



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

DECISION

OAL DKT. NO. EDS 09058-18

AGENCY DKT. NO. 2018 28095

J.W. AND M.W. ON BEHALF OF

Petitioners,

v.

MEDFORD LAKE BOROUGH BOARD

OF EDUCATION,

Respondent.

Sarah E. Zuba, Esq., for petitioners (Reisman Carolla Gran, LLP, attorneys)

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

Record Closed: July 30, 2019

Decided: August 23, 2019

BEFORE **CATHERINE A. TUOHY**, ALJ:

STATEMENT OF THE CASE

In accordance with the provisions of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C.A. § 1415, J.W. and M.W. have requested a due process hearing on behalf of their son, A.W., who is classified as eligible for special education and related services. Petitioners' dispute the District's proposed IEP and seek compensatory

education and reimbursement for the unilateral out-of-district placement at the Cambridge School. At issue is whether the District provided A.W. with a Free and Appropriate Public Education (F.A.P.E.)

PROCEDURAL HISTORY

On May 22, 2018 petitioners filed a due process petition with the Office of Special Education Policy and Procedure (OSEPP). The matter was transmitted to the Office of Administrative Law (OAL) where it was filed as a contested case on June 26, 2018 pursuant to N.J.S.A. 52:14B-1 to 15; N.J.S.A. 52:14F-1 to 13. A prehearing conference was conducted on July 23, 2018. Thereafter, petitioners filed an amended due process petition on consent on October 9, 2018. Respondent filed an answer to the amended petition on October 11, 2018. A hearing was conducted on November 27 and 28, 2018; December 5 and 12, 2018; January 15 and 22, 2019; February 22, 2019; April 8 and 15, 2019. Closing briefs were submitted and the exhibit list was reviewed on a remaining hearing date scheduled for July 9, 2019, at which time the record closed. On July 23, 2019 the matter was re-opened, and an additional hearing date scheduled following the receipt of additional briefs from both parties. The matter closed on July 30, 2019 following a hearing and receipt of final submissions.

FACTUAL DISCUSSIONS AND FINDINGS

Testimony

Dr. Michael Lee testified on behalf of the respondent. He is the Director of Special Education for respondent and was accepted as an expert in school psychology, case management of disabled students and the administration of special education programs (J-98). He also serves as the school psychologist, case manager, coordinator of nursing, basic skills, INRS and school counselors. He also assists in administrative functions within the District. The District is small with approximately 525 students. Dr. Lee is responsible for all programming within the District. As the school psychologist, he is a member of the child study team (CST), along with the learning disabilities teacher consultant (LDTC), the school social worker and the speech and language pathologist.

The school psychologist on the CST would conduct a psychological evaluation which includes measuring intellectual functioning, behavioral observations of the student in the classroom, interviews with teachers and parents and then make an appropriate recommendation. Dr. Lee has been a school psychologist for thirty years and has done over 500 psychological evaluations.

Dr. Lee joined the District on October 16, 2017 and met A.W. at that time. A.W. had only been back in the District for about one week. Dr. Lee reviewed A.W.'s file and is familiar with it. The Brigance screening test given to A.W. in kindergarten did not trigger a child study team evaluation. Although the screening identified areas of significant strengths and weaknesses, A.W. scored a sixty-six which was above the cutoff (J-1). The nurses' notes from kindergarten indicated A.W. had some anxiety issues (J-3), but his report card indicated that he made progress (J-4). A.W. made average to above average progress on the WriteSteps program (J-5). The first-grade nurses report indicates A.W. had stomachaches and tightness in his chest although anxiety is not specifically mentioned in the notes (J-6). A.W.'s first grade report card was overall positive (J-7).

On April 3, 2014, near the end of first grade, when A.W. was seven, A.W.'s mother wrote to the respondent's social worker regarding her concerns and requesting that the CST meet to determine if A.W. may be eligible for special education (J-8). A.W. had been seen by an audiologist, Dr. Angelelli, who recommended that A.W. receive a 504 plan as well as an IEP (J-9). The doctor also recommended that a FM sound system be used in the classroom and that A.W. receive a speech and language evaluation. Dr. Angelelli indicated that A.W. was average in the phonemic synthesis test, however A.W. was below the norm for the left ear and had decoding and memory issues. As a school psychologist, Dr. Lee indicated that this is a 'red flag' that something is going on medically with the child. A CST meeting was held. A.W. had been diagnosed by the audiologist with an auditory processing disorder. The CST discussed that A.W.'s Math skills were strong and there had been improvement over the year. A.W.'s fluency was poor, but his comprehension was strong. The CST indicated that he was participating in the class, although phonics and decoding were difficult for A.W. The CST decided not to move forward with additional testing but did recommend that a speech and language evaluation be conducted. The parents were in agreement (J-10 & J-11). A speech and language

evaluation were done by the District's speech and language pathologist, Tara Mahon, who found that A.W. was having left ear hearing field issues as well as memory issues and that he would benefit from speech and language services (J-13). A speech only IEP was developed for A.W. on July 15, 2014 that would commence at the beginning of second grade. A.W. was to receive individual speech therapy four times a month for twenty minutes and group therapy two times a month for twenty minutes (J-15).

A central auditory processing (CAP) evaluation was performed by Dr. Angelelli at the parent's request. Dr. Angelelli's report dated September 25, 2014, recommended that speech and language therapy, as well as the memory strategies and the amplification system be continued, but also added another recommendation that A.W. have counselling for anxiety (J-16).

Ms. Hamlin, A.W.'s second grade teacher made a referral to the CST believing he needed special education instruction (J-17 & J-18). The school social worker did a social history assessment. A.W.'s mother reported he was not a happy baby (J-20). A learning evaluation was conducted by the LDTC, to determine academic progress in specific areas to determine if there is a learning disability (J-21).

The Psychological Evaluation, used to determine cognitive ability, indicated A.W. had a full-scale IQ of 105, which means he has average intelligence. There was quite a variability in A.W.'s abilities – there were things he was extremely good at and there were things that he struggled with. In verbal comprehension, all of his scores were above average, except for working memory. Vocabulary was a relative weakness.

A standard deviation is fifteen points. A standard deviation and a half are fifteen plus seven and a half which is twenty-two and a half. The discrepancy used to determine whether a child meets the criteria in the N.J.A.C. for special education for a specific learning disability is one and a half standard deviations from the standard score. The full-scale IQ of 105 minus the twenty-three-point deviation equals eighty-two. Dr. Lee explained that the CST would be looking for anything below an eighty-two to determine eligibility for special education. A.W. was below eighty-two in the areas of oral expression, broad written language and written expression (J-21). A.W.'s story recall, that is, being

able to remember sequences of what was read to him, was extremely low at sixty-one. Math was not an area of weakness for A.W. in second grade. He scored a ninety-nine in Math fluency and 104 in applied problems.

The conclusion of the CST at its meeting of December 23, 2014 was that A.W. was eligible in the area of specific learning disability and required an IEP and special programming (J-24). A.W. would receive two periods of English-Language-Arts (ELA) block, one period of Math and Science and Social Studies in an in-class resource classroom. Science and Social Studies are split into half year programs from kindergarten to fourth grade. The in-class resource model of a special education class is where there is a certified special education teacher in the mainstream or inclusive setting with the general education teacher. The general education teacher is responsible for all of the students. The special education teacher would be there to follow A.W.'s IEP and deliver the accommodations and modifications that A.W. required in that classroom setting. It is a general education class and would consist of approximately eighteen to twenty students, no more than six having an IEP. The accommodations and modifications included in the IEP included modifying the grades, assistive technology use and the use of the FM system which was referred to in the audiologist's report. The IEP was the result of the combined efforts of the IEP team which included the general education teacher, the special education teacher, the CST members, the parents and also included the recommendation of outside agencies as well as the internal evaluations. It was an appropriate program for A.W.

The parent presented the District with a report from Dr. Egerdine of Cooper University which referenced a discussion whether A.W.'s reading difficulties were the result of dyslexia or a more complex interaction of CAPD, central auditory processing disorder and memory concerns (J-26). There was nothing specifically recommended by Dr. Egerdine for the District to do. The parents also had a private vision examination done of A.W. by Dr. Gallaway who recommended bifocals and a vision therapy program, which is typically not something a school district would provide (J-27). However, if there was a recommendation for larger print relative to the vision therapy, the District would incorporate that into the program.

On May 6, 2015 the IEP was developed for third grade and reflected A.W.'s present level of academic functioning (J-28). A.W. was working to improve his fluency and recognition of high frequency sight words. During large group instruction A.W. was quieter and rarely participated. He was struggling with his writing. He had a basic grasp of Math skills. The DRA is an assessment tool to determine where a student should be based on grade level. A.W.'s DRA score was a twelve at the end of second grade. A.W. was having the most difficulty with recalling sequential strings of information, which was an audiological issue. A.W. was participating in the Fast ForWord program at home and making steady progress. The recommendation for third grade was the continuation of the in-class resource program for ELA, Math and the Science/ Social Studies block. ELA was 120 minutes per six-day cycle. Speech therapy remained the same (J-28).

The June 15, 2015 progress report for the end of the second-grade school year indicated that A.W. was progressing towards attaining his goals set forth in his IEP and had mastered his speech goals (J-30). Ms. Gillet was A.W.'s special education teacher working with A.W. in the large group setting of a general education class and he was progressing. A.W. was good at answering questions of simple stories and more complicated stories that are read to him. He was working well with peer partners in finding facts and details in text. He was benefitting from the least restrictive environment where there are peers with a range of abilities in his classroom.

The nursing report for the third grade indicated that A.W. was presenting with signs of anxiety (J-31).

A.W.'s parents arranged for a private psycho-educational screening completed by an LDTC, Ms. Chase, the summer between second and third grade (J-32). The Woodcock Johnson test was administered, and this test was previously administered by the school psychologist, Ms. Rombach, six months before so there would be concern about a 'practice effect'. However, A.W.'s scores were lower, which emphasized that there was a disability. Ms. Chase was the first evaluator to mention that A.W. had a profile consistent with Dyslexia. She was not a doctor and the neurologist did not make this diagnosis. Dyslexia is a medical word and it is diagnosed by physicians. The school district does not do the medical tests that a doctor would do. As a case manager, Dr. Lee

indicated this would prompt him to consider if they should take further steps. This diagnosis would change the programming. Ms. Chase made various recommendations that the District should do for A.W. including instruction using the Orton-Gillingham method (J-33). The District should be working with A.W. on working memory, organizational and study skills, reading decoding, reading comprehension, applied problem solving and written language. Dr. Lee said that the District was doing all of these things with A.W. with Ms. Gillet in the inclusion class. This was the first time that the Orton-Gillingham method was recommended in a written report. Ms. Chase made specific recommendations that could be done in the school, but she did not recommend an alternative out-of-district placement.

In response to Ms. Chase's report, the District called for an IEP meeting to amend the IEP that was developed three months earlier. The IEP was revised to recommend that A.W. receive ELA instruction in a pull-out replacement setting which was a smaller special education class taught by a special education teacher and consisting of only special education students. The class size is six or smaller and the teacher was trained in Orton-Gillingham strategies. Counselling was also recommended in the revised IEP for twenty minutes once a month. Speech therapy remained the same (J-34).

A.W.'s report card for second grade indicated that his DRA went from a ten to a fourteen which showed growth (J-36). Ms. Hamlin, his regular education teacher, in conjunction with Ms. Gillett, his special education teacher, indicated that it was a pleasure teaching A.W. that year. A.W. displayed above-average effort and demonstrated a lot of strengths. There were weaknesses noted in study habits and working independently. The August 31, 2015 IEP's reading goals (J-34) were modified to include decoding and word recognition in September 2015 (J-37, page 7).

The teacher's worksheet for third grade reflected the year in review (J-38). At the beginning of third grade, September 2015, A.W. had an independent functioning DRA of eighteen and in March 2016 he was at a twenty DRA. His instructional DRA, that is when he is working with the teachers and being taught was twenty-four. A.W. continued to improve in third grade and was in a pull-out replacement special education class for his ELA block. His special education teacher was Ms. Hunter. The third-grade progress

report dated June 16, 2016 indicated that on June 7, 2016 A.W. had mastered the goal of using letter sound knowledge and structural analysis to decode words. He mastered skills in phonics up to Chapter 3 in the phonics program, using Reading Horizons which is an Orton-Gillingham method. A.W. was very systematic at applying decoding skills however, the focus was to carry over the skills he learned to everyday reading and writing by practice and repetition. A.W. had also increased his rate of words per minute with repeated readings from fifty-eight to 180 words per minute with ninety-nine percent accuracy. A.W. also made progress in Math which was in the mainstream general education setting with other third grade students and taught by Ms. Sacks. Ms. Sacks noted that A.W. demonstrated understanding whole number place concepts with eighty percent accuracy and that he made progress in Math. Numerical operations such as addition, subtraction, multiplication and division working independently with an eighty percent accuracy. Ms. Sacks noted that A.W. mastered these skills by the end of the third grade. A.W. demonstrated a good ability to apply the correct operation to a one-two-step problem with accuracy. A.W.'s speech and language goals being implemented by Ms. Mahon were also mastered (J-39).

The MAP score is a district assessment done on a computer three times per year to assess how a student is progressing in a standardized group setting. A.W.'s MAP scores were below the expected levels. This was not surprising to Dr. Lee based on A.W.'s disability with written expression and perhaps even the panic and anxiety A.W. experienced relative to test taking. The MAP test was a roadmap for the District to use to see what additional services need to be applied by the teacher in order to work to improve those areas of demonstrated weakness. Although A.W.'s MAP scores were below expected levels, it did not indicate that he was not making progress towards his goals and objectives. A.W.'s reading levels went from a 146 for the 2015- 2016 school year to a 173-174.

A.W.'s report card for third-grade when he had Ms. Terusso as his general education teacher and Ms. Hunter and Ms. Sacks as his special education teachers indicated he did well and made progress. A.W. showed a lot of effort in reading and there were a lot of pluses in terms of behavior and work habits on his report card (J -40). The

nursing notes for third-grade indicated mostly medical issues and listed only one instance of anxiety on December 17, 2015 (J-41, page 3).

The PARCC test is a statewide assessment given to all students to see how they were progressing. A. W.'s PARCC scores in third grade were lower-than-expected in ELA and Math (J-43). A student with a learning disability would not be expected to meet expectations, they would be expected to be below expectations.

The annual review meeting at the end of third grade to make recommendations for fourth grade took place on May 5, 2016 (J-44). Ms. Hunter filled out the PLAAFP. In ELA, A.W. was doing well grasping concepts quickly and readily applying them. She noted improvement with his reading fluency on repeated practices. A.W. had increased his rate of reading from seventy-two words per minute to 176 words per minute. He also greatly improved adding expression to his reading. He was being instructed in the 'Journeys' Reading Program which was another program the District had adopted to deliver the curriculum. It is also an Orton-Gillingham method. A.W.'s DRA scores were twenty at the independent level and twenty-four at the instructional level. A DRA of twenty indicates that A.W. was reading at a middle of second grade reading level (J-55, page 12). A.W. did have a reading and writing disability and needed a small group setting. It is not uncommon for a student to be one, two or even three years behind grade level, so his level was not unusual, as long as he is making progress. At the end of second grade, A.W. was at a DAR Level 12 (J-34). At the end of second grade the District made a change in A.W.'s placement to a small group special education class and at the end of third grade his DAR was at a twenty. So, although he was a year behind based on his DRA reading level, he was moving up from a first-grade level, to a second-grade level and preparing to enter a third-grade level and that demonstrated progress. This was reasonable and appropriate growth in reading.

A.W.'s pull-out replacement class for ELA was a small group special education class that had approximately four students at the time but could have no more than six. His teacher indicated that A.W. did well in his weekly spelling tests and grasped concepts quickly in the phonics-based program and applied the skills to everyday written tasks although he needed reminders to look for areas of difficulty. In writing, with the support

of a graphic organizer, he could outline a five-paragraph piece. He understood the organization of writing and made great strides incorporating voice and word choice in his writing. A.W. needed support with conventions, but with the use of spell and grammar check, he was able to make the corrections more independently.

Ms. Sacks, his inclusion teacher in the mainstream general education setting noted that A.W. was capable of keeping up with the pace of his program. A.W. no longer wanted his tests read to him but preferred to take it at his seat in the same manner as his peers. The speech therapist noted that A.W. continued in group and individual sessions and that he made significant progress in his short-term memory abilities and moved up seven levels in the "Hear Builder" program where he was listening to stories and answering questions. As far as articulation, A.W. no longer needed remediation of the 'TH' sound (J-44). The speech pathologist also noted that A.W. participated in the Fast ForWord reading program at home and was currently reading in a level three out of five levels.

A.W. had mastered his previous goals for decoding and word recognition (J-37) so his goals were revised, and new goals were added including phonological awareness, vocabulary and concept development. Continued goals included fluency and comprehension skills and response to text goals (J-44). These goals were a step-up for A.W. and although they are not third or fourth grade level goals, A.W. was making progress.

The May 5, 2016 IEP done in third grade going into fourth grade recommended that for fourth grade A.W. have 120 minutes of ELA per six-day cycle in a small pull-out special education replacement class taught by a special education teacher. Speech was not recommended to be continued for fourth grade probably because he had mastered the goals (J-44, page 12). A.W. would continue in the mainstream general education class with in-class support for Math, Social Studies and Science (J-44).

The May 5, 2016 IEP was amended in fourth grade without a meeting with the parents' consent on March 12, 2017 to provide A.W. with extra assistance with the pronunciation and spelling of vocabulary words in Social Studies and Science class. The

number of words he had to know was reduced. He was also to be provided with an extra set of textbooks for use at home (J-45).

There was a meeting with the parents concerning A.W.'s reading progress. They were considering A.W. participating in the Lindamood-Bell program. He had made progress but still was reading a lot of words wrong. There was an indication that his DRA scores were up from twenty-four and now at a twenty-eight. A.W. was volunteering to read aloud in Science. His writing was catching up. He was a visual and kinesthetic learner. His auditory processing, following multi-step directions and organization was showing improvement (J-47).

A teacher-administered assessment of the Write Steps program indicated that A.W. was doing well in writing. Fourth grade was a very difficult year for A.W., yet he spoke well of his school in a writing piece the assessment included (J-49, page 2-3).

Ms. Franchio, now known as Ms. Alessi, was A.W.'s teacher for fourth grade. The summary of his fourth-grade year indicated that A.W. started the year at a DRA of twenty and ended with a DAR of twenty-eight, which was not grade level but showed academic progress. He improved his reading words per minute from a sixty-one to eighty-seven through ninety. A.W. mastered all of his reading goals and mastered the Math goal regarding geometric properties which was a fourth-grade curriculum goal (J-50). A.W.'s fourth grade report card grades were extremely good. He received an 'A' in his ELA pull-out replacement class and 'A' in Math, Science and Social Studies. His teacher's comments indicated that A.W. was a wonderful asset to the classroom and that his confidence and eagerness to learn and work ethic showed what an excellent student he was and that he was a role model to his classmates (J-52). This was for his mainstream classes, which showed that he contributed, participated and belonged in that setting.

The nursing notes for A.W. for his fourth-grade year were six pages in length and involved medical issues including asthma, allergies, medications, coughing, and a gym injury. There is no specific notation of 'anxiety' reflected in the nursing notes, however there were notes for stomach aches and headaches (J-53).

An annual review was held in March 2017 at the end of A.W.'s fourth grade year to review fourth grade and propose a plan for fifth grade. In attendance were A.W.'s fourth-grade general education teacher, Ms. Leone, his special education teacher, Ms. Franchio, the case manager, Ms. Hart, and A.W.'s mother. Ms. Franchio completed the PLAAFP for reading and discussed at length how A.W. benefitted from her pull-out replacement class. He worked well in the small group setting and was more engaged and frequently volunteered to share answers, ask questions and read aloud. When he was reading at his specific reading level, which was a third-grade level, for a fourth-grade student, he was able to make inferences and think beyond the text independently. When he was reading at grade level, he was able to implement these skills but needed assistance. A.W. frequently asked thought-provoking questions which assisted him in understanding better (J-54). When reading in a guided group, A.W. was able to read aloud, read silently, perform a turn, talk with a partner and implement decoding and self-correction strategies independently. When A.W. was given oral instructions, an example was left on the board, breaking down the task into smaller steps, which A.W. read aloud and repeated for the class to follow. Rewording and repeating directions allowed for A.W. to follow the task appropriately. These were strategies the teacher did so that A.W. could benefit from being in that class (J-54). Overall this was a very positive PLAAFP. A.W. was on a modified fourth grade writing curriculum in the resource setting. He had received a fifty percent on an earlier writing narrative and later on was reassessed and received a ninety percent on a narrative writing prompt and a ninety-four percent on an explanatory prompt. He made progress.

In Math class, he was exposed to the fourth-grade curriculum in the general education class with his non-disabled peers. This was the least restrictive setting and A.W. was not only able to hold his own, he was successful in making progress with the in-class support of Ms. Franchio.

The goals set forth in this IEP were aligned to the third-grade mainstream curriculum and taken from a third-grade goal bank and include reading standards for identifying key ideas and details, crafting structure and understanding and identifying vocabulary and figurative language. The goals were getting more difficult.

At the end of fourth grade, A.W. was recommended for an ESY (J-54, page 16). He had always been recommended for the ESY program every year except one. The two-part criteria for an extended school year program was that there was a regression in skills and a failure to recoup those skills in a reasonable amount of time. There was a shakeup in staff moving into the ESY year in that the director of special education left and the District lost CST members. A.W. did not attend the District's ESY program the summer after fourth grade.

A.W.'s IEP for fifth grade recommended 100 minutes a day of ELA for a six-day cycle (J-54, page 18). From kindergarten through fourth grade, the District offers three period of ELA. When the student goes into fifth-grade, a transitional year, the ELA is reduced to two, forty-eight-minute periods. For sixth, seventh and eight-grade there is one period of ELA which is the English class for forty-eight minutes. The primary reason for this is that Science and Social Studies become their own independent courses.

A.W. attended the Lindamood-Bell program the summer between fourth and fifth grade. It was a fifteen-week ELA program that he was halfway through with as of the first day of school in September of his fifth-grade year. A.W. did not receive instruction in Math, Science or Social Studies at Lindamood-Bell. It was a morning program and the parents were trying to get him into school in the afternoon for the rest of his schooling. The superintendent made the determination that A.W. could not return to school until he finished the Lindamood-Bell program.

A.W. returned to the Neeta school on October 9, on a full-time basis, after having completed the Lindamood-Bell program. His DRA level was assessed at a twenty-eight by Ms. Craig (J-55). The District was unable to implement his IEP that started July 1 for ESY and continued into September for his fifth-grade year because A.W. did not attend the ESY program and did not attend the Neeta school until October 9. There was a disruption in the delivery of services to A.W. He attended school at Neeta from October 9, 2017 until the December winter break. The parents sent Dr. Lee a letter that they were unilaterally placing A.W. at the Cambridge school effective January 2018.

A.W. returned to Neeta on October 9, 2017 and Dr. Lee started in the District the next week. He had the opportunity as a counsellor to work with A.W. and spoke to him at length and observed him in the classroom. A.W. missed the beginning part of the school year and his performance was inconsistent. The teachers were trying to catch him up but there were times he did not want to go to class and choose to go to the nurse or the CST. Ms. Craig noted in the Goals and Objectives Progress reporting form completed December 15, 2017 that she was working with A.W. on the Journeys Comprehension test and he showed some strengths for grade level text. She was working on pulling the main idea from the passage with him (J-62).

The nurse's notes for A.W. for fifth grade began on October 16 until the last day he saw the nurse on December 22, 2017 (J-64). There were entries for anxiety and school refusal. There had never been an entry for school refusal noted before this time. During these three months upon his return, A.W. did not want to go to class. Dr. Lee specifically recalls being called down to the nurse's office and A.W. was laying on his back on the cot in the nurse's office with his hands folded across his chest refusing to go to class. He stated that this was no longer his school and that the teachers do not know how to teach him. Dr. Lee believes that A.W. felt strong in the Lindamood-Bell program and A.W. told him that the teachers taught him things there and they made him feel like he knew how to learn, and that confidence boost empowered him.

The progress reports from the Lindamood-Bell program from when A.W. started the end of June 2017 until October 2017 indicated that the same test was given twice within four months which would create a practice effect. Usually a test is not repeated in a year. In the Peabody Picture Vocabulary, A.W. showed a loss of skills, not significant but from a fifty-eight percent to a fifty-three percent so he did not show any progress in the vocabulary test. The next part it indicates A.W. made one year's growth in four months and in 'verbal absurdities' he made seven years growth in four months; in word attack skills he showed three years growth. These scores are suspect in the amount of growth they show for a fifteen-week course. They did not teach him six years of schooling in fifteen weeks. (J-65).

A revised IEP was prepared for A.W. on October 19, 2017(J-66). At this point in time A.W. had been away at the Lindamood-Bell program, the District was aware that Dr. Gillock was now involved and things were happening behind the scenes so they decided to sit down and review the IEP and see what they can do for A.W. He continued to be recommended for ELA pull-out replacement for the double period, 100 minutes a day and then in-class resource for Math, Science and Social Studies. One week later there was another IEP developed providing A.W. with small group pull-out instruction for Math (J-67).

Since A.W. was in second grade until now when he was in fifth, the District had been responsive to the parents' concerns, outside evaluations, audiological, vision examinations and have developed thirteen IEP's in the course of three or four years.

The IEP team has to meet and re-evaluate a student for continued eligibility every three years and to note academic progress as well as to consider the need for additional testing. A.W.'s triennial reevaluation planning meeting took place on October 27, 2017. It was noted that "A.W. has had difficulty transitioning coming to school. His anxiety has been impacting his ability to attend classes or school days" (J-68, page 1). The District agreed to conduct an educational evaluation and would await the results from the neuropsychological evaluation that the parents were having done by Dr. Gillock. The educational evaluation was done on December 4, 2017 by Jennifer Wierski (J-69). A.W.'s Math scores were in the low average range, but they were not severe discrepancies. They were lower than what they had been when the original learning evaluation was done.

The Cambridge School Preliminary Admission Summary date of evaluation was December 8, 2017 (J-70). This indicates that the parents had applied for A.W. to be enrolled in the Cambridge School four days after consenting to the evaluations and while the District was still awaiting the receipt of Dr. Gillock's report. A.W.'s parents sent Dr. Lee a letter dated December 11, 2017 indicating their displeasure with the progress A.W. had made at the Medford Lakes district and indicating that if an appropriate program was not offered by the District within ten business days, that they would be unilaterally placing their child at the Cambridge school (J - 71). On December 18, 2017 after the evaluation was completed the IEP team met to determine A.W.'s continued eligibility for special

education and continued services under the category “Specific Learning Disability in the area of Reading Fluency because of a significant discrepancy that Ms. Wiersky noted between his “Average” FSIQ=95 and his “Low Average” (SS=80) reading fluency score (J-72, page 3). The reevaluation IEP was done December 18, 2017 and the program that was being offered included the double block pull-out replacement for ELA, in-class support for Math, Science and Social Studies and counseling services. The District had not yet received Dr. Gillock’s report when this IEP was formulated (J-73). This IEP was offered in order to comply with the parents demand letter that an appropriate program be offered within ten business days of the date of the letter or they would unilaterally place A.W. at the Cambridge school. The parents did not attend the December 18, 2017 IEP meeting because there had been an agreement by counsel that they would not attend. A letter dated December 18, 2017 enclosing the IEP was sent to the parents summarizing that counseling was going to be offered to A.W. one time a week for twenty minutes and that the Math goals and objectives were being amended to address problem-solving in terms of steps and processes involved and not skill specific as A.W. demonstrated skill acquisition. Also, extended school year services would be decided at a later time in the school year if it was needed (J- 74).

A.W. had been attending the Cambridge school for approximately five months when the next IEP was drafted June 4, 2018 at the end of fifth grade for the sixth-grade school year (J – 77). There is a mistake in this the IEP in that there is an indication that 150 minutes of ELA instruction was going to be provided when the sixth-grade program only allows forty-eight minutes of ELA instruction. There was no intention to mislead. The District was open to how much ELA instruction would be provided and was going to create a supplemental instruction class taught by a special education teacher trained in Wilson to be provided two times weekly for forty-eight minutes. Wilson is a company that took the Orton-Gillingham strategies and instruction and developed their own curriculum and requires its teachers to be specifically certified in Wilson instruction. Based on a A.W.’s needs, the District decided to provide him with Wilson instruction by Wilson certified teacher within the school district so in addition to the forty-eight minutes A.W. would receive in ELA, he would get an additional forty-eight minutes two times per week with a Wilson instructor one-on-one. Dr. Lee explained that the District knew A.W. was not getting one-on-one instruction at the Cambridge school, but gets it in a small group

setting. In order to bring A.W. back, the District believed it was an appropriate offer providing one-on-one Wilson instruction that is highly personalized. The District has a certified Wilson instructor and all of the other ELA instruction in the District use Orton-Gillingham strategies.

The June 2018 Lindamood-Bell re-evaluation indicated that A.W. was maintaining the same level and that there was no significant growth except in Math computation where A.W. jumped almost three grades and was doing Math on a seventh-grade level (J-82). On July 12, 2018 A.W.'s parents sent Dr. Lee a letter indicating that their son would be continuing at the Cambridge school and that the parents would be seeking reimbursement from the District (J-83).

The nursing records from the Cambridge school indicate A.W. was treated for headaches several times and received Tylenol (J-86). A.W. was attending school. The speech therapist at the Cambridge school was supporting A.W. in his writing skills.

Jeanne Tighe, the parents' speech pathologist expert came to Neeta School on November 2, 2018 to observe the program A.W. would have been in if he was attending sixth grade in the District. Tara Mahon escorted Ms. Tighe visiting the programs and prepared a report (J-90).

Dr. Lee prepared a report summarizing the fourteen months that he was involved with this case and comparing the program that the District offered compared to the program being offered at Cambridge (J-91). Dr. Lee believes that A.W. was offered an appropriate program at Medford Lakes, in the least restrictive environment. The Cambridge school was about an hour drive each way. He wanted to observe the Cambridge school to see what it was that they were offering that Medford Lake was not and he was sadly underwhelmed. He and Jennifer Summerville, an LDTC went to observe the Cambridge program. The Cambridge classroom was about the same as the Neeta classroom. They were fewer children in the special education classroom at Neeta. In a five-day cycle of instruction, Neeta school offered 1700 minutes of instruction compared to the Cambridge School's 1500 minutes of instruction. English at Cambridge school is 405 minutes. Neeta offers 240 minutes of English in a pull-out replacement

class pursuant to A.W.'s IEP. Neeta offers a Wilson reading program in an individual setting for ninety-six minutes per five days. The Cambridge school offers Wilson reading in a group for 225 minutes. Dr. Lee explained that the Neeta school has the capacity to increase the Wilson reading up to 225 minutes. Neeta offers more minutes of Math, Science and Social Studies instruction. Physical education and health were comparable. In regard to electives or special services including computers, technology, visual arts, performing arts, world languages and library Neeta school offered 308 minutes of instruction compared to the Cambridge school's 195 minutes of instruction. In Dr. Lee's opinion, the programs that he observed at the Cambridge school were comparable to what is offered in the Medford Lakes school district. He observed comparable strategies, comparable skills, classroom arrangements, classroom size, the same style desks, same type of equipment, same type of posters on the walls and the same type of use of Wilson strategies. Although there is a difference between the Reading Horizons and the Wilson model, it is the same technique with just a different title. The Cambridge school is a newer facility than the Neeta school.

The Wilson reading program adopted the Orton-Gillingham strategies and made it their own. A.W. was receiving ELA instruction in the Reading Horizons program which is an Orton-Gillingham method, since second-grade. If A.W. had remained in the District, he would be receiving Wilson instruction this year as well as the Reading Horizons program.

Dr. Gillock started his examination on August 30, 2017 while A.W. was still in the Lindamood-Bell program and completed his examination on November 10, 2017 while A.W. was still in the District. The District did not receive the report until sometime in January 2018. Dr. Gillock made several recommendations in his report including that A.W. was in immediate need of an emotionally safe and supportive educational environment (J-96). He needed teachers who speak slowly, provide ample response time and are patient with students who are more reflective in their response style, and certainly teachers who are not punitive and yell at the students, but are supportive, nurturing and quick to reinforce students but not so quick to offer criticism. Dr. Lee indicated that as an administrator, if he knew teachers were being abusive or angry towards students, it would be addressed. However, he has not seen a pattern of abuse toward students in his

program and he has never seen a program be not recommended because of the tone or temperament of the teacher. Another recommendation of Dr. Gillock is that A.W. is in need of an educational placement where he will be exposed to multiple, intensive, and sequential Orton-Gillingham based multi-sensory approaches to remediating reading, spelling, written expression disorders, as one specific approach is not likely to work due to A.W.'s double deficit problems with phonology and the orthographic code. Dr. Lee explained that the Orton-Gillingham strategies are already used by the teachers to deliver instruction. Dr. Gillock also recommends that A.W. receive extended school year services due to his significant underachieving in reading, written expression and Math. Dr. Lee indicates that the ESY services were offered by the District and contained in A.W.'s IEPs. Dr. Gillock's fourth recommendation was that A.W. needed to be placed in a special education program with a small student to staff ratio of no more than eight students to one teacher and a total number of persons in the classroom limited to nine. Dr. Lee explained that the resource room would have less than an eight to one ratio and for a number of years A.W. actually had of five to one and four to one ratio of students to teachers. If A.W. was currently attending sixth grade in the District, he would be in the pull-out replacement room in which there are four students and he would be the fifth. Dr. Gillock's fifth recommendation was that A.W. needed to be placed in an educational program where he has a counselor, a school social worker, or a school psychologist available to him for counseling on an as-needed basis. The District did offer counseling services to A.W. and Dr. Lee would be available as a school psychologist and would have been A.W.'s school counselor. Dr. Lee was trained in cognitive behavioral therapy techniques which is recommended by Dr. Gillock. Dr. Gillock's sixth recommendation was that A.W. was in need of an educational program where the staff and the administration are willing to implement the kinds and types of approaches and methodologies recommended in his report, which have been specifically chosen with A.W.'s unique cognitive profile in mind. Dr. Lee indicated that the District is already implementing this recommendation. Dr. Gillock also recommends that in the event that A.W. remained in a large classroom for specials or other subjects was that he should have a classroom outfitted with an FM sound field system. Dr. Lee indicated that this already has been provided for A.W. All the recommendations contained in Dr. Gillock's report described strategies that the Medford Lake District is currently doing.

The District did not do its own psychological report because Dr. Gillock was preparing a report which was noted in the evaluation plan. IQ tends to remain a relatively stable factor. Dr. Gillock did a psychological evaluation within three years from the last one on A.W. which the school psychologist did and found A.W. to have an IQ of 105. Dr. Gillock found A.W. to have an IQ of 100. These are very comparable scores. A.W.'s working memory scores actually increased and this was while he was still within the District when Dr. Gillock performed this test. Dr. Gillock did a follow-up report after A.W. had been attending the Cambridge School and made statements relative to his progress (J-97). Using Dr. Gillock's report, to be specific learning-disabled in anything with a 100 IQ you would have to have a seventy-seven or below (J-97). Dr. Gillock's scores show that A.W. was in the average range. Average is eighty-nine to 109 and A.W.'s standard scores for listening comprehension was ninety-nine, reading comprehension was ninety-five, Math was eighty-eight and sentence completion was eighty-three. All of the scores were falling very close to the average range when you look to grade equivalent (J-97, page 32). The significance of this is that Dr. Gillock is pointing out that A.W. has foundational skills and that he is not profoundly disabled. The scores are within or close to the eighty-nine to 109 average range relative to his IQ of 100 or 105. The scores are comparable to the evaluations that were done by the LDTC, Ms. Wierski in December 2017 (J-69). Dr. Gillock's scores are not profoundly higher standard scores on a standardized assessment. So, if you were looking to measure whether A.W. made significant growth while he has been at the Cambridge school, Dr. Gillock's scores do not indicate that A.W. achieved two or three- or four-years growth. The scores Dr. Gillock found one year later after A.W.'s been at the Cambridge school were comparable to what Ms. Wierski found in her educational evaluation in December 2017. Dr. Gillock used the Wexler achievement test whereas Ms. Wierski used the Woodcock-Johnson test. Dr. Gillock's recommendations are what the District has offered.

Based on his expertise and a review of all the information provided, it is Dr. Lee's opinion that the program offered to A.W. by Medford Lakes was a reasonably appropriate program in which A.W. demonstrated meaningful progress. A.W.'s program was modified many times. The IEP team met fourteen times over three or four years to incorporate and try different things. A.W.'s progress was measured through goals and objectives and

achievement testing done by inside and outside people that showed progress through the end of fourth grade.

On cross-examination, Dr. Lee stated that he did not earn a doctoral degree in psychology, but in educational leadership. He is not a member of the National Association of School Psychologists. Dr. Lee spoke with Ms. Hunter, Ms. Craig, Ms. McKeever, Ms. Sommerville and Ms. Franchio, who is now known as Ms. Alessi, in order to prepare for his testimony.

Dr. Lee was in attendance at the June 5, 2018 meeting to propose a program for A.W. for the 2018-2019 school year. The meeting was recorded by the District and the parents and memorialized on a flash drive (J-112). Ms. Jennifer Wierski was the case manager and the LDTC for the District who left the District the second week of June 2017. The recording was played for Dr. Lee and confirmed that Ms. Wierski advised the parents at that meeting that A.W. would receive 150 minutes of Reading, Writing and Language Arts instruction if he attended Medford Lakes for sixth grade. Although she did say that, Dr. Lee said she misspoke. The IEP summary page is consistent with the tape from the meeting that the pull-out resource replacement for Reading Language Arts was six times per six-day cycle for 150 minutes. The in-class supplementary instruction for reading was two times weekly for fifty minutes (J-77). There was nothing on the tape to indicate that A.W.'s Wilson instruction was going to be one-to-one. The summary sheet also did not indicate that the supplementary instruction for reading was going to be one-to-one.

At the beginning of second grade, A.W. was at a DRA Level 10 which corresponds to the middle of first grade. By the end of fourth grade he was at a DRA Level 28 which corresponds to the end of second grade beginning of third grade. So, from second through fourth grade, A.W. progressed from mid-grade one to the end of grade two beginning of grade three – one and a half years progress in three years. Dr. Lee did not attend any of the IEP meetings for A.W. until the June 2018 meeting.

Dr. Lee agreed that A.W. had significant emotional needs in fifth grade and that would be something covered by a psychological evaluation. His refusal to go to class and his reporting that he belonged in a different school were behavioral needs. There

are behavior rating scales that could be administered as part of a psychological evaluation. The District would have an obligation to hold its meeting to review the results of any evaluations that it did prior to the December 22, 2017 triennial meeting date.

Other than receiving the December 11, 2017 ten-day letter (J-71), Dr. Lee did not have any reason to believe that the parents had made a decision regarding A.W.'s placement prior to receiving the December 18, 2017 IEP (J-73).

Regarding Dr. Lee's testimony that the in-district pull-out replacement ELA program was a better ratio of teacher to students than that recommended by Dr. Gillock, it was only regarding that class and did not apply to any other classes that A.W. would have pursuant to the December 2017 IEP or the June 2018 IEP.

A.W.'s kindergarten teacher noted on his report card in the comment section for his second marking period that they had seen much improvement over the anxiety issues (J-4). A.W.'s first grade report card was the only data sent home to his parents to provide information regarding A.W.'s progress, since he was not receiving progress reporting on any goals or objectives because he was not classified as a special education student at that point. The first-grade teacher noted that A.W. had an amazing first grade year (J-7).

On April 30, 2014, Ms. W. wrote to Amy Safko, a member of the CST, requesting that A.W. be evaluated for special education. Her letter references having spoken with the CST on three other occasions beginning when A.W. was three years old (J-8). The evaluation planning meeting held on May 21, 2014 indicated under 'current progress' that at the beginning of the year A.W. was very tense. It also noted that his reading fluency was poor, and that phonics and decoding were difficult for A.W. (J-11, page 2). These concerns were not noted on his report card. The CST Initial Referral Checklist was incomplete. Discipline and attendance records, progress reports or report cards, health and medical information were not checked off on the form as being attached (J-10). Dr. Lee assumes the CST followed protocol and procedure and considered all available information and he has no evidence that they did not do so. However, Dr. Lee was not employed by the District at this time. Even if the form was incomplete at the start of the meeting, it would all have been addressed after the outcome of the meeting. The initial

meeting was to consider whether a comprehensive evaluation was warranted. The team concluded that it was not and there would be no additional evaluations at that time. Dr. Lee's understanding was that the CST did not have evidence of a potentially disabling condition that interfered with A.W.'s ability to learn at that time. To identify a specific learning disability would require both achievement testing and cognitive testing, neither of which was done as of the May 21, 2014 initial evaluation planning meeting (J-11).

Tara Mahon performed a speech and language evaluation of A.W. dated June 16, 2014 (J-13). An initial speech only IEP was prepared for A.W. (J-15). It did not include any information about A.W.'s central auditory processing evaluation, aside from indicating that he had been diagnosed with that disorder. There is no indication of a recommendation for an amplification system to be used as had been recommended in the CAP evaluation.

On October 6, 2014 Ms. W. emailed Kelly Scapellato, then Supervisor of Special Education requesting a CST meeting to discuss evaluations based on A.W.'s continuing difficulties (J-94, page 11). This is the same day as the teacher referral of Ms. Hamlin, A.W.'s second grade teacher (J-18). Ms. Hamlin noted that A.W. cried whenever he was presented with a reading test; he was completely frustrated on phonics; and that after the tests she rereads and clarifies the directions and questions for him by himself. A.W. cried hysterically during the MAP testing. Ms. Hamlin also noted that A.W. cried and shut down whenever he came across hard word problems in Math. Ms. Hamlin indicated that she and Ms. Gillet, the special education in-class support teacher, tried to assist A.W. as much as possible in the class (J-18, page 4).

On October 14, 2014 another evaluation planning meeting was conducted due to A.W.'s continued difficulties in the general education curriculum. Ms. W. signed the consent to evaluate. The current progress notes indicated that A.W. had a lot of anxiety when taking Math and reading tests and had emotional reactions to poor grades and reading difficulties. It also indicated that A.W. was receiving tutoring at home and receiving therapy for auditory processing (J-19).

The Learning Evaluation was completed by Lisa Rombach, the LDTC. Ms. Hamlin provided the information contained in the 'teacher interview' portion of the evaluation. Ms. Rombach noted that A.W. was serious and appeared anxious (J-21). The psychological assessment completed by Ms. Scapellato noted in her classroom observation of A.W. that he never participated in the oral reading and spelling of words with his peers (J-22, page 1).

On December 23, 2014 an IEP was prepared for A.W. following the determination that he was eligible for special education while he was in second grade. The IEP was implemented in January 2015. Prior to being found eligible for special education at the December 23, 2014 IEP meeting, Ms. Hamlin and Ms. Gillet were already implementing small group instruction for reading for A.W. and had implemented a reward system to deal with A.W.'s anxiety in writing and Math which seemed to be helping A.W. Because of his difficulty with word problems, Ms. Hamlin and Ms. Gillet usually read every problem to him. In Social Studies and Science A.W. completed his tests in small groups. Although A.W.'s anxiousness and complaints of stomach aches are 'behaviors' the CST indicated that A.W. did not exhibit behaviors that inhibit his learning or the learning of others. If they had found that he did, that would trigger the need for a behavior intervention plan which would be included in the IEP. The teachers were using a reward system that seemed to be effective, but it is not specified in the IEP and there were no goals or objectives related to the reward system (J-24). The report from the audiologist also recommended counselling for A.W. for anxiety (J-16, page 4). However, the IEP did not provide for counselling or address specific goals for managing A.W.'s anxiety. There were reading goals addressed in the IEP but no specific goals for fluency, phonics or decoding which were areas of weakness for A.W. as demonstrated in his second-grade report card (J-36). The IEP did not change A.W.'s placement and there is no specific indication as to what the CST considered regarding placement, aside from stating "More restrictive and less restrictive environments were considered but rejected based on the student's current educational needs" (J-24, page 15). This was poorly written in that it does not explain what about A.W.'s needs justified his placement in the class. A.W. remained in the general education setting with in-class resource support of the special education teacher referred to as an in-class resource or "push in" model, as opposed to a pull-out resource model outside the classroom in a small group special education class.

Modifications and supports were provided to A.W. including: modified reading and writing assignments; monitoring A.W.'s level of tolerance and being mindful of signs of frustration; daily check of homework assignments; modification of the tests and grading received (J-24, page 9).

On May 6, 2015 at the end of second grade in preparation for third grade, a new IEP was prepared (J-28). Ms. Gillet prepared the PLAAFP narratives and indicated that in reading, A.W. was quiet and rarely participated in large group reading instruction. Writing was also challenging however the rewards system was helping A.W. stay calm in writing as well as Math. Ms. Gillet also wrote that A.W. benefited from support in a small group to assist in clarifying and organizing his thoughts in the writing process. A.W. also was weak in Math word problems and became confused if multiple approaches were taught to solve the problem. In second grade Science and Social Studies, A.W. was tested in small groups so that the questions could be reread and restated.

Tara Mahon completed the speech and language present levels of achievement and noted that A.W. was making progress in following multi-step directions in the therapy room, however still had difficulty in the classroom and seemed to drift during full group lessons.

The IEP noted that one of A.W.'s strengths was that he was thoughtful and kind. An area of concern was his low frustration tolerance, noting that they were using a behavior chart and cognitive reinforcement (J-25, page 3).

There were no goals related to phonics or decoding or fluency in the May 6, 2015 IEP however Math goals were added regarding place value concepts and Math operations. Goals should be able to be accomplished within the IEP term. There was no change in placement from second grade to third grade. Like the prior IEP, there are no reasons given for the placement decision in the notice requirements section (J-28, page 17). A.W. was found eligible for ESY only as to speech therapy, once a week for thirty minutes.

The IEP process involves gathering information and discussions regarding the information relative to the students' abilities and present levels of performance. The students' needs are discussed, which drives the goals and objectives, which determine in what setting these goals and objectives would best be accomplished.

According to the June 15, 2014 progress report from second grade, A.W. had not met any of his goals in the language arts literacy area but was progressing towards the goals (J-30).

Both; Ms. Rombach and Ms. Chase had used the Woodcock Johnson test, Form A and Dr. Lee had testified as to a practice effect since Ms. Chase administered the test nine months after Ms. Rombach did. Even though it was a different version of the test, it was not a completely different test. A practice effect would increase a student's score, not decrease it (J-33).

Avoiding pupil humiliation and promoting empowerment is an important goal of educators. Following the receipt of Ms. Chase's report, another IEP meeting was convened on August 31, 2015. A.W.'s placement was now going to be in a pull-out resource setting for ELA. The notice section does not describe any options considered and the reasons the options were rejected regarding the placement decision. Counselling for A.W. was added to this IEP (J-34, page 16). No goals were added regarding A.W.'s counselling. The goals set forth in the August 31, 2015 IEP were the same as the goals set forth in the May IEP. On September 28, 2015 Ms. Rombach sent Ms. W. an email indicating that since A.W.'s placement had changed to a pull-out replacement class, they would need to update his goals and objectives to reflect this new program. Ms. Hunter was working on this (J-94, page 26). The amended IEP still reflected an August 31, 2015 sign in sheet (J-37, page 1). The goals and objectives set forth in the August 31, 2015 IEP (J-37, page 7) sets forth additional goals of decoding, word recognition and fluency goals under 'Reading' and there is a handwritten note of '9/15' which was around the time Ms. Hunter was working on goals and objectives for A.W. referenced in the email. An IEP can either be amended in a meeting or through an amendment in writing with the consent of the members of the IEP team. There is no indication that there was an IEP

meeting after September 28, 2015 and there is no consent to amend without an IEP meeting signed by the parents.

The progress report for third grade indicates A.W.'s new case manager as Lynn Hart (J-39). The May 5, 2016 IEP meeting was held at the end of third grade to be implemented in September 2016 for fourth grade (J-44). This IEP was amended on consent without a meeting to account for progress reporting three times a year versus four times to coincide with the District's new trimester schedule (J-44, page 17).

Shelly Craig completed a chart related to A.W.'s DRA data to prepare herself for A.W. for fifth grade (J-38). The data for this chart was provided by the third-grade teacher, Mrs. Hunter. The "Optimal Reading Rates by Grade Level" chart provides silent and oral reading rates and is provided by Reading Horizons (J-55, page 2).

The new Jersey Dyslexia Handbook, dated September 2017 was put together to help guide districts, parents and advocacy groups in understanding dyslexia (J-111).

In A.W.'s third grade progress report for language arts literacy comments, Ms. Hunter reported in November 2016 that he had increased his fluency with repeated readings, from fifty-eight words per minute to 180 words per minute with ninety-nine percent accuracy (J-39, page 2). The fifty-eight wpm Ms. Hunter reported corresponds to a spring grade one and winter grade two fluency rate based on the chart (J-111, page 125). 180 wpm are off the chart at 151 which ends in eighth grade (J-111, page 25). Ms. Hunter's notes for February 2, 2016 indicated that A.W.'s fluency rate increased to 198 wpm (J-39, page 2). More than likely this was repeated readings of the same passage. Ms. Hunter noted in the PLAAFP for reading set forth in the May 2016 IEP, that A.W. had improved his fluency when reading and with repeated practices and had increased his rate of reading seventy-two wpm to 176 wpm (J-44, page 2). These numbers do not match what was contained in the progress reports.

A.W.'s third grade report card indicates that he made the principal's list and received all 'A's and 'A+' s (J-40). A.W.'s IEP allowed for his grades to be modified in collaboration with the general education and special education teacher. These grades

did not indicate that A.W. mastered the New Jersey curriculum standards for his grade in these areas or that he was at the top of his class.

A.W.'s IEP for fourth grade had a fluency goal to increase ten words per minute from baseline data on a cold read, at instructional level during repeated practices independently on two out of five trials (J-44, page 5).

Ms. Sachs, A.W.'s in-class support special education teacher, completed the Math section of the PLAAFP (J-44, page 2). She noted that A.W. did all of his homework assignments and received additional support at home. Reading and comprehending multi-step word problems were an area of concern for independent work, but A.W. readily understood with assistance. His tests were modified for increased formatting and minimal content by simplifying the wordiness of some problems and targeting the desired skill. In Science, Ms. Sacks noted that A.W. was given a modified vocabulary worksheet that was color coded for easier reference and that A.W. had difficulty following along with the science text and needed redirection. He also took modified assessments for formatting and some content. His tests were read aloud in a small group setting to ensure understanding and completion of the test. A.W.'s assessments in Social Studies were also modified for format and some content to focus on targeted facts (J-44, page 4).

Ms. Sacks modified the content of A.W.'s assessments in Math, Social Studies and Science. There were no goals established in his IEP for Social Studies and Science because A.W.'s specific learning disability was in written expression and reading fluency and that is where the goals were defined. A.W.'s modifications were relative to his disabling condition. He was not Science or Social Studies disabled but was having difficulty with the written expression associated with it and understanding what he was reading. A.W. was being provided with the general education tests with appropriate modifications, made by the general and special education teacher, to make sure A.W. knew the material.

A.W. was not offered ESY services according to the May 5, 2016 IEP (J-44, page 10). There was an email May 4, 2016 from Kelly Scapellato to Lynn Hart and Amy Safko asking which students will be attending ESY. Lynn Hart responded on May 5, 2016 that

A.W. would for reading and would have to check with Ms. Sacks to see about Math (J-113, page 7). The amended IEP for May 5, 2016 also does not include ESY (J-45, p. 11). A.W. was probably not offered ESY because after evaluating the data, he did not meet the criteria.

An email from the school nurse, Regina Reilly, to Kelly Scapellato dated May 15, 2017, the end of A.W.'s fourth grade year noted "Increased visits to the health office" (J-113, page 8).

The IEP annual review to prepare for fifth grade, dated March 20, 2017 contained the PLAAFP completed by Ms. Franchio, the special education teacher for A.W. for fourth grade (J-54, pages 4-6). The goals reflected in this IEP correlate to third grade curriculum goals for reading and writing and fourth grade curriculum goals for Math (J-54, page 8).

Mr. Gorman sent an email dated September 9, 2017 to Ms. Zuba indicating that he had consulted with the District and there was no documentation of any anxiety or a diagnosis in the record of anxiety for A.W. (J-56, page 3). When Dr. Lee was hired, he reviewed the file and did see documentation of emotional disturbances, emotional issues and anxiety in A.W.'s file.

On October 31, 2017 Jennifer Wierski, the part-time LDTC contracted by the District to provide case management services sent an introductory letter to parents (J-57). She started right before Dr. Lee and finished her contract in June 2018. The triennial evaluation for A.W. was prepared on October 27, 2017 and stated under current progress that "A.W. has had difficulty transitioning coming to school. His anxiety has been impacting his ability to attend classes or school days" (J-68, page 1). The District did not have Dr. Gillock's report at this time but conducted the meeting to be in compliance. The educational re-evaluation completed by Ms. Wierski on December 4, 2017 noted that A.W.'s fifth grade teachers checklist indicated areas of limited achievement and included listening comprehension, basic reading skills, reading comprehension, reading fluency, mathematics reasoning, mathematics calculation and written expression. In terms of classroom functioning, A.W. required more one-to-one attention than most other students his same age or grade. When given an academic task that required sustained mental

effort, A.W. would attempt it but gave up easily. His motivation impaired his performance (J-69, page 6). Problem behaviors in the classroom included impulsiveness, uncooperativeness and anxiousness. As far as uncooperative behavior, A.W. was at times oppositional and acted defiantly, pouted and refused to work in the classroom. A.W. would be anxious at times which behavior manifested itself in tense body language, going to the nurse or somatic complaints, however the behavior did not seriously impede A.W.'s opportunity to learn (J-69, page 5).

The December 18, 2017 IEP re-evaluation summary indicates that A.W.'s District benchmark testing was inconsistent (J-73, page 3). MAP testing is used within the school district to measure a student's instructional level. The tests are adaptive in that the test becomes more difficult the more questions a student answer correctly. When a student incorrectly answers a question, the test becomes easier. The RIT score is an equal interval scale that measures a child's growth similar to the way height is measured in inches to determine growth. MAP testing is a powerful tool for informing instruction and allowing you to see a child's academic growth from year to year. In reading, A.W.'s scores were under the fifth percentile from the spring of 2016 to the fall of 2017. His Math MAP scores went from the ninth percentile in the fall of 2015 to the twenty-fifth percentile in the spring and then he went back down to the third percentile compared to the norm group in the fall of 2016. The same type of increase and decrease was reflected in the next school year as well (J-109).

The draft IEP dated June 4, 2018 prepared at the end of fifth grade for sixth grade proposed the pull-out replacement class for ELA forty-eight minutes per day for six days. The class would cover all elements of literacy including phonics, vocabulary, comprehension, fluency, grammar, writing conventions and organized writing. In addition, in-class supplementary instruction in Wilson reading would be two times a week for forty-eight minutes (J-77). After the meeting, it was discussed that the Wilson reading twice a week would be one-on-one individual instruction, but this was not reflected in the draft IEP and was never presented to the parents. That added up to approximately sixty-six minutes of ELA daily. The Dyslexia Handbook states that the NJDOE recommends a minimum of ninety minutes of uninterrupted literacy instruction daily in grades kindergarten through fifth and eighty minutes for grades sixth through eighth in order to

accommodate content departmental classes at those grade levels (J-111, page 6). The sixth-grade program for Medford Lakes is not in alignment with that recommendation. This recommendation applies to students with IEPs. Supports and interventions can and should be provided in the literacy block as well as an additional intervention period to supplement literacy instruction beyond the block. It is a recommendation, not a requirement. The recommendations continue on to recommend as students get older and the gap between expected and actual achievement broadens, more time and increased intensity of instruction will be needed. Looking at A.W.'s DRA records, the gap between grade level achievement and A.W.'s achievement did increase, however there has been a reduction in the amount of literacy instruction relative to the overall curriculum.

The sixth grade IEP (J-77) did not propose an in-class resource teacher for A.W. for Social Studies and Science. The general education teacher would be modifying the test formats and providing study guides.

When the District showed Ms. Tighe and Dr. Gillock the classroom where A.W. would have been placed in sixth grade, it had an in-class support teacher.

Other than a foreign language, there is nothing offered at Medford Lakes in terms of content that is not offered at Cambridge (J-91, page 6).

If the Lindamood-Bell evaluation of October 6, 2017 was artificially inflated due to a practice effect, then the difference between the scores from October and June 2018 would be an unreliable measure of progress between those periods of time (J-82).

Dr. Lee and Ms. Summerville worked collaboratively on J-91. Ms. Summerville authored the "Student Observation (Cambridge School)" October 23, 2018 and November 5, 2018 portions of the report. The report notes specifically what the teacher was not doing and did not address what the teacher was doing. They did not know the specific needs of the other students in the class. Dr. Lee was not familiar enough with the Lindamood-Bell Lips, Seeing Stars, or Visualizing and Verbalizing programs to note whether they were being utilized during his observation of the one class that he observed at Cambridge. Ms. Summerville observed two classes. Their focus there was to observe

what Medford was not doing that Cambridge was doing and compare the programs. They observed a class similar to Medford and Cambridge was not doing some things that Medford was doing and they noted that in their report (J-91).

The Hoffman Expository Writing Program is used in the Cambridge school and is something that Medford Lakes is trying to introduce in its district.

The Cambridge school is an artificial environment, away from the public-school setting.

The Neeta School instructional program provides A.W. with a small student to staff ratio of not more than twenty students in a class (J-91, page 9). If A.W. was recommended for in-class support setting that would be twenty students to two teachers or ten students to one teacher or ten students to two teachers if it was a small group setting. Six students to one teacher is the ratio in the special education pull-out replacement class. The parents were told that the Wilson instruction would have been one-to-one, although that is not written in the IEP. The typical public-school setting number is eighteen to twenty students to one teacher. As the IEP is written, A.W. would be in a general education class setting for Social Studies and Science with eighteen to twenty students to one teacher.

Ms. Mahan accompanied Ms. Tighe to observe several classes at the Neeta School. During sixth period Social Studies general education with in-class resource support it was noted that there were twenty-six students in the class with two teachers and a one-to-one aide (J-90, page 2).

On re-direct examination, Dr. Lee explained the 150 minutes of ELA that was reflected in the IEP drafted by Ms. Wierski was a mistake and that there was no intent to mislead. When the parents' evaluators came to observe the program there was no representation that there would be 150 minutes of ELA instruction. It was to be forty-eight minutes of ELA. They were provided with A.W.'s schedule and observed the program that was going to be provided to A.W. if he was in the district for sixth grade. If A.W. came to Medford Lakes, he would have received one-to-one Wilson instruction three times per

week for forty-eight minutes. He would also have been in a class with a special education teacher who had access to his IEP. The IEP as written was never corrected as to the 150 minutes and the lack of a special education teacher in the other three subject areas since it was a draft that was not finalized once the parents filed for due process. The decision to provide one-to-one Wilson instruction was made by the District after the IEP was drafted and was not shared with the parents until after the unilateral placement.

At the evaluation planning meeting, the parents advised that Dr. Gillock was going to do the neuropsychological evaluation and share it with the District and the District was going to do the educational evaluation (J-68, page 2). The District did not receive Dr. Gillock's report until January 2018.

Although J-10 was an internal worksheet that was incomplete, J-11, the Written Notice of Evaluation Plan – Consent to Evaluate, dated May 21, 2014 reflected the discussions of the IEP team at the meeting and contained sufficient information to make a determination regarding evaluations.

The December 2014 is the first special education IEP that provides programming to A.W. and references the CAP evaluation and recommends that A.W. have assistive technology with the FM system (J-24).

Based upon the report card for first grade and the teachers comments therein, A.W. had a good first grade year. The teachers' input would be considered as to whether evaluations were warranted for A.W. beyond a speech and language evaluation (J-7). A.W.'s second grade teacher Ms. Hamlin referred him to the CST (J-17). Based on what Ms. Hamlin was reporting, there was a change in A.W.'s academic performance that caused the CST to order social, psychological and learning evaluations of A.W. The information reflected in J-18 was not documented by the District the prior school year. Following the evaluations, it was determined that A.W. met the criteria for being specific learning disabled in the area of reading expression and basic reading as well as being eligible for speech and language services. As far as A.W.'s anxiety, his disability in written expression and basic reading made him anxious and the specific modifications and

supplementary aides were designed to focus on his disability as well as reducing his anxiety (J-24, page 9).

A.W.'s difficulties in Math, Science and Social Studies arose from his disability in reading and that is why the goals and objectives were geared towards his disability in written expression and reading fluency.

Upon receipt of the psycho-educational evaluation completed by Ms. Chase, the District convened a new IEP meeting (J-32). As a result, a new IEP was drafted calling for A.W. to be in in special education pull-out class for the double period of ELA and to have counselling (J-34, pages 16-17).

Although there had been references in A.W.'s records to emotional reactions to various things, the current progress notes in the October 27, 2017 evaluation planning meeting reflect a different level of anxiety in that A.W.'s anxiety was impacting his ability to attend classes on school days (J-68). He did not want to be at the Neeta School after having attended the Lindamood-Bell program over the summer through the beginning of October and felt that was not his school any more. This refusal was very different than what the District had seen up until that time. Following an evaluation, an IEP meeting was held in December 2017 and emotional goals were added including self-confidence, positive interaction with other people and adults and demonstrating trust and positive attitudes towards authority representatives (J-73, page 6). These goals reflected the District's attempt to improve A.W.'s participation at the Neeta school.

The MAP scores for Math for A.W. from the fall of 2016 to spring of 2017 show a jump of thirty points and he was very close to the normed average. From spring of 2017 to fall of 2017 A.W. drops fifteen points (J-109). This was the time frame when A.W. was not attending Medford Lakes school and was participating in the Lindamood-Bell program which had no Math instruction.

An email dated October 26, 2015 from Ms. W. to Ms. Hunter, A.W.'s third grade special education teacher is very positive and indicated that A.W. enjoyed being in her classroom and was reading by himself (J-94, page 28).

Medford Lakes has approximately 530 students, seventy-nine of which are classified. The Cambridge School population is comprised of challenged learners where the number of typically developing peers would be small. The benefits of interacting with typically developing peers is the opportunity of learning behaviors from the other students.

On re-cross examination, the letter dated July 12, 2018 indicated that if the parents did not receive an appropriate program within ten days, they would make a unilateral placement to Cambridge for the next school year (J-83). The one-to-one Wilson instruction was not offered prior to the unilateral placement

Jenna Alesiani, (formerly known as Franchio) testified on behalf of the respondent. Ms. Alesiani is a special education teacher and was accepted an expert in the administration of special education instruction. She is currently employed as a fifth-grade special education teacher by Delran Township. She was formerly employed by respondent for two years as a fourth-grade special education teacher, in-class resource and pull-out replacement for Reading and Writing (J-100). As a pull-out replacement teacher her duties were to provide a classroom environment to foster learning in a small group setting and provide instruction based on a students' IEP. As an in-class support teacher her duties were the same, but special education instruction was provided to those students who required same in the larger general education class setting.

Ms. Alesiani became familiar with A.W. when he was her student her first-year teaching Medford Lakes as a fourth-grade special education student in the in-class resource setting, as well as a pull-out resource setting for reading and writing. A.W.'s IEP for the fourth-grade year 2016 – 2017, was prepared by his third-grade teacher, Mrs. Hunter (J-44). Ms. Alesiani reviewed the IEP to determine the student's strengths and weaknesses and area of need. Then she would make herself a chart based on the student's goals and objectives to track them throughout the duration of the school year. She would also check the modifications and accommodations to see how she would be supporting the student. Ms. Alesiani created herself a spreadsheet that she could easily refer to based on A.W.'s IEP. She also met with Ms. Hunter to discuss A.W.'s strengths

and weaknesses before the start of the school year. They discussed that she needed to be focused on decoding skills, fluency, vocabulary, reading independently, word attack and comprehension skills. The PLAAFP portion of the IEP provided her with an overview of where A.W. stood academically at the beginning of his fourth-grade year. A.W. was going to be with her in the pull-out resource setting for reading and writing. He would be in the inclusion setting for Science, Social Studies and Math for the 2016-2017 school year. She was with A.W. all day long as she was also the special education teacher in his inclusion classes.

When she first met A.W. at the beginning of his fourth-grade year, he needed to increase his phonological awareness and build his comprehension to become a fluent reader. The goals set forth in his fourth-grade IEP were appropriate for him at the time. They were going to use audio books like "Learning Ally" and the "Journey's" reading program which was the grade level curriculum. Each subject area was sixty minutes long. The pull-out replacement class for ELA started out with four students in the class but shortly dropped down to three students. ELA and Math were on a six-day cycle. Science and Social Studies alternated on a three-day schedule, that is three days of Science and then three days of Social Studies.

On a daily basis they worked on "Reading Horizons" which is an Orton-Gillingham based program utilizing a multi-sensory approach, that is auditory, visual and kinesthetic. The ELA block was 120 minutes long and so it was a good amount of time to work on the necessary skills in the small three to four student group. She would break up the small group into three centers that would change every day and the students would rotate. She would work one-to-one with each student for fifteen to twenty minutes at a time. So, when she was working with A.W., she worked on his goals and objectives of decoding and fluency. The other center would use the iPad or sand draw to provide the kinesthetic component. There was a spelling center using the application "Spelling City" to practice their spelling words and build up their basic sight word bank in order to help fluency. Every week there was a fluency reader that went with the program being taught. For example, murmur diphthong "ar" is when the "r" takes control of the vowel "a" in words like car and star. They would learn the lesson and there would be a book that went along with the lesson and contained twenty-five words that followed the rule of murmur diphthong

“ar”. The students would have to practice marking up the words, reading them aloud to themselves so that they could hear and practice their fluency. This would take about forty-five minutes of a “Reading Horizons” lesson. Then they would transition to the “Journeys” program which is the grade level curriculum that meets the state standard. There would be a story for the week that would be above their individual reading level. The program is modeled on repeated practice. They started on the active or smart board and the story was read aloud to them. As it is read, it highlights the words being read aloud so they are practicing hearing the words for fluency. There are questions on each page prompting story elements. There were different vocabulary cards and activities such as drawing a picture or acting out the word in order to make sense of the higher level vocabulary words. If the student is a struggling reader, their bank of vocabulary words were not going to be above grade level so they had to take the time to break down the words. The stories would be read aloud three times throughout the week each time focusing on a different item. The first time it was just the general story elements. The next time it was analyzing the text for the theme. The last read is a partner read where they would take turns reading to build their fluency. Ms. Alesiani would also make a packet to go with each story with all of the guiding questions and they would go over the packet together so it would be more concrete and not just auditory, like it would be in a general education classroom. At the end there would be an assessment.

Ms. Alesiani would specifically set up A.W.’s test on a landscape setting in a dyslexic font called “Dyslexi” and have one question on a page so that he could focus on the one question before him and not be overwhelmed. As the year progressed, two and then three questions were on a page. Everyone in her class had a different assessment based on their IEP. A.W. needed to be able to decode non-contextualized words. So he would have a word list and needed to attack that word list without using any context clues. A.W. also needed to increase fluency. That is why they used Learning Ally in the classroom where the books will be read to the student and the same for the Journeys program where they will be on the active board and read to them aloud so that A.W. could hear appropriate fluency as well as practicing his individual fluency. For comprehension, the packets that she made were more concrete and A.W. would have to physically go back in the text and find the evidence to answer the questions from “Journeys.” The Journeys and reading horizons program were used to meet the first four of A.W.’s goals.

To measure the goals, she would take data that she collected from her one-on-one sessions with A.W. She would have A.W. read the word list to her and she would mark down exactly what he was saying. If he got it correct on the first, try that was excellent and she would mark that and then average out the percentage and see what the accuracy rate was. The data ultimately would become part of A.W.'s progress report. It would also drive the PLAAFP for the next IEP.

After reading, they would have a whole sixty-minute block of writing. The writing program used was called "Write Steps" which was based on peer modeling. Ms. Alesiani would put a model up on the smart board. They would look at other fourth-grade students from across United States to see what their writing would look like. Then they would go back and talk about different writing skills. J-49 is an example of an explanatory piece that A.W. wrote about "My School". A.W. would look at a peer model writing sample and try and improve upon it using descriptive and figurative language and expanding complex sentences and paragraphs. Then he would have to go back himself and improve his own writing. They practiced together on how to make the writing stronger and then they would do it themselves in their own writing. For a struggling writer like A.W., the lessons were slow and helped target his weaknesses as a writer, which was very helpful for A.W. He was performing 'awesome with a smiley face' with the "WriteSteps" program.

The writing goals in A.W.'s IEP (J -44, page 5) indicated that A.W. needed to use graphic organizers to generate ideas. This was embedded in the "Write Steps" program as well as targeting A.W.'s basic sight words in order to build his spelling bank for his writing pieces. Ms. Alesiani kept A.W.'s writing samples throughout the duration of the school year and would chart his spelling assessments to keep track of them which all would be reported in the progress reports.

In Math class, Ms. Alesiani and her co-teacher would start the lesson with a video mini lesson that would be interactive. The video would stop and ask questions to which the students would have to respond. They would have a guided practice as a class and then would break into smaller groups based on the student's skills and abilities. They would meet with each student in a small group setting and would also have an independent center where they would practice whatever basic skills they were working

on at the time. The Math class had more than fifteen students total, but the class broke up into the individual groups of five or six in each group. A.W.'s Math goals included being able to estimate and be able to recognize two dimensional and three-dimensional figures in order to build his future Math skills. A.W. did not have a lot of weaknesses in Math skills such as computational skill. He was able to follow steps if a process was mapped out for him. His biggest struggle was with word problems and being able to attack them independently. A.W. had difficulty with the reading comprehension part of the problem and in multistep problems, such as long division, once a problem was done having to estimate the problem for reasonableness. Ms. Alesiani would break down the word problems sentence by sentence, a process called 'chunking', to make it more manageable for A.W. to process what the question was asking. Skills worked on in ELA such as word attack decoding, and fluency all transferred over into the Math area to interpret and comprehend word problems. There were no goals listed for A.W. for Science and Social Studies in his IEP. He did not have any problems in terms of skills in these areas. His problems were regarding comprehension.

Ms. Alesiani was with A.W. for all of his core subjects and she was the one implementing his IEP in all of the areas and providing him with the one-on-one instruction in the ELA setting. The strategies that she was using in the ELA setting transferred to the other subjects and were utilized by herself and her co-teacher in the other subjects.

In the small, pull-out resource setting, A.W. was very strong in his ability to share his thoughts and his ideas. He was eager to participate and raised his hand and was an active and engaged student. She also saw real growth in him even in the in-class resource setting with the general education students where by the end of the year he was willing to read a paragraph from the Science text which is a grade level text and not at his instructional level.

A.W. was on par with the general education students in his Math class although he did have difficulties with word problems. He was still behind grade level compared to his general education peers in reading which made the pull-out resource setting appropriate for A.W.

The DRA is a developmental reading assessment that evaluates fluency and comprehension. In September A.W. was assessed at a level twenty and his fluency was sixty-nine percent accuracy at 61.2 wpm. His comprehension was eighty-two percent accuracy. His overall accuracy for fluency was ninety-nine percent making him independent at that level. By the end of the year in May, he had increased to a twenty-eight DRA level and a fluency rate of 90.5 wpm. His fluency had increased by more than ten words per minute from baseline data on a cold read, that is, text he had never been exposed to before (J-50).

The first part of A.W.'s day was a forty-minute guided reading class in an in-class resource inclusion setting. A.W.'s level was instructional at twenty-eight, so she would pull all of the students that were the same level twenty-eight into a small group and do a reader that follows with the Journey's program, vocabulary and comprehension. These forty minutes of guided reading was in addition to the 120 minutes of ELA instruction provided.

A.W. was growing as a reader and he was making progress in ELA. He was moving up to more complex comprehension questions.

Ms. Alesiani completed A.W.'s progress reports for fourth grade based upon the data she had collected all year. A.W. mastered all of the goals set forth in his IEP. His areas of weakness were targeted, they were addressed, and he made progress (J-51). The fluency goal was to be reached independently, two out of five times which was an appropriate measure for this goal. Ms. Alesiani explained that you are not going to be a perfectly fluent reader every single time and she wanted to make sure that A.W. can do it two out of five times to see if he could increase ten words per minute to grow his word bank and be able to decode with automaticity, ten words per minute. Vocabulary concept development was assessed through the Journeys program whereas the first two goals of Reading and Fluency were assessed through the Reading Horizons program. Initially in the first semester, A.W. was introduced to vocabulary development through context and attempted to use the strategies taught. In the second trimester, he was using the tools he was taught and trying independently to use the context clues. By the third semester,

A.W. was able to use the context clues to find the words meaning independently without teacher prompting (J-51, page 2). That demonstrated progress.

The comprehension skills and response to text goal indicated that A.W. was introduced to citing evidence from the text and actively worked to apply this skill in the first trimester. In the second trimester he was able to identify the correct text evidence with assistance. By the end of the year, A.W. could cite evidence independently eighty percent of the time (J-51, page 2).

There were three writing goals based on the Write Steps program in the pull-out resource setting. In the beginning of the year, A.W. was working on producing a piece of writing using various types of graphic organizers. In the Write Steps program, each type of writing has a different graphic organizer. By the second trimester, A.W. was able to use the graphic organizers to create and organize writing samples with assistance on two work samples. By the end of the year, A.W. could create an organized writing sample independently. He could structure paragraphs and you could see the organization of the paragraphs with the transition words and the chunking of appropriate ideas in one paragraph and appropriate ideas in the next paragraph. A.W. took the graphic organizer and independently transferred it into his writing (J-51, page 2). All of this demonstrates progress. A.W. demonstrated the same progression in his Math goals.

Ms. Alesiani had A.W. the entire day and did not see that he was anxious or nervous. He was a little bit more reserved in the beginning of the year in the in-class resource setting which was general and special education students as opposed to the small group pull-out resource setting where he was always the first one to raise his hand because he was eager and excited. She definitely saw growth in the in-class resource setting where A.W. became eager to participate, go the board and share his work or willing to raise his hand and read from the grade level text to his peers. She never saw anxiety in the classroom or school or work avoidance.

A.W.'s fourth grade report card for the 2016 – 2017 year indicated he received straight A's. He was a delight to have in the class. He wanted to do well and worked hard to reach his goals. He took leadership and was learning by asking questions when

he needed help. He actively engaged in whole group and small group lessons by volunteering to share his answers and helped others with specific skills. He was a very creative thinker and had innovative answers. A.W. was a role model to his classmates in classroom behavior (J-52). She did not recall any health issues or trips to the nurse throughout his fourth-grade year aside from going to the nurse in the spring to use his inhaler because they were outside and running around more.

On June 2, 2017 a parent meeting was conducted because Ms. W. came in to discuss A.W.'s reading progress throughout the year and asked if they knew anything about the Lindamood-Bell program. Ms. Alesiani and her co-teacher, Ms. Leone, did not, but always encouraged all students to take any additional reading practice that might benefit them (J-47). There were no complaints made about her or the program. They went over all of the progress from the progress report.

Ms. Alesiano wrote the PLAAFP section of the IEP for the 2017 – 2018 school year (J-54). She provided a general overview for A.W.'s next year's teacher. A.W. still had a disability and had weaknesses and deficits which were listed to drive his next goals and what he needed to work on. She recommended that A.W. stay in the same placement for fifth grade, that is the pull-out resource class for reading and writing and the inclusion setting for Math, Science and Social Studies. A.W. was successful in Math in his skill set. The only hindrance was his reading ability and word problems. Although he made great progress in reading, he was still behind his peers in his reading level.

Ms. Alesiani drafted the goals contained in the IEP which continued and built upon the prior IEP goals. In comprehension, by the end of the year, A.W. will be able to determine a theme of a story and identify the main idea and supporting details and use them to summarize the text at eighty percent accuracy with minimal assistance as measured by teacher kept data. In craft and structure, A.W. will be able to identify vocabulary and figurative language and determine the meaning of those specific words and phrases as they are used in the text. In phonics and word recognition being able to apply phonetic and decoding skills to unfamiliar words when reading in order to increase fluency by fifteen words per minute independently. For Writing Standards, A.W.'s goal was to routinely over an extended period of time for various purposes including narratives,

informative/explanatory and research pieces that demonstrate the use of explicit details, descriptive language and structure and organization. The Math goals were to use multi-step problems and be able to perform all of the operations with multi digit whole numbers and with decimals to the hundredths (J-54, page 8). Ms. Alesiani spoke with Shelly Craig regarding A.W.'s performance, since she was to be A.W.'s fifth grade teacher.

Ms. Alesiani had A.W. in the class every day for fourth grade and he performed with great success. She saw a lot of growth academically and building confidence as a general learner. He was appropriately placed during his fourth-grade year and her recommendations for fifth grade were appropriate.

On cross-examination, A.W.'s fourth grade schedule was forty minutes of Guided Reading at the beginning of the day, which was supplemental instruction. Then A.W. would have forty minutes of Science, forty minutes of Social Studies and sixty minutes of Math in the inclusion setting with the general education students. In the afternoon, A.W. was in the pull-out resource setting for ELA for two sixty-minute periods. A.W. was receiving 160 minutes of literacy instruction in fourth grade which was an appropriate amount.

Ms. Alesiani started in the District October 19, 2016. Prior to her arrival, Ms. Gillet, a special education teacher that A.W. previously had, taught A.W. in the pull-out resource replacement class for ELA. Ms. Alesiani did not have prior training in Orton-Gillingham based reading instruction. She was trained upon her hiring by Medford Lakes. She would do online webinars once a month throughout the school year, in addition to a six-hour online training course prior to teaching Reading Horizons in the classroom.

They did not use speech to text programs in fourth grade, they used audio books through the "Learning Ally" program. A.W. was fully able to write as was evidenced from his writing samples. The "Journey's" program was the grade level curriculum.

The grade level text in the in-class resource setting would always be read aloud for Science and Social Studies content area by the class teacher. They did not read

independently. Work sheets that were handed out were always read aloud to her small group, especially in small group pull-out assessments.

In fourth grade, the class reinforced Chapter 3 of Reading Horizons to assess where they were and then covered all of Chapter 4 in the Reading Horizons program and began Chapter 5 going into fifth grade to preview what they would be doing in fifth grade. They used the Write Steps program for fourth and fifth grade which was grade level curriculum.

The PARCC scores did not impact Ms. Alesiani's instruction of A.W. because his instruction is based on his IEP and not the State standards. He was instructed based on his needs and goals set forth in his IEP. The Journey's program provided him exposure to the state standards, but his Reading Horizons program is based on his individual needs. The PARCC test results show where A.W. is compared to his grade level peers.

On February 1, 2017 Ms. Alesiani emailed Ms. W. regarding a concern about challenging terminology being used in Science and Social Studies (J-94, page 65). Ms. Alesiani had the whole class read the words aloud and discuss their meaning as many of his classmates also struggled with some of those difficult words. Ms. Alesiani continued to have A.W. review the terms, have him listen to the pronunciation, repeat it, as well as review the definition and practice pronouncing the words correctly. Ms. W. replied that it made a big difference studying the vocabulary that way (J-94, pages 65-67).

An amended IEP signed by case manager Lynn Hart included the extra assistance A.W. would receive regarding pronouncing content vocabulary for Science and Social Studies (J-45, page 9). This IEP was amended without a meeting by Ms. Hart with the consent of Ms. W. (J-46).

The IEP meeting annual review for fifth grade was dated March 20, 2017 (J-54). A.W. did well on weekly spelling assessments. Ms. Alesiani would assess spelling skills every five units. The District used the Stetson Spelling program. Ms. Alesiani found that A.W. benefited from labeled folders in order to assist in his organizational skills (J-54, page 3). A.W. had organized color coded folders for each subject which had 'tools' on

one side of the folder and 'work' on the other side of the folder to keep the students organized. Ms. Alesiani described herself as a very OCD person, so her classroom was very organized which proved beneficial to A.W. since all of his information was easily accessible. A.W.'s homework assignment book was checked daily. As a group, they would copy down their homework and then Ms. Alesiani would go around to check that they copied it down correctly. Homework and classwork were modified by reducing the length of assignments and rewording questions in order for A.W. to better understand what is being asked of him. A.W. would also repeat the directions back to Ms. Alesiani to verify that he knew what he was going to do independently. This was being done in Math, Science and Social Studies as well. A.W. also received extra time to complete assignments, which he especially needed for some of the longer writing assignments as well as in Math. Visual examples of any oral directions were left on the board in all of the classes.

A.W. received a fifty percent on the fall narrative writing prompt which was a cold assessment with no modeling or any type of instruction. It provided Ms. Alesiani with a baseline for the school year (J-54, page 4). A.W. wrote in short simple sentences, not long complex sentences, which is also how he spoke. They focused on fluency throughout the year.

A.W. benefited from using manipulatives in Math class such as base ten blocks. If they were doing a problem, a model would be left up on the board and the problem would be broken down into steps using different colors to keep his work organized. This was to address A.W.'s difficulty with multi-step Math problems (J-54, pages 4 and 5). Overall, with the supports and supplements being given, A.W. was able to succeed on all of his Math skills and concepts.

In Science and Social Studies, instead of having four multiple choice questions, he would have three in order to focus on the problems and not be overwhelmed. A.W. also benefited from reviewing content vocabulary with the teacher in order to practice pronunciation and word meaning frequently as needed throughout a given unit (J-54, pages 5 and 6). All of this is called 'scaffolding'.

Modifications and accommodations were listed for his fifth-grade school year to help guide his teacher in what A.W. needs to be successful (J-54, pages 10 and 11). The PLAAFP addressed many of the items that benefited A.W. such as small group Math instruction, Math manipulatives, reading tests aloud and being allowed extra time for assessments.

A.W.'s biggest weakness in Math was in multi-step and word problems. A.W. went from a level twenty to a level twenty-eight in his DRA scores in fourth grade and that reflected his independent level (J-50). Knowing that he is at an independent Level 28, he would be ready to be instructed at a level thirty. She knew this based on his score and reading the next level text that he was not there yet. On May 8, 2017 A.W. was at a twenty-eight DRA independent level so his instructional level would be at level thirty.

The Reading Grade Level Chart provides a DRA level and gives a corresponding grade level (J-55, page 12). A twenty DRA level would correspond to the beginning of grade two. A.W. then went to a level twenty-eight which is grade three. That showed a full year's progression. The DRA is based on a cold read. On the fluency readers, those are repeated practices. She based the increase of ten words per minute on cold reads, his instructional level and during repeated practices – all of the data went into formulating the goal.

Ms. Alesiani reviewed the previous IEP that guided her instruction for fourth grade and from which she obtained important information from the PLAAFP. Ms. Hunter reported that with repeated practices A.W. increased his rate of reading seventy-two words per minute to 176 words per minute (J-44). Ms. Alesiani indicated that she did not write that and could not clarify that information, however, A.W. was not reading 176 words per minute with her.

For measuring the writing goal, Ms. Alesiani used data from the WriteSteps program to determine that he had mastered the goal (J-51).

Ms. Alesiani did not recollect that A.W. went to the nurse as frequently as the notes indicated (J-53).

Ms. Alesiani was asked to fill-out teacher rating scales with respect to A.W. She explained that she knew A.W. better having had him for all of fourth grade and knew him better than Ms. Craig.

In an email dated November 1, 2017, which Ms. Alesiani was not copied on, Ms. Craig indicated that “I have never witnessed a child with no affect, no regard, to an adult’s request, like I have today or back on October 20th/23rd” (J-93, page 32). A.W. had never acted like that the year before when Ms. Alesiani taught him in fourth grade.

The last time Ms. Alesiani observed A.W., she thought it be appropriate for him to have an in-class support teacher for Social Studies, Science and Math.

On redirect examination, Ms. Alesiani received an email from Ms. W. on February 2, 2017 indicating that A.W. was having an exceptional year (J-94, page 64). On March 2, 2017 Ms. W. sent another email to Ms. Alesiani indicating how pleased she was with A.W.’s progress (J-94, page 67).

Shelly Craig testified on behalf of the respondent. Ms. Craig is a special education teacher and was accepted as an expert in the administration of special education instruction. She is currently employed as a fifth-grade special education teacher at the Medford Lakes Neeta School.

Ms. Craig is familiar with A.W. She reviewed his IEP and the detailed PLAAFP prepared by Ms. Alesiani, his fourth-grade teacher, prior to the beginning of the year knowing that A.W. was going to be in her fifth-grade class (J-54). She also spoke with Ms. Alesiani about A.W. Ms. Craig was A.W.’s pull-out resource special education teacher for ELA, each fifty-minute classes. Reading was the first class in the morning and writing was at the end of the day. She was also A.W.’s in-class resource special education teacher in the general education class for Social Studies and Science, each of which was fifty minutes long. She did not have A.W. for Math which also was to be delivered in the in-class resource setting for fifty minutes (J-54, page 18).

She used two reading programs the Reading Horizons program which is an intervention level program and the Journeys Reading program which is grade level. Reading Horizons is an Orton-Gillingham based program which works on reading comprehension, fluency and decoding skills. She worked with A.W. on A.W.'s goals as set forth in his IEP (J-54, page 8). She used weekly spelling assessments to measure the phonics and word recognition goals; task cards after reading a story to see if they could pull-out the theme to measure the key ideas and details goal; a combination of the assessments for Reading Horizons and Journeys program to measure the craft and structure goals to identify vocabulary and figurative language; and writing samples to measure the writing standards goals. The goals would be measured in the pull-out replacement and in-class resource settings.

Ms. Craig kept a calendar when A.W. returned to school after he left in early September (R-63). A.W. did not attend her class in September aside from a few days when school first started. He returned on October 9, 2017. A.W. missed the first two story reads in the Journey's program which focused on certain reading strategies and skills and a lot of review that was done from fourth grade, Chapter 4 of Reading Horizons and the beginning class spelling lessons. She would have picked up where Ms. Alesiani left off at the end of fourth grade. A.W. missed Chapter 5 and the whole pre-unit writing program in Write Steps. She held off with unit two which was starting the personal narrative until A.W. returned. Initially Ms. Craig saved his homework assignments but after a week he was gone, and she learned from Mr. Dent that he was attending another school she did not keep all of the homework because it would be too much. When A.W. returned she did not have homework saved for him to complete. He was not expected to make up the assignments he missed. Whatever was passed out to the class for writing instruction was kept for A.W. in his writing folder.

There were four children in the pull-out replacement ELA class when A.W. returned. A.W. was a little apprehensive when he returned, but he was happy to see the other boys in the class who he had been with the year before. Around October 12th and 13th Ms. Craig noticed A.W. was refusing to come to class or wanting to leave class and sat in the CST office with Jen Wierski and Paulette Bearer. He returned on October 9th which was a half day. He came to school on October 10th and was out on October 11th.

On October 12th and 13th he spent the day in the CST office. On October 18th A.W. left early. From the time A.W. returned to school on October 9th, until the day he left, he attended approximately twenty days of school. When he did attend her ELA class, A.W. did fine. He was the highest-level student in her pull-out replacement class. He could be very engaged and other times he appeared down.

A revised IEP was drafted for A.W. following a meeting on October 19, 2017 (J-66) that discussed A.W.'s Math placement. However, since he was performing well, his placement remained in the in-class support for Math. The IEP references the difficult transition A.W. was having from the Lindamood-Bell program back to Neeta school (J-66, page 6). Another IEP meeting was conducted on October 27, 2017, wherein it was noted that A.W. had continued interruption to his school day due to anxiety and refusal to go to class. There was discussion about changing his Math placement to a pull-out resource class (J-67, page 5). Ms. Craig did not notice A.W. experiencing anxiety in her pull-out resource classroom or in the Science and Social Studies class. A.W. was more disengaged and not interested. This was in direct contrast to what Ms. Alesiani had reported.

On November 1, 2017 Ms. Craig sent an email to her supervisor, A.W.'s caseworker, his Math inclusion teacher, the LDTC and the nurse, regarding A.W.'s school refusal and missed time in the classroom (J-93, page 32). A.W. had said that this was not his school anymore and he could not get an education here. Ms. Craig did not know where a fifth grader would get that information from.

Ms. Craig was present for the IEP that was written in December 2017 and provided input for language arts indicating that A.W.'s writing was still an area of concern. He had difficulty getting started and required a lot of modeling and a lot of scaffolding and guidance (J-73, page 2). Counselling was recommended for A.W. based on his increased anxiety.

A.W.'s work samples for Social Studies (J-58), writing samples for the WriteStep program (J-59), and data sheet regarding A.W.'s DRA scores for fifth grade (J-55) were all identified. A.W. was at level twenty-eight when he left fourth grade so Ms. Craig tested

him on that level when he started her class in fifth grade because there might be some regression over the summer. She used a different book and he did okay. His fluency was seventy-five percent, his comprehension was a little lower at sixty-eight percent and he had eleven miscues. This information was used as a gauge that A.W. was at the twenty-eight level independently and that Ms. Craig could instruct him around the thirty level. Her books are leveled based on DRA levels or Lexile level, so the students know what books to read.

A.W. did not return to Neeta School after the Christmas break. Ms. Craig prepared a progress report dated December 12, 2017 noting A.W.'s progress from October 9, 2017 through December 2017 (J-62). A.W. showed strength in comprehension on the Journey's grade level comprehension test. Ms. Craig believed A.W.'s placement was appropriate and that he was able to access the curriculum in her class.

On cross-examination, Ms. Craig testified that she is currently teaching sixth grade pull-out resource for English, which is one period for sixth through eighth grade. In sixth through eighth grade they use the New Jersey Instructional Coach rather than the Journeys program. It addresses the common core standards and prepares students for the PARCC test. If A.W. had remained in Neeta, Ms. Craig would have had him for sixth grade English pull-out resource class which is a fifty-minute period. The Instructional Coach has a reading and writing component for all of the different types of writing. The WriteSteps program is not used in sixth grade. The Instructional Coach is a peer mentor text. In addition, they work on weekly spelling and she will use the Reading Horizons program for some of the harder books.

Ms. Craig is not trained in Wilson Reading. She has webinar training in Orton-Gillingham approaches to reading through the Reading Horizons program training of six to seven hours which is standard in the District.

A.W. did not have challenges writing a sentence. Ms. Craig did not know why A.W. would need access to a program that would convert his speech to text.

Ms. Craig prepared a chart of A.W.'s DRA scores (J-38). Ms. Hunter reported a DRA score for A.W. as being at a fourteen-independent level in September 2015 (J-94, page 28). Ms. Craig explained that her chart is accurate, and she just did the chart to assist herself and went back a year and a half and did not go all the way back for all of A.W.'s scores.

Ms. Craig measured A.W.'s goals for applying phonetic and decoding skills to unfamiliar words and reading in order to increase fluency by fifteen words per minute, independently, with eighty percent accuracy, through the Reading Horizons program. She would do a cold read and check fluency at the end. By December 15, 2017 they were either still reviewing or finishing Chapter 4 (J-62). After Christmas break, they started on Chapter 5.

The attendance report for Neeta elementary school reports that A.W. was four days absent from October 11, 2017 until December 8, 2017 prior to him leaving the school (J-63, page 5).

A.W.'s Math class placement did not change prior to his leaving Neeta despite what is reflected in J-67, page 16 which Ms. Craig believed they decided he was doing okay in Math (J-67, page).

Ms. Wierski's Educational Evaluation states that A.W.'s fifth grade team teachers completed a checklist. Ms. Craig was part of the fifth-grade team and she primarily completed the checklist (J-69, page 13). The report notes that A.W.'s behavior does not seriously impede his opportunity to learn or is disruptive to his peers. Ms. Craig states that it is semantics. If you are missing class, it has to impede your ability to learn, if only slightly and maybe not seriously. She did not write this.

Ms. Craig signed the signature page of the December 18, 2017 IEP (J-73). She felt that the fifty minutes of reading and fifty minutes of writing that A.W. had during the fall was appropriate for him moving forward. The in-class support provided to him was also appropriate. She would have concerns if A.W. did not have the support in the inclusion settings.

On Saturday, September 9, 2017, Ms. Craig sent an email indicating that she had been reviewing A.W.'s IEP and noted that it called for an FM system in the classroom and suggested that this be put in place as soon as possible. Vicki Ley, the social worker responded that she would be taking care of it on Monday (J-93, page 5). The District did not have an FM system in place in the classroom for A.W.'s first day of school.

Ms. Craig was not aware that the W.'s requested that A.W. be allowed to continue to attend Neeta School through September or that they were told to disenroll A.W.

On October 9, 2017, Paulette Bearer, the interim director emailed Ms. Craig she was only going to be there one more week and would be transitioning with the new director, Michael Lee and that they would want to discuss students they know have had unusual breaks in services (J-93, page 14). Ms. Craig was not aware of any other students with unusual breaks in services.

On October 11, 2017, Mr. Dent sent an email to all involved with A.W. indicating that A.W. had a bad day and refused to leave his mother's side and come into school. A.W. had advised him that he was not receiving the supports he did last year such as: no one reads his tests to him; no one helps him with Math; he never had written homework last year; and that he had a test in art class, and he could not read any of the questions. Ms. W. told Mr. Dent the IEP was pretty involved and there should be basics he had last year that he isn't getting now, according to A.W. Mr. Dent further advised that Ms. W. would be back tomorrow and was hoping to get a few answers from the case manager (J-93, page 19). Ms. Craig recalls receiving the email from Mr. Dent, and replied "Looking over his IEP there is nothing that glares out that he would need his work tests read to him" (J-93, page 21). It was pointed out that the PLAAFP in the IEP from the prior Spring of 2017 indicated that "A receives assessments read aloud by the special education teacher in a small group setting or in a special classroom" (J-54, page 4). Ms. Craig said she does do that. Ms. Craig also stated in her reply email to Mr. Dent that "I will make sure his modifications are being met and he is getting the help he needs, but the W.'s need to understand that the work load and the expectations here will be quite different from Lindamood" (J-93, page 21). Ms. Craig explained that from what she knew about Lindamood-Bell, it was a lot of one-on-one attention.

On Friday, October 13, 2017 at 8:00 a.m., Jennifer Wierski sent an email to Ms. Craig, Ms. Rivas and Ms. McKeever requesting they send A.W. down to the CST office with his work for reading and Math as she and Ms. Bearer would be working with him during these two periods (J-93, page 22). Ms. Craig did not think this was a good idea. A week later on October 20th, A.W. had difficulty coming into the school building (J-93, page 27). Ms. W. sent an email to Ms. Craig indicating that A.W. agreed to stay but begged to be picked up before Math class. The goal was to get A.W. to stay in school for the rest of the day, but Ms. W. said the Math class was the trigger (J-93, page 25). Ms. Craig indicated that A.W. was concerned about going to Math class on some days. Ms. Craig sent an email to Ms. W. referencing that they discussed the Math class routine from last year and although it would not be identical since different teachers have different styles, small changes could be made with the small group assistance (J-93, page 25). Ms. Craig spoke to Ms. Rivas and gave her some pointers and discussed pulling A.W. out more.

Later in the day on October 20, 2017 Ms. Craig went to the nurses' office to try and get A.W. to take a Science quiz because A.W. refused to go to Science class (J-93, pages 27 and 28). A.W. was upset and refused to take the test. Later on, Ms. Craig learned from Ms. W. that he needed another copy of the test because he ripped it up because he was angry. Ms. Craig is not a counsellor or a trained psychologist.

A.W. had advised Ms. Craig that he was still going to Lindamood-Bell classes after he returned to Neeta School. She believed that this was impacting A.W. in that he appeared exhausted (J-93, page 32). However, Ms. Craig had no independent knowledge that A.W. was still attending Lindamood-Bell once he returned to the Neeta school in October.

Ms. Craig was aware that A.W. had problems with his memory and that his IEP required that homework be written in his planner. Ms. W. sent an email on November 13, 2017 indicating it was imperative that his homework log be reviewed daily and that most days nothing is written in it (J-93, page 37). Ms. Craig indicated that A.W. sometimes forgot to bring his homework log.

On November 13, 2017 there was an email from Ms. Craig to Ms. W. mentioning that A.W.'s IEP says to review pronunciations with him for Science and Social Studies. They do so as a class in discussion as they read however, there is very little time if any for Ms. Craig to review vocabulary words daily during class instruction. A.W. would miss far too much instruction (J-93, page 38). Ms. Craig explained the way the inclusion class is set up, for her to start off the class going over vocabulary words with A.W., he would miss the instruction started by the lead teacher.

On November 13, 2017 Ms. Craig sent the Science teacher, Amy Wiker an email: "I can't stand it when parents say what they had last year, aren't we supposed to grow?" (J-93, page 41). What she meant by this statement is that teaching styles, curriculum and work load changes each year and she is preparing the students for sixth grade where they are supposed to be more independent and in the least restrictive environment.

The PLAAFP in an IEP informs the next teacher what strategies were utilized the year before and were appropriate for the student. You are required to implement what is in the IEP as far as goals and objectives, but not necessarily the PLAAFP. The PLAAFP is an overview of what worked in the classroom and how the prior teacher delivered the curriculum. Ms. Craig believed she was following pretty much what Ms. Alesiani had been doing, but not exactly the same.

A.W. was showing progress in his reading. A.W. was not compared to his peers because he is a separate individual with a separate IEP with different goals than someone else.

A.W. was already using "Learning Ally" which uses a real human voice and not a robot, which improves fluency. The Social Studies textbook on audio has a robotic voice which does not help with fluency (J-93, page 49). The Journey's program uses a human voice.

By email dated April 10, 2018, Dr. Lee requested Ms. Craig to forward to him all the data she had on A.W. (J-93, page 73). She did forward all of the information but did not have much Reading Horizons data on A.W.

Dr. Gillock requested that the teacher's complete evaluation scales for A.W. Ms. Craig could not answer a lot of the questions so she worked with Ms. Alesiani in filling the questions out (J-96, page 26). Ms. Craig stated they complete the forms as best they could, but certain questions were inapplicable, or they did not know the answer.

Christine Hunter testified on behalf of the District. She is a special education teacher and was accepted as an expert in the administration of special education instruction. She has been employed by the Medford Lakes school district as a special education teacher for eighteen years (J-99). She also is the supplemental instruction teacher for Wilson Reading instruction. She is a Wilson Level 1 certified teacher and teaches ELA in the pull-out resource room. As the resource room teacher, she usually starts with the phonics program using Reading Horizons which is very similar to Wilson Reading because it is based on Orton-Gillingham techniques - multi-sensory and systematic. After phonics, she moves onto grade level reading programs with scaffolding support. There is also a writing component and a guided reading component in the classroom. She also co-teaches in the inclusion setting. There are two teachers in the classroom. Students that did not qualify for pull-out resource had in-class resource, where their needs would be met along with the general education students in the class and the special education teacher would provide extra support in ELA, Math, Science, Social Studies, whatever the student needed based on their IEPs. As a special education teacher for over eighteen years, she has participated in hundreds of IEP meetings. She usually would write the present levels of academic performance of the student at the time of their current academic programming. She also writes their goals for the following year based on what their needs are and what they need to continue working on the following year.

Ms. Hunter is familiar with A.W. as he was a student in her pull-out resource ELA class when he was in third grade. She is familiar with the IEP written for A.W. when he was in second grade to be implemented in September 2015 for third grade for the 2015 – 2016 school year (J-34). Initially the IEP called for in-class resource for ELA and then a private evaluation was done and the IEP was revisited and the goals were written for the pull-out resource ELA class in September 2015 (J-37, page 7). That is the IEP that she implemented. She only had A.W. for reading and writing, ELA. He received in-class

resource for Math, Science and Social Studies and had another special education teacher that worked with the general education teacher in those classes. Ms. Hunter would have coordinated with the other special education teacher, but she only had A.W. for pull-out resource ELA.

There were four students total in the ELA pull-out resource room that year, all third grade. They worked on Reading Horizons, the phonics program which worked on decoding and encoding. They would work on their weakness of decoding for their reading, then spelling and then grade level reading in the Journey's program with scaffolding supports. The Journey program dealt more with comprehension of the text since the Reading Horizons was a mostly learning to read program. There was also a WriteSteps writing program that was used and taught at a modified rate.

Reading Horizons is also an Orton-Gillingham based reading program that teaches explicitly, sounds and symbols and builds on the core foundation of reading to where students are decoding, and spelling based on phonetic skills. It is similar to Wilson in that both systematically teach phonics based on skills and decoding. A lot of their procedures are very similar in the way they use rules to decode words, but the markings are different. Ms. Hunter prepared J-95 which compared both the Wilson Reading program and the Reading Horizons program. The two programs are very similar but use different terminology and markings (J-95).

Ms. Hunter had A.W. in the class for sixty minutes for English and sixty minutes for language arts for a total of 120 minutes per day in third grade. Approximately a half hour was spent for Reading Horizons, another half hour for the Journeys program and then guided reading and writing for the remainder of the time. Other skills were also included during this time, but generally that is how she organized the class. There were four students in the class so she would teach a lesson to the whole group and then work individually where the need came up. There are different chapters and then there were skill checks that the Reading Horizons program has as well as end of the chapter tests to assess the students. Daily assessments were also done with word cards to check how an student was doing.

Journeys is an online grade level reading program based on stories that build comprehension skills. Each story would work on a different skill such as summarizing, inferences, cause and effect, or story structure. The story was read aloud and presented on the active board. The students read along in their text book. Then they would work on vocabulary and whatever skill they were working on at the time. At the end of the week there was usually a multiple-choice test on comprehension and a vocabulary test.

The goals of reading decoding, word recognition and fluency were worked on through the Reading Horizons program that come with little decodable books that are leveled based on the chapter. They are called "Little Books". They would read the book one time and she would track their accuracy. Then she would give them time for repeated practices since some of the research indicates that to increase fluency repeated readings help student increase their words per minute. They would work with partners sometimes and time each other trying to beat their prior timer score. Usually weekly she would test them again checking for accuracy and fluency. They were simple books that were very easy to read so their words per minute did really excel. Then again, when they started a new book, a 'cold read', their words per minute would decrease. But hopefully, with repeated practice each time you read something new your fluency is going to increase in smaller increments because it is the first time reading it.

Ms. Hunter completed a progress report for A.W. In the "Language Arts Literacy Comments" she indicated that A.W. had been working hard to improve his speed and accuracy during fluency practice. With repeated readings, he has increased his rate of words per minute from fifty-eight words per minute to 180 words per minute with ninety-nine percent accuracy (J-39, page 2). A.W.'s cold read was fifty-eight words per minute and after many repeated practices, he moved up to 180 words per minute. An average third grader should be about 100 words per minute but if they excelled with repeated practice, that was fine. A.W.'s goal for fluency was to read aloud with proper phrasing, inflection and intonation independently with eighty percent accuracy. Ms. Hunter noted in the progress report that he was still progressing towards this goal at the end of the year. He did great with the rest of his ELA goals and mastered them. A.W. mastered the skills in phonics up to Chapter 3 in the Reading Horizons program. He was assessed using the skill checks at the end of the chapter topic assessments. A.W. learned 250

most common or sight words. These are words that do not follow phonetic rules and require memorization by sight.

A.W.'s third-grade report card indicated that he did an amazing job in third grade (J-40). A.W. got all A's in reading and language arts and also scored high in effort and on task performance. He was enthusiastic, he tried hard, he was motivated, he paid attention and he applied the skills he learned. Looking at this DRA scores, at the end of second grade he was at a twelve and by the end of third grade he was at a twenty-four, which was a years' growth. It was not on grade level, but it was a years' growth within that year (J-38).

They also worked on spelling through the Reading Horizons program and site words. They used the Write Steps program that usually starts with a narrative and then they work on an expository piece and then an opinion piece. They use a graphic organizer which is a very useful tool that assists them in building up all of the components in order to write – organization, word choice and mechanics.

The modifications set forth in the IEP predominantly dealt with the general education class (J-37, page 11). Ms. Hunter noted in the IEP to be aware of A.W.'s tolerance levels. However, she was pleasantly surprised that A.W. did not exhibit any frustration in her class. A.W. was higher academically than the other four in the class which also helped with his self-esteem. Ms. Hunter did not witness any anxious behavior while A.W. was in her class.

Ms. Hunter would talk and discuss A.W. with his special education Math teacher, Ms. Sachs. word problems were difficult for A.W. and she would try and work on the reading skills of the problems when she could, although her focus was Math.

Ms. Hunter created the goals for ELA for fourth grade and wrote the PLAAFP for third grade Reading and Language Arts. She noted on March 18, 2016 that A.W. was instructed in the resource room for reading in order to focus on skill deficits in decoding. He was currently on Chapter 3 of the phonics-based program. A.W. tended to do well during daily instruction by grasping concepts quickly and readily applying them. He

transferred strategies to everyday reading tasks and would point out words that followed certain rules. He had worked hard his third-grade year in improving his fluency when reading. With repeated practices, he had increased his rate of reading seventy-two words per minute to 176 words per minute. He had also improved greatly in adding expression when reading. His accuracy was affected by little words such as saw, was, his, her. A.W. was also instructed in the Journey's Reading program which is on grade level. The story was presented on the active board while being read aloud. This gave A.W. the opportunity to be challenged by more difficult text and higher-level comprehension skills. He was always eager to participate in small group discussion of text and does very well on comprehension tests. His current DRA score was a twenty at the independent level (J-44, page 2).

In Language Arts, A.W. was instructed in the resource room to focus on deficits in encoding and writing. In September, A.W. was given a pre-test on the 100 most common words and could spell sixty-nine correctly. He continued to make progress in this area and did well on weekly spelling test. In the phonics-based program, A.W. grasped concepts quickly and applied the skills to every day writing tasks, although he needed reminders to look for areas of difficulty such as ch, sh, o, u and some special vowel combinations such as ung and ong. With the support of a graphic organizer in writing, A.W. could independently outline a five-paragraph writing piece. He understood the organization of writing an introduction, central ideas and a conclusion. He made great strides incorporating voice and word choice in this writing. He needed more support with conventions, but with the use of spell check and grammar check he made corrections more independently (J-44, page 2).

Ms. Hunter recommended A.W. for the same placement next year, the pull-out replacement class for ELA for fourth grade. She believed A.W. had a successful third grade year and that he made a lot of progress. He had a good amount of time with his general education peers but had his specialized instruction for areas of need.

A.W.'s goals for fourth grade in reading would be to continue with the phonics-based program and would decode noncontextualized word lists at an instructional level, applying decoding skills. His Fluency goal was to increase ten words

per minute from baseline data on a cold read at an instructional level, during repeated practices. A.W.'s Vocabulary and Concept Development goal was to infer specific word meaning in the context of reading passages. His goal for Comprehension Skills and Response to Text was to cite evidence from text to support conclusions. A.W.'s writing goals were: to use strategies such as graphic organizers to generate and organize ideas for writing and produce three complete work samples independently; write sentences of varying lengths and complexity using specific nouns, verbs and descriptive words; and to use standard English conventions that are appropriate to the grade level, such as sentence structure, grammar and usage, punctuation, capitalization, spelling and handwriting.

Ms. Hunter had interactions with A.W.'s parents throughout the course of the year including IEP meetings, emails and conferences. On October 26, 2015, Ms. W. emailed Ms. Hunter and advised her how much A.W. enjoyed being in her classroom and that he has been reading independently every day. Ms. W. noticed that some of the mistakes A.W. made, he used to make all the time but was not making them as much unless he is tired (J-94, page 28). This was a positive email. On April 30, 2017 Ms. W. sent Ms. Hunter another email to Ms. Hunter near the end of the school year, indicating A.W. is reading independently and is making progress (J-94, page 43).

The June 4, 2018 IEP meeting was conducted to develop an IEP for the 2018 – 2019 school year (J-77). Ms. Hunter was in attendance because she was going to provide supplemental Wilson Reading instruction, two times per week for fifty minutes to A.W. She was his third- grade teacher and had a good relationship with A.W. She believed the intention was for the instruction to be one-to-one instruction.

On cross- examination, Ms. Hunter stated that she has been Wilson certified since 2004. They are currently using the fourth edition of Wilson training. An average Wilson lesson takes forty-five to sixty minutes. She has not completed Level 2 certification in Wilson. Ms. Hunter also has had the Reading Horizon's training of six-seven hours. She does not have any training in multi-sensory reading instruction through the Institute of Multi-sensory Education. She does not have any certifications from the International Dyslexia Association.

The District uses guided reading for its reading program which gives students specific strategies for reading unfamiliar words. The Dan Gutman and Fly Guy books have pictures and were not part of the curriculum but were used in the optional Battle of the Books program in which students could participate. The goals were changed for the third grade IEP when A.W. was to be placed in the pull-out resource room because in the resource room they work more on Reading Horizons, which would be letter sounds, decoding and phonics(J-37). The evaluation summaries are done to provide and share all information obtained about the student to the members of the CST (J-37, pages 3-5). The psycho-educational screening by Ms. Chase indicated that A.W. had been identified with a profile that was consistent with dyslexia and dysgraphia.

A.W.'s second grade report card indicated that he ended the year with a DRA Level 14 (J-36). When Ms. Hunter tested him at the beginning of third grade, she tested him at that level to see if he was still at that level, regressed or moved forward. That was generally the practice of the District. If it comes up as instructional, they go back and if the student tests at an independent level they move forward. In March 2016, A.W. was at a DRA instructional Level 24 (J-38). He was at a DRA independent Level 20. A.W. did not reach a DRA independent Level 24 during third grade.

Ms. Hunter's expectation for third grade would be 100 words per minute for fluency on a repeated read. A.W.'s words per minute rate of 180-198 words per minute was on a repeated read of a simple book and it was accurate. Ms. Hunter timed herself and she was at 250 words per minute. The fluency rate depends on the level of text presented.

At the end of second grade A.W. was at a DRA Level 14. To make a years' worth of progress according to the chart shown in J-55, A.W. would have to be at a DRA Level 24. On October 25, 2017 Ms. Craig's DRA data for A.W. for fifth grade was a Level 28 (J-55).

A.W. mastered the skills in phonics up to Chapter 3 in the Reading Horizons phonics program (J-39) and he received an 'A' on his report card for reading (J-40) but that did not provide specific quantitative data about his mastery of the skills that were taught in Reading Horizons.

The June 4, 2018 IEP did not specify if the Wilson instruction to be delivered by Ms. Hunter was to be one-to-one (J-77).

Ms. Hunter was not aware of any research on the effectiveness of the Write Steps program for students with language-based learning disorders.

On re-direct examination, Ms. Hunter saw A.W. every day in third grade and thought he was an amazing student. The documentation in the emails, the grade book and the progress reports show progress. A.W. worked hard and she saw progress. She had a good rapport with A.W. and Ms. W. throughout the year and if something was wrong there would have been communication about it.

Jeanne Tighe testified on behalf of the petitioner. She has testified ten times before at the OAL as an expert. She is a Structured Language/Dyslexia Interventionist (SLDI). She has a BS degree in education of the deaf and hard of hearing and a minor in speech pathology and her MA in speech language pathology all from The College of New Jersey. She is a New Jersey certified teacher of the deaf and hard of hearing. She is a New Jersey State licensed Speech Language pathologist which requires a Masters' Degree and a certificate of clinical competence (J-105). The American Speech Language and Hearing Association (ASHA) is the national governing body of her profession and she has continuing education credits reported to that agency.

She is not directly employed by the public schools. She practices as a speech language pathologist and is the owner and clinical director of Beyond Communication, which is a private practice in speech language pathology and other educational services. She works a lot with children. Speech language pathology covers all aspects of human communication including speaking, listening, reading, writing plus the motor, physiological and neurological components involved in them. She has specialized in the development of speaking, reading and writing in children with language disorders. She also is a certified Wilson Dyslexia practitioner, Level 1. The Center on Effective Reading Instruction (CERI) and the IDA (International Dyslexia Association) developed a set of knowledge and practice standards to treat children with dyslexia and she has met the standards.

The NJ Dyslexia Handbook was created to provide information about dyslexia, early literacy development, and the best practices for identification, instruction and accommodation of students who have reading difficulties (J-111). The DOE sought out experts to review research and put together a handbook as to what the Science says and how to address the needs and teach dyslexic children (J-111).

Ms. Tighe also underwent thirty hours of Orton-Gillingham training intervention. Although she is Wilson certified, she is not Orton-Gillingham certified. Orton-Gillingham versus Wilson are different methodologies but have the same underpinnings. Orton and Gillingham were early researchers in reading disorders and developed principles that have been refined. Wilson is a brand and has a way of doing things that were initially set forth in the older principles. In dyslexia intervention, an 'Orton-Gillingham' method is described as one that is highly phonetic and multi-sensory in nature. All of these practices come from a body of common research.

Lindamood-Bell, like Wilson, is a corporation and takes information and makes a product and provides training to teachers to use the product. Lindamood-Bell has three programs that relate to literacy. LIPS (Lindamood Phoneme Sequencing) is a phonemic awareness program. There are forty-two phonemes in English. A single speech sound is a phoneme. A grapheme is a letter or set of letters that represent a sound. Decoding is the act of taking a printed word and translating it into the spoken word. Encoding is translating a spoken word to the printed word. Seeing Stars addresses basic reading skills and is a basic decoding program, focusing on word parts. Visualizing and Verbalizing is a comprehension language program which teaches a child to take information and turn it into a mental image in their mind. Ms. Tighe received three days of training in these programs.

Structured literacy is a methodology for teaching literacy skills to students who have reading disabilities. Ms. Tighe teaches structured literacy using Wilson instruction and not Orton-Gillingham.

Ms. Tighe has worked as a teacher for the deaf in the New Jersey public schools as a contracted employee of Princeton Learning Center. She worked in classroom and attended IEP meetings.

All schools must provide two hours per year of dyslexia training. She provides training to special education staff. She has done independent educational evaluations. Beyond Communications is listed as an approved provider for IEE. Ninety-Eight percent of the population served is school aged.

Ms. Tighe has had extensive interactions with the Cambridge School prior to this matter. She opened Beyond Communication in 2007. Prior to that time, she had worked for Princeton Speech and Language Center and was contracted out to provide speech language pathology services to the Cambridge School for approximately two years. She also developed a pragmatic speech class for Cambridge. After she started Beyond Communication, Cambridge School contracted speech language services from her in approximately 2009. Cambridge eventually hired Ms. Tighe's staff and now have their own speech language staff. There has been no relationship between the two since 2014. Cambridge School is now a direct competitor of hers since they opened a diagnostic testing center. She has never received any revenue or income as a result of a referral to the Cambridge School.

Ms. Tighe was retained by A.W.'s parents after he was already at the Cambridge School in preparation for this due process hearing. They wanted information as to how A.W. was doing at Cambridge and was it an appropriate program for him. They also wanted to know if what the District was offering in its IEP was an appropriate program for A.W. Ms. Tighe did not recommend A.W. go to Cambridge School.

It was stipulated that Ms. Tighe is an expert in speech language pathology with a specialization in literacy disorders and is qualified to make recommendations for educational programming.

Dyslexia is a specific learning disability that is neurobiological in origin. It is characterized by difficulties with accurate and/or fluent word recognition and by poor

spelling and decoding abilities. These difficulties typically result from a deficit in the phonological component of language that is often unexpected in relation to other cognitive abilities and the provision of effective classroom instruction. Secondary consequences may include problems in reading comprehension and reduced reading experience that can impede the growth of vocabulary and background knowledge (J-111, page 5). A.W. had been previously diagnosed with dyslexia but Ms. Tighe certainly agreed with the diagnosis.

The reading rope is a visual representation of the simple view of reading, which is a very important concept. Skilled reading is fluent execution and coordination of word recognition and text comprehension (J-111, page 22). Word recognition itself has a lot of strands and language comprehension has a lot of strands. When you combine the two you have skilled reading.

Multi-sensory teaching is harnessing visual information, auditory information and tactile kinesthetic experience at the same time. For example, for the letter T and the 'T' sound a student would look at the letter, say the letter and feel the tongue movement lifting up in front and touching right behind the front teeth in their mouth as they say the letter. Multi-sensory means seeing, hearing and feeling at the same time. It does not mean play-doh or lots of whole-body movement.

Structured literacy is systematic and cumulative as demonstrated by the Sample Scope and Sequence Chart (J-111, page 29).

Ms. Tighe prepared a report of her evaluation and observations of A.W. at the Cambridge School and the proposed program in the District and summarized her conclusions (J-104). She reviewed all of A.W.'s records (J-104, pages 1 and 2). A.W. met the classic profile of a child with dyslexia. He had strong skills in language comprehension but persistent and significant problems with word recognition.

Ms. Tighe evaluated A.W. on October 1, 2018, following time spent at Medford Lakes, Lindamood-Bell and the Cambridge School. During the testing, A.W. was compliant and appeared to want to do well, but he was anxious about his performance.

He was quick to give up or shut down on something that was novel or overwhelming. Everything she did in her evaluation was language based such as listening, speaking, reading and writing and this was stressful for A.W. He was very reactive to challenges to read and write. Ms. Tighe organized her testing into four sections: listening, speaking, reading and writing. Listening was an area of strength for A.W. and he performed right smack in the middle of the average range for multiple tasks presented to him that involved listening to language and gathering meaning from it. He could read from an age appropriate text and could listen and understand. He could answer questions and think critically and remember. He could make connections. He could process language meaningfully as long as it was read to him. A.W. scored at the forty-two percentile for the Oral Passage Understanding Scale (OPUS). He also did well on the language comprehension section of the Test of Integrated Language and Literacy Skills (TILLS). He scored in the fifth percentile for following directions, which was significantly low. A.W. scored in the zero percentile of the Social Communication subtest of the TILLS test. Ms. Tighe believed A.W. shut down on this test and so she did not give a lot of weight to the result.

The complexity, the output, the variation and the sophistication of his expressive language skills fell very far below age level norms. A.W. often used the wrong words at the wrong time in an awkward way, making his expression laborious and not effective. The parents saw this at home, that A.W. would have trouble pulling the words for things that should be familiar and giving awkward explanations for things or struggling to explain things. The testing did support that A.W. has an expressive language problem. A.W.'s fourth grade teacher testified that the writing sample reflected in Exhibit J-49, page 18 was typical of his sentence construction on a cold write and in how he speaks. Ms. Tighe indicated that this reflects what she described and that there is this consistent presentation of weakness in expressive language, in terms of short sentence length, poor word usage and poor sentence construction. An expressive language problem had not been specifically identified by the District based on Ms. Tighe's reviews of the records and IEPs.

A.W. performed low average in the twenty-ninth percentile when he had to decode non words in an untimed context. In a timed context, his score dropped down to the

eighteenth percentile. He was at a similar level, nineteenth percentile, for automatic recognition of real words that are common, high frequency words. A.W. scored a zero percentile for reading fluency on the TILLS meaning that no other eleven-year old student in the normative sample had more reading errors on that task than A.W. This was not a timed test but just an accuracy test. She looked at A.W.'s fluency with the Gray Oral Reading Test (GORT) and he scored in the ninth percentile for his accuracy in identifying words in connected reading, his speed and those factors combined. These two different assessments indicate that A.W.'s reading fluency is still a significant problem.

Ms. Tighe also assessed reading comprehension in three different ways. Using the TILLS test that has a listening comprehension subtest and a reading comprehension subtest. A.W. scored in the fiftieth percentile for comprehension when listening but in the fourth percentile for the same thing when he had to work with print. She also used the GORT to assess reading comprehension and he scored at the sixteenth percentile for comprehension, about a third-grade level. Ms. Tighe also assessed reading comprehension in silent reading which is important because as a sixth grader, most academic reading is done silently. The Qualitative Reading Inventory (QRI) showed that A.W.'s comprehension level was frustration with fifth and fourth grade text, but at the third grade level text he was able to read it well enough to look back at it again and improve his outcome, so that was his instructional level (J-104, page 20).

The TILLS normative sample is typically developing peers, not children who have a language disability. A.W.'s rank in the fifty-five percentile on listening comprehension and fifty-seven percentile on story retelling is compared to typically developing peers (J-104, page 13).

The data collected by the District using the Diagnostic Reading Assessment 2 which indicated that A.W. was at a Level 28 at the end of fourth grade and beginning of fifth grade equates to a late second grade early third grade benchmark. Ms. Tighe believes it compares to her findings, but that he was instructional at that level, not independent. Ms. Tighe indicated that reading is complex and is always measured in ranges and that the District's scores are pretty consistent with her scores and did not indicate a loss of skills between fifth grade to A.W.'s performance on Ms. Tighe's QRI.

A.W.'s intellectual ability has been measured several times and it is solidly average. There is a discrepancy in his reading ability based on his cognitive ability. Skilled fluent readers do not decode anymore in that they have matched the printed word to the spoken word, and it is automatic. Automaticity is a struggle for the dyslexic brain. The research indicates to move a student like A.W. to that level of automaticity requires a lot of systematic guided application of these skills with increasingly challenging texts. Lots of reading of novel text, with correction and the systematic application from word to connected text. This can be accomplished in Wilson instruction.

A.W.'s writing was assessed using two instruments, the TILLS and a non-standardized functional and formal writing assessment (J-104, page 23). He scored a zero percent in his rate of word errors and a zero percent for how much information he successfully included in his writing. He scored twelve percent in written expression of a sentence because he was able to move some modifiers. His writing sample was poor in that it contained very limited output. He produced three sentences that were not well constructed. Ms. Tighe indicated that it almost met third grade paragraph writing standards according to the core curriculum standards (J-104, page 26). The results of the writing assessments were very concerning.

Ms. Tighe recommended that A.W. continue to be educated at the Cambridge School until he attains the reading, writing, speaking and listening skills expected relative to his unique circumstances and demonstrates the ability to apply them functionally at a level supportive of reintroduction into general education. In her professional opinion, reintroduction into general education is a reasonable expectation for A.W. if he can improve his reading accuracy and fluency skills to a point that he is close to grade level.

On October 11, 2018, Ms. Tighe observed A.W. at the Cambridge School for the three classes of language instruction including Writing, Language and Reading. The Writing class addressed writing skills, specifically sentence composition, paragraph composition, essay composition, grammar, punctuation. The Language class at Cambridge is where they do the Wilson instruction which encompasses decoding and encoding, spelling and word reading and identification skills sight words and reading

fluency. The Reading class is a comprehension class with a lot of read aloud so the students can access text that they would not be able to read independently.

Ms. Tighe observed the writing class first in which the teacher used a smartboard for visuals and auditory and had the students say and repeat the word, which is actually a little bit of a kinesthetic component. The lesson was very organized and structured. There is a lot of production verbally in terms of the process in the classroom where the students are encouraged to explain and constantly asked what the next step is. The teacher gave exit ticket questions which is a quick way to make sure the students understood the lesson learned before they can leave. There were movement or stretching breaks between the classes before the students sat back down.

There was carryover between the classes even with different teachers. Ms. Tighe observed the language program which utilized a Wilson program called "Just Words". The Wilson method does decode first and then moves on to encoding within the same lesson. Reading and the decoding of words and then spelling and the encoding of words. Ms. Tighe also observed the Reading class where the teacher displayed a comprehension exercise on the smartboard. The graphic organizer was from the Story Grammar Marker program, a research based instructional program that teaches the explicit structure of narratives to support reading comprehension and written expression (J-104, page 30).

Ms. Tighe noted her impressions following her observation at Cambridge School (J-104, page 31). A.W. appeared at ease at all times, compared to her evaluation of A.W. The instruction in the Writing and Language classes was highly explicit, with many worked examples in a consistent format and appropriate opportunities for guided and independent practice. Sentence construction skills were being taught explicitly, with sensitivity to the need for both oral and written practice. The phonetic lesson worked on decoding and encoding of the same orthographic concept in a fully integrated way. The targeted phonetic rule was explored through the use of auditory, visual and kinesthetic modalities. Students were explicitly instructed in how to use tools to overcome challenges. Working memory demands were moderated in many ways, including lesson pacing, consistent structure, minimization of redundancy or extraneous stimuli and

absence of multi-modal demands. New skills were taught in one class then revisited and reinforced in another class with another teacher, showing tight coordination of instructional planning across the curriculum. Comprehension instruction used a research-based and validated intervention approach as well as traditional form of critical thinking questioning. (J-104, page 31).

A.W. finished the second half of fifth grade at the Cambridge School. The end of the year testing in May 2018 from Cambridge School, included the Gates-MacGintie Reading Test and the Word Identification and Spelling Test (WIST) (J-78). Ms. Tighe was not familiar with the Gates-MacGintie test. However, she was very familiar with the WIST test. There was a statistically significant jump in word identification skills from a standard score of eighty-five to 100, which is right in the middle (J-78, page 3). His progress in spelling was smaller, which is common for children with dyslexia to improve in reading before spelling. This is good progress in the amount of time he was there from January 2018 to May 2018. Ms. Tighe stated that the age and grade equivalents are not as psychometrically sound as percentile ranks and standard scores. At any grade level, children have a range of average, so she would not rely on those as strongly as she would rely on standard scores and percentile ranks.

Benchmark Assessor Live is software that targets oral reading fluency. Hasbrouck and Tindal are the researchers who compiled this data (J-78, page 7). It does not test reading comprehension like the DRA-2, just fluency. On January 9, 2018 when A.W. entered Cambridge he showed words correct per minute rate of ninety-one. When he was retested in May, his word correct per minute rate was 115. The gap between what he could do and what was expected for his age narrowed during that time but did not disappear.

The writing program called the Writing Revolution by Judith Hockman, uses a 'Quick Outline' any time the student is going to write a paragraph and is used at Cambridge across the curriculum. The quick outline aims to get ideas flowing and transferred to paper simply without the demands of sentence construction and spelling. After a draft, he would go over it with a writing checklist that pulls in other skills that have been worked on and build the paragraph (J-79, pages 19- 23).

Ms. Tighe helped develop the Cambridge Study Organization and Communication (SOC) class and was one of the first teachers of the class years ago when she was contracted to Cambridge (J-88, page 40). It covers a lot of executive function skills such as how to manage your time and your things as well as social communication. Social communication meaning how the students problem solve with each other and manage and build their relationships. There is also an emotional aspect which is new, and she is not familiar. She is aware from her record review that A.W. has anxiety but that is outside her scope of practice. As a speech language pathologist, she would not treat anxiety, but she would be trained to look for it to make sure the proper referrals happen to manage the disability. Anxiety has a significant impact on language output.

A.W. is receiving two individual forty-five-minute sessions per week of speech language therapy (J-87). A recording from the IEP meeting of June 5, 2018 was played (J-112). Although A.W. had the core foundational skills in the letter sound relationship in the fifty percentiles, he needed the continued daily practice using the Wilson instruction until those skills become automatic. The WIST test is not timed. He was accurate and got a good score, but he needs the skills to be automatic and instantaneous. A.W. shows some competency at the word level but he has not integrated them with bigger skills such as reading a sentence, multiple sentences, a paragraph or writing functionally. Progress in word reading skills would not provide a good sense of how much progress A.W. has made broadly in reading. Writing instruction is within the scope of practice for a speech language therapist. The long-term objectives referenced in the Speech Language Progress Report reflect what Ms. Tighe heard in the IEP recording as to what therapy was being provided to A.W. (J-87).

The Cambridge School is accredited by the Middle States Association Commission on Elementary Schools (J-88, page 3). Technology is used at the Cambridge School which is important for A.W. to have assistive technologies in place to support writing. Various software programs such as Speech to Text or Word Prediction would help him produce correct, clear written output. The staff at Cambridge have training in Lindamood-Bell programs. The Cambridge School teaches Greek and Latin word roots to help increase vocabulary and reading (J-88, page 30). There is research indicating that instruction in morphology is very effective for students with dyslexia.

Ms. Tighe's conclusion was that the language instruction program at Cambridge is appropriate for A.W.'s language disability and presentation (J-104, page 42). The structured literacy, the daily nature of the classes, the amount of language instruction per day of 135 minutes, the specific programs being used, not just Wilson but also the Hoffman Writing, the explicit language instruction, the Story Grammar Marker, and the integration throughout the day she saw leading from class to class so that there is generalization. All of these features are in line with what she would recommend for A.W. and his needs as demonstrated in her evaluation.

Ms. Tighe also conducted an observation at the Neeta School on November 1, 2018 (J-104, page 31). A.W. was not there at the time as he was at the Cambridge School. She observed the classes that A.W. would have been in if he were attending the sixth grade at Neeta school based on the District's IEP that was developed at the June 4, 2018 IEP meeting (J-77). Ms. Tighe observed the pull-out replacement reading and language arts class, the in-class resource Social Studies class and the supplementary instruction in reading class. Ms. Tighe was accompanied by Tara Mahon.

She observed the fifty-minute pull-out replacement class for English which had five students in the class. Initially they worked on a quick exercise analyzing some text in a writing workbook and then they worked on an ongoing writing assignment and were drafting and doing a lot of independent work while she was there. She did not observe anything else happening in the class other than writing. This was the only ELA class, other than the supplementary Wilson instruction A.W. was to receive twice a week. So, this one period of English had to be used for both reading and writing instruction. Ms. Tighe confirmed with Ms. Mahon that A.W. would only be receiving forty-eight minutes of ELA daily and not the 150 minutes daily of ELA set forth in the IEP.

Ms. Tighe observed the writing lesson utilizing the 'Instructional Coach'. There was not any reading instruction going on during the writing lesson but the reading for the students went smoothly and everyone in the class was able to just read the materials that were there. The use of mentor text was a critical cornerstone of what they were doing that day and Ms. Tighe does not have a problem with that. However, she explained that explicit instruction, from the bottom up, as was seen at Cambridge, like generating words

and phrases and putting them together in a sentence is more productive for a student with a language-based learning disability than using a model, which she described as top down instruction. Ms. Tighe also felt that the sixth-grade curriculum that was being delivered involving crafting your writing to make it more interesting, was above A.W.'s level of requiring basic language competency. Ms. Craig's reading class uses the 'Instructional Coach' at a sixth-grade level, however A.W. is still struggling with reading accuracy and reading fluency and his skills are very behind. The Reading Horizon's program is a phonic program which would be targeting A.W.'s disability but there is not enough time in Ms. Craig's class to cover the grade level curriculum and phonics aside from intermittent use of Reading Horizons. That would not be appropriate to A.W.'s needs. Ms. Craig's spelling instruction using the 'Stetson' spelling program would not be appropriate for A.W. as primary spelling instruction because it is a memorization program and not a phonetic spelling program. Some spelling instruction has to rely on memorization because some words do not follow the rules, but it would be insufficient for A.W.

Ms. Tighe was of the opinion that the use of spelling pyramids (J-58, pages 33-35) is contrary to what students are taught with the phonetic method where words are divided using phonetic and orthographic significance. The appropriate way to teach students with dyslexia spelling is through the phonetic process.

Ms. Tighe observed the pull-out replacement class for English that A.W. would have been in for sixth grade. His proposed IEP also called for supplementary aids and services identified as "A.W. will be provided with a multi-sensory, direct instruction decoding program two times per week for fifty minutes in addition to his pull- out resource reading class. This will happen during his advisory period." (J-77, page 7). It was Ms. Tighe's understanding that this was going to be Wilson instruction. Ms. Tighe observed this instruction and found it to be perfectly competent Wilson instruction. However, in her report Ms. Tighe indicated that the minimum amount of instruction should be no less than sixty to seventy-five minutes twice per week in a one-on-one setting (J-104, page 41). The IEP falls short of what Wilson recommends is the minimum appropriate amount of instruction. It can also be delivered for shorter forty-five-minute periods five days per week. The proposed IEP calls for language instruction, that is, reading, writing and Wilson

instruction would be forty-eight minutes three days a week and ninety-six minutes two days a week because of the supplementary period two days a week (J-77).

The New Jersey Dyslexia Handbook outlines a program of structured literacy. It is not specific to some school-based curriculum.

The proposed IEP does not allot the appropriate amount of ELA time necessary to meet A.W.'s needs, whether it is in the ELA class or provided as intervention services. There are not enough minutes of language instruction in the proposed IEP that would be sufficient for A.W. There is no magic formula as to how much, however she believes he needs structured literacy intervention every day. Two days of structured literacy intervention for A.W. is insufficient. Even if Wilson instruction was provided every day, which would go a long way, she would still be concerned about the writing instruction.

The New Jersey Department of Education recommends a minimum of ninety minutes of uninterrupted literacy instruction daily for grades Kindergarten through fifth and eighty minutes per day for grades sixth through eighth because there is more content at those grade levels. This does not include intervention for students who are showing deficient skills. There are no hard and fast rules as to how the services can be delivered. It can be in the classroom, pull-out resource, interventional or supplementary. Ms. Tighe agrees with these recommendations. As students get older and the gap between actual and expected achievement broadens, more time and increased intensity of instruction will be needed. However, what happens is that the older children get less intervention for purely logistical reasons because when you get to middle school you have to have Science and Social Studies every day which was not required to be taught every day in elementary school.

In addition to dyslexia, A.W. has a disability with written expression.

In Ms. Tighe's opinion, even if the Neeta school has a standard schedule of forty-eight minutes of ELA for sixth grade, an appropriate program could be developed for him to remain in the school. There are things that can be done and arrangements that can be made using his program as a baseline, to make an appropriate program for A.W.

The goals set forth in the IEP are the driving force of a special education program as they outline the skills the teachers and interventionists are responsible for developing in the students over the course of the year. The proposed IEP for sixth grade contains a decoding goal (J-77, page 5). Although it contains a decoding goal, it is not aligned with the Wilson reading program. The criteria for success are eighty percent whereas in Wilson you cannot move to the next level until you achieve ninety percent accuracy. Encoding means spelling through the phonetic process and an encoding goal should be contained in the writing section. There are no spelling goals in the IEP. The writing goals requires A.W. to work towards writing a five-paragraph essay. Although this goal is not inappropriate, it is insufficient. In Ms. Tighe's opinion, the literacy and language instruction presented the June 5, 2018 IEP does not lay out an appropriate program to meet A. W.'s needs. She also observed a Social Studies class at the Neeta school because a Social Studies class involves a lot of language. The Social Studies class she observed had an in-class support special education teacher present. The Social studies class was an academically rigorous class with a heavy language load. There was a lot of advanced terminology and vocabulary and a high level of oral and written language. The class was more advanced in reading and writing skills than the level at which A.W. was functioning. The IEP does not outline any assistive technology that would help A.W. such as Text-to-Speech access to textbooks. An appropriate accommodation for a student with dyslexia to use in a Social Studies classroom would be a Text to Speech program.

The speech and language evaluation of A.W. that was conducted in June 2014 does not reflect that a classroom observation was done which is significant because an evaluation should take into account real, applied language skills (J-13). That evaluation identified A.W.'s expressive language deficit in a very limited capacity in the Clinical Evaluation of Language Fundamentals (CELF) where he scored 25% on the low average in the "formulated sentences" section. Ms. Tighe believes further testing should have been done at that time to determine whether there was an expressive language deficit.

The Learning Evaluation of A.W. conducted in November 2014 also provided the District with information regarding A.W.'s expressive language skills in the Woodcock Johnson subtest that measures oral expression in which A.W. scored in the eighth

percentile (J-21). Ms. Tighe indicated if she were the speech language pathologist on the team, she would have done more such as administer an oral language test that examines verbal expression beyond the sentence level. The IEP developed following this evaluation provided for speech therapy and listed expressive language goals as “recall personal information and events” which was more of a retrieval goal (J-24). In the “story recall” section of the “oral language” section of the learning evaluation, A.W. scored a sixty-one which placed him in the point five percentile very low range of achievement (J-21, page 4). The goals in the IEP dated June 23, 2014 were not appropriate to meet A.W.’s expressive language issues.

The June 23, 2014 IEP’s reading goals did not address his disability, which was reading the words on the page, decoding, identifying and fluency, not comprehension goals (J-104, page 4). Dyslexia is a disability with print, not a disability with broad language comprehension. His strength is comprehension. The print, the decoding, the word identification and the reading fluency are his disability.

The May 2015 IEP, for third grade also did not contain goals or objectives related to decoding, encoding, reading and fluency (J-28, page 7). This IEP was revised and A.W. was moved from in-class support for ELA into a pull-out resource setting for ELA and new goals were proposed that addressed important basic skills including “use letter sound knowledge, instructional analysis to decode words” and “read with proper phrasing, inflection and intonation” which refers to fluency (J-37). Spelling is also included as a goal. These skills are touched upon in this IEP but don’t represent a structured literacy program and do not contain measurable goals to see if he was making appropriate progress or mastering the necessary skills. The progress report for the end of third grade for “language arts literacy comments” indicates that “With repeated reading, he has increased his rate of words per minute from fifty-eight words per minute to 180 words per minute with ninety-nine percent accuracy” (J-39, page 2). Although this scenario may be possible with repeated reads of simple texts, it is completely non-functional and not how to teach fluency. The goal of reading fluency instruction is to get the reader to read aloud in a way that sounds like speech and not getting bogged down by-word identification and the pace. The last comment indicates that “A.W. tends to do well in the phonics program and is very systematic at applying decoding skills although an emphasis in carrying over

the skills learned to every day reading and writing tasks is a focus.” This does not surprise her because A.W. is an intelligent boy and when taught a rule he can do it in a limited instructional context but cannot apply it in connected reading. Although eighty percent accuracy is a common benchmark in IEPs, it is not sufficient to be functional in reading.

Ms. Tighe reviewed the psychoeducational report prepared by Katherine Chase (J-32). She has a masters’ degree and is a learning disability teacher consultant. She identified A.W.’s performance as consistent with dyslexia and dysgraphia profiles. She is qualified to identify dyslexia. Based on the evaluations Ms. Tighe reviewed that the District had done, she would have identified A.W. as dyslexic. The District identified A.W. as having a deficit in written expression. Writing is best understood as consisting of three tiers, the physical part, the spelling part and the language part. One of the most prominent manifestations of dyslexia is the deficit in spelling.

Ms. Chase prepared an academic and social management plan for A.W. and made general recommendations including the use of assistive technology such as access to recorded research, Text to Speech and tape-recording lectures. Ms. Tighe agrees with Ms. Chase’s recommendation and that it was appropriate then and continues to be now. Ms. Tighe also agrees with Ms. Chase’s recommendation that A.W. needs a reading specialist or teacher who is trained in strategic teaching of systematic multisensory and metacognitive methods and programs (Orton-Gillingham method, Project Read/Language Circle, Wilson, etc.) which involve phonemic awareness, spelling, written language and academic fluency strategies (J-33). This is the definition of Structured Literacy. The District’s testing showed that A.W. needed this as of second grade.

In A.W.’s progress report for third grade, Ms. Mahon notes that all of his speech goals were mastered (J-39, page 3). Ms. Tighe does not dispute that the goals Ms. Mahon had set were mastered. However, A.W. still had expressive language deficits.

The decoding goal listed in A.W.’s fourth grade progress report indicated that he was to “decode non-contextualized word list at instructional level applying decoding skills” (J-51). Ms. Tighe had a problem with this goal in that it should also include contextualized reading. Also, she did not understand what a word list at instructional level was because

words do not have instructional levels, they are classified by features. Also, the goal of mastering a decoding skill with eighty percent accuracy is not a functional level, you need to read words with far more than eighty percent accuracy. The fluency goal was “To increase ten words per minute from baseline data on a cold read at instructional level during repeated practices.” Ms. Tighe did not believe that was an appropriate fluency goal. Although repeated readings may have some instructional value, what you want to see happen is fluency improving with other cold reads at a comparable level.

A.W.’s fifth grade progress report noted that “By the end of the year, A.W. will apply phonetic and decoding skills to unfamiliar words when reading in order to increase fluency by fifteen words per minute independently at eighty percent accuracy as measured by teacher kept data” (J-62). Ms. Tighe stated that this goal is illogical based on the Science of reading because to get fluent, decoding has to be automatic and not a process you are going through anymore while you read. You only have to decode a word four times and then it is stored in long term memory and you don’t have to decode it anymore and you can identify it fluently. If you are applying decoding skills your fluency will be slower. The goals are written in such a way that lots of things are conflated together and Ms. Tighe could not see a clear picture of A.W.’s progress in A.W.’s becoming a skilled and fluent reader through intervention.

During the summer between A.W.’s fourth and fifth grade year he was enrolled in an interventionist program at Lindamood-Bell Center and had instruction using the Seeing Stars and Visualizing and Verbalizing programs. Seeing stars is a reading program with a primary emphasis on automatic word recognition. Visualizing and Verbalizing is a language program that does not work on print skills. Students are taught to make pictures in their minds than link them to language for both expressive and comprehension purposes. Both of these programs addressed A.W.’s deficits and he progressed while in that program.

Eventually A.W. will retain reading skills but it is going to take time invested in a consistent method that is applied with fidelity and with appropriate intensity over and over again. Dyslexia does not go away and most dyslexic adults report that reading is still slower for them.

The DRA scores for A.W. and the gap between A.W.'s reading skills and those of his peers widened between his second-grade year, at which time he was only a half year behind, until the end of his third-grade year, in which he was nearly two years behind. A DRA twenty-four is the benchmark level for mid second grade and A.W. was at that level midway through fourth grade suggesting that he was two years behind in reading skills at that point.

A Lexile level refers to the complexity of the text.

Ms. Tighe is aware that the District implemented a Reading Horizons program in A.W.'s ELA class. She has observed it but has not been trained in it. There are similarities between the Wilson and the Reading Horizons which is also a phonics program. It is a kind of condensed version of a similar general philosophy of how words work and how we want kids to approach them. In fourth grade A.W. received small group instruction of forty-five minutes of Reading Horizons taught by a special education teacher. He had fifteen minutes of individualized instruction and then would work at other centers for fifteen minutes each working on spelling, reading the Horizons text for the week or marking up words according to the Horizon's rules. The rest of the reading period was spent on Journey's grade level curriculum working on comprehension and story elements. In Ms. Tighe's opinion, this was not adequate structured literacy instruction for A.W. in fourth grade. The fifteen minutes of direct instruction was not enough.

A tape from the IEP meeting prior to A.W.'s sixth grade year was played for the witness. A district representative stated that A.W. made very good progress for the year moving from a DRA of twenty to a twenty-eight. That is the typical progress a second-grader makes from the middle of second grade to the end of the year. This was A.W.'s progress in fourth grade. A.W. has average intellectual ability and should not be years behind his curriculum. He has a print disability and they need to get his print skills to the point where he can access his curriculum which he is cognitively capable of doing. For A.W. going into fifth grade still reading with skills expected from a second grader is a big gap.

If A.W. wasn't meeting the goals established, the program should be re-evaluated to correct the problems either with more intensive programming, teacher training or more intense delivery of instruction. These are all different variables that can be manipulated to improve the outcome. According to the Dyslexia Handbook, the course correction or intervention with a student with dyslexia is not supposed to end until the student has reached or approximated grade level reading ability.

On cross-examination, Ms. Tighe admitted that she is not certified as a special education teacher or a regular education teacher. She is familiar with The Word Identification and Spelling Test (WIST) and has administered it many times. She did not do so for A.W. and cannot confirm that the examiner followed all of the standardization procedures in administering the test (J-79).

She is very familiar with the Cambridge school and first came in contact with them for the 2005 – 2006 school year when she was contracted to them through Princeton Speech and Language Center to provide speech and language services. She also taught there for the next school year 2006 – 2007 as a salaried employee of Princeton. She left Princeton Speech and Language Center in the summer of 2007 and opened her own practice, Beyond Communication. In 2009 – 2010 Cambridge contacted her to provide speech and language pathology services. Ms. Tighe did not provide the services herself, she had a speech pathologist on staff who provided the services. This arrangement continued for several years ending after the 2013-2014 school year. The final year services were provided she had two professionals servicing Cambridge. Cambridge paid Beyond Communications approximately \$325,000. This is a gross amount and does not reflect the profit received.

A.W. received two individual forty-five-minute sessions of speech and language therapy per week at the Cambridge School (J-87). A.W. does not have a speech issue. Speech and language therapists are credentialed to work on language, speaking, listening, reading and writing. There is an overlap between what happens in ELA class and what happens in speech and language therapy sessions. One of the goals listed in the speech and language progress report was to improve comprehension of expository text in the skill area of reading comprehension (J-87, page 2). Although this is an

appropriate goal to be addressed by a speech and language therapist in a therapy session, it is more often seen as a goal in an ELA classroom setting. Ms. Tighe did not observe speech and language therapy being provided at the Cambridge School. The Hochman Basic Writing Skills Program, the Winston Grammar Program and the Banish Boring Words text were identified as the methods to address the skill area of “Written Expression/Executive Function” which are strategies used in the ELA class at Cambridge. One of the goals listed for the skill area of Executive Function: Metacognition is that A.W. “will improve his metacognitive abilities using therapy goals and tasks as measured by clinical observation.” This is not a well written goal. The auditory processing and memory goal states that A.W. “will identify and utilize effective compensatory strategies to improve auditory and working memory skills independently in eight of ten opportunities”. This is also not a well-written goal and is not capable of being measured.

The Learning Evaluation was completed by the LDTC who possesses a certification that Ms. Tighe does not (J-21).

The second-grade progress report (J-30) was compared to the goals set forth in the third grade IEP (J-37). The goals changed from second to third grade. Ms. Tighe testified on direct that this is the first time there is decoding and fluency goals in the IEP. When things are not going as expected you would make a correction. This would be a course correction. There also was a change in A.W.’s placement from his inclusion ELA class for second grade to a pullout replacement class for ELA in third grade. This correlates to a change in the goals.

Ms. Chase, as an LDTC, is qualified to make a diagnosis of dyslexia, as is Ms. Tighe, as a speech and language pathologist.

Ms. Tighe rendered her report based upon her record review, discussions with the parents, observation of A.W. at the Cambridge School and her observation of the Medford Lake’s school November 1, 2018 (J-104). She has no independent knowledge of what took place in second through fifth grade. In her report, Ms. Tighe indicates that A.W.’s mother recalled that homework became even more difficult his third-grade year because A.W. lacked the reading skills needed even to do his Math homework. It was the

impression of his parents that A.W.'s literary skills did not seem to be changing to a noticeable degree (J-104, page 4). Ms. Tighe indicated in her report that throughout the year in fourth grade, Ms. W. recalled that A.W. continued to show the inability to read in a functional way and that he could not independently pick up a book and read it for pleasure or to complete an assignment (J-104, page 5). However, Ms. Tighe's attention was directed to various emails that she had not previously seen between Ms. W. and A.W.'s teachers sent during the third and fourth grade years that indicated that A.W. was making progress in his reading and that he was reading independently and liked his teachers and friends. A.W. was also reading and solving his Math problems independently (J-94, pages 28, 46, 55 and 59). On February 2, 2017 Ms. W. writes that "A.W. is having an exceptional year gaining more self-confidence and enjoying the classroom setting immensely! This is no doubt due to the amazing teachers he has this year ! ! ! !"(J-94, page 65). On March 2, 2017 Ms. W. emailed the teacher that for the first time with very little assistance, A.W. read his own study guide and got stuck on less than ten words on a two-sided sheet. These were larger more challenging words but, on the rest, he was very fluent and had a good understanding of the definitions. His mother also wrote that A.W. bought an actual book at the book fair, not one loaded with pictures like he usually did (J-94, page 67).

During her observations of A.W. at the Cambridge School she noticed that A.W. took a leadership role in starting discussions and offering the first round of ideas (J-104, page 28). It would not surprise Ms. Tighe that A.W.'s teachers in Medford Lakes made the same observations in third through fifth grades. A.W. loved to share his ideas with his classmates and always asked outside of the box questions that require great thought (J-52).

The Cambridge School does not have any nondisabled typically developing students. They all have dyslexia and other language-based learning disabilities. There is an advantage to a disabled student being amongst typically developing peers for peer modeling.

Ms. Tighe complimented the Cambridge School for integrating what took place in the ELA classroom across the different classroom settings. Ms. Tighe did not know that

when A.W. was in Medford Lakes his pullout replacement ELA teacher was also his special education teacher in his inclusion settings. Ms. Tighe thought that was a great arrangement.

There is no dispute that A.W. has a reading disability. It was not a surprise to Ms. Tighe that A.W.'s DRA scores are behind grade level. She also does not have unrealistic expectations that any intervention program would take a student who is two years behind and get them to grade level in a year.

Ms. Tighe observed the Medford Lakes program on November 1, 2018 when A.W. was already attending the Cambridge school. Her observations were of other students with IEPs in the pull-out replacement setting. She was not privy to their IEPs for privacy reasons. So, when she observed the teacher working on a specific skill or specific intervention outlined in the student's IEP, she would not have that information and would not know what the teacher was doing. She has never seen an IEP in effect for A.W. at the Medford Lakes school or observed him receiving instruction yet came to the conclusion that the District's program was inappropriate.

Ms. Zuba, the parent's attorney, referred this case to Ms. Tighe who had previously worked with the firm. She has been referred approximately fifteen cases for evaluations from that firm. Evaluations cost \$2,600. Testimony at hearing is additional and Mr. and Mrs. W. will probably have a bill in the amount of \$4,000 since this is her third appearance. This is Ms. Tighe's fourth time testifying for Ms. Zuba's firm.

Ms. Tighe's conclusion was that the District was not offering an appropriate program for A.W.'s sixth grade year. Cambridge school was where he was and she was asked if it was appropriate, which she said it was. That does not mean that it is the one perfect program and there are not any others. The tuition at the Cambridge school is \$50,000.

On re-direct examination, Ms. Tighe stated she was competent to give an opinion regarding instruction delivered by people who possess certifications she does not, as long as it involves language disability, which is her area of expertise.

The books that are referenced in the email like “Fly Guy” are early first grade level books with pictures (J-94, page 28). “Learning Ally” is an audio book service (J-94, page 46). Ms. Tighe does not rely on uncorroborated parent reporting and does not request to review emails before writing a report.

The December 4, 2017 Educational Evaluation of Jennifer Wierski (J-69, page 5) indicates that A.W.: “will be inattentive in the classroom particularly in Social Studies and is reluctant to start independent tasks.” “At times, A.W. has been observed by his teachers to be impulsive, interrupting others, interrupting conversations, etc.” “As for uncooperative behavior, A.W. can be observed to be oppositional and will act defiantly, pout and refuse to work in the classroom at times.” His teachers have observed that he can be anxious at times which behavior manifests itself in tense body language, going to the nurse or somatic complaints. Ms. Tighe did not observe any of this behavior at Cambridge.

The sixth grade IEP that Ms. Tighe reviewed did not have in-class support for Social Studies or Science. In Ms. Tighe’s opinion, the literacy programming in Medford Lakes for A.W. from his second grade through fifth grade year was not appropriately designed to meet his needs.

James Gillock testified on behalf of the petitioner. He is a Doctor of Education in school psychology and is a diplomate of the American Board of School Neuropsychology. He has experience as a special education administrator and as a case manager in New Jersey public schools. He is certified in New Jersey as a school psychologist and also as a supervisor/principal. His practice is limited to conducting neuropsychological evaluations in Pennsylvania and New Jersey. He has qualified as an expert in due process proceedings at least ten times in Pennsylvania and on one occasion in New Jersey (J-107). He has formed an opinion based on his specialized training and experience with respect to the unique needs and appropriate educational programming for A.W. He conducted a comprehensive neuropsychological evaluation of A.W. dated January 4, 2018 (J-96). He conducted a partial school neuropsychological re-evaluation of A.W. after he was placed at the Cambridge school (J-97). It was stipulated between the parties that Dr. Gillock was an expert witness qualified to testify in the areas of school

psychology, case management of students with disabilities and the administration of special education programs.

A.W.'s parents brought him to Dr. Gillock at the end of August 2017, prior to his entrance into fifth grade at the Medford Lakes Public Schools. He met with A.W. seven times. Dr. Gillock administered a standard battery of neuropsychological tests of attention, memory, executive function, I.Q., achievement, social and emotional adjustment. He interviewed A.W. and also assessed his phonological skills and tested his visual perceptual skills (J-96, pages 13-14). Dr. Gillock observed A.W. at the Neeta school on October 17, 2017 in a pull-out resource reading class and in an in-class resource Math class. He met with the parents the first three dates of August 30th, September 8th and 15th to obtain a history. The next step was the classroom observation before Dr. Gillock did the testing. He also interviewed teachers and collected behavioral rating data from them. Dr. Gillock concluded that A.W. had a significant reading and spelling disability where the two primary codes, both the phonologic as well as the orthographic code were impaired. He found significant deficits in the area of reading, written expression as well as Math. He also found A.W. to have an adjustment disorder with anxiety. He has a good potential for growth if taught and treated properly. He has an IQ of 107.

Dr. Gillock conducted a classroom observation at Neeta school on October 17, 2017 (J-97, page 15). There were twenty-two students in the in-class resource Math class. As a child with a history of anxiety and a specific learning disability, A.W. needs a teacher who speaks calmly, patiently waits for verbal answers from children and is not overly directive or intimidating (J-97, page 17). Prior to his observation of Ms. McKeever's Math class, Dr. Gillock had met with Ms. Craig, A.W.'s pull-out resource teacher who advised him that she was concerned that recently A.W. was reluctant and anxious about going to Math class. Dr. Gillock asked Ms. Craig to ask Ms. McKeever if it was okay for him to observe her class and she consented. Dr. Gillock observed the Math class and was appalled by what he observed. He stated it was an emotionally toxic environment created by the teacher who talked very loudly and rapidly and who barked multiple directives at the children and periodically threatened them with consequences. He was appalled the way she spoke to fifth grade children. There are modifications that can be

included in an IEP for a student like A.W. that would modify the behaviors he saw Ms. McKeever demonstrate. They would include speaking slowly and in a normal tone of voice, allowing ample time to respond, using praise and being careful of criticism or threats of consequences. The IEP going into fifth grade contained a modification to reinforce student for appropriate behaviors, use praise generously and to monitor the student's comprehension of language used during instruction (J-54, page 10).

Dr. Gillock did not see a lot of attention being given to A.W. The special education teacher was moving about the classroom and she did spend time on a couple of occasions with A.W. Ms. McKeever failed to create the right kind of learning environment on that day he observed her for a child who is anxious and has auditory processing problems. Modification of the learning environment is an appropriate subject for an IEP. Dr. Gillock noted in his report that there was no FM sound field system in use when he observed A.W.'s general education Math class (J-96, page 46). A.W. was supposed to have an assistive technology device utilized in his general education classes because of his auditory processing problem. It helps with clarifying and amplifying the teacher's voice amidst the background noise so the student will remember what the teacher said.

The PLAAFP drafted in March 2017 for the fifth grade IEP indicates that A.W. was able to engage in whole group and small group instruction with redirection. He benefited from a small group center-based instruction as it allowed for more modeling and repetition of concepts. Center based instruction also assisted A.W. in maintaining focus on the concept being taught as he had a change in center, teacher instruction and individual work (J-54). Dr. Gillock did not observe any center-based instruction in small groups. During his observation the whole class was taking a test.

The PLAAFP also stated that A.W. "is able to grasp higher level concepts with a slow model and frequent repetition." Dr. Gillock did not observe this in the fifth-grade Math class. It also states that "A.W. benefits from completing multiplication and division problems on an enlarged model using individual boxes that break apart the number to complete a problem as well as showing specific steps to the problem using different colors which allows him to keep his work organized and assist in a strong visual understanding." Dr. Gillock did not observe what A.W. was writing on. The PLAAFP also stated that A.W.

receives assessments read aloud by the special education teacher in a small group setting or in a separate classroom. Dr. Gillock saw A.W. take the test in the same room as the rest of the class. The special education teacher came over to see A.W. two or three times during the class, but Dr. Gillock did not know what was said. These in-class support strategies were appropriate for A.W. Dr. Gillock would expect to see these specific types of strategies carried over from the PLAAFP section and reflected on the modifications, supplementary aids and services section of the IEP. However, in Dr. Gillock's opinion it did not matter what strategies were being used when the teacher is firing multiple directions and threatening children. A.W. told Dr. Gillock that he did not like Ms. McKeever because she is mean and yells at children all day. She yelled at A.W. three times a week. A.W. stated that he lives in constant fear of her yelling at him for making mistakes. A.W. cannot learn in that environment. After his observation of the class, he called Ms. W. on his way home and told her what he observed and suggested she get A.W. out of that class. If Dr. Gillock had observed a teacher like Ms. McKeever when he was a special education administrator, he would have reported her to the principal.

Dr. Gillock indicated that A.W. also indicated there were teachers he did like, and he spoke positively about them.

Ms. Craig, the special education pull-out resource center teacher provided Dr. Gillock with the information contained in the "Absences from school and anxiety/school refusal" section of his report (J-96, page 17). "On October 13, 2017, in accordance with a plan developed the previous day with the interim director of special education and a member of the child study A.W. was to stay in the child study team office and do his work in that environment". Dr. Gillock stated this would be okay for one day, but A.W. should have his instruction in an appropriate classroom environment.

Dr. Gillock administered the WISC V test to A.W. and although his full scale composite was 100, which is an average score, in Dr. Gillock's opinion, the global ability index was a better indication of A.W.'s ability and that was 107(J-96, page 24-25). A.W. has some significant memory weaknesses. When Dr. Gillock first assessed A.W. he had a specific learning disability in reading, written expression and Math. However, on

subsequent assessment his Math skills improved to the extent that the discrepancy between achievement and disability in the area of Math disappeared. A.W. seems to have made significant growth in the area of Math since he began in the Cambridge School. When a child is not achieving at a level consistent with their IQ and there is a significant discrepancy between ability and achievement and there is also a disorder of one or more of the basic psychological processes and there are no emotional or cultural causes, then a learning disability can be diagnosed.

The existence of a learning disability does not mean that significant underachievement will persist if the child is given proper instruction. If a child has average or better intelligence, upon reassessment you would want to see those standard scores go up. There is a direct relationship between standard scores and percentile ranks with a child who has a learning disability in reading or written expression and their percentile ranks are lower than what we expect them to be, so we want to see movement of the standard scores and their equivalent percentile ranks to move upward in the event they are making progress.

The Achenbach's syndrome scale is a parental behavior rating scale that Ms. W. filled out which indicated that A.W. was showing signs of being anxious and depressed (J-96, page 37). A.W. was administered the Revised Children's Manifest Anxiety Scale (RCMAS) which questions were read to him by Dr. Gillock. A.W. did not note any levels of concern on the anxiety scale and he performed the same as most students. Dr. Gillock questioned the validity of A.W.'s self-rating scores.

The Adaptive Behavior Assessment System third edition (ABAS – III) teacher rating scale were filled out by Ms. Craig with assistance from Ms. Franchio and was not scoreable because there were a lot of blanks (J-96, page 62). Dr. Gillock did observe A.W. in the beginning of the school year and it is not uncommon for teachers to not feel comfortable filling out the forms with having only had a month or two experience with the child. He did send an email to Dr. Lee on December 14th advising him that the assessment was incomplete and asking if it was possible for the teachers to try it again but Dr. Gillock does not recall receiving a response.

Dr. Gillock indicated in his report that “Clinical interview and projective testing suggest an anxious and fearful boy whose anxiety appears to be entirely associated with his school placement at Neeta School” (J-96, page 39). He corrected that statement and said it is not entirely associated with his school placement at Neeta but is also a function of his significant learning disabilities. However, Dr. Gillock believed that A.W.’s disability was not managed well at Neeta School. Dr. Gillock asked A.W. if he liked his school and A.W. told him he did not like it because he could not understand the way the teachers taught him, he did not like changing classes, and he did not like Ms. McKeever who was mean and Ms. Craig who was never positive and always told him he was wrong. A.W. told him Social Studies was his most difficult subject because Ms. McKeever was mean. Dr. Gillock did not observe his Social Studies class but understood that Ms. McKeever was also his Social Studies teacher.

Dr. Gillock diagnosed A.W. as having an adjustment disorder with anxiety and identified several factors that contributed to this including his “mistreatment in school” and A.W.’s significant underachievement or his significant learning disability (J-96, page 40). A.W. is intelligent and wants to be successful but he received regular negative feedback and teachers discouraged him and he became so stressed out and anxious that he would not come to school and attend classes over a course of several years. Dr. Gillock goes on to say in his report that “When placed in a more supportive and appropriate educational placement where he is not confronted with the same daily stressors he must endure at Neeta School, it is the opinion of this psychologist that A.W.’s anxiety will not persist beyond an additional six months” (J-96, page 40). This opinion is based on the DSM5 which states that symptoms will disappear in six months if the stressor is relieved. Dr. Gillock did evaluate A.W. again in the fall of 2018 after he had been at Cambridge School and he was far less anxious then when he first evaluated him.

Dr. Gillock recommended that A.W. be removed from Neeta School and be placed in another school (J-96, page 42). He sensed that the situation in the school could not be fixed in that a school that would allow a teacher like Ms. McKeever to teach children has dropped the ball. It was a toxic learning environment. That in combination with the wrong educational methodologies and approaches to use with A.W. and his extreme emotional reaction to his reading and writing difficulties caused Dr. Gillock to believe it

best that A.W. be removed. Dr. Gillock's opinion was that A.W.'s emotional condition would worsen to a full fledged school phobia and school refusal at which point he would need regular weekly psychotherapy which he did recommend to the parents because his anxiety was so significant it was interfering with his ability to attend school and go to classes. Dr. Gillock recommended David Handelman who he believed the parents contacted.

Dr. Gillock concluded that A.W.'s special education program at the Neeta school was not appropriate (J-96, page 43). He notes that the pull-out resource ELA program is not appropriate because it uses the "Write Steps" curriculum, which Dr. Gillock was not familiar with but viewed the website and determined it was more of a whole language approach used in general education classrooms and in his opinion not successful with special education students with language-based disabilities. He recommends a multi-sensory writing program for A.W. such as Project Read's "Framing Your Thoughts" program. Although "Reading Horizon's" bills itself as an Orton-Gillingham approach, it is not a program that historically has been identified as an Orton-Gillingham approach. He looked at some of the research regarding the program and concluded that there is insufficient support to use Reading Horizons with special education students. He would prefer that A.W. be instructed with more traditional intensive multi-sensory Orton-Gillingham type approaches such as Wilson or Lindamood-Bell. Also, the IEP fails to identify what specific program is to be utilized going forward to teach A.W. This is of concern because the District can use whatever program it wants, not necessarily based on the child's needs. Although the PLAAFP indicates Reading Horizons was used, they should specify what program is to be used the next year. Also, some of the accommodations and supplemental aids and services identified in the IEP had to do with basic good teaching and not necessarily special education.

A partial school neuropsychological re-evaluation was completed by Dr. Gillock at the request of the parents to determine how A.W. was adjusting at the Cambridge school where his parents had placed him in January 2018 (J-97). He observed A.W. at the Cambridge School and interviewed his teachers there. He also went to observe the program proposed for A.W. at Neeta for sixth grade. Dr. Gillock assessed A.W. in the area of academic achievement and social and emotional adjustment. He reviewed the

LDTTC evaluation of Ms. Wierski dated December 4, 2017 and was concerned that the District did not do a psychological re-evaluation of A.W. in mid fifth grade especially when Ms. Weirski noted A.W.'s problem behaviors in the classroom including oppositional defiance, pouting, refusing to do work and examples of anxiety including tense body language and somatic complaints and requests to go to the school nurse (J-97, page 3).

The December 18, 2017 IEP Re-Evaluation summary found A.W. eligible for special education and related services under the category of "Specific Learning Disability" in the area of Reading Fluency (J-72, page 3). Ms. Weirski's summary stated A.W. was classified under the category of "Specific Learning Disability" in the areas of basic reading skills and written expression (J-69, page 11).

Dr. Gillock identified A.W. with a Math disability at the time of his first assessment in December of 2017. Ms. Weirski did not (J-69, page 7). Dr. Gillock believes that she did not perform an assessment of the underlying psychological processes, so there is no information in that regards which is the first criteria of a learning disability. That information would be obtained through further assessment by herself or the school psychologist. The problem behaviors discussed in Ms. Wierski's report should have been diagnosed by a school psychologist, which Ms. Wierski is not. Her recommendation for counselling in the amount of one twenty-minute session a month was inadequate. In the evaluation planning meeting a mistake was made in not having a psychological evaluation of A.W., who had not had one since the initial psychological evaluation done in second grade. Dr. Gillock believes the District did not understand the severity of A.W.'s emotional problems.

Dr. Gillock observed a mainstream Social Studies classroom at the Neeta school for sixth grade (J-97, page 5). There were three teachers in the classroom, the general education teacher, a special education teacher and a personal aide for one of the students. The classroom environment was too noisy for a child with auditory processing disorder. It was a large classroom with twenty-four students with no carpeting. The proposed IEP for sixth grade called for A.W. to be in a mainstream Social Studies class with no in-class support. He also observed a pull-out resource English class at Neeta.

Dr. Gillock observed A.W. at the Cambridge school on October 9, 2018 and interviewed his teachers. His teachers believed he was an appropriate student for their program and that written language was his greatest academic need. A.W. had difficulty writing topic sentences, using words appropriately, confusing verbs and adjectives, writing run on sentences and significant problems with spelling. He remained a slow reader who tended to read without intonation or expression (J-97, page 7). A.W. had one emotional event in Science class after he had missed the instruction from the day before and he was not sure of the material, but other than occasionally becoming anxious when presented with new reading material, there have been no signs of anxiety.

Dr. Gillock discussed A.W.'s educational progress over time using two different statistical measures. The Growth Scale Values (GSV) measures a student's performance relative to his past performance. The other analysis Dr. Gillock used was a review of standard scores comparing A.W. to his typical peers.

A.W. made educational progress in the area of written expression while he was a student at Neeta in four out of the five areas with the one area of spelling being inconclusive. Dr. Gillock stated that in his opinion he could not say whether A.W. made progress or did not make progress from the time he left Neeta to the time Dr. Gillock assessed him at the Cambridge school.

The primary progress indicator Dr. Gillock relied upon were standard scores and the related percentile ranks which shows A.W.'s relative performance to other same aged children standardization sample across time. An analysis of progress based on standard scores provides information about the appropriateness of a program. If a child over time is showing reduced relative standing in comparison to his same aged peers in the standardization sample, that would indicate that the approaches being used with the child are not effective. If a child is showing improved relative standing over time, then that indicates the approaches and methodologies being used are effective. Dr. Gillock concluded that the approaches and methodologies being used at Neeta were not appropriate for A.W. as evidenced by his declining relative performance over time in the skill areas assessed.

Dr. Gillock concluded that a review of the standard scores and percentile ranks in Reading and Math indicate that from second grade at Neeta until he was placed at Cambridge School by his parents in the mid-fifth grade, A.W. made slower educational improvement and consequently demonstrated a reduced relative standing, compared to his same-aged peers in the normative sample in the majority of the reading areas assessed. Once he started at the Cambridge School the standardized test data supports an improved rate of learning and increased relative standing compared to his normative peers. The sum total of past and present standardized achievement test information clearly supports a lack of sufficient educational progress and reduced relative standing in comparison to same age peers in the normative sample (J-97, pages 20-22). In Dr. Gillock's opinion the comparative test data in Reading and Mathematics fails to support the appropriateness of A.W.'s instructional program in reading and Math at the Neeta School from second grade through mid-fifth grade but does support the appropriateness of A.W.'s instructional program in those same subjects at the Cambridge School from mid-fifth grade through early sixth grade. While the test data in Written Expression does support the appropriateness of A.W.'s instructional program in written expression at the Neeta School from second grade through mid-fifth grade, the test data is ambiguous in support of A.W.'s instructional program in written expression at the Cambridge School from mid fifth grade through early sixth grade (J-97- page 23).

Dr. Gillock did not believe that A.W. truly had a Math disability, but rather it was an outgrowth of his language problem which impacted his ability to be successful in Math. Once he went to the Cambridge school with their focus on language his Math skills rebounded.

A.W. was a better adjusted young man and happier at the Cambridge School and less anxious than he was at the Neeta school. Although he was in an out-of-district placement, he remained involved in his community soccer team and boy scouts. He remains friends with his neighborhood friends and has made new friends at the Cambridge School. Dr Gillock opined that a return to Neeta School would be emotionally harmful to A.W. and that he is attending an emotionally safer school environment at the Cambridge School.

A review of the District's proposed educational program and IEP fails to provide an adequate amount of specialized multi-sensory direct reading instruction (i.e. two weeklies fifty-minute sessions) compared to three periods of daily instruction in language arts at the Cambridge School (i.e. Writing, Language and Reading) by teachers who are certified Level 1 Wilson instructors. This is consistent with the New Jersey Dyslexia handbook which recommends 126 minutes a day as opposed to sixty-seven minutes a day. If Dr. Gillock was a special education administrator and the sixth-grade program only offered fifty minutes per day of ELA, he would make sure that additional instruction time was provided to those children who needed it. The IEP also fails to identify in writing the specific appropriate multi-sensory Written Language/Expression program to be used (J-97, page 27).

Jennifer Wierski's reevaluation on December 4, 2017 (J-69) did not do an analysis of whether A.W. made progress since his last evaluation. This would be an appropriate component of a reevaluation in order to look at changing the program if he was found to not have made progress. Dr. Gillock reviewed the report of Dr. Lee and Jennifer Sommerville, LDTC (J-91). It was not a psychological report or a psycho-educational report.

When A.W. was in first grade he was diagnosed with an auditory processing disorder and a CST evaluation planning meeting was held and a speech and language evaluation done. A comprehensive CST evaluation should have been done at that time because more than just speech and language issues were raised at that meeting including reading issues and emotional reactions. Once he was classified in second grade, he was provided with a daily behavior sheet that targeted crying and there was some improvement. In his opinion as a school psychologist, a reward program is an appropriate intervention for crying behavior in response to tests, however he would want to find out why the child was so emotional and a psychological evaluation would shed some light on that as well as a learning evaluation. Regular counseling could be provided to address that need.

Dr. Gillock believed it was important for A.W. to finish the program at the Lindamood-Bell Center in September. In hindsight, anxious children do not do well after

long vacations. It is not unusual for anxious children to have anxiety when they return to school but A.W. had very specific concerns. On October 17, 2017 Ms. Craig told Dr. Gillock her primary concern was A.W.'s anxiety in school and classroom refusal and that he was anxious about going to Math class.

Dr. Gillock reviewed the psychoeducational screening performed by Catherine Chase, LDTC and the list of her recommendations (J-32 & J-33) and believed it was on target and very helpful. Ms. Chase was qualified to identify A.W. as having dyslexia and dysgraphia.

On cross-examination, Dr. Gillock stated that he criticized the District for A.W.'s lack of progress in reading and the use of the Reading Horizons program because of A.W.'s lack of progress. He was not trained in the Reading Horizons program and has never implemented it and never used this program when he was an administrator in public school. The research he did was looking online at the Reading Horizons website for approximately one hour. He noted that the website did say that the Reading Horizons is an Orton-Gillingham based program. He has implemented the Wilson program as an administrator but never delivered the program. Looking at J-95 which is a comparison of Wilson and Reading Horizons syllable markings, Dr. Gillock could not identify either as an example of each of the programs. He does not have an instructional background.

Dr. Gillock also opined that a psychological assessment should have been done of A.W. at the same time the learning assessment was done by Ms. Wierski. However, at the evaluation planning meeting on November 8, 2017 the parents indicated that they were having Dr. Gillock do a neuropsychological evaluation and would share this evaluation with the District (P-68, page 3).

The difference between the certification Dr. Gillock possesses and a school psychologist is one extra year of training. The training was on weekends and Dr. Gillock was working at the time. He has no background as a teacher and never taught reading instruction.

A.W. does not have a Math disability. Based on the scores Dr. Gillock obtained, A.W. does not have a Math disability and can be educated in a public school (J-97, page 21). When Dr. Gillock looked at the data he obtained regarding written expression, his opinion was that A.W. made progress while in the Medford Lakes School District. His assessment as to progress in written expression achieved at the Cambridge School was inconclusive. In reading scores, the majority he went up on, two he went down and one he maintained, but there is indication that he made progress in terms of his basic reading skills from fifth grade to sixth grade at the Cambridge School (J-97, page 14).

Dr. Gillock got involved in this case when the parents contacted him after they were referred to him by Ms. Zuba. The initial contract between Dr. Gillock and the parents was dated September 8, 2017 (J-108, page 3). When Dr. Gillock first went into private practice full time a number of years ago, he reached out to various attorneys and he received a couple of referrals from Ms. Zuba's firm and they continue to periodically refer matters to him. Dr. Gillock has received five or six referrals from Ms. Zuba's law firm in the past six or seven years. He did not reach out to any school districts. The first report was \$5,000. Then for the partial assessment he charged \$3,000 and \$6,000 for the due process hearing preparation and attendance and an additional \$4,200 which makes the total \$18,000. His practice consists of just doing neuropsychological evaluations.

Dr. Gillock relied on his record review, test scores and parent input as far as what took place in A.W.'s kindergarten through fourth grade years as he did not know him then and did not meet A.W. until he was in fifth grade (J-96, page 7). Dr. Gillock did not review any of the emails between the parents and did not know Ms. Hunter was A.W.'s third grade teacher until reviewing the October 26, 2015 email wherein Ms. W. emails Ms. Hunter indicating A.W. was enjoying the classroom environment, the students and the teacher (J-94, page 28). In fourth grade A.W. made some progress and had a fairly decent year, although academic concerns remained. First grade was problematic, and second grade was low because it took a while to get A.W. identified but from the time he was identified through fourth grade, A.W. made gradual social process, interacting with other children and participating in the class. By second grade he was playing with the other children at recess. By third grade he began to participate in Science class, and it was of real interest

to him. By fourth grade the social progress continued in terms of classroom participation. A.W. began to volunteer to read in his pullout resource center program.

Dr. Gillock did not review the various positive emails sent by Ms. W. to A.W.'s teachers in third and fourth grade indicating she was happy and satisfied with what was happening in the ELA class (J-94, pages 55, 59, 65 and 67). Although Dr. Gillock did not review these emails he indicated that Ms. W. said he had a pretty good year in fourth grade. Dr. Gillock does not heavily rely on parental opinion but on test scores and what the child tells him.

A.W.'s progress reports for third grade, reported by Ms. Hunter, indicate that A.W. had mastered all but one of his eight ELA goals. Ms. Hunters' comments on the progress reports were overall positive (J-39). A.W.'s third grade report card indicated he made the principals' list and his teacher's comments were positive (J-40). A.W.'s fourth grade report card indicated he made the honor roll and his teacher's comments were positive (J-52). The teachers indicated that A.W. was doing very well. Dr. Gillock did not challenge A.W. or bring up the positive teacher comments when A.W. reported to Dr. Gillock his negative experiences at Medford Lakes because that would be inappropriate. Dr. Gillock indicated that in his experience, report cards at the elementary level tend to be very positive and encouraging. If anything, there was an absence of weaknesses identified when it was clear A.W. had difficulties. What teachers write and how children are treated in the classroom can be entirely different. Dr. Gillock was asked whether he believed these teachers were writing positive comments on the report card and progress reports and demeaning A.W. in the classroom to which he responded that he saw Ms. McKeever make demeaning comments to A.W. in fifth grade. However, based upon the third and fourth grade records reviewed Dr. Gillock saw nothing to support a conclusion that A.W. had been mistreated in those years.

Dr. Gillock first met A.W. in September 2017, the start of the fifth-grade school year. A.W. was attending the Lindamood-Bell program at the start of the school year which was a multi-sensory intensive Orton-Gillingham based program that only dealt with ELA. It was all reading based and there was no Math, Science or Social Studies. A.W. missed time from school while attending this program and returned to school in early

October. He did not know as fact that A.W. missed a month of school and returned October 9, 2017. Dr. Gillock conducted his observation of A.W. on October 17, 2017, after A.W. had been back at school about a week. A.W. had missed a month of school and had missed his ESY program at the Medford Lake School District because he was at the Lindamood-Bell program. A.W. was offered the ESY program at Medford Lakes for July but did not go. A.W. was out of school three months from the time school ended in June until his return to Neeta October 9, 2017. He did not attend July ESY, in August there was no instruction and in September he does not go to Neeta School, but instead goes to Lindmood-Bell. A.W.'s back in the District one week when Dr. Gillock comes to observe him on October 17, 2017. A.W. did not know Dr. Gillock at the time of the observation, as his testing of A.W. had not begun. Dr. Gillock wanted the observation to be "blind".

Although Dr. Gillock in his report did not specifically mention A.W. was anxious at the end of his fourth-grade year, he indicated that Ms. Franchio noted that A.W. needed to move around the classroom every fifteen minutes and fidget in order to maintain his attention and focus on academic tasks (J-96, page 19). As a psychologist in his opinion this could be anxious behavior. In his report he indicates he questioned Ms. Franchio whether A.W. exhibited any school refusal in fourth grade and she denied that this was a problem (J-96, page 18).

A.W. had never missed that much time from school before. Dr. Gillock stated it was fair to say that missing an entire month of school and then returning and trying to catch up on what is going on in the classroom, socially and with a new teacher would be a stressful situation and could exacerbate his stress and anxiety. When he saw A.W. on October 17, 2017 he did not see any obvious signs of anxiety, however he agreed that he did not observe A.W. when he was in an optimal condition regarding his educational setting. Dr. Gillock's observation of A.W. at the Cambridge School takes place a year later after A.W. has been there several months and believes that is his permanent school. The conditions of the observations relative to A.W. were different.

Dr. Gillock stated that A.W. said that Ms. McKeever was a mean woman who yelled at kids all day. Dr. Gillock described Ms. McKeever's class as a hostile and toxic learning

environment and he was shocked. Dr. Gillock believed that to be true for all the students in the class, but particularly so for someone with A.W.'s auditory processing problem because she spoke too fast, was too loud, demanded immediate responses and threatened consequences. In response to his observation, he notified the parent to get A.W. out of that Math class. His duty was to his client and not to the District and he did not notify anyone else of the toxic environment of the classroom. He did not know if the parents contacted the school district requesting A.W. be removed from Ms. McKeever's classroom but he assumed they did. His report was issued January 4, 2018. The classroom was not dangerous. He thought Ms. McKeever's behavior was inappropriate and unsatisfactory and was very poor teaching. Dr. Gillock reconsidered and believed it was somewhere between poor teaching and toxic and hostile. He was more focused on Ms. McKeever than A.W. and what she was saying. However, Dr. Gillock did note that he observed A.W. volunteer twice to answer questions in the class and he got one correct. Despite the bad teaching and hostile environment, A.W. was still able to perform in the classroom setting. Dr. Gillock did not note any issues of anxiety. Although Ms. McKeever made comments that a teacher would normally make to maintain order in the class and prevent a child from injuring themselves, it was the way she made the comments according to Dr. Gillock (J-96, page 18).

On October 9, 2018 Dr. Gillock observed A.W. at the Cambridge School (J-97, page 4). A.W. was late to class due to a transportation issue. The Cambridge School is an hour away from the Medford Lakes School District. Dr. Gillock did not believe this was too far for a student to travel to get to an appropriate program. He observed A.W. in a reading and writing class at Cambridge (J-97, page 5).

On October 15, 2018 Dr. Gillock then observed a sixth grade ELA pull-out class at Neeta school which would have been the class A.W. would have been in had he remained at Neeta School. This was a special education class wherein the children had IEPs which Dr. Gillock was not privy to and therefore may not have a complete picture as to what is going on in the class as far as interventions used with the other children. Dr. Gillock stated that he knew A.W. and his focus was to take a look at the overall environment to see if it would be appropriate for A.W. The English class at Neeta began with students handing in their homework, then using an iPad to review vocabulary in an interactive

manner. They then used a program where they predicted word meaning. Dr. Gillock found that the classroom was quiet and supportive and small with five students on roll, only four of whom were present that day. If A.W. had attended he would have been the sixth student. At Cambridge there were either eight or nine students in the class.

Dr. Gillock then observed a Math class at Neeta that had two teachers present and the students were taking a test. The special education teacher took the special education students to a separate setting for testing. He spent the entire class period observing the special education students take a test. Presumably the special education students were receiving individual accommodations for test taking. Dr. Gillock also observed the mainstream Social Studies class that had two teachers and a personal aide in the class. A child got up from his chair to sharpen his pencil and the chair made a significant noise. The chairs could be outfitted with tennis balls like at the Cambridge school, although he did not recommend that in his report, he recommended the use of an amplification system.

At the end of his observation, Dr. Gillock spoke to Ms. Hunter, who was going to be the person providing A.W. with the Wilson instruction had he attended the Neeta School. Ms. Hunter talked about Wilson instruction but there was no reference in the IEP to Wilson instruction. There was a reference to multi-sensory instruction for A.W. and he was advised that this would be Wilson instruction, but if it is not in the IEP, the District is not obligated to provide it. When he was an administrator, he specified Wilson instruction in the IEP because everyone in that district was trained to administer the program. The District cannot control personnel and if only one instructor is trained in Wilson and they leave for whatever reason, if it is specified in the IEP the District has to implement the program. One of the major challenges in special education is that the school districts cannot control personnel. A.W. was receiving instruction in the Reading Horizons program since third grade.

Although the Growth Scale Values (GSV) showed progress, Dr. Gillock did not put much emphasis on the scores because he only had two scores to review and according to the company who devised the test, you would need to have at least three scores to determine a reliable growth trend.

Dr. Gillock's diagnosis with regards to A.W.'s anxiety is that he has an adjustment disorder with anxiety which according to the DSM5 is the development of psychological and/or behavioral symptoms in response to a stressor that is either in excess of the severity of the stressor and/or sufficiently interferes with the child's overall adjustment. The disorder disappears after six months after the removal of the stressor. Dr. Gillock has identified the stressor as being the Neeta School and Ms. McKeever's classroom as well as A.W.'s learning disability (J-96, page 39). A regular psychologist can make this diagnosis. The process for rendering this diagnosis is based on interviewing, collecting history, testing, rating scales and administering psychological assessments of social and emotional adjustment. Dr. Gillock used the revised Children's Manifest Anxiety Scale to determine whether A.W. had anxiety (J-96, page 37). A.W. completed the form verbally and the results came back that he did not have anxiety. Dr. Gillock believed there was a problem with the validity measure of the test. Dr. Gillock relied more heavily on his clinical interview with A.W. than A.W.'s mother's behavior ratings. The report is misleading to the extent it says the diagnosis was made mostly on the mother's ratings. The mother's rating forms came back as borderline clinical. The various positive emails from the mother were pointed out to Dr. Gillock. In fourth grade, A.W.'s mother reported he had an exceptional year, gaining self-confidence and that fourth grade was a pretty good year for A.W.

Dr. Gillock indicated that his assessment of A.W. was at the end of fourth grade beginning of fifth grade and he can only make his evaluation based on information known to him. Dr. Gillock stated that all a psychologist ever has is a behavioral sample. At the time Dr. Gillock rendered his first report on January 4, 2018, he estimated he had spent ten to twelve hours testing A.W. Of the ten to twelve hours of testing, eight hours were standardized testing and four hours were clinical interviewing and computer testing of A.W. Of the four hours, one hour and fifteen minutes was for the computer testing and the rest was the interview, approximately two and a half hours. He also observed A.W. at the Neeta School. He did not observe any anxiety in the classroom. When he had A.W. complete the forms the results came back that A.W. did not have anxiety. The parent forms came back borderline clinical for anxiety. Dr. Gillock's clinical interview with A.W. was the main basis for his diagnosis of anxiety.

When Dr. Gillock first interviewed A.W. he was very vague about what he did not like about the Neeta School and made three comments, but in the second report he listed fourteen items (J-97, page 25). The first item A.W. listed was that he did not understand anything he was being taught. This statement does not align with the progress reporting from his teachers. A.W. complained that all of the teachers were not nice. Dr. Gillock stated that was A.W.'s perception, despite the positive emails his mother sent about his teachers. A.W. stated that he always got seventies on his tests. Dr. Gillock stated that this was probably not true based on his review of the documents. Item four A.W. complained they discouraged him by being strict handing homework in on time and putting a picture of a gravestone next to your name when you forgot your homework. Dr. Gillock agreed that homework is an important thing for a school teacher to emphasize with their students. Number five, A.W. complained that the playground was not safe. Dr. Gillock had no way of knowing but again said that was A.W.'s perception. A.W. also complained that the soccer field has a lot of weeds and that he only had five minutes to eat his lunch because of the long lines and could not finish his food. Dr. Gillock had not heard that before. A.W. also complained that they had a lot of homework, projects and assignments. Dr. Gillock agreed that these are hallmarks of education. A.W. complained that there were forty kids in every class and in his Math class he would always raise his hand and never get called on. Dr. Gillock did observe A.W. in Math class and there were not forty kids in the class and A.W. did get called on twice. Number ten, A.W. stated that the teachers stress you out and if you get under a seventy on a test, you have to retake it. Number twelve, was that in fourth grade the rule was no snacks, yet teachers would eat a snack right in front of them. That was the first time Dr. Gillock heard of that complaint. Also, the emails from A.W.'s mother in fourth grade purported that A.W. was happy. A.W. also complained that the whole school was dirty. Dr. Gillock did not notice that the school was dirty. A.W. also complained that all the kids were really mean and got him in trouble and he has to go to the principal's office. Dr. Gillock did not see a lot of disciplinary issues in A.W.'s file. Dr. Gillock would not say whether most of these fourteen complaints were untrue but that only it was A.W.'s perception. Based on A.W.'s perceptions, Dr. Gillock's determination of anxiety, the testing results, his observation of Ms. McKeever and the parent reports, Dr. Gillock came to the conclusion that the Neeta School was not an appropriate placement. If you take the anxiety piece out of this, A.W. could be educated in a public-school district if they were using the right methodologies.

Dr. Gillock stated that the crux of his opinion was not just the anxiety but that A.W. failed to make sufficient progress in reading and Math. Dr. Gillock stated that A.W. could be taught in a public school if the appropriate methodology was used.

Dr. Gillock indicated that it is not necessarily suspect to him to see jumps in test results of three or four years of educational progress within ten months if there has been an intervening variable such as improved instruction (J-97, page 32).

Dr. Gillock made recommendations for a special education program in his report that came out January 4, 2018 after A.W. had already been placed at the Cambridge School. Based on the notes from the evaluation planning meeting, the District was expecting Dr. Gillock's report. The information contained in the report could have been helpful to the District if they had had it before he left the District (J-96, page 42).

Dr. Gillock recommended A.W. was in need of an emotional and safe supportive educational placement. This was based on Dr. Gillock's observations and the sum total of all of his information. His second recommendation states that A.W. needs an educational placement where he will be exposed to multiple intensive and sequential Orton-Gillingham based multi-sensory approaches. Reading Horizons states that it is an Orton-Gillingham program. When Dr. Gillock did his observation at Neeta School he was advised that A.W. would be receiving Reading Horizons and Wilson Reading in his 2018 – 2019 school year. Dr. Gillock was advised that A.W. would be receiving two supplemental periods of Wilson instruction and also one period of ELA. Dr. Gillock's third recommendation was that A.W. receive an extended school year program that focused on his academic skill deficiencies in reading, written expression and Math. A.W. was offered an ESY program for the 2017 – 2018 and 2018-2019 school year. Dr. Gillock's fourth recommendation was that A.W. be placed in a special education program with a small student to staff ratio of no more than eight students to one teacher with a total number of persons in the classroom limited to nine. The ELA pull-out classroom in 2017 and 2018 had very few students, less than eight. The fifth recommendation was that A.W. be placed in an educational program where he has a counselor, school social worker, or school psychologist available to him on an as needed basis. Dr. Gillock is aware that the District did offer counselling to A.W. prior to his unilateral placement at Cambridge School,

but that it was an inadequate amount. The sixth recommendation was that A.W. was in need of an educational program with a staff administration willing to implement these kinds of approaches and methodologies recommended in this report which have been specifically chosen for A.W.'s unique cognitive profile in mind. Again, this report came after A.W. was pulled from the Medford Lakes District. The seventh recommendation was that when A.W. was in a large classroom for specials or other subjects he should have his classroom outfitted with an FM sound field system. Dr. Gillock was aware that A.W.'s IEP does call for an FM sound system but it was not in use during his observation of the Math class.

On re-direct examination, Dr. Gillock believed the District should have done its own psychological evaluation in 2017 and that the parents were not obligated to furnish the District with Dr. Gillock's report by a date certain. The District had an obligation to finish their reevaluation within three years from the initial eligibility meeting date of December 23, 2014. Dr. Gillock had requested additional information from the teachers regarding the adaptive behavior scales and requested same of Dr. Lee on December 14, 2017. Not having received same, he published his report January 4, 2018.

A parent has an obligation under the IDEA to provide the District an opportunity to propose an appropriate program before removing the student and unilaterally placing them. There is no obligation to provide the District with an outside expert's report on their program prior to removing the student and making a unilateral placement.

Ms. Craig had advised Dr. Gillock that A.W. had attended the first two days of school in September 2017 and then returned to school on October 9, 2017. That was a half day and there was no changing of classes. On October 10, 2017 A.W. went to all of his classes but on October 11th he refused to go to classes and stayed in the office all day and said this was not his school. On October 12, 2017 after attending pull-out resource he refused to go to Math stating that he was anxious about Math class. He also refused to go to Science. On October 13th in accordance with a plan developed the previous day by a member of the CST and the interim director of special education, A.W. was to stay in the CST office and do his work in that environment, however, by second period he went to pull-out resource program reading class with Ms. Craig and informed

his teacher that he wanted to stay in the resource program room. At the conclusion of the small pull-out resource program reading class, A.W. reportedly was reluctant to go to Math class but with encouragement went and stayed in the class. On the next day of school, October 16th, A.W. again was reluctant to go to Math in a general education in-class resource program classroom but did so. There was a subsequent note that he was very quiet/depressed looking. According to Ms. Craig, A.W. first looks like he does not want to be at Neeta School but then he warms up (J-96, page 17). Dr. Gillock indicated that this influenced his diagnosis of adjustment disorder with anxiety and was consistent with the reports he heard from the parents. The parents reported to Dr. Gillock that A.W. was having a great deal of difficulty adjusting to the school year.

Also, in Dr. Gillock's report he notes that "Although Ms. Franchio acknowledged that A.W. showed signs of frustration last school year, he had the drive and motivation to plow through it" (J-96, page 18).

The IEP meeting of August 31, 2015 indicates in the 'areas of concern' A.W. had a low frustration tolerance when the work seemed too difficult to him (J-37, page 3).

The December 4, 2017 educational evaluation of Ms. Wierski done in fifth grade noted that A.W. would be inattentive in Social Studies and reluctant to start independent tasks. He had been impulsive at times in the resource setting, interrupting others. He was sometimes uncooperative and acted defiantly, pouted and refused to work in the classroom at times. His teachers had observed that A.W. can be anxious at times which manifested itself in intense body language and going to the nurse for somatic complaints (J-69, page 5). Dr. Gillock said this supports his opinion that A.W. has an adjustment disorder with anxiety.

In making his diagnosis, Dr. Gillock did not assume that all of A.W.'s comments were factually accurate, although Dr. Gillock witnessed Ms. McKeever's behavior and believed he was accurate in that regard and gave A.W.'s comments serious consideration. He would not characterize A.W.'s statements as false but only that these were A.W.'s perception.

The goal of appropriate instruction is to remediate A.W.'s reading disability. A.W.'s standard scores in reading, especially for the subtests of word reading, pseudo word decoding and reading fluency would be improved with the use of an Orton-Gillingham reading program (J-97, page 14).

Dr. Gillock stated that A.W. liked Ms. Leone very much. He did not share with Dr. Gillock an opinion of Ms. Franchio.

For the summer of 2017, the District was offering A.W. ESY instruction for reading language arts four times a week for sixty minutes for four weeks (J-66, page 18). There was no Math instruction.

In fourth grade, Ms. W. had expressed concerns to Ms. Franchio regarding specific vocabulary terminology in Science and Social Studies (J-94, pages 65 67). On March 10, 2017 Ms. W. wrote to Ms. Franchio with various concerns including spelling, the tendency to visually confuse letters, emotional upset associated with A.W.'s academic difficulties and her frustration in terms of being able to communicate with teachers (J-94, page 73). Dr. Gillock does not rely on emails when he does an evaluation because they are often reflective of what is going on in the moment and when he is presented with selected emails it is usually for the purpose of manipulation. He also does not review non-standardized test result. He did not give a lot of credence to the test results he got from Lindamood-Bell because private schools have a parochial interest in their students showing progress. He also does not look at progress monitoring because districts are under an obligation to show student progress.

Dr. Gillock had discussions with Dr. Lee in front of Ms. Hunter that she was the only teacher with Level 1 certification in Wilson at the school. When Dr. Gillock was an administrator, the majority of his teachers were trained in Project Read's phonology program, Wilson Reading, and Project Read's writing program called 'Framing Your Thoughts'.

On re-cross examination, Dr. Gillock stated that he was in Ms. McKeever's Math class for fifty minutes.

Disabilities do not disappear. With appropriate instruction the individual will learn to compensate. Dr. Gillock indicated that A.W. had a Math disability pursuant to the code when he tested him the first time, but the discrepancy disappeared so he can no longer identify him as having a Math disability. In Dr. Gillock's report, the second-grade district testing done by Ms. Rombach compared to the testing done by Catherine Chase a year later showed A.W.'s Math scores all went down (J-97, page 21).

M.W. testified on behalf of the petitioners. M.W. is the mother of A.W. She describes A.W. as a good hearted, curious, inquisitive boy at home. He loves to make his family laugh. He loves motors, taking things apart and rebuilding them. He loves Legos. At the recent Science fair at Cambridge school A.W. won second-place overall. He is involved in travel soccer, Boy Scouts, the church choir and chess club. Boy Scouts and church choir are done in Medford Lakes.

On April 30, 2014, Mrs. W. sent a letter to Amy Safko, a social worker of the child study team, to raise concerns that she had about A.W. and requested that the child study team evaluate her son for special education eligibility and related services (J-8). A.W. had gone for audiology testing and she was making the child study team aware of the results. She had previously spoken to the child study team on three other occasions beginning when he was only three years old. The first time was when A.W. was in private preschool and the other two times were while he was in kindergarten. Ms. W. wrote "A.W. has always been overwhelmed by loud, competing sounds, including classroom environments. Last year his kindergarten class was particularly difficult for him emotionally. He would beg and make up illnesses not to attend school and cried every day. Later, I found out that the emotional disturbances continued during the day and he was often taken into the hallway until he could recover. He told me that he did not understand the instructions and the work was too hard. He started off eager to learn, but overtime became anxious, anticipating things that he found difficult. These behaviors are not exclusive to the classroom setting and have been mimicked in all of A.W.'s other extracurricular and social activities." When he played basketball or soccer, he did not understand what was being said to him and multistep directions were difficult to remember and hearing accurately was difficult. Ms. W. worked with A.W. reading at home the summer between kindergarten and first-grade. An auditory processing evaluation was

done by Dr. Angelelli (J-9). A friend of Ms. W. reached out to her because she had a son who had an auditory processing disorder and she noticed A.W. had similar issues. In kindergarten, preschool and first-grade at Medford Lakes, A.W. would kick, claw and scream as he was being drug into class.

The audiologist found that A.W. had an auditory processing disorder which she described was severe. Recommendations were made and included a speech language evaluation and school-based therapy. Mrs. W. shared this report with the school and also started A.W. in auditory therapy with Dr. Diane Lazer. A.W. was having trouble knowing the names of family members, rooms in the house, his teachers' names, his peers' names – all things a first grader should know. The testing was done in a sound booth and when there was no noise A.W. could hear and understand what was being said to him. However, when there was even light noise, he had difficulty understanding what was being said. There was a recommendation that an FM sound system be used in the classroom. Ms. W. spoke to the speech therapist, Tara Mahon about a sound system but she was not sure if there was money in the budget.

A.W. had therapy with Dr. Laser commencing May 27, 2014 for approximately thirty-five sessions each lasting an hour to an hour and a half (J-12).

A written notice of evaluation plan was prepared after Ms. W. requested a meeting of the child study team (J-11). Under current progress, it indicated that A.W. started the year very tense, especially when handwriting. His reading fluency was poor. Ms. W. stated that no one had told her that prior to this meeting. Ms. W. had previously spoken to the kindergarten teacher and told her that she felt something was not right, but the teacher said everything was fine, except she noticed that A.W. had poor eye contact. In first-grade at the parent-teacher conference, Ms. W. advised the teacher that A.W. was struggling with reading but she said that he was doing okay. That is when Ms. W. took A.W. to Dr. Angelelli.

Robin Barr was A.W.'s preschool teacher at Nokomis elementary school and did not refer him for an evaluation when he was in preschool although she saw issues, she believed AW was very bright. She talked about a dragonfly picture that he had drawn in

preschool that was so detailed she could not believe a preschooler had drawn it. Tara Mahon, the speech language therapist advised Ms. W. she would see A.W. in the hallway outside of kindergarten class crying uncontrollably and very tense and so upset that his body was rigid. She had never told Ms. W. that before this meeting (J-94, page 5).

A July 9, 2014 email from Mrs. W. to Ms. Mahon sent during the summer after first-grade before entering second-grade advised that she had retained a reading tutor to come to the house one or two times per week and work with A.W. on one and two letter words (J-94, page 5). That summer at home they also did reading, auditory and vision therapy. On September 20, 2014 A.W. was retested by Dr. Angelelli to see what progress had been made working with Dr. Laser. A.W. was unable to complete the assessment appropriately due to anxiety and frustration (J-16, page 2). A.W. did make some progress regarding memory gains. Dr. Angelelli recommended counseling for anxiety based on what Mrs. W. advised him about A.W.'s school refusal as well as what he observed during his testing of A.W.

A September 24, 2014 email from Mrs. Hamlin, A.W.'s second grade teacher to Ms. W. indicated that when they were having a reading test or when the work got too hard A.W. complained of stomachaches and started to cry. She initially let him go to the nurse, but then saw a pattern. Ms. Hamlin tried to reassure him and told him to just do his best (J-94, page 10). Ms. Hamlin advised that the reading tests were harder than last year and the content more rigorous because of the common core standards. She had the speech therapist working with A.W. on phonics because it required him to listen for sounds. Ms. W. explained that she was relieved when she received this email because Ms. Hamlin was the first teacher who reached out to her and said that there was a problem. A.W. had only had a speech IEP at this time. Ms. Hamlin advised her that A.W. was a hard worker and that she wanted him to be successful. Ms. W. advised Ms. Hamlin that A.W. had been diagnosed with an auditory processing disorder which does not go away (J-94, page 9). As A.W. has gotten older, he has shown improvement. He does not hear when there is extraneous noise going on about him. To get A.W.'s attention, a strategy that Ms. W. would use would be to place a hand on him.

Ms. Hamlin advised Ms. W. that she should request a CST evaluation and to contact the CST to request a meeting (J-94, page 11). It would be more effective coming from the parent. Ms. Hamlin told Ms. W. what to write. On October 6, 2014, Ms. W. sent an email to Kelly Scapellato, the Director of the CST requesting an evaluation (J-94, page 11). She indicated that both A.W. and his teachers had informed Ms. W. that A.W. was very emotional and frustrated during reading and testing situations. This is a classroom pattern that has continued since kindergarten. Ms. W. indicated that after reviewing his most recent reading test she can understand A.W.'s frustration since it is well above his capabilities. She requested an IEP meeting which is what Ms. Hamlin recommended she do. She also requested the sound field amplification system since one had not been provided yet.

The nursing notes for second grade indicated that he had anxiety on September 18, 2014, September 22, 2014 and October 23, 2014. The nurse spoke to Ms. W. that A.W. came to her office as a safe haven (J-31).

Ms. Hamlin sent Ms. W. a note in second grade giving her A.W.'s work back in an envelope so he would not see his low grades and be upset. She indicated that she was giving him the support of taking his test in a small group at the back table with Ms. Gillet, but he still got upset. Ms. Hamlin was glad Ms. W. sent the letter to the CST (J-29). A.W. would shut down due to anxiety when taking tests and skipped questions and left blanks. She would let him do his tests in a small group and started using a behavioral chart to stop him from crying. Ms. W. thought the behavior charts were suppressing his emotions and not helping him cope with the situation. Ms. Hamlin and Ms. Gillet were teachers not psychologists.

A.W. was evaluated for special education and Ms. W. was advised that he tested low and very low in some areas and that he also scored exceptionally high in visual spatial abilities. Ms. W. observed A.W. in his second-grade class and observed him not knowing what to do when the teacher gave instructions. There was an FM system in the class that was not turned on for the first fifteen minutes of class. During story time A.W. sat on the side in the back and was not engaged.

Ms. W. took A.W. to a developmental pediatrician, Dr. Eggerding at Cooper who recommended further screening for dyslexia at the Cooper clinic (J-26). She counselled A.W. and emphasized how talented he was and that he would be an engineer or an architect. She commented on how divergent his scores were between his visual spatial abilities and his other scores. There was a six-month waiting list for dyslexia screening at the Cooper clinic so Ms. W. took A.W. to Catherine Chase who was recommended by Dr. Lazer, their speech and auditory therapist.

A.W. was also seen by Dr. Galloway, a pediatric optometrist for vision therapy for eye teaming and tracking, which he successfully completed (J-27).

During the summer between second and third grade A.W. was working at home on a computer application recommended for auditory processing disorder by Dr. Lazer called Fast ForWord. He would work four to five days in a row for thirty to forty minutes each day on the program. Ms. W. emailed Tara Mahon on July 9, 2015 to have her review his program to see if he was ready to move on since he had plateaued on two of the activities and was getting frustrated, he could not beat his score (J-94, page 20). A.W. broke his iPad when he was upset doing the program. Ms. W. told Ms. Mahon who said A.W. was making progress but she understood it could be frustrating. She advised to just continue with the program. Ms. W. and A.W. read together every day during the summer. A.W. continued working on the Fast ForWord program during the school year until fourth grade. They stopped because the program was too advanced for A.W. and because Tara Mahon was not monitoring the program anymore. Lynn Hart was monitoring it and she was not familiar with the program. When A.W. had difficulty passing the assessments to move on, Ms. Mahon would manually move A.W. to the next part because he could not pass the test.

ESY for the summer of second grade consisted of thirty minutes of speech therapy once a week for four weeks (J-28, page 16). They opted out of the ESY because it was during summer camp which is a big thing in Medford Lakes socially and they did not want A.W. to miss that. They also were doing one and a half hours with Diane Lazer once a week.

Catherine Chase was the first to diagnose A.W. with dyslexia. She also advised that A.W. had dysgraphia and problems with executive function (J-32 and J-33). Following receipt of Catherine Chase's report, Ms. W. contacted the CST and a meeting was conducted on August 31, 2015. Ms. Chase had stressed the importance of A.W. receiving Orton-Gillingham based instruction and Ms. W. brought this up to the CST. They advised her that A.W. was already receiving Orton-Gillingham based instruction. A.W.'s IEP was changed as a result of this meeting and A.W. was going to be in a pull-out class for ELA. Ms. Chase's evaluation was included in the IEP (J-34, page 5).

After this IEP meeting, A.W. started third grade at the Neeta School. He had the same anxieties going to school and it was a new school. He had Ms. Sachs as his in-class support teacher and Ms. Bergen who was filling in for the main classroom teacher who was on leave. Ms. W. arranged to meet with the teachers the first month of school to explain to them A.W.'s learning profile. She told them that he had auditory processing disorder and had difficulty hearing. Ms. Sachs quickly commented that "He hears just fine." Ms. W. did observe A.W. in Math class which was a general education class taught by Ms. Bergen with Ms. Sachs providing the in-class support. Ms. W. observed two competing classes going on at the same time with lots of competing noise that she had difficulty understanding what was going on. Ms. W. received an email from Ms. Sacks December 7, 2015 in response to a concern she had voiced to A.W.'s case manager, Ms. Rombach, regarding the use of the FM system in the classroom and small group teaching (J-94, page 30). Ms. Sacks indicated that the FM system is turned off when A.W. joins her at the back table and he is seated facing her and she always questions if he is able to hear her fine. A.W. has never voiced any problems and Ms. Sacks did not notice any. She also indicated it is very quiet in the room as the students are working independently. Ms. W. had been in the room and it was not quiet. It was a large room with twenty-seven children. There is no air conditioning, so the windows are open, fans are on, birds are chirping and there is noise from the playground.

In third grade A.W. still had a lot of stomach aches and it was difficult to get him to school. She would drive A.W. to school while his younger brother rode his bike to school. The teachers continued a behavior chart for A.W.

Ms. W. sent an email March 1, 2016 to Kelly Scapellato regarding A.W.'s inability to participate in the "Battle of the Books" competition due to the complexity of the texts and inquiring if it was possible for the District to get the "Learning Ally" program wherein you can listen to a book (J-94, page 39). Ms. W. also asked for a talk to text program to assist A.W. in writing as well as the use of modified font and tests that were neat. Ms. Scapellato forwarded the email to Ms. Sacks who responded via email the same day. Ms. Sacks replied that the Math tests are made with enlarged font and the format and grading is modified pursuant to his IEP. There is no noise in the room during testing aside from her reading the test aloud to A.W. at the back table. She did indicate that A.W. had noticeable focus concerns and she was frequently redirecting his attention during group lessons and independent work (J-113, page 5). Ms. W. did not see this email at the time. Had she had seen it she would have provided Ms. Sacks with more information on his auditory processing disorder. Ms. W. has not heard any concerns from A.W.'s teachers at the Cambridge School regarding A.W.'s attention or ability to focus. Cambridge is a school for dyslexia and auditory processing disorders, and they have small classrooms with minimal noise.

A.W. told Ms. W. that Ms. Sacks was mean to him and made him feel stupid. On June 3, 2016 A.W. was working on long division and his work came home with a handwritten note from Ms. Sacks on it indicating that it took seventy-five minutes of reteaching and repetition. A.W. eventually remembered the steps but got incorrect simple multiplication and division facts and that this was a preview of fourth grade work (J-42, page 2). The nursing notes for third grade for June 6, 2016 indicate A.W. was crying, had a stomach ache and was excluded from recess due to illness. He came into school late because he was upset with a teacher (J-41).

Ms. Reilly was the elementary school nurse at Nokomis elementary who moved to Neeta elementary school the same time A.W. entered third grade. This was very fortunate because A.W. would always go to her if he was upset. Ms. W. described her as a very warm person.

Ms. W. received an email from her husband September 25, 2018 after he had attended a back to school night for their younger son. Ms. Sacks was there and

introduced herself as the special education teacher who went back for additional training in dyslexia a year and a half ago because they were seeing more students with dyslexia and they did not have the tools to help them (J-94, page 1). This would have been right after Ms. Sacks had A.W.

A.W.'s third grade report card consists of all 'A's (J-40). The PARCC testing was more indicative of A.W.'s performance and he scored in the lowest percentile (J-43). Ms. W. could not reconcile these scores with his report card.

The May 5, 2016 IEP prepared at the end of third grade for fourth grade (J-44) contains no evaluation summaries and does not mention dyslexia and dysgraphia. In fourth grade A.W. had Ms. Franchio as his pull-out teacher for ELA as well as his in-class resource teacher throughout the day and Ms. Leone as his general education teacher. Lynn Hart was A.W.'s new case manager for fourth grade. The November 4, 2016 email from Ms. W. indicated that A.W. loved his teachers and his friends and felt much more challenged and encouraged to keep up with his classmates. He chose the journalism club as his second choice to spend more time with his favorite teacher, Ms. Leone. Ms. W. also indicated in the email that the visual quality of A.W.'s tests greatly improved. Ms. W. wanted to know what specific classroom strategies were being used for A.W.'s dyslexia and auditory disorder. She also requested that the classroom speaker system be set up in the class as it had been in previous years because it was crucial because A.W. has difficulty hearing accurately with background noise. Ms. W. felt that A.W.'s speech therapy was discontinued prematurely at the last IEP meeting (J-94, page 55). Ms. W. also indicated that they have found success with Learning Ally and that A.W. was reading several of the Battle Books on there. They also utilized Talk to Text and did book reports for them (J-94, page 56). Talk to text is available on your iPhone.

Ms. W. stated that she is generally a positive person and many of the emails she sent were positive as well as raising issues of concern. Ms. W.'s October 25, 2015 email to Ms. Hunter, his pull-out teacher for third grade indicated that A.W. was enjoying her small class in which he generally felt more comfortable (J-94, page 6). Every day Ms. W. reads with A.W. 'Fly Guy' and 'Mighty Robot' were picture books 15 – 25 pages with large print with two sentences per page. They would read the same books over and over

because Ms. W. was told in second grade that is how to help him to read. The July 11, 2016 email from Ms. W. to Ms. Scapellato in response to her advising Ms. W. that she had set A.W. up for "Learning Ally" and a Dan Gutman book was on its which was a Battle book. Ms. W. wrote again to advise her that A.W. finished the book in two days. This was a book he listened to through the Learning Ally program. Ms. W. also requested the voice text software to be activated so A.W. could follow along with the text as he listens to the book (J-94, page 46).

On November 8, 2016 Lynn Hart wrote in reply to Ms. W.'s email that they wanted to meet with her to discuss A.W.'s progress. He was benefiting from the sound amplification system and doing well on his spelling tests and responding well to instruction in a small group setting. Ms. Hart also indicated that she will begin to monitor his progress on the Fast ForWord program (J-94, page 55).

A.W. received various supports in fourth grade that are described in his March 20, 2017 IEP for fourth grade going into fifth grade (J-54, pages 4 – 5). In fourth grade Ms. W. observed a Math class and felt the instruction was strong. As a parent her opinion about the instruction support A.W. received in fourth grade was definitely an improvement from third grade. However, she did not see that his reading and writing deficits were being addressed.

A.W. brought home Science vocabulary words to study for a test (J-49, page 5). He could not pronounce or read the words. Ms. A.W. wrote a note to Lynn Hart and requested that the words be reviewed with A.W. and be added to his IEP since nobody was doing it with him at the time.

During fourth grade A.W. had a lot of visits to the nurse for asthma (J-53). In fifth grade at Cambridge School from January to June A.W. did not have any visits to the nurse for asthma (J-86).

A parent meeting conference on June 2, 2017 was held because Ms. W. was concerned about A.W.'s reading progress and had heard about the Lindamood-Bell program and thought it might fit A.W.'s learning profile (J-47). She wanted to discuss with

his current fourth grade teachers who knew him best. Ms. W. asked various questions at the meeting and wrote down the answers (J-48). A.W. was reading at a mid to late second grade reading level at the end of fourth grade. His spelling was at a first to second grade level. His Math was good. No one had any ideas as to how to use A.W.'s strengths to help him learn to read. Ms. W. brought the documentation from Lindamood-Bell and Kelly Scapellato agreed that it may be an option. She recalled that A.W.'s visual spatial abilities were high. Ms. W. also brought up the possibility of one-on-one instruction for A.W. and was told that was not an option. Ms. W. said she had recently been a sub for a second grader in Medford who received a full class period of one-on-one instruction in Wilson, so she thought she would ask. Ms. W. was also advised that A.W. should remain in the pull-out class for ELA.

The Lindamood-Bell program would not be done in time when school started. Ms. Scapellato gave Ms. W. options. The program allows you to drive to their program in Bryn Mawr or you could do a computer program one-on-one with a computer they provide. A.W. could miss certain electives during the day to do it. Ms. Scapellato made it clear that A.W. could do it in a classroom on the computer system provided by Lindamood-Bell, but they could not spare a teacher to watch him in the room. ESY was also discussed at this meeting. Ms. Franchio said ESY was a possibility. The ESY program proposed was a pull-out resource ELA class, four times weekly for sixty minutes (J-54, page 17). A.W. did not end up attending ESY because Ms. W. felt he needed more one-on-one instruction and there were other children who would be attending ESY from different grade levels.

Ms. W. sent a follow up email to Kelly Scapellato on July 10, 2017 advising that A.W. completed his evaluation at the Lindamood-Bell Center in Bryn Mawr and wanted the CST to review the evaluation and meet to discuss how best to proceed with both the financial and logistic planning (J-94, page 97). On July 11, 2017 Ms. Scapellato emailed back that they needed a copy of the evaluation and then an IEP meeting can be scheduled to review A.W.'s current IEP. She advised that her last day with the District was Thursday. Ms. W. called the CST to talk to Ms. Scapellato but she was in a meeting with Mr. Dent and was not available. This was her last day and she would not be able to take anymore phone calls. Ms. W. spoke to the new CST Director, Paulette Bearer, who did not seem prepared to talk to her. She did not believe Lindamood-Bell was an actual program.

Ms. W. gave Delaney at Lindamood-Bell Paulette Bearer's contact information. Ms. W. received an email July 18, 2017 from Delaney advising that they had not heard from Ms. Bearer (J-94, page 81). Ms. W. emailed Ms. Bearer to follow up (J-94, page 96). On August 2, 2017 Ms. Bearer replied to Ms. W. that she recently hired an LDTC who is trained in Lindamood-Bell and that she and the interim psychologist and Ms. Bearer have reviewed the scores. She has reached out to the speech and language pathologist and will speak to her and then will be able to set up a meeting to review the findings with Ms. W.

A.W. started at the Lindamood-Bell program in Bryn Mawr on July 31, 2017 because that was the earliest A.W. could get in.

A meeting was conducted August 16, 2017 to review A.W.'s IEP (J-114). Ms. Bearer led the meeting and went through the Lindamood-Bell report and the Chase report telling Ms. W. why they were not valid or useful. Ms. Bearer felt that if Ms. Chase was not a doctor, she was not qualified to say A.W. had dyslexia. Ms. Bearer did not mention completing evaluations by the triennial date of December 23, 2017. A.W. was last evaluated on December 23, 2014. Ms. Bearer recommended that A.W. be taken out of Medford Lakes and home schooled while he was finishing with the Lindamood-Bell program. Ms. W. sent Ms. Bearer an email August 25, 2017 requesting that A.W. be allowed to attend Medford Lakes part time in the afternoon as he continues with the Lindamood-Bell program. They believed having him start in September would ease the stress of returning full time in October and also would help him keep up with parts of the curriculum (J-94, page 110). On August 29, 2017 Ms. Bearer responded that this was a matter for the superintendent. Ms. W. provided A.W.'s schedule (J-94, page 110). Ms. W. stated that A.W. was able to attend the first day of school to acclimate him.

A.W. was excited to attend the first day of school on September 6, 2017 because he wanted to show off the gains, he had made at Lindamood-Bell. Ms. W. had told A.W. that he would be attending Lindamood-Bell part of the day and Neeta School part of the day. When A.W. came home after the first day of school he said he was not receiving the same supports he was last year with Ms. Franchio in fourth grade such as reading his tests, organizing his folders and writing down his homework. She had been with him all

day and knew what things he had to bring home. On the second day of school, September 7, 2017 the Superintendent emailed Ms. W. that "Since A.W. was attending the Lindamood-Bell program through October, it is best for him to withdraw from our roster and re-register once the program has concluded (J-94, page 99). Ms. W. responded that A.W. is still enrolled at Neeta and would be in school for part of that day. Ms. Bearer emailed Ms. W. on September 8, 2017 and stated that A.W. is still registered and he could come to school and that they have a schedule for him. However, if he misses school due to attending the Lindamood-Bell program he will not be able to keep up with his class work. Also, he needs to be present for a certain amount of the school day to be marked as present (J-94, page 104).

Ms. Craig sent an email on Saturday, September 9, 2017 that she was looking over her IEP's and noted that A.W. needed an FM system in the classroom. The social worker, Vicky Lee responded that this was uncovered during their IEP review meeting Thursday, but she was not in school on Friday, but would make it a priority on Monday (J-93, page 5).

Lesson 1 came home on September 12, 2017 and contained a lot of vocabulary on one page. Ms. W. sent in a note requesting that the words be reviewed with him because he was having difficulty and that previously, the vocabulary words were reviewed (J-58).

On September 12, 2017, Mr. Dent sent Ms. W. an email indicating that he has reviewed the situation regarding A.W. and the amount of hours he is in school and after discussions with Ms. Bearer and the District's attorney, they needed to stand by their earlier recommendation and that she should withdraw A.W. from school (J-94, page 112).

An email from Michelle Revelle, who works in the front office, stated that on Tuesday, September 12, 2017, A.W. arrived at school at 10:00 a.m. and refused to go to class and was standing in the office with his mother (J-113, page 14).

Ms. W. requested that the District provide home instruction for A.W. for Math, Science and Social Studies while he was missing time from Neeta school to attend the

Lindamood-Bell program. Ms. W. felt that A.W. would feel more comfortable returning to Neeta if he had the curriculum available to him and this would lessen A.W.'s anxiety upon his return. There was an email exchange between counsel and Ms. W. was shocked that the District stated that A.W. had no diagnosis of anxiety when his school records reflect many instances of anxiety (J-56, page 3).

A.W. was positive about attending the Lindamood-Bell program which was about an hour and a half away during the summer and a little bit longer in September due to increased traffic. He was eager at the prospect of becoming a better reader. He attended five days a week for four hours a day. There was no homework because it was intense one-on-one instruction. A.W. made progress. The cost was \$122 an hour (J-94, page 93).

A.W. returned to Neeta School on October 9, 2017 after completing 200 hours and finishing the Lindamood-Bell program. He did not return to the Lindamood-Bell program or do any online instruction with them after that. Ms. W. expected that there would be some integration of the Lindamood-Bell skills when he returned to Neeta. Ms. Bearer had indicated in an email that she would have Ms. Weirski reach out to Lindamood-Bell staff to discuss strategies to support A.W.'s future learning at Medford Lakes (J-94, page 121).

Ms. W. did not have any contact with Neeta staff between September 12, 2017 and A.W.'s return on October 9, 2017 aside from attending back to school night. She spoke with Ms. Craig about A.W. being at the Lindamood-Bell program and that he was benefitting from it.

On October 5, 2017, Ms. Craig sent an email to Ms. Bearer indicating that Ms. W. expects Ms. Craig to mirror what Lindamood-Bell has done. Although she has done a little research on it, she is not trained in the program (J-93, page 11). Ms. W. did not see that email at the time. On October 9, 2017 Mr. Bearer replied to Ms. Craig that she was not expected to follow up with anything done at Lindamood-Bell that would take training. On November 15, 2017 an email from Dr. Lee to Laney Boyle at Lindamood-Bell was sent advising that he had Ms. W. consent to share information to enhance educational services provided to A.W. (J-94, page 185). Dr. Lee took over for Ms. Bearer. Ms. W. had spoken

to Dr. Lee about reaching out to Lindamood-Bell. Ms. W. followed up with Ms. Boyle who advised her that the phone call went well, and that Dr. Lee was very receptive to what they were doing (J-94, page 196) Ms. W. did not receive any follow up from the District regarding any enhanced educational services related to Lindamood-Bell for A.W. after November 15, 2017.

On November 21, 2017 Ms. Boyle emailed Dr. Lee with A.W.'s scores and indicated that he completed fifty-one hours of Visualizing and Verbalizing and 148 hours of Seeing Stars for a combined total of 199 hours. Ms. Boyle recommended an additional sixty to 100 hours of instruction (J-94, page 185). Ms. W. said this was not done because there was no time for additional instruction with A.W. going to school full time and the amount of homework. She was hoping that Neeta would be modeling some of the Lindamood-Bell instruction.

Ms. Craig sent an email on November 9, 2017 that Ms. W. was still taking A.W. to Lindamood-Bell after school and that A.W. looked visually exhausted (J-93, page 32). Ms. Craig never discussed this with Ms. W. and Ms. W. was not taking A.W. to Lindamood-Bell after he returned to Neeta on October 9, 2019. Ms. W. admits that A.W. may have looked visually exhausted because he was exhibiting school anxiety and was not sleeping because he had nightmares about Ms. McKeever.

A.W.'s first day back in the District was October 9, 2017. On October 11, 2017 Mr. Dent emailed staff that A.W. had a bad day and refused to leave his mother's side and come into school. According to A.W. he was not getting the supports that he had last year such as his tests being read to him to him and helping him with his Math (J-93, page 19). Ms. Craig replied that looking over his IEP she did not see that his work tests needed to be read to A.W. (J-93, page 21). Ms. W. was surprised because it was clear from last year that his tests were read to him. On October 27, 2017 Ms. W. emailed Jen Wierski that there were things missing from his last IEP such as testing modifications and mindfulness of signs of frustration (J-93, page 34).

At the end of fourth grade Ms. W. had the IEP amended to include reviewing vocabulary and helping with pronunciations for Science and Social Studies vocabulary

words. In an email of November 13, 2017 Ms. Craig advised Ms. W. that they review vocabulary as a class in discussion or as they read but there is very little time if any for her to review vocabulary words daily during class instruction or he would miss too much information. She also indicated that unfortunately this year on top of changing classes, they do not have 'Discovery' which was used for review. (J-94, page 171). Ms. W. was upset to learn this because she felt it was something that A.W. needed and it had been worked out in fourth grade and now they do not have the time.

Ms. W. had discussions with the teachers regarding A.W.'s planner being filled out because they depend on that to know what his homework is. He needed help getting organized.

A.W. went to the CST himself and requested a different smaller Math class because he did not understand what was going on. Ms. Wierski and Ms. Bearer contacted Ms. W. to see if it was okay for him to do his Math in the CST room each day instead of going to Math class, until they figured out what was best. Ms. W. agreed because A.W. was exhibiting anxiety and was upset.

Ms. W. retained Dr. Gillock to learn more about what A.W.'s educational needs were. Dr. Gillock observed A.W. at the Neeta school on October 17, 2017 and called Ms. W. that evening to advise her that the Math class was not appropriate and A.W. should be removed. On October 19, 2017 Ms. W. had a meeting with Dr. Lee and then attended an IEP meeting to discuss A.W.'s Math placement. Dr. Lee met with Ms. W. but did not attend the IEP meeting although he is listed as an attendee. Ms. W. was under the impression that A.W. was going to be moved to a resource room for Math due to his high level of anxiety and learning needs. However, when she got to the meeting, she was told that a Math resource room did not exist for fifth grade (J-94, page 159). The District was going to work on the special education teacher in Ms. McKeever's Math class, Ms. Rivas to be working with A.W. The October 19, 2017 IEP indicated that the team will reconvene in December to determine if A.W. should continue in the current placement (J-66, page 6).

On October 20, 2017, A.W. would not get out of the car so Ms. W. went with him to class and stayed there for twenty minutes in Ms. Craig's class. Ms. Craig sent Ms. W. a picture of A.W. in the class sitting on a ball to show that he was better than when she left him (J-94, page 157). Ms. W. thanked her and said A.W. agreed to stay as long as she picked him up before Math class. She met with Mrs. Reilly who agreed to bring him down to see her. The goal was to get A.W. to stay in school for the rest of the day. The Math class was the trigger so if he had to go to the CST after reading class until they could find another Math class for him, they should allow that if he was upset (J-94, page 156).

Ms. Craig emailed Ms. W. on October 21, 2017 and said that she had a very heavy heart about how A.W. was feeling at school and hoped she did not upset him more by asking him to take the quiz in the nurse's office, but she was concerned his work would pile up (J-94, page 158). A.W. had left class because he was upset and went to the nurse. Ms. Craig brought his test and asked him to do it. He did not want to do it and Ms. Craig said he would get a zero if he did not do it. A.W. ripped up the test. Ms. Craig also indicated that Ms. Rivas was prepared for small group materials and missed A.W.

On October 20, 2017 A.W. said that Ms. W. said he did not have to go to Math class, so he refused to go and was sitting in the nurses' office. Ms. Rivas was upset because she spent time getting ready for A.W. (J-93, page 26). Also, on October 20, 2017 Ms. Craig emailed Mr. Dent and Dr. Lee that A.W. was refusing to go to any class because he said Ms. W. was coming to get him (J-93, page 27). Ms. W. said this was not true and that Ms. Craig did not reach out to her to see if that was true. Ms. W. wanted to get him to stay in school. Ms. W. did discuss with A.W. that if he had anxiety he could go to the nurse until he calmed down and then return to class. She encouraged that.

The October 27, 2017 IEP amendment indicated that a pull-out resource Math class was proposed but the team felt that it would not be academically challenging to A.W. since his Math skills were on grade level. A restructuring of the Math class in the inclusion setting had made for a better learning environment for A.W. (J-67, page 5).

Ms. W. told A.W. that it was his job to stay at school in October and November when he was having anxiety. That he has to stay in the class as often as he can and that she would not be picking him up. She could not fix things if he was not going to be there. A.W. was saying that he was not able to learn at the Neeta school. This was not something he just started saying in fifth grade. In kindergarten he said he did not understand what his teachers were saying.

Ms. W. heard testimony that A.W. was saying that Neeta was no longer his school when he returned in October. They had to tell A.W. when he was not allowed to attend Neeta until he finished Lindamood-Bell and that is why A.W. probably believed that.

A.W. continued to have issues in Math class following the October 27, 2017 meeting. On November 15, 2017 Ms. W. wrote to Ms. McKeever that A.W. forgot how to do long division and could she have Ms. Rivas re-teach him in the class (J-94, page 178). Ms. McKeever replied that it was only a short preview and that they would be going slowly through the steps tomorrow and not to worry. Ms. W. felt that they should not be giving A.W. homework on something that they only had time to preview. A.W. needs a structured, systematic, intense approach.

On November 1, 2017 Ms. Craig emails various district personnel wondering if a meeting can be arranged to see what would be beneficial for A.W. He had been back in the District eighteen days and had been in her class for about seven or eight of the eighteen days and his continued sporadic school refusal and missed classroom time was becoming a real concern to her as she had little success remotely touching on his IEP goals and objectives (J-93, page 32).

Ms. W. began looking into schools with language-based learning disabilities in mid to late November after reaching out to Dr. Gillock. They first looked at the Bridge school which had classes consisting of students ages seven through nineteen, which Ms. W. was not comfortable with having A.W. a fifth grader with nineteen-year old. They did not use Lindemood-Bell instruction and switched classes a lot.

They looked at the Cambridge School on December 8, 2017 and had a preliminary admission summary (J-70). The visit went great. A.W. loved it and said this was where he needed to be.

A December 11, 2017 letter to Dr. Lee was sent to unilaterally place A.W. at another school if an appropriate program was not offered by the District in ten days (J-71). Various emails were exchanged between counsel concerning the IEP meeting of December 18, 2017. The parents had sent the unilateral placement letter and the District would be offering an IEP, but not offering an out-of-district placement so it was believed it was not necessary to have a meeting (J-56, page 9). The parents then received the proposed IEP and the cover letter stated, "I am sorry you were unable to attend the Eligibility and IEP Conference for A.W. on December 18, 2017" (J-56, page 6). The parents were upset because they thought there was no meeting and if there was a meeting they would have attended.

A December 18, 2017 letter from Jennifer Wierski indicated changes to the IEP including the addition of counselling services once per month for twenty minutes were made to the IEP and the Math goals and objectives were amended to address problem solving. Extended school year services were to be decided at a later date (J-74).

The December 18, 2017 IEP (J-73) offered was not an appropriate program because Ms. W. had talked to Dr. Gillock. A.W. had done Lindamood-Bell and she understood more about structured literacy and she was looking for the IEP to include these additions. Dr. Gillock was also concerned with A.W. being in a larger group setting in Math. Dr. Gillock predicted that if A.W. remained in the same program, there would be a total school refusal, so they placed A.W. at Cambridge. Besides recommending structured literacy programs, Dr. Gillock suggested that A.W. have counselling. A.W. saw Dr. Handleman for counselling and working on his emotions.

A.W. has been happy attending Cambridge. The trip is about fifty-five minutes and they car pool with two other children. They do homework or watch movies in the car. Ms. W. has a Wi-Fi hot spot so they can get on their iPads to do different work on the way there or the way back.

The parents hired Jeanne Tighe in September 2018 because they had a case and needed a specialist and an expert to testify if necessary. Ms. W. was the main provider of information to both Dr. Gillock and to Ms. Tighe.

A.W. receives speech and language services twice a week at Cambridge, which includes working on A.W.'s writing and vocabulary. A.W. has been very successful in Math at Cambridge using the Cloud 9 Lindamood-Bell program.

The proposed June 4, 2018 IEP had the same in-class Math resource as before. A.W. would not have an additional teacher to provide additional assistance in Science and Social Studies. He was also offered two times a week additional reading instruction, but it was not specified what it would be or whether it was one-on-one instruction. No speech and language services were provided (J-77).

Lindamood-Bell did retesting of A.W. on June 11, 2018 and found that A.W. would benefit from additional instruction (J-82).

A June 12, 2018 letter was sent to Dr. Lee confirming that the parents were having A.W. return to the Cambridge School for the 2018 – 2019 school year if an appropriate program was not offered by the District within ten business days of the letter (J-83). They did not receive anything from the District after sending that letter.

A.W. is extremely comfortable at Cambridge. He never has any school refusal and he feels good about himself. Ms. W. sees gains in his reading.

On cross-examination, Mr. Gorman pointed to an email he sent to Ms. Zuba that there was a miscommunication somewhere and that the CST may have met to get everything together for the IEP for their review, but it was not a formal meeting and there was no accusation that the parents refused to attend the meeting (J-56, page 6).

Regarding the March 1, 2016 email from Ms. Sacks to Ms. Scapellato (J-113, page 5) wherein Ms. Sachs indicated that A.W. has noticeable focus concerns and that she is

frequently redirecting his attention during group lessons and independent work, it was pointed out that A.W.'s IEP in effect at the time contained modifications requiring the teacher to "cue student's attention". Other modifications included preferential seating, and seating student in area free of distraction, modifying the presentation of materials and cuing student by calling his surname before asking questions. A.W.'s comprehension of language used during instruction was also to be monitored as well as frequently checking on A.W.'s progress of independent work (J-37, page 11).

Ms. W. only observed A.W. in the class once each year on the parental invitation days for between twenty to thirty-five minutes. She acknowledged that there were teachers there every day that would have been observing A.W. every day and would have personal knowledge as to how he was performing in the classroom.

Ms. Sachs was A.W.'s special education teacher in third grade who assisted him in all of his classes except for reading and writing for which he had Ms. Hunter, his pull-out ELA special education teacher. Ms. Hunter testified A.W. made appropriate and meaningful progress in third grade and she was with him every day.

Although on direct Ms. W. testified she felt A.W.'s instruction was strong in fourth grade, and she liked both Ms. Leone and Ms. Franchio, she felt A.W. had further needs that were not met. Ms. Franchio was with A.W. on a daily basis and provided A.W. with ELA instruction.

At the end of fourth grade, Ms. W. decided to send A.W. to the Lindamood-Bell program. There were various emails between Ms. Bearer and Ms. W. regarding A.W.'s schedule and when she was proposing to have A.W. attend Neeta while attending the Lindamood-Bell program in Bryn Mawr, Pennsylvania. On Mondays and Fridays A.W. would be able to get to school by 1:00 p.m. However, if they shortened the program those days and extended on one other day, he would be able to get to school by 11:30 a.m. hopefully in time to have lunch. Tuesdays and Thursdays, he could get to school by 1:30 p.m. depending on traffic from Pennsylvania. On Wednesdays, he would not attend Neeta at all but attend a full day at Lindamood-Bell (J-194, page 110). The school day ends at 3:00 p.m. Ms. W. admitted that this did not make educational sense. Also, she

later became aware that a student had to attend a certain amount of hours of school a day to receive credit for attendance. Although it did not make educational sense, Ms. W. wanted A.W. to attend Neeta while attending Lindamood-Bell because of other concerns including social concerns and anxiety.

The W.'s retained a lawyer to represent them in this matter the summer before fifth grade.

The March 20, 2017 IEP for A.W.'s fifth grade year was signed and in effect (J-54). To the extent that any services or supports were missing, Ms. W. had the opportunity then to bring it to the District's attention. Once A.W. returned to school on October 9th and said he was not getting the services he previously had, the Superintendent emailed everyone involved with A.W. with A.W.'s and Ms. W.'s concerns on October 11, 2017 (J-93, page 19).

Although Ms. W. was concerned A.W. brought home long division homework he could not do and emailed his teachers her concerns, she acknowledged that Ms. McKeever replied to her that A.W. was only supposed to try it and that she would be going over it the next day step by step and he would get any help he needed (J-94, page 178). This was the same teacher Dr. Gillock had advised her was inappropriate. Ms. W. did not call and advise Dr. Lee or anyone from the District that Dr. Gillock had concerns with Ms. McKeever.

Ms. W. stated if she had concerns, she would send an email and then they would have a meeting. She did not know she had the option to write things in the "parental requests" section (J-15, page 10). However, in the IEP dated December 23, 2014 there is a note under parental requests that the parents requested access to Fast ForWord based on the audiologist's recommendation (J-24, page 15). The IEP dated May 6, 2015 is blank under 'parental requests (J-28, page 17). After receiving the report from Dr. Chase, the District changed A.W.'s ELA placement from in-class support to pull-out replacement. The May 5, 2016 IEP does not have any parental requests listed (J-44, page 13). The March 20, 2017 IEP does not contain any parental requests (J-54, page 19). The October 19, 2017 IEP does not contain any parental requests (J-66). The

October 27, 2017 IEP meeting (J-67) and the October 19, 2017 IEP meeting were both to address the Math class concerns.

An evaluation planning meeting took place on November 8, 2017. A LDTC evaluation was going to be done and the document indicates that the parent was going to share the independent neuropsychological evaluation of Dr. Gillock (J-68, page 2). Dr. Gillock had already done his observation the month prior. The W.s intended to share the results of the report with the District. Dr. Gillock's report was not issued until January 4, 2018. They had started looking at the Cambridge School in early December. The preliminary admissions summary for the Cambridge school is dated December 8, 2017 (J-70). Cambridge did some assessments of A.W. as part of the admissions process. A.W. scored a grade equivalent of six and three quarters in the Wide Range Math Achievement test; a grade equivalent of six in the Word Meaning test; and a grade equivalent of five in the Silent Reading Comprehension test. On December 11, 2017 the W.s sent the ten-day letter to the District advising of the unilateral placement without waiting to see what the results of the evaluations or what the District's proposed IEP would be. Ms. Zuba assisted Ms. W. with the drafting of J-71 with information provided by Dr. Gillock.

The Enrollment Summary Report from Cambridge dated January 2, 2018 reflects A.W.'s first day at Cambridge (J-75). Ms. W. stated that after sending the ten-day letter they were awaiting the District to offer an appropriate program as reflected in the letter. The District proposed a new IEP for A.W. at its meeting of December 18, 2017, which meeting the W.s did not attend. She reviewed the proposed IEP before enrolling A.W. at the Cambridge School (J-73).

Discussion

It is the duty of the trier of fact to weigh each witness's credibility and make a factual finding. Credibility is the value a fact finder assigns to the testimony of a witness, and it contemplates an overall assessment of the witness's story considering its rationality, consistency, and how it comports with other evidence. Carbo v. United States, 314 F.2d 718 (9th Cir. 1963); see In re Polk, 90 N.J. 550 (1982). Credibility findings "are

often influenced by matters such as observations of the character and demeanor of witnesses and common human experience that are not transmitted by the record.” State v. Locurto, 157 N.J. 463 (1999). A fact finder is expected to base decisions on credibility on his or her common sense, intuition or experience. Barnes v. United States, 412 U.S. 837 (1973). A trier of fact may reject testimony because it is inherently incredible, or because it is inconsistent with other testimony or with common experience, or because it is overborne by other testimony. Congleton v. Pura-Tex Stone Corp., 53 N.J. Super 282, 287 (App. Div. 1958).

M.W. testified credibly, however she is not a special education teacher and had no first-hand knowledge as to what transpired in school aside from what she observed during the yearly parent class invitation and what was relayed to her by her son, A.W. and his teachers. Petitioners’ expert, Ms. Tighe testified credibly regarding the concept of structured literacy, but she is not a special education teacher and she did not observe A.W. receiving instruction in the District as she was not retained until after A.W. was already unilaterally placed at Cambridge. Ms. Tighe relied on the September 2017 Dyslexia Handbook which sets forth recommendations for dealing with students with reading difficulties, but states that New Jersey school districts have considerable autonomy in making decisions about diagnostic tools and instructional programs (J-111, page 3).

Petitioners’ other expert, Dr. Gillock’s testimony seemed a bit exaggerated regarding the educational environment in Ms. McKeever’s Math classroom and certainly did not support a conclusion that the whole school was not a supportive and nurturing environment when most of the evidence pointed to the contrary and that school personnel from the school nurse, his teachers and the CST were supportive of A.W. emotionally and academically. It was interesting to note that even during Dr. Gillock’s observation of A.W. in that Math class, A.W. felt confident enough to raise his hand on two occasions and got the answer correct once. He did not observe A.W. to be anxious during his observation of the Math class on October 17, 2017. This observation took place one week after A.W. had returned to school after a one-month absence. I also did not find Dr. Gillock’s testimony that A.W. has an adjustment disorder with anxiety persuasive as he indicates it was caused by his ‘mistreatment in school’ as well as his learning disability. Dr. Gillock

stated that he based his conclusion on his clinical interview of A.W. A.W. completed the assessment orally with Dr. Gillock and the results were that A.W. did not have anxiety. His mother's assessment indicated he was borderline clinical which is suspect since she had previously indicated that fourth grade was an exceptional year for A.W., she was pleased with his progress and that he had gained self-confidence (J-94, pages 64 and 67). His fourth-grade teacher, Ms. Alesiani did not observe any instances of anxiety and certainly no school refusal during fourth grade. The school refusal manifested itself after A.W.'s return to school following his one-month absence from school to attend the Lindemood-Bell program. The petitioners' decision to allow A.W. to finish Lindemood-Bell when it directly conflicted with the start of A.W.'s fifth grade school year resulted in him missing the first month of school and prevented the district from implementing A.W.'s IEP. Any student missing the first month of school, with new teachers and a new class and falling behind in the workload would experience anxiety, let alone a child who has a learning disability and has experienced anxiety in the past. I also did not deem Dr. Gillock's testimony persuasive regarding the Reading Horizon's program as inappropriate instruction for a child with a language disability, when he has no instructional background, did not know it was an Orton-Gillingham method and did an hour online on their website to come to his conclusion.

The District employees all testified credibly and were familiar with the facts and their respective direct contacts with A.W. throughout the school day as well as their direct contacts with Ms. W. regarding her parental concerns documented in the numerous meetings and emails between the parties. The detailed testimony of A.W.'s special education teachers who personally worked with and observed A.W. on a daily basis in third, fourth and fifth grade was especially persuasive as they are all educational experts in delivering special instruction to children with disabilities. The testimony was detailed as far as the chronology of events and evaluations completed to assess the suspected areas of A.W.'s disability; his performance in school; the specific teaching methodologies used for instruction; A.W.'s interactions with his teachers and peers; the modifications and supports in place to assist A.W.; and the assessments utilized to determine that A.W. made reasonable and appropriate educational progress.

Based upon due consideration of the testimonial and documentary evidence presented at this hearing, and having had the opportunity to observe the demeanor of the witnesses and assess their credibility, I **FIND** the following as **FACTS**:

A.W. scored a sixty-six in the Brigance early childhood screening test given June 5, 2012 prior to starting kindergarten (J-1). He scored above the cutoff which did not trigger a CST evaluation (J-2). His kindergarten report card for the 2012-2013 school year indicated that he had done a fantastic job in kindergarten. It was also noted under the comments section for the second marking period that they had seen much improvement over the anxiety issues (J-4).

When A.W. was in first grade, Ms. W. wrote a letter dated April 30, 2014 to Amy Safko, the social worker on the CST, and requested a CST evaluation to determine if A.W. was eligible for special education and services. A.W. had been evaluated on April 29, 2014 by Dr. Gail Angelelli, an audiologist who diagnosed A.W. with an auditory processing disorder in the area of decoding and tolerance fading memory. Ms. W. indicated in her letter that she was not surprised by the results as their family has had concerns with A.W.'s learning and emotional struggles for years and that she had spoken with the Medford Lakes child study team on three different occasions, twice in kindergarten and once when A.W. was in private pre-school when he was three years old (J-8).

Dr. Angelelli recommended a speech and language evaluation be done and that an FM sound system be used in the classroom (J-9).

Pursuant to Ms. W.'s request, a CST evaluation planning meeting was held on May 21, 2014. The CST discussed that A.W.'s Math skills were strong and there had been improvement over the year. His fluency was poor, but his comprehension was strong. He was participating in the class, but phonics and decoding were difficult. The CST decided not to move forward with additional testing but did recommend a speech and language evaluation be conducted. The parents were in agreement (J-10 and 11). A speech and language evaluation were done by Tara Mahon on June 16, 2004 (J-13) and a speech and language only IEP was developed for A.W. on July 15, 2014 to commence

at the beginning of second grade. A.W. was to receive individual speech therapy four times a month for twenty minutes and group therapy two times a month for twenty minutes (J-15).

A.W. had approximately thirty-five sessions of private auditory therapy from May 2014 through July 2015 with Dr. Diane Lazer (J-12). Each session lasted an hour to an hour and a half. Ms. W. also retained a reading tutor the summer between first and second grade (J-94, page 5).

A.W. was re-evaluated by Dr. Angelelli on September 25, 2014 who found that the intervention he was receiving for auditory processing deficit had completely improved the area of Decoding. Dr. Angelelli recommended that the speech and language therapy, memory strategies and the use of the amplification system all be continued. She also added another recommendation that A.W. have counselling for anxiety (J-16).

On October 6, 2014 Ms. W. sent an email to Kelly Scapellato, Supervisor of Special Education, requesting an IEP meeting after having been advised to do so by his second-grade teacher (J-94, page 11).

On October 6, 2014, A.W.'s second grade teacher, Mrs. Judy Hamlin referred him to the CST (J-17). The reasons for recommending A.W. for referral were his basic reading and Math concepts especially word problems. He cried whenever he was presented with a reading test and was completely frustrated on the phonics part of the test when he had to listen to vowel sounds in words. Also, A.W. shut down when he felt overwhelmed and frustrated and he had been diagnosed with an auditory processing disorder. An Evaluation Planning Meeting was conducted on October 14, 2014 (J-19). A Social History Evaluation by Amy Safko, Social Worker, dated October 28, 2014 (J-20); a Learning Evaluation by Lisa Rombach, LDTC, dated November 12, 2014 (J-21); and a Psychological Assessment by Kelly Scapellato, School Psychologist, dated December 9, 2014 (J-22) were all conducted.

The Psychological Evaluation, used to determine cognitive ability, indicated A.W. had a full-scale IQ of 105, which means he has average intelligence. In verbal

comprehension, all of his scores were above average, except for working memory. Vocabulary was a relative weakness (J-22). Oral Expression, Broad Written Language and Written Expression were all in the low range. A.W.'s story recall, that is, being able to remember sequences of what was read to him, was very low at sixty-one. Math was not an area of weakness for A.W. in second grade. He scored a ninety-nine in Math fluency and 104 in applied problems (J-21).

The CST, at its meeting of December 23, 2014, concluded that A.W. was eligible for special education and related services under the classification of specific learning disability and required an IEP and special programming (J-24). A.W. would receive two sixty-minute periods of ELA block, one period of Math and Science and Social Studies in an in-class resource classroom. Science and Social Studies are split into half year programs from kindergarten to fourth grade. The in-class resource class is a general education class with a general education teacher responsible for all of the students together with a certified special education teacher who would be following A.W.'s IEP and delivering the accommodations and modifications that A.W. required in the classroom setting. His related speech therapy services remained the same (J-24, page 14).

The accommodations and modifications included in the IEP included cueing the students attention; modifying reading and writing assignments; preferential seating; review, restate and repeat directions; simplify verbal/written directions; state expectations clearly; monitor levels of tolerance and be mindful of signs of frustration; homework assignment book checked by special education or mainstream teacher and parent daily; allow test to be given by special education teacher; location and time of test determined by teacher; modifying the test format; seat student in an area free of distractions; modifying the grades determined through collaboration of general/special education teacher; modifying the presentation of materials; cue student by calling his name before asking questions; frequently check on progress of independent work; monitor the student's comprehension of language used during instruction; and assistive technology use of FM system (J-24, page 9).

The IEP indicated under the "Parental Requests" section that the parents requested access to the Fast ForWord program at home on the recommendation of

A.W.'s audiologist. Based on the results of the evaluation and in conjunction with the CAP evaluation and classroom progress, it was agreed that A.W. have access to the Fast ForWord program at home. Progress and use of the program would be monitored by the speech therapist and case manager (J-24, page 15).

Ms. W. presented the District with a report from Dr. Caroline Eggerdine, a pediatric neurologist from Cooper University, dated February 3, 2015, wherein there was some discussion whether A.W.'s reading difficulties were the result of dyslexia or a more complex interaction of his CAPD and memory concerns. The plan was to continue his special education supports to include amplification for his CAPD and reading supports; and continue his therapy for CAPD. Further evaluation of reading difficulties could be done at the Cooper Learning Center (J-26). There was a six month wait to be seen at the Cooper Learning Center, so Ms. W. had A.W. evaluated by Catherine Chase, LDTC. who was recommended by Dr. Lazer, A.W.'s speech and auditory therapist.

The parents had A.W. evaluated by Michael Gallaway, OD on April 28, 2015 to see if any vision problems were interfering with his school performance. Although his vision was normal, A.W. had significant problems in the areas of eye tracking, focusing and eye teaming. Dr. Gallaway recommended bifocals and a vision therapy program (J-27). A.W. completed a vision therapy program that improved his eye tracking.

On May 6, 2015, at the end of second grade, the IEP was developed for third grade and reflected A.W.'s present level of academic functioning (J-28). A.W. was working to improve his fluency and recognition of high frequency sight words. During large group instruction A.W. was quieter and rarely participated. He was struggling with his writing. He had a basic grasp of Math skills. A.W. was having the most difficulty with recalling sequential strings of information, which was an audiological issue. A.W. was participating in the Fast ForWord program at home and making steady progress. The recommendation for third grade was the continuation of the in-class resource program for ELA, Math and the Science/ Social Studies block. ELA was 120 minutes per six-day cycle. Speech therapy remained the same (J-28). A.W.'s June 15, 2015 progress report for second grade completed by Ms. Gillet indicated that he was progressing towards his goals (J-29).

A.W.'s report card for second grade indicated that his DRA went from a ten to a fourteen which showed growth (J-36). Ms. Hamlin, his regular education teacher, in conjunction with Ms. Gillett, his special education teacher, indicated that it was a pleasure teaching A.W. that year. A.W. displayed above-average effort and demonstrated a lot of strengths. There were weaknesses noted in study habits and working independently.

A.W.'s parents arranged for a private psycho-educational screening of A.W. conducted by Catherine Chase, LDTC on August 1, 2015, the summer between second and third grade. Ms. Chase was the first evaluator to mention that A.W. had a profile consistent with dyslexia (J-32). Ms. Chase made various recommendations that the District should do for A.W. including instruction using the Orton-Gillingham method, working with A.W. on working memory, organizational and study skills, reading decoding, reading comprehension, applied problem solving and written language (J-33). Dr. Lee said that the District was doing all of these things with A.W. with Ms. Gillet in the inclusion class. Ms. Chase made specific recommendations that could be done in the school, but she did not recommend an alternative out-of-district placement.

In response to Ms. Chase's report, the District called for an IEP meeting on August 31, 2015 to amend the IEP that was developed three months earlier (J-34). The IEP included the psycho-educational screening of Ms. Chase. The IEP was revised to recommend that A.W. receive ELA instruction in a pull-out resource setting which was a smaller special education class taught by a special education teacher and consisting of only special education students. The class size was six or smaller and the teacher was trained in Orton-Gillingham strategies. Counselling was also recommended in the revised IEP for twenty minutes once a month. Speech therapy remained the same (J-34, page 16). The August 31, 2015 IEP's reading goals (J-34) were modified to include decoding and word recognition in September 2015 (J-37, page 7).

A.W. continued to improve in third grade and was in a pull-out replacement special education class for his ELA block taught by Ms. Hunter, who is a certified Wilson Level 1 teacher. There were only four students in her ELA class. The third-grade progress report dated June 16, 2016 indicated that on June 7, 2016 A.W. had mastered the goal of using letter sound knowledge and structural analysis to decode words. He mastered skills in

phonics up to Chapter 3 in the phonics program, using Reading Horizons which is an Orton-Gillingham method. A.W. was very systematic at applying decoding skills however, the focus was to carry over the skills he learned to everyday reading and writing by practice and repetition. A.W. had also increased his rate of words per minute with repeated readings from fifty-eight to 180 words per minute with ninety-nine percent accuracy. A.W. also made progress in Math which was in the mainstream general education setting with other third grade students and taught by Ms. Sacks. Ms. Sacks noted that A.W. demonstrated understanding whole number place concepts with eighty percent accuracy and that he made progress in Math. Numerical operations such as addition, subtraction, multiplication and division working independently with an eighty percent accuracy. Ms. Sacks noted that A.W. mastered these skills by the end of the third grade. A.W. demonstrated a good ability to apply the correct operation to a one two-step problem with accuracy. A.W.'s speech and language goals being implemented by Ms. Mahon were also mastered (J-39).

A.W.'s DRA scores showed that he went from an independent Level 12 at the end of second grade to an independent Level 20 by the end of third grade. It was not on grade level, but it was reasonable and appropriate growth.

Ms. Hunter saw A.W. every day in third grade and thought he was an amazing student. The documentation in the emails, the grade book and the progress reports show A.W. made appropriate and meaningful progress. A.W. worked hard and she saw progress. She had a good rapport with A.W. and Ms. W. throughout the year and if something was wrong, there would have been communication about it.

The May 5, 2016 IEP done in third grade going into fourth grade recommended that for fourth grade A.W. have 120 minutes of ELA per six-day cycle in a small pull-out special education replacement class taught by a special education teacher. A.W. had mastered his previous goals for decoding and word recognition (J-37) so his goals were revised, and new goals were added including phonological awareness, vocabulary and concept development. Continued goals included fluency and comprehension skills and response to text goals (J-44). These goals were a step up for A.W. and although they

are not third or fourth grade level goals, A.W. was making progress. Speech was not recommended to be continued for fourth grade because he had mastered the goals (J-44, page 12). A.W. would continue in the mainstream general education class with in-class support for Math, Social Studies and Science (J-44).

The May 5, 2016 IEP was amended in fourth grade without a meeting with the parents' consent on March 12, 2017 to provide A.W. with extra assistance with the pronunciation and spelling of vocabulary words in Social Studies and Science class. The number of words he had to know was reduced. He was also to be provided with an extra set of textbooks for use at home (J-45 and J-46). Ms. W. had previously reached out to Ms. Alesiani on February 1, 2017 with her concerns regarding challenging terminology being used in Science and Social Studies (J-94, pages 65 -67).

Ms. Franchio, now known as Ms. Alesiani, A.W.'s special education teacher for fourth grade was his pull-out replacement teacher for ELA, as well as his special education teacher in all of his inclusion classes. She was with him every day for all of his core courses and was responsible for implementing his IEP. The strategies she was using in the ELA setting transferred to the other subjects and were utilized by herself and her co-teacher in the other subjects. The ELA block was 120 minutes long. Although initially there were four students in the class, it dropped down to three. They worked daily on "Reading Horizons", which is an Orton-Gillingham based program utilizing a multi-sensory approach, that is, auditory, visual and kinesthetic. In addition to the ELA block, in fourth grade there was also an additional forty-minute guided reading period.

In the small, pull-out resource setting, A.W. was very strong in his ability to share his thoughts and his ideas. He was eager to participate and raised his hand and was an active and engaged student. She also saw real growth in him even in the in-class resource setting with the general education students where by the end of the year he was willing to read a paragraph from the science text which is a grade level text and not at his instructional level.

A.W. was on par with the general education students in his Math class although he did have difficulties with word problems. He was still behind grade level compared to

his general education peers in reading which made the pullout resource setting appropriate for A.W.

In September A.W. was assessed at a DAR Level 20 and his fluency was sixty-nine percent accuracy at 61.2 wpm. His comprehension was eighty-two percent accuracy. His overall accuracy for fluency was ninety-nine percent making him independent at that level. By the end of the year in May, he had increased to a twenty-eight DAR level and a fluency rate of ninety and half wpm. His fluency had increased by more than ten words per minute from baseline data on a cold read (J-50). Ms. Alesiani completed A.W.'s progress reports for fourth grade based upon the data she had collected all year. A.W. mastered all of his reading goals and mastered the Math goal regarding geometric properties which was a fourth- grade curriculum goal (J-50). His area of weaknesses was targeted, they were addressed, and he made progress (J-51).

A.W.'s PARCC scores did not impact Ms. Alesiani's instruction of A.W. because his instruction is based on his IEP and not the State standards. He was instructed based on his needs and goals set forth in his IEP.

A.W.'s fourth grade report card for the 2016 – 2017 year indicated he received straight A's. His teacher's comments indicated that A.W. was a wonderful asset to the classroom and that his confidence and eagerness to learn and work ethic showed what an excellent student he was and that he was a role model to his classmates in classroom behavior (J-52).

The annual review meeting at the end of fourth grade to propose an IEP for fifth grade was held on March 20, 2017. Ms. Alesiani wrote the PLAAFP section for the 2017 – 2018 IEP and provided a general overview for A.W.'s next year's teacher (J-54, pages 3 - 6). She recommended that A.W. stay in the same placement for fifth grade, that is, the pull-out resource class for reading and writing and the in-class resource setting for Math, Science and Social Studies. Modifications and accommodations were listed for his fifth-grade school year to help guide his teacher in what A.W. needed to be successful (J-54, pages 10-11). The PLAAFP addressed many of the items that benefitted A.W.

such as small group Math instruction, Math manipulatives, reading tests aloud and being allowed extra time for assessments.

On June 2, 2017 there was a parent meeting with the fourth- grade teachers and Ms. Scapellato concerning A.W.'s reading progress. The parents were considering A.W. participating in the Lindamood-Bell program. Ms. Alesiani and her co-teacher Ms. Leone were not familiar with the program. Notes from the meeting indicated that A.W. had made progress but still was reading a lot of words wrong. There was an indication that his DRA scores were up to a twenty-eight. A.W. was volunteering to read aloud in Science. A teacher-administered assessment of the Write Steps program indicated that A.W. was doing well in writing. He was a visual and kinesthetic learner. His auditory processing, following multi-step directions and organization was showing improvement (J-47).

An ESY program was proposed for A.W. the summer following fourth grade for a pull-out resource ELA class, four times weekly for sixty minutes (J-54, page 17). He did not attend.

A.W. started at the Lindemood-Bell reading program in Bryn Mawr, Pennsylvania on July 31, 2017 because that was the earliest, he could get in. It was an ELA program only and A.W. did not receive instruction in Math, Science or Social Studies at Lindemood-Bell. The program would not be finished by the time school started so Ms. W. requested that A.W. be allowed to attend Neeta School part time while he finished up the Lindemood-Bell program (J-94, pages 110-111). On Mondays and Fridays A.W. would be able to get to school by 1:00 p.m. However, if they shortened the program those days and extended on one other day, he would be able to get to school by 11:30 a.m. hopefully in time to have lunch. Tuesdays and Thursdays, he could get to school by 1:30 p.m. depending on traffic from Pennsylvania. On Wednesdays he would not attend Neeta at all but attend a full day at Lindamood-Bell (J-194, page 110). The Neeta school day ends at 3:00 p.m. Ms. W. admitted that this did not make educational sense. Also, she later became aware that a student had to attend a certain amount of hours of school a day to receive credit for attendance. Although it did not make educational sense, Ms. W. wanted A.W. to attend Neeta while attending Lindamood-Bell because of other concerns including social concerns and anxiety.

A.W.'s parents retained counsel the summer of 2017. Counsel recommended the parents retain James Gillock, Ed. whom they had previously referred clients to. Dr. Gillock was retained at the end of August 2017. Jeanne Tighe was also recommended by petitioners' counsel and retained in October 2018.

By email dated September 12, 2017, the Superintendent, after the reviewing the situation with Ms. Bearer and the District's attorney, advised Ms. W. that A.W. should be withdrawn from school until he finished the Lindemood-Bell program (J-94, page 112).

A.W. attended the Lindemood-Bell reading program from July 31, 2017 until early October 2017. He returned to the Neeta School on October 9, 2017 on a full-time basis after missing the first month of school. A.W. had a difficult time transitioning back to the Neeta School.

There was a disruption in services as the District was unable to implement A.W.'s IEP while he was attending the Lindemood Bell program.

A.W. missed the beginning part of his fifth-grade school year and on his return his performance was inconsistent. The teachers were trying to catch him up but there were times he did not want to go to class and choose to go the nurse or the CST. Ms. Craig noted in the Goals and Objectives Progress reporting form completed December 15, 2017 that she was working with A.W. on the Journeys Comprehension test and he showed some strengths for grade level text. She was working on pulling the main idea from the passage with him (J-62).

The nurse's notes for A.W. for fifth grade began on October 16 until the last day he saw the nurse on December 22, 2017 (J-64). There were entries for anxiety and school refusal. There had never been an entry for school refusal noted before this time. During these three months upon his return, A.W. did not want to go to class. He stated that this was no longer his school and that the teachers do not know how to teach him.

A revised IEP was prepared for A.W. on October 19, 2017 (J-66) and again on October 27, 2017 (J-67). Both of these IEP's dealt with A.W.'s Math placement and school refusal and anxiety and there was discussion of A.W. being in a pull-out resource setting for Math with more individualized attention. A pull-out resource option was considered but the team did not believe it would be academically challenging for A.W, since his Math skills were on grade level. There was a restructuring of the Math class in the inclusion setting which made for a better learning environment and less anxiety (J-67, page 5). Ms. Rivas, the special education teacher in Ms. McKeever's Math class would be working with A.W. more.

A.W.'s triennial reevaluation planning meeting took place on October 27, 2017. It was noted that "A.W. has had difficulty transitioning coming to school. His anxiety has been impacting his ability to attend classes or school days" (J-68, page 1). The District agreed to conduct an educational evaluation and would await the results from the neuropsychological evaluation that the parents were having done by Dr. Gillock. The notes from the planning meeting indicate that the parents had agreed to share the independent neuropsychological report of Dr. Gillock (J-68, page 2). The educational evaluation was done on December 4, 2017 by Jennifer Wierski (J-69).

A.W.'s parents sent Dr. Lee a letter dated December 11, 2017 indicating their displeasure with the progress A.W. had made at the Medford Lakes District and indicating that if an appropriate program was not offered by the District within ten business days, that they would be unilaterally placing their son at the Cambridge school (J - 71).

A Cambridge School Preliminary Admission Summary evaluation had already been completed on December 8, 2017, three days before the parents sent Dr. Lee the ten-day letter.

On December 18, 2017 the IEP team met to determine A.W.'s continued eligibility for special education and continued services under the category "Specific Learning Disability in the area of Reading Fluency because of a significant discrepancy that Ms. Wiersky noted between his "Average" FSIQ=95 and his "Low Average" (SS=80) reading fluency score (J-72, page 3). The reevaluation IEP was done December 18, 2017 and

the program that was being offered included the double block pullout replacement for ELA, in-class support for Math, Science and Social Studies and counseling services. Extensive modifications and supplementary aids and services were included as supports for both the general and special education setting (J-73, pages 8-11). The District had not yet received Dr. Gillock's report when this IEP was formulated (J-73). This IEP was offered in order to comply with the parents demand letter that an appropriate program be offered within ten business days of the date of the letter or they would unilaterally place A.W. at the Cambridge school.

A letter dated December 18, 2017 enclosing the IEP was sent to the parents summarizing that counseling was going to be offered to A.W. one time a week for twenty minutes and that the Math goals and objectives were being amended to address problem-solving in terms of steps and processes involved and not skill specific as A.W. demonstrated skill acquisition. Also, extended school year services would be decided at a later time in the school year if it was needed (J- 74).

A.W.'s parents unilaterally placed him at the Cambridge School in January 2018 for the second half of his fifth-grade year. The Cambridge School is an hour away from Medford Lakes and does not have any typically developing students. They all have dyslexia or other language -based learning disabilities. There is an advantage to a disabled student being educated amongst typically developing peers for peer modeling.

From the time A.W. was in second grade until when he was in fifth grade, the District had been responsive to the parents' concerns, outside evaluations, audiological evaluations, vision examinations and have developed thirteen IEP's in the course of four years. Whenever a concern was raised by A.W.'s parents, it was addressed by the district.

The District did not receive Dr. Gillock's report until sometime in January 2018, after his parents had unilaterally placed him at Cambridge. (J-96). Dr. Gillock made several recommendations in his report including that A.W. was in immediate need of an emotionally safe and supportive educational environment. He needed teachers who speak slowly, provide ample response time and are patient with students who are more reflective in their response style, and certainly teachers who are not punitive and yell at

the students, but are supportive, nurturing and quick to reinforce students but not so quick to offer criticism. Medford Lakes school district offers an emotionally safe and supportive educational environment.

Dr. Lee indicated that as an administrator, if he knew teachers were being abusive or angry towards students, it would be addressed. However, he has not seen a pattern of abuse toward students in his program and he has never seen a program be not recommended because of the tone or temperament of the teacher.

Another recommendation of Dr. Gillock was that A.W. is in need of an educational placement where he will be exposed to multiple, intensive, and sequential Orton-Gillingham based multi-sensory approaches to remediating reading, spelling, written expression disorders, as one specific approach is not likely to work due to A.W.'s double deficit problems with phonology and the orthographic code. Dr. Lee explained that the Orton-Gillingham strategies are already used by the Medford Lakes teachers to deliver instruction.

Dr. Gillock also recommends that A.W. receive extended school year services due to his significant underachieving in reading, written expression and Math. Dr. Lee indicated that the ESY services were offered by the District and contained in A.W.'s IEPs.

Dr. Gillock's 4th recommendation was that A.W. needed to be placed in a special education program with a small student to staff ratio of no more than eight students to one teacher and a total number of persons in the classroom limited to nine. Dr. Lee explained that the resource room would have less than an eight to one ratio and for a number of years A.W. actually had of five to one and four to one ratio of students to teachers. If A.W. was currently attending sixth grade in the District, he would be in the pullout replacement room in which there are four students and he would be the fifth.

Dr. Gillock's fifth recommendation was that A.W. needed to be placed in an educational program where he has a counselor, a school social worker, or a school psychologist available to him for counseling on an as-needed basis. The District did offer counseling services to A.W. and Dr. Lee would be available as a school psychologist and

would have been A.W.'s school counselor. Dr. Lee was trained in cognitive behavioral therapy techniques which was recommended by Dr. Gillock.

Dr. Gillock's sixth recommendation was that A.W. was in need of an educational program where the staff and the administration are willing to implement the kinds and types of approaches and methodologies recommended in his report, which have been specifically chosen with A.W.'s unique cognitive profile in mind. Dr. Lee indicated that the District was already implementing this recommendation.

Dr. Gillock also recommended that in the event that A.W. remained in a large classroom for specials or other subjects was that he should have a classroom outfitted with an FM sound field system. Dr. Lee indicated that this already has been provided for A.W.

All of the recommendations contained in Dr. Gillock's report were already being implemented by the Medford Lakes District.

A.W. had been attending the Cambridge school for approximately five months when the next IEP was drafted June 4, 2018 at the end of fifth grade for the sixth- grade school year (J -77). Dr. Lee testified that there was a mistake in this draft IEP in that it says that 150 minutes of ELA instruction was going to be provided when the sixth-grade program only allows forty-eight minutes of ELA instruction. There was no intention to mislead. The District was open to how much ELA instruction would be provided and was going to create a supplemental instruction class taught by a special education teacher trained in Wilson to be provided two times weekly for forty-eight minutes. Based on a review of A.W.'s needs, the District decided to provide him with Wilson instruction by a Wilson certified teacher within the school district so in addition to the forty-eight minutes A.W. would receive in ELA, he would get an additional forty-eight minutes two times per week with a Wilson instructor one-on-one. Dr. Lee explained that the District knew A.W. was not getting one to one instruction at the Cambridge school, but received it in a small group setting. In order to bring A.W. back, the District believed it was an appropriate offer providing one-on-one Wilson instruction that is highly personalized. The District has Ms. Hunter as a certified Wilson instructor and all of the other ELA instruction in the District

uses Orton-Gillingham strategies. The special education in-class resource placement was recommended for Math, but not for Social Studies and Science (J-77, pages 1 and 8). Various modifications and supplementary aids and services were set forth for both the special education and general education settings (J-77, page 7). Dr. Lee testified that both petitioners' experts, Dr. Gillock and Ms. Tighe were advised that A.W. would be in an in-class resource class for Social Studies and Science and that is what he showed the experts when they observed the proposed sixth grade program at Neeta School.

On July 12, 2018 A.W.'s parents sent Dr. Lee a letter indicating that A.W. would be continuing at the Cambridge school and that the parents would be seeking reimbursement (J-71)

Ms. Tighe observed the pull-out replacement class for English that A.W. would have been in for sixth grade. His proposed IEP also called for supplementary aids and services identified as "A.W. will be provided with a multi-sensory, direct instruction decoding program two times per week for fifty minutes in addition to his pull-out resource reading class. This will happen during his advisory period" (J-77, page 7). It was Ms. Tighe's understanding that this was going to be Wilson instruction. Ms. Tighe observed this instruction by Ms. Hunter and found it to be perfectly competent Wilson instruction.

In Ms. Tighe's opinion, even if the Neeta school has a standard schedule of forty-eight minutes of ELA for sixth grade, an appropriate program could be developed for him to remain in the school. There are things that can be done and arrangements that can be made using his program as a baseline, to make an appropriate program for A.W. There are no hard and fast rules as to how the services can be delivered. It can be in the classroom, pullout resource, interventional or supplementary.

Regina Reilly has been the school nurse at A.W.'s school since preschool and has always provided him with a safe haven if he was upset or anxious.

LEGAL ANALYSIS

This case arises under the Individuals with Disabilities Education Act, 20 U.S.C.A. §§ 1400 to 1482. One purpose of the Act, among others, is to ensure that all children with disabilities have available to them a “free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living.” 20 U.S.C.A. § 1400(d)(1)(A). This “free appropriate public education” is known as FAPE. In short, the Act defines FAPE as special education and related services provided in conformity with the IEP. See 20 U.S.C.A. § 1401(9). A FAPE and related services must be provided to all students with disabilities from age three through twenty-one. N.J.A.C. 6A:14-1.1(d). A FAPE means special education and related services that: a) have been provided at public expense, under public supervision and direction, and without charge; b) meet the standards of the State educational agency; c) include an appropriate preschool, elementary, or secondary school education in the State involved; and d) are provided in conformity with the individualized education program (IEP) required under sec. 614(d). 20 U.S.C.A. § 1401(9); N.J.A.C. 6A:14-1.1 et seq. The responsibility to deliver these services rests with the local public-school district. N.J.A.C. 6A:14-1.1(d).

In order to provide a FAPE, a school district must develop and implement an IEP. N.J.A.C. 6A:14-3.7. An IEP is “a comprehensive statement of the educational needs of a handicapped child and the specially designed instruction and related services to be employed to meet those needs.” Sch. Comm. of Burlington v. Dep’t of Educ. of Mass., 471 U.S. 359, 368, 105 S. Ct. 1996, 2002, 85 L. Ed. 2d 385, 394 (1985). An IEP should be developed with the participation of parents and members of a district board of education’s CST who have participated in the evaluation of the child’s eligibility for special education and related services. N.J.A.C. 6A:14-3.7(b). The IEP team should consider the strengths of the student and the concerns of the parents for enhancing the education of their child; the results of the initial or most recent evaluations of the student; the student’s language and communications needs; and the student’s need for assistive technology devices and services. The IEP establishes the rationale for the pupil’s educational placement, serves as the basis for program implementation, and complies with the mandates set forth in N.J.A.C. 6A:14-1.1 to -10.2.

The Act, however, 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 Board of Education of the Hendrick Hudson Central School District v. Rowley, 458 U.S. 176, 203, 102 S. Ct. 3034, 3049, 73 L. Ed. 2d 690, 710 (1982), the United States Supreme Court held that a state provides a handicapped child with FAPE if it provides personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction. The Court reasoned that the Act was intended to bring previously excluded handicapped 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, 102 S. Ct. at 3042, 73 L. Ed. 2d at 701.

The Act did not, however, impose upon the states any greater substantive educational standard than would be necessary to make such access to public education meaningful. Rowley, 458 U.S. at 192, 102 S. Ct. at 3043, 73 L. Ed. 2d at 703. In support of this limitation, the Court quoted Pennsylvania Association for Retarded Children v. Commonwealth of Pennsylvania, 334 F. Supp. 1257 (ED Pa. 1971) and 343 F. Supp. 279 (1972), and Mills v. Board of Education of District of Columbia, 348 F. Supp. 866 (DC 1972). Rowley, 458 U.S. at 192, 102 S. Ct. at 3043-44, 73 L. Ed. 2d at 703. The Court reasoned that these two cases were the impetus of the Act; that these two cases held that handicapped children must be given access to an adequate education; and that neither of these two cases purported any substantive standard. Rowley, 458 U.S. at 192-93, 102 S. Ct. at 3043-44, 73 L. Ed. 2d at 703-04.

In addition, the Court noted that available funds need only be expended “equitably” so that no child is entirely excluded. Rowley, 458 U.S. at 193, 102 S. Ct. at 3044, 73 L. Ed. 2d at 704, n.15. Indeed, the Court commented that “the furnishing of every special service necessary to maximize each handicapped child’s potential is . . . further than Congress intended to go.” Rowley, 458 U.S. at 199, 102 S. Ct. at 3047, 73 L. Ed. 2d at 707. Therefore, the inquiry is whether the IEP is “reasonably calculated” to enable the child to receive educational benefits. Rowley, 458 U.S. at 206-07, 102 S. Ct. at 3051, 73 L. Ed. 2d at 712.

The Board will have satisfied the requirements of law by providing A.W. with personalized instruction and sufficient support services “as are necessary to permit [him] ‘to benefit’ from the instruction.” G.B. v. Bridgewater-Raritan Reg’l Bd. of Educ., 2009 U.S. Dist. LEXIS 15671 (D.N.J. Feb. 27, 2009) (citing Rowley, *supra*, 458 U.S. at 189, 102 S. Ct. at 3042, 73 L. Ed. 2d at 701). The IDEA does not require the Board to maximize A.W.’s potential or provide him the best education possible. Instead, the IDEA requires a school district to provide a basic floor of opportunity. Carlisle Area Sch. v. Scott P., 62 F.3d 520, 533–34 (3d Cir. 1995). But an IEP must provide meaningful access to education and confer some educational benefit upon the child. Rowley, 458 U.S. at 192, 102 S. Ct. at 3043, 73 L. Ed. 2d at 703. 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., 580 U.S. (2017); 137 S.Ct. 988; 197 LEd 2d 335.

The educational opportunities provided by a public-school system will differ from student to student, based upon the “myriad of factors that might affect a particular 458 U.S. at 198, 102 S. Ct. at 3047, 73 L. Ed. 2d at 707. The Rowley Court recognized that measuring educational benefit is a fact-sensitive, highly individualized inquiry, and that “[i]t is clear that the benefits obtainable by children at one end of the spectrum will differ dramatically from those obtainable by children at the other end, with infinite variation in between.” Rowley, *supra*, 458 U.S. at 202, 102 S. Ct. at 3049, 73 L. Ed. 2d at 709.

Based upon the testimony and documentary evidence, I **CONCLUDE** that both the December 18, 2017 IEP (J- 73) and the subsequent June 4, 2018 IEP (J-77) proposed by the District offered A.W. a free and appropriate public education with the opportunity for meaningful educational benefit and progress appropriate in light of A.W.’s circumstances, within the least restrictive environment.

I **CONCLUDE** that the program offered A.W. by the District constituted FAPE as that term is defined by law. A review of the evidence reveals that A.W. progressed in his educational program, and that the child study team regularly adjusted his program in an ongoing effort to personalize his instruction and address his educational needs. School

personnel testified convincingly as to A.W.'s progress, and the burden of proof and production rests with the Board. N.J.S.A. 18A:46-1.1

The IDEA also includes a mainstreaming requirement requiring education in the "least restrictive environment." 20 U.S.C.A. § 1412(a)(5) mandates that

[t]o the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

The law describes a continuum of placement options, ranging from mainstreaming in a regular public school setting as least restrictive, to enrollment in a residential private school as most restrictive. 34 C.F.R. § 300.115 (2015); N.J.A.C. 6A:14-4.3. Federal regulations further require that placement must be "as close as possible to the child's home." 34 C.F.R. § 300.116(b)(3) (2015); N.J.A.C. 6A:14-4.2; Oberti v. Clementon Bd. of Educ., 789 F. Supp. 1322 (D.N.J. 1992).

Courts in this Circuit have interpreted this mainstreaming requirement as mandating education in the least restrictive environment that will provide meaningful educational benefit. "The least restrictive environment is the one that, to the greatest extent possible, satisfactorily educates disabled children together with children who are not disabled, in the same school the disabled child would attend if the child were not disabled." Carlisle Area Sch. v. Scott P., 62 F.3d 520, 535 (3d Cir. 1995), cert. den. sub. nom., Scott P. v. Carlisle Area Sch. Dist., 517 U.S. 1135, 116 S. Ct. 1419, 134 L. Ed. 2d 544 (1996). The Neeta School is A.W.'s home school and is the least restrictive environment that will provide A.W. meaningful education benefit. A.W. has a reading disability and was appropriately placed in a special education pull-out resource class for ELA. However, he was appropriately placed in a general education class with in-class supports for Math, Social Studies and Science, areas in which he does not have a disability.

When a court examines whether a district has provided FAPE, the appropriateness of an IEP is not determined by a comparison between the private school unilaterally chosen by parents and the program proposed by the District. S.H. v. State-Operated Sch. Dist. of Newark, 336 F.3d 260, 271 (3d Cir. 2003). Rather, the pertinent inquiry is whether the IEP proposed by the District offered FAPE with the opportunity for significant learning and meaningful educational benefit within the LRE. G.B. and D.B. ex rel J.B. v. Bridgewater-Raritan Reg'l Bd. of Educ., EDS 4075-06, Final Decision (June 13, 2007), <http://njlaw.rutgers.edu/collections/oal/>. Upon a finding that the District provided FAPE, the appropriateness of the private school program is irrelevant. H.W. and J.W. ex rel A.W. v. Highland Park Bd. of Educ., 108 Fed. Appx. 731, 734 (3d Cir. 2004). The District bears the burden of proof by the preponderance of the competent and credible evidence that it has provided a FAPE to A.W. in the least restrictive environment. N.J.S.A. 18A:46-1.1.

The District in this case has proven by a preponderance of the competent and credible evidence that the IEPs proposed by the District offered A.W. a free and appropriate education with the opportunity for meaningful educational benefit appropriate in light of A.W.'s circumstances, within the least restrictive environment. To the extent that I have concluded that the District has provided a FAPE to A.W., the appropriateness of a placement at the Cambridge school is irrelevant.

Statute of Limitations

A petition for due process filed under the IDEA must be brought within strict statutory timelines. The statute provides that

[a] parent or agency shall request an impartial due process hearing within two years of the date the parent or agency knew or should have known about the alleged action that forms the basis of the complaint, or, if the State has an explicit time limitation for requesting such a hearing under this subchapter, in such time as the State law allows.

[20 U.S.C. § 1415(f)(3)(C)]

Elsewhere, 20 U.S.C. § 1415(b)(6) provides that the procedures required by the IDEA shall include:

(6) An opportunity for any party to present a complaint—

(A) with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child; and

(B) which sets forth an alleged violation that occurred not more than 2 years before the date the parent or public agency knew or should have known about the alleged action that forms the basis of the complaint, or, if the State has an explicit time limitation for presenting such a complaint under this subchapter, in such time as the State law allows, except that the exceptions to the timeline described in subsection (f)(3)(D) shall apply to the timeline described in this subparagraph.

The Third Circuit Court of Appeals has interpreted these provisions to mean that “parents have two years from the date they knew or should have known of the violation to request a due process hearing through the filing of an administrative complaint. . .” G.L. v. Ligonier Valley School District Authority, 802 F. 3d 601, 626 (3rd. Cir. 2015). In G.L. the parties had urged that these two statutory provisions contained an incongruity that arguably expanded the window for relief available to a petitioner. The court rejected this argument, holding that the IDEA’s “two-year statute of limitations . . . functions in a traditional way, that is, as a filing deadline that runs from the date of reasonable discovery and not as a cap on a child’s remedy for timely-filed claims that happen to date back more than two years before the complaint is filed.” *Id.* at 616.

The due process petition in this case was filed May 16, 2018 yet sets forth allegations that go back prior to A.W.’s kindergarten year in 2012 – 2013. Although these claims are time barred, I have considered them and have concluded that the District did provide A.W. with FAPE.

Child Find Claim

Petitioners also allege claims against the District arising from the requirement in Federal Law that local public-school districts locate and identify children in need of special education services. Known as “child find,” the requirements of 20 U.S.C. §1412(a)(3)(A) provide for the implementation of policies and procedures designed to ensure that “[a]ll children with disabilities residing in the State, . . . regardless of the severity of their disabilities, and who are in need of special education and related services, are identified, located and evaluated. . .” See also: 34 C.F.R. §300.111; N.J.A.C. 6A:14-3.3.

Respondent had a continuing obligation under the IDEA to identify and evaluate students reasonably suspected of having a disability. P.P. ex rel. Michael P. v. West Chester Area Sch. Dist., 585 F.3d 727, 738 (3d Cir. 2009). But case law interpreting this obligation has recognized that it is not, and cannot be, the intent of the law that school districts locate and service each and every struggling student. The courts have recognized that “the IDEA is not an absolute liability statute and the ‘child find’ provision does not ensure that every child with a disability will be found.” J.S. v Scarsdale Union Free Sch. Dist., 826 F. Supp. 2d 635, 660(S.D.N.Y. 2011), quoting A.P. v. Woodstock Bd. of Educ., 572 F. Supp. 2d 221 (D.C. Ct. 2008). The courts have moreover recognized that where a disability is not clear, the student or her parents have some obligation to bring their concerns to the school district’s attention. See e.g. B.J. v River Vale Bd. of Educ., EDS 1335-06, Final Decision (June 19, 2007) <http://njlaw.rutgers.edu/collections/oal/>>.

Petitioner’s arguments that the District failed to meet its obligations to timely identify A.W. as a special education student are not persuasive. A.W. was initially screened in kindergarten and his scores did not trigger a child study team evaluation. His report card for first grade was good. His mother requested a CST meeting in April of first grade after she received the audiologist report. A speech and language evaluation were conducted and a speech only IEP was developed for A.W. on July 14, 2014. In October of second grade his teacher referred him to the CST and his mother requested an IEP meeting. Evaluations were conducted and A.W. was found eligible for special education

and related services and an IEP developed December 23, 2014 (J-24). The District was responsive and acted appropriately.

I **CONCLUDE** that the District has met its “child find” obligations set forth in the IDEA in identifying and classifying A.W. as a student in need of special education and related services.

Jurisdiction

N.J.A.C. 6A:14-2.7(a) states that a due process hearing is an administrative hearing conducted by an Administrative Law Judge. For students ages three through twenty-one years, a due process hearing may be requested when there is a disagreement regarding identification, evaluation, reevaluation, classification, educational placement, the provision of FAPE or disciplinary action. To the extent that petitioners, in an abundance of caution, have also plead claims arising under the New Jersey Law Against Discrimination (NJLAD), Section 1983 and the American with Disabilities Act, these claims are outside this tribunal’s jurisdiction and are therefore dismissed for lack of jurisdiction.

Section 504 claim

N.J.A.C. 6A:14-2.7(w) states that requests for a due process hearing with respect to issues concerning 504 of the Rehabilitation Act of 1973 shall proceed in accordance with this section. Section 504 of the Rehabilitation Act of 1973 (Section 504) prohibits discrimination and exclusion of persons with disabilities from programs that receive federal funds. 29 U.S.C. s 791, et. seq. 34 C.F.R. 104, Subparts A, C and D. The stated goal of Section 504 is “to the maximum extent possible, [persons with disabilities] shall be fully integrated into American life.’ (Senate Report 1978). Section 504 is broader than the IDEA in terms of the scope with respect to who is protected and the programs in which they are protected. It applies to all persons with a disability including students, employees, patrons of public facilities, etc. and applies not only to school programs, it also applies to extra-curricular programs and after school programs.

Petitioners alleges that the District violated Section 504 by denying A.W. the opportunity to participate in or benefit from public education and denied him access to disability-specific services and auxiliary aids and services required to afford A.W. access to public education. As set forth above, just as I have **FOUND** that the District provided A.W. with FAPE in the least restrictive environment, I **FIND** that the District did not violate Section 504. In this case, the District developed and implemented numerous IEPs on behalf of A.W. which consisted of comprehensive statements of his educational needs and the specially designed instruction and related services to be employed to meet those needs. The IEPs were developed with the participation of A.W.'s parents and members of the District's child study team who have participated in the evaluation of the child's eligibility for special education and related services. The IEP team considered A.W.'s strengths and the concerns of his parents for enhancing his education; the results of the initial or most recent evaluations of A.W.; his language and communications needs; and A.W.'s need for assistive technology devices and services. Modifications and Supplementary Aids and Services as well as Assistive Technologies were provided to A.W. in both the general education and special education classroom to assist him in accessing his curriculum. All of the IEPs developed for A.W. list the various modifications, supplementary aids and services and assistive technologies that were being provided to A.W.

Therefore, I **CONCLUDE** that the District has provided appropriate and meaningful services and accommodations to A.W. in order to access his education in accordance with Section 504 of the Rehabilitation Act.

ORDER

Based on the foregoing, petitioners' request for due process is **DENIED** and the petition is **DISMISSED**.

This decision is final pursuant to 20 U.S.C.A. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2017) and is appealable by filing a complaint and bringing a civil action either in the Law Division of the Superior Court of New Jersey or in a district court of the United States. 20 U.S.C.A. § 1415(i)(2); 34 C.F.R. § 300.516 (2017). If the parent or adult student feels that this decision is not being fully implemented with respect to program or services, this concern should be communicated in writing to the Director, Office of Special Education Programs.



August 23, 2019
DATE

CATHERINE A. TUOHY, ALJ

Date Received at Agency

August 23, 2019 (emailed)

Date Mailed to Parties:

/mel

APPENDIX

WITNESSES

For Petitioners:

Jeanne Tighe
James B. Gillock
M.W.

For Respondent:

Michael J. Lee
Jenna Alesiani (f/k/a Franchio)
Shelly Craig
Christine Hunter

EXHIBITS

Joint Exhibits:

- J-1 Brigance Kindergarten and First Grade Screen II dated June 5, 2012
- J-2 Brigance Early Childhood Screen II Kindergarten and First Grade Manuel
- J-3 Kindergarten Student Nurse Daily Entry Log
- J-4 Kindergarten Report Card dated June 21, 2013
- J-5 First Grade Narrative Writing dated December 11, 2013
- J-6 First Grade Student Nurse Daily Entry Log
- J-7 First Grade Report Card dated June 21, 2014
- J-8 Request and Parental Consent for Evaluation dated April 30, 2014
- J-9 Central Auditory Processing Evaluation dated April 29, 2014
- J-10 Child Study Team Referral Checklist dated May 21, 2014

- J-11 Written of Notice of Evaluation Plan dated May 21 and 28, 2018 - Consent to Evaluate
- J-12 Better Speech and Feeding Therapy Log Forms dated May 2014 and July 2015
- J-13 Speech and Language Evaluation dated June 16, 2014
- J-14 Eligibility Conference Report dated July 7, 2014
- J-15 Initial IEP dated July 7, 2014
- J-16 Central Auditory Processing Evaluation dated September 25, 2014
- J-17 Child Study Team Initial Referral Checklist dated October 6, 2014
- J-18 Teacher CST Referral dated October 6, 2014
- J-19 Written Notice of Evaluation Plane dated October 14, 2019 – Consent to Evaluate
- J-20 Social History dated October 29, 2014
- J-21 Learning Evaluation dated November 12, 2014
- J-22 Psychological Assessment dated December 9, 2014
- J-23 Eligibility Conference Report – ESLs – Referred to CST – dated December 23, 2014
- J-24 IEP, ESLs – Referred to CST dated December 23, 2014
- J-25 Student Schedule Change Request dated January 12, 2015
- J-26 Cooper After Visit Summary dated February 3, 2015
- J-27 Michael Galloway Vision Report – dated April 28, 2015
- J-28 Third Grade IEP Annual Review from May 6, 2015 Meeting
- J-29 Second Grade Parent-School Communication re: Work 2014-2015
- J-30 Second Grade Progress Report – Final – dated June 15, 2015
- J-31 Second Grade Student Nurse Daily Entry Log 214-2015
- J-32 Psycho-Educational Screening by Catherine Chase, MA, LDTC dated August 1, 2015
- J-33 Academic and Social Management Plan by Catherine Chase dated August 1, 2015
- J-34 third Grade IEP amendment from August 31, 2015 Meeting
- J-35 Second Grade Progress Report – Speech dated November 17, 2014
- J-36 Second Grade Report Card 2015-2016
- J-37 Third Grade IEP Amendment – September 2015 goals

- J-38 Third Grade DRA Evaluations 2015-2016
- J-39 Third Grade Progress Report 2015-2016
- J-40 Third Grade Report Card 2015-2016
- J-41 Third Grade Nursing Notes
- J-42 Third Grade Parent – School Communication re: Work – 2015-2016
- J-43 State of NJ PARCC results 2015-2016
- J-44 Fourth Grade IEP – Annual Review from May 5, 2016 Meeting
- J-45 Fourth Grade IEP – Amendment dated March 13, 2017
- J-46 Consent to Amend an IEP Without a Meeting dated March 13, 2017
- J-47 Parent Meeting / Conference Report dated June 2, 2017
- J-48 Parent Meeting Notes dated June 2, 2017
- J-49 Fourth Grade Work Samples 2016-2017
- J-50 Fourth Grade DRA Reports 2016-2017
- J-51 Fourth Grade Progress Report 2016-2017
- J-52 Fourth Grade Report Card 2016-2017
- J-53 Fourth Grade Nursing Notes 2016-2017
- J-54 Fifth Grade IEP – Annual Review from March 20, 2017 Meeting
- J-55 Fifth Grade DRA Evaluation Optimal Reading Rated, Reading Grade – Level Comparison Chart dated October 25, 2017
- J-56 Emails between Attorneys September 2017 through December 2017
- J-57 Letter from Child Study Team dated October 31, 2017
- J-58 Fifth Grade Neeta Work Samples dated September 2017 through December 2017
- J-59 Fifth Grade Neeta Writing Journal September 2017 through December 2017
- J-60 Fifth Grade Neeta Student Planner September 2017 through December 2017
- J-61 Fifth Grade Neeta Writing Assignments September 2017 through December 2017
- J-62 Fifth Grade Progress Report dated December 15, 2017
- J-63 Fifth Grade Attendance Records September 2017 through December 2017
- J-64 Fifth Grade Nurse Report September 2017 through December 2017
- J-65 Lindamood-Bell Evaluation Summary dated October 6, 2017 and Lindamood-Bell Evaluation Summary dated June 28, 2017

- J-66 Fifth Grade IEP – Review / Revise from October 19, 2017 Meeting
- J-67 Fifth Grade IEP – Amendment from October 27, 2017 Meeting
- J-68 Written Notice of Evaluation Plan – Consent to Evaluate dated October 27, 2017
- J-69 Report of Educational Evaluation dated December 4, 2017
- J-70 Cambridge School Preliminary Admission Summary dated December 8, 2017
- J-71 Notice of Intent to Make Unilateral Placement dated December 11, 2017
- J-72 Eligibility Conference Report – Re-Evaluation dated December 18, 2017
- J-73 Fifth Grade IEP – Re-Evaluation dated December 18, 2017
- J-74 Notice of Eligibility and IEP Meeting dated December 18, 2017
- J-75 Cambridge Enrollment Contracts dated January 2, 2018 through September 4, 2018
- J-76 Cambridge MP2 Reading Report dated February 14, 2018
- J-77 Draft IEP dated June 4, 2018
- J-78 Cambridge School End of Year Testing Report June 2018
- J-79 Cambridge End of Year WIST and Writing Samples June 2018
- J-80 Cambridge Middle School Progress Report
- J-81 Cambridge Fifth Grade Work dated January 6, 2018
- J-82 Lindamood-Bell Learning Ability Evaluation Summary dated June 11, 2018
- J-83 Notice of Intent to Make Unilateral Placement dated July 13, 2018
- J-84 Cambridge Summer 2018 Work July 2018
- J-85 Cambridge Sixth Grade Fall 2018 Work September 2018
- J-86 Cambridge Infirmary Visit Forms dated October 25, 2018
- J-87 Speech Language Progress Report MP 1 dated November 9, 2018
- J-88 Cambridge School Program Descriptions
- J-89 Cambridge School Schedules and Teacher Credentials
- J-90 Observation of Medford Lakes School District by Tara Mahon, M.S., CC-SLP dated November 2, 2018
- J-91 Educational Records Summary, Program Evaluation and Student Observation by Dr. Lee and Jennifer Summerville dated November 12, 2018
- J-92 Christine Hunter E-mails re: A.W.
- J-93 Shelley Craig E-mails re: A.W.

- J-94 Parent E-mails re: A.W.
- J-95 Wilson Reading compared to Reading Horizons
- J-96 Comprehensive School Neuropsychological Evaluation, Dr. Gillock dated January 4, 2018
- J-97 Partial School Neuropsychological Reevaluation, Dr. Gillock dated November 2, 2018
- J-98 Michael J. Lee Resume
- J-99 Christine Hunter Resume
- J-100 Jennifer Franchio a/k/a Alesiani Resume
- J-101 Shelley Craig Resume
- J-102 Jenna Summerville Resume
- J-103 Judith McKeever Resume
- J-104 Comprehensive Language Evaluation from Beyond Communication dated November 12, 2018
- J-105 Jeanne Tighe, MA, CC-SLP, CDP Resume
- J-106 Beyond Communication Evaluation Contract
- J-107 James B. Gillock, Ed.D, ABSNP Resume
- J-108 James B. Gillock Outline of Services – Fees and Consents
- J-109 MAP Test Results
- J-110 Lexile Framework Materials
- J-111 NJ Dyslexia Handbook
- J-112 Warren IEP Meeting (audio) dated June 4, 2018
- J-113 emails Produced by District
- J-114 IEP Annual Review meeting sign in sheet August 16, 2017

For Petitioners:

None

For Respondent:

None