

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. EDS 8418-15

OAL DKT. NO. 2015-22737

D.T. AND S.T. ON BEHALF OF A.T.,

Petitioners,

v.

MONTVILLE TOWNSHIP BOARD

OF EDUCATION,

Respondent.

Jennifer Y. Sang, Esq., and **Morgen Black-Smith**, Esq., for petitioners (Law Offices of David J. Berney, attorneys)

Nathanya Simon, Esq., for respondent (Schwartz, Simon, Edelstein & Celso, LLC, attorneys)

Record Closed: July 1, 2016

Decided: August 15, 2016

BEFORE **BARRY E. MOSCOWITZ**, ALJ:

STATEMENT OF THE CASE

A.T. is classified as “other health impaired” and has weaknesses in reading, writing, and mathematics. To address those weaknesses, the IEP team included, in the IEPs for fifth and sixth grades, most of the recommendations contained in the professional and clinical assessments. Did Montville provide A.T. with FAPE? Yes. To

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

PROCEDURAL HISTORY

I.

Due Process

On May 7, 2015, petitioners filed a request for a due-process hearing with the Office of Special Education Programs. In their request, petitioners complain that Montville failed in its child-find duties to A.T. for the 2014–15 and 2015–16 school years and, in doing so, failed to provide A.T. with a free appropriate public education (FAPE) in the least restrictive environment (LRE) for the 2014–15 and 2015–16 school years. Similarly, petitioners complain that Montville failed to provide A.T. with an individualized education program (IEP) that was reasonably calculated to provide A.T. with significant learning and meaningful benefit and, in doing so, failed to provide A.T. with a FAPE in the least restrictive environment for the 2014–15 and 2015–16 school years. Finally, petitioners complain that Montville failed to implement the IEP for the 2014–15 school year with fidelity and, in doing so, failed to provide A.T. with a FAPE in the least restrictive environment for the 2014–15 school year.

Ultimately, petitioners seek compensatory education for the 2014–15 school year when A.T. was enrolled in Montville, reimbursement for the cost of an independent evaluation they incurred during that school year, and reimbursement for private tuition and associated costs at The Craig School (Craig), where A.T. was enrolled for the 2015–16 school year.

On May 27, 2015, Montville filed an answer with affirmative defenses. In its answer, Montville denied the substantive allegations and asserted that petitioners failed to cooperate with Montville by dictating the program, placement, and services for A.T. and that petitioners should be denied reimbursement for private tuition and associated costs for their unilateral placement of A.T. at Craig.

On June 9, 2015, the Office of Special Education Programs transmitted the case to the Office of Administrative Law under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15, and the act establishing the office, N.J.S.A. 52:14F-1 to -23, for a hearing under the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6, and the Special Education Program, N.J.A.C. 1:6A-1.1 to -18.5.

II.

Interim Agreement

On June 18, 2015, the parties entered into an interim agreement. In that agreement, the parties agreed to hold the due-process hearing in abeyance pending an IEP review meeting with all relevant personnel, including James Gillock, Ed.D., and Michelle Havens, Ed.D., petitioners' school psychologist and educational consultant, respectively, whom Montville paid to attend. On July 8, 2015, the IEP review meeting was held. Unfortunately, no new agreement was reached.

III.

Hearing

On July 20, 2015, the case was assigned to me for a hearing. Numerous prehearing conferences were held and numerous prehearing orders were issued. After a protracted discovery period, the hearing was finally held during the course of four hearing dates in April 2016. On July 1, 2016, the parties submitted their closing briefs and I closed the record.

FINDINGS OF FACT

Based on the testimony the parties provided and my assessment of its credibility, together with the documents the parties submitted and my assessment of their sufficiency, I **FIND** the following as **FACT**:

I.

A.T.

A.T. is twelve years old and in sixth grade at The Craig School in Mountain Lakes, New Jersey. When A.T. was seven years old and in second grade at Woodmont Elementary School (Woodmont) in Montville, New Jersey, she was found eligible for special education and related services under the category “other health impaired” because A.T. had been diagnosed with attention deficit hyperactivity disorder (ADHD) earlier in the year. As a result, an IEP was developed to address her needs.

Subsequent IEPs were also developed to meet A.T.’s needs, but only the IEPs for fifth and sixth grade are at issue in this case so only the IEPs for fifth and sixth grade will be discussed in this decision. Similarly, only the program and placement at Montville is at issue in this case so only the program and placement in Montville will be discussed in this decision. In other words, should Montville fail to meet its burden regarding the appropriateness of its program and placement for A.T. for sixth grade, the unilateral placement of A.T. at Craig for sixth grade will not be challenged and need not be discussed.

II.

Eileen Horn

A.

Expertise

Eileen Horn is a learning disabilities teacher-consultant (LDTC) and a speech-language specialist. Horn received a bachelor’s degree in English from Rutgers University in 1993 and a master’s degree in educational technology from William Paterson in 2002. Horn completed the LDTC Endorsement Program at William

Paterson University in 2012 and the Supervisor Certification Endorsement Program at William Paterson University in 2014. Horn holds a certificate as a teacher of the handicapped for kindergarten through twelfth grade and a certificate in general education for kindergarten through eighth grade from the Department of Education. Horn also holds a certificate as an LDTC and a certificate as a supervisor from the Department of Education.

In all her years as an LDTC and case manager, Horn has evaluated and managed hundreds of children with disabilities.

Horn was offered and accepted as an expert in language disabilities and case management without objection.

B.

Review

Horn was the case manager for A.T. when A.T. was at Woodmont, but she did not become the case manager for A.T. until October 14, 2014, when A.T. was in fifth grade at Woodmont. Before then, Tara Monaco, LDTC, was the case manager for A.T. When Horn became the case manager for A.T., Horn first met with Monaco. Horn then met with all of the teachers who had provided instruction to A.T. in fourth grade and all of the teachers who were providing instruction to A.T. in fifth grade. Above all, Horn reviewed all of the documents on file, met with all of the experts on the case, and learned all of the parental concerns. Horn testified that she understood the parental concerns and sought to address them immediately.

The documents Horn reviewed are many and Horn testified about each in turn. In particular, Horn reviewed J-1, the Educational Assessment, dated January 9, 2012; J-2, the Psychological Assessment, dated January 19, 2012; J-3, the Conners' Rating Scale, dated December 1, 2011; J-4, the Social Adaptive Behavior Assessment, dated January 9, 2012; J-5, the Speech-Language Assessment, dated February 7, 2012; J-6, the Pediatric Neurodevelopmental Consultation Report, dated January 19, 2012; J-7,

the Initial Eligibility Determination and Evaluation Sequence, dated February 24, 2012; J-8, the Initial IEP for the 2011–12 and 2012–13 school years, dated and signed February 24, 2012 (the middle of second grade to the middle of third grade); J-9, the Annual Review IEP for the 2012–13 and 2013–14 school years, dated January 28, 2013, and signed January 30, 2013 (the middle of third grade to the middle of fourth grade); J-10, the Annual Review IEP for the 2013–14 and 2014–15 school years, dated and signed January 17, 2014 (the middle of fourth grade to the middle of fifth grade); J-11, the Educational Assessment dated April 30, 2014; J-12, the Speech-Language Assessment dated April 25, 2014; J-13, the Psychological Assessment, dated May 1, 2014; J-18, the Re-Evaluation Eligibility Determination for the 2013–14 and 2014–15 school years, dated May 9, 2014 (the middle of fourth grade to the middle of fifth grade); J-19, the Re-Evaluation IEP for the 2013–14 and 2014–15 school years, dated May 9, 2014 (the middle of fourth grade to the middle of fifth grade); and R-85, the Reading Level Assessment Data (Rigby Reads) for the 2012–13, 2013–14, and 2014–15 school years. Horn also observed the science class (J-86), the math class (J-87), and the social studies class (J-88).

C.

Eligibility

As a threshold issue, Horn testified that A.T. was ineligible for special education and related services under the category “specific learning disability” because A.T.’s intelligence was in the average range for all domains with a full-scale IQ of 95, as reported in J-2, the Psychological Assessment dated January 19, 2012, and that a severe discrepancy did not exist between her expected-achievement score and her obtained-achievement score, even after other data and input was considered, including the Educational Assessment.

To be sure, this threshold issue would be debated throughout the hearing, as witness after witness for Montville explained that it was required to use the severe-discrepancy formula, while Gillock would testify for petitioners time and again that the

severe-discrepancy formula is a discredited formula and that the predicted-achievement method was best practice.

Nevertheless, Horn continued that A.T. was eligible for special education and related services under the category “other health impaired,” and that she was aware of A.T.’s needs and programming. For example, Horn explained that A.T.’s academic skills were in the average to the low-average range, as reported in J-1, the Educational Assessment dated January 9, 2012. More specifically, Horn noted that A.T.’s oral language skills were in the average range, her reading skills were in the average range, her written expression was in the average range, and her math skills were in the average to low-average range. Indeed, the Educational Assessment made numerous recommendations to help A.T. access grade-level curriculum, as did J-2, the Psychological Assessment dated January 19, 2012, J-4, the Social Assessment dated January 9, 2012, and J-5, the Speech-Language Assessment dated February 7, 2012, most if not all of which were incorporated in the IEP for second grade dated February 24, 2012.

Finally, Horn testified that she reviewed J-8, the IEP for second grade dated February 24, 2012; J-9, the IEP for third grade dated January 28, 2013; and J-10, the IEP for fourth grade dated January 17, 2014, and that all of those IEPs were designed to help A.T. access grade-level curriculum and were appropriate for A.T.

D.

IEP for Fifth Grade dated May 9, 2014

To be sure, Horn testified that all of the IEPs for A.T. were designed to help A.T. access grade-level curriculum and were appropriate for A.T., including J-19, the IEP for fifth grade dated May 9, 2014, which is the first of the two IEPs at issue in this case. In support of her opinion, Horn relied on the documents she reviewed, but she focused on J-11, the Educational Assessment dated April 30, 2014, J-12, the Speech-Language Assessment dated April 25, 2014, and J-13, the Psychological Assessment dated May

1, 2014, during her testimony. Horn also referenced her classroom observations and the IEP for fifth grade itself.

1.

Educational Assessment dated April 30, 2014

Horn testified that even though some of the subtest scores had dipped slightly according to the assessment, A.T.'s academic skills remained in the average to low-average range. In other words, A.T. still possessed relative strengths and weaknesses. Horn explained that those relative weaknesses were in reading, writing, and mathematics. More important, Horn asserted that the assessment contained recommendations to address those relative weaknesses.

Oral Expression

The assessment states that A.T. was able to recall some of the information from the stories, but had greater difficulty as the passages increased in length and complexity. More specifically, her retelling of the stories was out of order and did not include specific details from the passages. Similarly, she was able to label some of the pictures presented to her but not all of them. As such, the assessment recommended that A.T. continue to receive multisensory instruction and that she strive to strengthen her vocabulary and word-retrieval skills.

Reading

The assessment states that A.T. was able to read words in isolation and apply her phonetic skills to decode words unknown to her. Reading comprehension, however, continued to be a challenge. As the passages increased in length and complexity, A.T. missed some key details, which impacted her comprehension. Still, A.T. was able to use picture cues and reading strategies to assist her. As such, the assessment recommended that A.T. continue to apply those reading strategies to strengthen her

comprehension skills and ensure that what she reads makes sense. It was also recommended that she self-correct when necessary.

Writing

The assessment states that A.T. was able to create sentences when presented with a picture prompt. All of the sentences were complete sentences and all of the sentences were related to the topic. As such, the assessment recommended that A.T. continue to receive picture prompts to complete sentences, edit her work for spelling and punctuation, and use graphic organizers to help her organize and expand her thoughts.

Mathematics

The assessment states A.T. was able to complete basic addition, subtraction, and multiplication. She did not, however, attempt regrouping, fractions, or division. Moreover, her problem-solving skills were still developing. She was able to solve basic problems involving addition and subtraction but had difficulty adding money and completing multi-step problems. As such, the assessment recommended that A.T. continue to apply problem-solving strategies and receive models when new concepts were introduced.

Recommendations

The assessment states that classroom observation and teacher input indicated that A.T. required a lot of support to access the curriculum and had difficulty completing the work independently. To address these needs, modifications were put in place and frequent check-ins and prompts were provided. More specifically, tasks were broken down and directions clarified before independent functioning, and additional time was given to process information and complete tasks. Positive reinforcement and praise were also given to strengthen confidence and increase self-esteem. In short, the assessment recommended that these modifications continue, with additional recommendations to be provided by the child study team.

2.

Speech-Language Assessment dated April 25, 2014

Horn testified that even though A.T. had speech and language issues according to the assessment, the IEP contained speech therapy to address those issues.

Teacher interview

Listening

A.T.'s teacher reported that A.T. had trouble remembering what people said, understanding new ideas, and following spoken directions.

Speaking

A.T.'s teacher reported that A.T. had difficulty answering questions, putting events in order, and expanding information. A.T.'s teacher also reported that A.T. had difficulty paraphrasing ideas. A.T.'s teacher, however, shared that A.T. had strengths. In particular, A.T.'s teacher noted that A.T. asked for help when needed, used a variety of vocabulary words, and stayed on point. A.T.'s teacher also noted that A.T. spoke in complete sentences.

Reading

A.T.'s teacher reported that A.T. could follow written directions and sound out words, but had difficulty understanding, explaining, and remembering details from what she read.

Writing

A.T.'s teacher reported that A.T. had difficulty writing down her thoughts and expanding her answers by providing details.

TODL-I:4

The Test of Language Development-Intermediate:4 (TOLD-I:4) was administered to assess A.T.'s strengths and weaknesses in spoken-language form and understanding language content. The subtest scores for word ordering, morphological comprehension, and multiple meanings were average, while the subtest scores for picture vocabulary and relational vocabulary were below average. The subtest score for sentence combining was significantly below average. Thus, the composite score for speaking was below average, which suggested that A.T. might have been misunderstood because of weak vocabulary and inadequate grammar. Meanwhile, the composite scores for listening, organizing, grammar, and semantics were also below average, which suggested that A.T. might have had difficulty constructing grammatically correct sentences, listening for key information, organizing thoughts, and defining vocabulary. As a result, A.T.'s total spoken-language quotient was below average.

TAPS

The Test of Auditory Processing Skills, Third Edition (TAPS-3) was administered to assess A.T.'s auditory skills needed for the development, use, and understanding of language commonly used in academic and everyday activities. The subtest scores for phonological segmentation, number-memory forward, word memory, sentence memory, and auditory reasoning were average. The subtest scores for word discrimination, phonological blending, number-memory reversed, and auditory comprehension were below average. Despite these subtest scores, the index scores for phonological skills, memory, cohesion, and overall ability to process auditory information were in the average to low-average range.

Recommendations

The assessment states that A.T. did not meet the criteria of a speech or language disorder, but that she would benefit from speech therapy to address her weaknesses in organization, grammar, vocabulary, and listening.

3.

Psychological Assessment dated May 1, 2014

Horn testified that even though A.T. had an average IQ, significant scatter existed among the subtest scores, which could affect learning and programming. In other words, A.T., once again, possessed relative strengths and weaknesses, and Horn wanted to know how those relative strengths and weaknesses would affect A.T.'s learning and programming. More important, Horn asserted that the Psychological Assessment contained recommendations to address those relative weaknesses.

WISC-IV

The Wechsler Intelligence Scale for Children, Fourth Edition (WISC-IV) was administered to assess A.T.'s cognitive ability. The WISC-IV provides subtest and index scores, which represent intellectual functioning in different cognitive domains, as well as an overall score, the full-scale IQ (FSIQ), which represents general intellectual ability. Subtest performance provides information on individual strengths and weaknesses within each domain.

The assessment states that A.T. obtained an FSIQ of 93, which is in the average range. Significant differences, however, existed between composite scores. More specifically, the general processing speed index (PSI = 112) was significantly better developed than the general verbal comprehension index (VCI = 91), the perceptual reasoning index (PRI = 88), and the working memory index (WMI = 97). Therefore, the FSIQ was not interpreted as a unitary construct or an overall representation of A.T.'s general cognitive ability.

WJ-III COG

The Woodcock-Johnson Tests of Cognitive Abilities, Third Edition (WJ-III COG) was administered to assess A.T.'s cognitive abilities in long-term retrieval and comprehension-knowledge, which influence cognitive performance. Long-term retrieval is the ability to store information and fluently retrieve it. Comprehension-knowledge, also known as crystallized intelligence, includes the breadth and depth of knowledge. It also includes the ability to communicate this knowledge and the ability to reason using previously learned experience.

Long-Term Retrieval

The assessment states that A.T. received inconsistent scores on the two tests that comprise this factor, the Visual-Auditory Learning test and the Retrieval Fluency test. On the first test, which contains two components, A.T. received a low-average score on one component and an average score on the other. On the second test, A.T. received a high-average score.

Comprehension-Knowledge

The assessment states that A.T. received an average score.

D-KEFS

The Delis-Kaplan Executive Functioning System (D-KEFS) was administered to assess A.T.'s verbal and non-verbal higher-level executive functioning skills. Such skills allow a person to engage in abstract problem-solving activities, both efficiently and effectively. Not every test in the set needs to be administered, and, in this case, only three were necessary: the Trail Making Test, the Verbal Fluency Test, and the Color-Word Interference Test.

Trail Making Test

This test assesses flexibility of thinking on visual-motor tasks, and the assessment states that A.T.'s fundamental abilities (motor speed, visual scanning, and basic scanning) were well developed, but that her cognitive flexibility was a weakness.

Verbal Fluency Test

This test assesses verbal fluency within a structured format. It also assesses the ability to initiate and sustain effort. The assessment states that A.T. scored in the below-average range on the Category Fluency condition, but in the average range on a similar test in the WJ-III COG. A.T. was able to generate more responses in the beginning of intervals, which suggested some difficulty with sustained effort and attention, but she was nevertheless able to initiate verbal responses adequately.

Color-Word Interference Test

This test assesses verbal inhibition and cognitive flexibility. For example, reading a printed word but naming the dissonant ink colors in which the word is printed. The assessment states that A.T.'s performance was strong, as she performed well on both the fundamental tasks and the higher-level tasks, which tap the executive functions of verbal inhibition and cognitive flexibility.

Twenty Questions Test

This test assesses visual attention, categorization, and concept formation. To do this, the examinee is given pictures of thirty objects and told to ask the fewest number of yes-no questions to identify the unknown target object. The assessment, however, states that A.T. struggled. Overall, A.T. scored in the low-average range. She asked redundant questions, even with prompts, which reflected an inability to recognize and incorporate feedback, and she was unable to recognize and form mental concepts or commonalities between or among pictures.

Word Context Test

This test assesses executive functioning in the verbal modality. More specifically, it assesses deductive reasoning, integration of information, and hypothesis testing. It also assesses the flexibility of thinking. To do this, the examinee is required to discover the meaning of a made-up word on the basis of its use in five clue sentences. The goal is to decode the correct meaning using as few clue sentences as possible.

The assessment states that this task was challenging for A.T. and that she scored in the borderline range. More specifically, the assessment states that A.T. had difficulty integrating the clues from the sentences and would often interpret the sentences in isolation. She was unable to use the clues to confirm and narrow a category, demonstrating difficulty synthesizing the information presented. On some occasions, she even failed to guess the word correctly when given all five clues.

Recommendations

Since A.T.'s performance on all three cognitive assessments (the WISC-IV, the WJ-III COG, and the D-KEFS) varied significantly, the following strategies were recommended, based on the individual test and subtest scores:

- Re-word and clarify directions and questions
- Pair abstract concepts with visual and concrete representations
- Provide frequent breaks to enhance sustained attention
- Provide frequent exposure and repetition over time of previously learned material
- Provide concrete visual representations of mnemonic devices to aid recall
- Provide the basis skills needed to learn and apply novel tasks and higher-level tasks
- Provide alternative ways to demonstrate knowledge, such as multiple-choice or matching

- Break down multi-step tasks into explicit components
- Present and require completion of one discrete task at a time
- Take a step-by-step approach to tasks

Although petitioners would later argue that A.T.'s mild deficits snowballed into something more educationally daunting—avalanching to a point where she was no longer receiving FAPE, burying her with mild condition after mild condition piling up on top of her—Montville was well aware of A.T.'s nuanced cognitive profile. More important, Montville made its recommendations with this very understanding—petitioners' dramatic avalanche metaphor notwithstanding. Thus, petitioners' argument that A.T. could not dig herself out of her alleged failures was without basis in fact, and exaggerated advocacy as a matter of law.

4.

Program and Placement

Horn testified that she spoke with A.T.'s mother, who was concerned about generalizing learning, and explained to her that A.T. needed a different kind of attention, which meant a change in some of the instruction: A.T. would no longer receive in-class support for reading, language arts, and mathematics, but would receive replacement instruction in the resource center for those subjects. A.T., however, would continue to receive in-class support for science and social studies. A.T. would also receive an additional speech therapy session. Finally, A.T. would begin the replacement instruction in language arts and math and receive the additional speech therapy session at the end of fourth grade during the extended school year.

To be clear, Horn testified that she reviewed R-85, the Reading Level Assessments of A.T., for third, fourth, and fifth grades, and that those assessments warranted placement in the replacement reading and language arts class because A.T. was at Level R (the middle of fourth grade) in the beginning of fifth grade, but only at Level S (the end of fourth grade) at the end of fifth grade. Thus, A.T. was half a year to

a full year behind grade level. Nevertheless, Horn explained that A.T. had made consistent progress and was, in fact, only one incorrect answer away from Level T (the beginning of fifth grade).

5.

Goals and Objectives

More granularly, Horn testified that the goals and objectives were appropriate, and a review of the IEP reveals why: It contained annual measurable academic and functional goals in all of the academic or content areas in which A.T. was in need of special education and related services (reading, writing, mathematics, and speech), together with their benchmarks or short-term objectives and their criteria for measurement. Just as important, Horn explained that the goals contained the procedure to evaluate or measure each and every benchmark or short-term objective. Indeed, all attempts by petitioners to brand the goals and objectives as inappropriate were either misunderstandings on their part or misguided advocacy.

6.

Modifications

More significantly, Horn testified that the IEP contains most if not all of the modifications the parents and professionals suggested or recommended at the IEP meeting, and they are listed below exactly as they appear in the IEP (J-19):

- Preferential seating to minimize distractions
- Multisensory instruction
- Break down tasks into manageable components
- Repeat/clarify instructions
- Have [A.T.] repeat back directions when necessary

- Ensure understanding of directions prior to task completion
- Extend time to complete tasks
- Modified assignments, tests, quizzes, homework, etc., modified as needed (Multiple choice questions and word banks will assist [A.T.]
- (When curriculum or test format require modification, notify parents) Provide prompts to redirect attention back to task
- Positive reinforcement and praise
- Check homework planner to make sure assignments were written down correctly
- Utilize graphic organizers for writing
- Provide test-taking strategies to help [A.T.] take tests independently
- Continue to teach time-management to increase [A.T.'s] awareness of time constraints (i.e., timer, 5-minute warning, etc.)
- Provide study guides for social studies and science that reflect what she will be responsible to know for the test. [A.T.] requires reteaching and repetition to maintain skills
- Provide checklists and models to help her complete tasks
- Provide concrete examples to help her make associations/connections
- Allow use of calculator or chart as needed
- Present one discrete task at a time
- Provide basic skills needed to learn/apply higher level tasks
- Provide breaks for sustained attention
- Preteach vocabulary for social studies/science

7.

Classroom Observations

Horn testified that the IEP was also appropriate based upon her observations of A.T. in class at Woodmont.

Science Class/October 15, 2014

First, Horn testified that she observed A.T. in her science class at Woodmont on October 15, 2014. Ostensibly, Horn was in the classroom to shadow Havens, petitioners' educational consultant, who was there to observe A.T. on that date. Horn's observations are contained in J-86, her Observation Report dated October 15, 2014.

Between her report and her testimony, Horn thought the class was appropriate. The class consisted of two teachers and twenty students, with tables set up in clusters of four to five. A.T. sat in a cluster in the front of the room.

Horn wrote that the teacher began the class by having the class work on a "brain warmer." Horn stated that A.T. transitioned nicely from the brain warmer to the daily lesson and that she actively participated in the class. Horn noted that A.T. raised her hand to answer questions, volunteered throughout the class, and provided correct answers. Horn continued that at one point, a teacher assisted A.T., quietly and briefly, one-to-one, and that the teacher looked over her work and confirmed it was correct.

Horn testified that she really liked the built-in breaks and cooperative learning and was pleased that A.T. participated so actively with such targeted responses.

Math Class/October 15, 2014

Next, Horn testified that she observed A.T. in her math class at Woodmont on October 15, 2014. Again, Horn was there to shadow Havens. Horn's observations are contained in J-87, her Observation Report dated October 15, 2014.

Between her report and testimony, Horn thought this class was appropriate too. The class consisted of only three students and one teacher. A.T. sat with the other two students in the front of the room.

Horn wrote that the teacher began the class with a review of multiplication problems. Horn stated that A.T. again participated actively and again provided correct answers. Horn noted that when A.T. was given work to do independently, the teacher provided A.T. with support through verbal reminders. Horn continued that A.T. even provided the correct answer when asked why a comma was needed in an answer.

Horn testified and wrote that she liked the math video the teacher showed the class because it was multisensory. Horn stated that the teacher was able to work alongside the video, connecting prior knowledge and checking for understanding through questioning. Horn noted that the teacher also reviewed lesson vocabulary and provided positive praise. Above all, Horn liked the fact that A.T. responded positively to the video.

Horn continued that the students used calculators to review skills and solve problems on the SMART Board, and that A.T. provided the correct answers to those problems.

In her report, Horn wrote that the students had math notebooks, which included math vocabulary, problem-solving steps, and sample problems as assistance tools, and that A.T. worked independently with her eyes on her paper, without the need for the calculator or notebook.

Finally, Horn testified that she liked the small class for the teacher to monitor the students, and restated that the class was appropriate.

Social Studies Class/December 18, 2014

Third, Horn testified that she observed A.T. in her social studies class at Woodmont on December 18, 2014. This time, Horn was there to shadow Gillock, petitioners' school psychologist. Horn's observations are contained in J-88, her Observation Report dated December 18, 2014.

Between her report and testimony, Horn thought this class was appropriate too. The class consisted of two teachers and approximately twenty students. Like the science class, tables were set up in clusters of four to five students, and A.T. again sat in a cluster in the front of the room.

Horn wrote that the lesson for the day was maps, and students were provided raised maps to work on with a partner in their group. Horn stated that the maps were interactive, that the students learned through peer interaction with manipulatives, and that the teacher facilitated the lesson. Horn noted that the teacher was also available for consult. Horn continued that A.T. was partnered with a student from her group and that both participated in and contributed to the pairing. Horn asserted that A.T. and her partner completed the expectations of the assignment and reviewed their answers with the teachers.

Reading and Language Arts Class/Undated

Horn did not have a report for her observation of A.T. in her reading and language arts class, but testified that she saw cooperative learning, multisensory instruction, and teacher involvement. Horn further testified that A.T. was engaged and on target in class. Moreover, Horn testified that she reviewed the writing-process folder and the writing samples and writing tools contained in it and was impressed by the program. As such, Horn thought the class was appropriate.

8.

Cross-Examination

Horn testified that replacement instruction in the resource center for science and social studies was not needed as it was for reading, language arts, and mathematics because small-group instruction could still be achieved in the general-education classroom for science and social studies. In particular, Horn testified that both science and social studies used a lot of center-based models and that the in-class support was still sufficient to meet A.T.'s needs in those classes. In other words, a more restrictive environment was not needed.

E.

IEP for Sixth Grade dated April 16, 2015

Horn testified that J-23, the IEP for sixth grade dated April 16, 2015, was also appropriate for A.T. In support of her opinion, Horn relied on the new or updated reports and evaluations, her consultation with A.T.'s teachers and service providers, and her observations of the classes at Lazar Middle School, the Montville Township school that A.T. would attend for sixth grade. Significantly, Horn noted that the IEP team also considered input from Gillock and Havens, whom Montville paid to attend the IEP meeting. More significantly, Horn accepted much of what Gillock and Havens reported, and incorporated much of what they recommended, even if the rest of the IEP team did not believe all of the recommendations were necessary. For example, Horn explained that petitioners wanted counseling and a pull-out session for academic strategies, which the rest of the IEP team did not think were necessary, but Montville obliged and incorporated them anyway. Finally, Horn asserted that all of A.T.'s teachers and services providers, including the speech and language specialist, reported that A.T. was making progress.

The documents the IEP team reviewed and considered—and the child study team’s response to what Gillock and Havens reported and recommended—are discussed below.

1.

IEP Meeting

Horn testified that the parties met on July 8, 2015, in an attempt to incorporate the reports and evaluations from Gillock and Havens, and that Montville did in fact incorporate many of their recommendations in the IEP for sixth grade dated April 16, 2015. The highlights are contained in her cover letter to petitioners dated July 15, 2015. Notably, the IEP included revised goals and additional modifications in the areas of weakness, namely, reading, writing, and mathematics:

- Goals have been revised to include a more detailed description of supports in math, reading, and writing.
- Modifications have been revised as discussed. Specifically, Framing Your Thoughts is named in the writing section and an accommodation was added to address Dr. Gillock’s concerns with [A.T.’s] public speaking phobia.
- The program was revised to include additional pull-out support periods to address the keyboarding and written expression concerns. Also, an occupational therapy consultation was added to monitor the keyboarding program.
- An FM system will be available in [A.T.’s] In-Class Resource classes, specifically Science and Social Studies.

[J-23.]

2.

Meaningful Progress

Horn testified that A.T. made meaningful progress in fifth grade based on her review of J-24 through J-29, the progress reports; J-45 and J-46, the report cards; and even J-58, the work samples.

Progress Reports

A review of the progress report dated June 18, 2015, for example, states that A.T. had achieved all twenty of her goals, or had made satisfactory progress toward them, except for those that had just been introduced. Horn explained that the reason some had just been introduced is because the annual review of these goals and objectives was in April, and some of the new goals had just been put in place at that time. More significantly, the reason some of these goals had not been achieved until June is because A.T. needed the full academic school year to achieve them. Parenthetically, Montville offered an extended school year after both fourth and fifth grades to afford A.T. more time to achieve her goals, but petitioners rejected these offers and overtures.

Report Cards

Meanwhile, a review of the report cards showed that A.T. had received all B's and C's in fourth grade and then all B's and A's in fifth grade, based on her modified curriculum, with positive comments from all of her teachers every marking period. But A.T.'s mother dismissed these grades. She explained that A.T. needed and received an extraordinary amount of extra help from her teachers in Woodmont to achieve these grades. Yet this is hardly an indictment of Montville's ability to implement the IEP or its ability to grade students—and it certainly does not support the assertion that A.T. did not earn these grades.

Work Samples

Finally, Horn testified that A.T.'s work samples from math and science in fifth grade demonstrated significant learning and meaningful progress. In fact, A.T.'s mother complained that she had to contact Montville on almost a daily basis about A.T. and what homework A.T. needed to complete. The fact that A.T.'s mother further testified that Montville answered or responded to every single email or phone call is again hardly an indictment of Montville's ability to implement the IEP or its ability to manage its students. It is an acknowledgment that Montville was both sensitive and responsive to parental concerns.

3.

Class Observations

Horn testified that the IEP for sixth grade was appropriate for A.T. based upon her observations of the classes A.T. would have been in at Lazar for sixth grade.

Reading and Language Arts Class/October 14, 2015

Horn testified that she observed the reading and language arts class at Lazar on October 14, 2015. Horn's observations are contained in J-68, her Observation Report dated October 14, 2015. Between her testimony and report, Horn thought this class was appropriate. The class consisted of eight students, one teacher, and one aide.

Horn wrote that the desks were arranged in a horseshoe shape facing the SMART Board, with anchor charts and student work displayed on the walls. Horn stated that the homework assignment and the classroom expectations were displayed on the SMART Board. Horn noted that the class began with the students working independently on a reading-comprehension activity as a brain warmer, and that the students recorded their homework in their planners. Horn continued that the classroom was quiet and that the students stayed on task.

Horn wrote that the teacher provided a one-minute verbal warning to alert the students to finish up their independent work so they could go over it together as a class. Horn stated that the teacher then directed the students' attention toward her and went over the homework for that evening. Horn noted that the students then updated their planners, and that the teacher then went over their independent work together as a class. Horn continued that the teacher assisted the students as they read and provided positive praise and encouragement throughout the class.

Horn wrote that once the activity concluded, the teacher again directed the students' attention to the SMART Board, where she displayed a blank chart and asked the students to complete a review activity for their upcoming assessment. Horn stated that the teacher asked the students to come up with the six reading strategies they had been learning, and reminded them of their prior learning about reading strategies. Horn noted that the teacher assisted the students throughout the activity by providing praise and clues. Horn continued that the teacher then provided the students with another warning to finish up what they were doing so they could transition to the next part of the lesson.

Horn wrote that the students pulled out a booklet with a story in it and that the teacher went over the lesson from the day before. Horn stated that the teacher guided the class in summarizing what they had read through questioning and then began to read the story aloud from where they had left off. Horn noted that the students followed along, and with a writing tool in hand, took active notes, applying the six reading strategies they had learned. Horn continued that the students underlined the vocabulary in the text they had already learned, and that the teacher pointed out areas that were a preview to future lessons.

Horn wrote that the teacher guided the students toward higher-level thinking and comprehension and modeled how to use the text as a reference tool for evidence to support their comprehension. Horn stated that the teacher continued to read aloud and the students continued to follow along. Horn noted that the teacher guided the conversation based on evidence in the text, brought in the six reading strategies they had learned and connected them to the text, and encouraged the students to be active

readers. Horn continued that the students took notes in the margins of the booklet and that an aide recorded the lesson in case notes needed to be provided to a student. Horn asserted that she was impressed by how the teacher modeled how to ask questions of the text to answer questions about the story, thereby using the text as an interactive tool.

Finally, Horn wrote that the students volunteered information, were on topic, were engaged and on task, and used the text to define vocabulary words in isolation.

Science Class/November 4, 2015

Horn testified that she observed the science class at Lazar on November 4, 2015. Horn's observations are contained in J-89, her Observation Report dated November 4, 2015. Between her report and her testimony, Horn thought the class was appropriate. The class consisted of twenty-six students and two teachers. One teacher was a qualified science teacher and the other was a special education teacher. The class was also equipped with an FM system, but it was not in use because no student required it.

Horn wrote that the teacher had a nice rapport with the students and that the classroom environment was positive. Horn stated that the class began with the students opening their daily planners and the teacher providing them with the classroom expectations in both verbal and visual form. Horn noted that the teacher circulated around the room to check on student preparation and organization and that the students continued working on a packet they had already started from a previous day. Horn continued that the students were then called up to the front of the room to retrieve a Chromebook and work on their projects independently.

Horn testified that she was impressed by the teacher support and the peer-to-peer support, as well as the posting of the assignment expectations and the ability of students to self-check their work.

Finally, Horn testified that this science class for sixth grade at Lazar was similar to the science class for fifth grade at Woodmont.

Social Studies Class/November 4, 2015

Horn testified that she observed the social studies class at Lazar on November 4, 2015. Horn's observations are contained in J-90, her Observation Report dated November 4, 2015. Between her testimony and report, Horn thought this class was appropriate. The class consisted of twenty-one students and two teachers. One teacher was a social studies teacher and the other was a special education teacher. The class was also equipped with an FM system, but it was not in use because no student required it.

Horn wrote that the students were seated in two rows in front of the SMART Board, with the textbooks opened to a skeleton-note-guided reading template. Horn stated that the teacher discussed reading strategies and explained how the assignment would strengthen reading comprehension. Horn noted that the students worked quietly and at their own pace. Horn continued that the students raised their hands when they needed help and that the teachers circulated around the room to provide that assistance.

Horn testified that she was impressed by how the teachers encouraged the students, provided them with problem-solving strategies, and modeled how to use the text for notetaking. Horn stated that she was also impressed by how the social studies teacher adjusted the scope and sequence of expectations based on student progress and provided accelerated assignments to students who had completed the work. Horn noted that she was similarly impressed by how the social studies teacher reviewed the student work as a class on the SMART Board and how the special education teacher continued to rotate around the room to provide on-task support and guidance.

Finally, Horn testified that she liked the student handout because it was an organizational tool and because it was multisensory.

Math/November 11, 2015

Horn testified that she observed the math class at Lazar on November 11, 2015. Horn's observations are contained in J-91, her Observation Report dated November 11, 2015. Between her testimony and report, Horn thought this class was appropriate. The class consisted of five students and one teacher.

Horn wrote that the desks were arranged in a horseshoe shape facing the SMART Board, which had interactive manipulatives on it. Horn stated that the lesson was adding and subtracting fractions with uncommon denominators, but the teacher began the lesson by reviewing adding and subtracting fractions with common denominators on the SMART Board and checked for understanding. Horn noted that the teacher displayed a sample problem on the SMART Board, questioned the students about the problem-solving process, and reviewed the concepts and rules for fractions. Horn continued that the students participated in the lesson and provided appropriate responses.

Horn wrote that the teacher then called each student to the SMART Board to work with the interactive manipulatives and model the problem-solving process for the class. After all the students participated in the lesson, the teacher played a fraction video. Horn stated that she was impressed that the teacher periodically stopped the video as it went along to check for understanding, and then recapped the introductory lesson and video once it was over.

Next, Horn wrote that the teacher began a new part of the lesson, with interactive notes to be placed in student binders and kept as reference tools for homework. Horn stated that the students did the first problem together as a class and then the remaining problems on their own. Horn noted that she was impressed that the class reviewed the worksheet together and the teacher color-coded the steps in the problem-solving process for them, with the students filling in their templates as they followed along on the board. Horn continued that the teacher made sure the reference tools were correct and ready for use at home.

Finally, Horn testified that she liked the handout because it made the abstract concepts more concrete and allowed the students to use it at home with their homework, and because it was interactive and organizational.

Writing Class/November 24, 2015

Horn testified that she observed the writing class at Lazar on November 24, 2015. Horn's observations are contained in J-94, her Observation Report dated November 24, 2015. Between her testimony and report, Horn thought this class was appropriate. The class consisted of six students, one teacher, and one aide.

Horn wrote that the desks were arranged in a horseshoe shape facing the SMART Board, which had the students' homework displayed on it. Horn stated that the class began with the teacher reviewing the homework on the SMART Board and the students checking their homework as the teacher went along. Horn noted that the students participated in the review and that the teacher checked for understanding. Horn continued that the teacher then handed out the homework for that night. Horn asserted that she was impressed by how the teacher reviewed the homework and explained its objective.

Horn wrote that the teacher then began the lesson of the day. Horn stated that the teacher demonstrated the lesson on the SMART Board and used color markers to display and chunk concepts. Horn noted that she was impressed with the use of the color markers. Horn continued that the teacher then modeled the correct answer on the SMART Board, checked for understanding, and restated expectations for the homework. Horn asserted that she was impressed with the students' participation and the teacher's reinforcement.

Horn testified that she liked the use of the graphic organizer from Framing Your Thoughts for the next segment of the lesson. In her report, Horn wrote that the teacher displayed it on the SMART Board, directed the students to come up with a sentence about the picture on the board, and then wrote those sentences on the graphic organizer. Horn stated that the teacher and the class used symbols to show parts of the

sentence, and that the teacher then expanded the sentences through the use of their descriptors. Horn noted that she was impressed that the teacher made a connection between this part of the lesson and the narratives the students had been working on from a previous lesson.

Horn wrote that the students then retrieved their Chromebooks, returned to their narratives, and tried to expand their sentences through the use of descriptors. Horn stated that she was impressed that the teacher reviewed the sentences with each student individually. Horn was also impressed that an aide circulated the room at the same time to provide help as needed. Horn continued that she was impressed that the students had writing tools available to them to expand their sentences, namely, a writer's checklist, word lists, and a sensory word list.

Finally, Horn wrote that the teacher instructed the students to write their "bare-bones sentences" with their "descriptive sentences" in their binders so they could use them as reference tools when comparing bare-bones and descriptive sentences.

In short, Horn testified that she was very impressed with this class.

Math Class/February 2, 2016

Horn testified that she observed the math class again at Lazar on February 2, 2016. Horn's observations are contained in J-165, her Observation Report dated February 2, 2016. Between her testimony and report, Horn thought this class was appropriate. The class consisted of five students and one teacher.

Horn wrote that the desks were arranged in a horseshoe shape facing the SMART Board, with anchor charts and an interactive "Math Word Wall" displayed on the wall. Horn stated that the "Problem of the Day" was on the SMART Board as the students entered the room. Horn noted that the evening homework with assignment expectations was on the white board, and was color-coded. Horn continued that the students came in, reviewed and recorded their homework expectations, and then began to work on the Problem of the Day.

Horn wrote that the teacher interrupted the students to explain the new expectations for the new marking period and to remind the students that they needed to show their work to get full credit for their answers. Horn stated that the teacher redirected the students to the Problem of the Day, encouraged them to use number lines, and reminded the students how to use them. Horn noted that the teacher then provided a transition warning and instructed the students to take out their red pens. Horn continued that the teacher directed the students to follow along as she reviewed the Problem of the Day, and questioned the students as she went along. Horn asserted that the students shared their answers and explanations, and that their answers and explanations were correct.

Horn wrote that the teacher used color-coding to demonstrate and model how the number line could help them self-check and self-correct their answers. Horn stated that the teacher then provided the definition of the decimal point as a refresher for some of the problems they were solving and continued to review the Problem of the Day. Horn noted that the students were quiet and remained on task. Horn continued that the teacher transitioned the class to the review of their homework from the night before and instructed the students to get their red pens and gather in their groups to review their homework together. Horn asserted that the teacher rotated through the groups, assisting the students and providing positive praise throughout.

Horn wrote that the teacher then directed the students' attention to the SMART Board, where she reviewed the homework with the class. Horn stated that the teacher showed the students various problem-solving strategies and supported student input. Horn noted that the teacher again used color-coding to chunk the work. Horn continued that the teacher guided the students through each step, both questioning and modeling the process. Horn asserted that the teacher encouraged input from all students.

Horn wrote that the teacher reworded and restated instructions to assist all students with understanding and provided positive praise and encouragement throughout. Horn stated that the teacher also slowed the pace to allow the students to process the information and respond to her questions. Horn noted that the teacher

provided reference tools to connect the students' understanding to the learning and to provide opportunities for visualization. Horn continued that the teacher then transitioned the class from the homework review to a note-taking template.

Horn wrote that the students had their own copy of the template in their notebooks to record the information from the board, and that the teacher encouraged the students to refer to their notes when doing their homework that evening. Horn stated that the teacher modeled the problems on the board and that the students volunteered input. Horn noted that the students were involved and that their answers were on target. Horn asserted that students came up to the board, that the class followed along, and that the class then came to an end, with the teacher explaining that they would pick up where they had left off the following day.

Finally, Horn wrote that the teacher handed out the homework sheet and reviewed the homework expectations and the reference tools the students could use to complete the homework.

Horn testified that she liked the class because the students were given opportunities for direct teacher instruction, guided practice, collaborative peer-group work, and independent practice, and because the teacher took a multisensory approach, provided positive praise throughout, and used signals to demonstrate understanding.

4.

Cross-Examination

Horn testified on cross-examination that the teacher in the reading and language arts class was trained in Framing Your Thoughts. On redirect examination, Horn explained that Framing Your Thoughts is not the only reading program Montville uses and that the teachers who use the other reading programs are trained in them as well. In addition, Horn testified on cross-examination, and reiterated on redirect examination, that A.T. was not a candidate for a Wilson reading program. Finally, Horn testified on

cross-examination that A.T. had progressed in fifth grade, as evidenced by the progress reports and report cards.

III.

Michelle Havens

A.

Expertise

Michelle Havens is an educational consultant. She received a bachelor's degree in speech pathology and audiology from Rutgers University in 1973, a master's degree in audiology from San Diego State University in 1974, and a doctorate in special education from Rutgers University in 2002. She holds many certificates in both general and special education and has extensive experience in both general and special education. Currently Havens is a full-time lecturer at Kean University, where she teaches students how to write IEPs.

Havens has an impressive and lengthy résumé and was offered and accepted as an expert in special education instruction, programming, and progress monitoring without objection.

B.

Review

Havens has known A.T. since she was four months old and had tutored A.T. in fourth and fifth grades until A.T. went to Craig. Havens was retained by petitioners when A.T. was in fifth grade to provide her opinion about the appropriateness of the program and placement for A.T. in Montville for fifth and sixth grades, and ultimately the appropriateness of the program and placement for A.T. at Craig in sixth grade. To provide these opinions, Havens observed A.T. in Woodmont when she was in fifth

grade and at Craig when she was in sixth grade. Havens also observed the program A.T. would have attended at Lazar for sixth grade.

More specifically, Havens observed A.T. in her math and science classes at Woodmont on October 15, 2014, met with the child study team in Montville on July 8, 2015, and memorialized her observations and recommendations in a report dated July 13, 2015.

On October 8, 2015, Havens observed A.T. in her reading and language arts class at Craig; on October 14, 2015, Havens observed the language arts class A.T. would have attended at Lazar; on November 4, 2015, Havens observed the science and social studies classes A.T. would have attended at Lazar; and on November 19, 2015, Havens observed A.T. in her math and science classes at Craig.

All of her observations and recommendations are summarized in P-95, her report dated December 17, 2015.

C.

Report

In her report dated December 17, 2015, Havens wrote that A.T. had received extensive private tutoring at great parental expense just so A.T. could keep up with the school work at Woodmont. Havens asserted that even with her tutoring, A.T. demonstrated only minimal gains in Woodmont, and that she would not have advanced grades without her tutoring. In short, Havens opined that Montville had not provided A.T. with an appropriate education and that A.T. needed to be placed at Craig.

On cross-examination, Havens acknowledged that she had tutored A.T. only once a week in fourth and fifth grades, until A.T. went to Craig, and that A.T. had progressed enough to advance grade levels.

Returning to her report, Havens specified that she shared her concerns about A.T. with the IEP team at the IEP meeting on July 8, 2015.

In particular, Havens wrote that she recommended that the following be included in the IEP for sixth grade:

- An FM system
- Writing across all subjects
- A specific writing program
- Collaborative planning time for teachers
- Keyboarding
- Occupational therapy
- New goals and objectives, which would be more specific and more measurable
- Spelling instruction
- Pre-teaching
- The teaching of time and money concepts

Havens testified that most of her concerns were addressed at the meeting and that most of her recommendations were included in the IEP. But Havens had no confidence Montville could implement the IEP with all of her recommendations and all of the modifications to her satisfaction. “With 41+ modifications, how will the general education teachers be able to teach her?” she wrote.

On cross-examination, Havens acknowledged that she agreed with all of the modifications contained in the IEPs, but maintained that she had no confidence Montville could implement them.

On redirect examination, Havens clarified that she did not think that the teachers could remember all of the modifications. Havens, however, had previously

acknowledged on cross-examination that she did not know any of the credentials of the teachers at Montville and their capabilities of implementing the modifications contained in the IEPs. Moreover, Havens admitted that she had never been a school teacher in fourth, fifth, or sixth grade.

That Havens did not think Montville could implement the IEP with all of her recommendations and modifications is but one of many examples of Havens and her bias against Montville. Indeed, Havens, like Gillock, was a paid expert, paid to deem the program and placement at Montville inappropriate, and the program and placement at Craig appropriate. In doing so, Havens provided allowances for Craig, and none for Montville.

The following is a summary of her concerns, comments, and criticisms, which she listed in her report:

- The FM system could not be an individual one and had to be installed schoolwide and in all classrooms.
- The writing program Framing Your Thoughts was added to the IEP, but the teachers had no experience with it.
- The teachers would collaborate with one another about A.T. but no specific time was scheduled for them to do so, and none of them had any specific training on how to collaborate.
- Typing would be taught in general, but keyboarding would not be taught in particular.
- Occupational therapy would not be included in the IEP because A.T. did not qualify for the related service.
- The goals and objectives were not changed and were not made more specific and more measurable.
- Spelling instruction was not specifically part of the middle-school curriculum, yet it was still needed.
- Pre-teaching had been included in previous IEPs but had never been implemented.

- Time and money concepts were not specifically included in the IEP, but even if they had been as a pull-out instruction, they would have been at the expense of other concepts, and A.T. would have fallen farther behind.

Havens also listed that she was concerned that A.T. would “look different” from her peers. Havens notes that Montville offered counseling in response, but Havens deflected that it would still be impossible for the teachers to implement the modifications. Havens continued that the teachers would not be able to monitor A.T. and her progress because teachers do not routinely assess students before teaching their lessons, “so there is no data on what the students already know before the lesson is taught and to determine what should be taught.”

In conclusion, Havens wrote that A.T. should be exempt from foreign language, have computer-based graphic organizers available to her at home and throughout her classes (even though Havens thought such graphic organizers had been ineffective), and receive pre-teaching in science and social studies with study guides provided in advance. Similarly, Havens wrote that A.T. should receive speech therapy more than two times a week in groups smaller than five, and that the IEP should include any remaining parental concerns not already documented in it. Finally, Havens wrote that Montville should be sure to inform the parents of the homework A.T. was to complete each night for the next day of school.

At bottom, Havens thought that the IEPs for fifth and sixth grades were inappropriate because A.T. required more intensive instruction in a small-group setting with multisensory support.

D.

Testimony

At the hearing, Havens was even more descriptive and even more specific. She testified that A.T. has difficulty with memory retention, even with multisensory instruction and medication, and that A.T. was still struggling in school when she reviewed the IEPs for fifth and sixth grades. Havens opined that the IEPs were inappropriate because the

multisensory instruction was not imbedded in the instructional program and used throughout the day in every class like it was at Craig. According to Havens, the instruction had to be sequential, with concepts broken down step by step, and the goals and objectives had to be more measurable than they already were. The classes also had to have as few students as possible and the rooms had to be equipped with FM systems.

1.

IEP for Fifth Grade dated May 9, 2014

Present Levels of Academic Achievement and Functional Performance

In reviewing the IEP for fifth grade, Havens testified that the Present Levels of Academic Achievement and Functional Performance was informative but contained no baselines. In her opinion, no goal was specific enough and no objective was measurable enough. Havens further testified that the modifications were too generic and that A.T. needed more help than a special education teacher could provide. Moreover, Havens testified that A.T. needed more intensive multisensory instruction than had been provided in the past and that it had to be part of a specific program. According to Havens, it could not be a standalone feature. For example, the teacher would have to say it, show it, and then provide manipulatives in all classes and across all subjects.

Goals and Objectives

Havens was unreasonably nitpicky, especially about the goals and objectives. For example, A.T.'s special education teacher in reading and writing documented in the Present Levels of Academic Achievement and Functional Performance that A.T. was assessed for reading and comprehension in September and then again in April and had progressed:

[A.T.] was assessed in September for reading. She was reading on level P (end of third grade). [A.T.] was re-assessed in the beginning of April and is now reading on an S (end of fourth grade). It is apparent that she has made gains in her reading this year. When [A.T.] comes across a word that is unfamiliar to her she takes the time to sound out the word or ask for help, which is a great skill to have. [A.T.] was also assessed for reading comprehension. In September she received 22 out of 48. In April she received 29 out of 48. During the assessment, [A.T.] worked extremely hard and really concentrated and looked back at each passage. I am very happy with the progress [A.T.] has made in reading this year!

[J-20 at MV 233.]

But Havens testified that the goal was inappropriate because she did not know from the document exactly what gains A.T. had made, and Havens did not know what 22 out of 48 or 29 out of 48 meant either. Yet, Havens never asked anyone at Montville the answers to her questions and never considered the fact that personnel at Montville knew exactly what gains A.T. had made and what 22 out of 48 and 29 out of 48 meant. In fact, petitioners never questioned any measurement until they filed for due process.

As another example, Goal Three in the area of study skills states, “[A.T.] will successfully transition from one activity to another with only minimal assistance with 85% success.” But Havens testified that the goal was inappropriate because she did not know what “minimal assistance” meant. Yet Havens completely overlooked the fact that the benchmark or short-term objective defines the term.

Similarly, Goal Four in the area of reading states, “When presented with a list of 4 unknown and multiple-meaning words and phrases selected by the teacher from Fifth Grade reading literature and content area subjects, [A.T.] will define the words and phrases to assist in reading comprehension and language acquisition with 80% success.” But Havens testified that the goal was inappropriate because she did not know the exact identity of the “content area subjects” from which the multiple-meaning words and phrases would be selected. Yet Havens overlooked the fact that A.T.’s

teacher knew exactly which books constituted “Fifth Grade reading literature” and which subjects constituted “content area subjects.”

To repeat, what was important was that A.T.’s educators, not an outside consultant, understood the goals and objectives, and that if any of A.T.’s educators had a question about a measurement or term, he or she could ask.

Havens also criticized the goals for writing and math. In particular, Havens testified that the goals for writing were inappropriate because they did not specifically include the baseline for writing, and the goals for math were inappropriate because they did not specifically include any objectives for regrouping numbers or for computing time and money. Yet, Havens dismissed the fact that the baseline for writing was contained elsewhere in the record and that the objectives for regrouping numbers and for computing time and money were subsumed in the objectives.

In the area of speech and language, Havens singled out Goal Eighteen, “[A.T.] will use grade level vocabulary through classification, categorization, and association with 80% success,” as inappropriate because Havens thought the goal was too vague and knew that A.T. struggled with grade-level vocabulary. But neither criticism made any sense because the benchmarks or short-term objectives specifically state that any classification, categorization, or association would be within a structured task and that any vocabulary would be curriculum-based. Indeed, learning grade-level vocabulary is the whole point of the goal.

In the area of social, emotional, or behavioral, Havens singled out Goal Nineteen, but testified about all of the social, emotional, and behavioral goals. This time it was merely possible that the goals were inappropriate. As Havens put it, “they could be inappropriate.” The reason Havens gave was that “they were not necessarily measurable.” This criticism was tepid at best. Indeed, Havens implied that these goals were only put in the IEP as an accommodation to petitioners in the first place.

Ultimately, Havens acknowledged that the goals and objectives were, in fact, capable of review, for she would later testify on cross-examination that she did, in fact,

understand the goals and objectives as written, and that she had simply wanted them to have been better written, that is, more specific and more measurable.

Modifications

Havens testified that the IEP for fifth grade was inappropriate because the modifications were insufficient. On the one hand, the modifications were missing items—no FM system, no pre-teaching, no methodology. On the other hand, the modifications contained too many items—no teacher could remember, let alone implement, them. In other words, the modifications had to be imbedded in a program so the curriculum did not have to be modified. As such, Havens wanted a program modified for the entire class, not a program modified for A.T. Stated otherwise, Havens wanted the IEP to be individualized, but not too individualized.

2.

Progress Reports

Havens was just as critical about the progress reports. Havens testified that the collecting of data was insufficient because the data needed to be collected at the beginning of each marking period, and that the reporting of progress was insufficient because it was not quantifiable. The term “progressing gradually”—even with the explanatory sentence “The student is making less than anticipated progress but may still achieve the goal”—had no meaning for her. Likewise, the term “progressing gradually” and the explanatory sentence “The student is making less than anticipated progress but may still achieve the objective/benchmark” had no meaning for her.

But Havens overlooked the fact that A.T. had been evaluated by the professionals in this case and that other assessments existed as well. Indeed, the cover letter enclosing the progress report expressly states that the progress report should be considered as only one assessment of A.T.’s individual achievement and should be used with the other reports from her education program. Moreover, the letter

concludes with the invitation for petitioners to call A.T.'s teacher or service provider if they had any questions:

Dear Parent/Guardian of [A.T.]:

Enclosed is a report which indicates your child's progress toward meeting the goals as stated in your child's Individualized Education Program (IEP). This progress is specifically related to your child's IEP Goals and should be considered as only one assessment of your child's individual achievement. Please utilize this report with other reports from your child's educational program to help you evaluate your child's overall achievement in relation to classmates and educational curriculum. If you have any questions, please do not hesitate to contact your child's teacher or service provider directly.

Sincerely,

Jennifer DeSaye
Director of Special Services
973-331-7100 Ext. 2226

[J-25.]

For all her criticism, Havens was still able to interpret the progress reports. Referencing J-25, the progress report dated March 23, 2015, for example, Havens testified that three marking periods in a row of "progressing gradually" meant A.T. was not progressing fast enough, and that Montville was wasting her time. Referencing J-26, the progress report dated April 17, 2015, Havens testified that "Progressing Satisfactorily—The student is making satisfactory progress and is expected to achieve the objective/benchmark" was not progress enough, at least not a full year. Similarly, referencing J-27, the progress report dated June 17, 2015, Havens testified that A.T. was still progressing, but not enough time was left in the school year to achieve all of her goals. Yet Havens testified on cross-examination that it is not always possible for a special education student to progress one year in one year, especially when the special education student has memory-retention issues, and that some goals and objectives can be repeated in the following year.

Then Havens testified that the progress-report narratives contained no data to support statements of achievement, and that the narratives themselves were too general and not specific enough. Yet Havens was accepting of the progress-report narratives from Craig when they contained no data and were written with no greater specificity. Moreover, Havens testified on cross-examination that she never asked for clarification about any of the progress reporting contained in any of the progress reports or IEPs, and that she did in fact understand what each statement meant in the progress reports and IEPs and simply wanted the statements to be more specific and the progress more measurable.

More damaging, when asked what grade she would have given the IEPs, with their goals and objectives written as they were, Havens stated that she would not have given them a failing grade but a “C,” an average grade.

3.

Observations

Havens testified that she observed A.T. in her math and science classes at Woodmont on October 15, 2014, but that the pace was too fast for A.T. in those classes and that she struggled with the lessons.

4.

IEP for Sixth Grade dated April 16, 2015

Havens testified that on October 14, 2015, she observed the reading and language arts class A.T. would have attended at Lazar, and on November 4, 2015, she observed the science and social studies classes A.T. would have attended at Lazar. She opined that the multisensory instruction in the classes was not intensive enough and that the proposed modifications were not part of the program. However, A.T. was not in these classes. And Havens acknowledged on cross-examination that she did see manipulatives such as calculators, computers, and SMART Boards in these classes.

Thus, Havens could only speculate what these classes would have been like if A.T. had been in those classes and her IEP were part of the program.

Havens, on the other hand, was impressed by Craig. She testified that Craig was the appropriate placement for A.T. because the instructional supports were imbedded in the program, the classes were smaller, the rooms were wired with an FM system, and the teachers collaborated with one another. More pointedly, Havens testified that she observed the sequential-teaching methodology she had been advocating for A.T., including the Orton-Gillingham reading program, and thought the programming was more individualized. Significantly, Havens testified that this was the least restrictive environment for A.T. and that anything less restrictive would have been inappropriate. To be sure, Havens testified that A.T. did not make meaningful progress at Woodmont, that A.T. could not make meaningful progress at Lazar, that Montville cannot match Craig, and that A.T. would make more progress at Craig. In doing so, Havens conflated what was appropriate with what was better.

IV.

James Gillock, Ed.D.

A.

Expertise

James Gillock is a school psychologist. He received a bachelor's degree in psychology from Dickinson College in 1972, a master's degree in school psychology from Temple University in 1975, and a doctorate in psychology from Temple University in 1981. Gillock later entered the School Neuropsychology Post-Graduate Program at Texas Woman's University in July 2003, and completed it in July 2004.

Gillock is licensed as a psychologist in New Jersey, Pennsylvania, and New York. He holds a certificate as a school psychologist in New Jersey and Pennsylvania

and certificates as a supervisor and principal in New Jersey. Gillock is also a diplomate of the American Board of School Neuropsychology.

Significantly, Gillock served as the director of pupil services in the Readington Township Public Schools in Whitehouse Station, New Jersey, from July 1991 to June 2005, and in all his years as a director of pupil services and a school psychologist he has evaluated thousands of children with disabilities and drafted hundreds of IEPs for them.

Gillock was offered and accepted as an expert in school psychology and special education without objection and as an expert in neuropsychology over Montville's objection.

B.

Review

Gillock was retained by petitioners in November 2014 when A.T. was in fifth grade to conduct a neuropsychological evaluation. To conduct the evaluation, Gillock met with A.T. seven times from November 2014 to January 2015, interviewed her parents and teachers, and reviewed all of the school records from Montville and Craig. Gillock also observed A.T. in class at Woodmont in fifth grade and observed a class she would have attended at Lazar in sixth grade. Finally, Gillock observed A.T. in class at Craig in sixth grade.

The documents Gillock reviewed were the most recent child study team re-evaluations at the time: J-11, the Educational Assessment, dated April 30, 2014; J-12, the Speech-Language Assessment, dated April 25, 2014; and J-13, the Psychological Assessment, dated May 1, 2014.

Gillock also administered his own tests and collected other data, which are listed on pages seven and eight in J-14, his Comprehensive School Neuropsychological Evaluation, dated February 12, 2015. Indeed, Gillock's evaluation was truly

comprehensive, comprising six lengthy testing sessions of ninety minutes each, with A.T. on and then off medication. Gillock also observed A.T. one day in Woodmont in both her social studies and language arts classes.

C.

Eligibility

1.

Classroom Observation

Social Studies

In his report, Gillock writes that the social studies teacher led a traditional lesson and that a special education teacher moved around the classroom to check on the special education students and offer assistance when needed. Gillock further writes that A.T. was paired with an academically competent student who took charge of their pairing and directed their activities. Indeed, Gillock writes that the class was well controlled and everyone was respectful. Gillock even writes that the teacher had a nice sense of humor, that the children responded to him, and that the teacher was able to quiet the class when necessary.

Language Arts

In his report, Gillock writes that the language arts teacher led the lesson on the SMART Board and that A.T. was more comfortable in this smaller class. Gillock writes that A.T. volunteered multiple times, asked the teacher a question, and responded correctly to multiple questions. Significantly, Gillock writes that when A.T. failed to understand one of the questions, the teacher rephrased the question and directed A.T. to a worksheet, and when A.T. needed assistance on the SMART Board, the teacher provided that assistance.

2.

ADHD Testing

Gillock administered the IVA+ computerized continuous performance test of attention to diagnose ADHD and agreed that A.T. had ADHD. Gillock summarized that A.T. demonstrated fine-motor hyperactivity; random, careless, and impulsive responding; extreme visual distractibility; extremely impaired auditory sustained attention; and slow discriminatory mental-processing speed on auditory tasks that required decision-making. He also found heightened levels of gross-motor restlessness. Although her overall performance improved dramatically when she took her ADHD medication, scoring within the average range or higher across the board for all visual-attention and visual-response control scales, Gillock still found that A.T. continued to show evidence of slow discriminatory mental-processing speed on auditory tasks that required decision-making. Thus, Gillock agreed that A.T. was eligible for special education and related services under the category “other health impaired.”

3.

Executive Functioning

Gillock administered numerous tests to measure executive functioning and agreed that A.T. had cognitive weaknesses. Gillock summarized that A.T. demonstrated consistently impaired performance on visual-spatial and visual-motor tasks, which required cognitive shifting. Indeed, all parties agree that cognitive shifting is a cognitive weakness for A.T. As Gillock further summarized, children with this type of executive dysfunction also often have impaired memory-search strategies, can have retrieval problems, and are unable to self-monitor their academic work, especially their writing. Gillock also summarized that they make careless errors and manage their time poorly.

4.

SLD

Written Expression

Gillock diagnosed A.T. with a specific learning disability (SLD) in written expression because A.T.'s predicted achievement on the WIAT-III essay-composition subtest, when compared to her actual subtest achievement scores on her WISC-IV Verbal Comprehension Index, demonstrated a significant underachievement on the essay-composition measure. "A review of the base rates of differences between predicted and actual writing scores for the one identified weak area revealed that the difference for A.T. was unusual compared to the standardization sample and is consistent with a diagnosis of SLD in written expression." For Gillock, this was damning, calling into question Montville's ability to classify A.T. with a disability, create a program for her, and then implement it:

The district's failure to properly identify A.T. as a child with [an] SLD in written expression may have contributed to improper programming and the selection of methodologies and remedial approaches not ideally suited for her neuro-cognitive profile in order to provide her with the opportunity to make reasonable academic growth and progress in written expression.

[P-14 at 28.]

On cross-examination, Gillock acknowledged that A.T. does not have an SLD in written expression based on the severe-discrepancy formula.

Mathematics

Gillock also diagnosed A.T. with an SLD in mathematics because A.T.'s predicted achievement on the WIAT-III math composites and subtests, when compared to her actual math composite and subtest achievement scores on her WISC-V Full

Scale Index, demonstrated a significant underachievement on the overall math composite and specific math problem-solving subtest. Gillock was even more critical of this alleged failure, having reviewed the math achievement scores going as far back as second grade and asserting that A.T. had been regressing since that time. Once again, this called into question Montville's ability to classify A.T. with a disability, create a program for her, and then implement it.

On cross-examination, Gillock acknowledged that A.T. does not have an SLD in mathematics based on the severe-discrepancy formula.

5.

Social-Emotional

Gillock used parent-rating scales, self-rating scales, a clinical interview, and a projective measure to assess social-emotional adjustment, and concluded that social-emotional adjustment was an issue for A.T., despite the fact that A.T. participated in after-school activities, reported that she had enough friends to play with, and denied being lonely.

Similarly, Gillock concluded that A.T. would try to escape difficult academic tasks by not being an active classroom participant because she was worried about making a mistake or being laughed at, despite the fact that it had never happened to her.

Indeed, Gillock concluded that social-emotional adjustment was an issue for A.T., despite the fact that A.T. reported that she liked all of her teachers and denied that she had any social problems at school.

Gillock even dismissed A.T.'s denial that she had too much homework or battled with her mother over completing her homework, and credited instead her mother's statement that A.T. had too much homework and her mother's complaint that she had to help her daughter complete it, as if it were unheard of for a mother to help her fifth-grade daughter complete her homework.

D.

IEP for Fifth Grade dated May 9, 2014

1.

Recommendations

Gillock recommended a more intensive, language-based special education program to include most of the following:

- Small classes with a student-to-teacher ratio of no more than eight to one
- A substantial commitment to multisensory instruction, such as Orton-Gillingham methodologies
- Classrooms outfitted with FM sound-field systems
- Individualized strategies and approaches to help learn and retain multiple-step math procedures, which require regrouping, such as subtraction, multiplication, and division
- Mathematical focus on place value, time, and money problems
- Speech-language therapy sessions of at least thirty minutes three to five times per week
- An occupational-therapy reevaluation
- Voice-to-type computer software
- Weekly counseling to work on the alleged public-speaking phobia

[See J-14 at 35–36.]

Gillock made even more specific recommendations—nine pages' worth—which followed his list of criteria.

Reading

Gillock recommended instruction for vocabulary development and oral expression.

Writing

Gillock recommended a number of programs. First, Gillock recommended Framing Your Thoughts because it was an “intensive, comprehensive, and sequential program of written expression.” Next, Gillock recommended “Writing Skills for the Adolescent” in conjunction with Orton-Gillingham instruction because it focused on “handwriting, spelling, and composition skills.” Third, Gillock recommended “Sentence Writing Strategy” because it features a “systemic sequence of instructional procedures.” Finally, Gillock recommended “CAST Universal Design for Learning” because it was centered on “pattern-recognition skills, strategic-functioning skills, and internal drive and motivation,” and emphasized multisensory instruction.

Mathematics

Gillock recommended instruction to take into account A.T.'s strengths (fluid reasoning and visual memory) and A.T.'s weaknesses (inattention, cognitive shifting, sequencing, auditory-verbal memory, and retrieval). His recommendations are contained in twenty separate paragraphs running four pages. In summary, they are as follows (see J-14 at 38–41):

- Modeling, demonstration, and lecture for the introduction of new concepts, skills, and procedures
- Computer software to supplement the multisensory instruction
- Frequent review and reinforcement of concepts and procedures

- Instruction on the use of computers as a tool
- Specific instruction on place value and regrouping using stories, pictures, and manipulatives
- Opportunities to teach other students the concepts she has already learned
- Flow charts to illustrate required steps and to use as reference tools
- Index cards with clear verbal explanations of questions to ask herself as she works on math problems
- Make A.T. highlight process signs before she works on math problems and make her decide which colors she will code for each of the four signs
- Use color-coding whenever possible in math computation as an aide
- Use graph paper with a large box grid to keep columns of ones, tens, hundreds, and thousands in line
- Use a specific problem-solving strategy, which includes cues, self-questioning, and follow-up
- Memory strategies for math algorithms
- Guided practice in word problems with pictured items, incorporated objects, and familiar situations
- When A.T. becomes comfortable with simple, brief word problems, provide longer narratives that describe real-life situations and include more information and events
- Teach A.T. to recognize the steps or operations involved in a work problem and how to sequence or order them
- Teach A.T. to identify extraneous information in word problems and strike them out with a marker
- Teach A.T. a simple strategy for solving story problems

Social-Emotional

Gillock recommended that A.T. develop a relationship with a mental-health professional at school to help her overcome her alleged public-speaking phobia, together with family counseling to reduce the alleged conflicts at home.

General Classroom

Attention and Memory

For attention and memory, Gillock recommended frequent teacher “check-ins” and re-teaching to make sure A.T. understood the material being taught, as well as daily teacher notes and study guides to prepare for quizzes and tests.

Gillock also recommended preferential seating near the teacher, written instructions on the blackboard, a varied classroom routine with frequent reinforcement, instructional techniques that allowed for hands-on work or experimental learning such as games or interactive activities with interesting and colorful materials, and no more than one long-term project at a time.

In addition, Gillock recommended verbal cues during lectures to alert A.T. that something important would follow the verbal cues, an outline on the blackboard to be reviewed in advance of a lecture, and alternate teaching approaches such as alternate sessions of seated work and interactive tasks.

Gillock further recommended that A.T. be allowed to listen to quiet music or white noise in a headset when the classroom noise becomes distracting to her.

Finally, Gillock recommended dividing the student assignments into smaller, more manageable chunks.

Executive Functioning

For executive functioning, Gillock recommended a number of strategies. First, Gillock recommended “COPS” (capitalization, overall appearance, punctuation, and spelling) because it helps students evaluate the quality of their work. Next, Gillock recommended “SCOPE” (spelling, capitalization, order of words, punctuation, expression) because it helps students develop proofreading skills. Third, Gillock

recommended “C-SPACE” (characters, setting, purpose, action, conclusion, emotion) because it helps students remember what they read. Finally, Gillock recommended “POWER” (plan, organize, write, edit, revise) because it helps students monitor elements of the writing process.

Gillock also recommended the use of graphic organizers such as “Inspiration” software and extra direction at times of transition.

Study Habits

For study habits, Gillock recommended a quiet place for A.T. to do her homework.

Testing

For testing, Gillock recommended testing in a “noise-reduced, distraction-free, separate environment” with no more than two other students and a proctor with whom A.T. is comfortable, extended time to complete the quizzes and tests, and as many breaks as needed during the testing.

2.

Appropriateness

Report dated February 12, 2015

In his report dated February 12, 2015, Gillock concluded that the IEP for fifth grade was inappropriate because A.T.’s needs exceeded what any public school could provide, and that Craig was better suited to meet her needs:

As A.T.’s educational needs seem to be far in excess of what typical special education programs in public schools can provide, it is the recommendation of this school psychologist that A.T. be placed in private school that will be

better suited to meet her needs such as The Craig School in Mountain Lakes, NJ.

[P-14 at 36.]

Addendum dated November 4, 2015

On October 12, 2015, Gillock visited Craig and observed A.T. in two of her classes: language arts and math. He also talked to her teachers in her science and social studies classes.

After observing A.T. in her language arts and math classes, and after talking to her teachers in her science and social studies classes, Gillock concluded that A.T.'s learning needs were being met, that appropriate methodologies were being used, which were consistent with her neuro-cognitive profile of strengths and weaknesses, and that the special education program was providing her with the opportunity for "reasonable educational growth and progress."

Gillock then contrasted this sixth-grade program at Craig with the fifth-grade program at Woodmont and dismissed the program at Woodmont out of hand because Montville had still not classified A.T. with an SLD in math and an SLD in written expression. In his addendum dated November 4, 2015, Gillock wrote that Montville "did not recognize or acknowledge A.T.'s learning disabilities in math and written expression, did not use educational methodologies that were consistent with her neuro-cognitive profile of strengths and weaknesses, and was not providing her with an appropriate educational program designed to confer reasonable educational growth and progress."

Addendum dated February 27, 2016

On February 12, 2016, Gillock returned to Montville and observed the replacement math class at Lazar. In doing so, Gillock returned to his review of the IEP for fifth grade. First, Gillock wrote that Montville failed to comprehensively evaluate and properly consider A.T.'s educational disabilities because the child study team failed to

use the predicted-achievement method or a response-to-intervention methodology to determine an SLD in math and written expression.

Second, Gillock wrote that Montville's memory assessment and writing assessment were incomplete.

Third, Gillock wrote that the goals and objectives were not measurable because the Present Levels of Academic Achievement and Functional Performance contained no baselines from which to measure progress.

Fourth, Gillock wrote that no teacher in Montville could implement the modifications contained in the IEP to help A.T. achieve the short-term objectives in writing because they needed to be imbedded in an intensive remedial writing program such as Framing Your Thoughts.

3.

Testimony

At the hearing, Gillock was more critical, more emphatic, and more absolute about Montville's inability to classify A.T. with a disability, create a program for her, and then implement it. Indeed, Gillock insisted that A.T. had made no progress in fifth grade and had in fact regressed. Yet Gillock also testified that it was impossible to tell whether A.T. had made any progress in fifth grade because the IEP contained no baseline data from which anyone could measure any such progress. Nevertheless, the absence of any baseline data, according to Gillock, rendered the IEP inappropriate.

More specifically, Gillock testified that A.T. had made no progress after reviewing her marks on the progress reports and her scores on the WIAT-III. In particular, Gillock asserted that A.T. had made no progress in written expression and mathematics (as reflected in her composite scores on the WIAT-III) and had regressed in listening comprehension and math problem solving (as reflected in her subtest scores on the

WIAT-III). According to Gillock, a student should progress a full year in an IEP that is appropriate and no regression should occur in any IEP that is appropriate.

Havens, as noted above, disagreed. She had testified that it is not always possible for a special education student to progress a full year in an IEP that is appropriate, especially when the special education student has memory-retention issues. She also acknowledged that goals and objectives can be repeated the following year.

Parenthetically, Gillock only identified two of the seven composite scores, the math and written-expression composite scores, as evidence that A.T. had not progressed in fifth grade. Similarly, Gillock only identified two of the fourteen subtest scores, the listening-comprehension and math problem-solving scores, as evidence that A.T. had regressed in fifth grade. Indeed, Gillock made no mention of the remaining composite or subtest scores. He also dismissed her low-average IQ.

Regardless, Gillock testified above all that the IEP for fifth grade was inappropriate for A.T. because it did not contain a classification of an SLD in math and written expression. To be sure, Gillock repeated time and again that the severe-discrepancy formula, which Montville was required to use, was a discredited approach, and that the predicted-difference method, which he chose to use, was the appropriate approach to determine an SLD. Thus the IEP, according to Gillock, was inappropriate from the start.

Then Gillock reiterated that the IEP for fifth grade was inappropriate for A.T. because the goals and objectives in the IEP were neither measureable nor specific. He asserted that the IEP contained no baselines from which to measure progress, but added that the IEP did not differentiate between special education and general education instruction. Thus no measurement, according to Gillock, could ever be adjusted.

Finally, Gillock testified, as he had written in his report, that A.T. was in need of pull-out, intensive, and multisensory instruction, throughout the day, and across all

subjects. For Gillock, the instruction had to be Orton-Gillingham, but according to Gillock, Montville was incapable of providing such instruction. Taking his reasoning one step further, Gillock was certain, just as he was in his report, that no public school would have been appropriate for A.T., because no public school, according to Gillock, could deliver such instruction or programming.

Yet on cross-examination, Gillock acknowledged that the IEP did contain many of his recommendations, including small class size and multisensory instruction. In fact, Gillock acknowledged that all of the modifications contained in the IEP were appropriate for A.T. Again, Gillock simply did not believe that Montville could implement the IEP with fidelity, which was his ultimate point. With this mindset, Montville could do nothing for A.T., except pay for Craig.

E.

IEP for Sixth Grade dated April 6, 2015

1.

Recommendation

On February 12, 2016, when Gillock returned to Montville and observed the math class at Lazar, A.T. was not in it. She was already at Craig. Thus, Gillock observed A.T. in no classes at Lazar. He simply observed the class she would have attended. He then provided an opinion, which left no room for others.

First Gillock observed the math class and mischaracterized the statement that the teacher made at the outset—that students had to show their work or be penalized for failing to do so—as “curricular threat.” Gillock would later speculate that this would frighten A.T. and interfere with her class participation. In doing so, he revealed his own hostility toward Montville and its program—a paradigm that played out throughout the remainder of his report and testimony.

Next, Gillock criticized the teacher for providing oral instruction and no written instruction. But Gillock wrote this as if the teacher would not have provided such step-by-step instruction for A.T. had she been in the class. In fact, the IEP for sixth grade specifically stated that A.T. would be provided with such written instruction. Again, Gillock would later speculate that the absence of such teacher encouragement for students to write down the procedural steps or use an existing procedural chart meant that A.T. would not have this resource available.

Gillock ultimately concluded that the pace and type of instruction would not have been appropriate for A.T. because the pace of instruction was too fast for her and she would not have been able to keep up, let alone recall such a large volume of material. Once again, this opinion assumes that none of the modifications included in her IEP for sixth grade would have worked. In fact, Gillock continued to speculate that A.T. would be quickly lost and not secure enough to let the teacher know she was not following his instruction.

That A.T. would not be secure enough to let the teacher know she was not following his instruction, however, was unlikely, as Horn had observed A.T. in fifth grade and saw the very opposite. To remind, Horn had seen A.T. actively participate in her science class, raise her hand to ask a question, and volunteer throughout the class. Similarly, Horn had seen A.T. actively participate in her math class and provide correct answers when asked. Moreover, Horn had seen A.T. partner with a student in her social studies class and saw her contribute to the pairing. Finally, Horn had seen A.T. engaged and on target in her reading and language arts class. Even A.T.'s mother agreed that among A.T.'s strengths was asking for help when she needed it. Thus Gillock had once again assumed without foundation the worst about Montville and its ability to implement the IEP.

2.Appropriateness

In his addendum dated February 27, 2016, Gillock reviewed the IEP for sixth grade and repeated much of what he wrote about the IEP for fifth grade. In particular, Gillock repeated that Montville failed to comprehensively evaluate and properly consider A.T.'s educational disabilities because the child study team failed to use the predicted-achievement method or a response-to-intervention methodology to determine an SLD in math and written expression. Gillock also repeated that Montville's memory assessment and writing assessment were incomplete and that the goals and objectives were not measurable because the Present Levels of Academic Achievement and Functional Performance contained no baselines from which to measure progress. Gillock, however, noted that the IEP contained more short-term objectives than the IEP for fifth grade. Gillock also noted that the final IEP contained more of his recommended modifications than the draft IEP. Still, Gillock believed that no teacher in Montville could implement the modifications contained in the IEP to help A.T. achieve the short-term objectives in writing because they needed to be imbedded in an intensive remedial writing program such as Framing Your Thoughts. As such, Gillock concluded that the IEP for sixth grade was inappropriate because A.T.'s needs exceeded what any public school could provide.

At the hearing, Gillock repeated that the severe-discrepancy formula was a discredited approach and that the predicted-difference method was the appropriate approach to diagnose an SLD. Gillock also repeated that the goals and objectives were neither measurable nor specific; that A.T. was in need of pull-out, intensive, and multisensory instruction throughout the day across all subjects; and that Montville was incapable of providing such instruction. This time Gillock amplified that teachers need at least one year of experience to teach a multisensory program, chided that public-school teachers are resistant to change, and implored that A.T. should not be subject to any learning curve. Finally, Gillock asserted that Montville had failed before and that Montville would have failed again.

On cross-examination, Gillock acknowledged that the final IEP contained more of his recommendations than the draft IEP and that it addressed A.T.'s weaknesses in written expression and mathematics, but maintained that Montville could not implement the IEP with fidelity. Gillock also maintained that student progress must be graphed to be measured, yet acknowledged that he did not know what testing Montville was performing to measure student progress. Indeed, Gillock acknowledged that the last time he had written an IEP was more than twenty years ago.

V.

Kelly Goodwin

A.

Expertise

Kelly Goodwin is also a school psychologist. Goodwin received a bachelor's degree in psychology from Bucknell University in 2001, a master's degree in school psychology from Fairleigh Dickinson University in 2007, and a doctorate in school psychology from Fairleigh Dickinson University in 2013. Goodwin holds certificates from the Department of Education as a school psychologist and as a supervisor.

In all her years as a school psychologist, Goodwin has evaluated and observed hundreds of children with disabilities.

Goodwin was offered and accepted as an expert in school psychology without objection and provided additional testimony about the implications of the psychological assessment and the appropriateness of the IEPs.

Goodwin also offered a pointed response to the report and addendum Gillock authored.

B.

Review

Goodwin was the school psychologist for A.T. when A.T. was at Woodmont. She became familiar with A.T. at the end of A.T.'s fourth-grade year when Tara Monaco, the LDTC and case manager for A.T., suggested they move up the evaluations for A.T. The documents Goodwin reviewed are many. In particular, she reviewed J-1, the Educational Assessment, dated January 9, 2012; J-2, the Psychological Assessment, dated January 19, 2012; J-3, the Conners' Rating Scale, dated December 1, 2011; J-4, the Social Adaptive Behavior Assessment, dated January 9, 2014; J-5, the Speech-Language Assessment, dated February 7, 2012; J-6, the Pediatric Neurodevelopmental Consultation Report, dated January 19, 2012; J-7, the Initial Eligibility Determination and Evaluation Sequence, dated February 24, 2012; J-18, the Re-Evaluation Eligibility Determination for the 2013–14 and 2014–15 school years, dated May 9, 2014 (the middle of fourth grade to the middle of fifth grade); J-19, the Re-Evaluation IEP for the 2013–14 and 2014–15 school years, dated May 9, 2014 (the middle of fourth grade to the middle of fifth grade); and J-108, the Letter of Consultation, dated January 17, 2013.

C.

Eligibility

Goodwin testified that A.T. was still eligible for special education and related services under the category "other health impaired" and that it was the appropriate classification because the assessment was comprehensive and ADHD was the concern of both the parents and the professionals.

Goodwin further testified that A.T. was ineligible for special education under the category "specific learning disability" because A.T.'s intelligence was in the average range for all domains, with an FSIQ of 95 as reported in the Psychological Assessment dated January 19, 2012, and that a severe discrepancy did not exist between A.T.'s

expected-achievement score and A.T.'s obtained-achievement score, even after other data and input was considered, including the Educational Assessment for A.T.

Goodwin explained that A.T. possessed both strengths and weakness, as reflected in the Psychological Assessment dated May 1, 2014, which she performed, and that all of the FSIQ scores (Ricciardi's score of 95, her score of 93, and Gillock's score of 88) fell within the confidence interval (88–98). Goodwin also explained that Gillock did not use the severe-discrepancy method and a 1.5 standard deviation to determine an SLD, but the predicted-difference method. Moreover, Goodwin explained that Gillock used different scores from different tests to guarantee his classification of SLD.

In J-16, her Review of Evaluation Report dated April 15, 2015, which she co-wrote with Horn, Goodwin was more pointed. She wrote that the different scores Gillock used were the WISC-IV VCI composite score and the WIAT-III essay composition subtest score. Goodwin also wrote that Montville did not perform any additional testing in the area of written expression because petitioners did not provide their consent for them to perform this educational testing. Moreover, Goodwin wrote that even though A.T. did not meet the criteria for an SLD in written expression, the replacement instruction in the resource center included many of the recommendations Gillock had made anyway.

Likewise, Goodwin wrote that A.T. did not have an SLD in math, even with an FSIQ of 93, but that Montville still changed the instruction from in-class support to replacement instruction in the resource center with modification, and that it was appropriate to meet A.T.'s needs.

D.

IEP for Fifth Grade dated May 9, 2014

Goodwin testified that the IEP for fifth grade dated May 9, 2014, was appropriate for A.T. In support of her opinion, Goodwin relied on the documents she reviewed, but

focused on the Psychological Assessment dated May 1, 2014. She also referenced her Review of Evaluation Report dated April 15, 2015, her informal observations of A.T. in the classroom, and the IEP itself.

More specifically, Goodwin testified at the hearing and wrote in her Review of Evaluation Report with Horn that she accepted Gillock's assertions that A.T. did have "significant cognitive shifting difficulty," "extremely impaired auditory sustained attention without medication," "mildly impaired auditory processing speed with medication," and "weakness in verbal problem solving self-monitoring," but reiterated that A.T. had "average to above-average abilities with some noted weaknesses" and that the IEP was created to address these weaknesses.

In her report, Goodwin wrote that Montville did agree to do some additional neuropsychological testing, but the neurologist with whom Montville consulted did not think that such additional neuropsychological testing was warranted because it would not change the program or placement.

Goodwin also wrote that Montville accepted parental assessments for Achenbach syndrome, but noted that A.T. exhibited none of the reported emotions or behaviors at school. Indeed, Goodwin testified and wrote that Gillock's standardized scores did not indicate that A.T. suffered from any public-speaking phobia in the classroom and that A.T.'s teachers reported that A.T. readily participated in class and presented to her peers in both the larger general education classroom and resource-room settings. In fact, Goodwin testified that A.T. later participated in the fifth-grade talent show and was an active participant in class at Craig. Moreover, Goodwin testified and wrote that it was developmentally appropriate for an early adolescent like A.T. to report in the clinical setting that she was afraid to volunteer in class because she worried about being wrong, but that it was not a clinical concern because it did not impede her functioning in class. Nevertheless, Goodwin testified and wrote that Montville agreed to provide counseling anyway and include it in A.T.'s IEP for sixth grade so they could promote healthy self-esteem and so A.T. could learn coping skills.

In her report, Goodwin wrote that Montville accepted Gillock's assertion that A.T. suffered impairment in sustained auditory attention, but only when she was not on medication, and that on medication her auditory attention is in the average range of functioning. In addition, her auditory selective attention fell in the average to superior range of functioning—whether or not she was on medication. Therefore, no need existed for a classroom outfitted with an FM system to magnify the teacher's voice.

More summarily, Goodwin testified that A.T. needed the pull-outs for reading, language arts, and math because her test scores warranted it and the modifications could be better provided in the replacement class. Goodwin explained that the work becomes more difficult in fifth grade and that her executive functioning could be better supported in the replacement class. Goodwin, on the other hand, testified that A.T. only needed in-class support for science and social studies because A.T. did have strengths and only needed some modifications and supports to access the curriculum. Goodwin explained that science and social studies is more project-based and more hands-on and that A.T. would have the opportunity to interact with and model typically-developing peers. Based on her informal observation, Goodwin asserted that A.T. was a happy and social child who would succeed in this program.

E.

IEP for Sixth Grade dated April 16, 2015

Goodwin testified that the IEP meeting for sixth grade was a lengthy one. Goodwin explained that she and the child study team considered the additional information the parents and their experts and their consultants provided but remained convinced that Lazar was the appropriate placement because of the continuum of comprehensive services it could provide and the opportunity for A.T. to interact with and model typically-developing peers. Once again, Goodwin noted that they included counseling in the IEP so they could identify any perceived strengths and weaknesses and then develop goals and objectives around them. Goodwin commented that A.T. had become more aware of her difference at that point in her young life—although the child study team and her parents agreed that A.T. had no social phobia. In sum,

Goodwin asserted that the IEP was both appropriate and comprehensive and that A.T., who had average to above-average abilities, would again benefit from the mainstreaming opportunities contained in it. Moreover, Goodwin commented that an IEP is a fluid document, which the IEP team could have modified as need be.

To be sure, Goodwin testified that A.T. simply did not need Craig. Goodwin continued that all of the concerns could be addressed at Lazar with its continuum of services, and that A.T. would have benefited greatly from the mainstreaming and the opportunity to interact with and model typically-developing peers. Indeed, Goodwin asserted that A.T. would have had greater socialization at Lazar, would have acquired a higher level of social skills and conflict-resolution skills at Lazar, and would have had the opportunity to participate in greater extra-curricular activities at Lazar.

E.

Response to Gillock

1.

Report dated April 15, 2015

A breakdown of what Goodwin (and Horn) accepted and rejected from Gillock's report is contained in J-16, Review of Evaluation Report, dated April 15, 2015.

Accepted

Goodwin accepted the following:

- Significant cognitive shifting difficulty
- Extremely impaired auditory sustained attention without medication
- Mildly impaired auditory processing speed with medication
- Weakness in verbal problem solving self-monitoring

- Adequate ability/skill in:
 - Auditory selective attention
 - Auditory focus both on and off medication
 - Sustained attention on medication
 - Visual selective attention
 - Visual sustained attention

Goodwin also accepted the following:

- That A.T. scored below the threshold for the Inattentive and Hyperactive-Impulsive subtypes of ADHD on the “Disruptive Behavior Rating Scale–Teacher Form”
- That A.T. scored below the diagnostic criteria for Oppositional Defiant Disorder in the DSM
- That A.T. was below the threshold for both the number of problem settings and the mean severity score for the problem settings on the “School Situations Questionnaire”
- That A.T. rated herself “No more Problematic than for Most Students” on the Physiological Anxiety, Worrying Scale, Social Anxiety Scale, Defensiveness Scale, and Validity Scale
- That A.T.’s teachers reported that she did not display symptoms of anxiety in school
- That A.T. rated herself in the normal range on the Reynolds Child Depression Scale, Second Edition
- That A.T. was diagnosed with Attention Deficit/Hyperactivity Disorder, Predominantly Inattentive Presentation with features of hyperactivity

Accepted in Part and Rejected in Part

Goodwin accepted the following in part and rejected the following in part:

Goodwin explained that petitioners never formally requested neuropsychological testing for the 2013–14 school year and that the parties merely agreed that Montville would do some neuropsychological testing and then consult with a neuropsychologist to determine whether additional testing would be warranted. Goodwin continued that the

consultant did not think additional testing was warranted because it would not change the program or placement. Moreover, Goodwin explained that no “red flags” existed to investigate weaknesses.

Goodwin explained that petitioners reported emotional or behavioral issues at home, but Montville reported none at school.

Goodwin explained that Gillock recommended a classroom with an FM system to magnify the teacher’s voice, but Montville noted that A.T. did not need such amplification when she was on her medication.

Goodwin explained that Gillock recommended counseling by a mental-health professional once a week to work on a public-speaking phobia in the classroom, but no testing indicated, and no teacher reported, that A.T. suffered from a public-speaking phobia in the classroom. In fact, Goodwin noted that any such reported concerns by A.T. would have been developmentally appropriate. Nevertheless, Goodwin stated that Montville acquiesced to this parental concern.

Goodwin explained that the district speech and language therapist reviewed the speech concerns in Gillock’s report, accepted many of them, and confirmed that the related services were sufficient to address them. In fact, Goodwin noted that A.T. was either mastering or at least making progress toward all of her speech goals and objectives. Moreover, Goodwin explained that consent was obtained for Montville’s district therapist to speak directly with petitioners’ private therapist.

Goodwin explained that they agreed with some of Gillock’s concerns about occupational therapy, but Montville had conducted an occupational-therapy evaluation and A.T. did not meet the criteria for occupational therapy as a related service.

Rejected

Goodwin rejected the following for the following reasons:

Gillock stated that A.T. did not socialize with any of her partners during his observation in class, but the teacher in the classroom reported that A.T. behaved appropriately because he had instructed the students not to socialize during the lesson.

Gillock stated that A.T. seemed “far more comfortable” in the smaller classroom setting, but Goodwin rejected this statement because it was pure opinion with no support.

Gillock stated that A.T.’s “inconsistent performance on different measures of verbal fluency for semantic content” suggested “a lack of neurological integrity,” but Goodwin rejected this statement because A.T.’s performance was due to a poor choice in strategy on one subtest (the D-KEFS Verbal Fluency), which impacted timing.

Gillock stated that the best estimate of A.T.’s true learning potential is provided by the Fluid Reasoning Index on the WISC-V, but Goodwin rejected this statement because it was an arbitrary determination, and she believed all composite scores should be interpreted as cognitive strengths and weaknesses.

Gillock stated that A.T. had an SLD in written expression, but Goodwin rejected this determination because Gillock used the predicted-difference method when Montville was required to use its severe-discrepancy formula. In addition, Goodwin rejected this determination because Gillock used two random scores: a composite score on the WISC-IV and a subtest score on the WIAT-III Essay Composition. Moreover, Goodwin rejected this determination because Montville still offered to conduct additional educational testing in this area, but the parents did not provide their consent for Montville to do so. Finally, Goodwin rejected this determination because Montville still recognized this area of weakness and removed A.T. from an in-class support program to a resource-centered program, where many of the recommendations Gillock had provided in his reports had already been included in her IEP.

Similarly, Gillock stated that A.T. had an SLD in math, but Goodwin rejected this determination because Gillock used the predicted-difference method when Montville was again required to use its severe-discrepancy formula, but Montville still recognized

this area of weakness and removed A.T. from an in-class support program to a resource-centered program, where many of the recommendations Gillock had provided in his reports had already been included in her IEP.

Gillock stated that A.T. appeared to be less well adjusted at school than at home, but Goodwin rejected this statement because this statement contradicted the parent-reported scores and the teacher-rating forms regarding A.T.'s social, emotional, and behavioral functioning.

Gillock stated that A.T. did not have too much homework to complete and that her home studies have not yet become a battleground, but Goodwin rejected this statement because A.T.'s mother reported that A.T. had to be retaught daily and that home studies had in fact become a battleground.

2.

Report dated March 21, 2016

A breakdown of what Goodwin accepted and rejected from Gillock's addendum is contained in J-166, Review of Evaluation Report, dated March 21, 2016, which Goodwin also co-wrote with Horn.

Accepted

Goodwin accepted the following observations Gillock made about the math class at Lazar: the teacher used visual models and tools; the teacher broke down problems into manageable components; the teacher frequently checked for understanding; the teacher fostered interactions and collaborative learning; and the teacher guided instruction.

Accepted in Part and Rejected in Part

Goodwin accepted in part and rejected in part the following observations Gillock made about the math class at Lazar: Goodwin accepted that the FM system was not in use at Lazar at the time of observation but explained that it was not in use because no student needed it and that it remains available to any student who does.

Rejected

Goodwin rejected the following observations Gillock made about the math class at Lazar for the following reasons:

Gillock stated that the teacher in the math class began the class with a threat, but Goodwin explained that the teacher was merely managing expectations and that the rapport between the teacher and the students was good.

Gillock stated that the pace of instruction in the math class would not have been appropriate for A.T., but Goodwin explained that it was appropriate relative to A.T.'s relative strengths and weaknesses as measured by formal testing and evaluation, especially with the multisensory instruction in the class.

Gillock stated that the teacher in the math class did not use step-by-step procedural charts to assist students in their problem solving, but Goodwin explained that a variety of reference tools were available to students, such as notes and templates in the binders and anchor charts on the walls.

Gillock stated that A.T. would not be secure enough to let her teachers know she was not following the teacher's instructions and that the future loss of credit would frighten her and lessen her participation in the class, but Goodwin explained that no evidence existed that this would be true and that A.T. had in fact been an active participant in class and an effective advocate for herself to that point.

Gillock stated that the child study team failed to evaluate A.T.'s attention profile, memory skills, and executive functioning during the initial evaluation process in 2012, but Goodwin explained that Montville's psychologist administered both a parent and teacher version of the Conners' Rating Scales in 2012 (which is a standardized objective measurement tools for attention, hyperactivity, learning problems, executive functioning, and peer relations), as well as the WISC-IV (which is a measurement tool for attention and memory). In addition, Goodwin explained that Montville had referred A.T. for a medical neurodevelopmental evaluation in 2012, which became the basis for the initial diagnosis of ADHD and the initial eligibility for special education and related services. Indeed, Goodwin explained that it was because of that evaluation that Montville provided in-class support.

Gillock stated that the child study team failed to perform a discrepancy analysis to determine whether an SLD existed in math, but Goodwin explained that Montville performed such an analysis and that A.T. did not meet the criteria for an SLD in math, and that the discrepancy analysis Gillock performed to determine an SLD in math was improper because Gillock used a subtest score and not a composite score to make that determination.

Gillock stated that the child study team still ignored the warning sign that A.T. was at risk of an SLD in math, but Goodwin explained that the child study team did not ignore her weakness in math with problem solving and provided her with in-class support for math with attendant goals and objectives.

Gillock stated that the child study team failed to use the response-to-intervention methodology to determine whether an SLD existed in math, but Goodwin explained that Montville does not use that methodology, yet still considered it at the pre-referral level and during the classification process.

Gillock stated that the child study team failed to provide A.T. with a comprehensive evaluation in 2012 to identify all of her disabilities as required by federal law, but Goodwin explained that the child study team did provide a comprehensive evaluation in 2012 to identify all suspected disabilities. In particular, Goodwin explained

that the child study team performed an educational evaluation, a psychological evaluation (which included an evaluation of cognitive functioning as well as social, emotional, and behavioral functioning), a social-adaptive-behavior assessment, a speech and language assessment, and a pediatric neurodevelopmental consultation. Finally, Goodwin explained that the child study team had previously performed an occupational-therapy evaluation and that A.T. had received and had been receiving occupational therapy since kindergarten.

Gillock stated that a goal in writing was inappropriate because it was repeated with only “teacher assistance” added, but Goodwin explained that this meant that the expectations for writing had increased and that progress would be measured with teacher assistance first, and then independently second.

Gillock stated that the writing needs in the Present Levels of Academic Achievement and Functional Performance for the IEP for fifth grade indicated that a specific writing program was needed for A.T., but Goodwin explained that the needs were addressed through a change in placement to the resource room with its own programming and instruction to meet those needs.

Gillock stated that the child study team failed to use co-normed tests of intelligence and academic achievement, but Goodwin explained that it was not necessary to use co-normed tests of intelligence and academic achievement because she used standardized clinical tools, which are norm-referenced.

Gillock stated that the child study team failed to complete comprehensive memory testing and, as a result, failed to uncover A.T.’s memory deficiencies, but Goodwin explained that A.T. did not have such memory deficiencies, because A.T. consistently performed in the average range in the eight index scores derived from the comprehensive-memory battery Gillock administered and in the average to high-average range in the three separate measures of working memory across time from 2012 to 2015.

Gillock stated that the number of modifications the child study team added to the IEP for sixth grade were too numerous, but Goodwin explained that the entire IEP team added those modifications and repeated them throughout the document because it was a transition year and the IEP team wanted to make sure all of the teachers in middle school would be well aware of them.

Gillock stated that the IEP for sixth grade could not be implemented successfully, but Goodwin explained that the IEP would be monitored throughout the year and that programming and services could have and would have been changed based on A.T.'s needs with the input and agreement of the entire IEP team.

Gillock stated that the child study team failed to address A.T.'s public-speaking anxiety in the IEP for sixth grade, but Goodwin explained that the IEP team—including petitioners—did not accept Gillock's conclusion that A.T. had public-speaking anxiety, and that the IEP team still addressed A.T.'s social, emotional, and behavioral needs by including counseling with attendant goals and objectives in the IEP.

Gillock stated that A.T. needed a specific writing program, such as Framing Your Thoughts, but Goodwin explained that Montville had a number of writing programs at its disposal, including Framing Your Thoughts, and had trained its personnel how to use them.

More derisively, Gillock stated that A.T.'s educational needs exceeded what any public school could provide, but Goodwin explained that this was hogwash because the child study team had created a program based on individual needs and would have explored other options if the program did not meet those needs. Goodwin further explained that Montville also considered the least restrictive environment. Indeed, Goodwin explained that mainstreaming opportunities where A.T. could be educated with her typically-developing peers should not be overlooked:

This statement is rejected because when the district creates an IEP . . . for a student, [it] creates a program based on individualized needs. When a district cannot meet a student's needs, other options are explored. The district

would not have created an IEP that would knowingly fail the student.

Based on [A.T.'s] needs and the scope and sequence of her progress and academic development, the Montville School District, as determined at the IEP meeting, developed an IEP that is created with the anticipation that it will meet [A.T.'s] needs in full. Programming was developed and supports and services were added to address [A.T.'s] needs.

The district also keeps in mind the least restrictive environment and developed a program that would both meet [A.T.'s] weaknesses and at the same time promote her strengths. Based on the IEP developed, [A.T.] will have mainstreaming opportunities where she is being educated amongst her typical peers while at the same time providing her supports and services to address her needs.

[J-166 at MVH 2440.]

VI.

Olesya Dubreuil

A.

Expertise

Olesya Dubreuil is a speech and language specialist. Dubreuil received a bachelor's degree in speech pathology and audiology from Stockton College in 2005 and a master's degree in communication disorders from William Paterson University in 2009. Dubreuil holds a Certificate of Clinical Competence from the American Speech-Language-Hearing Association and is licensed as a speech pathologist in New Jersey.

Dubreuil has evaluated over one hundred children between ten and fifteen years old during her career and provides speech and language services to approximately forty students and children each year.

Dubreuil was offered and accepted as an expert in speech and language without objection, and provided additional testimony about the implications of the speech and language assessment and the appropriateness of the IEPs.

B.

Report dated February 2, 2012

Dubreuil testified that she first met A.T. when A.T. was in second grade to evaluate her for speech and language services. Dubreuil summarized that A.T.'s results on the Test of Language Development-Primary, Fourth Edition (TOLD-P:4) and the Oral and Written Language Scales (OWLS) were in the below- and low-average ranges, respectively, and that her results on the Goldman Fristoe Test of Articulation 2 (GFTA-2) were below the norms. Thus, A.T. was in need of speech and language services, and such services were provided for her with attendant goals and objectives in her IEP for second, third, and fourth grades.

Dubreuil, however, was more detailed in her report. In her report, Dubreuil wrote that A.T. was functioning at grade level but had a faulty articulation pattern, which made A.T. difficult to understand. Dubreuil continued that during her interview, A.T. consistently misarticulated /ch/, /dzh/, /s/, /z/, voiceless /th/, /s/ blends, and some /r/ blends. The results of the TOLD-P:4, OWLS, and GFTA-2 followed.

TOLD-P:4

This test assesses strengths and weaknesses in spoken-language form and understanding language content. Dubreuil wrote that A.T.'s subtest standard scores indicated average knowledge of picture vocabulary, syntactic understanding, sentence initiation, and morphological completion. Dubreuil stated that this indicated solid vocabulary knowledge, comprehension of spoken sentences, familiarity with appropriate word order, and both understanding and using of correct morphological markers.

Relational vocabulary, however, was below average. Dubreuil wrote that this indicated difficulty in understanding and orally expressing the relationship between two or more words.

Similarly, oral vocabulary was poor. Dubreuil wrote that this implied difficulty providing factual information about vocabulary words.

Given these results, composite scores in listening and grammar were in the average range and composite scores in organizing, speaking, and semantics were in the below-average range.

Total language, therefore, was below average.

OWLS

This test assesses understanding and using spoken language in the areas of vocabulary, semantics, grammar, and syntax.

Dubreuil wrote that listening comprehension was in the low-average range, which meant A.T. had difficulty with comprehension of figurative language, multiple-meaning words, inference, and present perfect tense.

Similarly, oral expression was below average, which meant A.T.'s use of expressive language—particularly in the areas of possessives, pronouns, and vocabulary—was below average.

Given these results, the oral composite score was in the below-average range, but only slightly.

Total language, therefore, was slightly below average.

GFTA-2

This test assesses articulation.

Dubreuil wrote that the following errors were noted at the word level: /f/ for voiceless /th/ in the medial position, distortion for /s/ and /z/ in all positions, /sh/ and /dzh/ in the medial position, distortion of all /s/ blends, and inconsistent w/r substitution in /r/ blends. In addition, tongue protrusion was noted for /dzh/, /s/, /z/, and /s/ blends. Indeed, A.T.'s errors were more frequent in this test.

Although Dubreuil wrote that A.T.'s performance was below the norms at which 90 percent of the population has achieved mastery, Dubreuil also wrote that A.T. would be able to generate more appropriate sounds with proper modeling of the correct sound production and auditory and visual stimulation.

Audiometric Screening

Dubreuil wrote that A.T.'s screening was within normal limits.

Auditory Discrimination Test

Dubreuil wrote that A.T.'s testing was below the level of adequacy for children her age.

Oral Speech Mechanism Screening Examination, Third Edition

Dubreuil wrote that A.T.'s oral motor ability and structure for speech production was adequate, except for an open bite (due to a lost tooth); that her oral-facial tone appeared symmetrical; and that her tongue mobility was good too.

Summary

In summary, Dubreuil wrote that A.T. did not meet the criteria of a speech or language disorder, but that she was eligible for speech services because the GFTA-2 indicated that her performance was below the norms at which 90 percent of the population achieved mastery.

C.

Report dated April 25, 2014

Dubreuil testified that the progress reports for second, third, and fourth grades indicated that A.T. had improved with her speech and language. Dubreuil further testified that her testing indicated that A.T. had improved as well. As a result, A.T. was reevaluated to determine continued eligibility for speech and language services.

In her report, Dubreuil wrote that A.T. had been receiving speech and language services two times a week in a small group and that the focus of the therapy had been to increase A.T.'s articulation, vocabulary, and verbal-reasoning skills. In addition, Dubreuil wrote that A.T.'s mother reported that A.T. still had trouble remembering or understanding what people said, understanding new ideas, and following spoken directions. Likewise, A.T.'s mother reported that A.T. still had difficulty answering questions, putting events in order, expanding information with details, and paraphrasing ideas.

A.T.'s mother, however, agreed that A.T.'s strengths were that she asked for help when she needed it, used a variety of vocabulary words, stayed on topic, and spoke in complete sentences. And A.T.'s mother agreed that A.T. did well sounding out words and following written directions. Still, A.T.'s mother reported that A.T. had difficulty understanding, explaining, and remembering details from what she had read, and still had difficulty writing down her thoughts and expanding her answers with details.

Test of Language Development-Intermediate, Fourth Edition (TOLD-I:4)

Again, this test assesses strengths and weaknesses in spoken-language form and understanding language content.

Dubreuil wrote that composite quotients were within the average range, which indicated average word ordering and suggested that A.T. could construct meaningful sentences from a set of words presented orally. Morphological comprehension was average, which indicated that A.T. recognized ungrammatical spoken language. And the multiple-meaning subtest was average as well, which indicated that A.T. knew different meanings for spoken words.

Dubreuil, however, wrote that A.T.'s performance on picture vocabulary and relational vocabulary was below average. This indicated that it was difficult for A.T. to describe key information and recognize ungrammatical spoken sentences. Similarly, sentence combining was significantly below average. This indicated that A.T. had difficulty combining short sentences into one grammatical sentence.

Dubreuil continued that the composite scores revealed speaking to be in the below-average range, which suggested that A.T. may be misunderstood due to weak vocabulary and inadequate grammar. The composite scores for listening, organizing, grammar, and semantics were below average too, which indicated that A.T. may have had difficulty constructing grammatically-correct sentences, listening for key information, organizing thoughts, and defining vocabulary. As a result, the total spoken quotient was below average.

Test of Auditory Processing Skills, Third Edition (TAPS-3)

This test assesses auditory skills necessary for the development, use, and understanding of language commonly used in academic and everyday activities.

Dubreuil wrote that A.T.'s subtest scaled scores indicated average phonological segmentation, number-memory forward, word memory, sentences memory, and auditory reasoning.

A.T., however, demonstrated below-average word discrimination. This suggested decreased ability in differentiating phonological differences and similarities within word pairs. Likewise, Dubreuil wrote that A.T.'s weaknesses in the phonological blending subtests revealed that she had trouble synthesizing words given their individual phonemic sounds. This was evident during reading and writing tasks because of difficulty in decoding and spelling.

Dubreuil continued that scores in number-memory reversed revealed difficulty retaining and manipulating simple sequences of auditory information. Furthermore, A.T.'s weakness in auditory comprehension suggested that she experienced difficulty understanding spoken information.

Despite these individual subtest results, A.T.'s phonological memory, cohesion, and overall ability to process auditory information were in the average to low-average range.

Summary

Dubreuil wrote that A.T. did not meet the criteria of a speech or language disorder, but that she would still benefit greatly from speech therapy to address her weakness with her organization, grammar, vocabulary, and listening.

D.

Cross-Examination

Dubreuil testified that all of A.T.'s weaknesses in speech and language were addressed during speech therapy, and that A.T. made progress. Dubreuil asserted that the goals and objectives were both understandable and measurable. Indeed, from goal

to goal and from objective to objective Dubreuil was unflinching. And when challenged that A.T.'s picture-vocabulary, listening, and grammar scores went down from 2012 to 2014, Dubreuil simply agreed and explained that new goals and objectives were created to address them. Dubreuil was a most confident witness who provided most reliable testimony.

CONCLUSIONS OF LAW

I.

FAPE

This case arises under the Individuals with Disabilities Education Act, 20 U.S.C.A. §§ 1400 to 1482. One purpose of the Act is to ensure that all children with disabilities have available to them a “free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living.” 20 U.S.C.A. § 1400(d)(1)(A). This “free appropriate public education” is known as FAPE.

Another purpose of the Act is to assist states in the provision of FAPE. See 20 U.S.C.A. § 1400(d)(1)(C). Toward this end, a state is eligible for assistance if the state has in effect policies and procedures to ensure that it will meet the requirements of the Act. 20 U.S.C.A. § 1412(a). In New Jersey, such policies and procedures are set forth in the State statute, Special Schools, Classes and Facilities for Handicapped Children, N.J.S.A. 18A:46-1 to -53, and the implementing regulations, Special Education, N.J.A.C. 6A:14-1.1 to -10.2. See Lascari v. Bd. of Educ. of the Ramapo Indian Hills Reg'l High Sch. Dist., 116 N.J. 30, 34 (1989).

The primary issue in this case is whether Montville failed to provide A.T. with FAPE for the 2014–15 and 2015–16 school years.

A.IEP

The Act defines FAPE as special education and related services provided in conformity with the IEP. 20 U.S.C.A. § 1401(9). The Act, however, leaves the interpretation of FAPE to the courts. See Ridgewood Bd. of Educ. v. N.E., 172 F.3d 238, 247 (3d Cir. 1999). In Board of Education of the Hendrick Hudson Central School District v. Rowley, 458 U.S. 176, 203, 102 S. Ct. 3034, 3049, 73 L. Ed. 2d 690, 710 (1982), the United States Supreme Court held that a state provides a handicapped child with FAPE if it provides personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction. The Court reasoned that the Act was intended to bring previously excluded handicapped children into the public education systems of the states and to require the states to adopt procedures that would result in individualized consideration of and instruction for each child. Rowley, supra, 458 U.S. at 189, 102 S. Ct. at 3042, 73 L. Ed. 2d at 701.

B.Reasonably Calculated

Yet the Act did not impose upon the states any greater substantive educational standard than would be necessary to make such access to public education meaningful. Rowley, supra, 458 U.S. at 192, 102 S. Ct. at 3043, 73 L. Ed. 2d at 703. In support of this limitation, the Court quoted Pennsylvania Association for Retarded Children v. Commonwealth of Pennsylvania, 334 F. Supp. 1257 (E.D. Pa. 1971), and 343 F. Supp. 279 (1972), and Mills v. Board of Education of District of Columbia, 348 F. Supp. 866, 876 (D.D.C. 1972). Rowley, supra, 458 U.S. at 192, 102 S. Ct. at 3043–44, 73 L. Ed. 2d at 703. The Court reasoned that these two cases were the impetus of the Act; that these two cases held that handicapped children must be given access to an adequate education; and that neither of these two cases purported any substantive standard. Rowley, supra, 458 U.S. at 192–93, 102 S. Ct. at 3043–44, 73 L. Ed. 2d at 703–04.

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

C.

Significant Learning and Meaningful Benefit

The Third Circuit has since held that this educational benefit must be more than “trivial.” See Polk v. Cent. Susquehanna Intermediate Unit 16, 853 F.2d 171, 180 (3d Cir. 1988). Stated otherwise, it must be “meaningful.” Id. at 184. Relying on the phrase “full educational opportunity” contained in the Act, and the emphasis on “self-sufficiency” contained in its legislative history, the Third Circuit inferred that Congress must have envisioned that “significant learning” would occur. Id. at 181–82. The Third Circuit also relied upon the use of the term “meaningful” contained in Rowley, as well as its own interpretation of the benefit the handicapped child was receiving in that case, to reason that the Court in Rowley expected the benefit to be more than “de minimis,” noting that the benefit the child was receiving from her educational program was “substantial” and meant a great deal more than a “negligible amount.” Id. at 182.

Nevertheless, the Third Circuit recognized the difficulty of measuring this benefit, and concluded that the question of whether the benefit is de minimis must be answered in relation to the child’s potential. Id. at 185. As such, the Third Circuit has written that the standard set forth in Polk requires “significant learning” and “meaningful benefit”; that the provision of “more than a trivial educational benefit” does not meet that standard; and that an analysis of “the type and amount of learning” of which a student is capable is required. Ridgewood, supra, 172 F.3d at 247–48. In short, such an

approach requires a student-by-student analysis that carefully considers the student's individual abilities. Id. at 248.

In other words, the IEP must confer a meaningful educational benefit in light of a student's individual needs and potential. See T.R. ex rel. N.R. v. Kingwood Twp. Bd. of Educ., 205 F.3d 572, 578 (3d Cir. 2000).

D.

Measurable

Toward this end, an IEP must contain a detailed statement of annual goals. N.J.A.C. 6A:14-3.7(e)(2). More specifically, it must contain both academic and functional goals related to the Core Curriculum Content Standards of the general education curriculum and be measurable so both parents and educational personnel alike can be apprised of expected levels of achievement attendant to each goal. Ibid. These annual academic and functional goals must also include benchmarks or short-term objectives to help the student both participate and progress in the general education curriculum, as well as meet the student's other educational needs that result from his or her disability. N.J.A.C. 6A:14-3.7(e)(3). As the New Jersey Supreme Court noted in Lascari, supra, 116 N.J. at 48, "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."

In Lascari, the New Jersey Supreme Court concluded that the IEP was inappropriate because it was incapable of review. According to the classification officer, the goals and objectives were unclear from the IEP or testimony and the measure of progress was equally unclear. As the classification officer emphasized, all teacher remarks were subjectively based and the goals and objectives of the IEP were so vague that they were meaningless. Therefore, the instructional guide fell short of requirements. Id. at 49.

Under such circumstances, parents may be reimbursed for the costs of a private placement, provided the placement was appropriate under the Act. See N.J.A.C. 6A:14-2.10(b).

II.

LRE

Not only must an IEP be reasonably calculated to provide significant learning and meaningful educational benefit, but it must also be provided in the least restrictive environment. See 20 U.S.C.A. § 1412(a)(5)(A). To the maximum extent appropriate, children with disabilities are to be educated with children without disabilities. Ibid. Thus, removal of children with disabilities from the regular education environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. Ibid. Indeed, this provision evidences a “strong congressional preference” for integrating children with disabilities in regular classrooms. Oberti v. Bd. of Educ. of Clementon Sch. Dist., 995 F.2d 1204, 1214 (3d Cir. 1993).

To determine whether a school is in compliance with the Act’s mainstreaming requirement, a court must first determine whether education in the regular classroom with the use of supplementary aids and services can be achieved satisfactorily. Id. at 1215. If such education cannot be achieved satisfactorily, and placement outside of the regular classroom is necessary, then the court must determine whether the school has made efforts to include the child in school programs with nondisabled children whenever possible. Ibid. This two-part test is faithful to the Act’s directive that children with disabilities be educated with nondisabled children to the maximum extent appropriate and closely tracks the language of the federal regulations. Ibid.

Accordingly, a school must consider, among other things, the whole range of supplemental aids and services, including resource rooms and itinerant instruction, speech and language therapy, special education training for the regular teacher, or any other aid or service appropriate to the child’s needs. Id. at 1216. “If the school has

given no serious consideration to including the child in a regular class with such supplementary aids and services and to modifying the regular curriculum to accommodate the child, then it has most likely violated the Act's mainstreaming directive." Ibid. Indeed, the Act does not permit states to make mere token gestures to accommodate handicapped children, and its requirement for modifying and supplementing regular education is broad. Ibid.

To underscore this point, the Third Circuit has emphasized that just because a child with disabilities might make greater academic progress in a segregated special education classroom does not necessarily warrant excluding that child from a general education classroom:

Thus, a determination that a child with disabilities might make greater academic progress in a segregated, special education class may not warrant excluding that child from a regular classroom environment. We emphasize that the Act does not require states to offer the same educational experience to a child with disabilities as is generally provided for nondisabled children. To the contrary, states must address the unique needs of a disabled child, recognizing that that child may benefit differently from education in the regular classroom than other students. In short, the fact that a child with disabilities will learn differently from his or her education within a regular classroom does not justify exclusion from that environment.

[Id. at 1217 (citations omitted).]

III.

Child Study Team and Methodology

Finally, the United States Supreme Court warned in Rowley that courts must be careful to avoid imposing their own preferred view of educational methods upon the States. Rowley, supra, 458 U.S. at 207, 102 S. Ct. at 3051, 73 L. Ed. 2d at 712. In particular, the Supreme Court noted that the Act left the primary responsibility for formulating the educational program—and for choosing the most suitable educational

method—to the child study team. Ibid. “In the face of such a clear statutory directive,” the Court stated, “it seems highly unlikely that Congress intended courts to overturn a State’s choice of appropriate educational theories.” Rowley, supra, 458 U.S. at 207–08, 102 S. Ct. at 3051, 73 L. Ed. 2d at 712. Therefore, the Rowley Court concluded that questions of methodology are for resolution by the states once the requirements of the Act have been met. Rowley, supra, 458 U.S. at 208, 102 S. Ct. at 3051, 73 L. Ed. 2d at 712.

And such requirements have been met when the parents are involved in the development of the IEP:

Entrusting a child’s education to state and local agencies does not leave the child without protection. Congress sought to protect individual children by providing for parental involvement in the development of state plans and policies and in the formulation of the child’s individual educational program.

[Rowley, supra, 458 U.S. at 208, 102 S. Ct. at 3051, 73 L. Ed. 2d at 712.]

Neither parents nor courts, however, have a right to compel a specific methodology in educating a student:

However, as has been established, “once a court determines that the requirements of the Act have been met” neither parents nor courts have a right to compel a school district to employ a specific methodology in educating a student.

[W.R. v. Union Beach Bd. of Educ., 414 Fed. Appx. 499 (3d Cir. N.J. 2011).]

Thus, a program and placement does not turn on the intensity of the services or the superiority of the program. Carlisle Area Sch. v. Scott P., 62 F.3d 520, 535 (3d Cir. 1995). Despite a parent’s best intentions in attempting to seek the optimal placement of his or her child, the standard is not what is optimal, but what is appropriate. Ibid. A program is appropriate if it confers some educational benefit; it need not be the superior alternative. Ibid. The Act does not require more. Ibid. In short, an IEP must be

designed to confer some educational benefit in the least restrictive educational environment. Ibid.

IV.

Threshold Issue: Child-Find

Before addressing the primary issue in this case—whether Montville failed to provide A.T. with FAPE for the 2014–15 and 2015–16 school years—the threshold issue in this case must be addressed first. The threshold issue is whether Montville failed in its child-find duties for the 2014–15 and 2015–16 school years. More pointedly, the threshold issue is whether Montville failed to classify A.T. with an SLD.

A.

Eligibility and Classification

The regulation governing the determination of eligibility for special education and related services in New Jersey is N.J.A.C. 6A:14-3.5.

Under N.J.A.C. 6A:14-3.5(c), a student shall be determined eligible and classified “eligible for special education and related services” when it is determined that the student has one or more of the disabilities defined in (c)(1)–(14); the disability adversely affects the student’s educational performance; and the student is in need of special education and related services.

Classification shall be based on all assessments conducted, including assessments by the child study team, as well as assessments by other specialists. Ibid.

B.

SLD

An SLD corresponds to “perceptually impaired” and means a disorder in one or more of the basic psychological processes involved in understanding or using spoken or written language. N.J.A.C. 6A:14-3.5(c)(12). It may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations, and it may include such conditions as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. Ibid. Stated otherwise, these conditions are but possible manifestations of the disorder and do not define the disorder in and of themselves.

C.

Severe-Discrepancy Methodology

An SLD can be determined when a severe discrepancy is found between the student’s current achievement and intellectual ability in one or more of the eight following areas: (1) basic reading skills; (2) reading comprehension; (3) oral expression; (4) listening comprehension; (5) mathematical calculation; (6) mathematical problem solving; (7) written expression; and (8) reading fluency. N.J.A.C. 6A:14-3.5(c)(12)(i).

And if a district uses the severe-discrepancy methodology, it must adopt procedures that use a statistical formula and create some specific criteria for determining a severe discrepancy. N.J.A.C. 6A:14-3.5(c)(12)(iv).

The evaluation must also include a current assessment of academic achievement and intellectual ability. Ibid.

D.

Response-to-Intervention Methodology

An SLD can also be determined using a response-to-scientific-based-interventions methodology. See N.J.A.C. 6A:14-3.5(c)(12)(ii).

If a district uses this response-to-intervention methodology, the district must ensure that its methodology includes scientifically-based instruction by highly qualified instructors; that its evaluation of the student includes multiple assessments of the progress the student might have made (but no more than its methodology requires assessing such progress); and that its methodology includes an extension of time to complete the evaluation, if necessary. N.J.A.C. 6A:14-3.4(h)(6)(i)–(iii).

Moreover, a response-to-intervention methodology for determining an SLD is a permissive one. See N.J.A.C. 6A:14-3.5(c)(12)(ii).

E.

Methodology Required and Formula Used

Montville uses the severe-discrepancy methodology to identify and classify an SLD, and it adopted a statistical formula for determining a severe discrepancy. In particular, the statistical formula Montville uses is 1.5 standard deviations between achievement and aptitude. But in this case, a severe discrepancy did not and does not exist between A.T.'s current achievement and her academic ability in one or more of the eight enumerated areas because none of her tests evidenced or evidence a minimum of 1.5 standard deviations between achievement and aptitude. In fact, Gillock acknowledged on cross-examination that A.T. did not have an SLD in written expression or mathematics based on this severe-discrepancy formula. Moreover, a response-to-intervention methodology for determining an SLD is a highly coordinated and organized one and cannot simply be used or superimposed after the fact as Gillock suggests in his addendum dated February 27, 2016. Finally, Montville considered and used all

assessments from the child study team and petitioners to make its determination that A.T. did not have an SLD. Therefore, I **CONCLUDE** that Montville did not fail in its child-find duties to A.T. for the 2014–15 and 2015–16 school years.

More pointedly, I **CONCLUDE** that Montville was not required to use the response-to-scientific-based-interventions methodology to identify and classify an SLD; that Montville was within its rights to use the severe-discrepancy methodology and not a response-to-intervention methodology; and that A.T. was ineligible for special education and related services under the severe-discrepancy methodology.

V.

Primary Issue: FAPE

Returning to the primary issue—whether Montville failed to provide A.T. with FAPE in the least restrictive environment for the 2014–15 and 2015–16 school years—the record is clear.

A.

2014–15 School Year

Program and Placement

First, Horn testified that even though A.T.'s academic skills remained in the average to low-average range according to J-11, the Educational Assessment dated April 30, 2014, the assessment still contained recommendations to address A.T.'s relative strengths and weaknesses in reading, writing, and mathematics, and the IEP for the 2014–15 school year did in fact include those recommendations to address those relative strengths and weaknesses.

Second, Horn testified that even though A.T. did not meet the criteria for a speech or language disorder according to J-12, the Speech-Language Assessment

dated April 25, 2014, the assessment still contained recommendations to address A.T.'s weaknesses in organization, grammar, vocabulary, and listening, and the IEP for the 2014–15 school year did in fact include speech therapy to address those weaknesses.

Third, Horn testified that even though A.T. had an average IQ according to J-13, the Psychological Assessment dated May 1, 2014, the assessment still contained recommendations to address A.T.'s relative strengths and weaknesses in learning, and the IEP for the 2014–15 school year did in fact include those recommendations to address those strengths and weaknesses.

More expansively, Horn testified that in the IEP for the 2014–15 school year, A.T. would no longer receive in-class support for reading, language arts, and mathematics, but would receive replacement instruction in the resource center for those subjects.

Horn also reminded that A.T. would continue to receive the speech therapy.

Moreover, Horn testified that the goals and objectives in the IEP for the 2014–15 school year contained annual measurable academic and functional goals in all of the academic or content areas in which A.T. was in need of special education and related services, together with the benchmarks or short-term objectives and the criteria for measurement.

Finally, Horn asserted that the IEP contained most if not all of the modifications the parents and professionals suggested or recommended at the IEP meeting.

Even Gillock acknowledged on cross-examination that the IEP contained many of his recommendations, including small class size and multisensory instruction. In fact, Gillock acknowledged that all of the modifications in the IEP were appropriate for A.T. Gillock simply did not believe that Montville could implement them with fidelity.

To be sure, Horn testified that the IEP for the 2014–15 school year was appropriate based on her observations of A.T. in class at Woodmont.

Indeed, Horn clarified on cross-examination that replacement instruction in the resource center for science and social studies was not needed as it was for reading, language arts, and mathematics because small-group instruction could still be achieved in the general education classroom for science and social studies, as science and social studies used a lot of center-based models and the in-class support was sufficient to meet A.T.'s needs in those classes.

In short, a more restrictive environment was not needed.

Capable of Review

Concomitantly, I am unpersuaded by Havens and her testimony that the IEP was inappropriate because it was incapable of review. To repeat, Havens was unreasonably nitpicky about the goals and objectives. For example, she testified that a reading goal was inappropriate because she did not know from the document what the measurements meant. Yet Havens never asked anyone at Montville—nor did petitioners—and Havens never considered the fact that personnel at Montville knew exactly what the measurements meant, especially when personnel at Montville, at least in the first instance, would be the ones responsible for determining what changes would need to be made in the next IEP. In fact, when the measurement of any goal or objective was questioned at the hearing, it was ably explained by witnesses for Montville.

The same was true of the progress reports. To repeat, Havens overlooked the fact that A.T. had been evaluated by the professionals in this case, that the progress reports were merely one assessment of A.T.'s individual achievement, and that A.T.'s educators knew exactly how A.T. had been progressing. Moreover, Havens was still able to interpret the progress reports. As such, all of the teacher remarks cannot be said to be subjectively based and all of the goals and objectives of the IEP cannot be said to be so vague that they were meaningless.

Tellingly, Havens acknowledged at the end of her testimony that she would not have given the goals and objectives as written a failing grade, but a “C,” in her class at

Kean University. In other words, the instructional guides cannot be said to have fallen short of requirements. Moreover, no evidence exists that Montville failed to implement the IEP with fidelity for the 2014–15 school year.

Intensity of Services

To parrot the language of the Third Circuit in Carlisle, *supra*, 62 F.3d at 535, a program and placement does not turn on the intensity of the services or the superiority of the program. Despite petitioners' best intentions in attempting to seek the optimal placement of A.T., the standard is not what is optimal, but what is appropriate. Therefore, I **CONCLUDE** that the IEP for the 2014–15 school year was reasonably calculated to provide A.T. with significant learning and meaningful benefit and that Montville provided A.T. with FAPE in the least restrictive environment for the 2014–15 school year.

B.

2015–16 School Year

Horn testified that the IEP for the 2015–16 school year was appropriate for A.T. because the IEP team considered the new or updated reports and evaluations, consulted with A.T.'s teachers and service providers, and observed the classes A.T. would have been in at Lazar. In addition, the IEP team considered input from Gillock and Havens, accepted much of what Gillock and Havens reported, and incorporated much of what Gillock and Havens recommended, even if the entire IEP team did not believe all of those recommendations were necessary. For example, Horn explained that petitioners wanted counseling and a pull-out session for academic strategies, which the rest of the IEP team did not think were necessary, but Montville obliged and incorporated them anyway. Finally, Horn asserted that all of A.T.'s teachers and services providers, including the speech and language specialist, reported that A.T. had made progress.

On cross-examination, Horn testified that the teacher in the reading and language arts class was trained in Framing Your Thoughts and that A.T. was not a candidate for a Wilson reading program.

Meanwhile, Havens could only speculate what the classes would have been like if A.T. had attended school at Lazar and the IEP had been part of the program. Similarly, Gillock could only speculate that the classes at Lazar would have been inappropriate for A.T. Though the same could be said for Horn about her observation of the classes at Lazar, Gillock acknowledged on cross-examination that the final IEP contained more of his recommendations than the draft IEP, and that those recommendations did in fact address A.T.'s weaknesses in written expression and mathematics.

At bottom, neither Gillock nor Havens were reliable witnesses whose conclusions could be trusted to be anything but motivated by self-interest, bias, and prejudice. Gillock could not get past the fact that Montville did not classify A.T. with an SLD; even if he had, Gillock was certain that no public school would have been appropriate for A.T. because in his mind no public school could deliver the instruction or programming A.T. needed. Just as problematic, Havens ultimately opined that Montville could not match the program at Craig and that A.T. would make more progress at Craig, conflating what was appropriate with what was better.

Therefore, I **CONCLUDE** that the IEP for the 2015–16 school year was reasonably calculated to provide A.T. with significant learning and meaningful benefit and that Montville provided A.T. with FAPE in the least restrictive environment for the 2015–16 school year.

ORDER

Given my findings of fact and conclusions of law, I **ORDER** that this case be **DISMISSED** in its entirety.

This decision is final pursuant to 20 U.S.C.A. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2016) and is appealable by filing a complaint and bringing a civil action either in the Law Division of the Superior Court of New Jersey or in a district court of the United States. 20 U.S.C.A. § 1415(i)(2); 34 C.F.R. § 300.516 (2016). If the parent or adult student feels that this decision is not being fully implemented with respect to program or services, this concern should be communicated in writing to the Director, Office of Special Education Programs.

August 15, 2016
DATE

BARRY E. MOSCOWITZ, ALJ

Date Received at Agency _____

Date Mailed to Parties:
dr _____

APPENDIX

WITNESSES

For Petitioners:

S.T.

Grant Jacks

Michelle Havens

James Gillock

For Respondent:

Eileen Horn

Kelly Goodwin

Olesya Dubreuil

DOCUMENTS

J=Joint

P=Petitioners

R=Respondent

- J-1 Educational Assessment by Tara Monaco dated January 9, 2012
- J-2 Psychological Assessment by Mary Ricciardi dated January 19, 2012
- J-3 Conners' Rating Scale by Greg Milite and Mary Ricciardi dated December 1, 2011
- J-4 Social Adaptive Behavior Assessment by Donna Hall dated January 9, 2012
- J-5 Speech-Language Assessment by Olesya Dubreuil dated February 7, 2012
- J-6 Pediatric Neurodevelopmental Consultation Report by Joseph Holahan dated January 19, 2012
- J-7 Initial Eligibility Determination and Evaluation Sequence dated February 24, 2012
- J-8 Initial IEP for the 2011–12 and 2012–13 school years, dated and signed February 24, 2012

- J-9 Annual Review IEP for the 2012–13 and 2013–14 school years, dated January 28, 2013, and signed January 30, 2013
- J-10 Annual Review IEP for the 2013–14 and 2014–15 school years, dated and signed January 17, 2014
- J-11 Educational Assessment by Tara Monaco dated April 30, 2014
- J-12 Speech-Language Assessment by Olesya Dubreuil dated April 25, 2014
- J-13 Psychological Assessment by Kelly Goodwin dated May 1, 2014
- P-14 School Neuropsychological Evaluation by James Gillock dated February 12, 2015
- P-15 Children’s Memory Scale Summary Report by James Gillock dated January 19, 2015
- J-16 Review of Evaluation Report by Eileen Horn and Kelly Goodwin dated April 15, 2015
- J-17 Occupational Therapy Re-Evaluation by Crystal Hemberger dated April 17, 2015
- J-18 Re-Evaluation Eligibility Determination for the 2013–14 and 2014–15 school years dated May 9, 2014
- J-19 Re-Evaluation IEP for the 2013–14 and 2014–15 school years dated May 9, 2014
- J-20 IEP for 2014–2015 and 2015–2016 school years dated April 16, 2015
- J-21 Notes by Eileen Horn from IEP meeting on April 16, 2015
- J-22 Notes by Eileen Horn from IEP meeting on July 8, 2015
- J-23 Letter from Eileen Horn to petitioners dated July 15, 2015
- J-24 Letter from Jennifer DeSaye to petitioners dated November 12, 2014
- J-25 Letter from Jennifer DeSaye to petitioners dated March 23, 2015
- J-26 Letter from Jennifer DeSaye to petitioners dated April 17, 2015
- J-27 Letter from Jennifer DeSaye to petitioners dated June 17, 2015
- J-28 Letter from Olesya Dubreuil to petitioners dated June 18, 2015
- J-29 Letter from Jennifer DeSaye to petitioners dated June 18, 2015
- J-30 Letter from Jennifer DeSaye to petitioners dated June 1, 2015
- J-31 Letter from petitioners to Jennifer DeSaye dated June 12, 2015, and received June 17, 2015
- Ex-32 Not in evidence

- Ex-33 Not in evidence
- Ex-34 Not in evidence
- Ex-35 Not in evidence
- Ex-36 Not in evidence
- Ex-37 Not in evidence
- Ex-38 Not in evidence
- Ex-39 Not in evidence
- Ex-40 Not in evidence
- Ex-41 Not in evidence
- Ex-42 Not in evidence
- Ex-43 Not in evidence
- Ex-44 Not in evidence
- J-45 Report Card for 2013–14 school year at Woodmont Elementary School
- J-46 Report Card for 2014–15 school year at Woodmont Elementary School
- Ex-47 Not in evidence
- Ex-48 Not in evidence
- J-49 Student Schedule for 2015–16 school year at Lazar Middle School
- Ex-50 Not in evidence
- J-51 Daily Attendance Report for 2014–15 school year at Woodmont Elementary School
- Ex-52 Not in evidence
- J-53 Extended School Year Program form for 2015 dated and signed April 21, 2015, and received April 29, 2015
- R-54 Extended School Year Program form for 2014 undated but signed
- J-55 Email from Melissa Suserman to Tara Monaco dated April 30, 2014
- J-56 Parental Notice Following a Re-Evaluation Planning Meeting: Additional Assessment Required by Tara Monaco dated March 10, 2014
- Ex-57 Not in evidence
- J-58 Work Samples from math, science, and writing classes at Woodmont Elementary School
- Ex-59 Not in evidence
- J-60 Emails between parties during April and May 2015
- Ex-61 Not in evidence

Ex-62 Not in evidence
Ex-63 Not in evidence
Ex-64 Not in evidence
J-65 Attendance Sheet from meeting on April 28, 2015
Ex-66 Not in evidence
Ex-67 Not in evidence
J-68 Educational Observation Report by Eileen Horn dated October 14, 2015
Ex-69 Not in evidence
Ex-70 Not in evidence
P-71 Student Schedule for 2015–16 school year at The Craig School
J-72 Notes by Kelly Goodwin from IEP meeting on May 9, 2014
J-73 Educational Observation Report by Eileen Horn dated November 2, 2015
J-74 Educational Observation Report by Eileen Horn dated November 2, 2015
J-75 Educational Observation Report by Eileen Horn dated November 19, 2015
J-76 Classroom Observation Report by Kelly Goodwin dated November 20, 2015
J-77 Classroom Observation Report by Kelly Goodwin dated November 23, 2015
J-78 Résumé of Eileen Horn undated
J-79 Résumé of Kelly Goodwin undated
Ex-80 Not in evidence
Ex-81 Not in evidence
Ex-82 Not in evidence
J-83 Résumé of Olesya Dubreuil
Ex-84 Not in evidence
R-85 Reading Level Assessment Data (Rigby Reads) for the 2012–13, 2013–14, and 2014–15 school years
J-86 Educational Observation Report by Eileen Horn dated October 15, 2014
J-87 Educational Observation Report by Eileen Horn dated October 15, 2014
J-88 Educational Observation Report by Eileen Horn dated December 18, 2014
J-89 Educational Observation Report by Eileen Horn dated November 4, 2015
J-90 Educational Observation Report by Eileen Horn dated November 4, 2015
J-91 Educational Observation Report by Eileen Horn dated November 11, 2015
J-92 Educational Observation Report by Eileen Horn dated November 19, 2015
J-93 Educational Observation Report by Eileen Horn dated November 19, 2015

- J-94 Educational Observation Report by Eileen Horn dated November 24, 2015
- P-95 Observation Report by Michelle Havens dated December 17, 2015
- P-96 Miscellaneous documents from Michelle Havens
- P-97 Résumé of Michelle Havens undated
- P-98 Addendum Report by James Gillock dated November 4, 2015
- P-99 Résumé of James Gillock undated
- Ex-100 Not in evidence
- J-101 Writing Samples
- J-102 Letter from Jennifer DeSaye to petitioners dated June 3, 2015
- J-103 Interim Settlement Agreement dated June 18, 2015
- J-104 Emails between the parties from March 19 to March 27, 2015
- P-105 Addendum Report of James Gillock dated February 27, 2016
- J-106 Request for Assistance from petitioners to respondent dated November 1, 2011
- Ex-107 Not in evidence
- J-108 Letter from Joseph Holahan to Pediatric Associates of West Essex dated January 17, 2013
- J-109 Letter from Joseph Holahan to Pediatric Associates of West Essex dated April 21, 2015
- Ex-110 Not in evidence
- Ex-111 Not in evidence
- Ex-112 Not in evidence
- Ex-113 Not in evidence
- Ex-114 Not in evidence
- Ex-115 Not in evidence
- Ex-116 Not in evidence
- Ex-117 Not in evidence
- Ex-118 Not in evidence
- J-119 Memorandum from Dominic Esposito to Victoria Carlucci re: Action Plan undated
- Ex-120 Not in evidence
- J-121 Informal Assessment by Eileen Horn dated January 23, 2015
- Ex-122 Not in evidence

- Ex-123 Not in evidence
- Ex-124 Not in evidence
- J-125 Letter from petitioners to Jennifer DeSaye dated April 29, 2015, and received May 20, 2015
- Ex-126 Not in evidence
- Ex-127 Not in evidence
- Ex-128 Not in evidence
- Ex-129 Not in evidence
- J-130 Speech-Language Re-Evaluation Summary by A. Murray-Imbalzano dated October 16, 2015
- Ex-131 Not in evidence
- Ex-132 Not in evidence
- J-133 Student Work Product
- J-134 Student Work Product
- Ex-135 Not in evidence
- P-136 Résumé for Grant Jacks undated
- J-137 Application to The Craig School dated July 26, 2014
- Ex-138 Not in evidence
- J-139 Letter from The Craig School to petitioners undated
- Ex-140 Not in evidence
- P-141 Invoice from The Craig School dated April 15, 2015
- J-142 Present Levels of Academic Achievement and Functional Performance from The Craig School undated
- Ex-143 Not in evidence
- Ex-144 Not in evidence
- J-145 Computer Skill Assessment from The Craig School dated 2015
- J-146 Checks from petitioners to The Craig School dated April 6, 2015
- P-147 Summer Progress Report from The Craig School dated July 25, 2015
- P-148 Summer Progress Report from The Craig School dated July 30, 2015
- P-149 Summer Progress Report from The Craig School dated July 30, 2015
- J-150 Present Levels of Academic Achievement and Functional Performance from The Craig School dated September 21, 2015
- Ex-151 Not in evidence

- Ex-152 Not in evidence
- P-153 Student Evaluation for 2015–16 school year at The Craig School
- P-154 Enrollment Agreement for 2015–16 school year at The Craig School
- P-155 Report Cards for 2015–16 school year at The Craig School
- Ex-156 Not in evidence
- Ex-157 Not in evidence
- R-158 The Craig School Policy for Visitation undated
- Ex-159 Not in evidence
- J-160 Report of Classification Conference & ISP Development Meeting dated November 20, 2015
- Ex-161 Not in evidence
- P-162 Printouts from The Craig School website
- Ex-163 Not in evidence
- Ex-164 Not in evidence
- J-165 Educational Observation by Eileen Horn dated February 2, 2016
- J-166 Review of Evaluation Report by Eileen Horn and Kelly Goodwin dated March 21, 2016
- P-167 Progress Reports from The Craig School
- P-168 Student Evaluation Report from The Craig School
- J-169 Emails between the parties from January 21 to January 27, 2014
- J-170 Writing Rubrics