

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

**FINAL DECISION**

**(CONSOLIDATED)**

OAL DKT. NOS. EDS 12524-16

and EDS 13086-16

AGENCY DKT. NOS. 2017-25049

and 2017-25078

**E.P. ON BEHALF OF E.P.,**

Petitioner,

v.

**NORTH ARLINGTON BOARD OF EDUCATION,**

Respondent.

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**Catherine Merino Reisman, Esq.**, for petitioner (Reisman, Carolla, Gran,  
attorneys)

**Marc G. Mucciolo, Esq.**, for respondent (Methfessel & Werbel, attorneys)

Record Closed: July 17, 2017

Decided: August 29, 2017

BEFORE **MICHAEL ANTONIEWICZ, ALJ:**

## **STATEMENT OF THE CASE**

E.P. (parent/petitioner), on behalf of her daughter EA.P.<sup>1</sup> (daughter/student), filed a due process petition against respondent, North Arlington Board of Education (North Arlington/District), contending that the District should not declassify EA.P. from its previous determination of eligibility for special education and that EA.P. was eligible for special education and related services under the category of a preschool disabled. Petitioner seeks an Individualized Education Program (IEP) that includes: speech/language therapy; direct instruction in social skills; facilitated peer interaction; involvement of a behaviorist; parent training; modifications of the classroom environment; additional classroom supports; and an extended school year program (ESY). Petitioner also seeks reimbursement for all educationally related expenses incurred by the parent including evaluations and ESY for 2016 as well as transportation.

The Individuals with Disabilities Education Act (IDEA), 20 U.S.C.A. §§ 1400 et seq., requires a public school district to provide its students with a free appropriate public education (FAPE). At issue is whether EA.P. should continue to be classified as disabled, and, if so, what services should be provided.

## **PROCEDURAL HISTORY**

On or about August 22, 2016, E.P. filed a petition for due process and the District responded to the request on August 24, 2016. The New Jersey Department of Education, Office of Special Education Programs transmitted the matter to the Office of Administrative Law (OAL), where it was filed as a contested case on August 19, 2016, under OAL Dkt. No. EDS 12524-16. A second due process was subsequently transmitted to the OAL and filed on August 30, 2016, under OAL Dkt. No. EDS 13086-16. The undersigned entered an Order of Consolidation on October 3, 2016, in accordance with the parties' agreement that the matters should be consolidated. The hearing commenced on February 24, 2017, and continued on April 5, and April 19,

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<sup>1</sup> Since the mother and daughter share same initials, EA.P. will refer to the daughter in this decision.

2017. The record closed on July 17, 2017, with the submission of post-hearing written closing arguments by both parties.

## **FACTUAL DISCUSSION**

### **Background**

The following are **FACTS** by written Stipulation between the parties:

1. EA.P. is a four-year-old (DOB: 9/12/12) who resides in the area served by the North Arlington Board of Education.
2. By virtue of EA.P.'s residence in North Arlington, respondent is responsible for the student's educational programming.
3. E.P. is EA.P.'s parent and natural guardian.
4. EA.P. began receiving Early Intervention (EI) services in March 2014. Through EI, she received speech therapy twice a week, occupational therapy twice a week and developmental instruction twice a week.
5. North Arlington completed a Psychological Evaluation of EA.P. on June 1, 2015. (J-18.)
6. North Arlington completed an Educational Evaluation of EA.P. on June 3, 2015. (J-19.)
7. North Arlington completed a Social Evaluation of EA.P. on June 11, 2015. (J-17.)
8. North Arlington completed a Speech Evaluation of EA.P. on June 15, 2015. (J-20.)

9. On June 16, 2015, North Arlington found EA.P. eligible for special education and related services. Respondent offered the petitioner an IEP, dated June 18, 2015. (J-23).
10. The IEP placed EA.P. in an in-district PSD classroom that had no peers without disabilities.
11. Shortly after June 23, 2015, E.P. provided North Arlington with a letter from Lisa Nalven, M.D., dated June 23, 2015. (J-24.)
12. From July 14, 2015, through July 16, 2015, E.P. and Carolyn Kropp exchanged e-mails regarding IEP implementation. (J-26; J-77.)
13. On February 29, 2016, E.P. sent an e-mail to the Child Study Team (CST) Supervisor, Dr. Lynn Crawford. (J-31.) The letter stated:

I believe [EA.P.'s] development would continue to spurt in an integrated classroom which would also be the least restricted environment. [EA.P.'s] present placement does not allow [EA.P.] the opportunity to experience a typical classroom along with typically developing peers. Therefore, I am requesting a child study team meeting A.S.A.P. to discuss this very important matter.
14. In March and April of 2016, North Arlington offered to complete occupational and physical therapy evaluations.
15. The Speech and Language progress report, March 9, 2016, is J-32 (217-218).
16. On June 16, 2016, North Arlington proposed an IEP that would provide services through the end of the school year, June 22, 2016. (J-39.)
17. On June 16, 2016, North Arlington personnel told E.P. that the district would be declassifying EA.P. and she would receive paperwork later.

18. The audio of the June 16, 2016, meeting is exhibit J-83.
19. Jennie Porfido, EA.P.'s classroom teacher, wrote the progress report dated June 16, 2016. (J-39.)
20. On June 17, 2016, E.P. requested mediation. (J-1.)
21. On August 8, 2016, North Arlington held an eligibility meeting and proposed declassification of EA.P.
22. The audio of the August 8, 2016, meeting is exhibit J-84.
23. At the time of the eligibility meeting, North Arlington had the reports of Dr. Lisa Nalven, Dr. Mark Pesner, and Jeremie Hafitz (J-37; J-49; J-50.)
24. On August 22, 2016, E.P. filed a request for due process. (J-2.)
25. North Arlington responded to the request on August 24, 2016. (J-5.)
26. North Arlington had timely notice of the unilateral placement at Lightbridge Academy for the 2016-2017 school year.
27. Dr. Lisa Nalven is an expert in developmental pediatrics.
28. Dr. Mark Pesner is an expert in pediatric clinical psychology.
29. Dr. Michele Havens is an expert in special education and DIR/Floortime Intervention.
30. Jeremie Hafitz and Freda Atkinson are experts in speech and language pathology with infant/toddlers, pre-school, and school-aged children.
31. Carolyn Kropp is an expert in School Social Work/Case Management.

32. Jennie Porfido is an expert in Special Education Teaching, with a specific expertise in the education of pre-school children including those with disabilities.
33. Cynthia Hornstein is an expert in speech and language pathology with pre-school and school-aged children.

I also **FIND** certain additional **FACTS**:

EA.P. received preschool programming to address her developmental delays. During the annual review meeting, which was held on June 16, 2016, the District's CST informally recommended "declassifying" EA.P., which would then render her no longer eligible for special education under an Individualized Education Program (IEP) based upon a determination that her then levels of academic performance, achievement, and functioning demonstrate a lack of any present educational impact caused by her disability or diagnosis. The District then proposed an IEP for the last part of the 2015-2016 school year and communicated that they would be formally declassifying EA.P. at the conclusion of that school year.

Petitioner made a first request for due process under OAL Dkt. No. EDS 12524-16 on or about June 17, 2016. In that request, petitioner challenged the proposed program and placement for EA.P. for the remainder of the 2015-2016 school year and invoked "stay put." After failing to settle the matter, it was converted to a request for Due Process.

On or about August 8, 2016, the parties had an Eligibility Meeting for EA.P. where the District formally determined that the student was no longer eligible for special education and related services because she did not demonstrate a disabling condition that impacted her education to the extent that special education services were required. Petitioner filed a second Petition for Due Process on or about August 22, 2016, challenging the District's decision to formally declassify EA.P., under OAL Dkt. No. 13086-16.

The last IEP for EA.P. provides for an in-district placement in a self-contained autism program at the Washington Elementary School as well as related services of speech and language therapy three times per week for thirty minutes in a small group setting. EA.P. also receives special transportation to and from school pursuant to the IEP. EA.P. has requested general education placement with supports for her preschool disabled daughter from July 2015.

All of the District's witnesses agree that EA.P. made remarkable gains across all domains since entering the District's preschool program including the area of social behavior. It is abundantly clear from the testimony and evaluations of the witnesses from both the District and to a certain extent the petitioner that, despite any reported weaknesses, additional services for which might provide some benefit they were not affecting EA.P.'s ability to access the general education curriculum and I so **FIND**. In other words, any lingering deficits did not significantly impact verbal and non-verbal communication and social interaction that adversely affects EA.P.'s educational performance. The dispute centers, instead, on whether the issue of social behaviors must continue to be addressed pursuant to a classification and through the provision of additional special education. Petitioner acknowledges that its concern is not EA.P.'s intelligence or even her academic functioning. The concern is her social emotional functioning.

The most compelling testimony was that of Speech and Language Pathologist Hornstein and Social Worker Kropp and Porfido, the teacher for the school year 2015-2016 in that they all had the opportunity to observe the educational and social progress of EA.P. continuously during the time the student was in North Arlington School District. Importantly regarding social behavior concerns, EA.P. made great strides in her social interaction during that school year. She initiated action with peers on the playground and appropriately responded to them even though some of the petitioner's witnesses stated that she had trouble interacting with peers. Notwithstanding some behavioral, albeit improving, concerns during the 2015-2016 school year, both Kropp and Porfido credibly testified about dramatic behavioral improvement by EA.P. as that year progressed. It is evident, and I so **FIND**, that EA.P. had matured to such a degree by the time this petition was filed that her remaining behaviors could be addressed by a

general teacher without the need for special education. Indeed, under the circumstances present at the end of 2015-2016 school year, Pathologist Hornstein's opinion was persuasive that the continuation of facilitated social interactions would not be necessary. EA.P. was already able to interact appropriately with peers in a naturalistic setting without support. I agree with Hornstein's assessment that Attinson and Havens relied too much on parent reporting rather than objective criteria to opine that EA.P. qualified for continued services especially in the absence of the petitioner's witnesses seeking input from school personnel and the absence of their observation of EA.P. with peers while at the District's school. In addition, although Dr. Pesner offered sincere testimony, I **FIND** that he was motivated by the relationship he had with E.P. and her family over an extended period of time. There were large gaps of time when Pesner had no exposure with EA.P. and had very limited exposure to EA.P. while she was at North Arlington School.

### Testimony

#### Caroline Kropp

Caroline Kropp (Kropp) is the Case Manager and social worker for the District, who qualified as an expert in speech and language assessment. Kropp worked for the District for eight years. She identified J-63 as her current resume. Kropp is a licensed social worker in New Jersey and a certified school social worker. She also has a certificate of eligibility with advanced standing in elementary education and a certificate of advanced standing for an art teacher. Kropp testified as an expert in School Social Work/Case Management. (Stip. at 32.)

Kropp stated that for incoming preschool students, the District received referrals from EI notifying them that a child will be turning three who resides in the District and their date of birth. The District will then conduct a meeting between EI and the school and go over what the child is receiving through EI, the family's concerns and informed the parent what the District does and the role of educators. Kropp completed a social assessment on June 11, 2015, and created a report. (J-17.) The purpose of a social assessment is to collect background information on the child, family history, school

history, medical history, and developmental history. Such an assessment is based heavily on parent reporting. Kropp did this interview with E.P. over the telephone and found that E.P. was not forthcoming about background information. E.P. failed to provide all the information regarding who resides in the household, the ages of those individuals, where they grow up, work, etc.

The District also uses the Battelle Developmental Inventory (Battelle). The Battelle is an instrument used by EI for incoming preschool children. There are five domains: the adaptive, personal social, communication, motor, and the cognitive domain. Some domains are based on parental report and some based on the child doing a task. Based on the Battelle, a score sheet (J-21) was created and the protocol that the examiner used was submitted. (J-22.) Kropp was given the scores and she puts them into the program which generates the overall scores. After the scores are collected, there is a conversion table of sum of scaled scores and they look at the developmental quotient (DQ). They look for a discrepancy in scores, 25 percent in two or more areas or 33 percent deficit in one or more areas. In the cases where they find such a discrepancy, the child is then eligible as a child with a disability. Based on these scores for EA.P., she was eligible for special education.

Thereafter, the District held an eligibility meeting and mailed a notice of same to E.P. (J-23.) The meeting was held on June 18, 2015, and there was created an eligibility conference report. (J-23.) At that meeting, EA.P. was found to be eligible for special education. Thereafter, the District proposed an IEP. The IEP provided a preschool disabilities classroom with special meaning art, music, gym, with speech therapy three times a week with transportation to and from school. EA.P. would take the arts, music, and gym with the general education students. Kropp recalled that E.P. did not sign the IEP at the meeting. E.P. wrote some additional things she wanted through services for EA.P. Kropp discussed these requests with E.P. over the summer. They agreed on transportation and then talked about the other items. There was also an e-mail which was very similar to the IEP. (J-26.) Eventually, E.P. signed the IEP on July 28, 2015, and the IEP went into effect for EA.P.

After the IEP goes into effect, Kropp, as case manager, continually checks in with the teachers and speech therapist. Kropp would check in almost daily, but at least three or four times a week. Kropp would talk with the teachers about all the students. Kropp was present in the classroom when there was a formal observation by a representative from Montclair State to observe EA.P. The special education teacher told Kropp that EA.P. was progressing nicely. There was a letter E.P. wrote to Dr. Crawford dated February 29, 2016. (J-31.) The letter requested a CST meeting A.S.A.P. Kropp stated that right after receiving this letter a CST meeting was held on March 8, 2016. (J-33.) It was agreed that EA.P. would have an occupational therapy evaluation. EA.P.'s speech therapist and classroom teacher put together a Present Level of Performance in Speech and Language. (J-32.) This documents was given to Kropp prior to the March 8, 2016, meeting. E.P. also brought up her concerns about EA.P.'s school placement. They all also agreed after the meeting to have a physical therapy evaluation done on EA.P. The information contained in J-32 was reflected in the conversations with Ms. Hornstein and Ms. Porfido. Accordingly, Kropp believed the information to be accurate.

On June 16, 2016, another IEP was completed and contained therein was the Present Levels of Performance completed by the classroom teacher and speech therapist dated March 9, 2016. Kropp was told by EA.P.'s teacher when she would stop by the classroom, that EA.P. was doing wonderfully and making progress. EA.P.'s teacher was pleased with her progress. EA.P.'s speech therapist also stated that the student was continually meeting her targets and showing growth. At the June 16, 2016, meeting the participants discussed the PT and OT evaluations and EA.P. was found not eligible for OT and PT. The District used OT and PT therapists from South Bergen Jointure. An OT report and a PT evaluation report was created. (J-34; J-38.) At this meeting, it was discussed a proposal for a re-evaluation and the District gave E.P. notification that they wanted to set up such a procedure. They also discussed EA.P.'s progress and proposed an IEP from that date until the end of the school year, i.e., June 16 to June 22. This proposal was based on the fact that EA.P. made tremendous progress throughout the school year. At the end of the school year, they would have tested EA.P. They also found that EA.P. was not eligible for extended school year services. They did not discuss declassifying EA.P., only re-evaluating her. Kropp

remembered that E.P. had social concerns about her daughter. E.P. did not sign the IEP of June 16, 2016, so it did not go into effect.

By letter, dated June 22, 2016, was sent to E.P. to have a meeting to discuss EA.P.'s re-evaluation. The meeting was proposed for July 20, 2016. The meeting did not take place because E.P. cancelled the meeting. Accordingly, no formal re-evaluation was completed on EA.P. as E.P. did not agree to same. There was an eligibility conference report done on August 9, 2016. (J-42.) The purpose of this meeting was to discuss declassification. It was the District's position that they had ample reports and due to the fact that E.P. would not permit the District to move forward with a re-evaluation, they had enough information to declassify EA.P. They based this decision on the OT report, the PT report, EA.P.'s scores through Dr. Pesner's report, EA.P.'s scores through the outside speech therapist and her scores on the VB-MAPP at the end of the school year. They determined, based on the above information, to declassify EA.P. E.P. did not agree with this decision. Dr. Pesner, who was at the meeting, said that EA.P. had social issues. Kropp stated that Pesner's report only included parental feedback and none of the teacher's feedback in it. Accordingly, the CST disagreed with Pesner's conclusion.

It was Kropp's opinion that the IEP offered to EA.P. through the 2015-2016 school year was appropriate for her. Kropp found that EA.P. was much improved over the school year. EA.P. had better social skills and was able to speak and have a conversation. Kropp found that EA.P. was making nice progress. Kropp also agreed with the District's decision to declassify EA.P. because the student made significant progress throughout the year. It was Kropp's belief that she no longer required special education or related services after the conclusion of the 2015-2016 school year.

On cross-examination, Kropp admitted that EA.P. was in daycare, in a general education setting. It was Dr. Nalven's position that when EA.P. is with typical peers, anxiety would prevent demonstration of age-appropriate skills. However, EA.P. was mainstreamed daily for specials in school: art, music, and gym. Although Kropp never observed EA.P. in a general education setting and thus could not say how she functioned in such a setting, she was in contact with her teachers on an almost daily

basis. The goals and objectives were created after the IEP by EA.P.'s teacher and speech therapist and was provided to E.P. At the June 2016 meeting, the District advised E.P. that they would mail her a letter to set a date and time for a meeting to discuss re-evaluation.

Kropp stated that the decision not to provide an ESY was based on the teacher's reports, the speech therapist present levels, teacher's present levels, and EA.P.'s scores on the VB-MAPP. Kropp admitted that E.P. made a request for an OT evaluation in June 2015. Kropp and E.P. had a discussion and an agreement that they would first start the school year and see how EA.P. performed. E.P. signed the IEP after their discussion which indicated E.P.'s agreement to that course of action.

Upon review of the "Caregiver/Teacher report form" (J-29) which was provided by one of the outside evaluators retained by E.P. This form stated that she had a concern about EA.P.'s ability to initiate conversations, but she saw significant growth academically, socially, and behaviorally. At the March 2016 IEP meeting, the District agreed to do an OT evaluation. In addition, E.P. brought up the fact that EA.P. may be placed in the least restrictive environment; however, no formal request was made. The discussion included the fact that the District did not have a general education pre-K program.

On re-direct, Kropp stated that the report written by The Valley Hospital on Developmental Pediatrics (J-10) was reviewed by the CST and considered with regard to initial eligibility and the IEP meeting. Kropp testified that EA.P. had goals and objectives during the 2015-2016 school year. A progress report was created for EA.P. (J-47.) This progress report contains goals and objectives. This document was provided to E.P. as it was sent to her home. The District never received any communication from E.P. asking for goals and objectives.

#### Jennie Ann Porfido

Jennie Ann Porfido (Porfido) is a special education kindergarten self-contained teacher working for the District. Prior to that, Porfido was a preschool self-contained

teacher for nine years and prior to that she was a resources room teacher for two years. Porfido was accepted by stipulation as a special education teacher with expertise in educating preschool age children, including those with disabilities.

Porfido first became familiar with EA.P. in June 2015 when she attended a meeting and met the student. There were assessments happening at that time. E.P. was also present at the meeting as was a learning consultant. Porfido described EA.P. as very shy and not very verbal at the time. Porfido tried to engage EA.P. in play and EA.P. did respond. EA.P. seemed favorable to Porfido as she smiled and seemed to like Porfido. EA.P. seemed to have significant receptive and expressive language delay as she did not speak during the evaluation. There was an IEP meeting prior to EA.P. being in Porfido's case. Porfido attended the IEP meeting. She reviewed the evaluations and reports in EA.P.'s file.

Porfido described the class she taught, which had eight children, including EA.P., three para-professionals and herself. It had about a two-to-one ratio. There was an opportunity where all students participate during the morning meeting, circle time, and snack time with the whole group. There is also an opportunity during the day for small group instruction where they do centers, reading, math, and fine motor and art centers with herself or a para-professional running the group. There is also an opportunity during the day for one-to-one teaching sessions. The para-professionals were classroom paras. Porfido reviewed the classroom schedule for the year 2015-2016. (J-72.) This was the schedule that EA.P. received that year. The topics of music, Spanish, phys ed and art, the students would leave the classroom and be with the general education population. The general education students were not preschool students, but rather were kindergarten students. There was no preschool general education program in the District.

The time when EA.P. would be pulled for related services varied which included speech. Porfido also reviewed the VB-MAPP. (J-45.) Porfido administered assessment previously for each student in her class at the beginning and the end of the school year. Porfido had significant training in this area of assessment. The assessment covers different skills and how the student can reach different levels.

There is level one for zero to eighteen months. The child would receive a score of zero if they cannot complete the task, a half point if they can do half of it or partial, and full score if they complete the task. EA.P. received the VB-MAPP in the 2015-2016 school year. One test was given in October 2015 and one test was given in May 2016. Such a test can take from two weeks to a full month, depending on the child. Porfido works with each child, individually. As a result of the October test, EA.P. scored a 131 ½ out of a possible 170. Porfido found this to be a pretty high score. EA.P. had all of level one, a majority of level two (18 to 30 months), and well into level three. Porfido made the following comments: "While [EA.P.] shows more interest in adults currently I have observed more of a shift. She is imitating actions of her peers and showing overall more of an interest in peers rather than adults." Porfido described how EA.P. showed a social interest to two other children who were high functioning. EA.P. would like to imitate the actions of these children. EA.P. would join in with them on the playground.

Porfido found that preschool students when they come in are not verbal. These students have many behaviors that inhibit their ability to learn. She attempts to target their behavior first before addressing academics or socialization. Porfido noted that the June 2015 IEP had a blank page where the goals and objectives would go. Porfido stated that it was her responsibility to input these goals and objectives; however, she likes to run an assessment (VB-MAPP) prior to inputting any goals and objectives. Porfido likes to have the goals and objectives reflect the child's abilities. Porfido shares the goals and objectives with the parent through the progress reports. If the parent has any questions, Porfido is always open to communication. The VB-MAPP does not require any parental input.

Porfido stated that EA.P. was comfortable in her classroom during the first month or two. She said that EA.P. was one of the higher functioning students in the class. Porfido testified that EA.P. was pretty high academically and always participated in the discussion. EA.P. would raise her hand and always offered information and was a willing participant. EA.P., at the beginning of the year, would not use full sentences, but stringed some words together here and there.

Porfido also gave a pretest for reading to all her students. (J-27.) This pretest is a District-mandated pretest. The pretest consists of letter identification, recognizing their name, and the ability to exhibit reading-like behavior and book knowledge. This pretest was given in October. EA.P. scored low on this pretest mostly because she did not know many of her letters at that time. EA.P. only knew five out of twenty-six. There was also a pretest given for writing. (J-28.) In this pretest, the student is given a piece of paper and they are asked to write-draw a picture of their favorite toy and then write about it. On this pretest, EA.P. scribbled on the paper. Porfido stated that this is very typical of a three-year-old child. EA.P. received a one out of seven score. This did not surprise Porfido.

Porfido also filled out the “Caregiver/Teacher Report Form” which shows how the child behaves in the classroom. Based on this document, Porfido found that EA.P. made significant growth in her first two months in school. Porfido found that EA.P. was able to identify ten letters, was able to move about the routine in the classroom, transition from activity to activity, and was independent at the time. EA.P. was interacting with her peers, but was not initiating any kind of conversation or interaction. The last issue was Porfido’s only concern.

Porfido also looked at EA.P.’s present levels for March. (J-32.) This was prepared for the IEP meeting. This document indicated a lot of growth for EA.P. Porfido no longer had the same concerns about EA.P. initiating conversations and playing with peers. EA.P. showed more interest in her classmates and was imitating what other children were doing and she saw EA.P. initiate conversations with her friends. Porfido did attend the March 8, 2016, IEP meeting and she remembers E.P. having a concern with her daughter interacting socially with her peers. The attendees did agree to put EA.P. in the kindergarten classroom for part of the day. This began in March and they tried this every day by putting EA.P. in Ms. Fasouletos’ class most mornings for circle time. A para-professional would go with EA.P. to the kindergarten class. Porfido spoke with the kindergarten teacher regarding EA.P. in that class. EA.P. was quiet in the two classes except she was more engaging during instructional time. EA.P. would raise her hand and answer questions. Porfido believed that it was

beneficial for EA.P. to be included in the general education kindergarten because she was around socially appropriate peers.

There was also a “Pre-K pretest” (J-35) which Porfido administered to EA.P. for writing. EA.P.’s score was seven out of seven. EA.P. improved greatly as her previous pretest was one out of seven. Porfido described the increase from one out of seven to seven out of seven as a significant increase. There was also a pretest for reading. (J-36.) On this second pretest, EA.P. scored nine out of ten. The previous pretest had a score of four out of ten. This again was a significant increase. There was a “Caregiver/Teacher Report Form” regarding EA.P.’s behavior in the classroom. This form was sent to Dr. Pesner by Porfido. Porfido’s concerns in this form were that EA.P. does require minor prompting to initiate conversations playing with peers. Porfido stated this issue was no longer a major concern because there was such an improvement. Dr. Pesner was contacted by Porfido regarding this form and talked about the form in general.

Porfido also created EA.P.’s progress report for her speech goals and for her goals in her class, verbal behavior. (J-47.) The progress reports are given out three times throughout the year (December, March, and May). The goals and objectives were based on the VB-MAPP. It was Porfido’s belief that EA.P. was making progress in social behavior and social play. EA.P. also made progress in visual perceptual skills and academic skills. Porfido reviewed EA.P.’s report cards. (J-48.) Porfido filled out reading, writing, listening and speaking, mathematics and science, behaviors, work skills, social skills, motor skills, and social studies. Porfido testified that EA.P. was doing well in these areas, especially for a three-year-old. Porfido also reviewed the “present levels of academic achievement and functional performance” that she created for the June 16 IEP meeting. The final portion of the VB-MAPP was completed. The VB-MAPP score in May 2016 was 161 out of 170, which showed a significant increase. Porfido stated that she could not remember a student receiving such a high score. At three years old, EA.P. was meeting many of the milestones on a level three, which up to forty-eight months (four years old). Porfido found that EA.P. made significant progress in all academic areas. In the IEP of June 16, 2016 (J-39), Porfido wrote that “E. is right on point with where she should be for a child of her age meeting and surpassing most of

the milestones that are target in this assessment.” This was based on the VB-MAPP and is an accurate representation of EA.P.’s skills at that point in time. Porfido observed EA.P. asking one of her peers to play house out on the playground. Porfido saw a lot of interaction between EA.P. and another student. Porfido shared this information with all that attended the June 16 IEP meeting, including E.P. There were some concerns about EA.P.’s socialization raised at the meeting. E.P. stated that she would like to see EA.P. in a more inclusive environment (which the District did not have). She commented on Dr. Pesner’s observation by stating that Porfido did not know what EA.P.’s relationship was with Dr. Pesner and that EA.P. might not have been doing what she normally does in the classroom and Dr. Pesner’s observations were based on a small chunk of time whereas Porfido had the opportunity to see EA.P. in the classroom for ten months out of the school year. Porfido saw EA.P.’s growth first hand.

Porfido also looked at J-42 which was the conference report from the August 8, 2016, meeting. Porfido attended that meeting and the topic of that meeting was the declassification of EA.P. It was mostly a discussion between Dr. Crawford, Dr. Pesner and Ms. Kropp. Porfido did provide the group with her input and impressions of EA.P. Porfido did agree with the decision to declassify EA.P. based on the progress and the growth the student made. By the end, Porfido did not have any social concerns for EA.P. because she grew socially. EA.P. was not in any need of special education. Porfido confirmed that EA.P. did make progress in her class during the 2015-2016 school year and the program and placement was appropriate for her.

Porfido stated that E.P. never reached out to her to express concerns with the progress reports in terms of the goals and objectives. Porfido confirmed that it was her belief that her anecdotal recollection was accurate. By the end of the 2015-2016 school year, she stated that EA.P. was occasionally able to initiate a conversation or respond to a peer’s initiation of conversation or play. It was Porfido’s position that the student was generally appropriately interacting with peers even though she did not master all of her goals. EA.P. did master most of the goals (four out of five).

Porfido found EA.P. to be the highest functioning student that she ever had in her class and that she was performing well socially. Given the social models that she had,

it was Porfido's belief that the student did pretty well. Porfido confirmed that although EA.P. would have done well in a general education setting, no such program was offered in the District preschool.

On cross-examination Porfido confirmed that she was EA.P.'s teacher for the 2015-2016 school year and first met EA.P. in June 2015. Porfido did not perform any evaluation on EA.P. Porfido was there when the speech and language pathologist was working with the student. EA.P. did not answer questions that she was being asked. Thus, the evaluation at that time was based on an interview with E.P. Porfido also testified that she was present for part of Hornstein's evaluation.

Porfido also stated that the goals and objectives in the progress reports (J-47) were developed after the IEP meeting in June and were created without parental input. The goals and objectives were added after the VB-MAPP assessment. Intensive teaching occurred during center time in the classroom. EA.P. received speech services on Mondays, Wednesdays, and Fridays. EA.P. would miss some centers on Monday, intensive teaching on Wednesdays and centers on Friday. Porfido admitted that all of EA.P.'s speech sessions were scheduled during intensive teaching times.

Porfido stated that she filled out the Caregiver Teacher Report in October 2015. There was a note dated October 27, 2015, after working with EA.P. for about two months, and Porfido had an area of concern for EA.P. regarding her ability to initiate conversation with her peers and her ability to play with her peers. Porfido stated that the progress reporting was based on anecdotal information and the VB-MAPP. It was also based on the social and play progress reporting, which was anecdotal.

In April 2016, EA.P. still needed minor prompting in order to initiate conversation with peers and to play with her peers. There was no date as to the amount of prompting needed or the number of times she could interact without prompting. EA.P. did not master the goal of engaging in four verbal exchanges on one topic with peers for five topics. Porfido said that the goals EA.P. did not master impacted her ability to engage appropriately with her peers.

Porfido sent an e-mail to E.P. (J-81) that included a story where EA.P. went to the swing and did not get the attention of any of the teachers to help her on the swing. Porfido described it as one isolated situation. Porfido did not believe that EA.P. was not capable of asking for help, but in this situation, she did not. Porfido also stated that EA.P. did not ask for help when she was having trouble getting her jacket off. Instead of asking for help, EA.P. just began to cry. Porfido maintained that EA.P. still required prompts in social situations as of April 2016. Porfido stated that she would provide a social story, which is a story provided to children who have difficulty in certain social situations, to EA.P. at times. The child would read the story and they get used to what to do. Porfido admitted that at the end of the 2015-2016 school year, EA.P. had goals that she had not mastered, yet Porfido agreed to declassify the student. Porfido stated that she reached that decision because not reaching those goals did not impact her ability to perform in the classroom academically. Porfido stated that it was her belief that EA.P. would be better suited in a placement with typically developing peers.

### Freda Atkinson

Freda Atkinson (Atkinson) testified on behalf of the petitioner and, as stipulated, an expert in speech and language pathology. Atkinson came to an opinion on the appropriate programming for EA.P. That opinion was based on the evaluations she read; medical, psychological, speech and language; her own observations and work with EA.P.

Atkinson looked at the speech and language evaluation done by Jeremie Hafitz, which she previously reviewed. Atkinson noted from this evaluation that there was a large discrepancy of what EA.P. knows and understands of the rules of social language and her ability to actually use those rules. This was aligned with Atkinson's observations of EA.P.

Atkinson first met EA.P. in June 2016 and started working with her at the end of August 2016 and then once a week in September 2016. Atkinson supported the position that EA.P. needs models from her typical peers on how play occurs. EA.P. needs to hear language in a natural setting. Atkinson found that EA.P. needed designed

instruction expressing individuality by making independent decisions about materials; actively engaging in those activities and interactions with teachers and peers; making independent choices and plans through a diverse group of centers which there are a number of centers in her classroom and with help from speech pathologists. EA.P. also needed support playing independently and cooperatively in pairs and in small groups; engaging in pretend play; knowing how to enter a group, greeting other kids and developing a play scheme.

Attinson wrote a report in August 2016 (J-57) and an addendum on October 24, 2016. This report finds that EA.P. needed supports of a speech language pathologist to work on social language, the pragmatics in developing stronger vocabulary for social skills and developing novel play schemes. Exhibit J-70 was a summary that was done on February 19, 2017. This summary was based on Attinson's work with EA.P. in the classroom at the Lightbridge Academy. Attinson found that with the help of clinicians, EA.P. made good progress toward her goals. Attinson worked with EA.P. once a week. Attinson also provided notes to E.P. (J-80) so she would know what they were working on and how EA.P. was performing. Attinson described EA.P. was having average to above-average cognitive skills. Attinson found EA.P.'s greatest weakness to be language and social language use. It was Attinson's belief that it was far more effective to work with EA.P. in a natural setting because you are then presented with many different opportunities for natural success. It was Attinson's opinion that EA.P.'s placement at Lightbridge was appropriate. Attinson stated that EA.P. needed extra supports in speech and language.

On cross-examination, Attinson admitted that she never observed EA.P. in her class in North Arlington. In addition, Attinson never spoke with any of EA.P.'s teachers from North Arlington nor did Attinson speak with EA.P.'s speech therapist from North Arlington. It was Attinson's position that she did not need any information from the District's personnel. When Attinson had sessions with EA.P. in Lightbridge, she described EA.P. as just standing in the room with a frozen look on her face. Attinson would work with EA.P. to facilitate language. Attinson would model the language for EA.P. as to what she might say in a particular situation. Attinson would talk to EA.P.'s teacher, parent, and other clinicians and then write a summary.

Attinson also admitted that she was not qualified as a speech language pathologist who can diagnose social anxiety. Attinson stated that EA.P. did not appear to her to be a shy child. Attinson stated that it was her belief, although not positive, that the teacher at Lightbridge was a certified teacher. She based her belief on the Lightbridge class on how the teacher conducted the class. Attinson was unaware if Lightbridge is a New Jersey approved setting for disabled students. Attinson's sessions lasted forty-five minutes to one hour and happen during play. Attinson would generally communicate with the parent by phone after a session.

### Cynthia Hornstein

Cynthia Hornstein (Hornstein) testified on behalf of the respondent and submitted her resume into evidence. (J-64.) Hornstein is employed by the North Arlington Board of Education for over thirty-six years. Hornstein is employed as a speech language pathologist. It was stipulated that Hornstein would testify as an expert in speech and language pathology.

Hornstein first met EA.P. at the conclusion of the school year 2014-2015 (June 2015). At the time, Hornstein held an evaluation session in order to determine EA.P.'s eligibility for placement in North Arlington's preschool disabled program. As a result of this meeting Hornstein wrote an evaluation report. (J-20.) The evaluation session was held on June 1, 2015. Hornstein described how the team meet with the parent and the student and do a group assessment analyzing the different domains of the Battelle Developmental Inventory. Hornstein administers the communication domain, which assesses her receptive and expressive functioning; the other evaluators assess the adaptive personal social cognitive and motor. The report stated that E.P. acted as the sole informant for the initial intake. The Battelle can be administered through observation, parent interview, or standardized administration of the different probes for each domain and it allows for parent reporting to help determine the score for each domain. Hornstein described EA.P. as pretty much nonverbal during the evaluation. EA.P. was, however, otherwise engaged with the clinicians.

Hornstein did conduct testing on EA.P. The Battelle has different probes at different levels and if the child does not possess the skill, the child scores a zero and if the skill appears sometimes, the child scores a one. This was performed for both communication (the receptive and expressive component) of the communication domain. The testing protocol was marked as R-87 and entered into evidence. EA.P. received a raw score of 21 on the receptive domain. This showed a significant delay by EA.P. In the expressive domain EA.P. showed exactly the same, however, her age basis was lower.

The Battelle Developmental Inventory (J-21) which is the summary profile, is the result of the case manager taking the score sheets and entering them into a computer program which then determines the scores. Hornstein determined the total communication score under the "Developmental Quotient" which resulted in a score of 55. This score was significantly lower than the other scores. On page 144, Hornstein made a recommendation for EA.P. to attend the BSD class and have speech language services. This recommendation was based on the parent's report and her interactions with EA.P. Hornstein also identified the eligibility report which was the basis for the eligibility conference. This resulted in EA.P. being qualified for attendance in the preschool disabled program. Hornstein agreed with the team's determination of eligibility. On page 183-184, it contains the summary of Hornstein's speech evaluation. This is the summary of the full evaluation. Hornstein recommended speech therapy three times a week in a small group setting. This recommendation was made in order to give some flexibility to permit Hornstein to see EA.P. either individually or in a small group. Hornstein felt that EA.P. needed interaction with peers. This permitted Hornstein to bring in other children to help promote EA.P.'s overall language development. This was the maximum number of sessions that the respondent could give a child. In terms of location, Hornstein stated she used "various" locations. For example, Hornstein would treat EA.P. in her room, in the speech room, or sometimes in the class setting. Hornstein would also go out on the playground to assist EA.P. Hornstein stated that she loved to see the children in their natural settings.

At the IEP meeting, Hornstein stated that E.P. was in agreement with the speech therapy three times a week. E.A.P. did, in fact, receive speech in a small group for the

entire school year. In the speech room, Hornstein worked in specific skills. Hornstein worked on all levels of language development with EA.P. Hornstein stated that she worked with EA.P. on her goals and objectives. Many of those goals and objectives come from VB-MAPP and others from the preschool curriculum and many from a speech perspective and a language perspective.

Hornstein noted that on page 185 (J-23) of the IEP there was set forth no goals or objectives. Hornstein explained that the reason for this was that she had just met EA.P. for the evaluation and thus had not spent any time with her. Hornstein discussed with E.P. the weaknesses and strengths that EA.P. presented during the evaluations and the kinds of skills that Hornstein would work on.

Hornstein also reviewed a progress report created in February 2016, which included goals and objectives. Hornstein's recollection of working with EA.P. was that she was shocked that the child who was in her room was the one she evaluated in June. Hornstein found EA.P. to be verbal and engaging. EA.P. was interacting and her language structure and vocabulary was "amazing." R-44 was the log sheets and session log sheets, which she takes every session. At the end of every session, Hornstein logs the student's performance and the progress and goals they work on.

The first session between Hornstein and EA.P. occurred on September 16, 2015, which was the second week of school. Hornstein engaged in pairing activities with EA.P. wherein she gave EA.P. a choice of the things that she would like to do. In Hornstein's room, she has many puzzles, games and activities to make the child feel comfortable. The logs show "P" for progress, "LP" for limited progress and "M" for mastered. For location it states "CR" for classroom and "SRCR" for speech room. Hornstein worked on functional language with EA.P. which means eye contact, greetings, discourse with other children, etc. The September 25, 2015, log states: "picture cards, comprehension game, things that go together, excellent today, spontaneous generation of go together."

In December 2015, Hornstein began scoring goals and objectives. Hornstein uses a token tower, whereby the student gets a token each time the student does

something correctly. If the student obtains 70 percent, the student is progressing and if they get 10 percent, it is described as limited progression. Mastery is described as the student being above 70 percent consistently. The log sheets represent Hornstein's data on each student. Hornstein testified that she marveled at the progress EA.P. was making. EA.P. became a much more social child. Hornstein recalled walking with EA.P. through the halls and seeing her showing off her new sneakers and talking to everybody. Hornstein described her as very social and very comfortable and confident.

Hornstein stated that she would have EA.P. on Monday, Wednesday, and Friday, during the time on her schedule for centers. Hornstein had no concerns about taking her for speech during the time scheduled for centers because Hornstein and Porfido had a very strong working relationship and both would be flexible with the scheduling if needed. There were also times when Hornstein would stay in the classroom and hold her therapy then.

Hornstein also reviewed the IEP which was developed based on a meeting held on March 9, 2016. (J-33.) At this time, they provided mom with a basic update on EA.P.'s progress. Hornstein also reviewed the present Levels of Performance which was prepared by Hornstein. (J-32.) In this document, Hornstein assessed her receptive language based on EA.P.'s performance in her room. EA.P. was able to attain more than 70 percent mastery. It was Hornstein's professional opinion that this represented excellent progress for EA.P. Hornstein said that EA.P. was performing with language skills beyond her chronological age expectation. Hornstein recalled that E.P. did not express any concerns about EA.P.'s progress. There was a concern by E.P. with pragmatics. To address this issue, they tried to encourage the child to use their language in a functional sense, engaging in spontaneous conversation, peer interaction, asking and answering questions and to participate in any kind of activity that would require the child to use language in a functional sense. In the middle toward the end of the year, they started working on pragmatics because EA.P.'s vocabulary was so strong.

Hornstein recalled that EA.P. started to come with a couple other students. The other students would be helped by EA.P. Hornstein believed that in the classroom, in a

special or on the playground, was an appropriate setting for EA.P. It was also a way for Hornstein to assess how EA.P. was doing on her own volition. Hornstein also reviewed the IEP from June 2016. (J-39.) Hornstein attended this meeting. Page 264 was a present Levels document, which was used as a template (without the date being changed). This document is from the June 2016 IEP meeting. In this document, it shows that EA.P.'s progress in speech was "great" and "fabulous." Hornstein had very few concerns other than the fact that occasionally EA.P. was a quieter or shy child. Hornstein did not believe that she had a language based disorder. EA.P. needed a bit of encouragement from a pragmatic standpoint but she had the skills to engage in social language. Hornstein also found that EA.P. had tremendously improved eye contact during interaction with adults. In addition, EA.P. would provide information. Hornstein related the fact that EA.P. would come in on Monday morning and tell everyone what happened over the weekend.

Hornstein testified that it was the team's determination at the June 2016 meeting to declassify EA.P. Hornstein agreed with this decision. Hornstein felt that EA.P. had mastered the goals and objectives for the program and that EA.P.'s participation in a program for disabled preschool children was not the best program for her at this point. EA.P. did not need this program any longer. From looking at the progress reports for EA.P. (J-47), Hornstein testified that the child mastered eleven goals out of twelve. The one goal she did not master was "adding information in conversation" which EA.P. attained 80 percent of the time with moderate assistance. The note written by Hornstein stated that "while E. does participate in conversations we continually encourage more input from her. Nonetheless, definite progress." Hornstein did not believe that such a result was unreasonable for a child at that age. Hornstein believed that it was more unusual for children that age to be more engaging.

Hornstein did have communication with the mother several times throughout the school year, mostly by e-mail. The second exhibit J-83 are the e-mails between Hornstein and E.P. Hornstein believed that she had open line of communication. Hornstein was responsive to E.P.'s requests or questions. J-84 was the Caregiver Teacher Report Form, which was filled out by Hornstein on April 25, 2016. It was Hornstein's positions that most of these things were not applicable to EA.P. so she

provided zero to each. The comment written by Hornstein states that “E is a sweet, bright and friendly youngster. Her speech and language continued to blossom to levels beyond age-expected norms. She is engaging with both adults and peers and she’s a model student—E. is a model student.”

Hornstein also does periodically running records or anecdotal notes where she would write down every single thing the child says during a session. This is a way to do a functional analysis of the child’s language. Hornstein kept this information because EA.P.’s language structure was just impressing her so much. Hornstein wanted to do an assessment and she found that the child was using contractions, past tense, pronouns, embedded clauses, adjectives, and some adverbs. There were examples of EA.P. speaking based on Hornstein presenting toys and then asking questions, to which the child would respond. Hornstein described EA.P.’s speaking as all spontaneous. Hornstein keeps these records when there is something that is so impressive.

Hornstein also reviewed an independent speech and language evaluation, performed by Jeremie Hafitz. (J-50.) Hornstein stated that they do not administer the CELF preschool test. Respondent relies on the Battelle in order to qualify the students. Hornstein finds the CELF preschool to be more intensive and longer and not a part of the standard protocol. The information for this test is a checklist that is completed by someone familiar with the child (generally the parent). Hornstein did not believe that this is truly objective instrument since it is parent generated. In July 2016, EA.P. was brought to the ESY for a session once a week for thirty minutes each session. The CELF noted that EA.P. “appears to know what to do in various social situations, but she does not actively engage in these communicative interactions.” Hornstein stated that she agrees with the first half of the sentence, but disagrees with the second part of the sentence, and believes that it is more accurate to say that EA.P. does not always actively engage, because there are certainly situations where she does engage. It was E.P.’s position that her daughter had “contextual speech,” i.e., she would use more speech with familiar people and in familiar places. Hornstein did not believe that to be unusual for a child who is less outgoing and more shy. Hornstein’s opinion was that this was not a reason to have EA.P. continue in special education.

It was Hornstein's opinion that the program provided to EA.P. in the 2015-2016 school year was appropriate for her. Hornstein also testified that EA.P. made progress in that program. Hornstein believed that they addressed E.P.'s concerns with her daughter's pragmatic language difficulties. Thereafter E.P., nor Attinson, did not, at any point, reach out to her.

On cross-examination, Hornstein confirmed that Battelle is a standardized assessment. There are three possible ways to get information for this assessment: 1) direct assessment (S); 2) observation (O), or 3) interview (I). Hornstein stated that EA.P. did not respond to prompts with Hornstein during the assessment. Much of the depressed scores in this assessment was based on structured activity. Hornstein observed EA.P. several times inside and outside the classroom. When she was measuring EA.P.'s progress, she would use her clinical observations, impression and knowledge in order to determine whether she was able to do those skills. Hornstein stated that after thirty-seven years of working in this field, she was able to determine whether or not a child has mastered a goal. It was Hornstein's position that there are certain speech skills which are not able to be totally assessed by a token system or a checklist, like spontaneous use of language.

Respondent sought to do a standardized measure for EA.P. before recommending declassification, but E.P. did not agree. The IEP on June 16, 2016, proposed an end of services at the end of June. The CST wanted to evaluate EA.P. prior to declassification. It was the team's intention to declassify EA.P. and to test her for purposes of declassification. It was the team's belief that EA.P. had met all the goals and objectives of the program and that she no longer needed the program. Thus, they should test her for purposes of declassification. Hornstein confirmed that there was no general education preschool program, which EA.P. would benefit from. It was Hornstein's opinion that at the end of the 2015-2016 school year that EA.P. needed a program where she had access to typical peers.

On redirect, Hornstein confirmed that in the progress reports there is a section where she could provide anecdotal responses. Hornstein and Porfido discussed the skills exhibited by EA.P. Porfido would relate to Hornstein her observations in the

classroom. In addition, Hornstein would speak with the teachers in art, music, or gym and obtain their observations.

Dr. Mark Pesner

Dr. Mark Pesner (Pesner) was a witness testifying on behalf of the petitioner as an expert in pediatric clinical psychology. Pesner's CV was entered into evidence. (J-67.) Pesner was employed by the New York City Board of Education in 1985 for a year and a half. Otherwise he has run small social skills groups.

Pesner wrote a report regarding EA.P. Pesner stated that he was friends with EA.P.'s grandfather for over fifty years and thus has known EA.P. since birth. Pesner was asked by E.P. to observe her daughter in 2013 and then did an observation. Pesner saw that EA.P. was not interacting with any peers, not playing with toys, she was isolated and would stay by herself. Pesner found this to be very atypical.

Thereafter, Pesner then observed EA.P. in the spring of 2016. During that observation, he found EA.P. to be in a pretty good, upbeat mood. There was no acting-out behaviors. She paid excellent attention during circle time and anticipated and performed in gym. In Porfido's class, EA.P. was attentive throughout and displayed good skills in pattern recognition, sequencing, categorization, and block construction. She transitioned easily through tasks. However, he noted problems in her socialization. Porfido told him that she needed multiple prompts to interact with peers. She would initiate with adults, but never independently with other children. When she did participate with other children, it was in gross motor skill, i.e., activity with little language involved.

In June 2016, Pesner observed her at Lightbridge Academy. He found her at Lightbridge to be very comfortable. Pesner found the same problems in Lightbridge as he found in North Arlington. Pesner found that EA.P. played independently and did not play cooperatively.

Pesner used the Vineland Adaptive Behavior Scale (VABS). VABS is a pen and paper test filled out by E.P. in May 2016 when EA.P. was just short of four years old. In the seven of the eleven domains, EA.P. showed a 33 percent or more delay. This is based on the mother's reporting which corresponded with his observations. Pesner has significant concerns about EA.P.'s delays. In addition, the Social Responsiveness Survey (SRS) also comported with his observations, although Pesner admitted that he did not have extensive observations of the child.

Pesner did not include the results of Porfido's SRS because he called Porfido in order to ask about the ways she answered the questions in SRS because it was incongruent with the things she told him when he did his observation. It was his position that Porfido was disingenuous with her responses. Pesner disagreed with the answers provided by Porfido. This made him very concerned about the accuracy of the scale.

Pesner attended the IEP meeting in June 2016. At this meeting, Pesner found a significant disagreement between E.P. and the respondent. The respondent seemed to want to declassify EA.P. and the mother believed that EA.P. had significant needs, primarily in the areas of socialization and peer communication, which were a function of developmental delays and not a function of shyness. Pesner believed that EA.P. should be in an inclusion program where she could learn from typical peers. Respondent never observed EA.P. outside the District's program. Pesner shared his report (J-49) at the IEP meeting. The inclusive setting was in Lightbridge Academy because there were typical peers in that setting. At the end of the meeting, the District was going to proceed with declassification.

Pesner also attended a meeting in August 2016 where both sides presented their points of view and the respondent basically stated that they were going to continue with the process of declassifying EA.P. Both Pesner and E.P. stated that EA.P. needed services in an inclusive setting. Pesner made a diagnosis of "social communication disorder."

On cross-examination Pesner admitted that he did not formally treat EA.P. Pesner first observed EA.P. in 2013 when she was about eighteen months old. When

he first saw EA.P. at Lightbridge, she had been there for quite a few months. Pesner described Lightbridge as a typical preschool program with an emphasis on academics. Pesner stated that he believed that it was a school, but was unaware of any credentials of the instructors. He could not say if the teachers there were certified. Pesner also confirmed that EA.P. was comfortable in the District's program. Pesner also had no idea if Lightbridge Academy is approved by the State of New Jersey for the education of students with disabilities.

Pesner confirmed that his report was based on: 1) his observations; 2) input from the mother; and 3) his clinical understanding of the way these types of students work. Other than the form from Porfido, Pesner did not consider any other input from the District. Pesner never saw the Achenbach questionnaire. (J-30.)

Pesner observed EA.P. in Lightbridge in 2017 every two months. Pesner kept notes regarding his observations. He wanted to get a sense of EA.P.'s developmental processes. In addition, Pesner was being paid for his testimony at the hearing.

### E.P.

EA.P.'s mother testified that her daughter is a very smart, very loving, quiet, reserved little girl. E.P. stated her daughter made incredible progress this past year at Lightbridge. Her daughter has a history of social isolation and never played with toys. At Lightbridge, EA.P. learned how to make friends, respond to peers, and sustain a conversation with peers. E.P. first had concerns about her daughter when she was eighteen months old. EA.P. was fifteen months when she first attended Lightbridge Academy Daycare.

E.P. had a consultation with a developmental pediatrician, Dr. Nalvin, who provided a report. (J-10.) This was done in November 2014. There was also a speech and language evaluation from Valley Hospital based on a recommendation from Dr. Nalvin. In addition, E.P. obtained an occupational therapy evaluation which was completed in January 2015. (J-12.)

In April 2015, E.P. contacted the respondent to see if her daughter qualified for a preschool program because of her developmental delays and her diagnoses with social anxiety, sensory processing disorder, and diminished core strength. E.P. told the District that she had plans to go away for the summer so she wanted to complete the evaluation by the end of June. E.P.'s concerns were primarily social and play based. EA.P. would isolate herself and her play skills were not that of a typical peer.

There was an evaluation by Dr. Nalvin in May 2015. (J-16.) E.P. wanted to see how her daughter's development was going. Dr. Nalvin recommended an inclusive preschool setting. In Kropp's assessment (J-17), it states that E.P. declined to provide background information other than her job title. E.P. stated that she provided all information relevant to EA.P. and her development. E.P. advised Kropp of her concerns. E.P. told Kropp as to who lived in their home, any siblings, etc. E.P. declined to provide information regarding her salary, whether she went to school, if E.P.'s siblings went to school, their salary, or any information regarding her parents.

E.P. was invited to an IEP meeting to be held on June 18, 2015. The CST discussed EA.P.'s eligibility at that time. The team agreed that EA.P. was eligible for a program and should receive speech therapy three times a week. E.P. asked the District if they had reviewed the reports she supplied from Dr. Nalvin, St. Joseph's and Valley Hospital, which they did. E.P. asked the District to consider an inclusive program and she was told that they did not have such a program. In the IEP, the goals and objectives were blank. On this document, E.P. made some handwritten requests including: 1) transportation; 2) November 2015 review of classroom placement, profile, and IEP to assess student's status. E.P. never received a response from the District regarding her requests. The District also rejected the request to send EA.P. to a place to work on oral motor skills. E.P. did sign the IEP on July 28, 2015, and wrote her notes on the IEP.

E.P. then requested an IEP meeting in a letter to Dr. Crawford in February 2016. She requested this meeting because she felt as though EA.P. should be enrolled in a program with typical peers. E.P. wanted to discuss this issue. E.P. also reviewed the Present Levels of Speech and Language. (J-32.) This document was presented to her

at the IEP meeting in June 2016. There was also an IEP meeting on March 9, 2016, which resulted in an addendum to the then current IEP. (J-33.) E.P. was also offered a District OT and PT evaluations.

E.P. stated that there was no monitoring of EA.P. and her interaction in the classroom. Although E.P. provided a written request for an inclusive placement, she never received a written response from the District. Following up with Dr. Nalvin in April 2016, E.P. wanted to get Nalvin's expert opinion on what EA.P. needed in a program. Nalvin continued to believe that EA.P. belonged in an inclusion classroom. E.P. testified that Pesner observed EA.P. on May 12, 2016.

There was a June 2016 IEP meeting, which E.P. attended as well as Pesner. At this meeting, E.P. was provided with a five day IEP to run to the end of the school year. E.P. was told that the District was proposing a declassification. E.P. stated that she was confused by the District's position. A letter was drafted by the District on June 22, 2016, which proposed an evaluation planning meeting. However, the evaluation meeting did not occur in July 2016. The next meeting occurred in August 2016 at which time a declassification meeting took place. E.P. was looking for an opportunity to discuss re-evaluations, which did not occur.

In August 2016, E.P. had another meeting with the District. At this meeting, the District formally declassified EA.P. This was done without the benefit of re-evaluations and contrary to the many reports supplied by E.P. to the District. E.P. first received a pretest for reading and writing, which were performed by Porfido in June 2016. E.P. had no concerns about her daughter's academic skills. All EA.P. needed was social development. E.P. first saw the VB-MAPP in June 2016.

E.P. testified that the Lightbridge program provides EA.P. with a social skills aid trained in DIR, who sees EA.P. seven hours a week. EA.P. also gets instruction from a development interventionist, who is a certified teacher of the handicapped for three hours a week. EA.P. also receives speech therapy once a week from Hafitz and speech therapy once a week from Atkinson. E.P. stated that she had no idea that North

Arlington was primarily based for academic success. E.P. wanted more opportunities for social interaction and social inclusion for her daughter.

E.P. received some progress reports from EA.P.'s enrollment in Lightbridge. One in November 2016 and one in February 2017. E.P. was of the opinion that EA.P. made progress in the Lightbridge program. As a result of this program, EA.P. was able to respond to peers freely. EA.P. learned how to make friends and was able to play. E.P. did not feel as though the respondent provided an appropriate program for EA.P. E.P. wanted a program where EA.P. would have social development with typical peers and North Arlington did not provide such a program.

On cross-examination, E.P. stated that she is an investigator for the Attorney General's office in New Jersey in the cyberfraud unit. E.P. stated that she provided all reports and information soon after she received it to the District to either Kropp or Crawford via e-mail or in-person.

Even though E.P. had testified that she wanted the evaluations of her daughter done in 2015 before the end of June because she was going away for the summer, she did not go away for that summer. E.P. also stated that the June 18, 2015, IEP meeting is when she asked the District for an inclusive program. E.P. said that no one else in the meeting stated that an inclusion program was necessary. E.P. also did not recall the use of VB-MAPP with EA.P. as she entered the program. E.P. did not recall asking about the lack of goals and objectives in the first IEP. It was E.P.'s position that it is the District's obligation to write goals and objectives and not her job. However, E.P. never asked for such goals and objectives.

In IEP Exhibit J-23, E.P. wrote out a list of things she was requesting, including adaptive skills, OT evaluation and she was told by Kropp that providing them was not possible. E.P. stated that she was nearly certain that she sent an e-mail to follow-up on the requests she made. It was E.P.'s testimony that everyone from the District agreed that EA.P. belonged in an inclusive program in the IEP meeting. E.P. testified that Hornstein may have addressed the issues E.P. wrote on the IEP. In addition, Hornstein did discuss EA.P.'s progress at the March IEP meeting. E.P. found it absurd that the

District was proposing a declassification of EA.P. in the June 2016 meeting. This was the second IEP meeting in 2016. In this meeting both Porfido and Hornstein spoke extensively on how well EA.P. was doing. E.P. was not concerned about EA.P.'s academic performance but rather her social performance. E.P. believed it was absurd to propose declassification at an IEP meeting without performing re-evaluations and without seeing EA.P. in a typical preschool setting. The District staff saw EA.P. in a self-contained, very regimented, structured classroom. E.P. stated that the District put EA.P. in the kindergarten classroom because they did not have an inclusive program for EA.P. for preschool students. E.P. never observed her daughter in the kindergarten class.

E.P. stated that the other students in EA.P.'s class in Lightbridge are four-year-old children. E.P. stated that the first time she heard about the respondent using the VB-MAPP was in the March 2016 IEP meeting. E.P. confirmed that she received progress reports (J-47) throughout the school year. In fact, E.P. received at least one progress report before the March 2016 IEP meeting. E.P. admitted that her experts had not worked with EA.P. more than a handful of times as of August 2016. E.P. had issues with the fact that the District did not provide written notice explaining whether they accepted or rejected the reports she supplied to them and what they based their actions upon.

On redirect, E.P. stated that at Lightbridge EA.P. receives instruction from a developmental interventionist three times a week and receives speech one time a week and social skills seven hours per week. E.P. relied on the advice of Nalvin, Pesner, Havens, Hafitz, and Attinson. E.P. stated that Lightbridge is a school and is licensed as a childcare facility. E.P. stated that she was unaware as to whether EA.P. had activated like playing with a baby doll while in the District.

E.P. looked at Exhibit J-75 which was a series of e-mails between E.P., Dr. Crawford, and other District members. In the e-mail, E.P. stated that it was determined that EA.P. belonged in a classroom with typical developing peers because that was what everyone agreed to at the March 2016 meeting. E.P. stated that Crawford told E.P. that if she wanted EA.P. in a class with typical peers, she should enroll EA.P. in a

private school. E.P. confirmed that she had the progress reports with the IEP goals and objectives before the June IEP meeting. The progress reports showed that EA.P. was progressing but not mastered.

On re-cross, E.P. admitted that at the June 16, 2016 IEP meeting, the District discussed EA.P.'s progress in the respondent's school. E.P. did have information about the ESY program prior to the June 16, 2016, IEP meeting.

Dr. Michele Carol Havens

Dr. Michaelae Carol Havens (Havens) was a witness for the petitioner and testified as an expert in special education and DIR/Floortime intervention. Havens's CV was entered into evidence. (J-68.) Havens has taught preschool disabilities for twenty years in public school districts. She is also an expert in DIR/Floortime intervention and stated that DIR stands for Developmental Individualize or Individually Based Relationship Based intervention. Floortime is a part of DIR. It is a program for intervention for kids that is based on social-emotional development from infancy through adulthood. Haven has trained the one-to-one paraprofessional and consulted with that person.

Exhibit J-56 was a report written by Havens after observing EA.P. the first two times. The paraprofessional, Layla, was her student in her class at Kean University. Havens speaks with Layla several times a month. Havens observed EA.P. two times and then about two weeks prior to the hearing. In her report, Havens referenced symbolic play developmental levels which she found to be in the higher levels (4 and 5).

Havens observed EA.P. at Lightbridge in November 2016 and she found her to stand out in terms of her ability to interact. EA.P.'s responses to adults were very scattered or inconsistent. Her responses to peers were very poor. Havens found EA.P.'s language to be limited and so she did not have the language of social strategies to know how to interact with another child. She found that EA.P. had delays from the lowest level (one), which is birth to three months through level six, which is about four to eight years old. So, her delays were mild.

Based on the above, Havens recommended that EA.P. remain in a typical preschool setting because she does benefit from the role models but she does have language and social challenges which require support and programming. It was Havens belief that EA.P. should have a para working with her in general education setting. EA.P. should also receive speech and language therapy in order to help develop the skills she needs. It was Havens's opinion that applied behavior analysis (ABA) was not appropriate for EA.P. because EA.P. can learn in a traditional manner with regular teaching methodology.

Havens stated that she taught preschool disabled students and typical preschool students in New Jersey. She retired from teaching students in 2001 and began to do consulting. Havens is instead overseeing the people who are teaching the students.

Havens crafted goals for EA.P. in her report. The goals are basically DIR based and overlap with the standards. Havens recently observed EA.P. at Lightbridge. Havens stated that EA.P. was making very good progress. EA.P. was playing with other students in a parallel fashion. She saw EA.P. using language with other students. Havens said that she spoke with Layla two or three times a month. Based on the two observations she had of EA.P., Havens believed that the student made progress. In Havens's opinion, as of the beginning of the 2016-2017 school year, EA.P. continued to need special education supports.

On cross-examination, Havens stated that in public schools, there are some districts who "have attempted to incorporate" some strategies from DIR but she is unaware of any such full-blown program. Havens admitted that most public schools use ABA. Havens confirmed that she observed EA.P. twice in Lightbridge and once at home. Layla did not work for Havens. Havens just consults with Layla. Havens was unaware of what was happening in the District program. Havens never spoke with any District staff regarding the programs. In addition, Havens did not review any documentation from the District.

Havens was unaware as to whether Lightbridge is approved by the State of New Jersey. In addition, Havens was unaware if the teachers she spoke with from Lightbridge were certified teachers. Havens did not believe that Lightbridge provided DIR/Floortime services.

Jeremie Hafitz

Jeremie Hafitz (Hafitz) presented her resume (J-69) and it was stipulated that she would testify as an expert in speech and language pathology with infant, toddlers, preschool and school-age children. She completed a speech and language evaluation on EA.P. (J-50.) Pesner referred EA.P. to Hafitz for this evaluation and this was the first time she met EA.P. Hafitz reviewed the reports from the District at this time. Hafitz wrote that EA.P.'s spontaneous language and play do not reflect the language abilities that the testing portrays. Hafitz's clinical impression of EA.P. was that her language was very limited. EA.P.'s pragmatic skills were almost non-existent. The formal testing showed that she was at age-level or above.

Hafitz conducted the Clinical Evaluation of Language (CELF). Hafitz felt that CELF was the gold standard for assessing children at EA.P.'s age. Hafitz also used the CASL test, which showed EA.P. to be at age level or above. The Westby Play Scale is a descriptive tool and it tells you what behaviors to look for in the child's spontaneous play. This reflected her clinical observations of EA.P. Hafitz stated that she found EA.P. to be exhibiting a social pragmatic communicative disorder. EA.P.'s language in social interactions was not up to her competence based on formal testing. Hafitz found that there was a huge discrepancy between what she saw clinically and what was in formal testing. Hafitz found that the child's play skills were delayed. Hafitz found that EA.P. did not properly answer her questions. EA.P. would answer the question, but the answer did not relate to the question. These were not exchanges typical of a child of her age.

In the fall of 2016, Hafitz began working with EA.P. in Lightbridge. Hafitz produced session notes from those meetings. (J-82.) She saw EA.P. having difficulty engaging with other students. EA.P. needed assistance to interact with other students.

Hafitz found that EA.P. spoke very softly and thus was difficult to understand. At one point on November 7, 2016, EA.P. showed empathy to another child by hugging that child. On January 10, 2017, she observed EA.P.'s teacher having children pretend to make smoothies and EA.P. simply repeated what other people said. Hafitz began to work with EA.P. in individual sessions when the weather got bad outside. Hafitz stated that bullying became a concern. E.P. became concerned about bullying issues with her daughter. EA.P. read a book about bullying about how to be friends.

Hafitz wrote a progress report on EA.P. in February 2017. (J-59.) Hafitz also read a communication book that was at Lightbridge every time she went in. Hafitz also attended a meeting with the other staff in December 2016. In the progress report Hafitz wrote the goals she was working on with EA.P. Hafitz found that EA.P. had made significant gains. EA.P. was talking more and the speech length was longer. EA.P.'s social interactions with peers were imitative and physical. Hafitz found EA.P. talking and playing with her peers. Hafitz found that EA.P.'s role maintenance is not always sustained. This means that in a play scenario, she does not always follow the proper role correctly.

Hafitz stated that EA.P. made lots of progress at Lightbridge. EA.P. was showing her emotions more and seemed happier. It was her opinion that EA.P. is better off in a place with access to typical peers. It was her understanding that the respondent was going to declassify EA.P. and remove her from any program.

On cross-examination, Hafitz admitted that she did not speak to any of the District staff regarding the decision to declassify EA.P. Hafitz wanted to come to her own decision first, prior to speaking to District personnel. Hafitz also got information from E.P. Hafitz gave a descriptive questionnaire to the mother for her to fill out. Hafitz saw EA.P. twice before filling out the questionnaire.

Hafitz stated that she is consulting with several public schools. In those schools, she does not administer the DPP in a very long time because it is not appropriate for the students she is dealing with in those schools. Hafitz is not consulting at any public schools with preschool students. In Lightbridge, Hafitz would observe what was

happening. If there was an issue, Hafitz would come in and maybe make a suggestion. Hafitz found EA.P. just wandering in the Fall of 2016. Hafitz would then gather other girls EA.P. liked and encourage play. Hafitz also testified that bullying was a current concern and was for the last two or three months. Hafitz stated that she would not observe EA.P. at home. Hafitz stated that EA.P. has opened up a bit with her.

### **LEGAL ANALYSIS AND CONCLUSIONS**

The Individuals with Disabilities Education Act (IDEA or the Act), 20 U.S.C.A. §§ 1400 et seq., requires New Jersey to effectuate procedures that ensure that all children with disabilities residing in the state have available to them a FAPE consisting of special education and related services provided in conformity with an IEP. 20 U.S.C.A. §§ 1401(9), 1412(a)(1). A purpose of the IDEA 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).]

Under 20 U.S.C.A. § 1412(a)(1), any state qualifying for federal assistance under the IDEA must adopt a policy that assures all children with disabilities the right to a free appropriate public education. Hendrick Hudson Cent. Sch. Dist. Bd. of Educ. v. Rowley, 458 U.S. 176, 180-81, 102 S. Ct. 3034, 3037, 73 L. Ed. 2d 690, 696 (1982). State regulations track this requirement that a local school district must provide FAPE as that standard is set under the IDEA. N.J.A.C. 6A:14-1.1. New Jersey follows the federal standard requiring such entitlement to be “sufficient to confer some educational benefit,” although the State is not required to maximize the potential of handicapped children. Lascari v. Ramapo Indian Hills Reg. High Sch. Dist., 116 N.J. 30, 47 (1989) (citing Rowley, supra, 458 U.S. at 200, 102 S. Ct. at 3048, 73 L. Ed. 2d at 708). Third Circuit decisions have further refined that standard to clarify that such educational benefit must be “meaningful,” “achieve significant learning,” and confer “more than merely trivial benefit.” T.R. v. Kingwood Tp. Bd. of Educ., 205 F.3d 572 (3d Cir. 2000); Ridgewood

Bd. of Educ. v. N.E. for M.E., 172 F.3d 238 (3d Cir. 1999); Polk v. Cent. Susquehanna Intermediate Unit 16, 853 F.2d 171, 183-84 (3d Cir. 1988), cert. den. sub. nom., Ctr. Columbia Sch. Dist. v. Polk, 488 U.S. 1030, 109 S. Ct. 838, 102 L. Ed. 2d 970 (1989). The Third Circuit has re-emphasized the importance of the inquiry into whether the placement proposed by a district will provide the student with a “meaningful educational benefit.” S.H. v. State-Operated Sch. Dist. of Newark, 336 F.3d 260 (3d Cir. 2003). The quantum of educational benefit necessary to satisfy the IDEA varies with the potential of each pupil. N.E., supra, 172 F.3d at 247.

The basic floor for such education is an education which offers the student an opportunity for meaningful learning, taking into account the child’s potential. Ridgewood, supra, 172 F.3d at 247 wherein the Court found that meaningful education must be more than de minimis. New Jersey has adopted the standards set forth by the United States Supreme Court and the Third Circuit. Lascari, supra, 116 N.J. at 47-48, wherein it was found that the District is not required to provide the best education available. See R.D. and A.D. for C.D. v. Delran Board of Education, 2001 WL 830871 (N.J. Adm. 2001). Therefore, if the District through the applicable IEP is reasonably calculated to provide more than a de minimis benefit, then the school district has met its obligation under the IDEA. CV.J. and D.J. o/b/o B.J. v. Ocean City Board of Education, 2004 WL 763590 (N.J. Adm. 2004).

A parent who withdraws her child from public school and unilaterally places them in a private school while challenging the IEP may be entitled to reimbursement if the ALJ finds that the school district’s proposed IEP was inappropriate and that the parent’s unilateral placement was appropriate. Florence Cty. Sch. Dist. v. Carter, 510 U.S. 7, 12, 114 S. Ct. 361, 365, 126 L. Ed. 2d 284, 292 (1993). A reimbursement obligation is not limited by state-imposed limitations although it is an appropriate consideration for publicly funded school districts. The Court must first determine that the IEP offered by the School District was not reasonably calculated to confer a meaningful educational benefit upon the student.

Thus, the issue is whether the IEP proposed and implemented by the District during the 2015-2016 school year was appropriate for EA.P. and offered FAPE in the

least restrictive environment. Then, thereafter, the question is whether the District appropriately declassified EA.P. at the end of that school year.

The witnesses offered by the respondent, *i.e.*, Kropp, Porfido, and Hornstein, were all qualified experts who were very familiar with the IEP and educational services provided by the District for the 2015-2016 school year. They all testified regarding EA.P.'s progress. The District presented the VB-MAPP scoring sheet, progress reports, report card, and work samples as well as PLAAFP summaries which supported the fact that the IEPs provided EA.P. with an educational program reasonably calculated to provide meaningful educational benefit and she attained such benefit during the 2015-2016 school year.

In support of the petitioner's case, the witnesses failed to observe EA.P. in the District's program save for Pesner, who was a loyal, long-time family friend. In addition, none of these witnesses spoke with the District's staff about EA.P.'s progress. Although the witnesses for the petitioner were direct and clear, they failed to give a complete picture of the situation. The nearly sole basis for a claim that the District did not provide FAPE rested on EA.P.'s own testimony, which although sincere, was motivated by wanting a level of education well beyond that required under the IDEA.

I **CONCLUDE** that based on the persuasive testimony presented by the respondent, the education provided to EA.P. was reasonably calculated to offer EA.P. FAPE in the least restrictive environment.

As found above, EA.P. does not have a pervasive developmental disability which "significantly impacts verbal and nonverbal communication and social interaction that adversely affects a student's educational performance." [Emphasis supplied.] Indeed, concerns about social interaction by the District personnel had greatly diminished by the end of the 2015-2016 school year. Her social and behavioral progress in preschool had made significant progress. There was sufficient credible proof that none of EA.P.'s behaviors were adversely affecting her educational performance. The CST dutifully considered its evaluations as well as the independent ones. None of them suggested that EA.P.'s academic performance was other than beautiful.

The other question that needs to be addressed is whether the District determination to declassify EA.P. at the end of the 2015-2016 school year was proper, although the District bears the burden to prove same.

In order to show that EA.P. is a preschool student with a disability, a “student with a disability” is defined as a student who has been determined to be eligible for special education and related services. N.J.A.C. 6A:14-1.3.

A student shall be determined eligible and classified eligible for special education and related services under chapter when it is determined that the student has one or more of the disabilities defined in (c)(1) through (14) below, the disability adversely affects the student’s educational performance and the student is in need of special education and related services. Classification shall be based on all assessments conducted including assessment by child study team members and assessment by other specialists as specified below.

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

Thus, in order to be eligible for special education and related services, the student must 1) have one or more disability as defined in N.J.A.C. 6A:14-3.5(c)(1)-(14); 2) the disability must adversely affect the student’s educational performance; and 3) the student is in need of special education and related services.

In order to be classified as PSD, N.J.A.C. 6A:14-3.5(c)(10) is applicable. The PSD classification corresponds to children between the ages of three and five who either:

- i. are experiencing developmental delay, as measured by appropriate diagnostic instruments and procedures, in one or more of the areas in (c)(10) (1) through (5) below, and requires special education and related services. When utilizing a standardized assessment or criterion-referenced measure to determine eligibility, a developmental delay shall mean a 33 percent delay in one developmental area, or a 25 percent delay in two or more developmental areas.

- (1) Physical, including gross motor, fine motor and sensory (vision and hearing);
- (2) Intellectual;
- (3) Communication;
- (4) Social and emotional; and
- (5) Adaptive;

or

- ii. Has an identified disabling condition, including vision or hearing, that adversely affects learning or development and who requires special education and related services.

[Ibid.]

There is no dispute of the fact that the respondent was unable to re-evaluate EA.P. prior to proposing her declassification in August 2016. There is also no dispute that E.P. refused to meet with the District prior to that meeting in order to discuss a formal re-evaluation of EA.P. by the District. Petitioner cannot legitimately object to the failure to re-evaluate EA.P. when that failure was based on the non-cooperation of E.P.

With no formal re-evaluation, the District then relied upon the VB-MAPP, progress reports, speech logs, and teacher input to find that EA.P. no longer required special education and related services. I find the District's reliance on such information as persuasive. The record is replete with evidence that EA.P. was making significant progress by June 2016. The entire IEP team reported that EA.P. made tremendous progress and thus no longer needed ESY services in the summer of 2016. Petitioner offered no credible evidence to contradict this evidence. Thus, at the time of the declassification meeting in August 2016, the IEP team had an in-depth discussion about declassifying EA.P. based on all the information they had. There were objective proofs, like the VB-MAPP (a score of 161 out of 170) which were administered in April 2016 which confirmed the significant progress made by EA.P.

The District's witnesses were compelling as they worked with EA.P. on a regular basis and came to the conclusion that the child made tremendous progress and no longer needed special education and related services. There was no evidence

presented which showed that EA.P. needed continued special education in order to be successful.

New Jersey school districts are not required to maintain and operate general education preschool programs for non-disabled students, unless ordered by the State on an individual basis to provide universal or targeted preschool. N.J.A.C. 6A:13A. The evidence presented supports the proposition that EA.P. does not require special education and related services because she is not a classified student.

Accordingly, I **CONCLUDE** that the determination to declassify EA.P. was appropriate under the circumstances of this case. I also **CONCLUDE** that the declassification of EA.P. did not deny her a FAPE.

While it is apparent that the parent here is passionate, loving, and engaged, and wishes her child to receive as many services as possible, the IDEA simply does not require such maximization. As there has been no denial of FAPE, petitioner is not entitled to reimbursement for the unilateral placement of EA.P. in the Lightbridge Academy beginning the 2016-2017 school year. The Districts are not required to pay for a private placement if they have made available to the student a FAPE, and the parents elect to enroll the student elsewhere. N.J.A.C. 6A:14-2.10(a). In any event, reimbursement to parents may be reduced or denied if the parents (1) did not inform the district at the most recent IEP meeting that they were rejecting the IEP; (2) did not, as here, provide written notice to the board of their concerns or intent to unilaterally place the student and seek reimbursement ten business days prior to making the placement; or (3) upon a judicial finding of unreasonableness with regard to parental actions. N.J.A.C. 6A:14-2.10(c).

As the District provided EA.P. with FAPE for the 2015-2016 school year, the petitioner is not entitled to compensatory education for that time period. Although the petitioner requested modifications to the IEP, E.P. did sign the IEP which went into effect on July 28, 2015. In fact, there were two additional IEP meetings held in the 2015-2016 school year (March 9, 2016 and June 16, 2016) and only minimal changes

were made to EA.P.'s educational program as the evidence supports that EA.P. was doing well in the District's program.

Although the IEP did not contain specific goals and objectives, such goals and objectives were clearly set forth in the progress reports created by the District's staff and provided to the petitioner. This fact was clearly supported by the petitioner's own testimony at the hearing. Furthermore, at no time did E.P. question the goals and objectives being worked on by the District with her daughter. Thus, EA.P. was not deprived of any meaningful educational benefit of the educational program.

### **Relief Under Section 504, ADA and NJLAD**

Petitioner also argues that she is entitled to relief under Section 504, the ADA and the NJLAD. Petitioner's claims that the ADA and Section 504 are broader than the IDEA and are concerned with discrimination in provision of state services to all individuals with disabilities. A.G. v. Paradise Valley Unified Sch. Dist. No. 69, 815 F.3d 1195, 1203 (9th Cir.2016). A student may assert a valid discrimination claim under the ADA and/or Section 504 or under the NJLAD, even if a school district met its IDEA FAPE obligation.

This claim is not actionable in this matter as the petitioner failed to raise these issues in the due process petition. As the petitioner also asserts violations of the Americans with Disabilities Act, 42 U.S.C.A. § 12101 et seq. and the New Jersey Law Against Discrimination, this forum has no jurisdiction over ADA and NJLAD claims. The IDEA makes it clear that petitioner must first exhaust the IDEA's administrative proceedings if she seeks relief available under the IDEA. See 20 U.S.C.A. § 1415(l) and Fry v. Napoleon Community Schools, 580 U.S. 743 , 137 S. Ct. 743, 197 L. Ed. 2d 46 (2017). This due process petition appears to meet that exhaustion requirement. However, as to the viability of the petitioner's claims under these other related federal laws, those claims must be decided on another day in a different forum.

**ORDER**

For the reasons set forth above, it is **ORDERED** that the petition of the parent be **DISMISSED**.

This decision is final pursuant to 20 U.S.C.A. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2016) 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.A. § 1415(i)(2); 34 C.F.R. § 300.516 (2016). If the parent or adult student feels that this decision is not being fully implemented with respect to program or services, this concern should be communicated in writing to the Director, Office of Special Education Programs.

\_\_\_\_\_  
August 29, 2017  
DATE

\_\_\_\_\_  
**MICHAEL ANTONIEWICZ, ALJ**

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

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

jb

**APPENDIX**

**LIST OF WITNESSES**

**For Petitioners:**

E.P.  
Freda Atkinson  
Dr. Mark Pesner  
Dr. Michele Carol Havens  
Jeremie Hafitz

**For Respondent:**

Carolyn Kropp  
Jenny Ann Porfido  
Cynthia Hornstein

**LIST OF EXHIBITS IN EVIDENCE**

**Joint:**

- J-1 First Due Process Petition dated June 17, 2016
- J-2 Second Due Process Petition dated June 17, 2016
- J-3 Request for Emergent Relief dated June 22, 2016
- J-4 Answer to Due Process Petition dated August 24, 2016
- J-5 Answer to Third Due Process Petition dated August 24, 2016
- J-6 Motion to Consolidate dated September 7, 2016
- J-7 Order Consolidating Matters and Prehearing Order dated October 3, 2016
- J-8 First Amended Complaint dated January 30, 2017
- J-9 Answer to First Amended Petition for Due Process dated February 3, 2017
- J-10 Initial Consultation Report by Dr. Lisa Nalven on November 4, 2014
- J-11 Private Speech Evaluation by Michele Malone, MS CCC-SLP on December 15, 2014
- J-12 Private OT Evaluation by Greta Gray, MS OTRL on January 19, 2015

- J-13 Battelle Developmental Inventory Bergen County CFCS on February 28, 2015
- J-14 Private Pediatric Swallowing/Feeding Evaluation by Dr. Peggy Eicher on April 10, 2015
- J-15 Initial Referral for CST Evaluation and accompanying E-mail Correspondence dated April 27, 2015
- J-16 Developmental Pediatric Evaluation by Dr. Lisa Nalven on May 28, 2015
- J-17 CST Social Assessment by Carolyn Kropp, SSW, LSW on June 1, 2015
- J-18 CST Psychological Evaluation by Ashley Dowd, School Psychologist on June 1, 2015
- J-19 CST Educational Evaluation by Jodie Zettel, LDTC on June 3, 2015
- J-20 CST Speech Evaluation by Cynthia Hornstein, MA CCC-SLP on June 1, 2015
- J-21 CST Battelle Developmental Inventory on June 1, 2015
- J-22 CST Battelle Developmental Inventory Scoring Protocol
- J-23 Notice, Initial Eligibility Determination and Initial IEP dated June 16, 2015
- J-24 Letter from Dr. Lisa Nalven to petitioner dated June 23, 2015
- J-25 Letter from Dr. Gerard Costa to petitioner dated July 23, 2015
- J-26 E-mail Correspondence from Parent to District regarding dated June 30, 2015
- J-27 Pre-K Reading Pre-Assessment dated October 6, 2015
- J-28 Pre-K Writing Pre-Assessment dated October 14, 2015
- J-29 Letter and Caregiver Form and Addendum - Jennie Porfido, Classroom Teacher dated October 27, 2015
- J-30 Caregiver Form Jennie Porfido, Classroom Teacher dated April 24, 2016
- J-31 Letter from petitioner to the District dated February 29, 2016
- J-32 CST Present Levels prepared by Jennie Porfido and Cynthia Hornstein dated March 9, 2016
- J-33 Letter from Carolyn Kropp to petitioner dated March 9, 2016
- J-34 OT Evaluation by Andrea Odian, MA OTR/L on April 12, 2016
- J-35 Pre-K Writing Post-Assessment dated April 13, 2016
- J-36 Pre-K Test Reading Post-Assessment dated April 13, 2016
- J-37 Updated Report by Dr. Lisa Nalven on April 27, 2016
- J-38 PT Evaluation on April 29, 2016
- J-39 IEP
- J-40 Letter from Carolyn Kropp to petitioner dated June 22, 2016

- J-41 Not in evidence
- J-42 Eligibility Conference Report
- J-43 Skill Tracking & Probe Data
- J-44 Speech Logs
- J-45 VB-MAPP
- J-46 VB-Mapp Scoring Supplement
- J-47 Washington Elementary School Progress Reports
- J-48 Report Cards
- J-49 Consultation Report by Dr. Mark Pesner
- J-50 Speech and Language Evaluation by Jeremie Hafitz on July 3, 2016
- J-51 Developmental Pediatric Evaluation by Dr. Lisa Nalven on August 1, 2016
- J-52 Letter from petitioner to Lynne Crawford dated August 24, 2016
- J-53 E-mail Withdrawing Unilateral Placement dated September 5 and 6, 2016
- J-54 Letter from Lightbridge to "To Whom It May Concern" dated September 9, 2016
- J-55 Developmental Pediatric Evaluation by Dr. Lisa Nalven on October 19, 2016
- J-56 Report by Michele Havens, Ed.D. dated November 25, 2016
- J-57 Report by Freda Atkinson, MS CCC-SLP dated August 8, 2016
- J-58 Report by Diane M. Augelletta, MA
- J-59 Speech and Language Report by Jeremie Hafitz dated February 14, 2017
- J-60 Lightbridge Academy Portfolio
- J-61 Lightbridge Academy Fall Portfolio
- J-62 CV of Lynne E. Crawford
- J-63 CV of Carolyn Kropp
- J-64 CV of Cynthia Hornstein
- J-65 CV of Jennie Porfido
- J-66 CV of Dr. Lisa Nalven
- J-67 CV of Dr. Mark Pesner
- J-68 CV of Michele Havens, Ed.D.
- J-69 CV of Jeremie Hafitz
- J-70 Report by Freda M. Atkinson dated February 19, 2017
- J-71 Letter Lightbridge re Enrollment dated September 26, 2016
- J-72 District Class Schedule
- J-73 Lightbridge Welcome Letter

- J-74 E-mail
- J-75 Progress Report by Kathleen McDonald dated February 16, 2017
- J-76 E-mail
- J-77 E-mail
- J-78 E-mail
- J-79 Excerpts from NJ Preschool Standards
- J-80 Handwritten Progress Notes by Freda Attinson
- J-81 Handwritten Progress Notes
- J-82 Handwritten Progress Notes
- J-83 E-mail Correspondence
- J-84 Caregiver-Teacher Report
- J-85 Bell Curve - Achievement
- J-86 CV of Freda Attinson
- J-87 Team Meeting dated December 17, 2016
- J-88 Certification of Paige Berberian
- J-89 Social Responsiveness Scale