



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

**FINAL DECISION**

OAL DKT. NO. EDS 00895-22

AGENCY DKT. NO. 2022-33753

**C.E. AND Y.Z. ON BEHALF OF R.E.,**

Petitioners,

v.

**TOMS RIVER REGIONAL**

**BOARD OF EDUCATION,**

Respondent.

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

**R. Taylor Ruilova**, Esq., for respondent (Comegno Law Group, P.C., attorneys)

Record closed: April 1, 2024

Decided: May 22, 2024

BEFORE **ELAINE B. FRICK**, ALJ:

**STATEMENT OF THE CASE**

Petitioners, C.E. and Y.Z., the parents of R.E., contend the Individualized Educational Program (IEP) developed for R.E. for the 2021-2022 school year, failed to provide a Free Appropriate Public Education (FAPE) in violation of IDEA. The parents seek reimbursement from respondent, the Toms River Regional Board of Education (the District or the BOE) for the parents' unilateral placement of R.E. at the School for Children with Hidden Intelligence (SCHI) for the 2021-2022 school year. The parents seek continued placement at SCHI, transportation, development of an IEP reflecting the program and placement at SCHI, release of student records, change in classification of the student to multiply-disabled, and seek compensatory education and reimbursement of costs. The District opposes the relief sought by petitioners, asserting it can provide a

FAPE in the least restrictive environment (LRE) in district, and the parents' requests for relief should be denied.

### **PROCEDURAL HISTORY**

Petitioners submitted their petition to the New Jersey Department of Education seeking relief. The matter was transmitted to the Office of Administrative Law (OAL) where it was filed on February 7, 2022, as a contested matter. N.J.S.A. 52:14B-1 to 14B-15; N.J.S.A. 52:14F-1 to 14F-13.

A telephone conference was conducted with the parties on March 13, 2022. Counsel asserted they were not afforded the opportunity to participate in a settlement conference and requested same. A settlement conference was conducted by a settlement conference Administrative Law Judge (ALJ) with the parties. The parties reported thereafter during a telephonic conference that the matter did not resolve, and they were ready to proceed to a hearing on the scheduled hearing date.

The hearing began on June 22, 2022, via Zoom audio/video technology. Additional hearing dates were added at the end of the proceeding.

During the hearing on June 22, 2022, the District's request to qualify witness, Kelly McNamara, as an expert witness was denied, as no written report had been authored by the witness, nor was a specific summation as to her anticipated expert opinion provided in advance to petitioners. Although McNamara had been identified in a witness list in initial disclosures as a potential expert and fact witness, no resume nor curriculum vitae had been provided in advance by the District to petitioners, outlining the skills, experience, and education of the witness. McNamara did testify as a fact witness.

The hearing continued via Zoom on July 11, 2022. The attorneys requested a conference call prior to the next scheduled hearing date to add additional hearing dates to the calendar and were advised to submit proposed telephonic conference dates and times. Such dates and times were not submitted prior to the next hearing date.

The hearing continued via Zoom on August 15, 2022. At the end of the proceeding, additional mutually agreed upon hearing dates were scheduled.

The hearing continued via Zoom on September 30, 2022. The hearing date of November 21, 2022, was adjourned for personal reasons at the request of petitioner's counsel, with the consent of the District. The hearing date of December 20, 2022, was adjourned at the request of the District, with the consent of petitioner, due to witness unavailability.

On January 4, 2023, the hearing continued via Zoom. During the hearing, the District's request to qualify witness, Renee Verdon, as an expert witness was denied. Although a curriculum vitae had been provided, there was no written report authored by Verdon to alert petitioners as to Verdon's expert opinion. The absence of a report is not fatal to qualification of an individual as an expert witness, but the summation provided by the District to petitioners as to Verdon's anticipated testimony identified Verdon as a potential fact or expert witness, without specificity as to the expert opinion to be expressed. Verdon did testify as a fact witness.

The District advised it intended to request to qualify witness, Kelly Umbach, as an expert witness. Based upon my ruling denying Verdon to be qualified as an expert witness for the proceeding, the District opted to forego placing argument on the record, and reserved the issue for appeal, anticipating that its request to qualify Umbach as an expert witness would also be denied. Petitioners did not object to respondent's reservation. Umbach testified as a fact witness.

The hearing continued via Zoom on March 28, 2023. At the outset, the District's counsel noted an objection to the use or entry into evidence of voluminous supplemental documentation on behalf of the parents, received the day prior. The parents' counsel indicated he did not intend to utilize or move into evidence such documentation during the hearing on that date. The parties agreed that if petitioners sought to use or move into evidence any such documentation submitted on the eve of the future proceeding dates, objections would be dealt with at the hearing.

The hearing continued via Zoom on May 5, 2023. The District's counsel objected at the start of the proceeding to the use or entry into evidence of another binder of documentation petitioner parents had submitted a few days prior to the hearing date. Petitioners' counsel indicated he did not intend to utilize or move into evidence any documentation that was not timely provided. He stated he would no longer submit such documentation to the District, nor to the OAL. He explained that any of the submissions made on the eve of hearing dates were only intended to keep the District updated on the status of the student.

The hearing was scheduled to resume on June 7, 2023. Two days prior, the District submitted a letter brief with a motion to bar petitioners from recalling two witnesses who had already testified in the matter. Petitioners' counsel requested a telephonic conference, which was conducted with the parties on June 6, 2023. The parties agreed to adjourn the June 7, 2023, hearing date due to the witness dispute, and a schedule was set for briefing on the motion. Oral argument on the motion was requested and conducted on July 26, 2023, via Zoom, the date that was to be the next hearing date. An Order on the motion to bar petitioners from recalling witnesses was entered on August 4, 2023, granting in part and denying in part the motion request, permitting the parents to recall the two witnesses for strictly limited testimony.

The hearing was scheduled to resume on September 19, 2023, which was adjourned by joint request of the parties, due to witness unavailability. The hearing was next scheduled to proceed on October 17, 2023, via Zoom, which was adjourned by consent due to the parents' counsel having a conflicting Appellate Division matter. Before the adjournment was granted, the parties were required to submit mutually agreeable dates they were available for the next hearing date. The matter was rescheduled to proceed on December 15, 2023, as requested by the parties.

On December 15, 2023, the hearing continued via Zoom with testimony from the witnesses who were recalled by the parents. At the end of their testimony, petitioners sought to call an additional witness, a staff member from the District. A break was provided to allow counsel to confer regarding the request. Counsel reported back that the District would make the witness available, yet the witness was on vacation. The next

mutually agreeable hearing date was scheduled for January 8, 2024, for the additional witness. A schedule was sent for the attorneys to submit an agreed upon master evidence list and the anticipated date for the submission of their written summations.

On January 8, 2024, the hearing continued via Zoom. A master evidence list was confirmed on the record by the parties. Petitioners' counsel indicated that he would submit one binder with petitioners' exhibits, since approximately eight voluminous binders with pre-marked documentation had been submitted throughout the course of the proceeding, yet not utilized. The parties confirmed the schedule for the submission of their written summations. The testimonial portion of the hearing was thus conducted over eight days. The parties' written summations were received, and the record closed April 1, 2024.

### **FACTUAL DISCUSSION AND FINDINGS**

The following facts were derived from the testimony and documentary evidence as being undisputed, and I thus **FIND** as **FACTS** the following:

R.E. was born on June 1, 2016. Her parents are C.E. and Y.Z. They reside in the Toms River Regional Board of Education school district. For the 2021-2022 school year, R.E. was to begin kindergarten, at the age of five years old, in the District.

In April 2021, R.E.'s mother, Y.Z., contacted the District regarding enrollment of R.E. in the public school. Y.Z. completed a student registration form. (R-3.) Prior to her registration in the District, R.E. attended Imagination preschool, operated by Star Therapeutics. (R-3.) That is a private childcare center. She was in a self-contained classroom. (R-9.)

An invitation was forwarded by the District to the parents on April 28, 2021, to attend an initial identification and evaluation planning meeting of the child study team (CST). (R-10.)

Prior to the May 14, 2021, planning meeting, the mother provided to the CST various reports and records for R.E. A copy of a psychiatric evaluation of R.E. by Dr. Sajjad Zaidi, which was completed on April 25, 2019, was provided to the District by the mother. (R-5.) R.E. was two years old at that time of the evaluation. The diagnostic impression was primarily Autistic Spectrum Disorder (ASD) with the psychiatrist noting that R.E. also presented with a combination of ADHD and to rule out disruptive mood dysregulation disorder. (R-5.) The psychiatrist recommended that R.E. start preschool in a program which provides R.E. with Applied Behavioral Analysis (ABA) services and integrative therapies and noted that a 1:1 aide would be beneficial for R.E.'s overall emotional, social, and academic needs. (R-5.)

The mother provided the CST with a psychological evaluation of R.E. by Dr. Anita Elbaz, which was completed on May 10, 2019. (R-6.) The evaluation summary concluded that R.E. had been recently diagnosed with ASD and that R.E. presented with significant deficits in all adaptive areas of communication, socialization, and daily living skills. (R-6.)

The mother provided the CST with an ABA Treatment Request assessment from Star Therapeutics, completed by a Board-Certified Behavioral Analyst (BCBA) on May 17, 2019. (R-7.) The evaluator recommended various ABA services with BCBA oversight, for R.E.'s preschool program at Imagination preschool, operated by Star Therapeutics. (R-7.)

The mother provided the CST with a speech evaluation completed by a therapist from Star Therapeutics for R.E. on April 30, 2019. (R-8.) The therapist recommended twice or more weekly speech therapy sessions for six months to address R.E.'s expressive and receptive language, social and emotional goals. (R-8.)

The mother also provided the CST with an OT re-assessment report completed by a Star Therapeutics therapist on October 29, 2020. (R-9.) R.E. had received OT services at Imagination preschool but had not been seen consistently since her prior OT re-evaluation due to COVID 19 school shut down. (R-9.) The OT therapist noted that R.E.'s scores in multiple areas of testing had improved, indicating some improvement in areas

related to sensory processing. R.E. still had performance impairments and continued to struggle in her classroom and home settings. OT services were recommended two times per week for a period of twelve months. (R-9.)

The mother provided medical information to the District regarding R.E. The information was a March 18, 2021, note from R.E.'s pediatrician, indicating that R.E. "has been diagnosed with ADHD, ODD and Autism Spectrum Disorder." (R-4.) The mother completed a health office questionnaire, checking off conditions R.E. had been diagnosed with or was under evaluation by a physician. She checked off: "Autism/ASD/Asperger's Syndrome", "ADD/ADHD", and "Pervasive Developmental Disorder". (R-4.)

The identification and evaluation planning meeting occurred on May 14, 2021. (R-10; R-11.) The meeting participants were the mother; a general education teacher; the school psychologist; the case manager, Kelly McNamara, who is a Learning Disabilities Teaching Consultant (LDTTC); the school social worker; a speech therapist; and the school nurse. (R-11.) As a result of the meeting, the District proposed that an evaluation was warranted to determine if R.E. had a disability. (R-11.) The areas of suspected disability checked off on the proposed action letter of May 14, 2021, included autism and "other health impairment." (R-11.) Evaluations and assessments were proposed to be completed in the areas of social history, speech/language (S/L), and occupational therapy (OT). (R-11.)

The mother signed an authorization on May 19, 2021, permitting Imagination preschool to release R.E.'s records to the District. (R-12.) R.E. was registered to attend school in the District on May 24, 2021. (R-3.)

On June 3, 2021, the mother sent an email to the District's preschool secretary, Yesenia Newcomb. The mother provided R.E.'s immunization forms attached to the email. She also indicated in the email that since it was her daughter's birthday the day prior, she was wondering whether a summer program could be put in place for R.E. and whether the speech evaluation, which was scheduled for July 14, 2021, could be pushed up. (P-4a2.) The mother sent a follow up email on June 7, 2021, inquiring whether the

secretary had received her June 3 email. Newcomb responded via email within minutes, with “Yes, I did.” (P-4a1.)

The social history evaluation was completed by Kari Lefebvre, a school social worker, on June 9, 2021. (R-14.) Lefebvre reviewed records and met with the mother. Lefebvre compiled a history of R.E.’s status as reported by Y.Z., and recommended that the CST take into consideration such information and determine how to best meet R.E.’s educational needs. (R-14.)

The mother signed the consent form for the completion of the initial proposed evaluations from the May 14, 2021, planning meeting on July 1, 2024. (R-11, R-13.)

The OT evaluation was completed on July 12, 2021, by Jennifer Viola. (R-15.) Viola consulted with members of the CST, reviewed records, observed R.E., took a history from the mother, and administered the child sensory profile 2-caregiver questionnaire. Viola observed that R.E. had great difficulty attending to most activities for more than a few seconds. (R-15.) R.E. ran around the sensory gym and explored all of the equipment, with decreased safety awareness. R.E. was able to focus for slightly longer periods of time when the evaluation transitioned to a smaller, quieter conference room. R.E. attempted to elope from the conference room and demonstrated decreased safety awareness. Viola noted that R.E. will require constant close supervision throughout her school day for safety. (R-15.) Viola recommended school based OT services to improve R.E.’s fine motor, gross motor, bilateral coordination, self-care, visual motor/perceptual, and sensory processing skills to increase her academic success. (R-15.)

The District’s S/L evaluation of R.E. was completed on July 14, 2021 by Karen Rieser. (R-16.) Rieser confirmed that R.E.’s medical history is significant for diagnoses of ASD, ADHD, and OOD. (R-16.) Rieser reported that R.E.’s testing results for language skills in auditory comprehension and expressive communication were considered “below average.” (R-16.) Rieser summarized that R.E.’s communication skills are not “developmentally appropriate” and may affect her ability to adequately access the kindergarten curriculum and her ability to effectively communicate her ideas in the



classroom, without intervention. Rieser recommended that speech and language therapy services be provided, “with focus on developing age-appropriate communication skills.” (R-16 at 0218.)

After the proposed evaluations were completed, an invitation for the initial eligibility determination and IEP development, if feasible, meeting was sent to the parents as of August 2, 2021. (R-17.) The meeting was conducted on August 16, 2021. (R-17; R-18.) A proposed IEP was completed as of August 16, 2021. (R-18.) The mother, Y.Z., consented to implementation of the IEP by signing the consent form on August 31, 2021. (R-20.)

A letter was authored by Beth Keena, MS, CGC, Licensed Genetic Counselor, Clinical Genetics Center from Children’s Hospital of Philadelphia (CHOP) on August 20, 2021, summarizing R.E.’s medical diagnosis of Turner syndrome. (R-19.) The parties stipulated that neither the parents, nor the CST, had the August 20, 2021, letter at the August 16, 2021, IEP meeting.

The first paragraph states that the letter was written to summarize R.E.’s medical diagnosis of Turner syndrome. (R-19 at 1.) Keena wrote that R.E.’s “chromosomal testing revealed mosaicism for 45, X and 46, Xisodicentric X.” (R-19 at 1.) The letter went on to describe Turner syndrome in general, and the incidence rate in females and other conditions generally found in females diagnosed with Turner syndrome, such as hypothyroidism, autism, and visual-spatial deficits, which deficits may lead to more difficulty with math. (R-19 at 1-2.) Specific as to R.E., the letter stated “[R.] is already being followed by Endocrinology and they will evaluate for any hormonal differences that may need to be addressed at age appropriate intervals.” (R-19 at 1.) The other specific reference to R.E. thereafter in the letter was that “[R.] may require appropriate school services for her diagnosis of autism.” (R-19 at 2.)

The IEP provided for R.E. to attend full day kindergarten for the 2021-2022 school year at Hooper Avenue Elementary school (Hooper) in the District. (R-18.) The school year was projected to begin on September 8, 2021. R.E. was determined to be eligible for special education and related services with a classification of “Autism”. Noted at the

top of the first page on the IEP was “Special Alerts: Additional goals and objectives will be determined by ABLLS, the Assessment of Basic Language and Learning Skills when completed by her teacher in September.” (R-18.)

The special education and related services to be provided were summarized on the front page of the IEP as:

Special Class Autism	09/08/2021 – 06/20/2022	1x daily 360 minutes
OT, individual	09/13/2021 – 06/30/2022	17 x trimester 25 minutes
S/L, individual	09/13/2021 – 06/13/2022	26 x trimester 25 minutes
BCBA consultation, individual	09/13/2021 – 06/13/2022	1x week 60 minutes
Personal aide, individual	09/08/2021 – 06/20/2022	1x daily 360 minutes

Special transportation services were identified for door-to-door transportation to and from school, with a harness during transport, and a bus with an attendant. (R-18.)

The IEP specified:

[R.E.] is a student with a disability requiring an Individualized Education Program (IEP). This IEP states the proposed disability and services to be provided. The District is proposing an in-district self-contained kindergarten Autism class for the 21-22 school year with a 3:1 student to adult ratio, specialized instruction utilizing an ABA curriculum model, inclusion opportunities with typically developing peers as appropriate, a 1:1 aide, BCBA consultation as well as speech and language therapy, and occupational therapy. It is anticipated that [R.E.] will derive meaningful educational benefit from this program.

(R-18 at 13.)

The IEP identified that R.E. was eligible for special education under the classification of autism and that “re-classification of Multiple Disabilities is a consideration pending reception [sic] and review of additional medial [sic] reports from CHOP in regard to recent diagnosis of Turner’s Syndrome.” (R-18 at 13.) The records, reports, and information used to determine R.E.’s placement were listed in the IEP as input provided

by an OT therapist, input from the S/L therapist, parental input, teacher input, and CST input. (R-18 at 14.)

The relevant data listed as having been considered in the development of the IEP included the OT evaluation, S/L evaluation, and social assessment completed by the District after the May 2021 initial meeting. (R-18 at 2.) R.E.'s pediatrician's note from March 18, 2021, provided the diagnoses of ADHD, ODD, and ASD. The psychological and psychiatric evaluations from 2019 were listed as having been relied upon, with comments entered regarding the Vineland Scale indicating R.E. had significant deficits with all adaptive areas of communication, socialization, and daily living skills, and confirming the diagnosis of autism, recommendation for ABA services and therapies and a 1:1 aide for R.E.'s preschool. (R-18 at 2.)

The mother's concerns were included in the IEP as:

[R.E.'s] mother has requested to observe the class prior to her starting the program. Additional concerns include [R.E.'s] safety on the special transportation bus as well as elopement in the classroom setting. [R.E.'s] mother is very concerned with her speech and language development and has emphasized the need for [R.E.] to progress in this developmental domain. [R.E.'s] parents will be providing additional reports for Turner's Syndrome diagnosis as well as Cardiac and Kidney testing scheduled in November.

(R-18 at 3.)

The IEP further indicated that R.E.'s behavior impedes her learning or that of others, and that appropriate strategies and supports were listed further in the IEP under modifications and accommodations. (R-18 at 5.) Under the behavioral interventions section, the answer was "no" as to whether behavioral interventions are appropriate at this time. (R-18 at 6.) Under the modifications section, it was noted "Considered but not applicable." (R-18 at 10.) Under the accommodations section, the IEP identified that R.E. would be in a general and special education classroom, with accommodations listed such as use of a consistent daily routine, establish and maintain eye contact when giving oral directions, and use of visual aids to accompany instruction. (R-18 at 10.)

Academic goals were listed in the IEP. (R-18 at 7-10.) Fourteen individual annual measurable academic and/or functional goals were set forth, with subsections for benchmarks or short-term objectives. R.E.'s goals focused on the concerned areas of speech/language and OT. (R-18 at 7-10.)

The parents attended orientation with R.E. at the school on August 25, 2021. The mother sent an email the following day to the case manager, McNamara, in which she confirmed they were unable to see the classrooms at the orientation and although R.E.'s teacher was nice, she did not seem familiar with R.E.'s "specifics" so the parents could not "make an honest assessment." (R-21.) The mother noted she looked forward to observing the class sometime after September 8, as McNamara had advised. (R-21.)

Y.Z. consented to implementation of the initial IEP for R.E. by signing the consent form on August 31, 2021. (R-20.) Above the mother's signature on the form is the line "I understand that if I do not consent, any proposed special education and/or related services will not be provided." (R-20.) Y.Z. handwrote in "However, I continue to have concerns and look forward to an observation." (R-20.) The mother transmitted her signed consent form by email to case manager McNamara on August 31, 2021, noting that while "we continue to have significant concerns" she was signing the consent form so that R.E. could be considered a special education student. (R-21 at TRRS-0240.)

R.E. did not appear for the first day of school on September 8, 2021, and thus was not present in the District classroom as per her IEP.

Case manager McNamara was the District's preschool case manager as of 2021. Once R.E. was enrolled to begin kindergarten in September 2021, her case manager became Renee Verdon.

Arrangements were made for the mother to observe what was to be R.E.'s classroom at the Hooper school classroom. The first scheduled observation was cancelled due to case manager Verdon having tested positive for COVID and thus being unable to attend. The District's Supervisor of Special Services, Kelly Umbach, communicated with the mother to reschedule the observation. (R-21.) A virtual

observation was rescheduled to occur on September 24, 2021. The mother advised that R.E.'s learning consultant, Susan Caplan, would attend the observation as well. (R-21.)

The mother attended the virtual observation of the Hooper school classroom on September 24, 2021. She sent an email to case manager McNamara immediately thereafter. (R-21 at TRRS-0246.) The mother advised that she spoke to the teacher, Ms. Agathangelo after the observation and found her to be very nice. Y.Z. related that she was concerned there were two nonverbal kids and two "very low" verbal kids in the class and R.E. would be the highest verbal child in the class, as allegedly confirmed by the teacher. The mother was concerned also because a child in the class had sudden sound outbursts which she knew R.E. could not tolerate. The mother advised that the "program doesn't look to be appropriate." (R-21 at TRRS-0246.) She further indicated that she was looking into all options for R.E. and "have tentatively decided to pursue the state approved SCHI school. I will be formally applying to SCHI as soon as possible." (R-21 at TRRS-0246.) She concluded her email to case manager McNamara that she wanted the District to place R.E. "at the NJDOE approved SCHI School or reimburse us for any and all expenses associated with this as well as provide transportation." (R-21 at TRRS-0246.)

Supervisor Umbach responded to the mother's email and addressed her concerns. (R-1 at TRRS-0247.) She confirmed that the recommendations for classroom placement could change once the District was able to collect data regarding R.E. She offered another classroom observation to the mother of the Beachwood school in the District, which had a slightly different population of students. Umbach indicated that the staff was very familiar with handling noise and sudden movement issues and the staff works with BCBAs and occupational therapists to assist students in building tolerance for such sensory input. Umbach wrote "We can easily put a plan in place to provide [R.E.] support in that area." (R-1 at TRRS-0247.) She further indicated the District was ready and able to work with R.E. in Ms. Agathangelo's classroom, which would allow the District to get to know R.E. better and collect data on her skills.

Supervisor Umbach again emailed the mother approximately one week later, indicating the District was offering observations of two classrooms in the Beachwood

school, and offered proposed dates for the observations. Umbach confirmed that “we welcome [R.E.] to the Hooper Ave placement and are ready and willing to begin her in our program.” (R-21 at TRRS-0248.) The mother responded via email on September 30, 2021, indicating she did not know why a classroom that was not appropriate for her child was continuing to be recommended. She wrote “While I continue to seek an appropriate public placement, until one is provided I intend to unilaterally place my child at the NJDOE approved SCHI School as indicated previously.” (R-21 at TRRS-0248.)

Supervisor Umbach responded to the parents in correspondence dated October 1, 2021, regarding the mother’s assertion that the parents intended to unilaterally place R.E. in a private special education school placement for the 2021-2022 school year. (R-22.) The letter indicated that the District was not in a position to agree to such a placement, as it was confident that R.E. would be provided a FAPE in the District, as proposed. The letter confirmed that the placement in District was to begin September 8, 2024, yet the student never appeared for the program.

Supervisor Umbach’s letter confirmed the request for reimbursement for placement at SCHI was denied. The District was offering to schedule an IEP meeting to discuss the parents’ concerns and hopefully come to a mutual agreement regarding R.E.’s educational programming. (R-22.)

The mother communicated thereafter with Supervisor Umbach and proposed dates were offered for the virtual observation of the Beachwood classrooms. The mother again indicated Caplan, her learning consultant, would attend. (R-21.) That observation occurred on October 8, 2021.

The District also arranged for an IEP meeting with the CST to occur on October 15, 2021, to discuss the parents’ concerns. (R-23.) The meeting was held with Verdon, the LDTC/case manager; Ms. Agathangelo the special education teacher; a general education teacher; the District’s BCBA; the speech therapist and the occupational therapist; the mother; and the parents’ private learning consultant, Caplan. The parents’ concerns as discussed at the meeting were outlined in a Conference Summary statement

along with the CST response. The mother confirmed at the meeting that R.E. had started school at SCHI. (R-24.)

R.E. never attended school in the District. (R-25.) She was enrolled unilaterally by the parents in SCHI, with her first day at SCHI on October 12, 2021, in a self-contained classroom.

The parents contend their unilateral placement of R.E. at SCHI is appropriate because the IEP of August 16, 2021, would have failed to provide a FAPE. The parents seek to have an IEP implemented confirming R.E.'s placement at SCHI and seek reimbursement for their payment of SCHI's tuition, transportation, and fees and costs.

The District contends it was never given the opportunity to educate R.E. She never attended the public school. It asserts the IEP for 2021-2022 was appropriate and that it can provide a FAPE for R.E. in the least restrictive environment.

### **Testimony**

**Kelly McNamara** testified for the District. She has been employed by the District since approximately 2005, first as a special education teacher at high school East, then as a learning disabilities teacher consultant (LDTC) as of 2007. She continues to be employed as an LDTC for the District. Prior to her employment with the District, she worked in private and public schools in the special education field. She has seventeen years of experience in special education employment.

McNamara, as LDTC, is part of the Child Study Team (CST) for the District. She first learned of R.E. when her parents made a referral in April 2021. An initial identification and evaluation meeting was scheduled for May 14, 2021. (R-10.) The parents forwarded documentation to the District in advance of the meeting. McNamara, and other members of the CST, reviewed the documentation in advance of the meeting. McNamara learned that R.E. was attending preschool at a private facility and receiving advanced behavioral analysis (ABA) based instruction for students in need of such programming.

She confirmed she did not seek to have the parents sign any releases to enable her to talk or communicate with any of the medical professionals, or the child's preschool. She does not ask for such releases. She did not know if others on the CST had requested any such releases. McNamara confirmed she did not reach out to the preschool to request additional records besides those which the parents provided to the CST to review. She did not make any plans to observe the child in her preschool.

The planning meeting occurred on May 14, 2021, and the mother of R.E. attended along with the District's CST members. (R-11.) The CST discussed the mother's concern regarding R.E.'s disability and asked the parent questions to understand R.E.'s background. It was a "whole" team discussion regarding the suspected disability of autism, which appeared in the paperwork presented by the parents in advance of the meeting. There was a psychiatric evaluation by psychiatrist Dr. Zaidi, from April 25, 2019, indicating that R.E. presented "primarily with Autistic Spectrum Disorder" and also presented "with a combination of Attention Deficit Hyperactivity Disorder (combined type) and R/O Disruptive Mood Dysregulation Disorder." (R-5 at page 2.) A psychological evaluation was completed by Dr. Anita Elbaz, as of May 10, 2019. (R-6.) Dr. Elbaz noted that the child was previously diagnosed with autism spectrum disorder and R.E. presented with significant deficits in all adaptive areas of communication, socialization, and daily living skills. (R-6 at 0168.)

Psychiatrist Zaidi noted that R.E. was bright and had a good memory, which McNamara agreed with and stated in the IEP from her observations that R.E. "memorizes well and recognizes letters." (R-18 at 223.) McNamara acknowledged that this "did not jive" with the psychologist's results from the Vineland Adaptive Behavior Scales for R.E., which had scoring for R.E. in the first and second percentiles for communication and socialization. (R-6.)

McNamara recalled that there was perhaps another health impairment, due to reported information about prior genetic testing, and that the past testing was inconclusive. She did not see a definitive record or report as of the May 14, 2021, meeting, that R.E. had a genetic disorder diagnosis.



The CST recommended evaluations for R.E. for a social assessment, S/L evaluation, and OT evaluation. (R-11.) She confirmed the CST did not propose to do an educational evaluation, psychological evaluation, nor physical therapy (PT) evaluation. (R-11.) McNamara stated that at the time of the referral, she did not see a need for any of those evaluations. There was no suspected learning disability, such as a reading disability, to propose an educational evaluation. The parents did not raise that as an issue. The CST did not propose a PT evaluation because there was nothing presented to indicate there was a suspected orthopedic impairment or disability impacting the child's physical abilities, such as the ability to properly navigate the classroom. The parents did not raise that as an issue.

Regarding a psychological evaluation, the CST did not propose such an evaluation to be done since it had reviewed and accepted the psychological evaluation provided by the parents prior to the initial identification and evaluation planning meeting. (R-5.) The mother did not raise any concerns during the initial meeting that there was a need for another psychological evaluation, nor that there were other suspected areas of concern to warrant obtaining a psychological evaluation. McNamara did acknowledge that the report was from 2019, completed almost two years prior to the time of the referral of the student in April of 2021.

The mother did not object to the proposed evaluations at the May 14, 2021, meeting. She did not provide written consent at that time. Y.Z. later did provide consent for the initial proposed evaluations as of July 1, 2021, the date she signed the consent form. (R-13.) The CST moved forward to commence the evaluations.

The social history evaluation had been completed by Kari Lefebvre on June 9, 2021. (R-14.) The purpose of the evaluation was to determine and get an understanding of the family dynamic, the medical status of the child, and the background information pertinent to R.E. The OT evaluation was completed on July 12, 2021, by Jennifer Viola. (R-15.) The S/L evaluation was completed on July 14, 2021, by Karen Rieser. (R-16.) The evaluations were forwarded to the parents when they were completed. McNamara acknowledged that there was no objective testing noted as having been done in the OT evaluation, to measure R.E.'s academic level of functioning.

An invitation for the initial eligibility determination and IEP development, if feasible, meeting was sent to the parents as of August 2, 2021. (R-17.) The meeting was conducted on August 16, 2021. (R-17; R-18.) The CST reviewed all materials previously provided by the parents and the recent evaluations. R.E. was deemed to have a disability, classified as autism. (R-18.) McNamara agreed with that classification, relying upon a note from R.E.'s pediatrician, dated March 18, 2021, which indicated that R.E. was "diagnosed with ADHD, ODD and Autism Spectrum Disorder" and the psychiatric report by Dr. Zaidi, from April 25, 2019, indicating that R.E.'s primary diagnosis was "Autism Spectrum Disorder." (R-4 at TRRS-0159; R-5 at 2; R-18 at 4.) The CST relied upon the psychological evaluations presented by the parents in advance of the May 14, 2021, meeting, in its assessment of R.E. and in the crafting of the IEP. McNamara asserted that the CST accepted and agreed with the findings in the medical, psychiatric, and psychological reports provided by the parents.

McNamara reviewed and relied upon the records provided by the parents for R.E.'s preschool information, regarding the recommendations in the IEP. (R-7, R-8, R-9; R-18.) McNamara indicated that the records revealed that R.E. was in an ABA therapy program in preschool. (R-7.) R.E. had an S/L evaluation completed by Star Therapeutics as of April 30, 2019. (R-8.) R.E. had an OT re-evaluation completed on October 29, 2020, by Star Therapeutics. (R-9.) McNamara indicated that the Verbal Behaviors-Milestone Assessment Placement Program (VB-MAPP) assessment had been done by Star Therapeutics, to assess for autism. That information was relied upon to determine the classification of autism was appropriate.

McNamara acknowledged that she did not speak to anyone at Star Therapeutics for information regarding R.E. There was no release signed by the parents to permit her to do so. She confirmed that she had not asked for the parents to sign a release regarding Start Therapeutics, and did not know if anyone from the District asked for a release from the parents. She did not observe R.E. in her preschool program.

McNamara did want an updated assessment of R.E. to be done, known as the Assessment of Basic Language and Learning Skills (ABLLS) assessment. The ABLLS

had not been done by Star Therapeutics. The IEP identified on the first page, “**Special Alerts:** Additional goals and objectives will be determined by ABLLS, the Assessment of Basic Language and Learning Skills when completed by her teacher in September.” (R-18 at 1, emphasis original.) McNamara explained that she does not do ABLLS assessments and acknowledged she has thus never administered such a test. The ABLLS is done by the classroom teacher. It is an assessment completed by the teacher, based upon observations of the student in the classroom setting. R.E. never attended school in the District, so the ABLLS assessment was not completed. McNamara recognized that an ABLLS assessment perhaps could have been completed at the child’s preschool before the start of the academic year. She did not ask if that was possible and did not request that such an assessment be done by the preschool.

McNamara recalled that she, the parents, a special education teacher, a general education teacher, the evaluators, and the OT therapist, were present at the IEP meeting on August 16, 2021. The S/L therapist was not present. The CST started the meeting by reviewing the reports from the District’s evaluations and all the reports and information received to determine eligibility. The parents were given the opportunity to express their concerns. McNamara did not recall input from the parents regarding the eligibility determination. She was aware that the child had received a diagnosis of Turners syndrome. She recalled that the parent had submitted an email on July 5, 2021, indicated the child had just been diagnosed with Turner syndrome. (P-4B at 322.) This information was noted in the August 16, 2021, IEP regarding R.E.’s classification of autism that re-classification of multiple disabilities was a consideration, “pending reception [sic] and review of additional medial [sic] reports from CHOP in regard to recent diagnosis of Turner’s Syndrome.” (R-18 at 13.)

The CST deemed R.E. eligible for special education and related services, for implementation as of September 1, 2021, for full-day kindergarten for the 2021-2022 school year, with a projected starting date of September 8, 2021. (R-18.) R.E. was to be placed in the special class for autism and receive individual OT, individual S/L, a weekly BCBA consultation, a personal 1:1 aide during the school day, and door to door transportation with a bus attendant. (R-18 at 1; 10-11.) No behavioral interventions were recommended to be implemented. (R-18 at 6.) Fourteen individual annual measurable

academic and/or functional goals were set forth for R.E. (R-18 at 7-10.) Accommodations to be provided in the classroom were listed. (R-18 at 10.) Any recommendation for extended school year (ESY) was deferred, pending review and determination in the spring of 2022. (R-18 at 11.)

McNamara explained that had R.E. attended the District's program, R.E. would be in the special autism class on a daily basis, which is a self-contained class of no more than six students diagnosed with autism. It is deemed "self-contained" because there are no general education students in the classroom. R.E. would have the opportunity every day to interact with typical peers and general education students throughout the day in the hallways, socially on the playground, in the library and cafeteria, and in gym and art classes. There are no "special education only" gym or art classes, or recess or lunch periods. She acknowledged there is no indication in the IEP outlining that R.E. would have such specific inclusion. The placement decision section of the IEP indicates that R.E. would be "in the presence of general education students for less than 40% of the school day." (R-18 at 231.)

The related services outlined in the IEP were based upon trimesters, and not listed as weekly duration. McNamara indicated that the District is run on a trimester system. The IEP identified OT to be provided seventeen times during a trimester, for a duration of 25 minutes each session. McNamara explained that translates to approximately two times per week during the school year. S/L therapy was to occur twenty-six times during the trimester, for twenty-five minutes per session. McNamara indicated that would be approximately three times per week.

McNamara relied upon the information from the STAR institute, provided by the parents, that R.E. should be in an applied behavioral analysis (ABA) curriculum model program. (R-7, R-8, R-9.) The child was in an ABA program at her preschool administered by STAR therapeutics.

She acknowledged that the reports indicated that R.E. was known to elope and did not have safety awareness. She acknowledged there was no proposed behavioral plan

in the IEP. McNamara indicated that R.E. would have a one-to-one aide to address that issue.

A letter dated August 20, 2021, was issued by Beth Keena, from the clinical genetics center of Children's Hospital of Philadelphia (CHOP), summarizing R.E.'s medical diagnosis of Turner syndrome. (R-19.) Had McNamara been aware of the letter confirming the diagnosis at the time of the August 16, 2021, IEP meeting, it would not have changed her recommendations in the IEP.

McNamara indicated she has dealt with prior referrals of students who had a diagnosis of Turner syndrome. She has not served as a case manager for any student diagnosed with Turner syndrome. She has some general knowledge about the condition, having viewed information online at the website WebMD. She acknowledged that students diagnosed with Turner syndrome could have wide variations in academic performance levels due to the syndrome.

She did not attempt to reach out to CHOP or the medical professional who authored the letter outlining that R.E. was diagnosed with Turner syndrome. She believed the letter confirmed the diagnosis and gave only general information about the syndrome. It did not specify that R.E.'s ability to access the curriculum would be impacted by the syndrome. She did not find that the letter outlined any accommodations or issues to be addressed in the academic setting, specifically as to R.E. The letter stated that "Overall, most girls with Turner syndrome have normal intellectual functioning and often the verbal IQ exceeds the performance IQ. Some individuals have visual-spatial deficits that lead to more difficulty with math, for example. [R.E.] may require appropriate school services for her diagnosis of autism." (R-19.) There was nothing in the diagnostic letter for the CST to address specifically with R.E. regarding her Turner syndrome diagnosis.

McNamara did respond to the email from R.E.'s mother, that she would add the August 20, 2021, CHOP letter to R.E.'s file and her IEP. McNamara did add it to the file. She acknowledged that she did not add it to the child's IEP.

The parents did not reject the proposed IEP at the meeting on August 16, 2021. The mother signed the consent to implement the IEP on August 31, 2021. (R-20.) A box on the consent form was checked off next to the line “I consent to the proposed initial IEP and for services to be implemented.” (R-20.) McNamara saw that the parent wrote in “However, I continue to have concerns and look forward to an observation.” (R-20.) The parents never expressed that they objected to R.E.’s placement in an ABA program. They never requested that there had to be a Floortime program for R.E.

The parents requested to observe the classroom program, and the observation was scheduled. The child was not present for the first day of school, nor did she attend school at all in District. McNamara acknowledged having seen the mother’s email regarding concerns she had about the classroom observation. McNamara confirmed that she did not participate in the observations and did not go to “check out” the classroom when the mother raised concerns about it.

McNamara knows about the SCHI school and had been there approximately three years prior to the pandemic. She did not know anything about the SCHI school program where the parents unilaterally placed the student.

McNamara believed R.E.’s classification of autism was appropriate. She was aware of R.E.’s diagnoses of ADHD, OOD, and that disruptive mood dysfunction was to be ruled out. She believed that it was not necessary to deem R.E. multiply disabled, since McNamara understood that ADHD can be under the umbrella of autism spectrum disorder. ASD was the primary diagnosis from the reports provided by the parents. The CST determined that based upon all the documentation and information provided, autism was the classification that best fit R.E.

McNamara serves as the preschool case manager. She was thus the case manager for R.E. through the evaluation process. Verdon was the subsequent case manager for R.E. McNamara recalled speaking to Verdon about R.E. but did not specifically recall discussing Turner syndrome with her. McNamara acknowledged that she did have communication with the mother after the IEP was completed, towards the end of August.

McNamara believed that the IEP identified R.E.'s needs based upon the information the CST had available at the time of the August 16, 2021, meeting. She believed that there were supports outlined in the IEP to address R.E.'s needs. She did not believe that the CST missed identifying any needs for R.E. She believed that all necessary supports were outlined in the IEP. (R-18.) She acknowledged specific academic goals and objectives were not in the IEP but would have been added once R.E. got into the program. The ABLLS would have been completed but R.E. was never sent to school in the district.

McNamara was recalled to testify after motion was made by the parents. Her testimony was to be strictly limited to the mother's allegation of a delay or lack of action regarding the completion of the evaluations, and the communications with the witnesses during the time from when the mother requested services for R.E., through the time the evaluations were done.<sup>1</sup> McNamara confirmed she was aware of Y.Z.'s request for services for R.E., prior to the issuance of the April 28, 2021 correspondence scheduling the Initial Identification and Evaluation Planning Meeting of May 14, 2021. (R-10.)

McNamara confirmed again during recall testimony that the parent had submitted medical records and reports and documentation in advance of the meeting concerning R.E. McNamara again confirmed she was aware that R.E. was in an ABA program in preschool administered through Star Therapeutics. She again confirmed during recall testimony that no one from the CST or the Toms River district reached out to any staff members or teachers at the preschool, nor did any Toms River representatives conduct an observation of R.E. at the preschool, after receipt of the documentation from the parents.

McNamara attended the May 14, 2021, identification meeting and again testified as to her recollection of the CST discussion regarding the scheduling of evaluations. The CST agreed upon evaluations to be completed and confirmed that in writing with the parents. (R-11.) McNamara recalled that all evaluations were scheduled for July. She did not recall any objection from the parents about the evaluations being scheduled to

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<sup>1</sup> See Order on Motion to Bar Petitioners From Recalling Witnesses, entered August 4, 2023.

occur in July. She did not recall receiving any request from the parents to schedule the evaluations sooner than July, or that the parents wanted to start services for R.E. in the summer of 2021.

McNamara denied having seen the emails submitted by the mother, Y.Z., to the preschool secretary, Yesenia Newcomb, on June 3, 2021, and June 7, 2021. (P-4.) She testified that the first time she saw the emails was in preparation for the hearing when she would be providing recall testimony.

The consent for evaluation form was sent via email to the parents immediately after the May 14, 2021, identification and evaluation planning meeting. That was not signed by the mother until July 1, 2021, and then returned to the CST. McNamara indicated that the evaluations could not have been completed until the consent form was received. She acknowledged that the social history evaluation was completed as of June 6, 2021, indicating that the social worker sets up her own schedule for the completion of that evaluation, because it does not involve observation of the child or interviews of the child. The social worker would interview the mother and did interview the mother here. McNamara realized thereafter that the consent to evaluate had not been received back from the parent before the social history evaluation was completed.

She confirmed that R.E.'s IEP programming for special education and services was slated to begin on September 8, 2021, the first day of school for the 2021-2022 school year. (R-18.) McNamara testified that the parent had requested services for R.E.'s kindergarten year. The services were not offered earlier, because the evaluations had to be completed.

**Karen Rieser** testified for the District. She obtained a bachelor's degree and a master's degree in speech language pathology from College of New Jersey. She has had twenty-two years of experience working as a speech pathologist for various entities, including school districts. She is a licensed speech language pathologist in the State of New Jersey. She has been employed by the District since 2006. She is currently employed as a speech language specialist for the District. (R-29.) She was qualified as an expert in the field of speech language pathology.



Rieser first came to know R.E. when Rieser was scheduled to attend the initial determination meeting. She attended the meeting and spoke with the mother and heard her concerns about R.E.'s communication skills. Rieser recommended that an S/L evaluation be completed. She was tasked with completing the evaluation. The areas of suspected disability for R.E. were autism and other health impairment. She was aware that the parent reported the child was undergoing genetic testing.

Rieser completed her speech language evaluation as of July 14, 2021. (R-16.) Prior to conducting the evaluation, Rieser was provided with R.E.'s S/L evaluation from Star Therapeutics, which she understood had been given to the district by the parents. (R-8.) Rieser completed her evaluation by utilizing parental input from the mother during the initial determination meeting and at the evaluation; reviewing records; observing R.E. during the evaluation process and testing; and administering the Preschool Language Scale – Fifth Edition (PLS-5) test. (R-16.)

Her functional observation of R.E. consisted of clinical observations of R. E. before the evaluation, during the evaluation, during play, during interactions with Rieser and during R.E.'s transitions into the evaluation room. Her clinical observation of R.E. was conducted by observing R.E.'s ability to produce sounds based upon developmental norms and whether she was intelligible to a listener and observing R.E.'s fluency and voice. Rieser found R.E.'s articulation within age expectancy and intelligibility to be good for all listeners. Rieser found R.E.'s fluency and voice to be within normal limits for her age and gender. Rieser's oral peripheral examination to R.E.'s structure, strength, and mobility of her lips, teeth, and tongue, resulted in a finding of being functionally adequate for R.E.'s speech production.

The mother reported that R.E. had normal hearing and vision. Rieser did not observe anything contrary to that during the evaluation.

Rieser confirmed that R.E. attempted to elope several times from the evaluation room. She acknowledged that she did not note that in her evaluation. She did not recall the child attempting to remove a framed mirror from the wall during the evaluation, when

questioned on cross-examination.

Rieser explained that the PLS-5 is a standardized test assessing the student's auditory comprehension and expressive language abilities, utilizing two subscales in the areas of auditory comprehension and expressive communication. (R-16.) R.E.'s standard score for auditory comprehension was 57, which is a "1" in percentile rank, with "1" being the lowest percentile rank. R.E.'s standard score for expressive communication was sixty-eight, which is a "2" in percentile rank. Her total language score was sixty, which is a "1" in percentile rank. Rieser explained that such scoring reflected that R.E. was below average. The percentile rank of "1" is significantly below average.

R.E. exhibited adequate comprehension and use of early vocabulary concepts but did not show an understanding of qualitative concepts. She followed routine one step directions but had difficulty with two step directions. Question comprehension was limited to basics. She communicated with single words, phrases, and short sentences.

The S/L evaluation completed by Star therapeutics in 2019 had findings consistent with Rieser's evaluation of R.E. The standardized test administered by the Star Therapeutics therapist had similar results compared with Rieser's standardized testing results.

Rieser acknowledged that the Star therapeutic's S/L evaluation was done when R.E. was two years old. She confirmed she did not have a more current base line of information, but for the information from the parent. She did not observe R.E. in a classroom setting. She acknowledged she did not observe R.E. in her preschool and did not ask to do so. She recognized that it is important to observe a child in their "natural setting" such as the classroom, to observe the child's interactions with other student peers and adult teachers and staff.

Rieser determined that R.E.'s speech communication skills were not developmentally appropriate. She determined R.E.'s speech skills would affect her ability to adequately access the kindergarten curriculum and communicate her ideas in the classroom, without intervention. Rieser thus recommended S/L therapy, focusing on R.E.

developing age-appropriate communication skills. She acknowledged that she did not provide a recommendation in her evaluation as to the duration and time frame for speech language sessions to occur.

She was unable to attend the IEP meeting of August 16, 2021, due to a personal medical issue which came up rapidly. She had spoken to McNamara prior to the meeting. She was unable to communicate information to the parents after completing her evaluation and before the IEP meeting.

Rieser confirmed the information in the IEP summarizing her S/L evaluation was accurate. (R-18.) The information contained in the IEP regarding R.E.'s need in S/L was consistent with her evaluation, which noted that R.E. needs to increase her expressive and receptive language skills. (R-18 at 5.) She took part in putting together the goals and objectives and drafting the S/L portion of the IEP, based upon her evaluation of R.E. (R-18 at 7-9.) She input the information into the IEP computer program. She also provided input in drafting the accommodations listed in the IEP, recommending that eye contact must be established and maintained with R.E. when giving oral directions and to repeat directions and clarify or reword directions for her. She recommended to draft into the IEP that there should be consultation with related service providers, being anyone interacting with the child, such as the classroom teacher, speech therapist and occupational therapist.

The S/L proposed in the IEP was for twenty-six times per trimester for twenty-five minutes each session. That averages out to three times per week sessions of twenty-five minutes duration. (R-18.) That was consistent with her evaluation and findings.

Rieser believed that the IEP's recommended classroom placement for R.E. was appropriate for R.E.'s speech and language needs. Rieser was familiar with the proposed kindergarten autism class. She was aware it was a language-based program. She opined that from a S/L perspective, the August 16, 2021, IEP was reasonably calculated to provide meaningful educational benefit to R.E.

**Jennifer Viola** testified for the district. She obtained her BA and an MS in occupational therapy from Stockton University. She is licensed as an occupational therapist in New Jersey and has a certificate in occupational therapy. She has been the occupational therapist for the District for thirteen years. (R-30.) She was qualified, without objection, as an expert in the field of occupational therapy.

She first came to know of R.E. in July 2021, when she was tasked to complete an OT evaluation of R.E. The child was five years and one month old at the time of the evaluation and slated to attend kindergarten in the special education program in September for the 2021-2022 school year at Toms River. Viola completed her written OT evaluation on July 12, 2021. (R-15.) As part of her evaluation process, she reviewed an occupational reevaluation report and plan of care for R.E. from October 29, 2020, completed by Star Therapeutics, which she knew was a private preschool. (R-9.) She met with R.E. and her mother at the Toms River district's early learning center. She completed a functional assessment, observing R.E. entering the room, and doing tasks, such as engagement in play activities. She reviewed the Child Sensory Profile 2-Caregiver Questionnaire, which is a standardized test used in OT, completed by the child's caregiver, which was R.E.'s mother here. (R-15.) No other standardized testing could be administered, since R.E. was unable to sit and focus long enough to complete such testing. (R-15.)

Viola reviewed the STAR therapeutics OT reevaluation and plan of care, to see what R.E.'s areas of concern were. She acknowledged that it was important to know of any prior OT, goals and plans, and important to know if there was progress for the student. She acknowledged that the STAR report was completed ten months prior to her evaluation. She was not concerned with the lapse of time, since she was completing her evaluation and was looking at the prior reports to see what the child's status was at that time. She recognized that the child was attending school in a self-contained classroom at Imagination preschool but was unaware if the child was attending preschool at the time of her evaluation in July 2021. She confirmed she did not call anyone at the preschool and did not recall specifically asking the parents if the child was in school. She noted that it was summertime and there may have been communication difficulties at that time since school is generally not in session and that period of time had waning COVID issues,

making some communications difficult. She did not receive a more recent OT report to review.

Viola recognized that the prior OT re-evaluation noted a diagnosis of autism and ADHD. (R-9.) She noted that the assessor had a Sensory Profile Caregiver Questionnaire completed, which was an earlier version of the questionnaire Viola had completed by R.E.'s mother. Viola noted there were "definite differences" in scoring from the prior questionnaire, regarding R.E.'s sensory processing, modulation, and behavior. (R-9.) She reviewed the assessors reporting regarding balance, behavior, and other areas of OT concern. (R-9.) She did see that the assessor from STAR noted that R.E.'s scoring in multiple areas had improved since the child's prior assessment. Viola did not receive the prior STAR assessment that was referred to in the evaluation report she was provided. The STAR assessor also remarked that there was improvement by R.E. in some areas related to sensory processing. (R-9.) Viola agreed with the assessor's recommendation that R.E. should be engaged in OT two times per week.

Viola's functional observations of R.E. took place during one session of approximately sixty minutes in the therapy room and then in a smaller conference room at the District's early learning center. She started the observation in the therapy room, which was a larger room, but had to move to the smaller, quieter room, with less stimulation, due to R.E.'s inability to focus. The child was pleasant and friendly but had great difficulty attending to most activities for "more than a few seconds at a time." (R-15.) Viola stated that in the therapy room, referred to as the sensory gym area in her report, R.E. "was noted to run around and explore all of the equipment, with decreased safety awareness noted." (R-15.) R.E. was able to focus for slightly longer periods of time when they moved to the smaller, quieter, conference room. Viola acknowledged it would be important to know exactly how long the child could focus, yet recognized she did not put any specific time amounts regarding her observations of the child's attentiveness, except for the reference of "more than a few seconds at a time" in her report. She confirmed on cross-examination that there was a swing in the therapy room, which R.E. tried to climb into. She did not recall that the child fell off of the swing and bumped her head.

Viola acknowledged that she spoke to R.E.'s mother many times. The mother was very helpful to Viola in completing her evaluation.

Viola wanted to set a timer to show R.E. the transitional time after repetitions of an activity. R.E. did not want to use a timer. R.E. displayed decreased cooperation, particularly with non-preferred tasks. Her attention was fleeting. She had decreased safety awareness and attention. She tripped on equipment and lost her balance. Viola observed it was difficult for R.E. to stay on task. The child frequently tried to leave the area, even when transitioning to a smaller room. She tried to elope and attempted to run out of the door. Such observations led Viola to recognize immediately that R.E. would benefit from OT, particularly for fine and gross motor skills, balance, self-care, and bilateral movements. She had sensory issues with light and sound, and preferred to be in the dark, which improved her focus and attention.

Viola summarized R.E.'s circumstances after having reviewed the prior OT assessment, observed R.E., and reviewing the scoring from the questionnaire. R.E. had definite difficulties in certain areas, more so than her peers. While in other areas regarding OT skills, R.E. was just like the majority of her peers, at an average level of functioning, such as regarding body position sensory input.

Viola recommended in her OT evaluation that R.E. should have school-based OT services to improve her fine motor, gross motor, bilateral coordination, self-care, visual motor/perceptual, and sensory processing skills for increased academic success. (R-15.) She did not provide specific recommendations in the evaluation regarding the number of sessions or timing of the sessions. Those recommendations were formulated in the IEP. (R-18.)

Viola attended the IEP meeting and recalled other members of the CST being present, along with the parents. Viola had input information into the draft IEP specific to OT. (R-18.) She completed the date and evaluation information on page two of the IEP. (R-18 at 2.) She did not know why comments were not input at that section. She did input a summary of her evaluation report and present levels of achievement and performance at page three of the IEP. (R-18 at 3.) With respect to R.E.'s needs, Viola

input into the IEP that R.E. needed school-based OT services to address and improve multiple enumerated skills and tasks for increased academic success. (R-18 at 5.)

Viola did not recall the parents expressing an issue with the classification of R.E. as autistic. She did not recall the parents indicating that they were working with private evaluators and did not recall them disclosing such information at the meeting.

The goals regarding OT in the IEP were input by Viola. She identified nine goals, numbered in the IEP as goal number 3 through 11. The specific OT goals targeted motor skills for visual and body coordination, fine motor skills such as correctly holding a crayon or pencil and properly utilizing scissors under adult supervision, and tasks to improve her writing, drawing, and building puzzles. (R-18 at 7-8.) Viola input specific benchmarks and criteria for assessing progress for each goal. (R-18.) The teachers and aides who would be assisting R.E. were to be provided certain supports and consultations regarding R.E.'s occupational therapy needs. (R-18 at 10.)

Viola agreed with the placement in the IEP that R.E. would be in the self-contained autism classroom, with a small number of students. (R-18.) She believed that would be the best placement for R.E., given that the teachers and staff are specifically trained to deal with autistic students and R.E. would be supervised. Viola candidly noted that although she was aware the number of students in the classroom would be capped, she did not know the exact number of students who would be in the class with R.E. She acknowledged that would be an important piece of information to know when confirming such placement.

Regarding OT, Viola specified in the IEP that OT would be individually provided to R.E. for seventeen sessions during each trimester of the 2021-2022 school year. She estimated that translated to two sessions per week. She recognized on cross examination that it may not specifically be two sessions per week. She did not know how many weeks were in each trimester. The trimester system allows for additional time for students to benefit from the techniques from related services, such as OT, since that information is shared with the providers and staff and aids, so that OT techniques may be used and reinforced throughout the school day.

Viola confirmed she was not specifically trained to work with autistic children. She was not assigned to be the occupational therapist for R.E. for her kindergarten year. She indicated that whomever the therapist would be, it would be an individual best able to formulate the specific “sensory diet” or sensory plan while working with the child.

Viola asserted that based upon her experience and history in dealing with children like R.E., it was her expert opinion that FAPE would have been met for R.E. based upon the IEP. She believed her recommendations were appropriate and her findings in her evaluation were accurate and appropriate, even without having called the child’s preschool to talk to R.E.’s preschool teacher, or talk to any preschool therapist for R.E.

**Renee Verdon** testified for the District. She is an LDTC for the District and was the incoming case manager for R.E. for her 2021-2022 kindergarten school year. She obtained her bachelor’s degree and master’s degree in special education as of 2002. She holds an LDTC certification, supervisor certification and a general education teaching certificate. She has approximately twenty-six years of experience in teaching and serving as an LDTC and case manager.

Verdon has been employed by the District since 2008, having served as an LDTC for seven years, then supervisor for two years, and again as an LDTC and case manager. She had to step back from the supervisor position due to several family medical crises. She is the case manager for the Hooper school in the District. The school serves kindergarten through third grade students and has four autism classes. Verdon’s case load is about sixty students per year. She has managed thousands of students over the years.

As a case manager she monitors the students’ IEPs and develops programming and interventions. As LDTC she does educational testing and renders determinations for special education eligibility. She collaborates and consults with the administrators, teachers, and therapists to develop programming and scheduling. She coordinates outside service providers and the service providers in the school building. She is able to observe students throughout the school day in the classrooms during instructions, during



therapy services, and while they are in the cafeteria and on the playground. She interacts with the parents, particularly with the autistic student parents, because things evolve all the time and changes are made to the student's programming. She estimated being involved with drafting thousands of IEPs throughout her career and completing as many such evaluations.

Verdon first recalled discussing R.E. with the sending case manager, McNamara, on the first day of school for the 2021-2022 school year. Verdon had the student's complete file consisting of the IEP, meeting invitations, the most recent evaluations for R.E., and correspondence and reports provided by the parents. She and McNamara discussed the student's circumstances in general, and she learned that the parents wanted to observe the program. The student did not attend school on the first day.

Verdon did not take part in writing the IEP and nor was she at the IEP meeting in August. She was aware that the IEP indicated an ABLLS assessment was to be completed. (R-18.) Verdon explained that a student must first pair with the person who will be doing the evaluation. Pairing is the opportunity for the evaluator to establish a relationship with the student. It is best practices to have the pairing occur before completing the assessment. Pairing can take between two to four weeks.

She described the ABLLS test as an assessment tool to determine the student's current academic level, their self-help skills, level, and their language and motor level. Individual goals are then generated for the student. The student's IEP would be revised depending upon the ABLLS outcome. This is a test done on a regular basis with students who move into the District. Since R.E. was never a preschool student in the District, the ABLLS would be administered to her at the start of her kindergarten school year. It was never done here because R.E. was never sent to school in Toms River for the 2021-2022 school year. (R-25.)

Verdon reached out to the mother to introduce herself and the mother confirmed she wanted to see the program, before R.E. attended school. Verdon planned with Umbach, the District's supervisor of special education, to set up the observation. Based upon the mother's work schedule, Verdon recalled having the observation set up for

around September 17, 2021, to include the student's private LDTC, Caplan. Verdon also confirmed with supervisor Umbach that the student had not come to school for the first day.

Verdon indicated that during her preliminary discussions with the mother, and during discussions with the mother to set up the observation, the parent did not express any particular concerns about the student's IEP. The parent did not indicate that she was having R.E. evaluated by private evaluators. The parent did not mention anything about the SCHI school or mention anything about the possibility of placement of R.E. anywhere other than the Toms River district. The parent did not indicate she had any new records or reports for the student.

The observation was set up for September 17, 2021, to occur as a virtual observation, since the school was still involved with COVID protocols at the time. The observation did not go forward as scheduled, due to Verdon having tested positive for COVID. She advised the parent as soon as she learned of the positive test, since Verdon would be out of work. Supervisor Umbach then took over to reschedule the observation, which was done for September 24, 2021. Verdon could not attend that observation because she was still out sick.

Verdon learned that the parent had concerns about the Hooper school classroom placement, when made privy to the parent's email sent to supervisor McNamara in the afternoon of September 24, 2021, after the observation. (R-21 a TRRS 246.) Thereafter, Verdon understood that the mother observed another kindergarten autism class at another elementary school in the district.

Verdon set up a conference with the parents to address their concerns. (R-23.) The conference was conducted on October 15, 2021, via google meet. Verdon attended, along with members of the CST, including R.E.'s kindergarten classroom teacher, Ms. Agathangelo. The mother attended, along with her private LDTC Caplan. Verdon prepared a summary of the conference. (R-24.) The mother was concerned that there were two nonverbal students in the classroom and that would not provide an opportunity for R.E. to develop her communication skills. Verdon did not believe that R.E. was

“higher” than the students in that classroom, based upon the information she had reviewed.

The mother expressed concern about one student having a verbal outburst during the observation. Verdon explained that it is very common for students in an autism program to have verbal outbursts. The staff, such as the BCBA and the teacher typically want to determine what the function of the behavior is and address it specifically with the student having an outburst. She indicated that if another student was noise sensitive, interventions would be put in place to address that. For example, noise canceling headphones is a quick method of intervention. There could be other programming put in place to desensitize the sensitive student to the noise, or to increase that student’s tolerance to noise.

Verdon indicated there was discussion during the October meeting that the parent was concerned about videos being played in the classroom. Verdon explained that the use of videos in the classroom is done very purposefully. Any videos used by the teacher are kindergarten-based skill videos, the same videos used in the inclusion kindergarten room. If the autism student is ready for mainstreaming, they will have been exposed to similar things that are going on in the inclusion classroom.

She recalled there being a discussion about placing R.E. on a sensory diet. The majority of students in the autism kindergarten class are on a sensory diet. It is a tailored plan to identify a situation in which the student is struggling, such as noise in the classroom, and determine what type of input can be given to the student to increase their tolerance.

Verdon explained that the kindergarten autism classroom at Hooper school is characterized as a self-contained program and is a language-based classroom. All instruction is ABA based. There were four students in the class as of September 2021. The classroom has a maximum limit of six students. There is one special education teacher, Agathangelo, and three paraprofessionals, who rotate during the day, working one to one with the students.

The physical set up of the classroom consisted of a half-moon style table in the room, where morning meetings with the students would occur or the students would congregate at the table when the teacher would use an overhead projector. Each student has their own workstation, like a cubby area. There is an area in the room with small tables where students work in a small group setting. There is an attached bathroom.

The class day was five and a half hours. A typical day in the class would begin with the students entering, taking off their coats, and setting up for the day. They ate breakfast in the room. There would be task analysis done with data collection for every student to determine how much prompting the students needed to do such tasks such as taking their coats off, opening containers, and using utensils.

The students would transition to a morning meeting or circle time where different topics would be worked on such as numbers and days of the week. They would also work on social-emotional programming, talking about their feelings and individual information. The teacher would send home paperwork for the parents to complete and the next day, the teacher would focus the students' discussions on topics about what one student did the night before or what they ate for dinner.

The students generally would transition to independent workstations to focus on IEP goals. There are rotation centers where the students work on technology, independent skills, and natural based learning. There is small group programming. The students also work on individual task boxes.

Verdon understood that Floortime programming is a play-based learning opportunity led by the student's interest with the goal to encourage generalization of skills. The Hooper school's kindergarten autism class did not use Floortime methodology. The school used a natural environment teaching program, which has the same goal of generalization of skills. The programming is used as part of the ABA curriculum programming. It is a multimodal type of instruction, not just ABA discrete trial all day. The discrete trial takes place in a one-to-one setting working on very specific skills that are individualized for each student. The students receive discrete trial instruction for about two and a half hours each day. She recognized that McNamara's email transmittal of the

IEP to the parent on August 16, 2021, indicated that R.E. would participate in lunch, recess, special classes for art, gym, and the library, and other than those times would be engaged in discrete trial teaching. (P-4 at 324.) Verdon emphasized that discrete trial teaching is not the only thing done in a full-day autism program. It is part of the ABA based program and not the entirety of the program.

The natural environment setting makes a student's learning more organic and life based. Verdon explained an example would be a student who was working on labeling colors could have natural environment learning when the students would be coloring with crayons. The teacher would use that opportunity to label the crayon by color.

The students would attend lunch and attend specials, such as gym, art, music, and library media time. The gym class was very structured with students from another autism class participating at the same time, led by the teacher and paraprofessionals. The art class was specialized to the students in the class with the art teacher and paraprofessionals. Verdon believed the music class was a mainstreamed class. The library media time would be the autistic class students only. The students also would go outside to the kindergarten playground. The teacher would work with the students and systematically get them to use the equipment. The teacher would observe the level of prompting needed for the student.

There was group instruction learning during the day. It could be done during sensory-based activities, such as discussion related to a holiday. Since the class is an ABA and language-based classroom, the students have a constant opportunity for communication with reinforcement and modeling by the teacher using highly motivating reinforcers. Verdon was aware that the two nonverbal students in the classroom at that time were communicating proficiently with a picture exchange system, which all of the students used at the time. The teacher would encourage initiation of communication and reinforcing communication.

The classroom employed a visual schedule for each student. As a student completed a task for the day they will move a sticker or picture from one side to another on a board to indicate their activities done through the day. This method alleviates anxiety

for students by providing a predictable environment for daily tasks such as life skills.

Verdon explained there are “all sorts” of opportunities available for the autism class students to be exposed to typically developing peers. Some of the autism students are pushed into the inclusion kindergarten program at times. Other students are pushed into the autism classroom for the learning and language disabled programming. Verdon did not think specific programming such as the examples she provided, were in R.E.’s IEP. She explained that it takes some time to get to know the students and see how they may benefit before the programming is proposed.

Verdon indicated that it is very common for a student’s IEP to be modified after a school year has started, particularly like in R.E.’s circumstances. She was an incoming kindergarten student and students at that age can have a lot of progress from spring of one year to September of the next year. The progress goals in an IEP can be updated frequently. The teacher in the autism classroom is collecting data which is used to determine updates to be made. The IEP is a working document with respect to goals and objectives. Some students progress quicker than others.

Verdon recognized that R.E. had gotten a diagnosis of Turner syndrome. She was unaware that the diagnosis had not been placed in the IEP. She read the report but did not realize that it was dated August 20, 2021, a few days after the IEP had been completed. She confirmed the letter regarding R.E.’s diagnosis gave general information about the syndrome but had no specific information related to R.E.’s diagnosis.

During the October meeting, the mother indicated it was the parents’ intent to send R.E. to the SCHI school. Verdon did not recall the mother indicating that they were in the process of obtaining private evaluations of R.E. Verdon acknowledged she never met R.E. since she was never present to attend class in Toms River. Verdon would still be her case manager if R.E. attended school in the District. She has not made any attempt to observe R.E. at SCHI since the student was unilaterally placed there by the parents. She never had the opportunity to meet R.E.

Verdon believed that the proposed Hooper school program in the IEP was

consistent with the findings of the information provided by the family and their providers and the recommendations and findings of the Toms River evaluators. As the incoming case manager, she believed the Hooper placement was appropriate for R.E. She candidly indicated that without seeing R.E., she could not say for sure if R.E. was not a higher functioning student than those students in the kindergarten autism classroom for the 2021-2022 school year at the Hooper school.

**Kelly Umbach** testified for the District. She is the Supervisor of Special Education for the Toms River School District and has been employed for six years. She has had approximately twenty-two years of experience in the field of special education, having received a bachelor's degree from Monmouth University and her special education teacher certificate and elementary education certificate. She has a master's degree in early childhood education and P3 teaching endorsement. She started taking courses to obtain her LDTC certification but decided to change her focus to administration and obtained a principal certificate and a supervisor certificate. She has taught special education from preschool through twelfth grade in various capacities over most grade levels and most of her career was in middle school teaching for fourteen years in a public school district, and two years in a charter school. She served as supervisor of special education in another public school district before her employment with Toms River. (R-32.)

As Supervisor of Special Education, she has several responsibilities. Her main focus is on the CST and managing the CST from preschool through grade twelve for the District. She does tasks such as talking to the CST about referrals and student programming, attends many IEP meetings, does teacher planning, reviews what services are needed or if adjustments are to be made to IEPs, and troubleshooting situations such as future years planning for students, improving IPE writing, and determining what type of classes the District will need to serve its students. She sets up and runs the ESY program. Umbach has eleven different teams with approximately forty-five case managers. They meet as individual teams every week or every other week. She manages the eighteen- to twenty-one-year-old program, the hearing-impaired program, and works with the autism supervisor and autism teachers to connect them with resources.

Umbach confirmed she does not engage in directly servicing students but works closely with the teachers and CST. She sees students in the program and is with many of the students on a very regular basis.

She was familiar with R.E., having first become aware of the student during Umbach's consultations with the CST when there had been a referral for R.E. Umbach did not find anything to be out of the ordinary, as the CST was going to evaluate the student and she seemed like she was an appropriate fit for their program. She did not get into details about R.E. until the IEP meeting where the parents brought an advocate with them.

Prior to the formulation of the student's IEP, Umbach had engaged in regular staff meetings with the CST, and R.E. was a student who was discussed. Umbach had also read through R.E.'s file, and reviewed the parents' reports provided to the CST, and the evaluations that the District had completed. She acknowledged that upon receipt of the reports from the parents, she did not reach out to STAR therapeutics or Imagination preschool, where the child had attended preschool. She did not reach out to R.E.'s medical doctors.

The IEP meeting was conducted in August 2021. Umbach had first learned of the parents' advocate Caplan being involved in the matter when she was invited to the IEP meeting. Umbach is familiar with Caplan from other matters. She did not find it odd that the parents asked for Caplan to attend, because parents bring other people to meetings "all the time." (Trans January 4, 2023, 253:11-12.)

Umbach indicated that the CST was not aware at the time of the IEP meeting in August that the parents were having private evaluations completed of R.E. Umbach first learned of the parents' evaluators, Michelle Stern and Melanie Feller, around the time the District was going through a second round of evaluations in 2022, around the time the due process petition for this matter was filed. Their reports pertinent to this matter were not provided to the CST until after the due process petition was filed.



The parents did not immediately consent to the August 16, 2021, IEP. The mother signed the consent to implement the IEP several days thereafter, with a handwritten note that she wanted to do an observation. (R-20.)

Prior to the start of the 2021-2022 school year, Umbach spoke to LDTC McNamara, regarding the parents' plans to attend the orientation and that they wanted to do an observation. There was an email from the parent requesting to observe the program once school started. (R-21 at TRRS-0239.) The mother indicated that they had attended the orientation, but the teacher did not seem familiar with the student's specifics. Umbach indicated that was not unusual given that the IEP had not been signed by the parents to be implemented for R.E., prior to the orientation, so the teacher would not know officially if the student was going to be one of her students. Some background information had been given to the teacher, Agathangelo, before the orientation that R.E. was tentatively scheduled to be proposed for the teacher's classroom.

Umbach confirmed that the mother's email regarding the orientation noted that they were not able to see any of R.E.'s intended classrooms. The building was still having construction work completed, so the orientation was conducted at another building for the District. The orientation enables the teachers to meet the parents and students.

Umbach acknowledged that McNamara did not remain as R.E.'s case manager. McNamara was on the District's preschool team and R.E. was transitioning to a kindergarten setting, which would be taken over by the school-aged teams. Verdon was the new case manager assigned to R.E. Umbach thus spoke to case manager Verdon to arrange the parents' requested observation.

Umbach began to communicate directly with R.E.'s parents when an observation had been scheduled, but Verdon became sick, and the District had to reschedule the observation. Umbach did not want any further delay for the observation, not knowing how long Verdon would be out. Umbach took over scheduling the observation. (R-21 at 0241.) She confirmed the rescheduling of the observation via email with R.E.'s mother. The mother requested that her advocate, Caplan, be added to the meeting link. (R-21 at

0242.) Caplan was added to the link and the virtual observation took place on September 24, 2021.

After the observation, Umbach did not hear back from the parents. The mother did send an email directly to the prior case manager, McNamara, which was forwarded to Umbach. (R-21 at 0246.) The mother expressed concerns with the level of language of the other students observed in the classroom, and the sound and noise she observed. The mother made a reference in her email about placing R.E. at the SCHI school.

Umbach responded to the mother's email, on September 24, 2021. She addressed the two specific areas of concern and offered an additional observation of a different autism classroom, at the Beachwood Elementary school (Beachwood). The District has twelve elementary schools, and Umbach believed five of those schools had an autism kindergarten program for the 2021-2022 school year. Umbach did not hear back from the parents regarding the offer for another observation. She followed up via email on September 28, 2021. (R-21 at 248.) The mother did respond thereafter, but did not seem interested in another observation, and stated that they intended to unilaterally place R.E. at SCHI.

Umbach authored a letter on October 1, 2021, to the parents, in response to the parents indicating they were going to unilaterally place R.E. at SCHI. (R-22.) Umbach testified that the CST did not feel it was appropriate at the time to place the student at SCHI, which was confirmed in her letter to the parents. (R-22.) Umbach offered to schedule a follow up meeting to discuss the parents' concerns in more detail. The mother responded within two hours, requesting to observe the Beachwood program. (R-21 at 250.) That was the parents' first response to Umbach's previous offer of another observation. Umbach responded that they could not accommodate the request to observe the class that very day but offered more dates. She did not hear back until the mother requested a link for the observation, but nothing had been scheduled since the parent had not responded to Umbach's offering of other dates. (R-21 at 252.) Umbach responded, offering another day for an observation. (R-21 at 252.) The mother responded, indicating she did not realize she had not responded to Umbach's prior email.

They were able to schedule an observation for the next Friday at Beachwood. (R-21 at 256.)

The second observation occurred via Google Meet for the Beachwood program, on October 8, 2021. (R-21.) The parent requested that their advocate, Caplan, be provided the link again and that was done. There was no indication at the time from the parent that they were having any private evaluations completed. Umbach noted that the first time she found out about those private evaluations was after the due process petition was filed for this matter. The CST did not ask at that time if there was additional documentation. They had already received quite a bit of documentation from the parent and there was no reason for the CST to believe there would be more recent or additional documentation provided by the parents, having no knowledge that the parents were obtaining their own evaluations. Umbach believed at the time that the parents were being cooperative.

R.E. never attended school in the District. Umbach believes she did not know that R.E. was ultimately placed at SCHI unilaterally by the parents until sometime in October of 2021.

Umbach noted that in her past experience, in situations where a student was coming into the District from another program, the student's IEP would quite frequently be modified or updated once the student was actually in the District's program. The initial IEP is based on the information provided, but the school has not had an opportunity to see the student in the program. "So very often there are some adjustments that need to be made once we have an opportunity to work with them and explore their skills and – and needs a little bit more." (Trans January 4, 2023, 241:3-6.) She testified that in her experience "we certainly make more amendments and updates to an IEP for a student that is newer to us than one that we've had consistently in program and have more familiarity with." (Trans January 4, 2023, 241:20-24.)

Umbach confirmed that when a student begins in the district with an IEP, the focus is on the IEP while exposing them to the grade level curriculum. Data collection is done

in the district's programs to determine the student's progress and the ongoing appropriateness of their IEP.

She is familiar with the ABLLS assessment and was aware that had R.E. started school in the district, her kindergarten teacher would have conducted the assessment, as per the IEP. The ABLLS assessment would have given them more very drilled-down specific skills to work on with the student. The best practice in administering the ABLLS is to have a level of rapport between the teacher and student prior to conducting the assessment, which is done over multiple days.

Umbach testified that if a student is in district and there are indicators that their program may be inappropriate or the student may need something more, the CST would hold a meeting to discuss whether additional services were needed or whether there would be a tweak to the current program. She asserted that sometimes they look at a different program or a combination of classes, or placement in a different school within the district.

Umbach was aware that the Hooper school program was the proposed placement in R.E.'s IEP, and believed it was consistent with the evaluations and findings and information provided to the CST by the parents. She affirmed that her belief was that the Hooper program or the Beachwood program would have appropriately met R.E.'s needs based upon the information that was made available to the District. She indicated that any of the autism programs in the District would have been appropriate for R.E. She noted that there was not much difference in programming between the Hooper and Beachwood schools. All of the District's autism programs are running under "a similar umbrella" and then the class is individualized based upon the group of students.

The District tries to place the student in the school within the district which is closest to the student's home. They do consider other locations, at other schools within the district, but as a whole, any of the autism programs would have been able to implement R.E.'s IEP. She acknowledged that the school closest to the family's home was the North Dover school, but there was no availability in that program at the start of the 2021-2022 school year, so the Hooper program was proposed, which was the next closest school.

The Beachwood school was not initially proposed because it is farther across town. Umbach was confident that the Hooper program would have provided an educational benefit to R.E., had she attended school in the District.

Umbach was recalled to provide strictly limited testimony, as per the Order entered on August 4, 2023.<sup>2</sup> At the time of her recall testimony, Umbach was no longer employed by Toms River, having accepted another position as Director of Student and Special Services for another school district.

She affirmed that students are entitled to receive special services as of the age of three. If R.E.'s date of birth was June 1, 2016, R.E. was four years old at the time the parent requested a referral for services in approximately April 2021.

The initial identification and evaluation planning meeting was scheduled for May 14, 2021, as confirmed in the letter issued to the parent from the District on April 28, 2021. (R-10.) Umbach did not recall being aware of the student or the scheduling of the meeting at that time. She was one of several supervisors. She would not always know of the initial planning meetings in the regular course of business. She acknowledged that the child was known to the District as a result of the referral, which triggered the scheduling of the May 14, 2021, meeting. Umbach did not attend that meeting.

She confirmed that the first time special education and related services were offered to R.E. was in the IEP of August 16, 2021, for the start of the 2021-2022 school year on September 8, 2021. (R-18.) That is the first date the school could offer, after having the evaluations completed and confirming the student was eligible and what services would be recommended. She stated that services could not just be offered at the time of the request, since the evaluations are required, and the District has ninety days to complete them, as was done here.

Umbach denied having seen or received the mother's email sent to the preschool secretary, Yesenia Newcomb, of June 3, 2021, and the follow up from the mother to Newcomb on June 7, 2021. (P-4.) Umbach testified she first saw the emails a few days

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<sup>2</sup> See Order on Motion to Bar Petitioners From Recalling Witnesses, entered August 4, 2023.

prior to her recall testimony, in preparation for the testimony. She acknowledged that the mother indicated in her email that she would “love to put a summer program in place” and the mother had requested to move up the speech evaluation to be done prior to the scheduled date of July 14, 2021.

**Michelle Stern** testified for petitioners. She obtained her BA and MA in special education from Georgian Court University. She is certified as a general education and special education teacher and LDTC in New Jersey. She has been self-employed since 2016 as an LDTC consultant for parents and has been hired by some school districts to complete independent evaluations. Prior to that, she worked for approximately fifteen years in the Lakewood public school district, as a general education teacher for approximately two of those years and then as an LDTC. (P-11, Ex C Bates 882-883.) She was qualified without objection as an expert in the field of LDTC and special education, recognizing she was skilled in case management with an emphasis in writing IEPs and administration of testing.

Stern was contacted by R.E.’s mother to complete an educational evaluation of R.E. Stern authored a written Educational Evaluation, with the date of evaluation identified as August 16, 2021. (R-26 at 1.) Stern noted in her report the reason for the referral as “[R.E.] was referred for this educational evaluation in an effort to obtain current levels of academic achievement and adaptive behaviors and to assist in program recommendations.” (R-26 at 1.) Stern reviewed documentation from R.E.’s academic file; conducted an interview of the mother, Y.Z.; interviewed R.E.’s teacher from SCHI for the 2021-2022 school year; reviewed evaluations; reviewed the August 16, 2021 IEP from the District; conducted a classroom observation of R.E. on November 18, 2021 at SCHI; administered the Battelle Developmental Inventory-3<sup>rd</sup> edition (BDI or Battelle) test to R.E.; and completed the Adaptive Behavior Assessment System, 3<sup>rd</sup> edition (ABAS) based upon a questionnaire completed by the parent. She authored her report thereafter. (R-26.) She could not recall the date she completed her written report, acknowledging that the evaluation date of August 16, 2021, on the first page, most likely reflected the date she interviewed the mother with R.E. That was also the date of the IEP meeting. (P-5D.)

Stern indicated that she would have expected to have seen an education evaluation done for R.E. before she started school in the District, and not to have been scheduled to occur while in school. Had an educational evaluation been completed, R.E. would have been evaluated for the type of program necessary for her entry into school. There was no information in R.E.'s file to indicate what the preschool staff from the District knew of R.E.'s skills, learning styles, and habits. Stern reviewed the August 16, 2021, IEP and stated that it was too brief and did not articulate programming that would benefit R.E. or the teachers who would need to implement the program. (R-18.) There was no information as to how to deal with R.E.'s sensory issues in the IEP.

Stern testified that the mother related multiple concerns about R.E. to her. Stern testified such concerns were R.E.'s inability to problem solve; R.E. having a low frustration tolerance; R.E. being unable to access language at her disposal; she was prone to eloping and thus there were safety concerns; and R.E. reportedly has hypervigilant responses to sensory situations such as to loud sounds; and is unable to express herself and thus cries and has tantrums. (R-26 at 1-2.) Stern observed such described behaviors.

The mother told Stern that R.E. is constantly "on the go." Stern observed that R.E. could not sit for one second and rapidly transitioned from one activity to another without meaningfully attending to an activity. (R-26 at 2.)

R.E. is in a self-contained classroom setting at SCHI. R.E. was one of three students present when Stern observed the class. There was one special education teacher and three paraprofessionals in the room. (R-26.)

Stern interviewed R.E.'s teacher at SCHI. The date of the interview with the SCHI teacher was not noted in her report, but presumably occurred during Stern's observation of the SCHI class on November 18, 2021. (R-26 at TRRS-0268 through 0269.) The teacher reported that R.E. had varied and multiple needs with significant deficits in receptive and expressive language, academic skills, and fine motor abilities. (R-26.) The teacher reported that a global approach was provided to R.E. in the classroom, where R.E. is receiving a comprehensive program with her related service therapies are integrated into the classroom. R.E. received OT for sensory based programming and to

address her limited safety awareness and need to be constantly moving. The teacher indicated R.E. was responding well, but slowly.

The SCHI teacher also relayed to Stern that there is a BCBA who works with her to create R.E.'s programming. They created a daily reinforcement schedule to assist R.E. in providing her with a predictable and secure environment. R.E. reportedly has made significant progress in following and responding to a schedule, with the use of minimal prompting. Her language delay is being addressed with a total communication approach in the classroom by the S/L therapist. She receives ABA programming for acquiring skills in a structured, data driven model. The teacher reported that there are ongoing assessments conducted with the BCBA "and programming is constantly being revised to reflect progress or areas that require additional support." (R-26 at TRRS-0269.) Floortime programming was used to encourage and develop a relationship between R.E. and her teachers and related service providers. The teacher told Stern that R.E.'s teachers, therapists, and behaviorists meet weekly to create lesson plans that incorporate goals and objectives. The information is shared with R.E.'s parents and the mother is encouraged to visit the classroom to observe the methods and techniques used for R.E. (R-26.)

Stern observed R.E. in her classroom at SCHI. R.E. was observed working with a paraprofessional completing an activity where R.E. was instructed to put materials back into a container. The paraprofessional had to prompt R.E. to retrieve all items. When the task was completed, the paraprofessional instructed R.E. to check her schedule. R.E. was observed to flip through pages of a binder and yell out "library." R.E. affixed a picture of a book to the front of the binder and was told by the paraprofessional that she was correct. R.E. laid down on the mat by a bookshelf. She was allowed to rest before selecting a book. The paraprofessional continued to work one on one with R.E. in looking at the book, handling the book, and pointing to pictures. R.E. was redirected when she brought up other topics such as "I have swings!" and when she was directed to check her schedule and instead ran to the door. The paraprofessional continued to work one on one with R.E. on another task and then transitioned R.E. to leave the class to go to the next door music room. After the music session, the class transitioned to the playground where R.E. ran around and did not interact with the other children on the playground nor



did she want to engage with the paraprofessional. (R-26.)

Stern also observed R.E. when completing testing, which is assumed to have occurred when Stern interviewed the mother. She noted that R.E. had limited eye contact, was allowed to explore her surroundings, and had very limited attention and was in constant movement. She could not sustain attention for longer than several seconds without prompting. When R.E. became upset she yelled loudly. She demonstrated the ability to follow single step directions. She did not speak in full sentences. She could use picture cards to request a specific activity. (R-26 at TRRS-0271.)

Stern administered the BDI, which is an assessment of a child's development as they acquire developmental milestones. Comparison is done to the normed population of students of the same age to determine if the child is meeting developmental milestones and whether there are deficits in the assessed areas. Stern likes this test because unacquired skills that are revealed through the test can be turned into curricular goals. She does not administer the ABLLS test, as the District had indicated was to be done in R.E.'s IEP. Stern indicated that the ABLLS test does not compare the student to other students who are the norm for the same age and grade. She wants to see whether a student has achieved developmental milestones and where they fall in the percentile ranking comparing to typical students, as shown in the BDI. She confirmed the ABLLS is an effective measure to assist teachers and educators to create specific goals for a child.

Stern's report details the breakdown of scoring for the BDI and the assessed areas of cognitive domain, social-emotional domain, adaptive domain, and the domain subparts as assessed. (R-26 at 7-9.) R.E.'s results for her cognitive, social-emotional, and adaptive areas all demonstrated "significant developmental delay." (R-26.) Statistically, R.E. was approximately three standard deviations below the average student in each domain.

The ABAS assessment was also utilized by Stern in her evaluation of R.E. It is an assessment completed based upon the parent interview conducted with the mother. It results in adaptive behavior scoring, as detailed in her report. (R-26 at 10-13.) It measures a variety of areas of communication, functioning pre-academic skills, self-

direction, social skills, community skills, and home living skills, all scored according to the parent's information. Stern found R.E. to be extremely low functioning in all areas, as per the ABAS results.

Stern testified that she found the hybrid learning program at SCHI in which R.E. was a participant to be appropriate. She believed that SCHI provided a program that was satisfactory for the continued development of R.E. academically and behaviorally. (R-26 at 13-14.) She believed that the use of the child centered Floortime philosophy with the ABA program which utilized natural language encouraged meaningful participation and active learning, appropriate for R.E. Data collection was necessary to make constant adjustments to R.E.'s programming needs. Stern asserted that R.E. had made "marked progress" in her ability to self-regulate, attend to tasks, and communicate, while at SCHI. She anticipated R.E. would have continued progress. (R-26.)

Stern then testified to a second evaluation that is dated May 17, 2022. (P-11 at 1.) That is not the date of authoring the evaluation, since Stern notes in her evaluation having done an observation of the Hooper school in June. As part of this evaluation process Stern reviewed R.E.'s academic file from SCHI, again reviewed R.E.'s IEP from the District, interviewed R.E.'s mother, interviewed the SCHI classroom teacher (who was a different teacher than the teacher who was interviewed as part of Stern's first evaluation), conducted a classroom observation at SCHI and at the District's Hooper school. Stern's second evaluation process included new BDI and ABAS assessments.

Stern also interviewed R.E.'s case manager at SCHI, as noted in her report. (P-11 at 3.) That case manager reportedly relayed to Stern that when R.E. first started at SCHI she required significant support to enter the building and to remain regulated throughout the day. The case manager believed that R.E. had made significant progress through her school year at SCHI. The teacher interviewed by Stern confirmed that R.E. was receiving individualized programming to meet her academic, social, emotional and language needs. R.E.'s classroom at SCHI as of the spring had six students and R.E. had a 1:1 aide. The other aides in the classroom were noted to switch out so that R.E. worked with a variety of staff members. The teacher reported similar deficits for R.E. as had been reported during Stern's first evaluation.

While evaluating R.E., Stern reported that R.E. required physical and verbal prompting to join in. She was seen running around the room and needing prompting and redirection. She required maximum prompting to demonstrate sustained attention. She had a limited attention span. She spoke in single and two word utterances. She was able to use full sentences with prompting.

Stern observed R.E. in her SCHI classroom. She was one of four students present that day. She worked with her aide and received one to one prompting for tasks. R.E. interacted with another student and wanted to take a toy bus from the other student and she engaged in yelling. The observations of R.E. in the classroom were with her interactions with the paraprofessional providing prompting and redirection throughout the session.

Stern testified as to the growth that R.E. demonstrated between her BDI assessments, which Stern addressed in her first evaluation from the fall of 2021 and the assessment in her second evaluation in the spring of 2022. (R-26, P-11.) The results of the second evaluation are detailed in her report. (P-11 at 7-10.) She stated that the “measurable progress” in R.E.’s performance across several domains was due in part to the success of her programming at SCHI. Stern acknowledged that there was no progress in R.E.’s development in the “adaptive” domain. Although the “measurable progress” was noted as some increase in the sub-area testing for cognitive domain, social-emotional domain, and adaptive domain, R.E. was still noted to have “significant developmental delay.” (P-11.)

Stern’s review of the August 16, 2021, IEP reiterated the same concerns that it was inappropriate in addressing present levels for R.E.’s status and the summary of the evaluations completed was paltry and brief compared to how she authors an IEP.

As part of this evaluation, Stern conducted a one-hour observation of R.E.’s potential classroom in the District at Hooper school and found that the instruction in the classroom would “not be compatible with [R.E.’s] social, language, sensory and academic profile.” (P-11 at 10-11.) She observed four students in an ABA based program in

discrete cubbies with no movement breaks nor sensory programming. The students worked individually with the teacher or a paraprofessional. She did not see any picture schedule or timer used. Stern acknowledged that she did not know the IEPs of the students in the classroom that she observed, nor did she know what the classroom environment would have been like if R.E. were to be placed in that classroom.

Stern did not believe R.E.'s sensory needs would have been met in the District's proposed classroom. The IEP indicated that there would be sensory based learning for R.E., yet Stern did not see that in the District's classroom. Stern maintained that what she saw in that classroom would not be appropriate for R.E. She did not know the extent to which Toms River teachers, therapists, and behaviorists work together to ensure that students receive appropriate programming. She acknowledged that she did not know whether or not Toms River could provide the benefits she indicated were essential to R.E.'s development in her May evaluation, such as sensory processing activities, support in social competencies and executive functioning, programming that would train her attention span, thematic units, language based classroom environment, or learning activities with sensory and movement based activities. SCHI's programming is not in an "official" IEP but is a literacy based program. Stern's understanding is that SCHI's reporting methods, goals and objectives, and schedule used for R.E. are much better suited to R.E.'s academic and developmental needs.

Stern rendered her opinions as to the District's programming based upon her review of the IEP, her observation of the Hooper classroom, and the information gleaned from her evaluations of R.E. She confirmed she had never observed the District's classroom before she completed her first evaluation. She critiqued it after she saw it in June of 2022.

Stern determined that R.E. demonstrated measurable progress from her first observation of her in the fall through the second observation in June 2022. Stern believes that R.E. is not ready for inclusion with her typical peers in a classroom setting. She would continue to benefit from a highly structured academic environment with multisensory programming. Her teachers and therapists should continue to work together. Her language should be taught in a natural setting and not a rote, repetitive

method often seen in ABA instruction. She acknowledged that R.E. continues to require significant support to build her social and executive functioning. She thus determined that R.E. would benefit from continued placement at SCHI in the hybrid approach of one-to-one instruction and behavioral and developmental programming to encourage measurable progress in the domains seen in the BDI assessment.

**Melanie Feller** testified for petitioners. She holds a certificate as a school specialist and is licensed in New Jersey to practice speech language pathology. She has worked in New Jersey public schools for approximately seven years as a speech pathologist or speech specialist, as well as a clinical speech supervisor and at times was a case manager for speech only students. She has been involved in developing approximately thirty to forty IEPs. She has completed hundreds of S/L evaluations. She has done evaluations for school districts and privately for parents of students with speech needs. She holds an expert level of certification since 2015 in the area of DIR Floortime an evidence based, developmentally based model of intervention for children on the autism spectrum. She serves as an instructor for the DIR Floortime methodology. She has served as a supervisor of graduate students in the field of speech pathology. (P-8C.)

Feller has been the owner of Alphabet Soup Speech Consultants LLC, since 2006. She provides consultation, assessment, and treatment to individuals with speech and language delays and disorders at home or in school settings. She provides private S/L evaluations to be used in litigation. She was qualified without objection as an expert in S/L pathology, DIR Floortime, and special education.

R.E.'s parents requested that Feller complete a speech evaluation of R.E., due to their concerns about her proposed educational program. Feller completed her evaluation and authored a report which notes the date of the evaluation as August 21, 2021. (R-27.) She believed the parents had contacted her at some point during the summer of 2021. She acknowledged she did not provide her evaluation to the District because the parents hired her and she gives the report to the client. She never contacted the District about her recommendations.

Feller completed her evaluation report after having met with the parents and R.E., and observing R.E. during that session; Feller administered the Bayley-4 Scales of Infant and Toddler Development: 4<sup>th</sup> Edition-Social Emotional Questionnaire and Adaptive Scales, (Bayley-4) which consisted of a questionnaire completed by the mother; Feller reviewed records provided to her, as detailed at pages 9 through 11 of her report, such as the proposed IEP and the District's evaluations of R.E.; and Feller interviewed the director of the preschool program where R.E. had been attending since approximately two and one half years old. (R-27.) Feller was unable to administer any standardized testing because R.E. had "profound difficulty" remaining regulated during the evaluation session. She could not remain still nor stay focused for more than a second or two. (R-27 at 9.) Feller discounted standardized testing in her evaluation, indicating it would not capture the impact R.E.'s developmental challenges have on her ability to engage, relate, and communicate with the world around her. (R-27 at 9.)

Feller noted in her evaluation R.E.'s areas of strengths and areas of weaknesses as reported by the parents. They reported R.E. to be sweet, happy, full of energy, and liked music and Sesame Street. They reported as challenging behavior that R.E. has difficulty sitting still, is frequently moving, and gets profoundly upset over small things such as a change in routine. R.E. had limited expressive language and no gross or fine motor challenges were reported. The parents reported R.E. did not like to wear clothes and personal grooming, like brushing her teeth, was an activity that upsets R.E. She reportedly did not like loud noise and the noise from large groups.

Feller outlined what are precursors to communication in the development of speech and language skills. She testified that precursors are important for R.E. to effectively communicate as she develops. One precursor, intentionality, is the student having an intent and purpose to their communication, whether verbal or non-verbal. R.E. demonstrated an "emerging interest" in becoming a "competent communicator." (R-27 at 3.) Her limited expressive language limited her ability to be intentional and purposeful. Another precursor is focusing through shared attention, which is the ability of the child to share attention with another individual regarding something of interest, such as pointed out to the mother an object of interest to the child. R.E.'s level of regulation impacted her ability to focus and share attention.

Another precursor to communication is the child's ability to initiate sharing an idea or activity with someone, through affective engagement in sound making. R.E. demonstrated an emerging ability to do so. Exchanging roles in interactions and reciprocity is a precursor for a child to take turns engaging in verbal and non-verbal communication with another. R.E. did not generally respond to the interaction of others unless their actions were specific to her, and she was regulated enough to respond. She could respond in a limited back and forth communication. (R-27 at 5.)

Feller testified that R.E. was not able to share emotion or engage in a conversational exchange. Feller listed such things in her report as to what R.E. did not yet demonstrate in her communication skills. She listed R.E.'s emerging skills and ability in her report. (R-27 at 6.) For example, R.E. could initiate communication verbally and was beginning to be intentional, one of the precursors to communication.

The Bayley-4 questionnaire results were outlined by Feller from the mother's completion of a questionnaire. Feller testified that this test is a way to learn about a child's development. She particularly likes the social and emotional questionnaire because it was created by a founder of the DIR Floortime model. Feller thought it would be helpful to learn what R.E. was able to do at home as per the mother's reporting, through the lens of DIR Floortime. Feller confirmed during cross examination that the Bayley-4 scales are only normed for children aged sixteen days to forty-two months, while R.E. was five years old at the time Feller utilized the Bayley-4.

Feller discerned from the Bayley-4 questionnaire information pertaining to R.E.'s likes and dislikes when engaging in certain behaviors such as dancing and using words or pictures to show her likes or dislikes. Such behaviors and reactions were ranked as to the frequency of their occurrence, as outlined in Feller's evaluation as occurring all of the time, most of the time, half of the time or some of the time. (R-27 at 8.) R.E. reportedly did not yet take a calm and enjoyable interest in most sounds and her parents could not easily get her attention without being very dramatic.

Feller interviewed R.E.'s preschool director from Imagination preschool on August 20, 2021. (R-27 at 11.) Feller wanted to know the director's perspective on what R.E. might benefit from in her next program in kindergarten. The director reported that R.E. attended the program from when she was two and a half years old and had many sensory needs. She had a one-to-one ABA aide until 2020 and continued to require an aide at all times to remain focused and to be redirected. She was able to participate in small groups with support and was speaking more. Her ability to regulate was improving while sensory differences continued with R.E. being distracted by noise or changes to her environment. The director relayed to Feller that R.E. needs a slower pace with multisensory learning combining ABA with Floortime, suggesting that would continue to be appropriate. (R-27 at 11.)

Feller was asked by the parents to review the proposed IEP and give her impressions of it from a speech and language perspective. Feller criticized the District's IEP for failure to note R.E.'s multiple diagnoses, by only listing the disability of autism spectrum disorder, and did not identify Turner syndrome or oppositional defiant disorder. She believed the additional diagnoses should have been listed to provide the teachers and staff additional information which might affect R.E.'s ability to self-regulate and participate in her daily life tasks. She conceded on cross examination that the diagnoses identified in the IEP at page two were ADHD, ODD, and autism spectrum disorder. She also confirmed that the IEP on page twelve addressed the diagnoses and that R.E. had weaknesses and issues with sensory processing, social skills, and expressive and receptive language skills.

She found that the recommended speech therapy of twenty-six times per trimester to be unclear, and she calculated that to be less than two sessions per week. She acknowledged she did not reach out to the District for clarification. She did not know if the sessions per trimester meant it was guaranteed that R.E. would get two sessions per week. Feller deemed that insufficient to support R.E.'s significantly constrained communication profile. Feller indicated in her report that R.E. should have four sessions of speech therapy per week, given R.E.'s regulation status to keep her calm and organized. However, she testified on direct examination that R.E. should receive two



times per week of speech therapy. She further acknowledged that she believed R.E. was receiving speech therapy two times per week at her SCHI placement.

There were no present levels of information regarding S/L for R.E. in the IEP or the District's S/L evaluation. Feller thought it would have been appropriate for the District evaluator to obtain a report from R.E.'s preschool teacher or to have observed R.E. in the preschool class. The S/L goals in the IEP were insufficient to support R.E. in meaningful communication, such as using appropriate words to engage others, when Feller determined R.E. lacked the precursors to respond to others. (R-27 at 14-15.) Feller testified the goals were not robust enough, such as getting R.E. to share functional uses of communication was not a goal. She was critical of a goal to get R.E. to respond appropriately as to the location of something, which she asserted would not give "a lot" to R.E. who has such challenging functional communication. She did not think demonstrating that R.E. could follow instructions was not a measurable goal.

Feller was further concerned that safety was not addressed in the IEP. It was unclear to Feller how the staff would support R.E.s safely in school. She acknowledged on cross examination that the IEP did provide for a one-to-one aide to be with R.E. at all times. She did not know if SCHI provided that in their programming.

She asserted in her evaluation that the IEP did not appear to sufficiently address R.E.'s profound regulation and communication challenges. She did not find the IEP clear regarding behavior modifications, interventions, and accommodations.

Feller was critical of the District's S/L evaluation. The evaluator did not contact R.E.'s then current speech therapist from her preschool. The District's evaluator did not complete a classroom observation of R.E. at her preschool. This would have demonstrated R.E.'s current level of ability to create an appropriate program to address R.E.'s needs. Feller conceded that she herself did not contact R.E.'s current speech therapist to discuss R.E.'s current level of functioning, nor did she conduct an observation of R.E. in her preschool. She conceded she did not disagree with the findings of the District's S/L evaluation report. She further confirmed she was aware that the District's

evaluator was able to conduct standardized testing of R.E., when Feller was unable to do so.

Feller recommended that R.E. be placed in a small, quiet educational environment with a multidisciplinary collaborative approach. The classroom should be language rich with intervention in class, such as addressing R.E.'s regulation, to support her overall ability to communicate.

R.E.'s sensory needs had to be addressed in her program placement at the District. Feller stressed that R.E.'s ability to effectively communicate was directly related to her ability to self-regulate. All of her related service providers need to work together to determine an accurate treatment program for R.E. (R-27 at 16.) Feller listed essential principals for learning to be integrated into R.E.'s learning environment, such as recognizing R.E.'s sensory processing and regulatory challenges when interacting with R.E. at all times in addition to her learning sessions. She concluded in her evaluation that "[R.E.] requires a placement that provides an appropriate education which consists of respectful, effective, meaningful intervention. An experienced multi-disciplinary team is expected to be critical to support her success in the school setting and beyond." (R-27 at 17.)

Feller testified that the parents requested that she complete a S/L "re-evaluation" due to their concerns about R.E.'s proposed educational program. Feller's re-evaluation is dated as having been submitted on June 13, 2022. (P-8B.) Feller completed her evaluation by interviewing the mother with R.E.; administering the standardized Oral and Written Language Scales (OWLS-2) assessment; observing R.E. at SCHI and observing the Hooper school classroom where R.E. was to have attended for the 2021-2022 school year.

Feller's interview with the mother and R.E. apparently occurred on June 8, 2022. (P-8B.) R.E. had a level of regulation markedly different in 2022 versus when R.E. was evaluated in August 2021. Feller testified that R.E.'s behavior had improved as of 2022, with R.E. having less movement and better interaction with her mother and with Feller. (P-8B at 1-2.) Feller reported that R.E. demonstrated improvement in some language

skills, yet R.E. continues to have challenges in areas such as conversational exchange and initiating a back-and-forth interaction. (P-8B at 2-3.)

Feller emphasized that R.E. had individual differences and described R.E.'s observed precursors to communication, which are critical to support her functional communication as she develops. (P8B at 2-5.) R.E.'s intentionality had "increased considerably" as she was observed to be more organized and regulated. Her expressive and receptive language continued to be limited yet expanding. Feller credited this progress to R.E.'s educational program at SCHI.

Feller administered the OWLS-2 during the re-evaluation of R.E. in 2022. It is a standardized test that is "normed" with a comparison of the student being assessed with typically developing peers. The test measured R.E.'s expressive and receptive language skills, including pragmatic skills and supra-linguistic skills. (P-8B at 4.) Feller's re-evaluation report details the standard scoring and percentile ranking results, scoring R.E. as "deficient" in all tested areas of listening comprehension, oral expression, oral language composite. (P-8B at 4-5.) Feller noted in her report that standardized testing does not take into account individuality of a student and the "deficient" scoring from the standardized test negates R.E.'s "own unique developmental trajectory." (P-8B at 4.) Feller indicated that although R.E. was "deficient" this was well known information for R.E. and "is somewhat unremarkable." (P-8B at 5.) What Feller found to be remarkable was that R.E. was able to participate in the testing in 2022, when R.E. could not stay still at the time she conducted her first evaluation in 2021.

Feller observed R.E. in her SCHI classroom. Feller provided a detailed outline listing her observations in her re-evaluation report. (P-8B at 5-10.) She summarized that her observations of the teacher and speech pathologist working with R.E. demonstrated "affect" throughout their interactions and were meaningful as the programming was "clearly respectful and tailored" to R.E.'s specific needs, her differences, and developmental profile. (P-8B at 10.)

Feller testified she observed the proposed placement classroom at the District's Hooper school on June 7, 2022. (P-8B at 1, 10.) Feller provided a detailed outline listing

her observations of students in the class interacting with the teacher and aides. (P-8B at 10-14.) She summarized that the discrete trial training she observed in the Hooper classroom “would be of no benefit” to R.E. because R.E. requires dynamic, engaging, affect rich support. The rote repetitive training she observed in the District’s classroom had “no clear purpose.” She testified that she did not see evidence in the District’s classroom of any kind of support for the students to have independent thinking or spontaneous interaction.

Feller was critical of the District’s use of ABA instruction, yet supportive of the ABA instruction provided at SCHI. She explained that at SCHI the ABA instruction is relationship based, specifically tailored to R.E. She could not know if the District’s ABA instruction would have been similar, since R.E. was not in the classroom. She acknowledged that there are multiple models of intervention that are successful with autistic students, and that Floortime is not the only successful model of intervention. She acknowledged that she was critical of the District’s use of discrete trial instruction, but did note that discrete trial instruction is used for R.E. at the SCHI program as part of their ABA instruction.

She confirmed through Umbach, the Supervisor from the District, that there were no Registered Behavior Technicians (RBT) in the Hooper classroom during the observation. Umbach indicated that the paraprofessionals in the room receive additional behavioral training from the District’s BCBA. Feller was concerned that the District was not getting to the root cause of student’s behaviors through the District’s use of ABA methods. She confirmed she is not a behaviorist, and had not reached out to the District about what behavioral supports would have been provided for R.E.

Feller observed reinforcers being used with the students as an integral part of the District’s program, which are minimally used in the SCHI program. R.E. is intrinsically motivated at SCHI, without the requirement for a reward through the use of reinforcers. She was not aware that another expert for the parents indicated that R.E. responds to extrinsic motivators like reinforcers. She further confirmed that she did not know what was contained in the IEPs for the students she saw in the District’s program, but believed

after the hour long observation of the District program that it would not be appropriate for R.E.'s needs.

Feller opined in her reevaluation that R.E. had growth in the ability to self-regulate and across all areas of language and “has clearly benefitted from her current educational setting.” (P-8B at 15.) R.E. improved in S/L areas listed in Feller’s report, such as being intentional, sharing attention, and sharing comments. Feller noted R.E. continues to require support in such areas, as well as in R.E.’s overall expressive language. The issue Feller noted to be challenging for R.E. is receptive language in how she responds to others. Feller did believe there were some signs of improvement.

Feller endorsed the SCHI placement for R.E., finding that it provides R.E. with an individualized education that supports her individuality and developmental profile. She found R.E. to be an active part of her education and is not “spoken at” in a rote manner, as Feller observed the staff doing towards students in the proposed placement classroom at Hooper in the District. She could not imagine that the District’s program would be appropriate. Feller opined that R.E. would not benefit in that setting as she observed it to be rote, repetitive, and devoid of meaningful activity. She asserted this would be determinantal to R.E.’s speech and language growth. Feller opined that R.E. should have continued placement at SCHI. (P-8B at 16.)

**Nicole Agathangelo**, special education kindergarten teacher at Toms River, was called to testify on behalf of the parents. She was the teacher for the Hooper school program which was proposed for R.E. for the 2021-2022 school year.

Agathangelo first came to know R.E. at the kindergarten orientation which occurred on or about August 24, 2021. The parents came with R.E. to the orientation. Agathangelo had an approximately five-minute interaction with the parents and R.E. The father was holding R.E. while Agathangelo mainly interacted with the mother. She immediately told Agathangelo that they had to leave.

The orientation was conducted outside of the building. There were renovations being done to the building and the classroom was not yet ready to be accessed. The

parents could not see or tour the room on the day of the orientation. Agathangelo did have the other students whom she knew would be in her class pulled to the side, to go over what the classroom would look like. The parents and R.E. were unable to stay. She was unaware as to whether R.E. was ill or misbehaving that day.

Typically, Agathangelo would have spoken to the parents what the program in her classroom looks like, what the daily routine would be and would respond to any questions. The parents indicated they could not stay for the orientation, so Agathangelo did not have the opportunity to speak further with them at that time.

Agathangelo had not seen R.E.'s IEP until the beginning of September. It had not been finalized by the mother at the time of the orientation. She usually will review the IEPs through the computer system on the first days of school when the teachers begin, before students start for the school year.

Agathangelo believed R.E. was going to attend school in Toms River. She reached out to the mother sometime at the beginning of September since they did not have much time together at the orientation. She recalled speaking to the mother about the mother's concern that the students in the class would not be at the same level as R.E. Agathangelo recalled also discussing that she could make any accommodations or modifications for R.E.

She next recalled interacting with the mother during a virtual observation of the Hooper classroom sometime later in September 2021. She spoke to the mother after the observation. She denied using the term "very low" to describe two students in her classroom, as the mother asserted in an email the mother sent to case manager McNamara. (R-21 at TRRS-0246.) Agathangelo testified she does not use such terminology. She could not recall the specifics of their phone conversation, as it had occurred long ago. She thought it was a pleasant conversation and recalled indicating that she could accommodate or modify things for R.E. and that she was excited to have R.E. attend her class. She could not recall specifics of concerns the mother may have raised.

She denied discussing other students' circumstances with the mother. She would not make a statement that R.E. would be the "highest verbal child" in her classroom, as the mother stated in an email to case manager McNamara. (R-21 at TRRS-0246.) Agathangelo had not met the child and does not believe that because a child is verbal that that encompasses their intelligence. She has students that are non-verbal who are two grades above grade level. She has students in the class using augmentative devices to communicate and that is considered being communicative. She denied ever stating that her class would be inappropriate for R.E. Agathangelo was not given the mother's email which was sent to the case manager, thus Agathangelo did not have an opportunity to respond to it.

Agathangelo defended the use of videos during the observation of her classroom. She explained that the parents' concern that there "was no direct learning" was not true. The parent also expressed concern that the "class was being show[n] videos which are overstimulating for R.E. and trigger sensory overload." Agathangelo testified that it is standard practice in private and public schools to have a morning meeting in the class to learn about the calendar and work in a small group and to generalize skills that were worked throughout the kindergarten core curriculum standards and in the in the ABLLS assessment. There is direct learning occurring such as learning letter identification, with letter/sound identification, rote counting, motor imitation, and interacting with peers. Showing videos is not "a standard." The videos utilized are less than one minute to reinforce through song the memorization of letters, numbers, the weather, the seasons, whatever the topic is. The video clicks are appropriate reinforcers.

She confirmed that the parent and advocate who did the observation of Agathangelo's room did not have the students' IEPs. They would not know what the needs or goals were of the students in the classroom during the observation. R.E. was not there in the classroom for the observation.

Agathangelo was present for the virtual meeting conducted on October 15, 2021, to address parental concerns. (R-24.) She saw on the conference summary page that the mother brought up a concern about the students in the classroom being non-verbal and that R.E. had rich language and the Hooper program would not give opportunity for

R.E. to have verbal or language growth. Agathangelo recalled that was a concern the mother had raised during their prior telephone call after the observation. She recalled discussing different options and programs to address the mother's concerns, such as mainstreaming opportunities when appropriate or resource room programming.

She confirmed that she never got to meet R.E. again after the orientation. R.E. was never sent to attend school in the District. Agathangelo was confident that she could have made accommodations and provided appropriate supports to address R.E.'s needs.

**Susan Caplan** testified on behalf of the parents. She holds certificates in New Jersey for LDTC, teacher of the handicapped, and supervisor. She earned a bachelor's degree in speech and language, speech pathology and audiology and earned her master's degree in educational psychology. She has worked in a few public school districts out of state and then thirty two years in the Marlboro Township district as an LDTC. She completed more than five hundred IEPs throughout her career and hundreds of learning evaluations. She is trained in conducting standardized testing and completing such testing through her career. She was qualified as an expert in the field of special education and as a learning consultant. (P-9D.)

Caplan first became familiar with R.E. when R.E.'s mother contacted her in August 2021. The mother explaining that R.E. had been in a specialized preschool and had registered the child to attend school in Toms River and wanted Caplan to go to an eligibility IEP meeting with her. Caplan attended the meeting with the mother on August 16, 2021.

Caplan found the District to be "challenging" to the mother when she spoke about R.E.'s diagnosis of Turner syndrome and would not consider that as part of her eligibility unless the mother provided the District with medical testing. The District recommended their self-contained program and the mother asked to see the program. Caplan then accompanied the mother for the observation of the proposed program, which was done virtually.

R.E. was classified as autistic, to which Caplan disagreed. She found R.E. to be



an “extraordinarily complex student” who is best defined as “multiple disabilities.” She asserted that Turner syndrome has many areas of impact upon R.E.’s education, in addition to diagnoses of autism, ADHD, and ODD, making for a complex profile. The classification matters a lot to Caplan since eligibility is the first rung on the ladder where the CST must describe the child and all factors that go into the eligibility determination. She acknowledged that a student’s classification does not dictate programming or modifications or accommodations. She affirmed that if a student has a specific classification, it does not require that they only receive a certain type of instruction or services.

Caplan testified that the mother told the CST at the eligibility meeting that she would not be comfortable sending R.E. to a program unless she saw it. The mother was very clear about R.E.’s challenges, such as her difficulty with loud noises, singing, and being timed. Such things trigger dysregulated behavior for R.E., which at the time of her eligibility meeting it was very hard to bring R.E. back to a regulated state.

Caplan confirmed she did not offer any feedback to the CST about the proposed IEP nor any input during the IEP meeting. Caplan did review the District’s August 16, 2021, proposed IEP and gave critical remarks about it during her testimony. (R-18.) She immediately noticed on the first page of the IEP the program was written through June 2022, the end of the kindergarten school year. At the next IEP meeting, the IEP ended in August. The District was delaying its decision for ESY, and there was no reason to wait until August after ESY was over to have a meeting.

She did not see R.E.’s diagnosis of Turner syndrome in the IEP. She testified generally as to impacts the syndrome may have upon an individual, such as severe auditory sensitivity and that individuals are prone to ear infections which can impact their education. She did not indicate what effect R.E.’s diagnosis of Turner syndrome had upon R.E. and her ability to access her education, only that if R.E. gets sick, it throws her into a behavioral tailspin, which is referred to as dysregulation. Caplan did not believe there was enough information in the IEP for the teacher who would be reading it. She described that the mother gave a “tremendous amount of information” to the CST regarding Turner syndrome and the District’s response was to give them the diagnosis

and it would be added to the IEP. She found the CST team to appear unfamiliar with the syndrome. She was adamant there was nothing in the IEP about the syndrome yet conceded that it was noted in the IEP on page three regarding parental concerns and that the parents would provide documentation for the diagnosis of Turner syndrome.

Caplan took issue that it did not appear that any member of the CST either observed R.E. or attempted to evaluate R.E. No one from the District went to R.E.'s preschool to talk to the teachers. The teacher in District would not know where to start with R.E. or know what R.E. "was really all about." Caplan asserted the only reporting of pre-academic skills came from the mother. There was no information from the preschool, such as if R.E. knows how to rhyme words or could blend words. There is nothing about her cognitive ability in the IEP and there was no psychological testing done by the District.

Caplan asserted that the IEP lacked in its description of R.E.'s behavior, sensitivities, and weaknesses. The IEP had some goals, but otherwise the goals were lacking. She did not believe the goals were measurable, such as the goal to see improvement in R.E.'s social interactions with peers and adults, with an eighty percent success rate with moderate assistance. She saw that the District intended to administer the ABLLS test, which is an ABA assessment tool, upon R.E.'s entry to school. There were no pre-academic goals which could have been written into the IEP. Caplan was uncertain if the specials for music, art, and physical education were mainstreamed or only with special education students.

Caplan participated in the virtual observation of the Hooper kindergarten autism classroom at the request of the mother. Caplan authored a report as to her observations, and concerns, indicating that the observation was done from 9:15 a.m. through 9:40 a.m. on September 24, 2021. (P-9a.) She testified the last five minutes of the observation time consisted of a conference with the teacher.

Caplan observed the classroom with four students, two of whom she deemed "non-verbal" and two having "very limited language" using a "couple of words or phrases." (P-9a.) She asserted the teacher, Agathangelo, used such descriptive language of the students. There were four paraprofessionals and one teacher in the classroom with the

four students. They were seated the majority of the time but did get up towards the end of the observation to form a circle and follow directions in a song indicating words such as “run” and “jumping”. (P-9a.) Caplan described what she observed, such as the teacher going through the days of the week, without utilizing a calendar or visual reference when using the words “yesterday” and “tomorrow.” The teacher then “put on a song with the days of the week.” (P-9a.) Caplan took issue with the teacher not using visual reinforcement because traditionally, autistic students require a lot of visual reinforcement and multi-sensory instruction.

Caplan further described the lesson as outlined in her report, criticizing one portion when a song focusing on counting to twenty was played, which Caplan indicated appeared to be “a rote and meaningless activity.” (P-9a.) She observed students in the class who would call out, which she believed would have a negative sensory impact on R.E. She asserted that R.E. was “highly verbal” with ASD and would not have peers in the room she observed, with whom R.E. could develop pragmatic and social language skills. Caplan opined in her report that the proposed program did not appear to be a good fit for R.E., given her language and preacademic skills being “significantly higher than the students in this classroom.” (P-9a.)

Caplan testified that when regulated, R.E. is verbal and likes other children. She stated that R.E. would have had a very hard time and would have been dysregulated by the songs and videos used in the classroom, based upon what the mother had advised her about how R.E. reacts and is in constant movement. Caplan stated that she did not think R.E. had the readiness level, behaviorally or academically, to process what the students were doing in the classroom. She could not see how R.E. could interact the whole school year with the observed students.

The mother raised concerns to the District about this observation, and Caplan testified the mother rejected the program offered because there were no peers for R.E. in the class and the students were non-verbal. The District arranged for two other observations at the Beachwood school. Caplan emphasized that those virtual observations only lasted about ten minutes each on October 8, 2021. She authored a report detailing her observations of the classrooms and her criticism of the teachers’

methods. (P-9b.) The first classroom observed had seven students and one teacher and one paraprofessional. Caplan saw the use of videos again and the students having difficulty complying with the teacher's directives to sit appropriately. The students were directed to sing along with a video, but they were yelling rather than singing. This is what the mother told Caplan would send R.E. "into a tizzy." Caplan heard the teacher offer stickers as a reward if they sat appropriately yet did not see any stickers given out. (P-9b.) She testified that one lesson about upper case letters was so far above R.E.'s abilities to receptively process it or understand it.

Caplan stated that the District would not have been able to modify or individualize the class for R.E.'s needs. She testified that R.E. would have just been with a one-to-one aide all day with no interaction with other students.

In the second classroom observation of Beachwood, there was a teacher and two paraprofessionals. The class was deemed the "autism class" with the case manager advising them that two students were verbal while two students were non-verbal. A video was playing regarding counting to twenty and Caplan described that the students did not appear to focus on the video but rather on the table where they were seated. (P-9b.) She again was critical of the teacher's methods, observing the teacher to state observations and identify an object, without a response from the students. Caplan indicated the teacher did not indicate there was a transition between discussing the day of school and then went on to use a pumpkin song. (P-9b.) Caplan opined that neither program observed on October 8 appeared appropriate for R.E. because she was "highly verbal" and the students in the classrooms were not engaged nor able to participate verbally in the lessons observed. (P-9b.)

Caplan later observed R.E. in her classroom at SCHI on December 22, 2021, after R.E. had been attending that school for about two months. She did not observe R.E. sooner since she was not asked to do so at an earlier time. She acknowledged that the timing of her observation allowed for approximately two months for R.E. to be acclimated to the program.

She authored a report regarding the observation. (P-9c.) She first noted in the

report her comments regarding her review of the August 16, 2021, proposed IEP. The students of the proposed classroom would participate in lunch, recess, and special classes for art, gym, and library. Other than those times, the students would be engaged in discrete trial learning and teaching. While Caplan saw that ABA was “noted” in the IEP, she did not see a discussion of the ABA or assessment of R.E.’s skills in the IEP. This is the backdrop upon which Caplan had been given, after the parents rejected the proposed program and unilaterally placed R.E. at SCHI.

R.E. received two periods of ABA discrete trial teaching at SCHI. Caplan reported that R.E. receives one to one OT two times per week at SCHI and observed the OT session on December 22. (P-9c.) R.E. was permitted to swing in a cloth swing in the darkened room and was spoken to softly by the therapist. Caplan found this exercise to have a calming effect on R.E. and was “proven” to increase her attention and regulation. Caplan followed R.E. and the therapist back to R.E.’s classroom where R.E. had a teacher, co-teacher, and a paraprofessional in the room. This provided a one-to-one ratio of adults to students in the classroom.

Morning circle time was occurring in the classroom, with the teacher softly singing a good morning song. Caplan noted that for the first two months of R.E.’s attendance at SCHI, R.E. could not tolerate any singing or music. She reported that the SCHI staff began by only playing music then gradually added the teacher’s voice and words to which R.E. began to tolerate. If R.E. is given advance warning of singing and sounds, R.E. reported will now tolerate music in the classroom. Caplan conceded she had no idea what efforts would have been made for R.E. in Toms River to desensitize her, like she was given the opportunity at SCHI to build her tolerance.

Caplan was critical of the proposed IEP since the greatest area of weakness reported by the SCHI teachers was R.E.’s sensory dysregulation. The IEP provided for seventeen sessions per trimester of OT, which she thought would be approximately one time per week, compared to the two times per week of OT the student received in the SCHI program. She found the SCHI program to be rich in sensory integration with a sensory regulation room built into the room where the paraprofessional takes R.E. for OT sessions. There is also a dark room with soft lighting and music where the students can

go and touch things to regulate themselves. SCHI thus had more than two times per week OT, with a sensory component throughout the day.

Caplan confirmed she did not put in her observation report of Agathangelo's classroom that the lights in the classroom were off. She asserted the observation was virtual and she could not tell that the lights were off.

It was reported to Caplan that R.E. was receiving speech therapy at SCHI and worked with a Floortime therapist two times per week in the classroom. Caplan reported that the Floortime therapist works with the staff one hour per week to collaborate on activities. (P-9c.) The teacher advised Caplan that R.E. is highly verbal, demonstrating two types of verbalizations. If dysregulated, R.E. speaks in a rote, sing-song fashion that has no meaning. When regulated, R.E.'s language was reportedly "more meaningful" by speaking in sentences. R.E. was described as varying dramatically with the fluctuations in her behavior.

Regulation was reported to be R.E.'s greatest area of weakness. The SCHI teacher reportedly accommodates R.E.'s ability to participate and regulate her behavior "in the moment." (P-9c.) R.E. cannot be shown videos because she becomes "stuck" in the video, repeating it for an hour after being shown the video and is unable to "unlock" herself from it. Caplan was critical of the video use she saw during the District's classroom observations.

R.E. reportedly is mainstreamed at SCHI with a group of four peers of the same age. The teacher reported to Caplan that with adult facilitation, R.E. will interact with the other students.

Caplan was told that R.E. is non-cooperative during lunch because she does not like to sit and does not know how to pace her eating. She is accompanied by a one-to-one aide during lunch for safety and pacing. By the afternoon, R.E. becomes dysregulated and the parent reported to Caplan that they were addressing a medication adjustment with R.E.'s psychiatrist. Caplan remarked that the teachers noted R.E. had a very good day on the date of Caplan's observation of the student at SCHI.

Caplan testified that the observation at SCHI lasted for approximately one hour. She confirmed she did not note the length of time in her report regarding that observation. She confirmed she was very specific about the time for the other observations at the District because they were much shorter than the typical one hour. She could not account for why she did not enumerate the length of the SCHI observation. She further could not account for why she did not specify the number of verbal or non-verbal students in the SCHI observation classroom.

Caplan determined that the proposed program at Toms River did not include goals and objectives for R.E. in the classroom except for following classroom routines. She acknowledged that she did not conduct an evaluation of R.E., only the observation of her at SCHI.

Caplan took issue with the proposed use of ABA teaching in the District as the primary methodology given that R.E. already is verbal and knows her letters and numbers. The sole use of ABA would not be appropriate for R.E. She testified that New Jersey public schools are subject to constraints, where a private school, such as SCHI, can do much more to “meet the student in the moment” and do what the student requires and can adapt to the student. For example, a public school physical education class is generally one thirty minute period per week and R.E. cannot tolerate that. SCHI switched R.E.’s physical education to two fifteen-minute periods during the week, where public schools “don’t have that luxury.” Caplan asserted that a public school does not have the facilities to address all of R.E.’s needs.

After the observations had occurred, Caplan attended the October 15, 2021, meeting the District scheduled to address the mother’s concerns about the District’s proposed placement. She affirmed that the mother was concerned about the placement and that it was the Hooper teacher, Agathangelo, who referred to students in her class as “non-verbal” and that there were students with “extremely limited language” in her class. Caplan thought the mother’s concern was valid because there would be no way for R.E. to build relationships with other children for her social and pragmatic skills, in a classroom with non-verbal students.

Caplan affirmed she saw “non-verbal” students in her observations of the District’s classrooms. She affirmed the mother’s concern with the use of videos and singing and loud noises would not be addressed in the District’s classroom programs. She was concerned with verbal outbursts by other students and concerned about the District teachers being unable to move the child to change the child’s behavior. Caplan discounted the District’s assertion that it could accommodate R.E.’s sensory needs to loud noises by the use of noise canceling headphones. Caplan asserted that R.E. would then be unable to hear the video for the lesson. She further contended that if headphones were put on R.E. the District would need to develop an entirely new one on one program for R.E. and that was never offered or discussed.

Caplan found that the mother’s concern that there would not be individualized instruction was valid. Caplan only observed whole group lessons and no individualized teaching during the observations of the Toms River classrooms.

She confirmed during cross-examination that she had indicated in her testimony that R.E.’s sensory needs were not addressed in the IEP. However, she acknowledged that the IEP did have information about R.E.’s sensory sensitivities that impact her focus and learning. (R-18 at 4.) Caplan asserted the information did not describe the degree of R.E.’s sensitivities as she believed existed and apologized since when she indicated the IEP did not address R.E.’s sensory issues, she was not referring to any narrative in it. She was referring to the goals and objectives section.

Caplan acknowledged that R.E. was not present in any of the Toms River classrooms she observed. She further confirmed that she did not have the IEPs for the students in those classrooms which she observed. She further conceded she would be speculating about what the classroom may have looked like or the content of the lesson if R.E. was in the classroom. She did not ask for more time for the observations, yet quipped that the time offered for the observations was insufficient for the parent to make an informed decision. Caplan did not ask to have another observation to be given more time to review the District’s classrooms. She confirmed she never gave her input or



recommendations about R.E. to the District from the time of her involvement in August through the last District meeting in October.

Y.Z., mother of R.E., testified. She received a letter dated April 28, 2021, from the District, entitled "Invitation for Initial Identification and Evaluation Planning." A meeting was scheduled to decide whether an evaluation was warranted to determine if R.E. had a disability which would adversely affect her education performance, and if R.E. needed special education and related services, or speech-language services, only. (R-10.) The meeting was scheduled for May 14, 2021, as a virtual meeting. (R-10.) Y.Z. recalled attending that meeting to start the process of evaluating. (R-11 at 3.)

She advised the people at the meeting that R.E. was in a specialized program at Imagination preschool. R.E. started attending that preschool when she was two and a half years old, through the time she was placed at SCHI. At the preschool R.E. had a one-to-one aide and was in a class with four children. Y.Z. testified she told the District that Imagination had a mixed approach program with R.E. with Floortime therapy and ABA, which methods have different goals and outcomes and R.E. really needs both of those things. Y.Z. stated the CST did not say anything to her about that at the meeting.

Y.Z. testified she advised the District during the May 14, 2021, meeting about R.E.'s speech delay, her diagnoses of autism, ADHD, and ODD, and told them what she wanted for R.E.'s education. She testified she stated at the meeting she wanted R.E. to be as functional as possible and as happy as possible. R.E. has more struggles than a typical child and her day is not easy. Y.Z. wanted a program for R.E. that would suit her and keep her growing, moving forward, and eventually allow R.E. to become a functional adult.

The proposed action notice which was issued after the May 14, 2021, meeting, indicated the areas of suspected disability, having autism and other health impairment check off. (R-11 at 1.) The evaluations or assessments which were proposed were checked off as social history, speech/language evaluation, and occupational therapy evaluation. (R-11 at 2.)

Y.Z. advised the CST that R.E. had a speech evaluation done through the preschool. She signed an authorization for the District to get information from the preschool. She was not aware of anyone from the District ever reaching out to Imagination. She did not believe anyone from the District ever asked to observe R.E. in a setting other than for testing.

She registered R.E. in the Toms River district on May 24, 2021. (R-3.) the anticipated start date for the student was written in on the Student Registration Form “as soon as possible.” (R-3 at 1.) R.E. was born on June 1, 2016, and was turning five years old on June 1, 2021.

On June 3, 2021, Y.Z. confirmed she sent an email to the District’s secretary for the preschool program. (P-4.) Y.Z. wanted to get the ball rolling for R.E. and enrolled in school sooner, such as for the ESY program for the summer of 2021, if available. Y.Z. followed up on June 7, 2021, with another email, to determine if it was possible for R.E. to start earlier. She could not recall the specific response but thought that someone from the District provided an answer that they could not start anything sooner, and could only start on the date they were giving her, which was “a while out.” (Trans. May 5, 2023, 147:18-20.)

Y.Z. signed the consent for the evaluations to occur on July 1, 2021. She recalled it was signed right before the testing was done. They sent her a form to sign, and she signed it. She denied that she was given the consent form for testing at the evaluation meeting in May. She then was not sure of the order as to when the form was given to her and when the evaluations were scheduled. She stated she did what they told her to do, so when they wanted her to sign the form, she did so. She could not recall when she got the form for consent.

On July 5, 2021, she sent another email to secretary Newcomb, indicating “Just wanted to update you. R.E.’s geneticist, Dr. Zakal of CHOP, has just informed me that R.E. has Turner Syndrome.” (P-4 at 322.) Y.Z. testified that she did not get a response from Newcomb or anyone on the CST for additional information regarding the diagnosis.

On July 12, 2021, Y.Z. accompanied R.E. during the occupational therapy evaluation. (R-15.) R.E. was extremely dysregulated, overwhelmed, and “not present” during the evaluation. (Trans May 5, 2023, 181:6-16.) She was flapping her hands and talking to herself. She had trouble answering questions but did answer some of them. She tried to run away a few times. She threw things at the evaluator, Jennifer Viola.

On July 14, 2021, Y.Z. accompanied R.E. for her speech evaluation, done by Karen Rieser, from the District. (R-16.) R.E. threw something at the evaluator. She was talking to herself, like she does when she is over-stimulated. She was climbing on the table, climbing on the stairs, and was trying to get out. R.E. kept trying to pull the mirror off of the wall. The evaluator asked if that was typical behavior for R.E. and Y.Z. stated she responded “yes” and that she never turns her back on her because R.E. does not know how to keep herself safe.

Y.Z. attended the August 16, 2021, IEP meeting. Y.Z. had R.E.’s learning consultant, Susan Caplan, attended the meeting with her. Y.Z. could not recall when she first contacted Caplan, believing it occurred in August and she could not recall how she got Caplan’s name since she has so many contacts in her phone with others in the special needs community.

At the IEP meeting, Y.Z. stated that she expressed concerns about the proposed discrete trial teaching and proposed specials for R.E. She was not offered any accommodations or changes to the proposed programs. Y.Z. testified that she expressed concern about the CST saying R.E.’s sensory needs would be addressed with a sensory diet. Y.Z. said that meant they would give R.E. a squishy ball, and that was “never going to work[.]” (Trans May 5, 2023, 167:1-10.) She saw R.E. as a whole child with Turner syndrome, autism, and ADHAD, yet the District was only addressing the autism. Y.Z. was concerned about Turner Syndrome, since it is a genetic disorder effecting every single cell, during every part of R.E.’s day. If the program would not see that, it would not be an appropriate program for R.E. The response from the CST was that they could do more testing once R.E. came into the program.

When Y.Z. mentioned during the IEP meeting that R.E. was diagnosed with Turner syndrome, the CST wanted medical documentation, as if it was not enough for her to just tell them of the diagnosis. She did not know if they did not believe her, or if it was their protocol to ask for it. As soon as Y.Z. received the documentation, she sent it to them. It was a letter by Beth Keena, from CHOP, dated August 20, 2021. (R-19.) Y.Z. believed she received it that day and forwarded it to the District. The letter indicated that R.E. “has a diagnosis of Turner syndrome.” (R-19 at 1.)

Y.Z. elaborated in her testimony that the CST was not familiar “at all” with Turner syndrome so she explained it to them, and they kept asking “Why is this relevant?” (Trans May 5, 2023, 183:14-25.) She testified she explained it was relevant because it affects every single part of R.E. and that there are learned differences with math and problems with special awareness, hearing differences, and many different things that affect every part of R.E.’s day. The CST “kind of just left it at that” and did not tell her once they got a medical diagnosis that they would change something or do something. (Trans May 5, 2023, 184:1-9.)

Y.Z. stated she told the CST that she wanted to observe the proposed class. Of course, she could not immediately do so because school was not in session yet.

After the IEP meeting of August 16, 2021, Y.Z. received an email from Kelly McNamara, the preschool case manager, advising her of the upcoming school year program hours, the name of R.E.’s intended teacher, Agathangelo, and the program at the Hooper school. It further indicated that “other than lunch and recess and specials, she will be involved with discrete trial teaching for the rest of the day.” (P-4 at 324.) This concerned Y.Z., knowing that R.E. has an extremely limited attention span. It would not be possible for R.E. to do the ABA method with discrete trial teaching, which would be one on one in a booth for R.E.

Y.Z. testified that she had expressed her concern regarding the discrete trial teaching during the IEP meeting on August 16, 2021. She told the CST that R.E. had a big problem staying still, keeping regulated, and sitting one on one in a close up area to do ABA therapy all day long. The District representatives responded that R.E. would have

lunch and specials during the day. Y.Z. asserted she said the specials would be a problem as well since going to gym class for forty-five minutes was too long for R.E. to stay attentive in a group. No alternative was offered for R.E. The CST never suggested any modifications, accommodations, or changes to the offered programming, once Y.Z. expressed her concerns at the meeting. Y.Z. testified that she told the CST she wanted to observe the class. She was unable to do so at the time of the meeting because it was summer, and school was not yet in session.

The parents were invited to a kindergarten orientation. Y.Z. and her husband, C.E., attended with R.E. They were there for approximately forty-five minutes. They were in an outside bubble area which was very noisy. There were speeches made that were directed to the parents. R.E. was incapable of sitting through long speeches. Y.Z. and C.E. had to take turns stepping out with R.E. because she could not sit through the orientation, an incapable of participating in the orientation at all. After the speeches, they were told to meet with the classroom teacher, Agathangelo.

When they met with Agathangelo, she spoke to R.E. for “like a minute or two” and did not seem familiar with R.E. The orientation process was already too long for R.E. The orientation was not suitable for a special needs child. R.E. was swinging her head back and forth, flapping her hands, talking to herself incessantly. Y.Z. indicated that they cannot interact with her when she is like that. It takes time to get R.E. back to normal. The teacher could not interact with R.E. in a meaningful way. Y.Z. stated the meeting with the teacher “was a little bit unproductive.” (Trans May 5, 2023, 153:1-2.) While the teacher was speaking to other parents, Y.Z. asked if there was anything else happening for the orientation, and the teacher stated “no” and that it was nice to have met them and to “take care.” (Trans May 5, 2023, 153:2-12.) They were told that was all to the orientation, so they left. Y.Z. denied that Agathangelo asked them to stay longer. Y.Z. testified that she asked if they were going to miss anything, and that Agathangelo stated “no.” Y.Z. testified that Agathangelo was very nice and sweet when they met. However, Y.Z. asserted that Agathangelo’s testimony at the hearing “was not the truth[.]” (Trans May 5, 2023, 154:1.)

Y.Z. sent an email to the District regarding the orientation. (P-4 at 348.) She

indicated they had not been able to see the classrooms during the orientation. They were under construction. She also noted that Agathangelo was very nice, did not yet know R.E.'s case, and that Y.Z. wanted to see the classroom as soon as possible. She received a reply from the case manager McNamara, the case manager, on August 27, 2021. (P-4 at 350.)

Y.Z. learned the teacher would not be prepared for R.E. to start in her class, unless Y.Z. signed the IEP. She felt this placed them in a "bind" because they could not move forward without signing the IEP. She did sign the IEP but noted her concern. She did not want to sign it as if she were consenting to the program, which she had never seen. She signed the IEP consent form on August 31, 2021, so that she could do the class observation. There was a line on the consent form which stated, "I understand that if I do not consent, any proposed special education and/or related services will not be provided." Y.Z. wrote in "However, I continue to have concerns and look forward to an observation." (R-20.)

On August 31, 2021, Y.Z. sent an email to someone unnamed on the document at the District. (P-4 at 352.) She testified that she sent the consent form to implement the IEP so that R.E. could be considered a special education student and they could start the observation process and Agathangelo could become more familiar with R.E.'s case. Y.Z. stated she still had "significant concerns" and wanted to observe the class.

Y.Z. received an email from case manager McNamara, thanking her for having signed the consent form and indicating she looked forward to meeting Y.Z. during program observations scheduled during the week of September 13, 2021. (P-4 at 355.) Y.Z. then received an email from case manager Verdon on September 17, indicating that the virtual observation had to be cancelled because Verdon would be out sick and would call on Monday to reschedule. (P-4 at 357.) Y.Z. stated the observation was understandably cancelled by the District, due to Verdon having COVID.

On September 20, 2021, Umbach, the supervisor of special education, sent an email to Y.Z., apologizing for the delay in the observation, noting that case manager Verdon continued to be out. (P-4 at 359.) Umbach requested when a good time would

be for Y.Z. to observe. Y.Z. responded to the email, requesting to do the observation on the upcoming Friday, and that R.E.'s learning consultant, Caplan, would be with Y.Z. for the observation. (R-21 at 242.) Umbach responded the next day, stating they could do the observation on Friday at 9:15 a.m., and a Zoom link would be sent to her. (R-21 at 243.) The following day, Y.Z. responded, asking that the Zoom link be sent directly to Susan Caplan, to avoid any technical issues, and provided Caplan's email information. (R-1 at 244.) Y.Z. confirmed the District was aware that Caplan was involved on behalf of R.E.

The virtual observation of Agathangelo's class occurred on September 24, 2021. After the observation, Y.Z. sent an email to McNamara. (P-4 at 361.) Y.Z. confirmed that she spoke to Agathangelo, who was very nice. Y.Z. expressed concerns that there were "2 nonverbal kids in the class and 2 'very low' verbal kids." (P-4 at 361.)

Y.Z. testified that after the observation, she had a conversation with Agathangelo. Y.Z. asked Agathangelo about the other kids' levels whom she saw during the observation. She asked Agathangelo "Which kids are verbal?" Agathangelo gave her the information that the students in her class were either verbal or nonverbal and that two were "very low." Y.Z. asserted that Agathangelo testified differently that day about their communication. Y.Z. was certain she was told by Agathangelo that the two students were "very low." Y.Z. testified that she asked what that meant and Agathangelo responded it meant "a couple of words or phrases" and that Y.Z. put quotes around "very low" in her email, because that is exactly what the teacher stated. (Trans May 5, 2023, 160:10-2; 161:1-24.) She specifically used the quotation marks in her email because that is what Agathangelo said in response to her question as to what "very low" meant.

Y.Z. testified she advised Ms. Agathangelo that R.E. "has a rich vocabulary" and talks in full sentences. She can recite books by heart, so the class Y.Z. observed would not be appropriate for R.E. Ms. Agathangelo agreed with Y.Z., stating she was correct but there would be lunchtime during which R.E. could have conversations. Ms. Agathangelo indicated she could show Y.Z. other programs that would be more appropriate for R.E. The mother was adamant that Agathangelo told her that R.E. would be the highest student in the class and that would not be appropriate.

Y.Z. stated she put her concerns about the observation and Agathangelo's comments in the email to McNamara. (P-4 at 361.) She did not address the email to the teacher, since Y.Z. had been dealing with McNamara.

At the end of the email, Y.Z. confirmed she wrote "As I told the district I'm looking into all [R.E.'s] options and have tentatively decided to pursue the state approved SCHI school. I will be formally applying to SCHI as soon as possible." (P-4.) She further asked that the District place R.E. at SCHI or reimburse them for all expenses with that placement, as well as to provide transportation. Y.Z. testified that she had not yet applied to SCHI as of September 24, 2021, nor had she paid any money to SCHI at that time for R.E. She testified that both she and her husband were hoping R.E. would go to the Toms River schools. Her mind was changed after seeing the classroom and determining that it was not appropriate for R.E. She asserted the first time she was inside SCHI was either at the beginning or middle of October 2021 to do an observation, before she placed R.E. there.

Kelly Umbach responded to Y.Z.'s email. (P-4 at 363.) Umbach indicated that the CST placement recommendation was based upon their observations and interactions with R.E., which could change once they were able to collect data. (P-4 at 363.) Umbach indicated that if Y.Z. was concerned R.E. would be the highest student in Ms. Agathangelo's case, there were other placements in the district that might also be an appropriate fit. (P-4 at 363.) Umbach indicated she would reach out to another teacher to arrange for a virtual or in person observation of another class the next week. (P-4 at 363.) Umbach never discounted Y.Z.'s statements that R.E. would be the highest in the class or that all the students were verbal in the room.

Umbach sent a follow up email, offering two other classes for Y.Z. to observe, which might be appropriate for her. (P-4 at 365.) A date and time were set for the observations at the Beachwood school. Y.Z. responded by email stating she was not sure why a class was still being recommended for R.E. that was not appropriate for R.E. She appreciated Agathangelo's candor, and asserted she was still seeking "an



appropriate public placement until one is provided” and intended to unilaterally place R.E. at SCHI. (P-4 at 368.)

On October 5, 2021, an invitation issued for a meeting, as requested by the parents, scheduled for October 15, 2021. (R-23.) The virtual observations of the Beachwood school occurred on or about October 8, 2021.

On October 12, 2021, Y.Z. sent an email to Umbach, stating they continued to have serious concerns with the District’s proposed placement. (P-4 at 375.) They were not going to delay R.E.’s education and were placing her at SCHI. (P-4 at 375.)

Y.Z. then attended the October 15, 2021, meeting with District representatives. She testified that the first concern she raised was that the other kids in the class were non-verbal or limited, and R.E. is “very verbal.” (Trans May 5, 2023, at 170:17-25.) She indicated that the district did not disagree with that.

A conference summary letter was authored on October 15, 2021. (R-24.) The body of the letter outlines five numbered “Parent Concerns”. (R-24.) The first concern was that the students in the Hooper class were non-verbal or extremely limited in verbal skills. Y.Z. reported that R.E. had very rich language and the Hooper program would not give R.E. an opportunity for verbal or language growth. (R-24.) Y.Z. testified that accurately described her concern about the speech abilities in the proposed class she observed at Hooper. She also had discussed this issue with Ms. Agathangelo after the observation had occurred, during a telephone call with the teacher.

Y.Z. elaborated more about the telephone call, indicating that she described to the teacher that the proposed program was not going to work for R.E. because R.E. talks too much and will have no one to talk to. One of Y.Z.’s biggest goals was to get R.E. to talk to her peers, since she was not talking to peers at that time, at the beginning of the 2021-2022 school year. She testified that R.E. as of May 2023, R.E. talks to peers. Y.Z. attributes that to R.E. having peers who talk and are appropriate to talk to, presumably implying this occurs at SCHI. Y.Z. asserted during her testimony that there was no response from the CST during the October 15, 2021, meeting regarding her concern

about the non-verbal students Y.Z. observed in the Hooper program. She stated she raised the issue many times and no one ever addressed it.

The second concern raised during the October 15 meeting was that there was no direct learning done during the observations and there were videos shown. That would be over-stimulating for R.E. and trigger sensory overload. (R-24.) Y.Z. explained that R.E. is very sensitive to seeing things like videos. She cannot tolerate it because she gets overstimulated and loses focus for the rest of the day. She will stick her fingers in her ears and swing her head back and forth. Y.Z. does not show R.E. videos.

The third concern Y.Z. raised at the October 15 meeting was that a child had a verbal outburst in the classroom during the observation. R.E. is sensitive to noise and has panic attacks when she is over-stimulated. Her behavior is then sometimes irreversible or aggressive. R.E. completely loses herself when having a panic attack. She is much more regulated now. She is prone to panic attacks when there is a surprise or sudden sound. R.E.'s heart starts to race, and she sweats. Her eyes slide side to side and her hands start shaking. She cannot control what is happening to her. That is why Y.Z. indicated R.E. could not be in a room with those children who had verbal outbursts. It would not have worked.

Y.Z.'s fourth concern was that the children during the observations did not seem to know what was going on while the teacher went from one activity to another. Y.Z. testified that none of the children were interacting. She observed Y.Z. at her preschool many times and the children who are at different levels interacted with the teacher, even if it was not verbal. She could not picture R.E. in the setting in the District's classroom.

The fifth concern raised was that Y.Z. did not see any individualization of programs for the students. (R-24.) She testified that the kids were just singing a song. There was no lesson that was individualized for the kids. It seemed arbitrary to Y.Z.

Y.Z. recalled that at one of the meetings, someone suggested putting earphones on R.E. Y.Z. did not want headphones put on R.E. She would not be able to learn and would be isolated from the class, working in her own world. R.E. is hyper-emotional and

retreats not herself because it is predictable and safe to her. When she feels safe and comfortable she is not triggered and comes out of her shell. Putting headphones on her would be the opposite of that.

Y.Z. testified about the children in R.E.'s SCHI class, indicating that they are all verbal because she has observed the class many times. They never watch videos at SCHI. Y.Z. has seen improvement in R.E. and stated she is "a completely different kid than when she started." (Trans. 191:13-14.) She described that R.E. is at peace, calmer, smiles more, and talks to her peers. Her anxiety is more controlled, and her panic attacks are almost non-occurring now. It is unbelievable that R.E. now enjoys physical touch. She has "connecting" moments with therapist by meeting eye contact.

On the learning side of things, Y.Z. described that R.E. is starting to read. She has some general knowledge now about things such as the mailman or why gas is put in the car. She is experiencing things around her in a different way.

Y.Z. stated that R.E. is more expressive and can express complex emotions. It is as if she is a totally different child. She is confident in knowing her child and knowing that the program at Toms River "would never have worked." (Trans. 192:16-18.) It would have set R.E. up for failure. The whole program did not suit her. Y.Z. asserted it would have done damage with behavioral regression, which is not always reversible.

Y.Z. explained that you don't take risks with a child with mental health issues. "Your kid is not a guinea pig." (Trans. 193:1-2.) It doesn't work to just have R.E. walk in and the District would figure it out when she got there. Things need to be prepared ahead of time for a special needs student. For example, R.E. never grew into a milestone. Every milestone she has hit had to be worked on. It had to be taught, worked on, and cultivated for her. The idea that R.E.'s program could be changed to accommodate her when she got there is "not adequate care for a special needs child." (Trans 193:17-19.)

She acknowledged she is not a certified teacher, a special education teacher, a school psychologist, an LDTC, a speech or OT therapist, nor a medical doctor. She testified she was referred to her speech expert, Melanie Feller, by her attorney. She was

not able to recall the order of when she first communicated with her attorney, believing it to be sometime in October 2021, yet then was confused since she acknowledged her expert Feller had started working on evaluations in August and she got Feller's name from her attorney.

Y.Z. initially had no explanation as to why she did not tell the CST in either August at the IEP meeting or in October concerns meeting that she was having her own evaluations done. She started to indicate the topic never came up, then indicated that she had scheduled those evaluations "way in advance." She stated "That's how this is done. Everybody in the special needs community, you get multiple opinions." (Trans at 201:5-6.) She avoided responding on cross examination as to why she had not raised to the CST that she had arranged to get private evaluations, remarking that she had Caplan with her at the meetings, so they knew Caplan was there and knew she had a learning consultant. She eventually confirmed she did not inform the District at the August IEP meeting, nor at any other District meeting, that she was having private evaluations done by Feller and Stern.

Y.Z. could not remember how far in advance she set up the evaluation appointment with Stern, which was scheduled on the same date as the August IEP meeting. She explained that she was not even sure she was going to go through with the appointment, telling Stern in advance she was not sure she would keep the appointment. When the IEP meeting did not alleviate her concerns, she went forward on that same day with the already scheduled evaluation by Stern.

**Yesenia Newcomb** testified. She is the preschool secretary for the District and was so employed in that capacity as of 2021. She confirmed her school email address and confirmed that she received at that email address an email from R.E.'s mother on June 3, 2021, which had some medical and health records attached. (P-4A.) She forwarded those documents to the school nurse. She confirmed that an email was sent to her by Y.Z. on June 7, 2021, which indicated "Hi, wondering if you got my last email. Hope all is well." (P-4A, 2.) Newcomb confirmed that she replied on June 7, 2021, with "Yes, I did." (P-4A, 1.)

Newcomb could not recall whether she did anything else regarding Y.Z.'s email, besides having forwarded the medical records to the school nurse. She confirmed that the email from Y.Z. on June 3, 2021, indicated in the email that medical records were attached. Newcomb acknowledged that the mother also indicated that she "would love to put a summer program in place and was wondering if pushing up the speech eval scheduled for July 14 would be a possibility." (P-4A, 2.)

Newcomb could not recall having spoken to the mother about the information in her email regarding the attached medical records or about pushing up the speech evaluation or getting R.E. into the ESY 2021 program. Newcomb did not recall talking to the Director of Special Education about the email, until before her day to testify, when she was shown the email. Newcomb acknowledged that procedurally, in her position as secretary, when she gets communication from parents, she will get back to them. She could not recall talking to the parent or anyone else at that time.

### **Credibility analysis**

A fact finder must weigh the credibility of witnesses in disputed matters. Credibility is best described as that quality of testimony or evidence that makes it worthy of belief. "Testimony to be believed must not only proceed from the mouth of a credible witness but must be credible in itself. It must be such as the common experience and observations of mankind can approve as probable in the circumstances." In re Estate of Perrone, 5 N.J. 514, 522 (1950). The fact finder should consider the witness' interest in the outcome, their motive, and any bias, when assessing the credibility of a witness. Credibility findings are "often influenced by matters such as observations of the character and demeanor of witnesses and common human experience that are not transmitted by the record." State v. Locurto, 157 N.J. 463, 474 (1999). "A trier of fact may reject testimony because it is inherently incredible, or because it is inconsistent with other testimony or with common experience, or because it is overborne by other testimony." Congleton v. Pura-Tex Stone Corp., 53 N.J. Super. 282, 287 (App. Div. 1958).

The District witnesses testified in a professional and direct manner. They responded to questions without hesitation. Their testimony was not evasive, nor

exaggerating in manner to appear more favorable to themselves or the District. Supervisor Umbach was pleasantly confident and proficient. Both case managers, McNamara and Verdon were candidly straightforward. The District's witnesses found the mother to be cooperative and did not disparage the parents in any manner.

The District's OT expert Viola testified in a clear self-assured manner. She acknowledged the importance of gathering information and conceded certain information was not contained in her report. She was refreshingly forthright in her testimony and did not attempt to deflect probing cross-examination nor exaggerate her testimony or the circumstances of the matter. Likewise, the District's S/L expert Rieser presented testimony in a professional and unbiased manner. The parents' S/L expert, Feller, agreed with Rieser's findings and assessment of R.E.

The parents' expert witnesses, LDTC Stern, and S/L expert Feller, testified in a professional, academic, and reserved fashion. Neither were overly expressive nor exaggerated in their testimony. Stern, however, repeatedly conditioned her responses on cross examination. Feller directly responded in a quiet tone on cross examination. Notably, the District's expert and fact witnesses' observations and assessments of R.E. aligned with the parents' experts' observations and assessments. The witnesses only differed as to their opinion on the placement of R.E., with unsurprisingly the District witnesses asserting placement in Toms River was appropriate while the parents' witnesses endorsed placement at SCHI.

The parents' learning consultant, Caplan was insistent and direct in her testimony. Her learned opinions were appreciated yet delivered in an unwavering and preconceived manner that the public school system is ineffective and would never be an appropriate placement. She was a champion of the SCHI school and remarked how the public school system does not have the luxury of providing certain services or doing certain things for a student.

Special education teacher for the District, Agathangelo, was called to testify by the parents. She held her ground in a quiet, calm, and unwavering manner in the face of the parents' counsel's aggressive questioning. She was soft spoken, calm, pleasant and

professional. She candidly indicated she could not recall specifics from a brief meeting with the parents given the time that had transpired by the time she was called to testify. Her testimony was believable when she denied having used terminology the mother and Caplan so adamantly claimed Agathangelo used, referring to students in her classroom as very low or extremely limited. It is further believable that she would not have told the mother that R.E. would be the highest-level student in the classroom. Agathangelo had not even met R.E. There was nothing nefarious or demonstrative of untruthfulness in her demeanor.

The parents' experts evaluated R.E. in August, unbeknownst to the District, then thereafter observed R.E. at her SCHI placement months after being unilaterally placed there by her parents. They attributed any progress seen in R.E. to the SCHI program. They also noted there were continued deficits and challenges being worked on with R.E. I am respectful of the learned opinions expressed by the experts. However, they acknowledged it would be speculative as to how R.E. may have progressed if she attended Toms River. Their thoughts that the program in the District would not have been a good fit for R.E. discounted the fact that the CST would have adjusted programming, just as they reported was done at SCHI for R.E. Given the circumstances that the parents never presented R.E. to the District, and taking into consideration how the process unfolded, I **FIND** the opinions and information provided by the District regarding their programming and placement to be more persuasive than the opinions of the parents' experts.

The parents' counsel made comments during objections made in the process of teacher Agathangelo's testimony. He denied that he was badgering her as a witness and then interjecting with "I don't believe her" and "I don't believe her for one moment." Such comments did not align with the witness' demeanor or testimony. Notably, R.E.'s father was observed to be laughing, then both parents were looking down as if text messaging during this exchange. The father was observed at various times throughout the Zoom proceedings to smirk, laugh, or take pleasure at times when the parents' counsel got loud and aggressive when arguing objections or conducting examination of a witness.

The mother was observed to be stoic throughout the proceeding although at times she too joined with the father in smirking, laughing, or displaying pleasure during parts of their counsel's conduct. She at times was seen to display doubting or critical facial gestures and shake her head regarding testimony that did not support her position. She testified directly and with heartfelt passion and detailed knowledge of R.E. only a loving and emersed mother could do regarding her child. Her knowledge and background research and planning for her child was duly appreciated. She critically testified during mainly leading questions on direct, about the District generally not doing anything or disregarding her concerns and not being responsive.

Although the mother's testimony was sincere, what gives pause is the timing and communications by the mother, and the absence of any information supplied to the District that the parents were pursuing private evaluations. The process is supposed to be collaborative as part of the CST, yet the parents never shared such information throughout the District's evaluations, at the time of IEP meeting on August 16, 2021, and when they unilaterally placed R.E. at SCHI. The timing of communications by the parent was very calculated. It is not believable that the parents made the choice to send R.E. to SCHI within a few days of observing that program "at the beginning or middle of October" to when R.E. first attended SCHI on October 12, 2021.

The mother stressed how she had to plan things in advance. It is apparent that SCHI was under consideration well before the student was placed there. The timing of the parent's referral and retention of experts to support the SCHI placement, and the key words and phrases used by the mother in her communications to the District support that the unilateral placement was a decision made in advance. They went through the motions of attending the IEP meeting, attending orientation, and conditioning consent to implement the IEP on doing an observation of the District's classroom. Hence, it is evident the mother's intent was to get the best for her child through her eyes as a parent and the sequence of events as they unfolded lends significant doubt that the parents ever genuinely intended to send R.E. to the public school, and in fact they never did.



## **LEGAL ANALYSIS AND CONCLUSIONS**

The Federal Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §1400, et seq., was enacted to improve education for disabled students. One of the purposes of IDEA is “to ensure that all children with disabilities have available to them a free appropriate public education [FAPE] that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living[.]” 20 U.S.C. § 1400(d)(1)(A). A FAPE and related services must be provided to all students with disabilities from age three through twenty-one. N.J.A.C. 6A:14-1.1(d). The responsibility to deliver appropriate services rests with the local public school district. N.J.A.C. 6A:14-1.1(d).

Pursuant to IDEA, “a child with a disability” is one who has a disabling condition and needs special education and related services. 20 U.S.C. §1401(3)(A). In New Jersey, a student is eligible for special education and related services by satisfying a three-part test, by demonstrating: 1) the student meets the criteria for one or more of the disabilities defined at N.J.A.C. 6A:14-3.5(c)1-14; 2) the disability adversely affects the student’s educational performance; and 3) the student is in need of special education and related services. N.J.A.C. 6A:14-3.5(c); H.M. v Haddon Heights Board of Education, 822 F. Supp. 2d 439, 449-450 (D.N.J. 2010).

IDEA leaves the interpretation of FAPE to the courts. See Ridgewood Board of Education v. N.E., 172 F.3d 238, 247 (3d Cir. 1999). In Board of Education of the Hendrick Hudson Central School District v. Rowley, 458 U.S. 176 (1982), the United States Supreme Court held that a State provides a disabled child with FAPE if it provides “personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction.” Id. at 203. The Court reasoned that IDEA was intended to bring previously excluded disabled children into the public education systems of the States and to require the States to adopt procedures that would “result in individualized consideration of and instruction for each child.” Rowley, 458 U.S. at 189. IDEA was amended by Congress in 1997, subsequent to Rowley. The amendments focused on ensuring that students with disabilities receive a “quality public education” and not just “some benefit.” Forest Grove School District v. T.A., 557 U.S. 230, 239 (2009).

When a due process hearing is conducted to determine if a FAPE has been provided pursuant to the IDEA, “the school district shall have the burden of proof and the burden of production.” N.J.S.A. 18A:46-1.1. If a change in the student’s IEP is sought, whether by the parents or the school district, the burden to prove whether the IEP is appropriate is upon the school district. Lascari v. Board of Education of the Ramapo Indian Hills Regional High School District, 116 N.J. 30, 44 (1989). The burden of proof is by a preponderance of the credible evidence. N.J.A.C. 1:6A-14.1(d). There is no presumption of correctness on the part of the Board of Education for its proposed action. Ibid.

The child-find obligation of IDEA requires school districts to identify, locate, and evaluate all children with disabilities who are in need of special education and related services. 20 U.S.C. §1412(a)(3)(A). A school district has a duty to evaluate a child for a disability upon “notice of behavior that is likely to indicate a disability.” D.K. v. Abington School District, 696 F.3d 233, 250 (3d Cir. 2012). Once a school district has reasonable suspicion that a child has a disability, it has reasonable time to evaluate the student. The evaluation “should be tailored to the specific problems a potentially disabled student is having, [but] it need not be designed to identify and diagnose every possible disability.” D.K., 696 F.3d at 250. The assessment tools and strategies utilized by a school district for evaluation should “provide relevant information that directly assists persons in determining the educational needs of the child.” 20 U.S.C. §1414(b)(3)(C).

The parents first contend that the District failed to satisfy the child-find requirement of IDEA by not including R.E.’s diagnosis of Turner Syndrome, and other diagnoses, in the IEP under a classification of multiply disabled, rather than the classification of autism. The District asserts it utilized the appropriate primary diagnosis of autism as the classification for R.E. in the IEP.

The diagnosis of autism was the primary diagnosis for R.E. as confirmed in the medical records and through the parent provided information and reports. The parent did advise the CST that R.E. was diagnosed with Turner Syndrome. She took issue that it was not included in the IEP and was offended when the District requested confirmation

of the diagnosis. She provided the confirmation of the diagnosis in the CHOP letter of August 20, 2021. Although the diagnosis was confirmed, there was nothing specific to R.E. in the letter to indicate that Turner Syndrome was manifesting itself in R.E. in a manner impacting her education and needing to be addressed. The information specific to R.E. in that CHOP letter was at the very last line, “[R.] may require appropriate school services for her diagnosis of autism.” (R-19 at 2.) The child’s medical provider again specified autism as a primary diagnosis.

The parents took issue that McNamara did not “add” the Turner Syndrome diagnosis to the IEP upon her receipt of same. McNamara had indicated she was going to include the diagnosis in the IEP but never amended same. This is not fatal to the matter, given that there was reference already in the IEP as to the diagnosis, and the letter from the CHOP professional did not implicate any educational issues for R.E. due to the syndrome. There was no need to amend or modify the programming of the IEP with the Turner syndrome diagnosis. The CHOP professional herself noted that it was R.E.’s autism which may require school services.

The child’s other diagnoses of ADHD and ODD are noted in the IEP, although not referenced under the umbrella classification of multiply disabled. They need not be as it was entirely appropriate for the District to utilize autism as the classification in the IEP. I thus **CONCLUDE** that the classification of autism in the IEP as of August 16, 2021, was appropriate at the time. I thus **CONCLUDE** that the child-find obligation of the District has been satisfied.

The parents assert that the District breached its duty to R.E. by failing to provide a FAPE, by offering inappropriate services to meet her needs. The parents claim the evaluations done by the District were insufficient and the evaluators never observed R.E. in a natural setting, other than the evaluation setting. They further contend that the District failed to complete an educational evaluation and a psychological evaluation of R.E. The District asserts that it utilized evaluations provided by the parents and had evaluations completed in the suspected areas of disability, for OT and S/L. The IEP further confirmed that an ABLLS assessment was to be completed upon R.E. attendance at the school.

The primary method of ensuring the delivery of a FAPE is through the IEP. 20 U.S.C. §1414(d)(1)(A). An IEP outlines the child's present levels of academic achievement and functioning, outlines measurable goals and the services to be provided, and establishes objective criteria for evaluating the child's progress. 20 U.S.C. §1414(d)(1)(A)(i); C.H. v. Cape Henlopen School District, 606 F.3d 59, 65 (3d Cir. 2010). The IEP is meant to be developed, reviewed, and revised for the individual needs of the child. 20 U.S.C. §1414(d)(1)(A).

An IEP must provide meaningful access to education and confer some educational benefit upon the child. Rowley, 458 U.S. at 192. To meet its obligation to deliver FAPE, a school district must offer an IEP that is "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." Endrew F. v. Douglas County School District RE-1, 580 U.S. 386, 399 (2017).

The evaluations to be completed by the District were agreed upon during the planning meeting in May 2021. The parent never asserted that an educational evaluation or psychiatric or psychological evaluation were needed. The parents provided documentation to the District for the initial evaluation planning meeting, including: a note from R.E.'s pediatrician identifying diagnoses of ADHD, ODD, and ASD (R-4); a psychiatric evaluation which identified ASD as the primary diagnosis in and a combination of ADHD, and to rule out disruptive mood disorder (R-5); a psychological evaluation which also identified ASD as R.E.'s diagnosis and deficits in communication, socialization, and daily living activities (R-6), an assessment for ABA services from the preschool, which relied upon a VB-MAPP assessment for autism and recommended ABA services with BCBA oversight (R-7); a speech assessment from the preschool which recommended two times per week speech therapy to address R.E.'s expressive and receptive language and social and emotional goals (R-8); and an OT assessment from the preschool which recommended two times per week OT to address sensory processing performance (R-9).

The psychiatric and psychological evaluations were from 2019, which was not ideally current, given that the child was being evaluated in 2021, but there was no demand or suggestion that a more current psychological evaluation was necessary. The District

accepted same. The date of the report was less than three years old. That aligns with the regulations pertaining to when reevaluations are conducted for purposes of determining continued eligibility for special education services. The reevaluations are to be done within three years of the previous classification. N.J.A.C. 6A:14-3.8.

There was no demand or suggestion that an educational evaluation was necessary at the time of the initial planning meeting, nor as revealed during the evaluations conducted by the District. Autism was the primary diagnosis throughout the documentation provided by the parents. There was no indication R.E. had a suspected learning disability. As McNamara testified, there was nothing raised by the parents or through the evaluation process that a learning disability was suspected. Even if an educational evaluation had been done, McNamara noted it may have provided additional information, but not any information that was different or pointed to a learning disability.

The parents chose to pursue private evaluations, yet never so advised the District. Those evaluations were going on “behind the scenes” in the midst of the District’s evaluations and at the time the IEP meeting was conducted in August 16, 2021. The learning consultant, Caplan, was present with the mother at the IEP meeting and never voiced an objection or concern for the need for an education evaluation. At no time did Caplan ever communicate a concern about the IEP to the District. The District’s determination to complete the ABLLS was upfront in the IEP, on page one. That assessment would be completed upon the child’s attendance in the District. It was no surprise or mystery as to the methodology of the District. The parents’ expert Stern confirmed ABLLS was an ABA based assessment effectively used to establish academic goals for a child.

It was appropriate for the District to administer the ABLLS at the beginning of the year. It is not fatal that they did not do such an evaluation at R.E.’s preschool, as asserted by the parents, that it was a necessary baseline to have for R.E.’s current status. The parents and their witnesses noted that R.E. had difficulty adjusting to change. Given such circumstances, appearing at a new school was a big change for R.E. and she needed to be provided a settling in period so that a most accurate current status could be obtained. This would be her first time in a District school. It would not be unusual for adjustments

to be made after the ABLLS was completed, just as was done at SCHI, where R.E.'s sensory needs were addressed by building up her tolerance level. SCHI also adjusted her thirty-minute physical education class, by breaking it into two tolerable fifteen minute sessions. The District's experienced caseworker, McNamara, confirmed that the initial IEP was a starting point for the child. The parents consultant Caplan confirmed that there should be constant changes for accommodations and modifications as the student is observed in the classroom by the teacher and staff. The ABLLS would enable time for R.E. to pair with her teacher and related staff, the one-to-one aide, and then the information collected would be utilized to develop very specific and accurate goals for R.E.

The failure of the parents to advise the District that they were pursuing private evaluations lends more to a calculated decision to utilize the evaluations in litigation they anticipated, planning to unilaterally place the child in a private school and anticipating the District would resist such placement. The District proposed a program it deemed appropriate with the information that was revealed to it, and as gathered through the evaluation process. I thus **CONCLUDE** that the lack of obtaining an educational evaluation or psychological or psychiatric evaluation by the District does not deem the IEP to be deficient and failure to provide a FAPE. I **CONCLUDE** the District has demonstrated by a preponderance of the evidence that it utilized appropriate assessment tools and materials based upon the suspected areas of disability, to develop the IEP.

The parents contend that the District's experts for S/L and OT failed to assess R.E. in her natural environment and failed to pursue independently obtaining information from R.E.'s preschool. The District's evaluators did meet with R.E. and her mother and did have the opportunity to observe her. They were provided reports from the preschool regarding the areas of evaluation. Most notably, the experts for both sides all agreed that R.E. had significant deficits and was in need of services. The IEP addressed OT with goals and objectives, and services equivalent to two sessions per week. The IEP addressed S/L with goals and objectives, and services equivalent to three sessions per week. The "trimester" system listed in the IEP is confusing, rather than indicating the number of sessions per week. However, the parents' experts were recommending similar, and less sessions for such related services. The parents' S/L expert initially

testified that four sessions per week would be appropriate yet altered that opinion when confronted with her report wherein she recommended two sessions per week. Thus, failing to observe R.E. in a “natural setting” did not impede the District’s evaluators from forming similar conclusions regarding her status.

Both sides referenced that data collection was a necessary part of programming including regular collaboration between the teacher, staff, and related service providers. Both sides acknowledged and stressed that changes are an integral process of educating a special needs child to make modifications and accommodations to address, such as here, R.E.’s sensory needs to allow her to access her education and achieve progress with her goals and objectives. That is what the District proposed it would do. Simply because the District classroom utilized short video clips which the mother knew would be a trigger for dysregulation by R.E., does not mean that the program was deficient. The District confirmed it would adjust its program as needed, just as the SCHI program adjusted to accommodate R.E.’s sensory needs.

Both sides also referred to their programming being based upon ABA methodology. The parents expressed concern that there was no individualized education yet took issue with the proposed discrete trial teaching. The parents’ expert expressed concern that she did not observe any individualized teaching and that the activities and lessons she observed included all students in the classroom. The District had individualized programming for R.E. outlined in the IEP. The ABA methods are utilized with a language-based program, along with discrete trial learning which allows for specific one to one programming for the student’s needs in a natural environment, a method similar to Floortime method’s goal of generalization of skills. The District’s classroom did have one to one time with the teacher or paraprofessional and the student. R.E. would have a one to one aide.

The parents expressed concern that the students in the classrooms observed at the District were below R.E.’s level of functioning. The District’s staff did not believe that to be the circumstance, based upon the documentation they had regarding R.E., which was supported by the parents’ evaluators as to R.E.’s weaknesses. Their belief is supported by the parents’ expert, Stern, as per her testimony and report that R.E. had

significant developmental delays, was extremely low in functioning in communication and social skills and based upon Stern's observations of R.E. at SCHI. Stern also confirmed that R.E. should be in a self-contained classroom setting. That is what was offered by the District.

Case manager Verdon confirmed that the Hooper class with teacher Agathangelo was a language-based program with initiation and reinforcing communication. Students observed in the classroom used augmentative devices and were not deemed to be nonverbal as this is deemed communicative. The CST indicated it could provide additional supports to promote R.E.'s language development, to address the parents' concern regarding strengthening R.E.'s language skills and learning to speak to her peers.

The parents also expressed concern that there was a student who made loud outbursts during the observed session of the District's classroom. They were concerned that R.E.'s sensory needs would not be met as she could not tolerate loud outbursts. However, the parents' expert, Stern, observed R.E. in her SCHI classroom and the Stern noted several instances when R.E. would yell out in response to a question from the paraprofessional, or just as an utterance. The District indicated that R.E.'s sensory needs in the classroom could have been addressed and ABA techniques would be implemented to increase R.E.'s noise tolerance. Verdon remarked that a quick sensory fix was to use noise cancelling headphones. She indicated that was one method, and that other accommodations could be made and addressed with building tolerance to noise. Such concerns raised by the parent do not demonstrate that the District's program lacked FAPE.

The District will be found to have satisfied the requirements of IDEA and provided a FAPE if R.E. is provided with personalized instruction and support services "as are necessary to permit the child 'to benefit' from the instruction." G.B. v. Bridgewater-Raritan Regional Board of Education, 2009 U.S. Dist. LEXIS 15671 (D.N.J. Feb. 27, 2009), citing Rowley, 458 U.S. at 189 (1982). The IDEA does not require the District to maximize R.E.'s potential or provide the best education possible. It does require a BOE to provide the educational equivalent of a "serviceable Chevrolet" to special education students; it



does not require the provision of a “Cadillac.” Doe v. Board of Education of Tullahoma City School, 9 F.3d 455, 459-460 (6th Cir 1993).

The parents’ insistence that R.E. has progressed in her placement at SCHI is not proof that the District’s proposed IEP was inappropriate. Nor is this assertion accurate since the petitioners’ S/L re-evaluation by Feller from June 2022 confirmed assessment results demonstrating regression, as compared to her prior evaluation from the fall in 2021. Rieser, the Toms River evaluator, also observed similar results in her July 13, 2021, report. There was regression in R.E.’s S/L when comparing the data collected by both evaluators from 2021 to the data from Feller’s reevaluation of 2022, after R.E. was in SCHI.

The District here must demonstrate that the IEP offered for R.E. is reasonably calculated to enable R.E. to progress appropriately in light of her circumstances. Endrew F., 580 U.S. at 399. In a unilateral placement situation, when a court is tasked with determining whether a school district has provided a FAPE, the appropriateness of an IEP is not determined by a comparison between the private school unilaterally chosen by the parents and the program proposed by the district. S.H. v. State-Operated Sch. Dist. of Newark, 336 F.3d 260, 271 (3d Cir. 2003).

The District offered an appropriate IEP based upon the evaluations and information provided to it by the parents, and R.E.’s classification and needs. There is no dispute as to the student’s areas of strengths and areas of weaknesses. The District never had the opportunity to implement its program, and never had the opportunity to assess R.E.’s status and adjust the programming as necessary, as she began her journey of education in kindergarten. The District may not have had, as Caplan alluded to in her testimony, the “luxury” of certain provisions, such as a separate quiet room and cloth swing. The District did demonstrate that it was ready and able to enroll R.E. in the Hooper autism class, in an appropriate setting, and ready to provide accommodations and modifications as appropriate. The parents are not entitled to reimbursement for a Cadillac of education when the District has a serviceable Chevrolet able to address R.E.’s needs.

I **CONCLUDE** that the District has proven by a preponderance of the competent

and credible evidence that the August 16, 2021, IEP proposed by the District offered R.E. a FAPE, with the opportunity for meaningful educational benefit appropriate to R.E. within the least restrictive environment. Having concluded that the District has demonstrated it would have provided a FAPE, the appropriateness of placement at SCHI need not be determined.

As per N.J.S.A. 6A:14-2.10, reimbursement for unilateral placement by parents is only required upon a finding that the District did not make a FAPE available to the student in a timely manner prior to the enrollment. Parents who unilaterally change their child's placement, without the consent of local school officials, do so at their own financial risk and are barred from recovering reimbursement if it is ultimately determined that the program proposed by the District affords the child with a FAPE. School Committee of the Town of Burlington v. Department of Education of Massachusetts, 471 U.S. 359, 373-374. (1985). If it is determined that the proposed program affords a FAPE, then the parents are barred from recovering reimbursement of tuition and related expenses. Ibid. A court may reduce or deny reimbursement costs based on the parent's unreasonable behavior during the IEP process. 20 U.S.C. § 1412(a)(10)(C)(iii).

The parents' claim that they fully intended to enroll the student in the District school is not supported by the timeline of events and actions of the parents. The mother emphasized that she planned things well in advance. They did provide notice of their intent to unilaterally place R.E. at SCHI. They never shared that they were having their own evaluations done, which they later revealed in litigation after the District stood by its programming recommendation and would not agree that the unilateral placement was necessary for R.E. The parents took the risk of placement, which they understandably sought to be the best possible choice for R.E. in their hearts and minds. The parents' failure to fully participate in the collaborative process by failing to advise the District of their intent to obtain private evaluations, does not support their claim that they should be reimbursed for the tuition and expenses from SCHI. I have determined that the District's IEP was reasonably calculated to have provided an appropriate education for R.E. and would have delivered a FAPE. I must **CONCLUDE** that the parents' demand for tuition and costs reimbursement due to their unilateral placement of R.E. at SCHI is **DENIED**.

**ORDER**

It is **ORDERED** that all relief sought by petitioners is **DENIED**.

This decision is final pursuant to 20 U.S.C. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2022) 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 (2022). If the parent or adult student feels that this decision is not being fully implemented with respect to program or services, this concern should be communicated in writing to the Director, Office of Special Education.



May 22, 2024  
\_\_\_\_\_  
DATE

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**ELAINE B. FRICK, ALJ**

Date Received at Agency

\_\_\_\_\_

Date Mailed to Parties:

\_\_\_\_\_

EBF/gd

**APPENDIX OF PROCEEDING**

**WITNESSES**

**For petitioner:**

Michelle Stern  
Melanie Feller  
Nicole Agathangelo  
Susan Caplan  
Y.Z.  
Kelly McNamara, recalled  
Kelly Umbach, recalled  
Yesedia Newcomb

**For respondent:**

Kelly McNamara  
Karen Rieser  
Jennifer Viola  
Renee Verdon  
Kelly Umbach

**Exhibits**

**For petitioner:**

P-1 through P-3: pre-marked, not used

P-4 District and parent communications as itemized:

P-4A Emails

1. June 7, 2021, from Yesenia Newcomb to parent (Bates 318)
2. June 7, 2021, from parent to Yesenia Newcomb with June 3, 2021, from parent to Yesenia Newcomb
3. Universal Health Care record R.E. attachment to June 3, 2021, email
4. Dr. Gittleman medical document attached to June 3, 2021, email

- P-4B email YZ to Yesenia Newcomb July 6, 2021, re Turner syndrome (Bates 322)
- P-4C email August 16, 2021, Kelly McNamara to Y.Z. (Bates 324)
- P-4D email Jason Hughes to Kindergarten parents, August 18, 2021, (Bates 346)
- P-4E email Y.Z. August 26, 2021, regarding observation of class (Bates 348)
- P-4F email Kelly McNamara to Y.Z., August 27, 2021, regarding observation (Bates 350)
- P-4G email Y.Z., August 31, 2021, consent to implement initial IEP (Bates 352)
- P-4H email September 1, 2021, from Kelly McNamara to Y.Z. re observations (Bates 355)
- P-4I email September 17, 2021, from Renee Verdon to Y.Z. cancel observation (Bates 357)
- P-4J email September 20, 2021, from Kelly Umbach to Y.Z. regarding Hooper observation rescheduling (Bates 359)
- P-4K email September 24, 2021, from Y.Z. to Kelly McNamara re observation that day with concerns (Bates 361)
- P-4L email September 23, 2021, from Kelly Umbach to Y.Z. reply re concerns (Bates 363)
- P-4M email Kelly Umbach, September 28, 2021, to Y.Z. regarding other observations (Bates 365)
- P-4N email Y.Z. to Kelly Umbach, September 30, 2021, unilateral placement at SCHI (Bates 368)
- P-4Q email Y.Z. to Kelly Umbach, October 12, 2021, re concerns (Bates 375)
- P-5D August 16, 2021, Meeting attendance sheet, (Bates 407)
- P-8B S/L Evaluation Re-Evaluation by Melanie Feller, June 13, 2022, (sixteen pages; Bates 798-813)
- P-8C Melanie Feller, curriculum vitae (Bates 815-819)
- P-9A Susan K. Caplan observation report September 24, 2021, of proposed Kindergarten autism program (Bates 822-823)

- P-9B Susan K. Caplan observation report October 8, 2021, of additional Toms River programs (Bates 825-826)
- P-9C Susan K. Caplan observation report December 22, 2021, of SCHI program (Bates 828-830)
- P-9D Susan K. Caplan curriculum vitae (Bates 832-835)
- P-11B Educational Evaluation dated May 17, 2022, by Michelle Stern (Bates 867-880)
- P-11C Michelle Stern, resume (Bates 882-883)

**For respondent:**

- R-3 Student Registration Form, Toms River Regional Schools
- R-4 Medical and health information and documentation regarding R.E.
- R-5 Psychiatric Evaluation, April 25, 2019, by Dr. Sajjad A. Zaidi
- R-6 Psychological Evaluation, May 10, 2019, by Dr. Nita Elbaz, PsyD
- R-7 Star Therapeutics ABA Treatment Request, initial assessment May 17, 2019
- R-8 Star Therapeutics S/L evaluation April 30, 2019; Assessment Summary April 30, 2019
- R-9 Star Therapeutics OT re-evaluation October 29, 2020
- R-10 Invitation for Initial Identification and Evaluation Planning letter, April 28, 2021
- R-11 Initial Identification and Evaluation Planning-Proposed Action letter, May 14, 2021
- R-12 Authorization to release records from Imagination Preschool to the District
- R-13 Consent for Initial Evaluation signed July 1, 2021, by Y.Z.
- R-14 Social History assessment report June 9, 2021, Kari Lefebvre
- R-15 O/T evaluation report July 12, 2021, Jennifer Viola
- R-16 S/L evaluation report July 14, 2021, by Karen L. Rieser
- R-17 Invitation for Initial Eligibility Determination and IEP Development (if feasible) letter August 2, 2021
- R-18 IEP August 16, 2021, for implementation 2021-2022 school year, kindergarten full day
- R-19 CHOP clinical genetics center letter, August 20, 2021

- R-20 Consent to Implement Initial IEP
- R-21 District correspondence with parents, August-October 2021
- R-22 District response to unilateral placement letter, October 1, 2022
- R-23 Invite to google meets conference of October 15, 2021
- R-24 Conference Summary by Renee Verdon October 15, 2001
- R-25 Student Attendance Report for R.E. 2021-2022 school year, as of October 22, 2001
- R-26 Educational Evaluation August 16, 2021, by Michelle Stern, LDTC
- R-27 Alphabet Soup Speech Consultants LLC by Melanie Feller, August 21, 2021
- R-28 pre-marked, not used
- R-29 Karen Rieser, curriculum vitae
- R-30 Jennifer Viola, resume
- R-31 Renee Verdon, resume
- R-32 Kelly Umbach, resume