



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

**FINAL DECISION**

OAL DKT. NO. EDS 08974-19

AGENCY DKT. NO. 2019-30020

**K.A. AND M.A. ON BEHALF OF T.A.,**

Petitioners,

v.

**MORRIS SCHOOL DISTRICT**

**BOARD OF EDUCATION,**

Respondent.

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

**Katherine A. Gilfillan, Esq.**, for respondent (Schenck, Price, Smith & King, LLP,  
attorneys)

Record Closed: June 3, 2021

Decided: June 28, 2021

BEFORE **LESLIE Z. CELENTANO**, ALJ:

**STATEMENT OF THE CASE AND PROCEDURAL HISTORY**

In accordance with the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1415, petitioners M.A. and K.A. requested a due-process hearing on behalf of their daughter, T., who is classified as eligible for special education and related services. Petitioners unilaterally placed T. at the Banyan School at the start of the 2018–2019

school year, and sought reimbursement from respondent Morris School District (District). Thereafter the parties entered into a settlement agreement, pursuant to which the District agreed to contribute to the cost of T.'s attendance at Banyan for that school year. Petitioners waived all claims relative to T.'s education through June 30, 2019. The District also agreed to conduct an educational evaluation of T., which it did in March 2019, and which revealed continuing and significant deficits in all areas, including reading, math, and writing. The parties further agreed that T. would be evaluated by the District, and that an individualized education program (IEP) would be proposed for the 2019–2020 school year.

An IEP meeting was held at Banyan on April 4, 2019, at which the District proposed an in-district placement with special education programming and supports.

On May 31, 2019, petitioners filed a due-process petition with the Office of Special Education Policy and Procedure (OSEPP). The matter was transmitted to the Office of Administrative Law (OAL) as a contested case pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13, where it was filed on July 2, 2019.

The case was subject to the mediation process; however, the matter did not settle and was assigned to the undersigned. The initial conference call was held on July 23, 2019. During that call the parties were offered fifteen available dates for hearing between July 29, 2019, and March 27, 2020. Petitioner and/or petitioner's counsel was not available on eleven of the dates, and respondent and/or respondent's counsel was not available on four. Based upon that availability, hearing dates were scheduled from January 6, 2020, through March 2020.

On or about March 18, 2020, the Office of Administrative Law (OAL) closed pursuant to Executive Order #104 issued by Governor Murphy, closing all schools and government offices, and directing all residents to stay home until further notice. All cases for the remainder of March were adjourned. Thereafter, by virtue of multiple further Orders, the closure continued, and all cases were adjourned. The OAL remains closed to date, and no in-person hearings are currently scheduled.

Petitioners then sought to proceed via a virtual hearing. Following briefing of the issue and an initial denial on May 15, 2020, of petitioners' request, it became apparent that the unprecedented situation in our state might continue for many additional months, and it could not be predicted with any certainty when it would be safe to conduct in-person hearings again. A determination was therefore made that the matter needed to proceed to hearing virtually.

A telephone conference was scheduled and held with counsel on June 1, 2020, wherein the District advised of multiple dates in September and October 2020 on which it was available to proceed. Petitioners provided their available dates in a subsequent conference call on July 2, 2020. By this date, respondent no longer had any available dates in September. Accordingly, based upon the availability of all parties, the hearing was scheduled to continue on October 30, 2020, and November 2, 2020, and did continue on those dates. Subsequently, the parties submitted post-hearing summations in support of their respective positions, and after the exhibit list was finalized and copies of all exhibits provided, the record closed.

### **FACTUAL DISCUSSION AND SUMMARY OF TESTIMONY**

It is the duty of the trier of fact to weigh each witness's credibility and make a factual finding. In other words, credibility is the value a fact finder assigns to the testimony of a witness, and it incorporates the 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 conclusions "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, 474 (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).

What follows is not a verbatim accounting of the testimony, but rather a summary of the testimonial and documentary evidence I found to be relevant to resolving the issue in this matter. Some of the testimony offered in particular by petitioners' witnesses

includes matters occurring before June 30, 2019, and as such is useful only as background. Based upon consideration of the testimonial and documentary evidence presented, and having had the opportunity to observe the demeanor of the witnesses and assess their credibility, I **FIND** the following as **FACTS**:

T. was born on November 9, 2007, and was found eligible for speech-therapy services in preschool. Her special education programming continued, and T. underwent numerous evaluations both in-district and by private evaluators retained by petitioners, including an evaluation by the McCarton Center in 2013 (P-13); another evaluation by the McCarton Center in 2017 (R-10); an auditory processing evaluation, following a referral by the McCarton Center, in 2015 (P-15); educational testing by Suburban Learning Center, also in 2015 (P-21); psychological and educational evaluations by district staff in 2016 (R-9; R-6); a private psychological evaluation by Dr. Barenbaum in 2018 (R-8); and a private speech and language evaluation by Jeanne Tighe in April 2018 (R-7).

Testing done in-district and privately consistently revealed a full-scale IQ of 60–62, in the extremely low range. Dr. Barenbaum’s testing, utilizing a far less comprehensive test, revealed a slightly higher score that nevertheless is still in the same range. T.’s testing consistently showed deficits in all areas of learning—math, reading, and writing. She has also been diagnosed with auditory processing deficits, mixed receptive/expressive language disability, ADHD, anxiety, a mathematics learning disability, and dysgraphia.

The evaluation by the private speech-language therapist in April 2018 revealed that the gap between T.’s abilities and those of her same-age peers was widening rather than narrowing.<sup>1</sup>

In March 2019, the District conducted the educational evaluation, which revealed continuing significant deficits in all areas of learning. Thereafter, on April 4, 2019, an IEP meeting was held at Banyan. T. was classified as multiply disabled based upon those

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<sup>1</sup> A second report from Ms. Tighe was not provided to the District until May 29, 2019 (P-73), following testing of T. which had been done in March 2019 (P-70).

significant deficits and her cognitive abilities. At the meeting, attended by the District staff, Banyan staff, and petitioners, Banyan reported that T. was continuing to receive speech and language therapy. She also was spending 215 minutes of the 375-minute day in reading instruction, including 80 minutes of the Wilson Reading Program, yet had made slow progress in reading, which Banyan felt was commensurate with her abilities and intellectual functioning. Areas of achievement remained very low and due to her cognitive profile, it is harder for her to learn than it is for neurotypical peers. Her pace of learning has been consistent over the years.

T. required an educational program that would address her disabilities across all areas. The District proposed an IEP pursuant to which T. would attend a self-contained, multiply disabled (MD) classroom at the middle school, taught by a certified special education teacher who was Wilson trained, and with applied-behavior specialists in the class who work directly with students under the teacher's supervision and direction. The proposed classroom would have less than ten students. T. would receive modifications and accommodations in all her academic classes. She would also receive individual and group speech therapy, group occupational therapy, group counselling, and multi-sensory reading instruction,<sup>2</sup> as well as instruction in activities of daily living.<sup>3</sup> She would also have an extended school year and multiple opportunities to interact with non-disabled peers through electives and after-school extracurricular activities.

The six-hour school day would include an hour of daily supplemental reading instruction with Dr. Caroline Crosbie, the reading interventionist, and an additional 80 minutes of English/language arts instruction. She would receive social studies and math instruction every other day on a rotating schedule, and an elective every other day as well, for 40 minutes with non-disabled peers, an opportunity not available to her at Banyan. There was to be consultation between Dr. Crosbie and the classroom teacher so that strategies from the supplemental instruction would go into the proposed

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<sup>2</sup> The District includes strategies, goals and objectives, as well as modifications and supports in IEPs, as opposed to specific methodologies.

<sup>3</sup> The speech and occupational therapy goals were based upon what was being done at Banyan. Those were not received until after the IEP meeting, and, as such, the District would have had thirty days after T. started the program to amend those goals as necessary.

classroom. T. would have a Chromebook, which she would bring home every day to assist with technology skills also addressed during the class proposed for her.

At the IEP meeting, no concerns were expressed as to the components of the proposed program, nor as to the proposed goals and objectives. Petitioners asked that T. be permitted to remain at Banyan because she had made friends there.

### Suzanne Olimpio

Suzanne Olimpio is the interim director of special services at the Sparta School District. Prior to that she was the assistant superintendent for pupil services at the Morris School District, and prior to that was the director of special education for two years. She was with the Morris district for five years, and retired on July 1, 2019.

Prior to working at the Morris School District she was the director of pupil services at Parsippany for four years, during which she oversaw all special education, kindergarten through twelfth grade, and ages eighteen to twenty-one as well, plus all guidance and health services. As assistant superintendent of pupil services she also oversaw the child study team, all special education from prekindergarten through age twenty-one, and other programs as well.

She has a bachelor of arts in economics and a master's in counseling, is certified as a school psychologist, and has four other certifications (R-18). She taught the special education law course required for teachers to obtain an administration certification (N.J. Excel Program), and also had continuing-education requirements including extensive training in educational assessments and in many of the testing protocols, including the Wechsler Intelligence Scale.

She was also trained in Woodcock-Johnson testing and how educational tests interact with psychological tests, as well as intellectual functioning versus academic levels and where academic levels should be based upon intellectual functioning. At Morris, they have developed multiple special education reading programs in-district and have multiply

disabled classes. They brought in many experts to design and develop these programs. Teachers are trained extensively in Orton-Gillingham, in Wilson, and in direct instruction.

The New Jersey Dyslexia Handbook helps the District to design programs and helped to design their reading program. Dyslexia is usually under SLD, which stands for specific learning disability. When discrepancies are found, a student would be eligible under SLD.

She has been in the special education area for twenty-nine years, and has worked as a child-study-team member, a school psychologist for fifteen years, including as a case manager for all fifteen years before going into administration. She has evaluated at least 750 students, but believes it actually may be closer to 1,000. She was case manager for 750 students, and also evaluated many others whom she didn't case manage; her psychological evaluations helped to place children.

As a special education administrator she oversees the IEP process to assure compliance with the least restrictive environment (LRE), and the needs of a student. She doesn't just participate, she oversees the process, and has overseen hundreds of IEP's. There are 850 students in Morris and 1,200 in Parsippany.

The requirement of LRE stems from the IDEA; students should be educated in their home district in their home school with appropriate supports. Morris is below the State average in LRE education. New Jersey is third from the bottom, so the federal government said the districts need to educate in the LRE and the State audited everyone. The State stated that out of district is the most restrictive placement, and that only residential placement is worse and more restrictive. Their inclusion rate moved from below the state average of LRE at approximately 45 percent to now at 70 percent. The District received an award from the New Jersey Coalition for Inclusive Education for educating disabled students with nondisabled peers. Morris developed an "all-in" program, which is a philosophy that all students belong, and they call it "ability category" as opposed to disability. Activities for inclusion are created. Panels of students emphasize the importance of including students, and there are programs in and out of the classroom.

Importantly, she was present at the April 2019 IEP meeting (R-4), and was involved with the settlement in June 2019 as well. She reviewed the in-district testing and the private evaluations. The witness was accepted as an expert in five areas: special education, learning disabilities, reading, school psychologist, and educational programming.

Olimpio testified that generally an IEP is developed by looking at the assessments and the student's strengths and skills deficits to see what the student needs to make meaningful progress. As part of the process, she reviewed the educational evaluations by Paola Hall, LDTC (R-5; R-6); the oral and written language evaluation done by the parents' evaluator (R-7); an evaluation done by an outside evaluator (R-8); the District psychological evaluation (R-9); and another evaluation by an outside evaluator hired by the parents (R-10). All of these were considered in preparing the 2019 IEP.

She described a psychological evaluation as measuring global intellectual ability, and how a student is maturing intellectually, and if there are any inconsistencies. They are conducted every three years to see if there are any changes. When asked what would make an IQ score change, she testified that trauma or psychiatric disability could. In the testing conducted by the psychologist in the Morris School District, T.A.'s full-scale IQ was 62, which is extremely low.<sup>4</sup> Average is 90–110. She noted that in the evaluation arranged by the parents, R-10, at page 167, her full-scale IQ was 60. T. struggled across all indices, and 62 is an accurate depiction of her ability; the scores were consistent across the District and parent evaluations. (Indexed scores are categories of intellectual functioning, and then there are sub-scores within the indexes).

Programming implications with that IQ need to address the student's ability levels across all academic areas. Her rate and quality of learning won't be the same as same-age peers. It's not just verbal or language, but goes across spatial reasoning, which

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<sup>4</sup> Testing by petitioner's psychologist revealed a score of 60. Multiple evaluations reflected consistent scores.



affects math and science scores. Her global functioning is important across all areas so her overall functioning can improve.

The testing performed by petitioner's private evaluator, Dr. Barenbaum (R-8), at page 129 references the Test of Nonverbal Intelligence—Fourth Edition (TONI-4), a standard assessment, but the result is inconsistent. It is a fifteen-minute assessment that can be done by a paraprofessional, and is not nearly as consistent as the other testing done; it is typically used to obtain additional information on a student and is not as comprehensive as other evaluations conducted.

Classification of this IQ could either be cognitively impaired or multiply disabled, which is the more appropriate one, because there is more than one area of disability. T. has disability across domains. She also has features of dyslexia, but that may be due to low cognitive ability. They often see dyslexia with reading issues, but also can see areas of strength. Here, her math scores were lower than her reading scores. Of the three psychological evaluations in a short period of time, the District did one and the parents did two. The parent evaluations by Ms. Tighe (R-7) and by Dr. Barenbaum (R-8) were done within one month of each other.

The witness was at the IEP meeting along with the parents, Banyan School personnel, and Dr. Crosbie to explain the reading program. The program for T.A. in the IEP would be in her home school, in a multiply disabled class with a small student-to-teacher ratio, which would address her overall cognitive disabilities and her processing issues. She would have modifications and accommodations in all academic classes. She would also have speech therapy, individually and in a group, occupational therapy, and individual therapy, group therapy, counseling, and extra daily multi-sensory reading instruction using the Wilson Reading Program, as well as an extended school year.

The District discussed a multi-sensory approach to reading including Wilson, Orton, and direct instruction, which is a scientifically based approach like Wilson and Orton and helps the student generalize skills across all areas. The witness disagreed that T.A. was not making progress with direct instruction in the District. The direct instruction would be infused throughout the day, and also provided for one hour of daily

supplemental reading instruction which could be increased as needed. Not every teacher needs to be Orton certified and teachers can “implement strategies during the day across all areas.” The teacher for the multiply disabled class is Monica Mihalik and she is certified.

There were concerns when T.A. was placed at Banyan because she has global disabilities, not just in reading. There was concern that the strategies would not be applied in other areas such as math and social studies. The emphasis there is on reading, but T. needs to be taught across all areas and educated completely. Her other deficits affect her learning also, not just her reading issues.

The IEP (R-4) at page 61 discusses assistive technology, which helps a student move forward in other areas and helps with the expression of ideas. T.’s strengths indicate that she tries to utilize strategies she’s taught and follows the routine. She has no behavior issues. She follows what she is supposed to do to make progress.

At the IEP meeting, no concerns were expressed about the program by the parents, but they did say they want her to stay at Banyan and that she has friends there.

The Banyan teachers reported slow, consistent progress consistent with her intellectual ability, but no one said, “you can’t do this in-district.” Speech and occupational therapy were reported on at the meeting also.

Ms. Olimpio knows of Jeanne Tighe and was familiar with Ms. Tighe’s evaluation of T. in 2018 that the parents had done (R-7). The District included that report in the proposed IEP. The parents feel that Ms. Tighe can speak to reading disability; however, she is not certified in reading, nor in special education, nor in learning disabilities, so she cannot make any recommendations on reading programs. Tighe is a speech-language therapist, and programs are designed by a multi-disciplinary IEP team, not by speech therapists.

When asked why counseling appears in the IEP, she testified that the parents reported anxiety regarding reading and socialization issues. There are goals related to socialization in the IEP.

Ms. Olimpio referred to page 6 of R-4, which were the notes Ms. Tighe took when observing T. at Banyan. She also referred to Ms. Tighe's 2018 evaluation (R-7), which shows the evaluations she used prior to the placement at Banyan. She indicated that Ms. Tighe is not qualified to interpret the psychological evaluations, and went outside her area of speech and language domain in doing so. Asked why the evaluation (R-7) would indicate "language skills behind age-based expectations", Ms. Olimpio testified that due to T.A.'s overall cognitive level it would be reasonable for Tighe to not expect her to reach age-based expectations or the achievement levels of her neurotypical peers.

At page 104 in the middle of the page, Tighe concludes that the gap has widened between T.'s abilities and those of age-matched peers. It is unreasonable to expect the gap to narrow. This is because T. will progress, but it will be slower. She will make meaningful progress for her, progress that is reasonable for her according to her overall ability levels. Her global language deficits are addressed in the IEP by speech and language individual and group therapy.

In 2018 Tighe said (R-7 at 106) that delivery of daily instruction should be 10 to 15 minutes; however, the IEP offers one hour a day plus incorporation throughout the day. At page 107 her report speaks of dyslexia and references the dyslexia handbook. The definition, found at N.J.A.C. 6A:14-1.3, notes in the first paragraph that the difficulties with accurate and/or fluent word recognition and poor spelling and decoding skills are "often unexpected in relation to other cognitive abilities . . ." As to T.A., however, her difficulties are to be expected.

At page 107 of Tighe's report, she says that T. needs a teacher "fully certified in structured literacy methodology." Ms. Olimpio disagrees, and testified that someone who is trained in multisensory approaches to reading and consults with the teacher during the day is sufficient. Teacher certification for structured literacy is a two-year program, and

students can make meaningful progress through direct instruction and/or Orton-Gillingham.

T. needs someone who can design instruction to meet her needs in reading and break down her learning across all areas so she can generalize her learning. Banyan did not say how instruction is being generalized across all areas. Olimpio also disagrees with the Tighe report at the top of page 108, and testified that she should rely on compensatory strategies to generalize learning. Number 6 on page 108 speaks to addressing comprehension and the IEP speaks to comprehension across all areas.

Tighe references many specific methodologies, but many are outside her expertise. She is a speech expert. At page 109 of the Tighe report, number 8 refers to social opportunities, but in her home school she would be in classes and electives all day with her peers as well as at lunchtime, after school, and for extracurricular activities. The emphasis is on least restrictive environment, and out-of-district schools can't duplicate in-district opportunities. Children in the least restrictive environment are more successful. The self-contained class has the teacher, applied behavior analysis (ABA) teachers, and aides where there are physical challenges. The ABA teachers are doctoral level and board certified.

The reports are consistent regarding breaking learning down into components. Another principle of ABA is mastery of skill. Small-group instruction allows instruction based on the student's level and interaction with peers. T. would benefit specifically from a small group; she has good peer interaction in classrooms. In the IEP would be a six-hour instructional day, including one hour direct and 80 minutes of language arts. Math and social studies would be every other day. During the day there would be gym, and electives based on interests, all allowing exploration of her own interests and not available out of district.

Olimpio testified that students on panels who have returned from other placements emphasized that they had cherished these opportunities for access to typical peers in the school day, which would not be available at Banyan. Research has shown that

consistently students do best with more exposure to nondisabled peers. Speech and language are incorporated into the classroom and the core content standards.

When reviewing evaluations, the District looks at all scores for strengths and deficits and also what is actually being achieved. T.'s progress at both places was consistent with District testing and private testing. All scores are considered and tests are normed on neuro-typical students; R-6 shows all testing results. Tighe did not discuss math in her report or life skills, which are important for all students. T. needs to be educated in all skills. Tighe's 2019 evaluation (P-70) was submitted after the IEP was provided. She had done an observation April 10, 2019, at Banyan and had done an evaluation on March 22, 2019. Her report notes that she was refused an observation of the program, but she is not qualified to evaluate a program. She's a speech-language therapist.

Olimpio testified that Tighe has been involved before in cases with the Morris School District, and her recommendations always align with the parents' requests.

Tighe also makes comments that a learning consultant needs to make, and which she is not qualified to make. She compared 2016 and 2019 evaluations, yet T. was in-district in 2016 and she cannot say where the progress happened. Tighe uses age equivalency and grading equivalents, but needs to look at all scores, and no score should be used in isolation. The private evaluations are consistent with the progress made in-district and at Banyan. That alone does not mean she should be kept there. She will make progress in-district commensurate with her abilities and will be with nondisabled peers in accordance with the requirements of LRE.

In P-70 at page 19, Tighe mixes up what the IEP provides. The language arts block is used to generalize reading skills, and she got them confused, and did not include the additional daily reading instruction. She also speaks to "less intervention," but Tighe misunderstands the program, which she is not qualified to discuss in any event. T. is not getting less, but there is a shifting program in middle school. Tighe does not seem to understand public-school core requirements. Goals and objectives are aligned to the

core content standards, not to the Wilson reading program. The same rules are supposed to apply to goals and objectives at a private school.

Ms. Olimpio testified that she has been involved with petitioners relative to T.'s programming. She testified that it would be hard for any parent to fully accept the level of T.'s intellectual disabilities and cognitive level. She has tried to make the parents understand what T.'s progress would look like and what the expectations should be for T.

She testified that Tighe acknowledges that she is "long acquainted with Banyan," and her relationship with them is a cause for concern, as it relates to her ability to be objective. And she is a speech-language therapist. The same paragraph discusses how "every teacher is certified in Wilson or pursuing certification." The Wilson technique and procedures can be implemented in-district. In public school it is done in a multifaceted way. They develop strategies and skills being in the LRE and interacting and engaging with peers. The counseling group helps develop those skills, all towards social and emotional growth and development. Tighe says T. wasn't progressing in 2018, but what T. can be expected to achieve is what needs to be looked at—all the testing, all the teacher reporting, not just certain tests in isolation. Page 20 also indicates that there are 6 hours and 15 minutes in a day at Banyan, and they do 80 minutes of Wilson and an additional 135 minutes on reading, and are not spending sufficient time in other subject areas. Reading is extremely important, but math and spatial/visual abilities, as well as science and social studies, should not be discounted. Nor should time spent in electives to pursue interests.

The parent reports that DaSilva mentions anxiety, but does not recall it being raised at the IEP meeting, nor that it was addressed at Banyan. At the time of the April 2019 meeting, she does not believe T. had been receiving specific counseling there.<sup>5</sup>

Olimpio stated that DaSilva notes in P-105 at page 7 that T. is "friendly but has no friends," which is inconsistent with petitioner's claims at the IEP meeting. DaSilva did

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<sup>5</sup> None of the authors of the reports offered by petitioner other than Tighe testified. In the absence of direct testimony by the authors of the reports, they are hearsay.

some regular tests and some atypical testing the school does for programming. On the memory function (verbal memory/learning) subtest T. scored in the 37th percentile, meaning it is a relative strength for her.

She doesn't agree that T. would regress if removed from Banyan, and none of the Banyan teachers expressed that at the IEP meeting. Ms. Olimpio testified that in her expert opinion, the 2019 IEP is designed to confer a meaningful educational benefit for T. She will be able to make progress and move through the program at a pace expected of her. There is a long-term benefit to bringing her back. She will make meaningful progress, and the public school offers benefits including coping mechanisms, navigation of situations, specials and other classes, and other experiences that cannot be mimicked at an out-of-district school. There are electives and other opportunities to assist T. in developing more completely.

On cross-examination, Olimpio testified that T. has made little to no progress in math at Banyan. So much time is spent on reading at Banyan that it leaves little time for other subjects. The core content standards in district infuse all strategies including language skills throughout the day, with teachers always consulting; all part of a collaborative process in the District that is not listed in the IEP but is built into teachers' schedules. IEP goals should be connected to the core content standards, in-district and at Banyan. They are not all listed individually. There is no spelling goal reflected; and spelling is an area of need, in which she made no progress at Banyan. The team may not have felt that specific spelling goals were appropriate. They have a multi-disciplinary team, and the learning consultant may have wanted spelling incorporated into her language arts program. If they had questions about progress reports they would have reached out to Banyan.

The scope of practice for speech-language pathology doesn't include determinations about educational programming for a public-school student—Tighe is operating outside her scope.

Olimpio stated that T. made very little oral language progress in their program. In Tighe's April 2019 observation (P-70) she notes that T.'s scores went up, but by two

questions. While Tighe called this significant improvement, Olimpio testified that T. made little progress.

When asked about the Banyan IEP (P-67) of April 3, 2019, and asked why there were more goals (page 3-1) than in the District IEP, Olimpio testified that the District IEP does not need to mimic Banyan's, and more goals and objectives doesn't make it a better IEP. When coming back to District, information regarding progress on related services comes from the out-of-district placement and the assessments. They're in the IEP, which also provides for consultation and strategy planning between the regular education and special education staff.

There is a structured literacy program provided for in the IEP. Specific programs are not stated in the IEP. Goals and objectives are related to skills deficits, but the specific programs are not typically listed. T. had multiple evaluations in-district from preschool, and IQ test results are all consistent in finding her IQ was 61. Evaluations by the District and the parents' experts in totality shows full-scale IQ is accurately reflected, scores are consistent across all indexes, and not different across subtests. Each test score serves a purpose. Olimpio proved to be both a credible and a reliable witness.

#### Danae Heywood

Ms. Heywood is the District's supervisor of pupil services for pre-K-5. She evaluates special education programs, teachers, and nurses and oversees related-service providers' compliance with the IEP since July 1, 2019. Before that she was a special education teacher, and then worked as a learning disabilities teacher consultant (LDTC) at Frelinghuysen Middle School from 2013 until 2019, when she became the supervisor.

An LDTC is a member of the child study team who represents the educational portion of a child's program, and she is one third of the child study team. She conducts evaluations, case manages, and writes IEP's. Ms. Heywood received her LDTC post-master's certification. She has a bachelor's in English and a master's in special and elementary education and has received her LDTC post-master's certification. She also



did an educational leadership post-master's certification. Currently she is enrolled in a doctoral program for transformational leadership and will receive a doctorate in education.

To obtain her master's in special and elementary education she took classes in teaching reading, math, social studies, and several other subjects to students with multiple disabilities. She then did two practicums teaching, and in addition to her master's, received a certificate of eligibility with advanced standing in elementary and special education. She has certifications in teacher of students with disabilities, teacher of English, teacher of elementary education, and LDTC with an endorsement for supervisor. She has twenty-seven additional master's credits. She can teach elementary education pre-k to 6, special education, pre-K through 12 plus, and assess/discuss assessments. Her practicums were in testing, assessing, completing reports, and writing IEP's. She has worked as a teacher of students with disabilities and as a case manager. She has assessed over 100 students.

It is Ms. Heywood's tenth year with Morris. She is trained in Woodcock-Johnson and in the interpretation of a variety of other standard assessments. When looking at test scores and a child's profile holistically, they look at scores across cognitive educational speech, which are designed so that they can be compared within a child's cognitive profile to see which areas are strengths and which are weaknesses. Looking at these test scores enables them to program successfully for students.

To administer the educational tests in New Jersey the person needs an LDTC certification, and also has to complete continuing education requirements, 100 hours in 5 years. Heywood has case-managed over 100 students. The first responsibility is determining whether the student plan is being followed. Responsibilities also include drafting IEP's, reporting on progress, performing educational assessments of students, and writing reports on the assessments. Case managers also communicate with faculty and general education teachers, keep records, and insure social and emotional health and well-being. She is familiar with the special education options at Frelinghuysen Middle School and helped develop them. She programmed for students depending on their level, where they were coming from, their test scores, and working with their case managers.

Ms. Heywood is Orton-Gillingham trained. It is a multi-sensory reading program incorporated into the classroom. Other multi-sensory reading tactics are available such as Wilson, and Lindamood-Bell, developed from Orton. She has used Orton to instruct students in reading. It is a research-based program and is used in-district currently, some one to one. Some teachers are Wilson trained and use that; it all depends on the student. Orton has different levels of training and certification. There is a one-week comprehensive training she had, and then an advanced program, and then a two-year more advanced program taught at universities. The Orton certificate is issued by the college, not the State. To be an Orton instructor does not require certification, only the training. Other reading interventions are available in-district—at Frelinghuysen Middle School, students get 80 minutes/day of English-language arts (ELA) at a minimum.

If a student has a greater need, they are given literacy intervention with a reading specialist, and this is all in general education. If a student has a language-based learning disability, or other cognitive needs in the area of reading, they are provided with a literacy program in their IEP, Wilson Reading System instruction, 1:1 or in a small group. They also use corrective reading, a research-based reading program that uses ABA to teach reading. It teaches decoding, which is the focus of Orton. It also teaches vocabulary, fluency, and reading comprehension, all within a research-based program.

There is choral responding within corrective reading, and data is gathered all the time throughout the lesson.

Asked about certified reading or literary specialists, Ms. Heywood testified that is a State-certified, post-master's certification. The District employs some certified reading specialists, and also uses dyslexia screening as mandated by the State. The program tests some of the areas in which dyslexia can arise, including phonemic awareness, phonics, reading comprehension and fluency, and vocabulary.

She has classified over forty students as LDTC and a member of the child study team. If there is the presence of a disability and an educational impact, a student would be found eligible for special education and related services.

She has received training and continuing education in categories of classifications in the code and has maintained her continuing-education credits as required. Ms. Heywood was offered and accepted as an expert in five areas: educational assessment, learning disabilities, reading, dyslexia, and special education programming.

In the fall of 2018 she was asked to consult as an expert with T.'s educational programming. She also facilitated several observations and also observed T. in November 2018 with Dr. Crosbie at Banyan. They observed two classes, one was 80 minutes of Wilson instruction and the other was verbalizing and visualizing.

The case manager at the time, Donna Sjovall, and the school psychologist also observed her, as did the LDTC, Paola Hall, in February 2019. Observations were also done with T.'s mother of the MD class, and Dr. Crosbie's class. Dr. Weber, a board certified behavior analyst (BCBA) in the District, also observed.

Heywood reviewed all of T.'s IEPs, as well as the testing done by the District and outside evaluators. She reviewed goals and objectives and observations that District staff did of T. She reviewed the entire CST file.

Heywood testified that Dr. Crosbie is now a board-certified behavior consultant with the District, but before that was a self-contained teacher in the CABAS program and reading instructor for students with disabilities. Observations were done at Banyan, to see how T. was responding to her program. The proposed class in-district was observed with K.A.

She and Dr. Crosbie first observed a visual comprehension class at Banyan. The person escorting them to the class announced to the whole class that they were there to observe T. Some students were distracted, including T., whose attention often drifted towards them, as she was paying attention to them. Many off-task behaviors were observed, including T. and other students getting out of their seats, looking at the observers, staring at the wall, or interacting with peers. The teaching of reading at multiple levels was not done with the level of cohesiveness she would have expected from a special education teacher.

T. was redirected by calling her name at Banyan, which is nothing different than what could be done in-district. The District, however, uses redirections with greater effect when a student displays off-task behavior. Students are redirected very promptly and with great efficacy within the program proposed for T.

In the class they observed, nine of thirteen times the teacher at Banyan gave T. the answer when she couldn't answer the question. The teacher led her to the answer. When students are asked questions, it is sometimes to see what they know and what they comprehended, as was the purpose of this class. If the child is given the answer, that's not using either of those question tactics, and is not instruction of high quality. There was also a token system utilized by which T could earn gems as rewards, a system based on ABA principles.

The next class was eighty minutes with a Wilson-trained instructor. T. was eager to work and knew her routine. She was very engaged and no redirection was needed. There were a few movement breaks but no breaks in instruction, and a token-economy reward, which is based in ABA. Heywood is familiar with the multiply disabled class, and case-managed all the students in that class in the 2018–2019 school year. Prior to that she had several students on her case load throughout her tenure as an LDTC. Ms. Mihalik, who teaches the MD class, is a certified special education teacher. She observed in there weekly. Less than ten kids are in that class, and there are other instructors as well, assistant behavior specialists who provide instruction and are trained by the lead teacher in the class, Ms. Mihalik, to provide programs she prescribes during the instructional day. In this ABA class, a program book is developed for each student and data is collected on a regular basis. The data is charted weekly and learning trends are gleaned from the data, and the program is evaluated and adjusted regularly.

T. has supplemental reading in the IEP to be provided outside class, either one to one or a small group, based upon what the instructor recommends after assessment. There would be decoding/phonics to inform and bolster her reading comprehension. She would also have Orton, thus would receive the ELA of eighty minutes in addition to Orton.

Ms. Heywood observed Ms. Mihalik's multiply disabled classroom this year with two speech-language pathologists, Mrs. Plait, the District expert, and Ms. Tighe, the parents' expert. They also observed Dr. Caroline Crosbie's reading intervention class. Dr. Crosbie is a board-certified behavior analyst at the doctoral level now. At the time she was the special education reading interventionist for the District. Her observation of the self-contained special education class included that students were taught as a whole-class lesson, with a social-skills-type lesson and activities of daily living, such as understanding the calendar and the weather. These are lessons to make sure students have practical knowledge as they transition to career readiness. After that group lesson, students receive 1:1 or 2:1 (diad) instruction depending on their program, based on student needs. This academic-time instruction is provided by eight assistant behavior specialists currently assigned to the classroom. They provide instruction, and take data, and have more qualifications than the teaching assistants. Currently eleven students are in that class and a large portion of the day is devoted to diad or 1:1 instruction. There is large-group instruction, then students break out into 80 minutes of a language arts block. Then lunch is at 12 noon in the cafeteria with neurotypical peers. Everyone sits together. There is a large group after lunch, then small group until 1:20, then to general education electives. Students have two or three electives per year, based upon their IEP, for example, visual/graphic arts, music/theory, woodshop, etc. Plus, they have 80 minutes of gym every other day, two 40-minute classes. All students within the school get to choose their electives with general education teachers and modifications if needed. The classes are with neurotypical peers and range from fourteen to twenty students. Lunch is in the cafeteria with neurotypical peers. Some students push out from Mihalik's class to a different math class based on either their IEP or their skills. Every student is assigned a Chromebook that they can take home at night. Technical skills are taught to students. Ms. Mihalik is Wilson trained. Students also interact with neurotypical peers in after-school sports or extracurriculars, such as art, music offerings, and sports that have wide-ranging abilities like track or cheerleading—there is an extensive list.

Frelinghuysen Middle School also has clubs, and activities are available, and there are more than reflected on the supplied list (R-16), which is abbreviated. Clubs are published based upon interest and availability of teachers, and run from mid-October to December, then again from January to early March, and again from mid-March to May

on. There are no limitations in any of these activities. All are open to all students, and only two are cut sports based upon ability level.

All students are reinforced positively in Ms. Mihalik's class, and earn tokens to their bank to cash in later to, for example, use an iPad or play with certain things. During the school day, each has an activity of daily living (ADL), which starts in sixth grade. For example, setting the table, folding laundry, or brushing teeth, based upon individual student interests and identified needs, as well as parent input. Each student has a program book, which Ms. Mihalik checks daily and changes as needed to be sure the student continually makes progress. Technology is important for the students in the MD class, as adults interact with technology all day, checking emails, using cell phones, keeping a calendar. Ms. Mihalik explicitly teaches these skills so that the students have this prerequisite knowledge as they transition into a career.

The academic programs that Ms. Mihalik develops for each student are tracked in a program book kept in her classroom which she reviews each day, so that when a student goes out for an elective class, for example, Ms. Mihalik will review the data for that student and make changes to the program daily to make sure a student continually makes progress.

The observation of Dr. Crosbie's lesson was of a 1:1 going through the SRA Corrective Reading curriculum. Referring to the proposed IEP (R-4), page R-0060 notes supplementary services where the student would be using response boards. Ms. Heywood explained that when students are instructed in a variety of ways, one of the teaching practices is choral responding, where a small group answers collectively. Choral responding as a group increases accurate responses, as students can hear peers responding so they get positive auditory feedback. It is used in small and large groups, and is used in general education classes also. It's a teaching technique, and was part of her Orton training. Asked about the modifications portion of the IEP relating to multi-sensory approach with auditory aids, visual aids, and manipulatives, Ms. Heywood testified that based upon the IEP the modification would be implemented all day, both in T.'s special education and general education classes. Based on T.'s cognitive profile, that would increase her engagement.

Asked about tactics and tools, Ms. Heywood indicated that a tactic is a teaching technique, and the curriculum is what is to be taught. A tactic or tool is *how* to teach what we are to teach. Wilson would be a way to teach phonics and reading, it is not a curriculum.

Page R0061 refers to assistive devices, and indicates that T. would have a laptop with word-processing and word-prediction software. Based on her educational and cognitive profile she is still developing reading skills and writing skills. The word-prediction software augments her writing, as she is internalizing the rules of reading, and bringing that into her spelling and writing practices. Word prediction takes away some of the effort in writing and in understanding spelling so students can focus on what they are producing rather than how to spell it.

Ms. Heywood disagrees with Ms. Tighe's suggestion that this is an attempt by the District to avoid teaching T. how to spell. Spelling is addressed in the IEP goals to enable identification of areas of weakness and focus on that. As she builds skills, it provides strategies to help with what they are producing, not get stuck on spelling. Goal 2.3, page R0057, reflects spelling as a goal, and spelling is part of the Wilson program that was going to be provided to T. Goal 3 indicates that she is going to write in clear, concise language, which is important given that she has a noted communication weakness and writing is the last part of communication to develop. So there needs to be a focus on creating precise language for her writing. Speaking and listening happens first, and then reading and then writing, in terms of development. What T. is being taught daily is distilled into the writing. When they have students with noted communication weaknesses, the focus is on creating precise language for their writing.

Page R0061 indicates a personal FM system in the self-contained classroom, and this is important for T., as it takes the instructor's voice and brings it close to the student. For example, if the teacher turns her back and can't be heard, a microphone clipped on projects the teacher's voice so it's not lost during instruction. Due to T.'s noted communication weakness, it's important she hears what is being said throughout the school day so she can fully understand the instruction.

In order to ensure that the multisensory reading tactics and techniques were utilized, the intent of the IEP is to provide all the teachers, general education and special education, with consultations with the BCBA, Dr. Crosbie. T. was to be provided with both multisensory reading instruction and instruction in small groups, and either a diad or 1:1, and the consultation was to ensure that the multisensory reading tactics and techniques were brought into her classroom and the parts of the curriculum on which the teachers were focusing.

There were also to be conversations about reading and bringing reading tactics into the MD program for T. during the 80-minute language arts block, with Dr. Crosbie and Ms. Mihalik, and then continued professional development for the teachers and staff working with T.

In terms of the benefits of having T. attend general education classes, research shows that inclusion with neurotypical peers is extremely beneficial, allows for social interaction, and expands skills at a higher rate than the rate for students who are in a very restrictive setting all day.

Page R0062, under supplementary aids and services, number one, states, "T. will benefit from the low student-to-teacher ratio to target academics, communication and self-management skills using data collection and principles of applied behavior analysis." Ms. Heywood testified that when she observed T. at Banyan, she saw a reading-based visualizing class and then Wilson instruction. The visualizing class had eight students and the Wilson instruction was 1:1. In the visualizing class, T. was often inattentive and off task. In the 1:1 there was no observation of off-task behaviors.

Heywood was asked about Dr. Barenbaum's 2018 psychological evaluation referred to in the IEP, which was provided by the parents. They also provided an additional speech and language evaluation by Jeanne Tighe, conducted in April 2018, which was also utilized in developing the IEP.



Listed in the IEP are the evaluations used to develop T.'s program. R-5 is the educational evaluation; R-9 is the psychological evaluation; R-8 is Dr. Barenbaum's 2018 psychological evaluation; and R-10 is another psychological evaluation provided by the parents and also considered in writing the IEP, as was R-7, the speech-language evaluation conducted in April 2018 by Ms. Tighe and provided by the parent.

Asked why there are no speech or occupational-therapy goals in the IEP, Ms. Heywood testified:

The district received the goals, the OT and the speech goals from Banyan after the IEP meeting and we were awaiting her return to district in order to understand where she was and implement those goals effectively within her return to district. So they would have been added to the IEP within 30 days of her return.

The last educational evaluation performed on T. was R-5, Paola Hall's evaluation. Ms. Hall is one of the learning disabilities teacher consultants in the District and is qualified to give this assessment, which summarized the observation at Banyan, indicating that T. had a visual schedule. A visual schedule is also something that is utilized in Ms. Mihalik's class.

When reviewing educational evaluations to plan for a student's programming, the District uses standard scores first, which are most accurate, and then the percentages, which are less accurate and not as reliable as standard scores. Age equivalency and grade equivalency are not used in special education programs, as they are more variable than a standard score or percentile. A small difference in student performance can produce a much larger gain on the age and grade equivalents than a percentile or standard score.

This evaluation reflects T.'s academic profile, and based on her performance the relative weaknesses can be seen in reading, writing and math; and in her cognitive profile, which is consistently in the 60s. Based upon all the evaluations, she would be best instructed where there is a small teacher-to-student ratio. In using the particular tests to devise T.'s goals and objectives, they look at the academic profile, and develop specific

goals based upon performance, and so, for example, her word attack is a standard score of 77, which is in the sixth percentile.

Letter-word identification relates to reading high frequency words with accuracy—sight words. The MD class specifically teaches sight words and sight-word recognition through a variety of teaching tactics, depending on the student and the program deemed most effective for that student. She also has needs in math, and based upon her scores and the individual scores such as number matrices, calculation, and applied problems, the results on the evaluation inform accommodations and modifications in her program. Heywood referenced the modifications and accommodations in the IEP, at page R0060, as giving her a multisensory approach to assist with the acquisition of reading skills. She specified:

Models, pictures, charts, personal examples, graphic organizers and manipulatives are all teaching tools that are utilized to acquire learning efficiently. Giving immediate feedback on tasks provides for greater learning opportunities. Modified grading would occur within the general education curriculum for those cycle classes that we had talked about. Providing a calculator for math tasks again takes away some of the work that would be required, the - - the math work so that she can rely on the operation rather than the computation.

Due to her cognitive profile she learns more slowly than a neurotypical peer. It is all harder for her based upon her cognitive profile. Taking away some of the stressors and the work that taxes her brain allows for more learning opportunities. The counseling provided for in the IEP could be with the school psychologist or a licensed clinical social worker. She would miss forty minutes of either a related-service class or ADL every other day, but not an entire class.

Ms. Heywood disagreed with Ms. Tighe's conclusion that a diagnosis of dyslexia is separate and apart from intellectual functioning. According to the dyslexia handbook, one of the conditions to be discussed when looking at and identifying dyslexia is the level of intellectual functioning.

Tighe's March 2019 report (P-70) notes that comparisons to mean achievement of typically developing peers should not be used as a metric for judging T. Rather, "[T.'s] own performance at the time of A and her performance at the time of B to be compared and we can do that through age equivalent and grade equivalent scores." Heywood reiterated her earlier testimony that age and grade equivalents are not the most accurate representations of a student's skills. Tighe also indicates that skills must focus on the subtests rather than composite scores. Heywood noted that when looking at the special education code, how students' areas of need are identified must be done via composite scores. Subtests will help derive goals for different areas of need, but composite scores help to see overall how a student is achieving in that area of academics.

Tighe provided a comparison of the 2016 educational evaluation and the 2019 educational evaluation, and calculated the months of improvement. She concluded that T. had made progress based upon the scores on the chart, yet cannot attribute the increase to a particular intervention or a change in programming. There were three years between the two evaluations she had compared, and T. was in the District's program for two out of those three years. Tighe could not, in her analysis, determine what progress was attributable to which program.

In 2015 an educational evaluation was done by Suburban Learning Center. T. was in-district between the 2015 and 2016 educational evaluations. She made seven months' improvement for age equivalency, and six months' improvement for grade equivalency. Age equivalency is a twelve-month comparison, versus grade equivalency, which is a ten-month comparison. Grade equivalency is the most inaccurate of any measure of where a student is achieving. So, in a year, T. made seven months' progress. And between 2016 and 2019 she made sixteen months of progress. The reading cluster score reflects six months of progress in the District program. The 2019 score reflects eleven months of progress. In academic applications—grammar, punctuation, mechanics and conventions—she made six months' progress in one year in-district. And the 2019 score shows eleven months' progress since 2016. In academic skills she made ten months of progress, and in math, nineteen months of progress. In basic reading she made thirteen months of progress, so if a third of that is attributed to Banyan, since she was in-district two of those three years, that would equal four and one-third months.

In calculation, which pertains to math, T. made thirty-four months of progress in the District's program. In word attack, there is no noted change, but that doesn't mean she made no progress. She has attention difficulties. A variety of factors influence testing, including attention issues, concentration, and fatigue, all of which can affect test performance. It's the seventh test in the process, and students have gone through many of the other more taxing evaluations prior to arriving at the seventh test.

Spelling is identifying words, and spell sounds is phonemes. From 2016 to 2019 there was ten months of progress in age equivalency and eight months of progress in grade equivalents.

T. had outside reading support at the Lindamood-Bell Center. Lindamood-Bell is a type of multisensory instruction to improve reading mechanics and comprehension. It is Orton based, and incorporates speech and language. T. came to school late every day in order to attend, and missed classes during that time. The Center requires four hours of uninterrupted reading instruction.

Tighe refers to reading being addressed through a two-pronged approach, which is very similar to the in-district program. The mechanics of reading would be addressed through the Wilson system, as proposed by the IEP, and comprehension taught explicitly via appropriately leveled read-alouds and texts with explicit instruction in language-comprehension skills.

Next asked about Tighe's mention of Wilson being delivered with fidelity, Ms. Heywood testified that there is no research to indicate that the person delivering Wilson instruction must be Wilson certified; rather, they need to have been trained in Wilson from the Wilson Institute.

Heywood also disagreed with Tighe's indication that "T. was able to participate fully in every class observed, work independently and engage with all her peers." Tighe had also indicated that T. needed minimal reinforcement and redirection. Heywood testified that based upon her observations of T. at Banyan, there were no peers within the

Wilson program that she interacted with. T. received continual reinforcement through a token economy within the 80-minute session she observed.

Independence is critical for all students, but it is particularly so for T. to be able to function in the world independently, given her cognitive limitations. She has to be able to navigate without somebody instructing her at all times. The District's program fosters that independence. The principles and curriculum are explicitly taught, and students' programs are designed to generalize, such that skills are being brought into the home through activities of daily living, and into the greater world through community-based instruction, where students learn how to navigate their community.

Tighe also says that all teachers at Banyan are either Wilson certified or seeking certification, but Heywood did not see Wilson strategies being used in the other class she observed. Moreover, all teachers do not need to be certified in order for T. to make meaningful progress in her proposed program. The District has highly credentialed special education teachers and Wilson-trained teachers. Students make meaningful progress on a daily basis within the curriculum without Wilson certifications. All teachers teach all areas of the curriculum. The results of the Developmental Reading Assessment (DRA), which measures all areas of reading reported by Tighe, are inconsistent with the District testing in 2019. The District used a standard norm-based test, which is a more reliable measure.

The neuropsychological evaluation by Dr. DaSilva in 2019 says that T. needs development of executive-functioning skills, and the IEP addresses this with goals that will teach her how to organize her thoughts sequentially and in a very specific manner designed for her cognitive profile. Dr. DaSilva also indicates that he doesn't believe that an ABA-based program is appropriate, but then goes on to describe what she requires, which describes Ms. Mihalik's class.

He says she needs a higher level of teaching skills and abstract techniques, but not at her cognitive level. He opines that T. should be in a larger student body so she feels "on par with her peers," but Banyan is an insular community, and not what the world looks like. A student's success as they transition out of school depends on what they

learned in school. Without learning skills to navigate the world, they can't be successful as they enter it.

Based upon her review of the evaluations, her observations, and her review of the IEP, Ms. Heywood's opinion is that the District's proposed IEP offers T. the opportunity to make meaningful educational progress in her home school. Banyan is not the least restrictive environment, it is one of the most restrictive in terms of exposure and interaction with peers. Placement in a public school, whether in a self-contained class or if students are pushed out into other opportunities, provides exposure and interaction with neurotypical peers and allows for a variety of social and academic exposures.

The process by which the team considers the least restrictive placement for T. includes taking into account her present level of academic functioning, as well as standardized measures and cognitive scores. They also consider daily-living skills and how a child has progressed to determine what an appropriate program is for that student. Based upon all of the data considered, the team determined that the most appropriate program for T. was the self-contained class. In determining a student's placement they look at supplementary aids and services and they ask whether the student can be appropriately placed in a general education class and whether the student's needs and relative weaknesses can be accommodated with those services, and will the student make meaningful educational progress within that general education setting with the supplementary aids and services.

The information in the IEP as to T.'s present levels of academic achievement and functional performance came from Banyan. It indicates that T. has difficulty attending to and concentrating on a given assignment or writing task, which suggests attentional difficulty. The report from the speech-language therapist indicates, "T.'s impulsivity often interferes with her ability to internalize times and dates." This is also indicative of an attentional difficulty. The goals were written based upon the present levels of academic achievement and functional performance that were provided to them, and would've been adjusted as necessary if there were any other assessment data.

When T. was in-district previously, she received outside Lindamood-Bell instruction. This is a concern, as the multiple multimodalities could have caused confusion in attempting to apply reading strategies to a variety of assessments, and goes to the consistency of instruction that Tighe indicated is necessary for T.

T. was previously in a CABAS class, and instructed through the Columbia Teachers College program. It is an ABA-based class. The class proposed is multiply disabled, with different curriculum from CABAS, which provides its own curriculum replacements and supplementals. The multiply-disabled-class programs link to the New Jersey Core Curriculum standards, and the curriculums are different.

Heywood testified that more related services don't always mean more progress; often students are pulled out of class for related services, where, in-district, the speech-language pathologist would consult with the teacher to implement strategies to meet goals across the curriculum.

Heywood proved to be a very credible and reliable witness.

### Caroline Crosbie

Ms. Crosby is self-employed and contracted through the Morris School District in a new position as of December 2019, as a behavioral consultant. She also consults with the reading programs at the elementary and middle schools. Prior to that she was the reading intervention teacher working with students in small group or one-to-one in a pullout setting. Prior to that she was for three years the self-contained teacher in the middle school. As a reading interventionist, she assessed students who were recommended by their case manager because of difficulties with reading—students who tested significantly below grade level, more than two years below—and then set up sessions to work with them one-to-one or in a small group setting. They would get direct instruction or multisensory reading instruction as well, to bridge the gap in reading skills. She had been assigned to the middle school and the high school and eventually brought into Frelinghuysen Middle School full time.

Her current responsibilities including consulting with the reading intervention teacher, and recommend strategies and tactics to use based on student data. The data is collected every day with every student the teacher works with, based upon that day's reading session. Looking at the data, they can analyze what should be done next to add different tactics, or change the program. She also works with other special education teachers who have a supplemental reading program in their classes.

The curriculum in use is Wilson Reading as a methodology, and the Corrective Reading curriculum as another way to implement supplemental reading. During her time as the self-contained teacher, Corrective Reading was used not just in reading, but in math as well. The data across the school year demonstrated that students who were reading significantly below grade level had made significant gains in their reading level. When she finished her Ph.D. the District wanted her to stay, and offered her a position in that role, which she accepted.

Crosbie has a Ph.D. from Columbia University in applied behavior analysis, which is a scientific approach to teaching. She also has a master's degree in ABA (May 2015), and also completed a year of a special education master's degree. She holds an undergraduate degree in special and elementary education, conferred in May 2009.

The ABA program is a separate program at Columbia Teachers College. While there as a full-time student she was also employed full time, one of those years within the Morris School District, and the other also as a full-time employee, but at a preschool and elementary school in Yonkers, NY.

There were classes that covered the science of ABA, and other courses which covered methodology of implementing the course work within the everyday classroom. She is certified in ABA at the doctoral level, a board-certified behavior analyst, and has special education and elementary certificates from the State of New Jersey, and the same two certificates in Connecticut. Her Ph.D. dissertation was on students with disabilities and reading word problems, and could there be implemented a peer-tutoring reading-writing package to help students read word problems, and answer them. This was done with the students in her self-contained class at the middle school for all three years.



She was in the CABAS classroom for three years as a self-contained teacher. Prior to working in that classroom, she was at another school, which utilized the principles of ABA in an entire school. The class at Frelinghuysen was different, in that students were moving to a less restrictive environment.

She used ABA principles in class with immediate feedback in the form of positive reinforcement for a correct answer, or a correction. Crosbie testified,

So there's a certain correction procedure that goes along with applied behavior analysis and we would present the student with the correct answer, represent the antecedent so to say, you know, "When did the Revolutionary War happen?" and if the student gave the correct response after we would then move on to another question.

So that particular correction response, we have research showing that it helps minimize error patterns and increases rate of mastery of skills. So these - - this is the type of learning that the students received while also trying to use what was used across the whole school.

This helps minimize error patterns. Data collection is also part of that classroom, and data is recorded for everything, even how long it took to open lockers. They lived and breathed data every day, but made it fun, and the students liked to see how they were doing and progressing.

Crosbie was a special education teacher from July 2015 to July 2018, and designed curriculum for the CABAS classroom, individualized for each student in a way that they could learn. She completed a two-day Wilson Reading training, which reviewed the fourth edition of the Wilson program, including how to write and implement the different parts of the Wilson Reading lesson, and also how to conduct the Wilson Assessment for Decoding and Encoding. This is also known as the WADE, and is used to determine placement for students starting the Wilson program.

In determining placement, there are benchmarks and twelve steps across the Wilson program, and how the student reads words, or says sounds, would determine

what number step they would start at. She has had a few students as the reading intervention teacher for whom Wilson was the best way to teach their reading intervention sessions. In determining the best program for a student, the Wilson placement tests would be looked at, as would a placement test for the Corrective Reading curriculum. The i-Ready scores would be considered to determine where the student was as to phonological awareness, phonics, and vocabulary, as compared to their comprehension scores in literature and nonfiction. If they were told a student who came presented with dyslexia, they would typically use Wilson for their reading sessions.

Crosbie testified that with direct instruction there is a scripted curricula, including Corrective Reading, where skills or objectives are introduced and students are taught in small tasks how to make inferences from a sentence or sentences. The skill is taught to mastery, and data used to insure that the child has learned the skill up to 90 percent accuracy across a few sessions, and then that skill is built upon and reintroduced later. Wilson would also typically be used for multisensory opportunities. Using the principles of ABA within reading intervention enables the teacher to help the student access the multisensory reading or the direct instruction. Immediate feedback is foundational to the principles of ABA, reinforcing correct answers and giving correction procedures for incorrect ones as well. Positive reinforcement is also heavily relied upon. Creating a positive learning environment and approving the student for sitting and staying on task are some of the other ways ABA is used within lessons.

Crosbie testified that ABA is not just used for students with autism; rather, the District uses it school-wide. She led the Positive Behavior in School (PBIS) Committee across the entire middle school when it was set up. Basically, the school has a system whereby students can earn tickets for rewards, for positive behavior in the classroom, walking nicely in the hallway, or achieving a personal goal in class, and exchange those tickets for items in the school store or raffle tickets at a tricky-tray event.

She taught reading as a self-contained teacher and used Corrective Reading and i-Ready, then designed lessons similar to those in other classrooms and inclusion settings or resource-room classes. In assessing a student's progress within the reading intervention program, a baseline assessment would be done. Placement tests would be

conducted for Corrective Reading, and their i-Ready scores considered, to determine whether the WADE for Wilson should be done. A running record would be conducted using the Reading A–Z program to provide running records for different grade levels to get a general sense of where the student functioned on a grade level. Wilson would be used in these interventions.

Data is taken daily after each student response. For example, at the start of a Wilson lesson, how many sounds and letters did a student get right? What sight words and sentences were read correctly? Data would also be taken on fluency.

At the end of her Wilson training through the Wilson program, the program advised that participants were “now ready to go and implement these lessons.” Dr. Crosbie was accepted as an expert in ABA, and reading instruction.

Dr. Crosbie attended the IEP meeting in April 2019 and observed T. at Banyan. As the reading intervention teacher she needed to observe her at school, and then propose at the IEP meeting what could be done in-district. She knew Wilson would be offered in the IEP. T. was receiving Wilson lessons based upon reading needs and was successful in those lessons, and so that would be offered at Frelinghuysen to continue the success she was having, back at her home school. Discussions took place and it was determined to offer 40 minutes a day of Wilson during elective classes.

Referred to the IEP (R-4 at 60), supplementary aids and services notes, “a supplementary multisensory direct instruction reading approach is implemented daily.” Based upon T.’s needs, it would have been suggested that Wilson be the reading approach used with multisensory modalities. Combining and using different modalities and approaches is what is best for T., not prescribing a specific methodology. There is no question that T. would be getting Wilson.

Crosbie’s role would be to implement the 1:1 instruction in the pullout reading sessions and to consult with the language arts teacher and apply the skills learned into her other language arts classes. Ms. Mihalik would have been her teacher under the IEP, and she has worked with her for her entire time as a self-contained teacher at

Frelinghuysen. The language arts teacher would be reporting on the reading and writing goals in the IEP, in consultation with Crosbie. They would be sharing data and discussing progress as a team. As the self-contained teacher, her role in the IEP meetings was to present data collected during the year; report on the progress on the IEP goals for that student; and recommend programming for subsequent years. Her role as a reading intervention teacher was very similar, in that she would share progress using graphs constructed based off curriculum data. Parents were thus aware of where their child stood in term of reading progress.

As the special education teacher on the IEP team, she developed goals and objectives for students. She wouldn't specifically use Wilson as the actual programming part of the goals and objectives because the focus needed to be on the skill the student was trying to accomplish, and the methodologies may need to be changed based upon needs of a specific student. Scripting a goal is about determining the actual skill sought to be accomplished across the school year.

Prior to the IEP meeting, she observed a Wilson lesson and a visual comprehension class. Referencing her notes from those observations, the notes on the visual comprehension class indicate there were six students in that class and one teacher.

Correction procedure means if the wrong answer is given, a correction procedure should follow to present a correction so that the student does not give the same incorrect response again. For example, if a student were asked to spell C-A-T and said D-O-G, the teacher would say "cat is spelled C-A-T," and a student will typically spell it correctly after that. If an answer is correct, positive reinforcement should follow.

The circles in her notes indicate errors, where the teacher reinforced an incorrect response, or did not reinforce a correct response. After a correction, and a student spells a work correctly the second time, saying "good job" effectively reinforces the incorrect response. So where a C is circled on the form, it is because a teacher said "good job" after giving a correction. This is how data is taken on teacher interactions in a CABAS classroom, or an ABA self-contained class.

In her notes she had indicated “where is technology”, and by that she questioned that pictures had been printed out and pasted on poster board, whereas at Frelinghuysen all of the students have their own Chromebooks.

Research has established that in a CABAS or ABA classroom, there should be a ratio of four positive statements to every one negative statement, which indicates whether it is a positive class or not. During the observation of this particular class, Crosbie noted one approval and three disapprovals (negative statements by the teacher). Crosbie took a lot of notes regarding T. being off task. She was very social and talking to other students. Six times she was off task and was redirected, and two additional times she was off task and was not redirected. Called to the front of the class in a story-sequencing exercise, the teacher there prompted T., saying, “I think this one should go, you know, about here,” instead of allowing T. to do it herself. Learning without prompting enables students to learn more effectively, through correction if needed. T. did not give independent responses, but rather was prompted. Each student was supposed to be taking turns presenting to the whole class, but what happened was that the kids were all talking to each other while the teacher worked with one student at a time. Prompting occurred quite a few times when T. went up to talk to the teacher, and once she sat down again she would be talking to her friends and the teacher would call up another student.

The Wilson class Crosbie observed was a 1:1 setting, where T. earned tokens, as used in ABA. She had a very high accuracy rate, at 94 percent. In the one-to-one she was on task. One-to-one allows immediate feedback. Increased engagement and opportunities for engagement provide additional opportunities for a student to master a skill. On new skills or newly learned, her accuracy rate was 80 percent, which is still good, and the expectation would be that she wouldn’t perform as well. Overall she did well in the Wilson class and she was 100 percent on task, enjoyed the token system, and was motivated to learn.

Crosbie reiterated that under the IEP, T. would have received 40 minutes daily of the Wilson program, and nothing was done in that class in 40 minutes that they don’t do in-district. She did not see or learn anything new. She does not have a concern about

40 minutes of instruction instead of 80, because it is the effectiveness of the instruction that is important, not the duration. The data collection the District uses is also different.

Decisions in the District are made in the moment—whether to implement another strategy, or fix an error pattern. If, for example, the same errors are made over and over they would want to try something different; this is what drives their instruction. ABA strategies were used in this class also, and positive reinforcement is built into the structure.

Asked to review DaSilva’s report, Crosbie notes that he indicated, “T. requires small group instruction and positive reinforcement. She benefits when the material is represented in a multisensory format.” This recommendation is the Wilson instruction the District would have provided, ABA principles that incorporate positive reinforcement and small group, if she did not need one-on-one. Multisensory can be used in conjunction with ABA.

She also disagrees with his opinion that instruction with primarily one-to-one service delivery does not afford opportunities to practice skills that small-group placement would. Once a student acquires certain skills, then other students can be introduced into a small group. Discrete Trial Teaching is a very small part of ABA and affords opportunities to progress where a student can learn in a smaller group.

Crosbie noted that T. was giving more correct responses in the one-to-one instruction, where it was evident that ABA-based strategies were being used. The small group was not functional, and she disagrees completely with DaSilva’s statements. The small group needed principles of ABA for the students to maintain on-task behavior and show any mastery of that lesson. ABA is about motivation and preparing a student to learn so they can acquire the skills, and providing a positive classroom environment with positive reinforcement and immediate feedback to be successful. This was something she observed in the Wilson lesson. She also disagrees with DaSilva’s statement that ABA programming is not for preadolescents; rather, it is applicable for anyone of any age.

The severity of a student's needs determines whether a student receives Wilson instruction one to one versus a small-group setting. Those who are more significantly below grade level typically received one-to-one instruction, as there is more to catch up on in their reading skills. If they catch up they are moved to a group, but that does depend upon the student. Students who are at the same level, but at the same time significantly below grade level, can learn in a group, where they can choral respond.

Crosbie proved to be a very credible and reliable witness.

### Jeanne Tighe

Jeanne Tighe's has a bachelor's degree in education of the deaf and hard of hearing and is a certified teacher of the deaf and hard of hearing. She had a concentration in speech-language pathology in her undergraduate degree and went on to get a master's degree in speech-language pathology. She is certified by the American Speech-Language-Hearing Association and has a certificate of clinical competence. She can do screening for disorders including language-based literacy disorders, and can administer standardized or nonstandardized assessments and then draw conclusions, including assessments for literacy disorders.

She testified that she needs to review records, prior testing, and the case history in assessing children because they are "not static." Assessments are tools, and she needs to evaluate and draw conclusions, formulate impressions, and develop a treatment plan. She will review anything related to the questions that are driving the assessment and will observe in a school setting if she can.

Her practice focus is literacy, including assessing students, observing students, and providing treatment recommendations. She is also a Wilson-certified dyslexia practitioner, level I, and a certified SL/DI (structured literacy, dyslexia interventionist). Wilson is a type of structured literacy program, along with Orton-Gillingham and Lindamood-Bell. Anyone struggling to convert printed words to spoken words or vice versa is addressed by Wilson. She has also had Orton-Gillingham literacy training and

Lindamood-Bell programs. She wanted to specialize, so she narrowed her expertise via additional training and has been a literacy specialist for about thirteen years.

Tighe is a State-licensed speech-language pathologist; a New Jersey schools speech-language specialist; a certified teacher of the deaf and hard of hearing; ASHA, Wilson, and SL/DI certified, and a board-certified specialist in child language (BCS-CL). She noted that the New Jersey Dyslexia Handbook addresses screening for dyslexia, and that speech-language pathologists can identify and diagnose dyslexia. She has been in her current private practice since August 2007, Beyond Communication. She employs LDTs and speech-language pathologists and they assess, diagnose, and provide services. Ninety-six percent of their practice is language and literacy disorders.

In doing an assessment they first talk to the parent or school, whoever sought the assessment, and they get the records, including IEPs and prior evaluations, to get a picture of the situation. Sometimes the CST will refer a student. They will observe if they can. Direct testing is done at her office. She chooses the tests to use based upon the concerns and reason for testing to get at the questions driving the evaluation. Then she does the report, including the interpretation of testing, and may include diagnosis and recommendations regarding findings. She testified that her referrals this year are about 50 percent from school districts, but that at other times it could be 30 percent or 70 percent. Districts have also sought recommendations regarding literacy. She has provided instruction to districts' staff on literacy mostly, and also the mandatory two-hour dyslexia training for districts. She has been hired previously by the respondent District.

Tighe also teaches at the College of New Jersey as an adjunct, teaching literacy to mostly special education majors, which is required. She has been an expert witness at the OAL multiple times in literacy. Dyslexia has different interpretations, but broadly is a reading/writing disorder.

She was offered and accepted as an expert in speech-language pathology and language-based learning disabilities, but not in the development of programs for those with language-based learning disabilities. On voir dire she indicated that she received her master's degree in 2003 and taught public school in Pennsylvania for one and a half



years. She was in private practice while teaching, and 15 percent of her time was working with students. In 2007 she was still teaching the deaf in one or two districts, as an in-class-support teacher during language arts or pulled out. For those two districts she had three or four students total. She continued doing that work until 2016 or 2017, and now has people doing it in her company. She is not employed by a school district and hasn't been since 2004, in Pennsylvania. She hasn't written an IEP since 2004 and has never done it in New Jersey. Also since 2004 she has not provided speech-language services to a school in New Jersey. She is not a certified special education teacher, nor certified to do Woodcock-Johnson, nor certified to do IQ testing, nor is she an LDTC.

She did her Wilson training in 2008, and they now require continuing education units (CEU), and hers are due next year. She had two or three days of training in dyslexia, but no certificate. The Orton-Gillingham training she had was similar to the two-to-three-day Wilson overview training she had. Her SL/DI certificate was received in around 2017 from an organization associated with the International Dyslexia Organization, a professional group, not a school. Her BCS-CL was done in 2019. Regarding her Wilson certificate, she has not taught students in a school in Wilson, but has taught a few dozen in her practice. Her SL/DI certificate, she believes, is in the middle tier of the three levels. She had to complete a practicum, she believes, in 2007–2008,<sup>6</sup> and her Wilson training qualified for that. She had to pass exam on the knowledge and practice standards.

SL/DI allows her to say she has this knowledge and these skills to work with kids with literacy disabilities. Parents can seek someone on the list to help with their child.

When she was advised that she is not on the list at the Center for Effective Reading Instruction, Tighe stated she doesn't understand why, speculating that maybe she missed her dues payment, but that she's always been in it, to indicate she has the SL/DI certificate. The International Dyslexia Association also publishes a list, and she doesn't know why she is not on that either, and testified she's been on it before. She has not

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<sup>6</sup> It is unclear why the training was completed in or about 2008, but her certificate was not received until 2017.

developed programs or curriculum for schools, but testified that she's familiar with New Jersey standards.

Tighe testified that she evaluated T. in 2018 and again in 2019.<sup>7</sup> At the initial evaluation in 2018 (P-43), T. was in fourth grade. Her parents had reached out with concerns over slow literacy skills. She had significant developmental delays in language and the parents wanted to know what was happening and what they could do.

Tighe did a records review of the evaluations, IEPs, and what had been tried. She also did IQ testing and academic testing.<sup>8</sup> She is familiar with ABA, but it's not an area of her expertise. She reviewed Barenbaum's report of TONI testing, which revealed below-average intellectual ability. She also observed T. at school, saying it was important to do so, yet previously testified that she does it when possible. At this observation, T. worked one-to-one with the teacher for 70 minutes and moved from topic to topic at a fast pace. When she got items wrong they didn't correct her, they just kept going, and there was no instruction in the things she couldn't do. Her capabilities were better measured by using lower-age testing, because they knew she would fail same-age tests. She has significant disability based on expectations for her age, and what she can do is more comparable to early-elementary-age students, rather than her actual-age matched peers.

Tighe testified that T. has a disorder. She has significant developmental delays and is not going to catch up with typically developing peers—she is on a different trajectory. Her skills are not going to catch up fully. They will not mimic typical development. “[T.’s] development is [T.’s] development.” She has below-average/reduced cognitive abilities, but the intervention is the same—structured literacy. T. is a complicated case. She has a severe global language disorder. She has vulnerabilities in cognitive processes, and difficulties with sustained attention. She has anxiety, reduced cognition, and severe and multimodal needs, and she needs a teacher who is diagnostic and can address errors as T. makes them. The most complex children need the most.

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<sup>7</sup> The 2019–2020 school year is at issue in this matter.

<sup>8</sup> She is not qualified to administer IQ tests or academic tests, but when asked why she was qualified to review them, she responded, “I have to.”

She described T. as very social, and explained that social interaction was one of her struggles. T. wants to sit and talk but has difficulty understanding social normative behaviors, and so her social needs need to be considered. Part of an appropriate program for T. would be social opportunity, because typically developing age-matched peers are a social challenge for T., and so development of social skills is necessary.

Tighe testified that she was aware that T. went to Banyan for fifth grade. It fit Tighe's recommendations for her. Tighe's March 22, 2019, testing and April 10, 2019, observation (P-70) took place in the spring of fifth grade. T.'s parents asked her to evaluate, and provided the IEP indicating that the class proposed would be an ABA class. She saw that instruction in fourth grade, and felt it was not appropriate as a foundation—not the whole issue, but important. So, she wanted to observe, and did so in the fall of last year (2020).

Tighe testified that based upon the new assessments she did<sup>9</sup> (page 6), T. progressed at Banyan. T. will learn differently due to her disorder.

T.'s program at Banyan includes an extensive language component, including intensive reading and writing instruction every day. Per the Banyan IEP, Wilson gives equal attention to reading and spelling, and T. needs spelling goals. In the test of early written language, she improved significantly in eight months at Banyan. She was able to write better sentences and her spelling and composition were much better. Tighe testified, "She was minimally literate when I met her." Her notes from the observation at Banyan indicate that the teacher, Perkins, followed the Wilson lessons precisely and with fidelity. She was amazed at how well T. was doing, and said that she needs to continue in Wilson instruction.

TMC, Training Minds for Comprehension, is a language class they have every day at Banyan using Lindamood-Bell visualizing and verbalizing; it is a language-therapy

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<sup>9</sup> P-70 was later replaced with a redacted version, to remove portions of her evaluation of the program since she was not qualified as an expert in that area.

program. T. was engaged and participated. Then she observed the reading class. The theme was similar and related to that in the prior class, so consistency across classes reinforces building language in context. A cohesive approach to building language is critical for her.

Tighe stated that Banyan meets the educational profile T. needs and her progress is measurable. There is no justification to remove her. The District offering Wilson 40 minutes a day from a teacher not certified in Wilson is similar to the program T. was in for fourth grade. It's not identical, but in that program T. made minimal, much slower, progress. Tighe's recommendations have come to fruition at Banyan.

The District IEP doesn't mention Wilson, but vaguely seems to suggest it. Language doesn't seem to be the emphasis at the District, and T. still needs that.

Tighe prepared a supplemental report (P-90) after her observation at the District. She reviewed additional records, and testified that T. had continued to progress at Banyan. She reached out to the District with questions she had regarding Wilson instruction, which Ms. Benson at the District said T. received daily, but the goals are not organized the way Wilson is and it didn't sound like Wilson. The District indicated that T. would have one-on-one or small-group instruction at 40 minutes a day with a Wilson-trained teacher. Tighe felt that T. needed the 80 minutes she's getting now, at least, due to her significant needs. Also, the goals don't describe the instruction as Wilson.

Tighe testified that she was not permitted to observe the supplemental reading class.<sup>10</sup> She did observe the main self-contained classroom for one hour, from 8:30 a.m. to 9:30 a.m., which she was told was the majority of the language arts block. There were eight students, and each had a paraprofessional; so there was one teacher, eight paraprofessionals, and eight students. All had Chromebooks. At 9:05 students were one-on-one at tables, each with a paraprofessional, and the teacher, Ms. Mihalik, was sitting with two students, doing a different lesson with each one. She would be reading with one student while the other was working on the computer or completing a worksheet

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<sup>10</sup> Tighe was not qualified as an expert in program evaluation. The parent did, however, observe the class.

or something, and then switch between students. Tighe felt there was no instruction going on.

Tighe was concerned that during most of the time each student spent one-on-one with their paraprofessional, none of the paraprofessionals were doing structured literacy teaching. She felt the class wasn't appropriate for T., as there was no opportunity, from what she saw, for generalization, as in Wilson. Based on her review of the records, testing, and observations, she concluded that the District wasn't offering T. a language and literacy program that will confer a benefit to her. She needs specific instructional elements that Tighe didn't see in-district. T. has a reading disability, a language disability, and broader cognitive issues and she needs Banyan in order to continue the progress she's made.

On cross-examination, Tighe stated that she became a licensed speech-language pathologist in approximately 2004, and a school-certified speech-language specialist in 2003. She received a certificate of clinical competence in 2004; earned a Wilson dyslexia practitioner credential, level I, in 2008; and before that participated in a three-day introduction class in 2007. Then she did a year-long practicum in 2007–2008, and during her Wilson practicum she was teaching approximately three students in Wilson.

She opened Beyond Communication in 2007 with a partner and in 2014 became the sole owner. She did her training with the Robinowitz Education Center. Much of the course was done online. She worked as a speech-language pathologist at the same time for her own company, and did all the administrative work, and answered the telephone, etc. She also did assessments privately in 2007 and 2008, and can't recall how many.

Summarizing 2007 and 2008, Tighe testified that she did the practicum; did between twenty-five and fifty evaluations of students; did the administrative work at her company; did the reports for those fifty evaluations; and provided speech-language direct therapy to students with a caseload of approximately fifteen. Tighe was asked whether and how she had time to see her three Wilson students, each for one hour, three times a week, with all the other things she stated she was doing in 2007–2008.

Asked whether there are recommendations regarding frequency and duration of Wilson provision to a student, Tighe indicated that the factors are severity of need, history of intervention, age, and individual setting. It can be done in a group. The parameters are usually three times a week recommended, and not less than 45 to 60 minutes per lesson. Quality of instructor and fidelity to program are important.

Tighe doesn't always have students getting direct Wilson instruction from her. Some years she had one or two; other years she had ten. Since 2017, she has had maybe two. T. was not provided direct Wilson instruction by her. The Wilson certificate is given by Wilson, not by a state or federal agency, and Wilson charges for the training. They also require that you recertify periodically with continuing education units, which they also charge for. In 2021 she has to submit CEU requirements and recertify herself, and they charge a fee for that. She is not sure where her CEU credits will need to be done next year, and "hasn't checked."

The structured literacy dyslexia intervention certificate is bestowed by the International Dyslexia Association, not a state or federally accredited organization or agency, and also not overseen by the Department of Education. The certification has to be paid for and there are also annual dues. Also, there are CEU requirements and courses that have to be paid for.

Tighe has testified at the OAL around ten times, always for parents and usually for Ms. Gaines, five times or more. She receives referrals from other attorneys—several dozen a year from parents' attorneys since 2007, when she opened her practice. She has been admitted as an expert, but not in language-based learning disabilities in all cases and not as a structured-literacy expert in any cases. In several cases in which she testified, she had not received her Wilson certificate yet.

In every single case in which she has testified, Tighe supported the out-of-district placement. In each case she found that the student had a severe learning disability, except for maybe one, which had a "different focus." Where there was a reading disability and/or dyslexia case she testified in, she did not always recommend Wilson.

Not every student with a language-based disability needs Wilson specifically. When she wrote the report in 2018 for T., she recommended structured literacy. Wilson doesn't work for every student. There is a difference between an instructional approach and an instructional program. An instructional approach is a set of underlying principles, teacher practices, and instructional content: what are we teaching, and how are we teaching it? Wilson is an instructional program, a brand name, and they are paid for the program. They certify the trainers, who pay for the training.

She was asked about her testimony on direct examination that she can diagnose language and literacy disorders, and language-based literacy disorders, yet she cannot diagnose a language-based learning disability, and nowhere does the scope of practice (P-99) indicate that a speech-language pathologist can diagnose language-based learning disabilities. She focuses on a child's language system as intricately tied to cognition. Obtaining information about a child's cognitive abilities, social abilities and motor processes that influence language, and different views of the child helps put things in context for that child. Asked how student cognition is related to their language development, she testified that it is a complex reciprocal interaction on multiple levels and that language is a big part of cognition. A student with a lower cognitive level will have difficulty with language development and difficulty developing language-based literacy skills. Cognitive level does affect reading comprehension, which starts with decoding, which is basic and foundational and builds to comprehension. Cognition level plays into whether higher level comprehension can be achieved, and affects comprehension if there is low cognition. Asked about prior testimony regarding the standard deviation, she indicated that usually the standard deviation above and below the mean is broadly considered average. The mean is 100, so the standard deviation would be 15. She reviewed T.'s psychological evaluation and cognitive level and noted that the Barenbaum report indicated that her IQ was 78 for nonverbal ability. The 2015 psychological assessment indicated that the full-scale IQ was 62. Tighe didn't see the psychological assessment the District did in 2013, or it would have been in her report. She has seen the TONI test used occasionally; it is a test only of nonverbal ability.

New Jersey standards regarding an individual with a 62 IQ are two or three standard deviations below average, and would be classified as "intellectual disability."

According to the New Jersey Dyslexia Handbook, a team of individuals would determine or diagnose dyslexia. When asked on direct examination if T. was dyslexic, she responded, “you can get different answers from different people,” but using the New Jersey definition of dyslexic, T. is not.

Cognitive level is also a factor in the rate of progress in a reading program. T.’s reading deficits are very understandable based upon cognitive factors. Tighe testified that she would expect T.’s rate of progress in spoken or written language skills to be slower than that of a student of average cognitive abilities. She said in a 2019 report, “It is well known to all parties that [T.] exhibits reduced intellectual ability and it is realistic to expect that her rate of growth and academic skills will be slower than that of her peers.” The report was written after T. had been at Banyan for a period of time. In contrast, her 2018 report, when T. was in the District program, does not qualify T.’s rate of progress and doesn’t say it’s because of reduced intellectual ability.

Tighe has a long-standing relationship with Banyan, which she noted in her report. She has been going there since 2007, and knows the teachers, the staff and the program. In many cases she has testified in, she has recommended that the student go to Banyan, including T., and Banyan has referred parents to her a few times, including siblings of a student.

She first consulted with petitioners in February or March 2018, and first evaluated T. in April 2018 (P-43). The series of questions in her 2018 report are devised with the parents in hearing a summary of their concerns in the initial interview. In the second question, “[w]hy has the process of learning to read been so challenging for [T.]?”, there is no mention of cognitive ability affecting T.’s ability to read. Tighe agrees she didn’t acknowledge it, but “said it differently.”

She spoke with the parents right after the testing, providing immediate feedback before she wrote the report. Tighe testified that she didn’t “recall specifically” whether



she expressed to the parents that T.'s cognitive level would slow her rate of progress; indeed, the report does not indicate that.<sup>11</sup>

Next on page 17 is the Systematic Analysis of Language Transcripts, a standardized test, as are the Test of Narrative Language, and the Test of Integrated Language and Literacy Skills. Nowhere in the summary of those three tests does she mention cognitive level impacting those scores. Tighe explained, indicating that "it is entirely possible for an individual with low cognitive ability to not necessarily exhibit deficits across the board in all of these different expressive-language skills that I'm measuring."

Tighe testified that she reviewed a series of T.'s prior evaluations. She agreed that she reviewed an IEP, but didn't list it in the reports reviewed. She did not recall seeing (and did not have listed in her 2018 report) the following: the school speech-language evaluation dated September 23, 2010 (P-3); the educational evaluation from 2010 (P-4); the speech-language evaluation from 2013 (P-10); the 2014 speech-language evaluation from Suburban Speech Center (P-17), and the 2015 speech-language evaluation from Suburban Speech Center (P-20).

The 2016 reevaluation is referenced in her report (P-24). There are five reports before this one that she never saw. Asked whether it is important to have the prior history before assessing, she testified that these evaluations were done when T. was very young, and "there is a limit to the relevance of documents." In determining T.'s rate of progress, the five prior speech-language assessments are not important, although she would have reviewed them if they were made available to her.<sup>12</sup>

If she is provided with evaluations from three years prior she will look at them, but she does tell parents not to give her all of the documentation because it can get unwieldy.

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<sup>11</sup> Page 14 of the report compares T. to same-age students. Page 16, regarding oral language, is a standard assessment and speaks only of age-related equivalents. No reference to cognitive level is made.

<sup>12</sup> Tighe testified previously on direct examination that she needs to review records, the case history, and prior testing, because kids are "not static." She also testified that she would review "anything related to the questions that are driving the assessment."

Yet asked in 2018 to determine why T.'s rate of progress in language was slow; and that isn't the prior rate of progress important, she responded, "only to an extent."<sup>13</sup>

Asked about the two Suburban Speech Center evaluations, done one year apart when T. was still in-district (P-17 and P-20), Tighe agreed that her comparison of the two was "ostensibly to show progress that she made at Banyan." On the Goldman-Fristoe test, T. improved by 23 standard score points, which Tighe agreed was progress for T. Asked about the Pre-Reading Inventory test (P-20), Tighe indicated that she hasn't administered it, but between 2014 and 2015 noted that T. improved in all but one area.<sup>14</sup> She was in-district then. Tighe indicated, however, that this would not have assisted with her 2018 report because she doesn't know this assessment.

She observed the ABA program, and did not believe a behaviorist is qualified to administer the Wilson training unless they are a Wilson trainer. Student motivation plays a role in a student acquiring literacy skills; some get frustrated and lose motivation, which influences progress. Banyan has a behaviorist on staff, and also uses paraprofessionals in its program. Asked about her prior testimony that all Banyan teachers are Wilson certified, Tighe stated that some are going through the training, and, as such, she "may not have been specific enough in that statement," in that some may be "in the process, but not complete." She was not familiar with most of the names of teachers at Banyan she was asked about specifically, and cannot verify that all were Wilson certified before she wrote her report or before she testified in March. She agreed that when she testified in March that all Banyan teachers were Wilson certified she wasn't actually aware that they were.

She performed two assessments of T., the first one in 2018 after petitioners had consulted with their counsel. She observed T. twice and spoke to the mother after the first and second evaluations, and they met to review them. The parents paid for the observations; evaluations and meetings are included in the cost. She is being paid to testify and for her time. She never discussed educational or psychological testing with

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<sup>13</sup> I found this testimony to be particularly not credible.

<sup>14</sup> Progress in three reading skills was achieved.

anyone from the District. She would have discussed the content (of both the 2018 and 2019 reports) with Ms. Gaines and with petitioners before producing the final reports, and “may have” incorporated their feedback. Tighe has not seen T. since the 2019 assessment. She wasn’t aware that T. had a speech-language evaluation every year from 2013 to 2019, and noted that a yearly evaluation is not typical or usual to do. There could be a risk of retest-learning effects, where a student would learn things from the experience of taking the tests, which would impact follow-up tests. Some of the 2019 assessments were the same ones she had in 2018 to show that she had made progress at Banyan, not to determine skills. In the 2019 report she also made a comparison of the educational testing, even though she is not an LDTC, is not a school psychologist, and has no experience in administering the Woodcock-Johnson test. Tighe agreed that administering the test is outside her scope, but did not agree that interpreting the test is also outside her scope.

When testing T. in 2018, T.’s scores were discussed as compared to same-age peers on standardized assessments; Tighe commented that T.’s scores were extremely low compared to those of same-age peers. Yet in her 2019 assessment, Tighe switched to using age and grade equivalents. She denied that this was done to justify keeping T. at Banyan, and denied that if she had used the standardized scores in 2019 it would not have demonstrated progress.

In 2018 she administered eight tests to T. in one day, and they took breaks. She testified that in 2018 T. struggled not just in reading, but said that she can’t speak to math, science, social studies, or OT. Her recommendations in 2018 included ten to fifteen minutes per day of direct-interacting activities based upon her responsiveness, in accordance with phonological-awareness research that shows that amount of time can be effective. She also indicated that T. requires daily structured-literacy instruction, such as Wilson or Orton, but not limited to those; rather, it was a broader recommendation for structured literacy, and it would be reasonable to consider other structured-literacy approaches for T.—it does not need to be Wilson. Other approaches, including Orton-Gillingham, would not require someone to be Wilson certified.

In 2016 T. had the TOLD assessment, which Tighe did not administer, as she doesn't use it. But she did use the Phonological Awareness Test (PAT), which is not normed for T.'s age.

Tighe said she has been to the Banyan two or three times during the 2018–2019 school year, which is typical. She hasn't provided training to Banyan staff. Between 2017 and 2019 she referred approximately eight students there.

Tighe was not aware who T.'s reading instructor was, or what their qualifications were, when T. was placed at Banyan. She was aware that in 2018 petitioners removed T. from school to attend outside reading instruction in Lindamood-Bell, yet there is no mention in her report of having reviewed that participation. There was also no mention of the IEP report she reviewed, which isn't listed. Asked if there were any other records she reviewed that were not listed, Tighe indicated that she did not believe so.

She is not aware what Wilson books T. is on now. She noted that it was taking T. two years to complete two books. Wilson does indicate when to move a student forward, but there is no pacing guide per se, and movement forward is based on the student's skills. Tighe had previously testified that the District's goal of moving T. from a DRA level of 16 to 20 was not realistic, yet her independent DRA level in March 2019 for reading was 16.

She didn't attend any of T.'s IEP meetings at the time of the April 2019 IEP. She had already assessed T. on March 22, 2019, and observed T. at Banyan on April 10, 2019; she probably issued her report in May 2019.

As part of her 2018 report she administered the Structured Photographic Expressive Language Test 3 (SPELT-3) and noted a small change from 2016, which she felt did not necessarily mean progress, but could be within the boundaries of likely measurement error. She did not administer it in 2019, only in 2018 when she didn't know T., and so that evaluation had a different scope and purpose.<sup>15</sup> In 2019 she was looking

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<sup>15</sup> She compared 2016 to 2018, but then didn't do the test in 2019, so no comparisons are available.

for areas of change. Tighe was asked whether the 2019 evaluation purpose was to have T. remain at Banyan, to which she responded no, that it wasn't written in any way to support her remaining there. She spoke to the parents, and "imagines" that they said they wanted her to remain at Banyan.

On redirect examination, Tighe testified that purpose of the 2019 evaluation was to determine if T. was making progress at Banyan. If not, she would have told the parents, as a student should not be in a program that is not evidencing progress. In that event she would have recommended something different. She would not have said to keep T. at Banyan just because the parents want to or because T. has friends there. The parents reported to her that they thought things were going well, and maybe they specifically did say, "we want this," but that doesn't influence her decision.

T. does struggle with attention and she used strategies to keep her engaged during the day of testing. Tighe stated that there is no evidence that T. was tired or underperforming for her testing (from 9:30 a.m. to 2:30 p.m.), such that it would negatively impact the results.

Asked about T.'s cognitive vulnerabilities, or weaknesses in broader cognitive skills, Tighe defined that as the different facets of intelligence, memory, processing speed, reasoning and verbal skills. Global means not just in literacy or language, but across areas of cognition. Language is an area you can teach, but processing or memory you cannot. T. will never be at age level relative to her language.

Tighe stated earlier that when finished with her Wilson course, she wasn't qualified to teach it yet, but agreed that she taught three students during that time, five days a week, for one hour a day each, with no supervisors present.

Tighe did not review the 2013 psychological evaluation (P-8) before the 2018 report. That evaluation revealed a full-scale IQ score in the extremely low range. The 2013 evaluation by the McCarton Center (P-13) found T.'s full-scale IQ to be 70. The District psychological evaluation in 2016 (P-26) noted her full-scale IQ to be 62. Tighe

agreed that all of T.'s psychological evaluations reveal a full-scale IQ of between 60 and 70.

Overall, I found Tighe's testimony to be unconvincing.

K.A.

T.'s mother answered several questions to provide background information only. She indicated that she wanted to make changes for fourth grade. T. was receiving Lindamood-Bell during school hours, which the District did not object to, and the District amended the fourth-grade IEP to include the attendance at Lindamood-Bell. At that time, the District also changed T.'s classification to multiply disabled, which was felt to be a more fitting classification given her cognitive abilities.

The Barenbaum evaluation (P-42) was sought because she could evaluate T. with a nonverbal IQ test. All prior reports had cautioned about the IQ scores obtained, because all were language-based tests. Barenbaum found the IQ score to be 78 and did some other testing and observed her in school. She felt T.'s severe language learning disability required a different approach and that T. was capable of more. She said to put her in a different setting.

They sought an oral and written evaluation given T.'s disability, and Tighe recommended Banyan. They visited, and felt it would be an appropriate program, and asked the District to place her there, which the District declined to do. She believes they proposed the same CABAS program for fifth grade. K.A. agreed that they had waived their claims for that year, but that they ultimately unilaterally placed her there for the 2018–2019 school year at a cost of \$50,000 plus transportation.

K.A. testified that there were reading and social changes. She showed more willingness to read, more independent confidence, and improvement in oral language and vocabulary. Banyan reported progress in literacy and language.

The parents asked the District to continue T. at Banyan through the 2019 ESY and the 2019–2020 school year. She sought a reevaluation by Tighe to see how she was doing at Banyan (P–70), which confirmed that she was progressing. K.A. testified she found the proposed IEP for sixth grade “really surprising and really confusing,” because the District proposed that T. return to the District in a self-contained multiply-disabled ABA class. She testified that it was surprising and confusing, stating, “I thought we were a team . . . wanting the most appropriate, you know, program,” and to go back and do what had been done was “hard.” T. had struggled and now something different was working.

Banyan’s April 3, 2019, IEP (P-67) said to continue with the same reading program, which was Wilson twice a day. The District stated at their IEP meeting that T. would receive Wilson if she returned to their program, but that was not explicit in the IEP. The District proposed 40 minutes, but at Banyan she had 80, and K.A. was concerned it was less time. K.A. also felt that Banyan was the first opportunity T. had to interact with peers. She testified that she would’ve considered the District program, but wanted T. at Banyan.

On cross-examination, K.A. agreed that T. continues to have severe receptive and expressive language delays. She was in a partial program in kindergarten and first grade, full year. She was in school until after lunch, four hours, from 10 a.m. on, and did the first two hours at “Kids Under One Roof,” and no one expressed concerns. From 2016 to 2019 T. was in-district two years and at Banyan for one of those years. K.A. was concerned with her progress following evaluation by the McCarton Center. The prepared chart (R-23) reflects that she made 3.33 months’ progress at Banyan in her academic skills based on 2019 testing (for the period of 2016 to 2019), but from 2014 to 2016 the chart reflects 10 months’ progress in academic skills while she was in-district. The 2015 and 2016 evaluations were by the District, and she agrees that she discussed the progress with the child study team. She testified that the 2016 to 2019 rate of progress at Banyan is concerning also.

The District had recommended the self-contained class and they didn’t want that. Some kids were nonverbal, and she felt that was “not the type of environment that she would be successful.” She felt T. needed to be surrounded by language, and she believes they expressed this and that it was reported in the parent concerns. She stated that the

District had recommended on several occasions that T. go into a more restrictive, self-contained class. She spoke to Barenbaum before the testing to determine what assessments would be done. She suggested that Barenbaum do a nonverbal IQ test, but “doesn’t recall” who told her to ask for that. She went to Banyan once with her husband for “around an hour or so,” and they saw a reading class and “some children in the library,” and that was all she could “recall specifically, you know, recall.” She was also there once with T. for visitation day. K.A. also testified, “I don’t recall specifically,” when asked who had referred her to Banyan, indicating she “saw a number of schools,” yet testified they applied only to Banyan. She toured the building and spoke to the counselor, principal, and assistant principal, as well as several staff members. Asked when that visit was, K.A. testified, “I would think probably not—not specifically, but just late like March—February, March . . . of 2018.” That was T.’s fourth-grade year. They decided Banyan was appropriate from the first day they picked T. up and she asked if she could go there. They had decided to send T. after she was accepted and after determining that there were no other options in-district, probably June of her fourth-grade year, late spring or early summer. They decided it was appropriate for her after she was placed, and they saw her “happy and progressing.”<sup>16</sup>

They agree that when they settled with the District for the fourth-grade year and kept her at Banyan, the District said they still had an appropriate program for her, and K.S. knows that the agreement said that. She had observed the morning self-contained class in-district, took notes, and said that T. wouldn’t have an opportunity to interact with any typically developing peers during the day from what she saw, and that there were no peers that were “a good fit for her.” K.A. denied the suggestion that she did not want T. in that class because there were students with disabilities, yet agreed that there are no typically developing peers at Banyan at all, adding that is okay because Banyan is “appropriate for her,” because all the children at Banyan have language-based disabilities, and there are children in the multiply disabled class with different needs. K.A. agreed that T. had participated in an after-school cheerleading program in Morristown for a year, but did not discuss with anyone in-district the extracurricular activities T. would have access to if in the District program.

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<sup>16</sup> I found this testimony to be less than credible.



K.A. was asked about the parental concern noted in the IEP.

Q. “Mr. and Mrs. [A.] have expressed concerns for [T.’s] academic progress. They feel that [T.] is not progressing on par with her peers in reading, writing, or math skills.” Do you see that?

A. Yep.

Q. Was it your expectation, Mrs. [A.], that [T.] would progress at the same rate of her neurotypical peers at the time this IEP was written?

A. You know, I think that this was - -

Q. It’s just a yes or no. Was it your expectation that [T.] was going to progress at the same rate as her neurotypical peers?

A. We didn’t know. We didn’t know, you know, she’s my first daughter, my first kid. I was a new mom and we did what we had to do for her at any given point. We tried EI, we tried three years of a district, you know, pre-kindergarten program. The District themselves put her in a general ed class with support, so we trusted them, we were hopeful. I had no idea what was ahead of us, you know.

Q. Your answer is that you expected her to progress on par with her peers, is that correct?

A. I don’t know what I expected. I wanted her to - - I don’t know, I don’t know.

Q. Did you read this IEP when you received it?

A. I’m sorry?

Q. Did you read this IEP when you received it?

A. Yes.

Q. Did you sign the IEP to implement it, or did it just go into effect?

A. I’d have to take a look. There have been many IEPs.

Q. Well, let me ask you this. Did this IEP go into effect?

A. I believe so. I would have to check. This is - - I have to look at the other ones in first grade.

Q. That's all right. I'll withdraw the question.

I found K.A.'s testimony as a whole to be evasive and less than credible.

### Jennifer Sansone

Jennifer Sansone has a master's degree in childhood education and a master of science in literacy. She testified that teaching struggling readers is different from teaching typically developing students. Special education students with an IEP should receive a multisensory structured language approach for struggling readers; intensive one-to-one or small group by certified Orton-Gillingham instructors, which is a hands-on, multisensory structured approach. Different programs use it different ways, but that is the broad general term for multisensory instruction. Wilson is another example.

Ms. Sansone has a certification as a reading specialist and also as a teacher of students with disabilities. She teaches only one class now due to other responsibilities, including developing programs for students assessing students, monitoring progress, drafting goals and objectives, etc. She is a member of the child study team and the intake team and was offered as an expert in Wilson reading, special education, and literacy, and as a reading specialist. She also noted that Orton-Gillingham requires a certification, notwithstanding Tighe's testimony that certification is not required. They use the Orton-Gillingham philosophy at Banyan. Sansone was admitted in all four areas of expertise proposed.

Students at Banyan are all classified as special education students with IEPs. They have language-based learning disabilities, and most have expressive and receptive language disorders. Some are mild autistic, and some have mild or moderate cognitive impairment. She was involved with T.'s admission process and reviewed records, met with the parents, did the intake, and found T. appropriate for Banyan. She also did reading assessments with her to determine her programming. They received copies of

prior IEPs and evaluations were provided by the District or outside providers. She saw that T. had complex needs. She was a low reader, significantly below grade level. Sansone testified that it is “important to look at the history of the student to understand where they’re coming from.”<sup>17</sup> They determined that T. needed a very intensive literacy-based program, so they determined to provide Wilson one on one for 80 minutes each day. She also had a 40-minute reading class and a 40-minute writing class, and a 40-minute comprehensive class utilizing Lindamood-Bell. In her first year at Banyan, her teacher, Ms. Perkins, was going through the certification process her first year and the witness was her supervisor.<sup>18</sup> T. had five periods per day of literacy: two Wilson periods, a reading period, a writing class, and TMC, training minds for comprehension, which used Lindamood-Bell’s visualizing and verbalizing program.<sup>19</sup> Her language skills were not good when she arrived there, so she got speech and language also.

There are two potential starting points in the Wilson Reading System, 1.1 and 1.3. At the time that T.’s Wilson instruction began at Banyan, she started at step 1.3 because she knew her basic consonant sounds, short vowel sounds, and the concepts presented in 1.1 and 1.2. By May 2019 she was at step 3.5, which shows progress. She also made progress in her writing and spelling.

Sansone attended the April 3, 2019, IEP meeting at Banyan. Sansone reported that she was shocked that the District had proposed the ABA program in the District, because she “couldn’t even imagine T. needing an ABA program.” She had never needed a behaviorist at Banyan. Sansone testified that the District indicated that T. would be receiving Wilson instruction with Dr. Crosbie, but didn’t specify how many minutes per week; rather, the District related that Dr. Crosbie had indicated that T. “would get the amount of minutes that she needed,” and Sanson recommended 80 minutes per day, but wasn’t sure if that would be able to be implemented. In the witness’s opinion Crosbie is not qualified to teach Wilson with fidelity, especially given T.’s lower cognitive ability. She doesn’t feel 40 minutes a day is enough for T., after she made great progress. The duration is important, and a student with a below-average IQ would benefit from having

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<sup>17</sup> This appears to contradict what Tighe testified to earlier, about too much data.

<sup>18</sup> Thus, the teacher was not yet certified.

<sup>19</sup> Sansone testified that T. presented as way below grade level in all areas, but never mentioned her IQ.

an entire Wilson lesson each day, rather than over two or three days. T. wouldn't progress at the same rate if her instruction time were reduced. In Sansone's opinion, the reading goals in the IEP don't encompass everything T. needs.

Comparing the WIST testing from September 2018 (P-55)—where T.'s standard score for word identification was less than 40—to the September 2019 test (P-87)—where her standard score was 44—reveals that T. is still in the very-poor range for word identification. Her spelling is also poor, but getting better.

T. continues to attend Banyan, but now receives four periods a day instead of five due to COVID and a hybrid school day. She receives two periods of Wilson, one TMC, one reading and writing combined, and math. There are virtual classes for science and social studies in the afternoons.

On cross-examination, Sansone stated that T. can both decode and read now, not at her grade level, but at a third-grade level. She ended the 2018–19 school year at step 3.5 of Wilson, then started the 2019–20 school year at 3.0. All students at Banyan do this for review purposes at the start of a new school year. Sometime during the 2019–20 year she went to 4.0 before the COVID shutdown.<sup>20</sup> She is now on step 5 the last few weeks.<sup>21</sup>

Sansone did not know who inputted the information in P-8, it was whomever the reading teacher was on each of those dates. "Not applicable" on the chart means no test was done because the student had reached the ceiling. Once the student reaches 100 percent on a task they don't test that task again.

T. has been at Banyan two and a half years. She now has Mr. Cuellar as her teacher for almost everything, as due to COVID, students are staying with one teacher. Sansone has been the only one that can provide Wilson training (since 2016), although two others are going through the process now to be able to. Sansone agreed that she was upset when the District proposed that T. return to the District. She testified that it's

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<sup>20</sup> Banyan closed in March 2020 and at some point virtual classes took place. They reopened in September 2020.

<sup>21</sup> This witness testified on November 2, 2020.

not appropriate to compare T. to typically developing students because she has severe needs, language-based learning disabilities, and articulation issues. She is a complex child with lower cognitive abilities, and her learning pace will be “slower than any typically developing student with average ability”; her pace is “individualized to meet her needs.”

She agreed that the Banyan IEP goals do not reflect what grade level T. would achieve at the end of the school year, because they approach it in a developmental way. They do test and assess for grade level, but look more at the developmental skills. The writing teacher, Brian, was not certified then, nor was the math teacher, but that’s not applicable to Wilson. Reading would have been with Ms. Megna, who was going through the training. Ms. Perkins had introductory Wilson ten years ago, then had to retake it starting at Level I certification in 2018 to 2019 because more than five years had elapsed. You either have to have the Level I certification or be enrolled in it to be qualified to teach Wilson.

The introductory course is only 16.5 hours and focuses on the early steps only, so she supervised Perkins two to three times a week. In 2018–2019 T. had individual Wilson instruction; she did Level I with her. In 2019–20 she had group Wilson instruction in a group of three students with Ms. Perkins, who was enrolled in practicum at the time. She had thus not completed her Level I certification. Sansone testified that there are about twenty certified teachers at Banyan, and most of them obtained their certifications through her, but some obtained certification before they worked at Banyan. She believes 90 percent of Banyan students have the four literacy classes (four now due to COVID).

Sansone stated that she has never observed a class T. would have gone to or the teaching models used in that class. She is paid to provide Wilson training through her salary and receives extra compensation for training outside people. She also is responsible for keeping the Wilson Professional Learning page on the Banyan website up to date. The course descriptions of Wilson include a description of the Wilson introductory course as:

This course presents teachers with the knowledge and skills necessary to address the five principles of literacy instruction

that align with the Common Core Learning Standards (Phonemic Awareness, Phonics, Vocabulary, Fluency, and Comprehension).

Sansone testified that T. is not an ABA student, rather, she “does well with the type of instruction Banyan provides.” Sansone said that she (Sansone) had “personally invested many, many hours in her instruction, and I support her as an individual and I want best [sic] for her.”<sup>22</sup>

T. has made progress at Banyan with the Orton-Gillingham strategies employed in her reading and writing classes, and the Lindamood-Bell instruction in the TMC class. They have been effective approaches for her. The comprehension rubric of Wilson was used to overlap in the TMC class, and all of those strategies contributed to T.’s progress. Sansone agreed that the progress cannot be attributed to one particular strategy. It is a collaborative approach, with overlapping principles in T.’s five periods of literacy.

### **LEGAL DISCUSSION AND ANALYSIS**

The Individuals with Disabilities Education Act (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 (1982). One of the purposes of the IDEA is “to ensure that all children with disabilities have available to them a [FAPE] 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. § 1400(d)(1)(A). In order to qualify for this financial assistance, New Jersey must effectuate procedures that ensure that all children with disabilities residing in the state have available to them a FAPE consisting of special education and related services provided in conformity with an IEP. 20 U.S.C. §§ 1401(9), 1412(a)(1). The responsibility to provide a FAPE rests with the local public school district. 20 U.S.C. § 1401(9); N.J.A.C. 6A:14-1.1(d). The district bears the burden of proving that a FAPE has been offered. N.J.S.A. 18A:46-1.1.

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<sup>22</sup> Sansone appears to misunderstand that the standard to which the District is held is not better, or best, but “appropriate.”

The New Jersey Supreme Court and the United States Court of Appeals for the Third Circuit cases require similar inquiry into the educational proposal of the district in compliance with the requirements of Lascari v. Board of Education of Ramapo Indian Hills Regional High School District, 116 N.J. 30, 47 (1989) (citing Rowley, 458 U.S. at 200). The IDEA does not require that a school district “maximize the potential” of the student, Rowley, 458 U.S. at 200, but requires a school district to provide a basic floor of opportunity. Carlisle Area Sch. v. Scott P., 62 F.3d 520, 533–34 (3d Cir. 1995).

In addressing the quantum of educational benefit required, the Third Circuit has made clear that more than a “trivial” or “de minimis” educational benefit is required, and the appropriate standard is whether the IEP provides for “significant learning” and confers “meaningful benefit” to the child. T.R. v. Kingwood Twp. 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).

In other words, the school district must show that the IEP will provide the student with “a meaningful educational benefit.” S.H. v. State-Operated Sch. Dist. of Newark, 336 F.3d 260, 271 (3d Cir. 2003). This determination must be made in light of the individual potential and educational needs of the student. T.R., 205 F.3d at 578; Ridgewood, 172 F.3d at 247–48.

The Board will have satisfied the requirements of law by providing T. with personalized instruction and sufficient support services “as are necessary to permit the child “to benefit” from the instruction.” G.B. v. Bridgewater-Raritan Reg’l Bd. of Educ., 2009 U.S. Dist. LEXIS 15671 (D.N.J. Feb. 27, 2009) (citing Rowley, 458 U.S. at 189). The IDEA does not require the Board to maximize T.’s potential or provide her the best education possible. However, an IEP must provide meaningful access to education and confer some educational benefit upon the child. Rowley, 458 U.S. at 192. To meet its obligation to deliver FAPE, a school district must offer an IEP that is reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances. Andrew F. v. Douglas Cnty. Sch. Dist., 580 U.S. \_\_\_\_, 137 S. Ct. 988 (2017).

The IDEA requires a board of education to provide the educational equivalent of a “serviceable Chevrolet” to special education students; it does not require provision of a “Cadillac.” DOE v. Bd. of Educ. of Tullahoma City Sch., 9 F.3d 455, 459–60 (6th Cir. 1993); see also J.C. & E.C. ex rel. K.C. v. Warren Hills Reg’l High Sch. Bd. of Educ., EDS 11048-02, Final Decision (August 12, 2003), <https://njlaw.rutgers.edu/collections/oal/>. In other words, the fact that all students have the right to receive a free and appropriate public education does not mean that they are entitled to their own Cadillac of education. A showing that T. benefitted in her out-of-district placement is not proof that the proposed IEP was inappropriate.

Case law instructs that actions of the school district cannot be judged exclusively in hindsight. The appropriateness of an IEP must be determined as of the time it is made, and the reasonableness of the school district’s proposed program should be judged only on the basis of the evidence known to the school district at the time at which the offer was made. D.S. v. Bayonne Bd. of Educ., 602 F.3d 553, 564–65 (3d Cir. 2010) (citing Susan N. v. Wilson Sch. Dist., 70 F.3d 751, 762 (3d Cir. 1995)). An IEP is “based on an evaluation done by a team of experts prior to the student’s placement.” Fuhrmann v. E. Hanover Bd. of Educ., 993 F.2d 1031, 1041 (3d Cir. 1993). Thus, “in striving for ‘appropriateness,’ an IEP must take into account what was, and was not, objectively reasonable [when] the IEP was drafted.” Ibid. Our courts have confirmed that “neither the statute nor reason countenance “Monday Morning Quarterbacking” in evaluating the appropriateness of a child’s placement.” Susan N., 70 F.3d at 762 (quoting Fuhrmann, 993 F.2d at 1040).

The Third Circuit in Ridgewood, 172 F.3d at 247, stated that the appropriate standard is whether the IEP offers the opportunity for “significant learning” and confers “meaningful educational benefit.” The benefit must be meaningful in light of the student’s potential; the student’s capabilities as to both “type and amount of learning” must be analyzed. Id. at 248. When analyzing whether an IEP confers a meaningful benefit, “adequate consideration [must be given] to . . . [the] intellectual potential” of the individual student to determine if that child is receiving a FAPE. Ibid. The IDEA requires an IEP based on the student’s needs, and “so long as the IEP responds to the needs, its ultimate success or failure cannot retroactively render it inappropriate.” Scott P., 62 F.3d at 534.



Together, I **FIND** that Olimpio, Heywood, and Crosbie were credible witnesses who provided reliable testimony that the IEP for the 2019–20 school year was reasonably calculated to provide T. with significant learning and meaningful educational benefit in light of T.'s individual needs and potential, that is, that the IEP was appropriately ambitious in light of those circumstances, and that the IEP did so in the least restrictive environment. All of the testing done by the District and outside evaluators consistently revealed a full-scale IQ of 60–62, in the extremely low range, and significant deficits across all academic areas. No significant difference was found between verbal and non-verbal reasoning scores. Due to her cognitive profile, it is harder for her to learn than neurotypical peers. Her pace of learning has been consistent over the years. A private speech-language therapist found that the gap between T.'s abilities and those of same-aged peers was widening.<sup>23</sup>

Observations were done by District experts at Banyan, to see how she was responding to her program. The proposed class in-district was observed with K.A. At an observation of a visual comprehension class at Banyan, the individual escorting the observers from the District announced to the class that they were there to observe T. Students were distracted, including T. Many off-task behaviors were observed, including T. and other students getting out of their seats, looking at the observers, staring at the wall, or interacting with peers. The teaching of reading at multiple levels was noted to not have been done with the level of cohesiveness expected from a special education teacher. Redirection of T. was done with less effect than is done in-district when a student displays off-task behavior. Students are redirected very promptly and with great efficacy within the program proposed for T.

In the class observed at Banyan, the teacher gave T. the answer when she couldn't answer the question. When students are given answers to questions they've been asked to see what they know and what they comprehended, as was the purpose of this class, it

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<sup>23</sup> The District received the OT and the speech goals from Banyan after the IEP meeting and they were awaiting her return to District in order to understand where she was and implement those goals effectively within her return to District. So the goals would have been added to the IEP within thirty days of her return.

is not using those question tactics, and is not instruction of high quality. There was a token system utilized in both classes observed, based on ABA principles.

The teacher in the MD class, Ms. Mihalik, is a certified special education teacher. There are less than ten students in the class, as well as other instructors, trained by the lead teacher. A program book is developed for each student and data is charted weekly, and the program is evaluated and adjusted regularly based upon learning.

The IEP provides for supplemental reading, either one to one or a small group, based upon what the instructor recommends after assessment. There would be decoding/ phonics to inform and bolster her reading comprehension. T. would also have Orton, thus would receive the ELA of 80 minutes in addition to Orton. Ms. Mihalik is Wilson trained.

In Dr. Caroline Crosbie's reading intervention class, T. would be taught as part of a whole-class lesson, with a social-skills-type lesson and activities of daily living, such as understanding the calendar and the weather—lessons to make sure students have practical knowledge as they transition to career readiness. There would also be 1:1 or 2:1 (diad) instruction, provided by eight assistant behavior specialists currently assigned to the classroom, who also take data. After large-group instruction students break out into 80 minutes of a language arts block. Lunch is at 12 noon in the cafeteria, sitting with neurotypical peers. There is a large group after lunch, then small group until 1:20, then to general education electives. Students have two or three electives of their choosing per year, with neurotypical peers, and gym every other day. T. would have a Chromebook to take home for learning technical skills. T. would also interact with neurotypical peers in after-school sports or extracurriculars, such as art, music offerings, and sports that have wide-ranging abilities like track and cheerleading, as well as clubs and other activities offered at Frelinghuysen Middle School.<sup>24</sup>

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<sup>24</sup> Research shows that inclusion with neurotypical peers is extremely beneficial, allows for social interaction, and expands skills at a higher rate than being in a very restrictive setting all day.

All students are reinforced positively in the MD class, and earn tokens to their bank to cash in. There is a daily activity of daily living (ADL), which starts in sixth grade, which could include setting the table, folding laundry, or brushing teeth, based upon individual student interests and identified needs, as well as parent input. T. would have a program book which would be checked daily, with changes made as needed to ensure continued progress.

Supplemental services in the proposed IEP (R-4) notes choral responding and using response boards. Choral responding as a group increases accurate responses, as students can hear peers responding, so they get positive auditory feedback. It is used in small and large groups, and is used in general education classes also. The modifications in the IEP relating to multi-sensory approach with auditory aids, visual aids, and manipulatives would be implemented all day, both in T.'s special education and general education classes. Based on T.'s cognitive profile, that would increase her engagement.

T. would also have a laptop with word-processing and word-prediction software. Based on her educational and cognitive profile she is still developing reading skills and writing skills. The word-prediction software augments her writing, as she is internalizing the rules of reading, and bringing that into her spelling and writing practices. Word prediction takes away some of the effort in writing and in understanding spelling so students can focus on what they are producing rather than how to spell it. Spelling is addressed in the IEP goals to enable identification of areas of weakness and focus on that. As she builds skills, it provides strategies to help with what they are producing, not get stuck on spelling. Goal 2.3 reflects spelling as a goal, and spelling is part of the Wilson program that was going to be provided to T. Goal 3 indicates that she is going to write in clear, concise language, which is important given that she has a noted communication weakness and writing is the last part of communication to develop. So there needs to be a focus on creating precise language for her writing. Speaking and listening happens first, and then reading, and then writing, in terms of development.

There is also a personal FM system in the self-contained classroom, to ensure that T. hears and understands what is being said throughout the school day.

The IEP also provides for all the teachers, general education and special education, to have consultations with the BCBA, Dr. Crosbie, to insure that the multisensory reading tactics and techniques are brought into her classes. There were also to be conversations about reading and bringing reading tactics into the MD program for T. during the 80-minute language arts block, with Dr. Crosbie and Ms. Mihalik, and then continued professional development for the teachers and staff working with T.

The most recent educational evaluation performed of T. was Paola Hall's evaluation (R-5), which reflects T.'s academic profile, and weaknesses in reading, writing, and math, and in her cognitive profile, which is consistently in the 60s. Based upon all the evaluations, she would be best instructed where there is a small teacher-to-student ratio. The results on the evaluation inform accommodations and modifications in her program. Due to her cognitive profile, she learns more slowly than a neurotypical peer. Removing some of the stressors allows for more learning opportunities. Comparisons to mean achievement of neurotypical peers is not an appropriate metric for judging T. Counseling is also provided for in the IEP.

A comparison of educational evaluations over a three-year period revealed a third of the reported progress attributable to Banyan, since she was in-district two of those three years.

The mechanics of reading in the District program would be addressed through the Wilson system, as proposed by the IEP, and comprehension taught explicitly via appropriately leveled read-alouds and texts with explicit instruction in language-comprehension skills.

Independence is particularly critical for T. to be able to function in the world given her cognitive limitations. She has to be able to navigate without somebody instructing her at all times. The District's program fosters that independence. The principles and curriculum are explicitly taught, and students' programs are designed to generalize, such that skills are being brought into the home through like activities of daily living, and into the greater world through community-based instruction, where students learn how to navigate their community. Banyan is insular, and not what the world looks like. T. would

learn skills to transition out of school and navigate the world. Banyan is a restrictive environment in terms of exposure and interaction with peers, as contrasted with the multiple opportunities for interaction with neurotypical peers and a variety of social and academic exposures in-district.

The information in the IEP as to T.'s present levels of academic achievement and functional performance came from Banyan, and reveals that T. has difficulty attending to and concentrating on a given assignment or task, indicative of an attentional difficulty. The goals were written based upon the present levels of academic achievement and functional performance that were provided to them, and would've been adjusted as necessary if there were any other assessment data.

When T. was in-district previously, she received outside Lindamood-Bell instruction. This is a concern, as the multiple multimodalities could have caused confusion in attempting to apply reading strategies to a variety of assessments, and goes to the consistency of instruction, which Tighe indicated is necessary for T.

T. was previously in a CABAS class, and instructed through the Columbia Teachers College program. It is an ABA-based class. The class proposed is multiply disabled, with different curriculum from CABAS, which provides its own curriculum replacements and supplementals. The multiply-disabled-class programs link to the New Jersey Core Curriculum standards, and the curriculums are different.

I found petitioner's witnesses to be less informed and prone to criticize the District's programming for the sake of proving that the programming was lacking, even when confronted with information that contradicted the facts on which they relied. To the extent that details were required but not offered, this has been considered in determining the weight to be given to particular assertions.

I **CONCLUDE** that the April 3, 2019, IEP proposed by the District offered T. a free and appropriate public education with the opportunity for meaningful educational benefit and progress appropriate in light of T.'s circumstances, within the least restrictive environment.

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

Neither parents nor courts, however, have a right to compel a specific methodology<sup>25</sup> in educating a student:

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

[W.R. v. Union Beach Bd. of Educ., 414 F. App'x 449 (3d Cir. 2011) (quoting Rowley, 458 U.S. at 208).]

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

Moreover, by maintaining T. in-district, the IEP delivers services to her in the “least restrictive environment.” 20 U.S.C. § 1412(a)(5)(A) mandates that

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<sup>25</sup> The choice of instructional methods is not to be made by the courts or parents, but by the CST.

[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.

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) (2020); see also N.J.A.C. 6A:14-4.2; Oberti v. Bd. of Educ., 995 F.2d 1204, 1216 (3d Cir. 1993). The law describes a continuum of placement options, ranging from mainstreaming in a regular public school as least restrictive to enrollment in a non-approved residential private school as most restrictive. 34 C.F.R. § 300.115 (2020); N.J.A.C. 6A:14-4.3. Here, a placement within T.A.’s own school district, that allows her to interact within the mainstream of her own local community, is consistent with the concept of least restrictive environment.

I **CONCLUDE** that the District in this case has proven by a preponderance of the competent and credible evidence that the IEP proposed by the District offered T. a free and appropriate education with the opportunity for meaningful educational benefit appropriate in light of T.’s circumstances, within the least restrictive environment. To the extent that I have concluded that the District has provided a FAPE to T., the appropriateness of a placement at Banyan school is irrelevant.

No conclusions in this decision should be interpreted as a repudiation of the parents’ action in striving to find the best placement for their daughter. However, parents who unilaterally change their child’s placement, without the consent of local school officials, do so at their own financial risk and are barred from recovering reimbursement if it is ultimately determined that the program proposed by the District affords the child a FAPE. While every student with a disability is entitled to an education conferring meaningful educational benefit in the least restrictive environment, the school district is not obligated to provide the best possible educational opportunity. Parents who wish for their child to receive extra service beyond what is available to nondisabled students in the

public schools cannot expect the public to pay for the privilege. G.N. & S.N. ex rel. J.N. v. Livingston Bd. of Educ., EDS 3547-04, Final Decision (January 27, 2005), <http://njlaw.rutgers.edu/collections/oal/>; M.S. & C.S. ex rel. A.S. v. Bd. of Educ. of Ridgewood, EDS 5814-03, Final Decision (March 16, 2004), <http://njlaw.rutgers.edu/collections/oal/>.

It is well established that the appropriateness of an IEP is not determined by a comparison of the private school and the program proposed by the district. S.H. v. State-Operated Sch. Dist. of Newark, 336 F.3d at 271. Rather, the pertinent inquiry is whether the district's IEP offered FAPE and the opportunity for meaningful educational benefit within the least restrictive environment. Having concluded that the District offered FAPE to T. in the least restrictive environment, it is unnecessary that I determine whether Banyan School is an appropriate program for T.

In accordance with N.J.A.C. 6A:14-2.10, reimbursement for unilateral placement by parents is only required upon a finding that the District had not made a free, appropriate public education available to the student in a timely manner prior to the enrollment. Because I am satisfied that the proposed IEP by the District for the 2019–2020 school year would have offered FAPE, if implemented, I **CONCLUDE** that the parents are not entitled to reimbursement for the unilateral placement of T. at Banyan School.

### **ORDER**

It is hereby **ORDERED** that the relief sought by Petitioners is **DENIED** and the petitioner is hereby **DISMISSED**.

This decision is final pursuant to 20 U.S.C. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2020) and is appealable by filing a complaint and bringing a civil action either in the Law Division of the Superior Court of New Jersey or in a district court of the United States. 20 U.S.C. § 1415(i)(2); 34 C.F.R. § 300.516 (2020). 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 Policy and Dispute Resolution.

June 28, 2021  
DATE

  
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**LESLIE Z. CELENTANO, ALJ**

Date Received at Agency

June 28, 2021

Date Mailed to Parties:  
dr

June 28, 2021

**APPENDIX****Witnesses**

For Petitioner:

Jeanne Tighe

K.A.

Jennifer Sansone

For Respondent:

Suzanne Olimpio

Danae Heywood

Caroline Crosbie

**Exhibits**

For Petitioner:

Number	Date	Document Description	Introduced	Admitted
1.	2/16/10	Pediatric Neurodevelopmental Evaluation Dr. Lanzkowsky Goryeb Children's Hospital	√	√
2.	3/1/10	Speech Consultation Communicare Ltd Inc.	√	√
3.	9/23/10	Speech/Language Evaluation Morris School District	√	√
4.	9/24/10	Preschool Evaluation Morris School District	√	√
5.	10/13/10	Not in evidence	√	
6.	1/6/11	Not in evidence		
7.	7/27/11	Not in evidence		
8.	3/19/13 (end date)	Psychological Evaluation Morris School District	√	√
9.	3/21/13	Not in evidence	√	
10.	4/1/13	Speech/Language Re-Evaluation Morris School District	√	√

11.	4/16/13	Eligibility Conference Report	√	√
12.	4/16/13	IEP	√	√
13.	11/14/13 (end date)	Comprehensive Evaluation The McCarton Center	√	√
14.	2/5/14	Program Observation and Recommendations Report Carol A. Fiorile, Ph.D., BCBA- D, SAS	√	√
15.	2/14/14	Not in evidence		
16.	4/9/14	Not in evidence		
17.	4/11/14	Speech-Language Testing Results	√	√
18.	8/22/14	IEP	√	√
19.	11/12/14	IEP	√	√
20.	4/17/15	Speech-Language Re- Assessment Suburban Speech Center	√	√
21.	5/1/15 (end date)	Educational Evaluation Suburban Learning Center	√	√
22.	8/26/15	Not in evidence		
23.	10/21/15	Purchase Order from Morris School District to Beyond Communication	√	√
24.	1/28/16 (end date)	Speech and Language Re- Evaluation Morris School District	√	√
25.	2/5/16	Educational Evaluation Morris School District	√	√
26.	2/17/16	Psychological Assessment		Admitted as R-9
27.	3/15/16	IEP	√	√
28.	3/1/17	Progress Report for IEP Goals and Objectives 2016- 2017	√	√
29.	3/2/17	IEP	√	√
30.	4/3/17 (end date)	Comprehensive Evaluation The McCarton Center	√	√
31.	8/4/17	Auditory and Language Processing Re-Evaluation Donna Geffner, Ph.D., CCC- SLP/A	√	√
32.	9/29/17	Not in evidence	√	
33.	10/6/17	Request to Amend an IEP without a Meeting	√	√
34.	10/11/17	Not in evidence		
35.	11/17/17	Not in evidence		
36.	11/30/17	IEP	√	√
37.	12/5/17	Not in evidence		

38.	12/7/17	Not in evidence		
39.	12/15/17	Not in evidence		
40.	1/2/18	Not in evidence		
41.	1/4/18	Not in evidence		
42.	3/26/18	Educational Evaluation Edna Barenbaum. Ph.D.	√	Admitted as R-8
43.	4/24/18 (end date)	Comprehensive Oral and Written Language Evaluation, Jeanne Tighe, M.A., CCC-SLP, CDP	√	Admitted as R-7
44.	4/30/18	Not in evidence		
45.	4/30/18	Not in evidence		
46.	6/11/18	Not in evidence		
47.	6/13/18	Not in evidence		
48.	6/14/18	Not in evidence		
49.	6/14/18	Not in evidence		
50.	6/18/18	Not in evidence	√ ID only	
51.	6/29/18	Not in evidence		
52.	8/3/18	Not in evidence		
53.	8/3/18	Not in evidence		
54.	8/18	Narrative ESY Report Banyan School	√	√
55.	9/18/18	WIST	√	√
56.	9/21/18	WADE Examiner's Recording Form/Level AB	√	√
57.	9/26/18 (start date)	Wilson Reading System (WRS) Wordlist Chart	√	√
58.	10/5/18 (start date)	Wilson Reading System (WRS) Student Dictation Page	√	√
59.	10/18	Characteristic Analogies	√	√
60.	1/1/19	Wilson Reading System (WRS) End-of-Step Assessment Summary	√	√
61.	2/14/19	Wilson Assessment of Decoding and Encoding (WADE) 4 <sup>th</sup> Edition	√	√
62.	3/19	Wilson Reading System (WRS) End-of Step Assessment Summary WRS 4 <sup>th</sup> Edition, Step 2	√	√
63.	3/6/19	Reading Class Mid-Year Narrative Progress Report	√	√
64.	3/15/19	Training Minds to Comprehend (TMC) Class Mid-Year Narrative Progress Report	√	√

65.	4/1/19	Not in evidence	√	√
66.	4/3/19	Not in evidence		Admitted as R-4
67.	4/3/19	IEP Banyan School	√	√
68.	4/4/19	Letter Gaines to Gilfillan	√	√
69.	4/5/19	Not in evidence		
70.	4/10/19	Comprehensive Language Re-Evaluation Jeanne Tighe, M.A., CCC-SLP, CDP	√	√ with redaction
71.	5/6/19	Not in evidence		
72.	5/6/19	Email exchange Mr. A.	√	√
73.	5/29/19	Letter Gaines to Gilfillan	√	√
74.	5/30/19	Not in evidence		
75.	6/19	Not in evidence		
76.	6/1/19 (incorrectly dated 6/1/19, should have been 5/1/19)	Not in evidence		
77.	6/3/19 (end date)	WRS Lesson/Individual Progress Record 18-19	√	√
78.	6/21/19 (end date)	Wilson Assessment of Decoding and Encoding (WADE), 4 <sup>th</sup> Ed. Summary of Results	√	√
79.		DRA Development Reading Assessment, Second Edition (DRA2)	√	√
80.	5/6/19	Voicemail from Paola Hall to Mrs. A. (see thumb drive)	√	√
81.		Wilson Assessment of Decoding and Encoding (WADE), 4 <sup>th</sup> Edition Summary of 2018 vs. 2019 Assessment Results	√	√
82.		DRA Word Analysis Summary T.A. Oct 2018-September 2019	√	√
83.		Banyan Elementary School Extend School Year 2019 – Progress Report	√	√
84.	9/9/19	Not in evidence		
85.	9/9/19	WADE Examiner’s Recording Form/Level AB	√	√
86.	9/10/19	Not in evidence		
87.	9/11/19	WIST Secondary Examiner Record Booklet	√	√

88.	10/15/19	Not in evidence		
89.	10/22/19 (end date)	WRS Lesson/Individual Progress Record 19-20	√	√
90.	10/22/19	Proposed Program Observation Jeanne Tighe	√	√
91.	10/30/19	Not in evidence		
92.	11/19	Not in evidence		
93.	11/5/19	Reading & Writing Classes Beginning of the Year Narrative Progress Report November 2019	√	√
94.	11/6/19 (end date)	Not in evidence		
95.	11/11/19	Banyan School IEP Goals and Objectives Progress Reporting	√	√
96.	11/12/19	Not in evidence		
97.		Not in evidence		
98.		DRA3 Word Analysis Tasks	√	√
99.		American Speech-Language Hearing Association Scope of Practice in Speech-Language Pathology	√	√
100.		Pearson Reading Chart - DRA	√	√
101.		Not in evidence		
102.		Not in evidence		
103.		The New Jersey Dyslexia Handbook	√	√
104.		Banyan School Info	√	√
105.		Not in evidence	√	
106.		Not in evidence		
107.		Jeanne Tighe CV	√	√
108.		Not in evidence		
109.	3/7/19	Educational Re-Evaluation Morris School District	√	Admitted as R-5
110.	5/7/19	Letter from parents to Superintendent	√	√
111.	11/12/19	Not in evidence		
112.	11/19	Present Levels of Academic Achievement and Functional Performance	√	√
113.	1/16/14	Email exchange from Deborah Weston re: CABAS	√	√
114.	5/17/19	Not in evidence		
115.	6/14/18	Not in evidence		
116.		Jennifer Kempton CV	√	√

117.		Wilson Reading System Documents	√	√
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For Respondent:

Exhibit No.	Description	Identified	Entered
1.	Not in evidence		
2.	Not in evidence		
3.	Settlement Agreement, October 2018	x	x
4.	IEP, April 3, 2019	x	x
5.	Educational Evaluation, 3/17/2019	x	x
6.	Educational Evaluation, 2/15/2016	x	x
7.	Report of Jeanne Tighe, April 2018	x	x
8.	Report of Edna Barenbaum, April 2018	x	x
9.	Psychological Evaluation, 2/17/2016	x	x
10.	McCarton Center Report, April 3, 2017	x	x
11.	Heywood Notes from Observation with parent (in-district program)	x	x
12.	P. Hall, Notes from Observation (Banyan, 11/2/2018)	x	x
13.	D. Heywood/C. Crosbie, Notes from Observation (Banyan, Visual Comprehension Class)	x	x
14.	P. Hall Notes from Observation (Banyan) 3/11/2019	x	x
15.	D. Heywood, Notes from Observation (Morris, Mihalik's class) with Tighe	x	x
16.	FMS Activities printout	x	x
17.	Not in evidence		
18.	Resume, Suzanne Olimpio	x	x
19.	Resume, Danae Heywood	x	x
20.	Resume, Caroline Crosbie	x	x
21.	Resume, Monica Mihalik	x	x
22.	Not in evidence		
23.	Age/Grade Comparison Chart	x	x
24.	List of instructors for Center for Effective Reading Instruction	x	x
25.	List of Providers for International Dyslexia Association	x	x