



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

**FINAL DECISION**

OAL DKT. NO. EDS 01339-23

AGENCY DKT. NO. 2023-35426

**D.M. AND J.M. ON BEHALF OF N.M.,**

Petitioners,

v.

**HOPEWELL VALLEY REGIONAL**

**BOARD OF EDUCATION,**

Respondent.

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**Michael I. Inzelbuch**, Esq., for petitioners

**Eric L. Harrison**, Esq., for respondent (Methfessel & Werbel, attorneys)

Record Closed: February 1, 2024

Decided: February 26, 2024

BEFORE **TRICIA M. CALIGUIRE**, ALJ:

**STATEMENT OF THE CASE**

This case arises under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§ 1400 to 1482, and 34 C.F.R. §§ 300.500 et seq. (2024). Petitioners D.M. and J.M. on behalf of minor child N.M. bring this action against respondent Hopewell Valley Regional Board of Education (Board) seeking: all educational records of N.M.; a change in N.M.'s classification to multiply disabled; an Individualized Education Plan (IEP) that

recognizes and meets N.M.'s individualized needs and provides him with an appropriate program and placement out-of-district at the Cambridge School, Pennington, New Jersey (Cambridge); reimbursement for all costs associated with N.M.'s unilateral placement at Cambridge for the 2022–2023 school year; extended school year at Cambridge with appropriate related services and transportation; continued transportation; reimbursement for all out-of-pocket costs incurred by petitioners in connection with this matter, including but not limited to attorney's fees, evaluations, private therapies, and/or tutoring; and other appropriate relief.

### **PROCEDURAL HISTORY**

On February 1, 2023, D.M. and J.M. on behalf of minor child N.M. filed a complaint for a due process hearing with the New Jersey Department of Education (DOE), Office of Special Education. D.M. and J.M. waived mediation, and on February 14, 2023, this matter was transmitted to the Office of Administrative Law (OAL), where it was filed as a contested case. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13.

On March 6, 2023, the parties appeared before the Honorable Barry Moscovitz, ALJ, for a settlement conference, but the matter did not settle and was assigned to me for hearing. On March 16, 2023, a telephone hearing was held during which the due process hearing was scheduled for June 2 and 23, and July 12, 2023. A prehearing order was issued on April 21, 2023.

By joint request of the parties, the hearing dates of June 2 and 23, 2023, were adjourned and additional hearing dates were scheduled: July 28 and August 28 and 31, 2023. During the second day of hearings, a final day was added to the proceedings: October 13, 2023.

On July 12, 2023, the parties appeared for hearing by Zoom Communications, Inc., a remote audio-video platform licensed by the OAL. Prior to opening statements, respondent stated that petitioners' request for all academic records of N.M. had been satisfied, but petitioners reserved an objection with respect to a portion of N.M.'s records. Specifically, petitioners objected, pursuant to N.J.A.C. 1:6A-10.1(a) (the five-day rule), to

the introduction of documents by respondent which had not been provided prior to five business days before the beginning of the hearing. On July 12, 2023, petitioners moved to bar introduction of twenty-one pages of documents from the files of teacher Catherine Myers Kulp (Kulp) and to bar any testimony by Kulp regarding these documents.

On July 14, 2023, respondent provided petitioners with over 200 pages of documents originally provided to respondent by teacher Anne Fishman (Fishman). On July 28, 2023, prior to the examination of Fishman, petitioners objected on the grounds that their document request of January 31, 2023, identified numerous documents which, with respect to Fishman, were not provided by respondent, including her certifications, licenses, documents which reflect the work performed by N.M. and/or his achievements, and assessments and/or testing protocols used by Fishman with him. (R-1 at 044.) Petitioners moved to bar all testimony by Fishman regarding N.M.'s progress as well as all documents provided on July 14, 2023.

The regulation requires the exchange of all documents intended to be introduced at hearing five business days prior to the hearing, “unless the judge determines that the evidence could not reasonably have been disclosed within that time.” N.J.A.C. 1:6A-10.1(c). Kulp’s documents were inadvertently omitted from the records produced by respondent in discovery,<sup>1</sup> and petitioners were provided at least some of these documents in the normal course of N.M.’s 2021–2022 school year.<sup>2</sup> Petitioners failed to bring the absence of any documents to my attention prior to the hearing, though they were aware that documents had not been provided. While respondent’s counsel did not have the documents before the hearing and therefore, had not planned to introduce them, petitioners had already marked some of these documents for introduction. (See P-226; P-228.)

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<sup>1</sup> Counsel agreed that the error occurred in the office of the Director of Special Services; Kulp understood the request for documents and therefore, turned over her entire file on N.M. to the Director in a timely manner. The error was not discovered, and the documents were not provided to counsel for respondent until the morning of the July 12, 2023, hearing.

<sup>2</sup> The documents included samples of N.M.’s work in Kulp’s class, and some pieces were graded or otherwise assessed. Some of the documents were stamped “sign and return,” which meant, according to Kulp, that the work was taken home by N.M. and his parents were asked to sign it and send it back to school.

Any prejudice to petitioners by the late receipt of some documents from Kulp could have been remedied by delaying the testimony of Kulp to ensure that petitioners had time to examine all twenty-one pages, but petitioners stated their preference to proceed without further delay. Accordingly, respondent was not permitted to examine Kulp regarding the twenty-one documents; petitioners, however, elected to introduce some of these documents on cross-examination.

With respect to the motion to bar Fishman's testimony and the late-filed documents which she supplied, the parties agreed that respondent was responsible for the failure to provide Fishman's documents in a timely manner, consistent with the requirements of N.J.A.C. 1:6A-10.1(a). Notwithstanding this failure, counsel for both parties had the same amount of time—fourteen days—to review these documents prior to the second day of the hearing (as respondent did not forward the documents to its counsel prior to July 14, 2023). Fishman worked with N.M. on a daily basis for the three years preceding his parents' decision to remove him from the District. Therefore, Fishman was permitted to testify regarding her work with N.M., but respondent was precluded from introducing, and examining Fishman with respect to, the 200 documents produced after the hearing began.

At the conclusion of Fishman's testimony, petitioners moved to strike all testimony of Kulp and Fishman and all documents they produced. The motions to strike testimony were denied, and only those documents produced by Kulp and Fishman which were used by petitioners were accepted into evidence.

The hearing concluded on October 13, 2023; the parties submitted joint stipulations of fact on December 8, 2023, and post-hearing briefs on December 15, 2023. The parties participated in telephone hearings on January 11 and February 1, 2024, to confirm specific issues regarding submissions, and on February 1, 2024, the record closed.

## **FACTUAL DISCUSSION AND FINDINGS**

The parties stipulated to the following statements,<sup>3</sup> and therefore, I **FIND** as **FACTS**:

### **A. Background**

1. After eight years of enrollment in the Hopewell Valley Regional School District (HVRSD, District)—from preschool through fourth grade—N.M., a twelve-year-old sixth-grade student, was unilaterally placed by his parents, petitioners here, at Cambridge, beginning with the 2022–2023 school year.
2. During the school years of 2017–2018; 2018–2019; 2019–2020; 2020–2021; and 2021–2022, when he was in kindergarten through fourth grade, N.M. was classified by the District as eligible for special education (SE) and related services under the classification “Specific Learning Disability” (SLD). Prior to same, N.M. was classified as Preschool Disabled and attended the District’s preschool disabled program for three years (school years of 2014–2015; 2015–2016; and 2016–2017).
3. On January 31, 2023, petitioners filed a due process petition (Petition) against the Board alleging that the IEP developed for N.M. by the District on or around May 12, 2022, failed to meet N.M.’s individualized educational needs and denied him a Free Appropriate Public Education (FAPE).
4. Petitioners pled that N.M.’s classification be changed to fully describe N.M.’s multiple disabilities and sought to have N.M.’s classification changed from SLD to Multiply Disabled (MD).
5. The parties agree that N.M. has been diagnosed with a language delay, a language-based learning disability (LLD), attention deficit hyperactivity

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<sup>3</sup> I modified the joint stipulation of facts to ensure consistency with the OAL Manual of Style and with the cited materials. All emphases, including bold, underlined, and italicized language, were used by the parties.

disorder (ADHD), problems with literacy and academics, motor dyspraxia, amblyopia, astigmatism, auditory processing disorder, and a developmental disorder of scholastic skills. (R-6; R-7; R-16; R-18.)

6. According to Dr. Karen T. Kimberlin, N.M. also has a receptive-expressive language disorder, pragmatic language disorder secondary to a prosodic deficit, a complex reading disability, dyslexia, and a disorder of written expression. (P-186 at 5450.)
7. Petitioners further seek to have N.M. placed in an out-of-district program at Cambridge, fees/costs, reimbursement for costs of the out-of-district placement, transportation, and continued placement at/reimbursement for Cambridge, which is accredited by the Middle States Association Commission on Elementary Schools.
8. On February 7, 2023, respondent filed an answer admitting that N.M. is a learning-disabled student eligible for special services as part of his public education but denying that N.M. was misclassified and denying a failure of FAPE arising out of the provision of those services.
9. The Petition was heard before the Honorable Tricia M. Caliguire, ALJ, on the following dates: July 12, 2023; July 28, 2023; August 28, 2023; August 31, 2023; and October 13, 2023.

## **B. N.M.'s Period of Enrollment with Respondent District**

### **(1) Preschool and Kindergarten**

10. N.M. began attending classes in the HVRSD in preschool and attended the District for a total of eight years, from preschool through fourth grade.
11. N.M. was first evaluated in-district in 2014.

12. N.M.'s classification after "Preschool Disabled" was and remains SLD. (See R-3 at 366.)
13. N.M. entered preschool with a severe speech delay.
14. The District determined that N.M. was not ready for kindergarten after two years of preschool and provided him with a third year of preschool before he entered kindergarten.
15. Throughout kindergarten, the 2017–2018 school year, N.M. received forty minutes of occupational therapy (OT) per week, twice per week in twenty-minute sessions. (R-3 at 372.)

**(2) First grade (2018–2019)**

16. N.M. received SE instruction from Maria DeFrank (DeFrank) in kindergarten, first grade, and second grade.
17. Upon entering first grade, N.M. was referred for re-evaluation to determine continued eligibility for SE and related services. (R-3 at 366–67.)
18. N.M. received an OT evaluation on or around December 12, 2018. (Id. at 367–68).
19. N.M. was administered a test of visual perception skills and scored within average range.
20. N.M.'s overall visual and fine motor skills were assessed using the Miller Function and Participation Scale.
21. N.M.'s motor skills were determined to be below average due to issues with bilateral coordination, in-hand manipulation, and pincer grasp.

22. N.M. was unable to complete visual motor tasks within the time constraints of the test.
23. Weaknesses in the areas of memory, orientation, and control were also detected.
24. N.M. received a Speech-Language evaluation on February 5, 2019, with the following results:
  - Articulation deficits and difficulty forming vocalic sounds were detected.
  - His auditory conceptualization skills were average.
  - His speech had age-appropriate rate, pitch, volume, voice, and fluency.
  - His phonological awareness index score was average.
  - His Phoneme-Grapheme index score was 10 percent below average range.
  - His phonological processing skills were poor.
  - His composite phonological awareness score was below average range.(R-3 at 367.)
25. N.M. received a Psychological evaluation on February 21, 2019, with the following results:
  - N.M. shared that he enjoys school but finds it difficult to make friends.
  - His verbal comprehension and fluid reasoning were average.
  - His visual spatial index was high-average.
  - His working memory and processing speed were low-average.(R-3 at 366.)



26. N.M. received an Educational evaluation on February 21, 2019, with the following results:
- N.M. showed relative strengths in the areas of math, calculation, and applied problems.
  - N.M. demonstrated significant weakness in areas of broad reading, letter-word identification, academic fluency, passage comprehension, and writing.
  - N.M. was observed to require extra time to complete his tasks.
- (R-3 at 366.)
27. N.M. was thereafter classified as SLD and eligible for the following SE services, as included in the March 14, 2019 IEP:
- Daily sixty-minute placement in an SE math classroom;
  - Daily 120-minute placement in an SE language arts classroom;
  - Weekly thirty-minute placement in speech-language therapy, in a group not to exceed more than two students;
  - Weekly thirty-minute placement in individual physical therapy (PT);
  - Weekly thirty-minute placement in group OT;
  - Extended school year (ESY) summer placement in an SE classroom; sixteen hours per week;
  - Continued OT and PT through ESY.
- (R-3 at 364.)
28. N.M. received an Audiological evaluation on May 13, 2019; his Auditory Composite (APC) score placed him in the seventh percentile, indicating difficulty with auditory processing skills. (R-4 at 389.)
29. In a Neurological evaluation conducted by Ronald Barabas, M.D., in the summer of 2019, after N.M.'s first-grade year, the doctor diagnosed N.M. with "underlying (static) Encephalopathy manifesting with language delay," and auditory processing disorder and attention problems. Dr. Barabas'

report does not refer to any further evaluation or testing performed by him in concluding that N.M. has Encephalopathy. (R-6.)

**(3) N.M.'s Performance During the 2019–2020, 2020–2021, and 2021–2022 School Years (2nd through 4th grades)**

30. In November 2019, a Neuropsychological evaluation yielded diagnoses of “[ADHD], Auditory Processing Disorder, Developmental Disorder of Scholastic Skills and an Underlying Static Encephalopathy.” (R-7 at 453.) With regard to the diagnosis of underlying static encephalopathy, the evaluator relied on a “past neurological examination (that) provided this diagnosis” (referring to Dr. Barabas’ evaluation). (Id. at 452.)
31. In December 2019, the District updated N.M.’s IEP to include the results of the evaluation conducted by Dr. Barabas. (R-8 at 465.)
32. N.M.’s April 20, 2020 IEP, offering a program for the 2020–2021 school year in which N.M. would be in the third grade, proposed an increase in daily supplemental reading instruction to sixty minutes per day, placement in the LLD class for language arts and math, and in-class resource (ICR) classes for science and social studies.<sup>4</sup> The section of the IEP titled “present levels of academic achievement and functional performance (PLAAFP)” noted “steady growth in many areas of reading” through February 2020, but provided no instructional levels, no reading levels, and no underlying data. (R-9 at 502.)
33. The PLAAFP section of the IEP contained scores on several serial assessments, including the Gallistel-Ellis Test of Coding Skills, the San Diego Quick Reading Assessment, the Slosson Oral Reading Test, Take

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<sup>4</sup> An ICR class is a general education (GE) class with a certified SE teacher also present, but where the GE teacher is responsible for all the students, the SE teacher is there to follow N.M.’s IEP and deliver the accommodations and modifications he requires. See J.W. and M.W. obo A.W. v. Medford Lake Borough Bd. of Educ., OAL Dkt. No. EDS 09058-18 (Aug. 23, 2019).

Flight Decoding Progress Monitoring, the Phonological Awareness Screening Test (PAST), Primary Spelling Inventory, Aimsweb, and Literably, which was used online during COVID as a substitute for the Diagnostic Reading Assessment (DRA). Petitioners contend that no underlying data, no instructional level, and no reading levels were provided. (R-9 at 496–502.)

34. The Reading section of the PLAAFP stated that N.M. “has shown progress towards his individual goals and objectives in the area of Phonological Awareness, Decoding, Encoding, Fluency and Comprehension.” Petitioners contend that no underlying data, no instructional level, and no reading levels were provided. (R-9 at 496.)
35. While the COVID-related school closure prevented further testing in spring 2020, the PLAAFP did report gains from September 2019 through February 2020 on the “Take Flight: Single Word Decoding Progress Monitoring,” Primary Spelling Inventory, Aimsweb, CORE Graded High Frequency Word Survey, and DRA 2. Petitioners contend that no underlying data, no instructional level, and no reading levels were provided. (R-9 at 496–502.)
36. N.M.’s May 13, 2021 IEP, offering a program for the 2021–2022 school year, in which N.M. would be in fourth grade, proposed placement in the pull-out resource (POR) class for language arts and math,<sup>5</sup> ICR classes for science and social studies, and continued daily one-hour supplemental reading instruction, as well as speech-language therapy once monthly and OT once weekly. (R-11.)
37. The PLAAFP section of the IEP noted progress towards his individual goals and objectives in the areas of Phonological Awareness, Decoding, Encoding, Fluency and Comprehension; however, petitioners contend no

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<sup>5</sup> In a POR class, specialized instruction in a single subject is provided by an SE teacher outside the GE classroom. N.J.A.C. 6A:14-4.6(d).

underlying data, no instructional level, and no reading levels were provided. (R-11 at 541.)

38. According to the Progress Report for the 2020–2021 school year, (R-12), N.M. fully achieved only two of five goals in reading, with none of the goals delineating the instructional level nor reading level at which N.M. was then performing or expected to perform. With regard to one of the two goals N.M. achieved, (Goal #3, “Page 3 of 14”) there is a delineation that same would be monitored on his “instructional level,” however, said level is not provided. Petitioners contend that no underlying data, no instructional level, and no reading levels were provided.
39. An increase in N.M.’s scores was noted from September 2020, through April 2021, in the Gallistel-Ellis Test of Coding Skills, the San Diego Quick Reading Assessment, the Slosson Oral Reading Test, the Take Flight: Single Word Decoding Progress Monitoring, the PAST, the Primary Spelling Inventory, Aimsweb, and Literably. Petitioners contend that no underlying data, no instructional level, and no reading levels were provided. (R-11 at 542–49.)
40. On the progress report for the 2020–2021 school year, District staff reported that N.M. achieved all math goals and objectives and several language arts goals and objectives; in all other areas N.M. was “progressing satisfactorily.” Staff reported that N.M. achieved all speech goals and objectives and all but one OT objective. Petitioners contend that no underlying data, no instructional level, and no reading levels were provided. (R-12.)
41. N.M. attended the ESY program in the summer of 2021; a progress report provides that N.M. read aloud his first chapter book. Petitioners contend that no underlying data, no instructional level, and no reading levels were provided. The ESY progress report did not report monitoring of specific goals and objectives contained within the May 13, 2021, IEP. (R-13.)

42. Re-evaluations in the fall of 2021 yielded a significant discrepancy between N.M.'s cognitive functioning and his educational performance, resulting in N.M.'s continued classification as SLD. Petitioners contend that no underlying data, no instructional level, and no reading levels were provided. (R-14; R-15; R-16; R-17; R-18; R-19.)
43. On May 12, 2022, the District offered an IEP for the 2022–2023 school year, in which N.M. would be in the fifth grade. The PLAAFP noted progress towards goals in all areas. Petitioners contend that no underlying data, no instructional level, and no reading levels were provided. (R-20 at 684–96.)
44. Math teacher Christian Gilmore wrote in the IEP that N.M. “continues to work on building up his grit and resilience in the area of math. At the beginning of the year, after small group instruction was presented, [N.M.] would sit and stare at his independent assignments without attempting to solve the problems. He required frequent teacher check-ins, re-teaching, and verbal reassurance that he had the math ability and skills that were needed to solve the presented problems. As the year has progressed, [N.M.] has begun to attempt his math work with greater independence and confidence, but this should be an area of continued focus into fifth grade.” (R-20 at 685.) In N.M.'s Progress Report, he was noted to be “progressing satisfactorily” in math; however, N.M. did not achieve any of his math goals. (R-25.)
45. In writing, teacher Kulp noted that N.M. “has made steady growth toward meeting his writing goal and objectives . . . as the year has progressed, N.M. has displayed increased independence, confidence, and stamina in the area of writing.” (R-20 at 685.) Kulp also noted, in part, that “[N.M.] continues to require teacher support with revising and editing his work.” (ibid.) At the hearing, Kulp testified that she only monitored one writing goal.
46. Under the “social/emotional/behavioral” section of the PLAAFP, Kulp wrote that N.M. “socializes easily with his peers, both in class, and on the

playground.” (Id. at 686.) On cross-examination, Kulp did testify that N.M. was “argumentative” and “irritable” “at times” during her class, that this occurred for “periods of time” and that she did not include this in the IEP despite it being “important.” (Tr. of July 12, 2023 (T-1), at 205–209; R-20 at 10.)

47. Speech-language therapist Liz Babice (Babice) wrote in the IEP that N.M. had made progress in articulation, comprehension, and nonverbal pragmatic skills. (R-20 at 686.) Babice also noted that “[N.M.] requires more prompting to come up with definitions for different words,” and “requires more support when answering higher level comprehension questions within longer passages.” (Ibid.) Petitioners contend that she did so with no delineation as to the level(s) at which N.M. was performing or expected to perform.
48. In the reading section of the PLAAFP, N.M.’s scores on the Aimsweb, the Gallistel-Ellis, the Word Identification and Spelling Test (WIST), the Slosson, the San Diego, and the DRA, recorded from September 2021 through April 2022, were “collected in an effort to demonstrate progression in target instructional areas” and “to ascertain progression across the 2021–2022 academic year.” (R-20 at 686.) Petitioners contend that no underlying data, no instructional level, and no reading levels were provided.
49. On the WIST, N.M. went from scoring below the 1st percentile in September to the 25th percentile in word identification, from the 67th percentile to the 86th percentile in spelling regular words, from below the 1st percentile to the 90th percentile in Fundamental Literacy Ability, and from below the 1st percentile to the 90th percentile in Sound Symbol Knowledge. Petitioners contend that no underlying data, no instructional level, and no reading levels were provided. (R-20 at 690–91.)
50. On the Slosson—a “normed” test which measures oral word recognition—N.M. went from a 25th percentile ranking in September 2021, to a 45th

percentile ranking in April 2022. Petitioners contend that no underlying data, no instructional level, and no reading levels were provided. (R-20 at 691.)

51. On the San Diego Quick Reading Assessment, N.M. progressed from an independent level one to an independent level four. Petitioners contend that no underlying data, no instructional level, and no reading levels were provided. (R-20 at 691–92.)
52. On the Elementary Spelling Inventory from September 2021, to January 2022, N.M. dropped from 11/25 to 9/25 “words correct” but increased from 37/62 to 42/62 “feature points” and from a total score of 48/87 to 51/87. Petitioners contend that no underlying data, no instructional level, and no reading levels were provided. (R-20 at 692.)
53. On the DRA, which measures reading comprehension, N.M. increased from an independent reading level 18 (beginning second grade) to an independent reading level 34 (mid-third grade)—1.5 grade levels of progress in less than one full school year. (R-20 at 693.) Petitioners contend that witnesses for both parties noted that the DRA was “subjective,” and its probative value is limited.
54. Serial testing on the PAST in September 2021, December 2021, March 2022, and May 2022, demonstrated maintenance by N.M. of skills in some subtests and improvement in others. (R-20 at 693.)
55. The reading section of the PLAAFP concluded with a narrative summary that began with “this year [N.M.]’s coding skills have improved due to his positive attitude and sense of determination.” (R-20 at 20.)
56. N.M.’s end of year progress report for the 2021–2022 school year reported that he was “progressing satisfactorily” or had “achieved” all goals and

objectives. (R-25.) Petitioners contend that no underlying data, no instructional level, and no reading levels were provided.

### **Due Process Hearing**

#### **C. Testimony of Catherine Kulp, Special Education Teacher**

57. Kulp testified that she taught N.M. as his fourth-grade teacher during the 2021–2022 school year. (T-1 at 122–123.)
58. N.M. received instruction in the subject of “Writing” in his resource replacement language arts class from Kulp, who was trained in Wilson and Orton-Gillingham (O-G) methods of literacy instruction. The class began with six students and two left, leaving four including N.M. (Id. at 123.)
59. For writing instruction, Kulp used the “Framing Your Thoughts” program, which she described as a systemic, research-based methodology. (Id. at 125.) Kulp opined that N.M. made significant progress, concluding the year with excellent work on an essay regarding Elon Musk. (P-228.) Petitioners contend that no underlying data, no instructional level, and no reading levels were provided.
60. Kulp opined that during the 2021–2022 school year N.M. was appropriately placed for his skill level and performance. (T-1 at 125.)
61. Kulp stated that she modified her class lesson plan to meet N.M.’s needs in accordance with his IEP, (Id. at 137), and that N.M. made “meaningful progress” in her class. (Id. at 140.) Petitioners contend that no underlying data, no instructional level, and no reading levels were provided.
62. On cross-examination, Kulp admitted that for the entire 2021–2022 school year the only educational goal that she monitored was reflected in the entry



“[N.M.] will write an opinion piece of up to 2 paragraphs, with 2 accurate, relevant reasons that support the stated opinion.” (Id. at 149; R-25 at 735.)

63. This goal is listed in the IEP as “Goal #6.” There are three marking periods; this goal was not introduced in the first marking period. As to the goal itself, the criteria for success is 80 percent with no indication if said goal was to be achieved independently, with prompting, or with teacher assistance. (R-25 at 735.)
64. The actual work product (N.M.’s Fourth-Grade Writing Samples) was belatedly produced after the hearing commenced. (P-228.)
65. Kulp further testified that N.M.’s mother was cooperative, sent snacks in for the classroom, and offered to come in to help with the class. (T-1 at 211.)

#### **D. Testimony of Anne Fishman**

66. On the second day of the hearing, July 28, 2023, the District produced Fishman, who provided supplemental one-on-one reading instruction to N.M. from September 2019 through June 2022. (Tr. of July 28, 2023 (T-2), at 62, 63.)
67. Fishman is a reading interventionist who specializes in structured literacy, which consists of explicit multisensory instruction as well as “Take Flight,” a reading intervention program used with N.M. (T-2 at 43, 45–46, 47, 48.)
68. The WIST, the Slosson, and the Aimsweb assessments are norm-referenced, meaning that they compare the student to his same-age peers across the country. The other measurements used by the District were criterion-based assessments, which compare a student to himself over time. (T-2 at 87–88.) As to these tests, the only one discussed within the June 30, 2022, Progress Report is the Aimsweb. The other measurements were discussed within the PLAAFP sections of the IEPs.

69. Under Goal #2 (“when presented with instruction level text [N.M.] will read with sufficient accuracy and fluency to support comprehension”), the 2022 indicator states, in part, “[N.M.]’s decoding skills are constantly improving yet automaticity and oral reading fluency continue to be an area which he still struggles with. While he has not improved by 25 words or more using fourth grade AIMSWEB benchmark (he has improved by 18 more words per minute) passages just yet he has achieved 25 words read accurately per minute on a *third grade level* twice since September. He has not been able to do this on a consistent basis though.” (R-25 at 732 (emphasis added).)
70. Fishman testified that in her opinion, N.M. made meaningful progress in reading and that the IEP offered for the 2022–2023 school year was appropriate. Within the Progress Report for the 2021–2022 school year, Fishman described three Reading Goals, none of which N.M. achieved. (R-25 at 731–33.) He was noted to be “progressing satisfactorily” in reaching those goals. The Progress Report did not provide grade-level performance ratings.
71. With regard to the three Goals, to wit, “when presented with narrative and/or informational tests on [N.M.]’s instructional reading level[,]” the progress report does not indicate N.M.’s reading level. (ibid.) With respect to the rating of “progressing satisfactorily,” the June 2022 indicator states, in part, that N.M. “struggle(s) at times” and while “at times he fully comprehends[,] . . . at other times he appears to struggle.” (R-25 at 732.)
72. Fishman testified that she is not a Certified Academic Language Therapist. (T-2 at 138.)
73. Fishman testified that her instruction focused on oral motor movements, articulatory gestures, and multisensory instruction to address deficiencies in phonological awareness and auditory processing and that N.M. progressed satisfactorily during her instruction. (Id. at 66, 72 and 73.)

Petitioners contend that no underlying data, no instructional level, and no reading levels were provided.

74. Fishman testified that N.M. had shown he could make progress under a “diluted [O-G]” teaching method, but that she did not use that method while instructing him. (Id. at 144–145.)
75. Fishman stated that the “Take Flight” method she actually used was recommended by its publisher to be administered in intervals of forty-five to sixty minutes, which was more than the precise number of minutes allocated to her instruction under the IEP. (Id. at 149.)
76. Fishman testified that under her instruction she witnessed N.M. advance from needing attention and practice to review basic foundational reading skills in March 2020, to being able to read chapter books. Petitioners contend that this occurred without Fishman providing any reading levels as to said books. (Id. at 95–96.)
77. The Progress Reports completed by Fishman (R-10 for the 2019–2020 school year; R-12 for the 2020–2021 school year; R-13 for ESY 2021; R-25 for the 2021–2022 school year; and R-26 for ESY 2022) did not identify by grade level the reading levels at which N.M. was performing or expected to perform. The last period of time when a specific grade level was provided within a Progress Report was in first grade wherein the Progress Report with regard to three of the six goals contained therein indicated “First Grade Level.” Specifically, Goals 5, 6, and 7 specifically state “when presented with a First Grade Level literature text” and/or “subjects on the First Grade level.” (R-5 at 417–18 (emphasis added).)
78. Fishman did not recommend continuing one-on-one supplemental reading instruction during N.M.’s fifth-grade year because “it was time to let him fly,” meaning that she believed he would continue to make progress in the less restrictive environment of group instruction with peers. (T-2 at 112.)

79. Fishman admitted that the determination that N.M. had completed his Take Flight program with “mastery” was a basis for N.M. no longer being eligible for one-on-one instruction under the services provided in his May 2022 IEP rather than an evaluation as to what grade level N.M. was reading at, and that the first time she ever evaluated what grade level N.M. was reading at was when he received his DRA evaluation for the May 2022 IEP. (Id. at 151–153.)
80. Fishman testified that August or early September 2022 testing revealed regression that Fishman partially attributed to the summer break, and that testing in late October 2022 would have more accurately assessed N.M.’s reading skills. (Id. at 120–121.)
81. Fishman admitted on cross examination that she never advised petitioners that N.M. would experience regression that required until October to recoup his skills. (Id. at 126.)
82. Fishman stated she was not asked by the District to locate or produce any of the raw data behind N.M.’s language arts proficiency evaluations which would have been in her possession until a week and one half to two weeks before appearing to testify in this matter. (Id. at 127–28, 163.)
83. Fishman acknowledged that she never provided the data she collected with regard to the Take Flight program, (Id. at 125), nor did Director of Pupil Services Paulette DiNardo ask her for any of her data. (Id. at 127.)
84. Fishman testified that her instruction was to “bridge the gap,” that “I’m going to try my best to help this child get to grade level.” (Id. at 132–137.)
85. Fishman was unable to relate to the Court at what grade level N.M. performed in the area of “spelling” for the entire 2021–2022 school year. (Id. at 152.)

86. With regard to the DRA testing, Fishman testified that the IEP did not specify what grade levels N.M. was at, (Id. at 155), and none of the testing results contained within the IEP told us the grade level at which N.M. was performing. (Id. at 157–158). In addition, with regard to DRA testing, Fishman testified that “the DRA is a very subjective test . . . it doesn’t align with [O-G] teaching and I don’t pay much emphasis on the DRA.” (Id. at 191.)
87. Fishman testified that IEPs contain Goals and Objectives with the intention that same would be achieved. (Id. at 178.)

#### **E. Testimony of Paulette DiNardo, Director of Pupil Services**

88. On the third day of the hearing, the District produced Director of Pupil Services Paulette DiNardo (DiNardo).
89. DiNardo oversees the District’s SE department, has worked in the field of SE since 1993, and has been previously qualified as an expert in the field of SE. (Tr. of August 28, 2023 (T-3), at 6, 7.)
90. DiNardo admitted that as an expert in special education she is aware that the DRA test of reading proficiency was widely criticized by persons in her field with knowledge of literacy testing and the science of reading as not giving a genuine impression of independent reading level. (Id. at 115–117.)
91. DiNardo stated her opinion that N.M. made meaningful progress during the two years preceding his removal from the District, and that the IEPs covering the 2019–2020, 2020–2021, 2021–2022, and 2022–2023 school years offered FAPE in the least restrictive environment (LRE) appropriate to N.M.’s needs.

92. On cross-examination, DiNardo admitted that her opinion that N.M. made meaningful progress during his in-district education was based, in part, on the fact that he was annually advancing from one chronological grade to the next. (Id. at 85.)
93. DiNardo stated that she could not determine from looking at N.M.'s IEPs at what grade level he was actually performing or what grade level was set as an IEP goal. (Id. at 60.)
94. DiNardo admitted that while the District's progress report stated that N.M. had achieved the ability to write paragraphs by June 2022, she could not personally tell from the progress reports and attached data that this was actually true. (Id. at 63.)
95. DiNardo testified that while the District's position was that N.M. had met his IEP goal of being able to write paragraphs, that goal did not specify that N.M. had to be able to do so independently. (Id. at 64.)
96. DiNardo admitted N.M.'s IEP classification of SLD did not expressly separately address his ADHD and/or Dyslexia diagnoses or state how each affects his education. (Id. at 97.)
97. DiNardo admitted she was aware that petitioners had raised concerns to the District that were not documented in N.M.'s IEPs and that the "Concerns of Parent" sections, left blank, should have reflected those concerns. (Id. at 142; see R-8; R-11; R-19; R-20.)
98. DiNardo testified that the first time she noticed this error was the weekend before her testimony but admitted she was aware omitting parental concerns from IEPs is not a legally appropriate way to complete IEP documents. (T-3 at 142–143.)

## F. Testimony of Petitioner J.M.

99. At the August 28, 2023, hearing, J.M. testified it was obvious and upsetting to her that by the end of N.M.'s fourth-grade year, he was struggling academically. (T-3 at 188.)
100. J.M. testified that during the summer of 2020, she had N.M. evaluated at Children's Hospital of Pennsylvania after the District classified N.M. as SLD under a diagnosis, in part, of "Static Encephalopathy." (Id. at 197–98; see also P-216.)
101. Dr. Katherine Taub told J.M. that static encephalopathy was not an accurate diagnosis, and that the more accurate diagnosis was "language delay, ADHD, and auditory processing difficulty of unknown etymology." (P-216 at 5883.)
102. J.M. testified that she provided Dr. Taub's report to the District. (T-3 at 199.)
103. Petitioner J.M. testified that by fourth grade, N.M. was neither reading nor writing and had difficulty writing a single sentence in a birthday card. (Id. at 195–196.)
104. J.M. testified that in fourth grade, N.M. was exhibiting low self-esteem, could tell that he was falling behind his peers, and would come home from school in tears. (Id. at 188–189.)
105. J.M. testified that in fourth grade, N.M. did not feel like he had the support that he needed from his teacher (Kulp). (Id. at 190.)
106. J.M. testified she never felt assured that N.M. was progressing satisfactorily. (Id. at 189.)

107. J.M. testified that she communicated to the District's child study team (CST) N.M.'s belief that losing recess so that he could work with Fishman was a punishment. (Id. at 190–91.)
108. J.M. testified that she found the numbers in N.M.'s IEP and the explanations from his teachers regarding his purported progress confusing because "the bottom line is he wasn't reading." (Id. at 195.)
109. J.M. testified that in reviewing classroom work product provided to her that the District purported to evidence that N.M. was progressing satisfactorily, there was one ungrammatical sentence that N.M. had clearly written himself and the rest was just cut-and-paste. (Id. at 196.)
110. J.M. testified N.M. admitted to her he was just cutting and pasting sentences on his fourth-grade writing assignments and was not actually writing his own sentences. (Ibid.)
111. J.M. testified that with instruction from Cambridge, N.M. is finally reading independently; she can hear him reading out loud and see him writing, leaving N.M. with a sense of confidence. (Id. at 201–02.)
112. J.M. testified she was absolutely certain that the written paragraphs being presented to her by the District as N.M.'s work product and the underlying data for his third- and fourth-grade progress evaluations were the results of cutting and pasting, not N.M.'s actual writing. (Id. at 207; see also P-228 at 6319–22.)
113. J.M. testified that based on her review of the documents and knowledge of her son, the only sentence in a multi-paragraph writing assignment that appeared to actually have been written by N.M. and reflective of what he had achieved under in-district instruction was "Off-roading is very fun to do, lots of jeeps are there the most, Remember to bring a map if you go there." (T-3 at 207–08, quoting P-228 at 6322.)



114. J.M. also testified that sentences such as “The Pinelands have 1.1 million acres of land and water” and “This area provides water for millions of people, thousands of acres of farmland, and the rest of nature” were pasted from another source. (T-3 at 206–07, quoting P-228 at 6319.)
115. J.M. further testified that the remainder of the writing samples (in P-228) are clearly beyond N.M.’s vocabulary, grammar, and sentence structure levels and read as if they had been copied straight from an online encyclopedia. (T-3 at 208.)

### **G. Petitioners’ Experts.**

116. Petitioners presented two experts in support of their position that the District failed to offer a FAPE to N.M. and that Cambridge was appropriate, to wit, Susan K. Caplan (Caplan), M.Ed., LDT-C, and Dr. Karen T. Kimberlin, SLP.D., CCC-SLP.
117. Caplan performed her testing of N.M. during August 2022. (P-189.) Dr. Kimberlin performed her testing of N.M. on September 1 and 6, 2022. (P-186.)
118. Prior to the testing administered by petitioners’ experts, N.M. had last attended a full day of school in June 2022. (R-20.)

#### **(1) Testimony of Susan Caplan**

119. On the fourth date of the hearing, petitioners called Caplan to testify, who was offered and accepted as an expert in SE and interpretation of academic testing. (Tr. of August 31, 2023 (T-4), at 31–23). Caplan issued two reports dated January 6, 2023, (P-189), and May 23, 2023. (P-190.)

120. Caplan’s January 6, 2023 report included the reason for referral, background information, classroom observation in-district, a review of N.M.’s IEPs and Progress Reports, testing utilizing the Kaufman Test of Educational Achievement (KTEA), and a summary. In reviewing the PLAAFPs of N.M.’s 2020, 2021, and 2022 IEPs, Caplan wrote that the scores represent a “loss of skills,” “slow progress,” and “inconsistent scores (with) his pattern of growth.”

Specifically:

	DRA 4/2020 IEP		Literacy 12/2021 IEP		DRA 5/2022 IEP	
Fall	3	Kindergarten	2020	C Kdgtn* ↓	2021	18 J ↓gr. 1
Winter	6	beg. 1st “E”	2021	F gr. 1		20 gr. 2
Spring	Not provided		2021	K gr. 2		34 gr. 3**

\*[N.M.]’s Level C in the fall of 2020 was a lower level than his score in the winter of 2020 indicating a loss of skills. This can also be observed in fall of 2021 when his DRA score of 18, which correlates to a J, is lower than his spring of 2021 level.

\*\*Given [N.M.]’s reported slow progress, as well as his documented difficulties with memory and decoding, moving from a beginning 2nd grade to a mid-3rd grade level over an approximate four-month period of time, in the fourth grade, is inconsistent with his pattern of growth.

121. In her January 6, 2023, report, Caplan concluded that between the District’s Evaluation of October/November 2021, (R-16), and her Educational Evaluation of August 15, 2022, that “when compared to his peer group, [N.M.]’s progress has slowed and the gap has widened in the areas of Phonological Processing, Decoding, Reading Vocabulary, Comprehension, Math Computation and Application, and Written Expression.” (P-189 at 5595.)

Specifically:

	October 2021		August 15, 2022	
Composite/Subtest	Standard Scores	95% Confidence Interval	Standard Scores	95% Confidence Interval
<b>Core Composites</b>				
Academic Skills Battery (ASB) Composite	89	75–83	74 ↓	70–78
Math Concepts & Applications	80	83–95	81	75–87

Letter & Word Recognition	82	76–88	76 ↓	70–82
Written Expression	78	67–89	64	52–76
Math Computation	85	79–91	77 ↓	71–83
Spelling	73	67–79	82 ↑	76–88
Reading Comprehension	88	76–100	77 ↓	69–85
<b>Reading Composite</b>			76	70–82
Letter & Word Recognition	82	76–88	76	70–82
Reading Comprehension	88	76–100	77 ↓	69–85
<b>Math Composite</b>	86	81–91	78 ↓	73–83
Math Concepts & Applications	89	83–95	81 ↓	75–87
Math Computation	86	81–91	77 ↓	71–83
<b>Written Language Composite</b>	76	69–83	72	65–79
Written Expression	78	67–89	64 ↓	52–76
Spelling	73	67–89	82	76–88

<sup>1</sup> Indicates a raw score that is converted to a weighted raw score (not shown).

Composite/Subtest	November 2021		August 2022	
	Standard Scores	95% Confidence Interval	Standard Scores	95% Confidence Interval
<b>Composite Subtest</b>				
Sound Symbol Composite	93	87–99	67 ↓	61–73
Phonological Processing	96	87–105		
Nonsense Word Decoding	98	88–98	75 ↓	69–81
Decoding Composite	86		74 ↓	70–78
Word Recognition	82	76–88	76	70–82
Nonsense Word Decoding	93	88–98	75	69–81
Reading Fluency Composite	83	75–91	74 ↓	66–82
Silent Reading Fluency	85	74–96	79	68–90
Word Recognition Fluency	82	69–95	76	98–90
Decoding Fluency	90	77–103	78 ↓	65–91
Reading Understanding Composite	88	76–100		

Reading Comprehension	88	76–100	77↓	69–85
Reading Vocabulary	93	85–101	83↓	75–91
Orthographic Composite	71	61–81	73	63–83
Spelling	73	67–79	82	76–88
Letter Naming Facility	69	49–89	72	52–92
Word Recognition Fluency	82	69–95	76	63–89
Comprehension Composite	79	71–87	76	68–84
Reading Comprehension	88	76–100	77 ↓	69–85
Listening Comprehension	73	63–83	78	67–89

122. Caplan concluded, in part:

A review of [N.M.]’s progress reports from the fourth grade indicate that [N.M.] only “Achieved” one goal. The goal was “[N.M.] will write an opinion piece of up to 2 paragraphs, with 2 accurate, relevant reasons that support the stated opinion. (Criteria: 80% success).” [N.M.] was unable to demonstrate mastery of these objectives when asked to write on the Written Expression subtest of the KTEA 3 where he achieved a Standard Score of 64. In his May 2022 IEP, his progress on the DRA between Winter 2022 and Spring 2022, was reported to increase approximately one and one-half years.

[N.M.]’s performance on this administration of the KTEA 3 not only demonstrates the severity of his dyslexia, but, when compared to his performance on the same test in October 2021, also demonstrated that he has lost ground, when compared to his peers. When compared to his peer group, [N.M.]’s progress has slowed and the gap has widened in the areas of Phonological Processing, Decoding, Reading Vocabulary and Comprehension, Math Computation and Applications and Written Expression.

The program offered to [N.M.] for the fifth grade has less intensity than the Reading program which was previously provided to him. In the 3rd and 4th grades, [N.M.] received 1 hour of 1:1 instruction in Reading and group Language Arts in the Pullout Resource Center totaling 120 minutes per day. The proposed program for Reading/Language Arts in the Pullout Replacement Resource Center was for 120 minutes per day. The June 2022 IEP does not indicate or provide for a systematic, multi-sensory approach to reading. Mrs.

Fishman, [N.M.]’s fourth grade reading teacher wrote the following in his IEP: “[N.M.] was taught through a multimodal approach to learning, incorporating phoneme awareness, phonics, fluency, vocabulary, comprehension and written expression.” In the areas of phoneme awareness, decoding, encoding, fluency and writing, [N.M.] was instructed through a multisensory, systematic and sequential mode of instruction.” There is no mention of a systematic multi-sensory approach to reading indicated for the fifth grade in either Reading or Written Expression.

Given [N.M.]’s lack of progress on standardized testing, coupled with his inability to independently read above a mid-second to beginning third grade level, it does not appear, that the program offered to [N.M.] for the fifth grade, is appropriate to meet his needs. There is no integration or application of Reading and Writing skills across the curriculum. [N.M.]’s poor vocabulary development and Reading Comprehension skills, coupled with his weak auditory processing skills, place him at risk for failure in Social Studies and Science.

....

It is the opinion of this Learning Consultant, that [N.M.] be placed, by the Hopewell Valley Regional School District, at the Cambridge School, which specializes in teaching students with language-based learning disabilities, through the consistent use and application of a structured literacy program which will address all the components of reading necessary for effective and fluent reading and where multi-sensory writing programs, such as “Framing Your Thoughts”, are used and applied in all subject areas.

For [N.M.], the Cambridge School is the least restrictive environment and one where he can be educated with his peers, in a non-stigmatizing environment with social emotional and executive functioning supports integrated throughout the program.

[P-189 at 5595–96.]

123. Caplan’s “Educational Update” dated May 23, 2023, (P-190), described the reason for referral, background information, a classroom observation at the

accredited Cambridge School, and testing that, again, utilized the KTEA, and, concluded, in part:

Results of this educational update indicate that while [N.M.] continues to demonstrate significant academic weaknesses, in the nine months that he has attended the Cambridge School, he has made significant statistical growth in the areas of Word Recognition, Math Computation, Nonsense Word Decoding, Word Recognition Fluency, and Decoding Fluency.

.....

The results of this Educational Update document the progress that [N.M.] has made at the Cambridge School as well as identify the language deficits demonstrated in the areas of Comprehension, Vocabulary, and Written Language.

It is the recommendation of this Learning Consultant, that [N.M.] be placed by the District at the Cambridge School where he can continue to receive a highly structured, multi-sensory approach to learning, in a small group environment with reading and written language skills integrated across all areas of the curriculum.

[P-190 at P5603–04.]

124. Caplan testified that the District's theory that N.M. regressed over the summer of 2022 does not sufficiently explain why he scored so low in light of the alleged progress that the District purports. (T-4 at 38.)
125. Caplan testified that if N.M. had actually mastered the skills that the District represented he had mastered, testing him in September should not have made a difference.
126. Caplan testified that N.M.'s learning disabilities notwithstanding, N.M. has an average IQ, is of average intelligence, and did not make the progress in-district that should have been made by a properly classified and accommodated child of N.M.'s ability.<sup>6</sup> (Id. at 41.)

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<sup>6</sup> N.M.'s most current FSIQ is reported as 95, in the District's Psychological Evaluation of October 28, 2021. (R-15 at 589.)

127. Caplan opined that the IEPs that the District provided to N.M. did not provide an accurate picture of N.M.'s abilities or how he was testing. (Id. at 42–43).
128. Caplan opined that given the needs and limitations identified in N.M.'s assessments, N.M.'s placement in a GE classroom for science and social studies was not appropriate. (Id. at 44.) She stated, “I don’t know how they thought a student who wasn’t reading independently or writing could function in a content area class where those skills are necessary.” (Id. at 45.)
129. Caplan opined that the DRA test utilized to evaluate N.M.'s grade-level reading proficiency is not a good tool for assessing reading proficiency. (Id. at 56–57.)
130. Caplan opined it should have been evident from Fishman’s notes regarding repetition of instruction and very slow progress in advancing towards even the most basic foundational skills (i.e., mouth movements, articulation of consonants and vowels) that simply repeating the same program year after year was not an effective way to teach N.M. reading. (Id. at 59–60.)
131. Caplan testified that other than the DRA score in N.M.'s May 2022 IEP, no other IEP provided reference to grade-level achievement or support for the District’s position that N.M. had achieved a third-grade reading proficiency level under the instruction of Fishman. (Id. at 69.)
132. Caplan testified that the District’s IEP progress reports representing that N.M. had achieved the ability to write paragraphs under their instruction specifically did not indicate that he was writing paragraphs *independently*, and that if the District was representing that N.M. was writing independently, it did not make sense that N.M. could write at a higher level than he could read. (Id. at 71.)

133. Caplan testified that she had asked for, and was not provided, the raw test data indicating N.M. had actually increased his reading proficiency in the manner represented by the District.
134. Caplan testified that she reviewed N.M.'s fourth-grade IEP and progress report, but when she evaluated N.M., he was not able to demonstrate the skills the District represented he had achieved in his fourth-grade IEP progress report. (Id. at 66.)
135. Caplan testified that Cambridge was able to meet N.M.'s educational needs because it used the O-G method in every subject of the day. (T-4 at 73.) The District used O-G early in N.M.'s education and noted that N.M. had made some progress but then abandoned O-G in favor of the alternative methods of Fishman. (Id. at 73.)
136. Caplan reviewed records of N.M.'s educational progress at Cambridge and summarized them in her May 2023 Report. (P-190 citing P-162, P-176, and P-178.)
137. Caplan concluded, "It is the recommendation of this Learning Consultant, that [N.M.] be placed by the District at the Cambridge School[.]" (P-190 at 5604.)
138. Caplan opined that the District's last proposed IEP (May 2022) for in-district placement did not adequately address N.M.'s educational needs by focusing on speech and language articulation skills rather than the actual literacy skills that N.M. needed to read and write beyond a second-grade level. (Ibid.)
139. Caplan concluded that the District's expectation that N.M. would progress satisfactorily with such instruction was "unrealistic." (Ibid.)



**(2) Testimony of Dr. Karen Kimberlin**

140. On October 13, 2023, the fifth day of the hearing, petitioners produced Dr. Kimberlin, who was offered and accepted as an expert in SE, speech, language, writing, and diagnosis of dyslexia. (Tr. of October 13, 2023 (T-5), at 5.) Dr. Kimberlin issued two reports, dated January 20, 2023, (P-186), and June 8, 2023, (P-187).

141. Dr. Kimberlin testified that she evaluated N.M. on September 1 and 6, 2022. (T-5 at 14.) Her report of January 20, 2023, included the reason for referral, case history, parent interview, record review, clinical observations, standardized testing, a district observation, an observation at Cambridge, and teacher interview, and stated, in part:

[N.M.] demonstrated a long-standing history for an articulation deficit, a phonological processing disorder, and a language disorder which were documented in district Speech-Language and Educational Evaluations. For many years, though, [N.M.]’s speech-language program and goals/objectives were not aligned with his needs based on test results.

[P-186 at 5544.]

[N.M.] presented with a Dyslexic Profile in pre-school, yet the District did not “identify” Dyslexia until 2021.

[P-186 at 5544–45.]

This examiner’s test results support the presence of a receptive-expressive language disorder, pragmatic language disorder secondary to a prosodic deficit (CAPD), a complex reading disability and a disorder of written expression. Results are supported by educational testing by the district and repeated tests (phonological awareness) indicate a lack of progress. Students with a profile for oral and written language disorders are described as presenting with a language-based learning disability (LBLD). Students with LBLD commonly experience difficulties with listening, speaking, reading, writing, spelling, math, organization, attention, memory, social skills, perseverance, and self-regulation.

It is the impression of this examiner that the Hopewell Valley Public School District failed to provide [N.M.] with an appropriate educational program to address his diverse and complex needs in the areas of oral language, reading and writing. Specifically, the district speech-language specialist failed to identify and treat the presence of a language disorder and when testing revealed the presence of a phonological processing disorder, failed to address this deficit in therapy. [N.M.]’s prosodic deficit was not comprehensively addressed. [N.M.] presented with “signs” or early indicators for dyslexia beginning in pre-school (see the NJ Dyslexia Handbook for more information); he was not identified by the district until 2021. The district’s 2019 educational test results revealed that [N.M.]’s reading skills from 2016 to 2019 had not improved indicating his educational program was inappropriate and inefficient at addressing his literacy needs. [N.M.] lost valuable time.

[Id. at 5545.]

It is recommended that [N.M.] continue to attend the Cambridge School which specializes in educating children with language-based learning disabilities. The district should place [N.M.] at the Cambridge School as his free appropriate public education. • [N.M.]’s classes are very small so teachers can closely monitor for comprehension and time on task and provide supports for [N.M.]’s processing speed deficit. Research also suggests that small class sizes and lower student-teacher ratios benefit student achievement. Smaller classes also provide students with multiple opportunities for participation. • [N.M.] continues to require instruction in a phonics-based reading program. At Cambridge he is receiving Wilson instruction, as well as phonemic awareness instruction with his speech-language pathologist. All teachers at Cambridge are trained in the Wilson program as well as other reading programs (Orton Gillingham, SPELL). • [N.M.] needs explicit instruction to develop appropriate reading comprehension strategies and to improve his knowledge and application of skills related to the writing process. Teachers at Cambridge use the Story Grammar Marker program and Writing Strands from Project Read (Framing Your Thoughts) and from Hochman’s Basic Writing program. Reading and writing instruction and these programs are used school-wide in the Reading and Language Arts classes and are infused into Social Studies. • At Cambridge, [N.M.] is receiving executive function instruction via the SOC class which is offered to all students in the school; the class is built into the school schedule so that [N.M.] is not pulled out of a class. •

To address his significant weaknesses in the area of reading fluency, [N.M.] receives instruction in a reading fluency program as part of his Reading class. • [N.M.] is receiving speech-language services at Cambridge, with a focus on addressing his prosodic processing weaknesses, his emotional vocabulary and semantic skills, his listening and reading comprehension skills, and his writing skills. With regard to his prosodic deficit, [N.M.] needs to understand what prosody is and how to identify it, not only in words, but in sentences and in oral and written messages. He needs to learn how variations in prosody can infer mood, or the meaning of a message. He needs to learn that varying the stress in a sentence can change the meaning; [N.M.] needs to work on identifying and practicing these changes. [N.M.] should work on role playing and charades of emotions, statements, and questions. Sarcasm can be challenging so contrasting statements using a sarcastic tone of voice vs. a serious tone of voice should be practiced as an identification task to start, followed by expressive practice. [N.M.] should watch videos and movie clips to observe different models of varying intonation. He should practice matching auditory emotional statements with facial emotional expressions. • It is recommended that those working with [N.M.] become familiar with how a processing speed disorder can impact learning, attention, language, reading, and writing as well as a student's social – emotional development. • Mrs. [M.] noted that [N.M.] struggled in his Spanish classes and her concerns were not addressed by the CST. Based on results of the auditory processing evaluation and this evaluation, [N.M.] is eligible for a foreign language waiver.

[Id. at 5451–5452.]

142. Dr. Kimberlin's June 8, 2023, report, (P-187), compared her 2022 and 2023 testing and described an additional observation at Cambridge, which took place on April 13, 2023. Dr. Kimberlin concluded, in part:

Updated test results continue to support the presence of a receptive-expressive language disorder, pragmatic language disorder secondary to a prosodic deficit (CAPD) and weaknesses with higher-level language processing, a complex reading disability (decoding, fluency, comprehension) and a disorder of written expression. [N.M.]'s profile is consistent with the presence of a language-based learning disability (LBLD). [N.M.] has made measurable and meaningful progress on standardized oral language assessments assessing general language skills and

language-based literacy skills (e. g., phonological processing). Despite progress, many of his written language scores specific to reading and writing continued to fall well below expectations. [N.M.] also demonstrated weaknesses with listening comprehension, story retell, understanding of figurative language, higher level semantic and syntactic knowledge, and social-pragmatic communication which can be impacted by his attention deficit profile, processing speed weaknesses, and prosodic deficit.

Recommendations: It is recommended that [N.M.] continue to attend the Cambridge School which specializes in educating children with language-based learning disabilities. The district should place [N.M.] at the Cambridge School as his free appropriate public education. In addition to intensive and evidence-based reading and writing instruction, the recommendations for direct instruction in phonemic awareness, prosody, reading fluency and executive function training, cited in the previous report, continue to be relevant. [N.M.] should also continue to receive individual speech-language therapy, occupational therapy, and social cognitive skills/intervention at Cambridge. It was great to meet with [N.M.] again and to document his progress!

[Id. at 5488–5489.]

143. Dr. Kimberlin testified that N.M. presented with signs of dyslexia very early, possibly by kindergarten and definitely by first grade. (T-5 at 19.)
144. Dr. Kimberlin testified that N.M. was not appropriately screened or tested for dyslexia by the District. (Id. at 19–20.)
145. Dr. Kimberlin testified that petitioners reported long held concerns that N.M. had dyslexia but that the District’s position was that it could not make a diagnosis of dyslexia, a position Dr. Kimberlin called “inaccurate.” (Id. at 18.)
146. Dr. Kimberlin testified that the interventions N.M. received from the District were not appropriate to his needs because the District did not identify what his needs were. (Id. at 19–20.)

147. Dr. Kimberlin testified that N.M. should have been receiving intervention to help him develop his letter/sound knowledge in preschool and kindergarten because he presented with early indicators for dyslexia. (Id. at 20–21.)
148. Dr. Kimberlin testified that N.M should have been receiving supplemental reading instruction prior to second grade. (Id. at 39.)
149. Dr. Kimberlin testified that specific areas of speech pathology where N.M. required assistance were not identified in any of his IEPs, resulting in a detriment to his education because he was also at risk for similar weaknesses in reading and writing, and if those weaknesses were not addressed, he would not progress. (Id. at 31–32.)
150. Dr. Kimberlin testified that as tested on or about February 19, 2021, N.M.’s intelligence, visual spatial index, verbal comprehension, fluid reasoning, and working memory were in the average range (high average to low average). (Id. at 36–37.)
151. Dr. Kimberlin opined that the District’s speech language specialist “failed to do extensive testing, monitoring in the areas of language” with a negative impact on N.M.’s “ability to become a skilled reader.” (Id. at 51.)
152. Dr. Kimberlin opined it was concerning to her that in his May 12, 2022 IEP N.M. was still “working on articulation . . . a lower skill [that] should have been addressed” earlier. (Id. at 58.)
153. Dr. Kimberlin opined that the District was not addressing N.M.’s deficits in oral and written language skills. (Id. at 68.)
154. Dr. Kimberlin opined specifically with regard to N.M.’s May 12, 2022 IEP that “his needs [for speech and language therapy during ESY] weren’t identified.” (Id. at 85.)

155. Dr. Kimberlin concurred with Caplan's opinion that she did not "see a problem with testing in September," and that if N.M. had actually achieved the skills and benchmarks that the District represented he had achieved in his evaluations and progress reports, it shouldn't have made a difference. (Id. at 96.)

**(3) Respondent School District's Cross-Examination of Plaintiff's Experts**

156. The District offered N.M. an ESY in all of the IEPs covering the 2019–2020, 2020–2021, and 2021–2022 school years. (R-3; R-4; R-9; R-11; R-20.)
157. When questioned on this issue, both Caplan and Dr. Kimberlin denied that N.M. performed any lower on the tests they administered than he would have performed had he been tested while regularly attending school, notwithstanding the prior determination by the CST that ESY was appropriate for N.M.
158. Both Caplan and Dr. Kimberlin acknowledged that N.M. made some progress as demonstrated by the District's internal testing, Cambridge's admission testing in May 2022, and Cambridge's baseline testing in September and October 2022. Petitioners contend that neither expert testified to quantifiable or measurable progress. (See P-159; P-162; P-163; P-172; P-177; P-178; P-181.)

**H. Testimony of Ellen Gonzales, Head of School at Cambridge**

159. On the fourth day of the hearing, petitioners produced Ellen Gonzales, Head of School at Cambridge. (T-4 at 164.)
160. Preliminary admission testing at Cambridge in May 2022, while N.M. was still an HVRSD student, yielded a finding that he was performing at grade level for silent reading comprehension, one grade level behind in oral

reading, one grade level behind in word recognition, and a grade level ahead in word meaning. (P-181.)

161. The Cambridge preliminary admission testing determined that N.M. continued to perform below third-grade level in spelling. His Wide Range Math Achievement Test yielded a grade equivalent of 3.8. (P-181.)
162. Cambridge administered the WIST upon N.M.'s arrival in September 2022. The testing revealed that as he entered fifth grade, he was performing at a grade equivalent of 5.3 in word identification, 3.3 in spelling, 4.0 in fundamental literacy ability, and above grade level, 6.9, in sound-symbol knowledge. (P-159.)
163. In October 2022—after approximately one month of N.M. attending Cambridge—the school administered a “track my progress” test aligned with the “common core,” the New Jersey Student Learning Standards applicable to fifth graders. Such testing placed N.M. in the 44th percentile overall in math and the 47th percentile overall in English-Language Arts—meaning that he performed better than 44 percent of all same age peers in the nation in math and better than 47 percent of all same age peers in the nation in English-Language Arts when tested on New Jersey Grade Level Standards. (P-177; T-4 at 222–24.)
164. Gonzales testified that N.M. was given a baseline evaluation of his language arts abilities when he began attending Cambridge. (See P-181.)
165. After reviewing N.M.'s writing samples from the 2021–2022 school year, (P-226), Gonzales testified she did not believe it was possible—based on the results of the baseline evaluation—that N.M. could have been writing “sentences of this complexity,” or writing paragraphs as indicated in the District’s progress reports, or that the classroom work product produced by respondent was actually N.M.’s independent writing. (T-4 at 173.)

166. After completing the fourth grade in the District, N.M. was still mixing up words like along/alone and very/every, mixing upper-case and lower-case letters, and was unable to recognize-on-sight words like tragedy, exhibit, and favorable. (P-181.)
167. Gonzales testified that at the time N.M. was first enrolled at Cambridge, he could not read short stories or passages and was limited to being able to read only single words or phrases. (T-4 at 188.)
168. However, after a single year of O-G-based Wilson instruction at Cambridge, N.M.'s sound/reading/spelling portfolio rose from 78/69/26 to 81/88/40. (Id. at 189–190.)
169. Gonzales testified that she no longer uses the DAR test because it is not reliable and there are better tests. (Id. at 194.)
170. Gonzales testified that more reliable measures of reading skills require students to read out loud and be evaluated for oral comprehension, whereas the DAR only requires students to read silently and then answer a series of multiple-choice questions. (Id. at 195.)
171. Gonzalez testified that she uses the WIST and the Wilson Assessment of Decoding and Encoding (WADE) tests as better measures of reading mastery and that N.M. showed meaningful progress at Cambridge when evaluated using the WIST and the WADE. (Id. at 194–95.)
172. None of the Cambridge progress reports offered as evidence by petitioners describe N.M.'s performance by grade level. (P-172; P-176; P-177; P-178; P-179.)



## **I. Timely Rejection of the IEP and Notice of Unilateral Placement at Cambridge**

173. On July 6, 2022, N.M.'s parents sent an email rejecting the May 12, 2022 IEP and indicating that they intended to place N.M. at Cambridge School in September 2022. (R-27.)

### **DISCUSSION AND ADDITIONAL FINDINGS**

Based on consideration of the testimony and review of the documentary evidence, I **FIND** the following additional **FACTS**:

#### **Witness Testimony**

Respondent's witnesses, Kulp, Fishman, and DiNardo, were professional in demeanor and shared specific knowledge of N.M. (and of J.M.). They were patient as counsel frequently interrupted them with objections and pointed observations. Kulp and Fishman had not updated their resumes, even though both stated that they had testified in other matters where, presumably, this same issue would have been raised. Their explanation, that they last updated their resumes when looking for their current positions, was credible.

Only DiNardo was qualified as an expert witness, but Kulp and Fishman were permitted to give opinions as to the progress N.M. had made based on their education, professional experience, and firsthand knowledge, consistent with N.J.A.C. 1:1-15.9(a), which provides:

- (a) If a witness is not testifying as an expert, testimony of that witness in the form of opinions or inferences is limited to such opinions or inferences as the judge finds:
1. May be rationally based on the perception of the witness; and
  2. Are helpful to a clear understanding of the witness' testimony or to the fact in issue.

All three professionals testified earnestly regarding the progress they believe N.M. made in the District, notwithstanding the issues I have with their conclusions, as discussed below. Petitioners made much of the absence of data, including that which might have been collected between formal assessments of N.M. While recognizing that some such data may have been found in the files which respondent was precluded from introducing, overall I agree with petitioners that “the district fell short by using . . . unreliable representations of classroom performance as evidence that N.M. was making satisfactory progress in reading and writing[.]” (Br. of Petitioners (December 15, 2023) (Pet’rs’ Br.), at 47.)

Fishman worked with N.M. from September 2019 through June 2022, during which time she stated that N.M. made meaningful progress. According to Fishman, he maintained conversations, kept up with the work, was engaged, and asked questions. He was doing so well that Fishman asked J.M. to observe him in her sessions. However, in the 2020–2021 school year, Fishman was responsible for N.M.’s five reading goals, and he achieved only two. (R-12.) In the 2021–2022 school year, Fishman monitored N.M.’s three reading goals and two of his three writing goals. He achieved none of his reading goals and neither of the two writing goals Fishman monitored. (R-25.)

In the 2021–2022 school year, Kulp was responsible for monitoring one writing goal, Goal 6<sup>7</sup>: “[N.M.] will write an opinion piece, of up to 2 paragraphs, with 2 accurate, relevant reasons that support the stated opinion. (Criteria: 80% success).”

Kulp identified the paper N.M. wrote for his “pre-assessment” in her class on September 22, 2021, the beginning of fourth grade: “Two years ago my trip and croos got consld because covrak. We were going to New York to bord the ship.” (P-228 at 6324.) Kulp stated that in September 2021, N.M. was able to write less than one paragraph, and by June, he wrote a two-paragraph opinion piece. She identified the draft and final opinion pieces that N.M. wrote in satisfaction of Goal 6. (P-228 at 31.) Kulp

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<sup>7</sup> Kulp did not write Goal 6 and did not speak with the person who did. (T-1 at 149–50.)

stated that she held a “conference” with N.M. to revise and edit the piece and that he had access to spellcheck.

Upon review, the writing N.M. did in Kulp’s classroom does not square with his lack of achievement in meeting his IEP goals in reading. (P-228.) As stated above, J.M. stated credibly that the work being credited to her son by Kulp was more likely copied from another source than that it was his original writing. What N.M. allegedly told his mother about cutting and pasting is hearsay and is therefore disregarded. However, when comparing N.M.’s one-paragraph draft on Elon Musk to the single paragraph N.M. wrote one month earlier during pre-admission testing at Cambridge, J.M.’s criticism rings true.<sup>8</sup> (Cf. P-226 at 6300, and P-181 at 5403.)

The progress report dated June 30, 2022, (R-25), records N.M.’s progress in meeting the goals and objectives set forth in the IEP covering his fourth-grade school year. (R-20.) It shows that N.M. had three reading goals, none of which he achieved. He had five objectives in reading and achieved none. In the report, Fishman wrote, in pertinent part:

[N.M.]’s decoding skills are constantly improving yet automaticity and oral reading fluency continue to be an area which he still struggles with. While he has not improved by 25 words or more using fourth grade AIMSWEB benchmark passages just yet, he has achieved 25 words read accurately on a third grade level twice since September. He has not been able to do this on a consistent basis though. He struggles to improve his reading rate on a consistent basis. N.M. does comprehend but can struggle at times to recall all of the main information unless the topic is of interest to him.

In writing, Fishman monitored three goals and three objectives; N.M. achieved none, yet he achieved the single goal and three objectives Kulp monitored. Here, Fishman wrote:

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<sup>8</sup> In his final opinion piece, N.M. wrote that “[Musk] found comfort in books and computers.” (P-228 at 6305.) It is curious that Kulp did not find that sentence beyond the skill of the same child who had yet to master his reading goals.

N.M. does have greater difficulty remembering to apply all of his spelling rules when asked to write the targeted words within sentences or stories when there's a bit more information to process and incorporate.

A comparison of the “progress” N.M. made in writing to the lack of progress in reading supports the conclusion of petitioners’ witness Gonzales, who said that based on her pre-admission assessment of N.M., she does not believe he could have written the Elon Musk piece on his own without substantial support. (T-4 at 173.)

DiNardo was offered and qualified as an expert in special education. To provide an opinion regarding the program and placement offered to N.M., DiNardo reviewed the IEPs developed for N.M. beginning with April 2020, through the IEP at issue here and all related progress reports. DiNardo stated that the CST recognized that by the time N.M. was entering second grade, he was in need of “intensive literacy intervention,” and began one-on-one instruction with Fishman, a literary intervention specialist. (T-3 at 13.) The District’s most intensive intervention for reading and writing is typically a two-year program, but due to N.M.’s remedial needs, he was given a third year and placed in the LLD class. “The team was really thrilled of the progress that he had demonstrated, he truly did respond to the interventions[.]” (Id. at 14.)

DiNardo supported the proposed placement of N.M. in a GE class with ICR for fifth-grade science and social studies. There would be two teachers in the classroom, one GE teacher and one certified SE teacher trained in multisensory approaches to reading and writing. Projects in these classes are team-based without much reading and writing. DiNardo believed N.M. would benefit from the LRE as appropriate, “to connect with his age-appropriate peers, be part of his homeroom, [and] work on developing relationships and friendships across his peers.” (T-3 at 47.) This ignores the social implications of not being able to keep up with those age-appropriate peers.

This is not to place outsize blame on DiNardo. She did not write N.M.’s last IEP, and she oversees the SE program in a large, regional school district, likely making it difficult for her to weigh in on the appropriateness of every student’s program as it is developed. However, DiNardo stated that she did review N.M.’s file and read his IEPs—

in which goals and objectives are not met and are then repeated with a reduction in services—and found the May 12, 2022 IEP appropriate.

In the May 12, 2022 IEP, N.M. was provided no supplemental instruction in reading. According to Fishman, he “completed [Take Flight] with mastery.” (T-2 at 151.) Notwithstanding Fishman’s encouraging words and Kulp’s opinion as to N.M.’s progress, I **FIND** that the absence of progress in reading and writing in the 2021–2022 school year does not support the programming recommended for N.M. in the May 12, 2022 IEP.

Petitioners’ witnesses, Caplan, Dr. Kimberlin, and Gonzales, were similarly professional in demeanor, patient during questioning, and gave credible testimony. Caplan and Dr. Kimberlin were qualified as experts. Consistent in their testimony and reports were their findings that N.M. has an average IQ but has failed to make the kind of academic progress expected of a child with average intelligence (though they did find that N.M. had made some progress before leaving the HVRSD).

I **FIND** greater support in the record for the conclusion of petitioners’ experts, that the May 12, 2022 IEP proposed by respondent did not provide N.M. with FAPE. As described more fully below, petitioners’ experts identified problems with the programming developed by respondent for N.M. that respondent’s own testing had already revealed. Caplan stated that N.M. suffers from reduced auditory processing speed, which could impede his ability to follow the teacher in a large group setting or GE classroom. The May 12, 2022 IEP includes the summary of N.M.’s most recent audiological evaluation, which describes this issue but, in the May 12, 2022 IEP, N.M. was placed in a GE classroom with ICR for social studies and science. Caplan stated, “I don’t know how [the CST] thought a student who wasn’t reading independently, or writing could function in a content area class where those skills are necessary” and the rate of instruction does not accommodate his lower processing speeds. (T-4 at 45.) DiNardo’s explanation that these content area classes do not require much in the way of reading and writing is insufficient.

Dr. Kimberlin was particularly critical of the speech and language programming provided to N.M. (also discussed below). Caplan spoke well of Fishman, who Caplan knows endorsed one-to-one instruction for N.M. until the end of fourth grade. Caplan felt

that N.M. did not benefit enough from Fishman’s program because it was not continued throughout the day, across the curriculum. Overall, petitioners’ experts (and Gonzales) concluded that N.M. did not demonstrate the skills that the District found he had achieved, that the programming offered to N.M. was inappropriate as it did not include multisensory instruction across the curriculum, and that the objectives in his May 12, 2022 IEP were not realistic.

### **Absence of Grade Level Standards**

Petitioners, in witness examination and in the stipulated summary above, made the point repeatedly that the District did not record N.M.’s progress in grade-level terms and that respondent provided “no underlying data, no instructional levels, and no reading levels” in evaluations, IEPs, and progress reports. “Respondent’s progress evaluations were misleading and contained material misrepresentations of fact concerning the level at which N.M. was performing [and] the skills he gained, in order to conceal how little progress he was making.” (Pet’rs’ Br. at 49.)

Respondent characterizes this complaint as “a red herring,” noting that “none of the Cambridge progress reports . . . describe N.M.’s performance by grade level,” and even petitioners’ expert, Caplan, stated that she is unaware that school districts are required to “describe grade-level performance within an IEP or progress report.” (Respondent’s Post-Hearing Br. (December 14, 2023) (Resp’t’s Br.), at 16, quoting T-4 at 159.)

DiNardo identified N.M.’s fourth-grade report card. (R-24.) She (and Kulp) stated that report cards reflect progress on grade-level standards issued by the DOE, and progress reports track achievement of the goals and objectives outlined in an IEP. Meaningful progress is measured by the progress the individual student made, not necessarily by closing the gap with non-disabled peers.

I **FIND** that N.M.’s grade-level standing and/or progress was reported intermittently. For example, in May 2019, at the end of N.M.’s first-grade year, the CST adopted an IEP in which he was placed in second grade in an LLD class for math and

language arts with forty minutes/day of supplemental reading instruction with Fishman. Under the PLAAFP, SE teacher DeFrank wrote that by the date of the IEP, N.M. was reading “at the end of Kindergarten level.” (R-4 at 386.) By March 2019, N.M. had mastered grade one math concepts. (Id. at 399.)

Further, N.M. was given tests in which results were reported by grade level (norm-based) and by individual progress (criterion-based). Standardized tests are only part of the picture. By any measure, against his peer group (normalized) or against his own achievements (criterion), I **FIND** that N.M. did not show mastery of basic reading and writing skills needed for overall academic achievement. The absence of grade-level information in N.M.’s IEPs and progress reports may not be a problem so much as an alert to the problem that N.M. was falling further behind his grade-level peers, and I so **FIND**.

### **Classification of N.M.**

The parties stipulated that N.M. has multiple, sometimes overlapping, diagnoses which make him eligible for SE and related services. Petitioners argue that the District failed to properly classify N.M. and improperly relied on the 2019 diagnosis of static encephalopathy. When comparing the diagnoses used by the CST with those of petitioners’ experts, they are quite similar.<sup>9</sup>

Respondent includes the following diagnoses in N.M.’s IEPs, starting with the March 14, 2019 IEP (though not all diagnoses were included in the IEPs prior to 2022):

- Language delay (which is a type of communication disorder)
- LLD (problems with age-appropriate reading, spelling, and writing, a category which can include dyslexia)
- ADHD (over which there appears to be no dispute)
- Problems with literacy and academics

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<sup>9</sup> Parenthetical information is used to assist in the comparison.

- Motor dyspraxia (a coordination issue that leads to problems with writing and for which N.M. was provided OT)
- Amblyopia and astigmatism (vision problems that can be corrected with eyewear<sup>10</sup>)
- Dyslexia
- Central auditory processing disorder specifically a prosodic deficit (difficulty understanding speech, including sarcasm)
- Developmental disorder of scholastic skills (such a disorder affects math, spelling, and reading skills but cannot be explained by mental retardation)

In 2022, Dr. Kimberlin diagnosed N.M. with the following:

- Receptive-expressive language disorder (another way of saying “auditory processing disorder”)
- Complex reading disability (best described as overlapping conditions)
- Dyslexia
- Disorder of written expression (meaning that N.M. cannot write at his cognitive level and/or age level)
- Pragmatic language disorder secondary to a prosodic deficit (difficulty with verbal and nonverbal language in social situations, including difficulty understanding sarcasm)

It appears then, that the District’s diagnosis of N.M. covered almost all of the conditions identified by Drs. Kimberlin and Taub. Dr. Taub wrote that “the more accurate diagnosis to use [for N.M.] is language delay, ADHD and auditory processing difficulty of unknown etiology.” (P-216.) All those diagnoses (and dyslexia) appear in N.M.’s May 12, 2022 IEP. I **FIND** that N.M. was not mis-diagnosed or incorrectly classified. The greater concern is that the CST failed to adopt a program appropriate for N.M.’s particular needs.

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<sup>10</sup> There are references in some evaluations to N.M. wearing glasses.



## **District Programming**

In May 2019, N.M. was evaluated by an audiologist who confirmed his “difficulty with auditory processing skills[,]” significantly with temporal resolution and processing, which makes it difficult for him to recognize differences in sounds as well as to comprehend speech. (R-4 at 389.) In the May 14, 2019 IEP, speech and language therapist Liz Deamer (Deamer), MS CCC-SLP, recommended that N.M. continue once/week sessions for articulation skills and “auditory comprehension.” (Id. at 399.) However, the goals and objectives in speech and language do not include auditory processing skills. (Id. at 405–06.)

In August 2019, the District sent N.M. for a neurological evaluation because of concerns for his “response time when answering questions, long term retrieval of information, reading, writing, and math.” (R-6 at 430.) As stated above (Stipulation ¶ 27), following his evaluation, Dr. Barabas diagnosed N.M. with “evidence of an underlying (static) Encephalopathy manifesting” with a language delay, LLD, ADHD, problems with literacy and academics, motor dyspraxia, amblyopia, astigmatism, and an auditory processing disorder. (R-6 at 436.) Further, Dr. Barabas recommended “dyslexia-specific instruction given weaknesses with decoding and phonemic awareness.” (Id. at 437.)

Dr. Barabas also recommended:

Neuropsychological/Psychoeducational evaluation and testing, providing a comprehensive assessment and profile of cognitive and behavioral function, strengths and weaknesses, and academic achievement, which will assist and guide educational, remedial/rehabilitative and treatment planning and interventions.

[Ibid.]

Consistent with this recommendation, the District referred N.M. for an independent neuropsychological evaluation, which was performed on October 24, and November 8, 2019. (R-7.) While, as stated in the stipulated summary above, the evaluator accepted the diagnosis of static encephalopathy based on prior and current testing, she found N.M. had many strengths and average intellectual functioning and abilities. (Id. at 451–52; see

Stipulation ¶ 28.) She also diagnosed N.M. with ADHD, an auditory processing disorder, and a developmental disorder of scholastic skills, (R-7 at 453), and made recommendations for further testing and classroom accommodations, including:

[N.M.'s] reading program should be research-based with an emphasis on a multisensory approach. [N.M.] requires strengthening of phonemic awareness, decoding skills, and reading fluency. He will benefit from teacher modeling, repeated reading, timed reading, and frequent progress monitoring.

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Continued directive speech and language services to address articulation difficulties and documented language delays.

[Id. at 454, 456.]

On December 13, 2019, N.M.'s IEP was updated, but included the results of only the evaluation by Dr. Barabas. (R-8.) N.M.'s classification was not changed, and the parents' concern regarding the diagnosis from outside evaluations was noted; on review, no other changes from the previous IEP were found, including "dyslexia-specific instruction" as recommended by Dr. Barabas. (Id.) While petitioners claim that respondent relied on the diagnosis of static encephalopathy to maintain an incorrect classification, no evidence was presented that the District used further assessments to determine to what extent static encephalopathy affects N.M.'s intellectual skills. I **FIND** no evidence was presented to support the claim that the CST developed or changed the program found in the IEPs in reliance on the diagnosis of encephalopathy.

Reference to the independent neuropsychological evaluation, (R-7), is not found in any of N.M.'s subsequent IEPs. In the April 4, 2020 IEP, J.M.'s concerns included N.M.'s "auditory comprehension" and whether Deamer was working on auditory processing skills. (R-9 at 495.) The goals and objectives for speech and language did not change from the prior year, but N.M. was placed in group sessions rather than individual sessions (though he had not achieved speech and language goals related to comprehension). (See R-10 at 533.) One year later, in the May 13, 2021 IEP, speech

and language therapy sessions were reduced to once/month and goals related to auditory processing were removed. (R-11 at 537, 555.)

A full re-evaluation of N.M. was conducted by the District in the fall of 2021. The results of the speech and language evaluation showed progress in auditory comprehension. The following excerpts from the audiological evaluation report were included in the December 23, 2021 IEP, and the May 12, 2022 IEP, in pertinent part:

[N.M.'s] difficulty was with the detection/recognition of the pattern indicating that although he functionally “hears” the cousin, he may not actually be “hearing to process” the changes. This is where the Prosodic Deficit is defined and is considered a form of a (Central) Auditory Processing Disorder. Not only can this have an impact on reading and spelling skill development, but it can also have an impact on language interpretation and social communication intent.

Overall, results were consistent with features of a primary Prosodic Deficit. Although [N.M.] may be capable of learning the work, his reduced auditory processing speed in conjunction with this overall higher level processing speed levels in the Extremely Low range may hinder his ability to obtain and/or act on information as it may be moving to quickly for him to keep up. This may further cause auditory fatigue to be increased as [N.M.] would need to work harder to process the auditory messages, causing him to use more cognitive energy to understand what he is hearing.

The fact of a Prosodic Deficit can be seen in several academic areas[,] trouble with non-verbal cues including interpreting facial expressions, body language, gestures [and] sarcasm. Difficulty with these subtle cues can have an impact on reading fluency[.] Academically this may be seen in the areas of Language Arts skills, grammar and syntactical abilities.

Regardless of the etiology or basis of the auditory deficits, the functional implications would need to be addressed and managed through direct intervention and classroom management.

[R-1 at 057–059; R-18 at 646–48.]

I note here that the findings in the audiological evaluation were supported by testing conducted by Dr. Kimberlin six months later, as a result of which she concluded

that N.M. had deficits in listening comprehension, grammar and syntax, and spoken language. Therefore, Deamer should have been working on “listening comprehension skills, including semantics and figurative language or inferencing skills.” (T-4 at 64–65.) Again, the May 12, 2022 IEP does not reflect this recommendation.

The CST also had the benefit of the November 8, 2021 educational evaluation, in which the learning disability teacher consultant concluded, in pertinent part:

N.M.’s listening and oral comprehension abilities are limited, therefore making tasks requiring listening skills, working memory, and oral comprehension very difficult[.]

[R-16 at 609.]

N.M.’s December 23, 2021, IEP included three new speech and language goals with four short term objectives, but without explanation if the IEP was modified to address the audiologist’s recommendations and/or for how the instructor would specifically teach these skills. (Id. at 666.) Though he achieved only one of the three goals, (R-25 at 738–39), the May 12, 2022 IEP had only one related goal: improved comprehension of grade-level text (without designation of the grade level). (R-20 at 701.)

While the District’s witnesses shared concern for N.M. and seemed honest in their assessment of the progress he had made at the HVRSD, I **FIND** that the program they offered him was not appropriate for his needs as described by his teachers and the professionals retained by the District to evaluate N.M.

To confirm the absence of progress and the inappropriateness of the May 12, 2022 IEP, look no further than N.M.’s failure to achieve the majority of his goals and objectives in the 2021–2022 school year and the resulting decision of the CST to reduce services in the next year. As early as 2019, the CST was on notice that N.M. could not learn because he could not process language, whether spoken or written. There is no evidence that the CST modified his instruction in all academic areas to adequately address these deficits.

I **FIND** that N.M.'s disability impacted, and will continue to impact, his ability to make progress across all academic subjects. In his May 12, 2022 IEP, N.M.'s math teacher wrote, in pertinent part:

[N.M.] benefits from having his math tests modified and read aloud. As the year has progressed, [N.M.] has demonstrated a greater willingness to attempt independent math work. He requires consistent repetition of newly presented math skills and concepts. At times, [N.M.] requires teacher support with interpreting word problems.

[R-20 at 685.]

In mathematics, N.M. had two goals and four objectives; he achieved none. (R-25 at 736–38.) In the May 12, 2022 IEP, the math goals and objectives are repeated, and a third goal, to increase accuracy and fluency of math facts, was added. (R-20 at 701.)

I **FIND** that N.M., a student of average intellectual ability as measured by the District psychologist, did not make meaningful progress in the 2021–2022 school year and that the IEP developed for the next year, 2022–2023, reduced his SE services, making meaningful progress less likely.

### **Request for Student Records**

Petitioners requested relief in the form of all student records. Notwithstanding the failure of the District to provide records prior to the hearing, I **FIND** no evidence that additional records remain and therefore, there is no basis for an order compelling the District to provide further student records.

### **Compensatory Education**

Petitioners request relief in the form of compensatory education but did not specify which compensatory measures are needed to address N.M.'s educational deficits, notwithstanding the request for an out-of-district placement. (See Pet'rs' Br. at 63, fn. 4.)

## LEGAL ANALYSIS AND CONCLUSIONS

As a recipient of federal funds under the IDEA, the State of New Jersey must have policies and procedures that assure all children with disabilities the right to a FAPE. 20 U.S.C. §1412. State regulations track this requirement that a local school district must provide FAPE as that standard is set under the IDEA. N.J.A.C. 6A:14-1.1. A free, appropriate special education and related services must be provided to all students with disabilities from age three through twenty-one: a.) at public expense, under public supervision and direction, and without charge; b.) to the standards of the State educational agency; c.) include an appropriate preschool, elementary, or secondary school education in the State involved; and d.) in conformity with the IEP required under 20 U.S.C. §1414(d). 20 U.S.C. §1401(9); N.J.A.C. 6A:14-1.1 et seq. The responsibility to deliver these services rests with the local public school district. N.J.A.C. 6A:14-1.1(d).

An IEP is “a comprehensive statement of the educational needs of a handicapped child and the specially designed instruction and related services to be employed to meet those needs.” Sch. Comm. of Burlington v. Dep’t of Educ. of Mass., 471 U.S. 359, 368 (1985). An IEP should be developed with the participation of parents and members of a CST who have participated in the evaluation of the child’s eligibility for SE and related services. N.J.A.C. 6A:14-3.7(b). The IEP team should consider the strengths of the student and the concerns of the parents for enhancing the education of their child; the results of the initial or most recent evaluations of the student; the student’s language and communication needs; and the student’s need for assistive technology devices and services. The IEP establishes the rationale for the pupil’s educational placement, serves as the basis for program implementation, and complies with the mandates set forth in N.J.A.C. 6A:14-1.1 to -10.2.

Parents who are dissatisfied with an IEP may seek an administrative due-process hearing. 20 U.S.C. §1415(f). The school district bears “the burden of proving the appropriateness of the IEP that it has proposed . . . [b]ut that does not mean that the school district also bears the burden of proving the *in*appropriateness of *any* alternative IEP that a student’s parents might suggest.” Carlisle Area Sch. v. Scott P. by and through Bess P., 62 F.3d 520, 533 (3d Cir. 1995) (emphasis in original); N.J.S.A. 18A:46-1.1.

The IDEA does not require respondent to provide N.M. with the best possible education, S.H. v. State Operated Sch. Dist. of Newark, 336 F.3d 260, 271 (3d Cir. 2003), but it must provide personalized instruction with sufficient support services to permit N.M. to benefit educationally from instruction. Hendrick Hudson Cent. Sch. Dist. Bd. of Educ. v. Rowley, 458 U.S. 176, 203 (1982). Noting that Rowley involved a student who, though disabled, was fully integrated in a GE classroom, the United States Supreme Court later explained that while “a child’s IEP need not aim for grade-level advancement if that is not a reasonable prospect, . . . [the IEP] must be appropriately ambitious in light of his circumstances[.]” Endrew F. v. Douglas Cnty. Sch. Dist. RE-1, 580 U.S. 386, 387–388 (2017). The Third Circuit found the directions of the Supreme Court in Endrew to treat “a child’s intellectual abilities and potential as among the most important circumstances to consider” to be consistent with its standard that an IEP “must be reasonably calculated to enable the child to receive meaningful educational benefits in light of the student’s intellectual potential and individual abilities.” Dunn v. Downingtown Area Sch. Dist., 904 F.3d 248, 254 (3d Cir. 2018). An IEP must be “*reasonable*, not . . . ideal [but] the IEP *must aim* to enable the child to make progress.” Id. at 255 (quoting Endrew F., 580 U.S. at 399) (emphasis added).

Toward this end, an IEP must contain “detailed measurable annual academic and functional goals” related to the Core Curriculum Content Standards of the GE curriculum so both parents and educational personnel can be apprised of “the expected level of achievement attendant to each goal.” N.J.A.C. 6A:14-3.7(e)(2). These annual academic and functional goals must also include benchmarks or short-term objectives to help the student both participate and progress in the GE curriculum, as well as meet the student’s other educational needs that result from his or her disability. N.J.A.C. 6A:14-3.7(e)(3). “Without an adequately drafted IEP, it would be difficult, if not impossible, to measure a child’s progress, a measurement that is necessary to determine changes to be made in the next IEP.” Lascari v. Bd. of Educ., 116 N.J. 30, 48–49 (1989) (IEP was inappropriate and incapable of review where the goals and objectives were vague, the measure of progress was equally unclear, it lacked objective analysis, and remarks were subjectively based).

These individualized goals and objectives are not intended to be broad, aspirational statements,<sup>11</sup> but are meant to be achieved within one year, and objectives should be accomplished in an even shorter period of time. 20 U.S.C. §1414(d)(1)(A)(ii)(I). As the New Jersey Supreme Court stated in Lascari, the purpose of including individualized goals and objectives in an IEP is to enable parents, students, and educators to monitor progress during the year and, if appropriate, to revise the IEP consistent with the student's instructional needs. 116 N.J. at 49; 34 C.F.R. Appendix A to Part 300 (2024). The determination whether a child has benefitted from an educational program is based upon the child's progress towards goals and objectives. See Taylor v. Honig, 910 F.2d 627, 629 (9th Cir. 1990).

In Andrew F., the Supreme Court held the IEP must be "appropriately ambitious in light of the child's circumstances," 580 U.S. at 399, thereby sanctioning what has already been the standard in New Jersey: The IEP must be reasonably calculated to provide significant learning and meaningful benefit in light of a student's individual needs and potential.

Finally, the IDEA requires states to educate disabled children in the LRE to the maximum extent appropriate, with children without disabilities. See 20 U.S.C. §1412(a)(5)(A). Thus, removal of children with disabilities from the GE environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. Ibid. "This provision sets forth a 'strong congressional preference' for integrating children with disabilities in regular classrooms." Oberti v. Bd. of Educ. of Clementon Sch. Dist., 995 F.2d 1204, 1214 (3d Cir. 1993) (citations omitted).

### **Student Records Held by Respondent**

Petitioners seek all educational records of N.M. As is detailed in the procedural history above, the hearing began with the disclosure by respondent of its failure to timely provide all materials sought in discovery, including records generated by N.M.'s HVRSD

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<sup>11</sup> Compare the testimony of Fishman, that in IEPs, she writes "very high end goals being that my mind set is to aim as high as I possibly can for the kid." (T-2 at 197.)



teachers. Even so, having found that no evidence that additional records even exist was presented, I therefore **CONCLUDE** that there is no basis for an order compelling the District to provide additional student records.

### **Change in Disability Classification**

Petitioners requested relief in the form of a change in N.M.'s classification from SLD to "multiply disabled" due to Dr. Taub's 2020 diagnoses of language delay, ADHD, and auditory processing difficulty. (See P-216.) Petitioners provided Dr. Taub's report to respondent and contend that respondent "fell short by failing to consider competent medical evidence that N.M. was misclassified[.]" (Pet'rs' Br. at 47.) Instead, petitioners claim that based on the 2019 diagnosis of encephalopathy, respondent "determined that [N.M.] had brain damage [and] that all of his SE needs from ADHD to Dyslexia could be classified and addressed as symptoms of same, rather than multiple conditions each posing their own need for appropriate accommodations and services." (Pet'rs' Br. at 50.)

Respondent disagrees, arguing that the evidence demonstrated that change in classification to multiply disabled, simply because of the diagnoses of CAPD, ADHD, and dyslexia, would be inappropriate because those conditions manifest as an SLD, which the HVRSD program directly addressed.

The regulations implementing the IDEA define a "specific learning disability" as follows:

[A] disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.

[34 C.F.R. § 300.8(c)(10)(i) (2024) (emphasis added).]

“Multiple Disabilities” means:

[C]oncomitant impairments (such as an intellectual disability-blindness or an intellectual disability-orthopedic impairment), the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments. Multiple disabilities does not include deaf-blindness.

[34 C.F.R. § 300.8(c)(7) (2024).]

The regulations adopted by the New Jersey DOE to implement the IDEA provide a more expansive definition:

“Multiple disabilities” means the presence of two or more disabling conditions, the combination of which causes such severe educational needs that they cannot be accommodated in a program designed solely to address one of the impairments. Multiple disabilities include intellectual disability-blindness and intellectual disability-orthopedic impairment. The existence of two disabling conditions alone shall not serve as a basis for a classification of multiple disabilities. Eligibility for speech-language services as defined in this section shall not be one of the disabling conditions for classification based on the definition of “multiple disabilities.” Multiple disabilities does not include deaf-blindness.

[N.J.A.C. 6A:14-3.5(c)(6) (emphasis added).]

While petitioners rightly claim that respondent failed to craft a program for N.M. that adequately addressed the multiple conditions which respondent did identify, such failure was not a function of misclassification. Further, there was no evidence presented that N.M.’s disabling conditions could not be addressed in the same program and/or placement. See K.G. on behalf of V.G. v. Jefferson Twp. Bd. of Educ., OAL Dkt. No. EDS 05214-04, 2004 N.J. LEXIS AGEN 666, \*37 (August 30, 2004) (District’s placement of Down’s Syndrome student in multiply disabled class for second grade, with mainstreaming where appropriate, upheld as FAPE); cf., Washington Twp. Bd. of Educ. v. M.M. on behalf of J.M., OAL Dkt. No. EDS 00929-04, 2004 N.J. AGEN LEXIS, 635, \*4

(August 16, 2004) (classification of emotionally disturbed child with SLD changed to MD when his in-school behaviors began to interfere with his education).

Petitioners' experts found much in the District's program of which to be critical, including the absence of multisensory reading and writing instruction across the curriculum, but they did not allege that N.M.'s physical conditions required accommodations which the District failed to provide. I **CONCLUDE** that N.M. was appropriately classified as eligible for SE and related services under the category of specific learning disability.

### **Out of District Placement**

Since I found that the IEP for the 2022–2023 school year was not reasonably calculated to provide N.M. with significant learning and meaningful educational benefit in light of his individual needs and potential, despite being offered in the LRE, I **CONCLUDE** that respondent did not offer N.M. a FAPE under the IDEA and interpretive case law for the 2022–2023 school year.

Here, respondent reminds me that “the measure and adequacy of an IEP can only be determined as of the time it is offered to the student” and that “the lack of progress . . . does not render that IEP inappropriate.” (Resp’t’s Br. at 2 (quoting Carlisle Area Sch., 62 F.3d at 530).) There is no attempt here to second-guess the wisdom of the CST in issuing the May 12, 2022 IEP based on lack of progress in the 2022–2023 school year, as N.M. did not attend school in the District that year. It is the lack of progress N.M. made in prior years and the failure of the CST to recognize that changes were needed to address his specific learning deficits, as described above, which renders the May 12, 2022 IEP inappropriate.

As of the 2022–2023 school year, petitioners placed N.M. at Cambridge, where he is currently enrolled. In accordance with N.J.A.C. 6A:14-2.10, parents may receive reimbursement for a unilateral placement as follows:

(b) If the parents of a student with a disability who previously received special education and related services from the district of residence enroll the student in a nonpublic school, an early childhood program, or approved private school for students with disabilities without the consent of, or referral by, the district board of education, an administrative law judge may require the district board of education to reimburse the parents for the cost of enrollment if the administrative law judge finds that the district board of education had not made a free, appropriate public education available to the student in a timely manner prior to enrollment and that the private placement is appropriate.

The New Jersey regulation mirrors well-established Federal Law. Parents who unilaterally withdraw their child from public school and place him in a private school without consent from the school district “do so at their own financial risk.” Sch. Comm. of Burlington v. Mass. Dep’t of Educ., 471 U.S. 359, 374 (1985); see also N.J.A.C. 6A:14-2.10(b)(1). However, once a court holds that the public placement violated the IDEA, as I conclude here, the IDEA authorizes “grant [of] such relief as the court determines is appropriate.” 20 U.S.C. § 1415(i)(2)(C)(iii).

Reviewing courts recognize that parents who unilaterally place their child by necessity do so without the expertise and input of school professionals that is contemplated by a truly collaborative IEP process. The courts recognize that under these circumstances, parents essentially do the best they can, holding that, “when a public school system has defaulted on its obligations under the [IDEA], a private school placement is ‘proper under the Act’ if the education provided by the private school is ‘reasonably calculated to enable the child to receive educational benefits.’” Florence Cnty. Sch. Dist. Four v. Carter, 510 U.S. 7 (1993) (quoting Rowley, 458 U.S. at 207).

Under this standard, I **CONCLUDE** that the placement of N.M. at Cambridge was appropriate in that the program offered to N.M. was reasonably calculated to permit N.M. to make meaningful progress.<sup>12</sup>

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<sup>12</sup> The parties stipulated that Cambridge is accredited by the Middle States Association Commission on Elementary Education. (Stipulation ¶ 5.)

Gonzales described N.M.'s writing program at Cambridge as consistently in use throughout the curriculum and all subject matter classes, not just in writing class. This program is used in all grades, including in high school. All teachers (but one) are Wilson certified, including teachers of special subjects, such as music, art, and physical education, to ensure use of Wilson techniques when students are presented with reading materials in all classes. While Gonzales testified that as a result of Cambridge's program, N.M. is making meaningful academic progress, she admitted that his progress in several areas is still slow.

Both Caplan and Dr. Kimberlin stated that Cambridge is the appropriate placement for N.M., as it specializes in teaching children with LLD and will offer the speech and language services which I agree should have been provided by respondent.

Pursuant to N.J.A.C. 6A:14-2.10(c)(4), reimbursement for a unilateral placement can be reduced or denied upon a finding "of unreasonableness with respect to actions taken by the parents." Here, the District does not allege, and the record does not support, a finding that the parents were unreasonable. Petitioners timely rejected the May 12, 2022 IEP and sent the requisite written notice to respondent of their intention to place N.M. at Cambridge. (Stipulation ¶ 168.) Further, there was no evidence that the selection of Cambridge was unreasonable based on tuition, geographic location, or anticipated transportation costs.

In light of my conclusion that Cambridge is appropriate and that the conduct of the parents here was reasonable under the totality of the circumstances, I **CONCLUDE** that they are entitled to reimbursement for their expenses at Cambridge.

### **Request for Compensatory Education**

Finally, petitioners request an award "of compensatory education for the statutory period in which [respondent] failed in its child find and FAPE obligations to N.M." (Pet'rs' Br. at 63.)

Compensatory education is a judicially created remedy that may be awarded to account for the period in which a disabled student was deprived of their right to FAPE. Burlington, 471 U.S. at 369 (1985) (finding that tuition reimbursement was an appropriate remedy under the Education of the Handicapped Act, predecessor to the IDEA); Coleman v. Pottstown Sch. Dist., 983 F. Supp. 2d 543, 566 (3d Cir. 2013).

Compensatory education may be awarded if it is determined that a school district failed to provide FAPE to a disabled student and the district knew or should have known that FAPE was not provided. M.C. ex rel. J.C. v. Cent. Reg'l Sch. Dist., 81 F.3d 389, 396 (3d Cir. 1996). A finding for compensatory education does not require bad faith or egregious circumstances; it only requires a finding that a disabled child was receiving less than a “de minimis” education. Id. at 397.

Here, while petitioners alleged that N.M. was misclassified and such resulted in violation of respondent’s child find obligation, I concluded otherwise. Further, the finding that the May 12, 2022 IEP did not provide FAPE was prospective based on the failure of N.M. to make measurable gains the prior year, the subsequent reduction of services, and the failure to implement then-recent recommendations for speech and language services.

Where respondent’s obligation to provide compensatory education is found is its failure to adequately consider the neuropsychological and auditory evaluations of N.M. conducted by professionals retained by the District in 2019, and 2021, respectively. Here, the CST should have known that N.M.’s auditory processing deficits contributed to his failure to meet his IEP goals in reading, writing and math,<sup>13</sup> yet failed to provide appropriate services, instead reducing services with no apparent change in methodology. Further, having found that by the time the CST amended N.M.’s IEP in December 2021, they had sufficient information that the program they offered him was not appropriate for his needs, I **CONCLUDE** respondent must provide N.M. with compensatory speech and language services to cover those services that should have been provided in the 2021–2022 school year.

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<sup>13</sup> J.M. also raised the issue of inadequate speech and language services during the IEP review process in 2020.

**ORDER**

It is hereby **ORDERED** that the due process petition of D.M. and J.M. on behalf of N.M. is **GRANTED** in part as follows: The District shall place N.M. at the Cambridge School and provide him with transportation, at the expense of the District, and shall reimburse petitioners for the cost of attendance at the Cambridge School, including reasonable and verifiable transportation costs, retroactive to his enrollment through the end of the 2023–2024 school year. The District shall provide N.M. with compensatory education in the form of speech and language services equivalent to weekly individual sessions of thirty minutes for each week of the 2021–2022 school year.

It is further **ORDERED** that petitioners’ due process petition is **DENIED** in part as follows: The request to reclassify N.M. as multiply disabled is **DENIED**; the request for student records is **DENIED**; the request for reimbursement for private evaluations and other out-of-pocket expenses is **DENIED**; and the request for counsel fees and costs is **DENIED**.

This decision is final pursuant to 20 U.S.C. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2024) and is appealable by filing a complaint and bringing a civil action either in the Law Division of the Superior Court of New Jersey or in a district court of the United States. 20 U.S.C. § 1415(i)(2); 34 C.F.R. § 300.516 (2024). If the parent or adult student feels that this decision is not being fully implemented with respect to program or services, this concern should be communicated in writing to the Director, Office of Special Education Programs.

February 26, 2024 \_\_\_\_\_

DATE

  
\_\_\_\_\_  
**TRICIA M. CALIGUIRE, ALJ**

Date Received at Agency: \_\_\_\_\_

Date Mailed to Parties: \_\_\_\_\_

TMC/nn

**APPENDIX**

**WITNESSES**

**For petitioners**

Dr. Karen Kimberlin  
Susan Caplan  
Ellen Gonzales  
J.M.

**For respondent**

Paulette DiNardo  
Anne Fishman  
Catherine Meyers Kulp

**EXHIBITS**

**For petitioners<sup>14</sup>**

P-8 District School Visitors Policy  
P-125 District provided E-Mails of Catherine (Cate) Kulp, Teacher  
P-127 Parent – Antoinette Tighe Thread Re: Permission for Susan K. Caplan,  
LDT-C, dated May 31, 2022 / June 1, 2022  
P-129 Parent – Antoinette Tighe Thread Re: Nicks program, dated June 20, 2022/  
June 23, 2022  
P-143 Cambridge School 2022–2023 SY Student Schedule  
P-144 Cambridge School Bio and Resume of Ellen Gonzales, MS, CCC-SLP,  
Head of School

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<sup>14</sup> Petitioners marked exhibits numbered P-1 through P-266, but only introduced those listed here.



- P-159 Cambridge School 2022–2023 SY (September 2022) Beginning-of-Year WIST
- P-162 Cambridge School 2022–2023 SY (September 2022) Beginning-of-Year WADE Baseline Assessment
- P-163 Cambridge School 2022–2023 SY (May 2023) Beginning-of-Year WADE
- P-165 Cambridge School 2022–2023 SY (September 2022) Beginning-of-Year Writing Sample
- P-166 Cambridge School 2022–2023 SY (May 2023) End-of-Year Writing Sample
- P-172 Cambridge School 2022–2023 SY Marking Period 3 Report Card / Progress Report
- P-176 Cambridge School 2022–2023 SY End-of-Year Testing Report
- P-177 Cambridge School 2022–2023 SY Scores By Standard, dated October 2022 / January 2023 / April 2023
- P-178 Cambridge School 2022–2023 SY September 2022 / May 2023 Summary of Scores Baseline Assessment and End-of-Year Annual Assessment with WADE Assessments
- P-179 Cambridge School May 2023 End-of-Year One Paragraph Essay Grading Rubric with Writing Sample
- P-181 Cambridge School Preliminary Admission Summary
- P-186 Language & Literacy Evaluation, Dr. Karen T. Kimberlin, SLP.D., CCC-SLP Speech Language Learning Connection, LLC, dated January 20, 2023
- P-187 Language and Literacy (Re)Evaluation, Dr. Karen T. Kimberlin, SLP.D., CCC-SLP Speech Language Learning Connection, LLC, dated June 8, 2023
- P-188 Curriculum Vitae, Dr. Karen T. Kimberlin, SLP.D., CCC-SLP, Speech Language Learning Connection, LLC
- P-189 Educational Evaluation, Susan K. Caplan, M.Ed., LDT-C, dated January 6, 2023
- P-190 Educational Update, Susan K. Caplan, M.Ed., LDT-C, dated May 23, 2023
- P-191 Curriculum Vitae, Susan K. Caplan, M.Ed., LDT-C
- P-203 The New Jersey Dyslexia Handbook, A Guide to Early Literacy Development & Reading Struggles

- P-216 Neurology Evaluation, Dr. Katherine Taub, Children's Hospital of Philadelphia, dated July 27, 2020
- P-226 Writing Sample – Cate Kulp's Class, dated June 8, 2022 (4<sup>th</sup> Grade)
- P-228 2021–2022 (4<sup>th</sup> Grade), Writing File – Cate Kulp, received July 12, 2023
- P-237 Records of Anne Fishman
- P-247 Parent to Antoinette Tighe Re: Concerns, dated August 13, 2019

**For respondent**<sup>15</sup>

- R-1 Petition for Due Process, dated January 21, 2023
- R-2 Answer, dated February 7, 2023
- R-3 IEP, dated March 14, 2019
- R-4 IEP, dated May 4, 2019
- R-5 Progress report, 2018–2019
- R-6 Private neurodevelopmental evaluation, dated August 12, 2019
- R-7 Independent Neuropsychological Evaluation, dated November 26, 2019
- R-8 IEP, dated December 13, 2019
- R-9 IEP, dated April 20, 2020
- R-10 Progress report 2019–2020
- R-11 IEP dated, May 13, 2021
- R-12 Progress report (2020–2021), dated June 30, 2021
- R-13 Progress report, ESY 2021, dated August 5, 2021
- R-14 Occupational Therapy Evaluation, dated October 25, 2021
- R-15 Psychological Evaluation, dated October 28, 2021
- R-16 Educational Evaluation, dated November 8, 2021
- R-17 Speech-Language Specialist's Report, dated November 17, 2021
- R-18 Audiologic and CAP Evaluation, dated November 19, 2021
- R-19 IEP, dated December 23, 2021
- R-20 IEP, dated May 12, 2022
- R-24 Report card, 2021–2022
- R-25 Progress report, 2021–2022

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<sup>15</sup> Respondent marked exhibits numbered R-1 through R-56, but only introduced those listed here.

- R-26 ESY 2022 progress report
- R-27 Email from parent advising of unilateral placement, dated July 6, 2022
- R-28 District response to unilateral placement notice, dated July 6, 2022
- R-29 Email from parent agreeing to meeting, dated July 6, 2022
- R-30 Email chain regarding scheduling resolution meeting, dated July 22, 2022
- R-31 Unilateral placement notice, dated August 15, 2022
- R-45 CV and certifications – Paulette DiNardo (Director of Pupil Services)
- R-46 CV and certifications – Anne Fishman (reading teacher/special education)
- R-52 CV and certifications – Catherine Kulp (special education teacher)
- R-53 Email from DiNardo to Parents, dated July 4, 2023
- R-54 Email from DiNardo to Parents, dated July 11, 2023
- R-55 Tr. of March 13, 2023, in matter W.K. and A.K. obo I.K. v. Hopewell Valley Reg. Sch. Dist. Bd. of Educ., OAL Dkt. Nos. EDS 05870-22 and EDS 05871-22, at 105