



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NOS. EDS 08588-17 and EDS
11524-2018

AGENCY DKT. NOS. 2017-26280 and
2018-28138

CONSOLIDATED

J.A. AND J.A. ON BEHALF OF J.A.,

Petitioners,

v.

MONROE TOWNSHIP BOARD OF EDUCATION,

Respondent.

Robert C. Thurston, Esq., for petitioners (Thurston Law Offices LLC, attorneys)

John J. Armano, Esq. and **Katrina M. Register**, Esq. for respondent (Trimble and Associates, attorneys)

Record Closed: December 11, 2020

Decided: February 22, 2021

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

STATEMENT OF THE CASE

In accordance with the provisions of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C.A. § 1415, J.A. and J.A. have requested a due process hearing on behalf of their daughter, J.A., who is classified as eligible for special education and related

services. Petitioners' dispute the Monroe Township Board of Education (the District) proposed IEP and seek compensatory education, reimbursement of all fees and stay-put. At issue is whether the District provided J.A. with a Free and Appropriate Public Education (F.A.P.E.)

PROCEDURAL HISTORY

On May 24, 2017 petitioners filed a due process petition with the Office of Special Education Policy and Procedure (OSEP) seeking on behalf of their minor student, compensatory services in the form of individual tutoring provided by a special education teacher and sought the addition of all twenty-seven Goals from the prior annual review IEP dated May 3, 2016 to the proposed 2017-2018 IEP¹. Respondent filed its answer on or about June 2, 2017. The matter was transmitted to the Office of Administrative Law (OAL) where it was filed as a contested case on June 19, 2017 pursuant to N.J.S.A. 52:14B-1 to 15; N.J.S.A. 52:14F-1 to 13.

On May 1, 2018, Judge Wilson ordered that the November 14, 2016 IEP was J.A.'s Stay-Put IEP and ordered respondent to provide compensatory education in the form of individual tutoring and/or individual pull-out to meet the Goals set forth in that IEP. Thereafter, petitioners filed another due process petition with OSEP on May 22, 2018 seeking "Stay-Put" pending the outcome of the due process matter, compensatory education and reimbursement for all fees associated with the matter. Respondent filed an answer to this petition on or about May 30, 2018. This matter was transmitted to the OAL and filed on August 10, 2018. On June 13, 2018, Judge Wilson recused himself from this matter following the filing of a federal complaint naming him as a defendant. The matter was reassigned to Judge Kennedy who consolidated the matters by order dated August 14, 2018. The matter was scheduled for a hearing on October 1, 2018 before Judge Kennedy. Prior to the hearing, petitioners moved to exclude respondents' evidence for violation of the five-day exchange rule. Judge Kennedy entered an order dated October 2, 2018 denying petitioners' motion to preclude evidence as it relates to any disclosure that had not been provided through commonly accepted notions of

¹ Although due process petition seeks addition of twenty-seven Goals there were only twenty-six Goals listed in the May 3, 2016 IEP

discovery. To the extent any documents introduced as evidence by either party had not been provided between attorneys prior to September 24, 2018, they were precluded. Petitioners requested a stay of the hearing to pursue an interlocutory appeal of Judge Kennedy's order. Judge Kennedy granted petitioners' request for a stay of the proceedings pending petitioners' interlocutory appeal. On July 22, 2020, U.S. District Judge Hillman dismissed petitioners' interlocutory appeal without prejudice and the matter was returned to the OAL. Judge Kennedy recused himself from these proceedings following a request for same by petitioners. These consolidated matters were then again reassigned to the undersigned on or about August 5, 2020. Telephone conferences were conducted on August 13, 2020, September 3, 2020, September 15, 2020 and September 17, 2020 to schedule hearing dates and discuss what exhibits would be precluded based on Judge Kennedy's order of October 2, 2018.

A hearing was conducted on September 21, October 2, October 23, November 16, November 20 and December 4, 2020. Petitioners moved to disqualify Mr. Armano from representing respondent on the first day of hearing which was opposed by respondent and denied by the undersigned following oral argument. Following the conclusion of respondents' case on November 20, 2020, petitioners moved for a directed verdict/judgment which respondents opposed and cross-moved for a directed verdict on December 1, 2020. Decisions on the motions were reserved pending petitioners' testimony². Closing briefs were submitted on December 11, 2020 at which time the record closed.

FACTUAL DISCUSSIONS AND FINDINGS

Testimony

For Respondents:

Christine Trotter graduated from Rutgers in 2002 and has a certification in elementary education, Kindergarten through eighth grade. She obtained her masters in

² This decision disposes of the motions.

curriculum, instruction and assessment from Walden University. She has taken many additional classes and has her M.A. + 30. She also has a certificate in Human Services and Development. She has been employed by the respondent for nineteen years since her 2002 college graduation. Ms. Trotter has spent seventeen years in elementary education and is currently in her second year teaching high school home economics.

Ms. Trotter is familiar with J.A. and taught her in third grade during the 2016 – 2017 school year in a co-teach classroom. The co-teach classroom is a regular and special education class consisting of usually eight special education children and twenty to twenty-one regular education students. She was the regular education teacher and her special education co-teacher was Caroline Medlock. They follow the standard curriculum for third grade. The teachers took turns taking the lead in teaching different subjects while the other teacher would walk around and make sure the children were on task and understanding the lesson. Ms. Trotter would take the lead in Math and Social Studies and Ms. Medlock would take the lead in English Language Arts (ELA) and Science. They shared writing. The children did not know who the regular education teacher was and who was the special education teacher.

J.A. was a sweet, loving girl with a bubbly personality. She was always willing to give a hug and tell them how her day was. She was good in class and a model student. She kept up with and was better than most of the children in the class.

On a normal day, the children would come in, unpack their belongings and put them away and eat their breakfast. They would start their morning work and once the announcements were over, they had a little more time to finish their morning work before starting ELA, then went to a special and then continued with ELA, and then Math. They would go to lunch and come back and do “SSR” – Silent Sustained Reading, while they went to the bathroom. They would then do a little more ELA, usually writing or grammar and then would have “WIN” which stands for “What I Need”, which was also a language-arts based program that grouped the children depending on their level and they would be given their own individual assignments. Their level was based on tests that they took and on teacher input. J.A. was probably placed in the high average to average group.

Ms. Trotter was familiar with J.A.'s IEP. At the beginning of the year they are given the IEP to review so they know the modifications needed for class and the Goals that have to be attained. J.A. progressed well as a student in third grade. She outperformed the special education children in the class and a lot of times the general education population as well. She progressed nicely and was on track in third grade and getting ready to go into fourth grade. J.A. was always very attentive and always on task. Near the end of the year they noticed that J.A. was over-thinking things and taking longer to do assignments, even if it was a review topic. It was almost as if she was just sitting there not doing anything for a little bit, but when they checked on her, she knew what she was doing. She was not moving forward, but she did not need help when they checked on her.

Most assessments in third grade come from teacher observations. There are two teachers team teaching and they are constantly observing their students. Data is also collected in small groups and there is a check for understanding. Data is collected from assessments, class worksheets, end of chapter assessments and computerized assessment.

Referencing J.A.'s IEP for third grade, benchmark 1.1. indicates that "J.A. will identify and know the meaning of the most common prefixes and derivational suffixes." (R-10, page 22.) This is part of the ELA curriculum. J.A. would have been assessed on this Goal by being called up to the board or working at her seat while someone else was called up to the board. The teachers were circulating around the room to make sure correct answers were being put down. There would have been a worksheet to check for understanding independently as well as an end of unit test. If she was having trouble, they would have her come up to them at the teacher's desk or a small table and review it with her individually. If there were others also having trouble, they would pull them out and they would review it in a small group.

Goal 3.1 stated that "J.A. will use higher level adjectives to describe, people, places and things in their environment." (R-10, page 22.) Adjectives in general are taught through grammar and higher-level adjectives would be expanded upon in writing. You

would teach them the adjectives first and then have them use higher level adjectives. This Goal would be assessed the same way, through whole class, small group, and one on one instruction. For higher level adjectives they would meet with the student one on one when they were writing to see if they could use higher level adjectives in their writing.

Another Goal was “When given a writing assignment, J.A. will use end punctuation for sentences with ninety-five percent success.” (R-10, page 24.) This was assessed anytime they had a writing assignment and would be assessed across the curriculum because they are always writing sentences. Ms. Trotter believed ninety-five percent was a high Goal for third grade.

Ms. Trotter was familiar with the IEP modifications for J.A. (R-10 page 27.) The first general education modification was “Use a consistent daily routine.” They lived by a schedule every day and had consistent daily and weekly routines. The next modification was “Cooperative learning groups” which were used in class all of the time – they had WIN, math groups and multiple groups throughout the day. The next modification was “Arrange private signal to cue student” which was not really necessary with J.A. but if they needed to, they would have. The next modification was “Staying in proximity to student to focus attention.” Both teachers floated around the room and were always near a student and could always refocus a student struggling. Had J.A. needed her attention focused they would have been there. “Frequently check for understanding” was another modification listed which was something they always did. “Provide small group instruction.” They would frequently pull into small groups as needed. “Directions should be clear, concise and repeated” which they did. “Seat J.A. in the front row of the classroom away from the heat or A/C or other distractions.” Ms. Trotter explained that their classroom had the heater and A/C on one side of the room and the door on the other side of the room. The heater was a little loud, so they placed J.A. more in front of the classroom and more away from the heater than the door. This changed during the middle of the year when J.A.’s mom (Mrs. A.) was concerned there were too many distractions and the case manager moved J.A. into the back of the room by herself, which the teachers completely disagreed with. “Being paired with a buddy.” This modification was discussed with Mrs. A. at the beginning of the year because in third grade the children are getting older and more self-conscious and do not go in pairs to the bathroom. What they did do

was go in teams of three and four at a time and Mrs. A. was okay with that. "Pair her with an organized peer" was a modification J.A. never really seemed to need. At the end of the year this was kind of impossible because J.A. was off by herself.

In the beginning of the year, all the students sat near one another and they were in teams and kind of look out for one another. They always provided graphic organizers for everyone. J.A. always had access to her headphones and kept them in her cubby and could get them at any time.

In beginning of the school year, the teachers started off great with Mrs. A. They worked together to do what was best for J.A. in the classroom. They were very willing to make accommodations for J.A. as they saw fit. They had constant communication with Mrs. A. Ms. Trotter indicated that she felt the relationship went south after they had to go to court in the fall. Mrs. A. refused to let the teachers speak during the IEP meeting at the end of the school year.

Ms. Trotter never found that J.A. had any difficulties understanding. If J.A. did, she was not shy asking for help. She did not have trouble remembering things or following directions.

J.A. had headphones hooked up to an iPod to provide white noise. She did not use them that much, basically just when she came into the classroom in the morning and sometimes during morning work. As far as J.A. being sensitive to noise, it never really fit. There were times when the class would be a little crazy and she was right in there with the rest of the class. In the morning she used the headphones, so Ms. Trotter assumed the noise bothered her. The students had ten-minute breaks that they earned, and the noise level would get high during breaks because it was there ten minutes to decompress and unwind and then get back to work. J.A. always participated in break and loved it even though it got loud. She would go around to different groups and see what they were doing.

J.A. did not have problems with comprehension. They would read stories with questions that followed. Sometimes they would be graded as a worksheet assignment.

Sometimes they would go over them as a whole group and the other teacher would circulate around the room to make sure everyone understood what was going on. If they were off task, they would be pulled into a small group to go over it. There would be worksheets. Comprehension was also assessed with their computer program 'Exact Pass' and through bi-weekly assessments. J.A. did not struggle with new concepts any more than the others in the classroom. Socially she never had a problem in the classroom. She had her own group of friends. J.A. could advocate for herself. She could always come and ask for help if she was having a problem. They loved J.A. She was a little ball of sunshine. She was so enjoyable to talk to and they had a wonderful relationship.

Academically, J.A.'s overall ability level was in the high average range in their classroom, based on all of their assessments and observations throughout the year. J.A. was absolutely 100% ready for fourth grade at the end of her third grade year and that was their Goal. J.A. met all of the curricular Goals.

Ms. Trotter is not a special education teacher. J.A. did not need to know who was providing her with special education services, although Ms. Medlock would be the teacher overseeing her special education. They taught the third grade curriculum with modifications for the special education students. If J.A. had an issue that Ms. Trotter could not handle, she would defer to Ms. Medlock. In a co-teach classroom, Ms. Trotter could provide services to a special education student. J.A. was in her classroom four years ago. Prior to testifying, she reviewed her own documents regarding her observations of J.A. and her past IEP. (R-10.) She reviewed her own notes to refresh her recollection which have not been provided.

The data regarding meeting or progressing towards a Goal was taken down by both teachers via note taking, worksheets and assessments throughout the year. Ms. A. asked for data near the end of the year. She does not recall if that was provided to her. Caroline Medlock filled out the progress reports.

J.A. would over think things at the end of the year. It was almost like she did not want to perform anymore, and they seemed to hit a brick wall when she was doing well

all year. When the teachers asked her to see if there was an issue there was none. This was not a characteristic of autism. Ms. Trotter thinks it was a result of the bad relationship between the teachers and Mrs. A. and it was affecting J.A. The lawsuit broke down communications with Mrs. A.

Goal 1.1. concerning prefixes and suffixes states that J.A. should have success eight-five percent of the time. There was no record kept as to when she was at forty-five percent or any other percentage. Through observation, notetaking, and overall grades, they could see if she was meeting her Goals. The purpose of the Goal is to have the child achieve the Goal. The report card was based on the curriculum. Once you achieve Goals, you can move onto new Goals. The special education teacher keeps progress reports reporting on the Goals such as Goal 1.1., so as to not include it in the next IEP if it has been met. They know J.A. had achieved eighty-five percent success through observations, note taking, assessments and grades. Next to the criteria it indicates that the evaluation procedure is through tests or worksheets or class participation, which would be observation during class participation.

They did not rely on J.A. to advocate for herself if she had a problem. With two teachers in the room they knew all the students and what their needs were. Ms. Trotter had indicated that ninety-five percent was too high for a third grade Goal in her opinion, but she did not draft that Goal regarding punctuation. She does not recall if J.A. met that Goal.

J.A. did not need a private signal when she got stuck. It was the same signals as the rest of the class had when they needed help. J.A. was always on task, except maybe near the end of the year, and was a very good student. Ms. Trotter remembered J.A.'s modifications from memory even though she has had about eighty students since she taught J.A.

Mrs. A. requested the modification that J.A. be kept from distractions although Ms. Trotter did not see it as an issue. The change in J.A.'s seating was not done by her. J.A. did not need to be paired with a peer although she had a person that she could rely on near her if she needed it. Ms. Trotter knew what her students needed. She circulated

around her students. She was not certain whether this was changed during the sixty-day review period. Ms. Trotter believes having a peer builds on social skills.

In the IEP section entitled 'Special education and related services', speech services and Occupational therapy services are listed which services were not provided by Ms. Trotter, but were provided outside the classroom or inside as a consult. Counselling services were also provided outside the classroom as well and not by Ms. Trotter. (R-10, page 28.)

The Fall of 2016 litigation caused communication to break down between the teachers and Mrs. A. Ms. Trotter testified in that case. The tone of emails became more aggressive from Mrs. A. and Ms. Trotter reported it to the case manager, Jennine Peters. She continued to answer Mrs. A. She believes Dr. Bersh instructed her not to communicate with Mrs. A. near the end because they did not know what to do. Mrs. A. was scheduled to view the classroom each trimester. She came in for the first trimester and cancelled the second trimester observation several times because J.A. was not feeling well. Ms. Trotter was never instructed that Mrs. A. was not allowed to come to the classroom.

Ms. Trotter is familiar with third grade girls and that they want to fit in with their peers. It is possible that J.A. did not want to wear her headphones because she did not want to seem weird to her peers.

Aside from the IEP, Ms. Trotter was not shown any data during her testimony indicating that J.A. met her Goals.

J.A. was accepted by her peers and was always interacting with them. She does not believe J.A. had any trouble wearing her headphones when she wanted to as the class was very accepting of their peers and there were different things going on that they really were not even paying attention.

Regarding the modifications, some were used more than others, but she would not remove a modification but just use it as needed. If J.A. was being successful without the modification it would not be used.

Caroline Medlock received her bachelor's degree in education from Temple University and her master's degree in reading from Walden University. She received her post-graduate certificate in applied behavior analysis from Penn State University. She is a BCBA, which is a board -certified behavior analyst. She has a general education and special education certificate to teach K -12. She taught in the Philadelphia school district for a year and a half when she first began teaching in 2003 and started at Monroe Township in January of 2005. She taught fourth grade co-teach for eight years and taught third grade co-teach for five years all with Christine Trotter. She did a year and a half in a resource setting and spent her last year in the District teaching high school. She left the District in June and now works as a BCBA for Brett DiNovi & Associates.

She taught J.A. in third grade as the special education teacher in an inclusion classroom with Ms. Trotter, the general education teacher.

The student assessments and skills they needed to work on were constantly being monitored by both Ms. Trotter and Ms. Medlock through their assessments, observations, homework, tests and classwork. The assessments that had to be given throughout the year at specified times were kept tracked of through the "Link It" computer program.

Ms. Medlock remembered J.A. She loved her. She was a very sweet, smart, bubbly, wonderful little girl who was always happy. She would give Ms. Medlock a hug in the morning and liked to talk about her morning or the night before. J.A. had friends which she saw her interact with.

J.A. would go to the "squeeze machine" every morning. This is a device that J.A. would crawl into and on each side had pads and a lever that J.A. could control the amount of pressure applied to her. It was designed to give a sensory feeling sense of comfort. She believed it benefitted J.A. sometimes.

In order to prepare for third grade year, Ms. Medlock reviewed J.A.'s IEP and spoke to her second grade teachers who said that J.A. was a wonderful little girl and that they would love her. Ms. Medlock monitored J.A.'s IEP Goals through a lot of observation, through Link It, through classwork and through homework. During classwork activities she would walk around and make sure J.A. was on task and seeing how she was doing with all of the assignments. Ms. Medlock would check to make sure she was answering questions on her worksheet when she was working independently; if she was able to independently look at an activity, read the questions, answer the questions correctly; if she knew how to go back into her notebook or her reading book and look for answer; if she was following directions; if she was following the procedures that the teachers told her that she needed to use, whether it was for math or language arts. She was constantly observing J.A. In third grade. They do not change classes, so she was with her students all day long.

J.A. did very well in class. She was able to listen and follow directions. She knew to come in, unpack, get her morning work off the table, complete her morning work and when it was time to transition to new activities, she was able to put away whatever they were working on and go on to a new activity. She would follow whatever directions were given in terms of taking out certain books or taking notes. She would turn to the right page and follow along with the teachers. She would answer questions and participate. She was a very good student who got along well with the other students and fit in with the other students.

J.A. was usually in the medium to high group in the WIN groupings of students because she was very smart. Ms. Medlock assessed J.A.'s progress throughout the third grade year through observation, collecting assignments, classwork, homework, making sure that she could keep up with the third grade curriculum, making sure that she understood what was being taught to her, making sure that she could listen to a lesson and then apply those skills when she was working independently. J.A. kept up very easily and had no issues understanding the curriculum, listening to instruction or applying the skills taught during third grade.

J.A.'s progress on her IEP Goals was reported to her parents through progress reports that went out three times a year. Progress was also reported by her report card. The report card indicated how J.A. was performing on the third grade curriculum standards. J.A. did not need a lot of help in class. J.A. would come up and ask questions if she was having trouble and then went back and finished her worksheet. If Ms. Medlock had any concerns regarding J.A., she would have relayed them home, but she did not.

In the beginning Ms. Medlock indicated that they had an amicable relationship with Mrs. A. and they would email each other back and forth but then it got to the point that it was a little excessive. The teachers felt that their answers were not good enough and then Dr. Bersh indicated that the emails would go through him. Mrs. A. felt that J.A. was having trouble in school and with the work that the teachers were giving her and that J.A. was afraid to ask questions or let the teachers know she was having any trouble, but the teachers did not find that J.A. was having any trouble academically. They would always ask J.A. if she was okay and if she needed any help. J.A. knew she could ask her teachers.

J.A. had headphones she was allowed to use if she wanted to. Her mother said she did not like it when it was very noisy in the classroom. Ms. Medlock did not observe J.A. have any issues regarding noise in the classroom. Ms. Medlock believed if J.A. had any issues with noise, she would tell her. She saw J.A. use the headphones a few times. She would keep them on for a few minutes and then take them off. Ms. Medlock would say that was either because she did not need them, or she felt uncomfortable wearing them. During the breaks, when the classroom would get loud, J.A. would be smiling and having fun with her friends.

J.A. progressed very nicely throughout the school year. She learned all the material that was taught and seemed to comprehend it. She could take what she learned and apply those skills when she worked independently. They did a lot of review work that was part of the curriculum where you always go back and review work done before, which is called 'spiraling' to make sure the student is maintaining those skills and J.A. was.

Ms. Medlock felt that there was a disconnect between what Mrs. A. was reporting and what the teachers were observing in the classroom. What the teachers saw with J.A. was a very happy, social, smart little girl who seemed to like being in school, who seemed to like being with her friends, who did not seem to have any issues with learning and being in the school environment. It seemed as though the emails from her mother focused on all the problems she was having in school and yet the teachers did not see any of these problems. If they had seen problems, they would have reached out to Mrs. A. and come up with ways to solve them.

At the end of third grade, Ms. Medlock felt that J.A. was absolutely ready for fourth grade. J.A. did very well with the third grade standards. She could read, comprehend, answer questions, reference her notebooks and her reading books to find answers, she could follow directions and she was able to grasp material. She had a very good understanding of her multiplication facts which is very important going into fourth grade. She was very, very prepared. She was in the top ten percent of the class. She progressed very nicely though her IEP Goals. The IEP Goals were connected to the standards for third grade. Ms. Medlock taught fourth grade for eight years and was familiar with what was expected in fourth grade and J.A. was more than ready for fourth grade.

Ms. Medlock has no special certifications related to autism and no special training related to autism other than her ABA therapy training, which is used for children with autism, but also has other uses. Her BCBA certification is current and she takes continuing education courses to maintain her certification. She has been taught that a student with autism may not exhibit all of their 'symptoms' during the school day but when they get home may exhibit symptoms. She has had IEP training. It is an individualized education plan geared towards a student that might have trouble learning. The student's deficits are identified, and you work on those specific skills in the classroom. That is the purpose of the Goals in the IEP which should be measurable so you can determine if they have achieved them or not.

Ms. Medlock has not taught J.A. since third grade and did not look over any documents aside from her IEP prior to testifying. Ms. Medlock did not learn about the squeeze machine until she had J.A. in third grade. She was in charge of taking J.A. down

to the squeeze machine every morning. Sometimes it benefited her, other times it seemed that she did not want to go in it. Ms. Medlock reviewed the 2016-2017 IEP with Ms. Trotter at the beginning of the school year. She was not on the team that developed the IEP. J.A.'s progress on the Goals in her IEP were measured through observations, classwork, homework and Link It. The criteria set forth the percentage of time they are performing the skill and meeting the Goal. Once they have met the criteria, the Goal is considered mastered. She measures to see if a child has achieved the criteria based on observation and watching the student to see if they could perform the Goal independently without any prompting. She would determine they are doing well with that Goal and make sure it was done on all the assignments given, including worksheets and homework. Through observations she can see that the student is getting the idea and then she looks at worksheets, assignments and Link It for the written proof. Looking at a work sheet that had the skill on it, she would make sure the child got it correct eight out of ten times if eighty percent was the criteria. Most of the time the student's work was sent home in the Friday folder. Based on J.A.'s grades which were normally very good and mostly "M"s on the majority of her work, which was eighty-five, she knew J.A. was achieving her Goals.

The ABLES report is an assessment of a child's self-help, living and academic skills which is based on statistical data which was different then the data used to keep track of J.A.'s Goals. The grades reflected on the standards- based report card was the data used to keep track of the Goals. Ms. Medlock kept track of J.A.'s grades in the grade book for the different marking periods and could tell where she was in terms of her Goals based on the grade book. One of the Goals, for example, was regarding understanding common prefixes and suffixes. She would teach it, do a couple of guided worksheets together with the students and then hand out worksheets to be completed independently. If J.A. got an eighty-five on it and her Goal was eighty-five percent, then she considered it achieved. The progress reports reporting on the Goals had a legend, "PG" meant progressing gradually; "PS" meant progressing satisfactorily.

Mrs. A. did request data that the Goals were being achieved. They advised her that a lot of the work that had come home in the Friday folder was the data which was kept in the grade book. To Ms. Medlock's recollection, J.A. achieved the criteria on all of the twenty-six Goals and the data is reflected in the grade book. In order to set new

Goals, you need proof that the prior Goals were achieved. Ms. Medlock was involved in the May 2017 IEP meeting. She does not recall being asked to bring data showing that J.A. had achieved the twenty-six Goals set forth in her IEP.

There were emails to Ms. Medlock and Ms. Trotter from Mrs. A. indicating that J.A. was struggling with homework and struggling in school. The emails became excessive, a few times per week. It was not just the number of emails it was that Mrs. A. always saying J.A. had issues, which the teachers did not see any of which in school. Ms. Medlock did not believe that J.A. was struggling in school to the extent Mrs. A. said she was. She believed Mrs. A. when she said that J.A. was struggling with schoolwork at home.

Ms. Medlock began working with Epic Behavioral Health in 2014 and worked with autistic students in developing and implementing behavior plans in their home settings and she would train behavior technicians on how to work with the students. Ms. Medlock never found J.A. to be masking her symptoms at school. Ms. Medlock does not believe that J.A. was hiding any of her problems from the teachers. Although Mrs. A. said J.A. had trouble with noise, they watched J.A. in their class when it was noisy and she was enjoying herself, playing with her friends and the noise did not seem to bother her at all. Ms. Medlock also did not see any of the academic problems that Mrs. A. was reporting. J.A. did her work well, turned it in and Ms. Medlock did not see any struggles.

Part of the data was the homework and worksheets that were sent home every Friday. She did not observe J.A. regress during the year. The first part of third grade they review Math from second grade and J.A. did not struggle with Math or with reading, comprehension or vocabulary words.

The Progress Report for IEP Goals and Objectives 2016-2017 was sent home by Jeannine Peters, J.A.'s case manager three times per year to tell the parent how the student was progressing on their Goals. Ms. Medlock prepared these progress reports. (R-15.) Goal number one was a phonics and decoding Goal which meant J.A. could read on a third grade level. They would do fluency assessments and would have the students read for one minute and see how many words per minute they could read. By the end of third grade it was 112 words per minute. Mrs. Medlock does not recall exactly what J.A.'s

words per minute were but if she wrote “Achieved” then she was reaching that amount of words per minute. The data that goes into that was part of the Friday folders. The information stayed home with the parent.

The progress report indicates for an objective or benchmark that J.A. will decode multi-syllabic words. The progress report indicates that J.A. had achieved this Goal in December, March, and June. To see that she achieved this Goal, Ms. Medlock gave fluency assessments. If there were multi-syllabic words and J.A. was reading them and did not make any mistakes, she achieved the Goal. If she made mistakes and could not read or had trouble with the word, the teacher would either circle or underline the word in the fluency assessments. The fluency assessments went home in the Friday folder as they were done periodically throughout the year. But data was sent home every week in the Friday folder.

Ms. Medlock believes J.A. would have told her if she was struggling because she was so open with talking to her about so many things and did so on a regular basis. She did not see J.A. struggling. Ms. Medlock can tell when a student is struggling – if they are sitting at their desk and not completing their worksheet or if they are writing things down and it is all wrong or if they are making a lot of mistakes. J.A. was not doing any of those things.

Under Goal 2.1, “P.S.” is listed for June 2017 which means she was progressing satisfactorily. On Goal 1 for December the code is listed as having been achieved but in March it has progressing satisfactorily. The Goal was still being worked on because they spiral all of their Goals for maintenance to make sure there is no regression. Going from achieved to progressing satisfactorily does not necessarily means J.A. has regressed it could mean the words in a new story were unfamiliar or the story was multi-cultural with unfamiliar names that would throw a student off.

The benchmark numbers are associated with a third grade curriculum. If a student has not achieved that Goal, it does not mean that the student has not achieved the third grade curriculum Goal. You do not have to completely master a Goal as long as you are

progressing towards the Goal. Ms. Medlock based this on how many words J.A. would get correct in the fluency assessment and it was increasing.

If a parent wanted to know how the information in the Friday folders link to the criteria, the teacher can explain it to them. Although it was not a conversation they had in the beginning of the year, Ms. Medlock believes that it was explained to Mrs. A. that the information in the Friday folder was the data used to make sure the student was meeting the criteria.

Ashley Price Meilahn graduated from Rowan University in 2009 with a degree in writing and elementary education. She has a teaching certification in elementary education and a certification in special education. She also has her Master's in special education in dyslexia. She is a dyslexic therapist trained in Wilson and has a level one and level two certification. Wilson is a program that teaches students in a very explicit and systematic way how to decode, read and how to encode with spelling and comprehension. It is not given to every child, just those who have difficulty with decoding and encoding, which is typically children with dyslexia.

Ms. Meilahn was the special education teacher for J.A. in fourth grade during the 2017-2018 school year. She taught J.A. in a coteach classroom with Stacey Camerieri, the general education teacher. She student taught at Monroe Township and then was hired in June 2010. She taught a self-contained class in the District for seven years and this was her fourth-year teaching in a co-teach class at Oak Knell Elementary with Stacey Camerieri.

The usual day started with the students arriving at 8:40 a.m. since they had to be there by 8:55 a.m. Ms. Meilahn was always on hallway duty and would greet them as they arrived. They would come into the classroom, unpack and get themselves ready for the day. They would do their morning work and then they would have a special first thing which was either gym, music, or art and then they would come back and have their language arts and math time before lunch and recess. After that they would have their "WIN" period, then do their writing and grammar block and then social studies and science

before packing up and getting ready for dismissal. The WIN (What I Need) period was for students to work on the particular area they needed assistance in.

Ms. Meilahn remembers J.A. as a very sweet, lovable child who always had a smile on her face. She was very friendly and sociable. Prior to the start of the year, the teachers talked to the previous third grade teachers, reviewed the IEP and made sure that they had the modifications and accommodations needed. They make a spreadsheet and write down information. They prepare Goal sheets to track the Goals. The fourth grade curriculum is based on the State standards, so all of these are taught. Her and Ms. Camerieri maintained a sheet to go along with each Goal in order to keep track of them. They determine what assessment or what information would indicate that they are hitting their Goal and keep track of the information throughout the school year to see how the child is progressing. By the end of the school year they have multiple pieces of evidence that show that the child did or did not make their Goal based on their percentage that is put in the IEP. The child would be assessed through the curriculum and then use those documents to see if they were hitting their Goals. So, if the Goal was eighty percent and the child got an eighty-five on the assessment, they met the Goal for the standard and the Goal for the IEP. Teacher observation is a big part of the data collected in the elementary classroom. Within the classroom they are teaching all of the fourth grade standards and a lot of times the Goals and standards do align so they have a lot of documentation from the curriculum that show how the child is doing with their Goals. They maintained a notebook for each of their students where they would write down anecdotal records of their observations as to where the child was at a given time, not just for academics but for social/ emotional issues as well. Parents are made aware of how the child is doing by the use of the Friday folder. Anything that is graded is sent home. The papers marked "M" means meeting the standard or "P" progressing towards the standard were on the right side of the folder. Anything indicating the child was not meeting the standard and marked with an "N" was put on the left side of the folder and requested that the parent sign it so they were aware of how the child did on the assessment. On the back of the folder was a place for the parent to sign and date indicating that they had reviewed it. The report card was sent home three times a year and since it was a standards-based report card, let the parent know how the child was doing with each individual standard. The standards- based report card lists each standard set by the state

for that grade level. Essentially it tells the teachers what they have to teach and the different skills within the curriculum. The standards- based report card has each of the specific skills listed on the report card and the teachers report on how the child is doing with that particular skill. They use “E”, “M”, “P” and “N”. “N” is not meeting the standard. “P” is progressing toward the standard. “M” is meeting the grade level standard. “E” would indicate above the grade level standard. An “E” does not mean an “A”. “M” would be meeting the grade level standards and that is what the teachers wanted the students to achieve and that a “P” is not bad either because it is not expected that a child be perfect all year long. They would be concerned about “N” because that means the child is not understanding the curriculum.

Throughout the fourth grade year, J.A. did very well academically and socially. She was probably one of their high average students in most areas. This was based on her assessments and observations. Like every child in fourth grade there are some areas they excel in and others they struggle with. J.A. struggled with the writing process like a lot of fourth graders since it is a higher skill. J.A. was a typical child in their classroom. If there was something, she was stuck on academically she would say she was “tricked” on something, which is the term they used if someone was having difficulty understanding and then they would go over it again. J.A. did not have any trouble vocalizing if she did not understand something. She was social and had no problems making friends. She had friends in the class she had been friends with before. J.A. would give Ms. Meilahn a hug in the morning and talked about anything that she was excited about going on at home or what she was doing. They had a great relationship. J.A. was a very friendly child. Ms. Meilahn and Ms. Camerieri took turns taking J.A. down to the squeeze machine every day and they would have conversations with J.A. She believed J.A. liked the one on one attention and she believed it gave the teachers the opportunity to really know her. The squeeze machine was located in the OT/PT room. If the teachers were not available, the OT Keara Shute would walk J.A. back to the classroom. J.A. spent approximately five to ten minutes in the squeeze machine.

J.A.’s last marking period report card in fourth grade were all “M”s in every standard. She was prepared for the next grade level. Anywhere she had struggled previously in the school year, they did not see that as much by the end of the year. J.A.

also did well on the standardized assessments done throughout the year. J.A. was ready for fourth grade when she finished third grade and she was ready for fifth grade when she finished fourth grade.

The fourth grade standards included a fluency standard for language arts, which is how fluent a child is reading. There were vocabulary standards. There were comprehension standards with comprehending and explaining test. The math standards included understanding place value. There were addition and subtraction with multi-digit numbers as well as division and multiplication. All of these standards are hit within different assessments throughout the school year and through the curriculum. J.A. was able to follow along within the classroom. She had a good attention span. She was able to follow directions. There was nothing that they had to closely watch her for academically.

J.A.'s mother was quite concerned about noise in the classroom and reported this to the teachers. The teachers would let J.A. wear her headphones if that would help her but it did not seem that J.A. wanted to wear them. It was J.A.'s decision if she wanted to wear them. They did encourage her to wear them. If she did wear them, she put them on for a minute and then took them off. J.A. would say that she was afraid of the noise starting when there was no noise, but then did not put on the headphones. It was almost like a fear of hers. Although J.A.'s mother said the noise bothered J.A., the teachers did not see it in the classroom or in other areas of the school such as the cafeteria and in the auditorium. J.A. was told to take her headphones but then did not wear them. Ms. Meilahn did not believe the issue with noise impacted her academic performance. She was able to focus and did not appear to be in any distress.

Ms. A. did come in and observe the classroom and J.A. seemed nervous when her mother was present. She believes her mother had concerns about her seating and requested her seat be moved.

The annual review IEP dated May 9, 2017 with a start date of September 17, 2017 and end date of June 15, 2018 was represented by counsel to be J.A.'s IEP for the fourth grade school year. (R-14.) Ms. Meilahn believed J.A. met her Goals throughout her fourth grade year. This is reported to the parents through the progress reports done each

trimester. They use a computer program called IEP direct that allows her to input her data which is saved and then the CST sends it home to the parents, similar to a report card. Ms. Meilahn believed J.A. had three academic Goals for the fourth grade year and she achieved them.

The Friday folder, progress report and report card all go home to the parent. The teachers at back to school night advise the parents that they are there for them and that they can email the teachers or call them with any concerns. They also sent home a newsletter every Monday explaining to the parent's important dates that were coming up and what concepts were going to be going over that week and any quizzes or tests scheduled.

Any concerns raised by J.A.'s mother were always addressed – whether it was noise in the building, use of the headphones, time in the squeeze machine, snacks to be sent in for celebrations, her belief that J.A. was not voicing her concerns to her teachers and academic struggles at home. They tried to do what was best for J.A.

Ms. Meilahn participated in the Spring 2018 IEP meeting to prepare for J.A.'s fifth grade year. Both Mr. Thurston and Mr. Armano attended this meeting. J.A. achieved her fourth grade Goals and they were working on fifth grade Goals which included some writing Goals and a math Goal but most of the Goals were covered. Most of the skills were covered by the curriculum.

Ms. Meilahn missed time from work in order to testify at this hearing but was not penalized.

She was not part of any of the previous IEP meetings for J.A. and was not part of J.A.'s educational experience until September 2017 when she had J.A. in fourth grade. This was Ms. Meilhan's first year in the coteach classroom. There were eight students with IEPs in her fourth grade class, all with different disabilities and different Goals. Her and her co-teacher kept a Goal sheet on each student's Goals and the percentage necessary to reach the Goal. This was kept for their own benefit for them to keep track of their student's Goals and whether the student was meeting the Goals and was not

required by the District. They were used for the teachers reference for how to report on the IEP indicators. They would document the assessments on the Goal sheet in order to keep track of the student's progress. The assessments, which was the data, would go home in the Friday folders, but not the Goal sheets which was something the teachers kept for their own records.

Goal sheets were kept on J.A. throughout the year for her academic Goals and were based on assessments. Goals such as socialization would be done on observational and anecdotal records because J.A. would not take an assessment on that. The Goal sheets and observational and anecdotal records did not go home in the Friday folder, only the assessments. Ms. A. did not ask her for data beyond what was in the Friday folder. The assessments are matched with the percentage of the Goal to be achieved. If there was an assessment with ten problems on it and the Goal was eighty percent, if J.A. got eight out of ten correct, she met the eighty percent Goal. Nonacademic Goals, such as how J.A. was responding to her peers were kept track by the teachers' observation of the behavior and anecdotal records. Teacher observation is a big part of the reporting and is based on the teachers' opinion based on what they observed. If they did not observe a negative behavior over a course of time, they would report that J.A. was progressing satisfactorily toward the Goal. They did not report on a certain date that J.A. had reached fifty percent or seventy percent towards her Goal. It did not work that way. They used their anecdotal records to say, for example, today J.A. was socializing and having a conversation that showed she was able to accept her differences and the difference in others. If they did not see her not able to do that, they would say she met the eighty percent Goal. The teachers kept a notebook on each child in the class, including J.A., that reflected the teachers' observations and anecdotal records and was data. This notebook was not provided to J.A.'s parents. If the parents requested it, she does not see why it would not be provided, however it was maintained so that the teachers could keep track of their students. The notebook did not go home in the Friday folder.

Temple Grandin, who had severe autism, invented the squeeze machine as a way to address sensory needs. J.A.'s use of the squeeze machine was written in her IEP.

The May 9, 2017 IEP was J.A.'s IEP for the fourth grade school year and she reviewed it prior to the start of the year. She and her co-teacher prepared the Goal sheets based on the Goals set forth in the IEP. (R-14.) The central auditory processing evaluation from October 21, 2015 was referenced in this IEP and it indicated that J.A. had a severe auditory processing disorder in the areas of decoding and tolerance fading memory. (R-14, page 5.) Decoding is the breaking apart of words or letters within a word by sound to read them fluently. Tolerance fading memory has to do with not being able to remember things explicitly. There were nine Goals listed in this for the IEP (R-14, pages 22-23). Goal 2 which was "Motor" said "J.A. will maintain attention to classroom activities and not be distracted by normal stimuli with seventy-five percent success." The benchmark below this Goal was that "She'll tolerate auditory stimuli, background noise, music, bells, alarms while participating in educational activities for twenty minutes, seventy-five percent success". The evaluation procedure was structured observations of targeted behavior, which was the classroom observations, which was written down in the notebook. It was not provided to the parents because it was anecdotal records that they kept for themselves in order to report on them. They did not send their anecdotal records home.

Ms. Meilahn is familiar with fourth grade girls and that they may be a little self-conscious about their differences. She knew J.A. well enough to think it was possible she did not want to wear her headphones because she was self-conscious about wearing them. (R-14, page 19.)

The case manager never came and asked the teachers that Ms. A. wanted other information aside from what was sent home in the Friday folders.

It was the teachers' understanding that it was background noise that would not bother them but would bother J.A. and that is why she needed to use the headphones. Whenever she needed to use them, she was allowed to. They would remind her that if she thought something would bother her to put them on. She frequently came in afraid that the noise was going to start. They would remind her to put her headphones on. She would put them on for a minute and then take them off. There were assemblies during the 2017-2018 school year which were noisy. They told J.A. to bring her headphones with

her to the assemblies. There was one assembly that was a laser show and was very loud, but J.A. was fine and enjoyed it. She did not come and say there was a problem. She did leave an assembly at intermission and said she needed a break and a walk.

There were no progress reports from the 2017-2018 year introduced during her testimony.

The modifications section of the IEP provided that a pocket seat holder will provide J.A. access to headphones provided by parent, I pad provided by parent, fidgets as needed, all to be used at J.A.'s discretion. (R-14, page 23.)

Ms. Meilahn is a trained Wilson instructor and never observed J.A. having trouble with decoding. She gave J.A. a Wilson assessment at the beginning of the year for decoding and encoding and she did not qualify for Wilson instruction. She also never observed J.A. having difficulty remembering things. J.A. did not need frequent teacher support. Even though J.A. was out of the classroom to use the squeeze machine, she was able to perform at a high average academic level and the time out of the classroom did not present any academic difficulties for J.A.

Prior to testifying, Ms. Meilahn reviewed her notes and J.A.'s report card.

Keara McMahon Shute received her B.S. and Masters' degree in occupational therapy from Dominican College. She is board certified as an occupational therapist and has had a New Jersey license certification since 2001. She is familiar with J.A. and met her when she started working as an occupational therapist with respondent for the 2016-2017 school year. She did not work directly with J.A. because J.A.'s IEP had OT as a consultation. She observed J.A. in class and met with her teachers. She also was in the OT room when J.A. would come and use the squeeze machine. The prior school year J.A. had received direct occupational therapy intervention services and reached all of her Goals, so her IEP was changed to a consultative model to make sure she was continuing to function appropriately in the classroom.

J.A. was a sweet, kind, friendly girl and it was a pleasure getting to know her. Her prior OT Goals were handwriting and noise sensitivity. Ms. Shute made sure that she was still maintaining her handwriting skills within the classroom environment which involved her speaking with the teachers, observing J.A. doing handwriting tasks in the classroom such as copying and looking at samples of her handwriting. She was looking to make sure J.A.'s handwriting was legible, nicely spaced, and aligned and to make sure J.A. was keeping up with her peers when copying in the classroom. Ms. Shute did not observe J.A. having any difficulties with her handwriting in the classroom.

The noise sensitivity issue was reported by Mrs. A. who said J.A. told her that certain noises were bothering J.A. at school. Mrs. A. sent in noise cancelling headphones for J.A. to use whenever she felt it was too noisy. The teachers were aware of this and allowed her to use them whenever she wanted. Ms. Shute spoke with the teachers and tried to figure out at what time of the day J.A. used the headphones so she could pinpoint what was bothering her and reduce her stress about the noise level. They started incorporating the squeeze machine twice a day and J.A. definitely said she liked it. Ms. Shute guessed it helped some of her anxiety. By the end of the 2016-2017 third grade school year J.A. was not really taking out the headphones. Ms. Shute received an email from Ms. A. that J.A. was having difficulty with noise during WIN time, so Ms. Shute went to observe J.A. during WIN time and J.A. was working on the floor with her peer group, socializing and smiling and moved around to other groups to talk with other peers. Ms. Shute did not observe the noise presenting any problems for J.A. in the classroom. She spoke to J.A.'s teachers who also indicated that they had a good relationship with J.A. and that they reassured her and told her if something is bothering her to let them know and that they will try and work with her to ease this anxiety. The teachers did not report J.A. having any distractions regarding noise and Ms. Shute did not observe J.A. having any difficulty with noise. Ms. Shute did track J.A.'s use of the headphones. Her fourth grade school year she put the headphones on when she first came in in the morning. The total number of times for the whole year was around seventeen times, for a minute or two. J.A. brought her headphones to indoor recess but did not use them that much. Ms. A. had reported that J.A. did not like indoor recess.

Ms. Shute did an OT evaluation of J.A. in July 2018. J.A.'s scores were average and Ms. Shute did not see any concerns. This was consistent with what Ms. Shute had observed during her consultative OT evaluations of J.A. during her third and fourth grade years. The report was sent home to the parents. Ms. Shute recommended that J.A. be discharged from OT since she did not need OT based on the standard scores J.A. received. Mrs. A. was concerned about the recommendation that J.A. be discharged from OT.

Ms. Shute was missing time from work in order to testify but was not being penalized by respondent.

Ms. Shute has experience working with autistic students and is aware that they can experience anxiety.

The November 14, 2016 IEP called for an OT individual therapy consultation twelve times per year for fifteen minutes. (R-12, page 1.) The prior OT, Alicia Onesti, indicated that J.A. did well in 2015-2016 and mastered all of her Goals for the year. (R-12, page 20). Ms. Shute reviewed J.A.'s progress notes that were inputted into the IEP system by Ms. Onesti.

The squeeze machine helps calm autistic children by applying deep pressure and after using it for five minutes or so it can have lasting effects up to an hour or more. J.A. used it when she first came into school in the morning because Mrs. A. had reported that was a difficult time for J.A. because the students were noisier just coming into school and unpacking. Goal #26 involved avoiding distraction caused by auditory stimuli. (R-12, page 27.) This Goal was put in the IEP based on Mrs. A.'s concerns. Even though the OT had not observed the problem, they recognized Mrs. A.'s concerns and were looking to make sure it was not happening.

The consultation OT occurred in the classroom with Ms. Shute observing J.A. and speaking with her teachers. She kept logs of all of her twelve consults and provided a copy to Mrs. A. The IEP noted that Mrs. A. requested copies of therapy reports from speech, OT consultation and counselling, after each session. (R-12, page 32.)

The May 9, 2017 proposed IEP still had the one OT Goal regarding auditory stimuli as a result of the parents' input. The number of OT consultations were reduced from twelve to ten consults a year because Ms. Shute felt that J.A. did not need twelve. Ms. Shute actually saw J.A. more than was required in the IEP since she saw J.A. when she was in the therapy room for the squeeze machine.

Ms. Shute did not believe any more formal evaluation for OT was needed during the 2016-2017 and 2017-2018 school years or she would have recommended it. She recommended that OT be discontinued following her July 2018 evaluation.

Jennifer Cayer-Johnson graduated from Rowan University with a psychology degree and then attended Rutgers University for her Masters' in Social Work. She started her career as a school social worker in Pennsville School District and was there for eight years before she became employed by Monroe Township and has been with them for five years as a school social worker. Ms. Cayer-Johnson was J.A.'s counsellor for second, third and fourth grade and also became her case manager in fourth grade.

J.A. was a very happy, polite, social and compassionate girl. She was eager to learn and to participate. When she started counselling sessions with J.A. they were working on social skills, desensitizing her to things that bothered her, making eye contact and asserting herself. Counselling was done in small groups from two to four students and J.A. did fantastic in counselling. She was very social and eager to participate and progressed in making eye contact and in asserting herself. Her last year of counselling they were solely focusing on her accepting her disabilities as well as accepting other people's differences. During her third grade year, Mrs. A. wanted J.A. to participate in other groups to familiarize her with other students. She was concerned that J.A.'s social circle was limited to the student's she's been with since preschool and she wanted J.A. to learn to meet new friends.

Mrs. A. requested summaries of each counselling session be sent home. Ms. Cayer-Johnson had her Goals listed out and for each session checked off which Goal they were working on and what the activity was. Her assessments were based on her

observations. Once a month she would go into the classroom to specifically observe J.A. for half an hour within the classroom setting to see how she was doing in the classroom. She also was in the classroom several times a week to consult with the teachers and did informal observations during that time as well.

A big issue Mrs. A. was concerned with was background noise that started in her second grade year. Mrs. A. was concerned about fire drills and that J.A. became overstimulated and overwhelmed with the loud noise and it made her very anxious. So, the next time Ms. Cayer-Johnson knew they were having a fire drill, she followed the class out to see how J.A. reacted to see if she could come up with supports for her. J.A. did great. She did not have her hands over her ears, she was socializing with her friends. She followed the class downstairs and outside. She stood there until they were ready to go back in and then went back to continuing with her work she was doing before the fire drill. There was an issue with the hand-dryers in the bathroom, assemblies and walking back from choir in the hallway. Ms. Cayer-Johnson started doing her counselling sessions in the auditorium to desensitize J.A. She did an observation when choir was dismissed. The hallway was chaotic with students running back to their class. She observed J.A. skipping down the hallway and gave both her teachers a hug and then sat down and started doing her work. There was also an issue in the speech room with the air vent that Mrs. A. said was bothering J.A., so Ms. Cayer-Johnson did an observation during speech. The air vent was very noisy and there was another session listening to music so it was very distracting in there. However, J.A. was fantastic. She was engaged. Ms. Cayer-Johnson did not observe J.A. having any difficulty. Her intent in these observations was that if she saw J.A. struggling or demonstrating distress, she would address the issue with her and come up with different supports for her and then observe her with those supports in place. However, Ms. Cayer-Johnson did not see J.A. in distress in any of these situations. Ms. A. reported that assemblies were a big problem for J.A. as well. Ms. Cayer-Johnson observed her during assemblies and de-briefed her after them and Ms. Cayer-Johnson did not see any distress during the assemblies nor did J.A. report any distress in her debriefing sessions following the assemblies.

By the end of fourth grade, although she was not 100% making eye contact, it was not presenting as an issue that interfered with her education. Ms. Cayer-Johnson was not

able to observe any issues with J.A. tolerating noise. Socially, J.A. was well-adjusted by the end of fourth grade. She had a core group of friends that she has been with since pre-school. She was not shy and definitely able to interact with other students her age.

As J.A.'s case manager in fourth grade, she monitored her success with the recommendations contained in the IEP. She provided the counselling sessions and then made sure the teachers were implementing the strategies, modifications and accommodations in the classroom according to the IEP. J.A.'s case management was a lot of addressing Ms. A.'s concerns. Whenever Ms. A. would communicate with a teacher that J.A. was experiencing distress, or there was any issue, she would become involved in helping the teachers work through it, gather information to see if there was anything that needed to be addressed. She also provided J.A. counselling two times a month in a group setting. As a case manager, she generally does classroom observations once a month so that she is familiar with her students and their functioning within the classroom. She also sat with Mrs. A. during her observations. She also had numerous informal observations of J.A. when she was in the classroom numerous times a week. During Ms. Cayer-Johnson's formal observations, J.A. was always on task and paying attention in whole-group instruction as well as small group instruction. She would follow along with the teacher. She would help her friends if they could not find a page or were having a hard time pronouncing a word. She was social with her peers and always presented herself with a smile. Ms. Cayer-Johnson did not see any red flags during her observations of J.A. There were no differences in what Ms. Cayer-Johnson observed in the classroom and in what J.A. reported to her during counselling.

By the end of third grade, J.A. was ready for fourth grade and by the end of fourth grade, J.A. was ready for fifth grade. There was nothing that Ms. Cayer-Johnson saw in her counselling sessions in third and fourth grade with J.A. that adversely impacted her education. Anytime, Mrs. A. brought up a concern about J.A., it was addressed.

Ms. Cayer-Johnson is familiar with autism and how it affects students in their school environment. In preparation for her testimony, she reviewed J.A.'s IEPs, her counselling notes, J.A.'s social history report and behavior scales and emails and correspondence between her and J.A.'s mother. Difficulty socializing is a common

characteristic that is associated with autism, but it depends on each individual. Although J.A. had her core group of friends and socialized appropriately with others during group counselling sessions, she did not know if this carried over outside of the counselling sessions or if J.A. ever expanded her core group of friends. Ms. Cayer-Johnson did IEP counselling with J.A. where they addressed social Goals. A social skills class would involve a staff member going into the classroom to do a whole-group lesson. Ms. Cayer-Johnson did not do that.

Ms. Cayer-Johnson measured J.A.'s progress by observing her practice the skills and demonstrating the skills within the counselling session and then seeing if she was carrying over those skills into other areas. That would be by observations and discussions with the teacher to see if she displayed those skills. It was also the absence of the conduct problems, social conflict and maladaptive behaviors. The data is reflected in her counselling notes. Ms. Cayer-Johnson indicated that the noise was not interfering with J.A.'s accessing her education based on her observations. Mrs. A. requested Ms. Cayer-Johnson to provide her with her data sheets which she did.

During her case management of J.A., they received an audiology report diagnosing J.A. with an audiological disorder. The school wrote a letter in response identifying which parts of the report they accepted or rejected.

Ms. Cayer-Johnson indicated that J.A. never reported any audiology concerns to her from second to fourth grade. She would expect her to be able to tell her that she is feeling distress in certain situations. Lack of self-advocacy, Ms. Cayer-Johnson admitted, is a common characteristic associated with autistic children. However, knowing J.A., it would be unusual for her to not tell Ms. Cayer-Johnson if something was bothering her.

At the IEP meetings she attended, Mrs. A. did raise the same concerns she had raised regarding J.A.'s noise sensitivity and the IEP team considered her concerns. However, they also consider the student's functioning within the classroom and they were not seeing it interfering with her functioning within the school environment.

When she received J.A. for counselling during second grade, she had lots of Goals and it probably took two years to get through all of those Goals. By the time she was going into fourth grade they were just working on two specific Goals. She had the skills to be social and advocate for herself as a fourth grader would be expected to. She did not believe J.A. needed counselling for fifth grade.

Ms. Cayer-Johnson attended the IEP meeting dated November 14, 2016 as the school social worker and participated regarding J.A.'s counselling class and Goals. The social history evaluation for 2015 refers to the Vineland 2 adaptive scale which indicated that J.A.'s overall adaptive behavior, within the home and school settings was within the moderately low range. In the school environment J.A.'s adaptive behavior fell within the ninth percentile which is low and in the home environment even lower at fourth percentile. (R-12, page 5.) The evaluations indicate where they need to start. The eligibility statement determined that J.A. was classified eligible for special education and related services. Her disability category was "autistic" "due to a pervasive developmental disability, which significantly impacts verbal and nonverbal communication, and social interaction, that adversely affects a student's educational performance." (R-12, page 17.)

Ms. Cayer-Johnson's input was under the part entitled "Social-emotional behavior" which indicated that J.A. was currently receiving counselling in a group setting. (R-12, pages 18-19.) This was small group counselling with two to four students.

Her Goals included a wide variety of social skills, community safety and coping strategies. The social skills included being able to introduce yourself, say hello in the hallways, being able to have appropriate conversations with a student and being able to play games, take turns and being appropriate with each other, and what to do in certain situations. Community safety involved designating a personal contact in each situation, whether it be on the playground, on the bus, in the classroom or in specials. This would be a person to go to if you have a problem.

Mrs. A. was concerned that J.A. did not know how to navigate her environment, so they went over what doors are for boys and what doors are for girls and the location of the exit signs. They went through specifics within their school environment for her to

navigate. She did not have anything specific for J.A. regarding coping strategies, but as a group they learned what to do if they were feeling anxious, nervous or angry, identifying their emotions and effectively communicating with people in their environment. These topics were addressed through a variety of child therapy activities, role playing and storybooks. She tried to make it fun in a non-clinical environment. J.A. willingly participated. Ms. Cayer-Johnson noted that "At that time, J.A. needed reminders to make eye contact. And even when consciously putting forth effort, J.A. appeared very uncomfortable. It was evident after winter break J.A. needed less reminders to make eye contact. She was making more spontaneous eye contact during counselling sessions and appeared natural in doing so." (R-12, page 19.) Ms. Cayer-Johnson admitted that this was improvement made at home. There was also a note that J.A. demonstrated a need for social skills counseling in the school setting to address mild delays in social skills functioning. (R-12, page 22.) This was addressed in Ms. Cayer-Johnson's IEP counselling which addressed social skills with J.A.

J.A.'s mother was providing her school supplies and her lunches so that she was not exposed to toxins. There was a note from June 2015 that Ms. A. and the pediatrician indicated that J.A. had a tendency to overstuff her mouth with food which may lead to choking. This was listed as a special alert in the IEP and Mrs. A. did relay this concern to Ms. Cayer-Johnson as J.A.'s social worker. She never observed J.A. have any difficulty eating.

The social, emotional, and behavioral Goals identified by Ms. Cayer-Johnson were Goals twenty-one through twenty-four in the IEP. (R-12, page 27.) Goal #21 was that J.A. will learn about diversity with eighty-five percent success. They did different social skills stories and she would ask J.A. questions about how she perceived certain situations. It was a lesson and she would determine what J.A. learned from the lesson and was she able to give her back the information. These observations were documented and that is the data she used to see if J.A. attained her Goal. Mrs. A. received a summary after each session as to what they worked on and how J.A. did. Mrs. A. also received progress reports three times a year showing how J.A. was doing on her Goals in all subject areas. Mrs. A. did not receive Ms. Cayer-Johnson's raw data. She received her summary reports and the progress reports. Ms. Cayer-Johnson does not specifically

recall Mrs. A. requesting this of her. The IEP listed the services Ms. Cayer-Johnson was to provide for J.A.'s third grade year to meet the IEP Goals as counselling services, eighteen times per year, for thirty minutes each session. (R-12, page 29.)

Curb to curb transportation is listed in J.A.'s IEP. Usually that is typically for students who are unable to safely walk themselves to school.

The February 10, 2017 IEP was a progress IEP to see where the child was and to see if anything needed to be changed or reassessed. (R-13.) Ms. Cayer-Johnson knew that the November 14, 2016 IEP was her "stay-put" IEP. It is her understanding that if both parties agree to make a change a change could be made. When a child masters the Goals, she has set and a child still needs counselling, she will update the Goals to match the current need. An evaluation would not be needed unless a determination is going to be made that intervention is no longer necessary.

The 'Assess Progress Meeting', November 14, 2016 notes indicated that Ms. Cayer-Johnson would touch on J.A. expressing herself in a socially appropriate manner and standing up for herself when necessary. These were things that Mrs. A. presented to Ms. Cayer-Johnson as being an issue and she agreed to address it in her counselling sessions with J.A. Mrs. A. also said that J.A. continues to struggle with eye contact and appropriate space. Ms. Cayer-Johnson did not believe that Mrs. A. was lying about what she observed but that Mrs. A. had a different perspective than Ms. Cayer-Johnson. Mrs. A. also requested resources or homework for social skills. She did not have a curriculum for social skills, but she gave Mrs. A. one of her personal books about social skills in younger students. She did give Mrs. A. something to address Mrs. A.'s concerns as to what she was observing at home.

Ms. Cayer-Johnson was not at the May 9, 2017 annual review IEP meeting for J.A.'s fourth grade year as she was out on maternity leave. (R-14.) As J.A.'s fourth grade case manager it was her responsibility to implement whatever IEP was in place. Ms. Cayer-Johnson did not have any input into this IEP as her substitute, Ms. Horowitz worked with J.A. from February until June. The proposed IEP only had one social emotional Goal

so Ms. Horowitz must have determined that J.A. had met the other social emotional Goals from the prior IEP. (R-14, page 23.)

Dr. Bersh never told Ms. Cayer-Johnson not to come to an IEP meeting or not to communicate with Mrs. A. Mrs. A. was permitted three class observations of J.A. per year. Following her 2018 evaluation of J.A., Ms. Cayer-Johnson transitioned her with four individual sessions with a contact person over at the middle school and then either included another support whether it was a consultation with a teacher or small group she was not sure. She wanted to make sure J.A. had a smooth transition to the fifth grade and had supports in place. Ms. Cayer Johnson does not recall being involved in an IEP meeting where she recommended J.A. have a social skills class in fifth grade.

The Vineland 2 indicated that J.A.'s daily living skills and socialization skills within the school setting were areas of relative strength in comparison to the other domains across both settings. (R-12, page 6.) Ms. Cayer-Johnson observed J.A. socializing with her peers during numerous unstructured periods and has continued to make eye contact in those instances as well (R-12, page 19) J.A. was also observed during a fire drill and was smiling. She did not demonstrate any behaviors that are commonly associated with anxiety or confusion. (R-12, page 18.)

In Ms. Cayer-Johnson's experience as a social worker, it is possible for any child to hold in things during the school day and then when they get home display behaviors not observed in the school environment.

Patrice Christensen is a speech-language pathologist and has her Masters in Speech-Language Pathology. She attended Marywood University for both undergraduate and graduate school. She worked for Monroe Township and is currently working for another school district. She holds a speech-language specialist certification and a teacher certification.

J.A. was a pleasure to have in speech therapy. She was always cooperative and willing to come to sessions. She had great social skills, worked hard during her sessions and was very motivated to improve. She had J.A. during her third and fourth grade years

in a small group setting, no more than five in a group. She believes there were four in the class in fourth grade and three in third grade.

The Goals targeted in third grade were the “TH” sound for articulation, social skills such as introducing topics, taking turns, and maintaining topics. They worked on irregular plurals; irregular past-tense verbs; recalling details from sentences and paragraphs; understanding and using idioms; and comparing and contrasting using a Venn diagram. J.A. mastered her language Goals in third grade and the only Goal that was carried over was for the voiced “TH” sound. She collected data to keep track of how J.A. was doing during the year. If the Goal was eighty percent, they would do ten trials and if she got eight out of ten correct, she would mark it down during the session. That is how she kept her data. She worked with J.A. on her memory in fourth grade. They would work on visualization and chunking or grouping. They would work on listening for key details in paragraphs and sentences and being able to recall that way. J.A. did not have any difficulties with background noise. During their speech therapy session in both third and fourth grades there was another speech therapist conducting a session at the same time. So even with more students and more noise J.A. did not show any difficulties with background noise.

Central auditory processing disorder is not a hearing disorder it is when your hearing is normal but the way you process the sounds is different. Typically, students with an auditory processing disorder have difficulty learning in background noise. Ms. Christensen therefore would target doing activities when there was background noise present and J.A. did not have any difficulties with learning in background noise. Typically, students with central auditory processing disorder would have trouble recalling key details from stories. Ms. Christensen would read J.A. a story and she would be able to paraphrase the story almost word for word and recall every detail. The audiologist never contacted any of the teachers regarding how J.A. did in the school setting and never observed J.A. in the school setting.

The May 9, 2017 annual review IEP at the end of third grade in preparation for fourth grade contains the PLAAFP for “speech language” and was the summary of what

Ms. Christensen did with J.A. that year. She had forty-five speech therapy sessions. (R-14, page 19.)

Ms. Christensen did not observe J.A. having any issues with social skills. She got along well with the other students in the group.

J.A. mastered her Goals in the areas of receptive and expressive language, social skills, and articulation, except for the voiced “TH” sound, which Goal was carried over.

Ms. Christensen kept track of her speech language therapy sessions with her students. There are also school billing records indicating how many therapy sessions were provided. Ms. Christensen maintains her own data sheet with the student’s Goal on the top of the sheet and keeps a chart. These were not provided to Mrs. A. She keeps these for her own records. Ms. Christensen did provide Mrs. A. with a daily summary sheet to let her know what skills they worked on that day. That is something she did extra for Mrs. A. She does not recall if she wrote down the Goal the skill was linked to or where J.A. was at percentage wise in reaching her Goal. The progress reports and the PLAAFP at the annual review reflected percentages. Ms. Christensen did not give Mrs. A. her raw data and does not recall if Mrs. A. asked for the data. Ms. Christensen explained that the mastery for the “TH” Goal was set at eighty percent. If they did ten trials and J.A. got five correct, she was at fifty percent. This was noted on the progress report and in her notes. This Goal had not been mastered by the end of third grade and was carried over to fourth grade. If a Goal was mastered, it would not be carried over, a new Goal would be created if the student was still having a speech or language issue. J.A. was doing so well it was challenging for Ms. Christensen to come up with Goals for J.A. that would actually challenge her and that she actually needed. The audiologist recommended memory strategies, so to cover all bases, Ms. Christensen addressed those issues and J.A. mastered them.

Ms. Christensen met with Mr. Armano via zoom to prepare for her hearing testimony. They did not discuss or review any other witness testimony. Mr. Armano showed her the third and fourth grade IEPs. He told her to testify as to her expertise and what she knew. She was referring to her notes in her earlier testimony and put them away.

A child with an auditory processing disorder would have trouble listening in background noise and would have trouble comprehending what was said to them if the background noise was affecting them. An audiologist tests for an auditory processing disorder and she is not an audiologist. Ms. Christensen was the therapist that worked with J.A. during her third grade year, collected data and determined that she mastered her Goals. Proof of same was not just based on Ms. Christensen's testimony or her memory, the PLAAFP in the IEP written by Ms. Christensen indicated J.A. mastered her Goals.

She does not recall being told that the third grade IEP was J.A.'s stay-put IEP. Ms. Christensen did develop new Goals for J.A.'s fourth grade but does not recall ever being told that she should not be implementing new Goals for J.A. for fourth grade or that she should not be providing services that were different than her third grade IEP.

Ms. Christensen did not attend the May 3, 2016 annual review IEP meeting since this was the second grade annual review and she was not the speech therapist for J.A. at that time. (R-10.) She also did not participate in the November 14, 2016 IEP meeting. (R-12.) When a new IEP is developed for a child, the parent has to consent to it or if they do not consent to it within fifteen days, it is automatically implemented.

Ms. Christensen did not attend the February 10, 2017 assess progress and review or revise IEP meeting as her signature does not appear on the document. (R-13.) She did participate in and signed the May 9, 2017 IEP. (R-14.) She did not recall if the lawsuit was filed at around the time of this IEP meeting. She did not prepare the speech and language evaluation dated November 2, 2015. (R-14, page 3.) She would be the one developing the Goals for the IEP and she would rely on J.A.'s performance in therapy and how well she did that year as opposed to the two- year old speech evaluation from 2015. She did review it. J.A.'s triennial evaluation was coming up in 2018 so she did not think it was necessary to do another evaluation at that time, although she did not think the 2015 evaluation correlated with her present levels. The prior speech therapist, Ms. Azzirado indicated that "At times directions and questions needed to be repeated." Ms. Christensen did not find this to be the case with J.A., which indicates that J.A. made progress since Ms. Christensen had J.A. a whole school year after that. No one, including Dr. Bersh told

her that she should not do another evaluation. The purpose of an evaluation is to get updated information on a student's progress to see if they are eligible for services from the start or if they continue to need services. Observation or clinical notations in therapy are not the equivalent of an evaluation.

An October 21, 2015 central auditory processing evaluation indicated that J.A. had a severe auditory processing disorder. (R-15, page 5.) Ms. Christensen rejected this report. The audiologist did not consult with the teachers or any member of the CST before making recommendations which were already being implemented in the school setting. The report also used an incorrect pronoun and referred to "his". It also had an incorrect score. Audiology and auditory processing disorder impacts speech and language and Ms. Christensen knows that J.A. would have trouble with background noise but was not familiar with tolerance fading memory other than knowing it was part of J.A.'s testing with the audiologist. Decoding is trying to decipher and break the information down.

Mrs. A.'s concerns were noted, and she reported that J.A. does not like the sound of the hand-dryer in the bathroom and that J.A. was substituting "W" for "L" in speech. Ms. Azzirado indicated that she was not noticing this. (R-14, page 17.) When questioned as to how Ms. Christensen reconciled what was being reported by Mrs. A. and the evaluations and what was not being observed by them in school, she explained that she erred on the side of caution. She implemented Goals that would target auditory processing. J.A. was able to master the Goals that she had implemented that would address auditory processing - such as working on memory, working during background noise, and recalling details from a longer paragraph presented auditorily. All of these different areas she targeted in speech, J.A. performed well and mastered those Goals with the accuracy set for her. She never observed J.A. substituting the "W" for "L" sound, nor did Ms. Azzirado. Even though they did not notice it, they are a team and work with the parent and address their concerns. If Mrs. A. felt that was an issue, Ms. Christensen would pay more attention to listen for the W for L substitution and that is probably what Ms. Azzirado did.

The speech and language Goals for fourth grade were numbered five – eight and the mastery criteria was eighty percent. (R-14, pages 22-23.) Ms. Christensen developed

these Goals because J.A. had mastered the Goals from the third grade IEP. Ms. Christensen was her third grade speech therapist and she determined that she mastered her third- grade Goals. She does not recall Mrs. A. asking her for information that showed that J.A. had mastered the third grade Goals, but she had the third grade progress reports.

During some of the speech therapy sessions in fourth grade, J.A. was trying to help her peers by giving them the answers. Although the behavior may be typical, she should not have been giving them the answers.

Dr. John Bersh is the Supervisor of Special Services for the Monroe Township school district and has been since October 2009. He has a masters' degree in guidance and psychological services. He holds a certificate in advanced graduate studies from Temple University in counselling psychology and his doctorate is from Temple University. He has worked in this field for forty-seven years. He has evaluated over one thousand students. He is a certified school psychologist and guidance counsellor and licensed psychologist. He supervises all forty CST members and he is responsible for their clinical supervision. When he first started in the District, there were 750 special education students and now they have 1200 special education students. The District averages approximately thirteen hundred evaluations per year. He has been accepted as an expert witness in psychology as well as special education and was accepted as an expert in both special education and psychology. He is not a special education teacher. He has had training in special education and special education law in continuing education courses.

He has been familiar with J.A. since her arrival in the District and has reviewed her student file including all of her assessments. He has been involved with several due process proceedings involving J.A. and supervises the staff providing direct services to J.A. He has also had occasion to observe J.A. He has testified in five or six proceedings involving J.A. and qualified as an expert in both the fields of psychology and special education.

The May 3, 2016 annual review IEP was prepared at the end of second grade for J.A.'s third grade year. (R-10.) It is a part of her file and part of his duties was to oversee her files. He reviewed the document in order to provide his expert testimony for the

hearing. All of the participants in the IEP meeting have a voice. The teachers, both general education and special education, participate and report on how the child is doing in class. The service providers report as to how the student is doing with the services they are providing. The parental concerns are noted in the IEP to allow the parents to voice their concerns. (R-10, page 14.) The parental concerns are also maintained as a historical record. At the May 3, 2016 annual review IEP meeting there was a recommendation that J.A. be discharged from occupational therapy because of the progress she had made. The parents were concerned that she could not tie her shoes and that her handwriting still needed work. (R-10, page 16.) They specifically noted what the parents' concerns were, and although J.A. had progressed in the school setting to be discharged, they were willing to take the parents' concerns into consideration.

The PLAAFP is required by the administrative code and the District is required to provide the parents with the student's present levels of academic achievement and functional performance in the IEP. (R-10, page 17.) In February of each year they have an in-service day dedicated to professional development regarding writing PLAAFPs. The teachers come to the IEP meeting with the PLAAFP already prepared. They show the growth of the student. This is how the student is currently performing with regards to the other students. This document also includes previous assessments used to determine eligibility that must be considered even if not used. The Goals in the IEP document those needs perceived by the parents, teachers and service providers to be worked on in the upcoming school year. There were twenty-six Goals identified for J.A. for third grade. (R-10, pages 22-27.) Each Goal should be measured individually. Goals are measured by various assessment tools such as teacher observations and assessments such as 'link it'. The Goals are linked to the third grade curriculum standards as J.A. was in a general education setting and doing well. Severely disabled students may have Goals that target the 'essential elements' of grade level and not necessarily the third grade curriculum standards. Curriculum tends to spiral and each year a new skill or Goal will be introduced with the old one being reinforced with the next grade level skill being introduced. This IEP contains a wealth of information documenting J.A.'s progression and demonstrates that FAPE has been provided. (R-10.)

It is customary for the District to document the history of evaluations and assessments in the IEP and update this section as new assessments and evaluations are done. The prior evaluations and assessments of J.A. are all listed and incorporated into the IEP. (R-10, pages 2-13.)

The Progress Report for J.A.'s IEP Goals and Objectives for 2016 – 2017 contain various Goal progress marks such as “A” for achieved; “PS” for progressing satisfactorily; “PG” for progressing gradually; “PI” for progressing inconsistently; “NA” for not achieved; and “SC” see comments. (R-15.) The staff tracks these Goals based on their assessments and observations. The progress reports are sent home three times per year once every marking period. The final progress report for J.A.'s third grade year demonstrates that J.A. made progress towards all of her Goals which would suggest that the Goals be dropped or modified for the next school year. If a Goal is not achieved during an academic year it gets carried over to the next year with a linkage to a new Goal. J.A. demonstrated progress in every measured Goal. Progressing satisfactorily towards a Goal is still progression. (R-15.)

An Assess Progress and Review or Revise IEP meeting was conducted on November 14, 2016. (R-12.) In general, the school district offers a thirty- or forty-five - day review period at the beginning of the school year to review the student's progress and see if the IEP needs to be tweaked. Sometimes a teacher or parent will request a meeting. The IEP is a fluid document. The CST addressed the parents' concerns all of which were addressed at some level. (R-12, page 17.) There were concerns Mrs. A. raised about social skills. She was provided with some resources. She also raised concerns about handwriting and posture and the teachers indicated they would provide prompts to J.A. Mrs. A. was provided with suggestions regarding working on J.A.'s shoe-tying skills. Mrs. A. raised concerns about the noise of the hand-dryer in the bathroom, which was also addressed by the teachers, although they did not notice J.A. having any problems. J.A. was introduced to different sounds during the year. Usually if there is an issue regarding the noise with the hand-dryers, the building principal and facilities are made aware if the noise is too loud to try to correct the situation. This had to be done with a younger autistic class.

Another Assess Progress and Review or Revise IEP meeting was conducted during J.A.'s third grade year on February 10, 2017. (R-13.) Mrs. A. had concerns about J.A.'s posture. The occupational therapist made various recommendations regarding spacing of her desk and chair and the use of a cushion or T-stool to improve J.A.'s posture. (R-13, page 13.) They listened to Mrs. A's concerns and came up with ways to address them, including coming up with a cue system if J.A. needs assistance.

On May 9, 2017 the Annual Review IEP meeting was conducted and a proposed IEP developed for J.A.'s fourth grade year 2017-2018. (R-14.) The teachers and service providers put together the PLAAFP statement indicating J.A.'s current levels in order to devise a plan for fourth grade. The annual review addressed J.A.'s current levels as presented by her teachers and service providers. Ms. A. did not want to hear about the current levels. (R-14, page 17.) Ms. A. raised concerns that she was not provided with documentation regarding J.A.'s IEP Goals. Mrs. A. had been given a Friday folder each week with classroom worksheets, quizzes and tests. Documentation from the teachers towards J.A.'s Goals include tests, worksheets, classroom participation, assess progress meetings, triennial IEP progress reports and triennial school district progress reports documenting J.A.'s progress, as well as her grades and workbook which were provided to the parents. The speech therapist recommended decreasing speech services, which Mrs. A. disagreed with. (R-14, page 17.) The parents were provided with over eight hundred pages of documentation showing J.A.'s success. Student's receives progress reports and report cards three times a year. The report card is based on a curriculum standard.

During the 2016-2017 school year, J.A. received forty-five speech therapy sessions, thirty minutes each session, in a small group setting. (R-14, page 19.) The District uses a yearly model which allows students to receive their sessions throughout the course of the year. The weekly model was not working due to various interruptions such as holidays, snow days, class trips and assemblies, so they went to a yearly model. The service providers log into a computer system ('Semi') when services are provided to a student that allows the District to keep track of services being provided. Every Monday Dr. Bersh receives a printout of what service providers are logging in and if there has been more than a ten- day lapse without service, he will contact the provider. He reviewed

the service provider sheets for J.A. to confirm that she received all of the services required. (R-14.)

On October 17, 2017, Patrice Christensen, Speech Language Pathologist, sent a letter to J.A.'s parents enclosing the progress report for J.A. for speech and language from February 13, 2017 through June 21, 2017. (R-16.) Six speech and language Goals are reported on. (R-16.) The difference between R-16 and R-15 is that R-15 did not contain the updated progress reporting for the speech Goals for the last marking period for June 2017. There was some problem with the data base, so the District forwarded an updated report including the June progress reporting as to the speech and language Goals. (R-16.)

The progress report for 2016-2017 consisted of twenty-six Goals. (R-15.) The information contained therein indicated that she was meeting all of her Goals. The proposed Goals for fourth grade set forth in the May 9, 2017 annual review IEP consisted of nine Goals. (R-14, pages 22-23.) The IEP team came up with these recommended Goals after reviewing all of the information contained in the PLAAFP statements and supporting documentation, any of the evaluations, the student's progress reports, the curriculum based assessments to determine growth and whether she met the criteria, the speech progress reports and decided to either change or remove Goals based on all of the information. The teachers' curriculum- based assessments all indicated J.A. reached her Goals.

Based on his review of all of the documents, as well as all of the teachers' testimony, it is his opinion that the District provided FAPE to J.A. during the 2016-2017 school year. She made educational progress and was one of the top students in her class, including her nondisabled peers. The District consistently provided J.A.'s parents the opportunity to participate in the decision process in formulating the IEP during the 2016-2017 school year. They were advised of and participated in all of the meetings. The staff took notes of all parent concerns to record them and to address them. The case managers were always available to answer all of Mrs. A.'s questions.

In preparation for the 2017-2018 IEP, the case manager, in preparing for an IEP meeting, opens a draft in the IEP direct system and all of the data and information comes

up. The teachers prepare the PLAAFP to include in the draft IEP and present it at the meeting. At the meeting changes can be made since it is not a final document at that time. J.A.'s parents brought their concerns to the meeting. The meeting starts with a discussion regarding the students' success during the school year. The parents are invited to share their concerns which are always written into the IEP. However, from the school's perspective, it is all about educational impact. If there are concerns and there is no educational impact, they look into whether other resources are available. There are different forms of data provided through the teachers that include tests, quizzes and worksheets. Data is also provided through 'Link it' which includes all the standardized tests and formal assessments that measure student progress. It is his opinion that the District provided all of the information required to be provided to the parents. The report cards and progress reports were provided three times a year. They are required to share academic achievement and functional performance information which they shared with the parents. Formal and standardized testing is provided to the parents. Many evaluations were done and were shared with the parents. Classroom based assessments and observations by teachers and related service providers were shared with the parents. Dr. Bersh is not aware of any requirement that 'Goal tracking sheets' or anecdotal data be provided to the parents. There were hundreds of pages of data regarding J.A. which were all sent home to J.A.'s parents.

The District is required to consider reports supplied by the parents from private practice individuals but are not required to accept them or agree with them. They would be discussed at the next IEP development meeting and considered. All of the reports and assessments provided by J.A.'s parents were considered. There were three private reports supplied which were reviewed and considered including the central auditory processing evaluation dated May 24, 2017. They reviewed and considered this report but did not accept it. There were no observations by the audiologist done in school. If a report was accepted, it would be infused in the IEP accordingly.

The District was required to maintain stay-put during the 2017-2018 school year which required the District to maintain the same IEP already in place. The IEP could only be modified with the consent of both parties to make a change. The same IEP was in effect for J.A. with the consent of the parents to adjust the Goals for the grade level she

was entering which was fourth grade. The District has since made changes as to how they maintain stay-put. They had discussions with the teachers and service providers regarding J.A.'s stay put and again in the fall of 2017 in case they may have forgotten. They have since modified their procedures and require teachers and service providers to sign off that they are aware of the stay-put IEP in place.

A student has to have an IEP meeting by June 30th – so even though stay-put was in effect the District continued to have meetings and report on J.A.'s progress during stay-put. The District had IEP meetings to assess progress without changing the IEP, which could not be done unless there was an agreement.

During the 2017-2018 there was communication between the parents and the District by letters. There were also email chains between parents and teachers and the case manager. The CST requested that any formal concerns be in written correspondence. There were letters between the principal and parents regarding policies. J.A.'s parents were allowed to observe J.A. The District allowed in person observation by the parent one time per marking period. Observations would be limited if the principal felt it was disruptive to the educational experience of any of the students.

During the 2017-2018 school year, J.A. continued to make excellent progress towards her Goals. Her report card and her progress reporting supported this. Most of her Goals were achieved. She still had certain levels of need as a special education student, but she still made progress towards her Goals. He does not recall how many Goals were laid out in her progress reports for the 2017-2018 school year.

Based on Dr. Bersh's review of J.A.'s file and all of the documents discussed, J.A. was provided with FAPE during the 2017-2018 school year in the least restrictive environment. The least restrictive environment for J.A. was the co-teach environment which is a general education class and she has performed well and demonstrated educational achievement. She has been in this setting since kindergarten and has demonstrated growth educationally, socially and emotionally. As an expert in the field of special education and psychology it is his opinion that J.A. has been provided with FAPE for the 2016-2017 and 2017-2018 school years.

Dr. Bersh reviewed the due process petitions in preparing for his testimony, as well as the documents shown to him during the hearing. The District developed a new process for notifying the CST about maintaining stay-put and making sure all appropriate people are notified. They created a signing off process to make sure everyone was aware. It was not specifically as a result of this case, as there are other cases the District was involved in. He has been involved in all of the litigation filed by Mrs. A. He believes Mrs. A. has the right to file due process petitions and be an advocate for her child. He does admit to having more expertise than Mrs. A. in the field of special education.

Dr. Bersh sent a letter dated February 24, 2017 to Ms. A. which reflects an internal policy regarding limiting parental classroom observations to once per marking period to minimize the disruption to the education of all of the students. (P-1.) The Board Policy for School Visitors does not limit parents visiting once per marking period. (P-27.) Prior to the February 24, 2017 letter, Mrs. A. was aware she was allowed one classroom observation per marking period from prior years although it had never been in writing before. The case manager has conversations with the parents about observation procedures. There was a reference in one of the IEP's that J.A. and other students' social interactions and communications appeared limited when Mrs. A. did an observation during lunchtime. This is the kind of data they look at. Observation of a child during the lunchroom is not the same as observation during academic setting for academic skills. It would be relevant for observing social skills. The February 24, 2017 letter indicates that Mrs. A.'s scheduled classroom observation for February 16th was cancelled because Mrs. A. came to observe J.A. during her lunch on February 14th and that counted as her scheduled observation. Although Dr. Bersh signed the letter, the decision was made by the building principal, Mr. Deal, who believed the observations were disrupting the education of other students. (P-1.) He did not know if Mr. Deal made any observations of disruption. The March 9, 2017 letter from the Superintendent, Mr. Earling, to Mrs. A. confirmed what Dr. Bersh had said in his earlier letter to Mrs. A. (P-26, Pet 299.) There was no evidence presented of Mrs. A. being a disruption to the educational process.

Dr. Bersh did not attend the May 9, 2017 annual review IEP meeting. (R-14.) He does not recall if the case manager Jeannine Peters asked him if the IEP meeting could

be continued to further discuss the IEP. He does not recall denying the request and telling her to tell Mrs. A. to file for due process. Fifteen days after this meeting Mrs. A. filed for due process on May 24, 2017.

Dr. Bersh recalled the comment made by J.A.'s third grade teacher, Ms. Medlock, regarding him advising them not to respond to Mrs. A.'s emails. Dr. Bersh sent Mrs. A. a letter dated May 11, 2017 advising Mrs. A. to make requests for information from J.A.'s teachers to the building principal. (P-7.)

The last agreed upon IEP is the stay-put IEP including Goals and services. Every aspect of the stay-put IEP stays the same. The school cannot unilaterally change the IEP. Mrs. A. wrote to Dr. Bersh on September 25, 2017 claiming that the District was not following stay-put insofar as speech services (P-8) as she had received correspondence from J.A.'s speech pathologist, Ms. Christensen indicating speech services were going to be every Wednesday for thirty minutes. (P-9.) The stay-put IEP called for forty-five speech therapy sessions, which would be twice a week and the proposed IEP called for twenty-seven sessions, which would be once per week.

Respondent receives federal funding for special education services. Legal fees do not come out of the federal funding as far as Dr. Bersh is aware.

Link it data is stored on a server and you can print out the data on a student by student basis. He has not given this to Mrs. A. Dr. Bersh's salary is not paid with federal funds but with local funds. Mr. Armano attended the November 14, 2016 IEP meeting and the February 10, 2017 IEP meeting and his signature appears on the last page of both IEPs. (R-12 and R-13.)

Currently, J.A. is stay-put on homebound instruction and has been for several years. Judge Wilson entered an order on May 1, 2018 stating that the November 14, 2016 IEP is the stay-put IEP. Stay-put is triggered as soon as due process is filed. An order entered by Judge Kennedy on September 12, 2019 ordered that the November 14, 2016 IEP along with the consented to changes of homebound instruction and the additional social skills class were the only two revisions to the November 14, 2016 Stay-Put IEP. No

other changes were to be made unless agreed to. J.A. is on homebound instruction on the recommendation of her physician due to severe anxiety and central auditory processing disorder. J.A. gets worsening anxiety and is overwhelmed in a noisy, crowded environment (Exhibit E attached to petitioners' Request for Emergent Relief – August 2018 note from Dr. Ellen Del Moro). Prior to being placed on homebound instruction, J.A. was in the co-teach setting. The school's pediatrician approved the request upon receiving Dr. Del Moro's letter and the IEP was adjusted.

The May 3, 2016 IEP PLAAFP included the history of J.A.'s evaluations. (R-10, page 5.) As of October 21, 2015, respondent knew of the central auditory processing disorder evaluation.

The June 15, 2011 Report Review is respondent's review of the Children's Hospital of Pennsylvania report wherein they accepted the evaluation and the diagnosis but did not accept the recommendations. (P-14.)

Respondents reviewed the outside occupational therapy report of October 12, 2011. (P-13.) They accepted the evaluative data and the diagnosis but not the recommendations.

The Advocare Laurel Pediatrics report of June 15, 2015 indicated that J.A. had a diagnosis of autism spectrum disorder and apraxia. (P-15.) Apraxia is a speech and language condition where a child has difficulty expressing themselves. Respondent's review of the outside central auditory processing evaluation audiological report performed October 21, 2015 by Audiology Partners of J.A. indicated that she had a severe auditory processing disorder. Respondent accepted the diagnosis but not the evaluative data or the recommendations from this report. (P-12.) There are no audiologists on respondent's staff.

The IEP of November 14, 2016 does not reference any of the outside evaluation reports aside from the CAP evaluation of 2015. (R-12, page 2.) He previously testified as to why they would not be there. The most current information and the student's progress in the PLAAFP is what is driving the IEP, not evaluations that occurred several

years ago. There is a historical record of all evaluations kept in their data base if a staff member wanted to review the history of a student, but they do not want to corrupt the staff member with old information. If there was no adverse educational impact on the student, the evaluation would not be included in the IEP. If a teacher wanted to learn how J.A. came to be on homebound instruction, the data is there, and teachers and the CST have access to the information when needed.

The May 24, 2017 Central Auditory Processing Evaluation was submitted to the respondent by Mrs. A. and was considered but not accepted by the District. (P-11.) It was listed as part of her evaluation history. Mrs. A. presented the August 8, 2017 Huntington Learning Center evaluation to the respondent which they reviewed on September 19, 2017. (P-17.) This evaluation was partially accepted but the recommendations were not accepted. This evaluation was rejected for lack of standardization and benchmark assessments.

Dr. Bersh is considered respondents expert in IDEA interpretation. The administrative code specifically states that they have to consider the student's present level of functioning. Observations are extremely important. A triennial evaluation consists usually of a social assessment, psychological evaluation and educational evaluation – these do not equate to teachers' observations. What teachers observe is only part of the PLAAFP. Evaluations are also part of the PLAAFP. Parental input is not part of the PLAAFP but it is listed in parental concerns. Behavior is also considered as part of the PLAAFP.

J.A.'s placement in 2016-2017 was a co-teach classroom which already existed as an LRE, and there was some form of it since J.A. was in first grade although it may have been called a service rich class. Ms. Medlock had reported 20 students in a class with a maximum of eight students that could have an IEP in the co-teach class. There were about 21 students in the fourth grade class and eight with IEPs as well.

The co-teach model was developed with input from OSEP in collaboration with the teaching staff and CST. Another title for coteach would be an 'inclusion' class. As far as service levels there are self-contained classrooms which are all special education

children. There is no intermediate class between co-teach class and self-contained class at the elementary level. J.A. needed a general education program. They do not make a student fit in. J.A. was way above a self-contained level program. She was doing well academically, and she continued to be academically challenged in the co-teach class. They have tried to be creative in developing additional supports for children for example with the WIN program which is not just for special education students. The same was true for the 2017-2018 school year in that the only two choices were the self-contained or co-teach classrooms.

The November 24, 2016 IEP had twenty-six Goals and was the stay-put IEP. (R-12, page 23.) The Goals could not be changed without consent. The February 2017 IEP had the same Goals. (R-13.) The May 9, 2017 IEP had nine Goals that were not the same. (R-14, page 22.) The IEP team comes up with the Goals including the parents. Teachers propose Goals in the proposed IEP prepared in advance of the IEP meeting. The June 27, 2017 progress report for 2016-2017 has twenty-six Goals. (R-15.) The progress report came after the filing of the due process petition in May of 2017. Looking at Goal 1 she first achieved the Goal in December but in March she was progressing satisfactorily. Progressing satisfactorily means it was not achieved but progressing towards it. If a student has not achieved the Goal, it is anticipated the Goal would be carried to the next IEP.

An update report on the 2016-2017 Goals was sent in October 2017 of the next year listing six Goals but they were speech only Goals. (R-16.) For some reason, the June 2017 reporting did not contain the updated report, and this was for the preceding year.

The May 2017 proposed IEP had nine Goals. They were being implemented in the 2017-2018 school year. The full twenty-six Goals in the stay-put IEP were not being implemented in the fourth grade.

Triennial evaluations are required to be done every three years and none were done after the 2015 evaluations which are reflected in the IEPs involved in this case,

although they would have been done in 2018. A student would not be dropped from speech services without an evaluation, but Goals can be changed if they were met.

The emails from Mrs. A. would go through the principal. He does not know why the emails were not turned over when requested.

Dr. Bersh compared R-15, page 12 and R-16, page 3, which were the speech and language Goals and they were identical. R-15 shows that the speech and language Goals for the last marking period were blank. That is why they provided third marking period progress reports towards Goals for speech and language. (R-16.)

Even if stay-put is invoked the District continues to teach the student, hold IEP meetings, and make recommendations for parent consideration. The May 2017 proposed IEP nine Goals were recommended for the 2017-2018 school year. The stay put IEP support services continued to be provided throughout the 2017- 2018. Forty-five speech and language sessions were provided for both the 2016-2017 and 2017-2018 school years which were verified by the Semi logs.

The twenty-six Goals of the stay-put IEP were carried into the 2017-2018 school year. At the annual review meeting for the fourth grade, the IEP team made recommendations as to Goals for fourth grade, but that had to be revisited because of stay-put. Other than the stay-put Goals, the District can add additional Goals to allow J.A. to progress academically during the next school year.

The Board Superintendent and building Principal have the authority to limit access to any person under the policy. Mrs. A. was aware of the one visit per marking period and she was allowed to come in and observe J.A. each marking period. The chain of command is that the principal is responsible for everything that happens in their building. No reports were filed regarding Mrs. A. being disruptive or the police being called. He is not aware of any written warning being provided to Mrs. A. before she was advised that she could only observe J.A.'s class once per marking period. It was the building principal's decision.

At the May 9, 2017 annual review IEP meeting the District noted the parents' request to hold the IEP meeting at another date. (R-14, page 18.) Dr. Bersh said they usually try and make themselves available at the parents' request.

Dr. Bersh sent a letter to Mrs. A. dated May 11, 2017 because the staff were involved in a meeting with Ms. A. that they felt they were being cross-examined by Mrs. A. and were not permitted to present J.A.'s progress levels and they have to be allowed to do so. (P-7.)

The September 25, 2017 letter from Mrs. A. to Dr. Bersh was sent in the beginning of the 2017-2018 school year, J.A.'s fourth grade, and communicated Mrs. A.'s concern about the once a week speech therapy session referenced in Ms. Christensen's letter. (P-8.) As a result of this letter from Mrs. A., Dr. Bersh advised Ms. Christensen that J.A. was to receive the forty-five speech therapy sessions set forth in her previous IEP. The District did not reduce any services to J.A. All forty-five speech sessions were provided to J.A. in fourth grade as called for in the stay-put IEP of November 2017.

Costs are never a factor in making educational decisions. As a district practice, emails between a parent and the teachers are not maintained in the student's educational file. Dr. Bersh does not approve home bound instruction, the school physician does. He just approves the vouchers.

The evaluations by outside providers are maintained in J.A.'s student files as well as all of the review sheets of the outside providers are maintained in J.A.'s files. The lines of communication between the case manager and J.A.'s teachers were open in the 2016-2017 and the 2017-2018 school years. The co-teach classroom was the most appropriate setting for J.A. during third and fourth grade as she was learning at the same rate as her nondisabled peers. She was doing so well in this setting, to put her in a more restrictive setting would not be appropriate.

The spirit of stay-put is that the student make progress towards grade level expectations and continue educational growth. Stay-put was never intended to last four years. If the parent agrees to add Goals they can be added. If not, they cannot be added, and you have to stick to the twenty-six. The proposed IEP in May 2017 had nine Goals

but was rejected my Mrs. A. by filing due process. He believes the nine Goals were added and they still followed the twenty-six Goals in the stay-put IEP. Dr. Bersh was shown the proposed IEP from May 2017 with the nine new Goals which seemed to consolidate Goals and move forward. He was not certain what Goals were implemented in fourth grade. He believes it was a combination of the stay-put Goals and the proposed Goals. He was not certain what Goals were actually worked on and implemented in fourth grade. He was making a presumption that various Goals needed to be addressed. A failure to follow stay-put is not a denial of FAPE.

Ms. Christensen's testimony from October 23, 2020 was referenced wherein she indicated that she did not recall being told she had to implement the third grade IEP in fourth grade. She did not recall being told. She did not say it did not occur.

Ashly Meilahn's testimony from September 21, 2020 indicated she taught J.A. for fourth grade and that she talked to the teachers from the prior years and reviewed the IEP to review the Goals and modifications to make a spread sheet for the students Goals as to how to track a student's IEP progress. This is not a district wide practice. It was done by the individual teachers. Fourth grade curriculum is based on state guidelines.

IEP Direct is a software program containing the full IEP. Progress reports are just the Goals and objectives of the IEP. He is not aware of any other data regarding the Goals in IEP direct. The Goals in the progress reports track the Goals being implemented for the school year. All of the progress reports for J.A. should reflect at a minimum, the twenty-six Goals from her stay-put IEP. However, reference was made to a progress report for the 2018-2019 school year showing eight Goals.

The review of the records indicated that there was no adverse impact on J.A.'s educational impact.

The parents agreed that J.A. be promoted to fourth grade and fifth grade. Other than the change from third grade to fourth grade, no changes were made to her program from third or fourth grade. The District did not make any changes to J.A.'s services, program or classification. Most of the documents pertained to third grade. IEP Direct is

computer software. When a final IEP is done, the complete progress report gets forwarded to the parents which just contain Goals and objectives. A hard copy of the IEP is maintained in the file. A hard copy of the stay-put IEP is maintained in the student's file. Her educational classification remains autism.

Dr. Bersh's opinion remains that FAPE was offered to J.A. for the 2016-2017 and 2017-2018 school years.

Petitioner's Testimony

J.A. is J.A.'s mother. J.A. is currently twelve years old and is a sweet, friendly, social, and loyal child. She is very close to her mother and will go to her mother over anyone else if she is having a problem. She will not even go to her father.

The parents had noticed that J.A. was not making the usual milestones and took her to the pediatrician. There was no speech and no eye contact and J.A. did not respond to her name. She was delayed in gross and fine motor skills. She could not produce sound or imitate sounds. The parents noticed that J.A. could not control putting everything into her mouth. She had problems eating and risked choking. They were able to see a neuropsychologist who diagnosed J.A. with autism at nineteen months and severe apraxia shortly thereafter.

The family has lived in Monroe Township since J.A.'s birth. J.A. received early intervention services since she was three years old. She attended preschool for two years and then kindergarten at age five. She has had an IEP since she was three years old. The parents provided the school with a May 29, 2011 report from CHOP referring J.A. for services when she was thirty-five months old. (P-14.)

The parents provided the District with an occupational therapy report from CHOP. (P-13, page 3.) The school acknowledged receipt of the document but did not accept any of the recommendations contained therein. (P-13, page 1.)

Ms. A. had a good relationship with the CST during J.A.'s second grade year. An IEP meeting was conducted on May 3, 2016 to develop an IEP for J.A.'s third grade school year. Ms. A. had submitted a central auditory processing evaluation to the school indicating that J.A. had a severe auditory processing disorder. (R-10, page 5.) This was discussed at the IEP meeting. Ms. A's concerns and input at the IEP meeting are reflected in the IEP under "concerns of the parent" section. (R-10, pages 14-17.) Twenty-six Goals were listed in the May 3, 2016 IEP intended for J.A.'s third grade year. (R-10, pages 22-27.) Mrs. A was satisfied with this IEP and consented to its implementation although her signature is not on the document.

Another follow up IEP meeting was conducted in November 2016 to review the May 2016 because respondent scheduled meetings in the fall once school had started to see how the child was doing and to see if any changes needed to be made. (R-12.) Mrs. A. felt that she had meaningful participation in this meeting. The central auditory processing evaluation was referenced. (R-12, page 5.) The parental concerns were listed, which was Mrs. A.'s input. (R-12, pages 14 and 17.)

Mrs. A. requested that she be provided with a copy of the reports for speech therapy, occupational therapy, and counselling sessions. She requested this because they had a history of J.A. not receiving services and this was a way for Mrs. A. to keep track of services and what was provided. She did receive these records. The Goals listed in the November 2016 IEP were essentially the same twenty-six Goals listed in the May 2016 IEP and Mrs. A. was satisfied with this IEP and consented to its implementation. (R-12, pages 23-27.) At this time, J.A. was two months into the third grade school year. The teachers indicated that J.A. was doing great but the progress they were reporting that did not match what Mrs. A. was seeing at home. She started seeing J.A. struggling with her homework and needed a lot of support to complete her homework. She told the respondent and that was why she was requesting observations, so she could see what was happening in the classroom. Mrs. A told the teachers verbally on the telephone and at parent-teacher conferences that J.A. was struggling. Their response was that this was not observed by them in the classroom. J.A. would tell her mother that she did not remember or know what she was supposed to do and did not know how to do her homework. Mrs. A. took her step by step and tried to explain it to her. During third grade

Mrs. A. worked with J.A. all of the time and she personally observed her struggling and requiring a lot of support. The Friday folder came home every week showing the parents what work had been done in school.

The noise issues started in second grade but got progressively worse. The hand dryers in the bathroom, the noise in the auditorium, hallways and classrooms bothered J.A. She told her mother that “the kids chatter gets in her head”. Mrs. A. relayed this to the teachers and said J.A. could not concentrate but they said they did not see any of these issues. J.A. did not show obvious signs of the noise in the classroom bothering her because she did not want to look ‘weird’ in front of her peers.

Mrs. A. observed J.A. in her classroom in second and third grades. At least once a month she was allowed to observe the class but that changed to two times per marking period and then to one time per marking period. J.A.’s case manager in third grade advised Mrs. A. of this policy change and said it came from Dr. Bersh. In the fall of 2016 Mrs. A. observed J.A. in language arts and math class and remembers J.A. losing attention and looking at her peers to see what she was supposed to be doing.

During third grade, Mrs. A. would come once a week and observe J.A. during her lunch time to see how she was interacting. J.A. liked her mother coming. Mrs. A. observed her interacting with her small group of two or three friends she has been friendly with since kindergarten or first grade. J.A. socialized with these friends outside of school as well. J.A. did not socialize outside of school with neurotypical children.

Mrs. A. was a parent helper in the school and volunteered three times each week to come to school and assist a class in reading or arts and crafts. She was never a parent helper in J.A.’s class. When she observed J.A. at lunch or during class, she never disrupted the students and there were no complaints regarding her visits. By letter dated February 24, 2017, Dr. Bersh advised Mrs. A. that because she visited the school on February 14, 2017 during J.A.’s lunch, that was being counted as her visit for that marking period. (P-1.) Mrs. A. looked up the school visitor’s policy on the school website. (P-27.) She was always in compliance with the rules and no one had ever said anything to her before the February 14, 2017 visit. A follow up letter to Dr. Bersh’s letter was sent March

9, 2017 to Mrs. A. indicating one visit per marking period was allowed and the February 14, 2017 visit counted as her visit. (P-26.)

Mrs. A did receive reports from the occupational and speech therapists in 2016 but described them as generic form reports with a circle around the topic being worked on in the session and signed by the therapist. Ninety percent of the reports did not relay how J.A. was doing and there were no Goals listed. Mrs. A. did communicate with the therapists verbally and via email and asked how J.A. was doing and according to the therapists she was doing well.

J.A. was good with numbers, as are a lot of children with autism. However, word problems were difficult for her. J.A. struggled with homework during third grade. One homework assignment Mrs. A. wrote on to the teacher that J.A. needed help with all but the first problem. She could not do it on her own and needed step by step help. The teacher wrote back on the paper to please have J.A. show her work so they could see what the problem was. (P-20.)

Another IEP meeting was held on February 10, 2017. Mrs. A. did not specifically recall this meeting, but she was at all of the IEP meetings. (R-13.) The same twenty-six Goals were included in this IEP. (R-13, pages 23-27.) This IEP was not implemented but Mrs. A. does not remember why. The concerns of the parent were listed on page 13 of the IEP and not on page 14. Mr. Armano was present at this IEP meeting.

The annual review meeting for preparing the fourth grade IEP for J.A. was conducted on May 9, 2017. (R-14.) Mrs. A. recalls being at this meeting and specifically recalled raising her concerns about not receiving the data from the teachers that she had requested regarding J.A.'s progress towards meeting her IEP Goals. She did not receive the data she requested or was told why. Her concerns were listed. (R-14, pages 14 and 17-18.)

Mrs. A. did not want to hear from the teachers regarding J.A.'s current levels of achievement. Mrs. A. was told by the school that she received everything. Mrs. A. said the progress reports she received were generic and the grades J.A. received were not

assigned to specific IEP Goals. Mrs. A. wanted a continuance of the IEP meeting because without the data regarding J.A.'s progress towards Goals she would not be able to contribute to the formulating of new Goals for the next years IEP. Parental concerns raised by Mrs. A. regarding J.A. being pulled out for speech therapy was that J.A. was having problems with listening comprehension and auditory processing skills because of the background noise that was frequently an issue. (R-14, page 17.) Additional parent concerns were also listed. (R-14, page 18.) Mrs. A requested another date for an IEP meeting at this meeting. She was told by the child psychologist CST member that they would have to check with Dr. Bersh. She left the room and came back and advised Mrs. A. that they would not have another meeting.

There were nine Goals listed in the May 9, 2017 IEP which was less than the previous twenty-six Goals from the prior IEP. (R-14, pages 22-23.) Mrs. A. raised concerns because the progress reports had indicated that J.A. had not achieved twenty-two of the Goals and they were not carried over into the proposed IEP.

The first Goal in R-12 at page 23 was a reading Goal which listed a benchmark and criteria that J.A. had to achieve success eighty-five percent of the time. Mrs. A. never received anything listing the benchmarks and that J.A. had met the benchmark with eighty-five percent success. Mrs. A. never received any documentation matching up IEP Goals with benchmarks or whether J.A. was reaching the Goals by the criteria set forth. The reading Goal set forth in the proposed fourth grade IEP had an eighty percent criteria benchmark. (R-14, page 22.) From November 2016 through May 9, 2017 Mrs. A. indicated she received nothing indicating J.A. achieved eighty-five percent success in reaching her Goals.

Mrs. A. received a speech therapy summary report after each speech therapy session. (P-28.) These summaries did not indicate what Goals were being worked on or how J.A. was doing towards meeting the Goals. All it showed was what was being worked on during the session. The last speech therapy summary report dated May 31, 2017 listed no Goals and no progress made towards the Goals. (P-28.)

On May 11, 2017, two days after the IEP meeting, Mrs. A. received a two-page letter from Dr. Bersh regarding the May 9, 2017 IEP meeting and Mrs. A.'s refusal to allow the teachers to report on J.A.'s progress at the meeting. (P-7.) The letter refers to Mrs. A.'s request to the teachers via email requesting data. After Mrs. A. sent a second email to the teachers requesting data, she received this letter from Dr. Bersh instructing that she cease emailing the teachers. Most of her previous requests for data from the third-grade teachers were verbal.

Mrs. A. filed the Parental Request for Mediation/Due Process on May 24, 2017 within fifteen days from the May 9, 2017 IEP meeting. She prepared the petition and the information contained therein is true and correct.

Although Mrs. A. is not a teacher and not an educational expert, in her opinion, J.A. was not ready to move on in her education and go into fourth grade. At the end of third grade J.A. still struggled with language arts, reading comprehension, context clues and math word problems. Her grades at the end of third grade did not match what Mrs. A. was seeing.

The parents paid for all of the evaluations that they submitted on behalf of J.A. – both Central Auditory Processing Evaluations as well as the Huntington Learning Center evaluation that was done in the summer/fall 2017. A follow-up re-evaluation was performed after the initial central auditory processing evaluation was done. (P-11.) This was done the same day Mrs. A. filed her due process petition on May 24, 2017. The re-evaluation confirmed that J.A. suffered from central auditory processing disorder. Mrs. A. submitted the follow-up report to the District, but they did not say anything to her about the report. Mrs. A. also submitted the Huntington testing evaluation to the District. (P-17.) The school did not accept the recommendations made by the Huntington Learning Center.

In the fall of 2017, J.A. entered fourth grade and continued to struggle with the same issues regarding auditory processing disorder and she complained more about the noise. She still struggled with reading comprehension, context clues, and the same issues

she had previously. Mrs. A. was always helping J.A. at home with her homework and that is how she knew J.A. struggled.

In fourth grade Mrs. A. was not sure what IEP the school was following but she suspected it was not the stay-put IEP of November 2016. When she received the welcome letter from J.A.'s speech therapist in fourth grade, Mrs. Christiansen, it indicated J.A. was going to receive services once a week, which would be about half of the sessions J.A. was receiving in the November 2016 IEP. (P-9.) The November 2016 IEP called for J.A. to receive speech therapy twice per week not once a week. Mrs. A. wrote to Dr. Bersh by letter dated September 27, 2017 indicating she believed the school was not following the stay-put IEP. (P-8.) She does not believe Dr. Bersh responded to her letter.

In November 2017, petitioners filed a motion to enforce stay-put and for sanctions. Mrs. A. submitted an affidavit in support of the motion which she believed to be true to the best of her knowledge. Petitioners filed another due process petition when they believed the May 9, 2017 IEP was being followed and not the stay-put IEP of November 2016. On April 30, 2018 petitioners filed a request for emergent relief that the stay-put IEP was not being followed. Judge Wilson determined that the November 14, 2016 IEP was the stay-put IEP. Mrs. A. did not believe the school was following the stay-put IEP because in fourth grade she received a progress report that listed nine Goals and not the twenty-six Goals from the stay-put IEP of November 14, 2016. That based on the welcome letter from the speech therapist led Mrs. A. to believe the stay-put IEP was not being followed. The second due process complaint was filed May 22, 2018.

Judge Kennedy issued an order dated September 12, 2019, enforcing stay-put as amended by the parties to allow for home instruction and social skills class. Exhibit "E" was an August 20, 2018 letter from J.A.'s Advocare physician that she was suffering from anxiety. This was right before J.A.'s fifth grade year. J.A. started missing school in the middle of fourth grade due to anxiety and her doctor wrote a note to excuse the absences, which the school did. J.A.'s anxiety got progressively worse and J.A. was crying and told her mother she could not take the noise anymore.

J.A. finished fourth grade and was promoted to fifth grade. Mrs. A. does not feel that J.A. was ready to go onto fourth grade in that the educational gaps were getting bigger. J.A. was still struggling with reading comprehension, context clues and writing. J.A.'s grades and test results did not match with what Mrs. A. was seeing with J.A. at home.

Mrs. A. obtained homebound instruction forms from the school which she took to J.A.'s pediatrician to fill out and then provided to the school. J.A. was put on homebound instruction. She never started fifth grade in school. An IEP meeting was held to discuss how homebound instruction was going to work.

J.A. remains on homebound instruction.

The topics set forth in the speech and language Goals were covered in the speech therapy summary notes. (R-12, page 26, and P-28.) None of the evaluations provided by the parents to the school ever observed J.A. in an educational setting.

J.A. was assigned an aide during lunch time to make sure she did not choke.

Mrs. A. felt that although her input was noted throughout third and fourth grade, she felt that her input was not considered as valued as it was before.

Mrs. A. never requested that the school hold back J.A. from being promoted from third to fourth grade or fourth grade to fifth grade.

The June 27, 2017 progress report contains twenty-six Goals and how J.A. was progressing towards those Goals. (R-15.)

Discussion

It is the duty of the trier of fact to weigh each witness's credibility and make a factual finding. Credibility is the value a fact finder assigns to the testimony of a witness, and it contemplates an overall assessment of the witness's story considering its

rationality, consistency, and how it comports with other evidence. Carbo v. United States, 314 F.2d 718 (9th Cir. 1963); see In re Polk, 90 N.J. 550 (1982). Credibility findings “are often influenced by matters such as observations of the character and demeanor of witnesses and common human experience that are not transmitted by the record.” State v. Locurto, 157 N.J. 463 (1999). A fact finder is expected to base decisions on credibility on his or her common sense, intuition, or experience. Barnes v. United States, 412 U.S. 837 (1973). A trier of fact may reject testimony because it is inherently incredible, or because it is inconsistent with other testimony or with common experience, or because it is overborne by other testimony. Congleton v. Pura-Tex Stone Corp., 53 N.J. Super 282, 287 (App. Div. 1958).

Mrs. A. testified credibly and clearly wants the best for her daughter. However, she is not a special education teacher and had no first-hand knowledge as to what transpired in school aside from what she observed during her observations. Although I am not unaware that the current District employees might feel pressure to testify in support of their employer and would want to defend the educational plan they developed for J.A., I believe they all testified credibly. The District also offered testimony from former employees, Caroline Medlock, who was J.A.’s special education teacher in third grade, and Patrice Chirstensen, who was J.A.’s speech language pathologist in third and fourth grade, who also testified credibly.

The respondent’s witnesses were all educational professionals who seemed to genuinely care for J.A. and were trying to do the best for her. They were very familiar with J.A. from their extensive contacts with her. Ms. Trotter, J.A.’s general education teacher and Ms. Medlock, her special education teacher taught J.A. every day in third grade. Ms. Meilahn, J.A.’s fourth grade special education teacher, taught J.A. every day in fourth grade. Ms. Christensen provided J.A. with small group speech language therapy sessions forty-five times per year in third and fourth grade. Jennifer Cayer-Johnson was J.A.’s counsellor for second, third and fourth grade and was her case manager for fourth grade. She provided J.A. with small (two to four) group counselling sessions twice a month (eighteen times per year) for thirty minutes each session in third and fourth grade. As J.A.’s case manager in fourth grade, she would observe J.A. once a month in class for half an hour to see how J.A. was functioning in the classroom setting. As J.A.’s case

manager in fourth grade, Ms. Cayer-Johnson had a lot of contact with Mrs. A. in addressing her concerns. Keara Shute was J.A.'s occupational therapist who provided consultative OT services by observing J.A. in the classroom twelve times per year for fifteen minutes and speaking with J.A.'s teachers to make sure she was continuing to function appropriately in the classroom. She also had occasion to observe J.A. when she came to use the squeeze machine which was in the OT/PT room. J.A.'s teachers also had one on one time with J.A. taking her to the squeeze machine each morning.

The District witnesses all testified credibly and were familiar with the facts and their respective direct contacts with J.A. throughout the school day as well as their direct contacts with Mrs. A. regarding her parental concerns that were well documented in the numerous IEP documents. J.A.'s third grade teachers were candid in discussing their relationship with Mrs. A. and how it became strained as a result of the litigation. The detailed testimony of J.A.'s teachers who personally worked with and observed J.A. on a daily basis in third and fourth grade was especially persuasive. Ms. Medlock and Ms. Meilahn were both educational professionals trained and certified in delivering special instruction to children with disabilities. Their testimony in conjunction with J.A.'s general education teachers who taught J.A. in the co-teach setting, together with the testimony of J.A.'s service providers in OT, ST and counselling was very convincing. I believed they all testified truthfully. This was especially evident in the line of questioning regarding the issue of stay-put for the fourth- grade school year. Ms. Ashley Price Meilahn, J.A.'s fourth grade special education teacher's testimony was that J.A. had three academic Goals out of nine Goals, which clearly was not the stay-put IEP of twenty-six Goals. Likewise, the testimony of speech pathologist Patrice Christensen who testified that because J.A. had mastered her third- grade speech Goals, she implemented and was working on new Goals in fourth grade (aside from the voiced /th/ goal which was carried over). Dr. Bersh also admitted that he could not say for certain what Goals were being implemented for fourth grade.

The testimony was detailed as far as the structure of J.A.'s co-teach classrooms; the Districts extensive contacts with Ms. A. regarding her concerns; J.A.'s performance in school; the providing of support services; J.A.'s interactions with her teachers and peers; the modifications and supports in place to assist J.A.; the assessments utilized to

determine that J.A. made reasonable and appropriate educational progress in advancing from third grade to fourth grade by the end of the 2016-2017 school year; and that she made reasonable and appropriate progress indicating J.A. was ready to advance from fourth grade to fifth grade by the end of the 2017-2018 school year.

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

J.A. is eligible for special education and related services under the classification Autistic and was placed in a third grade co-teach classroom at Oak Knoll Elementary School during the 2016-2017 school year. (R-10 and R-12.) This placement put J.A. in the presence of general education students for eighty percent or more of the school day. The annual review IEP dated May 3, 2016 was prepared for J.A.'s third grade year. (R-10.) An assess progress and review or revise IEP meeting was conducted November 14, 2016 at which time Mrs. A. raised additional concerns. (R-12, page 17.) Mrs. A. consented to the implementation of this IEP. Another assess progress and review, or revise IEP meeting was conducted on February 10, 2017 at which time Mrs. A. raised various concerns. (R-13, page 13). This IEP was not implemented.

The November 14, 2016 IEP contained twenty-six Goals: 7 Reading Goals; 2 Writing Goals; 3 Math Goals; 2 Speaking and Listening Goals; 6 Speech/Language Goals; 4 Social/Emotional/Behavioral Goals; and 2 Motor Skills Goals.

The IEP, under "Special Alerts" indicated that J.A. has a tendency to over stuff her mouth with food which may lead to choking. For this reason, a paraprofessional was provided during the lunch period. It was also noted that the parent requested that J.A. not be exposed to toxins through foods and/or school supplies and that the parent will provide all snacks and/or food for J.A. as well as school supplies such as pencils, crayons, glue sticks, etc.

The following Modifications were listed: use a consistent daily routine; place student in cooperative learning groups; arrange private signal to cue student to off-task

behavior; stand in proximity to student to focus attention; provide short breaks when refocusing is needed; frequently check for understanding; simplify task directions; provide small group instruction; directions should be clear, concise and repeated if necessary; seat J.A. in the front row of the classroom away from heater/ac or other distractions (door), including all related arts; allow J.A. to sit in closer proximity to teacher during PE class to increase attention and understanding of instructions; J.A. will be paired with a buddy when using the bathroom; pair J.A. with an organized/responsible peer who can assist her with organization (i.e. ensuring on right page, copying notes, packing up). Peer buddy can be faded as J.A. becomes more independent; provide graphic organizer for writing as needed; provide access to headphones and iPod Nano with pink noise recordings (both provided by parent) when J.A. becomes anxious due to noise in the classroom.

J.A. was also provided the related services of speech language therapy in a small group (not to exceed five, forty-five times a year for thirty minutes; individual occupational therapy consultative services twenty-seven times a year for fifteen minutes; and group counselling services eighteen times a year for thirty minutes. As part of her occupational therapy it was noted that J.A. may benefit from a sensory program to increase attention and decrease frustration and was allowed to utilize the “squeeze machine” with supervision up to two times a day. (R-10 and R-12.) Curb to curb transportation was also provided to J.A. with an attendant on the bus.

J.A.’s third-grade class was a general education, inclusion class comprised of twenty to twenty -one general education students and eight special education students with IEPs, including J.A. Christine Trotter was the general education teacher and Caroline Medlock was the special education teacher. They followed the standard third-grade curriculum. Ms. Trotter and Ms. Medlock had J.A. all day in class and provided all of her academic instruction.

J.A. would go to the “squeeze machine” every morning. This is a device that J.A. would crawl into and on each side had pads and a lever that J.A. could control the amount of pressure applied to her. It was designed to provide a sensory feeling of comfort.

J.A. was described as a sweet, loving girl with a bubbly personality who was always willing to give her teachers a hug and tell them how her day was. She was a model student and performed better than most of her classmates.

J.A. did not have any difficulties with understanding, comprehension, memory or following directions. She was not afraid to ask for help if she needed it.

Most assessments in third grade are based on teacher observations. There are two teachers team teaching and they are constantly observing their students. Data is collected from assessments, class worksheets, end of chapter assignments and computerized assessment. The student assessments and skills they needed to work on were constantly being monitored by both Ms. Trotter and Ms. Medlock through their assessments, observations, homework, tests, and classwork. The assessments that had to be given throughout the year at specified times were kept tracked of through the "Link It" computer program.

Every week Mrs. A. was provided with a "Friday Folder" that came home with J.A. that contained classroom worksheets, tests, and quizzes. Documentation from the teachers towards J.A.'s Goals included tests, worksheets, classroom participation, assess progress meetings, triennial IEP progress reports and triennial school district progress reports documenting J.A.'s progress. The parents also received documentation of J.A.'s grades and workbook.

Mrs. A. requested and received a copy of therapy reports from speech, occupational therapy, physical therapy, and counselling after each session.

Ms. Medlock monitored J.A.'s progress on her IEP Goals which were measured through observations, classwork, homework and Link It. The criteria set forth the percentage of time they are performing the skill and meeting the Goal. Once they have met the criteria, the Goal is considered mastered. She measures to see if a child has achieved the criteria based on observation and watching the student to see if they could perform the Goal independently without any prompting. She would determine they are doing well with that Goal and make sure it was done on all the assignments given

including worksheets and homework. Through observations she can see that the student is getting the idea and then she looks at worksheets, assignments, and Link It for the written proof. Looking at a work sheet that had the skill on it, she would make sure the child got it correct eight out of ten times if eighty percent was the criteria. Most of the time the student's work was sent home in the Friday folder. Based on J.A.'s grades which were normally very good and mostly "M"s on the majority of her work, which was eighty-five, she knew J.A. was achieving her Goals.

Academically, J.A.'s overall ability level was in the high average range based on all of their assessments and observations throughout the year. J.A. was ready for fourth grade at the end of her third-grade year and J.A. had met all of the curricular Goals.

The Progress Report for her third- grade year, 2016-2017, indicated that of the twenty-six IEP goals, J.A. had either achieved the Goal or was progressing satisfactorily and was expected to achieve the Goal in twenty-four out of the twenty-six Goals. Goal 15 for speech was that J.A. will correctly produce /th/ in conversational speech. J.A. had achieved the Goal for the voiceless /th/ sound but not for the voiced /th/ sound for example as in 'this' and 'weather'. (R-16, page 1, Goal 1.) Goal 21 for Social Emotional/Behavioral stated that J.A. will learn about diversity. The objective benchmarks were that she will accept her differences and the difference of others and she will learn how to discuss her differences with others. J.A. was progressing gradually which was making less than anticipated progress but may still achieve the Goal (R-15, page 15).

The voiced /th/ speech Goal was carried over into the next IEP as Goal 6. (R-14, page 22.) The social/emotional/ behavioral Goal regarding diversity was carried over into the next IEP as Goal 9. (R-14, page 23.)

The annual review IEP meeting for the fourth grade, 2017-2018 school year was conducted on May 9, 2017. (R-14.) The proposed IEP again placed J.A. in a co-teach classroom in the presence of general education students for eighty percent or more of the school day. The related services provided were speech and language therapy in a group (not to exceed five) twenty-seven times a year for thirty minutes; individual occupational therapy consultation ten times a year for fifteen minutes; group counselling services

eighteen times a year for thirty minutes. Curb to curb transportation and an attendant on the bus were also to be provided. A paraprofessional was again to be provided during lunch. J.A. could also use the squeeze machine as needed up to two times a day with supervision. The modifications listed included: provide short breaks when refocusing is needed; frequently check for understanding; pocket seat holder will provide J.A. access to headphones (provided by parent), iPod Nano (provided by parent), fidgets as needed, all to be used at J.A.'s discretion; and directions repeated, clarified or reworded. Accommodations for assessments included additional time to complete classroom test/quizzes and direction repeated, clarified, or reworded. Based on teacher observations the following accommodations were not needed for J.A.'s success in third grade: stand in proximity to student to focus attention; and seat J.A. in front of classroom away from heater or AC unit or other distractions. The following accommodations were not necessary to be stated as they were already included in their daily routines/schedules: provide graphic organizer for writing; paired with a buddy for bathroom and simplify task directions.

The proposed IEP for 2017-2018 contained nine Goals: one Goal for Reading; one Goal for Motor; two Goals for Math; four Goals for Speech/ Language; and one Goal for Social/Emotional/Behavioral. (R-14, pages 22-23.) Two of the Goals were carried over from the prior IEP. The voiced /th/ speech Goal was carried over into the proposed IEP as Goal 6. (R-14, page 22.) The social/emotional/ behavioral Goal regarding diversity was carried over into the proposed IEP as Goal 9. (R-14, page 23.).

During the annual IEP review meeting of May 9, 2017 various parental concerns were raised. Mrs. A. did not wish to hear the teachers reporting on J.A.'s present levels of academic achievement. (R-14, pages 17-18.)

Following the annual review IEP meeting of May 9, 2017, petitioners filed for due process on May 24, 2017 alleging that they were not provided with data indicating that J.A. met her Goals and wanted all of the twenty-six prior Goals added to the proposed 2017-2018 IEP.

Following petitioners' filing for due process, the November 14, 2017 IEP became J.A.'s stay-put IEP. Mrs. A. did not request that J.A. be held back and remain in third grade. J.A. was placed in the same educational co-teach setting for her fourth- grade year, 2017-2018, as she had been during her third- grade year, however she received instruction based on the fourth-grade curriculum. Her classification remained autistic. J.A. received all of the support services set forth in her November 14, 2017 IEP throughout her fourth -grade year. Mrs. A. never requested that the District hold back J.A. from being promoted from fourth grade to fifth grade.

Ashley Price Meilahn was J.A.'s fourth- grade special education teacher for the 2017-2018 school year in the co-teach setting with Stacey Camerieri, the general education teacher. They had twenty to twenty -one general education students and eight special education students. They maintained Goal sheets to keep track of the students' Goals and also maintained a notebook for each of their students where they would write down anecdotal records of their observations not just for academics but for social emotional issues as well. Teacher observation was a big part of the data collected in the elementary classroom. The Goal sheets and the teacher's notebook were not sent home, they were for the teachers use. A newsletter went home every Monday explaining to the parent's important dates that were coming up and what concepts were being covered that week and any tests or quizzes that were scheduled. Parents are made aware of how a child is doing by use of the "Friday Folder". Anything that is graded is sent home. The papers marked "M" meeting the standard and "P" progressing towards the standard were placed on the right side of the folder. Anything marked "N" indicating the child was not meeting the standard was placed on the left side of the folder and the parent was requested to sign it so that they were aware of the assessment. On the back of the folder was a place for the parent to sign and date indicating they had reviewed it. The parents also received progress reports and report cards three times per year. The fourth- grade curriculum is based on the State standards. Within the classroom they are teaching all of the fourth -grade standards and a lot of times the Goals and standards do align so the teachers have a lot of documentation from the curriculum that show how a child is doing with their Goals. They used a standards-based report card which lists each standard set by the state for the grade level. It tells the teachers what they have to teach and the different skills within the curriculum. The standards- based report card has each of the

specific skills listed on the report card and the teachers report on how the child is doing with that particular skill. They use the letters “E”, “M”, “P”, and “N” for the grading on the report card. “E” means the student is performing above the grade level standard. “M” means meeting the grade level standard. “P” means progressing towards the standard. “N” means not meeting the standard. The teachers were looking for the students to achieve “M”’s which meant students were meeting the grade level standards. A “P” was not bad either because it is not expected that a child be perfect all year long. There were three marking periods and J.A.’s report card for the end of fourth grade consisted of all “M”’s in every standard. When she finished fourth- grade she was prepared for fifth grade.

J.A. did well academically and socially throughout her fourth-grade year. If there was something, she did not understand she would let the teachers know. She had friends in the class and was a very friendly child.

Ms. Meilahn and Ms. Cameireri took turns walking J.A. to the squeeze machine every morning and it gave her teachers the opportunity to really know her.

J.A.’s mother was concerned with the noise in the classroom and reported this to the teachers. They did encourage her to wear her headphones, but it seemed like J.A. did not want to wear them. She would put them on for a minute and then and take them off. The teachers did not observe J.A. have any trouble with noise in the classroom that impacted her academic performance.

Ms. Meilahn is a certified Wilson instructor and never observed J.A. having trouble with decoding. She gave J.A. a Wilson assessment at the beginning of the year for decoding and encoding and J.A. did not qualify for Wilson instruction.

Mrs. Meilahn believed J.A. had three academic Goals out of nine in her fourth grade year IEP and she achieved them all. Ms. Meilahn participated in the Spring 2018 IEP meeting to prepare for J.A.’s fifth grade year. J.A. achieved her fourth-grade Goals and they were working on fifth grade Goals which included writing Goals and a math Goal. Most of the skills were covered by the curriculum.

Any concerns raised by J.A.'s mother were always addressed- whether it was noise in the building, use of the headphones, time in the squeeze machine, snacks to be sent in for celebrations, J.A. not voicing her concerns to her teachers and academic struggles at home.

Ms. Shute, the occupational therapist provided J.A. with OT individual therapy consultations twelve times per year for fifteen minutes for the 2016-2017 school year which involved Ms. Shute speaking with the teachers and observing J.A. in the class to make sure she was maintaining her handwriting skills. J.A. had achieved her occupational therapy Goals from the previous year and that was why she was providing services on a consultative basis to make sure J.A. was maintaining her handwriting skills within the classroom. Ms. A. reported that J.A. had told her that certain noises were bothering her at school and sent in noise cancelling headphones for J.A.'s use. Ms. Shute did not observe noise presenting a problem for J.A. during her observations nor did the teachers report J.A. having any distractions with noise.

Ms. Shute tracked J.A.'s use of the headphones. Her fourth-grade year, J.A. put the headphones on when she first came into class in the morning. The total number of times she used the headphones for fourth grade was seventeen times, for a minute or two.

The proposed May 9, 2017 IEP still had one OT Goal regarding auditory stimuli as a result of the parent's input. The OT consultations in the proposed IEP for fourth grade were reduced from twelve to ten consults a year because Ms. Shute felt that J.A. did not need twelve. Ms. Shute actually saw J.A. more than what was required in the IEP since she saw J.A. when she was in the therapy room for the squeeze machine. Following her July 2018 evaluation, she recommended that OT be discontinued for fifth grade.

Ms. Cayer-Johnson was J.A.'s counsellor for second, third and fourth grade and also became her case manager in fourth grade. J.A. was a very happy, polite social and compassionate girl who was eager to learn and participate. When she started counselling sessions with J.A. they were working on social skills, desensitizing her to things that bothered her, making eye contact, and asserting herself. Counselling was done in small

groups from two to four students and J.A. did fantastic in counselling. She was very social and eager to participate and progressed in making eye contact and in asserting herself. Her last year of counselling they were solely focusing on her accepting her disabilities as well as accepting other peoples' differences. At Mrs. A.'s request, she provided her with summaries of each counselling session and what Goals were being worked on. One of the big issues with Mrs. A. was that she was concerned about background noise making J.A. very anxious. Mrs. A. was concerned about the noise from fire drills, hand-dryers in the bathroom, assemblies, walking back from choir in the hallway, the air vent and presence of another class in the speech therapy room. Ms. Cayer-Johnson did observations during all of these occasions and did not observe J.A. to be in any distress in any of these situations.

By the end of fourth grade, although J.A. was not making eye contact 100%, it was not presenting as an issue that interfered with her education. Ms. Cayer-Johnson was not able to observe any issues with J.A. tolerating noise. J.A. was socially well-adjusted by the end of fourth grade. The IEP team considered all of Mrs. A.'s concerns. However, they also consider the student's functioning within the classroom and they were not seeing it interfering with her functioning within the school environment.

As J.A.'s case manager in fourth grade, Ms. Cayer-Johnson monitored her success with the recommendations contained in the IEP. She provided the counselling sessions and then made sure the teachers were implementing the strategies, modifications, and accommodations in the classroom according to the IEP. J.A.'s case management was a lot of addressing Mrs. A.'s concerns. Whenever Mrs. A. would communicate with a teacher that J.A. was experiencing distress, or there was any issue, Ms. Cayer Johnson would become involved in helping the teachers work through it by gather information to see if there was anything that needed to be addressed. She also provided J.A. counselling two times a month in a group setting. As J.A.'s case manager, she did classroom observations once a month so that she is familiar with her students and their functioning within the classroom. She also sat with Mrs. A. during her observations. She also had numerous informal observations of J.A. when she was in the classroom numerous times a week. During Ms. Cayer-Johnson's formal observations, J.A. was always on task and paid attention in whole-group instruction as well as small

group instruction. She would follow along with the teacher. She would help her friends if they could not find a page or were having a hard time pronouncing a word. She was social with her peers and always presented herself with a smile. Ms. Cayer-Johnson did not see any red flags during her observations of J.A. There were no differences in what Ms. Cayer-Johnson observed in the classroom and in what J.A. reported to her during their counselling.

By the end of third grade, J.A. was ready for fourth grade and by the end of fourth grade, J.A. was ready for fifth grade. There was nothing that Ms. Cayer-Johnson saw in her counselling sessions in third and fourth grade with J.A. that adversely impacted her education. Anytime, Mrs. A. brought up a concern about J.A., it was addressed.

Following her 2018 evaluation of J.A., Ms. Cayer-Johnson transitioned J.A. with four individual session with a contact person over at the middle school to make sure J.A. had a smooth transition to the fifth grade and had supports in place.

J.A.'s speech language pathologist for third and fourth grade was Patrice Christensen. J.A. was a pleasure to have in speech therapy. She was always cooperative and willing to come to sessions. She had great social skills, worked hard during her sessions and was very motivated to improve. She had J.A. during her third and fourth grade years in a small group setting, no more than five in a group. She believes she had three in the group in third grade and four in the group in fourth grade.

The Goals targeted in third grade were the "TH" sound for articulation, social skills such as introducing topics, taking turns, and maintaining topics. They worked on irregular plurals; irregular past-tense verbs; recalling details from sentences and paragraphs; understanding and using idioms; and comparing and contrasting using a Venn diagram. J.A. mastered her language Goals in third grade and the only Goal that was carried over was for the voiced "TH" sound. She collected data to keep track of how J.A. was doing during the year. If the Goal was eighty percent, they would do ten trials and if she got eight out of ten, she would mark it down during the session. That is how she kept her data.

An October 21, 2015 Central Auditory Processing Evaluation was submitted by the parents to the District. The results of the evaluation indicated that J.A. had a severe auditory processing disorder in the areas of decoding (DEC) and tolerance fading memory (TFM). Decoding is the student's ability to quickly and accurately decode speech sounds. Problems associated with DEC are difficulty following directions, poor phoneme manipulation, poor receptive language, word-finding problems and difficulty with sound recognition and auditory closure. The disorder in TFM indicates reduced speech intelligibility in the presence of background noise and/or reduced short-term memory. (P-12.)

Central auditory processing disorder is not a hearing disorder. It is when your hearing is normal but the way you process the sounds is different. Typically, students with an auditory processing disorder have difficulty learning in background noise. Therefore, Ms. Christensen would target doing activities when there was background noise present and J.A. did not show any difficulties with learning in background noise. Typically, students with central auditory processing disorder would have trouble recalling key details from stories. Ms. Christensen would read J.A. a story and she would be able to paraphrase the story almost word for word and recall every detail. The audiologist who performed the CAP evaluation never contacted any of the teachers regarding how J.A. did in the school setting and never observed J.A. in the school setting. The May 9, 2017 annual review IEP at the end of third grade in preparation for fourth contains the PLAAFP for speech language and summarizes what Ms. Christensen worked on with J.A. that year. She had forty-five speech therapy sessions. (R-14, page 19.)

Ms. Christensen did not recall being told that the third grade IEP was J.A.'s stay-put IEP. She did develop new Goals for J.A.'s fourth grade but did not recall being told she should not be implementing new Goals for J.A. for fourth grade. The speech and language Goals for fourth grade were numbered five through eight and the mastery criteria was eighty percent. Ms. Christensen developed new Goals because J.A. had mastered her old Goals. (R-14, pages 22-23.)

In fourth grade, Ms. Christensen worked with J.A. on her memory. They would work on visualization and chunking or grouping. They would work on listening for key details in paragraphs and sentences and being able to recall that way. J.A. did not have

any difficulties with background noise. During their speech therapy session in both third and fourth grades there was another speech therapist conducting a session at the same time. So even with more students and more noise J.A. did not show any difficulties with background noise.

Following the May 2016 annual IEP review meeting which implemented the third grade IEP, the District conducted three additional IEP meetings in November 2016, February 2017 and May 2017 of J.A.'s third grade year. Petitioners were provided meaningful participation in the IEP process and the parental concerns were noted and addressed at each of the meetings and noted at length in each of the IEP documents.

The independent evaluations that were provided by the parents to the District were all considered. The May 24, 2017 Central Auditory Processing Re- Evaluation indicated J.A. had improved since her initial October 21, 2015 evaluation. (P-11.) The October 21, 2015 evaluation submitted by Mrs. A. was considered by the District and partially accepted. The District set forth the specific reasons why the evaluation was not fully accepted. (P-12.) The District reviewed and considered this evaluation and it was listed as part of her evaluation history. Mrs. A. presented the August 8, 2017 Huntington Learning Center evaluation to the District which they reviewed on September 19, 2017 and partially accepted. The specific reasons were provided as to why the evaluation was not fully accepted which included the lack of standardization and benchmark assessments. (P-17.)

Dr. John Bersh, Supervisor of Special Services for respondent testified as an expert in special education and psychology. He supervises all forty CST members and is responsible for their clinical supervision. Based on his review of all of the documents, as well as all of the teachers' testimony, it is his opinion that the District provided FAPE to J.A. during the 2016-2017 and 2017-2018 school years. J.A. made educational progress and was one of the top students in her class, including her nondisabled peers. The District consistently provided J.A.'s parents the opportunity to participate in the decision process in formulating the IEPs. They were advised of and participated in all of the meetings. The staff took notes of all parent concerns to record them and to address them. The case managers were always available to answer all of Mrs. A.'s questions.

On May 9, 2017 the Annual Review IEP meeting was conducted and a proposed IEP developed for J.A.'s fourth grade 2017-2018 school year. (R-14.) The teachers and service providers put together the PLAAFP statement indicating J.A.'s current levels in order to devise a plan for fourth grade. The annual review addressed J.A.'s current levels as presented by her teachers and service providers. In preparation for the May 9, 2017 annual review IEP meeting, the case manager opens a draft in the IEP direct system and all of the data and information comes up. The teachers prepare the PLAAFP to include in the draft IEP and present it at the meeting. At the meeting changes can be made since it is not a final document at that time. J.A.'s parents brought their concerns to the meeting. The meeting starts with a discussion regarding the students' success during the school year. The parents are invited to share their concerns which are always written into the IEP. However, from the school's perspective, it is all about educational impact. If there are concerns and there is no educational impact, they investigate whether other resources are available.

The District did not 'predetermine' J.A.'s IEP prior to the IEP meeting. The District comes prepared with a draft IEP having pulled up information regarding J.A. from the IEP Direct computer program. The teachers and service providers supply their input as to J.A.'s present levels of academic achievement and functional performance for the PLAAFP section of the IEP and then a discussion was had as to J.A.'s success during the school year. The parents shared their concerns which are always written into the IEP.

There are different forms of data provided through the teachers that include tests, quizzes, and worksheets. Data is also provided through 'Link it' which includes all the standardized tests and formal assessments that measure student progress. It is Dr. Bersh's opinion that the District provided all of the information required to be provided to the parents. The reports cards and progress reports were provided three times a year. They are required to share academic achievement and functional performance information which they shared with the parents. Formal and standardized testing is provided to the parents. Many evaluations were done and were shared with the parents. Classroom based assessments and observations by teachers and related service providers were shared with the parents. Dr. Bersh is not aware of any requirement that

'Goal tracking sheets' or anecdotal data be provided to the parents. There were hundreds of pages of data regarding J.A.'s progress which were all sent home to J.A.'s parents.

Ms. Meilahn, J.A.'s special education teacher in fourth grade participated in the Spring 2018 IEP meeting to prepare for J.A.'s fifth grade year and they were working on fifth grade Goals including writing Goals and a math Goal. Ms. Cayer-Johnson, J.A.'s fourth grade case manager and counsellor also attended the Spring 2018 IEP to prepare for J.A.'s fifth- grade year and recommended some transition services. Keara Shute, J.A.'s occupational therapist recommended that consultative occupational services that had been provided be discontinued as J.A. did not need them anymore.

The proposed IEP for J.A.'s fifth- grade school year, dated May 7, 2018, was not entered into evidence as it was precluded based on Judge Kennedy's October 2, 2018 order.

LEGAL ANALYSIS AND CONCLUSION

This case arises under the Individuals with Disabilities Education Act, 20 U.S.C.A. §§ 1400 to 1482. One purpose of the Act, among others, is to ensure that all children with disabilities have available to them a "free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living." 20 U.S.C.A. § 1400(d)(1)(A). This "free appropriate public education" is known as FAPE. The IDEA provides federal funds to assist participating states in educating disabled children. Hendrick Hudson Cent. Sch. Dist. Bd. of Educ. v. Rowley, 458 U.S. 176, 179–80 (1982). In short, the Act defines FAPE as special education and related services provided in conformity with the IEP. See 20 U.S.C.A. § 1401(9). A FAPE and related services must be provided to all students with disabilities from age three through twenty-one. N.J.A.C. 6A:14-1.1(d). A FAPE means special education and related services that: a) have been provided at public expense, under public supervision and direction, and without charge; b) meet the standards of the State educational agency; c) include an appropriate preschool, elementary, or secondary school education in the State involved;

and d) are provided in conformity with the individualized education program (IEP) required under sec. 614(d). 20 U.S.C.A. § 1401(9); N.J.A.C. 6A:14-1.1 et seq. The responsibility to deliver these services rests with the local public-school district. N.J.A.C. 6A:14-1.1(d).

A FAPE includes both “special education” and “related services.” 20 U.S.C. § 1401(9). “Special education” is “specially designed instruction . . . to meet the unique needs of a child with a disability” and “related services” are the support services “required to assist a child . . . to benefit from” that instruction. 20 U.S.C. § 1401(26)(A) and (29). The FAPE mandate requires the provision of “personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction.” Rowley, 458 U.S. at 203.

In order “[t]o meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” Endrew F. v. Douglas Cty. Sch. Dist. RE-1, 137 S.Ct. 988, 999 (2017). The United States Supreme Court has recognized that “this standard is markedly more demanding than the ‘merely more than de minimis’ test,” and “a student offered an educational program providing ‘merely more than de minimis’ progress from year to year can hardly be said to have been offered an education at all.” Id. at 1000–01. In addressing the quantum of educational benefit required, the Third Circuit has also made clear that more than a “trivial” or “de minimis” educational benefit is required and articulated that the appropriate standard is whether the IEP provides for “significant learning” and confers “meaningful” educational benefit to the child. S.H. v. State-Operated Sch. Dist. of Newark, 336 F.3d 260, 271 (3d Cir. 2003); T.R. v. Kingwood Bd. of Educ., 205 F.3d 572, 577 (3d Cir. 2000); Ridgewood Bd. of Educ. v. N.E., 172 F.3d 238, 247 (3d Cir. 1999); Polk v. Cent. Susquehanna Intermediate Unit 16, 853 F.2d 171, 180, 182–84 (3d Cir. 1988), cert. den. sub. nom. Cent. Columbia Sch. Dist. v. Polk, 488 U.S. 1030 (1989). The determination of whether a given IEP has satisfied the required standard must be assessed considering the individual potential and educational needs of the student. T.R., 205 F.3d at 578; Ridgewood, 172 F.3d at 247–48.

The IEP has been described as “the centerpiece of the statute’s education delivery system for disabled children.” Honig v. Doe, 484 U.S. 305, 311 (1988). It is the means

by which special education and related services are “tailored to the unique needs” of a particular student. Rowley, 458 U.S. at 181. An IEP must be in effect at the beginning of each school year and be reviewed at least annually. 20 U.S.C. § 1414 (d)(2) and (4); N.J.A.C. 6A:14-3.7(a)(1) and (i). It must “be drafted in compliance with a detailed set of procedures,” which “emphasize collaboration among parents and educators and require careful consideration of the child’s individual circumstances.” Andrew F., 137 S.Ct. at 994. The IEP team shall review any lack of expected progress toward the annual Goals and in the general curriculum; the results of any reevaluation; information about the student, including information provided by the parents, current classroom-based assessments and observations, and the observations of teachers and related-services providers; the student’s anticipated needs; and other relevant matters. N.J.A.C. 6A:14-3.7(j).

An IEP must also include various elements. See 20 U.S.C. § 1414(d)(1)(A); N.J.A.C. 6A:14-3.7(e). It must include a statement of the student’s present levels of academic achievement and functional performance and a statement of measurable annual academic and functional Goals. N.J.A.C. 6A:14-3.7(e)(1) and (2). The annual academic and functional Goals must be “measurable and apprise parents and educational personnel . . . of the expected level of achievement attendant to each Goal” and include benchmarks or short-term objectives related to meeting the student’s needs. N.J.A.C. 6A:14-3.7(e)(2) and (3). The IEP must further include, among others, a statement of the special education and related services and supplementary aids and services that will be provided for the student, along with any program modifications or supports, and a statement specifying the projected date for the beginning of the services and modifications and the anticipated frequency, location, and duration of those services and modifications. N.J.A.C. 6A:14-3.7(e)(4) and (8). In the words of the New Jersey Supreme Court, “[w]ithout an adequately drafted IEP, it would be difficult, if not impossible, to measure a child’s progress, a measurement that is necessary to determine changes to be made in the next IEP.” Lascari v. Bd. of Educ. of Ramapo Indian Hills Reg’l High Sch. Dist., 116 N.J. 30, 48 (1989). The case manager, who must “[b]e knowledgeable about the student’s educational needs and program,” is charged with the responsibility of “coordinat[ing] the development, monitoring and evaluation of the effectiveness of the IEP,” “facilitat[ing] communication between home and school,” and

“coordinat[ing] the annual review and reevaluation process.” N.J.A.C. 6A:14-3.2(b) and (c).

“The IEP must aim to enable the child to make progress,” and the “‘reasonably calculated’ qualification reflects a recognition that crafting an appropriate program of education requires a prospective judgment by school officials.” Endrew F., 137 S.Ct. at 999. The issue of whether an IEP is appropriate is fact sensitive in nature. In connection with this determination, “the focus should be on the IEP actually offered and not on one that the school board could have provided if it had been so inclined.” Lascari, 116 N.J. at 30. It is necessary to “determine the appropriateness of an IEP as of the time it was made” D.S. v. Bayonne Bd. of Educ., 602 F.3d 553, 564–65 (3d. Cir. 2010). “[E]vidence acquired subsequently to the creation of an IEP” should “only” be used “to evaluate the reasonableness of the school district’s decisions at the time that they were made.” Id. at 565. “Neither the statute nor reason countenance ‘Monday Morning Quarterbacking’ in evaluating the appropriateness of a child’s placement.” Fuhrman v. E. Hanover Bd. of Educ., 993 F.2d 1031, 1040 (3d Cir. 1993). Judge Mansmann’s concurring decision in Fuhrman “underscores and emphasizes the importance of this threshold determination.” Ibid. Judge Mansmann explained:

Rowley’s requirement that a school district’s program be “reasonably calculated” to enable a child to receive educational benefits is prospective; it is based on an evaluation done by a team of experts prior to the student’s placement. At the time of the child’s evaluation, the IEP must be reasonably calculated to enable the child to receive educational benefits. Thus I would not view Rowley’s test of “appropriateness” as whether the child actually receives educational benefit as a result of his school placement. Instead, the appropriateness of a student’s placement must be assessed in terms of its appropriateness at the time it is created and not at some later date when one has the benefit of the child’s actual experience.

[Id. at 1041.]

The adequacy of a given IEP will turn “on the unique circumstances of the child for whom it was created.” Endrew F., 137 S.Ct. at 1001. The Endrew F. Court observed that

the “absence of a bright-line rule . . . should not be mistaken for ‘an invitation to the courts to substitute their own notions of sound educational policy for those of the school authorities which they review.’” Endrew F., 137 S.Ct. at 1001 (quoting Rowley, 458 U.S. at 206). This “deference is based on the application of expertise and the exercise of judgment by school authorities,” who are vested “with responsibility for decisions of critical importance to the life of a disabled child.” Endrew F., 137 S.Ct. at 1001. In this regard, “[a] reviewing court may fairly expect those authorities to be able to offer a cogent and responsive explanation for their decisions that shows the IEP is reasonably calculated to enable the child to make progress appropriate in light of his circumstances.” Id. at 1002.

There is a two-part inquiry when reviewing alleged violations of the IDEA: whether the District “complied with the procedures set forth in the Act” and whether the IEP “developed through the Act’s procedures [is] reasonably calculated to enable the child to receive educational benefits.” Rowley, 458 U.S. 206–07. Not all procedural violations will rise to a substantive deprivation of FAPE. Rather, this forum may find that a child did not receive a FAPE “only if the procedural inadequacies . . . impeded the child’s right to a free appropriate public education”; “significantly impeded the parents’ opportunity to participate in the decision making process regarding the provision of a free appropriate public education to the parents’ child”; or “caused a deprivation of educational benefits.” 20 U.S.C. 1415(f)(3)(E)(ii); see N.J.A.C. 6A:14-2.7(k).

Scope of the claims in this hearing

Prior to addressing the critical issue concerning whether the District offered a FAPE to J.A., it is necessary to discuss the scope of the claims in this proceeding. The issues for disposition are limited to the claims set forth in the consolidated petitions. 20 U.S.C. § 1415(f) (3)(B); see N.J.A.C. 6A:14-2.7(c) (the request for due process must “state the specific issues in dispute, relevant facts and the relief sought”). Petitioners argue in their post-hearing submissions that the District failed to provide J.A. with FAPE for the two years prior to the 2016-2017 school year, which would be for the 2014–15 and 2015–16 school years, yet that was never plead in their due process petition and is beyond the scope of petitioners’ due process request. That petitioners’ claims relating to the two prior school years would not be barred by the two-year statute of limitation embodied in 20 U.S.C. § 1415(f)(3)(C) does not permit petitioners to expand the issues

beyond the 2016–2017 and 2017-2018 school years set forth in their consolidated petitions for due process. Likewise, petitioners' arguments in their post hearing submissions that the District violated its "Child Find" obligations was not plead in their due process petitions. Although it is noted that J.A. received special education and support services and has had an IEP since she was three years old, petitioners did not plead a violation of child find and this claim is also beyond the scope of this hearing.

Furthermore, any claims for relief arising from the summer of 2018 and the 2018-2019 school year, J.A.'s fifth grade school year are also beyond the scope of this hearing as the second petition was filed May 22, 2018. A petition for due process, like any other legal complaint, can allege only facts that have already occurred. The drafter of a petition is not prescient; he cannot predict future wrongs. Pursuant to N.J.A.C. 6A:14-2.7, a due process petition must be filed within "two years of the date the party knew or should have known about the alleged action that forms the basis for the due process petition." Petitioners could not know about events that post- date the filing of their claim for relief. The regulations provide that "a request for due process hearing...serves as notice to the respondent of the issues in the due process complaint." N.J.A.C. 6A:14-2.7(f). This is especially more important where, as in New Jersey, a respondent school district has the burden of proof and the burden of moving forward. See: N.J.S.A. 18A:46-1.1.

Although it would appear that subsequent to fourth grade and during the summer of 2018, J.A. had worsening anxiety allegedly related to her central auditory processing disorder necessitating her physician recommending homebound instruction, this was not part of the consolidated due process petitions before me. J.A.'s third and fourth grade years were at issue and based on all of the testimony from her teachers, counsellor and speech therapist, her central auditory processing disorder was not presenting as an issue that interfered with her education during her third and fourth grade years. The testimony was extensive regarding how J.A. functioned in the school setting with background noise and noise in general as well as how the District's staff attempted to address all of Mrs. A.'s concerns regarding this issue. Based on the parents request the auditory stimuli Goal was inserted in the IEP and was continually monitored by the teachers, case manager and speech therapist to make sure J.A. did not have any problems.

FAPE

The testimony was detailed as far as the structure of J.A.'s co-teach classrooms; the Districts' extensive contacts with Mrs. A. regarding her concerns; J.A.'s performance in school; the providing of support services including speech therapy services, counselling services and consultative occupational therapy services; J.A.'s interactions with her teachers and peers; the modifications and supports in place to assist J.A.; the assessments utilized to determine that J.A. made reasonable and appropriate educational progress in advancing from third grade to fourth grade by the end of the 2016-2017 school year; and that she made reasonable and appropriate progress in advancing from fourth grade to fifth grade by the end of the 2017-2018 school year.

Clearly, in line with Andrew F., J.A. has been provided with an educational program appropriately ambitious in light of her circumstances and has made more than de minimis progress. J.A. has achieved grade level advancement from year to year, which is what is considered appropriately ambitious for most children in the regular classroom. Her third grade IEP was appropriately ambitious, and she attained most all her Goals and was ready for fourth grade. Her fourth grade IEP proposed by the District carried over the two Goals that were not achieved and developed new Goals. Although the parents did not consent to the implementation of the fourth grade IEP, they did not request that J.A. be held back. J.A. did graduate to fourth grade and was instructed in the fourth-grade curriculum and was provided with all of the support services set forth in her "stay-put" IEP. She remained in the same educational placement, the co-teach classroom for fourth grade as she had been successful in this placement. Her special education teacher, her speech therapist, her counsellor/case manager for fourth grade all testified that J.A. was ready for fifth grade by the end of her fourth grade 2017-2018 year, academically, socially and emotionally. The parents' concerns were always considered and documented in the IEPs developed for J.A. and the District personnel always responsive to issues raised by Mrs. A. in order to ensure that J.A. was functioning appropriately in her educational environment. Mrs. A. requested and was provided with summaries of all therapy sessions with J.A.'s counsellor, speech therapist and consultative occupational therapist. The District provided J.A.'s parents with numerous documents indicating that J.A. was progressing in her educational program and reaching her Goals.

The May 9, 2017 IEP (R-14) proposed by the District offered J.A. a free and appropriate public education with the opportunity for meaningful educational benefit and progress appropriate in light of J.A.'s circumstances, within the least restrictive environment.

Based upon the testimony and documentary evidence, I **CONCLUDE** that the program offered J.A. by the District for the 2016-2017 and 2017-2018 school years constituted FAPE as that term is defined by law. A review of the evidence reveals that J.A. progressed in her educational program, and that the child study team regularly met to review her program in an ongoing effort to personalize her instruction and address her educational needs. School personnel testified convincingly as to J.A.'s progress academically, socially, behaviorally and emotionally and the burden of proof and production rests with the Board. N.J.S.A. 18A:46-1.1

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

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

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

Courts in this Circuit have interpreted this mainstreaming requirement as mandating education in the least restrictive environment that will provide meaningful educational benefit. “The least restrictive environment is the one that, to the greatest extent possible, satisfactorily educates disabled children together with children who are not disabled, in the same school the disabled child would attend if the child were not disabled.” Carlisle Area Sch. v. Scott P., 62 F.3d 520, 535 (3d Cir. 1995), cert. den. sub. nom., Scott P. v. Carlisle Area Sch. Dist., 517 U.S. 1135, 116 S. Ct. 1419, 134 L. Ed. 2d 544 (1996).

The Oak Knell Elementary school is J.A.’s home school and the general education co-teach classroom for her third and fourth grade was the least restrictive environment that would provide J.A. meaningful education benefit. Her placement was determined to be in the presence of general education student’s eighty percent or more of the school day. The District considered placing J.A. in the general education classroom without special education support, however it was determined that the pace of instruction would be too fast without the modifications and would interfere with her academic success. J.A. benefited from a special education teacher in the classroom to provide small group instruction and provide the modifications listed in the IEPs which were available in the co-teach classroom. Although J.A. performed above grade-level in many areas, she benefited from small group instruction at times for areas of relative weakness. (R-10, page 31; R-12, page 31; R-13, page 31; and R-14, page 27.)

The District in this case has proven by a preponderance of the competent and credible evidence that the District provided J.A. with FAPE during the 2016-2017 and 2017-2018 school years and that May 9, 2017 IEP proposed by the District offered J.A. a free and appropriate education with the opportunity for meaningful educational benefit in the least restrictive environment.

Based upon the testimony and documentary evidence, I **CONCLUDE** that the May 9, 2017 IEP (R-14) proposed by the District offered J.A. a free and appropriate public education with the opportunity for meaningful educational benefit and progress appropriate in light of J.A.’s circumstances, within the least restrictive environment and that the District provided J.A. with FAPE for the 2016-2017 and 2017-2018 school years.

Stay-Put

The "stay-put" provision under the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C.A. § 1400, et seq.; 20 U.S.C.A. § 1415(j) and its counterpart in the New Jersey Administrative Code require that a child remain in his or her current educational placement "during the pendency of any administrative or judicial proceeding regarding a due process complaint." 34 C.F.R. § 300.518(a); N.J.A.C. 6A:14-2.7(u). The stay-put provision functions as an automatic preliminary injunction and it assures stability and consistency in the student's education by preserving the status quo of the student's current educational placement until the proceedings under the IDEA are finalized. Drinker v. Colonial Sch. Dist., 78 F.3d 859, 864--65 (3d Cir. 1996).

There was extensive testimony regarding what Goals were being implemented during J.A.'s fourth grade year following petitioners' filing for due process in May 2017. Petitioners argue that the District repeatedly violated stay-put by failing to implement the twenty-six Goals from the third grade IEP in fourth grade. Although it was not clear to me exactly what Goals were being followed in fourth grade – whether it was all twenty-six from the November 14, 2016 IEP or the nine new Goals in the proposed May 2017 IEP or some combination thereof, what was clear to me is that this procedural violation did not amount to a denial of FAPE to J.A. It did not impede J.A.'s right to an appropriate education; did not impede the parents' opportunity to participate in the decision-making process; or cause a deprivation of educational benefits. The District continued to hold IEP meetings to continually assess J.A.'s progress and make recommendations and allowed the parents to participate in the decision-making progress.

J.A. made meaningful academic progress sufficient to graduate from fourth grade to fifth grade at the end of the 2017-2018 school year. She did remain in the co-teach classroom and was provided with all of the support services called for in her "stay-put" IEP. The fact that J.A. successfully completed the fourth- grade curriculum and was ready for fifth grade showed she made more than de minimis progress. To continue to implement stale Goals that have been achieved and not work on new Goals would be more of a denial of FAPE and would be exalting form over substance. Having heard the

testimony and evidence in this case, all of J.A.'s Goals set forth in her third grade IEP were met by the end of fourth grade and therefore Judge Wilson's May 1, 2018 order ordering compensatory education to meet the third grade Goals was moot. J.A.'s services, classification and modifications and support services remained the same. I believe it would have been a denial of FAPE if the District failed to develop and implement new Goals when the testimony was that J.A. had met twenty-four out of her twenty-six Goals and that only two Goals needed to be carried over to fourth grade.

This tribunal is required to defer to the educational expertise of school personnel who were most persuasive in their testimony as to J.A.'s academic progress and social, emotional and behavioral progress made as a result of those support services provided to J.A. including speech therapy, counselling and consultative occupational therapy support. Their testimony was persuasive that she met the curriculum Goals for both third and fourth grade. J.A. also achieved her speech Goals in fourth grade as Ms. Christensen testified it was becoming increasingly difficult to develop new Goals that would be challenging to J.A. since she was doing so well in speech therapy. Likewise, Ms. Cayer-Johnson's testimony that by the end of fourth grade J.A. had met all of her counselling Goals that she had been working on since second grade and that Ms. Cayer-Johnson did not believe J.A. needed counselling for fifth grade. Ms. Shute who had been providing consultative OT evaluations of J.A. during her third and fourth grade years recommended that J.A. be discharged from OT following her evaluation of J.A.

Therefore, **I CONCLUDE** that any procedural violation of stay-put in this case did not cause a denial of FAPE to J.A. since it did not impede her rights to a free appropriate public education; did not significantly impede her parents the opportunity to participate in the decision making process regarding the provision of a free appropriate public education to J.A.; or cause a deprivation of educational benefits to J.A.

Jurisdiction

N.J.A.C. 6A:14-2.7(a) states that a due process hearing is an administrative hearing conducted by an Administrative Law Judge. For students ages three through twenty-one years, a due process hearing may be requested when there is a disagreement

regarding identification, evaluation, reevaluation, classification, educational placement, the provision of FAPE or disciplinary action. To the extent that petitioners, in an abundance of caution, have also plead claims arising under the New Jersey Law Against Discrimination (NJLAD) and the American with Disabilities Act, these claims are outside this tribunal's jurisdiction and are therefore dismissed without prejudice for lack of jurisdiction.

Section 504 claim

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

Petitioners alleged in their due process petition that the District violated Section 504 by denying J.A. equal access to educational services including a denial of FAPE and retaliated against them for asserting their legal rights under Section 504. As set forth above, just as I have **FOUND** that the District provided J.A. with FAPE in the least restrictive environment, I **FIND** that the District did not violate Section 504 in either discriminating against J.A. or retaliating against petitioners. Dr. Bersh testified that it was the parents right to file for due process and advocate for their child and there was no evidence of retaliation by the District. The parents' concerns were always addressed, information as to progress constantly provided and observation of the class permitted each marking period. In this case, the District developed and implemented numerous IEPs on behalf of J.A. which consisted of comprehensive statements of her educational needs and the specially designed instruction and related services to be employed to meet

those needs. The IEPs were developed with the participation of J.A.'s parents and members of the District's child study team who have participated in the evaluation of the child's eligibility for special education and related services. The IEP team considered J.A.'s strengths and the concerns of her parents for enhancing her education; the results of the initial or most recent evaluations of J.A.; her language and communications needs; and J.A.'s need for assistive technology devices and services. Modifications and Supplementary Aids and Services were provided to J.A. in the general education classroom to assist her in accessing her curriculum. Although assistive technology was considered, it was not needed. All of the IEPs developed for J.A. listed the various modifications and supplementary aids and services that were being provided to J.A. (R-10, pages 27-28; R-13, pages 28-29; R-12, pages 28-29; R-14, pages 23-25.)

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

Compensatory Education

Our courts recognize compensatory education as a remedy under the IDEA, which should be awarded "for the time period during which the school district knew or should have known of the inappropriateness of the IEP, allowing a reasonable time for the District to rectify the problem." M.C. o/b/o J.C. v. Cent. Reg'l Sch. Dist., 81 F. 3d 389, 392 (3d Cir. 1996). Compensatory education requires school districts to "belatedly pay expenses that [they] should have paid all along." Id. at 395. It is well established that the courts, in the exercise of their broad discretion, "may award [compensatory education] to whatever extent necessary to make up for the child's lost progress and to restore the child to the educational path he or she would have traveled but for the deprivation." G.L. v Ligonier Valley Sch. Dist. Auth., 802 F. 3d 601, 625 (3d Cir. 2015).

In A.G. v Wissahickon School District, 374 Fed. Appx. 330, 334 (3d Cir. 2010), the court held that "for purposes of entitlement to compensatory education, the ultimate inquiry is two-fold: (1) did the school district provide the student with a FAPE and (2) if it failed to do so, when did the school know of that failure?" Ibid. The court thus turned its

compensatory education analysis squarely on the question of FAPE, and FAPE alone. As the child at issue had received a meaningful educational benefit, the court determined that “[a]n award of compensatory education would have been improper.” A.G. v Wissahickon School District, 374 Fed. Appx. at 336, citing Lauren V. v DeFlaminis, 480 F 3d 259, 272-73 (3d Cir. 2007). Likewise, in A.S. v Harrison Twp. Bd. of Educ., 2016 U.S. Dist. LEXIS 57008, where a student was determined to have been on the “right educational path” the court determined that “[a]warding [the student] further compensatory education under these circumstances would be akin to awarding damages which is not appropriate under the IDEA.” Id. at *13, citing Chambers v Philadelphia Bd. of Educ., 587 F. 3d 176, 186 (3d Cir. 2009), which confirms that monetary damages are unavailable under the IDEA.

Compensatory education is a remedy available to parents and children only upon proving a denial of FAPE. My view is consistent with the United States Supreme Court decision in Fry v Napoleon Cmty. Sch., 137 S. Ct. 743 (2017). There the Court confirmed that “[a]ny decision of the officer granting substantive relief must be ‘based on a determination of whether the child received a [FAPE],’” citing 20 U.S.C. §1415(f)(3)(E)(i). Id. at 748. The Fry Court reiterated that FAPE is the IDEA’s “core guarantee,” and that “[i]n the administrative process, a FAPE denial is the sine qua non.” Fry v. Napoleon Cmty. Sch. 137 S. Ct. at 754. Since the District provided J.A. with FAPE for the 2016-2017 and 2017-2018 school years, petitioners are not entitled to compensatory education for those years.

The evidence was clear in this case that J.A. made grade level achievement in third and fourth grade and was provided with all of the support services necessary to achieve success in her educational environment. Since the District provided J.A. with FAPE for the 2016-2017 and 2017-2018 school years, I **CONCLUDE** that petitioners are not entitled to compensatory education.

ORDER

Based on the foregoing, petitioners’ consolidated requests for due process are **DENIED** and the petitions are **DISMISSED**.

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



February 22, 2021
DATE

CATHERINE A. TUOHY, ALJ

Date Received at Agency

February 22, 2021 (emailed)

Date Mailed to Parties:

/mel

APPENDIX

WITNESSES

For Petitioners:

Mrs. J.A.

For Respondent:

Christine Trotter
Caroline Medlock
Ashley Price Meilahn
Keara McMahon Shute
Jennifer Cayer-Johnson
Patrice Christensen
Dr. John Bersh

EXHIBITS

Joint Exhibits:

None

For Petitioners:

- P-1 February 24, 2017 letter from Dr. Bersh to Mrs. A.
- P-7 May 11, 2017 letter from Dr. Bersh to Mr. and Mrs. A. (two pages)
- P-8 September 25, 2017 letter from Mrs. A. to Dr. Bersh
- P-9 Welcome to Speech and Language 2017-2018 from Patrice Christensen to parent

- P-11 May 24, 2017 Central Auditory Processing Re-Evaluation (four pages)
- P-12 Respondent's November 13, 2015 review of independent audiological report of October 21, 2015 and Central Auditory Processing Evaluation of October 21, 2015 (six pages)
- P-13 Respondent's October 12, 2011 review of independent OT report from CHOP of August 5, 2011 evaluation (fifteen pages)
- P-14 Respondent's June 15, 2011 review of independent report of CHOP medical evaluation letter of May 19, 2011 and initial evaluation of December 22, 2009 (six pages)
- P-15 June 15, 2015 letter from Dr. David Brunner of Advocare Laurel Pediatrics
- P-17 Respondent's September 19, 2017 review of the Huntington Learning Center Learning Assessment evaluation of 7/28/17 – 7/29/17 and 8/7/17 (sixteen pages)
- P-26 March 9, 2017 letter from Superintendent Charles Earling to Mrs. A.
- P-27 Respondent's School Visitors policy

For Respondent:

- R-10 May 3, 2016 annual review IEP (thirty-five pages)
- R-12 November 14, 2016 Assess Progress and Review or Revise IEP (thirty-five pages)
- R-13 February 10, 2017 Assess Progress and Review or Revise IEP (thirty-five pages)
- R-14 May 9, 2017 Annual Review IEP that was being proposed for J.A.'s fourth grade year 2017-2018 (thirty pages)
- R-15 Progress Report for J.A.'s IEP Goals and Objectives for 2016 – 2017 (eighteen pages)
- R-16 October 17, 2017 letter from Patrice Christensen, Speech Language Pathologist, enclosing the progress report for J.A.'s speech and language Goals through June 21, 2017 (five pages)