialized residential special education therapeutic setting with a high level of structure and small classes for students with cognitive, academic and social emotional difficulties.” (R-49).

Saperstein identified the treatment team as herself, Mary Carney (nurse practitioner) and Dr. Yun. The letter additionally states- “Villa Santa Maria is a therapeutic residential school that specializes in attachment therapy providing individual and family therapy in conjunction with academies that can truly meet L.L.’s needs.” (R-49). Saperstein testified that she made this recommendation based on research she did of the VSM facility. Per Saperstein, she spoke with parents who researched the facility, and discussed the program and whether it would be a good fit for the family. She also received emails about their treatment structure, modality and specialties.

Saperstein was presented with a letter she prepared, that is dated May 9, 2018, (R-54). Per Saperstein, she addressed the letter to whom it may concern this time, because she was attempting to reach a larger audience, to include more than just the CST. In the letter presented, it states “it is my recommendation that she attend this program in order to prevent her continuing to pose a danger to herself and her family.”(R-54). Saperstein bases this on “numerous occasions in which L.L. put her family and herself at risk.. for instance wandering the school, leaving the house without telling anyone and running, throwing rocks through the front door glass.” (R-54). It was the end of April beginning of May 2018 when A.L. first came to her about L.L. potentially going to VSM.

L.L.'s IQ was in the sixties when it was last reported.<sup>9</sup>

Saperstein was questioned about L.L.'s grades and indicated that she received As, Bs, Cs and a D- and an F, and L.L.'s grades continue to decline. L.L. received a hormone blocker and as per Saperstein, this did not impact L.L. emotionally. It should be noted that by Saperstein's own psychotherapy notes from June 28, 2017, L.L. difficulties at home, which were spilling over into her school setting were not much more than sibling rivalry. (P-5).

Saperstein testified that the IEPs were inadequate and proved so by indicating she received reports from teachers, faculty, and L.L.'s parents. Saperstein additionally stated that her assessments were based on the client reports, feedback from the school, and L.L.'s parents; all information that was reported to her.

### **DISCUSSION**

It is within an Administrative Law Judge's "province to determine the credibility, weight, and probative value of the expert testimony." State v. Frost, 242 N.J. Super. 601, 615 (App. Div.), certif. denied. 127 N.J. 321 (1990). The weight to be given to an expert's testimony depends upon "[sic] candor, intelligence, knowledge, and especially upon the facts and reasoning which are offered as foundation of [their] [sic] opinion." County of Ocean v. Landolfo, 132 N.J. Super. 523, 528 (App. Div. 1975). Further, "the weight to which an expert opinion is entitled can rise no higher than the facts and reasoning upon which that opinion is predicated." Johnson v. Salem Corp., 97 N.J. 78, 91 (1984).

A trier of fact may reject testimony as "inherently incredible," and may also reject testimony when "it is inconsistent with other testimony or with common experience" or it is "overborne" by the testimony of other witnesses. Congleton v. Pura-Tex Stone Corp., 53 N.J. Super. 282, 287 (App. Div. 1958). Similarly, "[t]he interest, motive, bias or prejudice of a witness may affect his credibility and justify the [trier of fact], whose province it is to pass upon the credibility of an interested witness, in disbelieving his

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<sup>9</sup> It should be noted that L.L.'s IQ was 81 while at the Teaneck Public Schools. This has not been disputed by the Plaintiffs.



testimony.” State v. Salimone, 19 N.J. Super. 600, 608 (App. Div.), certif. denied, 10 N.J. 316 (1952) (citation omitted).

In the case at hand, I found all the witnesses to be credible and found that they all testified openly and honestly. However, I feel it necessary to expand on the credibility of one witness in particular; McGuill. He is the founder of VSM which he opened in 1981, and his focus has been residential therapeutic treatment with children, focusing on attachment work for the last thirty years. He identified P-29 as an excerpt from a book titled “Creating Capacity for Attachment”, that he co-wrote with other professionals in the attachment field. His testimony could be viewed as biased because he is an interested party. His testimony was utilized to bolster and promote his own treatment facility. Further, promoting the RAD diagnosis of L.L. in order to justify the treatment being performed at VSM. He does not hold any certification in education.

As to Saperstein, L.L.’s psychotherapist, she was the only expert presented by the Petitioners. Saperstein’s testimony recommending L.L. to VSM was a “net opinion”. Her expert opinion and conclusions as to L.L. and the need for an out of district placement were presented without her explaining the facts or reasoning as to how she reached her opinion and conclusion. Saperstein testified to her two-page recommendation for VSM which was made at the mother, A.L.’s, request and was based only on information the Petitioners provided, Saperstein’s review of the VSM website and the review of one email from the director whose name she was unable to recall. Saperstein did not observe VSM nor did she observe the District’s program. She also never spoke to anyone at VSM before making her recommendation and made this recommendation only after speaking with A.L.

The only professional who observed L.L. in the District’s program was the Clinical psychologist, Dr. Rebecca Yun, from Farleigh Dickenson University. Yun issued a report dated January 4, 2018. (P-20). She did not recommend a residential placement. Yun cautions that an understanding of L.L.’s intellectual function is unable to be determined and she did not find the District’s program to be inappropriate. (P-20).

## **LEGAL ARGUMENT**

New Jersey as a recipient of Federal funds under the Individual with Disabilities Education Act (IDEA) 20 U.S.C. §1400 et seq. must have a policy that assures all children with disabilities the right to a free appropriate public education (FAPE), 20 U.S.C. §1412. IDEA defines FAPE as special education and related services that are provided at public expense, under public supervision and direction, without charge; that meet the standards of the state educational agency that include an appropriate preschool, elementary school or secondary school education in the state involved; and that it is provided in conformity with an IEP 34 C.F.R. § 300.17; 20 U.S.C. § 1401(9); N.J.A.C. 6A:14-1.1 et seq.

In a due process hearing in which the question is whether the District has fulfilled its statutory responsibility to provide a FAPE, the District bears the burden of proving, by a preponderance of the evidence, that it has met its legal obligation. Lasari v. Bd. of Ed. of the Ramapo-Indian Hills Regional School District, 116 N.J. 30, 45 (1989). In providing a student with a FAPE, a school district must provide such related services and supports that are necessary to enable the disabled child to benefit from the education. Hendrick Hudson District Board of Education v. Rowley, 458 U.S. 176, 188-89, 102 S. Ct. 3034 (1982). In fulfilling its FAPE obligation, the District must develop an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. Andrew v. Douglas County School District RE-1, 137 S. Ct. 988 (2017).

The Supreme Court noted in Rowley that judges have no expertise in the area of special education, and as such they must rely upon the determinations of special education experts. Rowley, 458 U.S. at 208. Of course, judges have expertise in resolving disputed questions of fact according to the preponderance of the evidence presented. Id. at 206-207. The Court should review such testimony and other relevant evidence and determine, according to the preponderance of the evidence standard, the appropriate placement of the child in light of the statutory indication in favor of “mainstreaming” and

after appropriate consideration of the conclusion of those involved in the child's placement.

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. Dept. of Education of Mass., 471 U.S. 359, 368, 105 S.Ct. 1996, 2002, 85 L.Ed. 2d 385, 394 (1985). 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.

In assessing whether the District offered a FAPE, the focus is on the IEP, which the Supreme Court has referred to as the "modus operandi of the Act." Burlington Sch. Committee v. Dep't of Education, 471 U.S. 359, 368 (1985). Again, in Honig v Doe, 484 U.S. 305 (1988), the Supreme Court stated that "[t]he IEP is the primary vehicle for delivering the appropriate educational services to each disabled child" and further described the IEP as the "centerpiece of the statute's education delivery system for disabled children." 484 U.S. at 311.

Should a parent believe that a school district has failed to provide FAPE for the child, they have the option to unilaterally enroll them in a different educational placement and seek tuition reimbursement for same. 20 U.S.C. § 1412 (a)(10)(C). However, parents unilaterally changing placement without the district's consent, "do so at their own financial risk." Sch. Comm. Of Burlington v. Dep't. of Educ., 471 U.S. 359 (1985).

Entitlement to reimbursement for unilaterally provided services is contingent upon the finding that the program being offered by the District does not provide the student with a FAPE under the IDEA. Id. Only after the program offered by the District is found not to provide FAPE can an appropriate alternative program selected by the parents be evaluated and reimbursement ordered. Forest Grove v. School District, 557 U.S.230,

247 (2009). Where the Court determines that the program offered by the District provided FAPE and /or the alternative placement selected by the parent is not appropriate for the student, a parent's claim for reimbursement for unilaterally provided services must be denied. The appropriateness of an IEP is not determined by a comparison of the District's program to the private placement. S.H. v. State-Operated Sch. Dist. of Newark, 336 F.3d 260, 271 (3d Cir. 2003).

There is a two-part inquiry for determining whether a district provided FAPE. First, whether the District complied with the procedural requirements of IDEA in developing the IEP, and second, whether the IEP is "reasonably calculated to enable the child to receive educational benefits." Rowley, supra, 458 U.S. 207, 102 S.Ct. at 3051, 73 L.Ed. 2d at 712.

The Petitioners in this matter argue that the District's CST violated the procedural safeguards of the IDEA which rose to the level of denying L.L. FAPE in accordance with Rowley. Id. In order for procedural violations of the IDEA to be actionable, the violations must amount to a substantive deprivation of FAPE. 20 U.S.C.A. § 1415(f)(3)(i). A claim based on violations of the IDEA's procedural requirements is thus not valid unless it alleges that the flaw affected the student's or the parents' substantive rights. Kingsmore v. District of Columbia, 466 F.3d 118, 199 (D.C. Cir. 2006). According to the Petitioners in this matter, there were numerous procedural violations. They argue that no one evaluating L.L. had expertise in her known disability of RAD. The CST failed to include the most basic of information for L.L.'s program in her IEP, R-51, including current goals, objectives, and appropriate behavioral interventions. Further that L.L.'s district evaluations and private evaluations identify numerous deficits in L.L.'s profile and none of those are addressed in the IEP, R-51, either by program or goals and objective and the CST failed to provide the parents with progress reports and any information regarding L.L.'s progress or regression. Through

In accordance with procedural safeguards, the Child Study Team is obligated in accordance with N.J.A.C. 6A:14-2.5(b)(3) to ensure that "The student is assessed in all areas of suspected disability." N.J.A.C. 6A:14-2.5(b)(7). In evaluating each student with

a disability, the evaluation to identify all of the child's special education and related service needs, whether or not linked to the suspected eligibility category. In addition, N.J.A.C. 6A:14-3.4(a)(1) sets forth the obligations for evaluation and states the Child Study Team must "review existing evaluation data on the student including evaluations provided by the parents, current classroom-based assessments and observations and the observations of teachers and related service providers and consider the need for any health appraisal or specialized medical evaluation." "Decisions regarding the areas to be assessed are determined by the suspected needs of the child." Office of Special Education and Rehabilitative Services, U.S. Department of Education, Analysis of Comments and Changes, 71 Fed. Reg. 46643 (August 14, 2006)." R.M. o/b/o T.S. v. Matawan-Aberdeen Regional Board of Education, 2014 N.J. AGEN LEXIS 202, 44-45 (N.J. AGEN 2014).

There is no dispute that there were multiple IEPs for L.L. throughout her time in the Teaneck School District. These IEPs are dated October 21, 2016 (R-18), February 16, 2017 (R-23), July 14, 2017 (R-33) and April 17, 2018 (R-51). However, according to the Petitioners, The District failed to conduct any evaluations that were relevant to L.L.'s behavior issues and issues related to her RAD. The CST was aware of her diagnoses and academic issues and emotional difficulties but still failed to evaluate and assess those needs. The Petitioners argue that they gave consent for updated evaluations and the district only completed the Social History and tried to blame the parents for stating that the testing should not be repeated so it could be valid. The director of special services, Beckford, agreed that was reasonable from the stand. It has been shown that the Petitioners provided the District with an abundance of documentation regarding L.L.'s diagnosis of RAD and recommended needs. (R-1, R-27, R-29, R-49, R-54, P-20 and P-23). The Petitioners argue that the District failed to review and use the relevant documentation provided by the parents when developing the IEP. Dr. Bacher-Weidman evaluated L.L. and diagnosed her with RAD. At the time, L.L. was seven years old. This report, R-1, was shared with the CST. The Petitioners shared P-20, Dr. Yun's FDU neuropsychological report, with the CST and P-23, the letter outlining L.L.'s various diagnoses and recommendation for treatment. A.L. shared R-27, the letter from Mary Carney, psychiatric nurse practitioner, diagnosing L.L. with post-traumatic stress disorder.

In addition, the parent brought in books and their own therapist to IEP meetings to inform the district about RAD. The Petitioners argue that District ignored all letters that L.L.'s private therapist provided in regard to her needs. (R-29, R-49, R-54). It is not disputed that the CST was not educated in or have any experience with RAD. They allege the District did not make any changes to the IEP or request further information from any of the professionals working with L.L. (R-51). Accordingly, this is in direct conflict with the procedural safeguards of the New Jersey Special Education Code that requires the CST to review all existing data and information prior to developing a program and placement. N.J.A.C. 6A:14-3.4(a)(1).

Finally, the parents never received quarterly reporting on her IEP goals or objective data on whether L.L. was doing her work more often in fifth or sixth grade. The harassment, intimation, bullying report was never shared with the parent. (R-24). The District admitted that they did not report on progress or give the parent any documentation or data on L.L.'s IEP goals. There was no evidence presented by the District dispute these allegations.

However, the District argues that any issues not addressed in the IEPs of L.L. were due to Petitioners' lack of cooperation and that they stopped working collaboratively with the District. In preparation for the October 2017 end date of the IEP, the District made numerous attempts to schedule an IEP. (R-41). Some dates were scheduled but then ultimately cancelled by Petitioners. Multiple notices and telephone calls were sent and made to petitioners. (R-41). It should be noted that it is undisputed that all IEPs leading up to the January, 2018 IEP (R-51) were signed and consented to by Petitioners. An IEP meeting was finally conducted on January 17, 2018 where current placement was maintained of which petitioners were noticed but failed to attend. As for Dr. Yun's report (P-20), this was not provided to the District until after the January 17, 2018 IEP meeting had been conducted, even though it was dated nearly 4 weeks earlier than provided. (P-20). The report being referenced (P-20) is the Neuropsychological Report at the Farleigh Dickenson University Center for Psychological Services in November and December 2017. It should be noted that the report recommended that L.L. be placed in a full-time outpatient program geared toward working with children who struggle in cognitive, academic, as well as socio-emotional difficulties. It also recommended that L.L. receive

therapeutic services to address emotional and behavioral limitations. This would be accomplished by small group instruction tailored to L.L.'s unique needs. There was not a recommendation made for the need for an out of district placement. Even after Petitioners current counsel was retained there were multiple attempts to convene an IEP meeting. (R-47 and R-48).

The District argues that they offered L.L. an appropriate program in that L.L. was provided with meaningful opportunity to progress educationally. The testimony and documentary evidence presented showed that L.L.'s fifth grade IEP provided for pull-out resource replacement for Math, as well as in class resource support for Language Arts, Social Studies, and Science. (R-18). L.L.'s pull-out resource replacement class consisted of six students and was taught by a certified special education teacher. The in-class resource support class was a general education classroom co-taught by both a certified general education teacher and a certified special education teacher. In addition, L.L. was provided with weekly group counseling, weekly group speech therapy, door-to-door transportation and an extended school year. L.L. was further provided a behavior plan focusing on homework completion. At the time, the Petitioners were working with advocate Susan Verrico, who attended the IEP meeting. (R-18); The Petitioners did not challenge the proposed IEP by filing a request for due process.

In December of 2016, the District put in place a behavioral intervention plan for L.L. and provided a tutor for L.L. upon Petitioners' request. Furthermore, the District social worker, Morrison, also set up a weekly check-in with L.L. After a safe zone was established, a lunch group was established, a BIP was put in place, and tutoring was put in place. On February 16, 2017, the District, with the Petitioners' consent, amended L.L.'s to also place L.L. in a pull-out resource replacement for Language Arts. (R- 23); Notably, the parent attended the February 16, 2017 IEP with their advocate Susan Verrico and the parent signed and consented to the February 16, 2017 IEP.

On July 14, 2017, the District held an IEP meeting, wherein the CST discussed L.L.'s placement for the 2017-2018 school year, L.L.'s 6<sup>th</sup> grade year. (R-33). The parents attended the IEP meeting with their attorney Emerson Dickman, Esq. The

District proposed an in-class resource support program at Thomas Jefferson Middle School for science and social studies. (R-33). L.L. would also receive pull-out replacement in Math and Language Arts, social skills counseling in group once per week, group speech services once per week, individual counseling once per week and an Extended School Year Services. The parents did not file a request for due process challenging the proposed IEP. On August 15, 2017, the District amended L.L.'s IEP without a meeting. (R 37.) Specifically, the District proposed providing L.L. with the services of a 1:1 aide during the schoolday. The Petitioners signed consent indicating their agreement to the amended IEP for 6<sup>th</sup> grade (R-33) having being represented by Emerson Dickman, Esq. Through the attorneys, then Mr. Dickman, it was agreed and memorialized that L.L.'s current IEP would run through October 20, 2017, at which time another meeting would be held.

Thereafter, at the April 17, 2018 IEP meeting, after numerous delays caused by the Petitioners, the District proposed the following special education program for 7<sup>th</sup> grade (2018-2019) and related therapeutic services: Pull-out resource replacement for Language Arts and Math, and in-class support for Science and Social Studies. (R-50 and R-51). Related Services included: Social Skills with a certified staff member 1x/week for 30 minutes; Individual Counseling with a certified social worker 1x/week for 30 minutes; a one-to-one personal aide; Special Transportation from door to door to and from school; and an Extended School Year 5 days a week, 4 hours a day, for 6 weeks over the summer. Ibid. Pull-out resource replacement classes consisted of six students and was taught by a certified special education teacher. The in-class resource support class was a general education classroom co-taught by both a certified general education teacher and a certified special education teacher. The IEP also includes a behavior intervention for homework completion which requires a homework log as well as positive reinforcement and rewards. (R-51). The IEP provides goals to address reading, writing, mathematics, speech/language, as well as social/emotional/behavioral. Ibid. As far as accommodations, L.L.'s IEP also provided for the following:

- Provision of study guides; guide should be checked for accuracy



- Provision of a copy of class notes
- Planner checked by ICS teachers
- Provision of math manipulatives
- Provision of a calculator
- Organizational aids (e.g. color coding, appointment book, etc.)
- Adding time as needed
- Providing frequent breaks as needed
- Read tests aloud to student, as needed
- Use modified text/worksheet
- Give directions through several channels
- Use test results to review and reinforce learning
- Vary grouping arrangements: Large, Small
- Consider seating arrangements: Close to teacher, away from distractions; next to peer buddy
- Utilize peer/buddy system in cooperative learning effort
- Provide parent/guardians with instructions on homework and other assignments, as requested
- Develop and enforce classroom rules consistently and persistently
- Develop strategies to meet the student's learning style
- Vary Presentation: demo, verbal, written, audio-visual learning aids Ibid.  
Provide practice with written/oral directions
- Provide student with exemplars or completed examples
- Break assignments into small series
- Shorten assignments; allow time to complete
- Provide additional time to complete tasks
- Provision of number lines or raised number line
- Reduce number of spelling words as needed
- Provide means of home/school communication

The IEP also provided for consultation/observation with Behaviorist on a monthly basis with feedback; Consultation with case manager; Consult with teacher and all related service providers. Furthermore, as stated on the first page of the IEP, the IEP

team was to reconvene at the conclusion of the reevaluations. Ibid. However, at the IEP meeting, the parents for the first time advised the District that were seeking placement at VSM, a residential placement in New Mexico. L.L. was ultimately unilaterally placed in New Mexico by she parents in August of 2018.

The evidence demonstrates her progress while enrolled in Teaneck. L.L.'s attendance in 5<sup>th</sup> grade (R-20). L.L.'s attendance in 6<sup>th</sup> was also very good. ( R - 4 3 ) And despite an IQ of 81, L.L. earned average to above average grades. (R-20 and R-43).

In order to appropriately address the parents' request, the District, through a formal evaluation plan, proposed that L.L. undergo a complete evaluation, including the following: Educational Evaluation; Speech/Language Evaluation; Psychological Evaluation; Social History; Neurological Evaluation; and Functional Behavioral Assessment. (R-52). After being presented with the proposed evaluation plan, the Petitioners refuse to provide consent to same, leaving the District unable to further evaluate L.L. or her present needs. Only after the District filed for a cross-petition to compel the requested evaluations, and after the petitioners filed an unsuccessful emergent application before this Court, the Petitioners, on June 14, 2018, gave consent to permit the District to conduct a social history assessment, and upon the condition of the Petitioners dictating the testing a psychological evaluation. (R-63) Said restriction was allegedly put in place by the Petitioners on the basis of the District tnot accepting the parents' evaluation, a Neurological Evaluation. Ibid. However, the Petitioners refused to provide consent, under any circumstances, for the District to conduct an Educational Evaluation, a Speech and Language Evaluation or a Functional Behavioral Assessment. Ibid. Therefore, the District was precluded from assessing the child. The District was unable to do an Educational Evaluation; a Speech/Language Evaluation; a Psychological Evaluation; a Neurological Evaluation; or a Functional Behavioral Assessment. the Petitioners sought and continued to seek a residential placement 2,000 miles from home, but unreasonably denied the District the ability to evaluate this child's needs.

I **CONCLUDE**, the Petitioners unreasonably refused to have the District conduct

proposed evaluations. Based on the evidence presented by the District, the Petitioners impeded the District's attempts to properly evaluate L.L. Without the ability to conduct full evaluations, the District was unable to determine whether the IEP needed to be modified to address all of L.L.'s needs.

I Further **CONCLUDE** that the District provided an IEP for L.L. which was reasonably calculated to provide L.L. with FAPE. The District's IEP provided L.L. with the appropriate services, which included classes taught by certified general and special education teachers in the least restrictive environment in a small, structured classroom environment., L.L. was provided with social skills training, individual counseling, speech therapy, a behavioral intervention plan, a one-to-one aid, transportation and an extended school year. L.L.s goals and objectives were appropriate and measurable.

The District is required to provide education in the least restrictive environment ("LRE").<sup>20</sup> U.S.C. § 1412(a)(5)(A). "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 (3<sup>rd</sup> Cir. 1995). Each public agency must ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services. 34 CFR 300.115. The continuum, in general, ranges from the least restrictive to the most restrictive: instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions. 34 CFR 300.115 (b)(1). The continuum of program options includes but is not limited to: regular education; resource specialist programs; designated instruction and services; special classes; non-public, non-sectarian schools; state special schools; specially designed instruction in settings other than classrooms; itinerant instruction in settings other than classrooms; and instruction using telecommunication, instruction in the home, or instructions in hospitals or institutions. Garden Grove Unified Sch. Dist., 114 LRP 29090 (SEA CA 04/21/14).<sup>21</sup> F.3d 520, 535 (3<sup>rd</sup> Cir. 1995).

I **CONCLUDE** the District offered a FAPE in the least restrictive environment. L.L. is classified as Other Health Impaired. Notably, L.L. is NOT classified Emotionally Disturbed. Pursuant to the IEP proposed by the District, the District provided for an in-class support setting with regular education students. Instead, L.L. was unilaterally placed in the very restrictive residential community in New Mexico, nearly 2,000 miles from home. It is evident from the testimony and documentary evidence presented that L.L. significantly regressed when placed at VSM. The behaviors exhibited while at the Teaneck Public Schools were minor behavioral infractions and few and far in between and were not significant enough to deem L.L. a danger to herself or others.<sup>10</sup>

L.L.'s placement in the District as provided for in her IEP is appropriate, and if L.L. were to be placed in an out of district placement, the Petitioners should not have completely skipped over consideration of (1) the self-contained program in the District (2) an out-of-district day school, or (3) a residential school in New Jersey closer to home, before placing L.L. in a residential placement in New Mexico, as same does not comply with the Least Restrictive Environment mandate.

Finally, I **CONCLUDE** that it would be in the best interest of L.L. for Petitioners to permit the District to conduct all relevant evaluations as outlined in the District's April 17, 2018 evaluation plan, including, and Educational, Speech and Language, Psychological, Neurological and Functional Behavioral Assessment.

Since it was concluded that the District provided L.L. with FAPE in the least restrictive environment, it is therefore unnecessary to address the unilateral placement at VSM and whether or not it is an appropriate placement for L.L. Further, entitlement to reimbursement for a unilateral placement is contingent upon the finding that the District did not provide L.L. with FAPE, thus reimbursement is denied.

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<sup>10</sup> As noted earlier, a Final Decision on an Emergent Application was entered by the undersigned on June 18, 2018 pertaining to this matter bearing Docket. No. 07900-18. Petitioners sought immediate out of district placement, in particular VSM, a therapeutic residential school in Cedar Crest, New Mexico, as they believed the minor, L.L. posed a danger to self and others. The ruling was that Petitioners were unable to satisfy the standards set forth in Crowe v. DeGioia, 90 N.J. 126, 132-34 (1982) and thus the emergent application was denied.

**ORDER**

For the reasons set forth above and the District having satisfied its burden of proof, I **CONCLUDE** that the District's program provided L.L. with FAPE in the least restrictive environment, thus it is **ORDERED** that Petitioners petition be **DENIED**.

Further, I **CONCLUDE** that the District's Cross-Petition to compel evaluations of L.L. is **GRANTED**.

This decision is final pursuant to 20 U.S.C. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2019) 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 (2019). 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.

May 4, 2021



\_\_\_\_\_  
DATE

\_\_\_\_\_  
**ELISSA MIZZONE TESTA, ALJ**

Date Received at Agency

May 4, 2021\_\_\_\_\_

Date Mailed to Parties:

May 4, 2021\_\_\_\_\_

sej

**APPENDIX**

**WITNESSES**

**For Petitioners**

A.L.  
 Joseph McGill  
 Michelle Baca  
 Dr. Linda Gregg  
 Dr. Julie Saperstein

**For Respondent**

Sandra Beckford  
 Evan Morrison

**EXHIBITS**

**I.D.**

**EVID.**

**For Petitioner**

P-1	Julie Saperstein CV	x	x
P-2	Julie Saperstein - license	x	x
P-4	Dr. Saperstein's journal of L.L. dated 7/17-10/17	x	x
P-5	Psychotherapy Progress notes of J. Saperstein	x	x
P-12	Correspondence From Mary Carney, APN dated 4/23/16		
P-17	PARCC English Language Arts/ and Mathematics Assess. Report, Grade 5, School yr. 2016-17	x	x
P-18	PARCC English Language Arts/ and Mathematics Assess. Report, Grade 6, School yr. 2017-18	x	x
P-20	Report of Rebecca J. Yun, Ph.D dated 1/4/18	x	x
P-23	Letter from Dr. J. Aranoff dated 7/16/18	x	x
P-25	Joseph McGill C.V.	x	x
P-26	Dr. Linda A. Gregg C.V.	x	x
P-28	Villa Santa Maria School (Preliminary Treatment Plan)	x	x
P-29	Excerpt from book titled "Creating Capacity for Attachment"	x	
P-30	Villa Santa Maria School, Key Math 3 Test Results	x	x
P-31	Woodcock Reading Mastery Test dated 9/19/18	x	x

P-32	Villa Santa Maria School, 2018-19 Report Card for Q1 for L.L. dated 10/15/18	x	x
P-34	Villa Santa Maria School, Master Treatment Dated 11/7/18	x	x
P-38	Packet of Emails bate stamped 1-100	x	x
PT-2	The Certification of Julie Saperstein's direct testimony	x	x

For Respondent

R-1	Neuro-Psychological Eval. dated 3/26/13	x	x
R-13	Psychological Eval. dated 4/20/16	x	x
R-14	Educational Eval. dated 4/26/16	x	x
R-15	Psychiatric Eval. dated 5/9/16	x	x
R-16	Speech-Language Re-eval. dated 5/10/10	x	x
R-18	IEP Re-eval. dated 10/21/16	x	x
R-19	Behavioral Intervention Plan dated 12/12/16	x	
R-20	2016-2017 Report Card – Grade 5	x	
R-21	2016-2017 Incident Reports	x	x
R-23	IEP dated 2/16/17	x	x
R-24	HIB dated 3/31/17	x	x
R-27	5/9/17 Letter from Ms. Carney to District	x	x
R-29	6/6/17 Letter from J. Saperstein, LCSW to District	x	x
R-30	Psychiatric Eval. dated 6/6/17	x	x
R-33	IEP dated 7/14/17	x	x
R-37	Request to Amend IEP dated 8/15/17	x	x
R-41	IEP Annual Review dated 1/17/18	x	x
R-42	Farleigh Dickenson University Neuropsychological Report 1/4/18	x	x
R-43	2017-2018 Report Card -grade 6	x	x
R-46	Progress Report dated 2/14/18	x	x
R-49	4/16/18 Letter from J. Saperstein, LCSW to District	x	x
R-50	Draft IEP dated 4/17/18	x	x
R-51	IEP dated 4/17/18	x	x

R-52	Re-eval. planning letter dated 4/17/18	x	x
R-53	5/3/18 Police Report	x	x
R-54	Letter from Julie Saperstein, LCSW dated 5/9/18	x	x
R-56	Letter from I. Machado, Esq. dated 5/9/18	x	x
R-63	Consent for, for additional Assess. Dated 6/14/18	x	x
R-67	Social Dev. History dated 8/9/18	x	x
R-70	Emails 9/4/16-1/31/18	x	x