



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. EDS 00267-22

AGENCY DKT. NO. 2022-33719

D.T. ON BEHALF OF L.T.,

Petitioner,

v.

LAWNSIDE BOARD OF EDUCATION,

Respondent.

Jamie Epstein, Esq., for petitioner

Darryl Christopher Rhone, Esq., for respondent (CGO Law P.C., attorneys)

Record Closed: January 9, 2023

Decided: January 19, 2023

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

STATEMENT OF THE CASE

Petitioner, D.T. on behalf of L.T. (parent and the student), filed a petition pursuant to the Individuals with Disabilities Education Act (IDEA) seeking development of an appropriate Individualized Education Program (IEP), out-of-district placement, and compensatory education due to respondent's alleged failure to provide a free appropriate public education (FAPE). Respondent, Lawnside Board of Education (the District or the

BOE), opposes the petition, asserting it can provide petitioner their program requests in District.

PROCEDURAL HISTORY

Petitioner's due process petition was transmitted to the Office of Administrative Law (OAL) where it was filed on January 11, 2022, as a contested matter. N.J.S.A. 52:14B-1 to 14B-15; N.J.S.A. 52:14F-1 to 14F-13.

Petitioner submitted a motion for relief asserting no prior written notice (PWN). Respondent filed a cross-motion opposing the PWN motion and seeking to dismiss the petition. An order was entered on March 22, 2022, denying the relief sought in the motion and cross-motion.

The hearing was scheduled to begin via Zoom audio/video technology on March 29, 2022. Petitioner asserted a motion in limine seeking to strike and bar witnesses and use of documentation by respondent, as respondent had submitted such information four business days prior to the hearing, rather than five business days prior. The motion was denied as petitioner was given time to review the information from respondent, and the hearing was adjourned and rescheduled to begin on April 5, 2022. An order memorializing the decision was entered on March 31, 2022.

Prior to the start of the Zoom hearing on April 5, 2022, petitioner asserted an oral motion to strike both the witnesses listed to testify and the exhibits provided by respondent on March 29, 2022, and as contained in the hard copy petitioner received thereafter. The motion was denied, and the order memorializing the decision was entered on April 7, 2022.

The hearing began on April 5, 2022, and continued on June 2, 2022. On June 2, 2022, respondent's request to adjourn the June 28, 2022, hearing date was granted, with the replacement date of June 20, 2022, added in its place.

During the hearing on June 20, 2022, petitioner's oral motion for summary decision was denied. The hearing continued via Zoom on June 20, 2022.

A telephonic conference was conducted with counsel on July 7, 2022, to address the unavailability of one of petitioner's expert witnesses for the upcoming hearing date. Petitioner's counsel was advised to get at least three available dates and times for the expert, and advise, in writing, by July 15, 2022, to see if any of the dates could be accommodated for the witness's testimony. Nothing was received from petitioner thereafter.

The hearing resumed via Zoom on July 28, 2022. At the end of the proceeding, an additional telephonic proceeding was scheduled for August 1, 2022, to address the scheduling issue for petitioner's additional witnesses. The telephone conference was conducted, and the hearing was scheduled to continue on August 23, 2022.

On August 23, 2022, the hearing continued via Zoom, at 11:30 a.m., the later start time at the request of petitioner due to witness availability. A telephonic hearing was scheduled for August 26, 2022, to address the admission of documentation introduced during cross-examination of a witness. Written objection to the admission of documentation was submitted by petitioner on August 24, 2022, in advance of the scheduled telephonic hearing. The August 26, 2022, hearing date was adjourned at the request of petitioner, due to a conflict with an appearance scheduled in Superior Court for petitioner's counsel in another matter. The telephonic hearing was rescheduled for September 21, 2022, at 3:00 p.m. Petitioner failed to appear, due to petitioner's counsel inadvertently marking the wrong date in his calendar. The proceeding was rescheduled for a Zoom hearing on October 21, 2022. The parties were also directed to submit evidence lists by October 14, 2022, to address discrepancies and admission of documents which were submitted pre-hearing, yet not all moved into evidence.

Neither party submitted evidence lists as requested by October 14, 2022. On October 20, 2022, petitioner's counsel requested to adjourn the October 21, 2022, hearing due to having two Superior Court appearances being scheduled on that date. The hearing was adjourned and rescheduled for November 28, 2022. A Letter Order was

entered on October 21, 2022, ordering the parties to submit by November 15, 2022, evidence lists and information to be addressed regarding the status of admission of documentary evidence.

On November 17, 2022, a letter regarding the evidence status was submitted on behalf of petitioner. On that date, respondent re-submitted their original evidence list and pre-marked exhibits.

A Zoom hearing addressing the documentary evidence was conducted on November 28, 2022. Documentary evidence entered during the testimony portion of the hearing was confirmed, as well as confirmation as to whether other pre-marked documentation was being offered into evidence or not, and confirmation as to whether other documentation which was marked and referred to during the testimony of witnesses or otherwise referred to during the proceeding, was admitted into evidence. The evidence entered on November 28, 2022, is outlined in the attached appendix.

The record remained open for the submission of written summations by December 28, 2022. Respondent requested an extension of time to submit its summation brief. The request was granted, for a shorter period of time than requested, over petitioner's objection to the extension.

Summations were due to be submitted by noon on January 5, 2023. In the morning of January 5, 2023, petitioner's counsel submitted an email indicating "I intend to file LTs summation today although it may not be by noon." The District's summation was submitted at 11:59 a.m. on January 5, 2023. The District then objected to petitioner's counsel's statement that their summation would not be submitted by noon. On Friday morning, January 6, 2023, petitioner's counsel submitted an email stating "still working on it. will submit today[.]" On Monday morning, January 9, 2023, petitioner's summation was received via email. The email had been sent on Sunday evening, January 8, 2023. The record closed on January 9, 2023.

FACTUAL DISCUSSION AND FINDINGS

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

Petitioner, L.T., was born on June 2, 2014, and is currently eight years old. L.T. is classified as “other health impaired” due to a diagnosis of Down Syndrome. The student’s placement in the District for the 2021–2022 school year was in second grade, in a multiply disabled classroom.

In 2018, prior to his enrollment in the Lawnside District, L.T. attended a pediatric medical daycare facility in Voorhees. The student has been enrolled in the District schools from 2018 through the present.

The student’s IEPs admitted into evidence are as follows:

- October 19, 2018, IEP for 2018–2019 school year, Head Start Preschool (P-20.)
- June 10, 2019, IEP for 2019–2020 school year, kindergarten in District (P-21.)
- September 18, 2019, Amended IEP for 2019–2020 school year in District (P-22.)
- January 20, 2020, Amended IEP for 2019–2020 school year in District (P-23.)
- July 6, 2020, IEP for 2020–2021 school year, first grade in District (P-24.)
- April 27, 2021, IEP for 2021–2022 school year, second grade in District (P-25.)
- January 20, 2022, Amended IEP for 2021–2022 school year in District (RQ-17.)
- June 9, 2022, draft IEP for 2022–2023 school year, third grade in District (P-42.)

The student’s annual IEP meeting for the 2021–2022 school year apparently was initially scheduled, then rescheduled, as D.T. advised just prior to the meeting that she had not received the draft IEP. D.T. did attend the rescheduled IEP meeting via Zoom. She did not sign the IEP. (P-25.)

L.T.'s placement for the 2021–2022 school year was in the second-grade, multiple disabilities special class in Lawnside. (P-25 at 17.) In addition to special education academics programming, L.T. was to receive related services of individual Occupational Therapy (OT), fifty times per year for thirty minutes per session; individual Physical Therapy (PT), twenty-six times per year for thirty minutes per session; individual Speech Language (S/L) therapy for twenty-six times per year for thirty minutes per session; group S/L services, fifteen times per year for thirty minutes per session; and have a personal aide each day in all settings. (P-25 at 17.) For the 2021 Extended School Year (ESY), L.T. was to receive individual PT four times per ESY programming, for twenty minutes per session; individual S/L one time per week during ESY, for thirty minutes per session; and individual OT one time per week during ESY, for thirty minutes per session. (P-25 at 18.)

L.T.'s first-grade special education teacher, Margaret Del Signore, noted, in the IEP for his upcoming second-grade 2021–2022 school year, that L.T. had received most special education instruction remotely during his 2020–2021 first-grade year and came into the school twice per week for half-hour sessions of VB-MAPP and his related services. She noted that as his first-grade year progressed, his engagement in remote lessons declined. Del Signore reported it was challenging for L.T. to stay focused and understand what was being asked of him during remote learning. In mid-January 2021, the paraprofessional aide was sent to L.T.'s home to provide services every school day from 9:00 a.m. through noon. Del Signore further reported that L.T. had shown improvement with his skills and engagement since that time, and that he benefited mostly from in-person instruction. She noted L.T. relied heavily on reinforcers to keep him motivated with instruction consisting primarily of the VB-MAPP program, "which works best with trained instructors." (P-25 at 3.) She reported in the IEP that L.T. learned some words, with approximately twenty-five nouns, but mostly communicated by gesturing and grunting. He was inconsistent with being able to imitate sounds on the first try. (P-25 at 5.) She summarized that L.T. had shown good improvement during the first-grade year with matching objects and pictures and was beginning to show progress on that skill with only a verbal command.

The PT therapist for the District noted in the IEP that L.T. had been consistently attending in-person related services for first grade and demonstrated improvement with gross motor skills. However, L.T. still presented with decreased tone and preferred to lay down, sit, or lean on a surface rather than using his postural muscles to complete an activity. (P-25 at 3.) PT services were recommended to continue for the 2021–2022 school year.

The OT therapist for the District noted in L.T.'s IEP that L.T. participated in person for his OT sessions during his first-grade year. He “displayed great progress this year” and worked hard on his goals. (P-25 at 4.) He continued to require assistance for some fine motor skills activity. Although progress had been made, the therapist indicated that L.T.'s goals should be updated to reflect the changes in progress, and OT services were recommended to continue. (P-25 at 4.)

The S/L therapist for the District, Rebecca Welde, noted in the IEP for the 2021–2022 school year that “Overall, [L.T.] has made limited gain toward his speech goals; therefore, it is recommended that [L.T.] continue to receive Speech services to further improve his expressive and receptive language skills.” (P-25 at 4.) She indicated in the IEP that he attended in-person S/L services during the year. He struggled to attend to structured activities without having maximum prompting and assistance from the therapist. He worked hard for reinforcers, which were usually a snack, squishy ball, bubbles, “or his blue bird.” (P-25 at 4.) His S/L sessions focused on improvement of his receptive and expressive language skills. He had regressed in his ability to say single words clearly during the S/L sessions. She noted his struggles with other specific S/L tasks. (P-25 at 4.)

The IEP included the following statements: “To assist [L.T.] with behavioral concerns, he will have the assistance of a personal paraprofessional for the entire school day. To address [L.T.]’s communication delays, he will receive VB Mapp programming.” (P-25 at 5.) It was further noted in the IEP that “At this time, [L.T.] does not have an individual behavior improvement plan.” (P-25 at 5.) The IEP indicated that L.T.'s school had recently “opened up again” from the pandemic and that he “is using the classroom behavior plan in conjunction with a personal aide to reinforce desired behaviors. If [L.T.]

requires an individual behavior plan, a meeting will be held to discuss how to proceed.” (P-25 at 5 and 6.)

It was noted in the IEP that during the meeting, Del Signore and S/L therapist Welde spoke about coordination of their services with L.T.’s outside S/L provider. D.T. reportedly relayed that L.T. was “on a break” with the outside S/L provider because L.T. was not cooperating with her. (P-25 at 4.) D.T. asserted during the IEP meeting that L.T. was not receiving an appropriate education. She questioned how his progress was measured. She stated she would not be signing the IEP and wanted another meeting to review how L.T. was assessed. The case manager at the IEP meeting reportedly advised D.T. to submit in writing that she did not consent to the IEP, or else it would go into effect fifteen days from the meeting. (P-25 at 4.) D.T. indicated that she would submit letters of objection. There is no indication that D.T. disputed the IEP within fifteen days.

The Child Study Team (CST) apparently determined that due to D.T.’s request for more frequent updates regarding L.T.’s progress, the IEP team was to meet every five weeks to review the goals and objectives and revise them as necessary.

In July 2021, D.T. requested that multiple independent evaluations be completed for L.T., which the District agreed to provide. D.T. selected the evaluators.

The District asserts it did try to follow the five-week progress meetings. The District contends it sent notices to D.T. regarding the meetings. D.T. did not attend any such progress meetings that were conducted at the start of the 2021–2022 school year. She or her counsel either canceled the meetings or advised they would not be attending the progress meetings.

The petition was submitted to the New Jersey Department of Education (DOE), and then forwarded to the OAL, where it was docketed on January 11, 2022.

On January 20, 2022, an IEP meeting was conducted and an Amended IEP for the 2021–2022 school year was completed. (RQ-17.) That IEP indicates that the parent was

invited. (RQ-17 at 2.) No signature/attendance page was provided with the Amended IEP.

The Amended IEP specified that due to D.T.'s request for more frequent updates, the CST determined that L.T.'s goals and objectives would be targeting short-term progress, rather than annual school year goals. The IEP team was to meet every five weeks to review the goals and objectives and revise them as necessary. (RQ-17 at 14.)

The January 20, 2022, IEP included an updated narrative from L.T.'s special education teacher, Del Signore, as of October 21, 2021, noting that he was responding well to her sessions with him and sits with his aide for the entire lesson. He was reportedly working well in whole group sessions. As of January 20, 2022, it was noted that Del Signore no longer was L.T.'s teacher, and his new teacher, Mr. Klemesh, wanted to keep the goals and objectives the same, as he personally assessed L.T.'s performance.

Regarding his S/L status, the S/L therapist Welde indicated that L.T. was a joy to work with and was making progress towards his speech goals. She provided a written update as of January 20, 2022, specifying some tasks she was working on with him and his progress, but that his motivation to complete tasks could be inconsistent. She reported he continued to make progress.

Regarding OT, the therapist noted in the January 20, 2022, Amended IEP that as of October 21, 2021, a multi-sensory approach was being utilized. She described the verbal prompts and assistance L.T. required for certain tasks such as writing, grasping, toileting, and opening containers. She noted that he was highly motivated by visual, motor, and tactile items that lit up. As of January 20, 2022, the OT therapist reported various verbal prompts and assistance for tasks which were needed for L.T. to complete same. His toileting was reported as inconsistent. L.T. made progress towards his OT goals, but had not mastered them. (RQ-17 at 4.)

Regarding PT, the therapist reported that as of October 2021, L.T. had been transitioning well and continuing to work on gross motor skills and coordination. His aide accompanied him to PT sessions to keep him on task and to manage his behavior and

safety concerns. (RQ-17 at 4.) He required moderate to maximum assistance with verbal and physical prompts during PT to get him to participate in two-to-three-minute activities. His balance and body control reportedly had progressed, but the therapist wanted to see more progress with his strength and coordination, specifically with age-appropriate ball skills.

The PT therapist, as of January 20, 2022, noted in the Amended IEP that L.T. was transitioning well, and repeated that L.T. was continuing to work on his gross motor skills and coordination. Some of L.T.'s status regarding specific tasks was noted. The PT therapist indicated that L.T. continued to have "a lot" of difficulty participating in structured activities, following directions, and required consistent redirection throughout his PT session. The therapist repeated the prior PT therapist's comment that they would like to see more progress with his strength and coordination, specifically with age-appropriate ball skills. (RQ-17 at 5.)

In the needs section of the Amended IEP, it was noted that due to L.T.'s Down Syndrome diagnosis, he needed support in every aspect of his life. It was noted that his abilities should be assessed "realistically," and expectations adjusted accordingly. (RQ-17 at 5.) He was noted to become frustrated easily and then shuts down and becomes unresponsive. He was to be challenged in his motivation, but not pushed too hard to cause him to shut down. To assist his behavioral concerns, he was to have a one-to-one aide for the entire school day. (RQ-17 at 5.) The Amended IEP continued to place L.T. in the multiply disabled classroom.

The independent evaluations requested by D.T. were completed by her chosen evaluators. A Functional Behavior Assessment (FBA) report was completed by Christen Russell. (P-17.) The report is undated. It does note that observations were made on September 10 and September 15, 2021. (P-17 at 1.) Russell's invoice, dated October 22, 2021, was submitted to the BOE secretary in or about the end of October or in November 2021. (RR-18.) Russell testified she submitted her written report to the BOE secretary in or about the end of October or November 2021.

The S/L independent evaluation was completed by Rizza Miro, of Rizza Miro and Associates, LLC. (P-18.) The report is not dated, but notes the evaluation was done on November 18 and November 19, 2021. (P-18 at 1.)

The OT independent evaluation was completed by Felicia Castagna, of Rizza Miro and Associates, LLC. (P-19.) The report is not dated, but notes that the evaluation was done on January 14, 2022. (P-19 at 1.)

A Developmental Behavioral Evaluation was completed by Dr. Mary Pipan, of Children's Hospital of Philadelphia (CHOP), on March 31, 2022, and her written report was authored on that date. (P-40.) The evaluation included multiple diagnosis for L.T., listed first as Autism Spectrum Disorder (ASD), then Trisomy 21; developmental delay; hypotonia; sensory modulation dysfunction; ligamentous laxity of multiple sites; feeding difficulties; and at-risk for elopement. (P-40 at 1.)

Testimony

Gina Lewis, the Supervisor of Special Education at Lawnside and the school psychologist, testified for the District. She has been so employed for approximately two years. She began in the position of Supervisor at Lawnside in January 2020. She oversees the CST. She serves the dual role of doing psychological and cognitive testing as the school psychologist for the CST, as well as serving as the supervisor by overseeing the CST and ensuring that the IEPs are being followed.

L.T. is classified as multiply disabled. L.T. is in second grade for the 2021–2022 school year. He has a one-on-one Applied Behavioral Analysis (ABA) trained aide, and receives related services of PT, OT, speech services, and is in a multiply disabled classroom for the 2021–2022 school year. The teacher in L.T.'s classroom holds a New Jersey teaching certificate for special education.

Lewis confirmed that she reviewed L.T.'s records from before she became the supervisor of special education at Lawnside. She confirmed she did not see that there was a medical evaluation of L.T. in 2018, nor when he was evaluated before kindergarten

in 2019. There was also no behavior evaluation done prior to his kindergarten school year. There was no determination or assessment done to determine if L.T. was autistic at that time.

When the COVID-19 pandemic first started in March 2020, all schools in New Jersey went to virtual remote learning. L.T. was in kindergarten for the 2019–2020 school year. All related services for L.T. were provided virtually. The remote instruction and virtual related services for L.T. continued through the summer of 2020. Lewis responded on cross-examination that the District had not yet provided compensatory education to L.T. for not providing him his related services therapies from March 2020 through September 2020. On re-direct, Lewis clarified that the District was offering compensatory education to its students for the pandemic remote learning time, and providing one hour of additional instruction after school. L.T. was not participating in that additional time, although the compensatory time was offered to him. She acknowledged that D.T. had not been provided written notice of the offer of compensatory education for L.T.

L.T.'s first-grade year was the 2020–2021 school year. In September 2020, the District permitted L.T. to come in-person to the school two times per week for his related services of PT, OT, and S/L. He was the only Lawnside student to receive his related services in-person as of September 2020. His teacher came in-person to the school on the same two days L.T. was there for related services, so that the teacher could provide in-person teaching to L.T. They realized that due to L.T.'s developmental disabilities, he needed in-person teaching and services, so as soon as it was safe and the school could do so, they provided such services in-person.

Lewis was aware that the IEP for L.T.'s 2020–2021 school year indicated that he had severe communication disabilities. (P-24.) The speech report done at the beginning of that year scored L.T. as very, very low. His scoring was so low in some categories that a measurement could not be taken. There was no assessment done to determine how L.T. would benefit from remote learning at the beginning of the 2020–2021 school year.

Lewis confirmed that from March 2020 through January 2021, an in-home aide was not provided for L.T. during his remote instruction. In January or February 2021, an

ABA trained aide went into L.T.'s house for three hours per day, from nine to twelve, when L.T. would receive his remote instruction. January 2021 was the earliest they could have the aide in the home, due to the pandemic. Lewis acknowledged she did not go to the home to check in on the aide. She had sign-in sheets from the company which the District contracted with to provide the aide. The aide's name was Miss Olivia. She acknowledged she did not have personal knowledge of the exact hours the aide was in-home. Lewis confirmed the aide was not provided for a full 420 minutes school day from January 2021 through April 2021. She knew the aide to be behaviorally trained, although she did not personally review the aide's credentials. She confirmed that the aide was provided in-home, at the request of D.T., due to L.T. not benefitting from his remote instruction. She further confirmed that the school has not offered to provide compensatory education for not providing the aide from March 2020 through January 2021.

As of April 2021, the school opened in-person for all students, which L.T. attended. The school continued to have in-person instruction for all students, including L.T., through the time Lewis testified.

For the summer 2021, L.T. attended ESY five days per week, 8:30 a.m. to noon. The District proposed for L.T. to attend the ESY 2022 session, from 8:30 a.m. to 2:00 p.m., five days per week, which runs from July 5, 2022, through August 12, 2022. Lewis testified that L.T.'s IEP for the 2020–2021 school year was not amended during the remote instruction time during that school year.

At the end of the 2020–2021 school year, Lewis discussed with L.T.'s case manager, Ms. Seminara, the plans for moving forward for L.T.'s 2021–2022 school year and that L.T.'s mother, D.T., requested out-of-district placement for L.T. Arrangements were being made to meet with the parent every five weeks to discuss the child's progress. They did not put "a hard no" on D.T.'s request for out-of-district placement. They were reviewing it as the school year progressed as they emerged from the COVID pandemic. Lewis wanted to provide the least restrictive environment (LRE) for L.T. and move forward to address his needs. At the June 2021 annual CST review, all parties agreed to this plan, with IEP progress meetings every five weeks, and it was placed in L.T.'s IEP. (RQ-

17 at 14.) D.T. agreed to the IEP, which included that the progress meetings were to occur.

D.T. was invited to the progress meetings, but did not attend. Once she retained counsel, the link to the Zoom progress meetings was likewise provided to her attorney. The attorney did not attend. Lewis testified she sent the links to the progress meetings to all parties. She did not receive any kind of response. The meetings were still conducted because it was stated in the IEP that the meetings were to occur. Lewis has not had the opportunity to discuss L.T.'s status with his mother, D.T., from when the school reopened to all in-person instruction and services in April 2021, through the time of her testimony in April 2022. The IEP progress meetings were held, but D.T. did not attend. At the beginning of the 2021–2022 school year, the case manager advised Lewis that D.T. said her lawyer told her not to talk to anyone at the District anymore and that she would not be attending the IEP progress meetings.

Lewis confirmed she exchanged email communications with D.T.'s lawyer, Mr. Epstein, in October 2021, regarding the topic of the IEP progress meetings. (PX-1.) Lewis communicated to counsel that if D.T. no longer wanted to have the scheduled progress meetings, then D.T. should write a letter saying so, or they could have a meeting and take the clause out of the IEP. (PX-1 at 1.) Counsel responded that he was acting on D.T.'s behalf and she would not be writing separately. (Id.) Lewis clarified on cross-examination that she was not indicating in her email that she would not accept a letter from counsel. She needed something in writing, whether from D.T. or her counsel, that they wanted the clause for the progress meetings taken out of the IEP, and she did not receive that. She did not take counsel's response to mean that D.T. was rejecting the progress meetings. Lewis testified the progress meetings were not considered the annual IEP review meeting.

Lewis herself did not attend the progress meetings. The case manager, Ms. Seminara, would attend the progress meetings, along with L.T.'s teacher who was a general education and special education teacher, the physical therapist, and the occupational therapist.

The case manager would meet with Lewis after every IEP progress meeting. This kept Lewis, as supervisor, apprised of L.T.'s goals. The case manager reported to Lewis that L.T. was making progress, and was being assessed every five weeks and the goals were being adjusted. For example, if L.T. had mastered an OT goal, the goal was amended and changed for something more for him to grow on. If the IEP was changed, such as with L.T. mastering a goal, then new goals were tailored for L.T. and the new IEP would be mailed out to L.T.'s mother. Regarding the IEP from the meeting of January 20, 2022, Lewis confirmed that there was no sign-in sheet attached to the IEP to confirm who was present at that meeting. (RQ-17 at 15.) The case worker told Lewis that D.T. did not attend the meeting. Lewis acknowledged she did not have personal knowledge that the January 20, 2022, IEP had been sent to D.T. She affirmed it would be a violation of L.T.'s rights under IDEA if that IEP had not been sent to D.T. She did acknowledge there was a letter in the pre-marked exhibits which was addressed to D.T. indicating a revised copy of L.T.'s IEP and summary of the November 18, 2021, meeting was enclosed.

The case manager reported to Lewis that L.T. had made great progress in some areas, but in other areas, there was minimal or slow moving progress, such as in the area of PT, regarding L.T.'s fine motor skills. He was still "learning" in other areas, and they were still "working with him." (Trans April 5, 2022, 77:4-8.) She believed that some goals had been reached, but she did not have firsthand knowledge of that. She had not been informed of a deterioration in L.T.'s progress. Lewis herself would see L.T. in school, such as during lunch time, and observed what she believed L.T. to be progressing. He was being social, walking up to other children, and making eye contact. He picks up his trash and takes it to the trash can.

In approximately August or September 2021, L.T.'s mother requested independent evaluations to be complete of L.T. for PT, OT, S/L, an FBA, and a neurodevelopmental evaluation, which was to include an IQ and learning portion. The District agreed to pay for the independent evaluations as of September 2021.

Lewis testified the S/L evaluation was done "rather quickly" and provided to the District in the early fall of 2021. (P-18.) The OT evaluation came in approximately January 2022. (P-19.)

Lewis asserted that the first she was aware the FBA had been done was when the District received petitioner's pre-marked exhibits prior to the start of the OAL hearing, at the end of March 2022. She learned that the FBA evaluation observations were done on two occasions in September 2021. Lewis had been inquiring about the status of the FBA report, knowing that the District had paid for the FBA evaluation, but she did not get the FBA report until the beginning of this proceeding, approximately five to six months after the District agreed to pay for the independent FBA. The FBA report was not dated. (P-17.) Lewis did not know that the FBA evaluator, Ms. Russell, had sent her report to the attention of the BOE's secretary, with her invoice, in October 2021. Lewis confirmed this was the first FBA evaluation done for L.T.

Regarding the speech and OT evaluations, Lewis found the conclusions to be that L.T. needed to be educated in a small classroom of students with similar disabilities. She believed that was similar to L.T.'s current setting in the District. His classroom size for the 2021–2022 school year was comprised of six students, diagnosed with multiple disabilities, or autism, and Down Syndrome.

A neurobehavioral evaluation report for L.T., dated March 31, 2022, by Dr. Mary Pipan for CHOP was presented to the District just prior to the start of the OAL hearing as part of petitioner's initial disclosures. This type of evaluation was not on the original list of requested independent evaluations. A developmental pediatric evaluation assessment was on that list. The neurobehavioral evaluation obtained by petitioner from CHOP did not have an IQ evaluation or learning evaluation. Lewis asserted they did not have "a whole lot of time to digest this one." (Transcript April 5, 2022, 52:4-9.) Lewis indicated that the evaluator, Dr. Pipan, did not reach out to her or anyone from the District on the CST.

Lewis believes that the things identified in Dr. Pipan's report regarding behavioral observations could be provided by the District, if the District was given the opportunity to hold an IEP meeting and review the information contained in the neurobehavioral evaluation. (P-40.) Lewis indicated they were not opposed to any of the things identified in the neurobehavioral evaluation; they just received the report and did not have the

opportunity to have an IEP meeting to discuss what parts of the report the District would accept in totality or confirm that they could provide such services for L.T.

Lewis confirmed that an IEP meeting was conducted on January 20, 2022. (RQ-17.) She guessed that D.T.'s due process petition was pending at the time. Lewis recalled talking to the case manager after the IEP meeting, either the next day or a day thereafter.

Lewis asserted that the District has not objected to anything the petitioner requested, except for the out-of-district placement. Lewis believes that the District is providing the LRE for L.T. and meeting his needs. The District is offering appropriate programming for L.T. in District. The progress meetings were included in the IEP so the CST could discuss L.T.'s status and, if the District could not provide for L.T., then they would look at an out-of-district placement. Lewis indicated that "we didn't take it off the table and say no for never, no. But it was something that we wanted to continue to discuss" coming out of the pandemic. (Trans. April 5, 2022, 54:23-35.) Lewis testified that she was not opposed to implementing anything that is going to help a child succeed. She wants to have a conversation to review what is and is not appropriate for L.T. Lewis stated that the recommendations in all of the independent evaluations for PT, OT, and the pediatric report from CHOP, would need to be discussed at a sit down meeting with the CST and they would implement what was necessary.

If there was something showing that L.T. was not thriving in their District, they would consider another placement for him. That has not been the case here. She has been informed that L.T. is making progress and doing well in his placement in the District.

Lori Seminara, case worker for L.T., testified on behalf of the BOE. She is a Learning Disabilities Teacher Consultant (LDTC), working part-time at Lawnside on Tuesdays and Thursdays. She serves as the case manager for the multi-disabilities and self-contained classroom for learning and language disabilities for students K through second grade. She has not done a learning evaluation of L.T.

She became L.T.'s CST case worker when she began her employment with the District in November 2019, and continues to serve as case worker for him. She confirmed that D.T. was involved in attending IEP meetings with the CST, and would have conversations with D.T. up through August 2021, prior to this dispute.

Seminara confirmed that they allowed L.T. to come in-person for the 2020–2021 school year, into the school building in September 2020, to have his related services. His teacher would then take him and do one-on-one instruction. The school building was not open to all students at that time, due to the pandemic. They made the accommodation for L.T. because they felt it was more beneficial for him to receive his related services in-person, rather than virtually. He was benefitting from the in-person instruction. He was the only student in the District who came in and his teacher worked with him face-to-face. The school returned to all in-person instruction in April 2021.

The last IEP meeting where Seminara was present and D.T. was in attendance was in June 2021. The issue of out-of-district placement came up. D.T. expressed that she felt L.T. was not getting everything he should be getting in the school and his needs would be better met in an out-of-district placement. The District's position was that L.T. was showing progress towards his goals and objectives and his placement was good for him at that time in the District.

Seminara acknowledged that L.T. had regression, as all students worldwide did, when learning went remote due to the pandemic. When he returned to attending in the building, he started to really show progress again. His scores were going up, such as in VB-MAPP. They saw that socially he was doing better. For example, he was looking at other students in the classroom and joining them to play.

At the IEP annual review meeting in June 2021, D.T. stated that L.T.'s goals continued to be the same every year and she was not seeing progress. One of the CST participants suggested that the goals should be in five to six week increments and once completed, they would go on to another skill in the task so that D.T. could see that L.T. was gaining skills. Those meetings did occur, although D.T. did not attend, who referred the school representatives to talk to her lawyer. Some of the meetings were cancelled,

such as if D.T. cancelled it, and they would reschedule it. If D.T. did not cancel the meeting, then they would go forward with it. During some of the meetings L.T.'s goals and objectives were changed while some were not. The related services providers and the teacher were asked to write down L.T.'s progress and if the goals were not modified, to note why that was not done, so that D.T. would know what was going on with L.T.'s goals and objectives.

L.T. receives OT, PT, and S/L therapy, and has the assistance of a personal aide for the school day. Seminara believed that the aide was a board-certified behavioral specialist, but noted she only knew that the aide was trained in ABA strategies and was not certain what certifications the aide held.

L.T.'s classroom is for students with IEPs in a self-contained learning and language disabled classroom. He is with students of similar needs. Seminara explained that the teacher and related services providers report that L.T. is "consistently inconsistent." (Trans June 2, 2022, 33:15-17.) Motivation was a big factor as to whether L.T. was progressing. Sometimes L.T. would present for the day as motivated and ready to work, and the teachers and related providers would work with him to complete some tasks, sometimes having him do them, and other times he would not. For example, L.T. would be working towards a goal that he was to achieve with eighty-percent accuracy, or complete four out of five times. He would complete the task three times, and then not participate the fourth time, so he did not achieve the goal with eighty-percent accuracy.

There were changes made to get some consistency in L.T.'s performance. For example, the OT and S/L therapist tried different strategies using preferred items, such as an object with lights, sounds, or movements. L.T. would be given the preferred item for an amount of time, then had to work on a task in order to receive the preferred item again. Such changes or ways to achieve consistency with L.T. would be discussed during the IEP progress meetings. L.T.'s mother, D.T., did not attend those progress meetings.

The annual IEP meeting was scheduled in May 2021, regarding the 2021–2022 school year. D.T. cancelled the day prior, indicating she had not received a draft IEP prior to the meeting. The meeting was rescheduled. D.T. did attend via Zoom. That was

the meeting where D.T. asked about an out-of-district placement for D.T. She did not sign the IEP. That is the IEP which included the five-week progress meetings. Seminara testified that the District followed the IEP from 2020–2021, under stay put. She still tried to follow the five-week progress meetings, as outlined in the proposed 2021–2022 school year IEP, to be able to demonstrate to D.T. that there was progress being made for L.T., just a little slower, which could be assessed in the smaller goals rather than one large goal.

Seminara confirmed that from the time she has been L.T.'s case manager, she has not requested to have him diagnosed or assessed by a medical doctor. She confirmed she did not see such an assessment in L.T.'s file from prior to her becoming his case manager in November 2019. The District did not have a report or diagnosis of autism for L.T. until receipt of the CHOP report obtained as an independent evaluation requested by petitioner.

She did not see that an FBA had been completed for L.T. prior to her becoming his case manager. She confirmed that an FBA was not completed by the District during the time she has been L.T.'s case manager. She saw L.T.'s file in December 2019, and wanted to address with the special education supervisor as to why an FBA was not done. However, there was no supervisor as of then, until Ms. Lewis began working for the District as the Special Education Supervisor in January 2020, and then the pandemic occurred.

L.T.'s IEP for kindergarten, for the 2019–2020 school year, was in L.T.'s file when Seminara began as his case manager. The IEP was amended as of September 19, 2019. (P-22.)

The IEP was then amended in January 2020, just prior to the start of the pandemic school closure in March 2020. (P-23.) The amendment was done without a meeting, and consented to by the parent. (P-23.) That IEP identified special education course topics of language arts and mathematics, to be provided five times per week for ninety minutes, and science and social studies to be provided four times per week for forty-five minutes.

(P-23 at 218.) Seminara confirmed that once the school closed for the pandemic, L.T. did not receive such instruction for the amount of time listed in the IEP.

That IEP also listed related services of OT to be provided thirty times per year for thirty minutes; PT for twenty-six times for thirty minutes; a Board-Certified Behavioral Analyst (BCBA) consult to occur twenty times per year for sixty minutes; and individual and group S/L services for twenty-six times and twenty times per year, each for thirty minutes duration with an S/L therapist. (P-23 at 218.) Seminara asserted that L.T. did receive such services remotely during the pandemic school closure time. She acknowledged she did not observe any of the PT, OT, or S/L virtual sessions for L.T. during that time. She did know from speaking with the therapists that L.T. was having difficulty completing the activities, and that is why those sessions became in-person.

The next IEP, July 6, 2020, was for the 2020–2021 school year, for L.T.’s first-grade year. (P-24.) L.T. was classified as other health impaired. (P-24.) She recognized that the IEP indicated that a “medical assessment documenting the health problem” was required. (P-24 at 227.) She confirmed that she did not request a medical assessment. There was an assessment in his file with a diagnosis of Down Syndrome, which was provided by D.T.

Seminara confirmed that L.T. has communication difficulties. The IEP for 2020–2021 was drafted approximately four months into the pandemic remote learning time. This IEP was not modified to indicate L.T. would receive remote learning. She explained that, as per the DOE, the school did not have to modify all IEPs to address remote learning during the pandemic.

She drafted the information under the additional related/intensive service information heading of the IEP for the 2020–2021 school year. (P-24 at 243.) Seminara noted that L.T. required the assistance of a personal aide for the entire school day, based upon his level of cognitive functioning and documented behavioral concerns. He required direct physical assistance with all self-help skills due to his developmental delays. He needed physical prompts and physical assistance for opening and eating his food. The aide would need to be instructed in the use of the VB-MAPP training. The aide would

need to constantly refocus L.T. during eating so he did not choke due to his limited attention span. In addition to the physical assistance, L.T. required constant supervision while using the bathroom because he had a history of elopement. She further noted that L.T. has a behavior improvement plan within the IEP given L.T.'s behavioral concerns related to his level of cognitive functioning of limited attention span, impulsivity, and elopement. (P-24 at 243.) She recognized that his remote instructors could not provide such supervision and monitoring through a computer screen, and that is why parents were sitting with their students through the unprecedented time.

Seminara acknowledged that although she noted in the IEP from July 6, 2020, for the 2020–2021 school year that L.T. had a behavioral improvement plan, there was no behavioral plan in the IEP. She explained that she was new to the IEP computer program, and she thought she wrote it up, but did not save it correctly, since this was one of the first times she was using that computer program. She indicated that she did include an explanation in the IEP about what they were doing for L.T. in the classroom.

Seminara confirmed that for the 2020–2021 school year, when the District felt it was safe for someone to go into L.T.'s home, they sent an aide there to be with him from 9:00 a.m. to noon, five days a week, to assist L.T. with his virtual learning. Seminara testified on cross-examination that L.T.'s in-person sessions began in January 2021, and that no services were provided to him in-person up until that time because the District did not feel it was safe to have anybody go into homes due to COVID-19. On re-direct, she stated that she could not remember exactly when services were provided in-person at the school for L.T., and that they may have started in September 2020.

The IEP for the 2021–2022 school year was not amended as of January 2021 when the in-home sessions occurred. What she could recall was that L.T. came into the school for his services two days a week and the teacher worked with him either before or after the related services. She recognized that two days per week was not stated in his IEP, but the BOE would not allow students in the building, when all students were at home for safety reasons. She recalled that from January 2021 through April 2021, L.T. received OT and speech two days per week and PT one day per week in school. He received

virtual instruction for the other three full days and two half-days, with the paraprofessional in his home to assist him.

Seminara initially testified that from January 2021 through April 2021, the aide was in-home with L.T. five half-days per week. During two days per week, L.T. was in school for half the day. When home for the three days per week, the aide was there half the day and then L.T. was without an aide for the other half of the day for virtual learning. Seminara believed that the teacher, Mrs. DelSignore, was working with D.T., L.T.'s mother, to try and make the virtual instruction work for L.T. Seminara indicated that from the school closure of March 2020 through January 2021, L.T. did not receive the special education and related services for the days and duration as identified in his IEPs. When asked on cross-examination if the school provided L.T. with compensatory education for his lost nine-month period of education, she stated "no." (Trans June 2, 2022, 84:5-9.) She likewise indicated that from January 2021 through April 2021, L.T. did not receive his special education and related services for the days and duration as identified in his IEPs, and the school had not provided him compensatory education. (Trans June 2, 2022, 84:10-17.)

On re-direct, she thought in-person services may have started at the beginning of that school year, in September 2020, which was a special accommodation for L.T. since other students were not back in the building for in-person learning. He received his related services in school, since they felt that L.T. would benefit more from coming in and seeing the therapists, as opposed to seeing them on screen. As of January 2021, the aide then went to his home.

Seminara testified that since the therapists requested to bring L.T. into the school because he was not benefitting from remote instruction, Lewis, as the supervisor, set up the arrangement to have L.T. come into school as of January 2021 for his related services. He would have virtual instruction every day during the week in the morning, with an aide in home, then would come into the school two days per week in the afternoon for his related services. Seminara confirmed that D.T. had spoken to her about many things regarding placement of L.T. during COVID-19, and that Seminara received an email on December 10, 2020, from D.T. indicating that they had spoken two weeks prior, and D.T.

had not heard back from Seminara. She directed D.T. to speak to Supervisor Lewis, regarding L.T.'s placement. (PX-2.) Seminara did not call a CST meeting regarding placement of L.T. when D.T. had sent the email. Seminara directed D.T. to speak to Lewis, and both Lewis and Seminara had a phone conversation together with D.T. Seminar had also provided contact information to D.T. for agencies that might have been able to assist her at home, for what she believed D.T. was inquiring about for in-home therapies. (PX-3.) She confirmed there was no IEP meeting at the time. There was no amendment to L.T.'s IEP in January 2021. Her understanding was that as per the DOE, the schools did not have to revise all IEPs during the COVID-19 time since they were providing as much of the services as they could under the situation as it was.

She thought there was an amendment to his IEP for the 2020–2021 school year. (P-24.) She confirmed on cross-examination that she did not have his IEP dates memorized, but did identify that L.T. had his annual review IEP completed on April 27, 2021, for a start date of July 6, 2021, for the 2021–2022 school year. (RQ-17.) She confirmed she did not see a signature on the IEP from the parent. Seminara confirmed there was no participant page with the IEP. She usually has everyone sign the page at the meeting, and was not sure what happened.

The IEP for the 2021–2022 school year again noted that a “medical assessment documenting the health problem” for L.T. was required. (RQ-17 at 2.) Seminara recollected that there was a medical report in L.T.'s file, provided by D.T., regarding a diagnosis of Down Syndrome. She could not recall who authored the report or any other details. She confirmed that she had not been provided a diagnosis of autism. Seminara identified that there was a “60 Day IDT and Care Plan Summary” in L.T.'s file, from July 31, 2018, by a social worker from The Medical Daycare Center-Voorhees Pediatric Facility which references a diagnosis of Down Syndrome. (RA-1.)

Seminara asserted that the CST was working on keeping L.T.'s skills as of April 2021. His teacher saw that within a couple of weeks of coming back into the classroom that he really started to blossom. She asserted that would be demonstrated by his VB-MAPP scores and the progress of his goals and objectives. Any documentation of that would be with the individual staff members who worked with L.T. She conceded that

there was no formalized data collection in the IEP for the 2021–2022 school year, but the IEP did call for progress reports and an annual review.

The IEP for the 2021–2022 school year was completed, with a start date of July 6, 2021. (P-25.) She confirmed in the IEP that L.T. did not have an individual behavior improvement plan. (P-25 at 255.) L.T. was using the classroom behavior plan with a personal aide to reinforce desired behaviors. Seminara noted that if “L.T. requires an individual behavior plan, a meeting will be held to discuss how to proceed.” (P-25 at 255.) Seminara acknowledged that the independent FBA indicated that L.T. needed a behavior plan. She acknowledged that she did not provide notice to D.T. that the IEP could be amended to develop a behavioral plan. She did not see the FBA until the first hearing day for this matter and had not provided notice because she did not receive the FBA until that time.

Seminara indicated that all services for L.T. were in-person for the 2021–2022 school year. She asserted that all services were provided for L.T. without disruption. She was aware that L.T. was progressing during the year, such as with potty training. He was wearing underwear in school and on a potty schedule. She was not certain as to whether he had any accidents, but knew that he was progressing with the skills. She previously would observe him in the hallway, and had to be held by the hand. He now is able to walk in the hallway without holding another’s hand. Previously, she would go into the classroom to greet the students and he would not acknowledge her. Now, he will look up to her and looks at her face. Seminara would observe him throughout the school day at various times. She did not know the dates and times and did not write anything down. She asserted that she had seen improvement.

She did observe L.T. on an occasion get upset and was screaming and yelling. She saw him get redirected, and he went back to his task. There was no plan in the IEP to address what to do if L.T. exhibited such behavior.

Seminara had reviewed the independent evaluations obtained in this matter. She agreed with the services stated in the evaluations. She acknowledged that some of the recommended services were not being provided to L.T. at the time. She did not believe

that there were any recommended services that the District could not provide. She has not had the opportunity to discuss the recommendations with D.T. because the meetings that were scheduled were canceled by D.T. She has not had the opportunity to discuss any public or private alternative placements. There has not been any communication with the parent since August 2021.

Christen Russell testified for the petitioner. She holds a doctorate, recently awarded this year, in ABA. She is a BCBA. She was qualified, without objection, as an expert in the field of ABA, regarding special education students, based upon her education, training, skills, and experience. (P-28.)

Russell was requested to complete an FBA for L.T. She completed a written Program and FBA report, which was paid for by the District. (P-17.) Russell submitted her report to the BOE secretary at the school in Lawnside. Her report is undated, but she approximated that she completed it on or about October 20, 2021, as per her invoice submitted to the District. (RR-18.) She recalled following up with representatives at the school on November 11, 2021, regarding billing documentation the District needed from her to be paid. She was not contacted by any representative of the CST from the District to request that she develop a behavioral plan for L.T.

The purpose of her FBA of L.T. was to observe his behavior and the school setting circumstances, and then determine why he engages in specific behaviors, such as elopement and off-task behaviors, in and out of the classroom setting. She also needed to determine if the school's program was effective in increasing L.T.'s pro-social skills and in decreasing his challenging behaviors. Russell completed her evaluation and assessment by reviewing L.T.'s records, as itemized in her report; conducting interviews with L.T.'s teacher, 1:1 aide, and mother; and observing L.T. on September 10, 2021, and September 15, 2021, in his classroom at Lawnside. (P-17 at 1.)

Russell concluded that the program at Lawnside was not an appropriate program to meet L.T.'s needs. (P-17 at 24.) She found the program to be an inappropriate placement because L.T. would benefit from applied behavior analysis instruction from an interdisciplinary team of highly trained and experienced behavior analyses, including

oversight by a board certified behavior analyst. Such an interdisciplinary team would be able to support learning across functional skills, social skills, and academics. She did not see social skills instruction being provided in the classroom with other students.

She recommended that L.T. should receive a behavior intervention plan. She recommended that it was critical that L.T.'s school program include the components of: enrollment in a full-day program based upon the principles of applied behavior analysis; include parent training in L.T.'s IEP; have a comprehensive augmentative and alternative communication evaluation completed of L.T.; update L.T.'s IEP goals and objectives to ensure they are measurable, quantifiable, and include independence as part of the mastery criteria; increase L.T.'s ESY services; and implement a variety of behavioral supports. (P-17 at 24-28.)

Russell reviewed multiple records for L.T. for her evaluation. (P-17 at 5-12.) She saw that when L.T. was three years old, he was attending a medical daycare for the 2017–2018 academic year. He did not have an IEP for that year. For the 2018–2019 academic year, when L.T. was four years old, he had an IEP from Lawnside, and he attended the Head Start program in a general education classroom. (P-20.) There was no behavioral intervention plan in that IEP. L.T.'s level of functioning at that time was well below average. Particularly as to that year of L.T.'s education, Russell noted that Dr. Carmen Henderson, LDTC from Lawnside, had completed an educational assessment on June 1, 2019. (P-12.) Henderson cautioned in her assessment that the test results were not a true representative nor valid indicator of L.T.'s present level of functioning and readiness. L.T. was not familiar with the method of standardized testing and did not have the language necessary for the formal testing. He was unable to get through different sub tests. (P-12 at 2.) Russell highlighted that Henderson's findings in regard to L.T.'s percentile rankings ranged from three to ten, which is well below average in math problem solving, written expression, and alphabet writing fluency. (P-12.)

Russell found that the other evaluations completed of L.T. at that time, for speech, PT, psychology, and OT all had similar findings that L.T. was below average of his same aged peers. For example, in the psychological evaluation from Lawnside completed on May 13, 2019, L.T.'s Weschler Preschool and Primary Scale of Intelligence (WPPSI-IV)

score was in the less than .1 percentile, which is graded as “extremely low” in all areas tested, such as verbal comprehension, fluid reasoning, and processing speed. (P-8 at 2.) Russell asserted that the behaviors L.T. exhibited at his young age, as outlined in the evaluations from that time, did interfere with his learning. His 2018–2019 IEP did include in some of the synopses of the evaluations from that time that L.T. had exhibited behaviors that interfered with his learning then, yet there was no behavior intervention plan in that IEP. (P-20.)

Russell conducted interviews as part of her evaluation process. She learned that there was no oversight at Lawnside of L.T.’s case by a BCBA. The District had received consultation services for the 2019–2020 and 2020–2021 school years from a Board-Certified Assistant Behavior Analyst (BCABA) which is a bachelor’s degree level clinician. There was no oversight by a fully certified BCBA, which is a master’s level credentialed certificate holder, to ensure that the services being provided to L.T. and implementation of behavior changing procedures was appropriate to increase school-based behaviors that were effectively occurring, as well as decreasing L.T.’s challenging behaviors. Russell acknowledged she did not interview L.T.’s case manager as part of her evaluation process. Her understanding was that the case worker was on medical leave at the time. She noted she does not typically interview the head of Special Education when completing her evaluation.

Observations of L.T. were made by Russell while L.T. was in school at Lawnside. L.T. appeared to have a desire to interact socially, but was not interacting appropriately or at the age level of other students within his classroom. Russell did not observe staff giving social skills instruction. The other student profiles in L.T.’s classroom had skills much higher than L.T., which was not a good match for him to increase his social skills. For example, the other students exhibited higher skills in reciprocal conversation, when talking about likes and dislikes. L.T. has one-word utterances, using approximately ten to fifteen different words.

Russell generally observed off task behaviors by L.T., which needed to be addressed. Such behaviors were elopement; motor and vocal stereotypy dissent; independent responses to social greetings and independent social initiations to peers;

and responses in group and individual instruction. She observed behaviors that needed to be decreased, such as repetitive noises or sounds that L.T. made and his elopement from an instructional area without permission. He would not engage or respond to instructions from the teacher or aide within ten to fifteen seconds and would respond in protest by pushing things away. He needs appropriate prompts and responses from the staff to provide guidance to decrease such behaviors and increase positive behaviors, such as social interaction and remaining on task. She did not see such issues addressed in L.T.'s IEP.

Regression was shown by L.T. during the remote instruction time. There needed to be remediation of that regression through an appropriate ESY program and not long gaps of time in his instruction. Russell saw in the records that L.T.'s challenging behaviors increased during remote instruction.

Russell asserted that there was a need to obtain baseline data for L.T. before implementing a teaching procedure or intervention plan to determine L.T.'s level of functioning. Once the baseline is determined, then the teaching method can be determined to increase positive behavior and teach reinforcement of proper skills. L.T. would then need to be continually assessed in the various areas to ensure he was progressing in academic, social, leisure, and functional skills, while decreasing challenging behaviors by at least eighty percent from the base line. She found the staff not appropriately utilizing the VB-MAPP assessment tool information for L.T. She also found that the IEPs lacked data on L.T.'s challenging behaviors in order to appropriately assess and address such behavior.

Russell opined that the IEPs for the 2020–2021 and 2021–2022 school years were inappropriate as they lacked an appropriate behavioral plan for L.T. (P-24, P-25.) She found in her observations of L.T. that his challenging behavior was impeding his learning academically and during his related services. He did have some successes, but the implementation of the way the staff provided reinforcement would not increase L.T.'s skills because it was the same amount of reinforcement whether he completed a task independently or with assistance. She did not believe the time allotted in the IEP for related services sessions was enough for lasting behavioral changes and progress. (P-

25 at 17.) She asserted that L.T. needs much more practice time with repetition of skills to develop independence in completion of tasks, which she found to be documented in the records she reviewed regarding L.T.'s performance.

Russell also found that L.T.'s instruction time in the classroom was lacking. She observed that L.T. received individual instruction for thirty-nine minutes. This did not afford enough time for learning opportunities for L.T. For example, she observed 215 prompted responses to individual instruction with only thirty independent responses by L.T., which demonstrated only twelve percent of independence in his responses. (P-17 at 19.) There were opportunities observed for L.T. to increase his social interaction skills with peers and adults, which were not being prompted appropriately by staff. L.T. needed to have such opportunities within the classroom multiple times per day, with appropriate prompts by staff, via an appropriate behavior intervention plan. Russell indicated that you would expect to see an increase then in the number of skills L.T. would gain. Without such appropriate opportunities handled in accordance with a behavioral plan, Russell asserted there would be regression or minimal to low progress by L.T.

Russell asserted multiple conclusions within her evaluation. (P-17 at 20-24.) Her conclusions focused on L.T. having not been properly evaluated regarding his challenging behaviors, nor were behavior supports in place from 2018 through May 2021, as evidenced by the lack of IEPs and progress reports. (P-17 at 20.) She concluded that L.T.'s IEP did not properly identify his current level of functioning and needs, nor were the IEP goals and objectives properly addressing his needs, and such goals and objectives were not stated in measurable and observable terms to assess L.T.'s progress. (P-17 at 21.) L.T.'s IEP goals were not individualized for him, nor were the related services promoting lasting behavior change. (P-17 at 21.) She further concluded that although the IEP included that ABA services would be used with the VB-MAPP and a personal aide under the supervision of a BCBA, she observed contradictory strategies being used and that the training of the staff was insufficient. (P-17 at 22-24.)

Russell determined that the District did not have an appropriate program to meet L.T.'s needs. She recommended multiple components which she reported would be "critical" to meet L.T.'s needs. (P-17 at 24.) L.T. needed to be enrolled in a full-day

program based upon the principles of ABA. His IEP should include parent training in-home to ensure the skills L.T. learned in school were carried forth at home. (P-17 at 24-25.) A comprehensive Augmentative and Alternative Communication Evaluation was required to ensure that the selected mode of communication for L.T. was functional for his needs and a preferred method for him. The IEP goals and objectives needed to be updated to ensure they were measurable, quantifiable, and included independence as part of the mastery criteria. (P-17 at 25.) Appropriate behavior supports needed to be included, such as: ensuring there was accurate data collected regarding all targeted behaviors to be increased or decreased; focusing on facilitating independence on basic activities of daily living (ADL), such as toileting; and providing appropriate responses and prompts to reinforce and shape pro-social behaviors. (P-17 at 25-27.) She emphasized that a formal behavior intervention plan must be written and implemented, yet a hearing evaluation was essential to determine what method of instruction to implement for L.T. (P-17 at 27.)

Russell had the opportunity to review Dr. Mary Pipan's developmental behavioral evaluation report of March 31, 2022. (P-40.) Russell found Dr. Pipan's diagnosis of ASD to be significant, since L.T.'s classification would change, which would change the way services would be delivered to L.T. under New Jersey autism program quality indicators.

Russell's main recommendation was for L.T.'s placement to include intensive support through best practices, with the oversight of a BCBA, in a collaborative model. L.T. needs a comprehensive team providing input from the S/L therapist, OT, PT, and staff trained in behavior analytic services, for a team approach working on L.T.'s skills in the classroom. The staff must be experienced and receive ongoing training. Parent training would be beneficial for D.T. to understand the approach to use with L.T. for consistency. A behavioral plan was necessary for L.T. to be in his IEP.

Rizza Miro testified for the petitioner. She is a licensed New Jersey speech pathologist and holds a license with the American Speech and Hearing Association. (P-27.) She holds a Master of Science degree in Speech-Language Pathology, awarded in 2003. She has been the owner of Rizza Miro & Associates, LLC, since 2009 through the present, a company which provides speech, OT, and tutoring services. She oversees a

staff of twenty individuals who are licensed in S/L pathology, OT, and reading specialist certifications. She is a practicing S/L pathologist and evaluates and treats children, including those who are diagnosed with ASD and some with Down Syndrome. All of the children whom she treats as clients have some special education needs. She considers her expertise to be in the field of Speech Language Pathology, Pediatrics. She acknowledged this was her first time testifying in a court proceeding. She was qualified, without objection, as an expert in the field of Speech and Language pathology, with expertise in dealing with the population of special education students.

Miro completed an independent S/L evaluation of L.T. on November 18 and November 19, 2021, and authored her report thereafter. (P-18.) Her report and services were paid for by the District. To complete her evaluation, she reviewed records and reports as identified in her report, and she observed L.T. in her private practice office and at his school in Lawnside. (P-18.) She relied upon information provided to her by L.T.'s mother, D.T., during the evaluation process. (P-18 at 1-2.)

Miro's most significant findings regarding L.T. were his diagnosis of sensorineural hearing loss, diagnosis of Down Syndrome, and his significant global delays. She explained that sensorineural hearing loss may be in one or both ears, affecting a child's ability to hear sounds and speech around him. Depending upon the severity, some children need some type of aid while others do not. She learned that L.T. had hearing aids but seldom wears them as per his mother.

Miro found it significant that L.T. was given the same standardized test, the Preschool Language Scale Fifth Edition (PLS-5) since 2018, for his initial evaluation and re-evaluation for S/L. Miro explained that the PLS-5 tests a child's ability to understand language and ability to use language expressively. The child is provided several attempts for each skill that is tested. For example, if the skill is the child's ability to follow one-step directions, they are given several chances to complete the task to demonstrate knowledge and ability to do so, in two or three times out of four attempts, to be able to receive a point for that skill.

L.T. was first tested with the PLS-5 in July 2018, at the age of three years, six-months old, at Cooper University Health Care, as part of a S/L evaluation. (P-2.) His results from the PLS-5 were reported at that time to be in the one percentile ranking, compared to other children of his chronological age. His scoring suggested severe delay in receptive and expressive language skills, and that he inconsistently demonstrated abilities and strengths. (P-2.) He was tested again with the PLS-5 during the District's S/L evaluation of May 28, 2019. The total language score was in the one percentile rank, with an age equivalency of one year, one-month-old, described as "below average range" and suggesting L.T. demonstrated severe delay in both receptive and expressive language skills. (P-11.)

Likewise, Miro reviewed the Camden County Education Services Commission psychological evaluation of L.T. completed on August 23, 2018. (P-4.) That report indicated that the Wechsler Preschool & Primary Scale Intelligence-Fourth Edition (WPPSI-IV) was administered to L.T. as part of that evaluation. Miro saw that L.T.'s results of the WPPSI-IV for verbal comprehension were reported to be in the first percentile described as "extremely low." (P-4 at 2.) In the Lawnside psychological evaluation of L.T. completed on May 13, 2019, L.T.'s WPPSI-IV results were reported to be in the 0.1 percentile, again described as "extremely low." (P-8.)

Based upon her review of the records, Miro found that L.T. was extremely low functioning for his age upon starting in the Head Start program for the 2018–2019 school year. Miro spoke to speech pathologist, Rebecca Welde, on December 7, 2021. Welde had provided S/L therapy to L.T. while he was at Head Start, once per week for thirty minutes. L.T. had an IEP for his Head Start year. (P-20.) That IEP indicates that L.T. was to receive special education in the Head Start program in a general education classroom. (P-20 at 143.) Speech therapist Welde completed a S/L evaluation of L.T. on May 28, 2019, which included the PLS-5 test. (P-11.) Welde found that L.T. was in the below average range for his total language score from the PLS-5 test, and indicated that L.T.'s scores "suggest he demonstrates a severe delay in both is receptive and expressive language skills." (P-11.) This was consistent with Miro's observations.

Miro also found it significant that L.T. received an Augmentative Alternative Communication evaluation (AAC) because L.T. is essentially non-verbal. L.T. was provided a device, but S/L therapist Welde told Miro that she received three or less training sessions as to how to use the device and was not sure if the one-to-one aide had been trained how to use it with L.T. Welde reported they eventually abandoned use of the device because it was unsuccessful.

Miro reviewed the IEP for L.T.'s 2021–2022 school year. (P-25.) She saw that L.T. was to receive speech therapy twenty-six times per year, for thirty-minute sessions, and group speech therapy sessions fifteen times per year, for thirty minutes in the special education classroom. Miro assumed this meant that L.T.'s speech therapies were received as a “push in” in his classroom. She indicated that would equate to one individual S/L session every other week for thirty minutes.

Miro conducted observations of L.T. She saw in the records that L.T. had a severe inability to attend to a task and his significant behaviors interfered with his ability to learn. She noted that the District's educational assessment, completed by Carmen Henderson on June 1, 2019, noted that L.T. did not have the language necessary for formal testing. (P-12.) Henderson had recommended ABA services for L.T. in her evaluation. That was consistent with Miro's observations of L.T. in school.

Miro observed L.T. in the media room, in November 2021, during L.T.'s second-grade year, when he was seven years old. It was a large all-purpose type of room with a combination of several classes. The majority of the students were regulation education, with approximately twenty to thirty children facing a teacher. The room had echoes and appeared to be divided by bookshelves. L.T. was on one side of the room. There were other teachers and school staff on the other half of the room, so there was a lot of background noise.

The regular education teacher was doing a regular education lesson for the majority of the children. L.T. was in the very back of the room with several children from his multiply disabled (MD) class. The other children from his class appeared to be

listening to the regular education teacher, with an aide walking around and between the other children. L.T. had his own aide sitting next to him.

L.T. was not paying attention to the general education teacher. He was playing with a puzzle for a few minutes then threw that on the floor and threw his mask. His aide gathered his mask and asked him to come and sit back down. She changed out the puzzles and then had L.T. working with a dry erase board for a couple of minutes. He then threw that as well. For the majority of the time, L.T.'s aide was just attempting to keep him quiet, keep him seated, and not have him display significant aggressive behavior.

There was no visual behavior plan and no direct auditory behavior plan that Miro could see. There was no specialized instruction for L.T. during Miro's observation of the general education lesson. She observed that the general education teacher did not include L.T. in the class lesson and did not address L.T. or talk to L.T. during the lesson. Miro asked L.T.'s aide if there was anything specific L.T. was supposed to be doing while in this general education classroom and she said "no." L.T. was not directly interacting with the general education students. When L.T. would fall down or make a loud noise, several of the general education students would turn to look back, since it was disrupting the classroom.

When the media room session concluded, the other aide gave instructions to the students from L.T.'s MD class. L.T.'s aide gave him directions and led him out to the hallway and back to the regular MD classroom. L.T. engaged in inappropriate behavior, first by refusing to clean up his markers and other materials, and then threw them on the floor. His aide attempted to help him, with her hand over his hand, doing most of the work. She guided him back to the hallway to follow the other children from his class. He made verbal and guttural noises throughout the hallway and would bump the hallway wall or fall out of line. The aide redirected him back into line until he got into his classroom.

The MD class had approximately five to seven students. The special education teacher and another aide were present. L.T.'s aide was initially in the classroom when they returned. Miro did not see a visual behavior plan for L.T. while observing him in the

MD classroom. L.T. was offered food, which he started to eat, but then refused and threw the food. The classroom teacher spoke to L.T.'s aide about L.T.'s eating preferences, and asked the aide to go to the cafeteria to get some cream cheese for L.T.'s bagel. The aide left the room. The teacher was busy with the other children giving them instructions and starting their work. L.T. was throwing his food on the floor and then started running around the room, kicking the trash can, and hitting the wall. Once the other children started their work independently, the classroom teacher came over to L.T. and attempted to calm him down and get him seated while his aide was still absent from the room. L.T. refused to comply, kept running around, and started to squeeze another student's arm until the student yelled at him.

The special education teacher had started an activity through the SmartBoard, with videos for the students to sing and to dance along. The other student whom L.T. had squeezed started to sing and dance, catching L.T.'s attention again. The teacher instructed the other student to come forward, which essentially lured L.T. to the front of the room, which worked for about a minute until he lost interest and again started to run around the room.

The other students in the MD classroom were participating in the lesson plan. Miro did not observe any of the other children throwing themselves on the floor or running around the room and screaming, or squeezing the arms of other students. They were singing and dancing with the lesson. L.T. was not watching the lesson. He was not participating by singing and dancing.

The other students in the class then began to do independent work. The special education teacher came to the back of the classroom where L.T. was, and began her one-on-one work with him. During this observation, Miro saw L.T.'s best performance for S/L. He was able to sit on the chair with multiple redirections, remained seated for ten minutes, and did the structured task with the teacher, using picture cards. He did attempt some sign approximations with his hands, some cued or modeled. He was given edible reinforcements, which the teacher remarked were most effective for him. Towards the end of the session, he started to lack participation, made guttural noises, and started to leave the table. The teacher attempted a few other tasks, and he did attempt to participate

in. Miro learned afterwards from the teacher that some days are better for L.T. for his performance and his behavior before the one-on-one instruction, while other days L.T. has more aggressive behavior than what Miro observed.

Miro observed L.T. in her office and administered testing to him. His difficulty sustaining attention makes administration of any standardized test very difficult. Miro worked with L.T.'s mother to get him back on task, using toy reinforcements, which did not work, and edible reinforcements, which worked the majority of the time to get L.T. to comply. She was unable to do an oral assessment because L.T. would not permit her near his mouth.

Miro did assess L.T.'s receptive and expressive language skills. She utilized the PLS-5 to be consistent with the prior testing administered to L.T. His standard score stayed the same at fifty. His percentile rank score stayed the same at one percent. His chronological age score did change a bit, increasing with slight improvement. His expressive language had improved to one year, seven-months chronological age, when he was seven years old at the time of the testing. There was virtually no progression from the 2018 and 2019 scores from the PLS-5 testing.

Most significantly, L.T. is unable to follow directions and does not fully understand the concept of delayed reinforcement. Miro explained that delayed reinforcement develops fairly earlier in most children, who are able to understand the first/then concept, which is first you did this, then you get that. Such a concept is targeted directly through ABA services and S/L therapy. L.T. was unable to consistently demonstrate that he understood the concept, making it extremely difficult to give him any directions and to determine whether he could understand and follow the directions.

She completed a functional communication profile test, which has six to seven areas of testing. Most significantly, the findings were L.T.'s inappropriate behaviors throughout his evaluation and his need for significant help for his ADLs and self-help skills during the evaluation. He was unable to sustain attention for the majority of the tasks presented to him. Regarding his receptive language, Miro most significantly found that L.T. was unable to follow one-step directions and routine commands consistently. He still

requires physical prompts for commands such as sit, go, and come here. Regarding his expressive language, L.T. typically expressed himself through guttural sounds and gestures. With maximum cues, he was able to imitate a couple of vowels and consonants. She noted what she observed, compared to what she read in his records and reports, demonstrated a regression in this skill. Although, when she observed the special education teacher in the classroom with L.T., the teacher was unable to get L.T. to imitate several sounds, Miro was able to get L.T. to imitate more sounds by using tactile and visual cues and prompts.

Miro opined that L.T. has not been provided with an appropriate education from 2018 through 2021, regarding his S/L deficits. She has observed many MD classrooms and the makeup of that students does vary. The children in L.T.'s MD classroom had significantly much higher S/L skills. This created the situation where the teacher would be teaching for the majority of the students, but L.T.'s needs were not being met due to his level of S/L skills. L.T. requires constant one-to-one physical and verbal assistance in the area of S/L. He was receiving one-on-one verbal assistance and physical assistance during her observations, but it was not constant. She explained that typically a one-on-one aide will accompany the student to individual and group speech sessions, with collaboration between the S/L pathologist and the aide so that the aide is familiar with the child's goals, and can carry that over during the child's classroom and unstructured school time.

Miro indicated that her observations of L.T. in school demonstrated that his S/L needs were not being met. The programming in his IEP for S/L was not meeting his needs. His behavior was not being targeted with an appropriate behavioral plan to enable L.T. to work on his S/L goals. Miro opined that L.T. had not made any significant progress since 2018 for his speech and language goals.

Miro recommended in her report that a pediatric developmental consultation should occur. She did review the subsequent developmental pediatric consult report by Dr. Mary Pipan, from CHOP. (P-40.) Miro saw that Dr. Pipan's observations agreed with Miro's observations, and Miro agreed with how Dr. Pipan scored L.T. on the childhood autism rating scale. L.T. demonstrated severe symptoms of ASD. (P-40.) Miro agreed

with Dr. Pipan's diagnosis of autism, pursuant to Diagnostic and Statistical Manual of Mental Disorders 5th edition (DSM-5) diagnostic criteria.

Miro acknowledged that she had not seen any prior indication of a diagnosis of autism in L.T.'s prior medical records or reports. She recognized that the symptoms and actions of someone with Down Syndrome or autism can overlap. Had Miro been the S/L for L.T. previously, coming in with a diagnosis of Down Syndrome, and there was no significant progress in his skills after a year, she would have started to look to other diagnoses or contributing factors as to why there was no significant progress. She saw that L.T. exhibited several autistic-like characteristics. That is why she recommended that L.T. have a developmental pediatric consultation. She asserted that it is not the place of the school to change a medical diagnosis, but after a year of no progress or regression, it is the school's responsibility to determine if there is anything else they could be doing for the student.

Miro also recommended that an OT evaluation be completed. That was done after her report issued. The OT evaluation was completed by one of Miro's employees of her company, Felicia Castagna. (P-19.) Miro was familiar with the report, as her typical procedure in her office operations is to go over all draft reports by her speech and OT therapist and reading specialists, to revise and finalize them before they issue to the parents or school. The conclusions by the evaluator regarding L.T.'s OT assessments found a poor level of performance, finding L.T. to be in a similar chronological range of functioning Miro found in his S/L assessments, falling in the one-to-two-year age equivalency. Castagna indicated that L.T.'s deficits interfered with his ability to be evaluated, similar to Miro's findings. Castagna found that L.T. had significant deficits in his self-help skills, ADLs, and daily living, just as Miro had observed. Miro agreed with Castagna's finding that L.T. had regressed in OT skills, based upon her review of the prior records and reports and her current findings.

Miro's opinion, based upon her review of the records and reports, her testing and observations, and review of reports after her evaluation was issued, is that L.T. should be placed in a self-contained autistic classroom with significant support for ABA with a S/L therapist specialized and experienced with children with autism who are non-verbal, and

the S/L therapist should be experienced with behavior planning. L.T.'s one-on-one aide should also have a significant amount of training, including behavior shaping techniques. Dr. Pipan's diagnosis of ASD "cemented" Miro's opinion that L.T. should be in a self-contained classroom with similar peers and with ABA services. He needs a behavior plan for all contingencies in school such as during structured time, unstructured time, feeding time, and during therapy for S/L and other therapies.

Miro acknowledged that the COVID-19 pandemic mandated the closing of schools, including Lawnside, which posed challenges to students with special needs in making progress. She agreed that the special education population did suffer with the school closings during the pandemic. She understood that L.T. had just returned to full-day in-person learning as of September 2021, and her evaluation and observations were done in November 2021. Miro noted it may have been hard to "get a gauge" of L.T.'s progress, given that full-day in-person schooling had just resumed. However, she saw L.T.'s 2018 PLS-5 evaluation results and the same results in the 2019 PLS-5 testing, with no progress noted. The standard scores and percentile ranks did not change. There was some progress with auditory comprehension and expressive communication for age comparison. His percentile ranking has remained the same over the years for his ability to understand and his ability to express himself. His age equivalency has stayed below two years of age since 2018, despite aging from four years of age to eight-years-old.

Specifically, as to S/L, Miro asserted that L.T. should have at least three to four times per week individual S/L therapy, for thirty minutes each session. She outlined in her report the S/L goals that should be incorporated into his IEP. (P-19.) Such goals should have been incorporated into his prior IEP, based upon his scores, behavior, and performance as seen in the records and reports from prior years, demonstrating no significant receptive and expressive language progress for L.T.

Mary Pipan, M.D., testified for petitioner. She is a Board Certified Developmental Behavioral Pediatrician, and has been so employed for over twenty years at CHOP. She is the director of the Trisomy 21 Program at CHOP. She is well versed and has expertise in Down Syndrome. She also sees general developmental behavioral pediatric patients, including many with autism. She responded on cross-examination that she has served

as a trial expert for approximately fifteen years and has not derived any income from doing so. She acknowledged having worked with petitioner's counsel previously, approximately three or four times, and probably had one patient referral from counsel, not one that they worked on as a case. She quipped that she really does not need more work and that she gets referrals from "many, many, many" different places and people. She was qualified without objection as an expert in the field of Developmental Pediatrics. (P-40 Bates pages 337-346.)

Dr. Pipan authored a developmental behavioral evaluation for L.T. on March 31, 2022. (P-40.) She saw him in her office on that date and evaluated and observed him. She spoke to his mother and reviewed a teacher questionnaire completed by L.T.'s second-grade special education teacher for his MD class. She completed a general health examination and comprehensive neurologic examination. She conducted a behavioral observation of L.T., and he had no interest in developmental toys to obtain a developmental behavioral testing result. She utilized the Childhood Autism Rating Scale, 2nd edition (CARS 2-ST) and the DSM-5, finding that L.T. met the diagnostic criteria under both measures for ASD. Her diagnoses of L.T. included ASD, Trisomy 21, developmental delay, hypotonia, sensory modulation dysfunction, ligamentous laxity of multiple sites, feeding difficulties, and at risk for elopement. (P-40.)

It did not surprise Dr. Pipan that the District asserted it never knew she was completing her evaluation of L.T. until they received her report of March 31, 2022. She was unaware of the hearing dates for the matter prior to her report date. Often times, school districts have no idea that a student is being evaluated by her until the parent shares her report with the school. She asserted that her evaluation does not change based upon who is paying for the evaluation. She recognized that the parent questionnaire was completed as of October 18, 2021. Typically, the CHOP waiting list for an evaluation can be approximately six to nine months, or more. When a parent requests an appointment, the CHOP office staff asks the parent to provide certain records and are given questionnaires to be filled out by the parent and teachers.

Dr. Pipan reviewed L.T.'s systems, most notably indicating L.T. has bilateral sensory neural hearing loss. He had some vision impairment. She noted that if L.T. was

visually and hearing impaired, his degree of autism could not be explained by a visual and hearing impairment. Many children with autism do not like to wear glasses or hearing aids. It is not unusual for her to see children with autism who are not wearing their glasses or hearing aids because they are difficult to tolerate, or they do not typically wear or use such aids.

Of note in L.T.'s developmental history was regression in his language. Dr. Pipan acknowledged she did not recall seeing any of L.T.'s IEPs or progress reports before completing her evaluation. She did not observe the child in his classroom. Her observations occurred in her office in Philadelphia. She based her determination that L.T. had not made progress based upon the information provided by L.T.'s mother and based upon her personal observations that L.T. has no communication skills. She assumed L.T. had been in school since age three, and was aware that he was virtually schooled due to the pandemic. Given his level of communication deficits, she would be surprised to learn that L.T. was effectively using an augmentative communication device in his classroom.

Dr. Pipan's neurological evaluation and observation of L.T. was notable in that he was quite affectionate and hugging, but did not respond to his name. He did not make eye contact. He was nonverbal making throaty noises and repetitive noises. His means of communication was going to an object on his own and grabbing it. Although he was being sociable, he was not communicative.

L.T. was not interested in playing with others. He only gave glimpsing eye contact. He did not play with toys appropriately. For example, he was given a doll and a spoon and cup. A typical behavior anticipated would be for a child to feed the doll. L.T. mainly manipulated the doll, did attempt to feed the doll when prompted to do so, but also used the spoon to rub the face of the doll and bang the head of the doll. That is a "typical" form of "atypical" play seen in children with autism.

He was particularly self-directed. He did what he wanted to do. It was very difficult to get him to do anything Dr. Pipan attempted to direct him to do. He was not responsive to adult direction. He was drawn to non-functional activity, such as playing with the window blinds and placing his face on the window. He played in the sink, turning on the

water. He wanted nothing to do with a ball when that typically social-type of toy was given to him. These were a number of patterns of atypical behavior that is consistent with autism, in addition to the developmental delay due to Down Syndrome.

Pursuant to the CARS 2-ST criteria, L.T. had a total score of forty and one half, which correlates in the CARS 2-ST scoring of thirty-seven or higher that the diagnosis is severe symptoms of ASD. (P-40 at 6.) She determined that pursuant to the DSM-5, L.T. met the diagnostic criteria for ASD. She diagnosed him with ASD based upon the history provided by his mother, her personal observation of him at her office, and the assessment instruments consisting of CARS 2-ST and the DSM-5 criteria. Dr. Pipan remarked that L.T.'s diagnosis of autism is what is referred to as "waiting-room diagnosis" meaning that it is very obvious from the get-go that he met the diagnostic criteria of autism.

She utilized standard screening tools of questionnaires completed by L.T.'s mother and by L.T.'s teacher. Dr. Pipan candidly remarked she did not put a lot of weight in them due to L.T.'s young age, his degree of autism, and degree of developmental delay. For example, the child behavior checklist demonstrated elevations in depression and withdraw, which she opined reflected his isolative behaviors, commonly elevated in individuals with ASDs.

It did not surprise Dr. Pipan that L.T.'s levels of functioning have remained the same or showed regression since preschool, due to his level of autism. Dr. Pipan acknowledged that typically children with autism get so diagnosed between eighteen months and three years of age. Children with Down Syndrome tend to be diagnosed typically between three to five years of age. She recognized that it is important to have an autistic child diagnosed as soon as possible to focus on appropriate learning skills and methods. She remarked that children do learn through their twenties, so any age that autism is diagnosed is a good time to start intensive interventions. There is not a time when it is "too late" because an individual's brain is still developing.

She explained that ASD is a developmental diagnosis made when the symptoms of autism are present and interfering with the ability to learn. Down Syndrome is a neurodevelopmental condition. When a disorder affects brain development it can affect

social and emotional processing more so than in other areas, resulting in an ASD. She estimated that approximately fifteen to twenty percent of Down Syndrome children also have ASD.

Dr. Pipan asserted that for educational purposes, L.T.'s primary diagnoses should be autistic disorder and a secondary diagnosis of developmental delay, Down Syndrome. (P-40.) Her impressions of L.T. included that he has delayed development, but his current level of skills likely underestimates his potential, because of the autism. She thought that it would be impossible to test how delayed L.T. was because he does not attend to the developmental tasks used by evaluators to assess how delayed or advanced he is in any area. Generally speaking, his degree of autism results in an underestimation of his developmental abilities.

L.T.'s current educational program does not address the complexity of his needs. She would not expect him to learn very effectively, since children with autism learn in a very different way than others, such as requiring specialized technology to gain skills, through ABA techniques. She was not surprised that L.T. has not gained many skills over the past five years, such as in communication, play, socialization, and everyday life skills, even being in an MD class. He needs specialized intervention. His primary deficits are related to autism, such as lack of social engagement, interaction, reciprocity and play, communication, repetitive behaviors, and behaviors affecting his attention to social and educational activities.

Dr. Pipan determined that L.T. has the motivation to be taught alternative means of communicating, but will require the use of ABA techniques. That requires adaptation of the current classroom programming or a change to an autistic support classroom with ABA trained teachers and therapists, along with parent training to address skills building with home-based ABA techniques. His method of communication is quite unsophisticated as he does not use any symbolic means of communication. Regarding S/L therapies and communication, L.T.'s speech therapist should be utilizing visual strategies, as well as auditory, since autistic children do not respond to auditory information alone, appearing as if they are noncompliant or ignoring others. His sensory aversions and sensory

seeking behaviors that interfere with his development and behavior can be addressed through OT.

Having formed impressions from her observations and evaluation of L.T., Dr. Pipan made recommendations for L.T. for home-based matters, such as having home ABA therapy and having a sleep study done due to his reported snoring. Dr. Pipan outlined multiple resources and options for L.T.'s caregiver.

Regarding schooling, Dr. Pipan recommended that L.T. should be in an autistic support programming class with teachers, special educators, and therapists experienced in autism and well-trained in ABA therapies. She recognized that L.T. would not be exposed to typical peers in such a class, but explained that children with significant ASD are not available for learning from others in their environment until they get more specific training in doing so. L.T.'s school programming should implement ABA technologies and visual communication systems, with play based interventions to build L.T.'s adaptive skills and minimize his maladaptive behaviors. A total communication approach should be utilized. Parent training should be built into L.T.'s program because once an autistic child learns certain things in one environment, such as in school, that method must be used in other environments, such as in home, otherwise the autistic child will not generalize learned behavior in all environments.

Dr. Pipan also made recommendations for L.T.'s S/L therapies and OT, such as managing and addressing his sensory seeking behaviors, since they take away from other learning. She had reviewed the S/L evaluation and OT evaluation completed in this matter and found them to be very thorough with the same conclusion that she reached.

She agreed that a private school setting, such as Kingsway school, would be a good placement for L.T. That is where she has known children to be placed, in an approved private school setting, when their public school has failed in supporting a student's learning needs, particularly students with autism and developmental delays. She acknowledged she has never been to the school nor observed any classes there. She has viewed many reports from the staff at Kingsway. In her experience with the Kingsway school, having children under her care attending that program, she found that

school to have very effective use of ABA interventions, effectively utilizing visual supports and effectively addressing sensory needs. She has seen children under her care make nice gains in the Kingsway school. She acknowledged that there are other programs for placement in New Jersey in L.T.'s region that have had similar success with individuals with autism, such as the YALE school, Bancroft, and the Durand Academy.

D.T., mother of L.T., testified. She graduated high school and attended college courses focusing on human resources studies. She previously worked in retail stores, last having worked at a department store as a supervisor until she had L.T. on June 2, 2014. She described herself as a full-time mother of a child with severe disabilities.

L.T. was placed in Early Intervention while still an infant. He received speech, PT, and OT in the home. He started medical daycare at the age of one-year-old, going on two-years-old. He attended Weisman's Pediatric Medical Daycare in Voorhees. The early intervention services stopped when he attended the medical daycare. The medical daycare program was five days per week between six to seven hours per day. The facility provided transportation for L.T. to the program. D.T. had L.T. attend the medical daycare because he is an only child and she wanted him to interact with other children.

L.T.'s third birthday was June 2, 2017. He continued to attend medical daycare. During what would have been the 2017–2018 school year, D.T. was not contacted by the Lawnside School District about attending school.

On June 27, 2018, D.T. handwrote a letter, addressed "To whom it may concern" to send to Lawnside, requesting that L.T. be evaluated for the preschool disabled program for the 2018–2019 school year. (P-32 at 1.) The Voorhees facility was not education-based and she wanted L.T. to receive an education. The handwritten letter indicated L.T.'s diagnoses were Down Syndrome, unspecified lack of expected normal physiological development in childhood, and bilateral sensorineural hearing loss. She outlined that he was attending Voorhees Pediatric Medical Daycare five days per week and, while at daycare, he received PT two times per month; OT four times per month; and speech therapy services four times per month. She indicated that his speech delay was her main concern. A fax cover letter from the Voorhees facility, dated June 29, 2018, sent

to Lawnside, indicated that the mother of L.T. was interested in having him evaluated for the fall 2018 school year. (P-32 at 2.) Attached with the fax cover sheet was a typed letter on the Voorhees facility's letterhead, signed by D.T., including most of the handwritten letter information in typed format. (P-32 at 3.)

D.T. was most concerned for L.T.'s speech and told the pediatrician about her concern. She was referred to Cooper for a speech evaluation. D.T. testified that the S/L language evaluation was done on July 9, 2019, but the document entered into evidence is dated July 9, 2018, prior to the 2018–2019 school year. (P-2.) The S/L evaluation from Cooper had a recommendation for individual outpatient S/L therapy for L.T. and that he was placed on a waiting list. The second recommendation was for a “[f]ollow-up with current family pediatric physician for pediatric neurology evaluation and/or pediatric developmental physician evaluation.” (P-2 at 5.) D.T. testified that she provided the evaluation to Lawnside. She testified that Lawnside did not obtain a pediatric neurologic or pediatric developmental evaluation for L.T.

D.T. indicated that the Lawnside CST accepted the S/L evaluation provided to her for L.T., as confirmed in the initial evaluation plan of July 20, 2018. (P-3 at 3.) The CST recommended that an OT and PT evaluation be completed. A cognitive and adaptive behavior assessment was to be completed by the psychologist. (P-3 at 3.)

On August 21, 2018, the Lawnside CST supervisor received an email from another representative of Lawnside indicating that L.T. was awaiting psychological, OT, and PT evaluations. (P-33.) Once the reports would be received, the CST eligibility meeting would need to be held. The email notes that L.T. was of preschool age and since the District's preschool was full at that point, the CST would need to find placement for L.T. if he qualified for services. (P-33.)

The psychological evaluation was completed on August 23, 2018, by the Camden County Educational Services Commission. (P-4.) D.T. was given a copy of the psychological evaluation and was not too surprised by the extremely low scores by D.T. on the WPPSI-IV, for his IQ, since he did not have much experience regarding education, coming from a medical daycare facility. He was not learning anything at the medical

daycare. The psychologist only met with D.T. for the evaluation. He did not meet with her after his report was issued. The psychologist's impression was that L.T. had a diverse range of skills and strengths but exhibited cognitive deficits that might be impacting his ability to demonstrate what he has learned or that he is capable of learning. He lacked background knowledge and language development to support his academic learning. (P-4 at 5.) The psychologist gave recommendations for both inside and outside of the classroom, to improve L.T.'s comprehension, knowledge, language deficits, and visual-spatial thinking deficits. The school staff did not explain to D.T. how such recommendations would be implemented in the Head Start program. L.T. attended preschool for the 2018–2019 school year at Head Start, which did not have a special education program.

D.T. recalled meeting with the CST in the summer of 2018, and was told that L.T. would attend school at Head Start because it would be a good program for him. They did not mention anything about having openings in the Lawnside school pre-K. L.T. started his preschool year of 2018–2019 in September at the Head Start program. An IEP was completed for L.T. as of October 19, 2018, for L.T.'s 2018–2019 preschool year. (P-20.) Under the heading Special Education Services, the name of the school was Head Start, in the general education classroom. Lawnside provided transportation for L.T. He was to receive related services of a one-to-one aide in the class; OT twenty-eight days per the school year in a group setting for thirty minutes; individual PT fifteen days of the school year for twenty minutes in the general education classroom; and S/L individual sessions one time per week for thirty minutes per session. (P-20 at 143.)

The PT recommendation report, which was included in the IEP, indicated that the PT was to be pull-out from the classroom and identified goals to be addressed during the year. (P-20 at 147.) The OT and S/L recommendations included annual goals. (P-20 at 148.) There were no goals listed under the Special Education Determinations section. (P-20 at 149.)

In February 2019, D.T. sent an email to the school superintendent inquiring about the status of L.T. getting a one-on-one aide for Head Start. (P-35.) The supervisor of special services at the time responded, indicating that they did not realize L.T. did not

have an aide; they contacted outside agencies and had two people interested in the position. (P-34.)

The school completed an Evaluation Sequence and Eligibility Determination Report, after a reevaluation for L.T. as of July 16, 2019. (P-13.) That was for L.T.'s kindergarten school year for 2019–2020. It was recommended that L.T. be placed in Lawnside's kindergarten special education program. The report noted recommendations for L.T., including that he may benefit from ABA instruction and from an assistive technology device that promotes independence for L.T.'s communication. (P-13 at 6.) An IEP was completed for the 2019–2020 school year. (P-21.)

D.T. testified that L.T.'s kindergarten IEP was completed in July 2019 for the 2019–2020 school year. The document indicated that the meeting was held on June 10, 2019. (P-21.) It noted that his then-current placement, which was his preschool year, was “Out of district special education.” (P-21.) D.T. indicated that preschool was out-of-district as it was at Head Start.

D.T. testified that the 2019–2020 kindergarten IEP did not include ABA instruction nor an assistive technology device, and that his kindergarten teacher was not trained in ABA instruction. (P-21 at 11.) Although the IEP initially indicated that L.T. did not require assistive technology devices or services, further into the IEP, under the heading of Modifications/Supports/Progress Reports, there were recommendations for utilizing VB-MAPP and assistive technology equipment. (P-21 at 11 and 13.) A BCBA consultation was to be provided as a related service, twenty times per year, for one hour. (P-21 at 16.) The cover page for the IEP indicated that for related services, in addition to S/L, OT, and PT, L.T. was to have ESY and a shared aide. There was no provision for transportation services. (P-21.) The IEP indicated that L.T.'s behavior did not impede his learning or that of others. (P-21 at 11.)

The IEP was amended at the start of the 2019–2020 school year, as of September 18, 2019. Apparently, the amendment was to provide notice requirements and Parental Rights in Special Education (PRISE). (P-22 at 1-2.)

Remote instruction began in March 2020 due to the COVID-19 pandemic. D.T. had to provide at-home support for L.T. during his remote instruction. The morning routine consisted of educational songs, then the teacher had time slots for each student. L.T.'s one-on-one session with the teacher was about fifteen minutes, doing lessons such as showing him photos to sign or imitate and then she would ask D.T. to provide a snack or candy to reward him if he got it correct. The teacher was following the VB-MAPP program, which D.T. indicated was not a curriculum, it was a guide. D.T. said that the teacher was not doing academic activities with L.T. He was receiving about three hours per day of live remote instruction at that time. He received his related services remotely as well. Although D.T. did not think L.T. got anything out of the virtual instruction, she did sign him up for ESY for 2020, which also was conducted remotely.

L.T.'s first-grade 2020–2021 school year IEP was completed on July 6, 2020. (P-24.) As of September 2020, L.T. still received remote special education instruction. He received his related services in-person at the school. He was permitted to go in for the related services.

In December 2020, L.T.'s teacher documented in an email to herself information regarding L.T. as of December 11, 2020. (P-36.) The teacher's memo indicated that during a remote VB-MAPP session with L.T., she requested from his mother that she give another food motivating reinforcer to the child. D.T. did not permit it because L.T. had just eaten. The teacher noted that she then suggested to D.T. to use a toy motivator and D.T. indicated she did not think it would work. The teacher noted that she continued through L.T.'s lesson, but he did not give any positive responses. The teacher noted this is typical when there was no reward and that it throws off the accuracy of L.T.'s status since they are not properly following the VB-MAPP afternoon session without reinforcers. (P-36.) D.T. testified that the teacher was trying to figure out the proper way to handle the situation during remote learning because it was not working for him.

D.T. sent an email to L.T.'s case manager, Seminara, on January 14, 2021. D.T. had attended the school board meeting and voiced her opinion that L.T. needed to go to school, and not continue to receive remote instruction on VB-MAPP because remote instruction was not working. (P-38.) D.T. told Seminara about her concerns, which the

Board did not seem to care about, without coming up with an agenda or plan for special needs students, and decided to do remote learning as of January 2021. L.T. did not return to in-person special education learning until April 2021, when all of the students returned for in-person learning.

L.T.'s second grade IEP was completed on April 27, 2021, for the 2021–2022 school year. (P-25.) In June 2021, D.T. expressed her concerns in an email regarding his IEP. She was concerned about his speech, and listed goals she was looking for. She addressed his OT with tasks and skills she wanted targeted, such as self-care for L.T. with dressing, using a zipper, and toilet training. She addressed his academics, and listed the goals and skills she wanted targeted. She noted that she never received a VB-MAPP assessment for L.T., and wanted to understand the program more. She expressed her concern that most of the goals and objectives indicated that L.T. was partially proficient, with only a few having been mastered, which she asserted “proves theres [sic] a struggle in his progress.” (P-39.)

D.T. asked the school to find another placement for L.T. They did not. He remained in Lawnside in 2021–2022, in his second -grade year. She was told by the CST that another placement was not necessary. D.T. was interested in a private school placement with ABA based instruction and aides specialized and able to work with L.T. and his condition.

She requested in her email to the school that Lawnside have L.T. re-evaluated by the psychologist and the learning consultant. D.T. also requested, in July 2021, that an OT, PT, S/L, and independent developmental pediatric assessment be completed of L.T. The school agreed to pay for the requested evaluations.

D.T. was not happy when she saw Miro's independent S/L evaluation completed in November 2021. She saw that L.T.'s scores in that evaluation were the same scores from when he was in pre-K. (P-18.)

D.T. saw in the January 14, 2022, OT independent evaluation by Felicia Castagna that a pediatric neurological appointment should be made to monitor L.T.'s brain

development and muscle weakness, and that L.T. should have annual pediatric developmental assessments to monitor his development. Lawnside had not gotten L.T. a pediatric neurological examination or developmental pediatric evaluation prior to the OT's evaluation. The pediatric developmental evaluation was done in March 2022, by Dr. Pipan. The independent OT evaluator also recommended that a pediatric audiologist determine the best plan and/or the best device for L.T. to use to assist with his impaired hearing to increase his ability to follow directions. D.T. asserted that Lawnside never obtained a pediatric audiologist evaluation.

Dr. Pipan's developmental pediatric report was completed in March 2022 during the course of this proceeding. D.T. was very upset after seeing the diagnosis of autism by Dr. Pipan, that Lawnside never told D.T. that L.T. had autism during the four years he was educated in the Lawnside School District. D.T. testified that the CST did not meet after receipt of that report, and did not amend L.T.'s IEP for the 2021–2022 second-grade school year.

The annual IEP meeting for L.T.'s 2022–2023 third-grade school year was conducted during the course of this proceeding. The proposed IEP, dated June 9, 2022, did not incorporate the FBA, OT, or S/L independent evaluation recommendations. (P-42.) Lawnside did not change L.T.'s classification to autism, as recommended by Dr. Pipan.

D.T. indicated she has looked at private schools for L.T.'s placement. She has considered Kingsway Learning Center in Voorhees, YALE school in Marlton, and Durand Academy in Woodbury. She is interested in those schools because they have ABA based instruction for the classroom and their staff, teachers, aides, and therapists are "very well-certified" and able to work with L.T. She asserted that in August 2022, she requested that the District set up visitation for her at the private schools. She was told that could not be done because they were involved in this litigation and that L.T. was in stay put status. D.T. contends she made it very clear she just wanted to tour the schools to get a feel of the environment and that she was not requiring that L.T. be placed at one particular location.

She could not recall having received a letter notice addressed to her, dated August 3, 2021, from the school, which was an invitation for a re-evaluation planning meeting on September 8, 2021. She could not recall if she got a copy from her attorney, nor could she recall if she attended such a meeting. (RR-20.)

D.T. could not recall having received an invitation addressed to her, dated October 5, 2021, to attend a meeting on October 21, 2021, to assess the progress of L.T. and review or revise his IEP. (RR-21.) She could not recall if she attended such a meeting. She clarified that when she stated during direct that she had not received any invitations to meetings, she meant she had not received invitations to attend meetings to revise L.T.'s IEP based upon the recommendations in the independent evaluators' reports.

She did not recall if she received or saw a letter invitation of March 10, 2022, to attend a meeting to assess L.T.'s progress and review or revise the student's IEP. (RR-22.) She did not recall having received any of the letter invitations from her attorney.

A letter issued to D.T., dated May 17, 2022, inviting her to L.T.'s annual IEP meeting. (RR-23.) She could not recall having seen that letter. She could not recall attending the meeting.

D.T. did recall receiving a letter dated June 7, 2022, inviting her to a re-evaluation planning meeting. (RR-24.) That meeting was cancelled. She could not remember why it was cancelled.

She testified that she attended the annual review meeting on June 9, 2022. She was aware of the date of that meeting through her attorney.

D.T. did not recall the subject of placement of L.T. coming up during the annual meeting. She did recall the issue of transportation coming up, with the school indicating that it is a walking distance, so no transportation would be provided. She did not recall the District offering transportation during the meeting.

D.T. did recall that when she was dropping L.T. off for ESY, although not specifying if it was 2021 or 2022, that Seminara told her that there was a meeting scheduled. D.T. told Seminara that in order for her to accept any of the meeting invitations, the school would have to contact her attorney.

Credibility

A fact finder is obligated to weigh the credibility of witnesses. Credibility is best described as that quality of testimony or evidence that makes it worthy of belief. “Testimony to be believed must not only proceed from the mouth of a credible witness but must be credible in itself. It must be such as the common experience and observations of mankind can approve as probable in the circumstances.” In re Estate of Perrone, 5 N.J. 514, 522 (1950). To assess credibility, the fact finder should consider the witness’s interest in the outcome, their motive, or any bias. Credibility findings are “often influenced by matters such as observations of character and demeanor of witnesses and common human experience that are not transmitted by the record.” State v. Locurto, 157 N.J. 463, 475 (1999). “A trier of fact may reject testimony because it is inherently incredible, or because it is inconsistent with other testimony or with common experience, or because it is overborne by other testimony.” Congleton v. Pura-Tex Stone Corp., 53 N.J. Super. 282, 287 (App. Div. 1958).

Both witnesses for the District testified in a direct manner with a professional demeanor. Their testimony was mainly broad and in general terms. They did not exhibit any bias towards petitioner, and there was no reason to doubt their credibility. Their testimony was mainly based upon hearsay or their own generalities, without pointing to supporting documentation or evidence for specifics. Thus, their testimony was not greatly persuasive nor helpful in eliciting the facts of the matter to render this determination.

D.T. testified comfortably and did not exaggerate or embellish L.T.’s circumstances. At times, the dates she testified to did not align with the documentation. There was frustration detected from her towards the school, which was understandable in this litigation setting. She mainly testified without hesitation, so it was curious that she could not recall ever seeing the meeting invitations addressed to her, nor recall if she attended

the progress meetings. She specifically recalled that she directed the school to communicate through her attorney. It was disheartening to hear the approach taken by D.T. as may have been influenced through counsel, in communicating, or lack of communicating with the District, after requesting multiple independent evaluations, which were all approved by the school. The petition was filed, but the independent evaluations were not completed, nor otherwise not provided to the CST in a timely manner. Dr. Pipan's evaluation report came out a few days before one of the school witnesses testified in the proceeding.

Neither of the school witnesses, nor D.T., provided a concise history and status of L.T. Neither side's process during litigation and the hearing proved to be a manner of clearly articulating their respective positions. It was challenging trying to align the testimony with the documentary evidence, just to get a clear understanding of the chronology and history.

The experts who testified for petitioner were not treating medical or other professional providers for L.T. It is recognized that greater weight should be given to the testimony of a treating professional, as opposed to an evaluating professional who may have met the subject on one occasion or observed the individual one time. Bialko v. H. Baker Milk Co., 38 N.J. Super. 169, 171-172 (App. Div. 1955), cert. denied, 20 N.J. 535 (1956). However, such an assertion is not unwavering, and it is recognized that "[t]he weight to which an expert opinion is entitled can rise no higher than the facts and reasoning upon which that opinion is predicated." Johnson v. Salem Corp., 97 N.J. 78, 91 (1984) (citation omitted).

The independent evaluators were chosen by petitioner to complete her requested evaluations of L.T. The school paid for the evaluations as requested. There was no bias detected during the testimony of any of the expert witnesses, under the circumstances of being selected by one party, and having the evaluation services paid for by the other party. There was no indication in the written reports, nor elicited through testimony, that any of the independent evaluators provided opinions favorable to petitioner or were swayed or influenced in their opinions to be favorable to petitioner, having been chosen by petitioner.

The expert witnesses Ms. Russell, Ms. Miro, and Dr. Pipan, all testified in a professional, clear, and direct manner regarding their evaluation process and recommendations. Russell's undated report caused some confusion, and since she issued her evaluation report to the BOE secretary, there was confusion as to exactly when the report was completed, submitted to the school, and when the CST was presented with the report for their review. This did not discredit Russell's observations and testimony as to her evaluation and conclusions. Her testimony was assistive in understanding L.T.'s behavioral status and her recommendations were thorough and thoughtful.

Miro was confident and professional in her testimony. She likewise was thorough and thoughtful in her evaluation process and testimony. She was assistive in understanding L.T.'s status. She had skills and experience to convey how other areas outside of her area of expertise interplayed with one another and the importance of a collaborative approach to be taken for L.T.

Dr. Pipan testified in a casually relatable manner, with her years of professional expertise evident. Her manner of communication of her diagnoses and recommendations was appreciated and trusted.

Based upon consideration and review of the testimonial and documentary evidence entered, I **FIND** the following as further **FACTS**:

L.T. has been educated in the Lawnside District since 2018. In his 2020–2021 first-grade school year, he was in the multiply disabled class with a special education teacher and received related services. As of March 2020, the school had to shut down due to the COVID-19 pandemic. Classes were done by remote instruction. He attended remote ESY in the summer of 2020.

L.T. received remote special education instruction in September 2020. He was permitted to come into the school to receive in-person related services therapies in September 2020. In January 2021, the school sent a paraprofessional in-home and assisted L.T. in the morning hours during remote instruction. He continued to receive in-

person related services therapies in the school. As of April 2021, all learning and therapies were in-person, in school.

As of March 31, 2022, L.T. has a primary diagnosis of ASD, and also has been diagnosed as Trisomy 21, developmental delay, hypotonia, sensory modulation dysfunction, ligamentous laxity of multiple sites, feeding difficulties, and at risk for elopement.

L.T. is consistently inconsistent in achieving goals in his IEP and demonstrating mastery of same. L.T. does not have a behavioral plan specific to him in his IEP.

Many of L.T.'s scoring and assessments from 2018, compared to evaluations from 2019 and the present, have demonstrated the same level of achievement or performance, often as very low functioning, or low scoring, such as in the one percentile of his peers, and there has been some regressions noted. There has been little to no progress demonstrated by L.T. from implementation of the April 27, 2021, IEP for the 2021–2022 school year for second grade.

LEGAL ANALYSIS AND CONCLUSIONS

The Federal Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400 et seq., was enacted to ensure that children with disabilities have access to a free appropriate public education (FAPE). 20 U.S.C. § 1412(a)(1). FAPE includes special education instruction and related services designed to meet the needs of the child. 20 U.S.C. § 1401(9); N.J.A.C. 6A:14-1.1, et seq. The primary method of ensuring delivery of FAPE is through an IEP. 20 U.S.C. § 1414(d)(1)(A). An IEP outlines the child's present levels of academic achievement and functioning, outlines measurable goals and the services to be provided, and establishes objective criteria for evaluating the child's progress. 20 U.S.C. § 1414(d)(1)(A)(i); C.H. v Cape Henlopen School District, 606 F.3d 59, 65 (3d Cir. 2010).

Pursuant to the IDEA, "a child with a disability" is one who has a disabling condition and who needs special education and related services. 20 U.S.C. §1401(3)(A). In New

Jersey, a student is eligible for special education and related services by satisfying a three-part test, by demonstrating: 1) the student meets the criteria for one or more of the disabilities defined in N.J.A.C. 6A:14-3.5(c)1-14; 2) the disability adversely affects the student's educational performance; and 3) the student needs special education and related services. N.J.A.C. 6A:14-3.5(c); H.M. v Haddon Heights Board of Education, 822 F. Supp. 2d 439, 449-450 (D.N.J. 2010).

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

Here, petitioner seeks to modify the IEP for the 2021–2022 second-grade school year. Petitioner did not sign the IEP and did not challenge it within fifteen days. In July 2021, petitioner requested independent evaluations to be completed. The District agreed to pay for the requested evaluations. Petitioner selected the evaluators. The FBA evaluator, Russell, completed observations in school of L.T. in September 2021. Her report is undated, but can best be targeted as being completed and submitted to the BOE secretary at the end of October, beginning of November 2021. The Lawnside staff of the CST apparently never was aware that the FBA report was completed until this petition was initiated. The petition was docketed at the OAL on January 11, 2022.

The S/L independent evaluator, Miro, completed observations of L.T. on November 18 and November 19, 2021. Her report was completed sometime thereafter. The Lawnside staff of the CST again, apparently, was never aware of the report until this petition was initiated.

The OT independent evaluator Castagna apparently evaluated L.T. on January 14, 2022. Her report issued sometime thereafter and, again, the Lawnside staff of the CST indicated they were not aware of same until in the midst of this litigation. The developmental behavioral evaluation by Dr. Pipan was done on March 31, 2022, a few days after the matter was scheduled to be heard on March 29, 2022, and a few days prior to the start of the hearing on April 5, 2022.

It is recognized that the experts only evaluated L.T. on one or two classroom observation times, or in their office once, or at home one time. Although that may have provided just a brief time with L.T., compared to having a long-term classroom familiarity with L.T., each expert's observation had consistent and similar observations of the child. Each expert reviewed prior documentation and noted similar findings that L.T. was still at the same level of functioning compared to prior evaluations in 2018 and 2019. Some regression was noted. The school representatives generally testified that L.T. made some progress, and they wished to demonstrate smaller step progress by L.T. by revising his goals and objectives and conducting IEP progress meetings every five weeks. The documentation demonstrates that there was some general progress noted and general notes as to L.T.'s status in October 2021, as found in the Amended IEP of January 20, 2022, which indicated that the teacher and staff would continue to work on goals with L.T. The school witnesses confirmed that L.T. is consistently inconsistent. I **CONCLUDE** the evidence preponderates that there has not been meaningful progress for L.T. pursuant to the IEP of 2021–2022, for his second-grade school year. I **CONCLUDE** that the District has not sustained its burden to demonstrate that IEP was appropriate for L.T.

It has been demonstrated that the methods employed by the District for L.T.'s special education, related services and therapies need to be addressed. The parent is seeking modification of the IEP, and I **CONCLUDE** that shall occur.

I recognize that the District's position is that it was not given an opportunity to address the recommendations by the independent evaluators in this matter. They apparently stopped scheduling the five-week progress meetings, due to the mother's non-cooperative approach. The mother later apparently sought assistance from the school in the midst of this proceeding in approximately August 2022, to review an out-of-district

program, and was allegedly advised by a school representative that due to this pending litigation, they would not assist or otherwise take such action.

Despite petitioner's approach to her method of communication or non-communication after requesting the independent evaluations, retaining counsel, and progressing with this litigation, the District could have still scheduled an IEP review meeting upon receipt of all of the independent evaluations. I recognize the District may counter that they attempted to resolve the matter but petitioner and/or her counsel were uncooperative. The District still should have persisted and appropriately convened a CST meeting, with notice to petitioner to address the independent evaluations.

There was no meaningful testimony or information provided by the District regarding their programming. Supervisor Lewis candidly testified they believed they could provide the programming as recommended by the independent evaluator experts, and rightfully noted the Lawnside staff of the CST had little to no time to review and digest the independent evaluations provided in the midst of this litigation. However, I must **CONCLUDE** that the District has not demonstrated, by a preponderance of the evidence, that it has the programming or ability to provide in-district programming and services to address L.T.'s needs.

The parties should both immediately begin the process of exploring out-of-district placement options at programs suggested by Dr. Pipan, or otherwise in the closest geographic proximity to L.T., which can address his needs. Petitioner shall cooperate and execute any authorizations for the release of L.T.'s records to such other schools. A CST IEP meeting should be scheduled, as soon as practicable, to review the programs available and take into consideration the recommendations of the independent evaluators, particularly with respect to modifying L.T.'s classification, who now has a primary diagnosis of ASD, in addition to the Trisomy 21 Down Syndrome diagnosis. I **CONCLUDE** that the anticipated IEP to be developed should provide for out-of-district placement in a program deemed to address L.T.'s needs, in accordance with the recommendations of placement and programming by the independent evaluators. The CST should ensure the IEP goals are measurable and that accurate data collection of targeted behaviors is included in the IEP. I further **CONCLUDE** that transportation shall

be included in the IEP to be provided by the District during L.T.'s out of district placement. That may be covered by either the District providing transportation with an aide or if the parent is doing the driving and transportation, the District will reimburse the parent for the reasonable daily cost of travel.

Considering the current time frame, if L.T. is placed in an out of district program, that will provide a few months of opportunity for L.T. to adjust to the ABA approach and collaborative method of special education and related services that is to occur, and assess his progress under the anticipated revised and appropriate goals and objectives. When the CST convenes toward the end of this school year, for the anticipated annual IEP review, it will then have the ability to assess L.T.'s circumstances, and determine if out-of-district placement continues to be the appropriate programming for L.T., or if the District is able to provide appropriate programming for him. Also at that time, it can be determined if evaluations or assessments should be completed.

The methods observed by the experts as to how the teachers, related service providers, aide, and mother handled L.T. have shown that there needs to be a consistent and collaborative ABA approach taken with L.T. The school's following of the VB-MAPP method of assessment is not a curriculum. As indicated, the IEP should be modified and developed, taking into consideration the recommendations of the independent evaluators, as to classification, special education programming and related services, and adjusting L.T.'s specific goals and objective. For example, such modification should include developing and implementing a behavioral plan for L.T., and developing goals and objectives that are measurable with appropriate data collection. It is acknowledged that the experts' recommendations from their reports are not set in stone, and may be tweaked depending upon L.T.'s current status. Both parties shall keep in mind this is a fluid process. I do **CONCLUDE** that there needs to be a component of parent education or training regarding the ABA method to be employed to ensure D.T. understands the approach and is consistent at home with L.T. The parent needs to understand how to provide consistent appropriate responses and prompts to reinforce and shape pro-social behaviors, such as facilitating independence for L.T. with his ADLs such as toileting and dressing. I further **CONCLUDE** the parent should research the supportive assistance

programs referred to and recommended by Dr. Pipan in her report, to provide further information, guidance, and support to the parent for understanding L.T.'s needs.

Compensatory Education

Petitioner seeks compensatory education asserting the District failed to provide FAPE. Having concluded that the IEP for the 2021–2022 school year was not appropriate to meet L.T.'s needs, I can **CONCLUDE** that the District thus has not demonstrated that it provided FAPE since the special education instruction and related services in that IEP did not meet the needs of L.T.

Compensatory education is a remedy under the IDEA, which should be awarded for the time period during which the school district knew or should have known of the inappropriateness of the IEP. M.C. ex rel. J.D.C. v. Central Regional School District, 81 F.3d 389, 397 (3d Cir. 1996). Compensatory education has been described as a method for school districts to “belatedly pay expenses that [they] should have paid all along.” Id. at 395, citations omitted. The compensatory education should be for a period of time equal “to the period of deprivation, but excluding the time reasonably required for the school district to rectify the problem.” Id. at 397.

Compensatory education is often awarded in the form of tuition reimbursement or requirement for a school district to pay for private school tuition or other services. Ferren C. v. School District of Pennsylvania, 595 F. Supp. 2d 566, 577 (E.D. Pa. 2009), *aff'd*, 612 F.3d 712 (3rd Cir. 2010). It also comes in other forms, such as an award of specific services. It has been noted by courts that the aim of compensatory education is to replace, in an equitable form, the educational services the student should have received. Ferren C., 595 F. Supp. 2d at 577, citations omitted. Courts are given broad discretion under IDEA in awarding relief. Id. at 578.

The fact finder is to weigh the interests of both sides and make an equitable determination. Ferren C. at 578. That requires a balancing of the interests of finality, efficiency, and use of the school district's resources versus the compelling needs of the student and family. Id. at 578-579. Courts have been cautioned not to utilize a cookie-

cutter approach by awarding a rote block of time equal to the time lost during the deprivation of FAPE. Such an approach runs counter to the broad discretion under the IDEA for remedial provisions to be fashioned by courts, balanced with the IDEA's provisions to ensure substantive FAPE. See Ferren C. at 577-578.

A due process petition filed under the IDEA must be brought within a two-year statutory timeframe. A parent “shall request an impartial due process hearing within two years of the date the parent . . . knew or should have known about the alleged action that forms the basis of the complaint[.]” 20 U.S.C. § 1415(f)(3)(C). The IDEA further provides in its procedures that a parent must present their complaint regarding issues of identification, evaluation, educational child placement, or denial of FAPE, within two years of when the parent knew or should have known of the alleged action which forms the basis of their complaint. 20 U.S.C. § 1415(b)(6). The Third Circuit Court of Appeals has interpreted these provisions to mean that “parents have two years from the date they knew or should have known of the violation to request a due process hearing through the filing of an administrative complaint. . .[.]” G.L. v. Ligonier Valley School District Authority, 802 F. 3d 601, 626 (3rd. Cir. 2015). The court held that the IDEA's

[T]wo-year statute of limitations . . . functions in a traditional way, that is, as a filing deadline that runs from the date of reasonable discovery and not as a cap on a child's remedy for timely-filed claims that happen to date back more than two years before the complaint is filed.

[Id. at 616.]

There have been documents and testimony presented throughout the hearing dating back to L.T.'s attendance at Head Start and then kindergarten for the 2018–2019 school year. The petition was docketed in January 2022. The information presented from the earlier time frame has been considered and was helpful in understanding the chronological history of the child and the status of his progress. Having taken that information into consideration does not alter my **CONCLUSION** that I am reviewing petitioner's claims going back for two years, and I am not extending a consideration for relief prior to the two years.

Taking into consideration two years prior to the petition, places the matter in January 2020. This was just prior to the COVID-19 pandemic. The testimony on behalf of petitioner focused on the remote learning that was imposed from March 2020 due to the mandated closure of schools. I **CONCLUDE** that the District did its best, under unprecedented times, to address L.T.'s needs. As of September 2020, when the school was considered closed, L.T. was permitted to come into school for in-person related services. When deemed safe, the District sent the paraprofessional aide into L.T.'s home as of January 2021, to provide one-to-one services during his remote learning session. L.T. continued to receive related services in-person. All special education programming and related services returned to in-person in April 2021. Under the circumstances, I **CONCLUDE** the evidence preponderates that the District took steps necessary and appropriate to deliver FAPE. There is no compensatory education to be awarded regarding 2020 through the end of the 2021 school year.

I have **CONCLUDED** that it is the IEP of 2021–2022 for the second-grade year which did not deliver FAPE. That IEP was to be effective as of July 2021. Petitioner did not sign the IEP and did not contest it within fifteen days. She did request multiple independent evaluations to be completed, due to her concerns about L.T.'s progress and wanting him to be re-assessed. The District reasonably agreed to fund the requested evaluations and allowed petitioner to select the evaluators. The District was aware that some observations had occurred during the fall of 2021, yet they did not receive the evaluation reports until after the petition was filed in January 2022. Some of the independent evaluation reports were not completed until after the petition was filed, such as the OT evaluation and the developmental behavioral assessment, which came in on the eve of the hearing date.

The District contends that the IEP was appropriate, given the circumstances of coming off of the pandemic closure and hybrid time. It wanted the opportunity to assess L.T. and break down his goals and objectives, to demonstrate to the parent that L.T. was making some progress on more short-term goals. It is as of August 2021 when the breakdown of effective communication between the parent and the CST occurred. The District attempted to set up the five-week progress meetings, without effective cooperation from the parent. The District did note, in the Amended IEP of January 20,

2022, their assessment status of L.T. as of October 2021, which essentially was the same across the related services. Everyone agrees that L.T. has been consistently inconsistent. The District also was not given all supporting independent evaluations until after the petition was filed and in the midst of the hearing process. They did not have the opportunity to digest and consider those recommendations. However, given that they were aware of the independent evaluations being completed, and their own assessments in October 2021, I **CONCLUDE** the District should have known that L.T.'s behavioral concerns should have been addressed, as of October 2021. I **CONCLUDE** that otherwise, the school was not made aware of the overall inability of the IEP of 2021–2022, to provide FAPE.

Consideration has been given to an effective equitable remedy of compensatory education for the period of October 2021 through L.T.'s second-grade year into 2022, regarding L.T.'s behavioral concerns. There was no specific behavioral plan in effect for L.T. That is to be addressed in an amended IEP that is to be fashioned as a result of this decision, if a behavioral plan has not already been completed for L.T.

Under the circumstances of L.T.'s current status, and his classification which should now include the primary diagnoses of ASD, I **CONCLUDE** it would not be equitable to complete a calculation of lost time of instruction. The student will be transitioning to an ABA-based program as noted above, in accordance with the expert's recommendations. If additional time in ABA therapies or related services can be tolerated by L.T., such services should be provided through his program placement as compensatory education. For example, if speech therapy is recommended for a thirty-minute individual session, and if it is believed L.T. can tolerate a longer session, such as forty-five minutes, or otherwise adding an additional thirty-minute session per week, to benefit L.T.'s progress, same should be provided. This is not to be a minute by minute or hour by hour replacement calculation. It has not been demonstrated that L.T. "lost" his ability to learn. Dr. Pipan testified that the student will continue to learn through their twenties. L.T. needs a consistent and collaborative method of learning to be implemented, based upon ABA. I **CONCLUDE** that to the extent the CST determines that some additional session time or sessions may benefit L.T.'s progress as he can tolerate same, that is the form of compensatory education to be provided through the end of this academic school year and

ESY programming. The balancing of equities does not favor monetization of time nor money as compensatory education. I **CONCLUDE** that any other form of compensatory relief is **DENIED**.

Any relief petitioner contends they are entitled to prior to January 2020, or subsequent to the filing of their petition, is **DENIED**. Relief sought beyond the bounds of the petition, and pursuant to the law, is **DENIED**. To the extent petitioner asserts they have other claims for relief, not otherwise addressed herein, such claims are **DENIED**.

ORDER

It is **ORDERED** that due to the District having failed to provide FAPE to L.T. pursuant to the IEP for his 2021–2022 academic year, relief is **GRANTED** to petitioner whereby the parties shall immediately tend to researching out-of-district programs and placement for L.T., and shall convene a CST IEP meeting, as soon as practicable, to complete an IEP for L.T. with out-of-district placement for the remainder of this academic school year, taking into consideration the independent evaluators' recommendations for programming and placement and development of goals and objectives for formulating the IEP, as outlined within this decision.


It is further **ORDERED** that an award of compensatory relief is **GRANTED** in the form of providing extended special education or related services, as may be recommended by the independent evaluators, as L.T. may tolerate, through the remainder of the current school year and into ESY of 2023. Any other form of compensatory relief is **DENIED**.

It is further **ORDERED** that any relief sought by petitioner prior to January 2020, or for time subsequent to the filing of the petition, is **DENIED**, including any other claims for relief asserted by petitioner, not otherwise addressed herein.

This decision is final pursuant to 20 U.S.C. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2022) and is appealable by filing a complaint and bringing a civil action either in the Law Division of the Superior Court of New Jersey or in a district court of the United States. 20 U.S.C. § 1415(i)(2); 34 C.F.R. § 300.516 (2022). If the parent or adult student feels that this decision is not being fully implemented with respect to program or services, this concern should be communicated in writing to the Director, Office of Special Education.

January 19, 2023 _____

DATE



ELAINE B. FRICK, ALJ

Date Received at Agency _____

Date Mailed to Parties: _____

EBF/jns

APPENDIX

WITNESSES

For petitioner

Christen Russell
Rizza Miro
Mary Pipan, M.D.
D.T.

For respondent

Gina Lewis
Lori Seminara

EXHIBITS

For petitioner

- P-1 Pre-marked, not admitted (duplicative of RJ-10)
- P-2 Speech and Language Evaluation, by Jina Mosley, Cooper University Health Care, July 9, 2018
- P-3 Initial evaluation plan, July 20, 2018
- P-4 Psychological Evaluation, Dr. Idler, August 23, 2018
- P-5 Pre-marked, not offered
- P-6 Pre-marked, not offered
- P-7 Pre-marked, not offered
- P-8 Psychological Evaluation, by Lawnside, Dr. Idler, May 13, 2019
- P-9 Pre-marked, not admitted (duplicative of RG-7)
- P-10 Pre-marked, not admitted (duplicative of RH-8)
- P-11 Speech-Language Evaluation by Lawnside, Rebecca Welde, May 28, 2019
- P-12 Educational Assessment, Dr. Carmen Henderson, LDTC, Lawnside, June 1, 2019
- P-13 Evaluation Sequence, Eligibility Determination Report, 06/20/2019
- P-14 Pre-marked, not admitted (duplicative of RI-9)

- P-15 Pre-marked, not offered
- P-16 Pre-marked, not offered
- P-17 Program and Functional Behavior Assessment, independent evaluation by Christen Russell, ABA, special education
- P-18 Speech and Language Evaluation, Rizza Miro, November 18, and November 19, 2021
- P-19 Occupation Therapy Evaluation, Felicia Castagna, January 14, 2022
- P-20 IEP October 19, 2018, 2018–2019 school year, preschool, age 4
- P-21 IEP June 10, 2019, 2019–2020 school year, kindergarten
- P-22 IEP Amendment, September 18, 2019, for 2019–2020
- P-23 IEP Amendment, January 22, 2020, for 2019–2020
- P-24 IEP July 6, 2020, for 2020–2021, first grade
- P-25 IEP April 27, 2021, for the 2021–2022, second grade¹
- P-26 Pre-marked, not offered
- P-27 Curriculum vitae, Rizza Miro
- P-28 Curriculum vitae, Christen Russell
- P-29 Eligibility Conference Report, October 19, 2018
- P-30 Meeting Participants, April 3, 2019, Parental Notice Following an Initial Identification/Evaluation Planning meeting
- P-31 Initial Evaluation Plan, July 20, 2018
- P-32 Parent letter re-evaluation request, June 27, 2018
- P-33 Email between Campbell to Alwan, August 21, 2018, re-evaluation status of L.T.
- P-34 Emails between D.T. and school rep, February 2019
- P-35 Email D.T. to Alwan, February 25, 2019
- P-36 Email by Del Signore to self, December 11, 2020
- P-37 Emails between school representatives, July 2018
- P-38 Emails regarding D.T. inquiry RE: BOE meeting, January 2021
- P-39 Email of D.T.'s concerns, June 8, 2021

¹ The pre-marked Exhibit P-25 was utilized during the proceeding but not moved in, as counsel indicated it was duplicative of RQ-17. However, upon review of the evidence documentation, RQ-17 as admitted did not include the IEP of April 27, 2021, for the 2021–2022 school year. Thus, P-25 has been admitted *sua sponte* to ensure a complete record.

- P-40 CHOP March 31, 2022, Developmental Behavioral Evaluation by Mary Pipan, M.D.; Curriculum vitae of Dr. Pipan
- P-41 Pre-marked, not offered
- P-42 Draft IEP of June 9, 2022
- PX-1 Emails, dated October 20, 2021, from J. Epstein to D. Rhone; Gina Lewis email; and emails, dated October 21, 2021, J. Epstein to Lewis and Rhone
- PX-2 Emails from D.T. to Seminara, dated December 10, 2020; reply Seminara to D.T. on December 11, 2020
- PX-3 Email from D.T. to Seminara January 6, 2021; reply Seminara to D.T. on January 7, 2021
- PX-4 Email, dated November 13, 2020, from D.T. to Lewis to set up IEP meeting

For respondent

- RA-1 The Medical Daycare Center 60-day IDT and care plan summary, July 31, 2018, by Juliet Monfardini-McDevitt, Social Worker (numbered as pages 64-67)
- RB-2 Pre-marked, not offered
- RC-3 Pre-marked, not offered
- RD-4 Pre-marked, not offered
- RE-5 Pre-marked, not offered
- RF-6 Pre-marked, not offered
- RG-7 PT evaluation by Camden County Educational Services Commission, May 16, 2019 (cross reference with P-9)
- RH-8 Functional Assessment of Academic Behavior, age 5 preschool (cross reference with P-10)
- RI-9 Augmentative Communication Evaluation report, August 20, 2019 (cross reference with P-14)
- RJ-10 Audiometric Report by Cooper Health, January 29, 2018, with Cooper Speech Therapy S/L evaluation, July 6, 2018 (cross reference P-1)
- RK-11 Pre-marked, not offered
- RL-12 Pre-marked, not offered
- RM-13 Pre-marked, not offered
- RN-14 Pre-marked, not offered

- RO-15 Pre-marked, not offered
- RP-16 Pre-marked, not offered
- RQ-17 IEP January 20, 2022, for implementation January 21, 2022, grade 2, (pages 1 through 15)
- RR-18 Invoice by Christen Russell, ABA independent evaluator
- RR-19 Pre-marked, not offered
- RR-20 Letter from school to parent, August 30, 2021, Invitation for Re-evaluation Planning, meeting September 8, 2021
- RR-21 Letter from school to parent, October 5, 2021, Invitation to Assess Progress and Review or Revise IEP, October 21, 2021, meeting
- RR-22 Letter from school to parent, March 10, 2022, Invitation to Assess Progress and Review or Revise IEP, meeting April 5, 2022
- RR-23 Letter from school to parent, May 17, 2022, Invitation for Annual Review of IEP, meeting May 24, 2022
- RR-24 Letter from school to parent, June 7, 2022, Invitation for Re-evaluation Planning meeting June 14, 2022