



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

**W.K. AND A.K. ON BEHALF OF I.K.,**

Petitioners,

v.

**HOPEWELL VALLEY REGIONAL**

**BOARD OF EDUCATION,**

Respondent.

And

**HOPEWELL VALLEY REGIONAL**

**BOARD OF EDUCATION,**

Petitioner,

v.

**W.K. AND A.K. ON BEHALF OF I.K.,**

Respondents.

**FINAL DECISION**

OAL DKT. NO. EDS 05870-22

AGENCY DKT. NO. 2022-34597

OAL DKT. NO. EDS 05871-22

AGENCY DKT. NO. 2022-34574

**(CONSOLIDATED)**

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**Michael I. Inzelbuch**, Esq. for petitioners/respondents, W.K. and A.K. on behalf  
of I.K. (Inzelbuch Law, attorneys)

**Eric L. Harrison**, Esq., for respondent/petitioner, Hopewell Valley Regional  
Board of Education (Methfessel & Werbel, P.C., attorneys)

Record Closed: November 21, 2023

Decided: December 22, 2023

BEFORE **JACOB S. GERTSMAN**, ALJ t/a:

**STATEMENT OF THE CASE**<sup>1</sup>

Petitioners W.K. and A.K. (parents) on behalf of I.K. filed a due process petition seeking, in part: (1) records/documents; (2) change of classification to Multiple Disabilities (MD); (3) an Individualized Education Plan (IEP) with appropriate goals and objectives; (4) reimbursement for placement of I.K. at the accredited Cambridge School (Cambridge); (5); reimbursement for transportation costs; (6) reimbursement for expert fees; (7) counsel fees and costs; (8) compensatory education for a period of time to be decided by this tribunal; and (9) any and all other relief deemed appropriate and just. Respondent Hopewell Valley Regional Board of Education (Hopewell, HVRDS, District) filed a due process petition requesting that petitioners' request for Independent Educational Evaluations (IEEs) be denied.

The parents argue that Hopewell failed to offer I.K. a Free Appropriate Public Education (FAPE) due to the failure of its child-find duty, its failure to provide I.K. sufficient evaluations, and its failure to provide I.K. IEPs that offered her a FAPE. Additionally, the parents argue that I.K.'s placement at Cambridge is appropriate because Cambridge offers consistent and individualized programming that resulted in meaningful progress. (Petitioner Supplemental Brief at 5–8.)

The District argues that the record demonstrates that the IEPs in question provided a FAPE in the least restrictive environment (LRE) appropriate to I.K.'s needs and an opportunity for meaningful learning based on her potential. Additionally, no further evaluations were warranted when the parents requested IEEs after rejecting the District's final IEP in May 2022. (District Supplemental Brief at 8.)

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<sup>1</sup> Hereinafter, petitioner shall refer to the parents and respondent shall refer to the District.

## **PROCEDURAL HISTORY**

The parents' petition was transmitted to the Office of Administrative Law (OAL), where it was filed on July 15, 2022, as a contested case under OAL Docket No. EDS 05870-22. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13. The District's petition was transmitted to the OAL, where it was filed on July 15, 2022, as a contested case under OAL Docket No. EDS 05871-22. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13. These matters were consolidated by my order dated September 19, 2022. A prehearing order was issued on September 20, 2022.

Hearings were conducted both telephonically and via Zoom Video Communications, Inc. on August 3, December 1, December 5, and December 14, 2022, and March 9, March 13, March 15, June 19, and November 21, 2023.<sup>2</sup>

The record remained open for the parties to submit both post-hearing and response briefs. The post-hearing briefs were filed by the parents on May 30, 2023, and by the District on May 31, 2023. During the June 19, 2023, hearing, the parties were directed to file supplemental briefs. The briefs were filed on July 31, 2023. The record was closed at the conclusion of the November 21, 2023, hearing.

## **FACTUAL DISCUSSION**

The following joint stipulation of facts was duly submitted by the parties and is hereby **FOUND** as **FACT**<sup>3</sup>:

### **Procedural History**

1. On June 22, 2022, Petitioners filed a Due Process Petition seeking, in part: (1) records/documents; (2) change of classification to Multiple Disabilities (MD); (3) an IEP with appropriate Goals and Objectives; (4) reimbursement for placement of I.K. at the accredited Cambridge School; (5) reimbursement for transportation costs; (6) reimbursement for expert fees; (7) counsel fees and costs; (8)

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<sup>2</sup> Hearings were adjourned at the request of the parties on September 6, 2022, and September 7 and October 16, 2023.

compensatory education for a period of time to be decided by this tribunal; and  
(9) any and all other relief deemed appropriate and just.

2. On June 24, 2022, Hopewell filed a Due Process Petition, requesting that Petitioners' request for Independent Evaluations be denied. (Petitioners' request for Independent Evaluations is dated June 8, 2022—Exhibit R-32.) Petitioners specifically requested an independent educational evaluation and an independent speech and language evaluation.
3. On June 28, 2022, Petitioners filed an Answer to Hopewell's Petition for Due Process.
4. On July 6, 2022, Hopewell filed an Answer to Petitioners' Petition for Due Process.
5. Both matters were consolidated via a CONSOLIDATION ORDER on September 19, 2022, with Parents identified as Petitioners, and Hopewell as the Respondent.
6. Due Process Hearings were held before the undersigned, on December 1, 5, and 14, 2022, and March 9, 13 and 15, 2023.
7. Nine-year-old I.K. was born on January 24, 2014, and is eligible to receive Special Education and related services under the classification of "Specific Learning Disability" (SLD). I.K. has been diagnosed, in part, with the following multiple disabilities: Specific Learning Disability in the areas of Basic Reading, Reading Comprehension, Oral Expression, Reading Fluency; Dyslexia; Central Auditory Processing Disorder; Math Disorder; Executive Functioning Deficits; Receptive/Expressive Language Disorder; Phonological Processing Disorder; and Disorder of Written Expression. At all times relevant, I.K. was eligible to receive special education and related services in accordance with the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq., and the Regulations

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<sup>3</sup> The joint stipulation of facts was modified by the undersigned for stylistic, grammatical and consistency

promulgated by the United States Department of Education (USDOE), 34 C.F.R. §300.1 et seq., as well as the New Jersey Department of Education (NJDOE), N.J.A.C. 6A:14-1.1 et seq. (collectively referred to as the IDEA).

**2018–2019 School Year<sup>4</sup>**

8. Petitioners enrolled I.K. at Hopewell for kindergarten during Extended School Year (ESY) 2019. (P-28; R-4.)
9. Petitioner A.K. testified that she first raised concerns about I.K.'s language development in January or February 2019. (T6 98:18–23; see also id. at 99:5–14 (Petitioners testified that I.K. was struggling to learn letters and Petitioner Parents were concerned she may have Dyslexia).)
10. Petitioners cited a family history of speech problems and educational difficulties. (P-67 at P3845.)
11. On February 22, 2019, Hopewell noticed an Initial Identification and Evaluation Planning meeting to determine whether evaluations were necessary to determine if I.K. was in need of special education and related services as a student with disabilities. (P-12 at P378.)
12. That meeting was held on March 1, 2019, and it was determined based on parental input and structured observation that I.K. has a suspected cognitive disability and required Educational and Psychological evaluations. (Id. at P733–37.)
13. On March 15, 2019, Hopewell Psychologist Beth Hoffman, Ph.D., NCSP, (Hoffman) and Hopewell Learning Disabilities Teacher-Consultant Greta Gennace, LDT-C, (Gennace) conducted a Psychoeducational Evaluation of I.K. (P-31.) Hoffman and Gennace issued their report on April 22, 2019. (P-31.)

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purposes. All emphasis, including bold, underlined, and italicized language, was included by the parties.

14. During the evaluation, Hoffman and Gennace measured I.K.'s Full Scale IQ (FSIQ) as 83, which is "**low average.**" (Id. at P2708.)
15. Hoffman testified that I.K. had a toileting accident during the evaluation and advised to view her findings "with caution," but did not re-test I.K. (T2 78:2–79:10.)
16. On June 11, 2019, Hopewell drafted I.K.'s initial IEP that classified I.K. as a student with a Specific Learning Disability (SLD) who required services for Reading/Language Arts and Math for the remainder of preschool and during the Extended School Year (ESY) leading into I.K.'s 2019/2020 kindergarten school year. (P-17 at P1930.)
17. On June 17 and 25, 2019, Kristen Herzel, Ph.D. (Dr. Herzel) conducted a private Neuropsychological Evaluation of I.K. (R-5.)
18. Dr. Herzel's evaluation in the absence of any toileting accidents determined that I.K. has an FSIQ of 91. Hoffman testified that she could not specify why the findings differed, but the District accepted Dr. Herzel's findings. (T2 79:20–82:12.)
19. Dr. Herzel, in 2019, specifically recommended a "comprehensive speech and language evaluation" based, in part, on the "language associated testing she conducted that demonstrated 'significant issues with word finding / verbal retrieval and had qualitative difficulties with answering "wh" questions.'" Dr. Herzel's evaluation found that a diagnosis of Dyslexia was appropriate for I.K. and that I.K. demonstrated several "red flags" for issues with executive functioning.
20. Dr. Herzel, in 2019, specifically recommended an occupational therapy evaluation based on screening measures she conducted demonstrating

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<sup>4</sup> T1 refers to the December 1, 2022, hearing; T2 refers to the December 5, 2022, hearing; T3 refers to the December 14, 2022, hearing; T4 refers to the March 9, 2023, hearing; T5 refers to the March 13,

“significant difficulty with dominant hand coordination and speed and motor planning.”

21. The District completed a Speech and Language Evaluation in March 2021 (R-13) and an Occupational Therapy Evaluation in December 2020 (R-11).

22. Paulette DiNardo, (DiNardo) Hopewell Director of Pupil Services, testified that I.K.’s Child Study Team (CST) received and considered, but did not formally accept or deny Dr. Herzel’s evaluation. (T1 157:10–158:7.)

23. DiNardo testified that the parents were cooperative and collaborative throughout the process as reported to her by her staff. (T1 158:22–159:24.)

### **2019–2020 School Year**

24. On April 15, 2020, Hopewell drafted an annual review IEP for I.K. that maintained the same SLD classification. (R-6.)

25. This IEP provided that I.K. would receive Pull-Out Resource Replacement in Reading/Language Arts for 120 minutes once a day and in Math for 60 minutes once a day. Additionally, the IEP provided for ESY during the summer between I.K.’s kindergarten and first grade years.

26. Hopewell’s Case Manager notes from the meeting state that I.K. made “great” progress in reading but that Petitioner A.K. remained concerned with I.K.’s achievement in Math. (P-25 at P2696.)

27. The June 11, 2019, IEP defined I.K.’s kindergarten year and was offered in the Spring of her preschool year. (T1 at 55:10–57:1; R-4.) Structured literacy was used for language arts taught by Orton-Gillingham trained teachers, and a multisensory program, Framing Your Thoughts, was used for writing. (T1 57:16–17.) Class size ranged between 7–9 students. (T1 57:18–25; R-4.)

28. I.K.'s 2019–2020 progress report stated that I.K. achieved all her English and language goals and objectives via remote instruction. However, with regard to the Math Goals and Objectives, same were not fully achieved and by June, due to the inherent limits of remote instruction on data collection, data could not be gathered. (T1 65:23–66:4; R-7.)
29. The extended school year 2020 progress report indicated that I.K. “was able to maintain her gains during the extended school year of 2020 via 1:1 instruction (remote), however, in bigger groups she would often get disturbed and fall behind in activities.” (T1 72:10–21; R-8.)
30. Based on the PLAAFP (Present Levels of Academic Achievement and Functional Performance) data reported in the Spring 2020 IEP issued during I.K.'s kindergarten year, from September 2019 through March 2020, I.K. made progress that HVRSD staff described as meaningful in the CORE Phonics Survey, the CORE Phonological Segmentation Test, the CORE Graded High Frequency Word Survey, letter naming fluency and letter word sound fluency, the Developmental Reading Assessment, the Phonological Awareness Screening Test, the Primary Spelling Inventory, and the Developmental Reading Assessment 2. (T1 81:22–82:26; R-6 at 2–7.)
31. In particular, District staff maintained that I.K. showed meaningful progress in the Core Phonics Survey, as in a few months she increased from 2/26 to 21/26 lowercase letters and 3/26 to 23/26 uppercase letters. (T3 21:3–14; R-6 at 2–3.)
32. The Spring 2020 IEP also described what the staff characterized as meaningful progress on Go Math testing during first grade, but, despite same, I.K. repeated the identical curriculum in second grade. (T1 82:10–15; R-6 at 7)
33. I.K.'s progress report for the 2019–2020 school year was otherwise unremarkable except that on a number of goals Hopewell indicated the COVID-19 pandemic made it impossible to measure I.K.'s progress. (R-7.)



**2020 ESY and 2020–2021 School Year**

34. I.K.'s progress report for the 2020 ESY indicated that I.K. benefitted from 1:1 instruction and was distractable in a larger group. (R-8.)
35. In the May 10, 2021, IEP, the District added speech-language therapy and included an extended school year. (T1 79:23–80:11; R-14 at 1, 18.)
36. In the PLAAFP section of the IEP, I.K.'s language arts teacher reported that I.K. "has shown progress towards her individual goals and objectives in the areas of phonological awareness, decoding, encoding, fluency, comprehension, and oral word recognition." (R-14 at 4.)
37. Serial testing yielded results that the District staff characterized as indicative of meaningful progress on the Gallistel-Ellis Test of Coding Skills, the Phonological Awareness Screening Test (P.A.S.T.), and Literacy. (T1 112:11–13; R-14 at 4–9.)
38. The IEP described I.K.'s progress in math as "positive but slow progress towards each 1st grade math standard/practice." (R-14 at 9.)
39. At the start of the 2020/2021 school year—I.K.'s first grade year—Petitioners requested an Occupational Therapy Screening due, in part, to "concerns about reversals" for letters. (P-32.)
40. An occupational screening recommended a full Occupational Therapy Evaluation. (Id. at P2722.)
41. On November 19 and 20, 2020, Hopewell administered a Psychological Evaluation as part of the reevaluation process for students classified as eligible for Special Education and Related Services. (R-9.)

42. The November 19 and 20, 2020 evaluation, conducted by Hopewell Psychologist Antionette Tighe (Tighe), found that I.K.'s FSIQ was 94 ("**average**"). (Id. at 239.)
43. On November 24 and December 15, 2020, I.K. received an Occupational Therapy Evaluation given her difficulties with handwriting and pursuant to the conclusions of the September 2020 screening. (R-11.)
44. The November 24 and December 15, 2020, Evaluation found I.K. was weak with recalling lowercase letters from memory, targeting the baseline accuracy, and maintaining age-appropriate letter size. (Id. at P2732.)
45. The November 24 and December 15, 2020, Occupational Therapy Evaluation revealed that I.K. fell "**below the average range**" (9th percentile) on the Visual Motor and Fine Motor subtests of the Miller Function and Participation Scales (M-FUN) (id. at P2732) and concluded that I.K. would benefit from Occupational Therapy Services. (Id. at 263.)
46. On December 10, 2020, Hopewell provided I.K. an Educational Evaluation. (R-10.)
47. The December 10, 2020, Educational Evaluation revealed that I.K. fell within the moderately "**below average**" range of functioning on all composites of the Feifer Assessment of Reading (FAR). (Id. at 256.)
48. The December 10, 2020, Educational Evaluation further revealed on the Woodcock Johnson IV test of Achievement for reading, written language, and mathematics, I.K.'s overall score was within the "**low**" range and her achievement scores were in the "**very low**" to "**low average**" range.
49. On January 13, 2021, Hopewell drafted an IEP for I.K., pursuant to a Reevaluation Eligibility Determination. (R-12.) I.K.'s classification, along with her Reading/Language Arts and Math services, remained "Specific Learning

Disability.” Hopewell also provided I.K. with group Occupational Therapy services once a week for 25 minutes. (Id. at P1962.)

50. Notes from the IEP meeting taken by the case manager indicate a comment by I.K.’s mother that “[t]here is an overall feeling that there is something off with [I.K.’s] recall.” (Id. at 28.) However, the “PLAAFP” section of the IEP did not expressly mention issues of recall. (R-12; T1 171:23–172:22) (DiNardo testifying on cross-examination that the IEP’s “PLAAFP” section does not mention I.K.’s recall issues.)

51. No further testing of I.K.’s recall abilities was conducted. (T1 78:11–20.)

52. In February and March 2021, a Speech-Language Evaluation of I.K. was conducted by the District. (R-13.)

53. The February and March 2021 Speech-Language Specialist’s Evaluation found that I.K.’s scores on the Clinical Evaluation of Language Fundamentals-5th Edition (CELF-5) in the Receptive Language and Language Content Index were “**below average.**” (R-13 at 296.) And on the Phonological Awareness Test-2nd Edition Normative Updated (PAT-2:NU) Phoneme-Grapheme Index, I.K.’s scores fell “**below average.**” (Id. at P2755.)

54. There was a “**drop**” in I.K.’s literacy scores at the end of her first-grade year and into that summer’s ESY term according to the Extended School Year 2021 Progress Report. (P-16 at P1856–57; T2 70:20–71:16.)

55. DiNardo testified that the CST was hoping to see I.K. make more progress by this point. (T1 69:10–12.)

56. I.K.’s first and second grade teacher, Allyson Mooney (Mooney), testified that she was concerned with I.K.’s **regression.** (T6 115:13–24.)

**2021 ESY and 2021–2022 School Year**

57. On May 10, 2021, Hopewell issued an IEP for I.K.’s second grade year. (R-14.)

58. The May 10, 2021, IEP provided, *for the first time*, Speech Services for I.K., once a week for 30 minutes in a group setting.

59. The May 10, 2021, IEP also provided for an in-class Reading/Language Arts resource class once daily for 60 minutes.

60. The May 10, 2021, IEP (written for second grade) repeated the same Math instruction from first grade for second grade. (See, specifically the May 10, 2021, IEP (R-14) at 1993–1994; the August 23, 2021, IEP (R-21) at 2045–2046; and the January 25, 2022, IEP (R-22) at 2133–2134 that all state for both first and second grade the first grade “Go math” curriculum was utilized) (see also, T1 210:7–213:7.) I.K.’s teacher Abigail Anker (Anker) acknowledged that the IEP called for use of the same first grade “Go Math” curriculum despite I.K. reportedly having made significant progress previously in first grade. When questioned, language arts teacher Anker testified that “I don’t know” (why the identical math instruction occurred). (Id. at 211:14.)

61. During the 2021 ESY term, Petitioner A.K. contacted Mooney to express concern about I.K.’s reading level compared to students her age. (Id. at 213:12–20.)

62. I.K.’s teacher for first grade, the 2021 ESY Term, and second grade, Mooney, testified on cross-examination that between the end of first grade (2020–2021) and the end of the 2021 ESY term, I.K. **regressed** from independent reading to requiring teacher instruction when reading despite her initial testimony that I.K. had progressed overall. (T4 206:7–17.)

63. As the 2021–2022 school year—I.K.’s second grade year—began, Petitioner A.K. testified, I.K. started demonstrating significant memory issues. (T6 117:1–118:18.)

64. Around that time, Petitioner A.K. asked Hopewell's CST if they agreed that an out-of-district (OOD) placement may be necessary. (T6 120:10–24; T2 98:13–16.)
65. After A.K. made that request, the CST scheduled an IEP meeting in January 2022. (T6 122:22–123:12.)
66. The August 23, 2021, IEP replaced group speech-language therapy with individual speech-language therapy based on recommendations contained within a neurodevelopmental evaluation, which also recommended a Central Auditory Processing Evaluation. (T6 at 100; R-21 at 1, 23.)
67. Based on the recommendation of Dr. Merchant following her CAP evaluation of I.K., the August 2021 IEP added an FM system to the homeroom/general education classroom. (T1 at 97:11–14; R-21 at 20.)
68. In January 2022 HVRSD issued a revised IEP, adding three weekly sessions of one-on-one pull-out supplemental reading instruction from an Orton-Gillingham-trained teacher. (T2 at 56:4–10; R-22 at 1, 22.)
69. On January 9, 2022, Petitioners made an application for I.K.'s admission to the Cambridge School (Cambridge)—an accredited private school for students with language-based learning disabilities such as Dyslexia. (P-45.)
70. At the January 25, 2022, IEP meeting I.K.'s parents voiced their concern that I.K. was not progressing in reading, expressed concerns that I.K. was not fitting in socially, and stated the opinion that Hopewell was not an appropriate placement and that they were hopeful that I.K. would be accepted at the Cambridge School. (R-22 at 5.)

71. The January 25, 2022, IEP (R-23) provided I.K., for the first time, with Pull-Out Supplementary Instruction in Reading/Language Arts three times a week for twenty minutes.
72. On January 26, 2022, Cambridge accepted I.K. for admission. (P-47.)
73. Between January 26 and January 27, Petitioners and Hopewell CST members engaged in email communications regarding the January 25, 2022, IEP. Petitioner A.K. stated that Petitioners were willing to give the “new program a try despite significant concerns that I.K. was not making progress.” (R-24 at 448.)
74. On January 27, 2022, Petitioners consented to the January 25, 2022, IEP. (P-27.) However, Petitioner A.K. noted on the IEP consent form that she had “concerns about I.K.’s academic program” and significant concerns about I.K.’s education. (Ibid.)
75. On February 25, 2022, Petitioner Parents independently sought and obtained an Educational Evaluation by Susan K. Caplan, M.Ed. (Caplan) (P-73).
76. Petitioner Parents also sought an Independent Language and Literacy Evaluation by Dr. Karen T. Kimberlin, SLP.D., CCC-SLP (Dr. Kimberlin). Dr. Kimberlin conducted her evaluation on February 21 and March 14, 2022. (P-67.) Dr. Kimberlin also observed I.K. at I.K.’s Hopewell elementary school on March 14, April 27, and May 2, 2022. (Ibid.)
77. In April 2022, the District offered Petitioners an increase in I.K.’s time in Supplemental Reading by two days or if they would bring I.K. to school 40 minutes early (before school) for the additional Supplemental Reading instruction. (R-26.)
78. After three months of the supplemental reading instruction, on April 19, 2022, case manager Tighe emailed the parents to propose an additional two days of instruction for a total of five days per week, on the basis that the instructor, Anne Fishman (Fishman), reported that I.K. was performing well.

79. Petitioners did not accept this proposal, reporting that I.K. became upset when they discussed with her the possibility of more time missed from homeroom, the extra instruction would be “further distracting to her fragmented program,” and commencing the school day earlier (receiving the proposed instruction before school) would not be practical because I.K. “already is hesitant at times to attend (school).” (R-26.)

80. HVRSD staff testified that I.K. made progress during the 2021–2022 school year prior to her parents’ rejection of the IEP offered for the subsequent school year. Work samples and scoring sheets demonstrated that on successive DRA assessments from the beginning of second grade to the end of second grade, I.K. progressed from a level three to a level eight. Staff opined that this demonstrated progress. (T6 at 54–56; R-36; bates stamped pages HVRBOE 740, 662–665, 679–682, 749–754.)

81. District staff testified that I.K. made progress with Core Phonological Segmentation, the Grade High Frequency Word Survey, Fluency and Aimsweb testing. (T3 22:12–16; R-36.)

82. On serial Aimsweb testing, I.K.’s words read correctly per minute increased and her errors decreased. (T2 89:5–7; R-36; bates stamped page HVRBOE 741.)

83. I.K.’s final progress report for the 2021–2022 school year reported that by June, I.K. had achieved all reading, writing and math goals. She was noted as “progressing satisfactorily” towards her speech and occupational therapy goals. (R-33.)

84. Anker testified that I.K. made “slow incremental progress.” The Court questioned Anker as to the difference between “slow incremental” and “meaningful progress” with Anker testifying as follows:

THE COURT: You know, if I could just jump in here for a minute.

BY THE COURT:

Q: The term “meaningful progress” has been mentioned a lot this morning and I think that the question that Mr. Harrison just asked is the perfect time for me to jump in and ask this question; what do you consider meaningful progress? What is the standard?

A: To me, meaningful progress, and I think to - -

Q: No, let me be clear, to you not only as her teacher but as an expert in special education, because you’ve given your opinion - -

A: Yes.

Q: - - as an expert, what is meaningful progress and when is it not meaningful progress?

A: So meaningful progress means that I see growth in her data, that she’s gaining the skills that she needs. When I’m talking about I, specifically, the building blocks that she needs to become a reader and to be a confident reader.

Meaningful progress shows that her data increases, like if we’re looking at her fluency data, I see that her score goes up and her errors go down. To me that’s meaningful progress. If I see her DRA go from a two to an eight, that’s meaningful progress.

Meaningful progress - -

Q: But what is - - but what is the line because, you know, you also talked about slow, and steady, and incremental progress. What is the line between slow and steady incremental, when would that - - when does that become meaningful progress and when does it remain not meaningful progress?

A: So if a child is remaining stagnant and they’re not moving up, then a child is not making meaningful progress.

If a child is regressing, they are not obviously making any progress.



Q: So any movement in a positive direction is meaningful progress in your opinion.

A: When we're looking at kids with learning disabilities, who we know have significant needs, yes, when I see an upward trend that is meaningful progress in the world of special education, that's what meaningful progress means to me.

I know that meaningful progress does not always mean in a year you can close a two year grade level gap. That's - - that's not always - - that's not possible, not always possible. We have to meet a child where they are and use data to drive instruction, and as documented in her IEP we see her scores going up.

Q: Right, that's perfect. One last follow-up from me.

A: Okay.

Q: So you said in your opinion - -

A: Yes.

Q: - - not only as her teacher, as a fact witness in kindergarten and second grade, but also as an expert in special education - -

A: Yes.

Q: - - that as long - - even if it's slow and steady progress, I mean, we can leave the issue of the grade level for another - - for another time, but the fact that this student was moving in an upward trajectory, that to you means meaningful progress, so really any progress at all would be meaningful progress? Is there a time - - hold on, Mr. Harrison is there any time where any progress would not be meaningful?

A: No, I don't believe so, if it's - - if it's collected with data and I see an upward trend, that to me is meaningful progress - -

Q: Okay, thank you.

A: - - as a special educator.

Q: Thank you.

THE COURT: Mr. Harrison, thank you for indulging me, Mr. Harrison, you may continue.

[T3 59:4–62:5.]

**The May 9, 2022, Individualized Education Plan**

85. The May 9, 2022, IEP drafted by Hopewell for I.K.'s 2022–2023 third-grade school year proposed placement of I.K. in a Language and Learning Disabled (LLD) setting for Language Arts and Math and in-class resource support for Science and Social Studies. (R-27.)
86. The IEP team did not propose continuing supplemental reading instruction for I.K.'s third-grade year, but rather provided that the District's reading specialist would support I.K. one hour every day during her language arts block. (T2 at 59:8–16.)
87. At an IEP meeting on May 9, 2022, attended by Petitioners and their evaluators Caplan and Dr. Karen Kimberlin, the Petitioners rejected the IEP offered by Hopewell's CST—citing I.K.'s concern with missing even more time from general education—and informed that they would enroll I.K. at the Cambridge School. (R-27.)
88. By an email dated May 17, 2022, Petitioners rejected the IEP in writing stating, in part, "As we discussed at the IEP meeting we have concerns, including, but not limited to, [I.K.]'s consistently low academic assessments. We have grave concerns that after three years of two to three hours per day of special education in reading/language arts, [I.K.] has made minimal progress and the gap is not closing. In addition, [I.K.]'s program requires her to go in and out of her homeroom classroom several times per day and this year she missed half of social studies and science three times per week in order to receive related services. [I.K.] is becoming increasingly self-conscious from being removed from

her classroom and her lack of reading skills. This is impacting her self-esteem. We are again requesting that you either place [I.K.] at the accredited Cambridge School or reimburse us for all the costs and transportation.” (R-28.)

89. On May 18, 2022, Hopewell emailed Petitioners and declined to place I.K. at Cambridge or reimburse them for costs and transportation. (R-30.)

90. On May 28, 2022, Hopewell provided Petitioners some materials in partial response to Petitioners’ request for records. (P-12.)

91. On June 8, 2022, I.K.’s parents sent the District a letter requesting “independent evaluations to fully understand the educational challenges and limitations of [I.K.],” specifically, educational and speech and language evaluations. (R-32.)

92. After I.K.’s parents had rejected the IEP, Dr. Kimberlin issued a Report on August 31, 2022, recommending that I.K. attend a private school, finding the District’s program to be inappropriate. (R-40.)

### **Training of Hopewell Valley Teachers**

93. It was testified to by DiNardo that Hopewell Valley teachers are trained in the two-hour mandated dyslexia training per New Jersey legislation and its special education teachers receive training through the Institute of Multisensory Education. (T1 at 71:20–72:25.)

94. It was testified to by DiNardo that Mooney completed 30 hours through the Academy of Orton-Gillingham Practitioners and Educators, along with a coexisting practicum under the direction of an Orton fellow, David Katz. (T1 71:23–25; 72:1–5.)

95. It was testified to by DiNardo that Orton-Gillingham instruction is deployed during special education instruction at Hopewell Valley. (T1 72:6–9.)

### **Training of Cambridge School Teachers**

96. All teachers at Cambridge are trained or certified in Wilson instruction, which is based on Orton-Gillingham methodology. (Id. at 80:6–11; T6 31:16–32:4.)

97. Additionally, Ellen Gonzales testified that all Cambridge teachers are certified or trained in the Wilson Assessment of Decoding and Encoding (WADE)—an instruction approach that incorporates the Orton-Gillingham methodology for students with Dyslexia. (T6 31:16–32:4.) WADE is incorporated in all courses at Cambridge, including special courses like Art, where students are asked to, for instance, spell an artist’s name using the WADE method. (Id. at 32:5–33:5.) And although WADE is criterion-based, it incorporates the crucial Orton-Gillingham method.

### **Cambridge School Testing**

98. Documents provided by the Cambridge School included January 11, 2022, admission testing, when I.K. was in the middle of second grade and prior to the commencement of supplemental one-on-one reading instruction at Hopewell Valley. (P-46.) The admission testing included the DAR (Diagnostic Assessment of Reading), the WRAT (Wide Range Math Achievement Testing), and the Peabody Picture Vocabulary Test.

99. The criteria and norm-based assessments administered by Cambridge demonstrated that I.K. performed below a first-grade level in spelling, the first-grade level in word recognition, the first grade level in oral reading and the second grade level in word meaning. (P-46; bates stamped page P3395.)

100. On the Peabody Picture Vocabulary test, I.K. performed in the 27th percentile, which fell within the “expected” range for a student her age. (P-46; bates stamped page P3412.)

### **Testimony of Petitioner A.K.**

101. Petitioner A.K. testified that her first interaction with Hopewell was in January or February of 2019 when she advised Hopewell of her concerns regarding I.K.'s difficulties with language. (T6 98:18–23.)
102. Petitioner A.K. testified that the difficulties that concerned her included I.K.'s struggle to learn letters and Petitioner Parents' concern that I.K. has Dyslexia. (Id. at 99:5–14.)
103. Petitioner A.K. testified that it was nearly two years after she raised her concerns before Hopewell provided I.K. with Speech and Language services despite Petitioner Parents' consistent request and I.K.'s needs for such services. (Id. at 107:11–15.)
104. Petitioner A.K. testified that it was *only after 18 months* since being recommended (Dr. Herzel) that Hopewell provided I.K. with Occupational Therapy services. (Id. at 107:16–20.)
105. A.K. testified that I.K. made no adequate progress during her first grade year. (Id. at 111:23–113:2.) I.K.'s first grade, ESY, and second grade teacher (Mooney) also expressed her concern to A.K. that I.K. was **regressing**. (Id. at 115:13–24.) By the time I.K. reached second grade, she also began demonstrating concerns as to recall and memory issues. (Id. at 117:1–118:18.)
106. A.K. testified that Hopewell's programming "confused" I.K. (Id. at 128:22–129:20.)
107. A.K. testified that at Cambridge I.K. is a "different child": she is confident, organized, gets ready by herself, reads for fun, signs up for school activities, asks to stay later at school for after care, and does her homework by herself. (Id. at 126:17–128:21.)
108. A.K. testified that Cambridge is only fifteen minutes from Petitioners' home, which helps with ease of transportation. (Id. at 132:8–10.)

109. A.K.'s testimony went uncontested, as Hopewell did not cross-examine her during the Due Process Hearing.

**Testimony of Dr. Karen T. Kimberlin, SLP.D., CCC-SLP**

110. Petitioners' evaluator Dr. Karen T. Kimberlin, SLP.D., CCC-SLP, (Dr. Kimberlin) was admitted by this tribunal as an expert in speech and language, special education, dyslexia diagnosis, dyslexia remediation, the administration of testing in language and language writing areas, and the interpretation of testing in language and language writing areas. (T4 10:13–14, 22:20–22, and 33:2–10; see Dr. Kimberlin's curriculum vitae as P-70.)

111. In her August 31, 2022, Report (P-67) Dr. Kimberlin found that I.K. was performing "**well below grade level.**" (P-67 at P3879; T1 122:11–16.) Dr. Kimberlin also testified that "I.K. demonstrates signs of a significant reading disability." (P-67 at P3879; T4 40:1–8.)

The Report also contained case history information, a parent interview, record review, clinical observations, standardized testing, and school observations at the Hopewell Valley Regional School District (March 17, 2022, April 27, 2022, and May 2, 2022). The Report also contained District responses to written questions posed by Dr. Kimberlin. The Report further contained rating scales/profiles that were completed by a teacher and a speech-language specialist. The Report, in part, concluded that I.K. presented with a severe language-based learning disability characterized by a receptive-expressive language disorder, a phonological disorder (mild), rapid naming weaknesses, word reading and fluency weaknesses (Dyslexia), a comorbid reading comprehension disorder, and disorder of written expression (including writing weaknesses). The Report, in part, also concluded that the District had failed to address I.K.'s individualized needs and a recommendation that I.K. attend a school that specializes in educating students with language-based learning disabilities.

112. Some of the evidence on which Dr. Kimberlin relied in determining that I.K. has made progress at Cambridge is criterion-based testing. (T4 at 172–173.)
113. Dr. Kimberlin’s August 31, 2022, Report was completed after Petitioners rejected Hopewell’s May 9, 2022, IEP and stated their intention to unilaterally place I.K. at Cambridge. (T4 at 164–165.)
114. Contained within her August 2022 Report was an observation of the District’s program in March, April, and May 2022.
115. Dr. Kimberlin testified that there were early signs of I.K.’s need for Speech and Language services that were not addressed (T4 35:10–18) and that I.K.’s family has a history of speech problems including her brother who also has Dyslexia. (Id. at 35:10–25.)
116. Dr. Kimberlin testified that the program Hopewell provided was “obviously not working.” (T4 61:5–16.) Dr. Kimberlin testified that the services Hopewell provided were “disjointed and lacked consistency,” which is “confusing” to students as it makes it unclear what the expectations for their education are. (Id. at 73:24–74:14.) For that reason, Hopewell’s placement of I.K. in general education along with her special education instruction was a “poor” recommendation. (Id. at 75:23–76:2.)

Dr. Kimberlin testified Hopewell’s criterion-referenced testing did not explain whether I.K. is progressing grade and age appropriately (Id. at 93:13–94:21) and noted that the sole norm-referenced testing Hopewell conducted—the AimsWeb test—did not demonstrate meaningful progress. (T4 89:10–90:15.)

Specifically, Dr. Kimberlin testified (Direct) with regard to the AimsWeb testing, in part:

A: So when you look at her score which was - - I - - I don’t even have to look it up because it didn’t

change. It was the first percentile, the first percentile and the first percentile in June of '22 because it's not in here, but I was given the updated test results.

So fall, September first percentile, winter first percentile, June first percentile, no progress. That is on a norm-referenced test. So what that test assesses is fluency which we know is an area of weakness. She made no progress compared to her peers.

That's very, very important. If you're looking at progress and you're saying whoa, still at the first percentile and I told you I observed her on a program that is supposed to address reading fluency and how uncomfortable it was to watch her what I would have said to the district is she shouldn't just be on this program.

Maybe you need to do some other things for fluency. There was no progress. So - -

Q: So on the only - - on the only normed reference test the Aimsweb she was at a 1% throughout the year?

A: That is correct.

[Id. at 90:6-91:3.]

117. Dr. Kimberlin testified that Hopewell did not administer the entire Wechsler Preschool and Primary Scale of Intelligence-Fourth Edition (WPPSI-IV), but she in fact did not administer the entire test. (T4 36:15–37:10.)

118. Dr. Kimberlin testified that much of the criterion-referenced testing Hopewell conducted used separate components that did not clearly relate to Orton-Gillingham instruction for students with Dyslexia and did not relate how I.K. was doing “overall in reading.” (Id. at 153:1–20; 170:25–171:8; 192:1–195:11.)

Specifically, Dr. Kimberlin testified the PAST score is specific to phonemic awareness, while she got more correct: on the Gallistel-Ellis “but that does (not) tell us how well she’s doing in the area of reading as a whole, in her word



identification skills, in her spelling skills. It just doesn't give us the whole picture and the best way to bet the whole picture (is) to see if those skills are really significant (and) are they . . . being applied . . . It's not that you just look at all of the discrete areas. Are they being applied to other areas of reading like . . . reading passage. Does she comprehend? And the only way to really find out is to do appropriate testing." In addition, Dr. Kimberlin referenced the New Jersey Department of Education "Dyslexia Handbook" of which she was an author (P-70 at P3942) in demonstrating that the district did not test nor instruct I.K. in all of the areas of reading as demonstrated by the rope visual. (P-70 at P3942.)

119. Dr. Kimberlin testified that I.K. did not demonstrate meaningful progress on the tests Hopewell provided. When Hopewell first tested I.K., it administered the Wechsler Individual Achievement Test (WIAT). (P-31 at P2710–14; T4 37:11–12.)
120. Dr. Kimberlin testified that I.K.'s early Reading score on that test was in the 1st percentile, she demonstrated weak skills in Math, and she had low oral language scores in the 10th percentile. (P-31 at P7110–14; T4 37:13–38:7.) On the Feifer Assessment of Reading (FAR) I.K.'s phonological index was in the 7th percentile, her fluency was in the 6th percentile, and her comprehension was in the 3rd percentile. (P-36 at P2735–40; T4 39:21–22.) On the Woodcock-Johnson test, I.K.'s basic Reading score was in the 2nd percentile. (P-36 at P2740; T4 40:18–23.)
121. Dr. Kimberlin testified that I.K.'s scores above demonstrate an overview of I.K.'s poor language skills. (T4 43:11–16.) Hopewell's mistake was that in claiming I.K. made progress, it failed to look at the score subtests along with the overall scores to understand where I.K.'s issues lie. (Id. at 43:22–44:9.)
122. Dr. Kimberlin testified that because the District did not identify I.K.'s speech and language differences, I.K. received improper instructional treatment and assessments of I.K.'s progress. By way of example, Hopewell's experts made much of I.K.'s results on the Developmental Reading Assessment-Second

Edition (DRA-2). However, Dr. Kimberlin testified that the DRA-2 is not recommended for students with Dyslexia. (Id. at 103:11–104:8.)

123. Dr. Kimberlin testified that the May 9, 2022, IEP was inappropriate given its inclusion of a general education classroom, large class sizes, teachers not trained in Wilson, and an unclear Writing or Reading curriculum. (Id. at 86:24–87:3.) Additionally, the IEP removed I.K. from the more supportive individual speech services to group speech services, and for only thirty minutes one day a week. (Id. at 48:3–6 and 87:12–25.)
124. Dr. Kimberlin testified that the May 9, 2022, IEP was disjointed. (Id. 120:19–122:3.) The issue was that Hopewell employed different levels of instruction and different skills without carry over. (Id. at 183:12–184:1.) Dr. Kimberlin stated that instruction “needs to be cumulative,” where teachers work on a skill, assess the student’s performance on that skill, and build on that performance. (Id. at 186:15–17.)
125. Further, Dr. Kimberlin testified that although she observed one of Hopewell’s teachers providing an appropriately structured lesson, I.K. only saw that teacher for twenty minutes a day, which is inappropriate for a student with I.K.’s needs. (Id. at 79:18–80:5.)
126. Dr. Kimberlin testified that when she asked the CST about their methods at the meeting, they did not provide her answers. (Id. at 128:3–129:24.)
127. Dr. Kimberlin testified that when she tested I.K. her concerns about I.K.’s issues with Speech and Language were solidified.
128. Dr. Kimberlin tested I.K. using the Oral Passage Understanding Scale-Fifth Edition (OPUS-5), and I.K. scored in the 5th percentile. (P-67 at P3852–53; T4 50:1–51:19.)

129. On the Test of Integrated Literacy (TILLS), I.K. scored in the 0 percentile. (P-67 at P3854; T4 51:18–53:11.) I.K. scored in the 0 percentile in the sound-words composite; the 0 percentile in syntax, sentence, discourse, and writing; the 4th percentile in oral language; and the 0 percentile in the written language composite. (P-67 at P3854–56; T4 53:12–54:4.) These scores demonstrated I.K. has a severe language and literacy disorder. (T4 54:13–16.)
130. On the Comprehensive Test of Phonological Processing, I.K. demonstrated phonological weakness with a score in the 8th percentile in rapid naming. (P-67 at P3857–58; T4 56:16–24.)
131. On the Word Identification and Spelling Test (WIST), I.K. scored below the 1st percentile in word identification and in the 3rd percentile in spelling. (P-67 at P3859–60; T4 58:18–59:15.) On the Fundamental Literacy Ability Index, I.K. scored below the 1st percentile. (P-67 at P3860; T4 59:23–60:17.) On the Sound-Symbol Knowledge composite, I.K. scored below the 1st percentile. (P-67 at P3860.)
132. I.K. also scored in the 0 percentile in reading fluency. (P-67 at P3854; T4 67:5–13.)
133. Dr. Kimberlin testified that the main difference between Dr. Kimberlin’s testing, and Hopewell’s is that using norm-referenced testing, Dr. Kimberlin was able to identify that I.K. has a written expression disorder. (T4 66:18–21.) Identifying this disorder is important because it demonstrates the need for intensive written instruction with an evidence-based writing program (Id. at 68:9–13), both of which Hopewell failed to provide.
134. Dr. Kimberlin also testified that norm-testing and criterion testing should be used. However, Dr. Kimberlin testified that the testing administered by the District “was not tied to” the programs they were using. (Id. at 185; P-12.) Dr. Kimberlin also testified that “both types of testing (normed and criterion) are appropriate, but I

think if you want to look at where a student is pertaining in terms of their peers then yes, norm-based testing is appropriate.” (T4 at 148:16–19.)

135. Dr. Kimberlin testified that Cambridge is the appropriate placement for I.K. (Id. at 197:19–22.)

136. Dr. Kimberlin testified that Cambridge offers highly sequential and structured instruction to I.K. (Id. at 78:3–22.)

137. Dr. Kimberlin testified that Cambridge is appropriate for I.K. given its small class sizes that provide I.K. with greater opportunities to participate and receive teacher attention, Cambridge specializes in Dyslexia, all teachers are trained in Wilson instruction, and I.K.’s speech-language intervention is individualized. (Id. at 82:10–83:5; 122:10–123:22.)

138. In November 2022, Dr. Kimberlin observed I.K. at Cambridge and issued a **second Report** as to her observation dated November 21, 2022. (P-69.) Dr. Kimberlin concluded that I.K. is in need of “explicit and consistent instruction by highly trained and skilled teachers” as provided at Cambridge. (Id. at P3901.)

139. Dr. Kimberlin testified that Cambridge supports I.K.’s needs. (Id. at P3901.) Further, Dr. Kimberlin reported that while I.K. was at Hopewell, she “was not exposed to . . . [the] level of intensive and explicit instruction [that Cambridge provides], nor was instruction consistent across the curriculum or school day.” (Id. at P3902.)

Dr. Kimberlin testified that I.K. has what’s called a language-learning disability. Cambridge supports students with language-learning disabilities. I.K. has average intelligence. She has the capability to do better. She has not made progress in the district and needs a very intensive program in order to get caught up. There cannot be any more Band Aiding. There cannot be any more inconsistent programs. She needs something that is going to move her forward,

teachers that are trained, things I already said about the Cambridge School. (T4 198:5–18.)

140. Dr. Kimberlin testified that I.K. has demonstrated significant improvement on the WADE program. (T4 113:2–116:2.) Between September 2022 and February 2023, I.K.’s scores on the Sounds subtest increased from 24% accuracy to 48% accuracy. (P-91 at P4743.) In Reading, I.K. increased from 1% to 18% accuracy. (ibid.) And in Spelling, I.K. increased from 8% to 24% accuracy. (ibid.)

141. As to the Cambridge admission testing (P-46) mentioned above, Dr. Kimberlin testified that she could not state that same demonstrated progress as the testing therein was never administered prior. (Id. at 187:11–15.) Dr. Kimberlin also testified that the “silent reading” section of the testing (the DAR) was not administered “because she could not read.” (Id. at 188:23–25.) As to spelling, the results were “even lower and consistent with my testing on the WIST below the first grade - -below first percentile.” (Id. At 187:25–188:2.) Dr. Kimberlin also explained that the “word meaning” section of the Cambridge testing (P-46) is not a reading test but an oral language test that “falls under speech and language” as “you give the student a word and you ask them what it means” with the results “tying in” with her testing. (Id. at 188:7–16.) Dr. Kimberlin further testified how the Peabody Picture Vocabulary Tests are not reading tests, however, oral language testing. (Id. at 190:1–191:2.)

As to Cambridge’s administration of the Peabody Picture Vocabulary Test (P-46 at P3412) Dr. Kimberlin did not disagree with same and testified that the scores were similar to District testing. (Id. at 191:17–20.) However, again, Dr. Kimberlin testified that this test is a language test, not a reading test. (Id. at 191:21–25.)

142. Dr. Kimberlin testified that Cambridge’s small class sizes and specialization in Dyslexia, along with individualized Speech-Language intervention for I.K., is appropriate for her needs.

### **Testimony of Susan Caplan**

143. Petitioners' expert Susan K. Caplan, M.Ed., (Caplan) was admitted by this tribunal as an expert in special education, as a Learning Disabilities Teacher Consultant (LDTC), in educational testing, in the interpretation of educational tests, and in educational case management. (T5 11:19–21; see Caplan's curriculum vitae at P-76.)
144. The first time Petitioners contacted Caplan was January 2022, and Ms. K. asked Ms. Caplan to attend the January 25, 2022, IEP meeting. (T5 at 75.) Ms. Caplan did not have a comprehensive list of everything she reviewed before the meeting started.
145. Caplan could not say with certainty what materials she reviewed prior to the meeting but testified that she "had a lot of information that mom gave me verbally over the phone about what happened, about when she first referred her." (T5 at 76–77.)
146. Caplan testified that Hopewell's CST was misleading, withheld information from Caplan, and did not answer any of her questions. (Id. at 18:3–9; see also id. at 18:10–15 (Caplan testifying that the Occupational Therapist compared I.K. to students who did not require Occupational Therapy); id. at 18:16–19:4 (Caplan testifying that I.K.'s second grade teacher consistently shifted the conversation away from Caplan's questions).)
147. Caplan testified that the CST focused on I.K.'s scores but could not answer direct questions about I.K.'s social emotional status, peer relationships, ability to organize materials, or executive functioning. (Id. at 20:6–14.) This was especially concerning given Hopewell's reliance on I.K.'s apparent positive remarks about her education to her teachers. Caplan opined, however, that most children—when an adult asks them a question about whether they like something—will respond positively. (Id. at 20:15–21:4; see also T6 116:7–25 (Petitioner A.K. testifying that I.K. is a people pleaser).)

148. Caplan testified that the CST's focus on the criterion-referenced test scores concerned Caplan, as that focus does not holistically address a student's academic or social emotional struggles. (T5 24:3–11.)
149. Overall, Caplan testified that Hopewell's answers at the meeting were minimal and reluctant. (Id. at 21:10–15.)
150. Ms. Caplan testified that she had not met or tested I.K. prior to the January meeting. (T6 at 81.)
151. According to Caplan's notes from the January IEP meeting, after thanking the District and the teachers for their hard work, "Ms. K. informed the teacher she was looking for out-of-district placements and would be asking the district for payment." (T6 at 82–83.)
152. Caplan wrote a Report dated February 25, 2022. (T5 at 12; P-73.)
153. The February 2022 Report contained a "Reason for Referral", "Background Information", a "Classroom Observation" at Hopewell, testing, and a summary. Ms. Caplan wrote, in part, "the program that the Hopewell Valley School District has offered [I.K.] does not integrate all of the elements of listening, speaking, reading, writing, phonology, orthography, syntax, and morphology nor is it delivered with fidelity . . . [I.K.] does not appear to be receiving meaningful benefit from her special education program. Despite the ratings on her Progress Reports, and goals which were rated as "Achieved" she has not mastered Kindergarten level skills in the area of reading and written language and continues to function at a first-grade level in Math. Dyslexia is only one component of [I.K.]'s language-based learning disability. Her language weaknesses, coupled with her visual motor deficits impact all areas of achievement; Math and Written Language as well. It is the opinion of this evaluator, that the District place [I.K.] at the Cambridge School. The Cambridge School is a private school, for students with language-based learning disabilities.

Here, she will be able to learn in a highly structured, small class environment where one Reading and Writing (Wilson and Judith Hochman Basic Reading) program are taught with fidelity, across all areas of the curriculum. In addition, [I.K.] can receive Speech and Language therapy which will be integrated with her writing instruction and the vocabulary of her curriculum. Occupational Therapy and Speech and Language therapy are delivered without missing core subject area instruction. Lastly, it appears that [I.K.]’s self-esteem is suffering due to her lack of progress in the area of reading, coupled with all of the ‘in and out’ of the general education classroom she currently experiences. At the Cambridge School, [I.K.] will be educated with her peers, realize that she is not the only student with these struggles, and develop the self-confidence she needs in order to learn and develop as a student.” (P-73 at P4020.)

154. Caplan also testified that during her evaluation I.K. did not know the word “period” (punctuation). (T5 29:16–30:7.) I.K. could not spell her last name. (Id. at 30:16–21.) I.K. could not add or subtract above ten. (Id. at 30:22–25.) Nor could I.K. write in complete sentences using capital letters, and she demonstrated expressive vocabulary and language weaknesses. (Id. at 31:3–16.)

155. Caplan testified that she conducted the Woodcock-Johnson test on I.K. Between Hopewell’s December 2020 Woodcock-Johnson test and Caplan’s in February 2022, I.K. barely made progress and did not close the gap between her achievement and ability at all. (Id. at 32:16–33.) I.K.’s basic reading skills standard score was in the “very low” range with a percentile rank of 2. (P-73 at P4014.)

156. Caplan testified that I.K.’s phoneme-grapheme knowledge standard score was in the “low average” range with a percentile rank of 17. (P-73 at 4014.) I.K.’s letter-word identification standard score was in the “very low” range with a percentile rank of .5. (Id. at P4014.) Her spelling standard score was in the “low range” with a percentile rank of 2. (Ibid.) And her word attack standard score was in the “low range” with a percentile rank of 6. (Ibid.)



157. Caplan testified that she conducted the Kaufman Test of Educational Achievement 3 (KTEA-3). On the Academic Skills Battery, I.K. scored in the “low range” with a percentile rank of 3. (Id. at P4015.) Her math concepts applications score was in the “low range” with a percentile rank of 4; her word recognition was also low with a percentile rank of 1; she had a “very low” written expression score with a percentile rank of .5; her math computation was “below average” with a percentile rank of 18; she scored in the 13th percentile in spelling, which is “below average”; and I.K.’s reading comprehension score was “low” in the 3rd percentile. (Id. at P4015.)

158. I.K. demonstrated poor composite scores throughout the KTEA-3: On the Reading Composite, I.K. scored as follows:

Composite/Subtest	Standard Score	Percentile	Descriptive Category
Reading Composite	66	1	Very Low
Word Recognition	64	1	Very Low
Reading Comprehension	71	3	Low

(Id. at P4015.)

On the Mathematics Composite, I.K.’s scores were as follows:

Composite/Subtest	Standard Score	Percentile	Descriptive Category
Math Composite	79	8	Low
Math Concepts & Applications	74	4	Low
Math Computation	86	86	18

(Id. at P4016.)

On the Written Language Composite, I.K. scored as follows:

Composite/Subtest	Standard Score	Percentile	Descriptive Category
Written Lang. Composite	71	3	Low

Written Expression	61	0.5	Very Low
Spelling	83	13	Below Average

(Id. at P4016.)

I.K.'s scores on the Sound-Symbol Composite:

Composite/Subtest	Standard Score	Percentile	Descriptive Category
Sound Symbol Composite	74	4	Low
Phonological Processing	79	8	Low
Nonsense Word Decoding	76	5	Low

(Id. at P4016.)

I.K.'s scores on the Decoding Composite:

Composite/Subtest	Standard Score	Percentile	Descriptive Category
Decoding Composite	69	2	Very Low
Word Identification	64	1	Very Low
Nonsense Word Decoding	76	5	Low

(Id. at P4016-17.)

I.K.'s scores on the Oral Fluency Composite:

Composite/Subtest	Standard Score	Percentile	Descriptive Category
Oral Fluency Composite	79	8	Low
Associational Fluency	85	16	Below Average
Object Naming Facility	82	12	Below Average

(Id. at P4017.)

And I.K.'s scores on the Comprehension Composite:

Composite/Subtest	Standard Score	Percentile	Descriptive Category
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Comprehension Composite	74	4	Low
Reading Comprehension	71	3	Low
Listening Comprehension	80	9	Below Average

(Id. at P4017.)

159. Caplan testified that Hopewell did not contact her after her evaluation. (T5 at 116:10–19.)

160. In her February 25, 2022, evaluation of I.K., Caplan concluded that I.K.’s Dyslexia is only one component of her language-based learning disability; I.K. also has language weaknesses and visual motor deficits that impact all areas of achievement including Math and Written Language. (P-73 at P4020.)

161. On cross-examination, when Caplan was questioned why she put age-equivalent or grade-equivalent data from the Woodcock Johnson assessment in her report, she responded that she never “cited or addressed age equivalent or grade equivalent because they are not statistically sound enough especially for in terms of interpreting them relative to a student. They are very weak statistically as are age equivalents.” (T5 at 93–94.)

162. On cross-examination, Caplan testified that she included this information in her report “because they are part of the computer scoring program and maybe next time I’ll delete them. This is what the computer generates from Riverside Publishers. But there are volumes written about not using grade or age equivalents when talking about student performance.” (T5 at 96–97; P-46.)

163. On cross-examination, Caplan stated that she had no reason to dispute the score on Cambridge’s normed Peabody test, which, according to the graphical profile filled out by the Cambridge staff, indicated that I.K. scored within the expected range at a percentile rank of 27. (T5 at 100.)

164. Caplan testified that one major sign that Hopewell’s programming was not appropriate for I.K. was how quickly she regressed between the end of first grade and that summer’s ESY term. (T5 26:5–27:1.165.)

165. Prior to the day of her testimony, Caplan did not provide an analysis of I.K.'s final IEP (R-27) of May 2022. However, Caplan testified that the IEP meeting she attended was a "very large and cumbersome" meeting (Id. at 109:7–8), with the District not being "open to questions" (Id. at 9), and with the District not even willing to tell her which reading program they were utilizing (Id. at 9–12).
166. Caplan testified that she did not articulate in writing what she found to be inappropriate about the program the District was offering I.K. because it did not occur to her to do so because the District was not willing to change the program during the school day as demonstrated by offering services before school, coupled with her prior interactions with the District leading her to believe that her comments "would have been welcomed." (Id. at 109:7–110:13.)
167. Caplan testified that between first and second grade, I.K. repeated the exact same Math curriculum utilized the same exact Math book, and, covered the same exact chapters without explanation from Hopewell's CST. (Id. at 27:15–29:7.)
168. Caplan testified that Hopewell placed I.K. in a self-contained program, which recognized how far behind she was and that she required more time and more intensive teaching in special education. (T5 14:25–15:8.)
169. Caplan testified that the two hours of Language Arts, with only about thirty to thirty-five minutes of direct instruction that Hopewell provided to I.K. was not sufficient for a child with severe Dyslexia. (Id. at 19:17–20:2.)
170. Caplan testified that I.K. also did not receive comprehensive Social Studies or Science curriculums given the pull-out sessions Hopewell incorporated. (Id. at 21:16–22:7.) This was inappropriate for I.K. because it led to her missing content areas and thus lacking the prerequisite skills for third grade. (Id. at 22:8–17.)
171. Caplan testified that the in-class support Hopewell provided was inappropriate because I.K.'s listening comprehension and reading were so far below grade

level that in a large group I.K. could not glean much, regardless of the support, from oral instruction. (Id. at 22:18–23:9.)

172. Caplan further testified that Hopewell’s offer of two additional Supplemental Reading pull-out sessions or a Supplemental Reading session 40 minutes before school started was an implicit acknowledgement by Hopewell that I.K. was not progressing under the Hopewell IEPs. (T5 39:14–42:6.)

173. Overall, Caplan testified that Hopewell’s programming was not cohesive or consistent because it offered isolated periods of instruction that were not carried over or integrated with I.K.’s other courses. (Id. at 37:23–38:16.) I.K. experienced no systematic progression at Hopewell—she constantly regressed. (Id. at 42:10–42:16.)

174. Caplan authored a second Report entitled “IEP Notes [I.K.] May 9, 2022.” (P-74.) Said Report reflected much of her oral testimony provided during the Hearing. Of note the Report states that the District “considered [I.K.] to be a self-contained student”, yet, offered Science and Social Studies in a general education setting to which Ms. Caplan inquired if there were resource rooms available for these subjects with the answer being “No.”

175. Caplan testified that Hopewell’s May 9, 2022, IEP was no different from Hopewell’s earlier IEPs, except that it provided one hour *less* in the special education class and instead offered supplementary instruction—without any clear indication as to what it was supplementing. (Compare P-17 at P2113 to P-17 at P2169; see also T5 61:1–62:3.)

176. Caplan testified that Hopewell’s May 9, 2022, IEP included no reading comprehension, no vocabulary development, and repeated goals I.K. previously mastered. (P-17 at P2186–88; T5 63:7–65:23.) It included no Math goals in the language of Math, or any other Math skills other than addition and subtraction. (T5 65:24–66:18.)

177. Caplan testified that Hopewell's May 9, 2022, IEP included no goals and objectives with regard to executive functioning that could be delivered in a classroom. Further, the IEP did not mention any executive functioning skills despite clear indicators that I.K. struggled with executive functioning. (Id. at 71:10–24.)
178. Caplan testified that Hopewell's May 9, 2022, IEP included reduced Occupational Therapy *without* any rationale. (T5 45:9–46:24.)
179. Caplan testified that Cambridge is appropriate because I.K. receives 2:1 instruction in small classes, it specializes in Dyslexia with teachers trained in Dyslexia remediation, I.K.'s work environment is very structured, and teachers work with I.K. on her executive function along with reading and writing skills through mastery. (T5 48:15–51:9.)
180. Caplan testified that when I.K. began at Cambridge, she only knew three sight words (the words "the", "them", and "for"). (T5 57:6–58:6.) After several months at Cambridge, I.K. made demonstrable progress. (Id. at 53:11–24.)
181. Caplan testified that I.K. is making meaningful progress at Cambridge compared to at Hopewell based on speaking with the teachers and the WADE assessment "that measured her skills from September to present" with the WADE testing "being linked to the skills of the Wilson reading program" I.K. was being instructed in throughout the day at Cambridge. (T5 53:11–24.)
182. Caplan authored a third Report dated November 7, 2022, (P-75) entitled "Classroom Observation of [I.K.] at Cambridge School, November 7, 2022." Ms. Caplan observed a math class and a writing class. Ms. Caplan also spoke with Cambridge staff who noted an increase in participation, decrease in behaviors, progress, and her "profound" needs.
183. As to the Cambridge testing (P-46), she considered same to be a "general guide," was not consistent with what the District "got" on the DRA at the time (a

kindergarten level), and, “are all very loose.” (Id. at 18:13–20.) Caplan also testified that she had no reason to doubt the Peabody normed-test citing I.K. as average (percentile rank of 27) as “it is not connected to her ability to read.” (Id. at 99:18–100:22.) Caplan also testified that the District’s DRA testing is “not for a Dyslexic student, there’s no word analysis component. It’s all based on sight words, there’s no decoding.” (Id. at 55–56.)

184. Caplan further testified that Cambridge was appropriate because all classes included 2:1 instruction, the environment is very structured, Cambridge works on executive functioning and organization skills with I.K., the classes are much smaller than at Hopewell, all teachers are trained or certified in Wilson instruction, and Cambridge works on reading and writing skills through mastery. (Id. at 48:15–51:9.)

**Ellen Gonzales’, M.S., CCC-SLP, testimony**

185. Petitioners’ third expert, Cambridge Head of School Ellen Gonzales, M.S., CCC-SLP, (Gonzales) was admitted by this tribunal as an expert in Speech and Language; she was also acknowledged for her skills in operating a private school and monitoring progress. (T6 11:3–7.)

186. Gonzales testified that Hopewell made I.K. read the same word list over and over again without mastery, which would likely lead I.K. to think she cannot read. (Id. at 18:12–19:10.)

187. Gonzales testified that Cambridge used to employ DAR (P-46) but is terminating use of it because they determined its scores have nothing to do with students’ reading ability levels. (Id. at 91:12–20.)

188. Gonzales testified that when I.K. started at Cambridge School, I.K. was insecure, did not interact with students, was reserved, and was exceptionally shy, even for a new student. (Id. at 12:15–13:25.)

189. Gonzales testified that after about a year at Cambridge, I.K. now always raises her hand, is the first to volunteer, plays with friends, performed in the talent show, and advocates for herself. (Id. at 14:1–16.)
190. Gonzales testified that I.K. receives Speech and Language services once a week for forty-five minutes, and the pathologists work in unison with her teachers for carry-over. (P-54; T6 23:1–24.) That carryover is also present because I.K. receives writing instruction during Speech and Language to address her executive function. (T6 24:22–25:12.)
191. Gonzales testified that I.K. receives 1:1 Occupational Therapy services once a week for forty-five minutes. (P-54 at P3435; T6 25:13–26:3.)
192. Gonzales testified that I.K. also receives “SOC” (Study, Organization, and Communication) Skills-instruction to work on her executive function skills. (T6 26:4–27:16.)
193. Gonzales testified that Cambridge placed I.K. in Foundations, a Wilson program for K–3 students. (Id. at 29:2–30:11.) I.K. also receives two additional 1:1 Wilson lessons per week. (Id. at 30:12–31:9.)
194. Gonzales testified that all of I.K.’s teachers are either certified or trained in Wilson instruction. (P-55; T6 31:16–32:4.) This allows I.K.’s teachers to integrate Wilson into all her classes. (T6 31:16–32:4.) The small classes at Cambridge emphasize the benefit of Wilson instruction, because I.K. is able to receive regular feedback. (Id. at 55:25–56:6.)
195. Gonzales testified that Cambridge insists upon norm-referenced testing, except for Wilson given its Orton-Gillingham foundation as it is “directly linked to the skills that they are (the students) working on in Wilson.” (Id. at 56:7–57:7 and 61:5–22.)



196. Gonzales testified that as a result of Cambridge’s program, I.K. is making meaningful academic progress. (Id. at 14:17–16:22.) On the Read Naturally Live program, I.K. has demonstrated significant progress “from the .8 level in September to 1.3 currently” (March 2023). (P-51, P-94, and P-95; T6 20:4–21:11.) Further, I.K. has demonstrated phenomenal executive function improvement at Cambridge. (T6 28:6–29:1.)

Specifically, “So the student who I would speak to or other teachers would speak to would not offer much in the way of expression, she was so shy and getting her to respond was really tough, but now she’s in there with her friends, she’s vocal, she’s volunteering in class, she’s confident with her skills. It’s been a very big change in her school performance.” (Id. at 28:20–19.)

197. Gonzales testified that Cambridge provides small class sizes. (Id. at 82:10–83:5.) Smaller class sizes lead to more opportunities to participate and greater teacher attention. (Id. at 82:10–83:5.) For a student like I.K., who suffers from a significant Speech and Language disorder and requires constant incorporation of Speech and Language services throughout her education, those opportunities to participate and teacher attention are extremely important. (See also T4 122:10–123:22.)

198. Gonzales testified that Cambridge focuses on norm-referenced tests to ensure I.K. is working on closing the gap between her achievement and ability in a manner that tracks with her grade level and age. (T6 56:7–57:7; 61:5–22.)

Specifically, Gonzales testified (Direct), in part, as follows:

Q: Okay. Can you tell us a little about that?

A: Well, all of our students come with testing, normed testing to go through the admission process. And we do some very selective criterion reference to go along with Wilson that is directly linked to the skills that they’re working on in Wilson. It’s not arbitrary skills, but at the end of the year, so 12 months or so since their last normed testing we like them to be tested again.

[Id. at 56:10-18]

199. Gonzales testified that when I.K. began attending Cambridge she performed poorly in Speech and Language areas. For instance, she only knew three sight words when she began attending in September 2022. (T6 57:6–59:6.)
200. Gonzales testified that after approximately five months at Cambridge, I.K. appears to be a different student entirely. She always raises her hand in class, is the first to volunteer, plays with her friends, performed in the talent show, and advocates for herself. (T6 14:1–16.) I.K. is more confident, more organized, gets ready for school by herself, asks to sign up for school activities and stay at after care, does her homework by herself, and reads for fun. (Id. at 126:17–128:21.)
201. Gonzales testified that in the Read Naturally Live program, I.K. has also demonstrated significant progress. (See ¶138; T6 20:4–11.)
202. Gonzales testified that Cambridge provided I.K. with a written expression prompt in September 2022 and again in March 2023. In September, I.K.’s response is just one short, misspelled sentence. (P-92 at P4753.) In March, I.K.’s response to the exact same prompt was a five-sentence paragraph with correct spelling but for one word and correct grammatical structure. (Id. at P4754.) Gonzales testified that the difference between these responses demonstrates “huge” progress in written expression and confidence. (T6 36:1–38:7.)
203. Gonzales testified that between the first and second marking periods that I.K. began attending Cambridge, her Speech and Language Progress Report demonstrates meaningful progress. (Id. at 45:10–48:15.)
204. In the skill area of Written Expression, I.K.’s level of prompting in sentence planning increased from moderate-maximum in the first marking period to moderate in the second. (P-91 at P4726.)

205. In the Language Comprehension/Auditory Processing skill area, I.K.'s level of prompting in verbally repeating directions and following two-step directions increased from moderate-maximum to moderate. (Id. at P4727.)
206. And in the Vocabulary/Semantic Organization/Word-Retrieval skill area, her level of prompting in use of description words increased from moderate-maximum to moderate. (Id. at P4727.)
207. Gonzales testified that I.K. also progressed in her Occupational Therapy services. (T6 49:11–21.) In the skill area of Visual Motor and Oculomotor, I.K. progressed from moderate to minimum-moderate level of prompting in production of the uppercase alphabet. (P-100 at P4774.)
208. Finally, Gonzales also testified that I.K. made “significant progress” as demonstrated by her 2022/2023 second marking period Progress Report. (T6 51:7–55:5.)
209. In Language class, I.K. maintained nearly all of her skills between the first and second marking periods. (P-90 at P4709.) Gonzales testified that is expected for a student with severe dyslexia. (T6 51:11–21.)
210. In Writing, I.K. maintained or improved all of her skills. (P-90 at P4710.) Gonzales testified this demonstrates meaningful progress. (T6 51:22–52:5.)
211. I.K. also maintained all of her skills in Reading between the first and second marking periods. (P-90 at P4712.) The same is true for Math, where she also improved in one skill. (Id. at P4713–14.)

### **Credibility**

As the joint stipulation of facts submitted by the parties summarized the pertinent testimony, this tribunal now turns to the credibility analysis of the witnesses.

In evaluating evidence, it is necessary to assess the credibility of the witnesses. Credibility is the value that a finder of the facts gives to a witness's testimony. It requires an overall assessment of the witness' story in light of its rationality or internal consistency and the manner in which it "hangs together" with the other evidence. Carbo v. United States, 314 F.2d 718, 749 (9th Cir. 1963). "Testimony to be believed must not only proceed from the mouth of a credible witness but must be credible in itself," in that "[i]t must be such as the common experience and observation of mankind can approve as probable in the circumstances." In re Perrone, 5 N.J. 514, 522 (1950).

A fact finder "is free to weigh the evidence and to reject the testimony of a witness . . . when it is contrary to circumstances given in evidence or contains inherent improbabilities or contradictions which alone or in connection with other circumstances in evidence excite suspicion as to its truth." Id. at 521–22; see D'Amato by McPherson v. D'Amato, 305 N.J. Super. 109, 115 (App. Div. 1997). A trier of fact may also reject testimony as "inherently incredible" when "it is inconsistent with other testimony or with common experience" or "overborne" by the testimony of other witnesses. Congleton v. Pura-Tex Stone Corp., 53 N.J. Super. 282, 287 (App. Div. 1958).

Further, "[t]he interest, motive, bias, or prejudice of a witness may affect his credibility and justify the [trier of fact], whose province it is to pass upon the credibility of an interested witness, in disbelieving his testimony." State v. Salimone, 19 N.J. Super. 600, 608 (App. Div.), certif. denied, 10 N.J. 316 (1952) (citation omitted). The choice of rejecting the testimony of a witness, in whole or in part, rests with the trier and finder of the facts and must simply be a reasonable one. Renan Realty Corp. v. Dep't of Cmty. Affairs, 182 N.J. Super. 415, 421 (App. Div. 1981).

#### Fact Witnesses:

I found the testimony of the two fact witnesses presented by the parents, I.K.'s mother **A.K.**, and **Mooney**, I.K.'s first and second grade teacher, to be clear, direct, and believable. A.K.'s testimony described I.K.'s experience as a student at Hopewell, the family's interaction with the District, and her improvement at Cambridge. She was not subject to cross-examination. Similarly, Mooney's testimony detailed her interactions

with I.K. and her concerns about her regression. She was subject to minimal cross-examination. I therefore deem the testimony of A.K. and Mooney to be credible.

Expert Witnesses:

I found all the expert witnesses to be highly qualified and experienced, as they presented professional, clear, and direct testimony and did not harbor any bias.

**Gonzales'** testimony, which outlined both I.K.'s program and progress at Cambridge, was straightforward and professional. She testified that after approximately five months at Cambridge, I.K. appeared to be a different student entirely. (Joint Stipulation ¶ 200.) I found her testimony to be credible.

The remaining respective experts disagreed on whether I.K. was making meaningful progress while enrolled in Hopewell. **DiNardo, Hoffman, Anker, and Tighe**, testifying on behalf of the District, believe that I.K. made meaningful progress (Joint Stipulation ¶¶30, 31, 37, 80). Specifically, I.K. made progress with CORE Phonological Segmentation, the Grade High Frequency Word Survey, fluency, and Aimsweb testing, and her words read correctly per minute increased and her errors decreased. (Joint Stipulation ¶¶ 81, ¶¶82.) Anker testified that I.K. made "slow incremental progress." I then questioned her on the difference between "slow incremental" and "meaningful progress":

Q: The term "meaningful progress" has been mentioned a lot this morning and I think that the question that Mr. Harrison just asked is the perfect time for me to jump in and ask this question; what do you consider meaningful progress? What is the standard?

A: To me, meaningful progress, and I think to - -

Q: No, let me be clear, to you not only as her teacher but as an expert in special education, because you've given your opinion - -

A: Yes.

Q: - - as an expert, what is meaningful progress and when is it not meaningful progress?

A: So meaningful progress means that I see growth in her data, that she's gaining the skills that she needs. When I'm talking about I, specifically, the building blocks that she needs to become a reader and to be a confident reader.

Meaningful progress shows that her data increases, like if we're looking at her fluency data, I see that her score goes up and her errors go down. To me that's meaningful progress. If I see her DRA go from a two to an eight, that's meaningful progress.

Meaningful progress - -

Q: But what is - - but what is the line because, you know, you also talked about slow, and steady, and incremental progress. What is the line between slow and steady incremental, when would that - - when does that become meaningful progress and when does it remain not meaningful progress?

A: So if a child is remaining stagnant and they're not moving up, then a child is not making meaningful progress.

If a child is regressing, they are not obviously making any progress.

Q: So any movement in a positive direction is meaningful progress in your opinion.

A: When we're looking at kids with learning disabilities, who we know have significant needs, yes, when I see an upward trend that is meaningful progress in the world of special education, that's what meaningful progress means to me.

I know that meaningful progress does not always mean in a year you can close a two year grade level gap. That's - - that's not always - - that's not possible, not always possible. We have to meet a child where they are and use data to drive instruction, and as

documented in her IEP we see her scores going up.

Q: Right, that's perfect. One last follow-up from me.

A: Okay.

Q: So you said in your opinion - -

A: Yes.

Q: - - not only as her teacher, as a fact witness in kindergarten and second grade, but also as an expert in special education - -

A: Yes.

Q: - - that as long - - even if it's slow and steady progress, I mean, we can leave the issue of the grade level for another - - for another time, but the fact that this student was moving in an upward trajectory, that to you means meaningful progress, so really any progress at all would be meaningful progress? Is there a time - - hold on, Mr. Harrison is there any time where any progress would not be meaningful?

A: No, I don't believe so, if it's - - if it's collected with data and I see an upward trend, that to me is meaningful progress - -

Q: Okay, thank you.

A: - - as a special educator.

Q: Thank you.

[Joint Stipulation ¶84] [T3 59:7-62:1.]

I have no doubt that the witnesses for the District genuinely believe in the program that was developed for I.K. and that it provided FAPE. However, I am unpersuaded by their expert opinions that I.K. was making meaningful progress, or that any trend in a positive direction is meaningful progress, as these conclusions are undermined throughout the record.

Evaluations revealed that I.K.'s FSIQ ranges from 83 (low average) to 94 (average) (Joint Stipulation ¶14, ¶42). However, the record is replete with examples of a lack of meaningful progress. The progress report for the 2019–2020 school year was “otherwise unremarkable” (Joint Stipulation ¶33). The 2020 IEP also described what the staff characterized as meaningful progress on Go Math testing during first grade, but, despite same, I.K. repeated the identical curriculum in second grade. (T1 82:10–15; R-6 at 7) (Joint Stipulation ¶32.) The May 10, 2021, IEP (written for second grade) repeated the same math instruction from first grade for second grade. (Joint Stipulation ¶60). Mooney testified that at the end of the 2021 ESY term, I.K. regressed from independent reading to requiring teacher instruction when reading (T4 206:7–17) (Joint Stipulation ¶62).

Testing also demonstrated I.K.'s lack of meaningful progress. On the Woodcock Johnson IV test of Achievement for reading, written language, and mathematics, I.K.'s overall score was within the “low” range and her achievement scores were in the “very low” to “low average” range (Joint Stipulation ¶48); I.K.'s scores on the Clinical Evaluation of Language Fundamentals-5th Edition (CELF-5) in the Receptive Language and Language Content Index were “below average” (R-13 at 296), and on the Phonological Awareness Test-2nd Edition Normative Updated (PAT-2:NU) Phoneme-Grapheme Index, I.K.'s scores fell “below average.” (*Id.* at P2755) (Joint Stipulation ¶53.)

The testimony and reports of **Dr. Kimberlin** and **Caplan** cast further doubt on I.K.'s progress in the District, as they showed a student with startlingly low scores. On the Test of Integrated Literacy (TILLS), I.K. scored in the 0 percentile. (P-67 at P3854; T4 51:18–53:11.) I.K. scored in the 0 percentile in the sound-words composite; the 0 percentile in syntax, sentence, discourse, and writing; the 4th percentile in oral language; and the 0 percentile in the written language composite. (P-67 at P3854–56; T4 53:12–54:4) (Joint Stipulation ¶129.) On the Feifer Assessment of Reading (FAR) I.K.'s phonological index was in the 7th percentile, her fluency was in the 6th percentile, and her comprehension was in the 3rd percentile. (P-36 at P2735–40; T4 39:21–22.) On the Woodcock-Johnson test, I.K.'s basic Reading score was in the 2nd percentile. (P-36 at P2740; T4 40:18–23) (Joint Stipulation ¶120.) I.K. also scored in the 0



percentile in reading fluency. (P-67 at P3854; T4 67:5–13) (Joint Stipulation ¶132.) I.K.'s basic reading skills standard score was in the “very low” range with a percentile rank of 2 (P-73 at P4014) (Joint Stipulation ¶155), and Caplan detailed other “low” and “very low” scores. (Joint Stipulation ¶156, ¶157, ¶158.)

Dr. Kimberlin persuasively testified that the program Hopewell provided was “obviously not working” (T4 61:5–16); that the services Hopewell provided were “disjointed and lacked consistency,” which is “confusing” to students, as it makes it unclear what the expectations for their education are (*Id.* at 73:24–74:14); and that the placement of I.K. in general education along with her special education instruction was a “poor” recommendation. (*Id.* at 75:23–76:2.) Further, the AimsWeb test did not demonstrate meaningful progress. (T4 89:10–90:15) (Joint Stipulation ¶116.) She also found that I.K. was performing “well below grade level.” (Joint Stipulation ¶111.)

Caplan persuasively testified that Hopewell’s placement of I.K. in a self-contained program recognized how far behind she was and that she required more time and more intensive teaching in special education. (Joint Stipulation ¶168.) The programming was not cohesive or consistent because it offered isolated periods of instruction that were not carried over or integrated with I.K.’s other courses. (Joint Stipulation ¶173.) She also noted that between first and second grade, I.K. repeated the exact same math curriculum, utilized the same exact math book, and covered the same exact chapters. (Joint Stipulation ¶167.)

Put simply, the record fails to support the expert opinions of DiNardo, Hoffman, Anker, and Tighe that I.K. was making meaningful progress. Accordingly, based upon a review of the complete record, and having had the opportunity to personally assess the demeanor and credibility of both the fact and expert witnesses, I **FIND** the opinions of expert witnesses Dr. Kimberlin and Caplan to be persuasive that I.K. was not making meaningful progress in Hopewell.

## **LEGAL DISCUSSION**

Federal funding of state special education programs is contingent upon the states providing a “free and appropriate education” (FAPE) to all disabled children. 20 U.S.C. § 1412. The Individuals with Disabilities Act (IDEA) is the vehicle Congress has chosen to ensure that states follow this mandate. 20 U.S.C. §§ 1400 et seq. “[T]he IDEA specifies that the education the states provide to these children ‘specially [be] designed to meet the unique needs of the handicapped child, supported by such services as are necessary to permit the child to benefit from the instruction.’” D.S. v. Bayonne Bd. of Educ., 602 F.3d 553, 556 (3d Cir. 2010) (citations omitted). The responsibility to provide a FAPE rests with the local public school district. 20 U.S.C. § 1401(9); N.J.A.C. 6A:14-1.1(d). Subject to certain limitations, FAPE is available to all children with disabilities residing in the State between the ages of three and twenty-one, inclusive. 20 U.S.C. § 1412(a)(1)(A), (B). The district bears the burden of proving that a FAPE has been offered. N.J.S.A. 18A:46-1.1.

New Jersey follows the federal standard that the education offered “must be ‘sufficient to confer some educational benefit’” upon the child. Lascari v. Bd. of Educ. of Ramapo Indian Hills Reg’l High Sch. Dist., 116 N.J. 30, 47 (1989) (citations omitted). The IDEA does not require that a school district “maximize the potential” of the student but requires a school district to provide a “basic floor of opportunity.” Hendrick Hudson Cent. Sch. Dist. Bd. of Educ. v. Rowley, 458 U.S. 176, 200 (1982). In addressing the quantum of educational benefit required, the Third Circuit has made clear that more than a “trivial” or “*de minimis*” educational benefit is required, and the appropriate standard is whether the child’s education plan provides for “significant learning” and confers “meaningful benefit” to the child. T.R. v. Kingwood Twp. Bd. of Educ., 205 F.3d 572, 577 (3d Cir. 2000) (internal citations omitted).

As noted in D.S., an individualized education plan (IEP) is the primary vehicle for providing students with the required FAPE. D.S., 602 F.3d at 557. An IEP is a written statement developed for each child that explains how FAPE will be provided to the child. 20 U.S.C. § 1414(d)(1)(A)(i). The IEP must contain such information as a specific statement of the student’s current performance levels, the student’s short-term and long-term goals, the proposed educational services, and criteria for evaluating the

student's progress. See 20 U.S.C. § 1414(d)(1)(A)(i)(I)–(VII). It must contain both academic and functional goals that are, as appropriate, related to the Core Curriculum Content Standards of the general education curriculum and “be measurable” so both parents and educational personnel can be apprised of “the expected level of achievement attendant to each goal.” N.J.A.C. 6A:14-3.7(e)(2). Further, such “measurable annual goals shall include benchmarks or short-term objectives” related to meeting the student's needs. N.J.A.C. 6A:14-3.7(e)(3). The school district must then review the IEP on an annual basis to make necessary adjustments and revisions. 20 U.S.C. § 1414(d)(4)(A)(i).

A due process challenge can allege substantive and/or procedural violations of the IDEA. If a party files a petition on substantive grounds, the administrative law judge (ALJ) must determine whether the student received a FAPE. N.J.A.C. 6A:14-2.7(k). If a party alleges a procedural violation, an ALJ may decide that a student did not receive a FAPE only if the procedural inadequacies: (1) impeded the child's right to a FAPE; (2) significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of FAPE to the child; or (3) caused a deprivation of educational benefits. Ibid. In the instant matter, petitioners allege substantive violations of the IDEA.

At issue in this matter is whether the May 9, 2022, IEP, (R-27) and its predecessors, proposed by the District, afforded FAPE to I.K. in the least restrictive environment. 20 U.S.C. § 1412(a)(1); J.T. v. Dumont Pub. Schs., 438 N.J. Super. 241, 257 (App. Div. 2014) (citing Lascari at 33).

In Endrew F. v. Douglas Cnty. Sch. Dist. RE-1, 137 S. Ct. 988, 1001 (2017), the United States Supreme Court construed the FAPE mandate to require school districts to provide “an educational program reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances.” The Court's holding in Endrew F. largely mirrored the Third Circuit's long-established FAPE standard, which requires that school districts provide an educational program that is “reasonably calculated to enable the child to receive meaningful educational benefits in light of the student's intellectual potential and individual abilities.” Dunn v. Downingtown Area Sch.

Dist. (In re K.D.), 904 F.3d 248, 254 (3d Cir. 2018) (quoting Ridley Sch. Dist. v. M.R., 680 F.3d 260, 269 (3d Cir. 2012)). In addressing the quantum of educational benefit, the Third Circuit has made clear that more than a “trivial” or “de minimis” educational benefit is required, and the appropriate standard is whether the IEP provides for “significant learning” and confers “meaningful benefit” to the child. Andrew F., 137 S. Ct. at 1000–01; T.R., 205 F.3d at 577 (3d Cir. 2000); Ridgewood Bd. of Educ. v. N.E. ex rel. M.E., 172 F.3d 238, 247 (3d Cir. 1999), superseded by statute on other grounds as recognized by P.P. v. W. Chester Area Sch. Dist., 585 F.3d 727 (3d Cir. 2009); Polk v. Cent. Susquehanna Intermediate Unit 16, 853 F.2d 171, 180, 182–84 (3d Cir. 1988). Hence, an appropriate educational program will likely “produce progress, not regression or trivial educational advancement.” Dunn, 904 F.3d at 254 (quoting Ridley, 680 F.3d at 269).

The IDEA’s FAPE requirement also includes a mainstreaming component, requiring education in the least restrictive environment. S.H. v. State-Operated Sch. Dist., 336 F.3d 260, 265 (3d Cir. 2003); 20 U.S.C. §1412(a)(5)(A). “The least restrictive environment is the one that, to the greatest extent possible, satisfactorily educates disabled children together with children who are not disabled, in the same school the disabled child would attend if the child were not disabled.” S.H., 336 F.3d at 265 (quoting Carlisle, 62 F.3d at 535). The school district bears the burden to establish that the district offered a FAPE in the least restrictive environment. N.J.S.A. 18A:46-1.1.

The New Jersey Supreme Court stated the following in Lascari, 116 N.J. at 46: “We also conclude that in determining whether an IEP was appropriate, the focus should be on the IEP actually offered and not on one that the school board could have provided if it had been so inclined.”

The District argues that the parents “failed to debunk the District’s demonstration that its IEPs were appropriate for I.K.” (District Post-Hearing Brief at 97–101) and that “the IEPs offered to I.K. provided a free appropriate public education in the least restrictive environment appropriate to her needs.” (Id. at 102.)

However, the parents persuasively argue that the District failed to provide I.K. with IEPs that provided FAPE and that the IEPs did not address her individualized needs. (Parents Post-Hearing Brief at 67–71.) Additionally, the May 2022 IEP “does not provide I.K. with a FAPE because it has not allowed her to make progress in light of her potential.” (Id. at 74–75.)

The parents’ argument is supported by the persuasive expert testimony of Dr. Kimberlin and Caplan. As noted above, I.K., a child with an FSIQ ranging from 83 (low average) to 94 (average) (Joint Stipulation ¶¶14, ¶42), scored consistently low on the testing done by Dr. Kimberlin and Caplan. (Joint Stipulation ¶¶120, ¶129, ¶132, ¶155, ¶156, ¶157, ¶158.) I.K. also exhibited low scores on the District’s evaluations (Joint Stipulation ¶¶48, ¶53), and she repeated the same curriculum and instruction. (Joint Stipulation ¶¶32, ¶60, ¶167.)

Dr. Kimberlin persuasively testified that Hopewell was “obviously not working” and that the services Hopewell provided were “disjointed and lacked consistency.” (Joint Stipulation ¶¶116.) Caplan agreed, stating that the program was not cohesive or consistent because it offered isolated periods of instruction that were not carried over or integrated with I.K.’s other courses. (Joint Stipulation ¶¶173.)

Based on the foregoing, and a review of the competent, credible, and relevant evidence in this matter, the District has failed to carry its burden. The record unambiguously demonstrates that I.K. was not making meaningful progress at Hopewell. Further, the proposed IEP does not address I.K.’s needs and does not confer upon her a meaningful educational benefit in the least restrictive environment. Therefore, I **CONCLUDE** that the District failed to offer FAPE.

This tribunal now turns to the issue of the appropriate placement for I.K. In accordance with N.J.A.C. 6A:14-2.10, parents may receive reimbursement for a unilateral placement as follows:

(b) If the parents of a student with a disability who previously received special education and related services from the district of residence enroll the student in a nonpublic school, an early childhood program, or approved private school for students with

disabilities without the consent of, or referral by, the district board of education, an administrative law judge may require the district board of education to reimburse the parents for the cost of enrollment if the administrative law judge finds that the district board of education had not made a free, appropriate public education available to the student in a timely manner prior to enrollment and that the private placement is appropriate.

Our regulation mirrors well-established Federal Law. Parents who unilaterally withdraw their child from public school and place him in a private school without consent from the school district “do so at their own financial risk.” Sch. Comm. of Burlington v. Mass. Dep’t of Educ., 471 U.S. 359, 374 (1985); see also N.J.A.C. 6A:14-2.10(b)(1). They may be entitled to reimbursement for the costs of their unilateral private placement only if a court finds that the proposed IEP was inappropriate, and the private placement was appropriate under the IDEA. 20 U.S.C. § 1412(a)(10)(C)(ii). Once a court holds that the public placement violated IDEA, it is authorized to “grant such relief as the court determines is appropriate.” 20 U.S.C. § 1415(i)(2)(C)(iii).

Parents who are compelled to unilaterally place their child in the face of a denial of FAPE need not select a school that meets state standards. Florence Cnty. Sch. Dist. Four v. Carter, 510 U.S. 7 (1993); L.M. ex rel H.M. v. Evesham Twp. Bd. of Educ., 256 F. Supp. 2d 290 (D.N.J. 2003). The Third Circuit has held that “parents [are] entitled to reimbursement even [when a] school lack[s] state approval because the [FAPE] state standards requirement . . . applies only to placements made by a public authority.” Id. at 297 (citing T.R., 205 F.3d at 581 (3d Cir. 2000)); see also Warren G. v. Cumberland Cnty. Sch. Dist., 190 F.3d 80, 83 (3d Cir. 1999). Accordingly, our courts recognize that parents who unilaterally place their child by necessity do so without the expertise and input of school professionals that is contemplated by a truly collaborative IEP process. The courts recognize that under these circumstances, parents essentially do the best they can, holding that, “when a public school system has defaulted on its obligations under the [IDEA], a private school placement is ‘proper under the Act’ (IDEA) if the education provided by the private school is ‘reasonably calculated to enable the child to receive educational benefits.’” Florence, 510 U.S. at 11 (quoting Rowley, 458 U.S. at 207).

Under this standard, I **CONCLUDE** that the placement of I.K. at Cambridge was appropriate. The parents argue that the placement of I.K. is appropriate. “Overall the instruction I.K. receives at Cambridge is highly *individualized* to her needs. That *individualized* instruction has resulted in meaningful changes to I.K.’s social and emotional state, as well as her academic performance.” (Parents’ Post-Hearing Brief at 79.) This argument is supported by the testimony of Gonzales, Dr. Kimberlin, and Caplan.

Gonzales detailed I.K.’s program, which includes speech and language services once a week for forty-five minutes, and the pathologists work in unison with her teachers for carry-over. (P-54; T6 23:1–24.) That carryover is also present because I.K. receives writing instruction during speech and language to address her executive function. (T6 24:22–25:12) (Joint Stipulation ¶190.) Further, I.K. is placed in Foundations, a Wilson program for K–3 students. (Id. at 29:2–30:11.) I.K. also receives two additional 1:1 Wilson lessons per week. (Id. at 30:12–31:9) (Joint Stipulation ¶193.) I.K.’s teachers are certified or trained in Wilson instruction, which allows I.K.’s teachers to integrate Wilson into all her classes. (Joint Stipulation ¶194.)

Gonzales testified that as a result of Cambridge’s program, I.K. is making meaningful academic progress. (Id. at 14:17–16:22.) On the Read Naturally Live program, I.K. has demonstrated significant progress “from the .8 level in September to 1.3 currently” (March 2023). (P-51, P-94, and P-95; T6 20:4–21:11.) Further, I.K. has demonstrated phenomenal executive function improvement at Cambridge. (T6 28:6–29:1) (Joint Stipulation ¶196.) She added that after approximately five months at Cambridge, I.K. appeared to be a different student entirely. (Joint Stipulation ¶200.)

Dr. Kimberlin testified that Cambridge is the appropriate placement for I.K. (Id. at 197:19–22.), and that it offers highly sequential and structured instruction to I.K. (Id. at 78:3–22) (Joint Stipulation ¶135, ¶136.) She added that Cambridge’s small class sizes and specialization in dyslexia, along with individualized speech-language intervention for I.K., is appropriate for her needs. (Joint Stipulation ¶142.) Finally, Dr. Kimberlin testified that I.K. has demonstrated significant improvement on the WADE program. (T4 113:2–116:2.) Between September 2022 and February 2023, I.K.’s scores on the

Sounds subtest increased from 24% accuracy to 48% accuracy. (P-91 at P4743.) In Reading, I.K. increased from 1% to 18% accuracy. (Ibid.) In Spelling, I.K. increased from 8% to 24% accuracy. (Ibid.) (Joint Stipulation ¶140.)

Caplan testified that when I.K. began at Cambridge, she only knew three sight words (the words “the,” “them,” and “for”). (T5 57:6–58:6.) After several months at Cambridge, I.K. made demonstrable progress. (Id. at 53:11–24.) (Joint Stipulation ¶180.) She added that I.K. is making meaningful progress at Cambridge compared to at Hopewell based on speaking with the teachers and the WADE assessment “that measured her skills from September to present,” with the WADE testing “being linked to the skills of the Wilson reading program” I.K. was being instructed in throughout the day at Cambridge. (T5 53:11–24) (Joint Stipulation ¶181.)

Pursuant to N.J.A.C. 6A:14-2.10(c)(4), reimbursement for a unilateral placement can be reduced or denied upon a finding “of unreasonableness with respect to the actions taken by the parents.” Here, the District does not allege, and the record does not support, a finding that the parents were unreasonable. In fact, DiNardo testified that the parents were cooperative and collaborative throughout the process as reported to her by her staff. (T1158:22–159:24) (Joint Stipulation ¶23.)

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

Finally, the parents argue that they should be awarded four hours of compensatory education from the first day Hopewell was put on notice, June 26, 2019, to I.K.’s last day of attendance in Hopewell, June 22, 2022. (Parents Post-Hearing Brief at 72.) Compensatory education is a judicially created remedy that may be awarded to account for the period in which a disabled student was deprived of their right to FAPE. Burlington, 471 U.S. at 369 (1985) (finding that tuition reimbursement was an appropriate remedy under the Education of the Handicapped Act, predecessor to the IDEA); Coleman v. Pottstown Sch. Dist., 983 F. Supp. 2d 543, 566 (3d. Cir. 2013).



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

A finding of compensatory education does not require that there be an IEP first; a disabled child’s right to compensatory education “accrues when the school knows or should know that the student is receiving an inappropriate education.” Ridgewood, 172 F.3d at 249. The appropriate calculation for compensatory education relief should be the period of deprivation, minus the time reasonably required for the district to correct the problem. Mary Courtney T. v. Sch. Dist., 575 F.3d 235, 249 (3d Cir. 2009). Compensatory education relief is appropriate if it furthers the purposes of the IDEA. Ferren C. v. Sch. Dist. of Phila., 612 F.3d 712, 719 (3d Cir. 2010) (citing Burlington, 471 U.S. at 369). However, the Supreme Court has declined to limit a court’s discretion in granting equitable relief under the IDEA. See Burlington, 471 U.S. at 369; see also Forest Grove Sch. Dist. v. T.A., 557 U.S. 230 (2009).

The parents argue that “I.K.’s deprivation of FAPE occurred on the first day that Hopewell was aware she required speech services. In June of 2019, Petitioners provided Hopewell with a letter advising of Kristen Herzel’s findings that I.K. has Dyslexia that required remediation. Hopewell never regarded this evaluation, and for two years entirely **failed** to provide I.K. Speech and Language services.” (Parents Post Hearing Brief at 72.) This argument is unpersuasive and is not supported by the record. In fact, while the District did not formally accept or deny Dr. Herzel’s evaluation, it was considered (Joint Stipulation ¶22), and the parents fail to substantiate their argument that the District knew or should have known that FAPE was not provided. Accordingly, I **CONCLUDE** that parents’ claim for compensatory education is denied.

**ORDER**

It is hereby **ORDERED** that the parents' due process petition is **GRANTED** in part as follows: The District is directed to place I.K. at Cambridge School and transport her there at the expense of the District. The District shall reimburse the parents for the cost of I.K.'s attendance at Cambridge School, including transportation, retroactive to her enrollment.

It is further **ORDERED** that the parents' due process petition is **DENIED** in part as follows: The request for compensatory education is denied; the request for reimbursement for private evaluations and other out-of-pocket expenses is denied; and the request for counsel fees and costs is denied.

It is hereby **ORDERED** that District's due process petition is **DENIED** and is **DISMISSED**.

This decision is final pursuant to 20 U.S.C. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2023) 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 (2023). If the parent or adult student feels that this decision is not being fully implemented with respect to program or services, this concern should be communicated in writing to the Director, Office of Special Education Programs.

December 22, 2023 \_\_\_\_\_

DATE

  
\_\_\_\_\_  
**JACOB S. GERTSMAN, ALJ t/a**

Date Received at Agency:

December 22, 2023 \_\_\_\_\_

Date Mailed to Parties:

December 22, 2023 \_\_\_\_\_

JSG/

**APPENDIX**

**WITNESSES**

**For petitioners**

Dr. Karen Kimberlin  
Allyson Mooney  
Susan Caplan  
Ellen Gonzales  
A.K.

**For respondent**

Paulette DiNardo  
Beth Hoffman  
Abigail Anker  
Antoinette Tighe

**EXHIBITS**

**For petitioners**

- P-16 ESY Progress Report Allyson Mooney November 5, 2021 (bates stamp 1856–1857)
- P-46 Cambridge School Admissions Summary & DAR (Diagnostic Assessments of Reading) Response Record January 11, 2022 (bates stamp 3395–3416)
- P-48 Cambridge WIST September 16, 2022 (bates stamp 3418)
- P-67 Language & Literacy Evaluation By: Dr. Karen Kimberlin August 31, 2022 (bates stamp 3844–3888)
- P-70 Curriculum Vitae: Dr. Karen Kimberlin (bates stamp 3907–3986)

- P-71 Neuropsychological Evaluation By: Kristen Herzel June 17 and 25, 2019 (bates stamp 3987–4000)
- P-72 Bio of Kristen Herzel (bates stamp 4001–4005)
- P-73 Educational Evaluation By: Susan Caplan February 25, 2022 (bates stamp 4006–4024)
- P-74 IEP Meeting Notes Report By: Susan Caplan May 9, 2022 (bates stamp 4025–4027)
- P-75 Cambridge Observation By: Susan Caplan November 7, 2022 (bates stamp 4028–4030)
- P-76 Curriculum Vitae: Susan Caplan (bates stamp 4031–4034)
- P-90 Cambridge Speech & Language Progress Report: Kristen Lane December 3, 2022 (bates stamp 4689–4691)
- P-91 Cambridge Speech & Language Progress Report: Kristen Lane March 1, 2023 (bates stamp 4726–4730)
- P-92 Cambridge Updated Records: Writing Samples 2022–23 School Year (bates stamp 4752–4754)
- P-94 Cambridge Read Naturally Live: Benchmark Assessor 2022–23 School Year (bates stamp 4756–4757)
- P-95 Cambridge Read Naturally Live: Performance Report February 23, 2023 (bates stamp 4758–4766)
- P-98 Annual Review Meeting Report of Susan Caplan January 25, 2022 (bates stamp 4769–4771)
- P-100 Cambridge Occupational Therapy: Progress Report—Kathleen DeNault-Ridge 2022–23 School Year (bates stamp 4774–4779)

**For respondent**

- R-4 IEP June 11, 2019
- R-5 Neuropsychological Evaluation June 25, 2019
- R-6 IEP April 15, 2020
- R-7 Progress report, 2019-2020
- R-8 ESY 2020 progress report
- R-9 Psychological Evaluation November 20, 2020

- R-10 Educational Evaluation December 10, 2020
- R-11 Occupational Therapy Evaluation December 15, 2020
- R-12 IEP January 13, 2021
- R-13 Speech-Language Specialist's Report March 25, 2021
- R-14 IEP May 10, 2021
- R-15 Neurodevelopmental Evaluation June 1, 2021
- R-16 Neurodevelopmental Evaluation, Part II June 18, 2021
- R-17 Progress report 2020–2021
- R-18 Report card 2020–2021
- R-19 CAP Evaluation July 20, 2021
- R-20 ESY 2021 progress report
- R-21 IEP August 23, 2021
- R-22 IEP January 5, 2022
- R-26 Email chain regarding adding additional reading support to program, April 25 to 29, 2022
- R-27 IEP May 9, 2022
- R-28 Email from parent rejecting IEP May 17, 2022
- R-30 Email from District declining to place student at Cambridge May 18, 2022
- R-32 Request for independent evaluations June 8, 2022
- R-33 Progress report 2021–2022
- R-34 Report card 2021–2022
- R-35 Math work samples 2021–2022
- R-36 Reading and ELA work samples 2021–2022
- R-37 Writing and ELA work samples 2021–2022
- R-38 Email from P. DiNardo to K. Kimberlin with answers to questions July 22, 2022
- R-43 CV and certifications—Abigail Anker
- R-45 CV and certifications—Paulette DiNardo
- R-47 CV and certifications—Beth Hoffman
- R-51 CV and certifications—Antoinette Tighe