



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

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

Petitioners,

v.

HOPEWELL VALLEY REGIONAL

BOARD OF EDUCATION,

Respondent.

And

HOPEWELL VALLEY REGIONAL

BOARD OF EDUCATION,

Petitioner,

v.

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

Respondents.

OAL DKT. NO. EDS 08024-22

AGENCY DKT. NO. 2023-34795

OAL DKT. NO. EDS 08026-22

AGENCY DKT. NO. 2023-34887

(CONSOLIDATED¹)

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

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

Record Closed: June 10, 2024

Decided: July 23, 2024

BEFORE **WILLIAM T. COOPER III**, ALJ:

¹ These matters were heard together with consent of the parties.

STATEMENT OF THE CASE

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

The parents argue that the District failed to offer A.K. a Free Appropriate Public Education (FAPE) due to the failure of its child-find duty, its failure to provide A.K. sufficient evaluations, and its failure to provide A.K. IEPs that offered him a FAPE. Additionally, the parents argue that A.K.'s placement at Cambridge is appropriate because Cambridge offers consistent and individualized programming that has resulted in meaningful progress.

The District argues that the record demonstrates that the IEPs in question provided a FAPE in the least restrictive environment (LRE) appropriate to A.K.'s needs and an opportunity for meaningful learning based on his potential.

PROCEDURAL HISTORY

The parents' petition was transmitted to the Office of Administrative Law (OAL), where it was filed on August 4, 2022, as a contested case under OAL Docket No. EDS 08024-22. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13. The District's petition was transmitted to the OAL, where it was filed on August 24, 2022, as a contested case under OAL Docket No. EDS 08026-22. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13. These matters, with the consent of counsel, were heard together.

Hearings were conducted both telephonically and via Zoom Video Communications, Inc. on December 4, December 11, and December 18, 2023, and on January 25, and March 19, 2024.

The record remained open for the parties to submit both post-hearing and response briefs. The post-hearing briefs were filed by both parties on June 10, 2024, and the record closed.

FINDINGS

The parties have provided the following stipulated facts,² and I **FIND** as **FACT** the following:

A. Background

1. A.K. was enrolled with the District during the 2015-2016 through 2020-2021 school years.
2. A.K. was classified as Preschool Disabled and attended the District's preschool disabled program for three years (2015-2016; 2016-2017 and 2017-2018 school years.) (R-5; R-6; R-7.)
3. During the 2018-2019; 2019-2020; 2020-2021 and 2021-2022 school years – A.K.'s kindergarten through third grade, A.K. was classified by the District as eligible for Special Education and related services under the classification "Specific Learning Disability." (R-8; R-9; R-11.)
4. Today A.K. is an eleven-year-old fifth grader. (T1 at 6:21-7:3.)

² Because of the length of the stipulations submitted, same are reproduced here verbatim and unedited.

5. Beginning in the Spring of 2022, Petitioners unilaterally placed A.K. their then third grade son at the accredited Cambridge School, in Pennington, New Jersey. (T1 at 6:21-7:3.)
6. The Cambridge School is accredited by the Middle States Association Commission on Elementary Schools.
7. On August 4, 2022, Petitioner Parents filed a Due Process Petition alleging that the Individualized Education Plan (IEP)—developed for A.K. by Respondent District on or around 5/10/2022—failed to meet A.K.’s individualized educational needs and denied him a Free and Appropriate Public Education (“FAPE”).
8. Petitioners sought fees/costs, reimbursement for costs of the out of district placement, transportation and continued placement/reimbursement at/for A.K. placement in the out of district program at the Cambridge School.
9. Petitioners made a contemporaneous request that the District provide independent educational evaluations.
10. On August 24, 2022, Respondent School District filed a cross petition seeking a determination from the Office of Administrative Law that the independent evaluations requested by Petitioners were not necessary for A.K.
11. On August 19, 2022, Respondent District Filed an Answer admitting that A.K. is a learning disabled student eligible for special services as part of his public education, but denying that A.K. was denied FAPE arising out of the District’s provision of those services.
12. Petitioners’ due process petition and Respondent School District cross-petition were heard before the Honorable William Cooper, Administrative Law Judge, on: December 4, 2023 (T-1); December 11, 2023 (T-2); December 18, 2023 (T-3); January 25, 2024 (T-4); and March 19, 2024 (T-5).

B. A.K.'s Period of Enrollment with Respondent Hopewell Valley School District

(1) Preschool

13. Beginning September 15, 2015 A.K. attended preschool classes in the Hopewell Valley School District and remained enrolled within the District for a total of seven (7) years beginning the 2015-2016 school year through the Spring of third grade, the 2021-2022 school year. (R-25)
14. A.K. was first classified as "Preschool Disabled," and then was and remains classified as "Specific Learning Disabled." (R-8 at 187.)
15. A.K. was first evaluated by the Respondent District in 2015, when he was just two years and nine months old. (R-5.)
16. A.K. was placed in an integrated preschool classroom within Hopewell Elementary School for the 2015-2016 school year, which was determined to an appropriate placement "as a result of his delays in expressive and receptive language." (R-5.)
17. Respondent District determined that for the 2015-2016 school year that A.K. "does not need an extended school year program because an interruption in educational programing will not cause his performance to revert to a lower level of functioning and recoupment can be expected in a reasonable length of time. (R-5.)
18. A.K. received speech and language services 8 times a month for a duration of 160 minutes a month during the 2015-2016 school year. (R-5 at 146.)
19. During the 2016-2017 school year, A.K. was placed in Special Class Preschool Disabilities classroom for half a day and provided speech-language therapy in a group (not to exceed 5 students) once a week for twenty minutes. (R-6 at 167.)
20. During the 2017-2018 school year A.K. was enrolled in a full day preschool program. He received instruction for half a day in a self-contained special

education setting (where he was one of ten students) and spent the other half of the day in an integrated setting (where he was one of 15 students. (R-8 at 190.)

21. During the 2017-2018 school year A.K. received speech-language therapy in a group setting (not to exceed 5 students) once a week for twenty minutes. (R-7 at 173.)

(2) Kindergarten (2018-2019)

22. A.K. was first classified as a student with a Specific Learning Disability in the 4/16/2018 IEP for his 2018-2019 Kindergarten year. (R-8 at 187).
23. A.K. was placed in an ICR program³ for reading and language arts where both a general education and special education teacher were present during his 2018-2019 Kindergarten year. (R-8 at 195.)
24. During his 2018-2019 Kindergarten A.K. received 120 minutes of Reading/Language Arts support on a daily basis. (R-8 at 195.)
25. The Progress Report for A.K.'s 2018-2019 IEP reveals that A.K. achieved all the goals contained in the IEP for the 2018-2019 school year. (R-10.)

(3) First Grade (2019-2020)

26. The 5/13/2019 IEP (R-9) placed A.K. in an ICR program for the first grade, where he spent 80% or more of his day in a general education setting. (T1 at 21-23; R-9 at 203 and 214.)
27. The 5/13/2019 IEP provided A.K. with an ICR placement for Reading/Language Arts for 120 minutes every day. (R-9 at 203.)

³ In-class resource program is one way of delivering special education services. In this model, a general education teacher and a special education teacher are present in a class at the same time to support the student.

28. The 5/13/2019 IEP provided A.K. with an ICR placement for Math for 60 minutes every day. (R-9 at 203.)
29. Modifications made for A.K. in the general education First grade classroom noted in the 5/13/2019 IEP provided A.K. were:
- Emphasize use of visual aids;
 - Provide modeling;
 - Provide guided instruction;
 - Provide positive reinforcement;
 - Use a consistent daily routine;
 - Allow time for A.[K.] to process information in order to give an appropriate response.

(R-9 at 214.)

30. Modifications made for A.K. in the special education classroom added “extended time (time and a half) for quizzes/tests.”
31. In January of 2020, before the March 2020 COVID shutdown, A.K. was struggling with fluency and moved to a pullout resource setting for language arts. (T1 at 9:21-23.)
32. Prior to the March 2020 COVID shutdown, transitioning from an in-class support setting to a pull-out placement resource room setting benefited A.K. because he no longer felt the pressure to keep up with his classmates and working at his own pace increased A.K.’s self-confidence. (4/15/2020 IEP, R-11 at 232.)
33. Respondent District moved to virtual learning when COVID-19 pandemic required school closures. Extended school year was virtual, and all special education students in the resource room were in person five days a week by September of 2020. (T1 at 69: 8-16.)

34. A.K.'s IEP Progress report for the 2019-2020 school year reveals that A.K. met all the goals set for him in his First Grade IEP. (R-12.)

(4) Second Grade (2020-2021)

35. A.K.'s Second grade educational program was first governed by an April 15, 2020 IEP. (R-11.)
36. During the Second grade A.K. was provided two reevaluations during October of 2020. (R-14 and R-15.)
37. In a Psychological Evaluation, A.K. received a Full-Scale IQ score of 103 corresponding to the 58th percentile, falling within the average range. (R-14 at 254.) His WISC-V sub-scores were as follows:

Test	Score	Percentile
General Ability	109	73rd
Verbal Comprehension	95	37th
Visual Spatial	117	95th
Fluid Reasoning	121	92nd
Working Memory	110	75th
Processing Speed	86	18th

38. An Educational Evaluation revealed that A.K.'s Word Reading Efficiency score placed him among less than 1% of his peers. (R-15 at 262.)
39. Similarly, the Grey Oral Reading Test revealed that A.K.'s oral reading rate placed in among less than 1% of his peers. (R-15 at 265.)
40. The Comprehensive Test of Phonological Processing revealed that for the most part A.K.'s reading efficiency skills were either below average or poor. (R-15 at 263.)

41. A.K.'s only score that fell within the average range was his memory for digits. (R-15 at 263.)

42. The Woodcock-Johnson IV Tests of Achievement Abilities and Oral Language revealed that, despite A.K.'s Full Scale IQ of Average, for the most part A.K.'s Achievement Abilities and Oral Language scores were in the very low range:

Category	Standard Score	Percentile	Range
Broad Reading	64	1	Very Low
Basic Reading Skills	76	6	Low
Letter-Word Identification	68	2	Very Low
Word Attack	89	23	Low Average
Passage Comprehension	70	2	Low
Reading Fluency	57	.02	Very Low
Sentence Reading Fluency	63	1	Very Low
Oral Reading	61	.05	Very Low

(R-15 at 266.)

43. Testing revealed that A.K.'s math skills were, primarily, in the low average range. (R-15 at 269.) As were his writing skills. (R-15 at 270.)

44. Despite the fact that he was of average intelligence, A.K.'s Academic Skills, overall, were in the Low Range:

Category	Standard Score	Percentile	Range
Academic Skills	76	5	Low
Academic Fluency	69	2	Very Low
Academic Applications	79	8	Low
Broad Achievement	71	3	Low
Brief Achievement	70	2	Low
Phoneme-Grapheme Knowledge	91	28	Average

Category	Standard Score	Percentile	Range
Spelling of Sounds	94	33	Average

(R-15 at 272.)

45. Citing A.K.'s scores, the Educational Evaluation noted that "[a]n individual with poor reading and writing ability but adequate language skills may have a reading disability." (R-15 at 272.)

46. As a result the Educational Evaluation concluded that:

A continues to require a structured approach to instruction with a focus on multisensory, systematic, direct, explicit and cumulative methods. An evidence-based approach integrating listening, speaking, reading and writing aspects of literacy is recommended. Instruction should emphasize the structure of language, including phonology, orthography, syntax, morphology, and the relationships or semantics of words. The daily fidelity of A's instruction should be an emphasis within his educational programming. Continuous progress monitoring and diagnostic, formative and prescriptive instructional planning should represent the hallmark of his individualized instructional plan. Aspects of phonology, sound-symbol association, syllable instruction, morphology, syntax and semantic aspects of language instruction should be balanced and integrated through daily explicit instruction.

(R-15 at 276).

47. After the October 2020 evaluations, the District continued to classify A.K. as specifically learning disabled. (R-14 (Tighe Psychological Evaluation dated 10/13/2020); R-15 McManamin Educational Evaluation dated 10/23/2020); R-16 (11/13/2020 IEP))

48. A.K.'s 11/13/2020 IEP governed his educational program for the Second grade beginning on 11/13/2020 through 6/18/2021. (R-16.)

49. An IEP dated May 10, 2021, and created at the end A.K.'s year of Second grade reveals the following:

- A.K. spent between 40% and 70% of his day in the presence of general education students. (R-17 at 301.)
 - During the 2021-2022 school year (Third grade) A.K. was to be provided with a Pullout Resource for Reading/Language Arts for 120 minutes per day. (R-17 at 301.)
 - During the 2021-2022 school year (Third grade) A.K. was to be provided with an in-class Resource for Math for 60 minutes per day. (R-17 at 301.)
 - During the extended school year for the Summer of 2021, A.K. was provided a Pullout Resource for Reading/Language Arts for 90 minutes for four days a week. (R-17 at 301.)
50. A.K.'s June 2021 progress report indicated that by the end of the second grade, he had achieved all the goals and objectives contained within his second grade IEP. (R-19.)
51. According to the July 8, 2022 IEP that governed A.K.'s 2021-2022 educational plan for the third grade, Gallistel-Ellis Testing reveals that "scores below 40% indicated that the student has probably acquired either no word recognition or only slight word recognition and that scores between 40-80% reveal partial mastery; and scores between 80-100% reveal the ability to read and spell most words encountered containing those phonic elements. (R17 at 306.)
52. Gallistel-Ellis Testing Pre and post test results reveal that in the Second grade, A.K. achieved the following scores:

Giving Sound			
	Pre-test	Post-test	
Single Consonants	100%	100%	
Vowel-Short Vowels	100%	100%	

Common Consonant Combinations	61%	77%	
Vowel-Long Vowel	83%	83%	
Soft c, g, s, tch, dge	0		
Common Vowel Combinations	0		
Combinations of Vowels with Rs	0		
Vowels Schwa	0		

Reading			
	Pre-test	Post-test	
Short Vowel words with single consonants	96%	100%	
Short Vowel words with consonant combinations	75%	85%	
One Syllable Long vowel words	0	40%	
One syllable words with soft c, g, -tch, - dge, se(z)	0	6%	
One syllable words with common vowel combinations	0	4%	

Reading			
	Pre-test	Post-test	
One syllable words with vowel r combinations	0	0	
Words with two short vowel syllables or easy endings	0	0	
Words with (c)le syllables and common suffixes	0	0	
Multisyllable words	0	0	
Phonetically Irregular words	10%	20%	

Spelling			
	Pre-test	Post-test	
Short Vowel words with single consonants	100%	100%	
Short Vowel words with consonant combinations	40%	50%	
One Syllable Long vowel words	0	60%	
One syllable words with soft c,	0	0	

Spelling			
	Pre-test	Post-test	
g, -tch, -dge, se(z)			
One syllable words with common vowel combinations	0	0	
One syllable words with vowel r combinations	0	0	
Words with two short vowel syllables or easy endings	0	0	
Words with (c)le syllables and common suffixes	0	0	
Multisyllable words	0	0	
Phonetically Irregular words	10%	30%	

(R-17 at 306-307)

53. Ms. Kulp testified that the Gallistel-Ellis test of coding skills measures a student's ability to decode words, to access sound, symbol relationships and to spell. If a student scores below 40 percent, this demonstrates that the student has little or no site word recognition. Scores between 40 and 80 percent demonstrate partial mastery. Scores between 80 and 100 percent demonstrate mastery. (T2 at 36: 21-37:9.)

(5) August 2021 Audiological Evaluation

54. A.K. received an audiological evaluation by Dr. Donna Merchant in August of 2021. (R-21.)

55. Dr. Merchant noted that A.K.'s eligibility for special education services is "based on a severe discrepancy between A[K.]'s current achievement and intellectual ability in the areas of Basic Reading Skills, Reading Comprehension, Written Expression, and Reading Fluency." (R-21 at 346.)

56. Dr. Merchant found that A.K.:

A[K.] presented with a combination of learning challenges at the higher level. Auditory findings supported several auditory skill deficits in both primary and secondary forms of an Auditory Processing Disorder. Review of the scores and patterns included components of a secondary Auditory Associative Deficit, which supports higher order coexisting deficits (e.g.: language, neurological, and/or language) compromising the processing of auditory information. Embedded within the response pattern was a significant left ear deficit on both the CS and SSW tests, suggesting a potential Integrative Deficit component or neuromaturational weaknesses, but specific to language-based movement of information through the auditory system. The addition of deficits within the temporal processing realm in combination with the AFG and PS deficits supported components of an Auditory Decoding/Discrimination Deficit.

Overall, results suggested insufficiently developed auditory skills in several areas being negatively impacted by coexisting learning challenges and potential language-based deficits. A general diagnosis of Auditory Processing Disorder is appropriate in this instance; however, inconsistencies within categories as well as the response patterns between tests supported potential a broader deficit/disorder or higher order variables imposing on the incoming auditory information and most likely exacerbating the problem.

(R-21 at 347-48.)

57. Dr. Merchant urged that A.K.'s

. . . overlapping or higher order deficits to be recognized in order to determine the extent to which inadequate auditory processing skills are impeding A[K.]’s learning progress as well as how much influence they are imposing on the auditory processing of signal. All findings need to be reviewed based on implications for language, communication, and academics as these would be an integral part of A[K.]’s learning profile. The skills within each category need direct interventions to help A[K.] develop his auditory system to a more age-appropriate level.

(R-21 at 347-48.)

58. Dr. Merchant urged that A.K. be provided an updated comprehensive Speech/Language that “would be helpful to determine the extent to which a language processing component may be involved in conjunction with the diagnosis of dyslexia.” (R-21 at 348.)
59. Dr. Merchant then provided in excess of four pages of accommodations and strategies to be provided to A.K. (R-21 at 350-353.)

(6) Third Grade (2021-2022)

60. Liz Babice, a Speech Language Pathologist employed by the District, performed a speech-language evaluation for A.K. in October and November of 2021, and did not recommend discrete speech therapy. (R-18.)
61. However, Ms. Babice noted that A.K. “showed strengths in articulation, voice, fluency, and form” and “showed weaknesses on content and pragmatics of language.” (R-18 at 330.)
62. Ms. Babice urged that “[t]he information in [her] report . . . be reviewed by all members of the Child Study Team, including parents and teachers.” And that “[s]peech and language evaluation results . . . be considered along with all diagnostic information provided by the Child Study Team, and used to assist in determining A[K.]’s current educational needs. (R-18 at 330.)

63. While the May 2021 IEP first governed A.K.'s education program for the Third grade, (R-17), the District offered an IEP dated 11/29/2021, for majority of A.K.'s Third grade year. (R-22.)
64. In the 11/29/2021 IEP, the District proposed pullout resource for reading and language arts and in class resource (ICR) for math. (R-22.)
65. The November 2021 IEP reported that A.K. was reading at a level eight (8) on the DRA (Developmental Reading Assessment). (R-22 at 363.)
66. Previously, in the Winter of 2020, A.K. was noted to be reading at a level (4) on the DRA. (R-11 at 231.)
67. Ms. Kulp, A.K.'s Third grade special education reading teacher testified that DRA Reading Levels 8-14 fall within a first grade reading level. (T2 at 27:1-13; R-25 at 420.)
68. As a result, Third Grade A.K.'s DRA reading level remained on the First grade level after more than six years of special education.
69. In February of 2022, A.K.'s mother emailed Ms. Kulp stating that A.K. coded his new books and was showing an eagerness to read them, noting that this was a positive development and that A.K. was enjoying reading. (R-23.)
70. The progress reports for the 2021-2022 school year stated that A.K. met most of the goals set in his IEP and that in others, he was progressing satisfactorily. (R-19.)

71. A.K.'s IEP progress report goals for Third grade were:

- Demonstrate sound discrimination skills on the basic phoneme level with 80% success. (R-19 at 333.)
- Correctly decoding 10 words from reading narratives or informational text. (R-19 at 334.)
- Immediate recognition of high frequency words taken from reading narratives or informational text. (Id.)
- Answer 5 who, what, where, why, and how questions regarding key details in reading narratives or informational text. (Id.)
- Spelling of ten words selected by teacher from student's instructional level. (P-19 at 335.)
- Write 5 untaught words phonetically, drawing on phonetic awareness and spelling conventions. (Id.)
- Write an informational/explanatory text with 4 facts and or definitions to develop points, including closing statements. (Id.)
- Write a narrative using 5 details to describe actions, thoughts and feelings about an event, including temporal words (e.g. first, second, next, then). (P-19 at 336.)
- Use objects, drawings and equations to represent and solve problems involving addition within 100. (Id.)
- Use objects, drawings and equations to represent and solve problems involving subtraction within 100. (P-19 at 337.)
- Represent three-digit numbers as groups of hundreds, tens, and ones using place value. (Id.)

72. A.K.'s progress report goals for ESY following Third grade reported progress but that progress was not quantified. (P-20 at 339-340.)

73. On May 5, 2022, while A.K. was still in the Third grade, a draft IEP was circulated for A.K. Fourth grade year. (R.-24.)

74. Respondent District reported to Petitioners that because Petitioners did not file a request for mediation, or a petition for due process, the May 5, 2022 IEP took effect the 15th day after it was finalized. P-96 at P5852.
75. The May 5, 2022, a final IEP for the 2022-2023 school year (A.K.'s Fourth grade) was marked R-25.
76. The May 5, 2022 final IEP stated that Petitioner Mother "does not want people writing for [A.K.]" (R-25 at 419.)
77. In that same IEP Petitioner Mother expressed concerned that A.K. was "significantly behind grade level," requested that extra reading pullout be added to the last 20 minutes of social studies or science or that A.K. be provided more time per lesson even if it meant on fewer days. (R-25 at 419.)
78. Petitioner Mother A.K. also asked for extra support to begin over the summer. (R-25 at 419.)
79. The May 5, 2022 final IEP for A.K.'s Fourth grade IEP's PLAAFP reported A.K.'s Spring 2022 DRA level was a 14, still within the first grade level. (R-25 at 420.)
80. According to the May 5, 2022 IEP, Aimsweb testing reflected that A.K. did not advance to "on track" except in one measurement, and for every other measurement A.K.'s scores suggested that further assessment was needed: (R-9 at 208; R-11 at 232; R-24 at 394; R-25)

	Fall Benchmark		Winter Benchmark		Spring Benchmark	
R-9 at 208	LNF 26%	LSF 52%	LNF 13%	LSF 10%	LNF 20%	LSF 20%
R-11 at 232	2%		4%			
R-24 at 394	ORF 1%		ORF 2%			

(R-9 at 208; R-11 at 232; R-24 at 394.)

81. The District's final May 5, 2022 placed A.K. in the presence of general education students between 40% and 79% of the school day. (R-25 at 414.)
82. The District's final May 5, 2022 offered a Pullout Resource Placement for Reading and Language Arts for 120 minutes per day and Pullout Supplementary Instruction for Reading for 20 minutes per day. An in-class resource was offered for Math, for 60 minutes per day, and for Science, and or Social Studies for 60 minutes per day. (R-25 at 414.)
83. In addition, A.K. was offered an extended school year with a Pull-out Resource Replacement for Reading/Language Arts for 90 minutes a day, for days a week. (R-25 at 414.)
84. On May 20, 2022, Petitioners, citing "concerns about the increasing gap in A[K.]'s academic assessments in reading, writing and spelling" and the fact that A.K. "is often incapable of reading," rejected the District May 5, 2022 proposed IEP and asked that the District place A.K. at the Cambridge school or provide reimbursement for tuition and transportation. (R-27.)
85. On June 20, 2022, Respondent District's Director of Special Services Paulette DiNardo informed Petitioners that should they "choose to file a request for mediation or a petition for . . . due process then A[K.]'s program will enter "stay put" mode based upon the last agreed upon IEP." (P-96 at P5852.)
86. On May 20, 2022, two days after Petitioners rejected the May 5, 2022 proposed IEP, Dr. Karen Kimberlin and Susan Caplan contacted the District to arrange for observations of A.K. in school. (P-13.)

87. Scheduling Petitioner's expert, Susan Caplan's Summer 2022 observation was challenging because she became ill and it was the end of the school year, but she did observe on June 15, 2022 for 20 minutes. (T1 at 96: 2-8; R-29)
88. On June 9, 2022, Dr. Kimberlin was able to attend a virtual observation of A.K. in the Hopewell school setting. (P-184 at 7771.)
89. In support of Dr. Kimberlin's evaluation, two of A.K.'s Hopewell teachers completed CELF-5 Pragmatic Profiles that revealed that A.K. sometimes (1) has to ask people to repeat what they've said; (2) has trouble answering questions as quickly as other students; (3) using a variety of vocabulary words; (4) thinking of the right word to say; (5) expanding on an answer and providing details and rephrasing when someone does not understand. (P-184 at 7795-96.)
90. The Hopewell teachers who completed CELF-5 Pragmatic Profiles also stated that A.K. never or almost never has trouble with: (1) listening skills; (2) speaking skills; (3) paying attention; (4) following spoken directions; (5) asking for help; (6) remembering things people say; (7) understanding what people say; (8) looking at people when talking or listening; (9) asking questions; (10) expressing thoughts; (11) describing things; (12) staying on topic; (13) getting to the point; (14) putting events in proper sequence when telling stories or relating past events; (15) using proper grammar; (16) using complete sentences; (17) using short choppy sentences; (18) having a conversation; (19) talking to a group of people; (20) getting upset when someone does not understand; (21) understanding facial expressions or body language. (P-184 at 7795 – 7796.)

91. Petitioners experts evaluated A.K. as follows:

Exhibit No.	Evaluation	Expert	Date of Testing	Date and Place of Observation	Date of Report (if noted)
P-191	Confidential Educational Evaluation	Susan K. Caplan, M.Ed.	6/30/2022		
P-207	Composite/Cluster Testing	Susan K. Caplan, M.Ed.	6/30/22 and 4/28/2023		
P-184	Language and Literacy	Karen T. Kimberlin	July and August 2022	District: 06/09/22 Cambridge: 12/15/2022	1/10/2023
P-193	Classroom Observation	Susan K. Caplan, M.Ed.		Cambridge: 11/4/2022	
P-194	Classroom Observation	Susan K. Caplan, M.Ed.		Cambridge: 11/8/2023	
P-185	Language and Literacy <i>Reevaluation</i>	Karen T. Kimberlin	11/09/2023	Cambridge: 04/04/2023 10/18/2023	11/13/2023

92. On August 4, 2022, Petitioners filed a due process petition and sent a letter to the District requesting individual evaluations “to fully understand A.K.’s educational challenges and limitations.”

93. By email dated August 16, 2023, at 8:04 a.m., Respondent District’s Director of Pupil Services, Paulette DiNardo acknowledged Petitioner’s unilateral decision to

place A.K. at the Cambridge School and offered to meet with Petitioners about that decision. (R-96 at P5856.)

94. By email dated August 16, 2023, at 9:18 a.m., Petitioner Mother answered Ms. DiNardo's email noting "I am always open for discussion with you as I have been in the past." (Id.)

95. By email dated Saturday, August 19, 2023 at 2:15 p.m. Ms. DiNardo suggested an August 30, 2023 meeting at 11:00 a.m. not to consider the Cambridge School Placement but to offer an in District program to A.K. (R-96 at P5858.)

96. By email on Wednesday, August 23, 2023, Petitioner Mother wrote to Ms. DiNardo, thanking her, noting that the August 30, 2023 meeting date did not work for Petitioners by expressing a willingness to "review any documentation that you want to send over." (P-96 at P5861.)

97. [Intentionally blank]

C. A.K.'s Period of Enrollment with the Cambridge School: Fourth grade (2022-2023) and (Fifth Grade 2023-2024)

98. Petitioners' witness Ellen Gonzalez, Head of School at Cambridge School, testified about A.K.'s period of enrollment at the Cambridge School. (T5 at 7:25-8:1.)

99. Gonzales testified as an expert in speech and language. (T5 at 8:17-9:1.)

100. Cambridge School is a private special education school for students with language based learning differences in Pennington. (T5 at 8:3-5.)

101. Gonzalez has been at Cambridge School for 19 years and school director for 8 years. (T5 at 7-8.)

102. Cambridge School's grade levels go from K to 12. (T5 at 10:8.)

103. The largest class size at Cambridge is 10 students, and it is not unusual for a class to have only 3 or 4 students. (T5 at 10:10-12.)
104. Ms. Gonzales testified that this is important for A.K. because he needs consistency across the school day. (T5 at 10:17-11:4)
105. All staff at Cambridge are Wilson certified. (T5 at 10:13-15.)
106. Student progress is monitored through beginning of the year testing, and end step assessment every time a student completes a step. (T5 at 11:7-11.)
107. All students at Cambridge also use the Read Naturally Live program. 3/19/2024 Trans. at 34:5; P-163. Read Naturally Live is a nationally normed program that addresses reading fluency and comprehension and decoding. (T5 at 34:9-10.)
108. Gonzales is Wilson trained and further trained in: the Lindamood-Bell programs (LIPS), phonemic awareness, visualization and verbalization, and reading comprehension. (T5 at 9:4-7.)
109. Gonzales holds expert level certification in story grammar marker, which is also a reading comprehension program. (T5 at 9:7-9.)
110. Gonzales is trained in PROMPT articulation training. (T5 at 9:10-11.)
111. Gonzales has received awards from the American Speech and Hearing Association. (T5 at 9:12-14.)
112. Gonzales testified that A.K. presented as a student with severe language based learning differences to a severe degree. (T5 at 10:1-2.)

113. Gonzales testified that it is important for students like A.K. with language based learning disabilities like dyslexia to have Wilson certified instructors, because they need consistency across their day and not pull-out sessions. (T5 at 10:17-19.)
114. A.K. was provided a beginning of the year assessment (P-148) at Cambridge in September of 2022. (T5 at 11:19-22.)
115. Gonzalez testified that during his September 2022 assessment A.K. could not organize a topic sentence, concluding sentence, or sequential paragraph (P-148). (T5 at 12:2-5.)
116. Gonzalez testified that during his September 2022 assessment A.K. exhibited an extremely limited vocabulary. (T5 at 12:6-7) and did not have a good comprehension of conventions of writing, capitalization, punctuation, and sentence structure. (T5 at 12:9-11).
117. Gonzalez testified that A.K.'s greatest struggles during the September 2022 assessment were paragraph content and word choice. (T5 at 13:12-15.)
118. During his September 2022 assessment, Gonzalez testified, A.K. could not write a paragraph with an introductory sentence, sequential cuing, and correct use of articles and prepositions. (T5 at 14:9-17.)
119. On the WADE test in September 2022:
- A.K. identified 50 out of 120 sounds, which was the 42nd percentile.
 - A.K. read 33 out of 240 words, which was 14th percentile.
 - A.K. spelled 17 out of 184 words correctly, which was the 9th percentile.

(T5 at 20:4-10; P-150.)

120. A.K. scored 100 out of 544 correctly overall on the WADE in September 2022, correlating to the 18th percentile. Ms. Gonzales opined that A.K. was severely delayed for what a Fourth grader was expected to be. (T5 at 20:10-13; P-150.)
121. When retested in May of 2023, Gonzalez testified, A.K. was able to understand the concept of a topic sentence, express a subject and key ideas, include and explain relevant details, and use a concluding sentence in his writing (P-160). (T5 at 16:1-4.)
122. By May of 2023, Gonzalez testified, the overall organization of A.K.'s writing was much improved. (T5 at 16:4-5) he was using sentence starters, prepositions, and exhibited a more vivid vocabulary and word choices. (T5 at 16:9-10.)
123. Gonzalez testified that by the time of his May of 2023 assessment, A.K. also displayed better knowledge of what makes a sentence fragment or a run on sentence, and what makes a complete sentence. (T5 at 16:15-17) and used consistent verb tenses and subject/verb agreement. (T5 at 16:17-18.)
124. Gonzales testified that A.K.'s writing from September of 2022 to May of 2023 showed "significant progress." (T5 at 17:4) And although A.K. "he still has more to go, but now he has the foundation ready." (T5 at 17:6-7.)
125. Gonzales attributed A.K.'s improvement to "consistency across the day" in his writing program at Cambridge. (T5 at 18:5-20.)
126. Gonzales testified that Cambridge School uses the Wilson assessment because it is a research based systematic and explicit and systematic approach to decoding. (T5 at 19:16-17.)
127. Gonzales testified that when A.K. came in "with very low decoding phonemic awareness and sight word recognition" that "he really needed an explicit and systematic phonics instruction and that's Wilson." (T5 at 19:20-23.)

128. Gonzales testified that there are two Wilson assessments: the WIST and the WADE ((T5 at 19:23-25P-150; P-159.)
129. Ms. Gonzales testified that Wilson cannot have grade levels because the program is measuring ability and meeting a student where they are. (T5 at 58:19-24.)
130. The WADE measures where a student is and the WIST reports grade levels. (T5 at 60:15-19.)
131. The WADE looks at the whole program of 12 books and the steps a student just finished. (T5 at 19: 23-20:2.)
132. WADE testing at Cambridge is given at the school's discretion, Gonzalez testified, always administered at the beginning of the year, and when a student has made extreme or unsatisfactory progress. A.K. was WADE tested in December 2023. (T5 at 25:11-16.)
133. A.K was retested again at Cambridge in December of 2023 (P-241). Gonzales testified that the Wilson evaluations of A.K. at Cambridge likewise showed "significant progress." (T5 at 24:3.)
134. A.K.'s December 2023 WADE test score in sound symbol knowledge was 75 out of 120, which was 63%, a 21% improvement in sound symbol knowledge from May 2023. (T5 at 25: 23-26:3; P-159; P-241)
135. A.K.'s December 2023 WADE test score in reading was 124 out of 240, which was 52%, a 22% improvement. Ms. Gonzales opined that this was significant progress. (T5 at 26: 15-23; P-159; P-241)
136. December 2023 WADE test score in spelling was 47 out of 184, which was 26%. This was a 3% improvement from May 2023. (T5 at 27: 3-8; P-159; P-241)

137. Gonzales testified that A.K. “came in very severely delayed and while he’s still delayed he’s approximating what we would want.” (T5 at 23:3-5.)
138. Compared to his results from May of 2023, Gonzalez testified, A.K.’s reading performance rose from 72 out of 240 words correct to 124 out of 240 words correct. (T5 at 26:15-17.)
139. Gonzales testified that this increase is “very significant progress.” (T5 at 26:23.)
140. Gonzales testified that spelling continues to be A.K.’s greatest area of challenge but that he’s “moving in a positive direction.” (T5 at 27:7-8.)
141. Gonzales attributed A.’s very significant improvement to responding positively to the Wilson program, and retaining concepts as he moves through the program. (T5 at 27:23-28:4.)
142. In September of 2022, A.K. had a raw score of 49 in identifying words (T5 at 28:25-29:1; P-150), but May of 2023 his word identification rose to 71 words. (T5 at 29:1-4; P-159.)
143. Gonzales testified that A.’s increase in word identification was “significant progress.” (T5 at 29:11.)
144. Gonzales testified: “to go from reading 49 to 71 words is showing that he’s understanding the concepts that he’s being taught and he’s incorporating them into his reading.” (T5 at 29:13-16.)
145. Overall, from May 2023 to December 2023, A.K. improved from the 30th percentile to the 45th percentile. (T5 at 27: 17-22; P-159; P-241.)
146. The WIST demonstrated A.K. improved from September 2022 with a standard score of 49 to May 2023 with a standard score of 63. (T5 at 29:1-7; P-158 at P7308.)

147. In spelling, A.K. improved from 43 to 53, from second grade to second grade six months. (T5 at 29:25-30:1; P-158.)
148. A.K.'s Wilson fundamental literacy ability index score was 92 in September and 124 in May. (T5 at 30: 6-7; P-158.)
149. Ms. Gonzales testified that the WIST booklet from September 2022 demonstrated that A.K. was severely behind his expected grade level. (T5 at 32: 22-33:5; P-152.)
150. Ms. Gonzales testified that A.K.'s Read Naturally Live benchmark assessment demonstrated he was functioning at the 2.0 grade level in September 2022. (T5 at 33: 22-34:20; P-163.)
151. A.K.'s Spring 2023 testing showed he demonstrated an upward trajectory, however stills scored below the 50th percentile for fourth grade. (T5 at 35: 9-12; P-163.)
152. Gonzales testified "the first year is the most challenging for students when they're working on their dyslexia, they have to unlearn the strategies that they were using because they weren't working." (T5 at 29:16-19.)
153. A.K. could identify 49 sound syllables in September of 2022 and 77 sound syllables in May of 2023. (T5 at 30:10-12; P-150; P-159.)
154. In reading, he scored 72 out of 240, which was the 30th percentile. In spelling, he scored 42 out of 184, which was the 23rd percentile. (T5 at 23: 2-18; P-159)
155. A.K. scored 92 on his fundamental literacy ability index in September of 2022 and 124 in May of 2023. (T5 at 30:6-7; P-150; P-159.)
156. A.K. was evaluated at the beginning of his second year at Cambridge to test his retention from the prior year. (T5 at 38:16-20; P-168.)

157. Gonzales testified that A.K. is making progress at an even better rate during the 2023-2024 school year because he now has “the foundational concepts of Wilson.” (T5 at 31:2-5.)
158. A.K.’s May 2023 word identification score of 71 rose to 96 in December of 2023. (T5 at 31:7-9.)
159. A.’s functional literacy ability index rose from 124 in May of 2023 to 166 in December of 2023. (T5 at 31:20-21; P-159; P-241.)
160. A.’s sound symbol knowledge rose from 77 in May of 2023 to 94 in December of 2023. (T5 at 31:24-25; P-159; P-241.)
161. Gonzales testified it was clear from working with A.K. that he needed one-on-one speech and language services. (T5 at 36:9-12; P-154.)
162. As noted in his March 2023 speech and language progress report, A.K. received 45 minute one-on-one sessions with a speech pathologist at Cambridge. (T5 at 36:12-17.)
163. Gonzales testified she could tell one-on-one sessions with a speech and language pathologist were necessary for A.K. from the severity of his written expression and oral language ability. (T5 at 36:18-20.)
164. A.K. was able to produce a writing sample that showed retention of skills and knowledge on use of starting sentences, sequential organization of paragraphs, and construction of complete sentences, but continued to show challenges with subject/verb agreement. (T5 at 39:6-16.)
165. A.K.’s writing showed improvement in syntax and use of words. 3/19/2024 Trans. at 39:20-21.

166. Gonzales testified that in the Fifth grade A.K. “has retained many of the concepts he addressed in fourth grade” (T5 at 39:22-23) and that this shows that A.K. is responding to Cambridge’s writing program. (T5 at 39:25.)
167. A.’s second marking period progress report for his Fifth grade (2023-2024) school year reveals that at the end of the second marking period he was working on Wilson Book 3, Step 3 (T5 at 40:12-19; P-235) which is noteworthy because in September of the prior school year he started at Book 1. (T5 at 40:20-22.)
168. Wilson is very strict on measuring fluency and accuracy, and does not permit a student to move on to a new Book or Step without demonstrating “mastery” of prior books and steps. (T5 at 41:3-8.)
169. Ms. Gonzales testified that Cambridge uses Wilson because it is a research base explicit and systematic approach to decoding. (T5 at 19:13-17.)
170. That A.K. is now working in Book 3, Step 3 indicates that he has mastered the 6 Steps of Book 1, and the 5 Steps of Book 2, as well as the 2 prior steps of Book 3 at a level between 94 and 98 percent accuracy. (T5 at 40:24-41:2.)
171. Gonzales testified that A.K. “has a very positive upward trajectory and he’s responding well to the program.” (T5 at 41:22-24.)
172. In March 2023, Cambridge recognized that A.K. needed additional one on one speech and language work, and he received an individual 45-minute session once a week with a speech and language pathologist. (T5 at 36: 9-14.)
173. Ms. Gonzales opined that writing samples demonstrated that A.K. was responding to Cambridge’s writing program and despite a summer slide, retained most concepts he was taught in fourth grade. (T5 at 38 23-40:3; P-168.)

174. Ms. Gonzales testified that progress reports indicated that A.K. has a positive upward trajectory but he is still below the 50th percentile for his age and grade. (T5 at 41:9-25; P-235.)
175. Ms. Gonzales opined that A.K. was maintaining the concepts from Framing Your Thoughts and the Hochman Program, and using them to more fully express himself in writing. (T5 at 46: 6-9.)
176. Gonzales testified that A.K. initially required ‘significant scaffolding’ to identify and define new vocabulary words, and has now gained greater independence. (T5 at 42:19-23; P-235.)
177. Gonzales testified that when A. first enrolled at Cambridge, he was frustrated that he was not able to express himself. (T5 at 45:23-46:1.)
178. Gonzales testified that A.K. really understands “the Wilson concepts. He’s using them. He’s a very bright boy and his written expression has really improved...He’s still impaired but making significant progress in response to the program’s he’s receiving.” (T5 at 46:3-14.)
179. Although Gonzales is not familiar with the education A.K received while enrolled with Respondent District, and did not know A.K. prior to his arrival at Cambridge (T5 at 50:5), Gonzales testified that A.K.’s performance on his September 2022 assessment at Cambridge is “consistent with what was done in district.” (T5 at 47:12-19.).
180. Gonzales read A.K.’s May 2022 IEP and spoke to A.’s parents, and had “some knowledge of what was going on” at Respondent District based on same. (T5 at 50:19-22.)
181. Gonzales did not review A.K.’s in-district writing samples (T5 at 51:3) because “I don’t see the point if I don’t see the retention of the concept...we might not see what’s going on in district, but we can see what he retained.” (T5 at 55:9-13.)

182. Gonzales is familiar with Aimsweb Plus, Phonemic Awareness Testing. (T5 at 57:7-12.)
183. Gonzales reviewed but did not remember A.K.'s in district progress reports and progress on IEP goals and objectives. (T5 at 57:13-19.)
184. Gonzales explained "[m]y job is to focus on what's done at Cambridge, not what's done in-district and I should be able to see what's done successfully in-district by what comes to Cambridge." (T5 at 57:19-22.)
185. Gonzales testified that Wilson books do not correspond to grade levels. (T5 at 59:21-23.)
186. Gonzales testified: "it's not like that...in reading it doesn't matter...why would you teach a fourth grade level for someone who is below the second grade expectancy." (T5 at 59:23-60:2.)
187. Upon cross examination, Ms. Gonzales testified that she had not seen any writing samples that A.K. did at Hopewell Valley. (T5 at 47: 12-16.)
188. Ms. Gonzales admitted testifying on direct that she noted "A little bit of summer slide is inevitable." (T5 at 47:23-24.)
189. Ms. Gonzales worked in public schools and testified she was aware of what the test is for qualifying for an offer for an extended school year. (T5 at 48: 13-15.)
190. Respondent District determined A.K. qualified for an extended school year because time off would lead to a regression which was not likely to be recouped within a reasonable amount of time. (T5 at 49: 3-19.)

191. Ms. Gonzales admitted that it would be fair to say that there is truth to the statement that the summer slide may be greater for A.K. than for a student who was not found to need an extended school year. (T5 at 49:9-14.)
192. Ms. Gonzales testified that she “may have seen” A.K.’s Orton Gillingham notebook from Respondent District prior to the hearing day, which contained a binder of his written work. (T5 at 50: 6-10.)
193. Ms. Gonzales testified that she read the IEP and A.K.’s parents explained “what was going on” in Respondent District when asked if she did any differential analysis by looking at the work A.K. did in the District before expressing her opinions about A.K.’s program and his progress at Cambridge. (T5 at 50:14-22.)
194. Ms. Gonzales did not compare A.K.’s writing samples from Respondent District to samples from Cambridge. (T5 at 50:25-51:3.)
195. With regard to the assignment of numbers in subcategories on a Cambridge rubric, Ms. Gonzales testified that is it “very hard to be specifically objective.” (T5 at 51: 10-12; P-148.)
196. She agreed that some assessment of a student is going to have subjectivity, but that she would rely on the professionalism and consistency of the evaluator. (T5 at 51:19-22; P-148.)
197. Ms. Gonzales agreed that A.K. did not outline a writing sample done in September 2022 for Cambridge because he was not yet instructed in the Hochman program at that time. (T5 at 53: 18-24; P-160.)
198. Ms. Gonzales was “not sure” if she was aware that A.K. was being educated in the Framing Your Thoughts Program at Hopewell Valley. (T5 at 55:2-5.)
199. She testified that she “she did not see the point” of looking at any of A.K.’s prior work under Framing Your Thoughts because “so many children are taught things,

but don't retain them," and the beginning of the year sample at Cambridge shows what is retained. (T5 at 55: 6-13)

200. Ms. Gonzales was unsure if A.K. received tutoring obtained by his family. (T5 at 56:7-10.)
201. Mrs. Gonzales did not know how much instruction A.K. had between his last day of school at Respondent District and his first day at Cambridge in September 2022. (T5 at 55:14-18.)
202. A.K. received one week of extended school year at Cambridge in the Summer 2023. She credited what he retained from one week. (T5 at 55:21-56:6.)
203. She was also unaware if she had seen A.K.'s serial scoring over the core phonics survey, the core phonological segmentation test or the phoneme deletion test in the IEP she reviewed. (T5 at 56:12-25; R-25.)
204. Ms. Gonzales testified that if the Aimsweb Plus, phonemic awareness testing and progress reporting toward goals and objectives were in the IEP, then she would have reviewed them. (T5 at 57:7-16; R-25.)
205. She could not recall specifics or if any of those materials demonstrated progress. (T5 at 57:19-22.)
206. Ms. Gonzales testified that if Susan Caplan or Karen Kimberlin's reports were shared with her, she read them. She did not look at grade level and oral fluency noted by Dr. Kimberlin the day she testified. (T5 at 60:19-61:2)

D. Testimony of Paulette DiNardo, Director of Pupil Services: Special Education Expert.

207. On December 4, 2023, Director of Special Services Paulette DiNardo testified that she oversees Respondent District's special education department and has worked in the field of special education since 1993. (T1 at 40:11-12.)
208. The Court qualified Ms. DiNardo as an expert in the field of special education. (T1 at 39: 2-40:12.)
209. DiNardo testified it was her opinion that A.K's in-district academic achievement and performance showed "meaningful progress." (T1 at 59:7-19.)
210. Ms. DiNardo testified that it was her opinion that A.K. made slow but meaningful progress while at Respondent District and was responding to tiered interventions. (T1 at 44: 5-9.)
211. DiNardo testified that in reviewing A.K.'s IEPs and test scoring over the years, nothing suggests to her that A. has not made sufficient progress in-district and needs to be educated elsewhere. (T1 at 65:20-25.)
212. Ms. DiNardo clarified "I would call any kind of progress meaningful." (T1 at 167:19.)
213. When asked to explain, Ms. DiNardo testified:

Q Wait I want to get that. Any kind of progress is meaningful?

A Yes.

Q What do you mean by that? What do you mean by that?

A Any kind of progress we see in a child where we see that his numbers and percentages is increasing is good. We also look at would a more intensive model help them to progress at a more rapid rate and that's what the team look at.

Q When I write my brief in this case, would it be a fair statement to say Paulette DiNardo testified that any progress is meaningful. Would that be fair?

A Yes.

(T1 at 167:20-168:8)

214. Ms. DiNardo noted that of the 800 students receiving special education services in the Hopewell Valley School District, with 36 or 37 of those students placed in out of district programs. (T1 at 41: 2-8.)
215. Ms. DiNardo agreed that the District did not put grade levels in all of its reports, and agreed that few progress reports and IEP class sections referred to the grade level at which A.K. was performing. (T1 at 49: 21-50:3)
216. DiNardo opined that it is not inappropriate to have an IEP with no reference to performance by grade level, and that most IEPs and IEP performance evaluations do not reference performance by grade level. (T1 at 49:21-50:5.)
217. Ms. DiNardo noted that The Cambridge School did not refer to A.K.'s grade level performance in his Middle School Progress Report for the first marking period of the 2023-2024 school year. (T1 at 51: 14-25; P-203.)
218. Ms. DiNardo opined that there has been a shift in the science of reading away from grade level reporting to "meeting the child where they are in the present" and guiding them to make meaningful progress. (T1 at 50: 5-14.)
219. Ms. DiNardo testified that all Respondent District teachers are trained in the Orton-Gillingham approach of literacy instruction, and some teachers also have certification in Wilson instruction. (T1 at 53: 3-6.)
220. Ms. DiNardo testified that A.'s IEP for this 2019-2020 First grade year (R-9) did not recommend a more restrictive placement because the district's literary

benchmarks demonstrated that he was making meaningful progress within the proscribed special education setting. (T1 at 56:15-18.)

221. Ms. DiNardo opined that the content of teacher Mooney's section of the PLAAFP within A.K.'s 2019 IEP for this First grade year demonstrates that he made meaningful progress. (T1 at 59: 7-18)
222. Ms. DiNardo referred to the CORE Phonics Survey scores, noting that in the Fall of 2018. A.K.'s Kindergarten Year:
 - a. A.K. was properly identifying 22 of 26 upper case letters.
 - b. A.K. was properly identifying 17 of 26 lower case letters. (T1 at 59:4-9; R-9 at 208.)
223. DiNardo testified that in her 30 years of special education experience she has experienced instances where students did not make progress on tests such as Aimsweb, the Gallistel-Ellis, and the CORE Segmentation. (T1 at 65:6-11.)
224. Ms. DiNardo testified that if Respondent District uses all of its interventions and programming within the District and does not find a student is making sufficient progress, it will work with a student's parents to identify an out of district placement that suits that student's needs. (T1 at 65: 14-19)
225. Respondent District teachers are not required to save every piece of work product for each student, and Ms. DiNardo testified that she trusts their data collection that goes into producing a progress report and considers the process as valid as data provided by an outside evaluator. (T1 at 68: 1-6; R-10.)
226. Ms. DiNardo testified that A.K.'s 2019-2020 progress report from his first-grade year at Respondent District demonstrates that he made meaningful progress and achieved many of his goals and objectives. (T1 at 70: 2-22; R-12.)

227. When questioned about how to explain goals four and five demonstrating "gradual progress," which according to the key means less than anticipated progress, Ms. DiNardo explained that gradual progression is not synonymous with no progression, and if progress is slower than hoped, if necessary, the District adds interventions. (T1 at 197: 4-20; R-12.)
228. Based on the PLAAFP sections of A.K.'s 2020/2021 IEP, Ms. DiNardo opined, A.K. was making meaningful progress based on his capabilities. (T1 at 74: 4-22; R-11)
229. The IEP issued by the District on April 15, 2020 of A.K.'s First grade year reported the following serial testing: :

Oral Reading Fluency	
Fall Benchmark	2 nd percentile
Winter Benchmark	4 th percentile

(P-11 at 232.)

ORF		
Date	Score	Percentile/Errors
9/9/19	4	8
10/14/19	9	2
11/11/19	9	6
12/09/19	21	0
1/6/20	19	2
1/13/20	14	4
1/20/20	10	0
2/3/20	10	1
2/17/20	9	2
2/24/20	18	3
3/2/20	20	1
3/9/20	24	2

Phonological Awareness						
	Form A Date: 9/12/19		Form B 12/14/19		Form C 3/10/20	
	Correct	Automatic	Correct	Automatic	Correct	Automatic
Basic Syllable	9/12	7/12	12/12	11/12	12/12	12/12
Onset-Rime	7/10	7/10	10/10	8/10	10/10	10/10
Basic Phoneme	0/10	0/10	0/10	0/10	4/10	2/10
Advanced Phoneme	0/20	0/20	0/20	0/20	0/20	0/20
Test Total	16/52	14/52	22/52	19/52	26/52	24/52
Highest Correct Level	G	G	G	G	G	G
Highest Automatic Level	G	G	G	G	G	G

(R-11 at 234-235.)

Words Their Way Primary Spelling Inventory				
	Fall 2019	(Percentage)	Winter 2020	(Percentage)
Feature Points	24/56	42%	30/56	53%
Words Spelled Correctly	4/26	15%	6/26	23%
Total	28/82	34%	36/82	43%

230. Only Pre-Scores were noted for the Gallistel Ellis Test of Code Skills, no Post-Scores were noted. (R-11 at 233-234.) In fact, no Spring scores were reported due to the inherent limit of remote education on data collection. (R-11 at 236.)
231. Ms. DiNardo opined that none of A.K.'s criterion-based testing suggested that he had not made sufficient progress and needed to be educated elsewhere. (T1 at 65: 20-24)
232. In January of 2020, before the March 2020 COVID shutdown, A.K. was moved from In Class Resource (ICR), one of the least restrictive general education environments consisting of co-teachers in a classroom with 17-20 students, up to 8 of which have IEPs, to the resource room, a more restrictive environment with a smaller class size with 7-9 students to receive more extensive support in structured literacy. (T1 at 71:6-73:15)
233. DiNardo testified that A. was making meaningful progress when he was moved from in-class resource to a resource room. (T1 at 168:9-12.)
234. DiNardo conceded, however, that children are not moved to resource rooms from in-class resource unless they are not progressing in class resource. (T1 at 166:1-4.)
235. A.K. attended the District's extended school year (ESY) program in 2020. (R-13.)
236. Ms. DiNardo opined that A.K.'s progress report from extended school year 2020 demonstrates that he was receiving appropriate programming that Summer, although he only attended nine days. (T1 at 76:19-77:9; R-13)
237. Ms. DiNardo agreed that although an IEP that offers supplemental reading instruction typically states why the service is being offered and the data that was reviewed to determine what service is needed; A.K.'s IEP contains no such statements in the precise language quoted by petitioners' counsel. However, she

opined that the PLAAFP section of the IEP provided the justification. (T1 at 129:7-13; 110:9-120:23.)

238. Ms. DiNardo opined that the IEP written in the Spring of 2020 for the 2021 school year, A.K.'s Second grade year, offered a free appropriate public education (FAPE) in the least restrictive environment. (T1 at 77:12-22; R-11.)
239. New psychological and educational evaluations were conducted for A.K. in the Fall of 2020 because he was due for reevaluation per code, which requires that a student be reevaluated every three years. (T1 at 80:3-8; R-16.)
240. Ms. DiNardo opined that it was appropriate to offer a new IEP for A.K. in the Fall of 2020, after the Fall 2020 reevaluations, and that 11/13/2020 IEP offered FAPE in the least restrictive environment (T1 at 80: 15-18; R-17.)
241. Ms. DiNardo further testified that serial testing described in the PLAAFP section of the IEP demonstrated that A.K. made meaningful progress based on his capabilities. (T1 at 81: 8-12; R-17)
242. Ms. DiNardo noted that A.K.'s 2020-2021 progress report from his second-grade year indicated that he achieved many of his IEP goals and objectives. (T1 at 82: 11-22; R-19.)
243. Ms. DiNardo did not have any disagreement with Dr. Merchant's 8/26/2021 determination that based on an audiologic and CAP report, A.K. has a general auditory processing disorder. (T1 at 84: 9-12; R-21)
244. A speech language specialist report (R-18, dated 11/03/2021) was prepared in response to Dr. Merchant's recommendation. (T1 at 85: 4-10; R-18.)
245. She opined that the IEP programs (R-17 and R-22, dated 11/29/21) for A.K.'s Third grade year calling for pull out resource for reading and language arts and in-class resource for math were appropriate. (T1 at 81: 13-20.)

246. Ms. DiNardo agreed that the purpose of Aimsweb Testing is to give a spring oral reading fluency number; however, the Aimsweb data in A.K.'s IEP contains no spring oral reading fluency number. (T1 at 129:7-13; 110:9-111:1.)
247. Ms. DiNardo agreed that A.K.'s 2021-2022 IEP Goals and Objectives progress report indicated that he did not achieve all his Third grade goals and objectives, and opined that this did not indicate that he did not receive an appropriate educational program that year. (T1 at 97: 22-98:8; R-31.)
248. Based on the results of benchmarking different prongs of literacy instruction, in the May 2022 IEP, A.K. was offered pull out supplementary reading instruction from a high-level Orton-Gillingham trained teacher to begin in September. Ms. DiNardo noted that this addition to A.K.'s IEP was another tier of intervention in addition to the 120 minutes of resource room. (T1 at 92: 4-22; R-25.)
249. The May 2022 IEP (R-25), proposed for A.K.'s Fourth grade year, is the first time ever that A.K. was offered pull out supplemental instruction reading. (T1 at 107:1-8.)
250. On cross-examination, Ms. DiNardo agreed that the District offered A.K. supplemental reading instruction because it was needed, which was noted on page 18 of the May 2022 IEP. (T1 at 108: 17-109:1; R-25.)
251. When asked to demonstrate what data shows A.K. needed more help in reading, Ms. DiNardo testified that the second paragraph of the page bated stamped 420 discussed the data collection process and was used to ascertain progression across the 2021-2022 school year. (T1 at 119: 14-22; R-25.)
252. Ms. DiNardo explained that there are different prongs of literacy, and the guides are instructions and recommendations. (T1 at 119: 23-24; R-25.)

253. Ms. DiNardo testified that the District no longer uses the DRA test for special education students because literacy experts expressed concern with the way the test is presented through pictures, which leaves experts unsure if students are decoding words or making inferences using the test's pictures. (T1 at 17-25.)
254. Ms. DiNardo confirmed that A.K.'s DRA level went from an 8 to a 14 and agreed that both scores are equivalent to first grade levels. She did not know the specific numbers in the first-grade range. (T1 at 124: 2-18; R-25.)
255. A.K.'s Aimsweb oral reading fluency (ORF) score from May 9, 2022 indicated that he read 38 words correctly with two errors. Ms. DiNardo agreed that the Spring ORF score was not in the IEP, as it was completed before the test was administered. (T1 at 128: 17-129:14; R-25.)
256. A.K.'s Aimsweb ORF score in grade one indicates that he got 62 words correct with six errors. (T1 at 132: 5-19; R-25.)
257. Ms. DiNardo testified that grade levels are not necessarily accurate and opined that they give a deceiving picture of where the child is, because "you're looking at different levels." (T1 at 135: 4-11.)
258. When questioned if the May 2022 IEP reflects grade levels, Ms. DiNardo also testified that the IEP contains no specific grade levels identified to show where A.K. is on different levels of literacy. Grade levels are mentioned in terms of "progress monitoring grade one, grade two." (T1 at 139: 2-13)
259. Ms. DiNardo revisited the question that counsel asked on cross-examination about why no goals and objectives referred to specific grade levels, and she stated that the goals were more specific. She elaborated that the more specific goals were appropriate because they were more specific to where A.K. was functioning at each of the literacy levels: phonics, phonemic decoding, and fluency. The District was looking at those goals specifically based on the benchmarks where A.K. was

at, and then working on progressing in each of those areas. (T1 at 198: 4-17; R-25.)

260. Ms. DiNardo testified that in the narrative section of A.K.'s May 2022 IEP, Ms. Kulp collected and entered the data showing that A.K. "has shown steady growth this year in the area of reading." Social, emotional and behavior detail from Lauren Macinsky in the areas of science and math demonstrated that A.K. was making meaningful progress. (T1 at 91:2-13; R-25.)

261. Ms. DiNardo could not tell after reading A.K.'s IEP and its data how far behind his grade-level peers A.K. actually was in reading at the end of the Third grade. (T1 at 127:7-11.)

262. DiNardo admitted there was no indication that A.K.'s non-fiction essay opinion piece writing was prepared independently by A. (T1 at 149:17-21.)

263. DiNardo testified the first time she was told that petitioners were unhappy with the district is when she received "the unilateral letter." (T1 at 162:7-10.)

264. DiNardo testified "I cannot answer that" when asked if she knew the parents were unhappy prior to receiving the letter informing that Petitioners had decided to unilaterally place A.K. at the Cambridge School and could not say with certainty there were no prior complaints. (T1 at 164:6-24.)

265. Based on a trajectory wherein A.K.'s percentages were increasing on the Gallistel-Ellis test, it is Ms. DiNardo's expert opinion that A.K. made progress. His common consonant combinations pre-test score in September 2021 was 38%, and in April 2022, it was 76%. (T1 at 143: 23-145:17; R-25)

266. On re-direct, Ms. DiNardo affirmed that when the IEP was issued there was no Aimsweb Plus Spring benchmark taken; thus there were underscores rather than numbers written. (T1 at 193: 14-20; R-25at 421.)

267. Ms. DiNardo testified that based on the 8 correct words per minute that A.K. was reading in the Fall of 2021 versus 25 words per minute he was reading in the following winter, A.K. was making meaningful progress based on his capabilities. (T1 at 193:17-194:7; R-25.)
268. Ms. DiNardo further testified that in regard to counsel's questions about how many words were possible on the test, the precise way the Aimsweb test is administered is outside of her expertise as an administrator; however she understands what the scores mean. (T1 at 194:8-19; R-25.)
269. DiNardo testified that she never saw the February 8, 2022 email Petitioners sent to Ms. Kulp expressing concerns about A.K.'s lost enthusiasm for reading (P-99 at P5900.) (T1 162:20-163:6.)
270. Ms. DiNardo further testified that Ms. Kulp never reported Petitioners' concerns about A.K.'s lost enthusiasm for reading to her. (T1 162:20-163:6.)
271. DiNardo conceded that Petitioner attempted to meet with DiNardo after rejecting A.'s proposed 4th grade IEP and advised they were unavailable to meet on that date unilaterally selected by DiNardo but would review any documents she provided. Thereafter DiNardo did not provide any additional documents (T1 at 154:21-155:13.)
272. Although Respondent District was not provided with the raw data behind A.K.'s first marking period 2023-2024 progress report from Cambridge, Ms. DiNardo does not question the professional integrity of his Cambridge educators or the accuracy of the report. (T1 at 68: 7-16; P-203.)
273. Ms. DiNardo testified that she had no indication that A.K.'s parents were dissatisfied with the program and seeking an out of district placement at the time the May 2022 IEP was offered. (T1 at 93: 1-5; R-25; R-27)

274. Ms. DiNardo learned shortly after A.K.'s parents rejected the IEP on May 20, 2022 that they had retained experts who requested to observe A.K. in school. (T1 at 95: 13-18; R-27.)
275. Ms. DiNardo testified that A.K.'s mother emailed her and his case manager, Antoinette Tighe, on June 17, 2022, and opted him out of the District's Extended School year, noting she felt that the program had been ineffective previously and instead, A.K. would have a tutor. (T1 at 99: 5-9; R-30)
276. Petitioner Mother informed, instead, that A.K. would be meeting twice a week with a certified Orton-Gillingham tutor during the Summer of 2022. (T1 at 99: 5-9; R-30)
277. Ms. DiNardo confirmed that she offered to meet to discuss the family's concerns and collaborate if they chose to. This did not occur. (T1 at 99: 14-20; R-30; P-96 at P5858-5861.)
278. Ms. DiNardo had no reservations about working collaboratively with A.K.'s parents going forward on an appropriate public education in the least restrictive environment appropriate for A.K. (T1 at 103: 5-9; P-96 at P5858-5861.)
279. Ms. DiNardo opined that the accommodations and modifications listed in A.K.'s May 2022 IEP (R-25) were appropriate based on his strengths and weaknesses. (T1 at 101: 7-15; R-30)
280. Ms. DiNardo opined that A.K. was offered a free, appropriate public education (FAPE) in the least restrictive environment (LRE) for the years he was educated by Hopewell Valley, including his fourth grade year, prior to which his parents removed him and placed him at the Cambridge School. (T1 at 102: 23-103:4.)
281. After receiving the email with Dr. Dyckman's psychiatric evaluation for A.K. in the Spring of 2023, one year after the parents rejected A.K.'s May 2022 IEP, Ms. DiNardo invited the parents to meet if they wanted to discuss the report. (T1 at 195: 7-13; P-83.)

282. After receiving the email with Dr. Karen Kimberlin's report on November 16, 2023, Ms. DiNardo responded that day and invited the parents to meet and discuss. There was no response. (T1 at 195: 20-196:7; P-88.)
283. Ms. DiNardo noted that she received Petitioners November 20, 2023, email with attached evaluations and observations by Ms. Caplan, which were forwarded by Ms. Tighe, A.K.'s case manager. Ms. DiNardo testified that prior to that email, she had not seen any evaluations or observation reports from Ms. Caplan in this case. (T1 at 196:11-23.)
284. Ms. DiNardo testified that in her expert opinion, the Cambridge progress report had less detail and specific data about grade level and grade level function than did the District progress reports, which provided more specific data with regard to literacy pieces. (T1 at 200: 23-201:4; P-203.)
285. Ms. DiNardo noted that in the writing section goals of A.K.'s Cambridge progress report, there is no mention of grade level or of functional performance level. (T1 at 201:13-19; P-203.)
286. Cambridge progress reporting shows that A.K.'s fluency component goal was adjusted to 3.0 with a WCPM goal of 85. The report did not indicate if he had reached that goal. (T1 at 202: 4-9; P-203.)
287. Ms. DiNardo testified that in her expert opinion, the absence of a grade level or grade level performance does not render a progress report defective or indicative of a failure of the school to provide an appropriate education for the student. She opined that through the progress report, Cambridge was likely demonstrating the different skill sets that A.K. was working on and addressing where he was possibly making progress and other areas where he was possibly struggling. (T1 at 203: 10-204:5; P-203.)

E. Testimony of Liz Babice: Speech and Language Pathology Expert

288. On December 4, 2023, Ms. Babice testified as an expert in the field of speech language pathology. (T1 at 215:5-12.)
289. Ms. Babice testified that she first became involved in A.K.'s education when the District received the Central Auditory Processing (CAP) evaluation by Dr. Merchant. (T1 at 215: 14-18; R-21.)
290. Ms. Babice further testified that she observed A.K. during a writing block and evaluated him. She used three different assessments as part of her speech report: (1) an auditory processing assessment, (2) an auditory perception of speech sound assessment (the Linda Mood Auditory Conceptualization Test) and (3) a comprehensive assessment of spoken language (the CASL II). Ms. Babice also completed an observation of A.K. in the classroom and gave the teachers a checklist to fill out to assess the academic impact. (T1 at 218: 3-12; R-18.)
291. Ms. Babice testified that A.K. scored within the average range for all assessments except for one subtest where he earned a standard score of 79, which is "below average." This score did not require or support A.K. getting speech services in the public school setting. (T1 at 218: 14-219:11.)
292. When questioned how speech testing could demonstrate that A.K. was average in all but one area if he has a specific learning disability - meaning a discrepancy between his cognitive ability and his functional educational performance – Ms. Babice explained that a lot of the assessment went through oral language, which shows as an area of strength for A.K., and the LTDC evaluator did more of the reading and writing components, which exposed his area of weakness. Ms. Babice did not test A.K. in reading or writing, as those areas were covered by the educational evaluation which Ms. Babice reviewed as part of her work on A.K.'s child study team. (T1 at 219: 16-220:11; R-15, R-18.)

293. Ms. Babice testified that based on Dr. Merchant's report, A.K.'s IEP was modified to provide him with assistance with note taking. This modification was based on a recommendation by Dr. Merchant. (T1 at 220: 20-222:1; R-22 p. 20.)
294. Babice testified that the testing conducted by Kimberlin went beyond the scope of her own testing. (T1 at 224: 11-22; P-185.)
295. Ms. Babice testified that Dr. Karen Kimberlin's testing included reading and writing assessments, and hers did not. (T1 at 224: 11-22; P-185.)
296. Babice testified that she has no reason to challenge the results of Kimberlin's testing. and that Kimberlin's results were consistent with her own observations. (T1 at 224:17-22.)
297. Babice noted that Dr. Kimberlin's results were consistent with the results of the educational evaluation performed a year earlier in Hopewell Valley. (T1 at 224: 11-22; P-185.)
298. Dr. Kimberlin recommended that A.K. receive speech language services. Ms. Babice did not recommend that A.K. receive speech language services. (T1 at 225:3-226:3; P-185.)
299. Dr. Kimberlin also recommended that A.K. receive individualized speech therapy at Cambridge to support vocabulary, writing, listening and reading comprehension. Writing and reading comprehension fall outside the scope of speech language services in a public school. (T1 at 226: 13-227:4; P-185.)
300. Babice attributed the discrepancy between Kimberlin's conclusion that A.K. required speech services and her own conclusion that he did not to Babice being bound by rules that students speech evaluations must show test results below a threshold percentile to receive speech services in public schools, whereas private schools such as Cambridge are not governed by the same code. (T1 at 226:24:228-3.)

301. Ms. Babice testified that while in district, A.K. received reading and writing instruction which covered deficits in writing and reading comprehension. (T1 at 227: 5-9.)
302. A private school such as Cambridge is not governed by the code that governs speech language services in public schools. (T1 at 227: 23-228:3.)
303. Ms. Babice testified that when comparing A.K.'s test scores from July 2022 to November 2023 – both administrations following A.K.'s last day in Respondent District - many scores from the TILLS either went down or stayed the same, and she opined that this demonstrated that A.K. had not improved significantly from the commencement of Cambridge in July 2022. (T1 at 229:6-230:14; P-185 at P7820.)
304. Further, Ms. Babice noted that Dr. Kimberlin used different confidence intervals; in 2022, her confidence interval age comparison was 95 percent and in 2023, it was 90 percent, leading Ms. Babice to question how one could compare the scores when using different confidence levels. (T1 at 231:2-9: P-185 at P7821)
305. Ms. Babice testified that she does not used grade equivalents when testing students; rather she uses standard scores which in her expert opinion are a more accurate indicator of where a student is because that method compares to the normative distribution and uses a bell curve. (T1 at 231: 17-232: 5.)
306. Ms. Babice agreed that in testing, age equivalents are at times used, that aged norms and grade norms are made available by the publishers of the tests, but in her expert opinion, age or grade equivalents are not reliable or valid measures. (T1 at 232: 6-10.)
307. In July 2022, A.K. had an age equivalent in reading comprehension of 7-4, meaning 7 years and 4 months old. In written expression, he had an age equivalent in writing of 7-3, meaning 7 years and 3 months old. November 2023 testing by Dr.

Kimberlin shows A.K. scoring an age equivalent in both areas of 8-1, 8 years and 1 month old. (T1 at 233: 8-234:2; P-185.)

- 308. Upon cross examination, Ms. Babice would not concede that an idiomatic score that fell below average would affect a child's performance in the classroom. (T1 at 242: 3-6; P-18.)
- 309. When questioned why that score would not affect A.K., she testified that A.K.'s super linguistic index score is a composite score, and he tested at a 92, which falls within the average range. (T1 at 243: 8-16; P-18.)
- 310. Ms. Babice testified that based on the sentence expression score of 118 and the sentence comprehension score of 91, A.K.'s oral expression of grammar and syntax was better developed than his understanding of sentences, and that this could have an impact on his classroom listening skills. (T1 at 246:20-247:3; P-18.)

F. Testimony of Ms. Catherine Kulp, Expert in Special Education

- 311. On December 11, 2023, Catherine Kulp testified as an expert in the field of special education (T2 at T2 at 21:10-11.)
- 312. Ms. Kulp testified that she taught Third grade A.K. in in a special education pullout resource room for reading and language arts during the 2021-2022 school year a classroom with four to six students. (T2 at 22:1-23:5.)
- 313. Ms. Kulp testified that she taught A.K. for 120 minutes a day and observed him interact with his classmates. Although he was quiet, Ms. Kulp opined that she saw no social, emotional or behavioral problems with A.K. (T2 at 39:23-40:11.)
- 314. Ms. Kulp testified that A.K.'s disabilities in language arts were in his decoding skills and that he was disabled in the area of reading fluency. (T2 at 156: 2-157:25.)

315. Ms. Kulp testified that if she were asked to instruct A.K. on his instructional level on decoding, she would look at multiple measures to do so. (T2 at 137: 9-17.)
316. Ms. Kulp testified that it is very important to report accurately and honestly about how a student is performing through progress monitoring reports, the IEP, parent/teacher conferences, and phone conferences. (T2 at 25: 2-14.)
317. Ms. Kulp wrote the PLAAFP section of A.K.'s May 5, 2022 IEP up until the social and emotional section on the bottom of page 12 (T2 at 25:15-26:12; R-25 at 419-426.)
318. Ms. Kulp's summary of the Developmental Reading Assessment II (DRA II) demonstrated that A.K. was at a level 8 in the Fall of 2021 and 14 in the Spring of 2022. (T2 at 26: 18-25; R-25 at 420.)
319. Kulp testified that although levels 8 and 14 Fall in a first grade reading level, that does not mean that A.K. did not make meaningful progress in moving from level 8 to a level 14. (T2 at 27:1-13; R-25 at 420.)
320. Ms. Kulp testified that the DRA is an assessment that is conducted one-on-one and identifies a child's area of strength and weakness in the areas of fluency, reading fluency, reading accuracy, and comprehension. A student reads a passage under time constraints and the assessor determines if the student has met the criteria to move ahead with the assessment or if the assessment is too challenging or too easy. (T2 at 27: 14-23; R-25.)
321. Ms. Kulp testified that she considered herself an expert in structured literacy, and affirmed that she had not spoken to Ms. DiNardo about the value of the DRA. (T2 at 119: 1-6)
322. Ms. Kulp testified that Aimsweb is an informative assessment tool that allows educators to (1) benchmark a student's reading fluency and accuracy and (2)

monitor the progress of that reading fluency and accuracy of the school year. (T2 at 29: 11-17; R-25)

323. Ms. Kulp testified that in the May 2022 IEP's report of Aimsweb Plus test results demonstrates if a student can read a paragraph. A.K. scored in the first percentile in the Fall. He scored in the second percentile in the winter for words per minute. (T2 at 108:9-18; R-25 at 421.
324. Ms. Kulp affirmed that A.K. was in third grade during the Aimsweb reporting period and explained that if a student benchmarks below the 11th percentile, they are tested at the grade level below until they reach the benchmark above the 11th percentile. (T2 at 122:15-124:7; R-25)
325. Ms. Kulp testified that the Aimsweb percentile rank is important because it tells what level a student is on and when that student can move to the next level and affirmed that the level is not reported in the IEP, but the level is accessible in the system. (T2 at 129:12-131:23; R-25.)
326. On re-direct, Ms. Kulp affirmed that she is not a learning disabilities teacher consultant who performs standardized testing. She testified that levels of performance in the context of standardized testing versus levels of performance during instruction and monitoring are not the same. (T2 at 159: 2-10.)
327. Ms. Kulp testified that data collected from September 2021 through April 2022 demonstrated that A.K. made meaningful progress in grades 1, 2 and 3. (T2 at 31: 3-8; R-25.)
328. Ms. Kulp has worked with students who have not made meaningful progress, in which event, she would confer with the student's case manager to discuss the data and information and possible ways the student's programming could be changed to meet the student's needs. (T2 at 31: 3-17.)

329. Ms. Kulp testified that in A.K.'s May 2022 IEP on page 9, she described pre-testing and post-testing from September 2021 through April 2022 on various Gallistel-Ellis sub tests. (T2 at 37: 17-21; R-25 at 423.)
330. Ms. Kulp testified that during September to June, she used the Gallistel-Ellis test with A.K. for multi-syllable words and he earned a score of zero both times. (T2 at 104: 5-9; P-14 pg. 3847.)
331. Based on A.K.'s scores, it is her expert opinion that A.K. made meaningful progress within Gallistel-Ellis serial testing. (T2 at 37: 22-25; R-25.)
332. Ms. Kulp further testified that she could not provide a grade or instructional level for decoding or coding on A.K.'s Gallistel-Ellis test of coding because coding skills are a progression. Ms. Kulp noted the progression and mastery of coding and decoding skills is why there is "zero percent" on A.K.'s results for some areas in reading and spelling. (T2 at 136: 17-137; P-14)
333. As to the PAST, Ms. Kulp testified that it is a phonological awareness screening broken down into different steps or sub areas: basic syllable, onset rhyme, basic phoneme, and advanced phoneme. These are the building blocks of reading and are measured in both correctness and automaticity. (T2 at 38: 5-10; R-25.)
334. Ms. Kulp testified that A.K. made progress in the advanced phoneme level and automaticity, which means how quickly the student is able to reply with the information needed, between September 2021 and March of 2022. He progressed from 9 out of 20 correct where his automaticity level was 6 out of 20, to 19 out of 20 correct with an automaticity level of 8 out of 20. (T2 at 38: 16-39:6; R-25 p. 10.)
335. Ms. Kulp contributed to the May 2022 IEP (R-25) offered for A.K.'s Fourth grade year (2022-2023) and that in her expert opinion, it was appropriate. (T2 at 40: 15-20; R-25.)

336. A.K.'s May 2022 IEP offered daily pullout supplementary instruction in reading for 20 minutes a day. Ms. Kulp agreed that during A.K.'s year with her, he did not have that support. She concurred with offering it to him for fourth grade because of the data that was presented combined with parental concerns. (T2 at 40:24-41:11; R-25.)
337. Ms. Kulp testified that within the context of instruction at Hopewell Valley, tiers or levels 1, 2 and 3 correlate with varying levels of support a student might receive; the higher the tier, the more support. (T2 at 42:23-43:5.)
338. A.K. was being offered level 2 supports in District. (T2 at 43:19-20; R-25.)
339. Ms. Kulp opined that A.K.'s progress report continued beyond the May 2022 IEP and indicated continued progress beyond the scoring from the previous April. (T2 at 46: 21-47:8; R-31.)
340. Specifically, A.K.'s June 13, 2022 progress report demonstrated that when tested at the third-grade level, he read 41 words correctly with three errors, and when tested at the second-grade level, he read 43 words correctly with five errors. (T2 at 47:21-48:8; R-31.)
341. When compared to prior testing, the results indicate an upward trend that Ms. Kulp considered to be significant and indicative of meaningful progress for A.K. (T2 at 48: 4-8.)
342. Ms. Kulp agreed that nowhere in the progress was grade level nomenclature indicated, and she opined that was not a problem in her expert opinion because reading is a subset of skills. (T2 at 48:16-24.)
343. Ms. Kulp testified that some testing was criterion-based, meaning there is a set of criteria A.K. is being measured against, and some "more informal." Ms. Kulp further testified that norm-referenced testing is normed against other students in the

country, where students are compared to their same aged peers nationally and given a percentile rank. (T2 at 49:9-50:7.)

- 344. She further testified that no grade or instructional levels were indicating at what grade level A.K. was instructed in September or June. (T2 at 94: 3-1.)
- 345. When questioned if it is important to compare A.K. to his grade level peers, Ms. Kulp testified that in her expert opinion, “the important piece is measuring him according to his own progress.” (T2 at 111:11-14.)
- 346. When asked if she had an opinion on whether norm-based testing is more valuable than criterion-based testing, Ms. Kulp opined that in her professional opinion, multiple measure points and multiple data pieces are needed to see the student as a whole. (T2 at 50:8-13.)
- 347. Ms. Kulp identified Exhibit P-15 as a binder with samples of A.K.’s work that was sent home, some done in school and some assessment materials, and that in her expert opinion, the materials in that binder supported her opinion that A.K. made meaningful progress over the course of a year. (T2 at 52:1-19; P-15.)
- 348. Ms. Kulp testified that A.K. was not consistently provided a scribe in her classroom. (T2 at 54: 12-13.)
- 349. Nor did Ms. Kulp complete writing pieces for students. (T2 at 80: 15.)
- 350. Ms. Kulp testified that she was unaware if A.K. had a scribe for social studies, science or math. (T2 at 94: 22-95:1.)
- 351. But Ms. Kulp opined that A.K. could benefit from a scribe in science and social studies because a scribe would have allowed A.K. to present his ideas more thoroughly and allow for idea generation. (T2 at 97:25-98:5.)

352. Ms. Kulp testified that A.K. utilized speech-to-text technology to generate writing ideas. The District instructed teachers to ensure that students had information online so if necessary due to the pandemic, students could access that information if the District moved to remote instruction. (T2 at 146: 13-25.)
353. Ms. Kulp testified that A.K. did his own writing in her classroom. (T2 at 63: 5-8.)
354. Ms. Kulp identified examples of handwriting by A.K. in his “take home binder” in Exhibit P-15, examples of handwriting in his “handwriting binder” in Exhibit P-17, and examples of A.K.’s handwriting in his “framing your thoughts” binder in Bates Stamp page 4420 in Exhibit P-18. (T2 at 63:19-68:15 P-15; P-17; P-18.)
355. She identified samples of A.K.’s handwriting at P-18 at 4420, 4450 (T2 at 68:11-16; P-18.)
356. Kulp testified that Exhibit P-15 at P4096 was another written piece by A.K. (T2 at 85:1-5; P-15.)
357. Ms. Kulp testified that she wrote “wonderful job” on the top of a reading activity that A.K. completed because a skill the exercise examined was his ability to identify supporting details and information in the passage, and his ability to underline using different colors where he found the evidence, and in complete sentences, answer the questions. (T2 at 69: 17-70:5; P-18 at P4450.)
358. Ms. Kulp testified that Exhibit P-14’s handwritten documents were not written by A.K. but P-15 at P4098 was an example of A.K.’s own written work.(T2 at 81:16-82:2; P-14.)
359. Ms. Kulp identified several cursive handwriting materials that she used when instructing A.K. and a graphic organizer she used in class to help A.K. brainstorm his personal narrative, a story about a soccer game. (T2 at 71:4-25; P-19.)

360. Ms. Kulp testified that structured literacy was offered to A.K. throughout the day with 45 minutes to one hour of Orton-Gillingham instruction in a pull-out replacement setting with four to six students. (T2 at 77: 21-78:21.)
361. Ms. Kulp further testified that the value of an exercise in A.K.'s "Orton binder" used during the structured literacy time provides a spiral review of the read words taught in the prior weeks, and the written form gave A.K. multiple modalities to master the word, improve automaticity and generalize the information. (T2 at 73: 11-74:4; P-16, at P4306.)
362. In Ms. Kulp's expert opinion, the criterion and norm-based testing within the PLAAFP statement of A.K.'s IEP were indicative of meaningful progress. (T2 at 74 5-11; R-31.)
363. Ms. Kulp testified that she attended the May 20, 2022 IEP meeting and that before that meeting, A.K.'s parents had not expressed dissatisfaction with the District's program or that they were considering a private school. (T2 at 74:12-19.)
364. Ms. Kulp's concluded that A.K. made meaningful progress based on his capabilities in reading and language arts and that the IEP offered for his Fourth grade year would have offered him FAPE in the least restrictive environment. (T2 at 74: 20-75:11.)
365. When questioned, Ms. Kulp affirmed that she knew what a "grade level" was. (T2 at 87: 18-20.)
366. However, Ms. Kulp testified that she "can't answer that with a yes or a no" when asked if she knew what "assessing a child's writing grade level" means. (T2 at 88:6-10.)
367. Ms. Kulp testified that there is no "norm testing" regarding A.K.'s writing that she administered in the May 2022 IEP. (T2 at 93: 21-24; R-25.)

368. She testified that the Woodcock-Johnson sub-tests from A.K.'s educational evaluation from November 2020 reported standard scores and percentile ranks and ranges for administered subtests, and those levels compared A.K. to his same-aged peers across the country. (T2 at 159: 11-160:9; R-15 at 260.)
369. Ms. Kulp further testified that standardized testing such as that is not performed at the beginning and end of every school year; rather, in public schools in special education, standardized tests that provide those performance levels are administered once every three years. (T2 at 160: 10-161:5; R-15.)
370. Ms. Kulp affirmed her cross-examination testimony that with respect to progress reporting during A.K.'s third-grade year, she could not ascribe a particular grade or instructional reading or writing level because when she monitors a student for progress, she examines a series of sub-skills and progression over time, looking for growth in those areas. (T2 at 162: 16-163:4.)
371. Ms. Kulp testified that in her opinion as an expert in special education, it would not be beneficial to report on a particular grade level in a subtest at a particular time in the school year because the District is working on filling in the basic foundational pieces that the child requires to get to those higher pieces and that her concern is making sure that there is progress within those specific skill set areas. (T2 at 165: 22-166:10.)
372. The Court noted previous testimony from Mrs. DiNardo indicating that "grade level performance is not necessarily a good indicator of student progress" and that "[g]rade level is not used." (T2 at 167:11-15.)
373. Ms. Kulp testified that she is aware of literature in the field of special education that is critical of grade level reporting of a student's progress, and further testified that she agreed with that literature. (T2 at 168:6-12.)
374. Ms. Kulp affirmed that A.K. required repetition to maintain mastery and acquire a skill, and more time on tasks. (T2 at 147: 13-25; R-25 pg. 12.)

375. When questioned when a student is expected to meet a goal defined in progress reporting, Ms. Kulp testified that when a student has a specific learning disability, they are expected to meet goals that are individualized and independent, based on the progress that each child demonstrates. She defined “closing the gap” for A.K. as progress according to his own skills and ability, as the goal of special education is to eventually get students back into the general education setting. (T2 at 142: 4-25.)
376. Ms. Kulp’s re-direct testimony concluded with her affirming that there would not have been a benefit to include in a progress report A.K.’s grade level that one could obtain on a regular sub-test from a manual because the District was measuring the skill areas that are attained and looking at the data demonstrating the skills areas in which A.K. requires instruction; thus the District is looking at what A.K. “mastered from simple to complex, known to new.” (T2 at 180:3-13.)

G. Testimony of Ms. Antoinette Tighe, Case Manager

377. On the third day of the hearing, December 18, 2023, Petitioners called as their first witness Antoinette Tighe.
378. Ms. Tighe served as the school psychologist on A.K.’s child study team and as A.K.’s case manager. T3 at 8:22-24.) Ms. Tighe has been employed by Respondent District Regional School District since 2016. (T3 at 8:13-21.)
379. Ms. Tighe has been a school psychologist for 9 years. (T3 at 10:18-21.)
380. As part of her duties as a case manager, Ms. Tighe communicates with students, parents, teachers, and staff on the children assigned to her. (T3 at 9:3-6.)
381. Ms. Tighe monitors a child’s progress by conducting yearly meetings with teachers and meetings with parents for annual reviews or as needed to review data that’s collected throughout the school year. (T3 at 9:7-13.)

382. As part of her duties as school psychologist for the child study team, Ms. Tighe administers psychological evaluations. (T3 at 9:20-22.)
383. Ms. Tighe administers the psychological evaluations to get data on strengths and weaknesses within a child's cognitive profile. (T3 at 9:23-10:2.)
384. Ms. Tighe's approach to providing a student with FAPE is to make sure that her students first receive an appropriate education, her second concern is with providing that appropriate education in the least restrictive environment. (T3 at 12:2-9.)
385. Ms. Tighe defines an appropriate education as the child's ability to function within a classroom setting, needs for small group learning, needs for two teachers in a classroom, and whether the child needs support from a paraprofessional. (T3 at 12:13-18.)
386. According to Mrs. Tighe, any progress is meaningful. (T3 at 14:11-13, 14:25-15:2.)
387. Ms. Tighe testified that a teacher scribed answers on A.K.'s official tests. (T3 at 61:5-7; P-13.)
388. Ms. Tighe reasoned that A.K. had a teacher scribe for his answers on official tests because his ability to do math, not his ability to write, was being considered. Ms. Tighe could not recall how often a teacher was used as a scribe for A.K. (T3 at 60:23-61:14.)
389. Ms. Tighe testified that Petitioner Mother expressed that she did not want teachers writing for A.K. in any subjects. (T3 at 66:24-67:3; R-25.)
390. As a result, Ms. Tighe added a modification to A.K.'s IEP stating that he be allowed the opportunity to respond on his own first before a response was written for him. (T3 at 69: 7-12.)

391. As a Case Manager, Ms. Tighe collects instructional data. (T3 at 16:10-13.)
392. In the beginning of the year and throughout the year, Ms. Tighe collects a battery of assessments that are listed within the IEP. (T3 at 16:16-18.)
393. Instructional data determines the level of instruction for each child (T3 at 16:16-18.)
394. Mrs. Tighe's average caseload is about 35 students. (T3 at 10:22-25.) The same case load she had as A.K.'s Case Manager. (T3 at 11:1-5.)
395. Ms. Tighe testified that she was unfamiliar with A.K.'s areas of disability and needed to review A.K.'s IEPs in order to give an appropriate response. (T3 at 40:25-41:3.)
396. When questioned by petitioner's counsel if she could recall A.K.'s area of disability without reviewing the category in his IEP as "a test of her memory and credibility," Ms. Tighe reviewed A.K.'s area of disability with the Court's permission. (T3 at 40:25-42:1; R-25.)
397. Ms. Tighe testified that she never conducted a formal observation of A.K. (T3 at 45:12-46)
398. She testified that she had informally observed A.K. but did not put her observations into writing, explaining that a formal observation and information observation are "different things." (T3 at 45:12-46.)
399. She could not say which days and for how long she informally observed A.K. (T3 at 45:12-46.)
400. Ms. Tighe testified that instructional level means "where the child is at," and explained that the District collects data to determine a student's instructional level

so his or her teacher will begin at that level at the beginning of the school year. (T3 at 47:25-48:5.)

401. Ms. Tighe further testified that the District does not quantify instructional level based on grade level because “grade level standards are not reliable,” and “that’s why we’re giving him this instruction because he’s not at grade level.” (T3 at 48: 7-18.)
402. A.K.’s DRA data was the first instructional data collected in the PLAAF section of the May 5, 2022 IEP on pages 6 through 13. (T3 at 17:5-20; R-25 at 420.)
403. Ms. Tighe testified that A.K. scored an 8 on the Developmental Reading Assessment (DRA2) at the beginning of the year and 16 at the end, noted in the 2021-2022 progress report. She noted both scores correlate to first grade levels with the score of 8 representing the beginning of first grade to the score of 16 representing the end of first grade. (T3 at 18:22-20:20; R-25; R-31 at 482.)
404. A.K.’s 5/5/22 IEP reveals that for the Fall Term of the Third Grade that A.K. was reading at a first-grade level. (T3 at 19:11-13; R-25.)
405. A.K. was reading at a first-grade level during the spring term. (T3 at 19:17-18; R-25.)
406. Using the Progress Report for the 2021-2022 school year, Ms. Tighe further indicated that under the DRA, 16 is indicative of first grade reading level proficiency (T 3 at 20-21-22; R-31.
407. Ms. Tighe reportedly indicated that the DRA score of 8 out of 16 represents A.K. is categorized as first grade level. (T3 at 49:18-20) and that A.K. was reading at the First grade level (T3 at 49:24-50).
408. Referencing her October 13, 2020 Psychological Evaluation of A.K, Ms. Tighe testified that A.K.’s full scale IQ was 103. (T3 at 23:18-19.)

409. On cross Ms. Tighe testified that the New Jersey Administrative Code does not require that a psychologist do a classroom observation as part of the psychological evaluation. She noted that this would not affect any of the results that she got upon testing A.K. (T3 at 100:24-101:8)
410. Ms. Tighe notes that 103 is an average IQ. (T3 at 22:11-12) and agrees that IQ scores are a part of the evaluation when determining the child's eligibility for special education and related services. (T3 at 23:20-25.)
411. Ms. Tighe further testified that the lower a child's IQ, the more difficult it is for him or her to function across many areas of academics. She noted that A.K. has a full scale IQ of 103, which is considered average, and that IQ is "not all that helps you determine how they're going to progress in school." (T3 at 21: 10-17; R-14)
412. Under the Aimsweb plus (Aims) test, Ms. Tighe agreed that A.'s fall benchmark was first percentile, which is well below average. (T3 at 25:12-23.)
413. Ms. Tighe agreed that A.'s Aims test winter benchmark is second percentile, which is well below average. (T3 at 25:14-15.)
414. According to Mrs. Tighe, the fall, winter, and spring benchmarks are collected to determine how a child progresses throughout a school year. (T3 at 28:12-22; R-25.)
415. Ms. Tighe testified that the spring benchmark for the Aims test was not included in A.K.'s 5/5/22 IEP nor in A.'s progress reports. (T3 at 30:13-17; R-25.)
416. Ms. Tighe testified that A.K.'s Third Grade Fall benchmark for the Aimsweb test was the first percentile. His winter benchmark was in the second percentile. (T3 at 25:1-15; R-25.)

417. On cross-examination, Ms. Tighe testified that A.K. demonstrated progress through the Aimsweb assessment:

- A.K. began the school year with 24 words correct and in December, he tested with 40 words correct.
- By June, he was no longer being monitored on a first-grade level, but a second and third-grade level. (T3 at 95:17-96:22; P-31, pg. 7)
- In September, A.K. was at first reading 14 to 19 words per minute with 8 or 9 errors on the second-grade level.
- In December, A.K. demonstrated upward progress by reading 45 to 55 words correct per minute at the second-grade level with errors decreasing. (T3 at 97:4-20; P-31 at 486.)

418. Ms. Tighe opined that although A.K. was not performing at grade level for a third grader, that did not mean he was not getting an appropriate education from the District because he continued to make progress throughout his time in the District. (T3 at 98:7-14.)

419. She further testified that if a student has a specific learning disability, the definition of that encompasses the failure to perform at grade level. (T3 at 98:19-22)

420. Tighe affirmed the view that student's failure to "close the gap" and achieve grade level performance is not indicative of a failure to provide that student with a FAPE. (T3 at 99: 8-11)

421. Concerning A.'s overall progress, A. needed to have an extended school year during the Summer of 2021. (T3 at 56:3-4; P-13).

422. Ms. Tighe testified that she had never administered the phonological awareness screening test (PAST) and she does not go over students' scores with parents. (T3 at 40: 12-24; R-25.)

423. Ms. Tighe pointed to other data demonstrative of growth to see A.K.'s self-growth, including percentiles going up on the Gallistel-Ellis, words correct going up on the Aimsweb. (T3 at 48: 22-49:5.)
424. Ms. Tighe testified that the Gallistel-Ellis Test of Coding determines where the teacher should start instructing a student, and when questioned regarding what grade level the teacher should use, she responded that "there's no grade level," and the teacher will look to 80% mastery of the respective skill tested by the G-E. (T3 at 37: 24-38:16; R-25)
425. Ms. Tighe testified A.K.'s May 2022 IEP reflect that A.K. started at a zero grade for multi-syllable words for the GE test. (T3 at 39:5-6; R-25) and did not improve from that starting point and ended the year with a zero. (T3 at 39:7-8, 39:11-13; R-25.)
426. A.K.'s G-E pre-test score for phonetically irregular words was 15 percent, and his corrective post-test was 75 percent. Ms. Tighe testified that the progress of less than 80 percent mastery does not indicate that A.K. made no progress. She further testified that she did not know what particular irregular words students should learn at any particular grade level. (T3 at 39: 14-40:5; R-25.)
427. Ms. Tighe noted the Gallistel-Ellis test demonstrated meaningful progress:
- On section 2, one syllable short vowel words, he progressed from a score of 75 to 95.
 - On one syllable words, he progressed from 0 to 60, which is partial mastery.
 - On one syllable words with common vowel combinations, he progressed from 4% to 52% (T3 at 100: 16-23; R-25 at 423.)
428. On cross-examination, Ms. Tighe noted that she herself did not administer the Gallistel-Ellis, Aimsweb or DRE, as that she relies on the teacher in reporting progress or lack thereof. (T3 at 101: 9-15)

429. A.K. was offered an additional 20 minutes per day of supplemental instruction to increase the frequency and duration of services to ensure that he continued to make progress. (T3 at 50: 19-52:1)
430. Ms. Tighe testified that there have been instances in her time at Respondent District where a student she has managed has not made meaningful progress and that those students were placed in an out of district placement that appropriately met their needs. (T3 at 101: 16-24.)
431. In her opinion A.K. is not such a student. (T3 at 101: 25-102:2.)
432. Tighe testified that an extended school year is given to students who are going to regress. (T3 at 56:5-7; P-13.)
433. Ms. Tighe confirmed that A.K. was offered ESY during the Summer of 2021, the Summer before Third grade and explained that ESY is provided to help prevent regression. (T3 at 56: 3-8; P-13.)
434. Ms. Tighe noted that the fact that A.K. did not regress that summer demonstrates that ESY was beneficial. (T3 at 56: 7-10; P-13.)
435. Ms. Tighe opined that the previous Summers A.K. attended ESY were effective because he did not demonstrate regression. (T3 at 104: 1-11; R-30.)
436. She testified that A.K. was likely to regress without ESY to help maintain skills based on his history and the fact that A.K.'s parents rejected ESY for Summer 2022. (T3 at 103: 13-19.)
437. Ms. Tighe confirmed that A.K. attended ESY in the Summer of 2021 and his base line testing when he returned to school that Fall shows he did not regress, and testified that this indicates that the extended school year was meaningful and help A.K. to maintain his skills. (T2 at 103: 7-12; R-20)

438. Ms. Tighe affirmed that A.K. did not regress during the Summer of 2021. (T3 at 58: 5-7; P-13.)
439. Ms. Tighe wrote an email to Ms. Kulp on October 5, 2021, in which she noted that A.K. did not regress over the Summer. (T3 at 53: 21-54:8; P-13.)
440. On October 5th, 2021, at 1:59pm, Ms. Tighe and Beth Hoffman received an email from A.'s mother regarding Dr. Merchant's report. T3 at 84:15-21(P-98/21-22 SY Hopewell).
441. Ms. Tighe confirmed that she received an email dated October 5, 2021, from Mrs. K regarding Dr. Merchant's report. She noted that she had a call with Dr. Merchant about the email. (T3 at 84: 15-85:15.)
442. Ms. Tighe specifically addressed Petitioner Mother's concern with Dr. Merchant. (T3 at 85:16-24; P-98.)
443. Ms. Tighe affirmed that she responded to Ms. K.'s October 5th email about her concerns about A.K.'s reading level by letting her know that he did not regress over the Summer and that his progress will continue to be monitored throughout the school year. (T3 at 85:22-86:8.)
444. Ms. Tighe testified that she was aware of Petitioner's Mothers February 8th, 2022, email to Catherine Kulp. (T3 at 75:25-76:4; P-89.)
445. Catherine Kulp-who in turn forwarded the email to Mrs. Tighe-that A.K. was losing his interest in reading. (T3 at 76:12-22; P-89.)
446. Ms. Tighe testified that, although A.K.'s case manager, she never personally contacted A.'s mother to discuss her concerns. Instead, Ms. Tighe allowed Catherine Kulp to respond. (T3 at 77:1-6; P-89.)

447. Petitioner Mother was concerned about A.K.'s reading levels before April, before the 5/5/22 IEP, and before the unilateral notice. (T3 at 85:3-7; P-98.)
448. Ms. Tighe testified that Petitioner Mother raised concerns at the IEP meeting that she believed he was significantly behind grade level, and affirmed this was before the unilateral notice. Ms. Tighe confirmed that she did not document a response to the parents' concern in the IEP. (T3 at 62: 19-64:7.)
449. Ms. Tighe confirmed that the second issue Petitioner Mother raised at the IEP meeting was the request for A.K.'s additional pullout for reading be the last 20 minutes of science and social studies, or if he could be pulled for fewer days for more time. (T3 at 64: 8-13.)
450. Ms. Tighe further testified that the IEP team had a conversation with Petitioner Mother and that the concern for the additional 20 minutes of supplemental reading instruction would be discussed and worked out. (T3 at 64:22-65:8.)
451. Ms. Tighe noted that Petitioner Mother also requested the extra 20 minutes of reading support start over the Summer, and although it is not noted in the IEP, the team had a conversation about this. (T3 at 65:25-66:14.)
452. Ms. Tighe agreed that although A.K. had a strength in math, he struggled in reading. (T3 at 60:18-22.)
453. The accommodation for an amendment without a meeting dated May 5, 2022 was for A.K.'s third grade year, and it was to add the accommodations of extended time, "text to speech" for language art and math, small group and frequent breaks for the New Jersey State testing. (T3 at 78:2-79:5; P-98 at P5682.)
454. Ms. Tighe acknowledged that—although A.'s mother never signed the amendment—they entered the amendment into the computer system for state testing. (T3 at 81:8-14; P-89.)

455. Ms. Tighe confirmed that Respondent Mother did not sign the accommodation, but that she had verbally discussed the accommodation of text to speech for Respondent Mother for state testing with Ms. K. (T3 at 82:12-19; P-98.)
456. Respondent Mother was traveling, and Ms. Tighe was unsuccessful in reaching her via email. The accommodations to provide A.K. with “text to speech” was put in for state testing, however not as an accommodation in A.K.’s IEP. (T3 at 80:10-14; P-98.)
457. Ms. Tighe confirmed that A.K. did not get a reader for the test because there was a technical problem. (T3 at 82: 20-83:1; P-98.)
458. As a result, A.K. was moved to where students who were opting out or had technical issues were sitting. Ms. Tighe noted that A.K. would be able to make up the test. (T3 at 81: 24-82:7; P-98.)
459. On May 17, 2022, A.K.’s mother sent an email to Ms. Tighe expressing concern about the fact that A.K. was remaining in the library because he didn’t have a reader. (T3 at 81:2-7; P-89.)
460. A.K. would need to miss class time to make up the state testing, and Petitioner Mother stated that she did not want him to miss class, so she opted him out of testing for third grade. (T3 at 83: 8-17.)
461. At the 5/5/23 IEP meeting, before notice of A.K.’s unilateral placement at Cambridge was provided, A.K.’s parents raised a concern that A. was significantly behind grade level. (T3 at 62:12-23; R-25.)
462. Ms. Tighe is unaware if she responded to the parent’s concern. (T3 at 63:21-24.)
463. A.K.’s parents also raised a concern regarding A.’s teachers writing responses for him on tests or projects. (T3 at 63:21-24.)

464. On May 5, 2022, Ms. Tighe sent Petitioners a request to amend an IEP without a meeting. (T3 at 78:2-6; P-89.)
465. The amendment was for A.'s third grade IEP. (T3 at 78:20-22 (P-89/21-22 SY Hopewell). The amendment was to add accommodations for extended time, text to speech for language arts and math, small groups, and frequent breaks. T3 at 79:3-5 (P-89/21-22 SY Hopewell).
466. Ms. Tighe confirmed that she received Respondent Mother's email on May 20, 2022 rejecting A.K.'s May 5, 2022 IEP, and that Ms. Tighe did not respond to it; rather she forwarded it to her director who responded. (T3 at 58: 13-59:10.)
467. Ms. Tighe did not revise A.K.'s May 2022 IEP to include parental concerns about A.K.'s self-esteem because the IEP was already rejected and he was being placed at Cambridge. (T3 at 88: 18-2; P-79)
468. On May 20th, 2022, at 4:38 p.m., Ms. Tighe received an email from A.'s parents stating that they are rejecting the 5/5/22 proposed IEP. (T3 at 58:13-24; P-13.)
469. In the email A.'s parents stated that they rejected the IEP because of his low academic assessments in reading, writing, spelling. (T3 at 59:2-5; P-13.)
470. Additionally, Petitioners stated in the letter, they knew that math was one of A.K.'s strengths and yet he was several years behind. (T3 at 59:2-5; P-13.)
471. Ms. Tighe never responded to the email, as a case manager, but she forwarded the document to her director. (T3 at 59:7-10; P-13.)
472. On June 22, 2022, Paulette DiNardo emailed A.K.'s mother and Mrs. Tighe. (T3 at 87:12-16; P-78.)

473. Paulette DiNardo acknowledged Petitioners concerns about A.K.'s May 2022 IEP and promised that the final IEP would include those concerns. (T3 at 87:17-20; P-78.)
474. On June 29, 2022, after rejecting the IEP, Petitioner Mother emailed Paulette DiNardo and Ms. Tighe with additional concerns about A.K.'s language arts deficiencies and self-esteem. (T3 at 88:18-24; P-78.)
475. A.K.'s May 2022 IEP was not amended to reflect Petitioner Mother's additional concerns after the parents had rejected the IEP and announced that they had enrolled A.K. at Cambridge. (T3 at 89:6-7; P-78.)
476. Petitioners' expert, Susan Caplan, had to cancel her observation of A.K. in his Third grade Hopewell program, due to illness. (T3 at 73:20-74:9; P-13.)
477. Ms. Tighe was unable to reschedule Ms. Caplan's observation in June because there were at a maximum, 7 days left in the school year. (T3 at 73:20-74:9; P-13)
478. Ms. Tighe confirmed that she received an email on June 10, 2022, from Petitioner Mother that rescheduling Susan Caplan's observation of A.K. to September was "unacceptable." (T3 at 73:20-74:9; P-13)

H. Testimony of Dr. Karen T. Kimberlin, SLP.D., CCC-SLP: Expert in Special Education, Speech, Language, Writing, Diagnosis and Treatment of Dyslexia and Reading Disabilities

479. On January 25, 2004, Petitioners' expert Karen Kimberlin was accepted as an expert in special education, speech, language, writing, diagnosis, and treatment of dyslexia and reading disabilities. (T4 at 5:7-11; P-186.)
480. Kimberlin's initial training is in the area of speech and language. (T4 at 7:24-25.)
481. Dr. Kimberlin holds a bachelor, masters, and doctorate degree in speech language pathology. (T4 at 7:25-8:1.)

482. Dr. Kimberlin is a Certified Speech-Language Pathologist, holds a NJ license for Speech Pathology, is a Certified Speech-Language Specialist and Teacher of the Handicapped, as well as an IDA Structured Literacy Classroom Teacher. (P184 at P7809.)
483. Dr. Kimberlin is Orton-Gillingham trained. (T4 at 8:4.)
484. Dr. Kimberlin served on The New Jersey Reading Disabilities Task Force and New Jersey Dyslexia Handbook Committee (Dr. Kimberlin at 8:5-11) and was a contributing author (P-173) to “The New Jersey Dyslexia Handbook.” (T4 at 8:24-9:1.)
485. The New Jersey Dyslexia Handbook has been accepted as authority by The New Jersey Department of Education (T4 at 10:23-25) and was developed for use by public school professionals, administrators, child study team members, speech language pathologists, teachers and parents to address common misinformation about dyslexia and reading disabilities. (T4 at 11:11-23.)
486. Dr. Kimberlin testified that the relevance of the rope graphic created by Hollis Scarborough defines the components of reading. (T4 at 12:2-12; P-173)
487. Dr. Kimberlin authored two reports in this case; the first is dated January 10, 2023, and the second is dated November 13, 2023. (T4 at 16:3-9; P-184; P-185)
488. Page three of Dr. Kimberlin’s report contained “an extensive record review,” and highlighted specific records she opined were significant in planning her evaluation. (T4 at 17:12-15; P-)
489. Dr. Kimberlin testified she considers “all the strands in the rope” and looks from a speech and language perspective and a literacy perspective - how the child responds to print - for early suggesting problems with reading and writing. (T4 at 18:6-12)

490. Dr. Kimberlin testified that dyslexia affects word recognition, phonological awareness, decoding, and recognition of letters and sounds. (T4 at 14:2-9.)
491. Dr. Kimberlin's language literacy evaluation for A.K. specifically addresses linguistic comprehension, word recognition, and decoding. (T4 at 14:19-24.)
492. Kimberlin testified that all of these areas should be assessed when identifying whether or not a student has a reading disability. (T4 at 15:21-23.)
493. Children with dyslexia do not present uniformly; for example some might only have problems with linguistic comprehension but do well with decoding. (T4 at 15:10-17.)
494. Dr. Kimberlin authored two (2) reports in this matter; the January 10, 2023 report at P-184 and the November 13, 2023 report at P-185. (T4 at 15:25-16:9.)
495. Prior to evaluation Kimberlin asked Petitioners to share their concerns. (T4 at 16:24-25.)
496. Kimberlin found it noteworthy that Petitioner Mother expressed concerns about A.K.'s reading comprehension, spelling skills, and history of language delay. (T4 at 17:1-4.)
497. Dr. Kimberlin reviewed A.'s evaluation pre-school evaluation records from 2015; noting that his expressive language scored in the 6th percentile and his expressive communication was in the 5th percentile. (T4 17:12-24.)
498. Kimberlin testified that A.K. showed early indications of having a reading disability because he had problems naming body parts and shapes, recognizing numbers and letters, rhyming, and recognizing opposites. (T4 at 18:15-20.)

499. Dr. Kimberlin further testified there were indications that A.K. was having problems with reading and writing in four to five year level evaluations completed by the district. (T4 at 18:20-19:1.)
500. Kimberlin further reviewed A.K.'s June 2016 IEP and 2017 re-evaluations in speech and language. (T4 at 19:3-6.)
501. Dr. Kimberlin questioned why there was a 15 point gap between A.'s receptive and expressive language scores. (T4 at 19:8-10.)
502. Kimberlin testified that the gap "just stood out" to her. (T4 at 19:11-12.)
503. Kimberlin testified that A.K.'s March 24, 2017 education evaluation (conducted while A.K. was in preschool) further showed he was presenting with early indications of a reading disability. (T4 at 19:16-21.)
504. Kimberlin further learned from speaking with Petitioners that they had a family history of dyslexia and reading disabilities, and testified that this was another early indicator. (T4 at 19:23-20:1.)
505. Kimberlin found it further noteworthy that A. had repeated a preschool class with no change in his curriculum. (T4 at 20:5-7.)
506. Kimberlin further reviewed A.K.'s 2020 psychological and educational evaluations (conducted the October that A.K. was in the Second grade) and found it noteworthy that A.K. had a full scale IQ of 103 solidly within average range. (T4 at 20:7-22.)
507. Dr. Kimberlin found it to be further noteworthy that A.K.'s comprehension nevertheless scored below the first percentile and his oral language composite scored in the low average range. (T4 at 20:22-21:9.)
508. Dr. Kimberlin testified A.'s low rapid naming score which had been present since preschool is also an early indicator of a reading disability. (T4 at 21:9-11.)

509. Kimberlin upon reviewing A.K.'s 11/13/2020 IEP (drafted after the October 2020 evaluations provided to then Second grade A.K.) and testified: "there were indicators for dyslexia." (T4 at 22:9.)
510. An auditory processing evaluation for A.K. was completed on August 26, 2021. His hearing tested normally, however reference to an auditory processing disorder in three areas was reported: auditory associative, auditory decoding/discrimination, and integration. (T4 at 22: 19-23:3; R-21 at 166.)
511. Dr. Kimberlin testified that an auditory associate deficit usually indicated that the child is having problems with higher level language, such as verbal reasoning. Dr. Kimberlin further testified that auditory associative deficit usually indicates problems with phonemic awareness, sound discrimination and the child frequently presents as dyslexic. (T4 at 23: 9-12; R-184.)
512. Upon reviewing A.K.'s August 26, 2021 auditory processing evaluation, Dr. Kimberlin found it further noteworthy that A.K. had normal hearing, but there was reference to an auditory processing disorder. (T4 at 22:19-24.)
513. Kimberlin found this to be indicative of an auditory decoding, sound discrimination, and phonetic awareness deficit of the kind frequently present in dyslexic children. (T4 at 23:2-12.)
514. Kimberlin testified Respondent District should have provided A.K. an "immediate referral to a speech and language pathologist" after his November 2020 evaluation by the district and that his observed issues "should have been investigated." (T4 at 24:2-20.)
515. The referral was necessary because educational testing is not as comprehensive as a speech-language evaluation completed by a speech language pathologist. (T4 at 23).

516. Kimberlin made a point of noting that the evaluations A.K. received in 2020 were not speech and language evaluations, and that A. was not recommended for a speech and language evaluation at that time despite multiple indicators that a speech and language evaluation was needed. (T4 at 23:16-22.)
517. Dr. Kimberlin further noted that A.'s language skills were not reevaluated until November of 2021, at the recommendations of an audiologist. (T4 at 24:20-23.)
518. Kimberlin testified it was a "red flag" to her that there was no discussion in the district's evaluations of whether or not the gap between A.'s expressive and receptive language was clinically meaningful. (T4 at 1/25:22.)
519. Kimberlin testified that she had "a lot of questions" about the district's evaluation of A.K.; specifically why speech and language therapy was not recommended. (T4 at 27:8-9.)
520. Kimberlin also reviewed A.K.'s draft May 2022 IEP. (T4 at 27:10-11.)
521. Kimberlin also personally observed A.K. in a classroom setting and found it noteworthy that his expression during observation was "flat." (T4 at 28:8-10.)
522. Kimberlin found this to be important because A.K. did not otherwise have difficulty smiling or becoming animated, which indicated his flat expression during classroom instruction was the result of him needing to intently focus on listening and processing due to auditory weaknesses. (T4 at 28:15-25.)
523. Kimberlin in her own evaluation of A. administered the oral passage understanding scale test of language comprehension. T4 at 29:11-13.)
524. A.K. scored at the lower end of the average range on the Oral Passage Understanding Scale, a language comprehension test. His performance on inferencing tasks was weaker than his performance on memory tasks. Dr. Kimberlin opined that inferencing is a higher-level language skill that Dr. Merchant

was looking for when she said A.K. had an associative processing problem. (T4 at 29:11-20.)

525. Kimberlin further administered the test of language development. T4 at 30:1-2. Kimberlin further administered the test of integrated language and literacy skills (TILLS). (T4 at 31:5-7.)
526. Dr. Kimberlin administered the Test of Integrated Language & Literacy Skills (TILLS). (T4 at 31: 5-7; P-184 at P7782-7784.)
527. Kimberlin testified that she places particularly high value on TILLS as a comprehensive assessment of language and literacy skills, and considers it to be an “outstanding assessment” for identifying language based learning disabilities. (T4 at 31:12-22.)
528. She opined that the TILLS language sub-tests are highly correlated with literacy or language of print or reading and writing. She further opined that the TILLS demonstrates if a student has a language based learning disability. Dr. Kimberlin did not administer the written expression sub test. (T4 at 31:12-25; P-184 at P7782-7784.)
529. A.K. achieved an oral language composite score of 86 with a percentile of 13, scoring within the below average range. (T4 at 32:5-8; P-184 at P7783.)
530. He scored above average on phonemic awareness. (T4 at 32:10-12; P-184, Bates Stamp 7783.)
531. A.K. scored below average in vocabulary awareness, following directions and social communication, which all fall into the domain of listening and speaking. (T4 at 32: 13-18; P-184 at P7783.)

532. A.K.'s reading scores were low and Dr. Kimberlin opined that this is consistent with a reading disability. His memory and spelling scores were also low. (T4 at 32: 21-32:25; P-184 at P7783.)
533. Dr. Kimberlin administered the Comprehensive Test of Phonological Processing - 2 (CTOPP-2) despite his high scores on phonological awareness on the TILLS. A.K.'s composite awareness score was in the 50th percentile. His phonological memory score was below average. Dr. Kimberlin opined that this score is noteworthy because children with problems with phonological memory processing sounds of words are at risk for problems with vocabulary and higher-level language processing skills. (T4 at 33:6-18; P-184 at P7785.)
534. Dr. Kimberlin opined that A.K. was struggling at a higher level of phonological processing and that if the issue was not addressed, he would continue to struggle in school. (T4 at 34: 7-10.)
535. Dr. Kimberlin administered the Word Identification and Spelling Test (WIST). A.K. scored below the first percentile in word identification and at the fourth percentile in spelling. (T4 at 35: 19-36: 2; P-184 at P7789.)
536. Dr. Kimberlin administered the Gray Oral Reading Test, Fifth Edition. She noted that Respondent District administered this test in 2020 and his scores were lower. He demonstrated improvement in reading rate and reading accuracy. His reading index remained the same, and she testified that A.K. was still performing within the poor range. (T4 at 36:24-38:6 P-184 at P7790.)
537. Dr. Kimberlin administered two sub-tests of the Oral Written Language Scales Test, (OWLS): reading comprehension and written expression. A.K. achieved a scaled score of 79 in reading comprehension with a percentile of 8 when compared to his same-aged peers. He achieved a scaled score of 86 in written expression with a percentile of 18 when compared to his same-aged peers. The OWLS test rated the 86 as average score and Dr. Kimberlin opined it was a "borderline" score. (T4 at 38: 22-39:15; P-184 at P7791-92.)

538. Kimberlin further administered the comprehensive test of phonological processing (T4 at 33:6-7); the word identification and spelling test; (T4 at 35:21-24); the Gray Oral Reading Test, Fifth Edition (T4 at 36:25); and the Oral Written Language Scales (OWLS) test. (T4 at 38:22-23.)
539. Dr. Kimberlin also evaluated samples of A.'s writing (T4 at 40:14-15.) Kimberlin observed A.K. in Respondent District's setting for approximately 20 minutes in June of 2022. (T4 at 40:25-41:1) and also reviewed comments from A.'s teachers. (T4 at 42:9-44:3.)
540. Dr. Kimberlin opined that it was significant that A.K. repeated a year of preschool, and when compared to his peers in the same grade, his written expression score was much lower and the score correlated to the below average range. (T4 at 40: 6-12; P-184 at 7793.)
541. Dr. Kimberlin opined that writing is the most difficult task in education and testified that a sample of A.K.'s writing responses revealed weaknesses with handwriting, semantics, vocabulary, grammar syntax, spelling, punctuation, and capitalization. (T4 at 40: 21-41:6; P-184 at 7793)
542. Dr. Kimberlin remotely observed A.K. in District in June 2022 for 20 minutes. She found A.K. to be "very focused" and "very engaged" during a phonemic awareness activity. (T4 at 41: 25-42:8)
543. Respondent District teachers completed forms at the request of Dr. Kimberlin and rated A.K.'s pragmatic language skills above average. Teachers completed an observational rating scale and rated A.K. in the areas of listening, speaking, reading, and writing. (T4 at 42: 9-43: 24.)
544. Respondent District teachers reported that A.K. almost or never had problems speaking and sometimes had problems answering questions as quickly as other students. (T4 at 43:9-12; R-184 at P7795-96.)

545. Dr. Kimberlin testified that Respondent District teachers reported in reading, A.K. sometimes had trouble sounding out words, understanding what was read, identifying the main idea, explaining what was read, and following written directions. (T4 at 43: 20-44:2; R-184, at 7796.)
546. Respondent District teachers reported that A.K. sometimes had problems understanding the meaning of words and new ideas; Dr. Kimberlin opined that this is attributed to vocabulary semantics or possibly a memory issue. (T4 at 43: 1-9; R-185.)
547. She testified that teachers reported A.K. displayed weaknesses with writing down his thoughts, reading complete sentences, writing oral complex sentences, and expanding an answer or providing details. (T4 at 44: 4-7; R-184 at 7796)
548. Kimberlin further observed A.K.'s instruction at Cambridge School. (T4 at 44:7-8.)
549. Dr. Kimberlin specifically noted that A.K.'s instructional program at Cambridge School was developed by speech pathologists. (T4 at 44:9-12.)
550. Dr. Kimberlin testified that she observed A.K. at the Cambridge School in reading and noted that one of the programs they used to address reading comprehension was developed by speech-language pathologists. One such program is called Story Grammar Markers. (T4 at 44:7-22)
551. Kimberlin testified that A.K. at Cambridge was placed in a "Wilson Class" (T4 at 45:4-5) a reading intervention program with a structured literacy approach endorsed by the International Dyslexia Association. (T4 at 45:7-11.)
552. Dr. Kimberlin opined that impressions on page 38 of her report are most important where she discussed that A.K.'s profile is consistent with dyslexia with comorbid oral language weaknesses. (T4 at 48: 6-10; P-184 at P7808)

553. Kimberlin testified that placement at Cambridge was appropriate for A. because it had small class sizes, didn't require pull outs, allowed him to receive more attention to his language processing weaknesses, and allowed him more opportunities to participate in class. (T4 at 49:9-14.)
554. Dr. Kimberlin testified: "the bottom line is that this is a student who had a history of language delay, obviously had reading issues, had a family history for reading issues. Wound up having auditory processing problems, stopped receiving speech language services. (T4 at 47:6-10.)
555. Kimberlin testified it was "worrisome" that Respondent District stopped providing speech language services in 2017, and A.K. was still having identified language issues that should have been referred for a speech language evaluation but weren't in 2020. (T4 at 47:13-22.)
556. Kimberlin testified that A.K. should have been receiving speech and language to address weaknesses identified both in her testing and in the evaluations performed by the district. (T4 at 49:17-24.)
557. Kimberlin testified that the district did not address weaknesses identified in their own 2020 educational evaluation of A. (T4 at 50:5-13.)
558. Kimberlin testified that A.K.'s profile is consistent with dyslexia with comorbid oral language weaknesses and problems with memory, spelling, fluency, and overall comprehension. (T4 at 48:8-13.)
559. Dr. Kimberlin testified that A. in-district was not making meaningful gains in reading, based on her assessment. (T4 at 49:4-6.)
560. Kimberlin noted little to no meaningful progress on two (2) assessments in reading. (T4 at 49:8-9.)

561. Dr. Kimberlin testified that she recommended speech and language because they corroborated with weaknesses she observed in other testing by Respondent District. Dr. Kimberlin could not explain why Ms. Babice did not recommend speech and language. (T4 at 49:20-50:5.)
562. Kimberlin testified that the district's program was not appropriate for A.K. (T4 at 51:11-14.)
563. Dr. Kimberlin testified that A. showed improvement after attending Cambridge and receiving speech and language services. (T4 at 51:22-25.)
564. Kimberlin attributed a significant increase in A.K.'s oral language skills to the education he received at Cambridge. (T4 at 52:16-53:15.)
565. Dr. Kimberlin further testified that at Cambridge A.K. made significant gains word identification, reading, and spelling. (T4 at 53:20-54:25.)
566. Dr. Kimberlin opined that her second report demonstrated that A.K.'s vocabulary was weak and that this indicated he was still having problems with verbal reasoning skills. (T4 at 52: 1-11; P-185)
567. Dr. Kimberlin testified that the November 2023 chart of WIST test she administered demonstrated that A.K. made gains. His word identification increased by twenty standard score points, spelling increased by five and his letter sound knowledge increased by seventeen points. She attributed this growth to the Wilson program. (T4 at 53: 20-54:6; P-184, Bates Stamp 7788)
568. Kimberlin attributed these gains to instruction in the Winslow program. (T4 at 54:5-6.)
569. Class sizes at Cambridge are usually 7 students. A.K. received speech and language services at Cambridge and Dr. Kimberlin testified that language is incorporated into the reading and writing class. (T4 at 54: 10-25.)

570. Dr. Kimberlin testified that the May 5, 2022, IEP offered to A.K. did not contain speech and language services and opined he needed them. (T4 at 55:22-56:5.)
571. Kimberlin further testified that A.K made meaningful progress at Cambridge was based in part on her own evaluation and testing of A.K. (T4 at 71:9-10.)
572. Dr. Kimberlin testified it was noteworthy that A.K.'s May 2022 IEP (R-25) contained writing goals, but no speech and language goals (T4 at 57:9-13) "the goals and objectives were not as descriptive as they could have been." (T4 at 59:13-15.)
573. Kimberlin testified that the phonemic awareness goals in A.K.'s May 2022 IEP contained no real description of what skills were being measured. (T4 at 57:21-58:2.)
574. She further opined that instructional levels are important so books can be chosen at that level. (T4 at 59:17-60:3.)
575. Dr. Kimberlin testified that grade levels are important because they help to determine choices for books and give parents information about how their child is performing. (T4 at 61:7-11.)
576. Dr. Kimberlin also testified that there is controversy about grade levels. She opined that the importance of grade levels because it helps with communication between parents and teachers with the understanding they are not as reliable as other scores. (T4 at 61: 14-62:7.)
577. Upon cross examination, Dr. Kimberlin testified that she expressed the opinion that it is a good thing to report on a student's grade level reading so a parent can be an educated consumer. (T4 at 65: 6-15.)

578. Dr. Kimberlin testified that she looked through binders and work samples prior to testifying and reviewed some tests and progress reports from Cambridge. (T4 at 66: 2-7.)
579. She testified that grade equivalencies means that a student's particular performance is being rated according to that student's raw score on a test, and that a calculation within a respective test would determine whether a particular raw score would equate to a specific grade level. Some tests have grade level equivalents, and some do not. (T4 at 66: 20-67:4.)
580. Dr. Kimberlin could not recall if she reviewed communications between A.K.'s parents and Respondent District during the school years he was educated in District. (T4 at 67:5-11.)
581. Dr. Kimberlin reviewed an email exchange between Respondent Mother and Catherine Kulp who recommended a book series appropriate for A.K. In that exchange, Respondent Mother thanked Ms. Kulp for the recommendation. Dr. Kimberlin testified that she was not critiquing the recommendation and noted that Ms. Kulp did not mention levels. (T4 at 68: 18-69:16; R-23 at P384).
582. Dr. Kimberlin testified that she had viewed A.K.'s Cambridge progress report prior to testifying and did not recall whether it referred to grade level performance in any area because she was not looking for that information. (T4 at 70: 15-71:2; P-164.)
583. Dr. Kimberlin testified that she concluded that A.K. was making meaningful progress at Cambridge based on the norm referenced testing that she administered before he started at Cambridge and the testing she performed after he had been there for a little more than a year and the WIST which demonstrated progress in word identification, spelling and letter sound knowledge. (T4 at 72:10-22)

584. Dr. Kimberlin opined that the Gallistel-Ellis Test of Coding skills is an accurate test for monitoring student progress in the areas tested. She did not feel that she needed to mention the test in either of her reports. (T4 at 74: 22-75:2)
585. Dr. Kimberlin testified that the first time she saw the May 5, 2022 IEP was after A.K.'s parents rejected it. (T4 at 76: 7-9; R-25)
586. Dr. Kimberlin disagreed with the proposition that neither of her reports criticizing Respondent District is critical of the May 5, 2022 IEP. (T4 at 77:3-8)
587. Dr. Kimberlin could not recall specifically where she learned that A.K. repeated preschool and that there was no change in preschool curriculum. She testified that she "definitely" received information from A.K.'s parent through case history. She could not remember if she saw anything in writing. (T4 at 77:9-20)
588. She testified that she did not know if A.K. repeating a year of preschool meant that he was working on the precise curriculum from one year to the next. (T4 at 77:25-78:3)
589. Dr. Kimberlin testified that she "thinks it can mean that" A.K. repeating Respondent District preschool program means the same curriculum was used because she did not see any other changes based on what she saw on the IEPs. (T4 at 79:5-14)
590. Respondent District staff responded professionally and promptly to Dr. Kimberlin when she reached out for information about A.K. or his program. (T4 at 80:1-6)
591. Dr. Kimberlin agreed that she testified that Ms. Babice's speech language report raised a lot of questions for her. (T4 at 80:9-13)
592. Dr. Kimberlin's report was completed in January of 2023, more than six months after A.K.'s parents rejected Respondent District's May 2022 IEP and placed him at the Cambridge School. (T4 at 81: 17-24; P-184)

593. Dr. Kimberlin testified that she finished her report and did not try to contact Respondent District (T4 at 80: 24-81:7; P-184) nor the language pathologist of whose report she was critical. (T4 at 82: 3-6.)
594. The chart from the Test of Language Development that Dr. Kimberlin administered tests general language ability. A.K. scored in the average range in all areas tested except for organizing, where he scored below average. (T4 at 82:7-83:1; P-184 at P7781.)
595. Kimberlin testified that scores showing general language ability in the average range that A.K. received during in-district evaluations were indicative of his individual patterns of strengths and weakness, and could not say they were attributable to the quality of the education A. received in-district. (T4 at 83:12-85:15.)
596. Dr. Kimberlin could not answer whether A.K. scoring average in all but one composite could be attributed to the quality of education he received at Respondent District. (T4 at 83: 12-17.)
597. At the time of Dr. Kimberlin's assessments, A.K. had not yet been enrolled at Cambridge School, and had, since preschool, only been educated by Respondent District. (T4 at 84:14-17.)
598. A.K.'s IQ was scored at 107 with a 90 percent confidence interval between 101 and 112. Dr. Kimberlin agreed that a score of average in spoken language is indicative of an area of strength for A.K., a student with an average IQ. (T4 at 85: 16-86:12; P-184 at P7781.)
599. Dr. Kimberlin would not concede that A.K.'s strength in spoken language is at least partially attributable to the quality of education he received during his six or seven years in District; rather she opined that it is attributable to his innate language abilities. (T4 at 86:13-17)

600. She did not agree that when A.K.'s scores were average they were attributable to his innate abilities, but when he scored significantly below average was indicative of the failure of the Hopewell Valley School System. (T4 at 86:18-22)

601. Dr. Kimberlin's report described A.K.'s performance in reading comprehension and written expression using both age and grade norms. (T4 at 87: 9-20; P-184 at P7792.)

602. At the end of his Third-grade year, when 9 year and 10 month old A.K. was tested by Dr. Kimberlin:

- A.K.'s grade equivalent for reading comprehension and written expression was 2.4.
- A.K.'s grade equivalent for written expression was 2.7
- Both scores were below average and at about a 7 year and 4 mos. Age equivalent.

(T4 at 87: 21-88:3; P-184 at P7792.)

603. Thus Dr. Kimberlin would "not necessarily" agree that A.K.'s reading comprehension was "still at a first grade level;" nor would she agree that A.K.'s written expression was "still at a first grade level." (T4 at 88:7-14.)

604. Dr. Kimberlin testified that she included grade equivalency in her reports because the OWLS provides it as part of the scoring system. (T4 at 88:15-18.)

605. Dr. Kimberlin wrote her report in January 2023 based on testing she performed in July 2022, and used both age and grade equivalence. She testified to using both because they are part of what the test publisher provides and helpful when she communicates levels for parents. (T4 at 89:5-90:4.)

606. When asked if she would not include grade equivalency ratings in page 22 of her report unless she felt it was an accurate description of a student's performance on her test, Dr. Kimberlin testified that age and grade equivalencies are not the most reliable scores, and that standard scores are the most reliable. (T4 at 90:10-19; P-184 at P7792.)
607. Dr. Kimberlin agreed that when a student gets a score and has only been educated in a place for six or seven years prior to obtaining that score, she would attribute that score at least in part to the quality of the education the student received at that institution. (T4 at 92: 16-21)
608. This would apply to attribute A.K.'s 2.7 grade equivalent in written expression. (T4 at 92: 22-26; P-184 at P7792.)
609. When reviewing testing she administered, Dr. Kimberlin affirmed that a composite is a cluster of subtests, and that generally, results on composites are more robust and helpful because they take data from several different subtests, not one isolated subtest. (T4 at 93: 1-19; P-184 at 7786.)
610. Dr. Kimberlin agreed that A.K. had been working on phonological awareness in Respondent District and that when 2020 testing was compared to 2022 testing, data showed that A.K. made significant progress with 25 standard score points greater than the 1.5 standard score deviations; A.K.'s performance on all sub-tests improved. (T4 at 93: 20-94:5; P-184 at P7786.)
611. Dr. Kimberlin agreed that phonological awareness is an area "most responsive to intervention" as written in her report – if a child is not getting interventions in this area – he will not improve, and if he is getting interventions, he will improve. (T4 at 94: 15-95:11; P-184 at P7786.)
612. Kimberlin admitted on cross-examination that an increase of 25 score points (1.5 standard deviations) in A.K.'s phonemic awareness scores during his in-district instruction was "significant improvement." (T4 at 94:1-95:14.)

613. Kimberlin agreed that phonological awareness was something A.K. had been working on in-district. (T4 at 93:22-25.)
614. Kimberlin testified that this is specifically an area of weakness for children with dyslexia. (T4 at 95:1-4.)
615. Dr. Kimberlin opined that an increase of 1.5 standard deviations is indicative of significant improvement. (T4 at 95: 12-14; P-184 at P7792.)
616. A.K. scored an 88 - the 21st percentile - on the phonological memory composite in 2020 testing. A.K. scored an 82 – the 12th percentile – on the phonological memory composite in Dr. Kimberlin's current testing. (T4 at 96: 13-19; R-15; P-184 at P7778.)
617. However, Kimberlin testified that during the same time period A.K.'s phonological composite memory score decreased from 21st percentile to 12th percentile. (T4 at 96:15-18.)
618. Dr. Kimberlin further testified that A.K. overall performance on both tests were below average. (T4 at 96:21-23.)
619. A.K. scored a 79 – the 8th percentile – on rapid symbolic naming in 2020 testing. A.K. scored an 82 – the 12th percentile – on rapid symbolic naming in Dr. Kimberlin's current testing. Dr. Kimberlin opined that A.K.'s results increased by 4 percent, but that these results demonstrate that A.K. is still performing low. She agreed that this is because he is a student with a specific learning disability. (T4 at 97:16-98;; R-15; P-184 at P7778.)
620. Dr. Kimberlin agreed that after a year at Cambridge, many of A.K.'s scores were still low, and that this means that A.K. has challenges and he is still a student with a specific learning disability. (T4 at 98: 5-14.)

621. Dr. Kimberlin affirmed that she did not speak with any of A.K.'s teachers to see if her findings corroborated teacher observations but she had printed information from them since she requested forms be filled out. (T4 at 98: 21-99:10.)
622. Dr. Kimberlin testified that she did not recall seeing A.K.'s final progress report for third grade before writing her report. (T4 at 99:11-100:15; R-15.)
623. Kimberlin agreed on cross-examination that A. still faces challenges at Cambridge. (T4 at 98:5-13.)
624. Kimberlin agreed that A.'s rapid symbolic naming score had only risen from the 8th percentile to the 12th percentile, and that it was still too low. (T4 at 97:24-98:4.)
625. Before completing her report, Dr. Kimberlin completed an observation of A.K. at Cambridge and had the opportunity to speak with his teachers. She did not gather further data from Respondent District rather relied on the information she had previously collected including materials provided by the parents and the IEP. (T4 at 100: 20-101:13; R-25.)
626. Kimberlin sent written forms to be completed by A.'s teachers and reviewed the printed information in those forms as part of her evaluation, but did not actually speak to A.'s teachers. (T4 at 98:15-99:10.)
627. Dr. Kimberlin admitted she did not have the information from A.K.'s progress report through June 2022, nor did she mention any testing performed throughout the year by Respondent District in the body of her report. (T4 at 101: 14-102:7; P-184.)
628. Dr. Kimberlin "quickly" went through A.K.'s writing samples from Respondent District when trying to identify certain documents. She testified that she did not recall seeing A.K.'s written piece from October of 2021, called "The Soccer Game." (T4 at 102: 8-22; P-15 at P4100.)

629. Dr. Kimberlin testified that when she tested A.K. in November 2023, there were certain areas where he declined after attending Cambridge for more than a year. (T4 at 104: 16-20.)

630. She compared A.K.'s results on The Test of Integrated Language and Literacy Skills (TILLS) in July 2022, before he started at Cambridge, to his results from November 2023.

	July 2022		November 2023	
	Standard Score	Percentile	Standard Score	Percentile
1. Vocabulary Awareness	6	12	5	5
2. Phonemic Awareness	13	94	13	89
3. Story Retell	10	32	9	30
4. Nonword Repetition	10	21	7	12
5. Nonword Spelling	6	6	6	12
6. Listening Comprehension	11	47	15	99
7. Reading Comprehension	6	8	7	12
8. Following Directions	7	13	12	71
9. Delayed Story Retell	8	21	12	73
10. Nonword Reading	6	8	6	12
11. Reading Fluency	0	0	0	0
13. Social Communication	4	4	5	8
14. Digit Span Forward	7	14	8	28
15. Digit Span Backward	7	11	9	37

631. Dr. Kimberlin testified that a standard score is more reliable than a percentile. (T4 at 105:16-21; P-185at P7820.)

632. A.K.'s standard scores increased in seven areas: Phonemic Awareness; Listening Comprehension; Reading Comprehension, Following Directions, Delayed Story Retell, Social Communication, Digit Span Forward and Digit Span Backward. (P-185 at P7820.)

633. A.K.'s standard score fell by one point in Story Retell, but remained in the average range, and by three points in non-word repetition. (T4 at 106: 6-19; P-185 at 7820.)

634. In three instances A.K.'s standard score remained the same: Phonemic Awareness, Nonword Spelling and Reading Fluency (the latter remaining an area of weakness for A.K.)(T4 at 105:16-21; P-185at P7820.)

635. Dr. Kimberlin agreed that she would want a student to improve when compared to his peers. (T4 at 109:12-14.)

636. She also agreed that after a year and two months at Cambridge, A.K. went down one point in reading comprehension on the OWLS. (T4 at 109:15-19.)

637. A.K. improved by four points on written expression, but remained in the average range. Dr. Kimberlin opined that one would want to see a larger difference to say that there is meaningful progress. (T4 at 109:20-110:5; P-185 at P7825.)

Written Expression	85	79 to 91	16	3.5	average
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638. Dr. Kimberlin agreed that she previously testified that when comparing A.K.'s scores between 2020 and 2022, she wanted to see bigger improvements in several areas. (T4 at 110:6-12)

639. She could not answer when asked if that was indicative of a failure of Cambridge to provide an appropriate education to a student with challenges like A.K. (T4 at 110:13-16)

640. Kimberlin admitted on cross examination that when she tested A.K. in November of 2023, there were certain areas where he had declined even after attending Cambridge for more than a year. (T4 at 104:16-20.)

641. However, Kimberlin testified that A.K., overall made significant progress in his word reading skills at Cambridge. (T4 at 129:13-16.)

642. Kimberlin testified these 'dips' did not detract from her opinion that A. was making meaningful progress at Cambridge. (T4 at 136:8-18.)
643. Kimberlin testified these results show that A.K. "is still a youngster with a significant specific learning disability in the areas of reading and writing and oral language, deficits in oral language, and that he needs (a) very, very intensive individually prescribed education program." (T4 at 136:18-23.)
644. Kimberlin testified that A's May 2023 WIST scores showed a 14 point improvement in word identification compared to his results from September of 2022, and that this was "meaningful progress." (T4 at 130:17-23.)
645. Kimberlin testified that the WIST specifically measures if a child is making enough progress to move them towards the level their peers are functioning at. (T4 at 125:20-23. 132:4-10.)
646. Dr. Kimberlin agreed that based on the grade equivalents she reported and considered statistically significant, in July 2022 A.K. was performing at a 2.4 grade level, and that in November 2023, he was performing at a 3.2 grade level, less than full grade level improvement in more than a year. (T4 at 110:17-111:8; P-185)
647. She also agreed that this was not indicative of failure by Cambridge to educate A.K. appropriately, but indicative of the challenges of having a specific learning disability. (T4 at 111: 9-13)
648. Dr. Kimberlin agreed that her answer would be the same for A.K.'s written expression score in July 2022 going from a 2.7 to a 3.5 in November 2023, an improvement of .8 for the year in more than a year's worth of time in grade. (T4 at 111:14-19)
649. Dr. Kimberlin did not agree that the standard of entitlement for speech language services in a public school setting is different from the clinical judgment of a speech language pathologist in private practice. (T4 at 112: 12-18)

650. N.J.A.C. 6A:14-3.6 is the code that defines eligibility for speech language services. Dr. Kimberlin testified that she was familiar with the code and disagreed with Ms. Babice that A.K. did not qualify for school-based speech language services. (T4 at 112:19-113:10.)
651. Dr. Kimberlin agreed that within the definition of entitlement to speech language services provided in 14-3.6, articulation, phonology, fluency, and voice are the subcategories under which a student in a public school setting would be entitled to speech language services. (t4 at 118:5-12.)
652. Dr. Kimberlin agreed that the District recognized that A.K. had a language disorder and she opined that he had a “printed language disorder.” (T4 at 120:17-20.)
653. Dr. Kimberlin testified that under the criteria at (b)(1) of N.J.A.C. 6A:14-3.6, A.K. would not qualify for speech language services. (T4 at 113:11-115:1.)
654. Dr. Kimberlin testified that A.K. did not have a disorder similar to stuttering to meet the criteria of (b)(2) of N.J.A.C. 6A:14-3.6 and would not qualify for speech language services under that provision. (T4 at 115:2-17.)
655. Dr. Kimberlin also testified that under the criteria at (b)(3) of N.J.A.C. 6A:14-3.6, A.K. would not qualify either through her testing or Ms. Babice’s testing. (T4 at 115:18-116:1.)
656. Kimberlin testified that the standards governing a clinical decision on whether or not to provide speech language services to a child are not different then the standards governing a school decision on whether-or-not to provide speech language services to a child, because “school based decision making is based on clinical knowledge.” (T4 at 111:20-112:16.)

657. Dr. Kimberlin testified that she was familiar with N.J.A.C. 6A:14-3.6. (T4 at 112:25-112:16)
658. Dr. Kimberlin disagreed with the position that under N.J.A.C. 6A:14-3.6, A.K. did not qualify for school based speech language services. (T4 at 113:6-10)
659. Dr. Kimberlin testified that she has worked in a public school district. (T4 at 125:1-3)
660. Dr. Kimberlin testified that there is no difference between how a speech pathologist conducts themselves in a public school versus how speech pathologists conduct themselves in any other clinical setting. (T4 at 123:19-124:4; 125:4-8)
661. A.K. received Wilson Reading instruction at Cambridge and Orton Gillingham at while with Respondent District. (T4 at 121: 6-13)
662. Dr. Kimberlin opined that based on her review of A.K.'s IEP, Respondent District was "indirectly" addressing A.K.'s written language deficits. (T4 at 121:16-19; R-25)
663. PLAAFP statements within A.K.'s May 2022 IEP demonstrated that Respondent District focused on oral comprehension and oral expression. (T4 at 121: 23-122:2; R-25, p-X)
664. On re-direct examination, Dr. Kimberlin opined that there should be no difference between how a speech language pathologist conducts themselves in a public school versus another setting. (T4 at 123:19-124:3)
665. Dr. Kimberlin agreed on cross-examination that A.K.'s writing samples were quality work and demonstrative of improvement with the assistance of competent teachers. (T4 at 103:11-15) but clarified on redirect that "those writing samples that look absolutely beautiful in print are usually a finished product and I have no idea

what kind of intervention, what kind of scaffolding, what kind of whatever went into that finished product.” (T4 at 125:14-18.)

666. In her expert opinion, A.K.’s writing sample in Dr. Kimberlin’s second report, “Pele,” was an example of good writing completed with scaffolding. She agreed it represented quality work demonstrative of improvement with A.K. having a lot of assistance from competent teachers. (T4 at 102: 23-103:14; P-185 at P7845.)
667. Dr. Kimberlin testified that she did not compare A.K.’s writing samples at Cambridge to his writing samples in-district because without knowing what kind of teacher intervention was involved in creating his in-district writing samples, it was “not comparing apples to apples.” (T4 at 125:20.)
668. Dr. Kimberlin further testified that A’s in-district writing samples did not appear to be handwritten, and, may have been created using a speech-to-text device. (T4 at 125:20-23.)
669. Dr. Kimberlin testified that she has worked in public schools and there is no distinction between the responsibilities a speech and language person has in a clinic or a school setting. (T4 at 125:1-8)
670. Dr. Kimberlin testified that she did not compare A.K.’s Cambridge writing sample to the District samples “that look absolutely beautiful” because “they are usually a finished product” and she had “no idea what kind of intervention” went into the finished product and she thought it was possible that the writing could be a speech to text product. Dr. Kimberlin opined that she “can’t compare that.” (T4 at 125:12-25)
671. Dr. Kimberlin testified that a student does not need to have a specific learning disability in oral expression to receive language services because one can have a severe discrepancy between cognitive performance and oral expression or listening expression. (T4 at 126:1-25; R-25 p. 13)

672. She opined that the District should have looked at a language disability that was emerging in 2020, and testified that there was no additional testing performed. (T4 at 127:5-12)
673. Dr. Kimberlin opined that A.K. needed speech and language services and that her testing reflected this, specifically weaknesses in listening comprehension. She testified that the OPIS identified weaknesses with inferencing and that the District identified weaknesses with inferencing and the overall oral language composite on the TILLS (T4 at 127:22-128:5; P-184, Bates Stamp 7792; R-X pg. X)
674. Dr. Kimberlin testified that A.K. made significant progress in his word reading skills, however, there was not a seen impact on the overall goal of reading or reading comprehension, rather, the scores show a student with a significant specific learning disability. (T4 at 129:13-20; P-184, Bates Stamp 7792)
675. Dr. Kimberlin pointed to the gains A.K. made at Cambridge on the normed WIST Test. He took the WIST in September 2022 and May 2023. A.K. gained 14 points in word identification, one point in spelling, 13 points in the fundamental literacy index, and 18 points in sound-symbol knowledge. (T4 at 129: 21-130:131:18; R-184 pg. 6)
676. Dr. Kimberlin testified that the WIST is a normed test, therefore measures a student against his peers of the same age or grade. She contrasted the WIST to the WADE, which is not a norm reference test; the WADE demonstrates how well a student did on the Wilson program. (T4 at 131:21-132:2)
677. She opined that the results one looks for are not if a student made progress on a specific program or intervention, but if they made enough progress to move them toward the level that their peers are functioning at, and the WIST does that. (T4 at 132:4-10)
678. Dr. Kimberlin testified that the numbers in the GATES test results; 3.2 for vocabulary and 3.1, refer to grade levels. (T4 at 132:22-133:10. P-185 pg. 6)

679. According to the DRA, A.K.'s independent reading grade level correlated to first grade. (T4 at 133:17-19; R-25 p. 6)
680. A.K.'s Aimsweb results show in the fall he was in the first percentile and in the winter he was in the second percentile. Dr. Kimberlin opined that this demonstrates A.K. was struggling and not making a lot of progress. (T4 at 134:35-135:4)
681. There were no grade levels reported corresponding to A.K.'s Gallistel-Ellis scores or PAST test. (T4 at 135:17-23; R-25 p. 9)
682. Dr. Kimberlin testified that there were no grade levels reported in A.K.'s May 2022 IEP. (T4 at 135:24-136:1)
683. The norm-referenced WIST testing and the Gates MacGintie Test administered by Cambridge provided corresponding grade levels. (T4 at 136: 2-7; P-X)
684. Dr. Kimberlin testified that A.K. dipped in sub-tests that she administered and opined that the dips did not diminish the fact that he made meaningful progress while at Cambridge. (T4 at 136:2-18)
685. Dr. Kimberlin opined that A.K. should have received pullout services in Hopewell Valley. (T4 at 137:6-7.)
686. In summation: Kimberlin testified A.K.'s in district placement was not appropriate because he did not receive language therapy and was receiving pull out services. (T4 at 137:2-8.)
687. Kimberlin testified Cambridge was more appropriate because the Wilson program integrated the specialized language instruction he required into his regular class and school schedule rather than pulling him out of class. (T4 at 137:8-14.)

688. Kimberlin testified it was her expert opinion that A. qualifies for speech and language services which were not provided by Respondent District. (T4 at 137:25-138:25.)

689. Kimberlin testified that her opinions offered to this Court were supported by her testing. (T4 at 139:1-2.)

I. Testimony of Ms. Susan Caplan, Expert in Special Education, Expert in Supervisor of Special Education, LTDC and Expert in Educational Academic Testing

690. Petitioners' expert Susan Caplan is an expert in special education, an expert in learning disabilities teacher consultant. (T3 at 106:16-18; P-195.)

691. Ms. Caplan holds a certification in LDTC, speech pathologist, and teacher of the handicapped. (T3 at 109:2-6; P-195.)

692. Ms. Caplan also holds a certificate as a supervisor issued by the New Jersey Department of Education. (T3 at 109:7-10; P-195.)

693. Ms. Caplan has been involved in education for 50 years. (T3 at 109:11-13 (P-195/21-22 SY Hopewell).

694. Ms. Caplan has managed more than 1,000 children throughout her career. (T3 at 110:23-24; P-195.)

695. While serving as a supervisor of special education, Ms. Caplan supervised 30 child study team members who were independent consultants, and they were responsible for the evaluations, the IEPs, and the annual reviews for 1,700 children. (T3 at 112:20-25; P-195.)

696. Ms. Caplan has conducted over 400 private evaluations for parents. 9T3 at 114:1-10; P-195.)

697. Ms. Caplan testified that reporting at grade levels, whether through norm or criterion based testing, is controversial in the field of special education and that grade equivalent scores are not stable or really reliable. (T3 at 207:12-18.)
698. Ms. Caplan further testified that she does not report age scores or grade equivalents in her reports because she does not consider them to be accurate or reliable. (T3 at 208:2-5.)
699. When asked if she felt the same way about age equivalents, Ms. Caplan opined that she was not as knowledgeable about age equivalents and she rarely sees them used in her field. (T3 at 208:14-18.)
700. Ms. Caplan testified that when she uses the phrase “grade level,” she is describing skills, such as “first grade skills, second grade skills, what kind of book can you give him that he can read independently.” (T3 at 208:21-209:2.)
701. Ms. Caplan testified that she was not aware of any rule or industry standard in the world of special education that requires a school district to report performance based on a grade level. (T3 at 211:4-9.)
702. Petitioners’ counsel has never paid Ms. Caplan to evaluate a student. (T3 at 115:2-6; P-195.)
703. Upon cross-examination, Ms. Caplan testified that she first became involved in the case by testing A.K. on June 30, 2022, at Petitioners’ request, and conducted an independent confidential evaluation of A.K. (T3 at 121:22-25; P-191.)
704. Caplan confirmed that she did not attend the IEP meeting or consult with A.K.’s parents before they rejected the May 2022 IEP. (T3 at 178:3-13.)
705. Ms. Caplan testified that she was never prevented from attending an IEP meeting for A.K. nor any other student in Hopewell Valley. (T3 at 194: 10-14.)

706. According to Mrs. Caplan's subsequent report, A.K. repeated a year of preschool. (T3 at 123:6-11.)
707. Ms. Caplan testified this is an important fact because it reveals that A.K. needed special education from a very young age. (T3 at 123:14-15; P-191.)
708. Ms. Caplan testified that Respondent District's educational evaluation (R-15, dated 10/23/2020) reveals that A.K. had difficulty decoding words and spelling from the beginning. (T3 at 124:12-13; P-191.)
709. The 10/23/2020 educational evaluation reveals that A.K.'s verbal comprehension sat at was 95, but it was relatively lower than the other scores, revealing that A.K. have had had some language or relative weaknesses at that time. (T3 at 124:24-125:2; P-191.)
710. Furthermore, Ms. Caplan indicates, in the November 2020 educational evaluation reports, the scores indicate that at the beginning of first grade A. performed at a kindergarten level and when he came out of kindergarten, he was at a beginning first grade level. T3 at 126:3-8; P-191.)
711. However, Ms. Caplan noted that Donna Merchant October 26, 2021 audiology report, suggests A.K.'s use of an FM system, an amplification system that allows teachers to speak into a microphone and assist a child's ability for auditory processing or even ADHD. (T3 at 125:1-12; P-191.)
712. A.K.'s 2021 contained no end of the year scores. (T3 at 126:9-10.)
713. Ms. Caplan testified that according to the different instruments Respondent District included in the IEP, and some of the testing that was done that Second and Third grade, A.K. only improved one grade level after two years of schooling. (T3 at 127:9-22.)

714. Ms. Caplan testified that a year of improvement after two years of education is not sufficient growth. (T3 at 127:25-128:2.)
715. Ms. Caplan testified that scribing even in math classes could have potentially hindered A.K.'s growth, because A.K.'s scribe did not assist in his mastery if he did not have proper number formation. (T3 at 129:16-21.)
716. Caplan opined that Respondent District decision to permit A.K to use speech to text technology to dictate his stories in the resource center was counterproductive to the effort to teach A.K. to write and organize thoughts. (T3 at 130:7-13 (P-191/21-22 SY Hopewell)).
717. Speech to text use is counterproductive because is not a writing program, and A.K needed explicit instruction writing structures. Speech to text hindered A.'s writing skill improvement. (T3 at 130-15-24.)
718. A.K. was placed by Petitioners at Cambridge School in August of 2022. (T3 at 131:1-2.)
719. A.K. was placed at Cambridge before Ms. Caplan was able to get an appointment for observation at Hopewell. (T3 at 131:1-6.)
720. Before A.K.'s enrollment at Cambridge began, in June 2022, Ms. Caplan administered the Woodcock Johnson test and the full battery of the Kauffman Test of Educational Achievement. (T3 at 131:9-14.)
721. Ms. Caplan testified that she did not want to overload A.K. with testing, but did all of her June 30, 2022 testing in one day. (T3 at 218:19-219:11.)
722. Ms. Caplan testified that she did not think that testing a student like A.K. after the school year ended all in one day may influence his scores on the count of fatigue. (T3 at 219:12-16.)

723. Ms. Caplan confirmed that the November 2020 District Evaluations were done over two days. (T3 at 218:19-219:11.)
724. Ms. Caplan testified that when she tested A.K. using the Woodcock Johnson Test she did not replicate all of the sub tests that the District evaluator used when testing A.K. in November 2020. (T3 at 199:12-15; R-15.)
725. Rather, chose sub-tests that measured reading, which was the area of concern. (T3 at 195:18-24; R-15.)
726. Ms. Caplan testified that the arrow on oral reading next to A.K.'s score of 78 on the Woodcock Johnson indicated a statistically significant increase, and agreed that because she tested A.K. before he attended Cambridge, that A.K.'s significant improvement in oral reading was attributable to the educational services he received from the Respondent District Regional School District. (T3 at 200:10-22; R-15.)
727. When asked if the upward arrow not pointing sharply upward as she would like it to be considered "significant progress" means A.K. did not make significant progress, she testified that "I think it means he's made some progress and on those graphs it shows how many more right he got." (T3 at 205:17-22.)
728. Ms. Caplan found that "to an extent" that a student such as A.K. can demonstrate variable test performance, especially in light of his reading disability, and that one way to build protection against that possibility is the use of confidence intervals, and that is the reason on Ms. Caplan's report for putting an asterisk or upward arrow of only next to a significant increase. (T3 at 226:6-20.)
729. Ms. Caplan then compared her Woodcock Johnson results to Hopewell's October and November 2020 results. (T3 at 132:17-18.)
730. The comparison reveals that A.K.'s oral reading skills stayed in the low range, but his reading comprehension skills actually declined. (T3 at 133:11-21.)

731. In the reading comprehension testing process, a student is handed a page and a book to read out loud and continues until the student cannot read any further. (T3 at 135:2-11.)
732. In October 2020, A.K. obtained a standard score of 70 in reading comprehension but in June 2022, his score was 58. T3 at 134:8-11(P-191/23-24 SY Cambridge).
733. The comparison revealed that A.K.'s rate of learning in that area slowed dramatically. (T3 at 134:14-19.)
734. In June 2022, Ms. Caplan also administered a second test used by Respondent District to measure A.K.'s growth during his time Hopewell, the Kauffman Test of Educational Achievement 3 (KTEA3). (T3 at 135:20-23.)
735. The KTEA3 requires a student to read sentences silently to themselves, and then answer one or more questions. (T3 at 136:1-8.).
736. During the June 2022 KTEA3 testing, A.K. achieved an overall reading score of 70. (T3 at 137:12-14.)
737. For spelling, A.K. achieved a 76 percentile; the same score he achieved at the beginning of second grade. (T3 at 138:3-6.)
738. Importantly, Ms. Caplan tested A.K. for phonological processing, and he scored a 99, which was average. (T3 at 138:10-17.)
739. Respondent District worked with A.K. for two years on phonological processing and yet their assessments never marked those efforts as successful. (T3 at 138:10-17.)
740. The June 2022 testing revealed that A.K.'s decoding skills were very weak. (T3 at 138:19-23.)

741. In conjunction, the June 2020 KTEA3 and WJT testing revealed that A.K. has a consistent overall weakness in phonological processing and word identification. (T3 at 138:21-23.)
742. Ms. Caplan testified that A.K. got a score of 73 on the Kaufman Test of Educational Achievement, which she noted was “more consistent with what you’re asked to do in school.” (T3 at 201:7-16; R-15.)
743. She opined that she would not compare the scores from the Kaufmann to the Woodcock Johnson tests, but testified that on two nationally standardized tests, a student that performed in the second or fourth percentile indicates a severe weakness in that area. (T3 at 201:19-24.)
744. Ms. Caplan notes that A.K. did not receive any special education services for science and social studies, (T3 at 142:6-9) but need them because he could not read or write and Third grade is a year of change where all subjects require much more reading and writing. (T3 at 142:13-15.)
745. Ms. Caplan observed A.K. at the end of his Fourth grade year. (T3 at 144:15-24; P-192.)
746. Caplan observed A.K. using the Wilson reading and writing program, used throughout Cambridge School. (T3 at 145:11-17.)
747. Ms. Caplan testified that that the Wilson instruction used by the Cambridge school is an Orton Gillingham based multi-sensory instruction program. (T3 at 184:23-185:3.)
748. Wilson uses 10 components to a lesson and is designed for 60 to 90 minutes a day of instruction. (Id.)

749. At Cambridge A.K. is getting 90 minutes of instruction in Wilson twice a week, and 60 minutes of instruction in Wilson three times a week. (Id.)
750. Wilson focuses on phonemic awareness, phonology, sight words, writing, spelling, vocabulary and comprehension, and covers all areas of reading and some of writing. (Id.)
751. The work is tailored to his level, the lessons are staged to provide work in the amount of time available to A.K. (T3 at 146:16-18.)
752. In April 2023, after A.K. attended almost of full year at Cambridge, Ms. Caplan reevaluated A.K. (T3 at 149:13-16.)
753. On the WJT, A.K. demonstrated significant improvement in word attack skills and reading comprehension skills. There was some improvement in his rate of learning and word identification, but it wasn't significant, and his basic reading also went up 10 points. (T3 at 149:24-150:10.)
754. On the WJT, A.K increased his basic reading skill 10 standard points: A.K. achieved only a 72 after leaving Respondent District and an 82 after almost a year at Cambridge. (T3 at 150:11-19.)
755. Ms. Caplan re-readministered the KTEA3, but in different form. T3 at 151:23-152:15.
756. In phonological processing, A.K. improved from the 47th percentile to the 61st percentile. T3 at 154:9-10 (P-192/23-24 SY Cambridge).
757. In nonsense word decoding, A.K. improved from the 18th to the 39th percentile. (T3 at 156:15-16.)
758. In reading comprehension, A. achieved 36 more items on the second administration of the KTEA3. (T3 at 156:23-157:2.)

759. In written expression, A.K. made progress, as well. (T3 at 158:9.)
760. In listening comprehension, A.K.'s score increased from the 18th to the 53rd percentile. (T3 at 158:18-23.)
761. Ms. Caplan testified that if a student receives the same score on a sub-test a year later, it does not mean that the student has not closed the gap with his or her typically developing peers, but means that he or she has progressed in a year's time at least at his or her level of performance compared to his or her age based peers. However, Ms. Caplan would not call this progress "meaningful." (T3 at 204:22-205:7)
762. Ms. Caplan testified that some of the numbers on the Kauffman showed what was in her opinion A.K.'s progress, but conceded that the Kaufmann test itself did not consider those results meaningful progress. (T3 at 205:8-16)
763. Caplan testified that, overall, A.K. made significant and meaningful progress between June 2022 and April 2023 while at Cambridge. T3 at 159:20-25.
764. At Cambridge, the Wilson reading program allows A.K. to learn the meaning of prefixes, suffixes, and root words. It helps vocabulary development, and it helps reading comprehension. It also helps students break down a word. (T3 at 162:11-14.)
765. Ms. Caplan's review of the 5/5/22 IEP that Respondent District offered to A.K. left her concerned about the absence of an identified instructional level T3 at 168:18-23 (R-25 at 440, Goal 4.)
766. Ms. Caplan opined that the 5/5/22 IEP should have identified the instructional level that A.K. had achieved. (T3 at 170:6-9.)

767. Ms. Caplan opined that she did not believe A.K.'s progress from a score of 8 to 16 on the DRA is meaningful progress and further opined that the test has a lot of subjectivity. (T3 at 173:8-16; R-25.)
768. Ms. Caplan further opined that the DRA in the May 2022 IEP does not test phonics and that the District "spent most of their time" on "decoding and phonological awareness." (T3 at 174:13-22; R-25.)
769. Caplan testified that the DRA is "skewed, which is why a lot of school districts aren't using it anymore." (T3 at 175:13-15; R-25.)
770. Caplan opined that the District did not instruct A.K. in vocabulary nor tested him on it. (T3 at 175:15-17; R-25).
771. Ms. Caplan testified that she looked at the May 2022 IEP before testifying the day of the hearing, but could not think of any other documents that she reviewed before authoring either of her reports at P-207 and P-208. (T3 at 180:16-20.)
772. Ms. Caplan testified that the parents "probably" sent her the prior educational testing from November 2020. She recalled reviewing district evaluations and Donna Merchant's report. (T3 at 180:21-181:6.)
773. Ms. Caplan noted that after she completes her report, she deletes the files. (T3 at 181:7-9.)
774. She could not testify if it was safe to assume that if there was no mention of a particular document in her report she did not review it, or she did not bother to mention it. (T3 at 181: 13-19.)
775. Ms. Caplan testified that she had IEPs and the District evaluations from A.K.'s parents before authoring her reports. (T3 at 183: 20-21; R-207; R-208.)

776. She further testified that before being asked to look at it during the hearing by Respondent's counsel, she had not examined the Plaintiff's exhibit P-14, at P3846-3967, which was about 130 pages within a portfolio assessment. (T3 at 184:1-8; P-14.)
777. Ms. Caplan also testified that before being asked to look at it during the hearing by Respondent's counsel, she had not examined the Take Home Binder, Exhibit P-15 at P3968-4153, which was about 100 pages. (T3 at 184: 9-15; P-15.)
778. Ms. Caplan also affirmed that before being asked to look at it during the hearing by Respondent's counsel, she had never examined Exhibit P-16 at P4154-4309, which was about 150 pages in A.K.'s class Orton binder, referring to Orton Gillingham instruction at Hopewell Valley Regional School District. (T3 a 184:16-22; P-16.)
779. Ms. Caplan testified that she was not aware that the District was using Framing Your Thoughts, as was Cambridge, and agreed that she did not have the opportunity before writing her reports or even before the day of the hearing to look at the Framing Your Thoughts notebook from the District to examine the kind of work A.K. was doing in the program. (T3 at 185:10-22; R-25.)
780. Ms. Caplan testified that she did not remember logging in June 15, 2022, to observe A.K. in District. (T3 at 190:2-7.)
781. She further testified that she most likely wrote her report "a few months later" after performing testing on June 30, 2022. (T3 at 8-14; P-191.)
782. Ms. Caplan testified that she felt her visit to observe A.K. in the District was "truncated," based on her past experiences observing students there. She admitted that she did not ask for an additional session, but "just accepted it." (T3 at 191: 15-192:25.)

783. When questioned if there was anything else besides a review of the May 2022 IEP and conversations with Respondent Mother to form her determination of what was going on in A.K.'s program for the 2021/2022 school year, Ms. Caplan pointed to "all the years that I was in public school and I know what in class support is, I know the pros, I know the limitations of it, so I know very well what A.K.'s program looked like." (T3 at 193:9-25.)
784. Ms. Caplan testified that it would be "fair to say" that the best way to find out what was really happening on the ground with A.K. would have been to have a dialogue with the staff, which she did not do. (T3 at 194: 15-25.)
785. Ms. Caplan testified that she had not looked at any of A.K.'s records or progress reporting from Cambridge. (T3 at 209:12-18)
786. She further testified that she did not know if Cambridge reported A.K.'s level of progress by describing at what grade level he was reading, but noted that on their admission testing, she believed they reported approximate grade levels. (T3 at 209:24-210:4)
787. Ms. Caplan testified that if serial testing used by Cambridge such as WIST or WADE test failed to demonstrate meaningful progress in a particular sub test, that does that mean that Cambridge is not providing A.K. with an appropriate program. (T3 at 206:10-22)
788. Ms. Caplan testified that she did not recall that the "progress monitoring" in the Aimsweb section of the May 2022 IEP demonstrated that A.K. had qualified to be tested at the third-grade level by the end of his third-grade year. (T3 at 214:14-19; R-25 pg. 8)
789. Ms. Caplan testified that she does not have familiarity with the Aimsweb, but generally, in her practice, she does not use the Gallistel-Ellis, DRA, and PAST, which measure student performance, but uses other batteries that test the same areas. (T3 at 216:17-218:14.)

790. Ms. Caplan also testified that as an expert, she did not think it was significant that A.K., whose child study team had found regression when a significant disruption in his educational programming, had last attended school and received regular instruction a couple of weeks before she tested him. (T3 at 220:11-24.)
791. When asked where she got the information that A.K. was performing at a first grade level in second grade, Ms. Caplan pointed to Literably testing. She agreed she was basing her opinion on one test that she didn't administer, and testified that she "read something else in here too, but I don't remember where." (T3 at 223:9-224:10.)
792. Ms. Caplan further testified that she had not reviewed Dr. Karen Kimberlin's report at all. (T3 at 224: 19-23)
793. Dr. Kimberlin performed testing before A.K. began at Cambridge using the OWLS with A.K. on July 7, 2022. (T3 at 226:21-227:13; P-184 p. 22) The OWLS testing demonstrated:
- A.K.'s reading comprehension scaled to a score of 81 as below average, but at a 2.4 grade equivalent.
 - A.K.'s written expression score was at an 80, which was below average, but at a 2.7 grade level.
794. Ms. Caplan testified that she had not seen any of A.K.'s Cambridge progress reporting and agreed that she assumed he was doing well there based on how he scored in April 2023 compared to how he scored on her testing in July 2022, along with "other ways too, they're subjective," which included anecdotes from parents, which she does not quote because it is not "hard data." (T3 at 229:2-19.)
795. When asked to examine the narrative on page 12 of A.K.'s May 2022 IEP, "A. has shown steady growth this year in the area of reading. A.'s fluency has shown

improvement this year as evidenced in his words read correctly and a decrease in errors on both the second and third grade Aimsweb Plus reading probe,” Ms. Caplan testified: “It’s subjective to me.” (T3 at 235:17-237:3.)

796. When asked if serial assessments such as the PAST and the Aimsweb and the Gallistel-Ellis were charted as Ms. Caplan charted her standardized tests in 2022 and 2023, would we see an upward trajectory, Ms. Caplan testified: “It’s not comparing apples to apples.” (T3 at 239:6-14; R-25.)

797. Ms. Caplan testified that the type of progress A.K. demonstrated in the May 2022 IEP was “such a rudimentary level that I think it almost appears a little deceptive in the areas of progress.” (T3 at 243:15-244:2; R-25.)

798. Ms. Caplan agreed that she never observed the Respondent District program that A.K. was in or that was proposed for him prior to issuing her reports and testifying the day of the hearing. (T3 at 245:21:25.)

799. Ms. Caplan further testified that she was “not sure” if she had seen the progress report, R-31 before testifying, but that A.K.’s mother “might have sent” it to her. (T3 at 245:10-246:4; R-31)

800. Ms. Caplan’s cross-examination testimony ended when she confirmed that she never attempted to create a chart comparing where A.K. was performing at the beginning to the end of his third-grade year based on Hopewell Valley’s data such as the ones she created in her April 2023 report. (T3 at 246:7-14.)

J. Testimony of Mrs. K., Petitioner Mother

801. Petitioner Mother (T5 at 62:7) testified that A.K. had interventions very early; all the way back to his pediatrician check-ups before he was two (2) years old. (T5 at 63:24-64:1.)

802. A.K. wasn't taking and had to be evaluated for a speech delay at one year old. (T5 at 64:16-17.)
803. A.K. had a state recommended speech pathologist servicing him in-home before he was three (3) years old. (T5 at 64:5-9.)
804. At the age of three (3) A.K. went into Respondent District specialized PEECH program. (T5 at 64:18-19.)
805. While a 3-year-old Respondent District provided A.K. had a mixed special ed classroom with paraprofessionals and a special ed. Teacher. (T5 at 65:5-7.)
806. Towards the end of A.K.'s Pre-K year his teacher expressed concerns that A.K. wasn't ready for kindergarten. (T5 at 65:10-12.)
807. As a result, A.K. was placed by Respondent District in its Skip program for disabled children in the morning and repeated the pre-K program in the afternoon. (T5 at 65:20-25.)
808. Petitioners at the time were satisfied with A.K.'s second year of Pre-K educational plan. (T5 at 66:2-3.)
809. A.K. received speech services while enrolled in Defendant District's preschool program. (T5 at 66:6-7.)
810. At the end of his third preschool year, Respondent District provided an IEP for A.K.'s upcoming Kindergarten year which removed his speech services so that the only that intervention that Respondent District provided to him was a general education classroom with a general education and special education teacher. (T5 at 66:7-12.)
811. Petitioner Mother does not remember having any concerns during A.K.'s kindergarten year. (T5 at 66:17-18.)

- 812. In January 2020, in First grade, A.K. was moved to the resource room for language arts. (T5 at 66:21-67:14)
- 813. There was no IEP meeting and A.K. IEP was not updated to reflect the change. (T5 at 66:21-67-7.).
- 814. Petitioner Mother testified that she did not know why A.K. was moved, but that the District thought A.K. would do better with a smaller class ratio. (T5 at 66:21-67:14)
- 815. Petitioner Mother opined the teacher was “great,” and A.K.’s parents agreed to the move. (T5 at 66:21-67:14)
- 816. A.K.’s IEP was updated after the fact to reflect that he had been moved from the general education classroom to a resource room. (T5 at 67:15-20.)
- 817. During COVID, Respondent District used pods so children didn’t move between classrooms. A.K. was taught all subjects by his special education teacher and was in person in school every day. (T5 at 67:21-68:6)
- 818. Up until second grade A.K. did not have an official diagnosis. (T5 at 68:24-69.)
- 819. All reports were positive and his second grade teacher, Ms. Alison Mooney, had positive reports about A.K. as a learner. (T5 at 16-19)
- 820. In Third grade Petitioners learned for the first time that A.K. was dyslexic. (T5 at 69:3-5.)
- 821. Petitioner Mother expected that upon learning that A.K. was diagnosed as dyslexic, Respondent District would better understand A.’s needs. (T5 at 69:3-6.)

822. Petitioner Mother testified that in hindsight that Respondent District did not provide A.K. with additional interventions when A.K. was diagnosed as dyslexic. (T5 at 69:6-7.)
823. Petitioner Mother testified that at the time of A.K.'s diagnosis as dyslexic she didn't realize how far behind he was (T5 at 69:8-9); all of his Second grade reports were positive and that his teacher had "great things to say about A.K. as a learner." (T5 at 68:16-19.
824. Petitioner Mother opined that in Second grade, A.K. was in a special education setting and had strong self-esteem with students around the same level, and that she did not think A.K. knew he was "off track." (T5 at 70:21-25)
825. Petitioner Mother recognized that there was a problem when A.K. was in the Third grade. (T5 at 69:-11.)
826. Petitioner Mother opined that in Third grade, she felt there was a problem as it was the first time in a year and a half that A.K. was back with his general ed peers and being "compared" them by comparing himself. (T5 at 69:9-17.)
827. Petitioner Mother opined that A.K. became insecure about his abilities and they saw a decline in his confidence and concerning behaviors at home. (T5 at 69:20-24.)
828. Petitioner Mother explained "we just started to see his confidence plummet." (T5 at 69:21-22.)
829. A.K. "started showing behaviors at home that were really concerning." (T5 at 69:23-24.)
830. Petitioner Mother realized somewhere in the middle of Third grade that A.K. was at least two years behind his peers. (T5 at 70:3-5.)

831. Petitioner Mother expressed her concerns to A.K.'s teacher, Ms. Mooney (T5 at 70:14) who likewise expressed concerns about A.K.'s reading and writing. (T5 at 70:15-16.)
832. Petitioner Mother recalled that she sent an email to Ms. Kulp asking for advice and that Ms. Kulp "suggested several books." (T5 at 71:11-13.)
833. Petitioner Mother recalled that the books Ms. Kulp suggested were for Kindergarteners, significantly below A.K.'s grade level. (T5 at 72:2-4.)
834. Petitioner Mother recalled that A.K. was excited about his new books and wanted to read them, (T5 at 71:22-25) but could not read them. Instead of trying to sound out words, A.K. would just look at pictures in the book and make up his own sentences. (T5 at 72:5-9.)
835. A.K. testified: "that was a big red flag for me." (T5 at 72:10.)
836. Petitioner Mother recalled that A.K. never wanted to read in front of anyone else and didn't even want his siblings to hear him. (T5 at 72:9-13.)
837. Petitioner Mother testified that in Third grade A.K. could not read (T5 at 72:17-19) and that Respondent District "knew that he wasn't able to read...they were scribing for him." (T5 at 72:19-21.)
838. Petitioner Mother opined that A.K. was at least two years behind his peers and that Hopewell had seven years to address his learning differences, so he should have been closer to his general ed peers since A.K. has a healthy IQ. (T5 at 70: 3-9.)
839. Petitioner Mother started looking at the work A.K. was bringing home in the Third grade and grew more concerned. (T5 at 73:2-3.)
840. Petitioner Mother saw A.K come home with a page-long social studies report and thought there was "no way" A. could have actually written it. (T5 at 73:4-7.)

841. Petitioner Mother specifically asked A.K. “how did you do this?” (T5 at 73:7) and was told by A.K. that his special ed. teacher wrote it for him. (T5 at 73:10-11.)
842. A.K. explained that his special education teacher would sit with him and he would tell her what to type into google search; the teacher would then read him facts off of google search results, and A. would pick the facts he liked. His teacher would then write those facts into a report, which would be presented as A.’s work, while the only writing on the report that was actually A’s own writing was his name. (T5 at 73:15-20.)
843. Petitioner Mother testified it was really concerning to her that A.K.’s teachers weren’t actually helping him write his own words. (T5 at 73:22.)
844. Petitioner Mother brought her concerns to A.K.’s teacher’s attention (T5 at 73:22) and testified that “I felt . . . they could have pushed him, he might have misspelled it, but they didn’t, they just wrote it for him.” (T5 at 74:12-14.)
845. A.K.’s IEP did not provide for a scribe, rather than teach him how to write, and Petitioner Mother was never asked for permission that A.K. be provided a scribe. (T5 at 79:3-6.)
846. After Petitioner Mother complained. the District said they would no longer scribe, but they noted A.K. was insecure and was requesting scribing. (T5 at 79:1-10.)
847. Petitioner Mother testified that the District response regarding scribing was that they wanted to demonstrate that A.K. could show his academic knowledge although his reading, writing and spelling skills were below grade level. (T5 at 74:23-3.)
848. A.K. was not aware that Respondent District was scribing for A.K. instead of teaching him to write until she learned inadvertently from reviewing his social studies assignment. (T5 at 78:14-17.)

849. Petitioner Mother testified: “I was in panic mode at that point because I felt like they were giving up.” (T5 at 74:17-19.)
850. Petitioner Mother A.K. did not understand why all of A.K.’s reports were so positive and always indicated that he was achieving his academic goals, when wasn’t learning and couldn’t do and basic skills. (T5 at 75:19-22.)
851. A.K. did not take the New Jersey Standardized Testing in Third grade although Petitioner Mother testified that she wanted him to. Petitioners did not want A.K. to use speech to text on the assessment and Petitioner Mother chose not to sign the document allowing text to speech and it was too late to set the system up for him to take it. (T5 at 75:4-17)
852. Petitioner Mother testified that she was told by his case manager that A.K. could not take the test without text to speech because he could not read the questions. Petitioner Mother noted this was the first time that the case manager told her A.K. could not read questions on a test. (T5 at 76:23-77:8)
853. Petitioner Mother testified that A.K. is doing “amazing” at Cambridge. (T5 at 80:9.)
854. Petitioner Mother that A.K.’s confidence has grown. (T5 at 80:1-81:25.)
855. A.K. has told Petitioner Mother than his academic experience at Cambridge is “easier” because they know how to teach A.K. and that A.K. does not want to go back to Respondent School District. (T5 at 81:4-6.)
856. Petitioner Mother testified that now he is at Cambridge School, A.K. has “a really healthy self-esteem” and “loves school.” (T5 at 83:12-13.)
857. Petitioner Mother testified that when A.K. was required to make a presentation in front of his Respondent District classmates, he would be anxious and shaking, but

now A.K. is excited to make presentations in front of his Cambridge classmates. (T5 at 83:19-84:8.)

858. Petitioner mother testified that she is “disappointed” that A.K.’s needs weren’t addressed in a greater fashion by Respondent School District. (T5 at 84:22-24).
859. Petitioner Mother testified that A.K. is doing “amazing” at Cambridge and that is was a difficult decision to remove him from Respondent School District. (T5 at 80:10-11)
860. Petitioner Mother opined that the District did not meet its responsibilities toward her because his parents expected that he would be performing close to his potential IQ, which is average, and despite interventions he was “in the first percentile.” (T5 at 84:25-85:4)

FACTUAL DISCUSSION AND ADDITIONAL FINDINGS OF FACT

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

A fact finder “is free to weigh the evidence and to reject the testimony of a witness . . . when it is contrary to circumstances given in evidence or contains inherent improbabilities or contradictions which alone or in connection with other circumstances in evidence excite suspicion as to its truth.” Id. at 521–22; see D’Amato by McPherson v. D’Amato, 305 N.J. Super. 109, 115 (App. Div. 1997). A trier of fact may also reject testimony as “inherently incredible” when “it is inconsistent with other testimony or with

common experience” or “overborne” by the testimony of other witnesses. Congleton v. Pura-Tex Stone Corp., 53 N.J. Super. 282, 287 (App. Div. 1958).

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

Based on consideration of the testimony and review of the documentary evidence, I **FIND** the following additional **FACTS**:

Witness Testimony

The District’s witnesses, DiNardo, Babice, Kulp, and Tighe, testified in a courteous and concise manner and were professional in their demeanor. These witnesses were able to share their specific knowledge of A.K. and showed no bias or animus toward petitioners. It was clear from these witnesses that the District had A.K.’s best interests in mind.

DiNardo, has thirty years of experience in the field of special education and oversees the District’s special education department, was qualified as an expert in special education services. She was knowledgeable as to A.K. and was able to recount his seven-years in the District; on September 15, 2015, A.K. attended the PEECH program and preschool classes and remained enrolled in Hopewell through the spring of third grade. A.K. was first classified as “Preschool Disabled” and remained classified as “Specific Learning Disabled” while attending school in the District. DiNardo reviewed the various IEPs developed for A.K, and it was her opinion that A.K. had made slow but meaningful progress based upon his capabilities. When asked to clarify what “meaningful progress” was, she replied that “any progress is meaningful.”

DiNardo testified that the 2019–2020 IEP (first grade) showed that A.K. was making meaningful progress because he achieved many of his goals and objectives. However, the educational evaluation of October 2020 reveals a child who was clearly struggling with reading and writing. The evaluation noted that A.K.’s abilities in “Reading Skills,” “Math Problem Solving,” and “Alphabet Writing Fluency” were in the “very poor to low average” ranges. In January 2020, A.K. was struggling with fluency and was moved from in-class resource, one of the least restrictive general education environments consisting of co-teachers in a classroom with seventeen to twenty students, up to eight having IEPs, to a resource room, a more restrictive environment with a smaller class size of seven to nine students, to receive more extensive support in structured literacy.

DiNardo testified that the 2020–2021 IEP (second grade) showed that A.K. was making meaningful progress and indicated that he had achieved many of his goals and objectives. However, this conclusion overlooked the fact that A.K. was moved to a resource room. DiNardo conceded that children are not moved to resource rooms from in-class resource unless they are not progressing in the in-class resource setting. A.K. was provided with two reevaluations during October 2020. In a Psychological Evaluation, A.K. received a full scale IQ score of 103, which fell within the average range. An educational evaluation revealed that A.K.’s word reading efficiency score placed him among less than 1 percent of his peers. Similarly, the Grey Oral Reading Test placed him among less than 1 percent of his peers. The Comprehensive Test of Phonological Processing revealed reading efficiency skills that were either below average or poor. The Woodcock-Johnson IV Achievement Abilities and Oral Language Test revealed that despite A.K.’s full scale IQ of average, for the most part, A.K.’s achievement abilities and oral language were in the very low range:

Category	Standard Score	Percentile	Range
Broad Reading	64	1	Very Low
Basic Reading Skills	76	6	Low
Letter-Word Identification	68	2	Very Low

Category	Standard Score	Percentile	Range
Word Attack	89	23	Low Average
Passage Comprehension	70	2	Low
Reading Fluency	57	.02	Very Low
Sentence Reading Fluency	63	1	Very Low
Oral Reading	61	.05	Very Low

The IEP dated May 10, 2021, and created at the end of A.K.'s second-grade year revealed the following:

- A.K. spent between 40 percent and 70 percent of his day in the presence of general education students. (R-17 at 301.)
- During the 2021–2022 school year (third grade), A.K. was to be provided with a pullout resource for Reading/Language Arts for 120 minutes per day. (R-17 at 301.)
- During the 2021–2022 school year (third grade), A.K. was to be provided with an in-class resource for Math for 60 minutes per day. (R-17 at 301.)
- During the extended school year for the summer of 2021, A.K. was provided a pullout resource for Reading/Language Arts for 90 minutes four days a week.

A.K.'s June 2021 progress report indicated that by the end of the second grade, he had achieved all the goals and objectives contained within his second-grade IEP. His November 2021 IEP reported A.K. was reading at a level eight (8) on the DRA. Previously, in the winter of 2020 A.K. was noted to be reading at a level four (4) on the DRA. The increase in the DRA scores could support the conclusion that progress was being made. However, Kulp, A.K.'s second-grade special education reading instructor testified that DRA reading levels 8–14 fall within the first-grade reading level. Tighe, the District

psychologist, confirmed the DRA scores and also stated that they correlated to first-grade levels. Tighe further confirmed that in the spring of 2022, A.K.'s mother was concerned that A.K. was losing interest in reading, his reading levels were below grade, and that teachers were writing his responses for him on tests or projects.

The 2021–2022 IEP (third grade) noted in the Parent Concerns section the following: “Mom has concerns about A.K.’s lack of progress as he is significantly behind grade level. She also asked if his extra pull-out for reading the last 20 minutes of science and social studies could be or if he could be pulled out fewer days for more time. Mom also asked if this extra support could start over the summer. Mom has noticed that his teachers have written his responses for him on his tests or projects, and she does not want people to be writing for him.”

The May 5, 2022, IEP offered A.K. the following: pullout resource placement for reading and language arts for 120 minutes per day and pullout supplementary instruction for reading for 20 minutes per day; an in-class resource for math for 60 minutes per day, and science, and/or social studies for 60 minutes per day; and an extended school year with a pullout resource replacement for reading/language arts for 90 minutes a day.

Petitioners were concerned about the gap in A.K.’s academic assessments in reading, writing, and spelling and rejected the proposed IEP. I **FIND** that the overall absence of academic improvement in reading and writing, despite the increase in supplemental support, leads to the conclusion that A.K. was not making “meaningful progress.”

Mrs. K., A.K.’s mother, testified as a fact witness and was credible. Petitioners’ expert witnesses, Dr. Kimberlin, Caplan, and Gonzales, were professional in their demeanor, patient during questioning, and provided persuasive testimony. Consistent in their testimony and reports were the findings that A.K. has an average IQ but failed to make the kind of academic progress expected of a child with average intelligence.

Dr. Kimberlin was qualified as an expert in special education, speech, language, writing, diagnosis, and treatment of dyslexia and reading disabilities. Dr. Kimberlin noted

that the District's testing of A.K. raised numerous red flags that should have led the District to conclude that A.K. may have had "language issues." According to Kimberlin, A.K.'s profile is consistent with dyslexia with comorbid oral language weakness and problems with memory, spelling, fluency, and overall comprehension. Dr. Kimberlin opined that while A.K. was a student in the District, he did not make meaningful progress.

Accordingly, based upon a review of the complete record, and having had the opportunity to personally assess the demeanor and credibility of both the fact and expert witnesses, I **FIND** the opinions of expert witnesses Dr. Kimberlin and Caplan to be persuasive that A.K. was not making meaningful progress in the District. The petitioners' experts identified problems with the programming developed for A.K. that earlier testing had revealed. The programming proposed did not provide speech services and allowed teachers to scribe for A.K., which was not beneficial. I **FIND** that the absence of progress in reading and writing in the 2021–2022 school year does not support the programming recommended for A.K. in the May 5, 2022, IEP.

Classification

Petitioners argue that the District should have classified A.K. as "multiply disabled" because of his diagnoses in addition to the finding of a specific learning disability. Respondent argues that A.K. had dyslexia and a "possible auditory processing disorder." However, the District maintains that both diagnoses manifested as a specific learning disability, which District programming addressed.

The District had an audiological examination performed on A.K. by Dr. Merchant in August 2021. Dr. Merchant noted that A.K.'s eligibility for special education services is "based on a severe discrepancy between A.K.'s current achievement and intellectual ability in the areas of Basic Reading Skills, Reading Comprehension, Written Expression, and Reading." Dr. Merchant found that:

- A[.K.] presented with a combination of learning challenges at the higher level. Auditory findings supported several auditory skill deficits in both primary and secondary forms of an

Auditory Processing Disorder. Review of the scores and patterns included components of a secondary Auditory Associative Deficit, which supports higher order coexisting deficits (e.g.: language, neurological, and/or language) compromising the processing of auditory information. Embedded within the response pattern was a significant left ear deficit on both the CS and SSW tests, suggesting a potential Integrative Deficit component or neuromaturation weaknesses, but specific to language based movement of information through the auditory system. The addition of deficits within the temporal processing realm in combination with the AFG and PS deficits supported components of an Auditory Decoding/Discrimination Deficit.

- Overall, results suggested insufficiently developed auditory skills in several areas being negatively impacted by coexisting learning challenges and potential language-based deficits. A general diagnosis of Auditory Processing Disorder is appropriate in this instance; however, inconsistencies within categories as well as the response patterns between tests supported potential [for] a broader deficit/disorder or higher order variables imposing on the incoming auditory information and most likely exacerbating the problem.

Babice, who qualified as an expert in the field of speech-language pathology, testified that she is employed by the District and became involved in A.K.'s case as a result of Dr. Merchant's report.

Babice testified that she observed A.K. during a writing block and evaluated him. She used three different assessments as part of her speech report: (1) an auditory processing assessment, (2) an auditory perception of speech sound assessment (the Linda Mood Auditory Conceptualization Test) and (3) a comprehensive assessment of spoken language (the CASL II). Ms. Babice also completed an observation of A.K. in the classroom and gave the teachers a checklist to fill out to assess the academic impact.

Babice testified that A.K. scored within the average range for all assessments except for one subtest where he earned a standard score of 79, which is "below average." This score did not require or support A.K. getting speech services in the public-school setting. When questioned how speech testing could demonstrate that A.K. was average in all but one area if he has a specific learning disability—meaning a discrepancy between

his cognitive ability and his functional educational performance—Babice explained that a lot of the assessment went through oral language, which shows as an area of strength for A.K., and the LTDC evaluator did more of the reading and writing components, which exposed his area of weakness. Ms. Babice did not test A.K. in reading or writing, as those areas were covered by the educational evaluation that Ms. Babice reviewed as part of her work on A.K.'s child study team.

Babice testified that based on Dr. Merchant's report, A.K.'s IEP was modified to provide him with assistance with note taking. This modification was based on a recommendation by Dr. Merchant.

It appears then, that Dr. Merchant's diagnosis of A.K. and the conditions identified by Dr. Kimberlin were covered in A.K.'s May 5, 2022, IEP. I **FIND** that A.K. was not misdiagnosed or incorrectly classified. The greater concern is that the District failed to adopt a program appropriate for A.K.'s particular needs. While the District's witnesses were concerned for A.K. and believed that he was making progress, I **FIND** that the program they offered him was not appropriate for his needs. I **FIND** that A.K. did not exhibit the ability of basic reading and writing skills necessary for academic achievement. I **FIND** that the classification of A.K.'s IEPs was appropriate, however, I also **FIND** that that A.K. was not keeping pace with his grade-level peers.

District Programming

As noted above, Dr. Merchant diagnosed A.K. with auditory processing disorder, yet according to Babice, the District only modified A.K.'s IEP to provide assistance with note taking. Dr. Kimberlin testified that dyslexia affects word recognition, phonological awareness, decoding, and recognition of letters and sounds. Dr. Kimberlin's language literacy evaluation for A.K. specifically addresses linguistic comprehension, word recognition, and decoding. Kimberlin testified that all of these areas should be assessed when identifying whether or not a student has a reading disability. Children with dyslexia do not present uniformly; for example, some might only have problems with linguistic comprehension but do well with decoding.

Dr. Kimberlin testified that an auditory associative deficit usually indicates that the child is having problems with higher-level language, such as verbal reasoning. Dr. Kimberlin further testified that auditory associative deficit usually indicates problems with phonemic awareness and sound discrimination, and the child frequently presents as dyslexic. Upon reviewing A.K.'s August 26, 2021, auditory processing evaluation, Dr. Kimberlin found it further noteworthy that A.K. had normal hearing, but there was reference to an auditory processing disorder. Kimberlin found this to be indicative of an auditory decoding, sound discrimination, and phonetic awareness deficit of the kind frequently present in dyslexic children. Kimberlin testified that Respondent District should have provided A.K. an "immediate referral to a speech and language pathologist" after his November 2020 evaluation by the District and that his observed issues "should have been investigated." The referral was necessary because educational testing is not as comprehensive as a speech-language evaluation completed by a speech-language pathologist. Kimberlin made a point of noting that the evaluations A.K. received in 2020 were not speech and language evaluations, and that A.K. was not recommended for a speech and language evaluation at that time despite multiple indicators that a speech and language evaluation was needed. Dr. Kimberlin further noted that A.K.'s language skills were not reevaluated until November 2021 at the recommendation of an audiologist. Kimberlin testified it was a "red flag" to her that there was no discussion in the District's evaluations of whether the gap between A.K.'s expressive and receptive language was clinically meaningful. Kimberlin testified that she had "a lot of questions" about the District's evaluation of A.K.; specifically, why speech and language therapy was not recommended.

Dr. Kimberlin opined that A.K. was struggling at a higher level of phonological processing and that if the issue was not addressed, he would continue to struggle in school. Kimberlin testified it was "worrisome" that Respondent District stopped providing speech-language services in 2017, and A.K. was still having identified language issues that should have been referred for a speech-language evaluation but weren't in 2020. Kimberlin testified that A.K. should have been receiving speech and language to address weaknesses identified both in her testing and in the evaluations performed by the District. Kimberlin testified that the District did not address weaknesses identified in their own 2020 educational evaluation of A.K. Kimberlin testified that A.K.'s profile is consistent

with dyslexia with comorbid oral language weaknesses and problems with memory, spelling, fluency, and overall comprehension. Dr. Kimberlin further testified that A.K. in-district was not making meaningful gains in reading, based on her assessment. Kimberlin also noted little to no meaningful progress on two (2) assessments in reading. Dr. Kimberlin testified that she recommended speech and language because they corroborated with weaknesses she observed in other testing by the District. Dr. Kimberlin could not explain why speech and language was not provided by the District. Kimberlin testified that the District's program was not appropriate for A.K., noting that the May 2022 IEP contained writing goals but no speech and language goals, and further, that the goals and objectives were not as descriptive as they could have been. Kimberlin noted that the phonetic awareness goals contained no real description of what skills were being measured. Finally, the District's IEP called for A.K. to move back and forth between a general education class and special services. The gap in skills between A.K. and the other students in the mainstream classroom has had a negative effect on his self-esteem. That gap is not closing, leading to continued frustration for A.K.

Caplan noted that A.K.'s 2021–2022 IEP failed to provide A.K. with special education services for science and social studies. According to her, A.K. needs those because he could not read or write, and third grade is a year of change where all subjects require much more reading and writing. Caplan's review of the May 2022 IEP concerned her because it failed to identify instructional levels, and she opined that the instructional levels A.K. had achieved should have been included. Further, she did not believe A.K.'s score of 8 to 16 on the DRA was meaningful progress. Caplan further opined that the DRA does not test phonetics, and although the District spent most of its time on decoding and phonological awareness, over two years, their assessments never marked those efforts as successful. According to Caplan, the current IEP is incomplete.

I **FIND** that A.K.'s disability impacted, and will continue to impact, his ability to make progress across all academic subjects. I **FIND** that A.K., a student of average intellectual ability as measured by the District, did not make meaningful progress in the 2021–2022 school year and that the May 5, 2022, IEP did not provide special education services for speech and language, making meaningful progress less likely.

Request for Student Records

Petitioners requested relief in the form of all student records. I **FIND** no evidence that additional records remain, and therefore, there is no basis for an order compelling the District to provide further student records.

Compensatory Education

Petitioners requested relief in the form of compensatory education but did not specify which compensatory measures are needed to address A.K.'s educational deficits, notwithstanding the request for an out-of-district placement.

LEGAL ANALYSIS AND CONCLUSIONS

As a recipient of federal funds under the IDEA, the State of New Jersey must have policies and procedures that assure all children with disabilities the right to a free appropriate public education (FAPE). 20 U.S.C. §1412. State regulations track this requirement that a local school district must provide FAPE, as that standard is set under the IDEA. N.J.A.C. 6A:14-1.1. A free, appropriate special education and related services must be provided to all students with disabilities from age three through twenty-one: a.) at public expense, under public supervision and direction, and without charge; b.) to the standards of the State educational agency; c.) include an appropriate preschool, elementary, or secondary school education in the State involved; and d.) in conformity with the IEP required under 20 U.S.C. §1414(d). 20 U.S.C. §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).

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, (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 SE 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.

Parents who are dissatisfied with an IEP may seek an administrative due-process hearing. 20 U.S.C. §1415(f). The school district bears "the burden of proving the appropriateness of the IEP it has proposed . . . [b]ut that does not mean that the school district also bears the burden of proving the inappropriateness of any alternative IEP that a student's parents might suggest." Carlisle Area Sch. v. Scott P. by and Through Bess P., 62 F.3d 520, 533 (3d Cir. 1995); N.J.S.A. 18A:46-1.1.

The IDEA does not require the Board to provide A.K. with the best possible education S.H. v. State Operated Sch. Dist. of Newark, 336 F.3d 260, 271 (3d Cir. 2003), but it must provide personalized instruction with sufficient support services to permit A.K. to benefit educationally from instruction. Hendrick Hudson Cent. Sch. Dist. Bd. of Educ. v. Rowley, 458 U.S. 176, 203, (1982). Noting that Rowley involved a student who, though disabled, was fully integrated in a GE classroom, the United States Supreme Court explained that while "a child's IEP need not aim for grade-level advancement if that is not a reasonable prospect[,] . . . [the IEP] must be appropriately ambitious in light of his circumstances[.]" Endrew F. v. Douglas Cnty. Sch. Dist. RE-1, 580 U.S. 386, 387–88 (2017). The Third Circuit found the directions of the Supreme Court in Endrew to treat "a child's intellectual abilities and potential as among the most important circumstances to consider" to be consistent with its standard that an "IEP must provide significant learning and confer meaningful benefit." Dunn v. Dowlingtown Area Sch. Dist., 904 F.3d 248, 254 (3d Cir. 2018). "IEPs must be reasonable, not ideal [and] slow progress does not prove" the deficiency of an IEP. Id. at 255.

Toward this end, an IEP must contain "detailed measurable annual academic and functional goals" related to the Core Curriculum Content Standards of the GE curriculum so both parents and educational personnel can be apprised of "the expected level of

achievement attendant to each goal.” N.J.A.C. 6A:14-3.7(e)(2). These annual academic and functional goals must also include benchmarks or short-term objectives to help the student both participate and progress in the GE curriculum, as well as meet the student's other educational needs that result from his or her disability. N.J.A.C. 6A:14-3.7(e)(3). “Without an adequately drafted IEP, it would be difficult, if not impossible, to measure a child’s progress, a measurement that is necessary to determine changes to be made in the next IEP.” Lascari v. Bd. of Educ., 116 N.J. 30, 48–49 (1989) (IEP was inappropriate and incapable of review where the goals and objectives were vague, the measure of progress was equally unclear, it lacked objective analysis, and remarks were subjectively based).

These individualized goals and objectives are not intended to be broad, aspirational statements, but are meant to be achieved within one year, and objectives should be accomplished in an even shorter period of time. 20 U.S.C. §1414(d)(1)(A)(ii)(I). The purpose of including individualized goals and objectives in an IEP is to enable parents, students, and educators to monitor progress during the year and, if appropriate, to revise the IEP consistent with the student’s instructional needs. 34 C.F.R. Appendix A to Part 300 (2023). See Egg Harbor Twp. Bd. of Educ. v. S.O., 19 IDELR 15, 17 (D.C. N.J. 1992). The determination of whether a child has benefitted from an educational program is based upon the child’s progress towards goals and objectives. See Taylor v. Honig, 910 F.2d 627, 629 (9th Cir. 1990).

Here, it is the lack of progress A.K. made in prior years and the failure of the District to recognize that changes were needed to address his specific learning deficits as described above which render the May 5, 2022, IEP inappropriate.

The IDEA also requires states to educate disabled children in the LRE to the maximum extent appropriate, with children without disabilities. See 20 U.S.C. §1412(a)(5)(A). Thus, removal of children with disabilities from the GE environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. Ibid. “This provision sets forth a ‘strong congressional preference’ for

integrating children with disabilities in regular classrooms.” Oberti v. Bd. of Educ. of Clementon Sch. Dist., 995 F.2d 1204, 1214 (3d Cir. 1993) (citations omitted).

Finally, the United States Supreme Court warned in Rowley that courts must be careful to avoid imposing their own preferred view of educational methods upon the States. Rowley, 458 U.S. at 207. In particular, the Supreme Court noted that the Act left the primary responsibility for formulating the educational program—and for choosing the most suitable educational method—to the CST. Ibid. “In the face of such a clear statutory directive,” the Court stated, “it seems highly unlikely that Congress intended courts to overturn a State’s choice of appropriate educational theories[.]” Id. at 207–08. Therefore, once a court determines the requirements of the Act have been met, questions of methodology are for resolution by the states. Id. at 208; see also W.R. v. Union Beach Bd. of Educ., 414 Fed. Appx. 499, 501 (3d Cir. 2011) (evidence of frequent communication between parents and district satisfied the requirements of the IDEA, notwithstanding that the district employed a methodology in educating the student with which the parents disagreed).

In Endrew F., the Supreme Court explained that it had declined to establish any one test in Rowley for determining the adequacy of the educational benefits conferred upon all children covered by the Act, as the statute and the decision point to a general approach: “To meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” 580 U.S. at 399. Toward this end, the IEP must be “appropriately ambitious” in light of those circumstances. Id. at 402. The Court continued that a student offered an educational program providing merely more than de minimis progress from year to year could hardly be said to have been offered an education at all, and that it would be tantamount to sitting idly until they were old enough to drop out. Id. at 403. The Act demands more, the Court asserted. “It requires an educational program reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” Ibid.

Thus, in writing that the IEP must be “appropriately ambitious in light of the child’s circumstances,” the Court sanctioned what has already been the standard in New Jersey:

The IEP must be reasonably calculated to provide significant learning and meaningful benefit in light of a student's individual needs and potential.

With that background, we turn to petitioners' specific claims.

Student Records Held by Respondent

Petitioners seek all educational records of A.K. No evidence that additional records were missing or even exist was presented, and I therefore **CONCLUDE** that there is no basis for an order compelling the District to provide additional student records.

Change in Disability Classification

Petitioners requested relief in the form of a change in A.K.'s classification from SLD to "multiply disabled," based upon Dr. Merchant's diagnoses of auditory processing disorder and dyslexia. A.K.'s special education needs could be classified and addressed as symptoms of the same, rather than multiple conditions each posing their own need for appropriate accommodation and services. The credible evidence demonstrated that change in classification to multiply disabled simply because of the diagnoses of auditory processing disorder and dyslexia would be inappropriate because those conditions manifest as a SLD, which the District program attempted to address.

The regulations implementing the IDEA define a "specific learning disability" as follows:

[A] disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.

[34 C.F.R. § 300.8(c)(10)(i) (2023) (emphasis added).]

“Multiple Disabilities” means:

[C]oncomitant impairments (such as an intellectual disability-blindness or an intellectual disability-orthopedic impairment), the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments. Multiple disabilities does not include deaf-blindness.

[34 C.F.R. § 300.8(c)(7) (2023).]

The regulations adopted by the New Jersey DOE to implement the IDEA provides a more expansive definition:

“Multiple disabilities” means the presence of two or more disabling conditions, the combination of which causes such severe educational needs that they cannot be accommodated in a program designed solely to address one of the impairments. Multiple disabilities include intellectual disability-blindness and intellectual disability-orthopedic impairment. The existence of two disabling conditions alone shall not serve as a basis for a classification of multiple disabilities. Eligibility for speech-language services as defined in this section shall not be one of the disabling conditions for classification based on the definition of “multiple disabilities.” Multiple disabilities do not include deaf-blindness.

[N.J.A.C. 6A:14-3.5(c)(6).]

While petitioners rightly claim that the District failed to craft a special education program for A.K. that adequately addressed the conditions which respondent did identify, such failure was not a function of misclassification. Further, there was no evidence presented that A.K.’s disabling conditions could not be addressed in the same program. See K.G. on behalf of V.G. v. Jefferson Twp. Bd. of Educ., OAL Dkt. No. EDS 05214-04, 2004 N.J. LEXIS AGEN 666, *37 (August 30, 2004) (District’s placement of Down’s Syndrome student in multiply disabled class for second grade, with mainstreaming where appropriate, upheld as FAPE); cf., Washington Twp. Bd. of Educ. v. M.M. on behalf of J.M., OAL Dkt. No. EDS 00929-04, 2004 N.J. AGEN LEXIS, 635, *4 (August 16, 2004) (classification of emotionally disturbed child with specific learning disability changed to multiply disabled when his in-school behaviors began to interfere with his education).

Both of petitioners' experts were critical of the District's program because it did not include special education services for speech and language, not because A.K.'s conditions required accommodations that the District failed to provide. I **CONCLUDE** that A.K. was appropriately classified as eligible for special education and related services under the category of specific learning disability.

An IEP Placing A.K. Out-of-District

Since I found that the May 5, 2022, IEP was not reasonably calculated to provide A.K. with significant learning and meaningful educational benefit in light of his individual needs and potential despite being offered in the least-restrictive environment, I **CONCLUDE** that respondent did not offer A.K. a FAPE under the IDEA and interpretive case law for the 2022–2023 school year.

As of the 2022–2023 school year, petitioners placed A.K. at Cambridge, where he is currently enrolled. In accordance with N.J.A.C. 6A:14-2.10, parents may receive reimbursement for a unilateral placement as follows:

(b) If the parents of a student with a disability who previously received special education and related services from the district of residence enroll the student in a nonpublic school, an early childhood program, or approved private school for students with disabilities without the consent of, or referral by, the district board of education, an administrative law judge may require the district board of education to reimburse the parents for the cost of enrollment if the administrative law judge finds that the district board of education had not made a free, appropriate public education available to the student in a timely manner prior to enrollment and that the private placement is appropriate.

The New Jersey regulation mirrors well-established Federal Law. Parents who unilaterally withdraw their child from public school and place him in a private school without consent from the school district “do so at their own financial risk.” Sch. Comm. of Burlington v. Mass. Dep’t of Educ., 471 U.S. 359, 374 (1985); see also N.J.A.C. 6A:14-2.10(b)(1). However, once a court holds that the public placement violated the IDEA, as

I conclude here, the IDEA authorizes “grant [of] such relief as the court determines is appropriate.” 20 U.S.C. § 1415(i)(2)(C)(iii).

Parents who are compelled to unilaterally place their child in the face of a denial of FAPE need not select a school that meets state standards. Florence Cnty. Sch. Dist. Four v. Carter, 510 U.S. 7 (1993); L.M. ex rel. H.M. v. Evesham Twp. Bd. of Educ., 256 F. Supp. 2d 290 (D.N.J. 2003). The Third Circuit has held that “parents [are] entitled to reimbursement even [when a] school lack[s] state approval because the [FAPE] state standards requirement . . . applies only to placements made by a public authority.” Id. at 297 (citing T.R. v. Kingwood Twp. Bd. of Educ., 205 F.3d 572, 581 (3d Cir. 2000)); see also Warren G. v. Cumberland Cnty. Sch. Dist., 190 F.3d 80, 83 (3d Cir. 1999). Accordingly, our courts recognize that parents who unilaterally place their child by necessity do so without the expertise and input of school professionals that is contemplated by a truly collaborative IEP process. The courts recognize that under these circumstances, parents essentially do the best they can, holding that, “when a public school system has defaulted on its obligations under the [IDEA], a private school placement is ‘proper under the Act’ (IDEA) if the education provided by the private school is ‘reasonably calculated to enable the child to receive educational benefits.’” Florence, 510 U.S. at 11 (quoting Rowley, 458 U.S. at 207).

Under this standard, I **CONCLUDE** that the placement of A.K. at Cambridge was appropriate in that the program offered to A.K. was reasonably calculated to permit A.K. to make meaningful progress.

Kimberlin testified that A.K.’s program at Cambridge was more appropriate than the in-district programs because Cambridge integrated the specialized language instruction that A.K. required into his regular class and school schedule rather than pulling him out of class. While Kimberlin testified that as a result of Cambridge’s program, A.K. is making meaningful academic progress, she admitted that his progress in several areas is still low.

Both Caplan and Dr. Kimberlin stated that Cambridge is the appropriate placement for A.K., as it specializes in teaching children with disabilities such as dyslexia and offers speech and language services that should have been provided by the District.

Pursuant to N.J.A.C. 6A:14-2.10(c)(4), reimbursement for a unilateral placement can be reduced or denied upon a finding “of unreasonableness with respect to actions taken by the parents.” Here, the District does not allege, and the record does not support, a finding that the parents were unreasonable. Petitioners rejected the May 5, 2022, IEP and provided the requisite written notice to respondent of their intention to place A.K. at Cambridge. Further, there was no evidence that the selection of Cambridge was unreasonable based on tuition, geographic location, or anticipated transportation costs.

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

Finally, petitioners request an award of compensatory education for the statutory period in which respondent failed in its child find and FAPE obligations to A.K.

Compensatory education is a judicially created remedy that may be awarded to account for the period in which a disabled student was deprived of their right to FAPE. Burlington, 471 U.S. at 369 (1985) (finding that tuition reimbursement was an appropriate remedy under the Education of the Handicapped Act, predecessor to the IDEA); Coleman v. Pottstown Sch. Dist., 983 F. Supp. 2d 543, 566 (3d Cir. 2013).

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

Here, while petitioners alleged that A.K. was misclassified and such resulted in violation of the District's child find obligation, I concluded otherwise. Further, the finding that the May 5, 2022, IEP did not provide FAPE was prospective based on the failure of A.K. to make measurable gains the prior year, the subsequent reduction of services, and the failure to implement recent recommendations for speech and language services. Accordingly, I **CONCLUDE** that petitioners' claim for compensatory education is denied.

ORDER

It is hereby **ORDERED** that the due process petition of W.K. and A.K. on behalf of A.K. is **GRANTED** in part as follows: The District shall place A.K. at the Cambridge School and provide him with transportation, at the expense of the District, and shall reimburse petitioners for the cost of attendance at Cambridge School, including reasonable and verifiable transportation costs, retroactive to his enrollment.

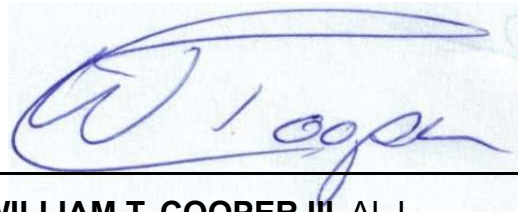
It is further **ORDERED** that petitioners' due process petition is **DENIED** in part as follows: The request to reclassify A.K. as multiply disabled is **DENIED**; the request for student records is **DENIED**; the request for compensatory education is **DENIED**; the request for reimbursement for private evaluations and other out-of-pocket expenses is **DENIED**; and the request for counsel fees and costs is **DENIED**.

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

This decision is final pursuant to 20 U.S.C. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2023) and is appealable by filing a complaint and bringing a civil action either in the Law Division of the Superior Court of New Jersey or in a district court of the United States. 20 U.S.C. § 1415(i)(2); 34 C.F.R. § 300.516 (2023). If the parent or adult student feels that this decision is not being fully implemented with respect to program or services, this concern should be communicated in writing to the Director, Office of Special Education Programs.

July 23, 2024

DATE



WILLIAM T. COOPER III, ALJ

Date Received at Agency:

July 23, 2024

Date Mailed to Parties:

July 23, 2024

WTC/am

APPENDIX

WITNESSES

For petitioners

Dr. Karen Kimberlin
Susan Caplan
A.K.

For respondent

Paulette DiNardo
Catherine Culp
Antoinette Tighe

JOINT EXHIBITS

P-14	3 rd Grade Portfolio Assessment Binder	2021-2022	3846-3967
	12/11/2023		
P-15	3 rd Grade Reading & Language Arts	2021-2022	3968-4153
	12/11/2023		
	Take Home Binder		
P-16	3 rd Grade In-Class Orton Binder	2021-2022	4154-4309
	12/11/2023		
P-17	3 rd Grade Handwriting Binder	2021-2022	4310-4381
	12/11/2023		
P-18	3 rd Grade Framing Your Thoughts	2021-2022	4382-4524
	12/11/2023 Binder		

P-19	3 rd Grade Learning Cursive Handwriting Instruction for the Right-Handed Binder	2021-2022	4525-4669	12/11/2023
P-78	Email Thread – Paulette DiNardo 12/18/2023 Harrison	06/22/2022	5232-5258	Re: IEP with Attachment Emailed Consent
P-79	Email Thread – Paulette DiNardo Re: IEP & Parental Concerns	06/29/2022	5259-5261	12/18/2023 Harrison Emailed Consent
P-89	Request to Amend IEP Without 12/18/2023 Harrison	Meeting	05/05/2022	5682-5684 Emailed Consent
P-89	Email Thread – Antoniette Tighe Harrison	05/17/2022	5691-5692	12/18/2023 Re: State Testing & Accommodations Emailed Consent
P-96	Misc. Emails with Paulette DiNardo 12/04/2023	2022-2023	5804-5861	
P-98	Email Thread 9/27-10/05/21 Antoinette Tighe & Beth Hoffman Re: Evaluations	5871-5875		12/18/2023 Harrison Emailed Consent
P-99	Misc. Emails with Catherine Kulp	2021-2022	5882-5915	12/04/2023
P-148	Cambridge School – Beginning of Sept. 2022 Year (“BOY”) Writing Samples With Rubric	7239-7244		03/19/2024
P-150	Cambridge School – WADE 03/19/2024 Baseline Assessment	Sept. 2022	7266-7269	
P-152	Cambridge School – Beginning of Sept. 2022	7282-7289		03/19/2024

Year (“BOY”) WIST

P-154 Cambridge School – Speech & 03/19/2024 Language Progress Report	03/03/2023 7293-7296 By: Kristen Lane, MA, CCC-SLP
P-158 Cambridge School – End of Year 2022-2023 (“EOY”) Testing Report	7308-7310 03/19/2024
P-159 Cambridge School – End of Year 2022-2023 (“EOY”) WADE Total Score Report	7311 03/19/2024
P-160 Cambridge School – End of Year 2022-2023 (“EOY”) Writing Sample with Rubric	7312-7316 03/19/2024
P-163 Cambridge School – Read Naturally 03/19/2024 Live Benchmark	2022-2023 7330
P-168 Cambridge School – Beginning of 03/19/2024 Year (“BOY”) Writing Sample	Sept. 2023 7349-7352
P-172 Cambridge School – Bios/Credentials Ellen Gonzales, MS,CCC-SLP, Head of School	7415-7420 03/19/2024
P-173 New Jersey Dyslexia Handbook	7592-7644 01/25/2024
P-184 Independent Language & 01/25/2024 Literacy Evaluation By Dr. Karen Kimberlin	01/10/2023 7771-7815
P-185 Independent Language &	11/13/2023 7813-7847 01/25/2024

Literacy Re-Evaluation

By: Dr. Karen Kimberlin

P-186 Curriculum vitae of Dr. Karen Kimberlin	7848-8048	01/25/2024
P-191 Educational Evaluation By: Susan Caplan	06/30/2022 8068-8080	12/18/2023
P-192 Educational Reevaluation By: Susan Caplan	04/28/2023 8081-8100	12/18/2023
P-193 Observation Report By: Susan Caplan	11/04/2022 8101-8105	12/18/2023
P-194 Observation Report at Cambridge By: Susan Caplan	11/08/2023 8106-8108	12/18/2023
P-195 Curriculum vitae of Susan Caplan	8109-8112	12/18/2023
P-207 Kauffman Score Comparison Chart 12/18/2023 By: Susan Caplan	06/30/22 & 8593-8594 04/28/2023	
P-235 Cambridge School – 2 nd Marking Period Progress Report	2023-2024 8810-8824	03/19/2024
P-238 Cambridge School – WADE Dec. 2023 Examiners Recording Form Level AB	8830-8843	03/19/2024
P-239 Cambridge School – WIST Dec. 2023 Elementary Examiner Record Booklet	8844-8853	03/19/2024
P-240 Cambridge School – WIST Progress	2022-2023 8854	03/19/2024

P-241	Cambridge School – WADE Progress	2022-2023	8855	03/19/2024
R-5	IEP	07/16/2015	140-158	12/04/2023
R-6	IEP	06/07/2016	159-171	12/04/2023
R-7	IEP	04/17/2017	172-183	12/04/2023
R-8	IEP	04/16/2018	184-200	12/04/2023
R-9	IEP	05/13/2019	201-217	12/04/2023
R-10	Progress Report for IEP	2018-2019	218-225	12/04/2023
R-11	IEP	04/15/2020	226-244	12/04/2023
R-12	Progress Report for IEP	2019-2020	245-249	12/04/2023
R-13	Progress Report for IEP	August 2020	250-251	12/04/2023
R-14	District Psychological Evaluation By: Antoinette Tighe, M.A,	10/13/2020	252-258	12/04/2023
R-15	District Educational Evaluation By: Andrea McMenamin, M.Ed.	10/23/2020	259-277	12/04/2023
R-16	IEP	11/13/2020	278-298	12/04/2023
R-17	IEP	05/10/2021	299-319	12/04/2023
R-18	District Speech Evaluation	11/03/2021	320-330	12/04/2023

By: Elizabeth Babice, MS,CCC-SLP

R-19	Progress Report for IEP	2020-2021	331-337	12/04/2023
R-20	Progress Report for IEP	August 2021	338-340	12/04/2023
R-21	District Audiologic & CAP Report	08/26/2021	341-356	12/04/2023
	By: Donna Merchant, Au.D.			
R-22	IEP	11/29/2021	357-382	12/04/2023
R-23	Email Chain Regarding Reading Progress – Catherine Kulp	02/11/2022	383-385	12/04/2023
R-24	Draft IEP	05/05/2022	386-412	12/04/2023
R-25	IEP	05/05/2022	413-439	12/04/2023
R-26	Email to Petitioners Regarding	05/05/2023	440-441	
	12/04/2024 Private Psychiatric Evaluation			
R-27	Email from Petitioners Rejecting	05/20/2022	442-443	12/04/2023
	05/05/2022 IEP			
R-28	Email from P. Dinardo Responding	05/22/2022	444-445	
	12/04/2023 to Petitioners 05/20/2022 Email			
R-29	Email Chain Regarding Susan Caplan	06/10/2022	446-447	
	12/11/2023 -Page 192 of Observation	Transcript Says Previously Admitted		
R-30	Email Chain Regarding Petitioners	06/22/2022	448-475	
	12/04/2023 Rejection of ESY & IEP			

R-31	Progress Report for IEP	2021-2022	476-488	12/04/2023
R-51	CV & Certification of Elizabeth Babice, CCC-SLP	1271-1273		12/04/2023
R-52	CV & Certification of Elizabeth Deamer, CCC-SLP	1274-1279		12/04/2023
R-55	CV & Certification of Catherine Kulp, Spec. Ed. Teacher	1292-1303		12/11/2023
R-58	CV & Certification of Paulette DiNardo, Director			12/04/2023