



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. EDS 05402-20
AGENCY DKT. NO. 2020-31607
AND
OAL DKT. NO. EDS 00791-21
AGENCY DKT. NO. 2021-32446

E.N. AND M.N. ON BEHALF OF A.N.,

Petitioners,

v.

GLOUCESTER TOWNSHIP BOARD

OF EDUCATION,

Respondent.

(CONSOLIDATED)

Jamie Epstein, Esq., for petitioners

Brett E.J. Gorman, Esq., and **Emily E. Strawbridge, Esq.,** for respondent (Parker
McCay, P.A., attorneys)

Record closed: August 1, 2022

Decision: August 12, 2022

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

STATEMENT OF THE CASE

Petitioners, E.N. and M.N. on behalf of A.N., (parents and the student), assert respondent, Gloucester Township Board of Education (“District” or “BOE”), failed to

provide a Free and Appropriate Public Education (FAPE) to A.N. for his first-grade year 2016-2017; his second-grade year 2017-2018; his third-grade year 2018-2019; his fourth-grade year 2019-2020; and his fifth-grade year 2020-2021. They seek compensatory education, reimbursement of out-of-pocket expenses, and prospective relief, such as implementing their expert's recommendations in an appropriate Individualized Education Program (IEP) for A.N. Petitioners' subsequent petition, consolidated by consent, seeks modifications and accommodations for remote learning, along with compensatory education regarding A.N.'s fifth-grade 2020-2021 academic year, from September 2020 through January 12, 2021. The District opposes the petitions and seeks dismissal of petitioners' claims. The District contends it provided FAPE to A.N. throughout his school years, in the Least Restrictive Environment (LRE).

PROCEDURAL HISTORY

Petitioners' initial due process petition was transmitted to the Office of Administrative Law (OAL), where it was filed on June 12, 2020, as a contested matter. N.J.S.A. 52:14B-1 to 14B-15; N.J.S.A. 52:14F-1 to 14F-13. A Prehearing Order was entered on August 25, 2020.

Petitioners filed a Motion for Partial Summary Decision, seeking reimbursement for their requested Reading Independent Educational Evaluation (IEE). An Order granting Partial Summary Decision was entered on November 24, 2020. The District was required to reimburse petitioners for their requested IEE. The District initiated a Complaint on January 20, 2021, in the United States District Court for the District of New Jersey-Camden Vicinage, seeking review and reversal of the Order for Partial Summary Judgment. An opinion and order were issued on April 13, 2022, by District Judge Robert B. Kugler, dismissing the District's Complaint without prejudice for lack of subject matter jurisdiction, finding that the Individuals with Disabilities Education Act administrative process had not yet reached completion with the entry of a final decision in the OAL.

The District submitted a Motion to Compel the Production of Discovery in the OAL. An Order on the Motion to Compel Discovery was entered on December 14, 2020. Petitioners were ordered to produce specific documents and information to respondent

within ten days of the date of the Order.

Petitioners initiated their second petition, referred to as AN2, which was transmitted to the OAL and docketed on January 29, 2021. A Motion to Consolidate AN2 with the first petition was filed by respondent on January 26, 2021. During a telephonic prehearing conference on January 29, 2021, counsel confirmed they reached an agreement regarding the prehearing status of the petitions. An Order on Parties' Pre-Hearing Consent Agreement was entered on February 2, 2021, memorializing the parties' agreement regarding consolidation of the petitions; confirmation of the parties' agreement to adjourn a scheduled hearing date; outlined an agreed-upon discovery schedule for AN2; and confirmed the hearing schedule, with added hearing dates. An Order of Consolidation was entered on February 8, 2021, as per the joint request of counsel.

The District submitted a Motion for Sanctions and to Bar Evidence by petitioners on February 16, 2021. A supplemental letter and documentation regarding the Motion were submitted by the District on February 17, 2021. Prior to the start of testimony on the first hearing date of February 22, 2021, a schedule was established for petitioners' filing of their Opposition to the Motion and the District's Reply filing. The District also moved to dismiss AN1. That request was denied on the record. A Letter Order was entered on February 25, 2021, memorializing that the District's request to dismiss AN1 was denied, and confirming the schedule for submissions on the Motion for Sanctions and to Bar Evidence.

An Executive Order had been entered by the Governor of the State of New Jersey in March 2020, declaring a public health emergency due to the COVID-19 pandemic. The public health emergency was extended throughout 2021, by subsequent Executive Orders. Other Executive Orders had been entered addressing methods to combat the spread of COVID-19, which affected the normal operations of the OAL, including the suspension of in-person proceedings. The hearing commenced on February 22, 2021, through Zoom video/audio remote technology and continued on February 23, 2021.

An Order on Motion for Sanctions and to Bar Evidence was entered on March 22, 2021, regarding the District's motion which had been filed just prior to the start of the

hearing. The District's request for relief was granted in part. To the extent there remained any outstanding discovery to be produced by petitioners for AN1 from the Order of December 14, 2020, such discovery was to be produced no later than ten days prior to the next scheduled hearing date of March 30, 2021, including all attachments to any email document already produced in discovery. The Order also barred petitioners from introducing at the hearing any evidence regarding the AN2 petition, which was not provided to the District, within five business days of February 22, 2021.

At the start of the next scheduled hearing date of March 30, 2021, the District's counsel advised that petitioners still had not produced the attachment to an email by petitioners' counsel to evaluator, Ellen Topiel (Topiel). The email had been provided in discovery without the attachment. The District sought to compel production of the attachment and enter sanctions. Petitioners' counsel contended he did not have a copy of the attachment. He was given time to take immediate steps to obtain a copy of the attachment and provide same to the District's counsel. He again asserted he did not have a copy of same. Both attorneys were directed to submit a certification to the undersigned ALJ by 8:45 a.m. the following day, regarding the alleged contemptuous conduct and request for sanctions.

The District's counsel submitted his certification. Petitioners' counsel did not. Instead, Mr. Epstein submitted a letter chronology from evaluator Topiel, whom Mr. Epstein had reached out to on the prior day, March 30, 2021, to obtain a copy of the attachment to the email he had previously sent to her. Oral argument was heard on the record at 9:30 a.m. on March 31, 2021, regarding the contempt/sanction request. The decision on the Motion was rendered, in writing, by an Order on Motion to Compel and for Entry of Sanctions on April 30, 2021. The District's Motion for the Imposition of Sanctions for payment of counsel fees was granted, in the amount of \$570.00, to be paid by Mr. Epstein immediately to the District, no later than May 31, 2021.

After oral argument on the Motion to Sanction on March 31, 2021, the hearing continued through Zoom, with additional testimony and documentary evidence entered. The hearing proceeded on July 13, 2021, and additional hearing dates were added at the request of counsel.

The hearing continued through Zoom on August 24, 2021. On that date, the District's Motion to Limit the Testimony of Witnesses who were qualified as experts to the information provided during discovery regarding the witnesses and their expected testimony, and information under the five-day disclosures, was granted. Petitioners' Motion to Adjourn the Hearing and permit petitioners time to provide the witnesses' files and documents, and then to reconvene on the next scheduled hearing date with those witnesses testifying, was denied. The witnesses testified on August 24, 2021.

The hearing was scheduled to resume on November 17, 2021. That morning, petitioners' counsel requested an adjournment due to a health issue. The District did not object, and the request was granted. A telephonic conference was conducted with counsel thereafter, at which time additional hearing dates were scheduled.

The hearing continued through Zoom on January 19, 2022. A telephonic conference was conducted a few days thereafter, regarding the status of evidence and further witnesses.

The hearing continued through Zoom with additional testimony on March 16, 2022. The attorneys did not wish to review the status of evidence having been entered, and instead confirmed they would submit a jointly agreed-upon master list of evidence.

A master list of evidence was submitted but required clarification. The parties were directed to submit a clarified and agreed-upon master list of evidence by March 25, 2022. Another master list was submitted. The attorneys appeared for the next scheduling telephonic hearing on April 27, 2022, which was adjourned by consent, to permit counsel time to be prepared to go through each item listed on the master evidence list to ensure that the list coordinated with the voluminous, pre-marked documentation sought to be entered into evidence.

On June 7, 2022, the hearing continued through Zoom, to review and confirm the entry of documentary evidence. The evidence entered in the matter is itemized in the attached appendix.

Petitioners' request to extend the time to submit written summations was granted. The District submitted its summation. Petitioners requested additional time to submit same, to which the District objected. A telephonic hearing was conducted on June 13, 2022, at which time petitioners' request for additional time to submit their summation by June 16, 2022, at noon, was granted. The date for reply summations, to address only issues from the opposing party's summation brief with respect to exhibit R-54, was extended to June 23, 2022, at noon. A telephonic hearing was scheduled for June 23, 2022, at 4:00 p.m., if all submissions were not in. An Order memorializing the status of submissions was entered on June 14, 2022.

Petitioners' summation was submitted on June 16, 2022. The District then submitted its reply brief regarding R-54 by noon on June 23, 2022. Petitioners did not submit their reply brief regarding R-54. Petitioners' counsel failed to appear for the scheduled telephonic hearing on June 23, 2022. The record closed on that date.

On July 11, 2022, counsel for the BOE provided a letter brief commentary and copy of a recent Federal decision, asserting same was pertinent for consideration in this matter. The record was reopened to permit petitioners to submit a reply by July 25, 2022. On July 25, 2022, petitioners' counsel submitted an email indicating he was trying to meet the July 25, 2022, deadline, but may need until the following day to submit his reply brief. Nothing was received from petitioners' counsel as of August 1, 2022. The record closed on August 1, 2022.

FACTUAL DISCUSSION

The following facts were undisputed or otherwise discerned from the testimony and documentary evidence submitted. I thus **FIND** as **FACTS** the following:

E.N. and M.N. are the parents of A.N., who was born on October 5, 2009, and is currently twelve years old. The petitioners reside in Gloucester Township. (R-1.) A.N. was enrolled in the District as of April 15, 2015, for pre-K, at the age of five. (R-1.)

The parents authored a letter, on January 26, 2017, requesting an evaluation to determine if A.N. was eligible for special education and, if so, what programs and services were needed. (P-27.)

A request for assistance, referring A.N. for an initial evaluation, was completed as of January 30, 2017, by A.N.'s teacher during A.N.'s 2016-2017 first-grade school year. (R-1, R-2.) A.N. was "showing little progress in Reading." (R-3.) The teacher noted he was not following along with text when reading stories and was beginning to show signs of avoidance, lack of confidence, and frustration. (R-3 at 13.) The teacher indicated that A.N.'s mother reported A.N. had anxiety over coming to school and had stated he does not like school. (R-3 at 13.)

The parents had A.N.'s vision evaluated on January 12, 2017, by Michael Gallaway. (P-1.) There were no vision or visual perception difficulties noted. Gallaway did note that the results in the vertical subtest of the developmental eye movement test suggested a word retrieval or naming speed problem, and a reading disability. He believed that additional Child Study Team (CST) evaluations should be completed to determine if educational remediation would be appropriate for A.N. (P-1.) The parents provided the vision evaluation to the school.

A "Score Report" for A.N. was completed by Linda Gross, a certified reading specialist, outlining a table of scores from the Woodcock-Johnson II Normative Update Tests of Achievement done on January 24, 2017. (P-7.) Handwritten on the bottom of the report was "Dx: Phonological Awareness Deficit (Dyslexia) Needs 1:1, intense multisensory instruction based on Orton-Gillingham rules of language." (P-7.) The note has a signature of the name Linda Gross at the bottom. (P-7.) This document was obtained by the parents and provided to the District.

A Central Auditory Processing Evaluation report was completed by Ruth W. Brenner, from Audiology Partners, LLC, on February 10, 2017, who evaluated A.N. for an audiologic and central auditory processing evaluation of his hearing. This was done to rule out any central auditory processing deficits being a contributing factor to A.N.'s academic difficulties. (R-5.) Brenner found the results of the testing were consistent with

an integration deficit, due to significant left ear deficit on dichotic tasks and normal auditory discrimination. (R-5.) The report noted that A.N. may have difficulty associating the visual symbol on a page with the sound, impacting his word attack skills, sight word vocabulary, reading speed, and fluency. Brenner recommended that A.N. should continue reading therapy utilizing a multi-sensory approach and suggested some classroom strategies which might be helpful. Some suggested strategies were to have A.N. in a classroom with a teacher who speaks clearly and conducts a quiet classroom, and having new words written on the board and instructions and assignments given in writing since A.N. may have difficulty understanding and following oral instructions. (R-5.) The parents obtained this report and provided it to the District.

As a result of their request to have A.N. evaluated, the parents were invited by the District to attend a CST identification meeting, which they did on February 22, 2017. (R-6; R-7.) The parents consented to a CST assessment and for evaluations to be done. (R-7.)

A Confidential Learning Evaluation was completed on April 11, 2017, by Maria Naugle, Learning Disabilities Teaching Consultant (LDTC) for the District. (R-8.) A psychological evaluation of A.N. was completed on May 5, 2017, by Chad W. Leonard, certified school psychologist. (R-9.)

The parents were invited to attend the CST initial eligibility determination meeting, which they did, on the mutually agreed upon rescheduled date of May 22, 2017. (R-10; R-11.) The statement of eligibility contained in the initial eligibility conference report indicated that the CST determined, based upon a comprehensive assessment of the student's educational disabilities, that A.N. was not eligible for special education and related services. (R-11.) The report suggested A.N. participate in Response-to-Intervention (RTI) Tier 3. The parents opted not to sign the report. (R-11 at 0107.)

A Section 504 Accommodation Plan (504 Plan) was to be implemented, as of October 1, 2017, during A.N.'s second-grade 2017-2018 school year. (R-13) A.N.'s disability was identified as Central Auditory Processing Disorder (CAPD). (R-13.) The 504 Plan outlined accommodations and action to be taken due to A.N.'s diagnosis having

a significant impact on his reading, phonics, and spelling performance. (R-13 at 0112.) Such accommodations included: preferential seating to reduce auditory stimuli; additional time to complete classwork specifically requiring reading comprehension; extra books sent home for parents to help reinforce skills and preview materials; cues for refocusing; as needed counseling sessions with the school counselor to assist with anxiety management and coping skills; and peer assistance. (R-13.)

As of July 21, 2017, A.N. was administered testing to evaluate his attention, by Mark Mintz, M.D., from ADHD System, and a report was generated. (P-8.) This report was obtained by the parents and provided to the District.

On August 1, 2017, A.N. underwent Digital High Density Electroencephalography testing at The Center for Neurological and Neurodevelopmental Health (CNNH). (P-9.) The impression was “within normal limits” by Dr. Mintz. (P-9.) Clinical correlation was advised if seizures were suspected. (P-9.) This report was obtained by the parents and provided to the District.

The parents had Linda Gross provide weekly private reading tutoring sessions to A.N. from approximately February 2017 through August 2017. A.N. transitioned to private tutoring once per week as of September 2017, through Professional Tutoring Service, by Renee Cherubini, who utilized the Wilson reading program. The parents paid for the sessions. (P-47.) The parties have stipulated that the cost of the tutoring incurred by the parents is \$6,650, which is the amount the parents seek to be reimbursed for by the District in this matter. (P-47.)

On October 30, 2017, and November 10, 2017, A.N. underwent a neuropsychological evaluation by Gregory Alberts, Ph.D., from CNNH. (R-14, P-11.) The report was obtained by the parents and provided to the District. The diagnostic and clinical impressions were listed as A.N. having a specific learning disorder, dyslexia; dysgraphia/handwriting impairment; CAPD (based upon an audiology evaluation); mild severity Attention-Deficit/Hyperactivity Disorder (ADHD); and emotional regulation difficulties of anxiety, mood disturbance, and Obsessive-Compulsive Disorder (OCD)

feature, secondary to A.N.'s learning deficits and attention difficulties. (P-11 at report page 11.)

Neuropsychologist Alberts's recommendations included having A.N. continue to participate in art therapy, which the parents had A.N. privately enrolled, also through CNNH. Alberts listed some educational recommendations, including the development of an IEP, with a focus on A.N.'s phonological processing skills; continued participation in individual tutoring with his current Wilson reading instructor, which the parents had A.N. privately enrolled; and Occupational Therapy (OT) to improve A.N.'s writing and visual motor integration skills. Alberts also provided recommendations and tips for the teachers when handling A.N. regarding his reading comprehension, attention and executive functioning deficits, auditory processing deficits, and suggestions as to how to reduce A.N.'s anxiety. (P-11.) The parents provided the neuropsychological report to the school.

A.N. was receiving RTI Tier 2 reading support services during the school day for his second-grade year. On January 10, 2018, interventionist Carolyn Smith from the District provided RTI information for a CST referral. (R-15; R-49.) The parents requested a CST review which was approved by the District as of January 18, 2018. (R-16.) The specific reasons cited for the CST review were:

[A.N.] has an extensive history of difficulty in primarily Reading. He has trouble decoding words, remembering sight words, reading fluently, and reading for meaning. Despite Tier 3 interventions and classroom 504 accommodations, [A.N.'s] reading grade has shown a downward trend. He also had difficulty copying from the board, even though he has preferential seating.

(R-16 at 0145.)

An initial determination meeting was conducted on January 30, 2018, with the parents in attendance, who consented to an OT evaluation being completed, an updated functional evaluation to be done by the LDTC, and observations to be done of A.N. to determine the impact of his deficits in the classroom. (R-17.)

A Functional Assessment report was completed by Maria Naugle, LDTC, as of February 14, 2018. (R-18.) Her assessment provided background information regarding A.N. and confirming he was receiving RTI Tier 3 services for language arts in a small group setting, having historical records of academic struggles in reading, and some anxiety related to his performance in school. (R-18.) He had the benefit of a 504 Plan. The assessment outlined A.N.'s scoring as average cognitive functioning; acknowledged the neuropsychological report and diagnoses; and A.N.'s status of receiving private tutoring in the Wilson program one day per week and private art therapy sessions. The assessment summarized that despite the level of intense remediation, A.N. continued to lag behind his peers, especially in the area of reading skills acquisition. (R-18 at 4.)

The OT evaluation report was completed by Carolyn Whitworth on February 22, 2018. (R-19.) Whitworth provided basic background information regarding A.N. and acknowledged the neuropsychological evaluation by Alberts and the testing results and diagnoses in that evaluation. All testing administered for the OT evaluation yielded A.N.'s motor skills within average range, including visual perception. (R-19 at 247-248.)

A CST initial eligibility determination meeting was conducted on March 20, 2018, which was attended by the parents. (R-20; R-21.) A.N. was deemed eligible for special education. A.N.'s disability classification was "specific learning disability." (R-21.) An initial IEP for A.N. was completed with an implementation date of March 20, 2018, for A.N.'s then current second-grade 2017-2018 school year. (P-16, R-21.)

It was noted in the IEP that the parents expressed concerns regarding A.N.'s level of reading, writing, spelling development, and handwriting. The parents supported additional services to be provided to assist in remediation of A.N.'s weak skills. The parents requested home support suggestions from the OT. The IEP further noted: "Parents specifically requested an Orton-Gillingham based multi-sensory reading program to address [A.N.]'s deficits in reading." (R-21 at 0252.)

The initial IEP outlined goals and objectives for A.N. for language arts. Modifications were outlined, such as allowing additional time to complete work, allowing extra time to take tests and quizzes, and seating A.N. in an area free from distractions.

(R-21 at 258.) He would be in a general education classroom and would receive language arts/literacy instruction in the pull-out resource center six times per six-day cycle, for a duration of ninety minutes. He would receive supplemental support for mathematics in the classroom. (R-21 at 265.)

A.N.'s second-grade report card, for the 2017-2018 school year, was issued by his teacher, Jennifer Dyer. (R-23.) Progress reports are issued by the teacher for each of the four marking periods during the year. (R-23.) The first marking period report card reflected a grade of 82 in reading and 90 in writing. The second marking period grade for reading was 64 and 90 for writing. The teacher's remarks after marking period two noted A.N. was a nice boy and doing well in all areas but for reading. It was noted that reading was a "constant struggle for him" and that the parents are "doing so much to help him at home." (R-23.) The teacher noted A.N. required more assistance than the current 504 Plan.

The IEP was implemented in March 2018. (R-21.) The third marking period grade for A.N.'s second-grade report card was 76 in reading and 94 in writing. The fourth marking period grade for reading was 95 and writing was 97. His final grade for reading was 79 and writing grade was 93. (R-23.) An IEP goals and objectives progress report was issued as of June 13, 2018, after the IEP was implemented in March 2018 for A.N. (R-21; R-24.) He was noted to be progressing under the goals and objectives. The teacher's comments for marking period three noted A.N. had a very easy transition into the resource center and he still required frequent redirection to stay focused. After the fourth marking period, the teacher noted that A.N. made "great gains in all areas of Reading" and encouraged him to keep reading and practicing math facts over the summer to continue his success into third grade. (R-23.)

The annual IEP review meeting was conducted on June 5, 2018, with the parents in attendance. (R-22, R-25.) An IEP was completed for A.N.'s 2018-2019 school year for third grade. (R-25.) Goals and objectives were outlined in the IEP for language arts and math. (R-25 at 286-287.) Modifications were included, such as for test taking to allow A.N. to make corrections on returned tests for additional credit, and to allow the test to be given by the special education teacher. (R-25 at 288.) His grading would be

determined through collaboration of the general education and special education teachers. (Id.) A multi-sensory, research-based reading approach was to be utilized. (R-25 at 289.) A.N.'s placement was in the general education classroom with language arts/literacy pull-out to the resource program six times per six-day cycle for a duration of ninety minutes. For mathematics, he would receive six times per six-day cycle in class supplemental assistance, for a duration of sixty minutes. (R-25 at 295.)

On February 5, 2019, the Otis-Lennon School Ability Test, commonly referred to as the OLSAT, was administered to A.N. at school. (R-26.) The test has two parts, a verbal and nonverbal scale. The verbal scale measures verbal reasoning and comprehension. The nonverbal scale tests the understanding of spatial and serial relationships among geometric shapes. The OLSAT measure a student's ability to answer verbal and nonverbal test questions. (Id.) A.N.'s school ability index score was 86, with the test indicating average scores fall between 90-110. His age percentile rank was 19, which would indicate that A.N. scored as well as or higher than 19 percent of students in his age group. (Id.)

A.N.'s third-grade report card was issued by his teacher, Rachel Shalette, for the 2018-2019 school year. (R-27.) Progress reports were issued for each of the four marking periods for third grade. A.N. received grades for the first through fourth marking periods in reading of 93, 97, 95, and 100, with a final grade of 96. (Id.) His writing grades for the marking periods in third grade were 94, 98, 97, and 100, with a final grade of 97. (Id.) The teacher's comments were positive, acknowledging A.N.'s hard work and progression. After the final marking period, the teacher noted the progress A.N. made and encouraged him to read during the summer and to keep practicing his comprehension and fluency skills, along with math facts. (R-27 at 300.)

IEP goals and objectives progress reporting was completed for A.N. throughout his third-grade year. (R-28.) He was noted to be progressing in his goals and objectives throughout the year. (Id.)

The annual IEP meeting was held on May 28, 2019, and attended by the parents. (R-29, R-30.) An IEP was completed for A.N., to be implemented for his fourth-grade

year, 2019-2020. (R-30, P-21.) A.N. was noted to have made significant gains as evidenced by STAR assessments and classroom work samples. The Sonday system was used for third grade to address his decoding deficits, and A.N. was noted to have benefited from that to improve his overall reading ability. (R-30 at 309.) Goals and objectives were outlined for language arts and math. (R-30 at 316-317.) Modifications were listed again, such as allowing additional time to complete work and use of preferential seating in an area free of distractions in the classroom. (R-30 at 218.) He would be in the general education classroom and receive in class resource program assistance for language arts and in class supplemental support for mathematics. (R-30 at 323.)

The parents sent an email to LDTC Naugle, as of June 3, 2019, regarding the Wilson reading program for the upcoming school year for A.N., and for other aspects of this plan. (P-37; R-47.) Ms. Naugle responded that she forwarded the request to administrator, Violet Martin, Director of Special Services. (P-37.) The parents' request for A.N. to receive instruction in the Wilson program for summer and fourth grade, was inserted in the IEP. (R-30 at 324.)

A.N.'s fourth-grade report card was issued by his teacher, Christopher Carosella, for the 2019-2020 school year. (R-31.) Progress reports were issued for each of the four marking periods for fourth grade. (Id.) A.N.'s first and second marking period grades for reading were 91 and 88, and for writing his grade was 94 and 94. (R-31 at 328.) The teacher noted at the second marking period that A.N. was a good citizen, aimed to please in the classroom, and his basic skills continued to improve. He was doing grade-level work. (R-31.) A.N.'s IEP goals and objectives report indicated he was progressing as of January 30, 2020. (R-32 at 333.)

As of March 2020, in-person learning was suspended due to the COVID-19 pandemic. The school switched to a remote learning program. The District completed a COVID-19 Preparedness Plan with an update as of March 23, 2020. (R-40.)

During remote learning, A.N.'s grades for reading for the third and fourth marking period of fourth grade were 92 and 96, with a final grade of 92. (R-31.) His writing grade

was 95 for the third marking period, 91 for the fourth marking period, and 9 as a final writing grade for fourth grade. (Id.) His teacher's comments were positive and noted that A.N. handled the "challenges appropriately" during the year of going to remote learning. (R-31.) A.N.'s IEP goals and objectives progress report continued to note he progressed during the latter part of the 2019-2020 school year. (R-31.)

An IEP was drafted for A.N.'s fifth-grade school year, for 2020-2021, as a result of the IEP annual meeting on April 2, 2020. (R-57.) In April 2020, Tamyra Fernandes, Case Manager (CM) for A.N., exchanged emails with the parents regarding A.N.'s IEP and the parents' request for the Wilson reading program and assistive technology. Ms. Fernandes indicated that a meeting would be set up in May to discuss the concerns. (P-39.) The parents authored a letter "to whom it may concern" to the school, dated April 15, 2020, expressing concern that they did not have adequate time to review or comment on A.N.'s IEP, having just received the draft IEP from the April 2, 2020, meeting. (P-40.)

On May 13, 2020, petitioners' chosen independent educational evaluator, Ellen G. Topiel, authored a report, entitled "AN Reading and Writing Evaluation." (R-36, P-41, P-54.)

An "Assistive Technology Evaluation Report" for A.N. was completed based upon an evaluation of A.N. on June 24, 2020, by Jennifer McIlvaine, from Technology for Education and Communication Consulting (TECC). (R-37, 0416-0430.) The report was sent to A.N.'s parents by Director of Special Services, Martin, as of July 6, 2020. (R-37 at 0410.) On September 8, 2020, A.N.'s IEP from April 2, 2020, for the 2020-2021 school year, was amended to reflect changes recommended for AT. (R-33 at 335, 340-41.)

On August 5, 2020, the Extended School Year (ESY) reading clinic teacher sent an email to the mother. The email was a summary of A.N.'s reading clinic progress report, regarding A.N.'s Souday and fluency results from the July 2020 ESY program. (R-56.)

A STAR Annual Progress report was generated by the school for A.N. as of September 29, 2020. (R-39.) The report provided a scaled score for A.N.'s progress and

benchmarks from 2017 through September 29, 2020, in STAR reading test scores. (R-39.)

A.N.'s mother, M.N., exchanged a series of emails with A.N.'s teacher, Amy Hennessy, at the start of the 2020-2021 school year, for A.N.'s fifth-grade year, regarding the hybrid status of in-person and remote learning. (R-38.) M.N. exchanged emails with Ms. Fernandes, A.N.'s CM, and with teacher Hennessy, during the fall of 2020, regarding A.N.'s remote instruction and some issues that occurred, and M.N.'s concern for A.N.'s struggles with the remote learning as of January 2021. (Id.)

A.N.'s fifth-grade report card from the first and second marking periods, and progress reports for the marking period, were completed by teacher Hennessy. (R-34; R-52.) His grades for reading for the first two marking periods were 96 and 86. His grades for writing for the first two marking periods were 90 and 87. (R-34.) His teacher comments were positive. He was attending an additional Zoom session in the afternoons with the language arts teacher, who noted it proved to be beneficial to review skills, recap chapters, and have A.N.'s work corrected/revised. (R-34.) An IEP goals and objectives progress report, dated January 20, 2021, had progress reporting entered for A.N. from the start of the 2020-2021 school year through January 19, 2021. (R-35.) He was noted to be progressing. (R-35.)

Testimony

Maria Naugle testified for the District. She is a CM and LDTC for the District. Her main duties are to evaluate students referred for special education and to serve as the CM, which includes the generation and oversight of IEPs. As the LDTC, she is responsible to complete Learning Evaluations, which are educational assessments, and include a reading evaluation. She was qualified as an expert in the field of LDTC and case management. (R-47.)

A.N. was registered in the District as of April 15, 2015. (R-1.) Ms. Naugle first came to know A.N. as of February 3, 2017. She received a CST packet completed by teachers working with A.N. (R-4.) A.N.'s first-grade teacher requested assistance for

A.N. due to him having made little progress in reading. (R-3.) The parents requested a CST evaluation, as well as A.N.'s teacher, completing a request for Intervention and Referral Services (I&RS) review. (R-3, R-4.)

A Central Auditory Processing evaluation was completed for A.N. as of February 10, 2017. (R-5.) The evaluator determined that A.N. had an integration deficit, which is an auditory processing deficit, making it difficult for A.N. to handle competing sounds in the classroom, which can inhibit academic progress. The evaluator recommended some classroom strategies to assist A.N. Ms. Naugle took this evaluation into consideration, with the other referral information provided to her, and scheduled an initial evaluation meeting for the CST, and notified the parents of same. (R-6.)

The initial determination meeting was held on February 22, 2017. (R-7.) A.N. was referred for evaluation to determine his eligibility for special education and related services. (R-7.) Ms. Naugle drafted the evaluation plan, based upon relevant information she reviewed, and that information indicated that A.N. needed supports with reading, and was initially in the RTI Tier 1 program receiving some intervention and strategies in the classroom, and had gotten moved to Tier 2. In Tier 2, A.N. was receiving thirty minutes of small group support, outside of the classroom with an interventionist, for three times in a six-day cycle, targeting specific areas of reading. Ms. Naugle explained that RTI is a precursor program for a student before the student is referred for special education or is determined to be eligible for a disabling condition which requires special education.

Ms. Naugle received a private evaluator's reading scoring information for A.N. from the parents, which indicated A.N. had reading difficulties that were implied to be dyslexia. (P-2.) Ms. Naugle did not call or communicate with the private evaluator, Linda Gross. She reviewed the documentation, noting that it was not accepted as a report since it provided a handwritten summary of scores. (P-2.) She recognized that Gross made observations and some findings, which led Ms. Naugle to perform and complete her comprehensive report.

The parents had reported that A.N. was struggling with reading. The classroom teacher made similar observations. The CST determined that two evaluations were to be

completed, an educational evaluation and a psychological evaluation. (R-7 at 0077.) The psychological evaluation would give a measure of A.N.'s intellectual functioning, to be completed by the school psychologist. Ms. Naugle, as LDTC, would complete the educational evaluation to measure A.N.'s educational strengths and needs. The parents consented to the completion of the evaluations. Ms. Naugle acknowledged that the CST did not recommend having evaluations done for A.N. by a reading specialist, neuropsychologist, or auditory processing specialist at that time.

Ms. Naugle completed the educational evaluation on April 11, 2017. (R-8.) A.N. was in first-grade general education at the time, with satisfactory grades. (R-8 at 0079.) He was making grade level progress, but the teacher did report A.N. had difficulty sounding out words. (R-8 at 0080.) At the time of the evaluation, A.N. was having difficulty completing work independently and was below level in reading skills. Multiple interventions had been implemented. His visual and hearing screens were normal.

Ms. Naugle administered the Wechsler Individual Achievement Test-Third Edition (Wechsler) to A.N. to assess academic achievement. (R-8 at 0081.) Five sub-tests were administered for specific areas of reading. A.N.'s scores were average in three sub-tests, and below average in word reading and oral reading fluency. (R-8 at 0082.) Reading fluency was a "weakness" for A.N. (R-8 at 0083.) He demonstrated difficulty with speed and efficiency when reading current grade level text, making the "reading process laborious for him." (R-8 at 0087.) Ms. Naugle explained that reading is important because it is A.N.'s ability to access the curriculum. His speed and accuracy with reading was an issue. Ms. Naugle determined that A.N. needed to build his sight word vocabulary and increase his rate of reading to be a more efficient reader. She indicated that reading practice will build speed. A.N. had demonstrated very good listening skills in a quiet, undistracted environment.

The psychological evaluation was completed by school psychologist, Chad Leonard, on May 5, 2017. (R-9.) As LDTC, Ms. Naugle reviewed that report and noted that A.N.'s IQ score was within the average range, and all composite scores fell within the average range. (Id.) She spoke to the psychologist, who indicated that A.N. had a fairly even cognitive profile. She considered the psychological evaluation as part of her

determination of eligibility. Ms. Naugle was aware that A.N. had exhibited anxiety-based issues that may have been impacting his academic growth, as reported by his parents regarding their observations at home. She was aware that the teacher had commented to the psychologist that A.N. can become nervous when called upon to answer or read and will make excuses. (R-9 at 9.) His mother reported to the psychologist that A.N. was kind, caring, and determined, but at times demonstrated anxiety, temper, and impatience. (R-9 at 9.) Ms. Naugle did not find it necessary to recommend that a psychiatric evaluation be completed because his overall emotional functioning seemed to be typical, with some outlier behaviors noticed from time to time.

A.N.'s grades for first grade were satisfactory, with grade level progress. (R-12.) Ms. Naugle acknowledged the teacher provided specifics in the marking period comments regarding A.N.'s reading deficiencies, such as being below fluency expectations, struggling with tracking text, decoding words, identifying spelling patterns, and retaining sight words. (R-12 at 108A.) A.N.'s reading struggles were noted in the teacher comments for the third marking period of first grade regarding phonics, spelling patterns, and sight word retention. (R-12 at 0110.) It was noted that progress was being made with some 1:1 help. (R-12 at 0111.) A.N. was RTI Tier 2 at the time and had not yet received the maximum level of RTI services.

Ms. Naugle drafted the initial eligibility conference report, which was reviewed at the eligibility meeting of May 22, 2017. (R-11.) It was determined that A.N. was not eligible for special education services. (R-11 at 0101.) The rationale for the determination was based upon teacher feedback, the educational evaluation, the psychological evaluation, standardized testing, parental input, and the observations of A.N.'s functioning in the classroom. (R-11 at 0104.) The CST found some weak areas for A.N. but did not feel that such discrepancies warranted special education services at that time. The CST looked at the functioning of the student, and took into consideration the Administrative Code, which specifies the need to implement the RTI program model and exhaust all general education school-based services.

The CST recommended that A.N. continue in the RTI program. Ms. Naugle indicated that another referral could occur at any time. The initial eligibility statement

specified that it may be in A.N.'s best interest to have reports reviewed by medical professionals to determine if A.N. had a medical condition and, if so, whether it was causing any educational impact. (R-11 at 0104.) Ms. Naugle asserted that the CST must follow the Administrative Code guidelines and not rush to identify a student as disabled. (R-11.) The CST recommended sharing the information regarding A.N. with the School Administrator, who is the person who receives a request for a 504 Plan.

A 504 Plan was drafted for A.N. The child was identified as having the disabling condition of CAPD, with impairment of a major life activity. (R-13.) The 504 Plan was to begin effective October 1, 2017. (R-13 at 0112.) Ms. Naugle acknowledged that the team had identified that A.N. had some areas of underachievement and needs to be addressed. The RTI services were increased from Tier 2 to Tier 3. The RTI Tier 2 program he attended was typically two or three times per six-day cycle. The Tier 3 program provided interventionist assistance for A.N. every day, with a greater level of intensity and duration than the Tier 2 program.

The 504 Plan identified certain accommodations to be afforded to A.N., such as preferential seating in the classroom; additional time, as needed for classwork and assessments; and for the teacher to provide reminders and non-verbal cues for A.N. to refocus him. (R-13 at 0112.) Ms. Naugle confirmed that such accommodations were given to A.N. for his second-grade academic year in the fall of 2017, and he was in the RTI Tier 3 program.

Ms. Naugle was thereafter provided a copy of a neuropsychological evaluation completed by Alberts from CNNH, which was obtained by the parents for A.N. in October and November 2017. (R-14.) The diagnostic and clinical impressions of A.N. in the evaluation were specific learning disorder in reading; dysgraphia/handwriting impairment; CAPD; ADHD; and noted that A.N. had a history of tics and emotional regulation difficulties with anxiety, mood disturbance, and OCD features, secondary to his learning and attention deficits. (R-14 at 0125.) Ms. Naugle acknowledged the school did not request nor seek to obtain another neuropsychological evaluation report.

Ms. Naugle noted, in her review of the evaluation, that A.N. had similar

standardized testing scores for his reading, such as very low scores for word recognition fluency. (R-14 at 0118.) She did not find this to be new information regarding A.N. There were still average range measures, and speed and fluency issues. The testing done by the neuropsychologist included different tests, but the content tested was very similar to the testing she had done.

She did note that Alberts found deficits in A.N.'s executive functioning, which is an area of testing a neuropsychologist delves into more deeply than the CST. Alberts identified some deficits, which would impact A.N.'s learning. Ms. Naugle reviewed the additional testing and results which were recorded and found Alberts's recommendations to be helpful. (R-14, 0124-0128.) She found the identification of specific learning disorders to be helpful in assessing Alberts's recommendation that A.N. would benefit from an IEP. (R-14 at 0124.) Alberts's second recommendation was to focus on improvement of A.N.'s phonological processing skills, which Ms. Naugle deemed as something always important to build upon. Alberts recommended reading aloud every day, which Ms. Naugle recognized helps to develop greater fluency, and he recommended working on comprehension strategies. The same recommendations had been made by the CST, which were being worked on for A.N. through the RTI Tier 3 program.

Alberts's recommendation to use books on audio was already a program used in the second grade at the District for A.N. Ms. Naugle did not find Alberts's optional suggestion of having A.N. alphabetize word lists to be applicable to his needs. Several strategies were recommended to address attention and executive functioning deficits, such as preferential seating in the classroom and providing A.N. with breaks, which Ms. Naugle indicated were many typical strategies for second-grade students. Alberts recommended an OT evaluation, which the District did have completed. (R-14 at 0126.)

A.N. was referred for another CST evaluation in January 2018. (R-16.) Carolyn Smith, Interventionist and a Reading Specialist for the District, had worked with A.N. when he was a first grader in the RTI program. Smith had received Wilson training and A.N.'s private tutor was a certified Wilson tutor. (R-15 at 0129.) Smith provided updated

information for the referral packet for A.N. regarding his progress in the RTI Tier 3 program as a second-grade student, as of January 10, 2018. (R-15.)

Ms. Naugle explained that Orton-Gillingham is a method of teaching reading to children. Under that method are packaged trademarked reading programs, such as Wilson, Lindamood-Bell, and Sonday. The Wilson program includes Orton-Gillingham principals, utilizing the Orton-Gillingham approach to reading. An Orton-Gillingham method was provided to A.N. She noted that the District does not dictate a specific reading program in an IEP.

Smith was working with A.N. on reading, writing, and spelling skills through computer-based instruction and direct instruction from Smith. A.N. was permitted time during one of his RTI sessions per week, to re-read sentences and paragraphs from his Wilson Book 3, which he was working on with his private outside tutor. (R-15 at 0129.)

The CST met for an initial determination meeting on January 30, 2018, with the parents participating in same. (R-17.) The CST referral was made due to A.N. struggling with the second-grade reading curriculum and due to the District having received the CNNH neuropsychological evaluation. The CST determined that rather than have A.N. go through another battery of standardized testing, the LDTC would do a functional update by gathering information and taking a snapshot of how A.N. was currently doing. (R-17 at 0236.) They also followed Alberts's recommendation to have the OT evaluation completed. The parents consented to the proposed assessments. (R-17 at 0237.)

Ms. Naugle confirmed that the CST did not obtain a second opinion regarding the neuropsychologist's recommendation that A.N. should continue to participate in art therapy and continue to participate in individual tutoring with his private Wilson reading instructor. (R-14 at 0125.) Ms. Naugle acknowledged that none of A.N.'s IEPs have included art therapy.

Ms. Naugle, as LDTC, completed the Functional Assessment, authoring her report on February 14, 2018. (R-18.) Ms. Naugle did a classroom observation, interviewed A.N.'s teacher, reviewed his records, and interviewed the parents. (R-18 at 0239.) Ms.

Naugle noted that the CST accepted the neuropsychological evaluation by Alberts, which yielded diagnoses for A.N. of dyslexia, dysgraphia, CAPD, ADHD, and a history of tics. Alberts also noted left ear deficits and simple auditory attention was significantly below expectations. (R-18 at 0240.)

Ms. Naugle explained that reading curriculum from first to second grade gets significantly more difficult after the first semester of second grade. There is more independence the students must apply regarding accessing the text, reading it, and taking the multi-page tests which requires mental endurance. Some of the required skills for the increased difficulty of the reading curriculum in second grade were related to speed, fluency, and executive functioning. A.N. was struggling with the increased difficulty of the reading program, as observed by Ms. Naugle and as reported by his classroom teacher. A.N. was having difficulty accessing the second-grade general education curriculum without modifications. (R-18.)

The OT evaluation was completed by Carolyn Whitworth on February 22, 2018. (R-19.) Her testing found that A.N.'s fine motor precision skills, manual dexterity skills, general visual perceptual skills, motor reduced visual perception skills, and visual motor integration testing motor and pencil control skills all fell within the average range. (R-19.)

The determination of eligibility meeting was held on March 20, 2018. (R-20, R-21.) Ms. Naugle acknowledged that none of the private evaluators, such as Alberts from CNNH, participated in the meeting. The CST combined their previous findings with the current information and evaluations. A.N. was having difficulty in second grade with reading effortlessly as well as with appropriate fluency, and his comprehension was getting impacted as the curriculum got more challenging for him. His test scores were dropping. There were executive functioning difficulties identified by Alberts, which helped the CST to better understand A.N.'s profile. Ms. Naugle believed that school just got harder for A.N., as the content increased in difficulty. His reading score had dropped by the second marking period in his second-grade year and that caused concern. (R-23.)

The CST determined that there was evidence of a disability for A.N., classified as "Specific Learning Disability" that required special education services and a modified

curriculum through the implementation of an IEP. (R-21.) The classification was based upon the team's findings of A.N.'s classroom functioning compared to his IQ and academic achievement and taking into consideration his diagnoses.

The IEP placed A.N. in a general education classroom with a special education teacher, and he would receive special education support outside of the classroom, in the resource center, where A.N. would receive small group instruction for ninety minutes per day, in the area of reading language arts. (R-21 at 0265.) Modifications and supplementary assistance for A.N. was outlined in the IEP, such as allowing additional time to complete work and seating A.N. in an area free from distractions. (R-21 at 0258.) A.N. received supplemental support from the special education teacher, who was in the general education classroom, for sixty minutes per day, for mathematics. (R-21 at 0265.) This was done to ensure that A.N. did not have math-based needs due to reading issues, for example for word problems and reading text in math tests.

Ms. Naugle explained that the District uses the Wonders reading program in the general education classroom. The WonderWorks program was used in the resource center, which has more simplified text, focusing on the same skills as the Wonders program, with less words on a page, which makes it easier for students with disabilities to access the information. A.N. would be in the general education classroom with supports and would be in the resource center for language arts assistance, which would provide A.N. with the least restrictive environment for his education.

The IEP was to be implemented as of March 30, 2018, through June 18, 2018. (R-21.) The parents approved of the IEP and executed same on March 26, 2018. (R-1 at 0267.)

Ms. Naugle confirmed that the initial IEP did not outline any goals and objectives specific to dysgraphia. (R-21.) She indicated that students with dyslexia commonly struggle with putting words on paper, so an OT evaluation is done to look at fine motor and visual motor skills. That is why the OT evaluation was done, and it had been recommended by the neuropsychologist as well. The OT evaluator determined that A.N. did not need direct services to address dysgraphia.

Ms. Naugle confirmed that an Assistive Technology (AT) Evaluation was not completed prior to the determination for the initial IEP. Art therapy was not provided for in the IEP. Ms. Naugle did not know what credentials would be required for someone to be an art therapist and she was unaware of any school district which provided art therapy.

The annual IEP review meeting was conducted on June 5, 2018. (R-22.) A.N.'s second-grade report card and progress reports were taken into consideration. (R-23.) The first marking period comments by the teacher at the start of the 2017-2018 second-grade academic year for A.N. noted that he was making satisfactory progress and benefited from the 504 Plan. His first marking period reading grade was 82. (R-23 at 0272.) The teacher's comments for the second marking period noted that A.N. was doing well in all areas, except for reading, and it "is clear that he needs more assistance than his current 504 Plan provides, and we are moving in that direction." (R-23 at 0272.) His second marking period grade for reading had dropped to a 64. The third marking period teacher comments indicated that A.N. made a very easy transition into the resource center. (Id.) A.N.'s third marking period grade in reading was 76. This was his grade from the start of the IEP for A.N.'s placement in the general education classroom with reading resource center special education and supports. At the end of the fourth marking period, A.N.'s reading grade had increased to 95. (Id.) The teacher commented about the great gains A.N. made in all areas of reading. A.N.'s goals and objectives progress reporting by the special education teacher noted A.N.'s progress. (R-24.)

During the annual IEP meeting on June 5, 2018, the CST reviewed A.N.'s May 8, 2018, STAR reading assessment to identify A.N.'s progress, strengths, and needs, which were used to determine what direction his teachers may want to take. His percentile rank of 28th placed A.N. in the average range for reading, which spanned the 25th to 75th percentile to be average. This was an increase from his prior STAR assessment, which was a 6th percentile.

It was determined that A.N.'s placement in a general education classroom, with pull-out for resource center small group instruction for reading language arts, was beneficial to A.N., and would continue for his third-grade 2018-2019 academic year. (R-

25 at 0295.) Modifications and supplementary aids were also outlined in the IEP, such as allowing A.N. to make corrections on returned tests for additional credit and allow tests to be given by the special education teacher. (R-25 at 0288.)

During A.N.'s third-grade year, the language arts program in the resource center used an Orton-Gillingham program known as Explode the Code. The District transitioned during that year to the Sondag program, also an Orton-Gillingham method program, which they believed had stronger materials and a stronger method for the teacher to present the information to students. Sondag focuses on phonics skills, building one skill upon the other. During A.N.'s ninety minutes in the resource center, phonics could be approximately twenty minutes, with the rest of the time divided between writing and the general education curriculum program on a modified level.

As of February 5, 2019, during A.N.'s third-grade academic year, the OLSAT-8 test was administered to A.N. to assess verbal and non-verbal reasoning and comprehension. (R-26.) The OLSAT is administered in a group setting. Ms. Naugle indicated it really does not provide "a lot" of information regarding A.N.'s reading performance. He did score in the 19th percentile, with percentile rankings ranging from a low of 1 to a high of 99. He did score slightly higher on a cognitive measure in the test, compared to the same score in the Wechsler test, which was an individually administered test to A.N.

A.N.'s progress reports and report card from his third-grade academic year demonstrated positive and encouraging teacher comments about A.N. making great strides in reading comprehension and fluency. His reading grades were 93, 97, 95, and 100 for the respective four marking periods of third grade, with an overall grade of 96. (R-27 at 0300.) A.N. was noted to be a hard worker and respectful of others. (Id.) His IEP goals and objectives progress reporting was positive, noting continued "progressing" throughout third grade. (R-28.)

The CST met for the annual IEP meeting on May 28, 2019. (R-29, R-30.) It was determined that A.N. had progressed so well during third grade that he would remain in a general education classroom for fourth grade and, instead of being pulled out for the resource center for language arts, he would receive In-Class Resources, referred to as

ICR. There would be a second teacher in the room who was special education certified. He would continue to receive in-class support for mathematics, again as it related to his reading. (R-30.) The IEP had three goals and seven objectives for A.N. for language arts. (R-30 at 316.) A.N. showed enough success and enough progress that the team believed they could place A.N. in a less restrictive environment, and thus placed him in the general education class, without pulling him out to the resource center.

The District was undergoing a reading curriculum change, starting a new program called Wit and Wisdom. The program entailed collaboration, dialogue, skill building, vocabulary building, text analysis, and text synthesis. It was determined that the special education students would benefit from collaboration with their peers, with modifications and accommodations and a co-teacher in the general education classroom. A.N. had marked improvement in his percentile ranking from second to third grade on his STAR reading assessment. The IEP was approved by his parents and implemented for A.N.'s 2019-2020 fourth-grade school year. (R-30.)

Ms. Naugle was no longer CM for A.N. for his fourth-grade year. She was still a member of the CST, as she continued to serve as LDTC. She received and reviewed the report completed by Ellen Topiel as a reading evaluation for A.N., as of May 13, 2020. (R-36.) As LDTC, Ms. Naugle is the District liaison who reviews private evaluations and gives her input as to the contents and how it applies to the student. The District did not accept the recommendations of Topiel and did not offer an IEP based upon Topiel's report. Ms. Naugle found that Topiel's report was based on observations and anecdotal information. There were no standardized measures in Topiel's report. It was delivered remotely, not something that evaluators are authorized to do for standardized measure.

STAR reading progress reports for a span of two plus years, through September 2020, demonstrated stagnation as of January 2018, and then, after the special education determination was made, A.N. had an upward trajectory. This demonstrated progress in reading. (R-39.)

Ms. Naugle asserted that the District was correct in rendering its initial decision for the 2016-2017 school year to find that A.N. was ineligible for special education. Based

upon the framework of the New Jersey regulations and code, the CST did not find evidence of a disability for A.N. in need of special education services. Ms. Naugle asserted that the District acted appropriately the following academic year, in determining that an IEP was to be implemented for A.N., based upon additional data and interpretation, observations of A.N., and information that A.N. was struggling.

Ms. Naugle testified that the IEPs for A.N. were appropriate and provided FAPE. (R-21, R-25, R-30.) She believed that A.N.'s IEPs provided him with the opportunity to make meaningful progress, and he did make meaningful progress.

Carolyn Smith testified for the District. She has been a special education teacher for the District for sixteen years. She is a certified special education teacher, certified reading specialist, and certified elementary education teacher. She serves as a special education teacher, reading specialist, and interventionist for general education students for the District. She was qualified as an expert in the field of reading specialist and special education teaching, without objection.

When working as a special education teacher, Smith employs the methods that she uses as a reading specialist. She utilizes a multi-sensory, direct instruction approach in her classroom, with a balanced literacy philosophy, so that students get a little bit of everything in her classroom by addressing every component of reading that is necessary. For example, she may be targeting a specific skill, such as reading fluency, while utilizing other skills such as site words and vocabulary. She is trained in the Wilson reading program, but acknowledged she is not certified in the program. When she works as a push-in reading specialist, she goes into the general education classroom for the specific time frame warranted in an IEP and carves out a small space to work with the students. When students are pulled out for services, she has a small classroom where she functions as a reading specialist and interventionist.

RTI students are general education students who will come to her resource classroom for Tier 2 or Tier 3 program services. Tier students receive thirty minutes of instruction from her.

When Smith provides push-in services to students in a general education class, she will serve as an In-Class Resource or Replacement (ICR) professional in the general education class, being a certified special education teacher, by carrying out a student's IEP. She also serves as an In-Class Supplementary Support (ICS) professional, a position done by educational professionals, not necessarily a certified special education teacher, who assists students in a general education classroom.

Smith first became familiar with A.N. towards the end of his first-grade academic year in 2017, working with him for a short amount of time. Prior to working with him, she had seen and reviewed the January 2017 referral form completed by A.N.'s first-grade teacher. (R-3.) Smith was a member of the I&RS team which reviews such referrals. She was aware that his classroom teacher identified some areas of concern observed from September 2017 through January 2018. The classroom teacher reported interventions she had done, and whether such interventions had been successful or not. For example, the teacher had done the intervention of allowing extra time to complete tasks, which was successful when A.N. had full teacher support for reading text. (R-3 at 16.) Another intervention, such as highlighting important text, was not helpful since A.N. needed everything read to him or full support to assist him in reading the text himself. (R-3 at 16.) A.N. was in RTI Tier 1 at the time. Smith took over from another interventionist towards the end of A.N.'s first-grade year.

Smith was aware a 504 Plan was implemented for A.N. to begin as of October 1, 2017, during A.N.'s second-grade year. (R-13.) She was not a member of the team that formulated the 504 Plan. (R-13 at 113.)

She was the interventionist and reading specialist for A.N. for his second-grade year, from September 2017 through 2018, until mid-year second grade when he left her roster, and the initial IEP was implemented with A.N. being pulled out for reading as a special education student in the resource center. She was directly teaching him for that period of time in second grade. He was RTI Tier 3. A.N. would come to her classroom daily, with a small group of approximately four students for reading instruction. Smith provided direct instruction to the small group, computer-based instruction, and individual guidance to each student. She utilized the Lexi Core Five software program (Lexi), Level

Literacy Intervention, and used Wilson reading materials. A.N. performed well, made progress, and was the highest performing student in her classroom. She utilized the Orton-Gillingham approach for phonics, with the Wilson reading materials. He progressed in guided reading and phonics.

She saw some progress for A.N. using the Lexi program in the classroom, which is designed for students with dyslexia. She used the program with all her students. It is a data driven computer program and has home practice assistance for the students. Some families loved to work with that program at home, while others did not. Generally, A.N. did not work on the Lexi program at home. He was receiving private tutoring with a Wilson certified tutor outside of the school day. Smith allowed A.N. to have time on Thursdays to use his Wilson Book 3 to re-read sentences and paragraphs. (R-15.) She utilized her Wilson book in the classroom.

In the wintertime of second grade, Smith noticed that A.N. was really starting to struggle on cold reading assessments, a component of the Wonders Program used in the main classroom. That was a piece of his education really hurting his overall classroom grade. She observed A.N. to perform better in a small group situation. Just by giving him extended time in the main classroom did not mean it was helpful to him, as he did not know how to use that time to progress in his cold reading assessments in the general education classroom.

Smith prepared a CST referral information form regarding A.N.'s participation in the RTI program, as of January 10, 2018, when A.N. was in the RTI Tier 3 program, during second grade. (R-15.) A.N. was at level "I" of the Fountas & Pennell Guided Reading Benchmark results program, as of January 2018, in A.N.'s second-grade year. Level "I" is usually where a first-grade student is at the end of first grade. Typically, Level "J" would be where a second-grade student should begin. A.N. needed to improve his reading stamina. His STAR reading scores for second grade had an upward trajectory from when he began in September through January of that year. (R-15 at 130.) His classroom grade for the second marking period in reading dropped to 64, compared to a grade of 82, for his first marking period. (R-23.)

She acknowledged she did not reach out to the private tutor to request what A.N.'s progress was in his private tutoring. She did not address in her report what effect the private tutoring may have had upon A.N.'s progress.

Smith was part of the CST which met for an initial determination meeting on January 30, 2018. (R-17.) She was aware that A.N. had an initial determination meeting the previous year and was found to be ineligible for special education.

As of March 2018, A.N. was found eligible for special education. Smith no longer worked with him for his second-grade year. She did not work with him again until his 2019-2020 fourth-grade year, when she was his special education teacher in the general education classroom. (R-30.) That was an ICR classroom setting, where there was a classroom teacher, a special education teacher, and a mix of general education and special education students. She provided special education for reading one hour per day to A.N. There was an area in the back of the classroom where Smith had a table and her six special education students would sit with her there or on the rug, and she had an interactive bulletin board to use with those students.

A.N. did quite well with his target IEP goals, modifications, and accommodations. Pre-pandemic in the 2019-2020 fourth-grade year, Smith was in the classroom providing ICR for A.N., working with him according to the provisions of his IEP. (R-30 at 318-319.) The general education classroom was utilizing the language arts program called Wit and Wisdom, a collaborative-based program with the teacher focusing on specific points and the students responding and discussing together. Smith would assist A.N. while he either sat at his classroom desk or in a small group work area. The classroom followed a balanced literacy approach, for example working on spelling by incorporating reading, phonics, and grammar components. She observed that A.N. was able to make better use of the extended time provided to him in the classroom, compared to when he was in second grade. He had self-confidence. He was in a room with friend connections. He was a stronger reader and much better with reading stamina than when he was in second grade. She credited his improvement with a combination of things, such as learning through the balanced literacy approach; having two years of growth in age; having done

repeated readings in second grade; and doing small group work in third grade, with repeated readings, skills, and strategies.

Smith did not see the need for A.N. to be utilizing the Wilson program in fourth grade. Wilson focuses on phonics instruction. The spelling connections program in fourth grade provided phonics programming in the general curriculum. A.N. was doing well in the classroom and did not need such assistance. He had the best learning profile in fourth grade out of her special education students. Smith was involved in co-teaching the class, and if, for example, she was grading students' work, she would grade for the entire class to see how her special education students were doing comparatively to others in the classroom. When she would work with A.N. in a small group setting, she would pair him with another student whom he liked and was doing well in the area she was targeting during the small group. A.N. did quite well and was accessing the general education curriculum.

Smith collaborated with the classroom teacher, Mr. Carosella, to complete A.N.'s reading and writing grades for fourth grade. A.N.'s progress reports and report cards demonstrated language arts grades of 91, 88, 92, and 96, for the first through fourth marking periods, respectively, and an overall grade of 92. (R-31.) His writing grades were 94, 94, 95, and 91, for the first through fourth marking periods, respectively, with an overall grade of 94. (R-31 at 328.) A.N. was "fully" in the fourth-grade curriculum with scaffolding methods, graphic organizers, vocabulary cards, highlighters, and assistance of that nature. The grades reflected his performance in relation to the general education students in the class learning the general curriculum. She denied that his grades were "inflated" due to the assistive measures and accommodations he received pursuant to his IEP. He earned his grades. A.N.'s attendance reflected that he was present forty-five days during the forty-five school days when instruction was live, in-person.

Smith completed the IEP goals and objections progress reports for A.N. for his fourth-grade 2019-2020 school year. (R-32.) She continually reported that A.N. was "progressing" for his IEP language arts goals each marking period that year. (R-32.) She followed the goals and objectives from his IEP. (R-33.) She maintained anecdotal notes,

a calendar, and a checklist for the data to track his progress. She did not see him struggle with technology issues.

The COVID-19 pandemic and school shut down occurred during A.N.'s third marking period in fourth grade, in March 2020. The District shut down for all students for in-person learning. Remote learning was put in place. All students initially had reading instruction provided through computer-assisted instruction until the classroom went live through Google Meets in April. She was the special education teacher for A.N. during the Google Meets class, while another ICS teacher was A.N.'s math support. She provided A.N. with modifications and supports from his IEP through computer technology, such as a program that enabled A.N. to click on an audio function to have material read to him. Another program allowed A.N. to take a test three times before not allowing him to repeat it. This type of education continued through the end of the 2020 school year.

Smith understood that A.N.'s mother assisted A.N. with some of his typing, which is what Smith, or the classroom teacher, would have done as a supportive assistant if they were in-person in the classroom. She acknowledged teaching live through a computer was "definitely different" than being in-person in the school and in a classroom.

A.N. completed his work and turned it in. He was a child that had a parent at home making sure he was logging on and doing class. She believed that his program was appropriate. Smith noted on his report card for marking period four, "it's been quite a year and [A.N.] handled the challenges appropriately. We all wish it had turned out differently, but it was a pleasure working with you. We wish you a safe and happy summer and good luck in fifth grade." (R-31 at 328.)

Smith participated in the remotely conducted IEP meeting on April 2, 2020, as special education teacher, for A.N.'s fifth-grade year IEP to be implemented for 2020-2021. (R-57.) She recommended that A.N. continue placement in fifth grade in an ICR/ICS room. Smith confirmed that the IEP was amended, as of September 8, 2020, to reflect changes recommended through an AT Evaluation, completed on June 24, 2020. (R-33 at 335, 340, 344, 354.)

Smith thought A.N. did very well in the ICR/ICS classroom setting for fourth grade. It was the least restrictive environment for him. She did not feel there was a reason to change his classroom status. She believed A.N. made progress in fourth grade and was in an appropriate program.

Debra Wall testified for the District. She has been employed by the District as a special education teacher since 1985. She estimated having worked with well over six hundred students with IEPs. She was qualified as an expert in the field of special education teaching, without objection.

Wall was A.N.'s special education teacher in the resource room for the end of his second-grade year in 2018. The resource center is a classroom where small group instruction occurs. A student will come to the resource center where Wall would teach them, and then the student would return to his or her general education classroom. While instructing students with IEPs, she is constantly monitoring their progress. The teaching is modified as the student progresses and is a "never-ending" process. Her students were unable to work at their best while in the general education classroom. They came to her for a portion of their reading, language, and spelling time, and she used a different program for teaching, which mirrored the curriculum of the general education classroom. She would teach students on their instructional level, to "fill in gaps" for them in learning, so they would return to their general education classroom having heard and learned the same curriculum as what was taught in the general education classroom. Her instruction was an intervention program, teaching students on their instructional level, so they could return to their general education class and be met with success there.

A.N. came to her resource center class towards the end of his second-grade year, for language arts and reading. The IEP specified he would be in the pull-out resource program for language arts/literacy, six days per six-day cycle, for a duration of ninety minutes. (R-21 at 265.) She was aware he had been struggling in the general education classroom. He had difficulty with phonics, which impacted his reading comprehension and fluency, and he lacked self-confidence. He did have technical skills, but he needed guidance to apply those skills. She found A.N. to be very bright, with great general background knowledge and great comprehension. She worked on the language arts

goals and objectives from his initial IEP of March 20, 2018. (R-21 at 257.)

Wall acknowledged the IEP did not specify a goal specific to dysgraphia. She asserted that issue is incorporated into the whole reading program.

A.N.'s second-grade general education classroom used the main reading program called Wonders, while Wall's class program was WonderWorks, which had an intervention piece. She used the Project Read and Explode the Code phonics programs, which are Orton-Gillingham based programs. She used a multi-sensory approach to teaching A.N., which is very expressive, using her facial expressions and hands. For example, she would make an elephant trunk motion with her hands when sounding out the letter "e" since the letter "e" has what appears to be an elephant trunk on the bottom of the letter. These are little tricks used for the student to recall the process when they are reading. She utilized the method of scaffolding, which is taking a larger goal and breaking it down into smaller increments so that the larger goal is met later down the road. This made learning easier for A.N. He took to the program and became a shining star in her class. She observed his attitude, ability, and participation. She observed that his confidence grew, he appeared happier, and he worked much more independently.

Wall worked with A.N.'s general education classroom teacher for A.N.'s grading. The first two marking periods grades in second grade for language arts/reading reflected A.N.'s status in the general education classroom. (R-23 at 272.) A.N. came into her resource center class towards the last week of the third marking period. Wall's grades were combined with the general education classroom teacher's grades for A.N., resulting in the grades that he received, which were "real grades" in collaboration with the other teacher. Wall denied that she inflated his grades. (R-23.)

Wall completed the IEP goals and objectives progress reports for A.N. for the end of his second grade. (R-24.) She reported that he was "progressing" and had made an easy transition into the resource center. She noted he was extremely compliant and responsible. (R-24.) She could say that A.N. had mastered a specific goal, since A.N. would be constantly improving, and the teaching would evolve as the tasks got more complex. He was progressing which she determined based upon his weekly testing with

her, particularly by acing his vocabulary test and his spelling tests. He was retaining his spelling words, which demonstrated he learned phonics skills and vocabulary. He was participating in class and productive. His STAR reading assessment, compared to other students' performance, had A.N. performing at grade equivalent of 2.3. (R-25 at 279.)

A.N. did so well in her class that she questioned whether he needed to go back into the resource center for the next year. She observed that A.N. just needed to learn the tips and tricks to help him when he returned to the general education classroom. She thought he might have been able to perform in the general education setting, with an ICS teacher. Eventually, the CST agreed to keep A.N. in the resource center for another year, to ensure he did not "undo" the progress he had made.

Wall had heard that A.N. was receiving private tutoring for reading using the Wilson program. She did not speak to the private tutor. She did not have access to the Wilson tutor's information. Wall sent work home. She did not know anything specific about A.N.'s private home tutoring. She was doing reading work with A.N. in the resource center geared toward his general education class instruction. She could not comment as to what, if any effect, his private tutoring had on his improvement. She observed his improvement in her classroom.

Wall was part of the CST that completed A.N.'s IEP for his third-grade year, 2018-2019. (R-25.) She noted A.N.'s strengths in the IEP, indicating that he enjoyed reading and being read to. (R-25 at 279.) He contributed and participated fully in class in small groups and with partners, as well as learned and applied concepts. He was an all-around good student. Wall noted concepts A.N. needed to work on, such as long vowel team repetition and practice, and that he sometimes would rush and misread words carelessly. (R-25 at 279.) She had observed in her class that A.N. needed text to be broken down and narrowed. She recommended that A.N. continue working in the pull-out resource center for third grade. The IEP specified he would be in the pull-out resource program for language arts/literacy, six days per six-day cycle, for a duration of ninety minutes. (R-25 at 295.) Wall did not want A.N.'s growth from the last marking period of second grade to be undermined.

Amy Hennessy is a general education teacher for A.N. for the fifth-grade 2020-2021 academic year. She testified relative to the issued raised in the AN2 petition. She is an English Language Arts (ELA) teacher for the core subjects of reading, writing, and spelling. She is A.N.'s homeroom teacher and ELA general education teacher for fifth grade.

Her classroom was in the ICR room, with a mix of general education and special education students. She is the regular education teacher and there is a special education teacher in the room. She is the main teacher. The special education teacher comes into the classroom for the ELA period. They take turns teaching directly to the students and monitoring their progress. They collaborate in their teaching. The special education teacher provides assistance to Hennessy as to modifications and accommodations to implement for the students in the class who have IEPs.

She and the special education teacher share the teaching duties for the Wit and Wisdom reading program. Hennessy described that program as being a novel-based reading program, which incorporates writing and the Spelling Connections program which focuses on spelling. Prior to the special education teacher coming into the general education class, she pulls A.N. and some other students with IEPs into her room and they go over the Soudy phonics program three days per week and cover skills that will be taught in the general education ELA class. Small group instruction is provided to A.N. during the time he is with the special education teacher.

Hennessy reviewed A.N.'s IEP at the start of the school year. (R-33.) She reviewed the accommodations and modifications and implemented those which were appropriate for him at specific times. She collaborated with the special education teacher to work on A.N.'s goals.

The 2020-2021 school year began as a hybrid program. (R-44.) From September through November, just prior to the Thanksgiving break, A.N. attended school in-person on Mondays and Tuesdays and received remote instruction the other three school days per week. The school followed the same time schedule whether in-person or remote instruction was occurring. When she taught remotely through Zoom, her class time for

language arts with A.N. was the same time as if he were in the building in-person. From Thanksgiving 2020 through mid-February 2021, due to a resurgence of COVID-19 cases, the school was conducted all remotely. She still conducted class at the same time, following the same time schedule for in-class instruction, but it was just done remotely.

Fridays were a “half-day” for all students. A.N. would attend remote instruction first with the special education teacher and then log into Hennessy’s general education Zoom instruction for ELA thereafter. From mid-February 2021, the school went to a hybrid mode again, with A.N. attending four days per week in-person, and on Fridays doing remote instruction, which was the day all students were remote learning at that time. A.N. received the same number of hours of instruction in his core subject areas, as if it were any other school year. A.N. had perfect attendance for the first and second marking periods of fifth grade. (R-33 at 357-358.) In November 2020, A.N. had some Zoom log-in issues, yet she never had to mark him as absent. (R-38 at 555.)

Hennessy felt that A.N. made adequate progress towards his goals throughout the 2020-2021 fifth-grade school year. He is an independent worker when he attends in-person. She does not have to “over” accommodate or “over” modify things for him. He participates in class, often with very insightful things to say about the book being read and the topics being discussed. She found him to have a great vocabulary, particularly when speaking. She believed he was trying his best every day. He is cooperative, listens to directions, and gets along with others.

She followed the applicable accommodations and modifications from his IEP. (R-33 at 347.) For example, she provided additional time to complete an assignment if he needed it. She provides reassurance and guidance to him to complete his assignments to the best of his ability. She would cue his attention, as needed, to keep him on task to complete an assignment. That is done by a tap on his desk or a silent or quiet signal. She was able to do such cues in-person or remotely. She has a computer program on her computer to view what each student is doing on their own computer. She can chat or message the student, where a pop-up box comes up on the student’s screen to gain their attention. There is also a chat function in Zoom to enable a direct chat message to be seen by the student.

Hennessey followed other accommodations and modifications, such as permitted A.N. to respond to a question or provide an answer to an assignment orally, rather than writing it down, if the matter is not being graded on writing. He is allowed to retake a test and sometimes the test content is modified. She generally lets A.N. take the test as best as he can without modifying things unnecessarily, to avoid holding A.N. back from achieving on grade level without modification. She acknowledged that in the language arts goals and objectives section of A.N.'s IEP, the terms "moderate assistance" and "minimal assistance" were not defined. (R-33.)

Hennessey confirmed A.N.'s IEP did not specify a goal and objective specific to dysgraphia, nor to improving A.N.'s ability to stay on task, nor to reduce his anxiety. (R-33 at 345.) She indicated that his goals and objectives were comprehension based. None of the goals and objectives set forth in the language arts section of the IEP were modified during the school year because A.N. met his success criteria within the time frames. (R-33 at 345.)

Hennessey recalled having some knowledge or information that A.N. was having a private tutor in home on Wednesdays. That is why he could not attend her afternoon Zoom session. She did not reach out to the private tutor to discuss A.N.

A.N. was achieving on a similar level with the other students in the classroom on grade level. Hennessey is involved with drafting A.N.'s report card. (R-34.) He received a 96 or "A" for the first marking period of fifth grade in reading and a 90 or "B" for writing. She denied the grades were inflated in any way. She authored the comment on his report card indicating that "[A.N.] is doing a nice job in class! He gets involved in our class discussions, listens well to advice from his teachers, and works hard to achieve highly." (R-34.) For the second marking period, he earned an 86 or "B" in reading and 87 or "B" in writing. Hennessey confirmed that the IEP goals and objectives progress reporting documents were true and accurate. (R-35.) She confirmed that A.N. was progressing each marking period. (R-35.)

Hennessey conducted an afternoon Zoom session at 2:00 p.m. for any students

who wanted to attend if they needed assistance with their assignments or had questions, since that was a time when the students did not have a core class scheduled. (R-44 at 731.) As the school year progressed, she required students to attend the afternoon Zoom if she needed to help the student with something, or if work was due and she would check-in on the student. Initially, A.N. was not attending. Hennessy reached out to his mother and asked if he could attend, and she agreed. A.N. then began attending the sessions. She believed it was beneficial for him and noted on his report card “[A.N.] has been attending my 2pm Zooms which has proved to be beneficial for me to review skills, recap chapters, and correct/revise work.” (R-33 at 359.)

Hennessy acknowledged having gotten an email, on January 14, 2021, from A.N.’s CM who was forwarding an email from A.N.’s mother addressing some hybrid/remote struggles for A.N. (R-38 at 553.) Hennessy was not certain exactly what the CM and mother were referring to regarding ELA concerns. She felt caught off-guard. She was aware his goals focused on grammar and paragraph structure, which his mother was addressing. She was working on those issues in-person and through remote instruction.

Hennessy maintained notes in the Realtime computer program when she would contact parents or administration about a student. She noted for A.N. that on January 26, 2021, she made a phone call to A.N.’s mother to advise that A.N. was inattentive on Zoom and during the 2:00 p.m. Zoom session. A.N.’s mom reported she thought A.N. was trying to get out of doing work and mentioned that the Sunday program was not a beneficial use of A.N.’s time. Hennessy advised her that she would be requiring A.N. to attend the formerly optional 2:00 p.m. Zoom session, but he would attend his math teacher’s session when necessary. (R-46 at 785.)

Hennessy noted this was something that did not happen often. She had contacted A.N.’s mother because she was concerned that his behavior was out of the ordinary and he was unprepared on that day. There were minor disturbances, but nothing major with A.N. He responds well with redirections and cues. She never had a severe problem with him not paying attention and therefore not being able to complete his work or an assignment. She believed A.N.’s mother felt that instead of the focus on the Sunday phonics program, he could benefit with help in reading and spelling. Hennessy never

encountered this type of issue again with A.N. She found A.N. to be progressing and achieving during his fifth-grade year.

Ellen Topiel testified for petitioners. She earned master's degrees in reading education and art therapy and holds certifications in elementary education and reading specialist. (P-54.) She is self-employed through her business, Maxability Learning. She provides reading and writing assessments for children so their parents can understand what is involved in remediating long-term reading and writing disabilities. (P-54.) She was qualified as an expert in the field of "Reading Specialist." (P-54.)

The parents were referred to Topiel by their attorney, Mr. Epstein, in approximately April 2020. A.N.'s parents requested that Topiel serve as an independent educational evaluator. Initially, Topiel was going to ask the school to pay for her services. However, the parents said in an email that they would pay for the evaluation if the school did not, and the parents did pay her.¹ She confirmed during cross-examination having received an email from petitioners' attorney, Mr. Epstein, wherein he advised her the BOE was calling her reading evaluation an educational evaluation, and that the parents were pursuing getting reimbursement from the District for the cost.

Topiel acknowledged communicating directly with Mr. Epstein for instructions on who would be paying her and how to go about getting payment. There were multiple emails Topiel exchanged with the District, in May 2020, in which she blind cc'd Mr. Epstein. (R-54.) She knew generally she was supposed to keep Mr. Epstein as a blind cc to such emails, for client confidentiality.

Topiel confirmed she replied to an email sent to her by Mr. Epstein on May 13, 2020, indicating "That is very helpful information, which I will now look to as my bible[.]" referring to an attachment Mr. Epstein sent to her. (R-54 at 828.) She further stated in her reply email to Mr. Epstein "I made aN [sic] unprofessional mistake which let you down

¹ This is the evaluation that was the subject of a prehearing motion, in which petitioners sought to have the evaluation considered an independent reading evaluation and thus paid for by the District. Petitioners' request for the school to pay for this independent evaluation was granted, as the school failed to file a petition seeking an order denying the request for the evaluation. The order granting partial summary decision was entered on November 24, 2020.

and broke the client's confidentiality. I sincerely apologize." (Id.) The unprofessional mistake was that she had sent one of her email communications to the District as a copy to Mr. Epstein, rather than as a blind cc to him. (R-54 at 828-831.) During her testimony, Topiel could not remember what she was referring to when she indicated she would look to the attachment as her "bible." She did not recall the attachment being Mr. Epstein's client guidelines, as he referenced in his email to her. (R-59.) She did not recall being asked to turn over the client guidelines attachment. She did not remember talking to and emailing Mr. Epstein in March 2021, regarding having to turn over the attached document for production in this proceeding. Upon review of the attached document, she remembered having to draft a letter explaining her search for a document but did not remember the specific document.

She acknowledged having sent an email on May 27, 2020, to Mr. Epstein and the parents looking for instructions as to how to respond to an email she received from the District about conducting a classroom observation. (R-54 at 835.) She acknowledged upon review that she had received a response from Mr. Epstein as to how she should respond to the District, and she believed she did respond in that fashion, but was not sure. The email from Mr. Epstein also instructed her that she should now copy him with any emails Topiel would send to the District staff or administration. (R-54 at 842.) She acknowledged that as of June 3, 2020, Mr. Epstein sent her an email in which he specified what she was to state in an email to Dr. Martin of the District regarding her classroom observation of A.N. (R-54 at 867.) She believed the information was accurate which Mr. Epstein directed her to write to Dr. Martin, specifically the statement that "video classrooms are also currently observed by each student's parents without the other parents' permission." (R-54 at 867.) Topiel received another email from Dr. Martin and sent an email to Mr. Epstein and the parents inquiring whether she should respond as he had directed her to do so. (R-54 at 870.) Mr. Epstein sent Topiel a reply email, with an amended email statement to be sent to Dr. Martin by Topiel. (R-54 at 872.) Topiel then sent a reply email to Dr. Martin, as instructed by Mr. Epstein. (R-54 at 875.)

Topiel acknowledged that Mr. Epstein directed her to submit her draft report to him by July 8, 2020, and that he would get his comments about the report to her by July 9, 2020. She could then submit her final report and bill to him by July 10, 2020. The parents

would pay her right away and Mr. Epstein would then go after the BOE for A.N.'s money. (R-54 at 886.) Topiel sent her draft report to Mr. Epstein. (R-54 at 907.) He responded with an email:

EXCELLENT
recorded very minor corrections
mostly typos
also added last line at end of report.
pls send me final signed copy anf [sic] your bill
parents will send me ck payable to Jamie Epstein Trust Acct.
I will write ck from my trust acct to you
I will pursue full payment from B"OE to reimburse parents.

(R-54 at 908.)

Topiel stated that Epstein had made a suggestion for her to edit a line. She could not recall whether she would not have included it, if it was not something she felt was correct. She could not recall if there were other circumstances where Epstein had edited her evaluations.

Topiel prepared a Reading and Writing Evaluation. Her forty-seven-page evaluation is dated July 7, 2020. (R-36; P-41.) She denied that petitioners' attorney had any sway over her final report. She did not include any opinion in her report that was not her own.

In preparation for her evaluation, Topiel communicated with the parents and heard their concerns for A.N. She reviewed historical records for A.N., as identified in her report. (R-41 at 2-8.) She highlighted in bold, in her report, some portions of the records she reviewed, and offered some opinions regarding whether she agreed with the recommendations of the other evaluators. She interviewed A.N.'s private tutor, Renee Cherubini. She offered comments about A.N.'s IEP of May 18, 2019, for A.N.'s fourth-grade 2019-2020 school year, and his IEP of June 5, 2018, regarding his third-grade 2018-2019 school year. (R-41 at 8-10.) Topiel summarized in her report A.N.'s special education teacher's responses to a questionnaire. (R-41 at 10-12.) She observed A.N.'s classroom through Zoom by video, without audio, due to technical reasons. She interviewed A.N. the day after the observation. She outlined in her report an explanation of various tests and how they are administered, and testified that she did administer tests

to A.N., and outlined his test results in her report. (R-41 at 19-38.) Throughout her report are various comments by her, and, ultimately, she provided a conclusion in her report. (R-41 at 44-46.) She confirmed that she observed A.N. first in the classroom setting, and then reviewed the reports and records. She stated she always reviews the records and reports after she tests the child.

Topiel acknowledged that her entire experience with A.N. was based upon two classroom observations through video and the day after a classroom observation when she interviewed him and administered tests. One of the virtual classroom observations was only through video, as there was no audio due to a technical glitch. That was approximately one hour. She acknowledged that the lack of audio probably negatively impacted her observation. She did read captions at the bottom of the screen and denied that she was unable to read the captions and observe the teachers, students, and A.N. at the same time. The second observation was also done virtually and was of A.N. receiving 1:1 instruction for the Sunday program for approximately twenty minutes.

Topiel concluded in her report that A.N. “has dyslexia which has not been remediated properly since he was diagnosed in first grade.” (R-41 at 44.) She asserts that “[t]he progress that he has made so far is mostly due to his weekly parent paid private tutoring.” (Id.) She determined that as A.N. was entering his fifth-grade year for the 2020-2021 school year, and that various aspects of his reading levels ranged from second to third-grade levels. His writing is “another struggle” for him due to his dysgraphia. (Id.) Topiel determined that A.N.’s writing level “is about 2nd grade.” (Id.)

Topiel’s conclusions authored in her report were rendered within a reasonable degree of scientific certainty within her profession. She ultimately recommended that a remediation schedule be put in place for A.N., including explicit, systematic 1:1 decoding instruction by a reading specialist or Wilson certified special education teacher for two hours per week; plus explicit 1:1 instruction by a reading specialist or special education teacher for reading comprehension strategies, for three times per week for thirty minutes; and explicit 1:1 instruction in writing skills by a reading specialist or special education teacher familiar with dysgraphia for three times per week, for thirty minutes per session. (R-41 at 45.) Topiel emphasized the need for integrating AT, at school and at home. She

recommended training by an AT Specialist for A.N.'s teachers, parents, and A.N. himself. (R-41 at 45.) She concluded that A.N. might benefit from doing relaxation techniques before reading and writing. He should also have counseling to address his level of anxiety, frustration, and low confidence. (R-41 at 46.) She testified if the school did not provide the level of specific intensive Wilson instruction she suggested, then the school should be paying for private tutoring after school hours for A.N.

Topiel highlighted during her testimony that the most significant parental concerns for A.N. were that he had reading, writing, and fluency deficits, with emotional stress attributed to his struggles with learning reading and writing. He was losing confidence, as per the parents. The parents reported to her that he feels rushed, does not have enough time, and gets upset when he cannot finish something, or did not complete a task as thoroughly as he would have liked because he did not have enough time. The parents were concerned with the programs offered to A.N. and the progress he was making. They wanted AT added to A.N.'s accommodations.

Topiel affirmed she reviewed A.N.'s background history and found of most significance that he was eligible for special education and related services under the specific learning disability diagnosis and was receiving in-class supports for language arts and math. She needed to determine his reading and writing strengths and weaknesses and current levels in all literacy skills areas. She found him to be a caring and hard-working child, which was important to her evaluation to understand his attitude towards learning.

She administered various tests to A.N. for reading and writing. She acknowledged they were not standardized assessments. As a reading specialist, she is trained to do qualitative assessments that test specific skills for which standardized testing cannot test. Most notably, she highlighted in her report that the testing she administered demonstrated strong evidence of A.N.'s dyslexia and dysgraphia. She administered the tests virtually, due to the COVID-19 pandemic. She was not aware that the Department of Education did not allow school districts to provide evaluations virtually during the pandemic.

During her testing of A.N., Topiel noticed that he would misinterpret directions about his writing prompt, and needed certain questions restated in a different way in order for him to understand them accurately. In her review of the evaluations done by the District, she noted similar deficiencies from those evaluations, such as expressive vocabulary being a weak area, and problems for A.N. which were very commonly seen in dyslexic students. She noted similar findings from other evaluations, such as the neuropsychological report which diagnosed A.N. with ADHD. She found him to have a poor ability to focus, a weakness she found when testing him. This interfered with his ability to decode, comprehend, and be a fluent reader.

She did also outline in her report A.N.'s test results which demonstrated his areas of mastery and achieving grade level results for some aspects of reading and writing. (P-41 at 19-36.) She also testified as to areas in which A.N. performed well, such as with syntax, and that he performed "fairly well" and was at fourth-grade level.

Topiel had some criticism of the Sondag program, and noted how it could be administered by anyone, from a gym teacher to special education teacher. She was concerned that Sondag training was done online. She was surprised to hear that the District staff were trained in person for Sondag. She questioned if Sondag was being administered properly to A.N. for the time frames recommended by the Sondag materials and information published online. She understood that A.N. was not receiving thirty-five minute sessions four to five times per week in school, as described on the Sondag website. She stressed that the school should be ensuring that the Wilson program instruction A.N. received privately should be coordinated with A.N.'s in-school program to avoid confusion for A.N. due to differences in style. She stated that Sondag was pretty similar to Wilson, or any of the other Orton-Gillingham programs with which she was familiar. She did think that the Sondag lesson she viewed was structured similar to a Wilson session. Topiel was never trained in Sondag. She was trained in the two-to-three-day Wilson training and used the Wilson program during prior employment at a private school. She testified that she is not certified by Wilson.

Topiel reviewed A.N.'s 504 Plan from the beginning of his 2017-2018 school year. She opined that the accommodations did not specifically target A.N.'s reading and writing

difficulties. She testified that the RTI program did not provide for the specific recommendations she made about the intensive 1:1 instruction by a Wilson specialist. She acknowledged that she did not know the specifics of the RTI instruction being provided to A.N. She did not know that A.N. was getting daily reading intervention services, separately from the 504 Plan, through the RTI program. On re-direct, she did confirm there is reference to "Tier 3 RTI" in her report at page 4, in the paragraph in which she states the 504 Plan had eleven accommodations, none of which targeted a remediation of A.N.'s reading and writing difficulties. (P-41 at 4.)

She interviewed A.N.'s private tutor, Renee Cherubini. Topiel was advised that A.N. had weakness with mixing up little words, and his fluency ability and attention difficulties were impacting his decoding abilities. Topiel found the same thing when she evaluated A.N.

In her review of A.N.'s IEP of May 18, 2019, for his fourth-grade 2019-2020 year, the needs stated within the IEP were the same needs Topiel believed were necessary for A.N. Her findings differed from those in the IEP regarding A.N. needing little assistance to get his thoughts in writing. She also thought it was significant that A.N. had AT for language arts, but he did not have it for other areas, such as science, which also required reading. She found that puzzling.

Topiel criticizes the goals and objectives in the 2019-2020 IEP. For example, specifically as to language arts, it should have included information about the length of writing, how such progress would be monitored and measured, and who would be monitoring the goal. She thought there were missing pieces from his IEP goals and objectives. She thought it would be almost impossible for him to reach the goal of applying grade level phonics and word analysis skills when decoding words in a text. Her evaluation found that A.N. was below grade level and was having difficulty with grade level text.

Topiel had A.N.'s teacher complete a questionnaire. Topiel indicated that her evaluation of A.N.'s skill progression was similar to some areas as the teacher stated, but there were some skills where Topiel disagreed with the level of proficiency stated by the

teacher for A.N., such as in the area of reading comprehension. Areas the teacher marked for A.N. as proficient, such as recognition of text structure, Topiel found A.N. to be struggling and rated him lower than proficient.

Topiel virtually observed A.N. with his classmates during a remote instruction session due to the COVID-19 pandemic. This was the observation of the language arts lesson for A.N.'s class during the thunderstorm and when she had technical difficulties and had no audio. She found the assignment to be structured well, giving A.N. framework he could view visually on the computer. Some other things seemed to be difficult for A.N., which she spoke to him about the day after the observation. He felt rushed. He did not participate verbally in the class to respond to questions the teacher was asking the students. She thought A.N. may have been struggling with processing the questions and answering them. She spoke to A.N. after the session and he expressed that it was distracting during the session when other students were doing side chatting and not paying attention. He suggested that the students should be given a three-minute break to have a snack.

She affirmed in her testimony that the recommendations she made in her report for the intensive weekly instruction by a Wilson certified instructor should be followed by the District. She opined that since A.N. was diagnosed with dyslexia in first grade, that should have prompted the District to provide him with the recommended Orton-Gillingham program to remediate his disability. (R-36 at 2.) She was not aware that, after having submitted her report to the District, it did not accept her report. She was advised that there was a cap on what the District would pay for her evaluation, and she was offered a portion of payment of her bill. She was never advised by the District that her report was not accepted.

Renee Cherubini testified on behalf of petitioners. She has served as a tutor for approximately forty years, with ninety percent of her students being special education students. All tutoring has been provided for reading disorders. (P-51.) She obtained a dyslexia specialist certification and is a multi-sensory structured language educator certified to teach children with dyslexia using the Orton-Gillingham method. She was

qualified, without objection, as an expert in the field of reading instruction for special education students.

Cherubini provided private tutoring services to A.N. from approximately September 2017 and continuing to the present time. His prior tutor, Linda Gross, had advised Cherubini she labeled A.N. as dyslexic with CAPD and in need of intensive tutoring based upon the Orton-Gillingham method.

Cherubini's sessions with A.N. are conducted once per week, for fifty minutes. She focuses on his dyslexia, utilizing the Orton-Gillingham program. She conducts the sessions in her home classroom. She focuses on teaching A.N. the individual sounds of the alphabet and how to blend them in a multi-sensory way, which is taught by tapping on the fingers.

There was a period of approximately five months, from approximately January 2019 through May 2019, when she did not provide tutoring services for A.N. The child attended the Burlington Dyslexia Center, which is a free program. Cherubini noted at the bottom of her August 2019 billing statement sent to the parents: "Please let me know by the middle of August whether you would like [A.N.] to continue with me so that I can make sure he has a spot in my schedule. I am not sure if the Dyslexia Center is a good fit for him. I would like to see him continue to make progress. Either way, it has been a pleasure working with him! He is a great kid!" (P-47 at Bates page 385.)

Cherubini believed A.N. progressed during the time she tutored him. She was concerned with him attending the Burlington Dyslexia Center because the center used teachers in-training to provide the services to the students for free. She herself was trained there. When A.N. returned to her private tutoring services after having attended the Burlington Center, she believed that A.N. had regressed, based upon testing she did when he returned to her.

She prepared monthly invoices for the parents for the services she provided. Each invoice has the month of service, lists the days of the week when the tutoring was provided, and has the amount billed. Her monthly billing statements, from December

2017 through January 2021, were entered into evidence. (P-47.) After the August 2019 billing statement, the next statement provided is dated December 2019. (P-47, Bates page numbers 385-387.) A billing statement for January 2019 was provided. There are no monthly bills thereafter until July 2019. (P-47 at Bates page numbers 390-391.) The parties have stipulated that the amount petitioners seek to be reimbursed for the private tutoring provided by Cherubini is \$6,650.

Cherubini did not recall any member of A.N.'s CST nor school representative contacting her regarding A.N. She was contacted by evaluator Topiel.

She was not asked by the parents, other members of the CST, nor any representatives of the school to participate in any CST meetings. She acknowledged she did not recall ever being asked to participate in CST meetings for any of the special education students she has tutored.

Alexandra Back testified on behalf of petitioners. She earned her undergraduate degree in psychology and art in 2011 from Pennsylvania State University. (P-50.) She earned a master's degree from Drexel University in 2013. She was nationally certified as a Registered Art Therapist-Board Certified (ATR-BC) in 2018, having attended a recognized master's degree program; completed post-graduate studies; having had 1,000 plus client contact hours and clinical supervision; and having completed a national certifying examination. She currently works for NeurAbilities Healthcare, the company formerly known as CNNH, as an art therapist. She has been so employed for approximately eight years. Her clients range in age from children to adults. She provides art therapy for individuals with developmental disorders, learning and behavioral disorders, and for issues such as anxiety. Approximately eighty-five to ninety percent of her clients are special education students. She was qualified as an expert in the field of art therapy.

Ms. Back first came to know A.N. when he was referred by his physician to her for art therapy for concerns regarding his anxiety, other diagnoses, and for social and emotional support. She first began providing services in July 2017. She provided two sessions per month, each forty-five minutes in length. She continues to provide art

therapy to A.N. at the present time. The sessions are either discontinued or reduced to once per month during the summer months, at the request of the parents. During the sessions, it is just her and A.N., but she is supervised as part of the organization's interdisciplinary team.

She has communicated with her colleague, Dr. Alberts, who authored the Neuropsychological Evaluation of A.N. from his evaluation dates of October 20, 2017, and November 10, 2017. (R-14.) Ms. Back found Alberts's recommendation that A.N. should continue to participate in individual art therapy with her consistent with her communications with Alberts. (R-14 at page 11.) She found his comments regarding A.N.'s art therapy treatment goals; his recommendations to continue to develop adaptive coping strategies for A.N.'s frustration regarding schoolwork; and his recommendation for future implementation of strategies to assist in developing A.N.'s self-esteem, to be consistent with her communications with him regarding A.N.

During the time she has provided art therapy to A.N., she has not heard from any members of A.N.'s school regarding what she was working on with A.N.

Itemized billing statements from CNNH reflect charges for Ms. Back's art therapy sessions for A.N. (P-48.) She explained that any entry that is billed as "Not covered 45 minute SP" for \$60 per session, was for her art therapy sessions, despite the billing statement indicating the provider is "Mintz." (P-48 page 1.) Ms. Back indicated she did not know why Dr. Mintz, who is a neurologist, would be listed as the provider. The company has switched to a new format for billing which no longer lists Mintz as the provider. The provider is identified as "ABVTC" for \$60 per session, which Ms. Back indicated is a charge for the art therapy she provided to A.N. (P-49 Bates numbered pages 430-431.)

M.N., mother of A.N., testified. During his first-grade year, 2016-2017, A.N. struggled "tremendously" with reading and writing. She communicated with A.N.'s first-grade teacher, especially during their conference in November 2016, when she expressed her concerns regarding A.N.'s struggles with reading and writing. She advised

that A.N. did not like school. He would complain that he had a stomachache and did not want to go to school. It was an issue getting him on the bus.

The first-grade teacher, Ms. Hasenbalg, advised M.N. that she was working with A.N. in a large classroom and tried to pull him out for a fifteen- or twenty-minute time slot, to work with him individually at the back of the class. That was not working out. The teacher had observed A.N. blinking and that he was not able to transcribe what was written on the chalkboard to his paper. She suggested getting his vision and hearing checked.

M.N. had A.N. evaluated by a pediatric eye doctor, who authored a letter report, dated January 12, 2017. (P-1.) A.N.'s teacher completed a questionnaire for the doctor regarding A.N. After the evaluation, M.N. recalled the doctor telling her that A.N.'s vision was fine, as it was 20/20. The doctor was concerned with A.N.'s vertical reading, which could indicate a reading disability. He indicated there could be a phonological issue and suggested M.N. reach out to the school for a CST evaluation. She paid for the vision evaluation and provided the report to the school. (P-1.)

M.N. had A.N. evaluated by Linda Gross, an individual who specializes in dyslexia and reading. Gross prepared a one-page score report regarding A.N.'s results from her administration of the Woodcock-Johnson test on January 24, 2017. (P-2.) Gross handwrote in some scores and notations indicating "Grade 1 at the very beginning" and recommended "CAP testing." (P-2.) She also handwrote in a diagnosis of "phonological awareness deficit (dyslexia)," recommending an intense multi-sensory Orton-Gillingham program. (P-2.) M.N. and E.N. paid for the testing and provided the score report and Linda Gross's business card to the school. (P-4.) Gross was concerned with A.N.'s phonological awareness and deficits. (P-2.) Gross advised M.N. that A.N. should be assessed by an audiologist. Gross believed that A.N. would be more receptive and do well with the Wilson reading program, preferably two times per week for approximately one hour per session. This would help him to progress to his grade level for reading and writing. As of January 24, 2017, the time of Gross's evaluation, the school had not conducted a reading evaluation, nor had it administered a Woodcock-Johnson test to A.N.

M.N. and E.N. submitted a letter request on January 26, 2017, to the CST, requesting evaluation of A.N. for special education and services. (R-4 at 32.) A.N.'s teacher put in a request for assistance for A.N. for intervention referral services as of January 30, 2017. (R-3.) At the time of the request, the teacher was completing Tier 1 assistance in the classroom. The teacher was seeking Tier 2 assistance. Her Tier 1 assistance in her large classroom was not effective, as A.N. was having difficulty finishing his work and was unable to read. He was struggling with his writing.

M.N. and E.N. believed that A.N. was in immediate need of intervention so they began once per week tutoring sessions for A.N. with Gross in February 2017 and continued through August 2017. They paid for the cost out-of-pocket as it was not covered by insurance. The school did not pay for it or reimburse them. Gross's office was in Pennsylvania. They transported A.N. to and from the tutoring each week and paid for the transportation costs. Gross indicated twice per week sessions would be the "ideal" situation, but they could only afford once per week sessions at \$105 per session.

M.N. sat in on the weekly sessions. She observed what Gross was doing with A.N. during the session and observed the concepts. Gross provided M.N. with tips during the lesson of what M.N. should work on with A.N., such as using flashcards and keeping on top of the writing concept for each week. Gross was using the Wilson program, which used twelve books in the program, and an accompanying workbook. They had to purchase the books themselves.

M.N. saw improvement in A.N. with phonics, such as breaking apart words. His confidence increased and he was less anxious with school. Linda Gross has since passed away.

In September 2017, Renee Cherubini took over tutoring A.N. from Gross. Cherubini was located in Southampton, New Jersey, and charged \$70 per session. The parents paid for the sessions and provided round-trip transportation from their home to Cherubini's office. M.N. attended the sessions, usually seated right outside of the tutor's office. After each session, Cherubini would explain to M.N. what she reviewed with A.N.

and his homework for the following week. The school was not providing Wilson reading instruction to A.N., nor using an Orton-Gillingham method of teaching A.N., as of 2017.

A.N. progressed through the Wilson books with Cherubini's tutoring. He had weekly assignments to work on during the week, mainly to improve his reading fluency through practice. M.N. believed the tutoring improved his performance in school since it focused on what his issues were and addressed them one-on-one during the tutoring sessions. His confidence improved. The school had not conducted a reading evaluation. The school did not conduct an evaluation to determine what effect the weekly tutoring had on his progress in school.

The parents also had A.N. evaluated by an audiologist, as of February 10, 2017. (R-5.) M.N. was present during the evaluation. The audiologist advised M.N. she saw a left ear deficit due to CAPD, which would create an issue for A.N. with phonics and spelling. The audiologist recommended continuing reading therapy utilizing a multi-sensory approach and provided classroom strategies such as having a classroom teacher who speaks clearly and conducts a quiet classroom. (R-5.) M.N. provided the report to the school. A.N.'s teacher at the time, Sandrah Hasenbalg, definitely tried to implement the recommendations, such as putting A.N. closer to her desk. The CST did not develop a plan implementing the recommendations in response to receiving the report in 2017. The school did not conduct its own audiologist evaluation.

The CST met on February 22, 2017. (R-7.) The CST had the reports from Gross and the audiologist. The members advised M.N. they would be looking into testing and evaluating A.N. and would get back to her. They did not get a reading evaluation nor neuropsychological evaluation completed. (R-7.)

Ms. Naugle, LDTC, completed the learning evaluation on April 11, 2017. (R-8.) M.N. acknowledged that Ms. Naugle administered the Wechsler Test to A.N., which was a measure of his reading. (R-8.) The psychological evaluation was completed by the school psychologist on May 5, 2017. (R-9.)

The CST met on May 22, 2017, for the initial determination meeting. (R-10, R-11.) That was the first time M.N. saw the learning evaluation and the psychological evaluation. There were some slight deficits in reading and writing, as noted in the reading evaluation. The psychologist noted that the teacher and mother reported the child had displayed anxiety. There were no recommendations in either evaluation. At the end of the meeting, the CST members did not find A.N. eligible for an IEP. He was in the RTI program in Tier 2. The team recommended continuing in the RTI Tier 2 program and to progress to Tier 3 for the upcoming school year.

M.N. was extremely frustrated at the end of the meeting, letting the team know she was confused since she obtained evaluations of A.N. which diagnosed him with dyslexia and CAPD, and he was obviously struggling. She was concerned regarding his school related anxiety. She asked about a 504 Plan and was told that the CST did not handle 504 Plans and she could take it up with the principal. At that point, the only service provided to A.N. to address his dyslexia and CAPD was the tutoring the parents had gotten for A.N., at their expense. She did acknowledge that in first grade in 2017, when A.N. began in the RTI program, through his current school year, the district has provided A.N. with reading support whether through the RTI program or through the implementation of an IEP. However, she asserted that the school supports were not intense, one-on-one support like his weekly private tutoring. The school reading supports were through small group settings.

M.N. asserted A.N. was not getting instruction through an Orton-Gillingham program at school. She was not aware that Foundations, the program implemented through the school's RTI program, was an Orton-Gillingham-based program. She was aware that several reading programs fall under the umbrella of being multi-sensory Orton-Gillingham-based programs. M.N. indicated that it was explained to her by the tutors that there is a difference between Orton-Gillingham and Orton-Gillingham-based programs, using an analogy that there is a difference between authentic Mexican food from a Mexican restaurant versus Mexican food from a Taco Bell. She acknowledged that the Wilson and Sonday programs were Orton-Gillingham-based programs. She confirmed that A.N. did receive from the school an Orton-Gillingham-based program instruction in reading.

After being denied an IEP in first grade, M.N. followed up with her pediatrician who told her that A.N. did not have anxiety other than school related. He suggested having A.N. evaluated by a neuropsychologist. The parents followed up with CNNH and had A.N. tested in July 2017, which M.N. described as occurring over four different times, with four components. There was an EEG done, a test for ADHD, and two educational examinations. The EEG was within normal limits for A.N. (P-9.) The result for ADHD was a “possible” index score on a scale of unlikely, possible, probable, and likely. (P-8.) M.N. stated that the doctor told her A.N. had ADHD related to schooling. The doctor recommended art therapy which A.N. began through CNNH. The neuropsychological evaluation got pushed back to the fall, and was done on October 30, 2017, and November 10, 2017. (P-11.)

At the start of the 2017-2018 second-grade school year, the parents had a diagnostic sheet from A.N.’s doctor and asked for A.N. to be evaluated for a 504 Plan. He was evaluated on September 19, 2017, and a plan was developed for him, to be implemented as of October 1, 2017. (R-13.) A.N.’s disability is listed as CAPD. He continued in the RTI Tier 3 program.

The neuropsychological evaluation by CNNH was completed on October 30, 2017, and November 10, 2017. (P-11.) The parents provided it to the school.

The CST met in January 2018 for a review of A.N. The neuropsychological report from CNNH got the school’s “attention” and the CST was willing to put “a lot” of the information from that evaluation into the school’s evaluations which were thereafter completed. The school did not obtain its own neuropsychological evaluation of A.N. The school did not get its own reading evaluation of A.N. The school recommended obtaining an OT evaluation and a functional update. (R-17.)

The OT evaluation and functional evaluation were completed. (R-18, R-19.) When the CST met for an initial eligibility determination meeting in March 2018, it determined A.N. did not qualify for OT services. However, it did determine he would qualify for an IEP and classified him as Specific Learning Disability regarding his reading fluency

disability which impacted his education performance. The IEP noted his diagnoses of dysgraphia, dyslexia, CAPD, and ADHD, which contributed to A.N.'s general academic challenges. The IEP noted that despite continued RTI support, his reading skill deficit required support through special education services. (R-21.) M.N. remarked with frustration that it took the school over a year and a half to finally find A.N. eligible for an IEP.

M.N. was able to take the initial proposed IEP from the meeting and make remarks and comments. (P-16.) The parents did not agree that A.N. did not qualify for OT services. M.N. wrote on the draft IEP her requested additional modifications, such as preferential seating. She advised that A.N. had been in private tutoring one day per week in the Wilson program. She indicated on the draft IEP that A.N.'s reading program should be Orton-Gillingham-based and requested the Wilson program. M.N. was told that the school was implementing a new reading program, called Sonday, and that would be used for A.N. in the pull-out resource room. She was told that the school could not fund the private tutoring the parents were providing for A.N.

The finalized IEP was implemented as of March 20, 2018, towards the end of the third marking period of A.N.'s second-grade school year. (R-21.) M.N. acknowledged that A.N.'s reading grade improved from the second to the third marking period, to a 76 and his writing grade improved to a 94. At the end of the fourth marking period, his reading grade was a 95 and his writing grade was a 97. M.N. agreed that A.N. was doing much better being placed in the resource room.

The neuropsychologist had recommended that A.N. continue with art therapy. That was not in the IEP. (R-14, R-21.) Although the CST accepted the parent provided report and had not obtained its own neuropsychological evaluation, the IEP did not implement or include all the recommendations in the parent provided neuropsychological report. ESY was not recommended in the IEP.

In June 2018, the CST met for the annual review meeting. (R-25.) The IEP from that meeting was to be implemented for A.N.'s third-grade school year, as of September 4, 2018. (R-25.) M.N. had the same disagreements about this IEP, as she did with the

March IEP. (R-21.) M.N. acknowledged that A.N. did very well in third grade, as per his grades in language arts reading and writing and the teacher comments. (R-27.)

A.N. had continued to receive weekly reading tutoring during the third-grade school year. He attended art therapy every other week, outside of school. M.N. noticed that A.N. benefited from art therapy, as he learned to talk himself through things and breathing methods when he would get frustrated, upset, or anxious. His confidence level was improving with art therapy.

In June 2019, the CST met for the annual review meeting. The IEP from that meeting was to be implemented for A.N.'s 2019-2020 fourth-grade school year. (R-35.) The difference from the prior year was the CST no longer would have A.N. pulled out of class and receive services in the in-class support room. Instead, A.N. would remain in his regular class with an in-class support teacher for all subjects. M.N. had not seen this IEP prior to the meeting. M.N. was extremely concerned about not having A.N. attend instruction in the resource room. He was doing well and thriving with the resource room instruction. She was concerned he would get lost in the shuffle and fall behind if he were left in the regular classroom. His confidence was up, he was completing his work, and he was doing much better.

M.N. also expressed concern about the Wilson reading program during the meeting. The parents were still paying for the weekly tutoring outside of school and she learned that two other students from A.N.'s school apparently were receiving Wilson instruction in school from a private consultant hired by the school. She wanted A.N. to receive that. Ms. Naugle advised M.N. that as CM, she could not make such a decision, and it would have to be addressed to the supervisor or the Administration. (P-37.)

In the new IEP for fourth grade, A.N. would receive in-class support for language arts. That subject was ninety minutes of the day. A.N. received sixty minutes of in-class support from a special education teacher, along with the rest of the class.

During the pandemic when remote instruction was occurring, from March 2020 through June 2020, A.N. received sporadic live instruction remotely. M.N. acknowledged

that the District did not independently choose to close the schools for in-person instruction.

At the beginning of the pandemic closure, assignments were posted on the computer. Approximately three weeks into the start of the pandemic time, live math instruction began remotely for at least four days out of the week for approximately a half hour to an hour. The language arts live instruction remotely started about four weeks into the pandemic. That consisted of the entire classroom online so there was no individualization for him. That was approximately four days per week of approximately forty-five minutes in duration.

When the class was taught live remotely, the special education and general education teacher were online with all the students. The special education teacher was primarily teaching the class. There was no individualization. A.N. needed adult support while receiving remote instruction at home. That support was provided by either M.N. or E.N. The school did not provide a support person to him in home. The school did not set up a meeting place at another location to receive instruction. He was not receiving instruction for language arts or math from a special education teacher during the remote learning time, as he was supposed to receive according to his IEP. (R-35.)

M.N. asserted that the school did not implement A.N.'s IEP from March 2020 through June 2020. They did not set up a meeting and modify his IEP during that time. They did not provide any training or assistance to M.N. or E.N. on how to be A.N.'s support person. He received approximately two hours per day, approximately four days per week, of live instruction remotely. She acknowledged that he did receive grades of A's and B's during fourth grade in reading and writing. (R-31.)

During the summer of 2020, the school did not offer ESY. Instead, they offered a six-week remotely taught reading program, which A.N. attended. His IEP was not amended to reflect the change. He received live instruction remotely during that program twice per week. M.N. and E.N. had to assist A.N. with the remote instruction and with his homework for the summer.

A proposed IEP for the 2020-2021 school year was sent to M.N. from CM Tamyra Fernandes. (P-39.) M.N. then corresponded with the CM, addressing her concerns about A.N. having a Wilson reading program and AT. She wanted to ensure the proper meeting was had, given that the prior CM indicated she did not have authority to implement the program. The parents forwarded a letter to the school on April 15, 2020, again reaching out because they did not have an adequate amount of time to review and comment on the draft IEP and requested an additional meeting. They expressed concern about the Wilson program and CAPD for A.N. (P-40.) The school had not completed an AT Evaluation as of April 2020. That evaluation was done in June 2020. The school then amended the IEP, as of June 8, 2020, to implement the recommendations from the AT Evaluation. (R-33.)

The 2020-2021 school year was A.N.'s fifth-grade year. The school year began with remote instruction. In September 2020, they did implement a hybrid situation where a student could be in plan "A" or "B." A.N. was plan "A" which was in school on Monday and Tuesday and then remote instruction on Wednesday, Thursday, and Friday. The two days in school were full school days of instruction. The three remote learning days, he received about three hours per day of instruction. His IEP had not been amended to reflect this.

During remote instruction for the start of the 2020-2021 school year, A.N. received a fifteen-minute session with the special education teacher prior to the start of language arts. During the class session, he was in class with all other students remotely. The school did not send a support person to their home to provide support during the remote instruction. The school did not offer petitioners any compensatory education for the September 2020 through beginning of 2021 school year.

As of January 2021, students who had been completely remote for the beginning of the school year could opt into attending in-person under one of the hybrid programs. M.N. reached out to the CM to explain that A.N. was having a difficult time with remote learning and wanted to know if he could attend in-person four days per week. After some back and forth, the school did allow A.N. to attend four days per week, as of February 2021, in-person. He remained remote for one day, Friday, which was the day of the week

the entire school continued to function as remote instruction. A.N.'s IEP was not amended to reflect this status. In January 2021, he got separated out into a private room during remote instruction.

The parties stipulated that petitioners are seeking \$6,650 for the weekly private tutoring expense they paid for A.N.'s tutoring. (P-47.) M.N. confirmed their petition also seeks reimbursement of \$2,208 for the transportation costs they incurred to transport A.N. to and from tutoring.

Petitioners are also seeking reimbursement for their out-of-pocket expenses for A.N.'s art therapy. While some of the evaluation costs were covered by their medical insurance, none of the art therapy costs were covered by their insurance. They paid \$60 per session for art therapy. (P-48.) M.N. estimated they paid approximately \$3,300 for art therapy between 2017 and 2020.

M.N. asserted that they, as parents, were always trying to get A.N. help, and the school always seemed "behind the eight ball" and lagging behind, thus making the parents seek out help. It was frustrating that they had to do so much along the way and the school was "never quite on time or in line with what was going on" with A.N.

E.N., father of A.N., testified. He was involved with A.N.'s education during the 2019-2020 school year, from the beginning of A.N.'s fourth-grade school year when instruction was still in-person, through the time when remote instruction was implemented in March 2020, due to the COVID-19 pandemic.

During the pre-remote instruction, E.N. would assist his son after school with his homework and any left-over class work that A.N. needed to complete. Some nights he would need to assist A.N. from after school up until dinner, and sometimes after dinner as well, to get the homework completed. A.N. frequently expressed frustration trying to complete his work, pounding on the desk, crying at times, and calling himself names such as "stupid," and that he could not understand the work. E.N. and M.N. would have to calm A.N. down and then get him back to work to complete the assignments. It was frustrating for the child and frustrating for him and his wife as parents.

It was difficult to keep A.N. on task, especially with reading. When an assignment would require A.N. to read a short paragraph, which should have taken a minute or two, it would require up to half an hour to get through it, having to help A.N. sound out nearly every word or sentence as A.N. struggled with the task. They would have to review matters two or three times before A.N. could complete the assignment. E.N. was unaware of the District having provided any techniques or methods to minimize A.N.'s frustration and behavior when trying to complete his homework.

As parents, E.N. and M.N. put education foremost. A.N.'s homework struggles, and having to attend private tutoring they paid for, resulted in A.N. missing out on attending sports' practices, having time to relax after school and watch television, or play outside with his friends. They wanted him to get out and socialize, but A.N.'s homework struggles often consumed his after-school time, creating great frustration for them as parents, as well as for A.N.

E.N. was aware that all schools in New Jersey were required to shift to remote learning, as per the Governor, in March 2020. He acknowledged that COVID-19 created an unprecedented event worldwide.

He was involved with A.N.'s education during the remote instruction that occurred from March 2020 through June 2020. E.N. was working from home. His office is next to A.N.'s bedroom, where A.N. would do his remote/online instruction. E.N. recalled that the education instruction was sporadic and minimal at best. It mainly consisted of A.N. getting assignments through email and then clicking on a link to the assignment. The students were left to do the assignments on their own. E.N. would have to assist A.N. through the assignments. He needed to prompt A.N. to get him to complete the work. He was not trained by the school to be a support person for A.N. The school did not provide the parents any supervision or instruction to enable them to be A.N.'s support person.

E.N. observed some of the onscreen live class events at home. He would check in on A.N. On multiple occasions, he would hear many voices and commotion and then see that the students and teachers were talking at the same time; there were students

asking questions at the same time; and it appeared to be mostly “corralling” of the kids by the teachers, and not much teaching going on. He never observed A.N. participating in a breakout room with his teachers. He did not recall A.N. ever participating in a breakout room session with just the special education teacher. A handful of times the teachers would re-review what had been done during the class time, but he did not see that done in a breakout room with A.N.

For the summer 2020 ESY remote learning for A.N., E.N. was still working from home. The entire week consisted of approximately one to one and a half hours of instructional learning. There were supposed to be two sessions of forty-five minutes in duration each week, but the sessions did not always last that long. There was one fifteen-minute session to review.

When the 2020-2021 school session began, the school was on a weekly hybrid schedule. A.N. attended in-person on Monday and Tuesday every week, while the sessions from Wednesday through Friday were done remotely. E.N. indicated that he and his wife had to provide the same type of support and assistance to A.N. after school on Mondays and Tuesdays as they had done when school was in regular session. They had to provide the same type of support and assistance to A.N. during the remote sessions the rest of the week, as they had provided when the remote sessions began in March 2020. A.N. would have the same frustrating reactions and was not able to complete his homework or assignments which were supposed to be done independently by him, with little instruction.

For the summer 2021 ESY session, E.N. observed A.N. on some occasions when E.N. was at home working remotely. E.N. had to provide similar assistance as he described to assist A.N. and keep him on task. The sessions were sporadic and not well structured. They were not very long, and E.N. indicated the benefit was lost on him. He and his wife wanted A.N. to attend the ESY, even if remotely, since it was at least something so that A.N. would not lose anything that had been gained during the school year.

He acknowledged that he received A.N.'s report cards and saw that he was getting passing grades. He was never provided the underlying data or metrics to support how the teacher came up with the grade. To him, it was just numbers and letters on paper, with comments by the teachers. It was "general" information to him. Since he and his wife were not experts in education, they sought the assistance of expert Topiel to evaluate A.N. and guide them through the process. They saw A.N. struggle with reading and writing, which their older child had never exhibited. They recognized that as a red flag, and wanted to get help for A.N.

E.N. and his wife expressed their concerns during evaluation meetings and teacher conferences. He and his wife also discussed issues with one another and then his wife would email the teachers and school with their concerns.

They became increasingly frustrated with the school. They did not believe that A.N. was getting fairly treated and was not receiving a proper or appropriate education. They obtained evaluations at their own expense and presented them to the school. They would be met with "brick walls" and they constantly got evaluations until they finally got a 504 Plan for A.N. in first grade and then the IEP beginning in 2018. He expressed concern that it could have been years before the school discovered A.N.'s issues had they not continued to press the school.

They chose to place A.N. in private tutoring with the Wilson reading program. A.N. should have gotten two sessions per week, but they could only afford one session per week. He believes that is the reason why A.N. was able to progress in school. They became increasingly frustrated when they learned through friends that there apparently were two students attending the school who were getting Wilson reading program sessions. He was frustrated that they had to spend the money, provide the transportation, and take time from their schedules to have A.N. get the Wilson program through private tutoring.

Credibility analysis

A fact finder is obligated to weigh the credibility of witnesses. The fact finder must choose to accept or reject whether a witnesses' testimony is credible. Freud v. Davis, 64 N.J. Super. 242, 246 (App. Div. 1960). Credibility is the value given to a witness' testimony. It is best described as that quality of testimony or evidence that makes it worthy of belief. "Testimony to be believed must not only proceed from the mouth of a credible witness but must be credible in itself. It must be such as the common experience and observations of mankind can approve as probable in the circumstances." In re Estate of Perrone, 5 N.J. 514, 522 (1950), (citations omitted).

A credibility determination requires an overall assessment of the witness' story "in light of its rationality or internal consistency and the manner in which it hangs together with other evidence." Carbo v. United States, 314 F.2d 718, 749 (9th Cir. 1963). The fact finder should also consider the witness' interest in the outcome, or any motive, or bias. The fact finder may reject testimony because it is inherently incredible, improbable, inconsistent with common experience, contradicted by other testimony, or it is overborne by other testimony. Conleton v. Pura-Tex Stone Corp., 53 N.J. Super. 282, 287 (App. Div. 1958).

All witnesses for the District testified in a direct manner. There was no embellishment, exaggeration, or evasion in answering questions. Their testimony was delivered in a concerning manner for the student. I deem the District's witnesses to be credible.

Particularly, Carolyn Smith, the expert in the field of reading specialist and special education teaching, projected a genuine sense of caring and concern for A.N., with first-hand observations of him. She had extended contacts and teaching connections with A.N. from the end of his first-grade year in the RTI program, through his second-grade year, serving as interventionist and reading specialist in RTI Tier 3, for small group instruction. She recognized A.N.'s reading struggles in second grade while instructing him, as the work became increasingly difficult. She referred him for assessment of special education eligibility. He then was on a different roster after getting his initial IEP. She

taught him again in the challenging fourth-grade academic year, when COVID disrupted the in-person regular course of teaching. Her testimony was direct, instructive, and first-hand observational of A.N. over extended periods of regular, direct contact. I deem her testimony credible and reliable.

The parents both testified in a direct manner with concern and frustration for the process. Neither parent was embellishing or engaged in any histrionics. They both communicated their frustration in a frank manner. Their frustration was appreciated as they continually communicated their concerns to the school staff, yet felt they were not getting the assistance for A.N. from the school as he should have been getting. I deem the parents as credible witnesses and historians.

The testimony of the private tutor and the art therapist were presented in a professional and direct manner. Their testimony was delivered in a thoughtful and informative manner as to their interaction and services provided to A.N. Their input was credible.

The expert testimony of the District's witnesses, including the evaluators, was presented to support that the District has provided FAPE in the LRE. The expert testimony of Topiel, reading specialist, was offered on behalf of the petitioners to counter the District's assertion.

Generally, "where the medical testimony is in conflict, greater weight should be accorded to the testimony of the treating physician" as opposed to an evaluating physician, who has only met with the employee on one occasion. Bialko v. H. Baker Milk Co., 38 N.J. Super. 169, 171–72 (App. Div. 1955), cert. denied, 20 N.J. 535 (1956.) However, this guidepost is not unwavering. Simply because a physician has been selected by the Board and paid by the Board, is "hardly a basis to discount his testimony" in favor of the treating physician, who is presumably paid by the patient. Reiziss v. Board of Teachers, Teachers Pension and Annuity Fund, 91 N.J.A.R.2d (TYP) 16, 21. It is further well settled that "[t]he weight to which an expert opinion is entitled can rise no higher than the facts and reasoning upon which that opinion is predicated." Johnson v. Salem Corp., 97 N.J. 78, 91 (1984) (citation omitted.)

The trier of fact assesses and determines the credibility, weight, and probative value of the expert testimony. State v. Frost, 242 N.J. Super. 601, 615 (App. Div.), cert. denied, 127 N.J. 321 (1990); Rubanick v. Witco Chemical Corp., 242 N.J. Super. 36, 48 (App. Div. 1990), modified on other grounds and remanded, 125 N.J. 421 (1991). “The testimonial and experiential weaknesses of the witness, such as (1) his status as a general practitioner, testifying as to a specialty, or (2) the fact that his conclusions are based largely on the subjective complaints of the patient or on a cursory examination, may be exposed by the usual methods of cross-examination.” Angel v. Rand Express Lines, Inc., 66 N.J. Super. 77, 86 (App. Div. 1961). Other factors to consider include whether the expert’s opinion finds support in the records from other physicians, and the information upon which the expert has based their conclusions. The premises upon which the expert’s observations are based, coupled with the expert’s ultimate conclusions, may be contradicted by rebuttal experts and other evidence of the opposing party. Id.

Here, Smith, the reading specialist expert, could be deemed a “treating provider” as she delivered teaching instruction and interventionist services to A.N. throughout several years of his schooling. I have found her to be credible and trustworthy.

Ms. Naugle, LDTC, authored evaluations of A.N. and had the position of CM for a period of time for A.N. Her testimony was direct and thoughtful as to why the initial evaluation did not result in classification of A.N. for special education, keeping him in the RTI program with more intense Tier servicing. It was in-synch with the observations other district representatives made. She acknowledged acceptance of the neuropsychological evaluation the parents obtained for the student and noted the CST did not want to put A.N. through another battery of testing. Her testimony was helpful and persuasive, based upon her knowledge of A.N. and wanting to maintain the LRE for him while addressing his needs.

Topiel was the reading specialist expert for the student. Her contact with A.N. was observation of him in a virtual classroom lesson and a 1:1 reading lesson for approximately an hour and twenty minutes. She interviewed him virtually after the observation.

Topiel testified with a generally flat affect in a stilted fashion. It was not testimony delivered in a professionally confident and direct manner to instill confidence in her opinions. Her answers often digressed into narratives on tangential issues and descriptions not on point to the question. She essentially agreed with the evaluations and findings of all of petitioners' medical evaluations and recommendations, asserting that she had similar observations of A.N. She disagreed with many of the "positive" observations from the District's witnesses and evaluations, such as regarding the level of prompting or assistance needed by A.N. She administered tests to A.N., which affirmed that he demonstrated weaknesses in areas typically found in students with dyslexia and dysgraphia. She did report that some of her testing demonstrated that A.N. had mastery of some reading elements and was grade level efficient in some areas, yet overall, she emphasized her testing found A.N. to be well below grade level. Her ultimate recommendations, tips, and techniques suggested to be used to assist A.N. were similar to those that were outlined in A.N.'s IEPs, and were in the 504 Plan and implemented through RTI, yet she did not know that A.N. was in RTI, or at least did not appreciate the specifics of the RTI program and that modifications and reading assistance was provided to A.N.

Her ultimate conclusion and opinion focused on having A.N. participate in multiple pull-out sessions per week, 1:1 with a Wilson reading specialist using the Wilson program. The ultimate conclusions are not particularly reliable as being an "independent" evaluator's opinion, given the heavy influence of petitioners' counsel in communicating with Topiel, and even reviewing her draft report and offering his corrections and modifications. The method of her communication with the school and being instructed by counsel to blind cc him rather than disclose to the school that she was keeping him apprised of her communications, was puzzling and questions the level and quality of communication and fair dealing with the District.

Her testimony and report did not inspire great confidence to warrant a level of credibility to place great weight in her opinions. I did not find Topiel's testimony or report to be of significant assistance in rendering my decision.

Based upon the review of the documentary evidence, and consideration of the testimony of the witnesses, I **FIND** as further **FACTS**:

During the 2016-2017 first-grade school year, A.N. was placed in the RTI program. He was moved from Tier 1 to Tier 2 due to noted struggles in his reading and writing. Through the RTI program, he received direct specialized assistance in reading through small group intervention.

The CST team determined A.N. was not eligible for special education and related services as of May 22, 2017. (R-11.) A.N. continue to participate in the RTI program, in Tier 3, which continued as a form of specialized assistance for language arts through small group intervention. When his struggles were not remediating and his grades dropped during second grade, he was assessed again and then deemed eligible for special education with an IEP implemented at the end of his second-grade year. He progressed in second grade, making improvements to the point where his special education teacher even questioned the need to continue the pull-out sessions. She did agree with other members of the CST to continue the pull-out sessions into third grade to ensure there was no digression.

A.N. progressed during third grade. A.N. progressed during fourth grade, despite the challenges posed by COVID-19 mandated remote instruction, and then transitioning through hybrid instruction. The parents were of great support and assistance through the remote instruction, and during pre-COVID-19 times, assisting A.N. with his homework and getting him private tutoring and art therapy to address the concerns they observed.

LEGAL ANALYSIS AND CONCLUSIONS

The Federal Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400 et seq., was enacted to ensure that children with disabilities have access to a Free Appropriate Public Education (FAPE). 20 U.S.C. § 1412(a)(1). IDEA provides the framework for special education in New Jersey, as reflected in New Jersey statutes N.J.S.A. 18A:46-1 to 46-55 and regulations at N.J.A.C. 6A:14-1.1 to 14-10.2. IDEA requires states to implement policies and procedures to ensure disabled students are

provided FAPE.

Schools are required to have an appropriate multi-disciplinary team approach, such as the RTI program or Multi-Tiered System of Support (MTSS) model, to assist the general education population of students who are experiencing learning difficulties. N.J.A.C. 6A:16-8.1(a). “Interventions in the general education setting shall be provided to students exhibiting academic difficulties and shall be utilized, as appropriate, prior to referring a student for an evaluation of eligibility for special education and related services.” N.J.A.C. 6A:14-3.3(b). This requirement is consistent with the concept of providing FAPE to students with the least disruption of their peer interaction and learning environment.

FAPE includes special education instruction and related services designed to meet the needs of a child. 20 U.S.C. § 1401(9); N.J.A.C. 6A:14-1.1, et seq. FAPE must be provided in the Least Restrictive Environment (LRE). 20 U.S.C. §1412(a)(5)(A). LRE is an environment that satisfactorily educates disabled children with their non-disabled peers, in the same school in which the non-disabled peers are educated. T.R. ex rel N.R. v. Kingswood Twp. Bd. of Educ., 205 F.3d 572, 578 (3d Cir. 2000); Carlisle Area Schools v. Scott P., 62 F.3d 520, 535 (3d Cir. 1995). Removal of children with disabilities from the regular educational classroom environment, or placement of such children in special classes outside of the regular classroom, may only occur when the nature or severity of the disability is such that education in the regular class cannot be satisfactorily achieved, even with the use of supplementary aids and services. 20 U.S.C. §1412(a)(5)(A); N.J.A.C. 6A:14-4.2.

The primary method of ensuring delivery of FAPE is through an IEP. 20 U.S.C. § 1414(d)(1)(A). An IEP outlines the child’s present levels of academic achievement and functioning, outlines measurable goals and the services to be provided, and establishes objective criteria for evaluating the child’s progress. 20 U.S.C. § 1414(d)(1)(A)(i); C.H. v. Cape Henlopen School District, 606 F.3d 59, 65 (3d Cir. 2010).

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

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

When a due process hearing is conducted pursuant to IDEA, regarding the provision of FAPE, "the school district shall have the burden of proof and the burden of production." N.J.S.A. 18A:46-1.1. If a change in the student's IEP is sought, whether by the parents or the school district, the burden to prove whether the IEP is appropriate is upon the school district. Lascari v. Board of Education of the Ramapo Indian Hills Regional High School District, 116 N.J. 30, 44 (1989). The burden of proof is by a preponderance of the credible evidence. N.J.A.C. 1:6A-14.1(d). There is no presumption of correctness on the part of the Board of Education for its proposed action. Id. This is not a burden to demonstrate.

IDEA leaves the interpretation of FAPE to the courts. See Ridgewood Bd. of Educ. v. N.E., 172 F.3d 238, 247 (3d Cir. 1999). In Bd. of Educ. of the Hendrick Hudson Central School District v. Rowley, 458 U.S. 176 (1982), the United States Supreme Court held that a State provides a disabled child with FAPE if it provides "personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction." Id. at 203. The Court reasoned that IDEA was intended to bring previously excluded disabled children into the public education systems of the States and to require the States to adopt procedures that would "result in individualized consideration of and instruction for each child." Rowley, 458 U.S. at 189. IDEA was amended by Congress in 1997, subsequent to Rowley. The amendments focused on ensuring that students with disabilities receive a "quality public education" and not just "some benefit." Forest Grove School District v. T.A., 557 U.S. 230, 239 (2009).

Here, the BOE will have satisfied the requirements of the law by providing A.N. with personalized instruction and sufficient support services which "are necessary to

permit the child 'to benefit' from the instruction." G.B. v. Bridgewater-Raritan Regional Bd of Educ., 2009 U.S. Dist. LEXIS 15671 (D.N.J. Feb. 27, 2009), citing Rowley, 458 U.S. at 189. IDEA does not require the BOE to maximize A.N.'s potential or provide him the best education possible, or a specific program of instruction. Instead, IDEA requires a school district to provide a basic floor of opportunity, with an education that provides significant learning and meaningful benefit to the student. Carlisle Area Schools v. Scott P., 62 F.3d 520, 533–34 (3d Cir. 1995); Ridley School District v. M.R., 680 F.3d 260, 269 (3d Cir. 2012).

An IEP must provide meaningful access to education and confer some educational benefit upon the child. Rowley, 458 U.S. at 192. To meet its obligation to deliver FAPE, a school district must offer an IEP that is "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." Andrew F. v. Douglas Cnty. Sch. Dist. RE-1, 580 U.S. 386, 137 S. Ct. 988, 999 (2017).

2016-2017 First-Grade Academic Year

Here, petitioners contend that A.N. was denied FAPE because he was referred by the parents and his first-grade teacher for evaluation due to A.N.'s observed reading struggles, yet A.N. was not found to be eligible for special education and an IEP. Petitioners assert that the school failed to implement the findings and recommendations from the visual evaluation and the Central Auditory Processing evaluation. The visual evaluation noted some deficits and recommended having the child evaluated by the CST. The auditory evaluation recommended use of a multi-sensory approach to teaching and to implementing classroom strategies such as a soft-spoken teacher who conducts a quiet and controlled classroom. The District contends it was appropriate in its action in not finding A.N. eligible for an IEP and they were following the mandated path of exhausting intervention services before implementation of special education through an IEP.

The District did follow the recommendation of the visual evaluator, and was in the process of evaluating A.N. A Learning evaluation was completed by Ms. Naugle, who administered standardized tests such as Weschler, with mostly all average findings for A.N. and some below average findings. She noted deficits for A.N. with reading issues

such as word-finding for vocabulary being a weakness. A psychological evaluation was completed, with no findings of physical, cultural, or social factors impacting A.N.'s ability to access the curriculum. The student was already in the RTI program, receiving accommodations and modifications, as suggested by the auditory evaluator, and was in a tier receiving direct lessons in small group sessions.

The parents provided a handwritten notation from a reading tutor that the child had dyslexia. Even with a diagnosis of dyslexia, the school is not automatically bound to implement an IEP. The disability or learning issues are to be addressed through intervention services first, and, if all factors are not met, the student can be deemed eligible for an IEP. The parents implemented private tutoring for A.N. once per week, as of February 2017. There has been no credible evidence to demonstrate that the private tutoring was necessitated to fill a void for A.N. not having an IEP. The evidence preponderates that the District acted appropriately in not finding A.N. eligible for an IEP and continuing to provide intervention services through the RTI program, with additional interventions through the Tier 3 program. There was nothing noted to demonstrate that A.N. suffered from anxiety in school, affecting his academic progression or access to the curriculum. I thus **CONCLUDE** that FAPE was provided, in the LRE environment for the student for the 2016-2017 academic school year.

2017-2018 Second-Grade Academic Year

Petitioners assert that FAPE was not provided in A.N.'s second-grade year as he lacked an IEP until the end of that academic year. They contend the school ignored the neuropsychological findings and did not implement all of the recommendations of that expert, despite claiming that the CST accepted the report during the evaluation of A.N. which occurred in the second portion of the second-grade year. The District confirmed it did accept the neuropsychological report by accepting the diagnoses which identified the child's disability and implemented most of the recommendations. Ms. Naugle acknowledged the CST did not implement art therapy, as the neuropsychological evaluation recommended continuing in art therapy. Ms. Naugle could not recall ever hearing of art therapy being something provided for a student in any district in which she was employed.

A.N.'s second-grade teacher noticed the struggles A.N. had by the end of 2017 and referred him for evaluation. The District had a follow-up functional assessment completed and an OT evaluation, which had no findings that OT was needed for A.N.'s dysgraphia. The District appropriately acted to implement the IEP at the time that it did. There were goals and objectives outlined in the IEP to address A.N.'s needs and specific pull-out sessions for language arts to be done in the resource center. He progressed, and all evidence supports his progression from his grades, teacher remarks, expert testimony, and direct observations. A.N.'s continued once per week private tutoring was not demonstrated to be the primary reason why he showed progression in school. I **CONCLUDE** that FAPE was provided in the LRE for A.N. for his second-grade academic year.

2018-2019 Third-Grade Academic Year

The IEP for A.N.'s third-grade year provided for continuation of pull-out sessions for language arts and in-class support for mathematics. Progress for the third-grade year was demonstrated through the grades, teacher comments, testimony of the teachers, and observations. A.N. was continuing to receive private tutoring with a Wilson specialist and art therapy approximately twice per month, at the parents' expense. A.N.'s reading program was utilizing an Orton-Gillingham approach. The parents desired use of the Wilson program, which is acknowledged to be under the umbrella of Orton-Gillingham programs, the Wilson program being the one utilized by the private tutor who expressed the progress she saw in A.N. utilizing that approach.

The District has always implemented use of Orton-Gillingham-based programs, such as Sonday. There has been no credible evidence presented that the child suffered or was not accessing the curriculum through use of reading programs other than Wilson. There was no evidence that the student had anxiety in school which was prohibiting him from accessing the curriculum. The evidence preponderates that A.N. made meaningful progress in third grade, progressing in his IEP goals and objectives, and keeping pace with his classmates. I **CONCLUDE** that FAPE was delivered by the District, in the LRE for A.N., during his third-grade academic year.

2019-2020 Fourth-Grade Academic Year and 2020-2021 Fifth-Grade Academic Year

The parents have witnessed outbursts of frustration and lack of confidence demonstrated by A.N. when they have assisted him at home with this schoolwork. They note the frustration they experienced, knowing that A.N. cannot just come home and relax to watch TV or play outside or engage in sporting activities, when his time is consumed with working on homework for extended periods of time. As the father explained, a paragraph that should take a few minutes to read will consume nearly half an hour of time going through it with A.N. That is an example of precisely what A.N.'s disabilities present, and why he has accommodations and modifications within his IEP, to enable him to access the curriculum. Not discounting the frustration and stress of the parents and what they have witnessed in their child, the evidence preponderates that A.N. is able to access the curriculum and it has been demonstrated that he has made meaningful progress. He is receiving a quality education, with personalized instruction utilizing Orton-Gillingham methodology, which has proven to be effective and meaningful for A.N.

Topiel's testing results confirmed what is known about A.N. He has dyslexia. He particularly struggles with reading comprehension. He is eager and puts in the extra work to decipher words properly and improve his comprehension, putting to use what he has learned. The accommodations for him are assistive in overcoming the deficits from the dyslexia and his frustration when struggling to keep up time wise with others. There is nothing that can be drawn from Topiel's conclusions that A.N. has only progressed because he has received once per week private tutoring in the Wilson program. She specifies that the progress A.N. has made "so far is **mostly** due to this weekly parent paid private tutoring." (P-41 at 44, **emphasis added**.)

The parents are applauded for jumping into action immediately to address at home follow-up and actively engaging in same, not only by getting A.N. tutoring but doing the efforts themselves in sitting with A.N. and actively assisting him with homework. Their frustration of feeling that A.N., and they, have missed out on after school sporting activities and other fun time, is palpable and understandable. A child with a disability will present such challenges and frustrations in trying to keep pace with other children of the same

age who do not have conditions such as dyslexia and dysgraphia. In an ideal world, every parent, no matter what their child's condition, should be putting in the time and attention after school hours to their child's academic progress. What A.N.'s disability requires is extra time and attention from his parents. He needs at home practice and encouragement to keep up his skills. He is progressing in his academics. Although frustrated at times because it takes him longer to compose his words, he is given modifications and accommodations for dyslexia to lessen the frustration in school. Notably, there is an absence of any remarks of outbursts or anxiety by the student during the school day, which would hinder his progress in school. The parents chose to provide assistance to A.N. through private tutoring and art therapy. This does not demonstrate that the school has shirked in its responsibility to provide FAPE under A.N.'s IEP, in the LRE. I thus **CONCLUDE** that there is no award of reimbursement for the out-of-pocket expenses incurred by the parents for the private tutoring, private art therapy, or other such private services or therapies the parents engaged for A.N., for any of the asserted years during A.N.'s education.

A.N. continued to be classified and had an IEP for his 2019-2020 fourth-grade school year. That IEP adjusted the language arts special education component for A.N. so that he remained in the general education class and received in-class resource programming rather than being pulled out. This was implemented due to the continuing progress A.N. made through his third-grade year. His STAR assessments and classwork showed upward trajectory improvement, and the Sonday program addressed his decoding deficits. Receiving in-class special education programming in the general education classroom was deemed to be the least restrictive environment, keeping A.N. with his peers, for a reading program that was interactive and an all-inclusive, multi-disciplinary approach. He still received in-class supplemental support for mathematics. His progression through the year, pre-COVID-19, is supported by the evidence of grades, teacher comments, and teacher and expert testimony. Likewise, he progressed through the challenging COVID-19 times.

The global COVID-19 pandemic resulted in the declaration of a public health emergency in the United States and in the State of New Jersey, which impacted the nationwide operation of schools. The Honorable Sarah G. Crowley, ALJ, recently

addressed the issue in her final decision in the matter of F.V. and M.V. on behalf of B.V. v Cherry Hill Township Board of Education, OAL Docket No. EDS 01556-2021 (April 6, 2022), in which she stated:

The effect of the pandemic on the requirements of FAPE and LRE is worthy of some discussion. On or about March 15, 2020, the State of New Jersey, by Executive Order of the Governor, declared a State of Emergency due to a serious pandemic which came about due to the Covid-19 virus. Among other things, the Order included a shutdown of all schools throughout the State, in an effort to contain the virus, and protect students, teachers, staff and parents from being exposed to others who might be carrying the virus. Little was known at the time about the potential threat, and it was hoped that after a two-week period, that schools and the rest of the State could open up again, with minimal disruption. Re-opening did not happen at that time, and school districts were left to develop alternate methods of teaching through virtual instruction for the balance of the 2019-2020 school year. This was especially challenging for teachers and students who are involved with delivering and receiving special education and related services, impacting thousands of students and families of students like B.V., who are eligible to receive these services.

Recognizing the need to address the situation, the Commissioner of Education, and the Department of Education itself, issued some modified guidelines to districts regarding the alternate method of teaching and delivering services to students, including but not limited to the ongoing obligation to offer and provide FAPE. The directives and guidelines that came out, however, did not require districts to revise the IEPs for students receiving Special Education services. The U.S. Department of Education (USDOE) issued a document advising local education agencies (LEAs) on how to comply with IDEA regulations during the COVID-19 public health emergency. The document was not intended to impose additional requirements on LEAs, nor act as legally binding rules, but rather to provide informal guidance of the USDOE's interpretation of the IDEA and its implementing regulations in the specific context of the COVID-19 health crisis. US Dept of Educ., Questions and Answers to Providing Services to Children with Disabilities During the Coronavirus Disease 2019 Outbreak, (Mar. 2020), <https://sites.ed.gov/idea/files/qa-covid-19-03-12-2020.pdf>. The USDOE provided that if LEAs choose to continue providing educational opportunities to the general student population during a school closure, "the

school must ensure that students with disabilities also have equal access to the same opportunities, including the provision of FAPE.” Id., at 2. The USDOE stated that during this time schools were required to ensure that “to the greatest extent possible, each student with a disability can be provided the special education and related services identified in the student’s IEP.” Ibid.

Based upon the above directives from the State of New Jersey and the US Department of Education, it is clear that services needed to be provided to special education students during these unprecedented times. However, there was no obligation to amend every IEP based on the student’s desire to return to school or continue with remote learning. In addition, the directive from the State as well as the USDOE clearly states that the services to be provided to special education students in remote learning was to be “to the greatest extent possible.” The foregoing directive recognizes that we are in unprecedented times and that the services were to be provided to the greatest extent possible and that they were to mirror what was provided to other students without disabilities.

F.V. and M.V. obo B.V. v. Cherry Hill Twp Board of Educ., OAL Docket No. EDS 01556-2021 (Final Decision, April 6, 2022, pages 9-11).

Here, based upon the foregoing, there was no obligation to amend A.N.’s IEP to address the change from remote and the hybrid status, and his desire to attend in-person as frequently as possible. The directives from the State and USDOE indicated that services for special education students during remote learning were to be provided to the greatest extent possible. Although it certainly was not a perfect situation for A.N. to be on a Zoom lesson with multiple other students and distracting chatter and inattention by the others, he was savvy enough to realize that was a distraction to him. He was noted to have performed well, even under such circumstances. This is not to discount the assistance provided by the parents during remote learning. All parents had to step up and assist or at least ensure their child was logged in and attending class. It was not possible to have an aide physically present at home with A.N. due to the Executive Orders and mandates due to the pandemic.

Topiel observed A.N. under unusual circumstances. It was COVID-19 mandated home instruction time. She had an audio tech glitch and could only view the video. A thunderstorm occurred during the session. A.N. did well, despite such challenges, albeit notably with assistance from his mother. He expressed frustration after the lesson with the other students being distracting and not paying attention and gave a very insightful suggestion that perhaps the students should be given a three-minute break to grab a snack. A.N.'s teacher specifically remarked on his report card and in testimony that there were certainly challenges presented due to COVID-19, and that A.N. managed to navigate them well under the circumstances. COVID-19 presented unprecedented challenges to all students, teachers, and parents, and continues to do so to the present, having caused the need to create different learning modes, methods, and environment for all.

Topiel honed in on A.N.'s deficits, which were signs of dyslexia and dysgraphia. Those disabilities are known. She did acknowledge that with accommodations, such as extra time, A.N. is able to perform at grade level for reading comprehension and is able to access the tools of deciphering words, sentences, and reading that he has been taught to get him through the deficits from his disabilities. A.N. is learning the skills to improve his reading. It is a step-by-step process, which his progression has been measured through the goals and objectives of this IEPs. He is learning the strategies to improve his performance in school. It will be a continual process learning to cope with the struggles posed by A.N.'s dyslexia. That learning process certainly was challenged by COVID-19 circumstances. It does not demonstrate the need for intense 1:1 pull-out lessons by a Wilson certified instructor. He has progressed, in the LRE, even in challenging pandemic times.

The evidence preponderates that the school acted to the greatest extent possible to provide special education services to A.N. The teacher provided an additional Zoom session in the afternoon, first optional, then mandatory, for A.N., which proved to be helpful to the teacher being able to individually address A.N.'s needs. A.N. had assistive tools during remote learning such as being able to have text read aloud through the computer, rather than just having to read the text. The District provided extended instruction through the summer of 2020. The fall 2020 internet connection issues and

headset issues were resolved by the District, although not as quickly or efficiently as the parents desired, but the District did attend to them. Likewise, as of January 2021, in-person attendance and tech issues were addressed. I **CONCLUDE** that A.N.'s special education needs were addressed by the District to the greatest extent possible during the COVID-19 mandated transitions for learning remotely and hybrid status. I thus **CONCLUDE** that A.N. received FAPE through the 2019-2020 school year and the 2020-2021 school year.

Having considered all evidence presented, I **CONCLUDE** that the school demonstrated by a preponderance of the evidence that FAPE was provided in the LRE to A.N. throughout the academic years from first grade through fifth grade, as confirmed herein. I **CONCLUDE** that there is no compensatory education to be awarded, nor reimbursements for private tutoring, therapy, or other requested out-of-pocket expenses for such services. To the extent petitioners contend relief is to be considered for subsequent school years, any such relief is **DENIED**. Relief sought beyond the bounds of the petitions is **DENIED**.

ORDER

It is **ORDERED** that the District provided FAPE in the LRE environment and there is no compensatory relief or other relief to be granted to petitioners, and thus any such requested relief is **DENIED**.

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



August 12, 2022
DATE

ELAINE B. FRICK, ALJ

Date Received at Agency:

Date Mailed to Parties:

EBF/jns

APPENDIX

Witnesses

For petitioners/parents and student:

Ellen Topiel
Renee Cherubini
Alexandra Back
M.N., mother
E.N., father

For respondent, the District:

Maria Naugle
Carolyn Smith
Debra Wall
Amy Hennessy

Exhibits

For petitioners:

- P-1 January 12, 2017, vision evaluation by Dr. Galloway
- P-2 January 24, 2017, reading evaluation scores by Linda Gross, Ed.M.
- P-3 Pre-marked, not entered, duplicative of R-5
- P-4 Pre-marked, not entered, duplicative of R-7
- P-5 Pre-marked, not entered, duplicative of R-8
- P-6 Pre-marked, not entered, duplicative of R-9
- P-7 Pre-marked, not entered, duplicative of R-11
- P-8 July 21, 2017, ADHD system test
- P-9 August 1, 2017, CNNH Digital High Density Electroencephalography report
- P-10 Pre-marked, not entered, duplicative of R-13
- P-11 Pre-marked, not entered, duplicative of R-14
- P-12 Pre-marked, not entered, duplicative of R-17
- P-13 Pre-marked, not entered, duplicative of R-18

- P-14 Pre-marked, not entered, duplicative of R-19
- P-15 Pre-marked, not entered, duplicative of R-20
- P-16 Draft IEP of March 20, 2018
- P-17 Pre-marked, not entered, duplicative of R-21
- P-18 Pre-marked, not utilized
- P-19 Pre-marked, not entered, duplicative of R-25
- P-20 Pre-marked, not entered, duplicative of R-30
- P-21 Final IEP June 3, 2019, for implementation 2019/2020 school year
(Fourth-Grade)
- P-22 Pre-marked, not utilized
- P-23 Pre-marked, not utilized
- P-24 Pre-marked, not utilized
- P-25 Pre-marked, not entered, duplicative of R-39
- P-26 Pre-marked, not utilized
- P-27 Pre-marked, not entered, duplicative of R-4
- P-28 Pre-marked, not entered, duplicative of R-6
- P-29 Pre-marked, not entered, duplicative of R-6
- P-30 Pre-marked, not utilized
- P-31 Pre-marked, not utilized
- P-32 Pre-marked, not utilized
- P-33 Pre-marked, not utilized
- P-34 Pre-marked, not utilized
- P-35 Pre-marked, not utilized
- P-36 Pre-marked, not utilized
- P-37 Email of June 3, 2019, from Maria Naugle to M.N.
- P-38 Pre-marked, not utilized
- P-39 Emails, beginning with April 17, 2020, from Tamyra Fernandes to M.N.
- P-40 April 15, 2020, Letter "To whom it may concern" from parents
- P-41 Reading and Writing Evaluation by Ellen G. Topiel, M.A., July 7, 2020,
(cross-reference with R-36.)
- P-42 Pre-marked, not entered, duplicative of R-37
- P-43 Pre-marked, not utilized
- P-44 Pre-marked, not entered, duplicative of R-33

- P-45 Pre-marked, not entered, duplicative of R-56
- P-46 Pre-marked, not utilized
- P-47 Invoices for reading tutor
- P-48 Invoices from CNNH, including art therapy
- P-49 Pre-marked, not utilized
- P-50 Curriculum Vitae/Bio, Alexandra Back, Art Therapist
- P-51 Curriculum Vitae, Renee Cherubini, Reading Instructor for Special Education Students
- P-52 Pre-marked, not utilized
- P-53 Pre-marked, not utilized
- P-54 Curriculum Vitae, Ellen G. Topiel, M.A.

For respondent:

- R-1 Student Registration Application for A.N., April 15, 2015
- R-2 Referral/Initial evaluation-timeline tracking tool
- R-3 January 30, 2017, Request for Assistance form
- R-4 February 3, 2017, Request for CST Review form by Sandrah Hasenbalg
- R-5 February 10, 2017, Central Auditory Processing Evaluation by Ruth W. Brenner, Audiology Partners, LLC (corresponds with P-3)²
- R-6 February 13, 2017, Invitation to an Identification Meeting, letter by Maria Naugle to parents (P-28)
- R-7 February 22, 2017, Initial Determination Meeting-Consent to Evaluate (P-4)
- R-8 April 11, 2017, Confidential Learning Evaluation by Maria Naugle, LDTC (P-5)
- R-9 May 5, 2017, Psychological Evaluation by Chad W. Leonard, M.S., certified school psychologist (P-6)
- R-10 May 12, 2017, Invitation for Initial Eligibility Determination Meeting letter
- R-11 May 22, 2017, Eligibility Conference Report determination meeting - initial (P-7)

² The corresponding "P" pre-marked exhibit number is referenced, to avoid confusion when one is reviewing the transcripts, as witnesses may have been referred to the duplicative exhibit by the "P" designation, rather than the "R" exhibit number under which the document was entered into evidence.

- R-12 2016-2017 First-Grade Report Card and progress reports
- R-13 October 1, 2017, Section 504 Accommodation Plan (P-10)
- R-14 Neuropsychological Evaluation October 30, 2017, and November 10, 2017, by Gregory Alberts, Ph.D., neuropsychologist, licensed psychologist, CNNH, provided by parents (P-11)
- R-15 January 10, 2018, RTI information for CST referral
- R-16 January 18, 2018, Request for CST review from parent referral, CST packet
- R-17 January 30, 2018, Initial Determination Meeting-Consent to Evaluate (P-12)
- R-18 February 14, 2018, Functional Assessment by Maria Naugle (P-13)
- R-19 February 22, 2018, Occupational Therapy Evaluation by Carolyn Whitworth (P-14)
- R-20 March 6, 2018, Invitation for Initial Eligibility Determination Meeting letter (P-15)
- R-21 March 20, 2018, IEP-Initial, 2017-2018 mid-year (Second-Grade)
- R-22 May 10, 2018, Meeting Invitation for Annual Review of IEP letter, and May 31, 2018, Meeting Invitation for Annual Review of IEP-reschedule parent request
- R-23 2017-2018 Second-Grade Report Card with progress reports
- R-24 June 13, 2018, IEP Goals and Objectives Progress Reporting-Second-Grade
- R-25 June 5, 2018, IEP for implementation September 4, 2018, for 2018-2019 academic year (Third-Grade) (P-19)
- R-26 February 5, 2019, Student/Home Report, OLSAT8 Otis-Lennon School Ability Test
- R-27 2018-2019 Third-Grade Report Card with progress reports
- R-28 June 17, 2019, IEP Goals and Objectives Progress Report-Third-Grade
- R-29 May 7, 2019, Meeting Invitation for Annual Review of IEP letter
- R-30 May 28, 2019, IEP - for implementation September 4, 2019, 2019-2020 academic year (Fourth-Grade) (P-21)
- R-31 2019-2020 Fourth-Grade Report Card with progress reports
- R-32 June 19, 2020, IEP Goals and Objectives Progress Reporting (Fourth-Grade)

- R-33 IEP of April 2, 2020 - Amended as of September 8, 2020, to include AT evaluation recommendations, for the 2020-2021 academic year (Fifth-Grade)
- R-34 2020-2021 Fifth-Grade Report Card, first marking period, with first and second marking period progress reports
- R-35 January 20, 2021, IEP Goals and Objectives Progress Reporting (Fifth-Grade)
- R-36 May 13, 2020, IEE-Reading and Writing Evaluation by Ellen Topiel, M.A. (P-41)
- R-37 July 6, 2020, AT Evaluation report by TECC (Bates stamped 0410-0430; emails Bates stamped 0431-0549 not admitted) (P-42)
- R-38 Emails (Bates stamped 0553-0562; any other Bates stamped documents pre-marked, not admitted)
- R-39 STAR Annual Progress Report, generated September 29, 2020, (Bates 0583-0519) (P-25)
- R-40 March 2020 COVID-19 Preparedness Plan
- R-41 Pre-marked, not admitted
- R-42 Pre-marked, not utilized
- R-42A ESY reading clinic records, in color
- R-43 Pre-marked, not admitted
- R-44 School master schedule 2020-2021 (Fifth-Grade), Bates numbered 0721 and 0731 entered, any other pre-marked documents were not utilized
- R-45 Pre-marked, not utilized
- R-46 Fifth-Grade reports by teachers, page 0785; calendar page 0788 and 0789, any other pre-marked documents not utilized
- R-47 Curriculum Vitae, Maria Naugle
- R-48 Pre-marked, not utilized
- R-49 Carolyn Smith Resume
- R-50 Debra Wall Resume
- R-51 Pre-marked, not utilized
- R-52 Amy Hennessy Resume
- R-53 Pre-marked, not utilized
- R-54 Emails between Mr. Epstein, M.N., Ms. Topiel, and Violet Martin

- R-55 Pre-marked, not utilized
- R-56 Email of August 5, 2020, ESY Progress Summary with Reading Clinic
Sunday and Fluency results by Gina Crescenzi (P-45)
- R-57 April 2, 2020, IEP annual review, before amendment (P-44)
- R-58 Carolyn Smith notes
- R-59 Jamie Epstein Law-LSA Supplement (rev. April 26, 2020)