

**COMMONWEALTH OF MASSACHUSETTS
DIVISION OF ADMINISTRATIVE LAW APPEALS
BUREAU OF SPECIAL EDUCATION APPEALS**

In re: Quinelle¹

BSEA #2009112

DECISION

This decision is issued pursuant to the Individuals with Disabilities Education Act (20 USC 1400 *et seq.*), Section 504 of the Rehabilitation Act of 1973 (29 USC 794), the state special education law (MGL c. 71B), the state Administrative Procedure Act (MGL c. 30A), and the regulations promulgated under these statutes.

A hearing was held remotely over Zoom on August 31, October 27, 28, 29, and 30, November 2, and December 9 and 16, 2020, before Hearing Officer Amy Reichbach. Those present for all or part of the proceedings, all of whom agreed to participate virtually, were:

Mother	
Father	
Maura Abate	Private Neuropsychologist
Julie Accorsi	Second Grade Teacher, Florence Sawyer School (FSS), Nashoba Regional School District (NRSD)
Allison Alioto	Speech Therapist, Integrated Children’s Therapies
Lori Anselmo	School Psychologist, NRSD
Bethany Bressette	School Psychologist and Team Chair, NRSD
Joan DeAngelis	Director of Pupil Personnel, NRSD
Lori DiPrima	First Grade Teacher, FSS, NRSD
Karen Fitzpatrick	Occupational Therapist, NRSD
Yvonne Forté	Special Education Teacher, FSS, NRSD (Retired)
Terri Alicia Madden	Special Education Teacher, FSS, NRSD
Anne Neylon	Team Chair, NRSD
Karen Pervier	Student’s Private Reading Tutor
Emily Vinci	Speech/Language Pathologist, FFS, NRSD
Carla Leone, Esq.	Attorney for Parents
Vineesha Sow, Esq.	Attorney for NRSD
Alina Kantor Nir	Hearing Officer, BSEA (observer)
Anne Bohan	Court Reporter
Carol Kusinitz	Court Reporter
Jane Williamson	Court Reporter

The official record of the hearing consists of documents submitted by the Parents and marked as Exhibits P-1 to P-184; documents submitted by Nashoba Regional School District and marked as Exhibits S-1 to S-37; approximately seven and a half days of oral testimony and

¹ “Quinelle” is a pseudonym chosen by the Hearing Officer to protect the privacy of the Student in documents available to the public.

argument; and an eight-volume transcript produced by court reporters. At the request of the parties the case was continued to January 22, 2021 and the record held open for submission of closing arguments. The parties' closing arguments were received and the record closed on that date.

INTRODUCTION

On April 27, 2020, Parents filed a *Hearing Request* against Nashoba Regional School District (NRSD, or the District) alleging that then eight-year old Quinelle, who has been diagnosed with a Language Disorder due to ongoing difficulties with expressive language, Specific Learning Disorders with Impairments in Reading, Mathematics, and Written Expression, and Attention Deficit Hyperactivity Disorder (ADHD) – Inattentive Type, requires placement in a small, language-based program. They requested reimbursement for their unilateral placement of Quinelle at the Carroll School for the summer of 2020 and the 2020-2021 school year, including tuition and transportation; reimbursement for privately provided services beginning in May 2019; and prospective placement in a language-based program. Specifically, Parents assert that NRSD failed to provide Quinelle with a free, appropriate public education (FAPE) during the two years preceding their filing; that NRSD's proposed 2020-2021 individualized education program (IEP) (including extended school year services for the summer of 2020) is not reasonably calculated to provide Quinelle with a FAPE; that the District failed to implement Quinelle's IEPs over the last two years, particularly during school closures that began on or about March 13, 2020; that NRSD unlawfully discriminated against Quinelle in violation of Section 504 of the Rehabilitation Act of 1973; and that the District committed a number of procedural errors that amounted to a violation of FAPE.

The hearing was scheduled for May 29, 2020. On April 29, 2020 NRSD filed a postponement request due to the unavailability of Counsel. With Parents' assent, the hearing was postponed to September 14, 16, and 17, 2020, to permit the parties to work together toward resolution. Following a request for an extension, which was allowed, the District filed its *Response*, arguing that the IEPs it proposed for Quinelle for the periods from April 3, 2018 to April 2, 2019 (and subsequent amendments) and June 3, 2019 to June 2, 2020 (and subsequent amendments) were and are reasonably calculated to provide Quinelle with a FAPE.

On May 15, 2020, the parties jointly requested that the first day of the hearing be advanced to August 31, 2020, due to the anticipated maternity leave of a key witness, and that the remainder of the hearing be postponed to September 30, October 1, and October 2, 2020. This request was allowed, and a Pre-Hearing Conference was scheduled for July 20, 2020. On July 16, 2020, the Pre-Hearing Conference was postponed due to the illness of Parents' Counsel, and on August 3, 2020, the parties jointly requested a one-month postponement of the hearing. On August 10, 2020, I allowed that request for good cause. The Pre-Hearing Conference was scheduled for the morning of August 31, 2020, and the hearing was scheduled for the afternoon of August 31, as well as October 27, 28, 29, and 30, and November 2, 2020.

On August 20, 2020, Parents filed a *Motion to Amend the Hearing Request*, accompanied by an *Amended Hearing Request*, to incorporate additional claims regarding an IEP dated June 2, 2020 to June 1, 2021; procedural violations; extended school year services; access to the general education curriculum; and failure to implement Quinelle's IEP during school closures related to

the pandemic. The parties filed their first sets of exhibits on August 24, 2020, and the first day of hearing took place on August 31, 2020. On September 18, 2020, NRSD filed its *Response to Parents' Amended Hearing Request*.

Between September 25 and October 6, 2020, the parties each filed a *Motion for a Protective Order* and an *Opposition* to the other party's Motion. On October 1, 2020, Parents also filed a *Request for Postponement of Hearing* to permit their expert to observe Quinelle at the Carroll School, as they were experiencing difficulty making these arrangements. NRSD filed its *Opposition* to this request for an indefinite postponement on October 5, 2020. Following a Conference Call on October 2, 2020, which resolved most of the discovery issues, a telephonic *Motion Session* was held on October 8, 2020. At this time, NRSD indicated that it would agree to one additional day of Hearing in December, during which Parent's expert could testify, but would oppose further postponement in the event that she was unable to arrange for her observation before then.

On October 13, 2020, I issued an Order allowing both *Motions* in part and denying both in part. Specifically, I ordered the District to produce computerized scoring sheets, recording sheets, and any other materials that provide raw data and identify student by name, associated with the testing listed in Parent's Discovery Request 5(a), (b), and (d), but allowed NRSD's *Motion for Protective Order* as to test protocols and test booklets that do not contain such raw data, except to the extent that access to a test booklet is required to carry out a proper "explanation and interpretation" of these records. I also scheduled an additional day of Hearing on December 9, 2020.

The parties filed additional exhibits and revised witness lists on October 23, 2020, and the hearing resumed on October 27, 2020, as scheduled. An additional half day was added later, at the parties' request.

The issues for hearing were delineated as follows:

1. Whether the rejected portions of IEPs proposed for Quinelle from April 27, 2018 to June 2, 2020, and the amendments thereto (specifically, rejected portions of the IEP dated April 3, 2018 to April 3, 2019, as applied from April 27, 2018 forward, as amended, and the IEP dated June 3, 2019 to June 2, 2020), were reasonably calculated to provide Quinelle with a FAPE?
 - a. If I find that the answer is no, what is the appropriate remedy, and does it include reimbursement for privately provided services during the 2018-2019 and 2019-2020 school years and/or summer 2019?
2. Whether the IEP and placement proposed for the period from June 2, 2020 to June 1, 2021 was reasonably calculated to provide Quinelle with a FAPE;
 - a. If I find that the answer is no, whether:

- i. the Carroll school is an appropriate placement for her, thus entitling Parents to reimbursement for the 2020-2021 school year; and/or
 - ii. Parents are entitled to compensatory services in the form of reimbursement for privately provided services during the summer of 2020
3. Whether Nashoba failed to implement accepted IEPs and/or portions of IEPs between April 27, 2018 and August 20, 2020, including during the time that schools were closed due to the pandemic;
 - i. If the answer is yes, whether Parents are entitled to compensatory services in the form of additional services and/or reimbursement for privately provided services, and/or tuition and transportation to an appropriate language-based program
4. Whether NRSD discriminated against Quinelle in violation of Section 504;
5. Whether NRSD has committed procedural violations that amount to a deprivation of a FAPE because they impeded Quinelle's right to a FAPE; significantly impeded Parents' opportunity to participate in the decision-making process regarding the provision of FAPE to Quinelle; or caused a deprivation of educational benefits, specifically by:
 - a. Failing to convene the Team meeting within 10 days of receipt of Dr. Abate's observation report, to the extent such convening was required;
 - b. Failing to convene the IEP Team to report on and address Quinelle's academic progress in the general curriculum and/or review her program placement;
 - c. Failing to include all necessary elements in Quinelle's IEPs;
 - d. Failing to give meaningful consideration to parental input and recommendations of the independent educational evaluation, instead predetermining placement and refusing to investigate a continuum of placements;
 - e. Failing to provide accurate Prior Written Notice in the N1s issued on 4/27/2018, 6/13/2019, and 6/2/2020;
 - f. Removing direct speech and language services from Quinelle's IEP;

- g. Failing to propose appropriate extended school year (ESY) services for Quinelle for the summer of 2019 and/or summer 2020, and/or reducing services for summer 2020 without convening the Team;

If so, what is the appropriate remedy, and does it include tuition and transportation to an appropriate language-based program, and/or reimbursement for Quinelle's summer placements at Bancroft School during summer 2019 and the Carroll School during summer 2020?

For the reasons below, I conclude that the IEPs proposed for Quinelle from April 27, 2018 to June 2, 2020 were reasonably calculated to provide her with a FAPE. I also find that the IEP and placement proposed for the period from June 2, 2020 to June 1, 2021 was reasonably calculated to provide her with a FAPE, and as such, I do not reach the question of whether Carroll is appropriate for her. I find, further, that with the exception of the time between March 15, 2020 and the end of the 2019-2020 school year, Parents have not demonstrated that NRSD failed to implement accepted portions of IEPs or discriminated against Quinelle in violation of Section 504. Finally, Parents have not met their burden to establish that NRSD committed procedural violations that amount to a deprivation of FAPE.

FINDINGS OF FACT

1. Quinelle is a nine-year old resident of Bolton, Massachusetts, where she lives with her parents and two siblings. Quinelle has a great sense of humor and is creative, empathic, exuberant, spontaneous, spirited, and resilient. She has a strong work ethic and is motivated to succeed. Quinelle enjoys listening to stories, crafting, playing with friends, riding horses and roller coasters, swimming, skating, playing soccer, engaging in dramatic play, and baking. She is also interested in Pokemon and horror movies. Quinelle loves animals, especially horses. As a baby, Quinelle was diagnosed with scoliosis, and she participated in Early Intervention services for speech and motor delays. (P-8, P-9; S-2; Madden, I: 29-31; Mother, III: 7-8, 112; DiPrima, IV: 201; Forté, V: 16-17; Abate, VII: 105-06, VIII: 8)
2. As Quinelle was aging out of Early Intervention, NRSD proposed an evaluation of her preschool development, speech and language, and occupational therapy (OT) skills. Testing demonstrated that Quinelle possessed age appropriate cognitive, receptive language, expressive language, and motor skills. Parent ratings indicated sensory processing difficulties, but evaluators concluded that these difficulties did not appear to be impacting fine and gross motor development. At the Initial Eligibility Meeting in December 2014, the Team determined that Quinelle was ineligible to receive special education services as she did not present with an educational disability. Given her continued sensory processing difficulties and history of lack of progression when speech and language therapy were discontinued, a follow-up screening in spring 2015 was recommended. (P-54, P-55, P-56, P-57)
3. In January 2016, the District proposed, and Parents consented to, an evaluation to include Preschool Developmental and Speech/Language Assessments. By this time, Parents had enrolled Quinelle in private therapy through Integrated Children's Therapies, Inc. (ICT) for sensory and

language concerns. ICT testing conducted shortly before NRSD's evaluation indicated average range receptive and expressive language scores. The Team convened on April 4, 2016 to review NRSD's testing. Quinelle presented with age-appropriate receptive language skills and basic concept knowledge, but expressive language and school readiness skills below the Average range. At this time, Quinelle was found eligible for special education on the basis of a communication impairment. An IEP was developed for the period from April 4, 2016 to April 3, 2017 placing Quinelle in an integrated preschool program three mornings per week, with 60 minutes per week of pull-out direct speech and language services. The Team did not propose extended school year (ESY) services, due to lack of data suggesting regression. The Team determined that the NRSD occupational therapist would monitor Quinelle's motor development. Parents accepted this IEP and placement in full on April 14, 2016. (P-59, P-60, P-61, P-62, P-63; Mother, III: 11-13, 15-16)

4. Quinelle's Team convened on January 6, 2017 to discuss her progress. The Team added several objectives to her goals as well as two additional half days per week of integrated preschool to provide her with additional time to build school readiness skills. Given Parents' expressed continued concern regarding Quinelle's sensory processing, the Team agreed to have the District's occupational therapist observe her at school. Parents accepted the Amended IEP on January 25, 2017. (P-67, P-69; Mother, III: 16-18)

5. Around this time, Parents sought a private neuropsychological evaluation due to their concerns about Quinelle's difficulty acquiring letters and numbers which, combined with her early speech delay, led them to believe she could be dyslexic. She was also exhibiting sensory issues, and she could not keep up with same-age peers verbally. On January 10, 2017, licensed clinical psychologist Alyssa Orinstein, Ph.D., of Boston Neuropsychological Services, conducted a neuropsychological evaluation of Quinelle. Testing revealed an average Full Scale IQ, as well as average verbal, nonverbal, and visual spatial skills. Basic attentional functioning was assessed using working memory and processing speed tasks, all of which were within age expectations. Although Parents and Quinelle's teachers denied attentional difficulties and hyperactivity, they endorsed several executive functioning challenges. Specifically, Quinelle appeared to have difficulty controlling behavior and emotions at home, struggled with cognitive flexibility while engaging in tasks at home, and had trouble holding information in her mind at school. (P-9, P-68; S-2, S-35; Mother, III: 18-23)

Dr. Orinstein diagnosed Quinelle with a communication disorder. She declined to diagnose her with a learning disability, but she recommended close monitoring of her learning profile over time to assess whether such a diagnosis would be appropriate in the future. Dr. Orinstein also determined that Quinelle did not meet criteria for an attentional disorder, but suggested that her behavioral profile be monitored as classroom demands increased over time. Dr. Orinstein suggested that Quinelle's emotional functioning be addressed, as her recognition of her weaknesses appeared to impact her self-esteem. She concluded that Quinelle needed support around emotional regulation and social skills to improve her functioning across settings. (P-9, P-68; S-2, S-35)

Finally, Dr. Orinstein recommended that Quinelle attend full-day integrated kindergarten, continue to receive speech and language services, participate in a social skills group at school

and/or in the community, meet with a counselor at school, and receive outpatient psychotherapy to help her manage negative emotions. She also recommended that Quinelle learn basic relaxation training to help her self-soothe. (P-9, P-68; S-2, S-35; Mother, III: 213-15)

6. In February and March 2017, NRSD occupational therapist Karen Fitzpatrick conducted an OT screening of Quinelle. Ms. Fitzpatrick has a Bachelor's degree in OT. She holds both national board certification and an allied health license through the state of Massachusetts in OT. She has been employed by NRSD for 16 years. Ms. Fitzpatrick did not recommend direct services at that time, but she did recommend accommodations. She explained that she would continue to monitor Quinelle in kindergarten and consult with her teacher as needed. (P-70; Mother, III: 23-24; Fitzpatrick, VI: 6-7)

7. Quinelle's Annual Review Meeting was held on March 24, 2017, at which time the Team reviewed Dr. Orinstein's neuropsychological evaluation, Ms. Fitzpatrick's screening, and an observation conducted by the school psychologist, and developed an IEP for the period from March 24, 2017 to March 23, 2018 containing Communication, Early Literacy, and Early Numeracy goals. The IEP provided for continued placement in integrated preschool program five mornings per week for the remainder of the school year; placement in a full-day kindergarten for the next school year; communication services in both settings, provided by the Speech/Language Pathologist (SLP); and Grid B and C English language arts (ELA) and mathematics services in kindergarten. Parents accepted the IEP and placements in full on April 25, 2017. (P-71, P-72, P-73; Mother, III: 24-27)

8. Data taken following the April break in 2017 demonstrated regression in school readiness skills, but no significant regression in communication skills. As a result, the Team proposed ESY academic services (2 x 45 minutes per week from July 5 to August 15, 2017), but did not proposed ESY speech and language services. The IEP was amended to reflect this addition, and Parents accepted the Amended IEP on May 12, 2017. (P-74)

9. When Quinelle was in kindergarten, Parents were concerned about her ability to keep pace with reading and phonics, as she did not appear to be acquiring letters and numbers as quickly as they expected. They noted that she was rotating certain letters in her writing and had difficulties with math. She continued to exhibit sensory issues at home, particularly with the way certain articles of clothing felt. (Father, II: 173-75; Mother, III: 27-28, 35-36) When asked to complete academic tasks at home, Quinelle became dysregulated. (Mother, III: 49)

10. On February 9, 2018, Quinelle participated in another neuropsychological examination, this time with Kaitlyn Switalski, Ph.D., also a licensed clinical psychologist with Boston Neuropsychological Services. Parents reportedly requested the evaluation because they were concerned that Quinelle might have a learning disability, likely dyslexia, not just a communication delay, and because they felt that Quinelle's IEP was not "ambitious" enough. (P-77; Mother, III: 40, 217-18)

As in 2017, Quinelle's Full Scale IQ was in the Average range. Her performance on many instruments was in the Average range, with lower scores on measures of fluency, phonological awareness, rapid naming, and other elements of language. Quinelle demonstrated significant

improvement on the NEPSY-2, with established attention and executive control skills. Her visual motor abilities fell in the average range. (P-4, P-77; S-2, S-11, S-36)

On the Behavior Rating Inventory of Executive Function, Second Edition (BRIEF-2), Quinelle's teachers endorsed clinically significant scores on the Emotional Control and Behavioral Control indices. Clinically significant scores were reported by teachers on the Behavior Assessment System for Children, Third Edition (BASC-3) for Atypicality, Depression, Withdrawal, Learning Problems, and Functional Communication scales. Home and school forms also indicated concerns within the At Risk/Clinically Significant range on Aggression and Adaptability scales and scores consistently within the At-Risk range for Anxiety. (P-4, P-77; S-2, S-36)

Dr. Switalski diagnosed Quinelle with a Specific Learning Disability (SLD) with Impairments in Reading and Mathematics, as well as Unspecified Communication Disorder based on her difficulty with complex language. According to Dr. Switalski, Quinelle should continue to participate in an IEP, and she would benefit from a language-based learning environment, though given her "many other strengths, a language-based classroom may not be necessary for her entire day or in the future, so she should be re-assessed regularly to determine if this environment continues to serve her needs in the least restrictive manner." Dr. Switalski recommended classroom accommodations, including a behavior chart to improve problematic behaviors such as work refusal and negative behavior toward peers; daily, direct instruction from a reading specialist/certified special educator utilizing a sequential, phonics-based approach such as Wilson reading or Orton-Gillingham; direct writing instruction using a phonics-based approach; and direct mathematics instruction. She also suggested ESY services in reading, writing, math, and speech/language, as well as an OT evaluation through NRSB to address Parents' concerns regarding sensory sensitivities. (P-4, P-77; S-2, S-36; Mother, III: 42-48)

Based on Dr. Switalski's recommendation, Parents attempted to locate a language-based program for Quinelle for first grade. They applied to the Carroll School but were not offered admission, or even an interview. (Mother, III: 49; Abate, VIII: 14)

11. On April 17, 2018, following Quinelle's April 3, 2018 Annual Review meeting at which Dr. Switalski's report was discussed, NRSB proposed a full inclusion IEP for Quinelle dated April 3, 2018 to April 2, 2019 (2018-2019 IEP), with goals focused on Reading, Written Language, Mathematics, and Communication. The IEP noted that Quinelle was reading at a Benchmark Assessment System (BAS) Level A with 94% accuracy as of February 13, 2018. The IEP increased Quinelle's services and included objectives within her Communication goal to address the risk for bullying. It also reflected the accommodations Dr. Switalski suggested, many of which had already been proposed for Quinelle, and incorporated many of her other recommendations. Furthermore, the N1 noted that the Team would reconvene following an OT evaluation to explore Quinelle's sensory needs, which the District had proposed – and Parent had accepted – on March 22, 2018. The IEP provided for ESY academic services in Reading (2 x 45 minutes/week) and Mathematics (1 x 45 minutes/week) with the special educator/reading specialist. At the meeting, Parents expressed concern regarding the wording of academic goals and the rate at which Quinelle would improve. Parents also requested that NRSB place Quinelle in a language-based classroom, which request the District denied. Subsequent communication among Parents, the school psychologist, and the special educator resolved these concerns and on

May 3, 2018, Parents accepted the IEP and placement in full. (P-79, P-80, P-81, P-82; Mother, III: 60, 67, 219-27)

12. Ms. Fitzpatrick administered the OT evaluation across three dates in May 2018. She noted that Quinelle was participating in a home-based program due to delays in primitive reflexes. Quinelle's mother reported that she was inconsistent in tolerating and responding to rhythmical movements, that she often refused to get out of bed, and that when she got home from school she was usually very tired. Quinelle presented with average motor integration and motor reduced visual perception skills. She continued to struggle with, and be frustrated by, letter and number memory. Parent and teacher responses on the Sensory Processing Measure suggested that she had social participation, touch, body awareness, balance and motion, and planning delays that impacted her at home and in school. At home, Quinelle resisted clothing; she wore only certain items and would tantrum if they were not available. Clinical observations suggested poor reflex integration that could impact various areas of sensory, motor, and cognitive development. (P-9, P-79, P-83; S-2; Mother, III: 50, 58-59)

The Team convened on May 29, 2018 to review Ms. Fitzpatrick's evaluation. The 2018-2019 IEP was amended shortly thereafter to include information derived from this evaluation and add OT services, 2 x 30 minutes per cycle, with an occupational therapist or certified occupational therapy assistant (COTA).² Parents accepted this IEP amendment in full on June 22, 2018. (P-84, P-87, P-88; Mother, III: 67-68)

13. Progress reports issued on June 7, 2018 demonstrated that Quinelle's decoding, word recognition, and reading skills were improving, and that she was engaging more in challenging tasks in the individual instruction setting of the Resource Room. (P-86) Her kindergarten report card reflected that Quinelle was consistently and independently meeting the standard for attention and reading at an instructional BAS Level B, which Mother characterized at hearing as a "marginal improvement over not being able to read at all." Though she was meeting, growing toward, or beginning to meet many standards on her report card, Parents remained concerned about her sight words, counting, and recognition of numbers and letters. They believed her progress was delayed, and not commensurate with the fact that she was receiving direct instruction. Mother felt that sufficient progress for Quinelle would have meant "starting to really close the gap between her and her peers." Asked to elaborate, she explained that this meant Quinelle would meet the standard for her grade. (P-89; Mother, III: 68, 228-39, 242) Around this time, Parents contacted NRSB personnel and the Chair of the School Committee about the possibility of creating an elementary school language-based classroom, as none existed within NRSB.³ (Mother, III: 65-66; DeAngelis, VI: 288, 290-91)

14. Parents contracted Karen Pervier to provide one hour of private Orton-Gillingham tutoring for Quinelle per week, beginning June 15, 2018. Ms. Pervier holds Massachusetts certification as a reading specialist and a Certificate of Advanced Graduate Studies (CAGS) in

² Parents' Exhibit 85 is an IEP Amendment dated 5/29/2018. This appears to be an incorrect date, as the Amendment pertains to a functional vision assessment that was not conducted until January 29, 2019 and refers to increased OT services. (P-85)

³ According to Director of Pupil Personnel Joan DeAngelis, although NRSB does not offer a language-based classroom at the elementary level, teachers have received training in language-based instruction. (DeAngelis, VI: 290)

Reading from the Massachusetts General Hospital Institute of Health Professional Reading Program. As part of her CAGS, Ms. Pervier completed a practicum within a public school system where she provided services in a language-based classroom, including phonics instruction, decoding accuracy, encoding accuracy, leveled reading, comprehension services, and fluency development. Ms. Pervier was certified by the International Dyslexia Association as a Dyslexia Therapist in 2016. She is fully certified as an Orton-Gillingham instructor and has been trained in other structured phonics programs, including Wilson, LiPS, Telian, and V&V. Ms. Pervier worked as a reading specialist in a public school system until 2019, when she retired. In this position, she worked with students, parents, and educators; analyzed students' reading issues and recommended strategies to help remediate those issues; monitored instruction; and provided screenings when parents had concerns about their children's reading development. Ms. Pervier is not certified in special education, though she collaborated with special educators in serving students when she worked in public schools. She describes her private practice as working primarily with students who have dyslexia that is not being remediated through special education services. (P-9, P-11, P-103, P-180; Pervier, II: 31-38, 41-42, 95-97)

Ms. Pervier did not review any of NRSD's evaluations before she began tutoring Quinelle. At the time she began working with Quinelle, Ms. Pervier conducted a baseline evaluation of her phonemic awareness. Viewing Quinelle as a non-reader, Ms. Pervier did not measure decoding. Quinelle had a very difficult time encoding words. Parents expressed concern that she was not developing at least letter knowledge and was still writing letters backward. (Pervier, II: 40-41) Ms. Pervier continued to provide one hour of tutoring per week through the 2018-2019 school year. She did not work with Quinelle for most of the summer of 2019. She then provided weekly tutoring from August through December 2019 and resumed in August of 2020. Over the course of their time together, Ms. Pervier noted that Quinelle had a strong work ethic, but found the work frustrating. She had sensory issues, including sensitivity to her clothing, but they did not impact the Orton-Gillingham instruction. (P-9, P-11 Pervier, II: 40-43, 46-47, 49, 102; Mother, III: 69)

15. Quinelle participated in the District's ESY program during the summer of 2018 but missed two weeks of services due to summer camp. She attended weekly tutoring with Ms. Pervier during this time, which Parents described as both supplementing her ESY services and making up for missed sessions. Quinelle's partial attendance later became the subject of controversy as the Team considered appropriate ESY services for the summers of 2019 and 2020. (P-9, P-119; Father, II: 178-79; Mother, III: 72, 77-79)

16. Lori DiPrima was Quinelle's first grade general education special teacher. Ms. DiPrima holds Massachusetts certification in elementary education and a Sheltered English Immersion (SEI) endorsement. She has been teaching in NRSD for 16 years, where she also facilitates the responsive classroom framework and participates in a mentor program. In her inclusion classroom during the 2018-2019 school year, Ms. DiPrima worked closely with special educator Yvonne Forté and related service providers assigned to her students. She built a great relationship with Quinelle, who often shared her interest in nature and animals, and a good working relationship with Parents. Quinelle's classroom participation varied; if she was confident or highly interested in sharing something, she volunteered. Sometimes she needed encouragement and coaching to participate in reciprocal conversation with peers. At times,

Quinelle would lose stamina while working and would grunt, put her head down, and discontinue work. She required coaching through verbal cues. At the beginning of the school year, she also had difficulty with letter/sound relationships. Quinelle participated in small group intervention with the reading specialist and relied heavily on accommodations to write, including a letter strip and space buddy, in addition to verbally telling her story before writing it. According to Ms. DiPrima, reading fluency – which at the first grade level refers to students’ accuracy and self-monitoring, whereas in later grades it corresponds to comprehension – is not assessed in first grade, although Ms. DiPrima aims to help students read quickly and accurately while making sense of what they read. In math, all students were using manipulatives and number lines, which Quinelle relied on as part of her toolbox. The science curriculum was hands-on, and in social studies many activities were read aloud and/or teacher directed, so Quinelle did not require modifications in either subject. (DiPrima, IV: 181-202; 213-14, 220; Forté, V: 27, 111-12, 118-19, 131)

17. Ms. Forté was Quinelle’s special education teacher in kindergarten and first grade. She holds a Master’s degree in education and SEI endorsement. She is certified in regular education, K-5 and 6-9; special education, K-9; and as a reading specialist, K-12. She is a certified provider of Lindamood-Bell, LiPS Phoneme Sequencing, Orton-Gillingham, and Leveled Literacy Instruction. As part of her reading specialist certification, Ms. Forté was trained to administer several standardized instruments. (Forté, V: 5-14)

As a special education teacher, Ms. Forté provided direct instruction in reading, writing, and math to students identified as requiring these academic services under an IEP, either one-to-one or in small groups of no more than three. She taught reading through a combination of Orton-Gillingham and Balanced Literacy. Ms. Forté collaborated with general education teachers and related service providers to coordinate services and served as a liaison for parents. She was also responsible for administering and reporting on formal and informal assessments and generating and interpreting data. When parents signed releases, Ms. Forté communicated with students’ outside providers. Ms. Forté retired in 2019 after 21 years teaching special education in NRSD. Before her retirement, Ms. Forté mentored Alicia Madden, who subsequently served as Quinelle’s second grade special education teacher. (Forté, V: 5, 14-16, 46-47, 117)

Ms. Forté worked with Quinelle on fluency through oral repeated readings of the same text to build confidence and independence. As Quinelle’s special educator, Ms. Forté maintained a nurturing, positive relationship with her, serving as a trusted coach. As a result of careful planning and coordination, students – including Quinelle – attended Ms. DiPrima’s general education lessons and were pulled out for reteaching and/or use of accommodations, including manipulatives, during application time. In this way, they participated in Ms. DiPrima’s mainstream lessons and accessed the information with Ms. Forté’s assistance. Generally, Ms. Forté worked with Quinelle in the back of the room for push-ins. Quinelle enjoyed working with her during both push-in and pull-out services, to and from which she transitioned easily, and she was not ostracized by her classmates in connection with these services. In fact, Quinelle spent recess playing with groups of classmates on the playground. Ms. Forté also fostered a good relationship with Parents, who describe her as a very experienced, qualified teacher whom they trusted. Parents often shared their concerns about Quinelle’s challenges, expressing that they expected her to progress faster and approximate grade-level achievement. Early in September,

Parents informed Ms. Forté about Quinelle’s private service providers, and Ms. Forté requested written permission for her to communicate with them. Ms. Forté also communicated with Parents throughout the year and provided them with data regarding Quinelle’s progress on a regular basis. Parents trusted her expertise. (Mother, III: 75-76, 243, 262; Forté, V: 16-18, 48-51, 79-80, 131-32)

18. Toward the beginning of the 2018-2019 school year, Ms. Forté reached out to Ms. Pervier by telephone. Ms. Forté summarized what she was working on with Quinelle and asked to maintain communication to coordinate instruction. She never received a call back. Instead, Ms. Pervier sent messages to several Team members, including Ms. Forté, regarding her work with Quinelle. (Pervier, II: 118-120; Forté, V: 32-33, 105-06) According to Ms. Pervier, she stopped reaching out to Ms. Forté because she “felt like they were on two different paths.” Ms. Pervier described the books Ms. Forté was sending home with Quinelle, and therefore her approach to teaching, as whole language instruction, though she never asked Ms. Forté about her methodology. Ms. Pervier did not feel this was the correct approach for Quinelle; she herself was focused on decoding and phonics. Questioned at hearing, Ms. Pervier acknowledged that NRSD was using a multisensory, structured, sequential program with Quinelle, but she did not know whether it was Orton-Gillingham. She testified that because she was working with Quinelle at lower levels than Ms. Forté was, Ms. Forté “should have been spiraling back to [Ms. Pervier’s] level,” even though Ms. Pervier saw Quinelle only once a week compared to the five sessions Ms. Forté had with her. (Pervier, II: 120-65)

19. Quinelle began receiving two additional hours of private tutoring per week through a free program at the Children’s Dyslexia Center in Worcester (CDC) on September 25, 2018. These services were delivered one-to-one, in one-hour blocks twice a week, by an instructor working toward Orton-Gillingham certification. NRSD made special accommodations at dismissal to facilitate Quinelle’s ability to attend these sessions. (P-9; Father, II: 181-82; Mother, III: 70, 72, 73-74)

20. A Quick Phonic Screener administered on June 5, 2018, September 5, 2018, and again on October 23, 2018, demonstrated that Quinelle had regressed over the summer but regained, and in most areas, exceeded her skills by the last screening. (S-90) Nevertheless, Parents expressed concern about this regression. They believed that Quinelle’s three hours per week of private services, combined with the services on her IEP, would have remediated that regression and helped her work toward the first-grade standard. Parents contacted Quinelle’s Team on November 16, 2018 regarding Quinelle’s inability to sight read numbers and the fact that she was a year behind in reading even with the extra tutoring. (Mother, III: 75-77, 79)

21. At Parents’ request, the Team convened on November 27, 2018 to discuss their concerns regarding Quinelle’s academic regression and her inability to tolerate specific pieces of clothing she had once accepted. The latter made mornings at home difficult for Quinelle’s family, though teachers did not see any negative effects in school. Parent also expressed concern that Quinelle’s was reading at a BAS Level B, whereas grade-level expectations were a BAS Level F. Quinelle’s teachers described her progress, and her special education teacher explained that given her disability, it would take more time for Quinelle to progress. Her mother shared her concerns and her goal for Quinelle to read with success, particularly by third grade. On

December 10, 2018, NRSB issued an N1 describing its decision not to propose adjustments to Quinelle's IEP at this time because she was making progress, the amount of services seemed to be a good balance for her, and she appeared more relaxed and comfortable in the classroom. (P-92; Father, II: 180-181; Mother, III: 77-83, 249-51)

22. By February 15, 2019, Quinelle was reading at an independent BAS Level E, one level away from grade level. (P-92, P-98, Mother, III: 256-58)

23. On January 23, 2019, NRSB proposed a three-year reevaluation of Quinelle, and on February 6, 2019, Parents consented. The evaluation, which included a psychological assessment, an academic achievement evaluation, and a speech and language evaluation, was conducted March and April of 2019. (P-94, P-95; S-2, S-11, S-12, S-13; Mother, III: 86)

24. On February 10, 2019, following a conversation between Parents and NRSB school psychologist/Team Chair Bethany Bressette, NRSB issued an N1 indicating that as Quinelle had displayed inconsistent regression following breaks in instruction, the Team was proposing ESY academic services for reading (1 x 45 minutes/week). The Team further amended the Amended 2018-2019 IEP to reflect this service and stated that it would continue to collect data over subsequent school vacations to inform further decision-making. Parents rejected this amendment, expressed their belief that 45 minutes of reading services per week was inadequate, and requested a meeting. (P-96, P-97; Mother, III: 82, 86-87; Bressette, V: 261-64)

25. On March 11, 2019, Dr. John Abbondanza, OD, FCOVD, provided a letter summarizing his examination and recommendations regarding Quinelle, whom he had seen on January 29, 2019 for a functional vision evaluation at Parents' request. Dr. Abbondanza, a behavioral optometrist, diagnosed Quinelle with several functional vision problems despite her 20/20 vision. He concluded that Quinelle has an oculomotor dysfunction (eye tracking problem), general binocular dysfunction (eye teaming problem), and accommodative dysfunction (eye focusing problem). He suggested that her low score on the vertical portion of the Developmental Eye Movement Test indicated a problem with rapid automatic naming, which is a processing skill, not a visual skill; Dr. Abbondanza described it as "where vision meets verbal." He suggested glasses, recommended school accommodations, and prescribed a full program of 30-40 weeks of vision therapy.⁴ (P-4, P-8, P-100; S-2; Father, II: 185-86; Mother, III: 92-95, 289-92)

26. Quinelle's Team convened on March 22, 2019, to review the functional vision assessment and discuss the rejected amendment that would have provided for 1 x 45 minutes of ESY reading per week. The Team added to the IEP a summary of the evaluation, proposed specific accommodations for Quinelle's vision issues, adjusted the delivery of OT services from 2 x 30 minutes/cycle to 3 x 20 minutes per cycle to address her eye tracking issues, and adjusted goals and objectives to incorporate handwriting/visual motor skills. The Team reviewed regression data. School-based Team members proposed an increase in ESY reading services from 1 x 45 minutes/cycle to 3 x 45 minutes per cycle; this also reflected an increase from the previous summer's 2 x 45 minutes/cycle. Parents expressed their belief that this would still be insufficient and requested that NRSB consider placing Quinelle at Bancroft for the summer,

⁴ Parents did not enroll Quinelle in this program due to its cost, but Ms. Fitzpatrick provided exercises for them to do with Quinelle at home to address these issues. (Mother, III: 93, 293)

given that she had regressed over the previous summer despite receiving ESY. The District raised the issue of Quinelle's inconsistent attendance for summer 2018 ESY services and noted that even though she had regressed over the summer, data collected over school breaks showed very little regression after the recoupment period. As such, and because she had not shown regression in math, the Team did not agree to fund Bancroft or further increase ESY services. The Team proposed a Second Amended 2018-2019 IEP on April 4, 2019, which Parents rejected on April 12, 2019 on the basis of insufficient ESY services. (P-85, P-102, P-105; Father, II: 186-97; Mother, III: 87-88, 90, 96-99, 104, 292; Bressette, V: 258-61)

27. Ms. Bressette conducted Quinelle's psychological evaluation on March 25 and March 29, 2019. Ms. Bressette has a Master's degree in counseling with a concentration in educational psychology and a CAGS in school psychology. She is a nationally certified school psychologist and holds a professional educator license from the Massachusetts Department of Elementary and Secondary Education. Ms. Bressette is in her seventh year at NRSD. (S-11; Bressette, V: 231-33) Ms. Bressette administered the Weschsler Intelligence Scale for Children – Fifth Edition (WISC-V), the Comprehensive Test of Phonological Processing, Second Edition (CTOPP-2), the Wide Range Assessment of Memory and Learning, Second Edition (WRAML-2), the NEPSY-2, the BASC-3, and the BRIEF-2. She also conducted an in-class observation and a student interview. (S-11; Bressette, V: 234-35)

Ms. Bressette observed Quinelle twice on March 20, 2019, both times in Ms. DiPrima's class. During the observations, Quinelle was engaged appropriately in independent reading, demonstrated sustained attention during a read aloud, provided a correct answer to the teacher's question, and appeared to transition well between activities. Quinelle completed all tasks during the assessment and appeared to enjoy completing activities during breaks. (S-11) She seemed comfortable in her classroom and had a positive bond with her teachers and good relationships with other students. (Bressette, V: 249, 251)

Quinelle's overall performance on WISC-V measures of verbal reasoning fell within the Average range, her background knowledge and fluid reasoning were both solidly average, and her verbal reasoning abilities were low average. Quinelle's variable scores on the Verbal Comprehension Index suggested better developed background knowledge than ability to understand and analyze information using her verbal skills. Given the discrepancies across measures, Ms. Bressette recommended further exploration of Quinelle's speech/language abilities. Her visual spatial skills were a strength. Quinelle's working memory index scores suggest average ability to use auditory and visual information; her processing speed index indicated a firmly established ability to quickly process information quickly. Ms. Bressette did not see significant differences between her testing and Quinelle's most recent neuropsychological evaluation. (S-2, S-11; Bressette, V: 235, 238-40)

On the WRAML-2, Quinelle showed stronger ability to recall meaningful information in a multiple-choice format than in an open-ended one and more consistent performance on measures of visual memory. She demonstrated difficulty retaining verbal information presented outside of a meaningful context. Her overall scores suggest low average ability to immediately recall both meaningful and non-meaningful visual information, and average-high average ability to correctly recognize both types of information after a time delay. (S-2, S-11; Bressette, V: 236, 283)

Quinelle's scores on the NEPSY-2 indicate that she has good overall attention when presented with auditory stimuli but higher levels of fatigue and difficulty switching from a previously learned response behavior than her peers. Quinelle's scores suggest that she would benefit from having multi-step tasks broken down into smaller parts and shorter, more frequent breaks. Both Quinelle's first-grade teacher and her mother completed rating scales for the BRIEF-2. Most scores fell within the Average range, but her teacher suggested she is less successful in maintaining control over her emotions than her peers. Comparing these results with those of previous testing, Ms. Bressette concluded that Quinelle's functioning had improved. (S-11; Bressette, V: 237-38, 247-49)

On the CTOPP-2, Quinelle scored within the Average range. She demonstrated typical phonological awareness and phonological memory skills, suggesting that she had the phonemic memory skills required when decoding and spelling words. Ms. Bressette reported that although Quinelle's rapid naming skills fell within the Below Average range, in the 21st percentile, statistically her standard score was within the lower end of Average range. Her rapid recall of information was within age expectations, suggesting typical foundational skills to help with fluency. These scores reflect increased performance over Quinelle's 2018 evaluation, particularly as to phonological awareness. (S-11; Bressette, V: 235-36, 241-44)

Quinelle's mother and teacher completed the BASC-3 rating scales. Parent's scores suggested that Quinelle was experiencing daily success, but she expressed minor concern regarding Quinelle's ability to adjust to unexpected changes and indicated that sensory integration issues continued to be a struggle. Teacher scores indicated that Quinelle displayed more irritable behavior compared to her peers, mostly when a piece of clothing did not feel right or when a classmate entered her personal space, but she was generally able to verbalize what was bothering her when asked. Although several areas were still elevated, a comparison with Quinelle's 2018 BASC-3 ratings demonstrates improvement in Quinelle's presentation as reported by the teacher. (S-11; Bressette, V: 244-47)

Overall, Ms. Bressette concluded that Quinelle was an "intelligent little girl who enjoyed school." She seemed comfortable with her teachers and peers. She needed information presented in a meaningful context. Testing suggested that although her ability to shift and to sustain attention was likely good, having to sustain attention for a significant amount of time might make her tired. As a result, she would probably need short, frequent breaks, and large assignments would need to be broken into smaller pieces. Ms. Bressette also recommended that Quinelle's reading fluency be monitored. (Bressette, V: 249-51, 253)

28. Ms. Forté evaluated Quinelle's academic achievement on April 1, 2, and 3, 2019 using the Wechsler Individual Achievement Test, Third Edition (WIAT-III), the Gray Oral Reading Tests – Fifth Edition (GORT-V), the Test of Early Written Language – Third Edition (TEWL-3), Contextual Writing Support, and the Test of Early Mathematics Ability – Third Edition (TEMA-3). (S-12; Forté, V: 84)

Quinelle participated willingly in testing; she was polite, focused, and attentive, and she indicated that she enjoyed school. She showed her sense of humor, but at times had trouble

finding the right words to express her thoughts. Her persistence with more challenging tasks was variable. She was compliant and responded appropriately when she found a task easy, but when she was unsure of her success or accuracy, she appeared frustrated and sad, bowing her head, sighing, and not responding. She required significant encouragement and the use of tangible rewards to complete more challenging tasks. (S-12)

On the WIAT-III, Quinelle's Oral Language composite fell in the Average range. She achieved an Above Average score in Listening Comprehension and a low Average score in Oral Expression. She scored in the Above Average range for Listening Comprehension. On the Oral Expression subtest, Quinelle's scores were in the lower end of Average, with variability on the subtests showing difficulty with efficient word retrieval and flexibility. (S-12; Forté, V: 89-90)

Quinelle's Total Reading Composite score on the WIAT-III fell within the Average range. She demonstrated several strengths in Early Reading Skills. Observation of her reading behaviors on the Reading Comprehension subtest indicates slow yet accurate reading, with multiple attempts self-correcting miscues. However, Quinelle stated that she was unable to read the last of three grade-level passages and, as such, the corresponding reading comprehension questions were not administered. Quinelle's Oral Reading fluency fell within the Below Average range, with accuracy in the Average range and rate in the Below Average range. On the Basic Reading composite, Quinelle scored within the Average Range, with a relative weakness in word recognition at the single-word level. (S-12; Forté, V: 85-86)

On the WIAT-III Written Expression composite, Quinelle's scores were within the low end of the Average range. She received Average scores for Alphabet Writing Fluency, Spelling, and Sentence Combining. Her scores on the Sentence Composition and Sentence Building subtests were Below Average; Quinelle found the latter subtest frustrating, and her spelling errors interfered with the readability and meaning of her writing. (S-12; Forté, V: 87-89)

On the Mathematics composite of the WIAT-III, Quinelle received scores in the Average range, with a relative weakness in addition fluency. (S-12)

On the GORT-5, Quinelle's total reading index fell in the Below Average range. Her rate was within the Poor range, her accuracy was within the Average range, and her fluency and comprehension fell within the Below Average range. Quinelle displayed slow, word-by-word reading, some two-word and three-word phrasing, and persistence problem-solving unfamiliar words and rereading the sentence smoothly after applying word attack strategies. Her word attack and rereading of sentences took time and affected her overall reading rate. On the TEWL-3, Quinelle scored within the Average range, although at the start of the writing assignment she was frustrated and stated that she did not want to do it. On the TEMA-3, Quinelle scored within the Below Average range. (P-4; S-2, S-12; Forté, V: 92-96)

Ms. Forté believes that because the test was timed, Quinelle was unable to demonstrate the full range of skills she had in the classroom. Ms. Forté recommended that a multimodal, explicit, and systematic instructional approach to the teaching of reading emphasizing phonics, word analysis, reading fluency, and reading comprehension be used with Quinelle. She recommended that Quinelle receive direct, explicit instruction in writing and extra time as needed to complete

academic tasks and assessments, as timed assessments may not reflect her knowledge accurately. Ms. Forté suggested that Quinelle utilize text at her instructional reading level in the general education setting, including science and social studies, and that everyone working with her continue to provide encouragement, emotional support, and strategies to assist Quinelle when she faces academic tasks she finds overwhelming. (S-12; Forté, V: 92)

29. Emily Vinci administered a speech and language evaluation across four days in March 2019 to determine Quinelle's continued eligibility for speech and language services. Ms. Vinci has a Master's degree in speech/language pathology and has been trained in standardized testing of children. She holds a Massachusetts license for speech/language pathology and a certificate of clinical competence from the American Speech-Language-Hearing Association. Ms. Vinci has engaged in continuing education in order to maintain these certifications. She has been a speech/language pathologist (SLP) with NRSB for five years. She has also been in private practice. In both settings, Ms. Vinci has provided speech and language services for students with a range of disabilities.. (S-13; Vinci, VI: 65-70)

Ms. Vinci's evaluation of Quinelle consisted of the Clinical Evaluation of Language Fundamentals, Fifth Edition (CELF-5), the Peabody Picture Vocabulary Test – Revised (PPVT-4), and the Expressive One Word Vocabulary Test (EOWVT-4). Quinelle participated in each session of approximately 30-45 minutes willingly. When she became fidgety, she was easily redirected to tasks with verbal reminders. (S-13; Vinci, VI: 70-72, 151-63)

On the CELF-5, most of Quinelle's index scores fell within the Average range. She understood basic linguistic concepts and was able to formulate grammatically correct sentences and demonstrate auditory comprehension and comprehension of complex sentence structures. Quinelle demonstrated a weakness in the following directions subtest, though Ms. Vinci noted that she may have had difficulty processing the visual stimulus required to accurately complete the test. Moreover, Quinelle was not having difficulty with directions in her speech therapy or in the classroom. Her scores on the PPVT-4 and the EOWVT-4 were both in the Average range, though she displayed some word retrieval difficulty. Her performance improved when Ms. Vinci provided phonemic cues. (P-4; S-2; S-13; Vinci, VI: 73-78)

Ms. Vinci concluded that receptive vocabulary recognition was an area of strength for Quinelle, while expressive vocabulary/recall, though within the Average range, was a relative weakness. With additional time and phonemic cues, Quinelle was able to repair word finding difficulties. Ms. Vinci recommended that Quinelle be given phonemic cues to aid with word retrieval difficulties, as needed; additional time to formulate verbal responses; and repetition of verbal directions, as needed. (S-13; Vinci, VI: 78-82, 85-86)

30. On two dates in March 2019, Ms. Fitzpatrick conducted an Occupational Therapy evaluation of Quinelle. Given continuing concerns about reflex integration and regulation, Ms. Fitzpatrick recommended OT services for Quinelle, 2 x 30 minutes per week, as well as a number of accommodations. Specifically, she recommended that Quinelle continue practicing, with reinforcement, the correct formation of three capital letters and correct placement of two lower case letters; that she continue with the home program as part of her morning routine to address hypersensitivities to clothing; that she continue with the behavioral optometrist's

recommendations for glasses for full-time use in school and for all reading, studying, computers, and homework, and larger print materials for reading and writing; and that Quinelle be given additional time to complete reading and writing assignments, tests, and quizzes. (S-2, S-14; Fitzpatrick, VI: 17-20)

31. Ms. DiPrima completed the Educational Assessment: Part B on April 10, 2019 in which she discussed Quinelle's progress in math, writing, Foundations, and reading. (P-104)

According to Ms. DiPrima, Quinelle had made a lot of progress in math. She was reading and writing numbers up to 100 consistently but was less consistent with numbers between 100 and 120. She had done well on most district math assessments, could solve addition and subtraction number stories, and model her thinking with an equation matching the problem. She needed to improve her fluency in addition and subtraction facts. In writing, Quinelle was able to provide multiple sentences about a given topic across all genres; needed reminders about the use of capital letters to begin sentences; was taking more risks with spelling unfamiliar words; and, at times, required support to continue working independently. Also, at times, Quinelle grew frustrated and manifested it by moaning or putting her head down. Her stamina during Writer's Workshop had improved. In Foundations, Quinelle was becoming more consistent in using conventions, identifying certain sounds, and generalizing phonics. Quinelle had also made progress in reading. As of mid-February 2019, she tested at an independent level E on the BAS, but demonstrated difficulty with fluency on both independent and instructional testing. As of April 1, 2019, Quinelle was assessed using Level F running record. She read most of the book word by word, with long phrases in some sections; her accuracy rate was 94-97%, decreasing after the first 100 words as she became noticeably fatigued and showed signs of frustration. Ms. DiPrima indicated that Quinelle did not appear to have attention difficulties, and that she appeared to have age-appropriate communication and interpersonal skills. Quinelle struggled with communication skills, confusing pronouns and irregular verbs and demonstrating difficulty naming/labeling objects. She also had trouble reporting the source her frustration and could, at times, get "stuck," moaning, bowing her head, and failing to respond. (S-8)

32. On March 24, 2019, Ms. Pervier reached out by email to Quinelle's Team. She provided the results of the baseline testing she had conducted in June 2018, expressed her disagreement with the NRSD progress report placing Quinelle at an independent Level E, and explained that Quinelle was making progress at a very slow pace. Ms. Pervier stated that in her experience, she would categorize Quinelle with "resistant dyslexia," which she described at hearing as meaning there was "something more going on here than just dyslexia," perhaps other issues impacting her reading development. At this time, Ms. Pervier believed, Quinelle was not capable of independently accessing first-grade material. (P-103; Pervier, II: 45-46, 54, 57-60) Parents did not provide NRSD with a two-way release to speak with Ms. Pervier until October of 2019; there is no indication the District requested one before then. (P-130; Pervier, II: 78)

33. An Instructional Summary developed by Ms. Pervier in May 2019 placed Quinelle at a Level F/G but noted that her special education teacher placed her at a Level H/I. (P-109) Parents were concerned about this discrepancy. (Mother, III: 106)

34. As of May 30, 2019, according to Ms. Forté, Quinelle was reading independently at a BAS Level G with 95% accuracy. She was reading at an instructional BAS Level H with 93% accuracy. (S-9) The Quick Phonics Screener administered two weeks apart, before and after April vacation, showed slight growth in two areas and slight regression (decrease of 1/10) in two. (P-108)

35. In the meantime, on or about April 12, 2019, in connection with their rejection of the Second Amended 2018-2019 IEP, Parents rejected NRSRD's proposed placement of Quinelle in the District's ESY program and stated that they would be placing her in the Orton-Gillingham Summer Immersion Program at Bancroft. At this time, Parents also expressed concern about the "lack of transparency" as to Quinelle's attendance in direct reading, math, OT, and speech and language instruction and services, and their dissatisfaction with the District's failure to allow them to observe Quinelle's reading evaluation. Finally, they submitted a written statement of their concerns, indicating that the 2018-2019 school year was the first time they had seen Quinelle grow toward the grade-level standard and attributing this growth, at least in part, to the private services they had provided for her.⁵ Parents presented NRSRD with a formal Notice of Intent to seek reimbursement for the Bancroft summer program, in the amount of \$1800, as well as for private tutoring. (P-8, P-88, P-106, P-107; S-2; Mother, III: 85)

36. NRSRD denied this request, by letter dated May 29, 2019, on the basis that the District was providing reading services reasonably calculated to provide Quinelle with a FAPE in the least restrictive environment (LRE). (P-42, P-113, P-126; DeAngelis, VI: 307-08)

37. The Team convened for approximately 90 minutes on May 7, 2019 for Quinelle's three-year reevaluation meeting. The meeting began with a review of reports. The Team determined that Quinelle was presenting with a Specific Learning Disability in Reading and Writing and that this was her primary disability category due to her difficulties with reading fluency, reading comprehension, and written expression. Team members all agreed that Quinelle required intensive services in math and reading as well as OT services. The Team removed her previously listed communication disability because, according to her speech therapist, she was scoring within the average range. Parents disagreed with this determination, as well as with the amount of ESY services under discussion, and requested additional time to review the reports. The Team agreed to discuss them when it reconvened on June 3, 2019 for Quinelle's annual review. Parents asked that the District provide a draft IEP ahead of the meeting, rather than bring it to the meeting, to promote their engagement. (P-110; Mother, III: 106; Mother, III: 107, 109, Mother, III: 115; Bressette, V: 256-58, 264-66; Fitzgerald, VI: 20; Vinci, VI: 79-81)

38. Quinelle's first grade report card, issued in June 2019, reflects that by the end of the school year, she had met nearly all standards in Speech, Listening, and Language; Reading; Writing; Mathematics; Science, Technology, and Engineering; Art; Music; Learning with Technology; Health; and Physical Education. She received a score of "progressing toward the standard" in one of eleven Mathematics categories and a score between "progressing toward" and "meeting" the standard in two of four Speech, Listening, and Language categories; two of

⁵ Between September 20, 2018 and June 3, 2019, Quinelle attended 55 hours of Orton-Gillingham tutoring sessions with the Children's Dyslexia Center in Worcester (CDC). She also attended 33 hours of tutoring with Ms. Pervier between June 14, 2018 and May 1, 2019. (P-111)

six Reading categories; two of six Writing categories; and one of eleven Mathematics categories. On the Social Behavior and Work Habits scale Quinelle met expectations in all but one category (begins, sustains, and completes tasks/assignments independently, on which she received inconsistently meets expectations). (P-5) Parents viewed this report card, which suggested that Quinelle was independent and approaching mastery of grade-level content in most areas, as discrepant from what they were seeing at home and hearing from Ms. Pervier. (Mother, III: 127)

39. Quinelle's Team convened for 60 to 90 minutes on June 3, 2019 for her annual review and to complete her three-year reevaluation meeting. The N1 from this meeting indicates disagreement between Parents and school-based Team members regarding the presence of a communication disability. NRSD recognized Quinelle's word-finding difficulty and proposed accommodations, whereas parents requested direct speech services to address expressive and receptive language skills. On the basis of Ms. Vinci's evaluation, combined with Quinelle's progress reports from previous speech services, observations, and discussions with classroom teachers, NRSD believed direct services would be too restrictive. As such, the District continued to propose consultation by an SLP to the Team to promote accommodations and effective strategies, such as phonemic cuing, to address Quinelle's word retrieval challenges. Ms. Vinci had difficulty explaining the basis of her recommendation, as Parents and their attorney interrupted her multiple times. Parents asserted stay-put to direct communication services provided by the SLP. As to ESY, Quinelle's special education teacher recommended services in the areas of writing and mathematics in addition to reading. The Team also discussed gains in Quinelle's social and peer interaction skills, and all participants agreed that she no longer required services in these areas. (P-1; S-1, S-2; Bressette, V: 270-71; Vinci, VI: 81-86) Although it is not discussed in the N1, and Ms. Bressette does not recall it happening, the IEP reflects that Parents requested placement in a language-based classroom during the Team meeting. (S-1, S-2; Father, II: 190; Mother, III: 126; Bressette, V: 270)

40. Parents submitted a Parent Statement in connection with the meeting, which was marked "received" by the District on June 13, 2019. Specifically, Parents noted concern regarding lack of progress in Quinelle's reading level during the summer of 2018 and since that time, despite considerable outside Orton-Gillingham services, and indicated that they expected her to perform at a level commensurate with her "normal to above average intelligence." They emphasized her neuropsychologist's recommendation for a language-based classroom, made in February 2018, and asserted that they had requested one in 2018 and 2019, but that their requests had been denied because NRSD did not offer a language-based classroom. Parents also indicated a concern regarding Quinelle's below-average math scores on her evaluation reports, despite having received "glowing reports" about her math skills from the District. Parents expressed concern about ESY services, given Quinelle's regression over the summer of 2018, and disputed the District's "attempt to place blame for that regression on [her] family for missed sessions," given that they had "more than made up" for those sessions through privately funded tutoring. Parents contended that the District had changed Quinelle's ESY offering for the summer of 2019 without parental input or any explanation, by increasing proposed services in May to 3.75 hours per week of reading/writing and 45 minutes per week of math, when in March the District had proposed only 45 minutes per week of reading services. Finally, they expressed concern that the District had not addressed Quinelle's oral word fluency and that NRSD's proposed removal of speech services from Quinelle's IEP would result in further regression of her expressive

language. (P-1, P-3, P-4; S-1, S-2; Mother, III: 110-112, 116-19; Forté, V: 67; Bressette, V: 266-70)

41. Following the meeting, the Team proposed a full inclusion IEP for the period June 3, 2019 to June 2, 2020, with goals in Reading, Written Language, Mathematics, Ocular-Motor Coordination, and Spatial Awareness (2019-2020 IEP). The proposed IEP included a number of accommodations as well. It was signed by the District representative on July 16, 2019, after some continued negotiation with Parents.

Quinelle's reading goal focused on decoding, encoding, reading fluency, and comprehension. Her written language goal focused on structure, vocabulary, detail, and editing, and her math goal focused on computation and problem solving. Quinelle's ocular-motor and spatial awareness goal proposed that she would improve her visual tracking, right/left discrimination skills, and reflex integration.

The IEP provided for A-grid Program Coordination, provided by the Occupational Therapist, SLP, special educator, general educator, and counselor, 1x 15 minutes per cycle and a Team consult between the OT and the general educator, 1 x 30 minutes per month. It also provided for B-grid ELA and mathematics services, 6 x 45 minutes each; C-grid services of reading, provided by the special educator/reading specialist, 6 x 30 minutes/cycle; written language and mathematics, provided by the special educator, 2 x 30 minutes per cycle each; and OT, provided by the OT or COTA, 1 x 60 minutes per cycle. The IEP proposed C-grid ESY services in reading (3 x 45 minutes/week), writing (1 x 45 minutes/week), and math (1 x 45 minutes/week). Ms. Forté believed these ESY services, which amounted to 225 hours per week, would be sufficient to maintain Quinelle's levels of performance. (P-4, P-97, P-116; S-2; Mother, III: 128; Forté, V: 66, 99-100; Fitzgerald, VI: 20-22)

42. Around this time, NRSB sent Parents a letter asking them to confirm Quinelle's attendance in the ESY program from July 6 to August 13 on Mondays from 8:15 AM to 12:00 PM and Wednesdays from 8:15 AM to 9:00 AM, to consist of three hours and forty-five minutes of academics and 45 minutes of OT. Although the form included a request that it be returned by June 10, 2019, Parents assert that they did not receive it until the following day. (P-46, P-114)

43. NRSB issued the last Progress Reports for the school year on June 19, 2019 regarding the benchmarks on the expired 2018-2019 IEP. Quinelle had met one of her four reading benchmarks and exceeded the others. Although she still struggled with fluency and had not met the first-grade benchmark, she was reading at an independent BAS Level G with 95% accuracy and an instructional Level H with 93% accuracy. Ms. Forté saw this as a tremendous accomplishment worthy of celebration, as the target for end of first grade is an instructional Level I, with 90 to 94% accuracy. Quinelle appears to have met her written language objectives; she exceeded one, but needed continued teacher prompting on the others. She was able to write sentences, and with teacher prompting, a paragraph and even pages, using a topic sentence, at least three details, and a wrap-up sentence, utilizing proper spacing and proper letter formation. Her teachers asked her to tap out sounds for her classmates because she was so skilled at it. Quinelle had met her four mathematics benchmarks. She had made progress in number counting number writing, addition, and subtraction. Again, Ms. Forté celebrated this growth. Quinelle was

both more confident and more independent than she had been at the beginning of first grade; she was engaging in more educational risk-taking. By the end of the year, she developed and fostered new relationships with peers and was not displaying any behavioral dysregulation. Given Quinelle's academic and social growth in the inclusion setting, Ms. Forté believed, and continues to believe, that the in-District inclusion program is the appropriate educational placement for her. (P-6; S-20; Mother, III: 271-89; DiPrima, IV: 204-09; Forté, V: 18-20, 53-60, 64-65, 68-69, 92)

44. Based on Quinelle's progress in first grade from non-reader to two BAS levels behind grade level, Ms. Forté anticipated that with solid reading instruction, she would end second grade no more than two levels behind. Given all of Quinelle's challenges, especially with fluency affecting all academic areas, Ms. Forté would not expect her to have closed the gap by that time. She opined that working with multiple providers with different voices and styles, as Quinelle was doing, could make it difficult for a student to generalize her learning across settings. (Forté, V: 128-30)

45. Parents provided Quinelle with private instruction over the summer of 2019 due to the regression she demonstrated in the fall of 2018 after attending NRSD's ESY program that summer. Specifically, Quinelle participated in two hours and fifteen minutes of academic work daily, or 675 minutes per week, for four weeks, at the Bancroft Orton-Gillingham Immersion program, for a total of 45 hours of instruction. It did not include writing or math services. Bancroft did not provide Parents with any information or data regarding Quinelle's progress. (Father, II: 187, 198; Mother, III: 88, 90, 130, 253) Parents provided an additional five hours per week, for four weeks (an additional 20 hours), of private Orton Gillingham tutoring. Finally, they read aloud to her themselves for a total of 27.7 hours over the course of the summer. (P-7; Mother, III: 131)

46. On July 12, 2019, Quinelle's mother sent an email to NRSD regarding work that had been sent home for the summer. She indicated that the work had not come with instructions and that Quinelle was struggling with the math in particular. She expressed concern that Quinelle had not achieved the standard for entering second grade. (P-117) Mother followed up with another email three days later stating that Quinelle needed to "be a kid"; that she wanted the District to understand that over the summer kids will miss some instruction, as Quinelle had missed two weeks of ESY services in 2018 (which Parents had made up for by providing her with private instruction); asserting that Parents were not to blame for Quinelle's regression over the summer but instead it was the fault of the District, which had not provided sufficient services; and asking that the District clarify that the work that had been sent home was optional. (P-119) Director of Pupil Personnel Joan DeAngelis responded to this email clarifying that the District did not place blame. Mother sent a further email insisting that Parent had been blamed during the Team meeting. She wrote, "It may be helpful going forward if you could explain to the IEP team leads that they can try not to tell parents that their child's regression is their fault." (P-120)

47. Parents sent a letter to the District on July 15, 2019 requesting that their Parent Statement be included in its entirety in the IEP itself, rather than as an appendix. In their letter, they asserted stay-put to Quinelle's speech services, requested additional direct instruction in math (4 x 30 minutes per 6 day cycle), and expressed concern about both the expectation and the wording of Quinelle's reading goals, suggesting that the bar was set too low and the language too vague.

They proposed specific wording for these goals. (P-118; S-2; Mother, IV: 137-38) Shortly thereafter, Parents met with Ms. DeAngelis and FFS Principal Joel Bates to discuss their concerns. (Mother, III: 128-29)

48. On August 5, 2019, Parents rejected the proposed 2019-2020 IEP in part, with the following comments: “Stay-put – speech services from previous IEP, Reading goals are not sufficient; needs additional math direct instruction, writing goals not sufficient.” They referenced details in their letter dated July 15, 2019. Although Parents did not check either box to indicate that they accepted or refused the placement, they checked a box requesting a meeting to discuss the refused placement. At hearing, Mother testified that they intended to reject the placement, particularly with respect to ESY. (P-122; S-2; Father, II: 193; Mother, III: 128, IV: 138-39; Neylon, VI: 198)

49. Parents sent a letter to Quinelle’s Team on August 29, 2019 reiterating their dissatisfaction with summer work. They indicated that she was unable to work independently on a workbook and that materials had not addressed her fluency deficits; that the family had completed only five weeks of OT exercises because Quinelle grew bored and resistant and because they needed to focus their “limited time on the amount of academic work sent home.” Parents also explained that Quinelle was continuing to struggle with distinguishing between addition and subtraction signs and that they were concerned that as academic demands increase over time, the gap between Quinelle and her peers would widen and her math difficulties would impact her negatively. (P-7) Parents were concerned during Quinelle’s second grade year, particularly, that she had not and would not progress rapidly enough to catch up with her peers. (Father, II: 240-41)

50. Ms. Pervier administered the first grade Dynamic Indicators of Basic Early Literacy Skills (DIBELS) testing to Quinelle at the beginning and end of the summer, on June 24 and August 29, 2019. Quinelle’s corrected words per minute dropped from 21 to 18 during this time, and her accuracy increased from 84% to 97%. According to Ms. Pervier, the target level and accuracy level for end of first grade are 47 words per minute with 90% accuracy on a first-grade passage. (P-7; Pervier, II: 63-67)

51. At some point in September, Ms. Pervier included this information in a letter she wrote to both Quinelle’s Team and the CDC. Ms. Pervier expressed concern that despite receiving over an hour per day of services in a structured phonics reading program for over a year (calculated across the three settings settings – school and private tutoring with her and with the CDC) Quinelle was still reading below first grade benchmarks at the beginning of second grade. As such, Quinelle’s reading had not developed commensurate with the amount of instruction she had received. Ms. Pervier again described Quinelle as a “resistant dyslexic” in need of “tremendous repetition to solidify her phonics knowledge so she can apply it accurately and with appropriate fluency.” She recommended that Quinelle’s instructors focus on foundations skills until she performs with the desired automaticity and accuracy levels and described the content on which she would be drilling Quinelle. She requested Quinelle’s DRA scores and estimated that she was reading at an independent level 10, and should be instructed at level 12. Finally, Ms. Pervier indicated that individuals working with Quinelle should give her more practice time and repetition to help develop her accuracy and work together to provide Quinelle with “an

appropriate level of instruction.” She expressed her willingness to meet in person to share her thoughts. According to Ms. Pervier, Quinelle’s reading ability, as she measured it, would prevent her from reading with her peers and from reading independently; she hypothesized that Quinelle required someone with her reading the material to her. (P-11, P-124; Pervier, II: 68-72, 134; Mother, IV: 62-64)

52. For second grade, Quinelle was placed in a general education classroom with teacher Julie Accorsi. (P-9) Alicia Madden was assigned as her special educator. (Madden, I: 29) As in first grade, Quinelle would participate in full-class mini lessons on grade-level curriculum and active engagement (class discussion, or trying out a skill), then would be pulled for services for the independent process part of activities. (Accorsi, V: 204-05) During the 2019-2020 school year, NRSD convened five Team meetings to discuss Quinelle. Parents shared their concerns about her at each of these meetings. (Father, II: 239-40; Accorsi, V: 223; Neylon, VI: 195)

53. Ms. Accorsi holds a Master’s degree in teaching and Massachusetts pre-K-2 and elementary grades 1-6 licenses, as well as an SEI endorsement. She is in her fifth year teaching second grade at FSS. Ms. Accorsi has participated in a number of trainings on effective teaching practices, ADHD, dyslexia, and delivery of small group math instruction, as well as a 75-hour Orton-Gillingham training. She has taught a diverse range of students, including students with learning disabilities, in the inclusion setting. While working with students with disabilities, she implements the accommodations on their IEPs. (Accorsi, V: 138-42)

Ms. Accorsi established a strong relationship with Quinelle, though she was slow to warm up at the beginning of the school year. They talked about shared interests, including cats and cake. She also had a good relationship with Parents; they communicated regularly, as Parents wanted to know a lot about Quinelle’s performance in the classroom. At the beginning of the year, Quinelle’s mother expressed to Ms. Accorsi that she did not believe Florence Sawyer School was the right placement for her daughter. (Accorsi, V: 142)

Quinelle transitioned well to second grade, though she was very hard on herself when she made mistakes. This often caused her to become frustrated, and at times she groaned or put her head down. She was taught to take a break, take some deep breaths, and utilize sensory strategies. She became fairly independent with this over time. Quinelle exhibited challenges in math fluency, rapid recall of math facts, adding, and subtracting; she needed her strategies in front of her. She was a good writer and knew to access helpful strategies such as tapping, but she became upset when she could not remember how to spell a word. Quinelle’s greatest reading challenge was in fluency, as she was still working on decoding accuracy and comprehension. Quinelle was more comfortable participating in small groups, but with encouragement she would volunteer in the larger classroom setting. (Accorsi, V: 144-47, 157-58, 177)

Ms. Accorsi utilized the enVision program to teach math, which entails a structured approach to lessons and activities that ensure access by students at varying levels. She supplemented the curriculum with hands-on games and other small group instructional approaches. For reading and writing, she used the Teachers College Lucy Calkins Units of Study, a workshop model that could also be accessed by students of various skill levels. She used Foundations, a prescriptive program, for spelling and STEMscopes, a hands-on program, for science. For social studies, Ms.

Accorsi followed second grade standards, which consist of stories read aloud and project-based learning. (Accorsi, V: 148-52)

54. Ms. Madden holds a Master's degree in severe special education and has taken approximately 15 post-graduate credits in working with specialized populations, including students with anxiety and/or dyslexia. She holds Massachusetts certification as a K-12 special educator and was trained in Orton-Gillingham at the Commonwealth Learning Center. In September 2019, Ms. Madden was entering her seventh year as a special education teacher, her fourth with NRSD. At the start of the 2019-2020 school year, she began working on her associate's level certification; she was more than two thirds of the way through this program when the pandemic began. She has also received training through the District in Foundations, a Wilson program, and other programs for students with language-based learning disabilities. (Madden, I: 13-18, 114-15)

55. As a special education teacher within NRSD's inclusion program, Ms. Madden spends time in both the general education and pull-out settings. For inclusion, she collaborates closely with the classroom teacher to plan curricular accommodations and modifications in accordance with each student's needs, often at a back table in the classroom. During pull-out services, Ms. Madden works with students either one-on-one or in small groups on their IEP objectives and other weaknesses, including those not addressed in the larger classroom setting. She aims to assist students in generalizing skills by providing grade-level content and spiraling back as needed. During the 2019-2020 school year, Ms. Madden had 12 students on her caseload. (Madden, I: 25-27)

56. Ms. Madden supported Quinelle in her inclusion math, reading, and writing general education classes. Accommodations were available to her during reading and writing activities in social studies and science classes. (Madden, I: 150, 155-56) Ms. Madden provided Quinelle's reading services one-to-one and her math and writing services in a small group, with one to two other students. Quinelle's math sessions focused on fluency and number sense and also provided scaffolds, accommodations, and explicit instruction to assist her in generalizing these skills to what was being taught in the larger class. Reading services addressed phonological and phonemic awareness, vocabulary, and comprehension, with a particular focus primarily on phonics (decoding and encoding) and fluency skills. Because Quinelle was functioning on grade-level for writing, Ms. Madden worked with her on the grade-level curriculum, the Fountas and Pinnell reading and writing workshop. Writing services aimed to adapt the curriculum through the use of scaffolds such graphic organizers and exemplars to help Quinelle discern and apply the expected structure. (Madden, I: 40-45, 48, 51, 136-37, 211-12) Ms. Madden also consulted with Quinelle's SLP to discuss language accommodations and scaffolds to use across various settings. (Madden, I: 142-43)

57. Ms. Madden met with Parents before classes began in order to hear their concerns. She requested that a monthly parental consult be added to Quinelle's IEP to facilitate communication with her parents. Ms. Madden reviewed both formal and informal assessments with Parents during these consults. (Madden, I: 32, 43-44)

58. When she first began working with Quinelle, Ms. Madden noticed that consistent with her IEPs, classroom data, and evaluations, Quinelle experienced her greatest challenges in decoding and reading fluency; number sense and number/fact fluency; and, with respect to writing, both spelling and frustration tolerance. Quinelle's executive functioning weaknesses appeared to impact her language. These continued to be challenging areas for her throughout second grade. Although Quinelle grew in her independence as a writer, Ms. Madden coached her both in how to approach situations where she did not know what to do (i.e. spelling a particular word) and how to manage her frustration regarding not knowing what to do. Sometimes this was as simple as talking her through something she did not know right away; sometimes Quinelle needed a longer problem-solving conversation. Often, Quinelle's academic frustrations manifested in sensory discomfort, such as itchiness. At times, she completely shut down when challenged with her work and put her head on the table or put it back and groaned. This happened less often as she got to know her teachers better. By October, she was able to apply coping strategies they had taught her (breaks, sensory toys) independently. (Madden, I: 33-38, 117-18, 146, 201-02; Mother, IV: 85-86)

59. Quinelle's push-in services were often delivered in the back of the classroom. Neither Quinelle nor any of her classmates who received such services were bullied, harassed, or teased for receiving push-in or pull-out services, and Quinelle did not appear to feel ashamed or embarrassed that she was receiving specialized services and instruction. (Accorsi, V: 152-55)

60. On or about September 12, 2019, Parents submitted a request for reimbursement for privately provided services as a follow up to the Notice of Unilateral Placement they had submitted on April 29, 2019. Their invoice included tutoring services during the 2018-2019 school year (May 15 through June 12, 2019), summer 2019, and the first week of the 2019-2020 school year; participation in the Bancroft Program; and mileage reimbursement for travel between private tutoring locations and to the Bancroft Program. Their invoice amounted \$3,027.65 for the period from May 14 through September 11, 2019. The District declined to reimburse them. (P-8, P-125; Mother, III: 134-35)

61. The Team reconvened on September 17, 2019 to review the rejected portions of Quinelle's proposed IEP.⁶ The Team agreed to make some adjustments to Quinelle's goals, objectives, and service delivery. The District also agreed that Ms. Madden would establish baselines in mathematics and written language, after which a new document would be generated. Parents invoked stay-put for Quinelle's speech services (30 minutes per cycle, provided by the SLP), which was usually delivered with one other student, and requested that the newly agreed upon service delivery for reading (6 x 45 minutes per cycle, increased from 6 x 30 minutes per cycle) be implemented immediately. The District's representative signed this Amended IEP on September 18, 2019 and the District implemented the increase in reading services immediately. (P-10, P-19, P-128; S-3, S-21; P-128; Madden, I: 95; Mother, III: 138; Vinci, VI: 114; Neylon, VI: 196-98, 200)

⁶ An attendance sheet submitted by Parents suggests that this meeting was scheduled for September 10 but was held September 11, 2019. (P-10) The remainder of the evidence suggests that this meeting occurred on September 17, 2019.

62. On or about September 19, 2019, Parents sent a letter to Quinelle’s Team in which they indicated their disagreement with the Team’s belief that Quinelle’s low oral fluency score on the WIAT was due to her poor performance on timed tests and asserting that she required continued direct speech and language services. In their letter, Parents mentioned that they had been “looking into” programs they believed would address Quinelle’s oral fluency difficulties, including the Carroll School. (P-12; Mother, III: 139-40) On September 24, 2019, Parents partially accepted the Amended 2019-2020 IEP. They asserted stay-put to speech and language services; indicated that writing, math, and reading goals must still be formulated and compromise must be reached; and requested reimbursement for their unilateral placement of Quinelle in outside tutoring. (P-128; Neylon, VI: 200-01) As Ms. Vinci provided services under stay-put during the 2019-2020 school year, no new goals were developed. She worked with Quinelle on syntax and semantics, pronouns, and word retrieval. (Vinci, VI: 99-100, 148-49)

63. On October 3, 2019, Ms. Madden provided Parents with Quinelle’s baseline data for September with respect to decoding, encoding, sight words, BAS levels, reading fluency, math fluency, grade-level math assessments, reading numbers, and writing numbers. Parents were concerned about comprehension scores, sight word accuracy (which appeared lower at home), and reading fluency. (P-131; Mother, III: 141)

64. The Team reconvened again on October 11, 2019 to continue discussing the rejected portions of Quinelle’s proposed IEP. Parents excused the attendance of the OT, SLP, and Counselor. The Team agreed to change the objectives in Quinelle’s reading and written language goals. Quinelle’s revised reading goal contained two decoding objectives, two encoding objectives, and increased accuracy. The revision specified that the proposed increase in Quinelle’s reading levels would be via Fountas and Pinnell, and Quinelle’s curriculum-based oral reading fluency measure was increased to 87 correct words with at least 90% accuracy, specifically on a grade-level measure. (P-19; S-3, S-4, S-22; Neylon, VI: 201-03)

In addition to the previous increase in reading services of 90 minutes per cycle, at this meeting the Team increased math service delivery, based on Ms. Madden’s baseline data, from 2 x 30 minutes to 3 x 30 minutes per cycle. These changes were memorialized in an N1 dated October 24, 2019, which was accompanied by a Second Amended IEP for the period from June 3, 2019 to June 2, 2020 that was signed by the District representative the same day. (S-3, S-4; Madden, I: 40, 44-45, 48, 96; Mother, III: 142; Neylon, VI: 201) The IEP incorporated a range of accommodations to assist with Quinelle’s deficits. (Abate, VIII; 105-08)

65. On October 28, 2019, Parents partially rejected the Second Amended IEP and rejected placement at Florence Sawyer School, writing that they were rejecting the lack of speech services and invoking stay-put to those services, and they requested a meeting to discuss their rejections.⁷ Parents also noted that they did not believe placement in public school was appropriate for Quinelle and requested a language-based classroom placement instead. (P-132; S-3, S-5; Mother, III: 142-43; Neylon, VI: 204-05)

⁷ Following the Team meeting later held on November 5, 2019 to discuss Dr. Abate’s private neuropsychological evaluation, Parents emailed the District to indicate that they did not believe another meeting was necessary at this time. (S-5)

66. In the meantime, on September 3 and 9, 2019, Quinelle participated in a private neuropsychological evaluation with Dr. Maura Abate. Dr. Abate has a Master's degree in Education and a Master's degree and PhD in Clinical Psychology with a specialization in child clinical psychology and neuropsychology. In 2018, she earned a Post-graduate Certification in School Neuropsychology. She is currently a nationally certified school psychologist and a licensed psychologist and health care provider in Massachusetts. She holds Diplomate status with the American Board of School Neuropsychology. Dr. Abate completed several internships in a variety of clinical settings. Her career has included positions as a private school dorm parent and coach, a summer school instructor at Landmark, a licensed psychological examiner, a school psychological examiner, a school psychologist (approximately five to eight years across three different school districts), and an adjunct professor, in addition to her private practice for 17 years as a licensed psychologist and child clinical neuropsychologist.⁸ Dr. Abate has evaluated thousands of school-aged children over the course of her career. (P-9, P-181; S-7; Mother, III: 135-36; Abate, VII: 9-25, 192)

Parents contacted Dr. Abate because Quinelle was having difficulty with reading, writing, and oral language and they wanted to make sure she was getting all the programming she needed. They asked her to obtain a comprehensive evaluation of Quinelle's learning profile and social-emotional status. Dr. Abate's evaluation, which lasted six hours total, consisted of the Weschler Abbreviated Scale of Intelligence (WASI-II); the Boston Naming Test – 2; the CTOPP-2; the Kauffman Test of Educational Achievement – Third Edition (KTEA-3) and the KTEA Orthographic Processing Composite; the Wide Range Assessment of Visual Motor Abilities (WRAVMA); the WRAML-2; the Conners' Continuance Performance Test – Third Edition (CPT-3); the Comprehensive Executive Function Inventory (Parent and Teacher Forms); the ADHD Symptom Checklist from the DSM-5 (Parent Report); the Beck-2 Youth Self-Report Inventories; the Achenbach Child Behavior Checklist – Parent and Teacher Forms; Kinetic Family Drawing (KFD); the Children's Sentence Completion Test; and the Child Clinical Interview. Dr. Abate reviewed Quinelle's previous testing in preparation for her evaluation. She did not, however, speak with Quinelle's first or second grade teachers before, after, or as part of her evaluation, nor did she review any of Quinelle's school assignments. (P-9; S-7; Abate, VII: 26, 28-30, 198, 229)

Dr. Abate observed that Quinelle had already been tested several times and did not want to undergo testing at this time. She intermittently engaged in "mildly oppositional behaviors" to communicate that she needed a break such as placing her hands to prevent Dr. Abate from turning pages of the test booklet and blocking her ears with her hands. Quinelle growled when she was angry and put her head down on the desk. She required frequent bathroom and snack breaks. Quinelle's verbal responses were minimal, as she often pointed to multiple choice answers rather than verbalizing them, and she needed extra wait time. At hearing, Dr. Abate referred to Quinelle during this evaluation as "very primitive in terms of her language expression." Dr. Abate noted that Quinelle appeared to lose cognitive set on at least two occasions. Difficulties with visual tracking and scanning were evident. Quinelle was mildly

⁸ As a school psychologist, Dr. Abate conducted assessments, ran groups and counseled students, and helped to write IEP goals for emotional disabilities. In her current private practice, she conducts neuropsychological evaluations, sees a handful of therapy clients, meets with parents, provides parent training and consultation, and attends some school meetings. (Abate, VII: 9, 21-23)

restless and fidgety; she appeared to have low energy and to fatigue quickly. Some impulsivity was observed, though she was not overly active. When tasks were very structured and straightforward, she could follow the steps, but when they involved more independent planning and organization, she had difficulty. (P-9; Abate, VII: 30-33, 67, 87, 230-32)

On the WASI-II, Quinelle's Full Scale IQ was in the Average range. Her nonverbal, visual perceptual, and visual motor abilities were in the upper end of the average range. Dr. Abate noted that Quinelle's strong score on the vocabulary subtest did not accurately reflect her difficulty, as in response to many of the words she moaned, growled, put her head down, and shook her head "no" before finally offering a definition. She mumbled and talked into her arm, even with a "great deal of praise, encouragement, and positive reinforcement." She had a good general sense of the meanings of many of the words but did not receive full credit because she offered vague definitions. On the Boston Naming Test-2, which measures expressive vocabulary and word finding, Quinelle scored more than two years below age expectations. Dr. Abate opined that word retrieval difficulties in students with solid verbal aptitude like Quinelle are often associated with executive function weaknesses. At hearing, she testified that Quinelle's scores on the WASI-II indicate a "pretty severe" expressive language disorder. (P-9; Abate, VII: 33-36, 71-74)

On the CTOPP-2, Quinelle received scores in the Average range on the Phonological Awareness Composite, with inconsistent subtest scores, and on the Phonological Memory Composite. She scored in the Below Average range on the Rapid Naming Composite. On the KTEA-3, Quinelle received scores in the Well Below Average range on the Orthographic Processing Composite and Below Average Scores on the Reading, Math, and Written Language Composites, which Dr. Abate characterized as "significantly below age, grade, and ability expectations, consistent with specific learning disabilities in these areas." Specifically, Quinelle's reading skills were below first grade levels; she did not know all the sound/symbol correspondence or have the word attack skills to break down words. She presented as a slow and inaccurate reader who, due to decoding problems, was unable to glean meaning from what she read. Her math skills were at the beginning first grade levels. Dr. Abate concluded that Quinelle's weaknesses would lead her to have difficulty processing sounds in words, a foundational skill for reading and spelling, and problems with reading fluency. She also believed that Quinelle's orthographic processing difficulty might be related to her problems differentiating between plus and minus signs. On the WRAVMA, Quinelle demonstrated solidly average visual motor abilities. (P-9; S-7; Abate, VII: 77-81, 83-86, 89-91, 205-09, 215, 247)

On the General Memory Index of the WRAML-2, Quinelle scored within the Low Average range, though Dr. Abate indicated that this score likely underestimates her general memory skills due to significant variability among subtest scores and the impact of the executive function skills of attention and organization upon memory. Quinelle's memory for visual information was in the upper end of average. She had more difficulty remembering verbal material, scoring in the Low Average range on the Verbal Memory Index. (P-9; Abate, VII: 36-42)

In testing, Quinelle demonstrated vulnerabilities across four aspects of attention: sustained attention, selective/focused attention, attentional capacity, and shifting attention. She had difficulty persevering, required testing to be broken down into small chunks, and needed many

breaks; she was occasionally distracted or bothered by sights and sounds. On the Conners CPT-3, Quinelle had a total of seven atypical scores, which Dr. Abate characterized as associated with a “very high likelihood of having a disorder characterized by attention deficits, such as ADD.” Dr. Abate noted that although Quinelle’s mother and teacher reported on the CEFI that she rarely seems distracted, listens closely to instructions, and is able to concentrate and pay attention, she does not believe these ratings reflect Quinelle’s attention accurately, given her test scores. Dr. Abate wrote, “I might argue that control of attention is often hard to assess accurately by observation alone, primarily because it is an internal process.” Dr. Abate reflected that generally Quinelle was adept at following a logical sequence and progressing in an orderly manner when tasks were structured or straightforward. and she received Low Average ratings in planning and organization from her parent and teacher, but she observed that in the absence of explicit external structure, Quinelle became frustrated and overwhelmed. She hypothesized that Quinelle’s scattered and disorganized approach to tasks was likely due to a weakness in working memory. Quinelle’s testing did not, however, demonstrate such a weakness. As with attention, Dr. Abate theorized that Quinelle’s average range scores in Working Memory on the CEFI did not accurately reflect her skills because test observations revealed a vulnerability in this area. Quinelle scored in the Low Average range on the Emotion Regulation subscale of the CEFI. Both parent and teacher reported that Quinelle finds it difficult to control her emotions, particularly when stressed, and that she gets agitated when clothing does not feel right or someone enters her personal space. Quinelle’s teacher expressed concern about Quinelle’s emotional regulation when presented with undesired tasks, indicating that she tends to whine or shut down instead of using her words or talking about a problem. On the CEFI, Quinelle scored in the Low Average range on Self-Monitoring. Dr. Abate concluded that Quinelle’s executive functioning weaknesses exacerbate her learning and processing difficulties, particularly with respect to the control of attention, working memory, planning/organization, emotional control, and self-monitoring. (P-9; Abate, VII: 42-44, 46-49, 68-69)

On the Achenbach, Quinelle’s mother rated all scores in the normal range, whereas her teacher rated scores in the normal range for Total Problems and Internalizing but borderline clinical scores on the Aggressive Behavioral and Oppositional Defiant subscales. Ms. DiPrima reported that Quinelle is often frustrated or stubborn; demands a lot of teacher attention; can sometimes be moody, sullen, defiant, touchy, or easily irritated/annoyed; and sometimes has a hot temper; and that she demonstrates these behaviors only when tasks are difficult for her or when she feels overwhelmed by demands. Dr. Abate noted that Quinelle may be internalizing a negative sense of herself as a learner and as a person. Quinelle’s low self-esteem also emerged on the Beck-2 Youth Self Report Inventory. Results of the Short Sensory Profile, completed by parent, suggest that Quinelle continues to exhibit sensory processing difficulties that likely contribute to or create barriers to her performance in daily life. Her teacher indicated that these difficulties, particularly her sensitivity to items of clothing and shoes, can interfere with her classroom learning. At hearing, Dr. Abate testified that Quinelle’s sensory issues might include sensitivity to noise and visual stimulation, making a general education classroom overwhelming, though her teachers had not reported any problems of this kind. (P-9; S-7; Abate, VII: 70, 92-95, 240-43)

Dr. Abate provided diagnoses of Language Disorder; Specific Learning Disorders with Impairments in Reading, Mathematics, and Written Expression; and ADHD-Inattentive Type. She also reported that Quinelle’s reduced scores in phonemic awareness and orthographic

processing, combined with her low rapid naming score, indicated that she has “triple deficit dyslexia.” She noted difficulties in sustained attention, particularly with academic (as opposed to cognitive) tasks, selective/focused attention, as Quinelle was distracted by outside stimuli, and shifting attention, where it was hard for her to refocus after a break. At hearing, Dr. Abate testified that because there is no diagnosis for an executive function disorder, the appropriate diagnosis for children displaying “all of these executive function difficulties” is the umbrella of ADHD. She characterized as early indicators of attentional problems Dr. Orinstein’s observation, in her 2017 report, regarding Quinelle’s level of fatigue during testing, as well as District testing demonstrating Quinelle’s difficulty retaining verbal information presented outside of a meaningful context, attentional challenges marked on the BRIEF, and notes about the delivery of academic intervention in a minimally distracting environment, all of which had been incorporated into the October 2019 IEP. Dr. Abate also noted that Ms. Bressette had flagged vulnerabilities in executive functioning, including shifting and sustaining attention and trouble controlling strong emotions, as supportive of her diagnosis of ADHD – Inattentive Type. Dr. Abate did not view Ms. Bressette’s description of Quinelle during her evaluation as showing sustained attention with appropriate eye gaze toward her teacher as conflicting with this diagnosis, because it can be difficult to tell whether someone is actually paying attention. Because Quinelle was too young, Dr. Abate could not measure her working memory by way of the WRAML, but parent and teacher scores on the BRIEF and the CEFI were within normal ranges. Even so, Dr. Abate concluded, based on her qualitative observations, that Quinelle had difficulties in this area.

Dr. Abate opined that Quinelle would be unable to communicate in the general education classroom. This would also impact her socially. Dr. Abate believed that Quinelle’s low fluency would cause her embarrassment if she were asked to read aloud, and it would also impact her comprehension. Dr. Abate indicated that students with Quinelle’s learning profile usually need verbal information presented in smaller chunks, repeated more often, and presented in structured, pre-organized formats, “as is typically found in language-based classrooms.” She also suggested that Quinelle would benefit from the use of spiraling and scaffolding. Specifically, Dr. Abate recommended placement in a fully-integrated, full-time school program that specializes in the instruction of children with language-based learning disabilities; language-based instruction in small groups of not more than six to eight students with profiles similar to Quinelle’s, or a one-to-one setting, by teachers trained to instruct children with language-based learning disabilities; and a structured, consistent, organized program that includes routines and reinforcement. She also recommended intensive, daily one-to-one language arts tutorial instruction, 45-60 minutes per session, in a structured, multi-sensory language program that addresses her deficits in decoding, encoding, reading comprehension, and written expression. Dr. Abate opined that Quinelle could not keep up with the pace of instruction, reading and written language demands, or requirements for independent work, in a larger mainstream classroom. Although she recommended small group speech and language therapy to address her expressive language disorder, Dr. Abate testified at hearing that Quinelle would not need these services if she were placed in a language-based classroom. (P-9; S-7; Mother, III: 146-47; Abate, VII: 45-46, 51, 65-66, 69-71, 74-75, 81-83, 88, 108-16, 226, VIII: 34-40, 42-48, 53-60)

Finally, Dr. Abate recommended that Parents consider reducing the intensity/frequency of Quinelle’s after-school tutoring “since it does not seem to be improving her reading and written

language skills.” She reported that depending on the programs Quinelle was using in three different settings (at school, with her Orton-Gillingham tutor, and at the CDC), three different instructors and approaches could be confusing for her. Dr. Abate also suggested that given the number of evaluations Quinelle has endured over the past few years, she “deserves a break from testing,” and that testing be limited to only what is essential for the next few years.(P-9; Abate, VII: 117-18, 338)

In formulating her recommendations, Dr. Abate did not speak with Quinelle’s teachers and service providers at FSS about their teaching methodologies and strategies, credentials, or specialized training in language-based approaches. (Abate, VII: 254-55, 260, 264)

67. Upon hearing Dr. Abate’s recommendations, Parents began looking for language-based programs that might be appropriate for Quinelle. They considered Landmark, Learning Prep, Willow Hill, Bancroft, and Carroll, among others. (Mother, III: 136-38)

68. The Team reconvened on November 5, 2019 to review Dr. Abate’s neuropsychological evaluation. During the meeting, Dr. Abate summarized her findings. Ms. Accorsi agreed that Quinelle exhibited executive functioning issues in the form of emotional control challenges, but she had not seen the attentional and organizational issues Dr. Abate flagged as indicative of ADHD. In Dr. Abate’s opinion, attentional issues might not be noticeable in the classroom environment if a student is compliant, sits quietly, and does as she is told. At hearing, however, Dr. Abate described Quinelle as “very oppositional when it comes to school work,” though not in life. She concluded that in a mainstream classroom, Quinelle would have difficulty with transitions associated with pull-outs and be dependent on an adult to sit next to her to get and keep her on task. Dr. Abate recommended placement in a “fully-integrated, full-time school program that specializes in the instruction of students with language-based learning disabilities.” District-based Team members did not agree with Dr. Abate’s ADHD diagnosis and with her recommendation for a change in placement. Ms. Madden also expressed her belief that Quinelle takes some time to build trust and rapport, and that her unfamiliarity with Dr. Abate – in addition to regression over the summer – may have impacted her test results. Furthermore, District staff maintained that Quinelle has been making, and will continue to make, effective progress in her then-current public school placement, where she was receiving appropriate programming and services. Moreover, the Team, including Ms. Vinci, continued to assert that Quinelle did not need in-school speech therapy, as she no longer presented with a communication impairment and the time out of class, missing instruction and content, would be detrimental to her. The Team did not propose any changes to the IEP. Parents requested that the District consider and propose ESY services for summer 2020 in January, for planning purposes. The District agreed to reconvene the Team in January for this purpose, after collecting regression data for the December break. (P-16, P-17, P-19, P-133, P-144; S-5, S-23; Father, II: 206-07; Mother, III: 148, 152; Accorsi, V: 224-26; Vinci, VI: 167, 169-70, 173; Neylon, VI: 205-09; Abate, VII: 49, 52-54, 96, 111-13, 119-21, 267-69, VIII: 6-9)

69. In Dr. Abate’s view, at the meeting the Team was “quite close minded about admitting that they could not meet [Quinelle]’s severe learning needs.” She told Parents she was “not sure [the Team members] even understand what a language-based program is and how it is different from what they provide.” She described the school as lacking in general knowledge and

experience with language-based learning disabilities and the specific programming Quinelle requires. She based this assessment, in part, on Quinelle's teacher's questions about the Sentence and Paragraph Frameworks programs. Dr. Abate referenced the tension between Parents and the Team and her view that the meeting was only a "necessary step," because the Team was not open to making changes she viewed as necessary, including structured writing programs, fluency programs, and/or a language-based classroom. As such, she recommended the family look at other options, including private placement and a BSEA hearing. Dr. Abate had already scheduled a conversation about Quinelle with Landmark Admissions. (P-17, P-134; Mother, III: 146; Abate, VII: 119-28, 270-72, VIII: 41-42, 69)

70. Following this meeting, Parents located a private counselor for Quinelle, as they noted that she was becoming aware that she was falling behind her peers and her self-esteem was plummeting. Parents believed that Quinelle's dysregulation in the mornings, which often manifested as throwing herself on the ground crying and screaming about her socks when it was time to get ready for the school bus, was really about her resistance to her school placement.⁹ They scheduled appointments that required Quinelle to leave school early one day every other week. (P-18, P-137; Father, II: 208-10; Mother, III: 148-50)

71. On November 7, 2019, Parents wrote a letter they entitled "Team Meeting Follow-up" in which they requested that NRSD change Quinelle's placement to a language-based classroom. (P-136)

72. Progress reports dated December 6, 2019 indicate that Quinelle had made progress toward four of her reading objectives, had met one, and would be explicitly taught/assessed on three following the completion of prerequisite skills. She had made progress toward her two written language objectives. She had begun writing more detailed sentences and no longer required the constant teacher support she had needed at the beginning of the school year. Quinelle had made progress toward two of her mathematics objectives and met the third, and with reinforcements, visuals, and manipulatives, she was successfully completing grade-level math work without teacher prompting. Quinelle was improving in one of her ocular-motor and spatial awareness objectives and had met or exceeded the other two. She was progressing on one of her communication objectives and had exceeded the other. (P-142; S-9; Madden, I: 49, 54-56, 59-68, 135-36)

Quinelle's first trimester report card indicates that she was meeting expectations or approaching mastery of grade-level standards independently on most categories in Social Behavior and Work Habits; Science, Technology, and Engineering; History and Social Studies; Art; Music; Health; and Physical Education. In Speech, Listening, and Language; Reading; Writing; Mathematics; and Learning with Technology, Quinelle was inconsistently meeting expectations, for the most part. Moreover, at this time she was inconsistently taking risks with ideas and experiences and inconsistently participating actively in class discussions, and inconsistently persevering in challenging situations. Ms. Madden attributed this inconsistency to Quinelle's preference for staying with what she knew and her discomfort with making mistakes. (P-21; Madden, I: 220-24)

⁹ When Quinelle arrived at school dysregulated from such events, Ms. Fitzpatrick and Certified Occupational Therapy Assistant Cathy Horman assisted her. (Fitzpatrick, VI: 48-49)

73. Although Quinelle's teachers were reporting this progress, Parents maintained that they did not see it at home, particularly in her writing. Ms. Madden attributed this difference to the specific structure and repetitive process being used at school, which she had not yet generalized to different contexts. (Madden, I: 68-69; Mother, III: 152-54)

74. In early to mid-December, Parents applied to both Landmark and the Carroll School for the 2020-2021 school year. (P-138, P-178)

Landmark admissions testing included standard scores on the GORT-5 that showed progress. Following Quinelle's interview at Landmark, Parents were told Quinelle would not be admitted due to her presentation and demeanor. Parents attributed her dysregulation to the length of the drive. Parents then applied to Windham Woods and were denied an interview. (P-27; Mother, III: 154-59)

As part of her Carroll application, Quinelle produced a paragraph about her cat as a writing sample. At hearing, Mother could not recall whether Quinelle had completed the paragraph during the interview or Parents had submitted it with other materials. The writing sample, which Mother described as something she would expect to see from a first rather than a second grader, begins with a topic sentence and ends with a closing statement, a format taught to NRSD first-graders. It uses complete sentences, including appropriate capitalization and periods. (S-40; Mother, III; 305-09, IV: 165) On re-direct, Mother testified that she did not believe Quinelle could have produced writing like this without significant support during the period of school closures between March and June of 2020. (Mother, IV: 139) At hearing, Dr. Abate testified that Mother had told her that when Quinelle was applying to Carroll, Mother wrote out a paragraph and had Quinelle copy it, because Quinelle was not able to write it herself. Dr. Abate testified that this was not a good idea, but she believed the task was developmentally inappropriate and understood Parents' concerns that Quinelle would be rejected from Carroll again. (Abate, VII: 143, VIII: 14-15)

75. Around the same time, Dr. Abate contacted Mr. Bates to arrange to observe Quinelle at FSS in her tutorial and general education settings for approximately three hours. Parents requested that she do this in order to make additional recommendations for Quinelle's programming, as the District did not appear responsive to the suggestions and findings she had made in her evaluation. At the time of this request, Team Chair Anne Neylon was not aware this observation would result in a written report. (P-20; Neylon, VI: 261-62; Abate, VII: 129)

76. According to DIBELS testing conducted by Ms. Pervier, Quinelle demonstrated significant progress in her decoding fluency between August and December of 2019, doubling her words per minute from 18 to 36 while increasing from 97% to 98% accuracy. Although she had not yet reached the target level for grade one, which Ms. Pervier listed at 47 words per minute with 90% accuracy, Ms. Pervier believed she was on track, as of December, to reach that level by the end of the school year. (P-175; Pervier, II: 84, 131)

77. On January 3, 2020, Parents requested that NRSD agree to fund an Orton-Gillingham Summer Program for Quinelle at either the Bancroft School or the Carroll School. They based this request on their view that the programming proposed by the District for Quinelle for prior

summers was “not tailored to or sufficient for children with triple deficit dyslexia.” According to Parents, they had provided Quinelle with 3.7 times the amount of services recommended by the Team, through her private tutor, and she had still regressed by one reading level. The previous summer she had attended the District’s ESY program and had regressed more, dropping from a BAS Level B at the end of kindergarten to no measurable reading level one month into first grade. She had, however, missed two weeks of the ESY program; Parents asserted that they had more than made up for these through private tutorial services. In their letter, Parents indicated that they were trying to locate a language-based program with small group interventions and a daily reading tutorial for Quinelle and requested that in the event she were to be accepted to such a program, NRSD fund tuition and transportation. (P-23; Mother, III: 160)

78. In accordance with Parents’ request to determine ESY services at an early date, the Team convened again on January 7, 2020 for this purpose. Data taken by Ms. Madden showed regression over the winter break. In response, NRSD proposed reading services, 4 x 45 minutes per week, with writing embedded within these sessions, and mathematics services 2 x 30 minutes per week. The reading services would be conducted in a 1:1 setting, and math in a small group setting (2-3 students), between July 6 and August 13, 2020 during the hours of 8:15 AM to 12:15 PM. Parents expressed concern with the timing, which would interfere with private programs in which they had enrolled Quinelle for the summer, and stated that they believed District ESY reading services needed to be provided by someone certified, rather than trained, in Orton-Gillingham. (P-24, P-26; S-5, S-24; Madden, I: 225-28, 232; Mother, III: 162; Neylon, VI: 210-11, 242)

During this meeting, Parents also requested that Quinelle be evaluated in math during the spring of 2020, as they had less information about her progress in math than in reading. The Team agreed that Ms. Madden would administer the TEMA and on February 10, 2020 sent an N1 accompanied by a consent form for this test. (P-26; S-5; Madden, I: 233; Mother, IV: 141; Neylon, VI: 212)

After the meeting, on January 8, 2020, Ms. Neylon sent Parents a two-way release form, requesting Parents’ signature to permit the exchange of information between NRSD and ICT. It does not appear that this release was ever signed. (S-37; Mother, IV: 122)

79. Following the meeting, on January 9, 2020, Parents wrote to the Team to express their concerns. They challenged the District’s position that only formal assessments need to be provided in advance of Team meetings and requested that they receive data and other information collected as well. Second, they asserted that the Team was proposing ESY services NRSD had the capacity to offer, rather than what Quinelle needed to prevent regression and receive a FAPE. They contended that the proposed services were not sufficient for Quinelle and stated that they did not have sufficient information regarding her teachers’ credentials and whether they were qualified to teach children with severe dyslexia. They reiterated their requests for a District-funded private summer program and a more intensive placement and explained that despite expressed concern about subjecting Quinelle to so much testing, they believed the TEMA-3 they had requested would provide important information. Finally, they indicated that they would provide a release for two-way communication between Quinelle’s Team and her private occupational therapist. (P-25; Mother, III: 164, 170-71)

80. On January 22, 2020, Dr. Abate observed Quinelle at Florence Sawyer School. She did not meet with teachers before or after the observation. Dr. Abate observed Quinelle in her one-to-one pull-out reading tutorial and several in-class supported subjects taught by Ms. Acorsi: math, written language, and social studies. In her written report, Dr. Abate described Quinelle's reading tutorial with Ms. Madden as the strongest element of her program; it occurred in an organized, well-structured, positive, relaxing environment in which Quinelle felt comfortable and secure. Quinelle followed the visible agenda, was familiar with the routine, and had a positive, trusting relationship with Ms. Madden, who appeared to be in tune with Quinelle's specific needs and interests. Following the tutorial, Ms. Madden sent Quinelle back to her classroom for math and said she would join her there. (P-28; Madden, I: 236; Mother, III: 168; Abate, VII: 129, 310-11, 316-17)

Quinelle used the bathroom beforehand and arrived after math instruction had already begun. The students worked in groups of six. Ms. Madden sat next to Quinelle and helped her with the first problem, which the rest of the class had already completed. Two other adults entered the class ten minutes in and rotated among students to provide them with assistance. As students read the problem aloud to one another, and Ms. Madden read them to Quinelle, the classroom noise increased. Quinelle did not finish her work. During the snack break, Ms. Acorsi read aloud to the students. Quinelle did not volunteer to answer questions or talk with other students as they conversed with each other. Following the snack break, Ms. Acorsi led a Wilson Foundations lesson for the class, who sat on a rug in front of her. Quinelle sat quietly and did not raise her hand, though she spelled most words correctly on her whiteboard. Dr. Abate noted that Quinelle had looked to her neighbors and, as such, it was unclear whether Quinelle was copying from them or really knew how to spell. During the lesson, Ms. Madden was working with another student in the room. When Ms. Accorsi handed out a packet to the class, Quinelle joined Ms. Madden and that student to work on it. Ms. Madden provided accommodations to both of them. Dr. Abate indicated that Quinelle completed less of the packet during class than many of her classmates. (P-28)

Quinelle then participated in pull-out small group writing with Ms. Madden and the other student with whom she had been working, while the rest of the class participated in a "Zones of Regulation" lesson with the school adjustment counselor. Ms. Madden supported both students in their writing with both a written rubric and questions. In response to Ms. Madden's questions, Quinelle looked down and mumbled her responses. (P-28, P-147)

Quinelle returned to the classroom for in-class social studies. Dr. Abate was surprised to see students engaging in a Valentine's Day activity, which followed on the Zones of Regulation lesson. Quinelle worked quietly, in systematic fashion. Other students appeared accepting of her but did not engage her in conversation. Quinelle left class early for her therapy appointment. (P-28; Abate, VII: 75-76, 137-39)

In her summaries and recommendations, Dr. Abate reported that Quinelle's school program consists of several appropriate elements, most notably her reading tutorial and small group writing instruction. She noted, however, that the reading tutorial should have included a structured, evidence-based reading fluency component; that her writing pull-out should have included a structured writing program that breaks down sentence writing into small, discrete

steps, and additional scaffolding. The Lucy Calkins workshop approach being used in Quinelle's class, in her experience, is contraindicated for students with language-based learning disabilities, and the pace of her math class was too fast for her. According to Dr. Abate, Quinelle's program involved too many transitions, which is problematic because of her executive function weaknesses, and her behavior in mainstream classes was notable for lack of verbal expression and language pragmatic (social communication) skills. Dr. Abate did not observe the oppositional behavior she had seen during her evaluation of Quinelle, which she attributed to the presence of an adult providing push-in support in her classes; this level of support allowed her to stay on task in class, but she was still behind her peers. Dr. Abate concluded that Quinelle's school program was not appropriate for her, and that she required a fully integrated language-based program, which would be less piecemeal and would employ strategies to assist Quinelle in responding to prompts appropriately. Such a program would consist of classes of six to eight students; more explicit language-based teaching; structured, evidence-based reading fluency and writing programs; strategies to address Quinelle's executive functioning weaknesses; and participation in all components of the learning environment, including specials. (P-28; S-7; Abate, VII: 130-37, 139-40, 232-35)

Parents provided this report to the District on February 26, 2020. (P-147)

81. Parents wrote to Quinelle's Team again on January 22, 2020 regarding her absences and missed services. They described these absences of several days as attributable to a neuropsychological evaluation, a speech and language evaluation, an OT evaluation, and three interviews with private placements, all necessitated by their search for "appropriate services and an appropriate placement." Parents acknowledged that Quinelle missed 30 minutes of school on Wednesdays to attend private therapy, but characterized this as necessary "because the school declined to make any changes" to her IEP despite Dr. Abate's evaluation which showed "issues with negative self-image." They requested compensatory services for these missed services, in addition to those missed due to half-days and to school days Quinelle had missed in connection with an injury she had sustained on a school bus. Parents also indicated that they had tabulated Quinelle's time outside the classroom on the proposed full inclusion IEP, and that due to the speech services she was receiving pursuant to stay-put, it was actually a partial inclusion IEP. Finally, they requested that the District agree to fund the academic portion of the summer program at Carroll in which they intended to enroll Quinelle and to reimburse them for travel. (P-27; Mother, III: 164-65)

In this letter, Parents also explained that they viewed Carroll and Bancroft as the two viable options for Quinelle for the following school year. They requested that NRSB fund Quinelle's placement and transportation at Carroll School from third to sixth grade, at which time they could evaluate placement at a Chapter 766 school. (P-27; Mother, III: 166)

82. In the meantime, on January 23, 2020, Quinelle participated in a private Speech and Language Insurance Evaluation with Danielle Heider, MS, CCP-SLP of Integrated Children's Therapies, Inc. (ICT) "to determine communication strengths and needs and [whether] skilled intervention is warranted." This evaluation is required annually for Parents' insurance company to continue services. Ms. Heider conducted an informal evaluation, as Dr. Abate had reported that Quinelle had been "over tested with standardized assessments and [was] beginning to show

adverse behaviors during testing.” On a measure of Quinelle’s overall communicative abilities and the way her skills manifest in the home environment, she received average scaled scores on all measures. On a language sample analysis, results demonstrated no significant presence of phonological error patterns. Her oral narrative skills were within the Low-Average range for her age, which Ms. Heider recommended be closely monitored for development of simple inference and higher-level vocabulary. She noted that although Quinelle’s CTOPP-2 scores, as measured by Dr. Abate, were below average, she was “demonstrating basic phonemic awareness skills that can serve as a building block for further reading and writing skills.” (P-29; Mother, III: 168-69; Alioto, III; 16-17)

In her report, dated February 4, 2020, Ms. Heider recognized Quinelle’s diagnoses of mixed receptive-expressive language disorder, a documented specific reading disorder and disorder of written expression, and deficits characterized by word finding and executive functioning difficulties, vocabulary development, and difficulties with reading/writing at age-appropriate levels. Ms. Heider recommended four long-term function goals, four short-term function goals, direct individual speech and language services (1 x 60 minutes per week) with monthly reviews, and a home program that facilitates carryover of therapy targets to other environments. (P-29; Alioto, IV: 18-19)

Upon reviewing this evaluation at hearing, Ms. Vinci reported that Ms. Heider employed a lot of informal measures, rather than tools with standardized scores, and explained that such measures are usually used with younger children. Ms. Vinci, who provided direct speech services for Quinelle from preschool through March 2020 (when schools closed due to the pandemic), does not agree with Ms. Heider’s diagnosis of a mixed receptive-expressive language disorder, and testified at hearing that the goals she developed do not correspond with the results of the evaluation. These goal areas, including phonological awareness, are not areas a school SLP would typically work on with students; special educators and reading specialists might do so instead. In private practice, however, they might be appropriate, because an SLP in that setting has free rein to address areas that go beyond a communication impairment impacting access to the curriculum. (Vinci, VI: 90-99, 101)

83. Quinelle also participated in an Occupational Therapy Insurance Evaluation with Lois Denman, OT, of ICT on January 28, 2020 “to determine if underlying motor and regulation concerns are affecting her ability to participate in functional tasks and [whether] treatment is warranted.” This evaluation is also an annual requirement mandated by Parents’ insurance company. Ms. Denman indicated that Quinelle had received OT services through Early Intervention at the age of three, then ICT from 2015 to 2016. Ms. Denman conducted social emotional/behavioral observations and measured regulation and functional independence through home and school forms and the Roll Evaluation of Activities of Life (REAL) tool. Quinelle’s scores on the REAL tool were in Average range for Activities of Daily Living and the Below Average range for Instrumental Activities of Daily Living, likely due to difficulty with self-regulation. On measures of motor planning and coordination, Quinelle scored within the Average range. These results, together with clinical observations, led Ms. Denman to conclude that Quinelle presented with a number of challenges including body weakness, difficulty with self-regulation and vestibular processing, as well as deficits with motor coordination. In her report, dated February 5, 2020, Ms. Denham developed four long-term and short-term goals,

recommended that Quinelle participate in weekly one-on-one skilled outpatient OT services (1 x 60 minutes per week, with monthly reviews), and suggested that activities be added to her home program to facilitate carryover of skills learned during the session. (P-30; Mother, III: 168-69)

Upon reviewing this evaluation, Ms. Fitzpatrick concluded that Quinelle was displaying more problems in social participation and with touch, as reported by Parents. She was presenting with increased OT needs, particularly at home, in January 2020 than she had in March 2019. (Fitzpatrick, VI: 27)

84. On January 28, 2020, Parents provided NRSD with a formal Notice of Intent to Seek Reimbursement for Privately Provided Services and Unilateral Placement. In their Notice, Parents indicated that they would be requesting reimbursement for tuition and transportation for Quinelle's placement at Carroll School for the summer of 2020 and the 2020-2021 school year; and reimbursement for services and transportation associated ongoing counseling and Quinelle's speech therapy at ICT beginning February 19, 2020. (P-143)

85. On February 3, 2020, Ms. Madden informed Parents that the TEMA would be administered to Quinelle in March. On or about February 7, 2020, NRSD issued an N1 indicating that this would occur, and on February 12, 2020, Parents returned a signed Evaluation Consent Form. (P-31, P-145, P-146; S-31; Mother, III: 171, 173) The TEMA was not conducted prior to school closures caused by the COVID-19 pandemic. (Madden, I: 135; Mother, III: 173)

86. On February 7, 2020, Ms. DeAngelis wrote to Parents declining their request to fund an out-of-district placement for Quinelle and their request for private ESY services. She also declined Parents' request for compensatory services, as District personnel had been available to meet Quinelle at the scheduled times. (P-144; Mother, III: 172; DeAngelis, VI: 308)

87. On or about February 10, 2020, the District issued a revised Second Amended IEP 2020-2021 IEP, accompanied by an N1, updating Quinelle's placement page to reflect that although the Second Amended IEP provided for a full inclusion placement, her current services (with the increase of 90 minutes per cycle of reading and 30 minutes per cycle of math, following the October 11, 2019 Team meeting) aligned with a partial inclusion program because of the speech and language services being delivered due to stay-put. Ms. Neylon characterized this error as a clerical one that did not impact service delivery in any way. Parents returned this form on or about February 28, 2020, commenting that the IEP had not been changed and the amendment was issued only to correct an error on the placement page. They also indicated that they continued to advocate for a change to an integrated language-based program per the recommendation of their neuropsychologist. (P-34; S-6; Mother, III: 174-75; Neylon, VI: 214-15, 236)

88. On February 24, 2020, Parents wrote to NRSD in response to the District's letter denying their request for unilateral placement. They indicated that they were continuing to seek reimbursement for speech therapy provided by ICT, beginning on February 19, 2020, and for counseling, and attached an invoice for out-of-pocket expenses they had incurred since their initial letter in spring 2019 informing NRSD that they would be seeking reimbursement for

privately provided services. Parents expressed their continuing belief that the District's ESY proposal was inadequate. (P-32; Mother, III: 173-74)

89. Shortly thereafter, Parents wrote to Ms. Madden to express concern about a note Quinelle had written, which they asserted showed that she could not demonstrate appropriate spelling skills in the absence of a person coaching her. (P-33) Ms. Madden spoke with them at a parent consult about this note, which was inconsistent with the way Quinelle was writing in school, even without support. (Madden, I: 243)

Parents also wrote to Ms. Madden, Ms. Acorsi, and Ms. Fitzpatrick on March 1, 2020 to express their concern about Quinelle's ongoing sensory issues at home. At school Quinelle had begun displaying increased sensory issues and frustration in mid-to-late February, shortly after she received an award for good character and work ethic. This was discussed at a parent consult, and Ms. Madden worked with OT staff to create a behavioral incentive program for home for putting on socks and shoes. Staff noticed that this sensitivity at home, which was leading to tantrums, at times caused Quinelle to be elevated when she arrived at school. The plan was then implemented at school as well, and staff gave her increased access to sensory breaks. Around this time, Quinelle began displaying increased frustration at school, putting her head down or back, as well as more negative rhetoric about school. She told Ms. Madden that she would soon be going to a school that "actually helps her to learn." (P-35, P-183 at 222; Madden, I: 245-48; Accorsi, V: 178-82)

90. Throughout the school year, Ms. Madden was aware that Quinelle was working with outside providers—Ms. Pervier and the CDC – on Orton-Gillingham as well. Although she testified that aligned, coordinated interventions might lead to dramatic improvements, she expressed concern that such alignment was not occurring. According to Ms. Pervier's reports, Quinelle was not working on the same skills with her that she was in school. (Madden, I: 130-31)

91. On March 4, 2020, Quinelle began receiving speech therapy once a week for approximately 30-40 minutes through ICT with Allison Alioto. Ms. Alioto has a Master's degree in speech-language pathology. She has been fully licensed as an SLP by both Massachusetts and ASHA, the national board for speech-language pathology, since March 2020. Ms. Alioto has been providing speech therapy to Quinelle via telehealth on a weekly basis since that time, with the exception of a short break at the beginning of the pandemic. She describes Quinelle as eager to learn, though it took some time for her to warm up when they first met. During speech therapy, Ms. Alioto works with Quinelle on her word finding difficulties, executive functioning, vocabulary development, and difficulties with reading and writing. At first, Quinelle was not resistant to speech therapy, though she had some difficulty connecting on the computer. During sessions, Quinelle tends to become frustrated and shut down when she cannot find a word. On at least five occasions she was unable to complete her work, and Ms. Alioto could not always continue the session. Ms. Vinci was not aware that Quinelle was receiving private speech therapy until sometime during COVID closures. When she became aware of this, NRSD requested a release to facilitate communication with the outside provider, but Parents never signed this release and as such, Ms. Alioto never spoke with NRSD personnel regarding her work with Quinelle. Ms. Alioto has spoken with Carroll school staff during the 2020-2021 school year. (Alioto, IV: 5-6, 9-11, 14, 21, 40-43, 45-47, 51; Vinci, VI: 101, 104-06, 115-16)

92. On March 4, 2020 Ms. Madden provided Parents with baseline and regression data regarding BAS, grade-level fluency, and syllable type in connection with summer break 2019 and Christmas break 2019/2020, at which time she indicated that Quinelle had regressed in the first two instances, but not over February break in 2020. Ms. Madden provided the February break regression data to Parents on March 12, 2020. (P-35, P-36, P-37, P-129, P-149, P-150; Madden, I: 248-49)

93. On March 13, 2020, NRSD closed schools due to the coronavirus pandemic. (P-38) At the time of the closure, Quinelle was making significant growth across all areas. Her second trimester report card and progress reports indicated that although she had not yet achieved grade level mastery, she was approaching most reading, writing, and math standards with supports and making progress toward her objectives. Quinelle was demonstrating solid math skills, keeping pace with grade-level assessments on which she was receiving mostly scores in the 90s. She was exceling in some strategies, including use of a number line and mental math; had made considerable progress on computation problems and word problems; and was still working on fluency. Specifically, Quinelle could identify pertinent information, including what she was being asked to solve, identify the operation, and solve the problem using addition and subtraction with 80% accuracy in 3 out of 5 recorded opportunities. She continued to need teacher prompting, including check-ins, sneak peeks of lessons, and/or repeated practice, as well as scaffolding with two-step word problems. In reading, Quinelle had mastered her high-frequency word lists and improved her fluency, comprehension, and reading demeanor. She had increased three reading levels to BAS independent Level J with 97% accuracy, which placed her on target to meet her end-of-year goal of an increase of five levels.¹⁰ Quinelle was feeling good about her progress. Her writing had also improved; she was less resistant, had great ideas, organized her content well, and included transition words. She was applying the phonetic skills she was working on in her pull-out sessions to classroom assignments and increasing the amount of detail across all writing genres. Specifically, given a writing assignment, she was able to write more detailed sentences, in 3 out of 5 measured opportunities. She had begun to show increased independence while writing but continued to be most successful with teacher praise and encouragement, particularly as she would get frustrated when she did not know what to do next; she “put a lot of pressure on herself when it came to writing.” As a result, much of her work with Ms. Madden on writing focused on the growth mind-set and reducing that pressure. Quinelle continued to benefit from teacher scaffolding of her verbal ideas as she translated them into written content. Quinelle was continuing to progress on ocular-motor and spatial awareness and communication objectives. She was also maintaining strong social connections at school, as she was close with a couple of girls in her class and at recess, was able play with both boys and girls across different activities. Although she was quiet during many academic periods when she was focused on work, socially she was able to keep up with both special education and general education peers. Quinelle conversed with other students during informal snack or free time, or during group work. At the same time, she received ratings of “inconsistently meeting expectations” in several areas of her report card, including risk-taking with ideas and experiences, actively participating in discussions, and persevering in challenging situations. She

¹⁰ Ms. Madden and Ms. Forte described BAS Level J as an end of first grade and/or beginning of second grade measure. According to Ms. Madden, by this time of the year, most students would be expected to read at one or two levels beyond that. (Madden, I: 161; Forte, V: 82) The target for end of second grade is BAS instructional Level M. (Accorsi, V: 193)

continued to receive accommodations in the general education setting to enable her to participate when she felt comfortable. (P-148, P-153; S-10; Madden, I: 69-73, 76-83, 140-44, 165-69, 173-74, 178-82; Mother, IV: 71-73; Accorsi, V: 160-67, 182, 188, 196-99; Fitzpatrick, VI: 31-32, 51-52)

94. Although her teachers were reporting that she had made progress at this time, Parents remained concerned about Quinelle's academic skills, including her first grade reading level and low fluency and their belief that she required a lot of support to complete writing assignments and was not as independent as her teachers suggested. Parents believed Quinelle was over-reliant on staff during general education classes. (Mother, IV: 69-70, 74, 81)

95. When schools first closed due to the COVID-19 pandemic, Ms. Madden gathered resources from classrooms to create a work bag for Quinelle to support the Orton-Gillingham structure, including sound cards and language games. She added math games, books, a poetry packet, and links to online resources such as Splash Math. These activities were intended to last two to three weeks initially. (Madden, I: 83-86; Mother, IV: 86, 88-89; DeAngelis, VI: 304-05) On March 16, 2020, NRSD sent an email regarding opportunities for Resource Room students to access additional support. (P-151) That same day, Parents contacted Quinelle's teachers to ask whether Quinelle would be receiving any direct instruction during the break in school. (S-30; Mother, III: 178) Ms. DeAngelis responded that NRSD could not provide direct services because it was a global pandemic, the District was closed, and confidentiality issues limited online virtual learning opportunities. (DeAngelis, VI: 305-06)

96. On March 18, 2020, Parents signed a binding agreement to enroll Quinelle at Carroll for the 2020-2021 school year. They made their first tuition payment on or about April 1, 2020. (S-178)

97. On March 21, 2020, the United States Department of Elementary and Secondary Education Office for Civil Rights (OCR) issued a Supplemental Fact Sheet (SFS) regarding COVID-19 and children with disabilities. This SFS clarified that neither IDEA nor Section 504 prevents any school from offering educational programs to children with disabilities through distance instruction. (P-155; S-32)

OCR also issued clarifications regarding timelines, specifying that annual review meetings may be conducted through videoconferencing or telephone conference calls, and inviting school teams and parents to work collaboratively and creatively to meet IEP timeline requirements. OCR also indicated that changes could be made to a child's IEP after the annual Team meeting without reconvening, if Parents and their District were to agree to instead develop a written document to amend or modify the child's current IEP. (S-32)

98. On March 21, 2020, the Massachusetts Department of Elementary and Secondary Education (DESE) also issued guidance in the form of Coronavirus/COVID-19 Frequently Asked Questions for Schools and Districts Regarding Special Education (FAQ). Pursuant to the FAQ, school districts must provide special education services to students with disabilities during school closures, consistent with the need to protect health and safety of both students and providers. DESE specified that school districts are permitted to deliver many disability-related

modifications and services remotely or online, through resources and supports, as well as virtual, online, or telephonic instruction. Moreover, any educational opportunities offered to general education students must be made available to students with disabilities, including enrichment opportunities and resources. DESE recognized that it might not be possible to provide certain services (i.e. hands-on OT), but encouraged school districts to modify other specialized instructional opportunities and related services by sending resources and supports to students or providing them online or telephonically. DESE also put school districts on notice that once school resumes, they will have to review how school closures impacted the delivery of special education and related services to individual students and convene Team meetings to determine how best to provide necessary compensatory services and ensure that the student receives a FAPE prospectively. (S-34)

99. At the time schools first closed, NRSD cancelled special education meetings, as it was unknown how long in-person instruction would be suspended. In mid-April, the District began holding annual reviews virtually, focusing on students whose IEPs had expired. NRSD planned to discuss Dr. Abate's observation report at Quinelle's annual review in June, as personnel did not view this document as triggering the ten-day window within which a Team meeting must occur to discuss an independent evaluation. (Neylon, VI: 189-90, 243-44)

100. During school closures, Ms. Fitzpatrick was in regular communication with Parents. Ms. Vinci consulted with Quinelle's teachers to ensure that she was receiving work targeting expressive language development. Ms. Fitzpatrick and Ms. Vinci created a weekly OT and Speech Remote Learning Plan that included Visual Motor, Sensory Motor, and Speech-Language Therapy activities. These activities included links to different options for students to complete, and many included written directions as well as files or videos. Parents were informed to do what they could without causing undue stress for them or their children. Speech therapy plans appear to have been distributed for three weeks, at which point Ms. Vinci began a maternity leave and a substitute assumed her caseload. Speech and language assignments were distributed, then, via Google Docs. OT plans appear to have been distributed for a period of at least nine weeks. Quinelle's OT remote plan included activities that addressed her objectives, including activities to address self-regulation, reflex integration, and eye tracking. Other than these plans, Quinelle did not receive direct and/or synchronous speech and language or OT services from NRSD during the period of school closures. (S-30, S-38; Mother, III: 188-89, IV: 146; Fitzpatrick, VI: 33-37, 55-56; Vinci, VI: 100-01, 106-10, 175)

101. Parents emailed District personnel frequently over the first few weeks of pandemic-related school closures. On March 25, 2020, in response to Parents' concern that the initial schedule was too taxing and their request to hold the parent consult that had been scheduled for March 16, Ms. DeAngelis provided a suggested schedule she had developed in consultation with Quinelle's educators and explained that the parent consult would be rescheduled when schools reopened. (P-154; DeAngelis, VI: 304-05) Mother responded the same day, stating that she was continuing to await data regarding Quinelle that had been delayed due to the closure, and as a result she felt Parents were not being treated as part of the Team. She wrote again that night, indicating that Quinelle was receiving no Orton-Gillingham services despite Dr. Abate's September 2019 report stating that she requires 45-60 minutes per day. In a third email that

appears to have been sent the same day, Mother stated that she was formally requesting data and would not wait until May to receive it. (P-156)

102. Mother wrote to Ms. DeAngelis again the following day. She emphasized that Parents had provided the District with their unilateral placement letter and Dr. Abate's observation report ten days before schools closed due to the pandemic, yet two weeks after closure had not received a response to either. She referenced the DESE guidance released five days earlier; pointed out that Quinelle had been without services for two weeks, tabulated missed services and requested compensatory services for them; and requested that the District respond to the list of missed services Parents had provided on January 22, 2020. Parents offered to send Zoom invitations to the District to facilitate service delivery and indicated that they would be amenable to District-funded private services in the alternative. Finally, they restated their refusal of the District's proposed delay until school reopening of their meeting to discuss regression ad reading level data. (P-155)

103. Ms. DeAngelis responded the following day, emphasizing that given the pandemic she was not able to provide concrete answers to all questions. She explained that the District recognized that only three weeks of work had been provided but was working on a remote learning plan to assist families going forward. Ms. DeAngelis described the parent consults to which Parents referred as a mechanism to discuss Quinelle's progress, not an obligation to create and produce documents; accordingly, the Team was not withholding anything from Parents, as the underlying information was not readily available. Ms. DeAngelis asserted that because the district was not open, timelines were "on hold." She characterized Dr. Abate's observation report as a document provided by Parents to the District, not an independent evaluation triggering the need for a Team meeting. (S-156; Mother, III: 174)

104. On April 6, 2020, Parents emailed Ms. DeAngelis, the school principal, and Quinelle's general and special educators, SLP, and occupational therapist expressing their concern that although they had heard from the classroom teacher, occupational therapist, and special educator over 17 school days of closure, they had not been contacted by Quinelle's Team lead nor had they received a plan from the SLP. A chain of emails followed that week, with Mother asserting: (1) because she had not heard from the SLP previously, she assumed Quinelle would not receive direct SLP services and would continue to provide an hour per week of private speech therapy; (2) Quinelle was struggling and the regular education materials were making her anxious; (3) she had been instructed by service providers to direct questions to the administration, but should not have to wait four days for answers; and (4) she expected more timely responses to her questions about services. Mother asked whether Quinelle would receive specialized reading and math services and attached a chart of missed services to date during the closure. (P-158)

105. At some point between the end of March and the beginning of April, NRSD provided guidance for second grade families in the form of a Grade 2 – Home Engagement Choice Board, which included Math, Science, ELA, Social Studies, and Movement & Arts activities, many of which embedded links to online resources. The second grade teachers, including Ms. Madden, met weekly to develop these boards. (S-26; Madden, I: 84-85, 253; Accorsi, V: 168-69; DeAngelis, VI: 316-17) Before this point, Ms. Accorsi focused on checking in with her students about their social-emotional wellbeing. (Accorsi, V: 167-68)

On or about April 6, 2020, Ms. Madden began providing a weekly Grade 2 Specialized Instruction Opportunities PowerPoint presentation to families of children who receive special education. Ms. Madden explained that in place of the reading and work assigned by the general education teacher, students could complete the activities in the PowerPoint. Parents were invited to upload pictures, videos, or audio messages of their children completing activities, asking questions, sharing what they had done, or just saying hello. These activities featured repetition, included word reading and trick word spelling activities; sound card drills; and word and sentence games that required a participant in addition to the child. Ms. Madden provided video models for the work, which walked parents through the structure of a reading lesson at home that could be used to supplement general education teachers' reading assignments. She also included math alternatives, reminded families of her four weekly "office hours," and invited them to contact her then, email her specific questions, upload video or audio messages on Seesaw, or request a Google Meet. (P-156; S-29; Madden, I: 85-87; Mother, III: 184, 312, IV: 89-90, 95, 99-100; Accorsi, V: 174-75)

Mother worked through the PowerPoint activities with Quinelle, which often required that she print out, laminate, and organize pages. She characterized this involvement as "doing all the teaching functions." In reading, they worked on sound cards, then completed word, sentence, and paragraph activities in order. For math, they completed some worksheets they had been given, supplemented by additional worksheets to address topics Mother felt were important, such as money sense. Various methods were provided for spelling, including multisensory tools. Mother worked through these activities with Quinelle and worked, at times, on cursive. They also completed speech and OT activities together. (Mother, IV: 95-97, 101, 145-46)

These PowerPoints, which were issued through the week of May 4, 2020, evolved over time to include options to replace or supplement Foundations assignments given by general education teachers and a revised reading structure that relied on the Lexia Reading Program. (S-29; Mother, IV: 101-02)

Beginning either the same week or the week of April 13, 2020, through and including the week of May 18, 2020, Ms. Accorsi provided Quinelle's family weekly newsletters and Second Grade Remote Learning Grids that listed daily "Must Do" activities in the following areas: Independent Reading; Listen to Reading; Writing Workshop; Math, including activities from the enVision curriculum; Foundations; Social Studies/Science; and Specials. These plans included links to online sites and required that only a small portion of assignments be submitted to the teacher. Ms. Accorsi also posted this information on Seesaw, a platform that allowed her to write notes back and forth with students, along with morning videos reviewing the day's assignments. (P-160, P-161, P-163; S-27; Mother, III: 184-85, IV: 90-94; Accorsi, V: 169-72) Beginning the week of May 18, 2020, Quinelle's family began receiving adapted learning plans, described in detail below. (S-164; Accorsi, V: 172-74)

At some point in April, Ms. Accorsi began holding both small group and full class Google Meets. During small group, which occurred once a week for 30 minutes and in which Quinelle was able to participate, students would read a book or engage in activities such as scavenger hunts, with a focus on social-emotional wellness. Quinelle tried on four occasions to attend full

class Google Meets, which occurred once a week for 30 minutes, but she became dysregulated each time and Parents stopped attempting to have her participate. (Mother, III: 186-88; Accorsi, V: 175-78, 204)

106. Although Quinelle and her mother were working hard during this period to prevent regression, Quinelle began declining in her social-emotional and behavioral presentation, and she showed decreased ability to complete academic work she had previously mastered. For the first few weeks of April, Mother and Ms. Madden emailed daily, sometimes exchanging as many as a dozen emails in a day, to discuss and problem-solve this shift. In mid-April, Ms. Madden began scheduling twice weekly video calls of 30 minutes each with Quinelle, one-on-one, to work through her assignments; generally Mother attended as well. During their first attempt to work in this format, Quinelle screamed, cried, and refused to be on the screen. Ms. Madden noted that there were limited periods of success during school closure, but for the most part she observed a dramatic decline, as Quinelle was unable to produce work. She was also too dysregulated to participate in Orton-Gillingham instruction with Ms. Madden using even the most basic sounds cards. Ms. Madden consulted with other members of Quinelle's Team regarding her presentation, but at some point, these twice weekly meetings discontinued because Quinelle could not tolerate them and Ms. Madden began meeting with her once a week for an emotional check-in. Ms. Madden did not provide any direct Orton-Gillingham services to Quinelle from the time schools closed through the end of the school year. (Madden, I: 89-90, 126-27, 254-55, 261, 289; Mother, III: 179-180, 102-05, IV: 149)

107. Mother viewed Quinelle's inability to complete work independently during school closures as indicative that she had become dependent on an adult at school. (Mother, III: 183-84)

108. On April 21, 2020, following a conversation with Ms. DeAngelis, Mother emailed Ms. Madden, copying Ms. Neylon, Ms. DAngelis, Mr. Bates, and Ms. Accorsi. She wrote that she was "uncomfortable communicating with [Ms. Madden] and even just requesting office hours . . . because Ms. DeAngelis said [she] came off as aggressive and made [Ms. Madden] feel uncomfortable and she told [Mother] she would instruct [Ms. Madden] to cease communication with [her] if [Mother] continued to send too many emails making requests." She explained that she would be leaving assigned projects unfinished because Parents could not get Quinelle to complete them. She indicated that Quinelle had demonstrated "clear regression" in regulation and academic abilities, and she again attached a chart of missed services. (P-159)

109. Parents filed the instant *Hearing Request* on April 24, 2020. (P-40)

110. On May 13, 2020, while NRSB was providing education virtually through distance learning, Dr. Abate conducted a socially distant follow-up evaluation of Quinelle to assess her academic progress by comparing current test scores to those obtained by Ms. Forté in April 2019. Dr. Abate wore a mask; Quinelle wore one at times. Dr. Abate administered the Wechsler Individualized Achievement Test – Third Edition (WIAT-III) and the Gray Oral Reading Test – Fifth Edition (GORT-5): Form A. According to her report, Quinelle demonstrated statistically significant declines on multiple measures. (P-41, P-43; S-7; Abate, VII: 146-47) As of this time, Quinelle's only Orton-Gillingham work since mid-March had been provided by her mother, with support from Ms. Madden. (Mother, III: 191)

Although Quinelle’s Total Reading score remained in the Below Average range, the score was “significantly lower” than it had been on Ms. Forté’s evaluation. Three subtests showed significant decline, according to Dr. Abate; three subtests showed some decline, but not to a statistically significant degree; and Quinelle’s score on the remaining subtest was the same. On the GORT-5, Quinelle’s score on the Oral Reading Index declined from the Below Average to the Poor range. Her Rate, Accuracy, and Fluency scores declined to ninth, fifth, and fifth percentile, respectively, and her Comprehension scores stayed the same. According to Dr. Abate, only Accuracy showed a statistically significant decline, from the twenty-fifth to the fifth percentile. Dr. Abate observed that Quinelle had not yet mastered sound-symbol correspondence, phonics rules, word attack skills, or syllabification principles. She added words, added or omitted word endings, transposed letters in words, and substituted words when reading aloud. She presented as a slow, dysfluent reader who, when asked to read more than a few sentences, became overwhelmed, moaning, putting her head down, and crying. Dr. Abate indicated that as Quinelle’s reading skills had fallen to beginning of first grade level or lower, likely because she had not been receiving the appropriate services, she was certainly not ready for third grade work. (P-41; Abate, VII: 149=54)

In math, Quinelle earned a Total Math score in the Below Average range; Dr. Abate characterized this as significantly lower than her 2019 score. Her Math Problem-Solving score was lower than last year, but not to a statistically significant degree. Her Math Fluency-Subtraction score was significantly lower, though her Math Fluency-Addition subtest was slightly higher. Overall, Dr. Abate concluded that Quinelle’s math skills had declined, likely due to NRS’s failure to provide her with appropriate services. (P-41; Abate, VII: 154-55)

On the WIAT-III, Quinelle’s Total Written Expression score in the Below Average range was slightly, but not significantly, lower than it had been in 2019, as was her score in Alphabet Writing Fluency. Quinelle’s spelling score, in the seventh percentile, reflected a significant decline, but her Sentence Composition score, in the Low Average range, was slightly, but not significantly, higher than in 2019. Quinelle continued to generate sentences more skillfully when provided with models. Quinelle’s Total Oral Language score declined from solidly Average to the lower end of Average, showing statistically significant declines on all measures of receptive language. Most of her expressive language scores remained within the Average range, and she showed statistically significant improvement on the Oral Word Fluency subtest. Dr. Abate testified initially that she could not say, based on this testing alone that showed definite weaknesses and an overall score in the low average range, that Quinelle had an expressive language disorder. On further questioning, she revised her answer to “probably yes.” (P-41; Abate, VII: 155-58)

Even though she testified at hearing that she would expect a student with Quinelle’s profile to regress without direct instruction for a prolonged period of time, Dr. Abate relied on her updated testing, conducted two months after direct instruction had terminated abruptly, to draw conclusions about Quinelle’s progress over the course of the spring and the appropriateness of her placement. Dr. Abate concluded that Quinelle had not made effective academic progress over the last year in subtests reflecting certain aspects of reading, math, and written expression, and had in fact regressed. She testified that Quinelle’s regression was “the most severe that [she’d

seen in any child [she'd] tested with learning disabilities” and that Quinelle would be “totally lost and completely overwhelmed” in a partial inclusion program. Once again, Dr. Abate opined that Quinelle’s complex profile consisting of an expressive language disorder, triple deficit dyslexia, math, written language, and executive function weaknesses, sensory processing difficulties, and a vulnerable self-esteem,”of required placement in a fully-integrated language-based placement with similar peers. (P-41; Abate, VII; 117, 146-48, 158-59, 293-94, VIII: 19)

111. In reviewing Dr. Abate’s evaluation, Ms. Madden noted that it was consistent with what both she and Quinelle’s mother had been seeing since schools had closed, in that it showed a massive regression in her academic functioning. Quinelle’s scores on the WIAT and the GORT-5 in particular, were not reflective of the performance Ms. Madden had seen from Quinelle prior to school closure. They were, however, representative of her social-emotional and academic presentation in and around May 2020. (Madden, I: 90-92, 257)

112. Beginning the week of May 18, 2020, and through the week of June 8, 2020, Quinelle received a weekly Adapted Second Grade Remote Learning Plan. This plan included a daily priority assignment on Lexia in reading, accompanied by a “Listen to” and/or “Watch” assignment (goal of 30-45 minutes per day); Specials; and reduced amounts of work in Math (20-35 minutes per day), Spelling (10-15 minutes per day), and Social Studies/Science (20-30 minutes per day). The weekly plans included optional extension activities and provided for four “office hours” per week with Ms. Madden, during which families could schedule time to receive help on any assignments. Again, only a small portion of completed work had to be submitted to the teacher. (P-164, P-166; S-28; Mother, III: 190, IV: 94-95, 157; Accorsi, V: 173-75)

113. Between March and June 2020, Quinelle received private counseling, speech, and OT services. She did not receive any outside Orton-Gillingham programming. Parents maintained a log of these services, as well as detailed notes regarding the activities, general education and small group classes, and consultations offered by NRSD that Quinelle participated in throughout the period schools were closed. Quinelle struggled to complete work consistently; she made errors, cried, and became dysregulated during school lessons on a regular basis. (P-168, P-169; Mother, III: 191, IV: 146-57)

114. The Team convened for Quinelle’s Annual Review on June 2, 2020. Ms. Neylon provided a draft IEP the previous day. During the meeting, Dr. Abate reviewed her observation report and updated evaluation, and she again recommended a language-based program. Although the District did not present any standardized, nationally normed testing data of its own, the Team considered other information, such as Quinelle’s progress on Lexia. Ms. Madden provided context for some of Dr. Abate’s observations during her day at FFS. For example, Quinelle typically would not miss any math instruction; she only did so on that day because her schedule was rearranged to allow Dr. Abate to observe her reading tutorial as well. Ms. Madden explained that Quinelle’s lack of participation in class may have been related to the fact that she was being observed; moreover, Dr. Abate’s positioning may have prevented her from seeing some of the interactions between Quinelle and Ms. Madden. Ms. Acorsi provided additional information about the packet she had distributed to students and responded to Parents’ complaint about the Valentine’s Day lesson. Quinelle’s mother described Quinelle’s significant dysregulation during school closure; Ms. Madden agreed that she had seen a dramatic change in regulation between

school and home during videoconferences. District personnel expressed concern that the results of Dr. Abate's updated testing may have been impacted significantly by Quinelle's struggles during remote learning and the unconventional format in which the evaluation was administered (masks, social distance, etc.) At hearing, Dr. Abate refused to acknowledge that Quinelle's low test scores may have been invalid, or that due to unusual circumstances, including the absence of in-person learning and social-emotional issues occurring at home, they may not have reflected accurately her progress since her initial evaluation eight months earlier. (P-43, P-170; S-7, S-25; Madden, I: 263-64; Neylon, VI: 216-218, 257-58; DeAngelis, VI: 291; Abate, VII: 159-60, 307-08, VIII: 68, 101-03)

The parties also discussed goals and services. Parents requested that additional accommodations and information be included in PLEP-A. Mother stated that she did not want Quinelle to participate in in-person ESY programming and noted that both Bancroft and Carroll would be remote over the summer. She referred to the potential requirement that Quinelle participate in an in-person program as a violation of her personal health and rights. The parties discussed Quinelle's goals. Parent stated that she did not agree to a goal that anticipated that Quinelle would still be a year behind in reading; she asserted that if Quinelle's IEP could not get her to grade level, she would need a change in placement. She also expressed disagreement with the District's continuing omission of a communication disorder on Quinelle's IEP. As a result of Quinelle's increased frustration and decreased self-concept toward the end of the school year, the Team determined that a social goal would be appropriate. NRSD prored a partial inclusion placement, though Parents again requested a change in placement. (P-43; Madden, I: 139 -40, 283-84; Mother, III: 192-93; Neylon, VI: 216, 223; Abate, VII: 160-64)

115. The Team developed an IEP covering the period June 2, 2020 to June 1, 2021 (2020-2021 IEP), which was signed by a District representative on June 19, 2020. According to Ms. Neylon, delivery of the IEP was delayed due to both pandemic-related disruptions, about which she had warned Parents, and because the District had to figure out how to embed Parents' long statement of concern.¹¹ (S-7, S-15; Neylon, VI: 221-22)

116. Parents' Concern Statement, which was submitted either before or after the meeting and included in its entirety in the 2020-2021 IEP, noted their belief that Quinelle had failed to make sufficient progress and their distress regarding the data collected by Dr. Abate, which they viewed as showing "large regression over the last year." They emphasized their efforts to convince NRSD to place Quinelle in a language-based classroom since kindergarten. Parents also raised the District's failure to provide Quinelle's Grid-C services via a virtual platform during school closures, which they estimated at 94 missed service hours, and NRSD's failure to modify social studies and science work during the pandemic, as these subjects were not explicitly included in her IEP. According to Parents, Quinelle was reliant on one-to-one instruction and guidance across all academic areas. Moreover, they asserted that the District failed to timely schedule a meeting to discuss Dr. Abate's observation report, which was submitted to the District on February 26, 2020. They disputed the District's belief that Quinelle no longer required speech therapy and argued that the ESY services offered were inadequate. Parents explained that they had attempted to locate an appropriate, "Chapter 766" school with a

¹¹ Ms. Neylon had informed Parents that the IEP might be sent outside of the procedural timeline prescribed by the IDEA for these reasons. (Neylon, VI: 221-22)

language-based program within a reasonable distance of their home, but as they could not locate one they intended to place Quinelle unilaterally at Carroll School in Waltham, a placement they believed should be publicly funded until she reached sixth grade. (P-171; S-7, S-15; Neylon, VI: 218-19)

117. The 2020-2021 IEP reflects the Team's determination that at this time, Quinelle's Specific Learning Disability in Reading impacts her basic reading, reading fluency, and reading comprehension skills. Her below-average rapid retrieval skills, which affect the automaticity with which Quinelle can access known information in her mind, have an additional negative impact on her reading fluency. Her academic skills, including writing and mathematics, are delayed, as is sensory processing in the areas of vision, touch processing, balance, and motion, which impact her regulation, ocular motor, and motor skills. Delays in the integration of primitive reflexes impact Quinelle's social, motor, and cognitive development. Quinelle also presents with oculomotor dysfunction (eye tracking), general binocular dysfunction (eye teaming), and accommodating dysfunction (eye focusing) that impact her reading, writing, and copying skills across the curriculum. The 2020-2021 IEP provided multiple accommodations to address these deficits and delays. (S-7, S-15)

118. In PLEP-B, the Team proposed consultative speech and language services to address Quinelle's word finding needs, direct services from the school counselor to address her social needs, and direct OT services to address ocular motor and handwriting/copying skills, as well as keyboarding, sensory processing, and reflex integration. (S-7, S-15)

119. The 2020-2021 IEP provided for a partial inclusion placement and contained Reading, Written Language, Mathematics, Handwriting and Keyboarding, Sensory Processing/Self-Regulation, and Social goals. According to the Current Performance Levels across all academic areas, per parent report and as seen by Ms. Madden, Quinelle had demonstrated slowed rates of progress due to emotional difficulties as a result of the altered school routine and change in instructional format "necessitated by the COVID-19 pandemic." This IEP did not list ADHD among Quinelle's diagnoses. It did, however, incorporate many of the accommodations suggested by Dr. Abate.

According to the Current Performance Level of Quinelle's Reading goal, as of March 2020, prior to school closures associated with COVID-19, Quinelle was reading at an independent BAS Level J with 97% accuracy, and was reading slowly and methodically, primarily in two to three-word phrases, with some word-by-word reading. She demonstrated the greatest accuracy while reading in a structured, supportive learning environment. During school closures, on May 4, 2020, Quinelle placed into Level 10 of the Lexia Core 5 program, beginning of second grade level; as of May 29, 2020, she had completed 63% of Level 10.

Quinelle's reading goal focused on decoding, word analysis, oral fluency, and comprehension. Among other things, her reading goal anticipated specifically that she would increase her independent reading level by three or more levels from the baseline of Level J measured in March 2020 via Fountas and Pinnell.

According to the Current Performance Level of her Written Language goal, as of March 2020, in isolation Quinelle's encoding of different types of words ranged from 82% to 93% accuracy, and her encoding of different kinds of words in dictated phonetically controlled sentences averaged between 83% and 87% accuracy. Among other things, at this time, Quinelle was able to develop a complete paragraph that included a sequential structure, used transitional vocabulary, and included 2 or more detailed sentences in 3 of 5 measured opportunities. She was showing increased independence in the completion of written tasks. With a guided editing checklist, Quinelle was able to identify and correct errors in writing conventions with 85% accuracy in 4 of 5 measured opportunities. During school closures, Quinelle completed adapted writing assignments in the form of spelling practice at the word and dictated sentence level. The goal focused on encoding, applying phonetic knowledge, writing accurate sentences and structured, sequential paragraphs, and editing work.

According to her Current Performance Level in Math, at the time the 2020-2021 IEP was proposed, Quinelle's scores on grade-level math assessments ranged from 89% to 100% accuracy. Her objectives focused on skip counting, mental addition and subtraction, making value comparisons, identifying pertinent information in word problems read aloud to her, solving addition and subtraction problems using concrete models, drawings, place value blocks, or standard algorithms, telling time from analog clocks, and utilizing dollar bills and coins.

Quinelle's Handwriting and Keyboarding goal aimed to improve these skills through objectives focused on copying text, using touch typing skills, and improving typing speed and accuracy.

Quinelle's Sensory Processing/Self-Regulation goal targeted improvement in these areas through Quinelle's accurate and independent performance of pre-taught exercises and her identification, with visual supports, of her emotional state and use of a tool in regulating that state.

The Social goal focused on use of appropriate coping strategies when experiencing frustration and focusing on strengths and making positive statements.

The IEP provided for A-grid Program Coordination (15 minutes/cycle) and Parent Consultation (45 minutes/month), as well as OT consultation (30 minutes per month). B-grid services were increased in ELA to 6 x 60 minutes per cycle. They remained the same in Mathematics (6 x 45 minutes per cycle), and Social Skills was added, at 1 x 30 minutes per cycle, to be provided by the general educator and special educator/paraprofessional. C-grid services include reading, provided by the special educator/reading specialist, increased from the 2019-2020 IEP to 6 x 45 minutes/cycle; written language, provided by the special educator, again at 2 x 30 minutes per cycle; mathematics, provided by the special educator, increased to 4 x 30 minutes per cycle, and OT, provided by the OT/COTA, 2 x 30 minutes per cycle. Social Skills services, to be provided by the counselor, at 1 x 30 minutes per cycle were added to Grid C. ESY academics in the C-grid were increased to 8 x 45 minutes per week, four sessions of reading, and two each in writing and math. The IEP also includes ESY OT, 1 x 30 minutes/week. The proposed increase in services was due, at least in part, to Quinelle's regression during the period that schools were closed.

Based on her experience with Quinelle, Ms. Accorsi believes the inclusion environment at FSS continued to be appropriate, as she was making meaningful, steady progress, and had established

connections with peers and staff. Given Quinelle’s continuing needs in the areas of sensory processing, self-regulation, and reflex integration, Ms. Fitzpatrick, who had worked with Quinelle since preschool, believes that she also requires in-school OT direct and consultative services. (S-7, S-15; Madden, I: 265; Mother, IV: 106-13; Accorsi, V: 183-84, 225; Fitzpatrick, VI: 38-3, 44, 58-60; Neylon, VI: 261-62, 265-667; DeAngelis, VI: 301; Abate, VII: 164, 261-63)

120. On June 3, 2020, Parents wrote to the District to express their concerns regarding the meeting that took place the previous day. They asserted that they had not received the draft IEP with sufficient time to review it before the meeting and challenged the District’s position that due to the pandemic, legal timelines could not be upheld. This included the District’s failure to convene a Team meeting within ten school days of receiving Dr. Abate’s observation report.¹² These failures, they argued, amount to Parents not being treated as equal members of Quinelle’s Team.

Substantively, Parents asserted that the District’s continued refusal to consider the “extent and complexity” of Quinelle’s disabilities, discounting of her ADHD diagnosis, and failure to recommend speech/language services, among other things, compromised her right to a FAPE. They described the District’s refusal to provide any of the direct services required by Grid C of Quinelle’s IEPs as inconsistent with NRSD’s legal responsibilities to Quinelle. They contended that the District should have addressed compensatory services at the meeting as well.

Finally, Parents expressed concern about the amount of both pull-out and push-in services in the proposed 2020-2021 IEP. They called it “illegal and unethical to draft an IEP that anticipates [Quinelle] will not ‘close the gap’ between” her and her peers and asserted that NRSD is not the appropriate placement for her. (P-44; Mother, IV: 114-15)

121. At hearing, Ms. Madden testified that despite the fact that it would not bring Quinelle to grade level, an increase of three or more reading levels from the baseline of Level J measured in March 2020, was, in fact, a reasonable, attainable goal because of the regression noted between April and June. She explained that the same reasoning underlay some of Quinelle’s writing objectives, which did not appear to anticipate much progress from her March 2020 levels. (Madden, I: 197-99, 267-68)

122. On or about June 3, 2020, ICT provided a progress report to Parents indicating that Quinelle had been making progress on three of her four short-term speech and language goals and had made slight progress on the last. At times Quinelle was dysregulated in sessions. Telehealth Treatment Summaries created on July 17, August 14, September 11, and October 9, 2020, reflect Quinelle’s progress across her goals, including instances where she met goals and new ones were created, as well as Ms. Alioto’s continuing belief that Quinelle both needs and benefits from speech therapy. (P-45, P-177; Alioto, IV: 11-14, 22)

123. In the meantime, on or about June 11, 2020, Parent received a proposed schedule for ESY consisting of 225 minutes of academics and 30 minutes of OT per week from July 6 to

¹² Parents also objected to the District’s intent, shared one day before the meeting, to have the assistant principal who had accompanied Dr. Abate on her observation, report at the Team meeting as to what she had observed on that day. They argued that they had not signed a consent form for observation by the District. (S-16)

August 14, 2020. The notice did not specify whether services would be in-person or virtual, though because it provided an option to indicate that transportation was necessary, presumably the services would have been in-person. On or about June 27, 2020, they received a proposed schedule consisting of in-person weekly programming from July 13 to August 13, 2020 consisting of 90 minutes of academics and 30 minutes of OT per week. Parents objected to this reduction in proposed services, for which they saw no basis. Ms. Neylon and Ms. DeAngelis characterized the change as pandemic-related, due to extraordinary circumstances. (P-47; Mother, III: 205-06; Neylon, VI: 269-70; DeAngelis, VI: 300-03)

On or about June 24, 2020, Parents received the proposed 2020-2021 IEP. On July 1, 2020, they sent a letter rejecting the District's most recent ESY proposal, which reflected fewer services than had been proposed initially. Again, they indicated that they had not had the opportunity for input into this change and that Quinelle would be attending Carroll's summer program. They requested reimbursement for the costs of this program, as well as private weekly speech therapy, OT, and counseling. Parents formally rejected the IEP and placement on or about July 23, 2020 and attached a letter outlining their concerns. According to Parents, the NI and IEP stated inaccurately that Quinelle was making effective progress, failed to indicate Parents' disagreement with this assertion; failed to acknowledge that Quinelle would require remediation even if she were reading at grade level; failed to include Dr. Abate's findings regarding regression; and omitted Dr. Abate's input regarding Quinelle's strengths and weaknesses, the type of program she requires and her recommendations for, and Parents' request for, particular interventions and services. Parents requested that PLEP-A be modified in several ways. First, they requested that it list the following diagnoses: language-based learning disabilities in reading, writing, and math; ADHD - Inattentive Type; communication disorder; and executive function. Second, they asked that it reflect a need for small group instruction with a special educator across all core academic subjects, and a need for scientific, evidence based direct instruction in oral reading fluency, math, and written expression. Parents requested several changes to PLEP-B to reflect the impact of Quinelle's communication and sensory-processing disorders. Parents objected to Quinelle's goals as encompassing low expectations, including a reading objective that would place her one full year behind her peers. Finally, they asserted that Grid C should provide for direct instruction across all core academic subjects by a special educator; they objected to the proposed decrease in Quinelle's reading instruction and asserted stay-put to both the current amount of these services and to speech therapy. Parents contended that a partial inclusion placement would not provide Quinelle with a FAPE, and further objected to the proposed ESY services as insufficient. Finally, Parents asserted that the Team had failed to timely convene to discuss Dr. Abate's observation report and improperly planned to have the assistant principal provide a report regarding his observations during Dr. Abate's observation of Quinelle. (P-48, P-49, P-174; S-16, S-39; Mother, III: 196; Neylon, VI: 218-19, 271-74)

124. Quinelle attended the Carroll School Summer Program Monday through Thursday from June 26 to July 31, 2020. Although they requested the credentials of Quinelle's teachers in this program, Parents were unable to obtain them. Quinelle's Carroll schedule provided for Language Tutorial (4 x 40 minutes/week), Math (4 x 40 minutes/week) and Writing (4 x 40 minutes/week). Parents also continued private OT (1 x 45 minutes/week), speech (1 x 45 minutes/week), and counseling (1 x 45 minutes/week). (P-173; Mother, III: 295) Parents enrolled Quinelle in the summer program at Carroll's recommendation, in part, to address Carroll's concerns about

Quinelle's sensory processing issues. At the beginning of the summer, she became a little dysregulated at times and did not want to participate in class discussions. When this occurred, her teacher would bring the school counselor into the Google Meet. (P-50; Mother, III: 166-67, 194-95, 294-95, IV: 105)

125. Upon reviewing Quinelle's Academic Report from the Carroll Summer Program, Ms. Madden characterized Quinelle's reading class and the objectives she was working on as similar to her own work with Quinelle prior to school closures. Quinelle's language tutorial Academic Report showed significant progress throughout the summer, increased confidence and stamina, and further development of her phonemic awareness. The skills she was working on and had mastered at Carroll in this tutorial were consistent with her academic performance prior to school closure. Quinelle's math Academic Report also showed work consistent with what she had been doing at FSS. (P-50; Madden, I: 100-108)

126. Even after the Carroll Summer Program, Quinelle displayed significant regression in decoding fluency, as measured by Ms. Pervier. According to the DIBELS, Quinelle had been reading 36 words per minute with 98% accuracy in December 2019, but in August 2020 was reading only 17 words per minute, with 98% accuracy. This score was similar to the one she received in August 2019, which was 18 words per minute with 97% accuracy. (P-175)

127. Additional state guidance regarding compensatory services and recovery support for students with IEPs in connection with COVID-19 was released on August 17 and updated on September 3, 2020. In this guidance, DESE acknowledged that with the unexpected suspension of in-person education due to the pandemic, school districts were unable to provide all special education instruction and services in the manner typically provided or described in students' IEPs. DESE also recognized that despite efforts by districts to create and implement remote learning plans, some students with disabilities may not have been able to access the special education and related services necessary for them to make effective progress on their IEP goals. In these situations, DESE prescribed that IEP teams must make individualized determinations as to whether and to what extent compensatory services are needed for a particular student, and recommended that districts engage students and their families in determining students' needs for services and support to mitigate the impact of extended school closures on their learning. The guidance outlined the process school districts should engage in to determine how to provide students with the appropriate COVID Compensatory Services. (S-33)

128. On August 20, 2020, Parents filed their *Amended Hearing Request*. (P-53)

129. During August 2020, Ms. Pervier resumed her tutoring of Quinelle, at which point she administered the DIBELS again. As noted above, Quinelle was reading 17 words per minute with 98% accuracy. Ms. Pervier characterized this as reading first grade material very slowly and hypothesized that Quinelle would have had difficulty decoding third grade science and social studies texts without a person next to her decoding texts, tests, and questions for her. Moreover, Quinelle was not displaying the prosody Ms. Pervier would expect in a student entering third grade. Given that she seemed to have plateaued, Ms. Pervier testified that she would have recommended that in third grade, Quinelle receive more phonics and decoding practice during the day. She described Quinelle as a student who regresses when she does not receive services,

but expressed surprise at her lack of progress following school closures, even after her placement in Carroll's Summer Program. (Pervier, II: 85-89, 151-55, 166-67; Mother, III: 197)

130. Quinelle began attending the Carroll School for the academic year the week of September 8, 2020. At the beginning of the school year, Quinelle was assigned to one in-person day on campus per week and remote learning four days a week. Beginning October 5, 2020, Quinelle began attending school in-person two days a week. On Monday through Thursday, Quinelle's school day runs from 8:15 to 3:10 and on Friday from 8:15 to 12:10. In addition to Morning Meeting, Advisory, Snack/Recess, Lunch, and Dismissal, there are 27 blocks of 45 minutes each per week, for a total of 1,215 minutes of instruction.¹³ (P-177)

131. Initially, Quinelle was resistant to participating in virtual learning at Carroll during the 2020-2021 school year, but over time she became more comfortable and began interacting with her teachers and peers. She has become more confident and independent in preparing for school, both virtually and in-person. She appears to enjoy reading. Her self-regulation, which she continues to work on with private speech and OT providers, has improved. (Father, II: 229-31; Mother, III: 167, 199-201) Although Parents believe she has made tremendous progress at Carroll, at the time of hearing they had not received any formal reports, assessments, or progress reports regarding the 2020-2021 school year to support this belief. With the exception of one meeting with a teacher over the summer and one during the first few months of the school, Parents had not met with the staff providing Quinelle's services, nor had they been presented with an educational plan containing her goals. They had requested, but had been unable to obtain from Carroll, information regarding the professional and educational background of Quinelle's teachers. (Father, II: 249-50, 255-57; Mother, III: 197, IV: 117-19) Although Parents have discontinued Quinelle's private Orton-Gillingham tutoring with Ms. Pervier, they have continued to supplement her education. (Mother, IV: 169) Carroll is not providing Quinelle with any services to address dysregulation at school, which they are not currently seeing; Parents, however, continue to provide private OT to address her sensory issues. (Father, II: 252; Mother, IV: 124, 126) Though there is an SLP at Carroll, Parents could only say that Quinelle had met with her; they did not know whether she was receiving speech therapy regularly. She continues to receive private speech therapy, where she is meeting goals and making progress. In these sessions, Quinelle has been completing more tasks and seems more excited to meet her goals. (Alioto, IV: 23-28; Mother, IV: 119, 124-28, 129)

132. NRSB did not administer the TEMA virtually during school closures because of concerns about validity, and the District did not administer this test, or any others, in person during the spring because it did not have the proper protective equipment, training, or safety protocols in place. On September 10, 2020, District personnel reached out to Parents to ask whether they still wanted NRSB to conduct TEMA testing. Parents responded that they no longer believed the

¹³ Dr. Abate testified about the structure and methodology of Quinelle's instruction at Carroll. The information that follows is based not on her own observations, but on conversations she had with staff following her observation. According to Dr. Abate, Quinelle participates in a weekly block focused on cognitive intervention, where students are directly taught strategies to further support skills like attention, working memory, planning, and organization. Reading is taught through Orton-Gillingham, with an additional focus on reading fluency through a program called RAVE-O, which incorporates orthographic processing. Carroll uses two structured writing programs. For math instruction, Carroll uses Singapore Math supported by Stern Structural Arithmetic, along with Symphony Math. (P-184; Abate, VII: 175-76, 181-82, 185-87, VIII: 71-74)

purpose of the TEMA, which had been requested in January 2020, was valid, as Quinelle had been unilaterally placed and they did not want to subject her to unnecessary testing. They requested that NRSD explain the purpose of the proposed evaluation at this time. Ms. Neylon responded that no testing was completed during school closures and that it was just now completing in-person evaluations. Ms. Neylon asked how Parents would like to proceed. It appears that Parents were not interested in pursuing the testing, as Ms. Neylon did not receive a response. (S-31; Madden, I: 279-81; Mother, III: 173; Neylon, VI: 191-95, 226, 249, 280-81; DeAngelis, VI: 299)

133. Quinelle has not received any of her related services from NRSD while attending Carroll. District personnel interpreted the statement Parents made in the email exchange regarding TEMA administration that the purpose of the testing was no longer valid because “she is no longer receiving direct services from [NRSD], due to her unilateral placement at Carroll” as communication that Parents would not avail themselves of such direct services from NRSD. Parents have not contacted the District to schedule or arrange for such services at any time during the 2020-2021 school year. (Father, II: 261-62; Mother, IV: 164-65; Neylon, VI: 225-26, 230-31, 275-76, 78-80; DeAngelis, VI: 3-7)

134. On October 10, 2020, Quinelle’s private counselor wrote a letter stating that in addition to the Language Disorder with which she had been diagnosed in September 2019, his clinical observations led him to diagnose her with Disruptive Mood Dysregulation Disorder. He explained that the basis of this diagnosis was her struggle and inability to regulate and express her emotions, which lead to anger or frustration outbursts both at home and at school. In counseling sessions, she sometimes presented these outbursts when it was difficult for her to express emotions. According to her counselor, as of March 2020, around the time school became remote, her symptoms were improving. She now reports being more connected and comfortable in school. (P-179)

135. Also on October 10, 2020, Parents tallied their expenditures for services they had provided for Quinelle from May 14, 2019 through that date. Specifically, they listed the costs and dates associated with private tutoring from Ms. Pervier, the Bancroft Summer Program, outside counseling and outside speech therapy (beginning February 26, 2020), the Carroll Summer Program, and so much of Carroll tuition for the 2020-2021 school year they had paid to that date, inclusive of mileage charges to and from each service. Their invoice totaled \$37,858.10, though tuition at Carroll for the remainder of the year cost an additional \$25,000. (P-182; Father, II: 228; Mother, III: 197-98, 203-05)

136. In November 2020, Dr. Abate met with Quinelle for about an hour and a half to ask her about her new school and how she was doing. Quinelle appeared talkative and happy. She reported that she could do all of her work now, had friends, and was no longer getting bullied.¹⁴ A week later, Dr. Abate observed Quinelle at Carroll School in her virtual language arts class, then met with school personnel for about an hour who shared information about their program. Among other things, they shared that language-based instruction was used in all classes. Quinelle’s ELA teacher reported that she is Orton-Gillingham certified at the highest level. Dr. Abate asked about the essay component of the school’s application process and was told that

¹⁴ Except for this statement, there is no evidence before me that Quinelle was being bullied at NRSD.

there was not one. Dr. Abate did not review any progress reports or other data in connection with her observation, but she testified that Quinelle’s teacher told her she was still working on writing at the sentence level. She spoke with Quinelle’s private counselor around the same time. (Abate, VII: 26-27, 166-70, 284, 320-21, 340, VIII: 12-16)

Following her remote observation, Dr. Abate concluded that Quinelle’s ELA class was appropriate for her, as it included only seven students and comprised the components of language-based instruction she recommended. She testified at hearing that Carroll was addressing Quinelle’s attentional issues by virtue of the fact that the class was comprised of only six to eight students, which enables the teacher to provide feedback and monitoring. She also referred to a cognitive intervention log and a program available at Carroll that improves children’s attention and working memory. As this program is offered to fourth and fifth graders, Quinelle does not participate in it. Dr. Abate did not observe any social interaction between Quinelle and her peers, though the remote format made such interactions difficult. Quinelle did volunteer to answer the teacher’s questions, at times giving one-word answers. Dr. Abate did not produce a written report regarding her observation at Carroll. (Abate, VII: 55-56, 170-73, 190, 276-78, 333-34, VIII: 85-88)

According to Dr. Abate, Carroll staff believe Quinelle is appropriately placed at Carroll and should remain a Carroll student through ninth grade. Dr. Abate agrees. She believed Quinelle has made social-emotional progress. Dr. Abate could not assess whether Quinelle had made academic progress at Carroll as she had neither received data nor measured it herself. (Abate, VII: 179, 187, VIII: 21-22, 88)

137. As of the date of the hearing, Parents continued to believe that NRSD’s goals for Quinelle were, and are, insufficiently ambitious. According to Mother, “[t]he fact that her goals for third grade were set to second grade level goals, I found to be not acceptable.” (Mother, IV: 172) To the contrary, Dr. Abate noted that Quinelle’s present instructional level is not grade level and acknowledged that given her dyslexia diagnosis and executive functioning and social-emotional weaknesses, Quinelle would not have reading skills equivalent to her grade. (Abate, VII: 250, VIII: 24-26, 63)

DISCUSSION

It is not disputed that Quinelle is a student with a disability who is entitled to special education services under state and federal law. To determine whether Parents are entitled to a decision in their favor, I must consider relevant substantive and procedural legal standards governing special education. As the moving party in this matter, Parents bear the burden of proof.¹⁵ To prevail, they must establish by a preponderance of the evidence that the rejected portions of one or more IEPs proposed by the District between April 27, 2018 and June 2, 2020, and the amendments thereto, were not reasonably calculated to provide Quinelle with a FAPE; that the IEP and placement proposed for the period from June 2, 2020 to June 1, 2021 was not reasonably calculated to provide Quinelle with a FAPE; that the accepted portions of one or

¹⁵ See *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62 (2005).

more of these IEPs was not implemented fully; and/or that the District committed at least one of the enumerated procedural violations that amount to a deprivation of FAPE.¹⁶

If I decide, based on the evidence before me, that NRSD failed to propose IEPs during the relevant period reasonably calculated to provide Quinelle with a FAPE; that NRSD failed to implement accepted portions of IEPs; and/or that NRSD committed the alleged procedural errors and that these errors amounted to a deprivation of a FAPE, I must determine the appropriate remedy, and whether that remedy includes reimbursement for privately provided services, including Parents' unilateral placement of Quinelle at the Carroll School.

I address the delineated issues below.

I. Parents Failed to Establish that the IEPs Proposed by Nashoba Regional School District for the Relevant Time Period Were Not Reasonably Calculated to Provide Quinelle with a FAPE

A. *Legal Standards for Free Appropriate Public Education, Including Extended School Year Services*

The IDEA was enacted “to ensure that all children with disabilities have available to them a free appropriate public education [FAPE].”¹⁷ FAPE is delivered primarily through a child’s IEP, which must be tailored to meet a child’s unique needs after careful consideration of the child’s present levels of academic achievement and functional performance, disability, and potential for growth.¹⁸ As summarized by the United States Supreme Court in *Endrew F. v. Douglas County School District*, the IEP must “describe how the child’s disability affects the child’s involvement and progress in the general education curriculum, and set out measurable annual goals, including academic and functional goals, along with a description of how the child’s progress toward meeting those goals will be gauged.”¹⁹ “To meet its substantive obligation under the IDEA, a [district] must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.”²⁰ The goals of all students should be “appropriately ambitious . . . just as advancement from grade to grade is appropriately ambitious for most students in a regular classroom.”²¹

Similarly, Massachusetts FAPE standards require that an IEP be “reasonably calculated to confer a meaningful educational benefit in light of the child’s circumstances,”²² and designed

¹⁶ See *Roland M. v. Concord Sch. Comm.*, 910 F.2d 983, 994 (1st Cir. 1990) (Districts are liable for procedural violations if parents prove both that a violation occurred and that the “procedural inadequacies compromised the pupil’s right to an appropriate education, seriously hampered the parents’ opportunity to participate in the formulation process, or caused a deprivation of educational benefits.”)

¹⁷ 20 U.S.C. §1400 (d)(1)(A).

¹⁸ *Endrew F. v. Douglas Cty. Reg’l Sch. Dist.*, 137 S. Ct. 988, 999 (2017); *D.B. ex rel Elizabeth B. v. Esposito*, 675 F.3d 26, 34 (1st Cir. 2012).

¹⁹ 137 S. Ct. at 994 (internal quotation marks omitted), citing 20 U.S.C. §§1414(d)(1)(A)(i)(I)-(III).

²⁰ *Endrew F.*, 137 S. Ct. at 999.

²¹ *Id.* at 1000.

²² *C.D. v. Natick Pub. Sch. Dist.*, 924 F.3d 621, 624-25 (1st Cir. 2019) (cert denied).

to permit the student to make “effective progress.”²³ Evaluating an IEP requires viewing it as a “a snapshot, not a retrospective. In striving for ‘appropriateness, an IEP must take into account what was . . . objectively reasonable . . . at the time the IEP was promulgated.’”²⁴

Under state and federal special education law, a school district has an obligation to provide the services that comprise FAPE in the least restrictive environment that will “accommodate the child’s legitimate needs.”²⁵ For most children, a FAPE “will involve integration in the regular classroom and individualized special education calculated to achieve advancement from grade to grade.”²⁶ However, “the benefits to be gained from mainstreaming must be weighed against the educational improvements that could be attained in a more restrictive (that is, non-mainstream) environment.”²⁷

Consistent with these standards, extended school year (ESY) services must be provided only if a child’s Team determines, on an individual basis, that such services are necessary for the provision of a FAPE to the child.²⁸ Although neither the U.S. Supreme Court nor the U.S. Court of Appeals for the First Circuit has delineated specific standards to be used to determine whether an IEP must include ESY services, Massachusetts regulations provide further guidance, clarifying that ESY services “may be identified if the student has demonstrated or is likely to demonstrate substantial regression in his or her learning skills and/or substantial difficulty in relearning such skills if an extended program is not provided.”²⁹ DESE has elaborated on this standard, explaining that a child’s difficulties with recoupment are an aspect of significant regression.³⁰ Specifically, Districts are instructed to consider the following inter-related elements in determining the need for ESY programming: (1) the loss of performance levels that were attained before a break in services; (2) the child’s limited learning rate, which lengthens the amount of time the child requires to review and/or relearn previously attained objectives, and (3) the fact that the time for that child to accomplish such recoupment is greater than the period of time the school district allows all other children for review and/or relearning.³¹ DESE’s advisory also references court decisions from other Circuit Courts of Appeal and appears to incorporate factors outlined by the U.S. Court of Appeals for the Tenth Circuit to be considered by districts in addition to the regression-recoupment analysis: the degree of regression the child suffered in the past; the exact time of past regression; parents’ ability to provide educational structure at home; child’s rate of progress and behavioral and physical problems; availability of alternative resources; child’s ability to interact with non-disabled children; areas of child’s curriculum that need continuous attention; child’s vocational needs; whether the requested services are

²³ 603 CMR 28.05(4)(b) (IEP must be “designed to enable the student to progress effectively in the content areas of the general curriculum”).

²⁴ *Roland M.*, 910 F.2d at 992 (internal quotations and citations omitted).

²⁵ *C.G. ex rel. A.S. v. Five Town Comty. Sch. Dist.*, 513 F.3d 279, 285 (1st Cir. 2008); see 20 USC § 1412(a)(5)(A); 34 CFR 300.114(a)(2)(i); MGL c 71 B, §§ 2, 3; 603 CMR 28.06(2)(c).

²⁶ *Andrew F.*, 137 S. Ct. at 1000.

²⁷ *C.D.*, 924 F.3d at 631 (quoting *Roland M.*, 920 F.2d at 993).

²⁸ 34 C.F.R. § 300.106(a)(2); see also 71 Fed. Reg. 46,582 (2006) (district must make the individualized determination of ESY services by using the IEP process).

²⁹ 603 CMR 28.05(4)(d)(1).

³⁰ See DESE *Question and Answer Guide on Special Education Extended School Year Programs*, 603 CMR 28.05(4)(d) (last updated June 28, 2019) (DESE *ESY Advisory*).

³¹ See *id.*

extraordinary for the child's condition or an integral part of a program for populations of students with the same disability condition.³²

I measure the rejected portions of each proposed IEP against these standards.

B. *Parents Failed to Establish That Extended School Year Services Proposed for Summer 2019 Were Not Appropriate*

Although the 2018-2019 IEP, which originally was proposed for the period from April 3, 2018 to April 2, 2019 did not include summer 2019, the parties began discussing extended school year services during the period of the IEP and proposed amendments to the IEP to address the summer. As such, I consider the summer services proposed in both the 2018-2019 and 2019-2020 IEPs.

1. 2018-2019 IEP

Parents accepted this IEP in full on May 3, 2018, following conversations with Quinelle's Team to adjust the wording of academic goals after the April 3, 2018 Team meeting. This IEP was amended to add OT information and services following a Team meeting to review the subsequent OT evaluation, and Parents accepted that amendment in full on June 22, 2018. The 2018-2019 IEP provided for ESY services in reading (2 x 45 minutes/week) and math (1 x 45 minutes/week) for the summer of 2018. As explained above, Quinelle missed two weeks of District ESY services (though she attended private weekly tutoring with Ms. Pervier over the summer). Rather than wait for Quinelle's annual review to discuss ESY for 2019, at which time it would have been difficult for the family to plan for the summer, the District initiated conversations in early 2019. Based on regression data, the Team issued an N1 and amended the IEP in early February to reflect that it was proposing reading 1 x 45 minutes/week for 2019 ESY services. NRSD indicated that further discussion would occur as data was collected following additional school vacations. Parents rejected this amendment, asserting that the ESY services proposed were inadequate to meet Quinelle's needs. The Team convened in March to discuss, in part, this rejection, at which time additional data was reviewed. Changes were proposed to the IEP, which was approaching expiration, including an increase in ESY reading services to 3 x 45 minutes/week. The Team did not believe additional services were necessary, given the limited amount of regression after the recoupment period in reading and the lack of regression in math. Parents rejected the Second Amended 2018-2019 IEP on April 12, 2019 on the basis of insufficient ESY services and unilaterally placed Quinelle at Bancroft for summer 2019.

Given these facts, the only rejected portion of the 2018-2019 IEP (and therefore the only portion that I consider here) is the ESY proposal for the summer of 2019. It is unclear on what

³² See *Johnson v. Indep. Sch. Dist. No. 4*, 971 F. 2d 1022, 1027 (10th Cir. 1990), *cert. denied*, 500 U.S. 905 (1991) (internal quotation marks and citations omitted); see also DESE *ESY Advisory*. More recently, in 2016, the U.S. District Court for the District of Hawaii relied on precedent from the Fourth and Sixth Circuits in concluding, "If the child benefits meaningfully within his potential from instruction under a proper IEP over a regular school year, then ESY service may not be required under the Act unless the benefits accrued to the child during the regular school year will be significantly jeopardized if he is not provided an [ESY]." *Hawaii Dep't of Educ. v. Leo W. ex rel. Veronica W.*, 226 F. Supp. 3d 1081, 1112-13 (internal citations omitted). Massachusetts does not appear to have incorporated these standards.

basis Parents assert that they are entitled to reimbursement for costs associated with private tutoring provided by Ms. Pervier and/or the Children’s Dyslexia Center in Worcester (CDC) at other times during the life of this IEP, as they did not reject other portions of the IEP. Based on the information available to the Team at the time, including recent data taken before and after February break, NRSB proposed an increase in reading services to 3 x 45 minutes per week, from the 2 x 45 minutes per week offered the previous summer and the 1 x 45 minutes per week offered initially in the 2018-2019 IEP. As such, NRSB was responsive to the data and Parents have not established that at the time they rejected the amendment in early April, Quinelle had “demonstrated or [was] likely to demonstrate substantial regression in . . .her learning skills and/or substantial difficulty in relearning such skills” in the absence of additional services.³³

2. 2019-2020 IEP, Pertaining to Summer 2019

At Quinelle’s annual and three-year reevaluation meetings in May and June 2019, extensive discussion occurred about data, evaluation results, and Quinelle’s progress. Following these meetings, the Team expanded its ESY proposal for summer 2019 to address additional areas of need. Specifically, the Team proposed 3 x 45 minutes per week of reading services and 1 x 45 minutes per week each of writing and math services in the initial IEP dated June 3, 2019 to June 2, 2020. Although Parents did not receive the proposed IEP until after ESY services had commenced, they were aware of the proposal from discussions at the meeting and NRSB’s subsequent correspondence.³⁴

Based on my review of the extensive evidence, I conclude that the services NRSB proposed for the summer of 2019 in the 2019-2020 IEP were based on the information before the Team at the time regarding regression and recoupment, and were reasonably calculated to ensure that Quinelle received a FAPE. As such, Parents are not entitled to reimbursement for costs associated with the unilateral placement of Quinelle at Bancroft or with private tutoring provided by Ms. Pervier and/or the CDC during the summer of 2019.

C. *Parents Failed to Establish that the IEP Proposed by NRSB for June 3, 2019 to June 2, 2020 Was Not Reasonably Calculated to Provide Quinelle with a FAPE*

The 2019-2020 IEP proposed for Quinelle omitted her previously diagnosed communication disorder, which she carried from 2016, and corresponding speech and language services, largely on the basis of Ms. Vinci’s evaluation of, and experience working with, Quinelle. When Parents rejected the IEP, they asserted stay-put to speech services and now contend that their absence is one reason Quinelle’s 2019-2020 IEP was not reasonably calculated to provide her with a FAPE.

At hearing, Dr. Abate testified that Quinelle’s WASI-II scores indicated an expressive language disorder, though she also suggested that Quinelle’s word retrieval difficulties could be associated with executive function weaknesses. Other than this statement, Parents’ evidence with

³³ See 603 CMR 28.05(4)(d)(1).

³⁴ See *Pachl v. Sch. Bd. of Indep. Sch. Dist. No. 11*, 2005 WL 438587 at *8-9 (D. Minn. 2005) (when Team develops IEP at a different time from the time it determines the extent of ESY services, district does not commit a procedural violation, as IDEA does not mandate that ESY determinations be made at a specific time.)

respect to a communication disorder and Quinelle's need for speech services was provided primarily by way of a private speech provider and an informal evaluation for insurance purposes. Although Ms. Alioto recommended that Quinelle participate in private speech services, on ICT's assessment Quinelle received mostly scores within the average range, with low-average oral narrative skills. As Ms. Vinci testified, private providers are able to – and expected to – work with clients on issues that may not impact their ability to access their education. In Quinelle's case, for example, Ms. Vinci's testing indicated a weakness in following directions. However, as Quinelle was not experiencing difficulty in school following directions, she did not require services. Ms. Alioto, however, had developed a private speech therapy goal for following multi-step directions and she worked with Quinelle on this goal through activities like baking. Moreover, several of Ms. Alioto's goals for Quinelle, such as phonological awareness, were embedded in other goals and objectives in the proposed IEP. As such, I do not find that speech and language services were required for Quinelle to receive a FAPE.

Parents' initial partial rejection of the proposed 2019-2020 IEP indicated their dissatisfaction with reading and writing goals and the amount of direct math instruction proposed, as well as their belief that Quinelle required a language-based program. They were particularly concerned about Quinelle's reading fluency. The Team did not dispute that Quinelle continued to struggle with fluency, as indicated in her three-year reevaluation; however, in light of her trajectory of progress, school-based members believed she could continue to progress in this and other areas of need through in-District inclusion programming. Furthermore, when the Team reconvened shortly after the school year began, adjustments were made to Quinelle's goals, objectives, and service delivery, and reading services were increased to reflect continued concerns about her development in this area. As such, around September 17, 2019, Quinelle began receiving 6 x 45 minutes per cycle of reading services in addition to 2 x 30 minutes per cycle of written language and math services.³⁵ When they partially accepted the Amended IEP on September 24, 2019, Parents accepted the increased reading services but indicated their continuing belief that writing, math, and reading goals required readjustment. When the Team reconvened a few weeks later, objectives in reading and written language were adjusted and, based on baseline data collected by Ms. Madden, the Team proposed an increase of math services to 3 x 30 minutes per cycle. To the extent they partially rejected this IEP, Parents again invoked stay-put regarding speech services and requested a language-based placement.

During Dr. Abate's initial evaluation, Quinelle demonstrated many of the same behaviors she exhibited when frustrated by academic tasks at school, particularly at the beginning of the school year before becoming more familiar with her teachers. For example, she put her head down, growled, and required praise and encouragement to expand on her verbal responses. Based on her scores on the Conners-CPT-3 and her observations during six hours of testing, Dr. Abate concluded that Quinelle had ADHD-Inattentive Type, though she declined to speak with her teachers about Quinelle's presentation in class and acknowledged, at hearing, that neither teachers nor Parents had seen indicators of ADHD. In fact, both teachers and Parents reported that she rarely seemed distracted, listened closely to instruction, and was able to concentrate and pay attention. During her own observation of Quinelle in class in January 2020, Dr. Abate observed Quinelle to be quiet and compliant. Dr. Abate discounted these observations, however,

³⁵ Parents did not, and do not, challenge the appropriateness of OT services. For this reason, I do not address them here.

in favor of her view that attention is an internal process, and it would be easy for teachers to overlook problems in this area.³⁶

Academically, Dr Abate observed that Quinelle was a slow, inaccurate reader who, in second grade, was reading below first grade level and displaying math scores at the first-grade level. In addition to ADHD-Inattentive Type, Dr. Abate diagnosed Quinelle with a Language Disorder and Specific Learning Disabilities in reading, written expression, and math. She indicated weaknesses in executive functioning, for which she recommended accommodations. She concluded that Quinelle could not keep pace in a mainstream setting and required a small, fully integrated language-based program serving students with profiles similar to hers, with teachers trained in language-based instruction. She also recommended a daily 45-60 minute, one-to-one language tutorial.

Notably, Dr. Abate evaluated Quinelle on September 3 and 9, 2019; data taken by her teachers suggests that at this point in the school year, when she had only just resumed District services after more than two months without them, she would still be displaying regression and may not yet have recouped what she had lost. She had, however, participated in Bancroft's program and Ms. Pervier's tutoring over the summer, which focused only on reading. As such, it is unclear whether testing conducted so early in the school year reflected accurately where Quinelle would have been following a full recoupment period.

Also significant is Dr. Abate's recommendation that Parents decrease Quinelle's after-school tutoring, both because these interventions did not appear to be improving her reading and written language skills and because of the potential for confusion. Parents, however, continued to provide after-school tutoring in Orton-Gillingham three times a week with two different providers.

At the time of school closures in March 2020, the evidence shows that Quinelle was not at grade level, as she continued to struggle with fluency in particular, but she was making considerable progress toward her objectives. Quinelle was reading at BAS Level J and had demonstrated growth in reading, math, and writing skills, as detailed in paragraph 93 above. Quinelle was comfortable working with her teachers, who were both experienced and well-trained. Though she was still quiet, particularly in the general education setting, she was receiving accommodations to help build her confidence to enable her to increase her participation. As Ms. Madden testified, Quinelle was able to manage more independently her frustration, which often arose when she encountered difficult academic tasks, and was open to problem-solving conversations when needed.

³⁶ Notably, it is possible that some of the behaviors Parents and Dr. Abate attributed to Quinelle's academic frustration and executive function weaknesses, which contributed to Dr. Abate's diagnosis of ADHD-Inattentive Type, are related to her diagnosis of Disruptive Mood Dysregulation Disorder (DMDD). In connection with this diagnosis, based on his clinical observations, Quinelle's counselor noted that "[h]er struggle and inability to regulate and express her emotions would lead to anger or frustration outbursts." Quinelle's counselor did not specify when he diagnosed her with DMDD, but he indicated that when he first began treating her, in October 2019, she presented with these outbursts, but around the time of school closures in March, "her symptoms [had] improved as evidenced by her ability to express herself with reduced frustration and anger." (P-179)

Parents contend that Quinelle’s IEPs should have contemplated that she would close the gap to achieve goals, particularly in reading, commensurate with her peers’ achievement. They worked hard to locate supports they believed would assist her in doing so; they invested significant time (and money) in private Orton-Gillingham instruction by the CDC and Ms. Pervier. Parents further assert that Quinelle failed to meet several reading, writing, and mathematics standards of the Massachusetts Curriculum Frameworks. Nevertheless, there was no evidence at hearing that given her constellation of weaknesses, Quinelle would have been capable of closing the gap by the end of this IEP period, no matter the manner or intensity of instruction. In fact, Parents’ own expert acknowledged at hearing that it was, and is, unlikely that Quinelle would be reading at grade level. (Abate) Moreover, several witnesses testified that despite Parents’ good intentions in securing her outside services, Quinelle’s simultaneous participation in Orton-Gillingham instruction with three providers, with different styles and – as Ms. Pervier acknowledged – different lessons and areas of instructional focus delivered at the same time, may actually have delayed her progress. (Abate, Forté, Madden, Pervier) Similarly, Parents’ emphasis on Quinelle’s inability to master state standards is misdirected: a student’s IEP must afford her access to the general curriculum, i.e., must contain “a statement of measurable annual goals, including academic and functional goals, designed to...meet the child’s needs that result from the child’s disability to enable the child to be involved in and make progress in the general education curriculum...”³⁷ Relevant state regulations require that the IEP must “include specially designed instruction or related services...designed to enable the student to progress effectively in the content areas of the general curriculum,”³⁸ that is, to “make documented growth in the acquisition of knowledge and skills...within the general education program, with or without accommodations, according to...age and developmental expectations, the individual educational potential of the student, and the learning standards...in the Massachusetts Curriculum Frameworks and the curriculum of the district.”³⁹ As such, although the IDEA and state regulations dictate “access” to and “documented growth in” the general curriculum, neither guarantees mastery of the Massachusetts Curriculum Frameworks. No other outcome is guaranteed by a FAPE, or the IEP through which it is delivered.

Parents assert that the updated testing conducted by Dr. Abate in May 2020 demonstrates that Quinelle failed to make progress during the 2019-2020 school year and, as such, supports their contention that the 2019-2020 IEP was not reasonably calculated to provide her with a FAPE. I disagree. Dr. Abate administered her evaluation two months into pandemic-related school closures, following a two-month hiatus from direct reading services. The evaluation was also administered with novel protective measures (masks, distancing) in place. Though the results reflect Quinelle’s performance at that time, as recognized by Ms. Madden, they are not a reliable indicator of the progress, or lack thereof, that Quinelle made during the academic year.

Based on the results of Quinelle’s formal and informal evaluations and the growth she had demonstrated and continued to demonstrate with the services she received in first grade and second grade, I cannot conclude that Quinelle required a language-based placement in order to receive a FAPE during the 2019-2020 school year.

³⁷ 20 U.S.C. §1414(d)(A)(I)(aa); *id.* at §1414(d)(A)(II)(aa).

³⁸ 603 CMR 28.05(4)(b).

³⁹ 603 CMR 28.02(17).

For these reasons, Parents have not met their burden to prove that the 2019-2020 IEP was not reasonably calculated to provide Quinelle with a FAPE. As such, their request for reimbursement for costs associated with services provided privately by Ms. Pervier and/or the CDC between June 3, 2019 and June 2, 2020 is denied.

D. *Parents Failed to Prove that the IEP Proposed by NRSB for June 2, 2020 to June 1, 2021 Was Not Reasonably Calculated to Provide Quinelle with a FAPE*

At the time the Team convened on June 2, 2020 for Quinelle's Annual Review, all members agreed that Quinelle had regressed significantly in her academic and social-emotional presentation, as demonstrated by Dr. Abate's updated testing, Parents' reports, and the observations of Ms. Madden and Ms. Accorsi when Quinelle attempted to participate in virtual programming with them. The 2020-2021 IEP reflects the impact of Quinelle's Specific Learning Disability (SLD) on her basic reading, reading fluency, and reading comprehension skills and notes that her academic skills, in writing and mathematics are delayed as is sensory processing and reflex integration. The IEP incorporates a plethora of accommodations to address these deficits and delays, many of which were recommended by Dr. Abate. It contains Reading, Written Language, Mathematics, Handwriting and Keyboarding, Sensory Processing/Self Regulation, and Social goals, the last two to address Quinelle's decline in her social-emotional presentation while schools were closed. B- and C-grid ELA services were increased to 6 x 60 minutes per cycle and 6 x 45 minutes per cycle in reading, respectively. Math services were increased in the C-grid to 4 x 30 minutes per cycle; B-grid math and C-grid written language services remained the same, at 6 x 45 minutes and 2 x 30 minutes per cycle, respectively. B-grid social skills (1 x 30 minutes per cycle) and C-grid counseling (1 x 30 minutes per cycle) were proposed to support Quinelle's social-emotional development. Increased ESY services were proposed, in part to address Quinelle's regression during school closures: the Team proposed 8 x 45 minutes per week of academic services, four sessions of reading and two each in writing and math, and 1 x 30 minutes per week of OT.

Parents rejected the 2020-2021 IEP in part and rejected the placement in full, attaching to their rejection a seven-page letter detailing their objections. Parents described Quinelle's goals as inadequate, as they did not anticipate that Quinelle would "close the gap" with her peers during the IEP's term. Again, they contended that Quinelle required speech therapy and that her IEP should reflect diagnoses of a communication disorder, ADHD-Inattentive Type and executive function disorder. They challenged the amount of both push-in and pull-out services and asserted that a partial inclusion setting could not meet Quinelle's needs, as she could not keep pace and had become reliant on one-to-one instruction. Finally, Parents indicated that despite Quinelle's inability to engage with virtual learning between March and June 2020, they were unwilling to have her attend in-person ESY.

Given the significant regression Quinelle experienced over the period of school closures, both academically and in her social-emotional presentation, I find that the goals proposed by the District are sufficiently ambitious. Furthermore, in response to that regression, increased services were proposed in the 2020-2021 IEP which I also find to be appropriate. Given the growth Quinelle had demonstrated with the services then in place between September and March 2020,

had she participated in the programming called for in the 2020-2021 IEP, Quinelle may well have recouped many of the skills she had developed, at which point nothing would have prevented the Team from convening to develop more challenging goals.

The District’s proposed ESY services for the summer of 2020 had also been increased, given Quinelle’s regression, and addressed her demonstrated areas of need. Moreover, the District’s emphasis on in-person instruction was appropriate, given Quinelle’s documented difficulty accessing virtual programming. As Parents have failed to establish that the proposed 2020-2021 IEP, including proposed ESY services for summer 2020, was not reasonably calculated to provide Quinelle with a FAPE, their request for reimbursement for privately provided services and programming for the period from June 2, 2020 to June 1, 2021 is denied, and thus I need not reach the question whether Carroll is an appropriate placement for her.

It is unclear how and why NRSD altered their ESY proposal for Quinelle on or about June 27, 2020, but at that point Parents had made clear that Quinelle would be attending Carroll’s summer program instead. As such, I address this issue as a procedural error, below.

II. NRSD Failed to Implement Accepted Portions of Quinelle’s IEP During the Pandemic

A. *Legal Standard for Failure to Implement an IEP*

Where an IEP has been accepted, the analysis shifts to implementation. “To provide a free and appropriate public education to a student with disabilities, the school district must not only develop the IEP, but it also must implement the IEP in accordance with its requirements.”⁴⁰ I reviewed the standard for this analysis recently, in *In Re Ollie*, BSEA #2007894, and repeat it here.

Although the U.S. Court of Appeals for the First Circuit has not elaborated on what constitutes implementation of an IEP, several lower courts within the First Circuit have done so. In 2010, the U.S. District Court for the District of Massachusetts linked the failure to implement an IEP to the failure to permit a student to benefit educationally – or in other words, to provide a FAPE.⁴¹ Citing its own 1999 decision, the court outlined the test it would use to determine whether an IEP has been implemented as follows:

- (1) the “failure” to implement must not be a “complete” failure;
- (2) the variance from the special education and related services

⁴⁰ *Colón-Vazquez v. Dep’t of Educ.*, 46 F. Supp. 3d 132, 144 (D. P.R. 2014) (citing 20 U.S.C. § 1401(9)(D)).

⁴¹ See *Doe v. Hampden-Wilbraham Reg’l Sch. Dist.*, 715 F. Supp. 2d 185, 198 (D. Mass. 2010) (noting that plaintiffs had “not met their burden of proof to convince me that these services provided to [Student] did not permit him to benefit educationally”); *id.* (“Finally, under *Ross*, I must determine whether these services allowed [Student] to make progress toward the achievement of the goals in his IEPs”). See also *Ross v. Framingham Sch. Comm.*, 44 F. Supp. 2d 104, 118 (D. Mass. 1999) (“when presented with a claim that a school district failed to implement a student’s IEP, a district court must determine whether the alleged failure to implement the IEP deprived the student of her entitlement to a ‘free appropriate public education,’ as defined under the applicable federal and state prescriptions”).

specified in the IEP must not deprive the student of a FAPE; and (3) the provision of special education and related services must make “progress” toward the achievement of the goals stated in the IEP.⁴²

As this analysis is difficult to apply, I look to other relevant jurisdictions for guidance. In 2014, the U.S. District Court for the District of Puerto Rico observed that the First Circuit had not addressed the question whether failure to provide all services outlined in an IEP constitutes a per-se violation of the IDEA.⁴³ As such, it surveyed federal courts across multiple jurisdictions and concluded that they had “generally adopted the standard articulated by the Fifth Circuit in *Houston Independent School District v. Bobby R.*,” requiring “more than a *de minimis* failure” to prevail on an implementation claim under the IDEA.⁴⁴ The court summarized the analysis as follows:

. . . a court reviewing failure-to-implement claims under the IDEA must ascertain whether the aspects of the IEP that were not followed were “substantial or significant,” or, in other words, whether the deviations from the IEP’s stated requirements were “material.” A material failure occurs when there is more than a minor discrepancy between the services a school provides to a disabled child and the services required by the child’s IEP. This standard does not require that the child suffer demonstrable educational harm in order to prevail; rather, courts applying the materiality standard have focused on the proportion of services mandated to those actually provided, and the goal and import (as articulated in the IEP) of the specific service that was withheld.⁴⁵

Persuaded by the approach of the U.S. District Court for the District of Puerto Rico, which adopts the approaches endorsed by the U.S. Courts of Appeals for the Fifth, Eighth, Ninth,

⁴² *Doe*, 715 F. Supp. 2d at 198 (citing *Ross*, 44 F. Supp. 2d at 119).

⁴³ *Colón-Vazquez*, 46 F. Supp. 3d at 143-44.

⁴⁴ See *id.* at 143 (Under *Houston Indep. Sch. Dist. v. Bobby R.*, “to prevail on a claim under the IDEA, a party challenging the implementation of an IEP must show more than a *de minimis* failure to implement all elements of that IEP, and, instead, must demonstrate that the school board or other authorities failed to implement substantial or significant provisions of the IEP”) (citing 200 F.3d 341, 349) (5th Cir. 2000), *cert denied*, 531 U.S. 817 (2000).

⁴⁵ *Id.* at 143-44 (citing and quoting *Van Duyn v. Baker Sch. Dist.*, 502 F.3d 811, 822 (9th Cir. 2007) and *Garmany v. District of Columbia*, 935 F. Supp. 2d 177, 181 (D. D.C. 2013) (internal citations and quotation marks omitted)); see *Van Duyn*, 502 F.3d at 815 (“We hold that when a school district does not perform exactly as called for by the IEP, the district does not violate the IDEA unless it is shown to have materially failed to implement the child’s IEP”).

and Eleventh Circuits as well as the U.S. District Court for the District of Columbia, I apply this analysis to the case before me.⁴⁶

B. NRSD Failed to Implement Quinelle's IEP During the Period of School Closures from March to June 2020

There is no question that during pandemic-related school closures, NRSD failed to provide direct OT services, which Parents had accepted, and speech therapy, which Quinelle was entitled to under stay-put. For weeks, NRSD appeared to expect Parents to deliver Quinelle's direct services in reading, written language, and math by implementing Remote Learning Plans that were being sent home. Although this may have been permitted under the DESE's March 21, 2020 FAQ, which allowed for the delivery of "many disability-related modifications and services remotely or online, through resources and supports, as well as virtual, online, or telephonic instruction," it was evident that Quinelle could not access instruction delivered in this manner, at least with regard to academics. By the time Ms. Madden began attempting to deliver Orton-Gillingham services herself, by way of videoconferences, Quinelle had become too dysregulated to participate effectively. Though the pandemic surely constitutes extraordinary circumstances and although at least some of the deviations from Quinelle's IEP were unavoidable, there is no question that a material failure to provide services consistent with the accepted portions of the 2019-2020 IEP occurred.

For these reasons, I find that Quinelle was unable to access the special education and related services necessary to make progress on her IEP goals during pandemic-related school closures, at least in part due to NRSD's failure to implement her IEP effectively from March 15, 2020 through the end of the school year. DESE anticipated this issue, which it addressed in its guidance released on August 17 and updated on September 3, 2020. Pursuant to this guidance, school districts are instructed to make individualized determinations as to whether and to what extent compensatory services are needed for a particular student, in order to mitigate the impact of school closures on her learning. To the extent NRSD has not already done so, the District is directed to convene Quinelle's Team to make such determination in accordance with DESE's guidance.

C. Parents Did Not Prove that NRSD Failed to Implement Quinelle's IEP at Any Other Time

Parents claim that NRSD failed to implement other accepted portions of IEPs during the relevant time period. They submitted evidence regarding this claim in connection with a letter they wrote to NRSD on or about January 22, 2020 describing services Quinelle had missed,

⁴⁶ See *Van Duyn*, 502 F.3d at 815; *Neosho R-V Sch. Dist. v. Clark*, 315 F.3d 1022, 1027 n.3 (8th Cir. 2003) (noting that courts cannot conclude that an IEP is reasonably calculated to provide a free appropriate public education where "there is evidence that the school actually failed to implement an essential element of the IEP that was necessary for the child to receive an educational benefit"); *Bobby R.*, 200 F.3d at 349; *Garmany*, 935 F. Supp. 2d at 181. See also *L.J. by N.N.J., v. Sch. Bd. of Broward County*, 927 F.3d 1203, 1211 (11th Cir. 2019) ("[W]e conclude that to prevail in a failure-to-implement case, a plaintiff must demonstrate that the school has materially failed to implement a child's IEP. And to do that, the plaintiff must prove more than a minor or technical gap between the plan and reality; *de minimis* shortfalls are not enough. A material implementation failure occurs only when a school has failed to implement substantial or significant provisions of a child's IEP.")

primarily to attend parent-initiated private evaluations, interviews with prospective private placements, and private counseling. Parents also requested compensatory services to the extent half-days and Quinelle's injury necessitated missed services. These missed services do not constitute a material failure to implement Quinelle's IEP, particularly since, as NRSB recognized when it rejected Parents' request, NRSB staff were available to deliver the services as scheduled.

III. With the Exception of the Period of School Closures, Parents Failed to Prove that NRSB Discriminated Against Quinelle in Violation of Section 504

Section 504 of the Rehabilitation Act of 1973 provides, "No otherwise qualified individual with a disability in the United States . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance . . ." ⁴⁷ For school districts, this includes the provision of a FAPE to each qualified student with a disability. ⁴⁸ In their Closing Statement, Parents argued that NRSB's failure to provide regular or special education and related aids and services that met Quinelle's needs as adequately as the needs of non-handicapped persons, both before and during the pandemic, constitutes a violation of § 504 that entitles them to money damages.

Because, as I concluded above, Parents generally have not met their burden to prove that NRSB deprived Quinelle of a FAPE, their claim under § 504 fares similarly. As described above, however, NRSB failed to provide Quinelle with the direct services necessary to access a FAPE and the general education curriculum during the period of school closures. As such, I find that NRSB's failure to provide these services constituted a violation of § 504 that entitles Parents to the same COVID compensatory services they receive pursuant to the District's failure to implement the 2019-2020 IEP during this period.

IV. Parents Failed to Prove that the District Committed One or More Procedural Errors Amounting to a Deprivation of FAPE

For Parents to prevail on these claims, they must establish, first, that NRSB committed one or more procedural errors. Whether procedural errors occurred in this case turns on several related questions connected to Parents' right to participate fully in the Team process: the contours of a District's obligations to consider an evaluator's separate observation report; what it means to give meaningful consideration to the input of Parents and private clinicians; when a Team must reconvene and what must be included in an IEP; and what comprises accurate Prior Written Notice following a Team meeting. If Parents establish the existence of one or more procedural errors, then I must determine the impact of those errors.

As Parents have alleged a number of procedural errors, I have divided them into several categories and address them below.

⁴⁷ 29 U.S.C. § 504.

⁴⁸ See 34 C.F.R. § 104.33(a).

A. *Procedural Protections for Children with Disabilities*

The procedural protections embedded in IDEA serve a dual purpose; they ensure that each eligible child receives a FAPE, and they provide for meaningful parental participation.⁴⁹ They are so important that the IDEA recognizes that even if no substantive irregularities have occurred, procedural errors may amount to a deprivation of a FAPE if “the procedural inadequacies – (I) impeded the child’s right to a free appropriate public education; (II) significantly impeded the parents’ opportunity to participate in the decision-making process regarding the provision of a free appropriate public education to the parents’ child; or (III) caused a deprivation of educational benefits.”⁵⁰ In determining whether procedural violations amount to a deprivation of FAPE, courts focus on the degree to which school districts offered parents the opportunity to play an important participatory role.⁵¹

- a. *Timely consideration of Dr. Abate’s observation report and input provided by parents and their expert; failure to write complete IEPs and removal of direct speech and language services*

As outlined above, the IDEA recognizes the central role parents play in formulating a student’s IEP. Well-developed law regarding independent educational evaluations (IEEs) reflects the importance of experts’ input as well. In *Schaffer v. Weast* the U.S. Supreme Court characterized an IEE as a tool that provides “parents access to an expert who can evaluate all the materials that the school must make available, and who can give an independent opinion. They are not left to challenge the government without a realistic opportunity to access the necessary evidence, or without an expert with the firepower to match the opposition.”⁵² Regardless of the source of funding of an IEE, a school district “must take into consideration the results of a properly performed IEE in deciding how to improve upon the student’s” IEP.⁵³

⁴⁹ See *Honig v. Doe*, 484 U.S. 305, 311 (1998) (“Congress repeatedly emphasized throughout the [IDEA] the importance and indeed the necessity of parental participation in both the development of the IEP and any subsequent assessments of its effectiveness). See also *Andrew F.*, 137 S. Ct. at 994 (“These procedures [set forth in 20 U.S.C. § 1414] emphasize collaboration among parents and educators”); *Bd. of Educ. v. Rowley*, 458 U.S. 176, 205-06 (1982) (“Congress placed every bit as much emphasis on compliance with procedures giving parents and guardians a large measure of participation in every stage of the administrative process . . . as it did upon the measurement of the resulting IEP against a substantive standard”).

⁵⁰ 20 U.S.C. §1415(f)(3)(E)(ii); 34 CFR 300.513(a)(2); see *Roland M.*, 910 F.2d at 994.

⁵¹ See, e.g., *Roland M.*, 910 F.2d at 995 (where parents did not cooperate with attempts to create IEP and there was no “indication of procedural bad faith” on school’s part, school district had “fulfilled the essence of its procedural responsibility”); *A.M. v. Monrovia Unified Sch. Dist.*, 627 F.3d 773, 780 (9th Cir 2010) (no procedural violation of parental right to participate meaningfully where parents did not participate in Team meeting but district had taken steps to obtain their presence); *Ms. S. ex rel. G v. Vashon Island Sch. Dist.*, 337 F.3d 1115, 1132-33 (9th Cir. 2003) (superseded by statute on other grounds) (where parent disagreed with receiving district’s temporary placement of her son, upon transfer, pending completion of a “proper evaluation” and alleged that District’s “take it or leave it” position did not allow for meaningful parental participation, court found that where school district attempted to schedule several assessments and other IEP meetings, notifying her in advance, “school district ha[d] repeatedly provided the parent with the opportunity to participate meaningfully in the IEP process” and as such, “ha[d] not violated its obligations under 34 CFR §300.345”).

⁵² *Schaffer*, 546 U.S. at 60-61. See 34 CFR 300.502(e) (limiting the conditions that a school district may impose upon a parent’s independent education evaluation obtained at public expense).

⁵³ *D.S. ex rel. M.S. v. Trumbull Bd. of Educ.*, 357 F. Supp. 3d 166, 172 (D. Conn. 2019).

The IDEA does not, however, specify “the role the findings of an IEE should play in terms of a school’s ongoing duty to provide a free and appropriate education.”⁵⁴ Pursuant to its implementing regulations, if a parent “shares with the public agency an evaluation obtained at private expense, the results of the evaluation – (1) Must be considered by the public agency, if it meets agency criteria, in any decision made with respect to the provision of FAPE to the child.”⁵⁵ Massachusetts regulations are more specific, requiring that within ten school days of receiving an independent education evaluation report, the IEP Team must reconvene and consider the evaluation and whether a new or amended IEP is appropriate.⁵⁶ Nevertheless, a “school district is not obliged to accept or implement the findings of an independent expert. An IEE need only be ‘considered’ by the school district to decide what services are necessary and consistent with its overarching obligation to provide” a FAPE.⁵⁷

Parents submitted Dr. Abate’s observation report to NRSD on or about February 26, 2020, and they contend that the District was obligated to convene to consider this report within ten school days (by March 11, 2020), which would have been before pandemic-related school closures. The District, on the other hand, asserts that there is no obligation under state or federal special education laws for a Team to convene to consider an observation report.

The IDEA does not define the term “evaluation,” but pursuant to its implementing regulation, “[e]valuation means procedures used in accordance with [34] CFR §§ 300.304 through 300.311 to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs.”⁵⁸

i. Dr. Abate’s observation report

I addressed the question of a District’s obligations with respect to an observation report last year, in *In Re Sharon Public Schools*, BSEA #1912408. As I stated in that case, neither federal nor state law regarding IEEs explicitly includes or excludes observations. As in that case, therefore, I look to more specific guidance. In 2009, Massachusetts amended G. L. c. 71B, §3, by enacting the “observation law.” This law provided school districts with guidance regarding how to respond to observation requests, with the goal of removing unnecessary obstacles and simplifying the process for parents. Among other things, the law uses the term “parent-designated independent evaluators and educational consultants” to identify individuals a parent may designate to observe the child and the child’s program on her behalf. In an advisory issued shortly thereafter, DESE interpreted the term “independent evaluators” to refer to “those individuals who conduct independent evaluations as provided under federal and state special education laws.”⁵⁹ In contrast to regulations regarding IEEs in general, the observation law is

⁵⁴ *Trumbull*, 357 F. Supp. 3d at 171.

⁵⁵ *G.J. v. Muscogee Cnty. Sch. Dist.*, 668 F.3d 1258, 1266 (11th Cir. 2012); 34 CFR 300.502(c); see *Trumbull*, 357 F. Supp. 3d at 172.

⁵⁶ 603 CMR 28.04(5)(f).

⁵⁷ *Trumbull*, 357 F. Supp. 3d at 172 (internal citations omitted).

⁵⁸ 34 CFR §300.15; see *Trumbull*, 357 F. Supp. 3d at 171.

⁵⁹ See 30 CFR §300.502; 603 CMR §28.04(5); *Massachusetts Department of Education Technical Assistance Advisory SPED 2009-2: Observation of Education Programs by Parents and Their Designees for Evaluation Purposes* (January 8, 2009) (hereinafter SPED 2009-2).

silent as to any obligations on the part of a school district to consider an observation report that has been presented, but, at a minimum, a school district should act in accordance with the stated purpose of the observation law, which is “to ensure that parents can participate fully and effectively in determining the child’s appropriate educational program.”⁶⁰

In this case, Dr. Abate had already conducted a full neuropsychological evaluation of Quinelle, which was discussed at a Team meeting in November 2019. Parents requested that she conduct an observation approximately four months after the evaluation was completed, not as part of the evaluation itself but primarily to gather additional information in support of Dr. Abate’s recommendations, including her recommendation for a language-based program. Dr. Abate is clearly an independent evaluator. Consistent with the purpose of the observation law, even an observation report commissioned separately from her neuropsychological evaluation should have triggered the Team’s obligation to convene to consider the document within ten school days. As such, I find that NRSD committed a procedural violation when it failed to convene the Team to consider Dr. Abate’s observation report within ten school days of its receipt.⁶¹

Parents argue that because the Team failed to timely convene to consider Dr. Abate’s observation report, an opportunity to amend the IEP was lost, which is “particularly egregious where District staff testified that in January and February [Quinelle] was exhibiting increasing dysregulation and frustration at school.” As Dr. Abate did not observe such behaviors, a discussion of her report would not necessarily have included this subject. In the unique circumstances of this case, where schools were closed a few days after the Team should have convened to discuss the IEE and remained closed through the date it did convene, this violation did not impact Quinelle’s ability to access a FAPE. Parents were in regular – at times, daily – communication with members of Quinelle’s Team from March to June 2020. They had expressed clearly their belief that Quinelle’s placement at NRSD was not appropriate for her and that she required a language-based program instead. Moreover, Dr. Abate’s observation report did not result in significant changes to her recommendations regarding appropriate programming for Quinelle. Even if the Team had convened on March 11 (as opposed to June 2), it is unlikely that changes would have been made to Quinelle’s IEP to take effect during this three month period on the basis of Dr. Abate’s observation, given that the proposed changes ultimately made to the 2019-2020 IEP were unrelated to her observation report. For these reasons, Parents have not proven that the District’s delay of nearly three months in convening a Team meeting to consider Dr. Abate’s observation report, during a period of pandemic-related school building closures, impeded Quinelle’s right to a FAPE; significantly impeded the Parents’ opportunity to participate in the decision-making process regarding the provision of a FAPE to Quinelle; or caused a deprivation of educational benefits.”⁶²

ii. Consideration of input

⁶⁰ See SPED 2009-2.

⁶¹ Although DESE issued an advisory on May 21, 2020, cited by Parents in their Closing Statement, that clarified that school working days or school days were considered paused from March 17 through April 9, 2020, this pause would not affect the relevant timeline.

⁶² 20 U.S.C. §1415(f)(3)(E)(ii); 34 CFR 300.513(a)(2); see *Roland M.*, 910 F.2d at 994.

Relatedly, Parents contend that NRSD violated procedural safeguards by predetermining placement in its own program rather than investigating a continuum of placements for Quinelle, as it was required to do, in accordance with 603 CMR 28.06(2)(e). Pursuant to Massachusetts regulations, a Team must develop a student’s IEP in accordance with her needs. Then, “[i]f an in-district program can provide the services on [a student’s] IEP, such program shall be identified at the placement meeting and provided by the district; if not, the placement Team shall identify an out-of-district placement.”⁶³ Parents assert that the Team should have proposed, and explored, out-of-district language-based placements for Quinelle based on the input of Parents and Dr. Abate. They argue that the fact that Quinelle’s IEP for the period from June 2, 2020 to June 1, 2021 remained largely unchanged from its draft form to the form in which it was ultimately presented to Parents after the Team meeting on June 3, 2020, provides incontrovertible evidence that the District failed to consider their input.

Parents had many opportunities to provide their input during the multiple Team meetings convened per year to discuss Quinelle’s progress, IEPs, and evaluations. Both the documentary evidence and the testimony before me demonstrate that at each of these meetings, the Team heard and discussed the views of Quinelle’s Parents. They corresponded regularly with her teachers via email and, in second grade, through monthly parent consults initiated by Ms. Madden. The recommendations Dr. Abate presented at the June meeting did not differ significantly from those she presented in November, which were based on six hours of testing with an unfamiliar evaluator at the beginning of the school year. Dr. Abate’s evaluations were summarized in detail in NIs and/or IEPs. Based on her evaluations and observations, Dr. Abate proposed a language-based program both times, based on her belief that Quinelle could not keep pace with instruction in the general education classroom, transition in and out of direct services provided outside of that context, or sustain attention. These assertions were controverted by the people who worked with Quinelle most: her teachers, her SLP, and – with respect to attention – her parents. Moreover, Parents themselves declined to follow Dr. Abate’s recommendations with respect to decreasing Quinelle’s private outside services. In fact, they increased them by adding counseling and speech therapy in December 2019 and March 2020, respectively. There is no indication that they would have discontinued Quinelle’s private Orton-Gillingham instruction with Ms. Pervier if Ms. Pervier had not become unavailable; the fact that they resumed services with her over the summer suggests otherwise. That the Team declined to adopt Dr. Abate’s recommendations, which conflicted with their experience with Quinelle, as well as their assessments of her progress and performance, does not mean that its members did not consider the input of Parents or their experts, or even that they did not do so meaningfully. Whether the Team’s decisions in light of the information it received and considered were reasonable is a separate question that implicates substantive, rather than procedural, protections. As such, Parents have not proven that the District committed the procedural violation of failing to consider input provided to the Team by Parents and their expert, Dr. Abate.

⁶³ Pursuant to 603 CMR 28.06(2)(e), if, upon developing the IEP, “the needs of the student and the services identified by the Team are complex, and the Team is considering an initial out-of-district placement . . . the school district may schedule a separate Team meeting to determine placement,” before which Parents and district personnel shall investigate in-district and out-of-district options.” As the needs and services identified by the Team were not complex, and school-based members determined, appropriately, that they could be met in-district, the provisions of this regulation were not triggered.

- iii. Failure to write complete IEPs and removal of direct speech and language services

These claims are more substantive than procedural. According to Parents, Quinelle's IEPs failed to contain a description in PLEP-A and PLEP-B of her diagnosed disabilities, particularly the ADHD-Inattentive Type and executive functioning deficits provided and recognized, respectively, by Dr. Abate in her evaluation that was considered by the Team on November 5, 2019. Parents also contest the removal of a previously diagnosed communication disorder and speech and language services following Quinelle's three-year reevaluation in the spring of 2019. Although Parents characterize these as procedural failures to write complete IEPs and include all necessary services, the District violated no procedural protection in taking the actions it did, and in deciding not to take others. The Team considered all relevant information and determined that data did not support a diagnosis of ADHD-Inattentive Type, a diagnosis of a communication disorder, or a need for direct speech and language services. Quinelle's IEPs did reference her executive functioning weaknesses and provided accommodations to address them, as recommended by Dr. Abate. Parents have not proven that the District committed procedural violations in connection with the writing of IEPs or the removal of direct speech and language services.

- b. Failure to monitor progress and convene the Team as appropriate, including during the pandemic and to discuss adjustments to ESY services*

These claims are grouped together because they all involved allegations that Parents were deprived of the opportunity to provide input to the Team. Specifically, Parents argue that NRSD failed to administer the TEMA and to issue progress reports and an end of year report card in June 2020. Among other things, Parents argue that these inactions constitute a failure to monitor Quinelle's academic, social, and emotional progress (or lack thereof) between March 13, 2020 and the end of the school year. Parents also assert, somewhat contradictorily, that because the District was aware that Quinelle was not accessing the general education curriculum during school closures and was failing to progress toward her objectives, the District was obligated to convene the Team to propose or conduct assessments, revise her IEP, and/or consider a change in placement.

Despite Parents' assertions, the evidence shows that NRSD was well aware of Quinelle's struggles: both Ms. Madden and Ms. Accorsi observed them, and Parents emailed Team members regularly to keep them apprised. Although the District did not conduct the TEMA, it had good reasons; testimony demonstrates concerns about virtual test administration and an inability to conduct in-person assessments safely, at least until the summer when in-person ESY began. By this point, as NRSD was aware, Quinelle had been unilaterally placed for both the summer and the school year. The District was not in a position to conduct formal assessments in-person; informal meetings (such as Ms. Madden's attempted one-to-one services) were causing dysregulation and Parent was reporting that Quinelle could not complete assignments, much less assessments. Ms. Madden consulted with other District staff but was unable to find an effective way to assist Quinelle. Quinelle's Team was aware of her lack of progress, which was then measured by Dr. Abate in early May; her results were consistent with Quinelle's teachers' observations. The Team convened for Quinelle's Annual Review on June 2, 2020, less than three

months into the pandemic, at which time members discussed all available information. These actions, including the timely Annual Review, were consistent with OCR's and DESE's guidance and sufficient to meet the District's obligations. Moreover, despite Parents' assertion to the contrary, Quinelle did receive a progress report for the third trimester, which they included in the Exhibit Books they submitted for Hearing. To the extent the District failed to produce an end-of-year report card, Quinelle's progress (and lack thereof) was discussed in detail during the Team meeting, where Parents provided input and had the opportunity to ask questions. As such, Parents have not established that NRSB committed a procedural violation that impeded Quinelle's right to FAPE, significantly impede Parents' opportunity to participate in decision-making regarding the provision of a FAPE to Quinelle, or cause a deprivation of educational benefits and, as such, did not constitute a violation of FAPE.⁶⁴

As Parents allege, at some point NRSB reduced the ESY services it was offering for the summer of 2020. According to both Ms. DeAngelis and Ms. Neylon, this reduction was due to the pandemic, but it was made without a Team meeting or other consultation with Parents. Such a change constitutes procedural error. Given that Quinelle was enrolled at Carroll, and that Parents had rejected the higher amount of services as inadequate, I find that this procedural error did not constitute a violation of FAPE, as it did not impede Quinelle's right to FAPE, significantly impede Parents' opportunity to participate in decision-making regarding the provision of a FAPE to Quinelle, or cause a deprivation of educational benefits.⁶⁵

c. Accurate Prior Written Notice

Parents allege that NRSB failed to provide accurate Prior Written Notice following Team meetings that occurred on June 13, 2019, January 16, 2020, and June 12, 2020.⁶⁶ Specifically, Parents contend that the N1 form associated with the June 13, 2019 meeting failed to reference Parent's request, made at the Team meeting, for a change in placement. The January 16, 2020 N1, they allege, portrays discussions that occurred at the January 7, 2020 Team meeting inaccurately and also fails to reference Parents' request for a change in placement and the District's rejection thereof. As to the June 12, 2020 N1, Parents assert that it was inaccurate and omitted information, which they detailed in their partial rejection letter the following month. NRSB denies these claims.

IDEA's implementing regulations require a school district to provide written notice to Parents when, among other things, it refuses to initiate or change the identification, evaluation, or educational placement of a child or the provision of FAPE to the child.⁶⁷ Such notice must include, among other things, a description of the action proposed or refused by the agency; an explanation of why the agency proposes or refuses to take the action; and a description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action.⁶⁸ As with other procedural protections, this requirement exists to ensure that

⁶⁴ See 20 U.S.C. §1415(f)(3)(E)(ii); 34 CFR 300.513(a)(2); see *Roland M.*, 910 F.2d at 994.

⁶⁵ See 20 U.S.C. §1415(f)(3)(E)(ii); 34 CFR 300.513(a)(2); see *Roland M.*, 910 F.2d at 994.

⁶⁶ Parents' *Hearing Request* alleged such errors in connection with the Team meeting that occurred on April 27, 2018, but they did not address this in their evidence or in their Closing Statement.

⁶⁷ 34 CFR 300.503(a)(2).

⁶⁸ *Id.* at 300.503(b)(1)-(2).

parents receive information that enables them to participate fully in decisions regarding their child's education.

Though many of the N1 forms generated by the District contained significant detail, at times they did not include all of the information above. Whether the N1 forms reflected discussion at Team meetings accurately is difficult to discern, but credible testimony by District witnesses supports the information that appears in the N1s. To the extent any of the N1s failed to reference Parents' request for a change in placement explicitly, the IEPs developed following Team meetings incorporated these requests. This claim involves only notice, and it was known to all parties that Parents were, since at least June 2019, seeking placement of Quinelle in a language-based program. Parents, who have participated actively in Quinelle's Team meetings throughout her time at NRSD, have failed to establish a connection between the District's failure to provide adequate written notice following Team meetings and Quinelle's right to FAPE, their opportunity to participate in the decision-making process regarding the provision of a FAPE to Quinelle, or Quinelle's receipt of educational benefits.

CONCLUSION

After reviewing the record in its entirety, I conclude that Parents have not proven that the IEPs proposed for Quinelle between April 27, 2018 and June 2, 2020, and any amendments thereto, were not reasonably calculated to provide her with a FAPE. Although Parents have demonstrated that Nashoba Regional School District committed several procedural violations, they have failed to show that these errors, taken individually or even in the aggregate, had a significant impact on Quinelle's educational benefit or parental participation and thus deprived her of a FAPE.

Parents implementation claims fail as well, except to the extent they address accepted services that NRSD failed to provide during the pandemic-related school closures. DESE has outlined a procedure for Districts to follow in determining COVID compensatory services owed, and I expect that NRSD will follow this process in making such determinations with regard to Quinelle. To the extent Parents have alleged a 504 violation regarding NRSD's failure to provide a FAPE during this same pandemic-related school closure time period, they prevail on that claim as well.

ORDER

Nashoba Regional School District is hereby directed to convene a Team meeting, if it has not already done so, to determine appropriate COVID compensatory services it must provide for Quinelle to mitigate the impact of extended school closures on her learning.

By the Hearing Officer:

/s/ Amy M. Reichbach
Dated: March 3, 2021