

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

**FINAL DECISION**

OAL DKT. NO. EDS 18093-17

AGENCY DKT. NO. 2018 27135

**W.C. AND L.C. ON BEHALF OF D.C.,**

Petitioners,

v.

**KINNELON BOARD OF EDUCATION,**

Respondent.

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**Lori M. Gaines**, Esq., for petitioners (Barger & Gaines, attorneys)

**Robert J. Merryman**, Esq., for respondent (Apruzzese, McDermott, Mastro & Murphy, attorneys)

Record Closed: November 18, 2019

Decided: December 20, 2019

BEFORE **KELLY J. KIRK**, ALJ

**STATEMENT OF THE CASE**

Petitioners, W.C. (Dad) and L.C. (Mom) (collectively, the parents) on behalf of D.C., filed a Petition for Due Process against the Kinnelon Board of Education (the Board or District), alleging that the District's proposed in-District program for D.C. was not appropriate, and that an out-of-district placement at Banyan Elementary School in Fairfield, New Jersey, was appropriate.

## **PROCEDURAL HISTORY**

On or about October 30, 2017, the parents filed a Petition for Due Process against the Board seeking a determination that the District denied D.C. a free appropriate public education (FAPE) in the 2015–2016, 2016–2017, and 2017–2018 school years, compensatory education, reimbursement for the cost of D.C.’s private reading tutor for the 2015–2016 school year, continued unilateral placement at Banyan Elementary School (Banyan), and reimbursement for all costs for Banyan, including transportation, retroactive to September 7, 2016. The matter was transmitted by the New Jersey Department of Education (the Department), Office of Special Education Policy and Procedure, to the Office of Administrative Law (OAL), where it was filed on December 11, 2017.

Hearing dates were scheduled for May 2, 2018, July 23, 2018, and August 29, 2019. Said hearing dates were adjourned at the request of the petitioners due to their prior attorney’s appointment to a position with the Department and new attorney’s scheduling conflicts. The hearing was rescheduled for January 9, 2019, January 11, 2019, January 15, 2019, April 29, 2019, and May 1, 2019. Petitioners filed an Amended Petition for Due Process on December 21, 2018 (Amended Petition). Respondent filed a response to the amended petition on May 29, 2019. The Amended Petition seeks a determination that the District denied D.C. a FAPE in the 2015–2016, 2016–2017, 2017–2018, and 2018–2019 school years, compensatory education, reimbursement for the cost of D.C.’s private reading tutor for the 2015–2016 school year, continued unilateral placement at Banyan Elementary School (Banyan), reimbursement for all costs for Banyan, including transportation, retroactive to September 7, 2016, and reimbursement of the cost of petitioners’ experts.

On January 2, 2019, the January 15, 2019 hearing date was adjourned and rescheduled for January 22, 2019, and the February 6, 2019 hearing date was added. The hearing was held on January 9, 2019, January 11, 2019, January 22, 2019, February 6, 2019, April 29, 2019, May 15, 2019, May 17, 2019, July 22, 2019, and November 18, 2019.

## **FACTUAL DISCUSSION**

### **Findings of Fact**

Jaime Gabriele (case manager (grades pre-K–2)/learning disabilities teacher-consultant), Maegann Struble (occupational therapist), Carrie Bott (physical therapist), Katherine Pawlikowski (speech therapist), Christine Seminerio (case manager (grades 3–4)/learning disabilities teacher-consultant, Stacy Kleinert (school psychologist), Dena Dilenno (special education teacher), Jennifer Varadi (special education teacher), and Lori Foster (school psychologist) testified on behalf of respondent. Veronica Hinton, Ph.D. (neuropsychologist), L.C. (Mom), Jeanne Tighe (speech-language pathologist), Joanne Seelaus, Ed.D. (educational consultant), and Jennifer Sansone (teacher K–5/students with disabilities) testified on behalf of petitioners.

Having had an opportunity to consider the evidence and to observe the witnesses and make credibility determinations based on the witnesses' testimony, I **FIND** the following **FACTS** in this case:

D.C. was born on October 13, 2007. D.C. did not receive any New Jersey Early Intervention System (NJEIS) services. His parents did not have concerns about his development as a toddler, but they began noticing some difficulties and struggles when he was in preschool. D.C.'s preschool teachers shared the parents' concerns and recommended that the parents contact the District.

The parents contacted Richard Maizell, Psy.D., the District's director of special services. An initial Child Study Team (CST) meeting was held on August 2, 2012, and the CST proposed educational, psychological, social, speech, and occupational-therapy evaluations. The parents signed the consent for the evaluations on August 2, 2012. (J-1.)

A speech and language evaluation was conducted on September 11, 2012, and September 20, 2012, by speech-language pathologist Beverly Miller. Miller prepared a Speech and Language Evaluation dated September 20, 2012 (2012 Speech-Language

Report). (J-2.) An occupational-therapy evaluation was conducted by occupational therapist Maegann Struble. Struble prepared an Occupational Therapy Evaluation dated September 20, 2012 (2012 OT Report). (J-3.) A school-social-work evaluation was conducted by school social worker Susan Frantz. Frantz prepared a School Social Work Report (2012 Social Work Report) dated September 21, 2012, and signed October 9, 2012. (P-4.) A psychoeducational evaluation was conducted on September 24, 2012, and September 28, 2012, by learning disabilities teacher-consultant (LDT-C) Jaime Gabriele and school psychologist Stacy Kleinert. Gabriele and Kleinert prepared a Psychoeducational Evaluation dated October 10, 2012 (2012 Psychoeducational Report).

On November 12, 2012, an initial individualized education program (IEP) meeting was held, attended by the parents, Ofeer Kearns (special education teacher), Jaime Gabriele (CST member/case manager), Stacy Kleinert (school psychologist), and Beverly Miller (speech-language pathologist). (J-6.) The initial 2012–2013 IEP (Preschool IEP) reflects that D.C. was determined eligible for special education and related services under the disability category “preschool child with a disability,” as he was experiencing a developmental delay in communication. (J-7.) D.C. was determined to require a “highly language-based program with a low pupil-to-teacher ratio and immediate feedback,” with the following modifications: low pupil-to-teacher ratio, language-based classroom environment, immediate feedback, and consistent classroom structure and routine. (J-7.) D.C.’s program for the 2012–2013 school year was the District’s preschool inclusion class (Mondays, Wednesdays, and Thursdays<sup>1</sup>) for two and one-half hours per day, with small group speech/language twice per week for thirty minutes in the speech room, in-class speech/language once per week for thirty minutes, and small-group occupational therapy once per week for thirty minutes in the OT/PT room. (J-6.) His Preschool IEP included an extended-school-year (ESY) program. (J-7.) The Preschool IEP reflects that a full continuum of services, including modified goals and objectives, in-class support, and alternative strategies were considered, but were found to be insufficient to address D.C.’s needs in a general-education environment, and that due to D.C.’s communication delays, he required a small, structured, highly language-based environment. (J-7.)

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<sup>1</sup> The program was five days per week, but the parents wanted him to attend three days per week so that he could remain in his current preschool setting for part of the week. (J-6.)

By CST referral, a pediatric neurodevelopmental consultation and evaluation was conducted by Pahirathi Haran, M.D., on May 21, 2013. (J-8.) Dr. Haran prepared a Pediatric Neurodevelopment Consultation & Evaluation dated May 21, 2013 (Haran Neurodevelopmental Report). (J-8.)

An IEP meeting was held on June 17, 2013, attended by the same individuals as the initial IEP meeting, plus Maegann Struble (occupational therapist). (J-9.) Based upon D.C.'s evaluations, structured assessments, and CST observations, D.C. was determined eligible for special education and related services under the disability category "communication impaired," as he was affected by a language disorder. (J-10.) D.C.'s program for the 2013–2014 (kindergarten) school year was pull-out support for academic-readiness skills daily for forty minutes in the special-education classroom, with small-group speech/language three times per week for thirty minutes in the speech room, and small-group occupational therapy once per week for thirty minutes in the OT/PT room. (J-10.) His kindergarten IEP also included an ESY program. (J-10.)

In July 2013, a physical-therapy evaluation was conducted by physical therapist Carrie Bott, DPT. Carrie Bott prepared a physical-therapy evaluation report, dated July 2013 (2013 PT Report). (J-12.) By addendum dated July 8, 2013, small-group physical therapy once per week for thirty minutes was added to D.C.'s program. (J-11.)

Jaime Gabriele is a certified teacher and she has been employed by the District as an LDT-C for eleven years. She was D.C.'s case manager from preschool through second grade. On September 11, 2013, Jaime Gabriele emailed Cassi Perinotti (special-education teacher), in pertinent part, as follows:

I just spoke with Richard [Maizell] and he suggested using Wilson with [D.C.]. Can you let me know what you think about that as soon as possible. I also have the info for foundations [sic] materials if we need it.

[P-1.]

That afternoon, Perinotti responded to Gabriele as follows:

I have looked at the foundations teacher's manual that I received from Noreen and it begins with digraphs, it is the level 2 book. After informal assessments I have concluded that [D.C.] does not really know his sounds and should begin with . . . 1, if that is available. In regards to using Wilson, it might be a good idea since it begins with simple sounds. Please let me know what you think. I am really open to any suggestions.

[P-1.]

Thereafter Gabriele emailed Jennifer Straub, Donna Bednarz, and Becky Sido to ask if anybody had a "book 1" she could use or copy. Jennifer Straub had a "Foundations teachers manual k-1" and "the fluency kit and home support packet," that she could copy, and Becky Sido "found the Home Support Pack K" and had "a copy of the Grade 1 Manual and the Fluency and Home Support Packs." (P-1.)

Notwithstanding the foregoing, the District utilized Foundations, and not Wilson, for D.C. Foundations is a Tier 1 general-education or mild-support phonics program for children in kindergarten through third grade. Just Words is a Tier 2 program for children not making adequate progress in Tier 1. Wilson is a Tier 3 program, which would be the most intensive level of support, intended for students with language-based learning disabilities.

On December 27, 2013, a pediatric neurodevelopmental evaluation was conducted by Shelly Lanzkowsky, M.D. Dr. Lanzkowsky prepared a Pediatric Neurodevelopmental Evaluation dated December 27, 2013 (Lanzkowsky Neurodevelopmental Report). (J-13.) The Lanzkowsky Neurodevelopmental Report reflects that D.C. presented with "quite significant language delay and while his overall vocabulary may be advanced, he is lagging behind in grammar concepts"; that D.C. had "fleeting attention and difficulty with auditory memory which both contribute to poor language learning"; and his "overall ability to communicate is at about the level of a three year old which will make an inclusion setting difficult for him to keep up with as more language is introduced." Mom thereafter emailed Gabriele and Maizell regarding the

evaluation and advised that Dr. Lankoswky's and Kleinert's recent evaluations "led to the conclusion that [D.C.] needs to be retested in both the cognitive tests (this WPSSI<sup>2</sup> test) and a very good speech and language test." (P-2.) She further advised that Dr. Lanzkowsky strongly recommended that receptive language skills be the primary focus of his education. (P-2). No changes were made to the IEP as a result of the Lanzkowsky Neurodevelopmental Report.

On January 30, 2014, February 11, 2014, February 18, 2014, and February 19, 2014, speech and language evaluations were conducted by speech-language pathologist Katherine Pawlikowski. Pawlikowski prepared a Speech and Language Evaluation dated February 21, 2014 (2014 Speech-Language Report). (J-14.) D.C.'s language testing revealed receptive and expressive single-word vocabulary skills in the average range, with expressive language stronger than receptive, oral language functioning in the low range, and overall language skills in the low range of functioning. His strengths were expressive and receptive one-word vocabulary, paragraph comprehension, pragmatic judgment, and sentence completion, and his weaknesses were comprehension of basic concepts, ability to follow directions, ability to formulate sentences, and knowledge of linguistic concepts.

On January 31, 2014, and February 2, 2014, a psychological evaluation was conducted by school psychologist Stacy Kleinert. Kleinert prepared a Psychological Evaluation dated February 25, 2014 (2014 Psychological Report). (J-15.) Kleinert noted that the results of the evaluation should be interpreted with caution, as many factors interfered with D.C.'s performance.

An IEP meeting was held on June 11, 2014, and attended by the parents, Stacey Poulas (general-education teacher), Cassi Perinotti (special-education teacher), Jaime Gabriele (CST member/case manager/school representative), and Katherine Pawlikowski (speech-language pathologist). (J-16.) D.C.'s program for the 2014–2015 (first-grade) school year was replacement language arts, daily for ninety minutes in the LLD classroom, and replacement math, daily for sixty minutes in the LLD classroom, with

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<sup>2</sup> WPSSI stands for Wechsler Preschool Primary Scale of Intelligence.

small-group speech/language three times per week for thirty minutes in the speech room, small-group occupational therapy once per week for thirty minutes in the OT/PT room, small-group physical therapy once per week for thirty minutes in the OT/PT room, and a shared aide daily for more than 60 percent of the school day.<sup>3</sup> (J-16.) His first-grade IEP also included an ESY program. (J-16.)

On June 16, 2014, a behavior observation was conducted by Joann Whitmore, the District's behaviorist, at the request of the parents. Whitmore prepared a Behavior Observation dated June 19, 2014 (2014 Behavior Report). (J-17.)

On October 8, 2014, Mom emailed Gabriele and advised that the parents were concerned that D.C.'s general-education teacher and special-education teacher were not aware of what was going on in each other's class and that the two most important elements of his program were not tied more closely together. (P-3.) Mom also advised that she had written a note in his PT/OT notebook asking for feedback on why he was struggling so much on forming letters within the correct boundaries after it was worked on for a full year and over the summer, and it was like he was starting from scratch. (P-3.)

On January 21, 2015, Gabriele emailed Jacqueline Remaly (special-education teacher), Amanda Browne (general education teacher), Beverly Miller, and Maegann Struble and asked them to each send something regarding D.C. "and his progress, your present concerns, etc." in preparation for a conference with Mom. On January 22, 2015, Beverly Miller, the speech-language pathologist, responded, in pertinent part, as follows:

One of the key concerns with [D.C.] continues to be inconsistency. Information, concepts, vocabulary or ideas that are presented and appear to be "learned" can be present one moment and gone the next. It is the inconsistency that is very perplexing.

More specifically he does very nicely on simple social questions such as name, age, address, etc. He continues to have difficulty staying on specific topics as he wanders in his

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<sup>3</sup> The IEP reflects the replacement language arts and replacement math under the heading SCHOOL YEAR: 2014–2015, but the dates of service for both are "6-12-14—6-20-14." It is presumed that this was a typo and that the dates should match the related services, to wit: 9-11-14—6-10-15. (J-16.)

thoughts and relating them to current conversational topics, this makes it difficult for him to relate and express specifics of experiences. He continues to work on improving his listening skills by not interrupting to respond before questions or comments have been completed. Listening and remembering are area [sic] we are focusing on in his speech and language program.

In the area of expressive language we continue to work on opposites, synonyms, rhyming, responding to verbally presented question etc. but his inconsistency in performance is a great stumbling block. What he is able to demonstrate one day often may be gone the next. We continue to work on some rote information such as understanding the concept of today, tomorrow and yesterday as well as following directions.

In the area of listening and following directions (receptive language skills) [D.C.] is able to follow simple one and two step directions but when these simple directions are combined, for example, in a game format like Simon Says, he can clearly explain the concept of the game, "you only follow the directions if you hear *Simon Says*," but when you play the game he consistently does all the directions given immediately. His sessions have focused on listening to one and two sentence stories and then responding to questions requiring listening for details and main ideas. He continues to work on developing auditory memory strategies.

[D.C.] is a wonderful student in that he is always attentive and an active participant and is trying his best.

[P-5.]

On February 24, 2015, Remaly emailed Susan West, who was meeting with D.C. on Saturday morning, in pertinent part as follows:

I would say one of the biggest struggles I have been having with [D.C.] is having [sic] with blend words (CVC words). He is able to tap the word out and say each individual letter sound, but is having a difficult time blending the sounds together. Some days he is able to do it well, but most days he says the three individual sounds and then completely different sounds come out of his mouth when he tries to put them together. I have tried a bunch of multisensory approaches to getting him to blend. He is more of an auditory learner. Has difficulty processing information visually. For

math, we have been doing a lot with counting, very basic addition, and identifying coins/values. Obviously there is much more, but that should be enough to get you started.

[P-5.]

An IEP meeting was held on June 8, 2015, and attended by the parents, Amanda Browne (general-education teacher), Jacqueline Remaly (special-education teacher), Jaime Gabriele (CST member/case manager/school representative), and Beverly Miller (speech-language pathologist). (J-19.) D.C.'s program for the 2015–2016 (second-grade) school year was replacement language arts, daily for ninety minutes in the LLD classroom, and replacement math, daily for sixty minutes in the LLD classroom, with small-group speech/language three times per week for thirty minutes in the speech room, small-group occupational therapy twice per week for thirty minutes in the OT/PT room, small-group physical therapy once per week for thirty minutes in the OT/PT room, and a shared aide daily for more than 60 percent of the school day. (J-19.) His second-grade IEP also included an ESY program. (J-19.) Accordingly, the only change from the prior year's program was that occupational therapy was increased from once per week to twice per week.

The second-grade IEP reflects the following progress-report summary for speech-language therapy in June 2015:

[D.C.] has participated in the formalized speech/language program 3 times a week in small group sessions and a pull out model for the delivery of services. His program has addressed the following specific goals: **auditory:** phonological/phonemic awareness, identifying and generate rhyming words, blending syllables and blending phonemes, auditory discrimination and sequencing; auditory memory; **language:** pragmatics, syntax, expressive skills and receptive skills.

In the area of expressive language skills he has worked on responding verbally to what, where, when, and why questions, word classes, opposites, synonyms, rhyming and temporally related words. Receptively, [D.C.] has worked on front, widest, starting, whole, above, after, other, forward, center, medium, half, separated, third and pair. He continues to have difficulty with some specific concepts such as other, second,

never, always, center, medium, skip, left, third, fewest and pair. He has been introduced to many concepts and vocabulary related to the language of mathematics. A great concern is [D.C.]’s inconsistency in performance within a session. After introduction of a concept he may demonstrate understanding for three or four trials and then begin to give unrelated responses without indication that he realizes he is no longer responding appropriately. After repeated teachings of the same concept he may demonstrate the same inconsistency. Of concern is the incidence of this occurrence on the concepts presented to date, for example rhyming, opposites, yesterday, today and tomorrow. [D.C.] attempts to use all the cues provided to him but can’t seem to hold the information, for example, if he gives you the correct day of the week, and then tries to give you the answer to “yesterday”, or “tomorrow” he will use the first letter of the word to guess the day even though he is able to recite the days of the week in order he will read Thursday as Tuesday as he seems to only cue in on the first letter “T.” An additional concern is that when he begins making errors in his responses and he is gently cued “does this sound like a rhyme?” to allow him to self-correct, he is not able to identify incongruities by listening. At some point during each session [D.C.] has demonstrated ability to produce rhymes, opposites and understanding of concepts but he is not able to use these skills in a consistent, independent manner. Some of our language work has included using a target word in a self-generated sentence. Often, [D.C.] will make up a good sentence but omits the target word he was expected to use in the sentence.

[D.C.] has been working on the computer with the following programs: Hearbuilder, Interactive “wh” Questions, Auditory Memory for Short Stories and Earobics. He is attentive and enjoys working on the tasks. He has made progress in following directions but this continues to be a weak area for him. His inconsistent performance is also apparent in computer work. He is most successful when we work on them as a group on the smart board. When [D.C.] is unsure of a response he looks to his peers to answer for him or help him with an answer.

Throughout the year [D.C.] continues to learn not to shout out responses and to take turns appropriately during listener-speaker exchanges or to introduce a topic unrelated to what we are currently engaged in. His speech is judged intelligible. He has made progress in all areas throughout this school year. [D.C.] is always an active and enthusiastic participant in all his speech sessions.

[J-19.]

The second-grade IEP reflects the following progress report summary for general education in June 2015:

[D.C.] is a thoughtful and pleasant student. He always has a smile on his face and complies with classroom and school rules. [D.C.] completes tasks with no argument, however he needs step-by-step directions. Either I or Mrs. Lewis needs to assist him with each step. When he is given multi-step directions, he forgets them, loses focus or completes a task incorrectly. I love how [D.C.] can sit through an entire read aloud, which he was unable to do in the beginning of the year. However when asked a question about the story, he almost always gives an answer unrelated to the book and needs a lot of prompting to lead him in the right direction. Although his body appears to be listening (sitting crisscross, eyes on me), he is not truly full body listening (mind following the story, ears listening).

[D.C.] is always putting others before him and is the first to welcome back, with wide open arms, a classmate who has been out sick or away on vacation. His classmates appreciate his positivity, thoughtfulness, and kind gestures this year. [D.C.] can get very excitable at moments when his peers do not. Because [D.C.]'s reactions do not always correlate appropriately with the scenario, lately, it seems that his peers are noticing.

[D.C.]'s motivation and desire to learn and be in school are inspiring! He has his daily routine down to a science. I believe that although his attitude towards school is terrific, he benefits greatly from the support of a shared aide to assist him in completing academic work successfully and offer redirection throughout the school day[.]

[J-19.]

The second-grade IEP reflects the following progress report summary for special education in June 2015:

[D.C.] comes to class each day with a smile on his face! He knows the classroom routines and completes them with no assistance. [D.C.] has a good foundation and knows all his letters and sounds they make. In class he has been working hard on sounding out and spelling CVC words (ex. cat, mop,

hut). He is inconsistent in his success in blending the sounds of each letter together. We have been using a variety of multisensory approaches (such as tapping out the sounds, using blocks) to help. Even using this approach, [D.C.] has struggled with reading words and remaining focused. In class we recently started using the Edmark reading program with [D.C.] and he has shown growth in his reading ability thanks to the program. It is recommended that he continue with this program next year. In writing, [D.C.] has shown tremendous growth. He is doing better at selecting a topic for his writing and with sequencing his writing. With prompting he is using words like first, next, and finally to transition from one page to another. He still needs reminders when drawing people that they have bodies. [D.C.] has many ideas he wants to share, but has difficulty writing the words. He is encouraged to write down the sounds he hears, but this is a struggle for him. When writing high-frequency words, he is able to use the word wall in the classroom to help him with proper spelling. In math, [D.C.] continues to work on his understanding of numbers (counting, writing numbers, reading numbers, and comparing them). He [sic] success with these skills tends to be correlated to how focused he is on any given day. [D.C.] benefits from hands-on learning involving manipulatives. He is also doing simple digit addition. [D.C.] using a chart to help him get a better visual representation of what numbers he is adding together and he is now able to use this chart independently and with accuracy! [D.C.] tends to want to rush through his work and needs reminders to slow down. In class we have been presenting problems to [D.C.] and asking him to take at least five seconds before he replies. This slows him down and gives him more time to process an answer instead of just immediately guessing. In addition to his academic progress, [D.C.] has been an amazing friend to all his classmates. He is a pleasure to have in class!

[J-19.]

The 2015–2016 IEP was mailed by the District to the parents on June 17, 2015. (J-19.) The parents signed and returned the acknowledgement-of-receipt form on July 17, 2015, but noted thereupon that they were rejecting the IEP, and included a copy of a July 17, 2015, email. (J-21.) The July 17, 2015 email from the parents to Richard Maizell, Director of Special Services, states that they were writing to notify him that they were rejecting D.C.'s IEP for the 2015–2016 school year, and that they would be gathering

additional information and be back in touch to discuss as soon as possible. On July 31, 2015, Maizell emailed Mom, with a copy to Jaime Gabriele and Ivonne Cirese, as follows:

In terms of altering the IEP now related to what we discussed that will be difficult. Staff are gone until the first week in September but that will still leave time to tweak the IEP prior to implementation. This is relatively common practice. I have shared my meeting summary and discussed same with Mrs. Gabriele and Mrs. Cirese. A number of items can be implemented without further discussion in September.

- Scheduling of an assistive technology evaluation.
- Monthly individual counseling to work with [D.C.] on understanding the Hidden Social Curriculum, as we discussed. This can be added to the IEP in September.
- Formation of a social skills group as the year progresses and children appropriate to work together are identified for participation.
- A weekly communication book and initial meeting one month into the program to assess areas of success and areas of concern.

Regarding reading, feedback from staff would indicate that Edmark is a successful program for [D.C.]. I misspoke on our Orton staff member becoming involved in September as she will be on leave for half the year. However there is another option. We have a Level 2 Wilson trained staff member in the district and I am sure it can be arranged for her to provide consultation and support to Kiel staff working with [D.C.]. First it will need to be determined as to what type of consultation is warranted. This is something to discuss with Mrs. Gabriele.

The class placement issue for reading and mathematics is also in need of further discussion with involved staff in September. The professionals here feel that [D.C.] is appropriately placed. If there are student behaviors impacting on the learning climate and [D.C.] in the classroom this will require immediate attention and intervention. However, in terms of challenging [D.C.], I am sure that the intention is to move him along as quickly as possible which will most effectively occur in as [sic] small group setting.

I know this does not resolve all outstanding issues but I am certain given your willingness to work cooperatively with the District that a consensus can be reached around all concerns. Mrs. Reed will also be available on or about the last week in August should you wish to reach out to her.

[P-6.]

On August 13, 2015, August 14, 2015, and September 3, 2015, Veronica Hinton, Ph.D., evaluated D.C. after he was referred by Dr. Wendy Vargas for a neuropsychological evaluation to assess his cognitive academic and behavioral functioning. At that time, Dr. Hinton diagnosed D.C. with “mild intellectual disability” and recommended that his IEP be revised to reflect the diagnosis of mild intellectual disability. Dr. Hinton prepared a Neuropsychological Evaluation. (J-22.) The Neuropsychological Evaluation reflects recommendations of placement in a structured classroom with a high teacher-to-student ratio; provision of a one-on-one paraprofessional; maintaining current physical, occupational and speech therapies; repetition and/or clarification and/or demonstration of directions as needed; increased structure in the classroom and a setting familiar with working with children with limited attention; frequent breaks or teacher “check ins”; daily reading interventions; implementation of a clearly defined behavior plan. With respect to the daily reading interventions, the Neuropsychological Evaluation states that “[D.C.] requires daily, intensive, one-on-one specialized reading help, such as the Wilson Program or Orton Gillingham.” (P-22.)

By letter dated September 25, 2015, the District notified the parents of a meeting scheduled for October 8, 2015, to discuss referral for special-education evaluation and, if referred, evaluation planning. (J-23.) On September 25, 2015, the District mailed the parents an IEP addendum, dated September 21, 2015, indicating that it had to be signed and returned within fifteen days of receipt or it would not go into effect. (J-24.) The September 21, 2015, IEP addendum reflects that D.C. would receive speech-language therapy twice per week for thirty minutes in the speech room and once per week for thirty minutes in the classroom. (J-24.)

On October 6, 2015, Mom emailed Gabriele the Neuropsychological Evaluation. The Neuropsychological Evaluation reflects Dr. Hinton’s summary and impression that “results from the current evaluation are of concern because of evidence of significant declines in his overall IQ and language levels since his prior assessment in early 2014,” and that D.C.’s “profile of significant difficulties with problem solving, planning, abstract

thinking and academic learning and his Full Scale IQ score of 58 are consistent with the diagnosis of MILD INTELLECTUAL DISABILITY.”

Gabriele emailed the Neuropsychological Evaluation to Stacey Kleinert, Beverly Miller, Maegann Struble, Carrie Bott, Jacqueline Remaly and Corde Reed on October 7, 2019, for them to read in advance of the October 8, 2019, meeting. Reed replied, “Wow, what a comprehensive report—Dr. Veronica is recommending 1:1 and OOD! And the parents wanted him more mainstreamed????!!!” (P-7.) On October 8, 2015, Gabriele replied, “I know—what a contradiction right?” (P-7.)

By letter dated October 8, 2015, the District requested parental agreement to conduct educational, psychological, speech, occupational-therapy, physical-therapy, and assistive-technology evaluations, as well as a functional behavior assessment (FBA). (J-25.) The parents signed and agreed to the evaluations on October 8, 2015. (J-25.)

A physical-therapy reevaluation was conducted on October 12, 2015, by Carrie Bott, who prepared a Physical Therapy Reevaluation (2015 PT Report). (J-26.) The 2015 PT Report reflects that D.C. was currently demonstrating difficulties in the areas of bilateral coordination, balance, running speed and agility, and upper-limb coordination which may impede on his gross and fine motor success within the school environment and that he may benefit from educational instruction that entails new tasks and/or skills to be broken down one step at a time and visual, verbal, and auditory demonstration of tasks prior to execution and verbal repetition of the steps to ensure success.

An occupational-therapy reevaluation was conducted by Maegann Struble, who prepared an Occupational Therapy Re-Evaluation dated October 14, 2015 (2015 OT Report). (J-27.) The 2015 OT Report reflects that D.C. was distracted by both visual and auditory stimuli, he required frequent redirection with repetition of simplified instructions, and he presented with difficulties in the area of motor planning, fine motor skills, and perceptual motor skills, which impact upon his ability to function optimally within the school environment.

A speech and language reevaluation was conducted on October 8, 2015, October 9, 2015, October 15, 2015, October 16, 2015, and October 23, 2015, by Beverly Miller, who prepared a Speech and Language Evaluation dated October 23, 2015 (2015 Speech-Language Report). (J-28.) The 2015 Speech-Language Report reflects that D.C. presented with a generally intelligible speech pattern characterized by errors in some specific consonant sound production; his expressive single-word vocabulary skills were within the moderately low to low-average range; and his overall oral-language functioning was in the very low range as measured on norm-referenced tests.

An educational evaluation was conducted by Gabriele on October 13, 2015, October 21, 2015, October 22, 2015, and October 23, 2015. Gabriele prepared an Educational Evaluation (2015 Educational Report). (J-29.) The 2015 Educational Report summarizes her evaluation, in pertinent part, as follows:

According to the results of the WJIV, [D.C.]'s overall scores of achievement, including the areas measured as part of this evaluation indicate that he is functioning within the very low range as compared to same age peers.

The Comprehensive Test of Phonological Processing, Second Edition, (CTOPP2) is a norm-referenced test that measures phonological processing abilities related to reading. The CTOPP2 is designed to assess three kinds of phonological processing that are considered to be especially relevant for mastery: phonological awareness, phonological memory, and rapid naming. Overall, [D.C.]'s composite scores measured within the very poor range, with 1 composite measuring within the poor range.

The Beery VMI is a developmental sequence of 27 geometric forms to be copied by the student with paper and pencil. It is designed to assess the extent to which individuals can integrate their visual and motor abilities. It is the belief of the author of this test that poor performance could suggest a lack of integration between visual-perceptual and/or motor coordination abilities or a deficiency in any one of those abilities. [D.C.]'s performance reveals a standard score of 58 and a percentile rank of .6, placing him in the very low range when compared to peers of his same age.

[J-29.]

On October 28, 2019 Gabriele emailed Reed in pertinent part as follows:

We were looking through the code yesterday to find an eligibility category for [D.C.], the case I was sharing with you when you stopped by Kiel the other day. The Team is looking to switch the classification from Communication Impaired to Cognitively Impaired (#3 on page 55 in the code) based upon the new full scale IQ of 58 and how that impacts him in all areas of learning . . . . When I go to do the change in his IEP the only drop downs for this are “Mild cognitive impairment” or “Moderate cognitive impairment” . . . is that correct or should the classification category just say Cognitively impaired?

[P-11.]

Reed replied that she would use “Mild.” (P-11.)

By letter dated October 28, 2015, the District notified the parents of a meeting scheduled for November 3, 2015, to discuss determination of eligibility for special education and development of an IEP. (J-30.) On October 28, 2015, the District mailed the parents the 2015 Educational Report, 2015 Speech-Language Report, 2015 OT Report, and 2015 PT Report. (J-31.)

On October 30, 2015, Gabriele dropped some reports and paperwork in the parents’ mailbox in advance of the meeting on November 3, 2019. Mom emailed Gabriele and advised that the meeting would have to be postponed because they had a wedding in Philadelphia that weekend and would not have time to review the reports before November 3, 2019. Gabriele replied that they would talk the following week about rescheduling the meeting. (P-12.)

An FBA was conducted by behaviorist Caitlin Reilly. Reilly prepared a Functional Behavior Assessment dated November 2, 2015 (2015 FBA). (J-32.)

The District held a meeting on November 3, 2015, attended by Debbie Reinhardt (general-education teacher), Jacqueline Remaly (special-education teacher), Stacy Kleinert (CST member), Jaime Gabriele (case manager), Corde Reed (school

representative), Beverly Miller (speech-language pathologist), Maegann Struble (occupational therapist), Carrie Bott (physical therapist) and Caitlin Reilly (behaviorist). (J-35.) The parents did not attend the November 3, 2015, meeting.

By letter dated November 3, 2015, the District notified the parents that based upon D.C.'s reevaluations and the eligibility meeting, D.C. was determined eligible for special education and related services under the disability category "mild cognitive impairment," stated, in part as follows:

Cognitive Impairment means a disability that is characterized by significantly below average general cognitive functioning existing concurrently with deficits in adaptive behavior; manifested during the developmental period that adversely affects a student's educational performance. Mild cognitive impairment corresponds to educable and means a level of cognitive development and adaptive behavior in home, school and community settings that are below age level with respect to: the quality and rate of learning, the use of symbols for the interpretation of information and the solution to programs; and performance on an individually administered test of intelligence that falls within the range of 2–3 standard deviations below the mean.

[J-33.]

On November 9, 2015, Gabriele emailed Mom to ask if the parents had a chance to review the reports and progress indicators in the IEP so they could move forward and schedule the IEP meeting. On November 10, 2015, Mom replied that they had not reviewed all the reports yet and advised that they were supposed to get medical results by the end of the week. Mom wanted to try to schedule the meeting for the following week. (P-16.) Gabriele replied that she had been looking at November 19, 2015, because the team and staff, including OT and PT, were available on Thursdays, and that the following Thursday was Thanksgiving, which would bring them to December 3, 2015. (P-16.) On November 13, 2015, Gabriele emailed Mom to see if she was still considering either November 19 or December 3 as possible dates for the IEP meeting. (P-17.) Mom replied that she was trying to clear her conflict so they could have the meeting on November 19. (P-17.) By letter dated November 16, 2015, the District notified the parents

of a meeting scheduled for December 3, 2015, to discuss continuation of the determination of eligibility for special education and development of an IEP. (J-34.)

On December 1, 2015, Gabriele emailed Reed regarding the assistive-technology evaluations. (P-18.) On December 3, 2015, Gabriele emailed Lisa Kelly as follows:

[. . .] suggested that I reach out to you. I was wondering if you are Orton certified or Wilson certified. If it is Orton, would you happen to have some information regarding that program and recommended IQ for success in using it? If Wilson, I guess I would have the same question.

[P-20.]

On December 4, 2015, Lisa Kelly replied that she was “level 1 and 2 certified in Wilson” and had the information Gabriele was asking for at home and would email her that weekend. (P-20.) Handwritten on a printout of the December 3, 2015/December 4, 2015, email (P-20) are notes from Gabriele, including the following:

cognitive levels?

beneficial but doesn't need to dictate the program

- (1) observe first
- (2) get cognitive levels
- (3) prove that Wilson/Orton will not internalize w/his cognitive ability
- (4) prove how Edmark (+ whatever else in (centers) is working[])]

A re-evaluation IEP meeting was held on December 3, 2015. (J-35.) The re-evaluation IEP reflects that D.C. had been referred for his triennial re-evaluation, and includes summaries of the recent evaluations. Additionally, the October 2015 general-education progress report summary reflects that the students are assigned daily jobs but D.C. requires assistance to complete the various jobs, such as turning the next number over on the calendar, charting the weather on a graph, or labeling the thermometer to show the daily temperature. The general-education progress support summary also states, in pertinent part, as follows:

His responses are not on target and heavy scaffold is needed to support [D.C.]’s ability to formulate an appropriate response to a question that has been asked or a directive to discuss. The same is noted in all academic areas in class. [D.C.] wants to participate and tries to approximate the work, but struggles to put his thoughts into words and on paper. Scaffolding supports his development in these area [sic] to help him meet with success.

[J-35.]

The October 2015 special-education progress report summary states in pertinent part, as follows:

Academically, [D.C.] had been using the Edmark reading program since the middle of last school year. This program is being used because [D.C.] does well with repetition and shorter intervals. Under the program, [D.C.] has learned to read approximately 40 new words. He is able to comprehend these words, match them to pictures, follow directions, and read simple stories with these words. [D.C.] has made a tremendous amount of growth using this program. He is being introduced to spelling some of the new words he has learned. [D.C.] is also being exposed to these words in other settings and in other activities (separate from Edmark) to help him generalize his knowledge. In addition to these words, he also currently knows 70/200 sight words (Teacher’s College High Frequency word lists). That is up from 53 out of 200 at the beginning of this school year.

We have also been doing a lot with asking and answering “wh” questions. Skill is practiced in a variety of contexts including read alouds and our weekly group speech push-in time. [D.C.] is doing well asking and answering these questions, but does need to be prompted to stay on topic.

For writing, [D.C.] is going back and forth between writing his stories by hand and typing them on a computer. In both cases, [D.C.] prewrites by thinking of an idea for his story, then planning out what he is going to write each page. When writing by hand, he verbalizes what he wants to write, then is guided to write each word. He is encouraged to write the sounds he hears in each word and to use our word wall to help spell words. [D.C.] finds this to be a difficult task and needs to be redirected frequently. When typing a story, [D.C.] verbally communicates his story and his story is scribed for him. [D.C.] then types his story at the computer. He is able

to do this mostly independently, and monitors his progress by crossing off each word after he types it.

[J-35.]

The re-evaluation IEP reflects that D.C.'s program for the 2015–2016 school year was replacement language arts, daily for ninety minutes in the LLD classroom, and replacement math, daily for sixty minutes in the LLD classroom, with small-group speech/language three times per week for thirty minutes in the speech room, small-group occupational therapy twice per week for thirty minutes in the OT/PT room, small-group physical therapy once per week for thirty minutes in the OT/PT room, individual social skills once per month for thirty minutes in school, and a shared aide daily for more than 60 percent of the school day. (J-35.) His re-evaluation IEP also included an ESY program. (J-35.) The reevaluation IEP also reflected that D.C.'s program for September 7, 2016, to November 2, 2016, was would remain the same, with the addition of in-class-support science and social studies four times per week for forty minutes in a mainstream classroom. (J-35.)

On January 15, 2016, Gabriele emailed Reed, in pertinent part, as follows:

I have been thinking a lot about [D.C.] and the parental concerns, etc., . . . coupled with the fact that his DRA levels are slowly but steadily going up and I cannot help but wonder if the work he has been doing with his tutor AND the work with Jacky contributed to that rise in level. It is really impossible to say for sure.

That being said, I kind of played out some scenarios this morning around the “what if’s” of **adding** some Orton to his existing program with Jacky. The only negative, potentially risky thing I came up with is if there is a negative impact (regression or flatline in progress) due to less time with Edmark so that Orton may be added, parents may come back and say the district (experts) agreed to implement and now my child is showing less progress. As experts, are we responsible for making a decision that did not lead to meaningful, measurable progress and thus held liable? This is where the data from the tutor would come in handy as concrete evidence that shows [D.C.] has been making progress using OG at home. However, time is of the essence

here and I think if we can convey this message to the parents and even have them sign something that says they understand that as a good faith effort on the part of the District in the spirit of compromise, etc, . . . we agree to add some OG to his already 90 minutes of ELA daily they would agree to sign. We could have Jacky continue to take data based on the OG assessment manual as well as Edmark and re-convene in time to analyze her data. Christine can be a part of that as well.

The other scenarios I considered were:

1. We add it and there are no significant changes in terms of progress and generalization of skills.
2. We add it add it and he continues to make progress similar to now (inconsistent, slow, but steady)
3. We add it and he in fact shows more significant progress and generalization of some skills which in turn enhances his abilities as a “reader”

At the end of the day, I do not want to think that there is some possibility to enhance a child’s ability to become a more equipped reader and we did not, at the very least, give it a try.

I realize this is a ton of information, but I was also thinking that the timing is perfect as Christine could come in and train Jacky for a day (I spoke with her yesterday and she has done OG training here already) before returning or even do it when she returns and Ellen could cover for Christine—freeing us from having to pay 2 subs/or a voucher for extra time as I know the budget and funds are essentially “frozen” at this time. This also may be beneficial in the long run to other students working with Jacky now and in the future.

[P-23.]

On January 19, 2016, Gabriele emailed Reed and Ciresi, advising that she was looking at schedules to see who could be pulled to do the Wilson program with D.C. “in addition to his existing ELA.” (P-24.) She also included a possible schedule of times showing Monday with “Jacky” for forty-five minutes, Tuesday with “Jacky” for twenty-five minutes, Wednesday with “Jen” for thirty minutes or “Jacky” for twenty-five minutes, Thursday with “Jacky” for thirty minutes, and Friday with “Jen” or “Jacky” for a half hour. Tuesdays and Wednesdays would require that Jacky Remaly be pulled from another student. (P-24.) Ciresi replied that she thought they would try it during his ELA so that

there was consistency with the teacher and “Jacky can see whether or not the Wilson work will do more harm than good.” (P-24.)

On January 21, 2016, the District mailed the parents an IEP addendum, dated January 20, 2016, indicating that it had to be signed and returned within fifteen days of receipt or it would not go into effect. (J-36.) The January 20, 2016, IEP addendum reflects that D.C. would receive social skills once per month for thirty minutes in school. (J-36.)

An assistive-technology evaluation was performed by Louise Ortiz of Bergen County Special Services on January 28, 2016. (J-38.) Ortiz prepared an Assistive Technology Evaluation for D.C. dated February 28, 2016 (Assistive Technology Report). (J-38.)

On February 4, 2016, Gabriele emailed the parents that she had spoken with Remaly about setting up their next meeting and that they could go over the reading level and how it is achieved and the materials for the reading program. (P-26.) Mom replied that they were trying to understand the new plan and had some questions from last week’s meeting, as follows:

[. . .] we understand that [D.C.] is now going to be getting Wilson (true Wilson) for half. . . of his reading pullout? Is that correct? Will it be every day? Is it Jen Straub who is the certified Wilson teacher in [. . .] district that is working with Jacky Remaly? Is so, is she indeed Wilson certified? Will Mrs. Straub be teaching [D.C.] directly for some of the time? Working with Mrs. Remaly to teach him? Training Mrs. Remaly? We weren’t clear as to how it was going to work. And how will the progress monitoring work?

[P-26.]

On February 9, 2016, Gabriele replied as follows:

Here are the answers (I Hope) to your questions:

1. Yes, [D.C.] will be getting this additional instruction during his existing ELA pull out time. Exactly how many minutes of that block is hard for me to say but it will be a good portion of the time for sure
2. Yes it will be daily
3. Jacky Remaly had obtained the materials needed from Jen Straub and they are collaborating together on that piece in terms of implementation, modeling, etc. . . . .
4. Progress will be recorded accordingly for the reading we spoke about in our meeting as well as for the additional program work added to his 90 minute block of ELA
5. As for a certificate, that I am not sure of but can certainly ask

Hope this helps. Please know though that the program cannot start until we receive your signed consent for it to [begin].

[P-26.]

By letter dated February 8, 2016, the District mailed the parents D.C.'s Goals and Objectives. (J-37.)

On February 17, 2016, the parents emailed Jaime Gabriele and Corde Reed, stating that per their discussion with Wilson (company), the recommendation was that a person teaching Wilson should be certified to insure the integrity of the program and Jen Straub was not certified, though she had received some training. They further stated that in the interest of cooperation, they were requesting that even though Jen Straub was not certified, she should teach Wilson three times per week for sixty minutes, or, alternatively, if that was not acceptable, they requested that the District pay for a Wilson-certified teacher three times per week after school. (P-27.) Reed replied that the District's proposal was that Jen Straub would work with D.C. directly three times per week for forty-five minutes. (P-29.)

On February 19, 2016, the parents emailed Reed and indicated, among other points, that they would like Jen Straub to "do a WADE<sup>4</sup> with [D.C.] before beginning

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<sup>4</sup> Wilson Assessment for Decoding and Encoding.

Wilson to give a true baseline.” (P-28.) Reed emailed Gabriele and asked if they had a WADE. (P-27.) On February 19, 2019, Reed emailed the parents that Jennifer Straub would administer a WADE upon her start with D.C. (P-29.)

On March 1, 2016, the parents emailed Jennifer Straub, and concluded their email with, “We are looking forward to a very productive rest of the year with the combined learning of Wilson, Edmark and his tutor at home.” (P-30.) Jennifer Straub forwarded the email to Jaime Gabriele asking her how she should respond to the parents. Gabriele asked Jennifer Straub to call her and stated, in part, as follows:

This continues to cloud what we have in place. I realize they are interested in “helping” but this zeal is not in the best interest of what we are doing.

[P-30.]

On March 2, 2016, Mom emailed Corde Reed stating that she was not suggesting changes to the proposal Reed had emailed, and confirming that Corde Reed did not want the parents to meet with Jennifer Straub until the meeting in thirty days. On March 2, 2016, Gabriele emailed Corde Reed and Ivonne Ciresi and asked, given Mom’s request for data and work samples, if the District could counter-request data and work samples and video clips of sessions from the tutor, because they had requested the documentation since October and it had not been provided, and that Straub was firm on where D.C. was and it was contrary to what his tutor was claiming he mastered, and the discrepancy is a problem. Reed replied that Mom noted that the information was refused and that was clear. (P-28.)

On March 7, 2016, Jennifer Straub emailed D.C.’s home tutor, as follows:

I just wanted to update you on what I am working on with [D.C.]. We are focusing on digraphs at this point. Specifically sh and -ck at this time. I’m finding that he can read many cvc words, but is sometimes using another sound at the end when he puts the words together, so it isn’t consistent. He is also changing the beginning sounds at times as well. There are a handful of words that he is consistent with, such as fish, duck,

Nick (his uncle), dog, big, mop, not, but all others he is still sounding out. I just wanted to keep you up to date on where we are.

[P-32.]

A meeting was held for data review on June 14, 2016, attended by the parents, Jennifer Straub (special-education teacher), Jaime Gabriele (case manager), Corde Reed (school-district representative), and Jacqueline Remaly (special-education teacher).

By letter dated June 20, 2016, the District mailed the parents an IEP addendum, dated June 16, 2016, indicating that it had to be signed and returned within fifteen days of receipt or it would not go into effect. (J-40.) The June 16, 2016, IEP addendum reflects that D.C. would receive social skills twice per month for thirty minutes in school. (J-40.)

The Teacher's College High Frequency Word Reading Data (TC Data) dated September 10, 2015, reflects that on said date D.C.'s score was 53/200. (J-41.) The Running Record data for September 10, 2015, reflects that D.C. was independent at level A, but not independent at level B. (J-42.) The TC Data dated November 2, 2015, reflects that on said date D.C.'s score was 70/200. (J-41.) The Running Record data for January 11, 2016, reflects that D.C. was independent at level B, but not independent at level C. (J-42.) The TC Data dated May 2, 2016, reflects that on said date D.C.'s score was 98/200. (J-41.) The TC Data dated June 10, 2016, reflects that on said date D.C.'s score was 98/200. (J-41.) The Running Record data for June 10, 2016, reflects that D.C. was independent at level C, but not independent at level D. (J-42.) The District maintained a Student Record Book for the Level 1 Edmark Reading Program for D.C. (J-43.)

The Wilson Assessment of Decoding and Encoding (WADE) Sight Word Checklist Reading Recording Form, and assessments, dated February 16, 2016, does not reflect a summary of scores for Sounds, Reading and Spelling. (J-44.)

On July 22, 2016, Dad emailed Gabriele and Reed and requested an IEP meeting as soon as possible to discuss D.C.'s program for the 2016–2017 school year, and

waiving having teachers present due to summer availability. Reed replied on August 8, 2016, that she had been out of the office and would call that afternoon. (P-42.)

A meeting was held on August 18, 2016, at which the parents informed the District that they disagreed with the proposed program for the 2016–2017 school year because it was not appropriate to meet D.C.’s educational needs, and requested that the District place D.C. out-of-district. (P-43.) By letter dated August 19, 2016, the parents’ attorney, Christine Ann Soto, Esq., notified the District that the parents were unilaterally placing D.C. at Banyan in September 2016. (P-43.)

D.C. started school at Banyan in September 2016.

An audiological and central-auditory-processing evaluation was conducted by audiologist Craig Barth, MA CCC-A, on August 22, 2016, and August 26, 2016, which identified mild left sensorineural hearing loss. (J-46.) It was recommended that the parents seek advice from an ENT specialist to explore the underlying medical condition for the deficit. (J-46.)

On September 19, 2016, a follow-up neuropsychological evaluation was conducted by Dr. Hinton. Dr. Hinton prepared a Follow-Up Neuropsychological Evaluation (2016 Neuropsychological Evaluation). (J-48.) The 2016 Neuropsychological Evaluation reiterates the school recommendations from her prior report.

On October 12, 2016, Christine Seminerio emailed Jacqueline Remaly and Deborah Reinhardt requesting input for D.C.’s IEP. On October 13, 2016, Reinhardt’s reply stated, in pertinent part, “Even with modifications/strategies in place, D.C.’s conceptual understanding/vocabulary development was inconsistent and significantly below the grade level expectations.” (P-52.) On October 13, 2016, Seminerio emailed Remaly, and copied Straub and Gabriele, regarding the goals and objectives in D.C.’s IEP. In part, Seminerio’s email stated, “I also wanted to see if you could expand at all upon the fact that his reading level didn’t progress (or progressed then regressed).” (P-53.) On October 13, 2016, Seminerio emailed updated input for D.C. (P-54.)

During the 2015–2016 school year, [D.C.] was using the Edmark reading program. At the start of the school year, he had learned 11 words in the program. By the end of the school year, he had mastered 158 words in Edmark. Toward the end of the school year he completed Level 1 and started Level 2. When practicing these words on flashcards, he was able to instantly read them with 90–98% accuracy. [D.C.] showed progress using this program. He was able to not only read the words in isolation, but as part of a passage and demonstrate his comprehension of the words/phrases/sentences in the program. The words he learned through Edmark were the words he was easily able to read in other books (outside of the program) and the words he could write in his writing.

When looking at a traditional reading level, [D.C.]’s running record showed him to have been reading at a Level A independent/Level B instructional. He started the school year at the same levels, went up to Level B independent/Level C instructional, then back to a Level A independent/Level B instructional. [D.C.] can easily lose his place or lose that one-to-one correspondence especially if he is rushing. [D.C.] in school has been instructed to point under each word as he reads it. He was showing progress with this, but midway through the year his parents asked that he no longer point to each word, as it can slow fluency. It appeared in the second half of the school year, that [D.C.] was conflicted on which strategies to use when reading (For example: he would be instructed to use picture clues, but would instead try to sound out an unknown word). It seems he was confusing strategies learned in the LLD class, in the multisensory program used in school at his parents’ request, and the program used at home through private tutoring.

Over the course of the year we did a lot of work with answering and asking “WH” questions. At the start of the year, [D.C.]’s responses were often off topic. By the end of the year, when asked a WH question [D.C.] was able to stay on topic, but he won’t consistently answer the question correctly. ‘Why’ questions were the most challenging.

In writing, [D.C.] tended to write about similar topics. He had been working on writing across pages and telling a story in a sequential order. While [D.C.] does know his upper case and lower case letters and their corresponding sounds, he has trouble applying this knowledge to his work. He can typically identify the beginning sound, but medial and ending prove to be more challenging. [D.C.] needed constant prompting and support during all stages of the writing process. When writing

without assistance, he would write 'tic' marks. When asked to read what he wrote though, he was able to come up with an elaborate story. The words that were easiest for [D.C.] to write were also Edmark words. The pictures that [D.C.] produced for stories have come a long way. When last seen, he was able to draw a person (with a body). His pictures were becoming more detailed, but needed labels for readers to know what everything is. [D.C.] labels with the initial letter sound.

By letter dated October 27, 2016, the District notified the parents of an annual IEP review meeting scheduled for November 1, 2016. (J-49.) D.C. was determined eligible for special education and related services under the disability category "mild intellectual disability." (J-51.) An IEP dated November 1, 2016, reflects D.C.'s program for the 2016–2017 (third-grade) school year as follows: Special Class Mild/Moderate Learning or Language Disabilities (LLD): Reading/Language Arts once daily for ninety minutes; Special Class Mild/Moderate Learning or Language Disabilities (LLD): Math once daily for sixty minutes; In-class Resource: Science/Social Studies four times weekly for forty minutes; group occupational therapy twice weekly for thirty minutes; group physical therapy once weekly for thirty minutes; group (not to exceed five) speech-language therapy three times weekly for thirty minutes; group shared aide daily for 210 minutes. (J-50; J-52.)

At Banyan, D.C.'s program in November 2016 was a self-contained class of four children and three adults: one certified teacher, one classroom teacher, and one personal aide (assigned to another student). Both aides accompany the class to special subjects and science/social studies, so the adult-child ratio remains the same. His program consisted of four periods per day (twenty per week) intensive small-group language arts literacy instruction as follows: (1) Reading, (2) Focused Intensive Reading Strategies and Techniques (FIRST); (3) Teaching Minds to Comprehend (TMC); and (4) Writing; one period per day of small-group math instruction; science and social studies; developmental physical education; and small-group social skills once per week. Wilson is incorporated into Banyan's four periods per day of language arts literacy, with one period per day dedicated to a Wilson Reading lesson. (J-51.) A Wilson lesson is not delivered during Reading and Teaching Minds to Comprehend (TMC) periods, but Wilson practices, such

as use of a magnetic reading journal and tapping out words, are integrated into the lesson activities. (J-51.)

At the request of the parents, Joanne Seelaus, Ed.D. performed an extensive review of D.C.'s records, assessment data, the District's program, and Banyan's program. She also observed the District's program and Banyan's program and evaluated D.C. Thereafter, she prepared a comparison of the District's program and Banyan's program, dated March 23, 2018. (P-115.) Seelaus concluded that D.C. should remain at Banyan.

At the request of the parents, Jeanne Tighe, CCC-SLP, evaluated D.C. on October 2, 2018. She observed D.C. at Banyan on November 5, 2018, and observed the District's program on November 13, 2018. She reviewed D.C.'s extensive records, his developmental and educational history, and his prior evaluations, including his neurodevelopmental, psychological, educational, speech and language, auditory-processing, and assistive-technology evaluations. Tighe also administered various assessments to D.C. and she prepared a Comprehensive Language Evaluation. (P-147.) Results of the oral language portion of her testing showed that D.C.'s spoken comprehension and expression language skills are severely impaired relative to age-based expectations. In terms of language content and structure, his skills were at least four to six years behind age-based expectations and his performance on most standardized language measures was in the first percentile. He had severe deficits in syntax and semantics, as well as in the cohesion skills needed to comprehend and express language of the discourse level. Given his deficits, academic instruction would need to be delivered with simplified vocabulary and syntax at a slow pace with frequent pauses for processing time, frequent repetition, and review of critical concepts and terms in a high degree of reciprocal student-teacher verbal interaction so that expressive opportunities can further facilitate comprehension and retention. Her current testing revealed that D.C. had achieved comprehension ability at an instruction level up to guided reading level H.

On December 1, 2018, Dr. Hinton performed a second follow-up neuropsychological evaluation on D.C. (2018 Neuropsychological Evaluation). The 2018 Neuropsychological Evaluation reflects that the results of Dr. Hinton's current evaluation

indicated an unusual profile of strength and weaknesses that was comparable to his two prior evaluations and that contributed to an impression of D.C. being much higher functioning than his test score suggests; that his overall intellectual function fell in the mild-intellectual-disability range, but his adaptive-behavior skills were stronger, suggesting relatively good understanding of, and engagement in, daily life activities; that his language skills were generally in the lower borderline range, with the exception of impaired phonemic processing; that his spatial and executive skills were very poor, yet his performance on tasks of simple attention and rote verbal learning was good for his age, indicating areas of clear strength; that, in contrast, on more complex measures requiring executive control D.C. was significantly compromised; that from a neuropsychological perspective D.C. was a student with significant needs which frustrate and complicate his academic achievements and necessitate highly specialized instruction; that his placement at Banyan was the most appropriate placement to meet his unique educational needs; and that she did not believe that given his unusually complicated cognitive profile he could access or benefit from a general-education class placement.

As of May 17, 2019, D.C. was on substep 2.5 of Wilson, which was the last substep of Step 2. He was projected to finish Step 2 by the end of May and be able to progress to Step 3, where he would be learning to break down multisyllabic words.

### **LEGAL ANALYSIS AND CONCLUSIONS**

The Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§ 1400–1482, ensures that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living, and ensures that the rights of children with disabilities and parents of such children are protected. 20 U.S.C. § 1400(d)(1)(A), (B); N.J.A.C. 6A:14-1.1. A “child with a disability” means a child with intellectual disabilities, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities, and who, by reason thereof,

needs special education and related services. 20 U.S.C. § 1401(3)(A). There is no dispute that D.C. is communication impaired or that he has been diagnosed with mild cognitive impairment and mosaic Fragile X. D.C. was initially classified as “preschool child with a disability,” then as “communication impaired,” and finally as “mild cognitive impairment.”

States qualifying for federal funds under the IDEA must assure all children with disabilities the right to a free “appropriate public education.” 20 U.S.C. § 1412(a)(1); Hendrick Hudson Cent. Sch. Dist. Bd. of Educ. v. Rowley, 458 U.S. 176 (1982). Each district board of education is responsible for providing a system of free, appropriate special education and related services. N.J.A.C. 6A:14-1.1(d). A “free appropriate public education” (FAPE) means special education and related services that (A) have been provided at public expense, under public supervision and direction, and without charge; (B) meet the standards of the state educational agency; (C) include an appropriate preschool, elementary-school, or secondary-school education in the state involved; and (D) are provided in conformity with the individualized education program required under 20 U.S.C. § 1414(d). 20 U.S.C. § 1401(9); Rowley, 458 U.S. 176. Subject to certain limitations, FAPE is available to all children with disabilities residing in the state between the ages of three and twenty-one, inclusive. 20 U.S.C. § 1412(a)(1)(A), (B).

An individualized education program (IEP) is a written statement for each child with a disability that is developed, reviewed, and revised in accordance with 20 U.S.C. § 1414(d); 20 U.S.C. § 1401(14); 20 U.S.C. § 1412(a)(4). When a student is determined to be eligible for special education, an IEP must be developed to establish the rationale for the student’s educational placement and to serve as a basis for program implementation. N.J.A.C. 6A:14-1.3, -3.7. At the beginning of each school year, the district must have an IEP in effect for every student who is receiving special education and related services from the district. N.J.A.C. 6A:14-3.7(a)(1). Annually, or more often, if necessary, the IEP team must meet to review and revise the IEP and determine placement. N.J.A.C. 6A:14-3.7(i). FAPE requires that the education offered to the child must be sufficient to “confer some educational benefit upon the handicapped child,” but it does not require that the school district maximize the potential of disabled students commensurate with the opportunity provided to non-disabled students. Rowley, 458 U.S.

at 200. Hence, a satisfactory IEP must provide “significant learning” and confer “meaningful benefit.” T.R. v. Kingwood Twp. Bd. of Educ., 205 F.3d 572, 577–78 (3d Cir. 2000).

The Supreme Court discussed Rowley in Endrew F. v. Douglas County School District RE-1, \_ U.S. \_, 137 S. Ct. 988 (2017), noting that Rowley did not “establish any one test for determining the adequacy of educational benefits” and concluding that the “adequacy of a given IEP turns on the unique circumstances of the child for whom it was created.” Id. at 996, 1001. Endrew F. warns against courts substituting their own notions of sound education policy for those of school authorities and notes that deference is based upon application of expertise and the exercise of judgment by those authorities. Id. at 1001. However, the school authorities are expected to offer “a cogent and responsive explanation for their decisions that shows the IEP is reasonably calculated to enable the child to make progress appropriate in light of his circumstances.” Id. at 1002.

In Lascari v. Ramapo Indian Hills Regional School District, 116 N.J. 30, 46 (1989), the New Jersey Supreme Court concluded that “in determining whether an IEP was appropriate, the focus should be on the IEP actually offered and not on one that the school board could have provided if it had been so inclined.” Further, the New Jersey Supreme Court stated:

As previously indicated, the purpose of the IEP is to guide teachers and to insure that the child receives the necessary education. 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. Furthermore, an IEP that is incapable of review denies parents the opportunity to help shape their child’s education and hinders their ability to assure that their child will receive the education to which he or she is entitled.

[Id. at 48–49 (citations omitted).]

In accordance with the IDEA, children with disabilities are to be educated in the least restrictive environment (LRE). 20 U.S.C. § 1412(a)(5); N.J.A.C. 6A:14-1.1(b)(5). To that end, to the maximum extent appropriate, children with disabilities, including children

in public or private institutions or other care facilities, are to be educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment should occur only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. 20 U.S.C. § 1412(a)(5)(A); N.J.A.C. 6A:14-4.2. The Third Circuit has interpreted this to require that a disabled child be placed in the LRE that will provide the child with a “meaningful educational benefit.” T.R., 205 F.3d at 578. Consideration is given to whether the student can be educated in a regular classroom with supplementary aids and services, a comparison of benefits provided in a regular-education class versus a special-education class, and the potentially beneficial or harmful effects that placement may have on the student with disabilities or other students in the class. N.J.A.C. 6A:14-4.2(a)(8).

The District contends that it provided FAPE to D.C. in the least restrictive environment. Conversely, petitioners contend that the District did not provide D.C. with a FAPE in 2015–2016 (second grade), 2016–2017 (third grade), 2017–2018 (fourth grade) and 2018–2019 (fifth grade). The district bears the burden of proof and the burden of production whenever a due-process hearing is held pursuant to the provisions of the IDEA. N.J.S.A. 18A:46-1.1.

The District’s witnesses all credibly and consistently testified that D.C. had made progress in Kinnelon. Certainly, there was evidence that he had made progress in occupational therapy, physical therapy, and speech therapy. Likewise, there was evidence that he had made progress in language arts and math. However, the record falls short of establishing that he had made “meaningful” progress or “progress appropriate in light of his circumstances,” for two main reasons: (1) the District’s program for language arts/reading was not appropriate for D.C., as he was not being taught to read; and (2) given his extreme receptive- and expressive-language deficits, general-education classes and specials were not appropriate for D.C.

There was extensive testimony relative to the District’s reading program for D.C., and as to the various methodologies utilized by the District. The District even presented Edmark, Running Records, DRA, and Teacher’s College data, and relied upon data such

as the increase in the number of sight words in his repertoire and that he had advanced in his DRA reading levels—both instructional and independent. However, this data is unpersuasive in establishing that D.C. had made “meaningful” progress in language arts. The testimony of Jennifer Sansone and the documentation from Banyan as to D.C.’s progress with the Wilson program credibly and persuasively established that upon entering Banyan in third grade, D.C. was wholly incapable of reading even the most basic C-V-C words. This is not to discredit testimony of the District’s witnesses that D.C. had been able to read C-V-C words at some point in Kinnelon, but it certainly establishes that he had not retained any ability to do so. In fact, his failure to retain skills or information that he had learned, especially with regard to reading, is confirmed in the various emails and progress summary reports of his teachers. Further, from the testimony and documentary evidence, his ability to “read” C-V-C words was by means of “sight” or memorization and not decoding (phonics) or encoding (spelling) words because he was not being taught encoding or decoding. Although there was documentation of various methodologies, the District’s program focused primarily on sight-word memorization. While a sight-word-memorization program may be appropriate for a student whose cognitive function would not allow the student to learn to read, and therefore would allow for meaningful progress in view of the student’s disability, this was not the case with D.C. Rather, consistent with his eligibility category of “mild cognitive impairment” the record reflects that D.C. is educable, but that his development and adaptive behaviors are below age level. Moreover, the credible testimony of Jennifer Sansone and the extensive documentation from Banyan reflect that, although his progress is extremely slow, D.C. is in fact capable of reading (encoding and decoding) and not just sight-word memorization. During his time at Banyan, he moved from Wilson substep 1.1 to Wilson substep 2.5 in fifth grade.

The District suggests that some of the problems D.C. was having with reading may have been caused by the parents insisting that the District provide Wilson instruction while D.C.’s home tutor was providing Orton-Gillingham instruction. While I agree with the District that parents cannot dictate a specific reading program, and that it is not required that an IEP specify the reading program, it nevertheless is required that an appropriate program be utilized. There is no evidence that any appropriate reading program was utilized for D.C. A piecemeal approach, utilizing primarily Edmark—a sight-word

program—and drawing from several other programs and adding in limited Wilson, with no evidence that it was taught with fidelity, was absolutely not appropriate for a student with D.C.’s extreme deficits. The majority of his testing revealed he was at the first percentile or very low range. There is little doubt that learning from multiple approaches was not beneficial to D.C., and while this may have been compounded by a home tutor adding in yet another approach that may or may not have been taught with fidelity, this does not negate the District’s responsibility to have provided an appropriate reading program for D.C. during the school day. The record makes clear that D.C. required daily intensive language intervention and a program like Wilson or Orton-Gillingham, delivered with fidelity by a certified instructor. However, such a program was not offered by the District.

There is no dispute that D.C.’s present levels of functional performance, even after several years at Banyan, are not at grade level, but they are not expected to be so. Nevertheless, the record reflects that D.C. has been able to master—albeit very slowly—the steps 1 and 2 of the Wilson program. Thus, he is now able to “read” words without having had prior exposure to them. The District’s proposed reading program for D.C. was wholly inadequate to address his significant deficits. This situation is very different from parents alleging that a child is not making meaningful progress because he is not progressing at a rate whereby the gap between him and his peers would eventually close. Had the District utilized the Wilson program, by a Wilson-certified instructor, or a comparable program and D.C. made the same slow progression, it would nevertheless have been meaningful progress. But despite the early directive of the prior director of special services, it is clear that Wilson was never truly implemented in earnest and he was not being taught encoding and decoding. In fact, the evidence suggests that the District believed Wilson was detrimental to D.C.’s progress.

In addition to the District’s failure to provide an appropriate intensive language program, the various IEPs reflect that D.C. was in general-education classes for science, social studies, and specials. The record is clear that given D.C.’s very limited reading and writing skills, as well as his extensive receptive-language and expressive-language deficits, there was no way for D.C. to meaningfully access general education, even with related services. The various evaluations and the testimony of petitioners’ witnesses clearly established that the assignment of an aide and modifications to his materials would

have been wholly insufficient to enable D.C. to participate and make meaningful progress in any general-education classes.

Based upon the testimony and documentary evidence, I **CONCLUDE** that the District's IEP was not appropriate to meet D.C.'s educational needs for the 2015–2016, 2016–2017, 2017–2018, and 2018–2019 school years, and did not provide him with a FAPE.

The parents unilaterally placed D.C. at Banyan for the 2016–2017 school year. Banyan is a school approved and accredited by the State of New Jersey. Further, the credible testimony of Jennifer Sansone, L.C., and extensive documentation from Banyan reflect that Banyan's program was appropriate for D.C. and has allowed him to make meaningful educational progress in the least restrictive environment. Since the District failed to provide D.C. with a FAPE, I **CONCLUDE** that it was reasonable for petitioners to have unilaterally placed D.C. at Banyan and to have continued his placement through the 2018–2019 school year.

Pursuant to 20 U.S.C. § 1412(a)(10)(C)(i), and subject to 20 U.S.C. § 1412(a)(10)(A), a local educational agency is not required to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if that agency made FAPE available to the child and the parents elected to place the child in such private school or facility. See also N.J.A.C. 6A:14-2.10(a). However, if the parents enroll the child in a private elementary school or secondary school without the consent of or referral by the public agency, a court or a hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency has not made FAPE available to the child in a timely manner prior to that enrollment. 20 U.S.C. § 1412(a)(10)(C)(ii); see also N.J.A.C. 6A:14-2.10(b). When a state fails to provide a free appropriate public education, it must reimburse parents for resulting private school costs. See T.R., 205 F.3d at 577 (citing Sch. Comm. of Burlington v. Dep't of Educ., 471 U.S. 359, 370 (1985)). Such reimbursement is subject to limitation as set forth in 20 U.S.C. § 1412(a)(10)(C)(iii).

As set forth above, the District failed to provide D.C. with a FAPE for the 2015–2016, 2016–2017, 2017–2018, and 2018–2019 school years. Having reviewed the criteria for reimbursement, I **CONCLUDE** that the District should reimburse petitioners for the cost of D.C.’s placement at Banyan, including transportation, commencing September 7, 2016, through the 2018–2019 school year. As to any allegations of process or procedural deficiencies relating to an eligibility meeting, development of an IEP in the parents’ absence, or a unilateral change in D.C.’s eligibility classification, it is noted that the parents did participate in a “continuation” of any such IEP meeting, and the change in classification was consistent with evaluations obtained by the parents. Thus, in consideration of the testimony and documentary evidence, I **CONCLUDE** that any alleged deficiencies did not significantly impede the parents’ opportunity to participate in the decision-making process, nor did they cause a deprivation of educational benefits. As to the request for reimbursement of the cost of his private tutor for the 2015–2016 school year, the record is devoid of any specificity as to the cost of or the services provided by the private tutor. Accordingly, I **CONCLUDE** that petitioners are not entitled to reimbursement for the private tutor. As to the request for reimbursement of the costs of petitioners’ experts, I **CONCLUDE** that petitioners are not entitled to reimbursement of the costs of their experts as per Arlington Central School District Board of Education v. Murphy, 548 U.S. 291 (2006). Finally, as to the request for compensatory education, I have considered the totality of the circumstances, and **CONCLUDE** that same should be denied. It is observed that the requests for reimbursement in the petitioners’ summation differ somewhat from the requests in the petition, and it is noted that any relief is limited to the petition. Likewise, although the summation requests that a determination be made as to the 2019–2020 school year, the 2019–2020 school year is not part of the petition and the 2019–2020 IEP was not part of this record.

### **ORDER**

Based on the foregoing, it is hereby **ORDERED** that certain relief sought by petitioners is **GRANTED** as to the 2015–2016, 2016–2017, 2017–2018, and 2018–2019 school years. Specifically, it is **ORDERED** that the District reimburse petitioners for the costs of D.C.’s placement at Banyan, including tuition and transportation, commencing September 7, 2016, through the 2018–2019 school year.

It is further **ORDERED** that petitioners and the District should meet within thirty days of this decision to create an IEP for D.C. to reflect his placement at Banyan for the 2016–2017, 2017–2018, and 2018–2019 school years.

This decision is final pursuant to 20 U.S.C. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2019) 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 (2019).

December 20, 2019

DATE

mm

KELLY J. KIRK, ALJ

**APPENDIX**

**Witnesses**

**For Petitioners:**

Veronica Hinton  
L.C.  
Jeanne Tighe  
Joanne Selaus  
Jennifer Sansone

**For Respondent:**

Jaime Gabriele  
Maegann Struble  
Carrie Bott  
Katherine Pawlikowski  
Christine Seminerio  
Stacy Kleinert  
Dena Dilenno  
Jennifer Varadi  
Lori Foster

**Exhibits**

**Joint**

- J-1 Written Notice: Consent for Initial, dated August 2, 2012
- J-2 Kinnelon Speech and Language Evaluation, dated September 20, 2012
- J-3 Kinnelon Occupational Therapy Evaluation, dated September 20, 2012
- J-4 Kinnelon Social Work Project, dated September 21, 2012
- J-5 Kinnelon Psychoeducation Evaluation, dated October 10, 2012
- J-6 IEP signature page, dated November 12, 2012
- J-7 IEP, dated November 12, 2012

- J-8 Pediatric Neurodevelopmental Consultation and Evaluation Dr. Pahirathi Haran, dated May 21, 2013
- J-9 IEP signature, dated June 17, 2013
- J-10 Letter from Richard Maizell and IEP to follow, dated June 17, 2013
- J-11 Letter from Richard Maizell re: IEP Addendum, dated July 8, 2013
- J-12 Kinnelon Physical Therapy Evaluation, dated July 2013
- J-13 Pediatric Neurodevelopmental Evaluation, Dr. Shelly Lanzkowsky, dated December 27, 2013
- J-14 Kinnelon Speech and Language Evaluation, dated February 21, 2014
- J-15 Kinnelon Psychological Evaluation, dated February 25, 2014
- J-16 IEP, dated June 11, 2014
- J-17 Kinnelon Behavior Observation, dated June 19, 2014
- J-18 (Not in evidence)
- J-19 Cover letter and IEP, dated June 17, 2015
- J-20 Report Card, Kinnelon, Grade 1, dated June 2015
- J-21 Receipt and rejection notice from Mr. and Mrs. C., dated July 7, 2015
- J-22 Neuropsychological Evaluation, Dr. Hinton, dated September 3, 2015
- J-23 Meeting Notice, dated September 25, 2015
- J-24 Cover letter from Jaime Gabriele and IEP Addendum, dated September 25, 2015
- J-25 Written Notice: Consent for Evaluation, dated October 8, 2015
- J-26 Physical Therapy Evaluation, Kinnelon, dated October 12, 2015
- J-27 Occupational Therapy Re-Evaluation, Kinnelon, dated October 14, 2015
- J-28 Speech and Language Evaluation, Kinnelon, dated October 23, 2015
- J-29 Educational Evaluation dated October 24, 2015
- J-30 Letter from Gabriele to Mr. and Mrs. C., dated October 28, 2015
- J-31 Letter from Reed to Mr. and Mrs. C., dated October 28, 2015
- J-32 Functional Behavioral Assessment, dated November 2, 2015
- J-33 Parental Notice of Eligibility, dated November 3, 2015
- J-34 Meeting notice, dated December 3, 2015
- J-35 IEP (signed by parent on December 3, 2015), dated December 3, 2015
- J-36 IEP addendum letter, dated January 21, 2016
- J-37 Letter enclosing Goals and Objectives, dated February 8, 2016
- J-38 Assistive Technology Evaluation, dated February 28, 2016

- J-39 Sign-in Sheet, dated June 14, 2016
- J-40 IEP Addendum, dated June 16, 2016
- J-41 Teacher's College High Frequency Work, date September 2015–June 2016
- J-42 Running Records Date, dated September 2015–June 2016
- J-43 Edmark Data
- J-44 WADE
- J-45 Report Card Kinnelon Grade 2, dated
- J-46 Audiological and Central Auditory Processing Evaluations, Craig T. Barth, dated August 22 and August 26, 2016
- J-47 Cover letter attaching Goals and Objectives, dated August 31, 2016
- J-48 Follow-up Neuropsychology Evaluation, Dr. Veronica Hinton, dated September 19, 2016
- J-49 Invitation to Annual Review, dated October 27, 2016
- J-50 IEP, dated November 1, 2016
- J-51 Letter, McNeil to Mr. and Mrs. C., dated November 23, 2016
- J-52 Summary of Components for D.C., dated November 30, 2016
- J-53 Complaint Form, dated December 29, 2016
- J-54 (Not in evidence)
- J-55 Correspondence from Walther to DiGiuseppe, dated February 28, 2017
- J-56 Correspondence from Worthington to Soto, dated March 21, 2017
- J-57 (Not in evidence)
- J-58 (Not in evidence)
- J-59 Word Analysis and FFI Summary Banyan School, dated June 14, 2017
- J-60 WADE, dated June 2017
- J-61 Meeting Attendance Sign-in Sheet, dated June 19, 2017
- J-62 Correspondence from Reed to Mr. and Mrs. C. with IEP (June 19, 2017), dated July 25, 2017
- J-63 (Not in evidence)
- J-64 DRA2 Assessment, dated September 13, 2017, February 5, 2018, and May 8, 2018
- J-65 WADE, dated September 13, 2017–May 14, 2018
- J-66 Physical Therapy Evaluation, Kinnelon, dated October 4, 2018
- J-67 Occupational Therapy Re-evaluation, Kinnelon, dated October 4, 2018

J-68 Speech and Language Evaluation, Kinnelon, dated October 11, 2018

J-69 Educational Assessment, Kinnelon, dated October 15, 2018

J-70 Psychological Report, Kinnelon, dated October 16, 2018

For Petitioners:

P-1 Email exchange, Sido, dated September 11, 2013

P-2 Email exchange, Ms. C., dated December 27, 2013

P-3 Email exchange, Ms. C., dated October 8, 2014

P-4 District internal emails, dated October 30, 2014–November 14, 2014

P-5 Email district internal emails, dated January 22, 2015–February 25, 2015

P-6 Email exchange, Maizell, dated July 31, 2015

P-7 Email exchange, Gabriele, dated October 8, 2015

P-8 (Not in evidence)

P-9 (Not in evidence)

P-10 (Not in evidence)

P-11 Email exchange, Reed, October 28, 2015

P-12 Email exchange, Gabriele, dated October 30, 2015

P-13 IEP (parents did not attend), dated November 3, 2015

P-14 (Not in evidence)

P-15 (Not in evidence)

P-16 Email exchange, Gabriele, dated November 10, 2015

P-17 Email exchange, Gabriele, dated November 13, 2015

P-18 Email exchange, Reed, dated December 2, 2015

P-19 (Not in evidence)

P-20 Email exchange, Kelly, dated December 4, 2015, with handwritten notes

P-21 (Not in evidence)

P-22 (Not in evidence)

P-23 Email exchange, Gabriele, dated January 15, 2016

P-24 Email exchange, Gabriele, dated January 20, 2016

P-25 (Not in evidence)

P-26 Email exchange, Gabriele, dated February 9, 2016, with handwritten notes

P-27 Email exchange, Reed, dated February 17, 2016

P-28 Email exchange from Reed, dated February 19, 2016

- P-29 Email exchange from Reed (2), dated February 19, 2016
- P-30 Email exchange with Straub, dated March 1, 2016
- P-31 Email exchange with Straub, dated March 7, 2016
- P-32 (Not in evidence)
- P-33 Wilson Data from District, dated March 21, 2016–April 27, 2016
- P-34 Email exchange, Gabriele, dated May 2, 2016
- P-35 (Not in evidence)
- P-36 (Not in evidence)
- P-37 Email exchange, Reed, dated May 5, 2016
- P-38 High Frequency Word Assessment, dated February 2016–June 2016
- P-39 (Not in evidence)
- P-40 (Not in evidence)
- P-41 (Not in evidence)
- P-42 Document #3 email exchange between Mr. C. and Corde Reed, dated July 22, 2016–August 8, 2016
- P-43 Letter, Soto to Merryman, dated August 9, 2016
- P-44 (Not in evidence)
- P-45 Email exchange from Remaly, dated September 16, 2016
- P-46 (Not in evidence)
- P-47 (Not in evidence)
- P-48 (Not in evidence)
- P-49 (Not in evidence)
- P-50 (Not in evidence)
- P-51 Sample work, dated October 2016
- P-52 Email exchange, Reinhardt, dated October 13, 2016
- P-53 Email exchange, Remaly, dated October 13, 2016
- P-54 Email exchange, Seminerio, dated October 13, 2016
- P-55 Email exchange, Merryman, dated October 20, 2016
- P-56 PLEP and Functional Performance, dated October 25, 2016
- P-57 Letter, Soto to Merryman, dated October 26, 2016
- P-58 Letter, Soto to Merryman, dated November 1, 2016
- P-59 (Not in evidence)
- P-60 Attendance Sign-In Sheet, dated November 1, 2016

- P-61 Confirmation of Medical Consultation, Dr. Vargas, dated November 1, 2016
- P-62 (Not in evidence)
- P-63 (Not in evidence)
- P-64 (Not in evidence)
- P-65 (Not in evidence)
- P-66 (Not in evidence)
- P-67 Letter, Soto to Merryman, dated November 14, 2016
- P-68 (Not in evidence)
- P-69 (Not in evidence)
- P-70 (Not in evidence)
- P-71 (Not in evidence)
- P-72 (Not in evidence)
- P-73 Letter from Merryman to Soto, dated November 22, 2016
- P-74 (Not in evidence)
- P-75 (Not in evidence)
- P-76 (Not in evidence)
- P-77 (Not in evidence)
- P-78 (Not in evidence)
- P-79 (Not in evidence)
- P-80 (Not in evidence)
- P-81 (Not in evidence)
- P-82 (Not in evidence)
- P-83 (Not in evidence)
- P-84 (Not in evidence)
- P-85 (Not in evidence)
- P-86 (Not in evidence)
- P-87 (Not in evidence)
- P-88 DRA 2016–2017 SY, Banyan School, dated September 2016–May 2017
- P-89 Email exchange from Mr. C., dated May 31, 2017
- P-90 (Not in evidence)
- P-91 K–3 Book Graph, Banyan School, dated June 14, 2017
- P-92 Letter Dr. Anyane-Yeboha and Primiano, date June 15, 2017
- P-93 Correspondence Soto to Merryman, dated June 15, 2017

- P-94 Goals and Objective Banyan School, dated June 17, 2017
- P-95 Banyan School Program description D.C.
- P-96 (Not in evidence)
- P-97 (Not in evidence)
- P-98 IEP, dated June 19, 2017
- P-99 Correspondence Soto to Merryman, dated June 19, 2017
- P-100 Banyan School Report Card, dated June 22, 2017
- P-101 Email exchange from Seminerio, dated July 21, 2017
- P-102 Memorandum from Kempton, dated July 25, 2017
- P-103 Correspondence Soto to Merryman, dated August 2, 2017
- P-104 (Not in evidence)
- P-105 (Not in evidence)
- P-106 (Not in evidence)
- P-107 Email exchange from Seminerio, dated September 19, 2017
- P-108 (Not in evidence)
- P-109 (Not in evidence)
- P-110 IEP Banyan School, dated November 29, 2017
- P-111 DRA 2017–2018 SY, dated September 13, 2017–February 5, 2018
- P-112 DRA September 2016–current, many dates–February 2018
- P-113 WRS Wordlist Charts Progress Charts with Test protocols as Backup
- P-114 (Not in evidence)
- P-115 Comparison of Education Programs for DC Joanne K Seelaus, Ed.D., dated March 23, 2018
- P-116 (Not in evidence)
- P-117 DRA2, dated September 13, 2017
- P-118 (Not in evidence)
- P-119 Letter, Gaines to Merryman, dated July 10, 2018
- P-120 Letter, Merryman to Gaines, dated July 12, 2018
- P-121 Letter, Gaines to Merryman, dated July 13, 2018
- P-122 (Not in evidence)
- P-123 (Not in evidence)
- P-124 (Not in evidence)
- P-125 IEP, dated July 31, 2018

- P-126 (Not in evidence)
- P-127 (Not in evidence)
- P-128 (Not in evidence)
- P-129 (Not in evidence)
- P-130 Banyan September WADE WISC, dated September 11, 2018
- P-131 (Not in evidence)
- P-132 (Not in evidence)
- P-133 IEP, dated November 2, 2018
- P-134 Banyan Report Card and Progress Report
- P-135 Banyan School Progress
- P-136 Banyan IEP, dated December 4, 2018
- P-137 Joanne Seelaus, Ed.D., CV
- P-138 (Not in evidence)
- P-139 (Not in evidence)
- P-140 (Not in evidence)
- P-141 Jennifer L. (Kempton) Sansone, CV
- P-142 (Not in evidence)
- P-143 (Not in evidence)
- P-144 (Not in evidence)
- P-145 Jeanne Tighe, CV
- P-146 Dr. Veronica Hinton, CV
- P-147 Comprehensive Language Evaluation, Jeanne Tighe, dated October 2, 2018 (date of evaluation)
- P-148 Dr. Veronica Hinton Report, dated December 21, 2018 (date of evaluation)
- P-149 (Not in evidence)
- P-150 (Not in evidence)
- P-151 Banyan brochure
- P-152 (Not in evidence)
- P-153 (Not in evidence)
- P-154 (Not in evidence)
- P-155 (Not in evidence)
- P-156 D.C. Wilson student-progress recording form
- P-157 D.C. Wilson work-list charts

P-158 (Not in evidence)

P-159 (Not in evidence)

P-160 (Not in evidence)

P-161 Banyan IEP Goals and Objectives Progress Reporting (04/05/19) & WRS Lesson/Individual Progress Record

P-162 DRA Summary of Results 2018–2019

P-163 Banyan Report Card, MP3 2018–2019 & Banyan IEP Goals and Objectives Progress Reporting (04/24/19)

For Respondent:

R-1 Progress Reports for 13–14 (including cover page of 6-17-13 IEP), dated June 2014

R-2 Progress Reports for 14–15 (including cover page of 6-11-14 IEP), dated June 2015

R-3 Woodcock Johnson IV Score Report, dated October 13, 2015

R-4 (Not in evidence)

R-5 (Not in evidence)

R-6 (Not in evidence)

R-7 (Not in evidence)

R-8 (Not in evidence)

R-9 (Not in evidence)

R-10 Reed & Gabriele emails re: “this Friday,” dated February 25, 2016–March 2, 2016

R-11 (Not in evidence)

R-12 Gabriele & Parent Emails re: “At eval,” dated March 30, 2016–April 26, 2016

R-13 Wilson Data Tables, dated February 29, 2016–June 8, 2016

R-14 Wilson Data Tables (“1st 30 Days” with Notes), dated February 29, 2016–April 27, 2016

R-15 Wilson Student Work Product, dated February 24, 2016–July 29, 2016

R-16 Student Writing Samples, dated 2015–2016

R-17 (Not in evidence)

R-18 Seminerio & Parent emails re: “IEP Meeting,” dated September 14, 2016–September 16, 2016

R-19 (Not in evidence)

- R-20 (Not in evidence)
- R-21 Goals & Objectives w/ Progress, dated November 1, 2016
- R-22 Meeting Attendance Sign-In Sheets, dated November 1, 2016–November 17, 2016
- R-23 2015–2016 Student Progress Summary of Data, dated November 18, 2016
- R-24 Seminerio & McNeil emails re: “D.C. observation,” dated November 28, 2016
- R-25 (Not in evidence)
- R-26 (Not in evidence)
- R-27 (Not in evidence)
- R-28 WADE, dated September 13, 2017
- R-29 Seelaus Stonybrook Observation Notes, dated February 27, 2018
- R-30 District Notes on Seelaus Observation, dated February 2018
- R-31 (Not in evidence)
- R-32 WADE, dated May 14, 2018
- R-33 WIST, dated May 17, 2018
- R-34 (Not in evidence)
- R-35 Kelly Analysis of February 2016 WADE, dated June 11, 2018
- R-36 District analysis of Banyan Progress Report Tables, dated January 26, 2018, to June 20, 2018
- R-37 (Not in evidence)
- R-38 Reading Level Correlation Chart
- R-39 (Not in evidence)
- R-40 Wilson Scope and Sequence of Wordy Study Skills Steps–6
- R-41 Gabriele D.C. Notes
- R-42 Resume Cordé Reed
- R-43 Resume of Jaime Gabriele
- R-44 Resume of Christine Seminerio
- R-45 Resume of Katherine Pawlikowski
- R-46 Resume of Stacy Kleinert
- R-47 Resume of Maegann Stuble
- R-48 Resume of Jennifer Straub
- R-49 Resume of Carrie Bott
- R-50 (Not in evidence)

R-51 Resume of Lori Foster

R-52 Resume of Susan Gubkin

R-53 Meeting Attendance Sign-In Sheet, dated November 2, 2018

R-54 IEP, dated November 2, 2018