



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. EDS 05885-24

AGENCY DKT. NO. 2024-37293

J.B. AND P.B. ON BEHALF OF C.B.,

Petitioners,

v.

CHERRY HILL TOWNSHIP

BOARD OF EDUCATION,

Respondent.

Michael I. Inzelbuch, Esq., for petitioners

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

Record Closed: December 19, 2024

Decided: January 24, 2025

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

STATEMENT OF THE CASE

In accordance with the provisions of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C.A. § 1415, J.B. and P.B. have requested a due process hearing on behalf of their daughter, C.B., who is classified as eligible for special education and related services. Petitioners' dispute the district's proposed IEP and seek placement at the Laurel School and reimbursement for associated costs with placement and services. At issue is whether the February 6, 2024, IEP offered by the district was reasonably

calculated to enable C.B. to make progress appropriate in light of C.B.'s circumstances in the least restrictive environment.

PROCEDURAL HISTORY

Petitioners filed a request for due process with the Office of Special Education (OSE) on April 1, 2024. Respondent filed an answer to the petition for due process on April 8, 2024. The matter was transmitted by the OSE to the Office of Administrative Law (OAL) where it was filed as a contested case on May 3, 2024, pursuant to N.J.S.A. 52:14B-1 to B-15 and N.J.S.A. 52:14F-1 to F-13. A telephone pre-hearing conference was conducted on July 9, 2024, and a pre-hearing Order was entered on July 10, 2024, scheduling the matter for hearing December 3, December 9, and December 12, 2024. The December 3, 2024, hearing date was adjourned on consent and the matter was heard in person on December 9, 2024, and December 12, 2024, with the last witness testifying remotely via Zoom audio and video technology at 3:30 p.m. on December 12, 2024. The parties made oral closing arguments and reviewed the evidence admitted. The record remained open for one week to allow the parties the chance to submit any additional evidence they believed should be admitted and the record closed on December 19, 2024.

FACTUAL DISCUSSIONS AND FINDINGS

Testimony

Jamie Esters testified on behalf of the respondent. She is employed by the Cherry Hill School District and has been for three years as a school social worker and case manager. Her resume accurately reflects her educational background and work history. (R-30.) She has both a bachelor's and master's degree in social work. She has never testified in any legal proceeding before. The case manager oversees the special education programming and delivering different programming based on the student's needs. She is licensed by the State of New Jersey as a school social worker. As a case manager she develops IEPs, meets with the parents, collaborates with the team at the school and outside the school. As a social worker, she is not an expert in learning evaluations or psychological/cognitive evaluations. She develops IEPs as part of a team

effort and collaborates with other members of the child study team which consists of a psychologist, social worker and learning consultant who collaborate and deliver the best that they can for their students. She has heard the phrase free and appropriate public education and understands the term to mean the delivery of program related services based on the child's needs in the public school system. Least restrictive environment is providing students with services as much as possible with their general education peers. She considers herself an expert in the field of special education because of her experience providing for her students and collaborating with her team. She has been able to understand what special education looks like and how to deliver same. She has managed approximately seventy to eighty students per year and has facilitated the writing of the IEPs for all of them. There has never been a time where placement decisions have been made outside of the team. In her experience in developing IEPs, the focus is on providing a free and appropriate public education to the student in the least restrictive environment. Socialization and exposure to general education is very important. The biggest difference between an ISP and an IEP is that the ISP is not a guarantee where an IEP.

She has never held herself out as an expert in special education. She has taken a course in special education during her master's program. She writes the meeting page, the classification, and the placement category with general education students. She collaborates with the rest of the team regarding the modifications and accommodations and the goals and objectives.

Ms. Esters was not accepted as an expert in special education but was accepted as an expert as a school social worker and case manager.

Ms. Esters learned that C.B. was going to be a student that she would case manage the summer of 2023 when C.B.'s mother wrote a letter advising that she was going to be a student at Cherry Hill. C.B. had an ISP at her previous school so mom wanted to get in touch with the case manager to set up a meeting. The first contact she had with C.B.'s parents was an email from mom and then mom also came to the school over the summer and Ms. Esters met with her.

Ms. Esters received the previous ISPs for C.B. (R-3 and R-4.) These documents describe evaluations from 2021. R-4 was the ISP for third grade, although C.B. ended up coming to Cherry Hill. The evaluations summarized in R-4 are the same evaluations summarized in the prior ISP. This was not a problem as the student is usually evaluated every three years, so they carried over the evaluations from R-3 to R-4. Her obligation upon receiving records from a non-public school for a child coming to Cherry Hill, is that within thirty days of C.B. coming to Cherry Hill, they must develop an IEP regarding programming, related services and goals and objectives. From what Ms. Esters saw, C.B. was only receiving supplemental instruction once weekly for thirty minutes. (R-4 at 66.) Based on C.B.'s evaluations, she qualified as eligible for special education under specific learning disability and that they should create her program and placement to be pull-out resource. They were able to offer C.B. pull-out resource placement for both ELA and math. She develops an IEP based on what they know about the child and her records. Based on C.B.'s evaluations and areas of need, Ms. Ester's impression was that C.B. could benefit from more direct instruction throughout the entire school day. Pull out resource is a small group classroom with no more than nine students in a classroom. When there are more than six students in the classroom there is an aide in addition to the teacher. They replace the instruction that is given in the general education classroom and can modify the curriculum and the pace of instruction.

R-5 is the July 27, 2023, IEP that they created when C.B. transferred to Cherry Hill. R-6 is an email communication between mom and Ms. Esters sent August 22, 2023, wherein Ms. Esters is advising that she was reviewing C.B.'s IEP and realized that her speech/language goals did not save for this school year and attached a consent form to add her goals into her current IEP as listed in the IEP from Resurrection. (R-6.) The consent form was sent so that she could amend the IEP to include the speech and language goals. R-7 is the IEP amendment consent form and the amended August 25, 2023, IEP which included the speech and language goals. C.B.'s first day of school was after the second IEP. Ms. Esters did offer J.B. another chance to visit the school in addition to the tour she had with the principal, Mr. Parks, but does not believe she visited again, but she did want to offer her the opportunity.

The first page of the IEP proposed pull-out resource replacement for math, reading and writing five times per week for forty-five minutes. C.B. would go to her general education homeroom. Then for math, reading and writing she would go into the pull-out resource classroom and then in social studies and science she would be in a general education classroom with a general education teacher with the support of a paraprofessional in that classroom. The Present Levels of Academic Achievement and Functional Performance (PLAAFP) summarizes reports from 2021. They did not reevaluate her in the summer of 2023 because she was not due for evaluations until June 2024. Ms. Esters had no reason to doubt the accuracy of the evaluations from 2021. It is helpful to get to know the student as a learner in the classroom. It was part of Ms. Esters responsibilities as her case manager to check how C.B. was doing as she started school in Cherry Hill in September and October. She visited her classroom and saw her in other settings such as at lunch and C.B. seemed happy. The strengths of the student Ms. Esters listed in the IEP were taken from C.B.'s evaluations which she synopsized from the prior pages. (R-7 at 98.)

The -thirty-day review IEP meeting took place over the summer. Ms. Esters recalled the meeting and that the parents mentioned no major concerns aside from concerns about being in a new school and anxiety, but other than that, there were no concerns, and she listed that there were no concerns of the parents. (R-7 at 98.)

Under the PLAAFP on page four of the IEP, there are statements regarding Speech/Language, Occupational Therapy, and Educational Performance which Ms. Ester's obtained from C.B.'s previous ISP from her prior nonpublic school. It was determined that C.B. was classified eligible for special education and related services under the category Specific Learning Disability in one or more of the basic psychological processes involved in understanding or using language, spoken or written, that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell or do mathematical calculations including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. It is characterized by a severe discrepancy between the student's intellectual ability (full scale IQ) and current achievement in one or more of the following areas: Basic Reading Skills and Mathematical Problem Solving. (R-7 at 5.) That is why Ms. Esters chose Specific

Learning Disability as the classification. Ms. Esters indicated in the IEP that Behavioral Interventions were not appropriate at this time. (R-7 at 101.) She wrote that because there was nothing to indicate that C.B. needed behavioral interventions since she was not exhibiting any behaviors at the time.

Ms. Esters collaborated with C.B.'s teacher, Ms. Sabila, in drafting the goals and objectives listed in the IEP. (R-7 at 102-104.) Ms. Sabila was given access to the same reports that Ms. Esters was able to review. Based on her expertise as a case manager, she believed the goals and objectives were appropriate, based on the records they received and what they knew about C.B. at the time. Ms. Esters contributed to the balance of the IEP including the Accommodations and Modifications and Supplementary Aids and Services listed at page 10 of the IEP. (R-7 at 104-105) and from a case management standpoint, these were appropriate based on what she knew of C.B. Ms. Esters completed the rationale for removal from general education section of the IEP and felt it was appropriate from a case management perspective based on what she knew of C.B. at the time. (R-7 at 12-13.) Aside from the pull-out resource placement, the other settings available for a student with special needs was an inclusion class with both general education and special education students and co-taught taught by a general education teacher and a special education teacher. They also have a self-contained Language Learning Disability (LLD) classroom. They chose pull-out resource for C.B. over the other settings based on how she performed on her evaluations. Although she had significant delays in ELA and math, they also saw she had a high IQ and the potential to perform so pull-out resource seemed to be the best option for her.

The neuropsychological evaluation was sent to the district by the parents once it was completed in either October or November. (R-8.) They sent it to Ms. Esters via email and she shared it with the team and set up a meeting to discuss the results. Ms. Esters read the report and gave copies of it to her team members. The report was kept in the normal course of business.

R-9 is an e-mail exchange between Ms. Esters and J.B. from October 26 through November 8, 2023. The first email is from J.B. to Ms. Esters and states "Hi, I just wanted to touch base on whether you were able to find any tutors available in the district for C.B.?"

And also about the form for the tech eval?” This was after their meeting where they discussed the next potential steps to support C.B. Ms. Esters had said that they have a list of tutors within the district that were able to provide resources for the family. They also talked about completing an assistive technology evaluation based on some of the findings contained in the neuropsychology report regarding her auditory processes that she could benefit from a technical evaluation. Ms. Esters remembers that J.B. was pretty upset at the meeting because she was worried about C.B. and wanted the best for her child. The discussion about tutors was about getting extra support for C.B. They knew she had already had an outside tutor, but the parents were looking for more support for C.B. so the district gave them a list of tutors that they had within the district. At this time, Ms. Esters believed C.B. was doing well in the classroom. However, she believed J.B.’s concerns were typical because C.B. was performing below what they had expected based on what the ISP showed. Ms. Esters believed J.B. had legitimate concerns as the parent.

An Assistive Technology (AT) evaluation determines whether a student would benefit from text to speech or an FM system in the classroom to help them hear. Students sometimes have problems with attention and focus and these supports within the classroom can help the student. As the email chain continues, Ms. Esters email of October 27th advises J.B. that she is compiling the list of tutors and sending the consent for the AT evaluation through the collaboration portal, so she could sign the consent form, and they could start the AT evaluation. (R-9 at 136-137.) Ms. Ester’s email of November 2, 2023, attached a list of tutors and advised that the services would be provided after school hours and coordinated with the tutor. Ms. Esters also advised J.B. that C.B. was currently receiving multisensory reading instruction and that they are continuing to see if different programs are offered within the district. (R-9 at 136.) In the pull-out resource classroom C.B. was receiving the SPIRE reading program which is a multisensory reading instruction that is delivered within the district to help students with decoding, encoding, and fluency in their English Language Arts program.

Ms. Esters did not see the November 29, 2023, email J.B. sent to the Superintendent and Board of Education (R-10) until she saw the hearing exhibit binder. Ms. Esters also did not see the December 15, 2023, letter from Mr. Morgan to Ms. Mallory until she saw it in the hearing binder. (R-11.)

The progress Report for C.B. for the first marking period is her report card and is not reporting her progress towards her IEP goals. (R-12.) The grades of one, two three, and four are provided by the teacher. As C.B.'s case manager, Ms. Ester's did not have any concerns that for the first trimester C.B. had some "1"s but mostly "2"s because it is pretty typical and the "2"s mean that they are developing their skills and that is expected for the first marking period for any student.

R-13 is the progress report showing progress towards C.B.'s IEP goals and objectives. The first page of R-13 is a letter dated November 11, 2024, which is not the date it was first issued but the date it was downloaded. This progress report covers the first marking period for the 2023-2024 school year. The teacher provided the input for this document, and it is a complete document. The first reading goal states that when presented with a third-grade level literature text and/or specific informational text from C.B.'s content area subjects, C.B. will read seventy-five words per minute fluently with accuracy and appropriate rate. The code "SC" means see comments which are listed under the objective/ benchmark and indicates that C.B. was progressing gradually. C.B. was making progress toward her goal of reading seventy-five words per minute. She was currently reading between twenty-three to twenty-five words per minute, which had doubled since the beginning of September. (R-13 at 153.)

R-14 is the assistive technology evaluation which was kept in the normal course of business. R-15 is a copy of the educational evaluation by Jaime Lehrhoff, dated January 29, 2024, that the parents had done outside of school. The district did not have this report before C.B. left the school.

R-16 is the February 6, 2024, IEP for C.B. This meeting was called because now they had additional information with the receipt of the AT evaluation, and they wanted to include it in the IEP. They changed the IEP to add additional services for the rest of the school year based on this evaluation. The AT that was added was that the AT consultant would come in and push in with the students and work with them directly throughout the school year. The technician added extensions on C.B.'s Chromebook like text to speech and different programs to help her with her writing.

Under concerns of the parent, it was noted that her parents were concerned with C.B.'s emotional well-being as her academic challenges as well as her diagnosis of dyslexia have taken an emotional toll on C.B. Her parents wanted to ensure that the appropriate supports are provided for C.B. in all areas, academic and social/emotional. (R-16 at 202.) Ms. Ester's included this because J.B. had expressed these concerns to her at the meeting. The virtual meeting was attended by Ms. Esters, the parents, Jodi Rosenfeld (Sabila), Nicole Palmer, the assistive technology specialist, Trina Ragsdale, the speech therapist, Melissa Bergstrom, the general education teacher, and the advocate, Mr. Morgan. She remembers the meeting being very tumultuous and the advocate being very rude. She does not remember exactly what he said. She formed an impression during that meeting that the parents were not happy with the Cherry Hill program.

The classroom modifications section of the IEP which begins on page 12 of 17 of the IEP (R-16 at 209) describes multisensory reading instruction and providing books on tape, CD or read aloud computer software, which was added to the IEP because of the assistive technology evaluation. The modifications and accommodation section Ms. Esters included was a carryover from the prior IEP, plus new materials from the AT report.

As a case manager Ms. Esters believed the goals and objectives were appropriate. She observed C.B. in the classroom and her impression was that she was doing well. She was always friendly and greeted Ms. Esters when she went into the class. C.B. was always happy and she worked hard. The teacher said she was doing well, working hard and making progress from the beginning of the school year and was becoming more comfortable in her new school, making new friends and she was doing well.

R-17 is the notice they received advising that C.B. would be going to a different school. Ms. Esters recognized R-18 as a February 22, 2024, letter from Robin Ballard of Schenk Price to Mr. Morgan in response to R-17.

On cross-examination, Ms. Esters stated that she had no specific training with the SPIRE program. She has reviewed worksheets indicating C.B.'s progress with the SPIRE

program but there were no grades on those. She gathered the data from the classroom teacher but did not share the worksheets with the parents. There was no reason that they did not. Ms. Esters was aware that the parents had a problem with the SPIRE program because they told the CST that during the meeting when the advocate was present. She understands that as the case manager, one of her jobs is to relay to the parents the students progress, or lack thereof the child is having at school. Ms. Esters stated the parents did not request of her data regarding their daughter's progress. When Ms. Esters has a meeting with parents, she logs in 'Frontline' that a meeting occurred and what happened at the meeting. Frontline is a computer program they use to document and create IEPs and generate meeting invites. When the parents met with her in July and in August, she would have logged into Frontline and noted what occurred. She had a meeting with the parents in October to assess progress and review or revise. She sent an invite notice for that meeting. It was not the entire CST, but her, the parents and the teacher.

Ms. Esters was aware that C.B. went to the nurse's office sixteen times from September to February. She does not know why she went to the nurse's office sixteen times, but mom, J.B., had shared that C.B. was nervous and was having stomach aches. Mom told them that C.B. would come home from school nervous and talk about her frustrations throughout the school day. Ms. Esters would check in with C.B. throughout the day but she does not know how many times she checked in and does not keep a record.

They wrote an IEP that only went to June because they just write it for the school year and then have an annual review before the year was over for the next school year. They did not schedule an annual review meeting or evaluate C.B. because they did not have the chance to do so. Ms. Esters did not make any contact with the parents after they placed C.B. at Laurel. She did not make any attempts to speak to anyone at Laurel. They received the unilateral letters that the parents sent, but she does not know when. J.B. had told them that C.B. was not coming back.

Triennials have to be done every three years, but they can be done sooner if you needed to gather more information. J.B. had advised Ms. Ester's that C.B.'s experience

at the Catholic school was not the best. Ms. Esters did not know specifics other than she did not have a good school year, was nervous a lot and the teachers yelled at her. Everything she needed to take notes on was included in the IEP so she did not take separate notes of the July or August meetings. However, it was pointed out that what mom relayed about C.B.'s experience in Catholic school was not reflected in the IEP. The July 27, 2023, IEP meeting was virtual. Under concerns of the parent, Ms. Esters listed none although she did admit that J.B. expressed a concern about C.B.'s transition to the public school. (R-5 at 4.) She does not know why she did not list that under concerns of the parent. Before C.B.'s arrival in the district she was already classified as SLD based on basic reading skills and math problem solving in the prior ISP. The goals and objectives listed came from C.B.'s teacher, Ms. Sabila who inserted them in the IEP. (R-5 at 8-9.) Cherry Hill accepted the prior reports from 2021. Ms. Esters was not aware of any particular form used when the CST considers an outside report and accepts or rejects it.

Ms. Esters had no substantive communication with anyone from Resurrection or with the commission who prepares the ISP. She did not think it was necessary as she had the PLAAFP where the teachers discussed her performance in the classroom. The ISP dated June 16, 2023, under Supplemental Instruction provides a description of how C.B. was doing in ELA and Math (R-4, at 60): "C.B. is a second grader who receives Supplemental Instruction once weekly within a small group setting in the Resource Room during LAL. C.B. continues to struggle with putting sounds of words together. She will look at the first letter of a word and put a word in that begins with that letter even though it doesn't fit in the context of the sentence. In Math, C.B. will benefit from repetition and review of basic addition and subtraction facts. She still needs a number line to add and subtract. C.B. benefits from working in a small group, repetition of directions and extra time to complete assignments. The curriculum is at a second-grade level. Loretta McDevitt – 6/12/2023."

Ms. Esters had enough information to create a Cherry Hill IEP for C.B. She knew C.B. was receiving pull out resources but did not know with certainty how many times a week she was getting it. Although J.B. said C.B. was receiving pull out resource room five times a week, the service plan mentioned pull-out instruction once weekly.

The second IEP of August 25, 2023, (R-7) was an amendment on consent without a meeting and this is where Ms. Esters added C.B.'s speech and language goals. She knew that the parents had expressed concerns with C.B.'s transition to Cherry Hill and some anxiety she dealt with at their July meeting, but Ms. Esters did not receive any new concerns between the July meeting and the amendment in August.

The neuropsychological evaluation (R-8) was received either in October or November and the team met via Zoom with the parents to discuss the report. It was an assess progress review meeting to see if anything was to be changed in the IEP. Ms. Esters did not recall the date of the meeting. They considered the report helpful information. Ms. Esters, Ms. Sabila, the speech language therapist, Ms. Apple and at least one of the parents were present for the meeting. C.B.'s intelligence testing showed a full-scale IQ of ninety-one, which is average and many of C.B.'s scores were average or borderline. (R-8 at 5). Ms. Esters did not share the report with a learning consultant because the report would not have changed anything that they were recommending for C.B. in the IEP. She was already found eligible under Specific Learning Disability and the report did not change any of that. The neuropsychological report concluded that "C.B. meets criteria for a Specific Learning Disability in Reading (Dyslexia), Mathematics and Written expression". (R-8, at 15.) The report also concluded that C.B. has ADHD. (R-8 at 16.) The team agreed with these findings. The report also indicated that "Emotional/behavioral ratings completed by C.B. revealed concerns in the areas of attitude to school, atypicality, locus of control, social stress, anxiety, depression, sense of inadequacy, attention problems, hyperactivity. . ." (R-8 at 16.) Ms. Esters believed they discussed this also, but she does not recall what was specifically discussed.

On November 8, 2023, at 10:40 a.m. J.B. wrote to Ms. Esters and said "I have not heard back from you this week. I hope you can understand my frustration. I need to make sure that my daughter gets the appropriate instruction in school to make progress. She is not making progress in her reading ability with the current intervention." (R-9 at 135.) Although Ms. Esters did respond to J.B. the same day at 2:50 p.m. she did not respond to mom's claim that C.B. was not making progress in her reading ability. Mom had also written in her email "If you cannot help me or C., please tell me who I should talk

to in order to get appropriate instruction for her in school.” Ms. Esters told mom that Cherry Hill did not have a specific program for dyslexia and that C.B. was in the program where all of the students with dyslexia are placed. Ms. Esters does not recall saying to mom that she thought it would be a good idea to have such a program, but she does recall telling mom that she understood her frustrations and that if she had concerns, aside from telling Ms. Esters, to bring her concerns to the board of education to see if perhaps they would address the issue. Ms. Esters believed mom’s concerns were justified. Ms. Esters was not copied in on the email mom, J.B., sent to the superintendent and the board of education. (R-10.) The team was aware that C.B. had dyslexia, dyscalculia, dysgraphia and ADHD. Ms. Esters recommended a tutor for C.B. because mom was asking for help, even though C.B. had a tutor. She also recommended the assistive technology evaluation.

Ms. Esters saw that J.B. wrote in her letter (R-10) that the teachers and staff were wonderful. Ms. Esters said J.B. was always cooperative and collaborative with her. Mom also complained in R-10 that her child was being taught by a non-certified teacher in the SPIRE program. Ms. Esters did not know anything about that. She knew that C.B.’s paraprofessional who was not certified was teaching C.B. in the SPIRE program. Ms. Esters did not know how many times a week C.B. received SPIRE or for how many minutes a day she received SPIRE. Ms. Esters directed the aide to provide C.B. with SPIRE. C.B. received it in the classroom and then the aide pulled her for SPIRE. Ms. Esters explained that they had multi-sensory reading instruction as one of C.B.’s accommodations and she wanted to make sure the teachers or whoever would be working with C.B. were aware of that.

C.B. has difficulty in reading and writing and there is reading and writing in science and social studies, yet C.B. does not get the benefit of a special education teacher in those subjects. Ms. Esters explained that they want to make sure the students have an opportunity to be with their neurotypical peers as much as possible. They believed that although C.B. has difficulties in reading and writing, she could be in a general education classroom with the support of a paraprofessional for science and social studies. The IEP provides under “Supplementary Aids and Services” that C.B. will receive “Supplementary Support by Teacher’s Aide in General Education Classroom.” (R-7 at 105.) Ms. Esters

understands that an aide is not equivalent to a special education teacher and does not teach but redirects the student. Ms. Esters did not know how many students were getting the benefit of the aide in the general education classroom.

The February 6, 2024, IEP started September 5, 2023, because her placement did not change. (R-16.) The assistive technology report recommended, and the IEP reflects that C.B. receive individual assistive technology services three times a year for thirty minutes. (R-16 at 1.) Ms. Esters went into C.B.'s classroom to observe C.B. but does not know how many times she did. She also spoke to the teacher, Ms. Sabila. The PLAAFP in the IEP is supposed to inform everyone how the student is currently performing in various subjects. C.B. was in the Cherry Hill school district approximately five months when the February IEP was drafted yet under educational performance section, there is no current PLAAFP information for math, language arts, science or social studies. The information contained is all from the previous school year. The current levels should be reflected because it represents the most up to date information on the student. She did not notice before today that the PLAAFP was not up to date. The IEPs are reviewed by supervisors. The supervisor for Ms. Esters building was Ms. Ragsdale and although she discussed the IEP with her, she does not recall if she reviewed the IEP with her. The goals and objectives are also the same goals as R-7, which were taken from the Resurrection ISP goals. Ms. Esters explained that typically, at the annual review meeting they would update the PLAAFP and change the goals and talk about the plan for the next year.

Ms. Esters testified that C.B. was doing well in the months she was in the district, but it is not reflected in the February IEP and it should have been.

Ms. Esters did not know what other reading program was offered in the pull-out resource room besides the SPIRE program. The Eureka program is used in Math. C.B. was in general education for science and social studies, but she did not know the size of those classes. No more than nine students can be in a pull-out resource class, and if you have more than six students there has to be an aide in the class. Ms. Esters did not recall the specific number that were in C.B.'s resource room.

Ms. Esters was asked to gather C.B.'s educational data around May 22, 2024. (R-24.) She was not asked for the Front-Line records or her notes.

Ms. Lehrhoff's report was sent to Ms. Esters by the parent, and she reviewed it. (R-15.) It was after C.B. had already left the school so they did not have a team meeting about it. She does not know what she did with the report. Ms. Esters was present when Ms. Lehrhoff did the January 24, 2024, observation of Ms. Sabila's classroom, but Ms. Esters did not take any notes. When an outside observer comes in, she just has to be present in the classroom to assist. She did not take any notes of any of the observations of Ms. Lehrhoff or Ms. Bernstein.

Ms. Esters is no longer the case manager for C.B. since she is no longer in their school. After ten days of a student not attending school, they are automatically removed from the Genesis system and Ms. Esters presumed that C.B. was no longer their student.

When the district receives a transfer student, they have thirty days to review the IEP that was received from the previous district to create the student's IEP. Ms. Esters does not know if there was an FM system in the classroom.

At the February 2024 IEP meeting, the parents were concerned with C.B.'s lack of progress in her reading abilities and wanted more supports. Their response was that C.B. was making meaningful progress towards her IEP goals based on the data they collected. The data they collected is not in the IEP. At the meeting when mom raised her concerns about C.B.'s rate of progress, she had Ms. Sabila go over the information and data she had collected throughout the school year for C.B. including the DIBLES information, her levels and progress made. This was discussed at the meeting although it is not reflected in the PLAAFP because they do not update the PLAAFP until the annual review meeting. Ms. Sabila had explained that C.B. had increased her fluency and was making progress towards her IEP goals. There are progress reports after the first semester ending in December indicating that C.B. was progressing gradually, although it is not reflected in the IEP. Ms. Esters did not believe the information contained in R-20 was reviewed at the IEP meeting and she was not certain if the SPIRE information contained in R-19 was reviewed at the IEP meeting. Ms. Esters did not recall if Ms. Sabila advised the parents

at the meeting at what grade level C.B. was operating. Ms. Esters did not know specifically what the parents were shown at the meeting by Ms. Sabila. Ms. Esters showed them the assistive technology evaluation. (R-14.) AT services were recommended three times for the remainder of the school year, and they would discuss the amount of services for the 2024-2025 school year during C.B.'s annual review. (R-14 at 169.) She was evaluated for assistive technology and found eligible for services, and they amended her IEP to reflect the assistive technology services. The AT specialist was Nicole Palmer who was present at the meeting. The January 8, 2024, Assistive Technology Evaluation was added to the PLAAFP (R-16 at 2).

Ms. Esters was present when Ms. Sabila (Rosenfeld) told mom that she was not able to deliver the SPIRE program with fidelity. She was not sure if this was during a meeting or a telephone conference call, but it was in response to mom expressing her frustrations about C.B.'s progress.

Ms. Esters has seen Ms. Sabila's notes regarding what was presented at the February 6, 2024, meeting. She would defer to Ms. Sabila's recollection of that meeting based on her detailed notes. Ms. Esters saw Ms. Sabila's notes during the IEP meeting. Ms. Sabila had an outline of what she wanted to cover. (R-36.)

Jodi Sabila (f/k/a Rosenfeld) testified on behalf of the respondent. Ms. Sabila has never testified in a due process proceeding or in any other legal proceeding and was nervous. She is employed by the Cherry Hill Board of Education and has been employed by the district in various capacities for over twenty years, the last ten as a teacher. Her CV outlines her educational and work history. (R-32.) She also holds certifications as an elementary school teacher for grades K to 5 and as a teacher of students with disabilities, which she obtained in March 2010. She has been at the Knight School from 2015 to the present as a fifth-grade general education teacher as well as teaching in a co-teaching classroom and as a resource room teacher. As a resource room teacher, she is responsible for multi-aged students from third through fifth grade and instructs them in English Language Arts (ELA), which is reading and writing combined and in math. In the resource room setting she exclusively teaches students with disabilities.

Ms. Sabila taught C.B. in a pull-out resource classroom for third grade math and a joint third and fifth grade pull-out resource class for ELA. In a pull-out resource classroom students are pulled from their general education classroom to meet with Ms. Sabila in a smaller group setting and she can make accommodations and modifications in her classroom to fit the students IEP. She follows the curriculum but can also pull different resources as well. She taught C.B. during the 2023-2024 school year and had three students including C.B. in her math pull out resource setting and had six children including C.B. in her ELA pull out resource class.

Ms. Sabila was involved in the development of C.B.'s IEP in the summer of 2023. As a special education teacher, she considers herself an expert in special education. She initially paused in answering and explained that she considers herself a forever learner and can always grow. She fits the definition of an expert as she has knowledge beyond that of an average lay person in the field of special education. She plays the role of the special education teacher on the IEP team in the creation of the IEP and as such she listens and communicates with the parents as well as the rest of the child study team to create a comprehensive IEP for the student so they will be successful. A free and appropriate education is an education that is provided to students that allows them to make meaningful progress and be successful in obtaining the goals that are established in the IEP. The least restrictive environment is the environment where the student can make progress and be successful with the least amount of barriers. A pull-out resource setting is more restrictive than a co-teaching classroom because you cannot make the accommodations and modifications to the curriculum in a co-teaching classroom that you can make in a pull-out resource classroom. When she got together with the child study team and the parents for the first IEP for C.B. it was decided that based on all of the information provided and based on her prior educational experience that the pull-out resource room for math and ELA would be the most appropriate for C.B. because you could not modify the curriculum in a coteaching classroom and C.B. needed modifications and accommodations.

C.B. was in general education classes for science and social studies and for the intervention enrichment program, morning meeting and her encore subjects like art, music and gym. Ms. Sabila was her pull-out resource teacher for ELA and math and there may

have been a ten-minute overlap in the schedule when C.B. was doing computer- based programs like Learning Ally or Read Theory in the general education classroom setting. Ms. Sabila's pull out resource math with C.B. was in the morning and after lunch and recess there was the pull-out resource class for ELA.

Ms. Sabila was accepted as an expert in special education based on her expertise, her education and her certifications.

Ms. Sabila first met C.B. over the summer during a virtual IEP meeting. C.B. was home with her mom and brother and briefly came onto the camera to say hello. After that, Ms. Sabila was setting up her classroom one day and C.B. was taking a tour of the school so she came in and introduced herself. Ms. Sabila walked her around the classroom and explained what they would do in the classroom, where the bathroom and water fountain were located, so she would know a little bit before she came to school for the very first day. Ms. Sabila briefly spoke to J.B. to say hello and introduced herself. She wished them a great rest of the summer and said that they were looking forward to the start of school.

Ms. Sabila worked with the rest of the child study team to create the August 2023 IEP. (R-7.) She has reviewed the document recently before today and it is her opinion that it was appropriate for C.B. based on the information they had at the time it was created. She participated in drafting the goals and objectives and the modifications. They were appropriate based on the information Cherry Hill had at the time.

C.B. was one of three students in Ms. Sabila's pull-out resource math class and believes it was C.B.'s preferred subject with Ms. Sabila. Ms. Sabila feels that she made strides and made progress in math. C.B. also made meaningful progress based on her capabilities in ELA pull-out resource class with Ms. Sabila.

C.B.'s report card contained grades of 1s, 2s and 3s for the first trimester which were provided by Ms. Sabila. (R-12.) There was a parent/teacher conference that was in person within the first week of December. Ms. Sabila met with mom and went through C.B.'s artifacts to show her strengths and areas that she was working on, and they talked

about things that C.B. was proud of and talked about areas that needed improvement. Ms. Sabila loved C.B. and tended to focus on the positive because she knew that C.B. was a struggling learner. C.B. was able to do adding and subtracting with basic numbers, she did have the support of a math chart as well as a multiplication chart for down the road when she was doing multiplication fact fluency. Multi-step word problems were something C.B. could work on because as a third grader that is the first exposure to multi-step word problems so that was an ongoing goal they were working for. The comments Ms. Sabila listed on the report card accurately synopsized what she stated at the conference. A report card lists all of the standards that are covered throughout the year and some of them have "NA" listed because they have not yet been assessed for that marking period. A progress report lists all of the goals that are being monitored and how the student is doing with that specific goal.

C.B.'s progress report contains comments and ratings in reading and math which were provided by Ms. Sabila. (R-13 at 153.) The reading goal and objective 1.1 states "C.B. is making progress towards her goal of reading 75 words per minute. She was currently reading between 23 through 25 words per minute which has doubled since the beginning of September." Ms. Sabila considered this to be meaningful progress for C.B. since the goal is to be achieved by the end of the year and she felt that C.B. reading twenty-three to twenty-five words at that time was progressing gradually towards that goal.

Under the math goals in objective 4.1, Ms. Sabila listed "PS" for progressing satisfactorily and stated that with five three addition problems without regrouping, with support and reminders of the steps for regrouping, C.B. can solve three-digit addition problems with regrouping up to 1,000. C.B. would require support and Ms. Sabila would give her lined paper and flip the lined paper sideways so C.B. could keep her numbers in a line to add straight down or even subtract straight down. C.B. was given reminders to use the paper or strategies Ms. Sabila showed her. Ms. Sabila felt C.B. made meaningful progress from September to the end of November, beginning of December. Overall, as an expert in the field of special education, she felt that the progress C.B. was demonstrating after the first marking period was meaningful based on her capabilities.

SPIRE is a multi-sensory reading program that was developed to help students with reading disabilities to become readers and to grow as a reader. Ms. Sabila used portions of SPIRE with C.B. SPIRE was a part of the multi-age grouping of the classroom, so it was during the ELA block and Ms. Sabila was able to do about twenty minutes of instruction with C.B., three times a week or two or three times a week based on the schedule of the building. Some students were pulled out for library; therefore, it may not have always been three days per week. Ms. Sabila recalled a conversation with C.B.'s parents wherein she admitted that she was not doing the SPIRE program "with fidelity". She does not recall the exact wording she used, but she knows that for SPIRE to be productive or to be at its utmost impact it should be delivered forty-five minutes a day, five days a week. Ms. Sabila had a combined grade level of third and fifth graders in that time period for reading and writing and not all of the students required the SPIRE instruction. She was only able to get C.B. individually or with a small group for twenty to twenty-five minutes because of the limitations of the classroom. Ms. Sabila would have liked to have spent forty-five minutes per day, five days a week providing Spire instruction to C.B. Nevertheless, with the twenty minutes Ms. Sabila was able to provide C.B. two or three times per week, she felt C.B. made meaningful progress. C.B. had made progress and growth since she started with Ms. Sabila in September. Ms. Sabila used the SPIRE workbook with C.B. in class and C.B. also used the SPIRE workbook during Intervention and Enrichment (INE) instructions in her homeroom. (R-19.) The workbook went back and forth between the two classrooms. During the time Ms. Sabila worked with C.B. on her workbook pages C.B. looked forward to working with Ms. Sabila at the table one on one. C.B. was excited to pick out the stamp from the collection and stamped her workbook pages. They worked to complete the sentences and looked at the pictures shown on page 229 and 230 and the pattern repeats itself as far as the rest of the workbook is concerned. C.B. looked at the picture, identified the picture and chose the word and filling in the blank on page 231. Then on page 232 she is reading the sentence with help and then choosing the word from the bottom that fits into the sentence.

Towards the end of the workbook materials at R-19 at 260 through 262 is a document "Placement Test Recording Form" followed by a couple of pages that say, "Level 1" and "Level 2". The "Placement Testing Form" was completed by Ms. Pennington, their literacy coach. Ms. Sabila used the data to determine where she would

pick up the lessons with SPIRE and found she should have a starting point with the short vowels. Ms. Sabila assessed C.B.'s progress during the five months she had her in class based on C.B.'s ability to complete the activities they did in class, including her performance with SPIRE.

The DIBELS (Dynamic Indicators of Basic Early Literacy Skills) was used in the classroom. (R-20.) The Benchmark Maze 3. Beginning (R-20 at 267) was given in the fall. Ms. Sabila would read the practice passage to the students out loud and then they would choose the correct word to fit in the blank together for the first part and then they are given time to read the second part, and they review that together before they go on to actual passage on page 268. After the time was over, Ms. Sabila collected the tests and scored them. C.B. had two correct answers and eleven incorrect answers for an adjusted score of negative 4 in the fall. (R-20 at 267.) Ms. Sabila had an opportunity to compare her performance in the fall to an assessment done later in the year when they completed the winter benchmark on January 3, 2024. (R-20 at 272.) C.B. had three correct answers and nineteen incorrect answers for an adjusted score of -6.5. (R-20 at 272.)

The EZCBM progress monitoring for letter sounds, word reading and phoneme segmenting is a progress monitoring tool that is used in the district. (R-20 at 310-314.) On the progress monitoring for November 14, C.B. was reading twenty-three words per minute correctly. (R-20 at 313.) Then the progress monitoring for December 20 indicated that she was reading seventeen words per minute correctly (R-20 at 314) which was a decrease in her words per minute from November, but an improvement from September when she read eleven words per minute correctly. (R-20 at 316.) Ms. Sabila felt that C.B. was making improvement and indicated it was her mistake to give the December test so close to winter recess when all the students were excited for winter break.

In October/November Ms. Sabila learned that C.B.'s parents were dissatisfied with the level of progress she had been making and requested a meeting to see if there were more supports for C.B. to be more successful. Ms. Sabila attended the IEP meeting of February 6th and explained to the parents how C.B. was doing. She shared her strengths and her struggles. Ms. Sabila believed C.B. was making progress. She could not

remember her scores without looking at her notes. (R-36.) She made the notes in preparation for the IEP meeting. It encapsulates all of the data she had for each of the monthly probes for the EZCBM as well as the unit assessments for ELA and math. Her notes accurately document the progress that Ms. Sabila felt C.B. was making. There is a combination of typed notes and some handwriting on the last page which is Ms. Sabila's handwriting. These notes accurately describe what Ms. Sabila told the parents at the meeting. Ms. Sabila felt that C.B. was making meaningful progress in their program. The February 6 IEP was changed to reflect additional support services to be provided to C.B. Ms. Sabila felt these changes were appropriate.

Ms. Sabila has read Ms. Lehrhoff's report and remembered Ms. Lehrhoff criticizing her for giving instructions about adjectives and then before any of the students could answer, directing them to look at the bottom of the page. Ms. Sabila explained that it was a document that the students have in their resource folder and the students body language indicated they were confused so she prompted them to look at the bottom of the page. There was nothing inappropriate about that. Ms. Lehrhoff never sought any additional information from Ms. Sabila as to why she had done anything she had done. She has never had any communication with Ms. Lehrhoff outside of the classroom on the two occasions she observed her class.

Ms. Lehrhoff also criticized Ms. Sabila for engaging in approaches such as cold calling, activities students completed and holding students accountable. Ms. Sabila believes it is good teaching to hold students accountable for their learning, classroom management and following directions.

Ms. Sabila was also criticized by Ms. Lehrhoff for providing inaccurate information to students about a blend versus a digraph. Ms. Sabila explains she tends not to use the nomenclature because she wants the students to focus on the actual letters. She may have said there were two letters that blend together but she does not recall calling them a blend versus a digraph.

It was also not appropriate for Ms. Lehrhoff to criticize Ms. Sabila for using a scrabble game in class because it was a spelling activity where they were practicing for

their spelling assessment where they were able to look at the word, identify the letters and form the word. It was just a fun practice activity they were completing for that day.

A subsequent report from Ms. Bernstein was critical of Ms. Sabila's use of vowels and word choices and errors made on the activity page. Ms. Sabila remembered the errors on the activity page and met with students to review the errors that were made. When she did the reading for the EZCBM activity, identifying the word big versus bag by saying big has the i in the middle and bag has the a in the middle, students were able to identify those words because they know their letters.

Ms. Sabila has taught for more than ten years and if she had occasion to teach a student who she felt was not making progress, she would point it out. Ms. Sabila felt that C.B. was making meaningful progress based on her capabilities. Although Ms. Sabila admitted telling C.B.'s parents that she was not using the SPIRE program with fidelity, because ideally it should be forty-five minutes per day, every day, she still felt that C.B. was making meaningful progress. This progress is indicated in her notes. (R-36.)

C.B.'s Maze scores decreased from the fall of 2023 when they were a -4 to the winter of 2024 when they were a -6.5. Both those scores are considered well below the benchmark. In Ms. Sabila's opinion, the scores went down because she gave the winter assessment on January 3, 2024, right after winter break, which was probably not the best choice, but that is when she gave it.

The Unit 1 ELA assessment for 2022-2023 has $10/10 + 1/3 + 0/3 = 11/16$. (R-20 at 298.) The Unit 2 ELA Assessment for 2023-2024 was given February 6, 2024, and has scores of $13/15 + 1/3 + 2/3 = 16/21$. (R-20 at 282.) The first scores are the multiple-choice tests for reading comprehension. C.B. got a 10/10 in the fall and a 13/15 in February so her reading comprehension score went down. The first 1/3 score is based solely on reading comprehension. The second 0/3 is based on conventions. C.B. had a 1/6 in the fall which is one point and is indicative of limited comprehension on the rubric. In the winter she had a 3/6 which is still limited comprehension. Both assessments showed limited comprehension. Ms. Sabila believes these scores were shared with the parents but was not certain. There were a lot of people at the meeting and although Ms.

Sabila had prepared her notes, she was not able to say everything that was reflected in R-36 at the meeting. She was able to go through the entire last page. Ms. Sabila discussed C.B.'s present levels at the IEP meeting. She helped develop the IEP and provided the PLAAFP. The February 6, 2024, IEP R-16 at page 5 does not reflect any present levels of academic achievement. The special education teacher directly inputs into the program portion of the IEP. Ms. Sabila did not write any portion of the February 6, 2024, IEP and none of her data contained in R-36 is in R-16. Ms. Sabila believed the case manager had a copy of R-36 before the meeting. Ms. Sabila believed the February 6 meeting was to discuss how to improve upon C.B.'s program and what could be added. The PLAAFP are not in this IEP because this IEP meeting was really to focus on the assistive technology evaluation.

Ms. Sabila did tell J.B. that she was not implementing the SPIRE program with fidelity. Although she was not implementing it with fidelity, Ms. Sabila was trying to give C.B. the best effort she could in the time that she had her. Ms. Sabila does understand that for a program to be effective it has to be done with fidelity. C.B. received about twenty to twenty-five minutes of SPIRE two or three times per week delivered by Ms. Sabila for two days of the week for twenty to twenty-five minutes and the aide would do it during the INE instruction. Looking at the schedule contained on page 3 of Ms. Sabila's notes in R-36. C.B. was in SPIRE from 3:00-3:15 with two other students for fifteen minutes and then had ten minutes from 3:15-3:25 one on one with Ms. Sabila working on the workbook pages. Ms. Sabila indicated that she did not know why the schedule listed in R-36 does not specify that it was only two to three times a week and not five times a week.

Ms. Sabila had a handwritten notation on the last page of R-36 with the entry of "(?) social, emotional well-being". It was Ms. Sabila's notes questioning where they could implement that into her curriculum, whether it would be in the general education classroom or something that she would do in her classroom. The parents reported that C.B. had anxiety at home. Ms. Sabila did see signs of anxiety in school. Sometimes C.B. said she had a headache and put her head down and sometimes she asked for a 'brain break' where she allowed the students to do a "brain loop" where they take a break and take a walk out her door, down the hallway, down the far steps, back down the hallway and up the stairwell and back to the classroom. C.B. was exhibiting anxious behavior,

maybe shutting down, on a rare occasion putting her head down on her desk, saying she had a headache, asking to get a drink of water to leave the room since the water fountain is right outside the door or to maybe go to the restroom. Ms. Sabila did not take any data on how often C.B. did this as it was not glaring. She wrote it on the notes because it was mentioned at the IEP meeting. R-16 at 5 under Concerns of the parents: "Parents shared concerns as it relates to C.B.'s emotional well-being. Parents shared the emotional toll that C.B.'s academic challenges as well as her diagnosis of dyslexia has had on her. Parents want to ensure that the appropriate supports are provided for C.B. in all areas, academic, social and emotion." Ms. Sabila was not sure what was ultimately decided as far as implementing time with the guidance counselor.

C.B. had significant issues with reading and writing. There is reading and writing in social studies and science. Ms. Sabila was not her teacher for social studies or science. C.B. had the same accommodations and modifications in those subjects as listed in the IEP and that is considered special education. She did not have a special education teacher for science or social studies because that was not what they had as her program. Cherry Hill does not have a resource program in elementary school for science and social studies and that is why the team did not consider it for C.B.

Ms. Sabila recalled a conversation between herself, J.B. and the case manager wherein they discussed that they do not have a program that specifically addresses dyslexia and J.B. was asking for a program that specifically addressed dyslexia. She believes it was before the winter break. Ms. Sabila said that they were doing the program that they had with integrity, but not necessarily with fidelity and that they supported her advocating for her daughter.

SPIRE is a reading program approved by the district. Ms. Sabila did not know if it was approved by the National Dyslexic Association.

Ms. Sabila was trained in the SPIRE program. She met with the school's literacy coach, Paula Pennington and she walked her through the initial program and the training began in August. Training was for three hours. It is a pretty straight forward program, and anyone can use it. Ms. Pennington gave C.B. the initial SPIRE assessment for

placement and there were no other SPIRE assessments done. The initial placement test recording form (R-19 at 260) has no notes or score on it. R-19 at 261 shows C.B. was at level 1 which is the beginning level. Ms. Sabila was not sure if this translated to a specific grade level. Ms. Sabila moved through the workbook pages with C.B. and as they completed one activity they moved onto the next activity. None of the SPIRE workbook pages in R-19 are dated and they are supposed to be dated. Ms. Sabila said she completed the workbook pages with C.B. during the last ten minutes of the class time. In retrospect, she should have dated the material. Ms. Sabila did not give C.B. a score on the SPIRE material, she gave her a stamp in order to make it fun for C.B. All of the answers that C.B. gave were accurate. Some of the worksheets that were not completed were because C.B. preferred the worksheets with the pictures and the words. Ms. Sabila did not purposely provide the parents with a copy of R-19, but it did go home in her book bag one day. Ms. Sabila did not test C.B. to see what level she was at after the five months she had C.B. doing SPIRE. She began the program with C.B. in September after Ms. Pennington did the assessment and Ms. Sabila worked through the manual to cover the short vowels and then the letter combinations such as sh, ch, th and wh. Ms. Sabila's notes in R-36 do not indicate what level C.B. was at in the SPIRE program only that C.B. enjoys the magnet board and looks forward to stamping her workbook pages. Ms. Sabila was not doing the SPIRE program the way it was indicated in the workbook completing level one and then going to level 2. She was just doing the parts of the program that Ms. Pennington suggested to her to focus on with C.B.

Ms. Sabila indicated in her notes that C.B. benefits from small group instruction. The general education social studies and science class had approximately twenty students, which was not small group instruction. Ms. Sabila also indicated in her notes that C.B. benefits from repetition. She struggles with basic reading skills, oral expression and listening comprehension. Although C.B. has attention issues, given redirection she was okay in Ms. Sabila's classroom. C.B. had a problem staying organized but they had things put in place to help her stay organized.

Looking at C.B.'s math scores mid module 1 was an 96% with support. The end of the module assessment was an 86% with support and that was with the properties of multiplication and division. Module 2 was place value and problem solving with units of

measurement. Her mid module score was 100% with minimal support. Her end of module 2 score was a 92% with support. Module 3 was multiplication and division with units of 1, 2 and 6 through 9 as well as ten. Her mid-module score was an 77% and her end of module was a 72%. Ms. Sabila said a 77 with support and a 72 with support in a resource room is expected for a student with her abilities at that time. Most assessments Ms. Sabila gave them a paper copy and she read it aloud to them. Sometimes they were given a math chart and sometimes they were given a calculator.

Some of the spelling words were extremely difficult for C.B. so Ms. Sabila gave her modified grading.

Amy Bernstein, testified on behalf of the petitioners. She was accepted as an expert in speech and language services, special education and the development of IEPs, following a stipulation by counsel that she had previously been accepted as an expert in these areas in other special education matters before the OAL.

Ms. Bernstein authored one report dated July 18, 2024. (P-40.) The report listed the documents she reviewed including the February 6, 2024, IEP. She also conducted a student interview of C.B. and did a June 10, 2024, school observation at the Laurel School and an October 22, 2024, school observation at the A. Russel Knight Elementary School in Cherry Hill. She believes the district erred in that it did not take into consideration any of the phonological issues or working memory issues that were found over and over again by other evaluators and made zero goals under the speech goals having to do with phonological awareness. They only cared about articulation and did no goals for phonological awareness, decoding or anything that had to do with dyslexia. Ms. Bernstein was not allowed to speak to anyone directly but Ms. Esthers, who directed her to write down her questions and said that she would forward them to the appropriate individual. Ms. Bernstein had a question regarding the speech therapist's involvement. (P-40 at 22.) She asked if the speech therapist met with the teacher to discuss the student's goals and if so, how often. The answer she received was yes, that the speech therapist checks in with the classroom teacher frequently to establish goals that are appropriate for the given student. This happens periodically throughout the school year and if needs to be, meetings are requested to collaborate with the team. Ms. Bernstein questioned who did

not know that C.B. had phonological goals, was it the speech therapist or the teacher because somebody did not know something because no changes were made.

C.B. scored four standard deviations below the mean on the Test of Integrated Language and Literacy (TILL), which is one of the tests that Ms. Bernstein administered. That is the lowest she has ever tested anybody in the last decade. She has tested hundreds of students in the past decade, both for parents and school districts. Four deviations below the mean is a 0 percentile. Ms. Bernstein does do work for several public-school districts.

The district should have known that C.B. had phonological issues based on the neuropsychology evaluation from September 2023. (P- 40 at 3103.) There were several tests given by this doctor, several of them which are also given by speech pathologists including the Comprehensive Test of Phonological Processing (CTOPP). All of her scores on the subtests including Elision, Blending Words and Phoneme Isolation are a 6, which is below the average of 10. Her scores are so low that even without additional testing, should have been addressed. She is so below the average that she cannot access any of the curriculum or anything being taught without significant help.

The district received the neuropsychological report in October 2023 from the parents. If Ms. Bernstein was the speech pathologist on the child study team and received this report, if she was allowed, she would immediately have done testing or if she could not have done testing, she would have met with the classroom teacher. These skills would have been obvious to anyone in the classroom. The teacher could have said here is the problem and that we need to add goals, and the speech therapist who is a specialist in phonology and language should have been part of the interdisciplinary team that was working on this. There were no goals added to her IEP. There was no structured time for the speech pathologist to come in and work on this and there was no plan to do anything when Ms. Bernstein asked the classroom teacher.

The IEP of February 6, 2024, (R-16) lists the goals and objectives at pages 9 of 17 and there were no phonological goals regarding speech. The speech goals listed at six through ten do not include any phonological goals. Phonological goals should have been

included in speech goals because the speech pathologist is an expert and specialist in phonological skills. That is fundamentally what dyslexia is. A speech pathologist's whole job is phonological processes. Not only could she have done therapy with C.B., but she could also have been the one to give the teacher and other people structured things to do. The speech pathologist was left out completely of any intervention for dyslexia. The goals that are in the IEP for speech concern articulation and how C.B. talks/sounds. When Ms. Bernstein met with C.B., she asked to speak to her mother privately and pulled her aside and said that she was a little confused as to what she was planning on testing her on and what she was showing, as C.B. barely had any articulation issues, which mom acknowledged.

Ms. Bernstein administered several assessments to C.B. that showed weaknesses. The first test she gave C.B. is considered the 'gold standard' in speech pathology in receptive and expressive language and is called the Comprehensive Assessment of Spoken Language (CASL) 2nd Edition. (P-40 at 3122). On page 3125 in some areas C.B. has average skills and falls in the typical expected age range and then in other areas, her scores go all the way down to the tenth percentile. That is a huge dichotomy between what she has and what she is able to use. Her significantly lower scores were in language structure such as grammar. This is a typical profile of a child with a severe problem with dyslexia. Ms. Bernstein also gave C.B. the Executive Functioning test, which looks at her ability to use her working memory, shift and code change and is more advanced. Everything was average except the only thing she had significant trouble with was for attention and immediate memory auditory. Ms. Bernstein also administered the Oral Passage Understanding Scale (OPUS) which is another standardized scale which gives short paragraphs based on curriculum and age-appropriate information and asks them questions about comprehension, inferencing and figurative language and C.B. also did below average in the ninth percentile on that test. (P-40 at 3128.) Lastly, she was also given the TILLS, the Test of Integrated Language and Literary Skills. (P-40 at 3130.) Ms. Bernstein noted that C.B. was making immature errors for her age. (P-40 at 3132.) When Ms. Bernstein met with C.B., she had such mental anguish about school and quoted her that she had headaches and stomach aches and did not want to go to school. When she asked C.B. about Laurel, C.B. said although she missed her friends, but loved it so much better because there she did not have

stomach aches or headaches, and her body does not hurt anymore. Ms. Bernstein felt that was important and when you go back to the TILLS at 3134 it shows that in her social communication C.B. was average but in everything else she was so below average which goes to show that C.B. is very cognizant of her difficulties and as the curriculum gets harder and the age gap widens, Ms. Bernstein fears for her mental health as well because she has enough language and enough knowledge to know that she is having trouble and she had physical manifestations of that trouble. As the gap widens and kids can be brutal, it will become very hard for her. Ms. Bernstein has been doing this for twenty-seven years and these are some of the lowest scores she has ever seen.

Ms. Bernstein observed the class C.B. would have been in at Cherry Hill and believed it would not be appropriate for C.B. (P-40 at 3177.). It was a horrible observation. There was a teacher who was trying her best, but did not have control of the class. There was no structure. There was a paraprofessional whose job it was to support the class but stayed in the corner the entire time and when it came time to switch, another paraprofessional came in and sat in the corner. Ms. Bernstein had asked Ms. Esters what the role of the paraprofessionals was and was advised that they were there to support the children. By law they had to have a paraprofessional present in the class if there were seven or more students. What bothered Ms. Bernstein was that there were no student visual materials and the teacher, Ms. Sabila was calling out letters. If C.B. had been in that class, she would have had no ability to access that lesson. There were no visuals on her desk, and no one would be checking her work. C.B. requires immediate feedback. She needs to know what is going on and what is wrong.

In June Ms. Bernstein observed the Laurel School, which was structured, multi-modality with visuals and sensory breaks. There was teaching with writings, visuals and tactiles. There was getting up and down and there was immediate feedback. The ratio was smaller. Every staff member that walked into the class was on the same page. The speech therapist advised her that she goes into the class once a week during the ELA class to support and teach with the teacher and support C.B. The teachers all meet once a week to make sure they are all on the same page with vocabulary. Ms. Bernstein found it interesting that the speech therapist is one module away from being Wilson trained, which is highly specialized. The Cherry Hill IEP offered C.B. forty ten-minute speech

sessions. By the time C.B. walked back and forth to the room resulted in only about four minutes of speech therapy. At Laurel, the speech therapist is in the classroom working with C.B. and she is making progress. The speech therapist also told Ms. Bernstein that not only is C.B. making progress, C.B. who was introverted at Cherry Hill is now in the school play this month at Laurel as the boss elf in Rudolph the Red- Nosed Reindeer.

The February 6, 2024, IEP under “Summary Special Education Program and Related Services” called for group speech therapy twenty-five times a year for twenty-five minutes. (R-16 at 198.) Ms. Bernstein worked in a school for several years and it is five minutes back and forth so C.B. gets fifteen minutes in a group and five minutes to herself. The IEP also calls for individual speech language therapy for forty times per year for ten minutes. That is the first time she has ever seen a ten- minute session.

The Cherry Hill School District is not appropriate for C.B. Laurel School is appropriate for C.B. because she can access the curriculum and she can learn everything she has missed, remembering she is a kindergarten COVID child. If she ever has a chance of catching up and functioning, she needs discrete information done with fidelity and consistency, done multi-modality and she needs it now. Time is of the essence when you are talking about a spongy brain at this age. Laurel provides all of these things.

When Ms. Bernstein said that the Cherry Hill School District is inappropriate for C.B., it was based on her observation of the classroom after C.B. had already left the district and based on her review of the IEP that was offered to C.B. (R-16.) So, she could not say if the aide she saw sitting in the corner of the classroom would not have been helping C.B. if she had been in that classroom. However, there was another child significantly struggling and the aide did not come over to him. When the next aide came in, she went over and sat in the same corner and went on her cell phone and did not come to the student’s assistance.

Ms. Bernstein’s retention by the parents did not include the responsibility to attend an IEP meeting and collaborate on an IEP. If she had attended an IEP meeting, her opinions would be the same she expressed here today. She has not done a systemic review of what Cherry Hill has to offer to determine that they could amend the IEP. Ms.

Bernstein did not know that if she had attended the IEP meeting and made recommendations of additional goals based on her report, would Cherry Hill have considered those recommendations. The district had already pushed back any testing of C.B. for a few more months until the annual review. A few more months in the life of a child who cannot read or write is everything. The speech therapist was on C.B.'s team and the CST had a copy of the neuropsychological report, yet no additional speech goals were included.

The testing that Ms. Bernstein performed was comprehensive from a speech language perspective and there is nothing else from a speech pathologist perspective that needed to be done to understand her as a learner.

She has only observed the Cherry Hill classroom once and that was of the classroom that C.B. would have been in. Her opinions are based on her review of the records, conversations with Ms. Esters and Ms. Sabila and her observation.

In C.B.'s case, she was in a pull-out resource setting which is populated with all children with IEPs. Ms. Bernstein was asked if she had a professional opinion whether C.B. should be in a language learning disabilities classroom (LLD) and if C.B. were able to be educated in Cherry Hill, would a LLD program be appropriate for C.B. Ms. Bernstein is of the opinion that neither a pull-out resource nor LLD program at this point would be appropriate. C.B. needs a very small class ratio, intensive instruction that has to be done consistently and with fidelity or she is in a lot of trouble. She has no knowledge as to whether Cherry Hill offers such an LLD program. Everything she has reviewed and was given is listed in her report.

J.B., C.B.'s mother testified on behalf of the petitioners. C.B. went to kindergarten at Resurrection Catholic School. She had been registered to attend Cherry Hill public schools but when COVID hit and the public schools decided to go completely remote, they decided to send C.B. to Resurrection. She attended kindergarten, first and second grade at Resurrection. In kindergarten she received speech services right away since her preschool teacher had mentioned she had problems with articulation. They did a screening, and she let the school know and they started services. When C.B. left

Resurrection in June 2023 she was receiving special education services in a pull-out resource setting for reading, writing and math as well as speech therapy and occupational therapy. She was getting speech twenty-six times a year for half an hour. She does not know specifically how much OT she received. C.B. received pull-out reading, writing and math five times per week. She was in the pull-out resource setting for math for forty-five minutes and an hour for reading and writing. They left Resurrection when she realized C.B. was not making any progress and they did not have the knowledge and were not able to help her. Her teacher had said C.B. was a mystery and was very inconsistent. One day they would work on something and C.B. understood it and the next day it was like they had never covered it before. J.B.'s husband, P.B. works for the Cherry Hill Public School District as the middle school music teacher and the band instructor for twenty-five years.

They came back to Cherry Hill School because people she spoke to questioned why she was in private school when public school has more resources and the ability to teach C.B. better. C.B. did not want to switch schools and leave her friends, but her mother told her they were switching because Cherry Hill would be able to teach her to read. She registered C.B. for third grade in Cherry Hill as soon as the school opened in January 2023, which was in the middle of second grade. She registered early to make sure C.B. went to a local school and thought it would help. Their local school was the A. Russel Knight Elementary School.

J.B. first started communicating with the case manager, Jamie Esters sometime in May. Mr. Park, the principal of the school, knew her husband because he went to the school to provide music instruction for the rising fifth graders. He offered to give them a tour of the school and to make the transition easier and he said he would connect them with the case manager, Jamie Esters. They emailed back and forth to make sure the school received the records from Resurrection and then they talked about scheduling an IEP meeting. J.B. advised the CST who they could talk to at Resurrection about C.B., but no one from Cherry Hill reached out to Resurrection. She provided the telephone number for the school and advised them to reach out to Ms. McDevitt, who had been C.B.'s literacy coach, but who was retiring at the end of the year to make sure they reached out

to her before she retired to discuss C.B.'s individualized needs. To J.B.'s knowledge, no one from the CST reached out to Resurrection.

The district did not request any evaluations except for the AT evaluation, which mom consented to. This was suggested at the October meeting mom requested in order to review the neuropsychological report. No other evaluations were requested, not a speech and language evaluation or an educational evaluation.

There were two IEPs, one in July and August. At the July IEP meeting they discussed goals and in August J.B. received an email from Ms. Esters that the speech goals did not get uploaded to the July IEP for some reason, so she was going to send a consent to amend and requested her to sign it, which she did.

At the July IEP meeting, which was conducted via Zoom, J.B. expressed her concerns about her daughter's education and said she thought she had dyslexia C.B. had previously been in a resource room where she got small group instruction, but mom believed just being in a small group was not helpful for her and that she needed more of a dyslexia intervention. J.B. was told that they would work on it and see what was available in the district.

The July 27, 2023, IEP indicates under the "Concerns of the Parents" section that there were none. (R-5 at 4.) J.B. did have concerns, and she expressed them at the IEP meeting. The email from Ms. Esters dated August 22, 2023, to J.B. requested her consent to amend the IEP to include the missing speech and language goals. (R-6.) The July 27, 2023, IEP was thereafter amended on consent and the August 25, 2023, IEP contained the speech and language goals. (R-7.)

The parents paid for a neuropsychology report. (R-8.) The district did not offer to do a neuropsychological examination. It was J.B.'s understanding based on her research, that the district could not evaluate and make a diagnosis of dyslexia, so they wanted to see if she had dyslexia or not. They were going to use Cooper, but there was sooner availability at Next Generation Neuropsychology, which also had a good reputation, so they decided to have it done there. The parents provided a copy of the report to the

district on October 11, 2023, the day after J.B. received and reviewed the report with the neuropsychologist. J.B. provided a copy of the report to Jamie Esters, C.B.'s case manager. The report confirmed that C.B. had dyslexia, dyscalculia, dysgraphia and ADHD. When J.B. sent the report to the district, she sent an email and requested a meeting to discuss it believing it would change things for the better. When they met, Ms. Esters seemed to be confused as to why they were meeting, and it seemed that she had not even read the report. The meeting was attended by Ms. Esters, both parents, Ms. Rosenfeld (Sabila), Ms. Apple, the speech therapist, and Ms. Bergstrom, the general education teacher. At this October meeting, the parents expressed concerns that C.B. was now eight years old and time was of the essence, and they want her to be able to learn how to read and that C.B. wants to be able to learn how to read and that they had to figure out a way to make this happen. J.B. requested an instructor certified in Wilson or Orton Gillingham to do the instruction because that was important for someone with profound dyslexia. She believes that Ms. Esters misunderstood her and was going to look into tutors, when J.B. wanted a certified teacher to provide instruction to C.B. Ms. Esters was going to check what resources were available in the district and offered the assistive technology evaluation. The speech therapist and Ms. Sabila offered to do lunch bunch, which C.B. would have loved but J.B. was not sure if that ever happened.

The parents had previously hired a private tutor for C.B. from Farleigh Dickinson's program who started in July and worked with C.B. for a couple of months. The case manager offered another tutor. J.B. had sent an email to Ms. Esters asking for an update on tutors but believes she misspoke and meant teachers and resources in the district to teach C.B. how to read at school as discussed at the meeting. J.B. sent a lot of emails regarding C.B. because she was really struggling and making comments about herself saying she was 'too dumb to have friends' and that she said she 'knows you guys are trying to help me but I am a lost cause'. The district offered a teacher's assistant to do the SPIRE program with fidelity because they accidentally admitted they were not doing it with fidelity. During the October 23rd meeting, Ms. Sabila said to the case manager that she was not able to get through all of the ten steps of the program with fidelity. When J.B. brought that up, they offered to have the teacher's assistant work with C.B. on SPIRE in her general education classroom when all of the other children are doing other things during INE time she sat there and did work sheets. J.B. was under the impression that

they could not implement this without their approval, but apparently it did start taking place. J.B. did not know about this until January when C.B. accidentally brought her SPIRE binder home.

On November 8, 2023, J.B. sent Ms. Esters an email “Hi Jamie, I have not heard back from you this week. I hope you can understand my frustration. I need to make sure that my daughter gets the appropriate instruction in school to make progress. She is not making progress in her reading ability with the current intervention.” (R-9 at 135.) J.B. felt she was not making progress because C.B. still could not read and did not understand the math concepts. On November 2, 2023, Ms. Esters emailed the parents and attached a list of tutors available within the district, the services to be provided after school hours coordinated with the tutor. She further advised in her email that C.B. is currently receiving multi-sensory reading instruction and they are continuing to see if different programs are offered within the district. (R-9 at 136.) During a telephone call with Ms. Esters, she advised J.B. that they would have a teacher’s assistant work with C.B. an additional two to three times a week with the SPIRE program. During this telephone conversation, Ms. Esters also advised J.B., that to answer her question, that there were no dyslexia intervention programs offered within the district. J.B. sent another email to Ms. Esters that the more time that passes the more C.B. is at risk for worsening self-esteem, self-image, anxiety and depression. (R-9 at 136.) C.B. was already demonstrating this by going to the nurse a lot. The nurse had mentioned to J.B. early on that C.B. was coming to her office complaining of stomach aches, yet she did not have any GI symptoms and was being sent back to class.

J.B. wrote a letter to the Superintendent and members of the Board of Education regarding the lack of dyslexia intervention in the Cherry Hill public schools. (R-10.) She did this at the suggestion of both Ms. Esters and Ms. Sabila, who thought she should escalate her concerns by writing to them. J.B. never heard back from them.

An Education Evaluation of C.B. was done by Jamie Lehrhoff on January 29, 2024. (R-15.) J.B. did not provide this report to the district, but believes her advocate, Mr. Morgan did. She never heard from the district to discuss that report.

The February 6, 2024, IEP goes from February to June 2024. (R-16.) No one explained to them why it went from February to June. No one explained to them why the Present Levels of Academic Achievement and Functional Performance were not current but were from June. (R-16 at 5-6.)

The Concerns of the Parent (R-16 at 5) regarding C.B.'s emotional well-being were raised by the parents but not addressed as the parents were told at the meeting that they were not seeing in school what the parents were reporting. The supervisor at the meeting said they were not making any changes to C.B.'s program, despite the new information, and that Mr. Morgan and the parents cannot dictate who provides interventions to C.B. J.B. never wanted to dictate the interventions, she just wanted someone knowledgeable and qualified.

At the February 6, 2024, IEP meeting, Ms. Sabila quickly mentioned a bunch of numbers in response to how C.B. was doing, but no specific reference was made to the SPIRE program. They never received any data from SPIRE as to how C.B. was doing.

The whole DIBELS report at R-20 was not provided to the parents before this case, but J.B. believes Ms. Sabila emailed J.B. the maze assessment in November after the October meeting. Ms. Sabila sent an email that C.B. made progress in her reading words per minute which then went down in the winter assessment. There was no discussion as to how to address this as J.B. was not aware that C.B.'s winter assessment had gone down until they received the documents from their lawyer.

By letter, date stamped received August 21, 2024, by the Cherry Hill public schools, the parents formally noticed the district that they were unilaterally placing C.B. at the Laurel School for the 2024-2025 school year. The last sentence in the letter states that "Lest there be any alleged misunderstanding, we continue to seek a public placement that is appropriate for our child that has yet to be offered." (R-27.) To date, no one has reached out to the parents to talk about a public placement.

They unilaterally placed their child because they had no other choice. They were told they were not going to change anything after there was no progress in English. C.B.

did not feel good, she was not happy and did not make progress. She could not read, and they were not going to do anything about it. Ms. Ragsdale said they were not going to make any changes to C.B.'s program.

C.B. is doing well at Laurel. She is reading. She can do mental math in her head. She is happy, confident and has friends. She is looking forward to the play. Laurel tells them how well she is doing. The parents can see that she is doing well as she now can read and understand the instructions for her homework and does not need as much handholding. She does not resist doing her homework and does it willingly. She is more independent and can do things by herself. One of her teachers has dyslexia herself and has been amazing.

J.B. was asked whether Ms. Ragsdale said she was not refusing to provide services, only that it was not her role to do so. J.B. said no and she has a recording that Ms. Ragsdale stated that we are not making any changes to C.B.'s program and she told Mr. Morgan that he could not dictate who Cherry Hill chose to provide the intervention.

Jamie Lehrhoff testified on behalf of the petitioners. It was stipulated that she is an expert in the areas of Learning Disabilities Teacher Consultant (LDTTC), reading specialist and consultant, educational expert, education of learning-disabled children and special education programming. She was accepted as an expert in these areas as she had previously been qualified as such by Judge Calemme in EDS 02925-22. P-41 at 3207-3209 is a copy of her C.V. She currently works part time as a case manager for sixth and seventh grades at Oceanport public school. She does educational testing, meetings with families, case studies and attends team meetings. She has been retained by various public-school districts to complete educational testing, including Springfield, Howell, Bridgewater-Raritan, Livingston, Manalapan, and Dover. P-41 at 3159-3184 is her January 2024 Educational Evaluation. P-41 at 3186-3192 is her June 5, 2024, Laurel School observation. P-41 at 3194-3205 is her second observation at the Laurel School on October 23, 2024.

Ms. Lehrhoff also observed the Cherry Hill resource room math and English language arts resource room on January 24, 2024, after C.B. had been a student there

for approximately six months. Ms. Lehrhoff noted certain behaviors while observing C.B. in her first observation. C.B. was very reserved and had her head on the table a good amount of the time during that hour and a half period. She complained of a headache. She needed a Band-Aid. Any moment that she looked like she could not do anything, her head went down, or she shut her eyes. The teacher, Ms. Rosenfeld/Sabila, told her to get a drink of water when C.B. complained of a headache. When C.B. asked for a Band aid the teacher told her where to find a Band-Aid. When her head went down on the table the teacher did not do anything.

The math lesson she observed started off with factoring and the teacher would start off saying $10 \times ? = 30$ and they were trying to get C.B. to use her chart but she was having a hard time taking her two fingers to find out what was needed to get to the answer. From there they switched to counting by 6s and went down the 6 times table. The screen then switched to the seven times table and up to the nine times table and C.B. had a hard time keeping up with that. They moved into two step word problems, which C.B. was not able to keep up with the pace of the class and her head went down on the desk. Ms. Sabila came over to C.B. a few different times to show her how to get to the right answer because she was giving a lot of wrong answers. She was given a calculator to use, but she was not sure what to put into the calculator. Ms. Lehrhoff did not feel that C.B. had any understanding of what was being asked of her although she was trying.

Based on Ms. Lehrhoff's expert opinion and testing, C.B.'s math skills are very low, and she was diagnosed with dyscalculia, and she does not have the foundation to do two step problem solving, let alone one. Even using the calculator, she could not come up with the answers because she did not know what to put into the calculator. She had to be literally told what to put into the calculator. She could not come up with the answer on her own. When she did try to add and subtract the numbers that were put on her paper for her, she could not get the right answer.

Ms. Lehrhoff also observed the Cherry Hill ELA pull-out resource room. There were multiple things going on as the teacher had third and fifth grade students in the class and the teacher had to go back and forth between the two levels so there were times when each group had to do all their own work. When Ms. Lehrhoff first got in the class,

the teacher was defining a spelling word which C.B. could not read because the teacher was working with the fifth-grade students. When C.B.'s group was called to the table in the back of the room they were working on a storybook passage that they had started the day before. They picked up where they left off and there was no review. They had to come up with an answer as a group and then the teacher wrote out the sentence on the board and they all had to copy it. Ms. Lehrhoff felt this was a problem as it did not allow them to come up with their own answer or if they wanted to vary their answer, but was a one size fits all response, and they all had the answer in front of them.

From there they moved onto a phonological awareness lesson and got out their whiteboards. The teacher asked them to pop up the 'sh' and 'ch' words and was calling them blends when they are not blends but digraphs. When you are teaching a student how to read, it is important to use the right terminology. A blend is two letters that makes two sounds, but a digraph is two letters that make one sound. So, when you are teaching a student to tap out a word, they need to understand how many sounds they are tapping out in the word. C.B. got visibly upset when the teacher was moving phonemes from different parts at a pace that C.B. could not keep up with. C.B. commented that the teacher was going too fast.

The rest of the lesson was reading words, which C.B. got them all wrong except for one. Then they moved to sentences. C.B. asked if she could read the sentences in her head which the teacher said sure, and she let the students read in their head and then from there the teacher than read each sentence. Then the students read the sentence. Ms. Lehrhoff was not sure what the students could have done or not done if the teacher had not read the sentences to them. Even when the students were repeating the reading, C.B. had a very hard time keeping up and at one point, Ms. Lehrhoff could not hear C.B. mimicking anymore. The teacher had mentioned that she did not have time to do all the elements of the lesson and Ms. Lehrhoff felt that the lesson seemed a little rushed and the teacher was trying to get through it.

Later on, the teacher asked C.B. to come to the back table and C.B. brought her binder and there was a fill in the blank worksheet. The teacher read the entire thing to C.B. and C.B. did not have to read any of the words, she just had to choose between one

or two words to fit into the blank. Ms. Lehrhoff stated there was no time for her to see what C.B. was capable of doing, besides her reading the few words she read and got wrong.

Ms. Lehrhoff is familiar with SPIRE as a curriculum used in the classroom. Ms. Lehrhoff believes this was not an appropriate curriculum for C.B. SPIRE is a program that offers multiple components of an English language program, but unless it is done with fidelity forty-five minutes a day and followed specifically with all of the components, it has not been researched- proved to be effective for a student like C.B. C.B. got bits and pieces of the program and the teacher admitted to not being able to get all the elements in and even at the end of the day, when C.B. was working for maybe three minutes with teacher, the teacher was reading everything to her.

Ms. Lehrhoff spoke to Ms. Sabila after the observation and Ms. Sabila said it appeared C.B. was 'off' that day, that she appeared to be tired and was not herself. She mentioned C.B. was going away and sometimes when C.B. knows she is missing things that she gets anxious. Ms. Sabila also told her of the accommodations provided to C.B. such as the use of the calculator.

Ms. Lehrhoff's testing revealed C.B.'s academic skills. (P-41 at 3163.) C.B. had a neuropsychological evaluation in September so Ms. Lehrhoff could not repeat that test within a year. Ms. Lehrhoff administered the Woodcock -Johnson IV Tests of Oral Language and the Woodcock-Johnson IV Tests of Achievement Form A and Extended. She did the Comprehensive Test of Phonological Processing and the Alternate Phonological Awareness subtest, the Phonological Memory and Rapid Symbolic Naming test. Ms. Lehrhoff attempted to give C.B. the Gray Oral Reading Test, but C.B. was unable to read the first story, which was at kindergarten level. C.B. attempted to read and they actually got through it but there were so few words that were read correctly that she could not answer one comprehension question. That was her basal. Then she gave C.B. the Test of Word Reading Efficiency which is two timed tasks of sight word reading and nonsense word reading. Ms. Lehrhoff also gave her an informal writing activity just to see how she did. C.B. scores were low. Her overall language ability was her strength and were in the average range. Her listening comprehension and her expression were

average. Slightly below average was her following directions, but that was the only score below the average range for language. However, moving to the CTOPP, she had a lot of trouble. (P-41 at 3165.) Her phonological awareness alternate cluster score was in the in the State of New Jersey. These low scores are significant in that they are in the foundational skills necessary to be a reader. She does not have the skills necessary to start the reading process so you have to start from there to build the foundation. It is interesting if you look at when C.B. was in preschool and her teacher said she could not rhyme or recognize letters being taught time and time again that really set the stage for what continued to happen over time. She never built the foundational skills which is why she cannot read.

Ms. Lehrhoff's results corroborated with the September neuropsychological report results, and some of the scores Ms. Lehrhoff obtained were lower and C.B. has gone down in some areas. All of Ms. Lehrhoff's reading scores for C.B. were below the first percentile. Based on the neuropsychological report and Ms. Lehrhoff's report, the district's IEP did not represent any of the findings of testing. Although the IEP was done before Ms. Lehrhoff's report was provided to the district, none of the testing from the neuropsychological report was in the IEP.

The February 27, 2024, IEP called for pull-out resource room for math and reading and writing. However, there was no in class support or resource room for science and social studies. (R-16.) Ms. Lehrhoff questioned this because C.B. needs a special education teacher in all of her academic subjects to be able to use the same language the resource room teacher is using and being able to see where she needs support. There were no goals in science and social studies in her IEP because there was no special education teacher for those classes for C.B. If you cannot read in math and English, you cannot read in science and social studies. The IEP does not specify what type of program, such as multi-sensory reading that C.B. is receiving, only that she is in a pull-out resource room with a curriculum that everyone else is using. Ms. Lehrhoff acknowledged that a district will not name a specific program to be provided but a description of the type of program to be provided is usually included.

The goals and objectives in the IEP regarding reading and math are not appropriate for C.B. Her reading goal of reading third grade level at seventy-five words per minute was not appropriate as C.B. could not read at twenty words per minute and if she was, it was not consistent. She had a lot of errors in her reading. She should have had more goals regarding the foundational areas regarding the teaching of reading such as phonological awareness goals. These are things that C.B. cannot do, so we do not know what we are looking at or how we are assessing that. C.B.'s writing goals struck Ms. Lehrhoff as one of the strangest because it talks about writing a five-paragraph essay, when C.B. could not write two sentences with coherence. Ms. Lehrhoff initially thought it was an error and had to be someone else's goals. Her math goals of solving five three-digit addition with regrouping as well as subtraction problems. When Ms. Lehrhoff saw C.B. in the classroom, C.B. did not get three-digit problems correctly.

Ms. Lehrhoff believed the SPIRE program was not appropriate for C.B. and if they were going to use a program like SPIRE, it would have to be used in conjunction with Wilson or a program meant to teach dyslexic students. It would be a problem that the district told the mother that they do not have a program to teach dyslexic students.

On June 5, 2024, Ms. Lehrhoff observed C.B. at the Laurel School. (P-41 at 3186.) C.B. had been there about three months and observed her math class and her Wilson reading class. The math class Ms. Lehrhoff observed was teaching fractions using a pizza as an example and used multi-modalities, including visuals and coloring. C.B. was engaged and involved in the lesson and answered a lot of questions. Even when C.B. had a hard time, the teacher came over and explained to C.B. what she had to do, and she did not get frustrated and continued in the lesson. Ms. Lehrhoff spoke to the director at Laurel, Ms. Anderson, who advised that at first, C.B. had no confidence in herself and it was a long journey to get her integrated and comfortable, but they have seen great growth in her. She was working towards progression towards her goals, but it was going to take a while.

Ms. Lehrhoff returned to observe C.B. in October 2024 after she had been at Laurel School a little longer. She went to see her Orton Gillingham (OG) lesson and asked why she was switched from the Wilson program to the OG program, although they

are both great programs and accredited. (P-41 at 3195.) They explained that they took it upon themselves to change the program because Wilson is more rigid in how it is taught, and OG had more flexibility and was hands-on and allowed C.B. to be an active participant in a lot of the lessons. This was the first time Ms. Lehrhoff saw C.B. reading. She was decoding words and understood the rules. She was doing the dictation and even if she made an error, she was not getting frustrated. She was recognizing her own mistakes and if the teacher gave her clues, she was able to get there. She offered to erase the board and asked if she wanted to write her sentences on the board. She was a full-on participant in the lesson. C.B. is currently receiving Orton Gillingham programming in reading and in math. When C.B. first came to Laurel she could not count to twenty backwards or forwards and could not recognize numbers. She can now count backwards from twenty and has numbers sense.

Ms. Lehrhoff reviewed the Acadience Oral Reading Fluency progress reports from the Laurel School which showed that C.B. has shown significant improvement in the past three months in reading. In October 2024, C.B. read thirty-one total words with seventeen errors and fourteen correct words. In the November assessment she read thirty-four total words with fifteen errors and nineteen correct words. In December she read forty-nine total words with eleven errors and thirty-eight correct words. (P-63 at 4002-4004.)

C.B.'s class at Laurel consisted of five students. Class size is important for C.B. because she needs a lot of individualized instruction in addition to her small group instruction, so they are able to provide her with that support.

Ms. Lehrhoff went back to Cherry Hill on November 11, 2024, and saw the same teacher and the same classroom with an aide and a student teacher. The only difference she saw was that they were now using a program called Amplify, which integrates elements of science into language arts. She observed a science class comparing and contrasting tree frogs and poison dart frogs with the student teacher leading the science lesson. The students were having a good time with the lesson, were engaged and filled out Venn diagrams with the teacher. It was very hands on, and they were asking questions. After that, Ms. Sabila took over again and they were working on parts of speech. She had them take out a workbook and they were doing nouns, verbs and

adjectives. They had to circle the nouns, underline the verb, box the adjective and draw a line from the adjective to the noun. There were a lot of different components. On the smart board she had the sheet they were working on, and she was directing them but there was some confusion as she had previously taught them about action verbs and the sheet had linking verbs, so she skipped over the verbs entirely when she realized the work sheet did not align with what had previously been taught and went right to adjectives. Later, after the lesson she went back to the verbs. Then she put spelling words on the board and divided them by grade level and asked them what the difference between the two lists was. Some words had double consonants and others did not, but she did not explain why. The students then used scrabble tiles to spell the words shown on the whiteboard, a method that merely involved copying without any teachable moments or further explanations.

Besides the spelling lesson, Ms. Lehrhoff did not see a multisensory program during this year's observation in Cherry Hill. C.B. needs a multisensory program. A multisensory program has many components including encoding, decoding, reading fluency, reading comprehension, and phonological awareness, delivered in multi-modalities in a very structured program, like a Wilson or Orton Gillingham program where it spells out how long you are supposed to do them and how you move through the program. Most of these programs are sixty minutes long, five times a week and that is when you see the progress.

CKLA is a program that is used in schools and in resource rooms however there is no phonics program for fourth grade. Grades K, 1 and 2 have a foundational phonological component but as you move up in grades, the phonological piece is replaced by spelling and vocabulary. C.B. needs phonics. C.B. needs a multisensory reading program. Cherry Hill does not have a multisensory reading program and Laurel does.

Ms. Lehrhoff had a conversation with Ms. Esters following her last observation at Cherry Hill about the proposed program for C.B. She would be in a pull-out resource room for math, reading and writing and continue in general education for science and social studies. She talked about the CKLA program that the students were getting and that there would be a science component. She talked about lunch and specials being put back in C.B.'s general education curriculum.

The program Ms. Lehrhoff observed last year and this year in Cherry Hill was not appropriate for C.B. C.B. should not be in a general education science or social studies class, yet that is what the district is recommending for C.B. in her IEP. She is a student with special needs with significant reading disabilities and she is only going to struggle in a general education science or social studies class where she has no goals and objectives and where there will be increased reading and writing demands.

The Cherry Hill failed to provide an appropriate program for C.B. She did not get an IEP that represented C.B., her abilities or her current levels of functioning or have any goals and objectives that matched C.B. Laurel is appropriate for C.B. because she is receiving all of the foundational skills that she is lacking, by certified teachers who are teaching with fidelity and getting it not only in English, but in math and the same language is being used across the board in all of her classes. In Laurel there is a generalization of skills, and all of the teachers use the same terminology whether it is Wilson, or another OG program and all of the teachers are trained in those terminologies and use them in all of the classes.

When she went back to observe the district's proposed program, she was surprised that they were not offering anything different. She did not see a multisensory program, offered by a certified teacher and done with fidelity.

Ms. Lehrhoff has some familiarity with the SPIRES program but has not taught it. She has looked through the curriculum and has the manual and she has spoken to teachers that have used it. R-34 and R-35 addresses the efficacy of SPIRE. Cherry Hill did not do the SPIRE program with fidelity which was forty-five minutes per day for five days. She cannot say from a professional vantage point that if the SPIRE program was

done with fidelity, that it would have been appropriate. However, C.B.'s teacher was not adequately trained in SPIRE. Had she been trained adequately, Ms. Lehrhoff could not say that the SPIRE program would not have been appropriate. However, she pointed out that SPIRE is not accredited by the National Dyslexia Association.

Susan E. Miller testified on behalf of the petitioners. It was stipulated that she is qualified as an expert in the areas of Structured Literacy and OG instruction. She is also considered an expert in teaching students with reading disorders and language-based learning disabilities due to her graduate level degrees in special education which was focused on learning disabilities and reading and her post graduate work since 1991 at various institutions and then within the last twenty years, her completion of clinical practicums to become a certified dyslexia therapist. This certification was issued through the Wilson Language Company and has to be renewed every five years. She is also a Learning Disability Teachers Consultant (LDTC). She has been licensed by the State of New Jersey Department of Education as a Teacher of the Handicapped and holds an LDTC certificate. All of the years working as a special ed teacher and case manager make her an expert in the development of IEPs. Ms. Miller has not worked in any public schools, but has worked in a state approved school, the New Grange School and developed and collaborated on hundreds of IEPs.

Ms. Miller was accepted as an expert in: Structured Literacy and OG instruction; special education and teaching students with reading disorders and language-based learning disabilities; in the development of IEPs; and as an LDTC.

Ms. Miller provides workshops for public school districts and just completed teaching a three-day graduate level course on a Wilson Reading introductory course which is a prerequisite to the pursuit of a dyslexia certification. She had public school teachers throughout the country attend the course. Next week she is back in Elizabeth and has been working with that district in supporting their teachers in their delivery of a structured literacy intervention. She has worked with a number of public-school districts in "elbow teaching" and supporting both their general education and special education teachers in training them in different structured literacy interventions and reviewing the data with them to make decisions about how to benefit their students. Roselle, Patterson,

West Deptford, Medford, Jefferson Township, Mt. Olive and Egg Harbor are some of the public-school districts she is supporting the teachers and training them in different structured literacy interventions.

Ms. Miller has heard of the SPIRE program. Decades ago, as a teacher she used their workbooks. The worksheets came in handy when she was looking for homework to send home for her students to practice. It was great for the holidays and summer break to take home the workbook. When asked if the SPIRE program was something that she would recommend for a student with dyslexia who has an average IQ, Ms. Miller responded that she would need more information regarding the student's profile and how often the program would be delivered and whether the individual was trained in the program and had deep knowledge of the program.

The International Dyslexia Association for approximately ten years has been accrediting programs so that stakeholders, such as families, teachers, and school administrators, when they are shopping around for a good intervention program look to see if an intervention is accredited by the IDA. Ms. Miller has been on the board of the IDA and is familiar with the accreditation process which is rigorous and takes a year for it to happen. The IDA has not accredited the SPIRE program, which means it has not been independently evaluated through the lenses of the IDA and the knowledge and practice standards for teachers of reading and spelling. The programs that are accredited have proven that their training teaches that knowledge of phonemic awareness, vocabulary fluency, etc. and that the curriculum mirrors that knowledge. SPIRE for whatever reasons is not accredited. When Ms. Miller works with schools, she advises them to go to the website and see what is accredited and that is the launch point for finding an intervention, because you want to be a good consumer. Those programs that are on the IDA website as accredited programs include IMSE, Wilson and Lexercise. IMSLEC is an organization that trains teachers in OG instruction which is a methodology and not a program is on the list as well. There are institutes of higher education that are on the list as well, including Farleigh Dickenson which was one of the first institutes of higher learning to be on the list. Their program teaches OG as a methodology.

Ms. Miller has read reports regarding C.B. and observed C.B. She was asked if SPIRE was done with fidelity would it be an appropriate program for C.B? Ms. Miller explained that SPIRE is very scripted and considering C.B.'s age and complex needs and the need to be a little flexible with the lesson planning as C.B. requires diagnostic and prescriptive programming and not a lock-step program. The workbook pages from SPIRES were shared with Ms. Miller and it did not have an engaging vocabulary and comprehension aspect of it which is the same as most out of the box programs. It was not doing phonetics and vocabulary at the same time. Ms. Miller used the SPIRES workbook years ago for practice, but it was not the main means of her instruction.

Ms. Miller observed C.B. at Laurel School and observed a math lesson and science lesson which were customized, and the teacher was creating her own materials based on the needs of her students. She made word lists that the students would read during the reading lesson but also had engaging vocabulary. Students read the word and then learn how to use it in a sentence and are asked to explain what they know about the word. There is a lot of scaffolding. There were four students in each class and the math lesson customized activities with the teacher making her own materials creating different font sizes and spacing and removing distracting visuals. The teacher created her own materials based on the needs of all of her students, not just C.B. There was a generalization of skills throughout the day from your reading class. There is research being published that informs that when you teach something in isolation it is static. Children need opportunities to practice and get reinforcement. Ms. Miller observed C.B. in her science and math program, which was taught by a teacher going for her Wilson certification because she wanted to be able to better support her students in math and science by becoming Wilson certified. It is hands on and multimodal. Ms. Miller interviewed the reading teacher who explained that she knows what is going on in science. So, if the vocabulary word is 'bond' she will use it in a reading lesson and explain the phonetic component and then connect it to another content area like science and explain how to use it in a sentence. This is important language support and reinforcement.

Ms. Miller was a former DIBELS credentialed mentor/trainer for the University of Oregon. DIBELS stands for "Dynamic Indicators of Basic Early Literacy Skills" now in its

8th Edition. For many years she trained teachers how to use, administer and score it correctly and to understand what the numbers meant and understand that a certain score is at benchmark, which is equivalent to 40%. Depending on the score There is a DIBELS based chart which you can check scores and see based on the scores where children stand as compared to their peers in that grade. It will become state law in September, where schools have to use a universal third- party screener twice a year to see if children are making progress in regard to their peers.

Ms. Miller saw C.B.'s benchmark assessment but did not see any progress monitoring data with the DIBELS. Because when a child is getting intervention, the guidance is to monitor progress children every two weeks, ideally every week since it is only a minute long to determine if the intervention is closing the gap with their peers in her grade. The idea is to collect as many data points as possible to see if the intervention is leading to closing the gap between C.B. and her peers. C.B. was well, well below her peers at the benchmark assessment, winter/spring and you do not want to wait until the end of the year to determine if they should make a change in the intervention. So, it is really relevant to have that progress monitoring to make decisions.

Ms. Miller reviewed C.B.'s DIBELS materials contained in R-20 and noted that progress monitoring with the DIBELS probe was missing in the fifty-five pages she reviewed. The progress monitoring is an essential part of DIBELS. If a child is receiving intervention, you need to do progress monitoring. Progress monitoring would be a one-minute probe, sitting down with the student and having them read a passage for one minute, telling them to do their best reading and telling them where to start and read for one minute until they are told to stop. The instructor would have a timer and then mark how many words were read correctly in a minute, how many errors were there and what type of errors and then look at the DIBELS chart by grade level to see where they should be reading for example in winter third grade where they should be at ninety words correct a minute and C.B. was performing well below her peers. This helps the teacher make important instructional decisions, such as should the frequency or focus of the intervention be increased or changed or should a different program be chosen. Ms. Miller saw no evidence of this.

Ms. Miller explained that the Rabinowitz Education Center, the Laurel School and the New Grange School are part of an organization called the New Grange School at Princeton Incorporated. She runs the educational center and is the sole trainer and lead evaluator. They are an outreach center that existed long before the Laurel School and was started by Dr. Sherman and has always been about translating research to practice and that is why they always do so much work with their schools. The Laurel School is a school operated by the company that employs Ms. Miller.

Ms. Miller met C.B. after C.B. started at Laurel. Ms. Miller's role in the organization is to push into the school five times a year to support those teachers who are going for their level one certification in Wilson and observe them and help them when necessary. She was supporting C.B.'s teacher helping with modeling and lesson planning and C.B. happened to be one of the students in the class.

The professional expert opinion she gives here today is what she tells public schools as well. Last year, the Rabinowitz Education Center was one of several vendors to win a state contract from the Department of Education to train teachers and administrators in structured literacy in Mercer, Monmouth and Ocean Counties. They were to provide program neutral structured literacy, that is, what should every teacher and administrator know about structured literacy and using data to make instructional decisions.

Discussion

It is the duty of the trier of fact to weigh each witness's credibility and make a factual finding. Credibility is the value a fact finder assigns to the testimony of a witness, and it contemplates an overall assessment of the witness's story considering its rationality, consistency, and how it comports with other evidence. Carbo v. United States, 314 F.2d 718 (9th Cir. 1963); See In re Polk, 90 N.J. 550 (1982). Credibility findings "are often influenced by matters such as observations of the character and demeanor of witnesses and common human experience that are not transmitted by the record." State v. Locurto, 157 N.J. 463 (1999). A fact finder is expected to base decisions on credibility

on his or her common sense, intuition, or experience. Barnes v. United States, 412 U.S. 837 (1973).

In order to assess credibility, the witness' interest in the outcome, motive, or bias should be considered. Furthermore, 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).

Both of the district witnesses, Ms. Esters and Ms. Sabila, testified truthfully and were credible. They clearly were both fond of C.B. and wanted her to succeed in their district and did their best to support her. They were candid in discussions with the parents about the lack of a specific dyslexia program offered in the district. Ms. Sabila was forthcoming in her admission to the parents that she was unable to deliver the SPIRE program to C.B. with fidelity. Ms. Esters and Ms. Sabila both believed C.B. was doing well in the district and making meaningful progress, however the data introduced does not support this position. Although evaluations must be done every three years, given that C.B.'s evaluations were from 2021 and her deficits significant, the district should have offered to do reevaluations when she started in the district to get a current idea of her educational status. Ms. Esters' testimony that the district had until the Spring 2024 to do reevaluations was true, but probably not the most prudent given how old the evaluations were and the need to have updated information on C.B. to better determine programming. The February 6, 2024, IEP did not include current PLAAFP statements after C.B. was in the district for five months. Ms. Esters testified that it was their practice to update the PLAAFP statements at the annual review meeting in the Spring. Ms. Sabila testified that the PLAAFP statements in the February 6, 2024, were not current because the purpose of that IEP meeting was to discuss the assistive technology evaluation and make changes to the IEP based on that report.

Mom, J.B., also testified truthfully and was a credible witness. The parents tried to work collaboratively with the district and thought C.B.'s teachers were wonderful. They had switched C.B. from Resurrection Catholic School to the Cherry Hill public school district because they were told the public schools were better equipped to provide special

education and related services to C.B. The parents at their own expense had a neuropsychological evaluation done to confirm the fact that C.B. had dyslexia. As soon as they received the report, they shared it with the CST and requested an IEP meeting to see if further support could be implemented for C.B. The parents were becoming increasingly concerned that C.B. was in third grade and still could not read, especially after learning that there were no dyslexia programs in the district and that the SPIRE reading program being provided to C.B. was not being delivered with fidelity. J.B. emailed a letter to the superintendent and members of the BOE expressing her concerns about the lack of a dyslexia program in the district but received no response. The parents were further concerned about the emotional toll C.B.'s dyslexia and learning disabilities were taking on C.B. and shared these concerns with the district. J.B. also testified that at the February 6, 2024, IEP meeting, Ms. Sabila read to them a bunch of numbers trying to show C.B. was making progress, but there was no current data in the IEP indicating C.B.'s PLAAFP.

Petitioners' expert witnesses all testified credibly and were knowledgeable in their areas of expertise. However, it is noted that the district did not have the benefit of Ms. Lehrhoff's and Ms. Bernstein's expert reports prior to petitioners' unilateral placement of C.B. at the Laurel School.

Although Ms. Miller is employed by the corporation that owns the Laurel School, her testimony was quite credible regarding the importance of progress monitoring and the lack of progress monitoring in this case. Ms. Miller saw C.B.'s benchmark assessment but did not see any progress monitoring data with the DIBELS. When a child is getting intervention, the guidance is to progress monitor children every two weeks, ideally every week since it is only a minute long to determine if the intervention is closing the gap with their peers in her grade. The idea is to collect as many data points as possible to see if the intervention is leading to closing the gap between C.B. and her peers. C.B. was well, below her peers at the benchmark assessment and you should not wait to the end of the year to determine whether a change should be made in the intervention.

Ms. Bernstein's testimony was persuasive that the district erred in that it did not take into consideration any of the phonological issues or working memory issues that

were found by other evaluators, including the neuropsychologist, yet did not develop any goals under the speech goals having to do with phonological awareness. They were focused on articulation and did no goals for phonological awareness, decoding or anything that had to do with dyslexia. Ms. Bernstein's testimony that C.B.'s scores were the lowest she has ever seen and that C.B. required immediate intensive intervention in order to be able to access her curriculum was particularly persuasive.

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

C.B. is eligible for special education under the classification Specific Learning Disability based on a severe discrepancy between her intellectual ability and current achievement in basic reading skills and mathematical problem solving.

C.B. started third grade at the A. Russel Knight Elementary School in Cherry Hill in September of 2023. Prior to that time, she attended Resurrection Catholic school for kindergarten, first and second grade. Her parents transferred her because they were not able to help C.B. and she was not making any progress. They believed the public schools had more resources and could better provide C.B. with the necessary special education and related services that were unavailable to her in the private school.

C.B. was registered early in January 2024 at Cherry Hill while she was still in second grade at Resurrection. Her parents wanted to make sure she received a spot in her local school which she did. J.B. provided the CST the telephone number for Resurrection and advised them to contact Ms. McDevitt, who had been C.B.'s literacy coach at Resurrection, but who was retiring at the end of the school year and that they should reach out to her to discuss C.B.'s individualized needs. No one from the CST contacted Resurrection to discuss C.B.'s performance while at Resurrection.

Cherry Hill received and reviewed the Individualized Service Plans for C.B. from Resurrection dated June 21, 2022, and June 16, 2023. (R-3 and R-4.) The June 16, 2023, ISP was prepared at the end of second grade and was projected for third grade

although C.B. ended up transferring to Cherry Hill for third grade. (R-4.) The Evaluation Summaries in the ISP indicated that C.B. last had a Psychological Evaluation on April 4, 2021, an Educational Evaluation on June 7, 2021, a Social Assessment on May 7, 2021, a Speech and Language Evaluation on May 12, 2021, and an Occupational Therapy Evaluation on May 27, 2021.

The ISP dated June 16, 2023, under Supplemental Instruction provides a description of how C.B. was doing in ELA and Math (R-4, at 60): “C.B. is a second grader who receives Supplemental Instruction once weekly within a small group setting in the Resource Room during LAL. C.B. continues to struggle with putting sounds of words together. She will look at the first letter of a word and put a word in that begins with that letter even though it doesn’t fit in the context of the sentence. In Math, C.B. will benefit from repetition and review of basic addition and subtraction facts. She still needs a number line to add and subtract. C.B. benefits from working in a small group, repetition of directions and extra time to complete assignments. The curriculum is at a second-grade level. Loretta McDevitt – 6/12/2023”.

The ISP dated June 16, 2023, included under the Goals and Objectives for English Language Arts 3.3: Reading Standards: Foundational Skills, Phonics and Word Recognition: “Know and apply grade- level phonics and word analysis skills in decoding words. a. Identify and know the meaning of the most common prefixes and derivational suffixes. b. Decode words with common Latin suffixes. c. Decode multisyllable words. d. Read grade- appropriate irregularly spelled words.” (R-4 at 61.) Although these foundational reading goals were included in the proposed ISP for third grade, the IEP developed for C.B. by Cherry Hill did not include these goals and objectives.

Although the prior ISP had evaluations from 2021, since triennials were not required until Spring 2024, the district carried over the evaluations to the IEP developed for C.B. in July. The district had to develop an IEP for C.B. within thirty days of her coming to Cherry Hill. According to the ISP, C.B. was only receiving supplemental instruction in math and ELA once weekly for thirty minutes. (R-4 at 66.) Based on C.B.’s evaluations, she qualified as eligible for special education under Specific Learning Disability. The district initially developed an IEP dated July 27, 2023, (R-5) for C.B., but the speech and

language goals did not get uploaded into the document. Ms. Esters sent mom an email (R-6) advising of same and requested a consent to amend the IEP without a meeting to add those goals. Mom consented and an IEP dated August 25, 2023, was implemented. (R-7.)

The August 25, 2023, IEP provided for: pull-out resource Replacement in Math five times a week for forty-five minutes; pull-out resource replacement for reading five times a week for forty-five minutes; pull-out resource replacement for writing five times a week for forty-five minutes; group occupational therapy twenty-five times a year for twenty-five minutes; speech-language therapy in a group (not to exceed three) twenty-five times a year for twenty-five minutes; and speech-language therapy individual forty times a year for ten minutes. (R-7 at 1.) For social studies and science C.B. would be in a general education classroom with a general education teacher with the support of a paraprofessional in that classroom. (R-7 at 11.) The Present Levels of Academic Achievement and Functional Performance (PLAAFP) summarizes reports from 2021. Ms. Esters collaborated with C.B.'s teacher, Ms. Sabila, in drafting the goals and objectives listed in the IEP. (R-7 at 102-104.) Ms. Sabila was given access to the same reports that Ms. Esters was able to review. The Accommodations and Modifications and Supplementary Aids and Services are listed at page 10 of the IEP. (R-7 at 104-105.)

Parents had C.B. privately evaluated by a neuropsychologist in September 2023 to evaluate her academic, emotional and behavioral functioning, as well as to provide treatment recommendations. The October 10, 2023, report from Next Generation Neuropsychology diagnosed C.B. with a Specific Learning Disorder with impairments in reading with dyslexia and reading comprehension, impairments in written expression with spelling accuracy and impairments in mathematics. C.B. was also diagnosed with Attention Deficit/Hyperactivity Disorder (ADHD) predominantly inattentive type, mild severity with executive functioning weakness and inconsistent processing speed; auditory processing disorder; and symptoms of anxiety associated with school, performance, and social situations; and depressive symptoms. (R-8 at 16-17.)

A number of educational recommendations were made in the neuropsychological report including: giving C.B. extended time accommodations for all assignments and

evaluations; simplified directions using keywords for the most important ideas, step by step verbal directions, and written instructions read out loud, due to her auditory processing difficulties; supplemental instruction resource support in reading, specifically, due to her difficulties in word reading and spelling, C.B. may benefit from a specialized reading program that focuses on phonological awareness, sounding out words, spelling and reading fluency, etc., if not already provided. Due to her auditory processing disorder, an FM system should be considered. A one-on-one aide should be considered for in-class or pull-out support. In order to reduce distractions C.B. should be seated near the teacher in order to reduce barriers between herself and the lesson. In addition, ensure distracting items are out of reach. It was also recommended that it is important for C.B.'s teachers to maintain clear communication with C.B.'s parents regarding her academics. If offered by the school, C.B. should participate in school counselling for peer and social support. Chunking information allows for more efficient use of C.B.'s short term memory by grouping information. It was also recommended that C.B. be allowed to move around by providing opportunities for movement. (R-8 at 17-18.)

The parents provided the Neuropsychological report to the district on October 11, 2023, and requested a meeting to discuss the findings. The IEP team agreed with the diagnoses. The meeting was attended by Ms. Esters, both parents, Ms. Rosenfeld (Sabila), Ms. Apple, the speech therapist, and Ms. Bergstrom, the general education teacher. At this October meeting, the parents expressed concerns that C.B. was now eight years old and time was of the essence, and they want her to be able to learn how to read and that C.B. wants to be able to learn how to read and that they had to figure out a way to make this happen. Ms. Esters was going to check what resources were available in the district and offered the AT evaluation since the neuropsychologist's report indicated C.B. may benefit from the use of assistive technology. Ms. Ester's also offered to provide a list of tutors for additional support, although the parents already had used a privately retained tutor from Farleigh Dickenson.

On November 8, 2023, at 10:40 a.m. J.B. wrote an email to Ms. Esters and said "I have not heard back from you this week. I hope you can understand my frustration. I need to make sure that my daughter gets the appropriate instruction in school to make progress. She is not making progress in her reading ability with the current intervention."

(R-9 at 135.) Although Ms. Esters did respond to J.B. the same day at 2:50 p.m. she did not respond to mom's claim that C.B. was not making progress in her reading ability. Mom had also written in her email "If you cannot help me or C., please tell me who I should talk to in order to get appropriate instruction for her in school." Ms. Esters told mom that Cherry Hill did not have a specific program for dyslexia and that C.B. was in the program where all of the students with dyslexia are placed. Ms. Esters does recall telling mom that she understood her frustrations and to bring her concerns to the board of education to see if perhaps they would address the issue. J.B. sent an email letter to the superintendent and the board of education regarding the lack of a specific dyslexia intervention program in the district. (R-10.) She did not receive a response.

The Grade 3 Student Profile for C.B. is her report card for the first marking period in which she received mostly "2s" which indicates a "developing understanding and demonstration of the skills included in the grade level NJSLs for the current reporting period." (R-12.) C.B. received a "1" in solving two step word problems involving the four operations and a "1" in Reading Fluency which indicates a "minimal understanding and demonstration of the skills included in the grade level NJSLs for the current reporting period." C.B. received a "3" in Math for adding and subtracting within 1,000 which indicates an "expected understanding and demonstration of the skills included in the grade level NJSLs for the current reporting period." (R-12.) The Math and English Language Arts scores indicate that C.B. receives a Modified Curriculum "MC" in those areas. (R-12 at 146.) C.B. received a "2" in Social Studies and a "3" in Science in the general education curriculum. (R-12 at 147.)

R-13 is the Progress Report showing progress towards C.B.'s IEP goals and objectives for the first marking period for the 2023-2024 school year. (R-13.) The first reading goal states that when presented with a third-grade level literature text and/or specific informational text from C.B.'s content area subjects, C.B. will read seventy-five words per minute fluently with accuracy and an appropriate rate. The code "SC" means see comments which are listed under the objective/ benchmark and indicates that C.B. was progressing gradually. C.B. was making progress toward her goal of reading seventy-five words per minute. She was currently reading between twenty-three to

twenty-five words per minute, which had doubled since the beginning of September. (R-13 at 153.)

C.B.'s Progress Report for Math for the first marking period indicated that she was Progressing Satisfactorily in her goal to solve five three-digit addition problems with regrouping up to 1000 and that with support and reminders of the steps for regrouping, C.B. can solve three-digit problems with regrouping up to 1000. She was also progressing satisfactorily towards her goal of solving five three-digit subtraction problems with regrouping up to 1000 and that with support and reminders of the steps to follow for regrouping, C.B. can solve three-digit subtraction problems with regrouping up to 1,000. (R-13 at 155.)

The neuropsychological evaluation had recommended that C.B. might benefit from an AT Evaluation and the district agreed to conduct one with parents' consent. An AT Evaluation was recommended by the CST because "Student presents with difficulty in the following: handwriting legibility, typing skills, reading comprehension, spelling and decoding." An evaluation was conducted and a report dated January 8, 2024, was prepared. (R-14.) AT services recommended were access to a portable word processor, access to Speech Recognition Software and access to audiobooks. The recommended software (read and write, language tool) was downloaded onto C.B.'s Chromebook. C.B. was also to receive individual AT consults three more times for the remainder of the year for thirty minutes. (R-14.)

The February 6, 2024, IEP meeting was called to revise C.B.'s IEP to reflect the additional AT evaluation dated January 8, 2024, and to incorporate the additional supports that were recommended. The February 6, 2024, IEP added the January 8, 2024, AT evaluation and the additional services to be provided. (R-16.)

The IEP of February 6, 2024, (R-16) lists the goals and objectives at pages 9 of 17 and there were no phonological goals regarding speech. The speech goals listed at 6 through 10 do not include any phonological goals. Phonological goals should have been included in speech goals because the speech pathologist is an expert and specialist in phonological skills. That is fundamentally what dyslexia is. A speech pathologist's entire

job is phonological processes. Not only could the speech therapist have done therapy with C.B., but she could also have been the one to give the teacher and other people structured things to do. The speech pathologist was left out completely of any intervention for dyslexia. The goals that are in the IEP for speech concern articulation and how C.B. talks/sounds, which was not a significant concern.

The district should have known that C.B. had phonological issues based on the neuropsychology evaluation from September 2023. (P- 40 at 3103.) There were several tests given by the doctor, several of them which are also given by speech pathologists including the CTOPP. All her scores on the subtests including Elision, Blending Words and Phoneme Isolation are a six, which is below the average of ten. Her scores are so low that even without additional testing, they should have been addressed. C.B. was so below the average that she could not access any of the curriculum or anything being taught without significant help.

Although C.B. has difficulty in reading and writing and there is reading and writing in science and social studies, she is in a general education class for those subjects and does not get the benefit of a special education teacher in those subjects. The IEP provides under “Supplementary Aids and Services” that C.B. will receive “Supplementary Support by Teacher’s Aide in General Education Classroom.” (R-7 at 105.)

The Cherry Hill District uses SPIRE, which is a multi-sensory reading program that was developed to help students with reading disabilities to become readers and to grow as a reader. Ms. Sabila used portions of SPIRE with C.B. during the ELA block. Ms. Sabila was able to provide about twenty minutes of instruction with C.B., two or three times a week based on the schedule of the building. Ms. Sabila recalled a conversation with C.B.’s parents wherein she admitted that she was not doing the SPIRE program “with fidelity”. The SPIRE program requires instruction to be delivered forty-five minutes a day, five days a week to be most effective, Ms. Sabila had a combined grade level of third and fifth graders in that ELA time period for reading and writing and not all of the students required the SPIRE instruction. Ms. Sabila was only able to deliver SPIRE instruction to C.B. in a small group or individually for twenty to twenty-five minutes, two or three times a week because of the limitations of the classroom, although she would have liked to

have spent forty-five minutes per day, five days a week delivering the instruction as it was intended.

Ms. Sabila was trained in the SPIRE program by the school's literacy coach, Paula Pennington. She walked her through the initial program and the three- hour training began in August. Ms. Pennington gave C.B. the initial SPIRE assessment for placement and there were no other SPIRE assessments done. The initial placement test recording form (R-19 at 260) has no notes or score on it. R-19 at 261 shows C.B. was at level 1, which is the beginning level. Ms. Sabila was not sure if this translated to a specific grade level. None of the SPIRE workbook pages in R-19 are dated or scored. Ms. Sabila worked individually with C.B. completing the workbook pages during the last ten minutes of the class time. Ms. Sabila did not give C.B. a score on the SPIRE material but rather gave her a stamp in order to make it fun for C.B. Ms. Sabila did not test C.B. to see what level she was at after the five months she had C.B. doing SPIRE.

The DIBELS (Dynamic Indicators of Basic Early Literacy Skills) was used in the classroom. (R-20.) The Benchmark Maze 3. Beginning (R-20 at 267) was given in the fall. C.B. had two correct answers and eleven incorrect answers for an adjusted score of -4 in the fall. (R-20 at 267.) Ms. Sabila had an opportunity to compare her performance in the fall to an assessment done later in the year when they completed the winter benchmark on January 3, 2024. (R-20 at 272.) C.B. had three correct answers and nineteen incorrect answers for an adjusted score of -6.5. (R-20 at 272.) These scores are both well below the benchmark.

The EZCBM progress monitoring for letter sounds, word reading and phoneme segmenting is a progress monitoring tool that is used in the district. (R-20 at 310-314.) On the progress monitoring for November 14, 2023, C.B. was reading twenty-three words per minute correctly. (R-20 at 313.) Then the progress monitoring for December 20 indicated that she was reading seventeen words per minute correctly (R-20 at 314) which was a decrease in her words per minute from November, but an improvement from September when she read eleven words per minute correctly. (R-20 at 316.)

The PLAAFP in the IEP is supposed to inform everyone how the student is currently performing in various subjects. C.B. was in the Cherry Hill school district approximately five months when the February 6, 2024, IEP was drafted yet under the educational performance section, there is no current PLAAFP information for math, language arts, science or social studies. The information contained is all from the previous school year. The current levels should be reflected because it represents the most up to date information on the student.

At the February 2024 IEP meeting, the parents were concerned with C.B.'s lack of progress in her reading abilities and wanted more supports. The districts response was that C.B. was making meaningful progress towards her IEP goals based on the data they collected. The data they collected is not in the IEP. Ms. Sabila discussed C.B.'s progress based on notes she had prepared in preparation for the meeting. (R-36.)

C.B. has displayed signs of anxiety including visiting the nurse sixteen times from September to February, complaining of headaches or stomachaches, putting her head down on her desk when she was overwhelmed or not understanding her classwork, as well as making self-deprecating comments to her parents that she was 'too dumb to have friends' and that she said she 'knows you guys are trying to help me but I am a lost cause'.

Under concerns of the parent, it was noted that her parents were concerned with C.B.'s emotional well-being as her academic challenges as well as her diagnosis of dyslexia have taken an emotional toll on C.B. Her parents wanted to ensure that the appropriate supports are provided for C.B. in all areas, academic and social/emotional. (R-16 at 202.) There were no social/emotional goals or support listed in the February 6, 2023, IEP.

The parents were told by district personnel at the February 6, 2023, IEP meeting that they were not making any changes to C.B.'s IEP.

By letter, dated February 8, 2024, petitioners noticed the district that they were unilaterally placing C.B. at the Laurel School as of February 20, 2024. (R-17.) C.B. has been attending the Laurel School since then.

The Laurel School is a private school specializing in educating students with language-based learning differences such as dyslexia, dyscalculia and ADHD. It provides an academic environment that makes accommodation for students with special needs with certified teachers and small class sizes. C.B. is receiving all of the foundational skills that she is lacking, by certified teachers who are teaching with fidelity and getting it not only in English, but in math and the same language is being used across the board in all of her classes. At the Laurel school there is a generalization of skills, and all of the teachers use the same terminology whether it is Wilson, Cor another OG program and all of the teachers are trained in those terminologies and use them in all of the classes.

On June 5, 2024, Ms. Lehrhoff observed C.B. at the Laurel School. (P-41 at 3186.) C.B. had been there about three months and she observed her math class and her Wilson reading class. The teacher used multi-modalities, including visuals and coloring. C.B. was engaged and involved in the lesson and answered a lot of questions. Even when C.B. had a hard time, the teacher came over and explained to C.B. what she had to do, and she did not get frustrated and continued in the lesson. Ms. Lehrhoff spoke to the director at Laurel, Ms. Anderson, who advised that at first, C.B. had no confidence in herself and it was a long journey to get her integrated and comfortable, but they have seen great growth in her. She was working towards progression towards her goals, but it was going to take a while.

Ms. Lehrhoff returned to observe C.B. in October 2024 after she had been at the Laurel School a little longer. She went to see her OG lesson and asked why she was switched from the Wilson program to the OG program, although they are both great programs and accredited. (P-41 at 3195.) They explained that they took it upon themselves to change the program because Wilson is more rigid in how it is taught, and O-G had more flexibility and was hands- on and allowed C.B. to be an active participant in a lot of the lessons. This was the first time Ms. Lehrhoff saw C.B. reading. She was decoding words and understood the rules. She was doing the dictation and even if she made an error, she was not getting frustrated. She recognized her own mistakes and if the teacher gave her clues, she was able to get there. She offered that C.B. is currently receiving Orton Gillingham programming in reading and in math. When C.B. first came

to Laurel she could not count to twenty backwards or forwards and could not recognize numbers. She can now count backwards from twenty and has numbers sense.

The Acadience Oral Reading Fluency progress reports from the Laurel School indicated that C.B. has shown significant improvement in the past three months in reading. In October of 2024, C.B. read thirty-one total words with seventeen errors and fourteen correct words. In the November assessment she read thirty-four total words with fifteen errors and nineteen correct words. In December she read forty-nine total words with eleven errors and thirty-eight correct words. (P-63 at 4002-4004.)

J.B. testified that C.B. is doing well at Laurel. She is reading. She can do mental math in her head. She is happy, confident and has friends. Laurel school personnel tells them how well she is doing. The parents can see that she is doing well as she now can read and understand the instructions for her homework and does not need as much handholding. She does not resist doing her homework and does it willingly. She is more independent and can do things by herself. One of her teachers has dyslexia herself and has been amazing.

C.B.'s class size at Laurel consisted of five students which is important for C.B. because she needs a lot of individualized instruction in addition to her small group instruction and Laurel is able to provide that support.

LEGAL DISCUSSION AND ANALYSIS

This case arises under the Individuals with Disabilities Education Act (IDEA), as amended by the Individuals with Disabilities Education Improvement Act (IDEIA), 20 U.S.C. §§ 1400-1482, which provides the framework for special education in New Jersey. One purpose of the Act, among others, is to ensure that all children with disabilities have available to them a “free appropriate public education 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.A. § 1400(d)(1)(A). This “free appropriate public education” is known as FAPE. In short, the Act defines FAPE as special education and related services provided in conformity with the IEP. See 20

U.S.C.A. § 1401(9). 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). A FAPE means special education and related services that: a) have been provided at public expense, under public supervision and direction, and without charge; b) meet the standards of the State educational agency; c) include an appropriate preschool, elementary, or secondary school education in the State involved; and d) are provided in conformity with the individualized education program (IEP) required under sec. 614(d). 20 U.S.C.A. § 1401(9); N.J.A.C. 6A:14-1.1 et seq. The responsibility to deliver these services rest with the local public-school district. N.J.A.C. 6A:14-1.1(d).

In order to provide a FAPE, a school district must develop and implement an IEP. N.J.A.C. 6A:14-3.7. An IEP is “a comprehensive statement of the educational needs of a handicapped child and the specially designed instruction and related services to be employed to meet those needs.” Sch. Comm. of Burlington v. Dep’t of Educ. of Mass., 471 U.S. 359, 368, 105 S. Ct. 1996, 2002, 85 L. Ed. 2d 385, 394 (1985). An IEP should be developed with the participation of parents and members of a district board of education’s CST who have participated in the evaluation of the child’s eligibility for special education and related services. N.J.A.C. 6A:14-3.7(b). The IEP team should consider the strengths of the student and the concerns of the parents for enhancing the education of their child; the results of the initial or most recent evaluations of the student; the student’s language and communications needs; and the student’s need for assistive technology devices and services. The IEP establishes the rationale for the pupil’s educational placement, serves as the basis for program implementation, and complies with the mandates set forth in N.J.A.C. 6A:14-1.1 to -10.2.

To meet its obligation to deliver FAPE, a school district must offer an IEP that is reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances. Endrew F. v. Douglas Cnty. Sch. Dist., 580 U.S. (2017); 137 S. Ct. 988; 197 L. Ed 2d 335.

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

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

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

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

Parents who are dissatisfied with an IEP may seek an administrative due-process hearing. 20 U.S.C.A. § 1415(f). The burden of proof is placed on the school district. N.J.S.A. 18A:46-1.1. If an administrative law judge finds that a district has not made FAPE available to a student who previously received special education in a timely manner prior to his enrollment in a nonpublic school, the judge may require the district to reimburse the parents for the cost of that enrollment if the private placement is appropriate. N.J.A.C. 6A:14-2.10.

Thus, the first issue is whether the district’s proposed IEP of February 6, 2024, provided C.B. with FAPE. As set forth in the findings of facts, the February 6, 2024, IEP

did not contain any current information on C.B.'s current levels of academic achievement and functional performance (PLAAFP). She had been in the district for five months and there was no update as to how she was performing in any of her academic areas. The IEP carried over her PLAAFP from the prior school year with no current information as to C.B.'s educational performance.

The IEP of February 6, 2024, (R-16) lists the goals and objectives at pages 9 of 17 and there were no phonological goals regarding speech. The speech goals listed at six through ten do not include any phonological goals. Phonological goals should have been included in speech goals because the speech pathologist is an expert and specialist in phonological skills. That is fundamentally what dyslexia is. A speech pathologist's whole job is phonological processes. Not only could she have done therapy with C.B., but she could also have been the one to give the teacher and other people structured things to do. The speech pathologist was left out completely of any intervention for dyslexia. The goals that are in the IEP for speech concern articulation and how C.B. talks/sounds, which was not a significant concern. The district should have known that C.B. had phonological issues based on the neuropsychology evaluation from September 2023. (P- 40 at 3103.) There were several tests given by the doctor, several of them which are also given by speech pathologists including the CTOPP. All her scores on the subtests including Elision, Blending Words and Phoneme Isolation are a six, which is below the average of ten. Her scores are so low that even without additional testing, they should have been addressed. C.B. was so below the average that she could not access any of the curriculum or anything being taught without significant help. It was also noted that the ISP dated June 16, 2023, prepared for C.B. by Resurrection included foundational reading and phonics goals, yet these were not carried into the Cherry Hill IEPs.

Although C.B. has difficulty in reading and writing and there is reading and writing in science and social studies, the February 6, 2024, IEP placed her in a general education class for those subjects without the support of a special education teacher and only required a teacher's aide be present.

The multisensory reading intervention provided to C.B. with the SPIRE program was not given five times per week for forty-five minutes as required by the program to be

effective. Ms. Sabia could only administer the program to C.B. two or three times per week for twenty to twenty-five minutes because of the demands of the classroom. There also was no progress monitoring as to how C.B. was performing in the SPIRE program.

The February 6, 2024, IEP did not include any social/emotional goals or supports to address C.B.'s anxiety and emotional well-being.

The district has no specific program that provides intervention for dyslexia.

Therefore, I **CONCLUDE** that the February 6, 2024, IEP failed to offer C.B. FAPE.

If an educational agency failed to provide a student with a FAPE, the court is broadly empowered to fashion relief that is appropriate in light of the purpose of the IDEA. School Comm'n of Burlington v. Mass. Dept. of Educ., 471 U.S. 359, 369 (1985). The right of parents to make unilateral private placements when they disagree with the educational programs provided to their disabled children is well established. In the Burlington case, the United States Supreme Court held that the IDEA empowers courts to order school authorities to reimburse parents for their expenditures on private special education for a child if the court ultimately determines that such placement is proper under the IDEA. Ibid. This was considered to be a valid exercise of courts' broad powers to ensure that the purposes of the statute are carried out, i.e., to ensure that all disabled children have access to a FAPE. Ibid. The Court concluded that this would not unduly burden school districts. Rather, it merely requires a school district to belatedly pay expenses that it should have paid all along and would have borne in the first instance had it developed a proper IEP. Id. at 359.

Reimbursement is still dependent upon the parents establishing that the unilateral placement provides the pupil with an appropriate education. Burlington, 471 U.S. at 359. They may be entitled to reimbursement for the costs of their unilateral private placement only if a court finds that the proposed IEP was inappropriate, and that the private placement was appropriate under the IDEA. 20 U.S.C. § 1412(a)(10)(C)(ii); N.J.A.C. 6A:14-2.10(b). Having determined that the IEP of February 6, 2024, did not offer FAPE, I must now determine whether the Laurel School placement was appropriate. Our courts

have held that “when a public school system has defaulted on its obligations under the [IDEA], a private school placement is ‘proper under the [IDEA]’ if the education provided by the private school is ‘reasonably calculated to enable the child to receive educational benefits.’” Florence Cty. Sch. Dist. v. Carter, 510 U.S. 7, 11 (1993) (quoting Carter v. Florence County Sch. Dist. Four, 950 F.2d 156, 163 (4th Cir. 1991)). Since the Florence decision, the Supreme Court in Endrew F. has redefined FAPE. The placement made by petitioners is proper if it was “reasonably calculated to enable [C.B.] to make progress appropriate in light of [her] circumstances.” Endrew F., 137 S. Ct. 988 at 1001.

C.B.’s placement at the Laurel School was appropriate. The Laurel School is a private school specializing in educating students with language-based learning differences such as dyslexia, dyscalculia and ADHD. It provides an academic environment that makes accommodation for students with special needs with certified teachers and small class sizes. C.B. has progressed in her education and done well at the Laurel School. Although it is not a state approved school for students with disabilities, our courts have held that “parents [are] entitled to reimbursement even [when a] school lacks State approval because the [FAPE] State standards requirement[s] . . . [apply] only to placements made by a public authority.” L.M. ex rel. H.M. v. Evesham Twp. Bd. of Educ., 256 F. Supp. 2d 290, 297 (D.N.J. 2003) (citing T.R. v. Kingwood Twp. Bd. of Educ., 205 F.3d 572, 581 (3d Cir. 2000)); see also Warren G. v. Cumberland Cty. Sch. Dist., 190 F.3d 80, 83 (3d Cir. 1999); 34 C.F.R. § 300.148(c) (2019); N.J.A.C. 6A:14-2.10.

I therefore **CONCLUDE** that C.B.’s placement at the Laurel School was appropriate.

Having concluded that the Board denied FAPE to C.B., and that the placement at the Laurel School was appropriate, I am authorized to “grant such relief as [I determine] is appropriate.” 20 U.S.C. § 1415(i)(2)(C)(iii). Our courts have held that “equitable considerations are relevant in fashioning relief under the IDEA.” Sch. Comm. of Burlington v. Dep’t of Educ., 471 U.S. 359 (1985). A court may reduce or deny reimbursement costs based on the parents’ unreasonable behavior during the IEP process. 20 U.S.C. § 1412(a)(10)(C)(iii). New Jersey rules likewise confirm that the cost of reimbursement may be reduced or denied “[u]pon a judicial finding of

unreasonableness with respect to actions taken by the parents.” N.J.A.C. 6A:14-2.10(c)(4). The rules specifically require that parents advise the district at the “most recent IEP meeting” that they were rejecting the IEP and give at least ten business days’ notice of their concerns or their intent to enroll their child in a nonpublic school. N.J.A.C. 6A:14-2.10(c)(1) and (2). The intent of the rule is to afford the district an opportunity to respond to the parents’ concerns; work collaboratively with the parents to develop an IEP that delivers FAPE; and obviate the need for unilateral placement. The intent of the rule is to afford the parties one last opportunity to develop a plan for the student in the manner that the Federal law intended.

In this case, petitioners notified the district on February 8, 2024, of their intent to unilaterally place C.B. at the Laurel School on February 20, 2024. (R-17.) Petitioners had in good faith sought to collaborate with the district on the development of an appropriate educational plan for C.B. There has been no testimony that the parents acted unreasonably in any way in their dealings with school personnel. The parents were concerned that their daughter was in third grade and lacked the basic phonological skills to learn how to read and the gap was growing wider between her and her peers. There were no phonological goals in her IEP. There was no district program specifically designed to address students with dyslexia. There were no present levels of academic achievement and functional performance set forth in her February 6, 2024, IEP. The intervention that the school was providing was not being delivered with fidelity to allow C.B. to make meaningful progress. Also, the parents were concerned with the emotional toll C.B.’s dyslexia and academic difficulties were taking on her. They brought their concerns to the district and were advised that C.B.’s program was not going to be changed. The parents stated that they had no other choice but to unilaterally place C.B. in the Laurel School in order to get her the intervention she needed to address her significant learning disabilities.

Therefore, I CONCLUDE that the parents did not engage in any unreasonable conduct that would warrant reduction in the reimbursement of the costs of tuition for the Laurel School and reimbursement for transportation.

LRE Discussion

Although I have concluded that the February 6, 2024, IEP failed to offer C.B. FAPE, that the Laurel School was appropriate, and that petitioners acted reasonably in unilaterally placing C.B. at the Laurel School, I am not unmindful that the Laurel School is a more restrictive placement with no exposure to neurotypical peers. Although I believed C.B. required the intensive structured literacy instruction that Laurel provides to narrow the reading gap between her and her peers, moving forward, I direct that the parties collaborate to develop an appropriate IEP with the necessary support and services that would allow C.B. to return to her home district and be educated with her neurotypical peers, in the least restrictive environment. The district now has the benefit of the petitioners' expert reports which they did not have prior to the unilateral placement. Therefore, all current data should be reviewed, any necessary evaluations be obtained, input obtained from C.B.'s teachers at Laurel to see what interventions have been working for her and that the parties plan an IEP meeting to develop an appropriate IEP for C.B. for the 2025-2026 school year.

ORDER

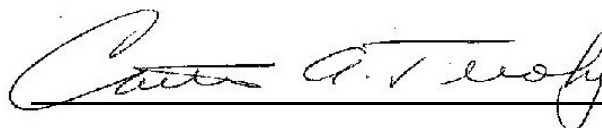
Based on the foregoing, it is **ORDERED** that respondent reimburse petitioners for their expenses in unilaterally enrolling C.B. at the Laurel School, including transportation, retroactive to the date of her enrollment.

It is further **ORDERED** the parties convene an IEP meeting to develop an appropriate IEP for C.B. for the 2025-2026 school year.

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

January 24, 2025

DATE

A handwritten signature in black ink, appearing to read "Catherine A. Tuohy", is written over a horizontal line.

CATHERINE A. TUOHY, ALJ

Date Received at Agency:

Date Sent to Parties:

CAT/gd

APPENDIX

WITNESSES

For petitioner

Amy Bernstein
J.B.
Jaime Lehrhoff
Susan Miller

For respondent

Jamie Esters
Jodi Sabila

EXHIBITS

For petitioners

- P-40 Amy Bernstein July 18, 2024, Speech/ Language Evaluation; November 16, 2024, Addendum to Speech/Language Evaluation; and CV
- P-41 Jamie Lehrhoff January 2024 Educational Evaluation/Observation; June 5, 2024, Laurel School Observation; October 23, 2024/November 11, 2024, Observations Report; and CV
- P-50 Resume of Susan E. Miller
- P-56 Laurel School Progress Monitoring
- P-63 Laurel School December 11, 2024, Progress Monitoring

For respondent

- R-3 ISP, June 21, 2022
- R-4 ISP, June 16, 2023
- R-5 IEP, July 27, 2023
- R-6 Email from case manager regarding amendment of IEP, August 22, 2023
- R-7 IEP dated August 25, 2023
- R-8 Private Neuropsychological Evaluation, September 19, 2023

- R-9 November 8, 2023, email chain between case manager and parent
- R-10 November 29, 2023, email from J.B. to Superintendent and BOE
- R-11 December 15, 2023, letter from A. Morgan
- R-12 Report card for marking period 1, 2023-2024
- R-13 Progress report 2023-2024
- R-14 Assistive Technology Evaluation, January 8, 2024
- R-15 January 29, 2024, Educational Evaluation by Jaime Lehrhoff
- R-16 IEP dated February 6, 2024
- R-17 Unilateral placement notice, February 8, 2024
- R-18 Response to unilateral placement notice, February 22, 2024
- R-19 SPIRE reading notebook
- R-20 DIBELS student materials
- R-22 May 20, 2024, Document Demand from petitioners' counsel
- R-30 CV and certifications of Jamie Esters
- R-32 CV and certifications of Jodi Sabila
- R-36 Notes of Jodi Sabila for February 6, 2024, IEP meeting