



**State of New Jersey**

OFFICE OF ADMINISTRATIVE LAW

**FINAL DECISION**

OAL DKT. NO. EDS 11208-19

AGENCY DKT. NO. 2020-30374

**V.D. AND M.D. ON BEHALF OF O.D.,**

Petitioners,

v.

**MEDFORD TOWNSHIP BOARD**

**OF EDUCATION,**

Respondent,

AND

**V.D. AND M.D. ON BEHALF OF J.D.,**

Petitioners,

v.

**MEDFORD TOWNSHIP BOARD**

**OF EDUCATION,**

Respondent.

OAL DKT. NO. EDS 11455-19

AGENCY DKT. NO. 2020-30414

(CONSOLIDATED)

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**Ryan Clark, Esq.**, attorney for petitioners (Clark, Clark & Noonan, LLC, attorneys)

**Brett E.J. Gorman, Esq.**, for respondent (Parker McCay, P.A., attorneys)

Record Closed: May 25, 2021

Decided: July 6, 2021

BEFORE **DOROTHY INCARVITO-GARRABRANT**, ALJ:

**STATEMENT OF THE CASE**

This case arises under the Individuals with Disabilities Act, 20 U.S.C. 1400 to 1482 (IDEA). Petitioners, V.D and M.D. (petitioners, parents, mother, or father), on behalf of minor children O.D. and J.D., seek a finding that the special education and related services for O.D. and J.D. in the individual education programs (IEPs) proposed by the District of Medford Township, (respondent or District) for the 2018-2019 and 2019-2020 school years are inappropriate, fail to confer a free, appropriate public education (FAPE), and do not comply with the requirements of the IDEA. Further, petitioners seek a finding that the Newgrange School (Newgrange) is an appropriate educational program and placement to meet O.D. and J.D.'s needs, and the unilateral placement of O.D. and J.D. at Newgrange in the 2019-2020 school year was proper and reasonable. Petitioners seek an order directing the District to provide O.D. and J.D. with an IEP which places them at Newgrange for so long as it remains appropriate; compensatory education for O.D. and J.D. for the period of deprivation; and reimbursement for all costs associated with this matter due to the failure of the District to provide FAPE.

**PROCEDURAL HISTORY**

Relative to the minor student, O.D., on July 16, 2019, petitioners filed a request for due process with the Department of Education, Office of Special Education Programs, which was transmitted to the Office of Administrative Law (OAL) and filed as a contested matter on August 15, 2019. Relative to the minor student, J.D., on July 22, 2019, petitioners filed a request for due process with the Department of Education, Office of Special Education Programs, which was transmitted to the Office of Administrative Law (OAL) and filed as a contested matter on August 21, 2019.

Prehearing conferences were held in each matter on October 15, 2019. Prehearing orders were entered in each case on October 18, 2019, scheduling multiple hearing dates. Subsequently, on January 24, 2020, an Order consolidating the matters was entered.

Hearings in this matter were held on January 28, 2020, January 29, 2020, February 3, 2020, February 4, 2020, February 11, 2020, February 12, 2020, and March 6, 2020. The remaining scheduled hearing days were adjourned due to the COVID-19 pandemic restrictions. The hearings resumed remotely via ZOOM in the fall of 2020. Hearings were held on September 28, 2020, October 19, 2020, November 2, 2020, November 30, 2020, and December 17, 2020. The record was held open pending the parties' receipt of the hearing transcripts and submission of their closing briefs and summations. Five months elapsed before the final transcripts were received by the parties. Respondent submitted its closing summation and brief on June 11, 2021. Petitioners submitted their closing summation and brief on June 12, 2021. Subsequently, the record closed.

Several motions were made and decided on the record during the hearings.

### **Motion in Limine**

During the hearing, at the conclusion of Ferraro's testimony on February 4, 2020, petitioners' counsel made a motion in limine to declare respondent's expert report, co-authored by SHEMELEY and Ferraro, a net opinion, and to preclude it from admission into evidence. Petitioner argued that the report was a net opinion, which was forbidden from admission. Petitioners argued that the experts' conclusions were unsupported by factual evidence or other data. They argued that the opinions were based on facts, methods, and data not generally accepted in the discipline. Petitioner maintained that the experts admitted that they did not have the requisite expertise to make the conclusions embodied in their report.

Respondent opposed the motion. Respondent submitted that SHEMELEY and Ferraro observed O.D. and J.D. at Newgrange. They recorded their observations in the report. They then compared and contrasted what occurred at Newgrange with what occurred in the District. They then made conclusions based on their expertise and their observations. Respondent argued that any discrepancies between their testimony and their report should go to their credibility as experts and that this tribunal should give their testimony and report

the weight the tribunal deems appropriate. This should be developed through cross-examination.

After argument, the motion was **DENIED**. The tribunal that the issue for determination in the motion was whether the observation and conclusions reports for J.D. and O.D., both dated January 10, 2020, co-authored by SHEMELEY and FERRARO, or parts thereof, should be stricken or not to be found to be supported by facts or logically supported by observations; thus, rendering their opinion a net opinion.

In denying the motion, the tribunal noted that expert witnesses can qualify and testify as either an expert by their study, educational background, experiences, or what they have learned through practice. The issues presented in the instant matter and the observations required were not within the common, lay world experience. They were not something that one can just know by having some experience with special education. SHEMELEY and FERRARO were qualified and accepted as experts.

A net opinion is one in which an expert opinion is lacking a proper foundation and just consists of bare conclusions that are unsupported by factual evidence and would therefore, be inadmissible in whole or part. The tribunal concluded that there was sufficient evidence and testimony for the experts to support the facts and conclusions that they included and made in their reports. Those facts logically supported their conclusions and their opinions. I **FOUND** and **CONCLUDED** that the reports did not set forth a net opinion, in whole or in part.

### **Motion for Summary Decision**

After the respondent's case in chief, the petitioners moved for summary decision. The petitioners argued that the District failed to meet its burden, even if the tribunal took every inference based on the evidence in a light most favorable to the District. The petitioners incorporated as if set forth at length the arguments they made in its prior motion relative to the SHEMELEY/FERRARO report.

The respondent opposed the motion. The respondent submitted that immediately prior to their enrollment in the District, O.D. and J.D. were not receiving any special education services. When they enrolled, the District looked at their evaluations and completed some evaluation. These students did not have the foundational skills they needed when they started in the District. The District provided those foundational skills throughout the school year. O.D. and J.D.'s teacher testified that they made progress and that the majority of their goals were achieved. Ferraro testified that the Newgrange school was not as challenging as the District's program, and that it was inappropriate. The Newgrange Foundations program consisted of much less instruction time than the District's. The District provided a balanced literacy program to provide the other skills students need to learn how to read. The District's 2018-2019 program was appropriate. The District submitted that their observation at Newgrange demonstrated that the students had regressed. The District argued that the motion for summary decision should be denied.

The motion for summary decision was **DENIED**. This tribunal **CONCLUDED** that based on the testimony and evidence presented in respondent's case, as well as the cross-examination, the respondent sufficiently established a *prima facie* case for this matter to go forward and to have a decision rendered on the merits.

### **Motion to Preclude New Evidence**

Prior to petitioners' expert's, Susan Miller's, (Miller) testimony, the respondent moved to preclude the use of new evidence, which petitioners had provided just prior to the hearing date of October 19, 2020. That new evidence was the informal addendum report or data, which petitioners represented was prepared by one of their other experts, Amanda Colannino, (Colannino), on October 10, 2020.

Respondent argued that the new documents were produced well past the discovery end date and after seven days of trial. Respondent submitted that there was no basis to allow additional documents at this point in the hearing. Respondent would be

prejudiced if the new documents were permitted to be utilized. Respondent would have to recall witnesses to address the new information. The new data would require more discovery to determine the impact of the COVID-19 pandemic on Newgrange's instruction. Respondent did not have access to the information when it cross-examined two of petitioners' experts. Respondent submitted that petitioners never advised that they were obtaining a new evaluation, despite the fact that the continuation of the hearing in this matter had been adjourned for approximately six months before reconvening remotely via ZOOM. Respondent argued that the new evidence was being produced at this time to rectify the weaknesses in petitioners' case and that this was an inappropriate and prejudicial trial strategy. Respondent argued that it made this motion because it had just received the new documents and because it most likely was going to be part of Miller's testimony at the hearing on this date.

Petitioners opposed the motion. Petitioners argued that respondent's motion was based on a number of unsupported assumptions, including, but not limited to, that this was not a new expert and that the new information, produced by Colannino, would be used during Miller's testimony. Petitioners submitted that Colannino was scheduled to testify in November 2020. Petitioners recognized that there may have to be some additional discovery to support the newly produced evidence. Petitioners argued that the prejudice to respondent was non-existent or minimal at best because they were simply updated test scores for O.D. and J.D.. Petitioners conceded that the new evidence was to address the theory of respondent's case, which had already been presented in its entirety. Petitioners argued that the new evidence was relevant, and it could not have been turned over five days before the hearing began, because it did not exist at that time.

The motion to preclude the new evidence was **GRANTED**. The tribunal **CONCLUDED** as follows. A prehearing order was entered on October 18, 2019 in this matter. Paragraph 3 of that order scheduled hearing dates two of which were adjourned due to the pandemic. However, hearing dates were held on January 28, 2020, January 29, 2020, February 3, 2020, February 4, 2020, February 11, 2020, February 12, 2020, and March 6, 2020. The matter reconvened on September 28, 2020, at which time a

hearing day was completed remotely via ZOOM. Paragraph 6 of the order provided for discovery and a date for its completion five days prior to the commencement of the hearing on January 28, 2020. The tribunal noted that paragraph 6 also provided with underlined emphasis that, “[a]ll expert reports must be produced five days prior to the commencement of the hearing. Any reports not so produced will be excluded.” Paragraph 6 further provided that a copy of all expert reports had to be provided to the Judge no later than five days before the hearing’s commencement. This was also bolded and underlined in the order for emphasis.

While petitioners argued that the new evidence was essentially an informal addendum to her report, the tribunal found that the production and use of the addendum at this point in the hearing and so many months after the discovery end date made it essentially a new expert report. The tribunal noted that the issue in this matter was whether the respondent provided a FAPE to O.D. and J.D. during the 2018-2019 school year. The new evidence included testing, which was completed in October 2020, nearly two years after the students were enrolled in respondent’s district. Too many variables occurred and existed in the intervening time frame for this evidence to be anything other than prejudicial. Additionally, multiple hearing dates and witness testimonies had occurred. To allow the evidence to be utilized at this point in the hearing would have been prejudicial.

## **FACTUAL DISCUSSION**

### **Testimony**

#### ***For respondent*<sup>1</sup>**

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<sup>1</sup> O.D. and J.D. are twins, who have very similar medical and learning profiles. For purposes of efficiency and clarity, and to avoid time-consuming duplicative testimony, respondent’s and petitioners’ witnesses testified to their observations, actions, and opinions in detail about O.D. and J.D. collectively. The witnesses then testified specifically about O.D. and J.D. specifically, when detailing results of their testing or differences in their profiles.

**Corrine SHEMELEY**, (SHEMELEY), testified on behalf of the respondent. SHEMELEY detailed her resume. (OD R-62.) (JD R-56.) SHEMELEY is employed by the respondent as a Learning Disabilities Teacher Consultant, (LDTC), and Case Manager. SHEMELEY was qualified and accepted as an expert LDTC and case manager of disabled students with IEPs. She has been employed in this capacity, since 2012. This was the first time she ever testified. From 2003 through 2012, SHEMELEY was employed at the Educational Services Unit as an LDTC. She had previously worked as a special education teacher in the Pemberton Township public schools for two years. SHEMELEY has a teacher of the handicapped certification. She did not teach any of the curriculums in the O-G method.

As an LDTC, SHEMELEY is responsible for conducting and interpreting learning evaluations for students in pre-school through eighth grade. SHEMELEY has conducted over 2,000 evaluations. SHEMELEY has a background in special education and a special certification in educational measurement and evaluation. Additionally, SHEMELEY has a Master's Degree in special education. She does continuing education courses and professional development courses. SHEMELEY conducts educational evaluations, generally using norm reference tests to measure a student's academic performance against their same age peers. SHEMELEY would be looking for their performance in the areas of reading, math, writing, and oral language as it pertains to learning. SHEMELEY utilizes the Woodcock Johnson Test of Achievement, (Woodcock), the Wechsler Individual Achievement Test 3 (WIAT), and the Word Identification and Spelling Test, (WISC). SHEMELEY had not administered the Test of Integrated Language and Literacy Skills, (TILLS) or DIBLES. SHEMELEY had given the Comprehensive Test of Phonological Processing, (CTOPP), approximately eight times. She had not administered the Woodcock Reading Master Test 3, opting to use the other Woodcock evaluations. SHEMELEY indicated that the Woodcock she administers is similar to the CTOPP.

SHEMELEY is responsible for consulting with special education teaches in the District, regarding the programs they are implementing. She has a role in providing intervention when a general education teacher has concerns about the way a student is learning.



As a case manager for the respondent, SHEMELEY is responsible for overseeing the special education program for students assigned to her. She receives referrals for evaluations to determine if students are eligible for services. If they are eligible, SHEMELEY creates IEPs. SHEMELEY is responsible for attending IEP meetings, revising IEPs, consulting with special education or general education teachers. SHEMELEY makes sure IEPs are being implemented. As a case manager, SHEMELEY actually writes the IEPs for students but also works with other disciplines and experts. In this regard, if there were other disciplines involved, like speech and language, that therapist would create the speech goals. SHEMELEY explained that the school psychologist would create the cognitive section of the IEP. This coordination would also include occupational therapy, physical therapy, and social work. SHEMELEY has drafted approximately 800 to 900 IEPs. In addition, she has been a member of child study teams, (CST). SHEMELEY testified that the CTOPP is done in public schools by either the LDTC or the speech and language therapist. This was the same with the TILLS. During her career, SHEMELEY has done hundreds of observations. Those observations become part of the IEP or the multi-disciplinary report.

SHEMELEY is familiar with O.D. and J.D. When their family moved into the District, they contacted SHEMELEY about kindergarten. SHEMELEY identified a document from the Lady of Lourdes early intervention program dated in 2014. (OD R-1-4.) At the time these were generated, O.D. and J.D. were in the under three years old category. SHEMELEY detailed an Eligibility Conference Report from Pennsauken public schools, (Pennsauken). (OD R-5.) This was generated when they became old enough to attend public school. This document was for the 2015-2016 school year. Pennsauken found O.D. to be eligible under the classification category of pre-school student with a disability. SHEMELEY explained this is the classification for every special education student between three and five years of age. SHEMELEY stated that when students turn five years old, districts generally reevaluate the student to see if they continue to be eligible for special education. SHEMELEY identified Pennsauken's IEP for O.D. which proposed a half-day, pre-school

special education program. (OD R-6.) SHEMELEY did not know if O.D. attended that program.

SHEMELEY identified a Family Conference Form. (OD R-8.) SHEMELEY identified a letter from Pennsauken regarding absences for O.D. during the 2015-2016 school year. (OD R-9.) SHEMELEY identified an IEP Annual Review from Pennsauken for the 2016-2017 school year. (OD R-10.) Services were to begin in May 2016 and carry through the next school year. The IEP recommended a half-day pre-school special education program. SHEMELEY did not know if O.D. attended this program.

SHEMELEY identified the form that petitioners completed when they registered their students in respondent's District. (OD R-11.) O.D. and J.D. were registered to begin school in September 2018. SHEMELEY testified that the District provided petitioners with a Release Authorization to Obtain Records, to allow the District to obtain records from the CSTs in their previous school district, Pennsauken. (OD R-12.) SHEMELEY first spoke with mother in May 2018 about registering O.D. and J.D. for school. SHEMELEY discussed with mother that O.D. and J.D. previously had an IEP in Pennsylvania. Mother indicated that she would provide the IEPs for both of her sons. SHEMELEY asked the petitioners to sign a release to get the documents from the school in Pennsylvania. The parents refused to sign the release. Mother explained that petitioners did not feel like the evaluations that the Pennsylvania team conducted were the most valid or appropriate. SHEMELEY testified that the district determined that it was best to reinstate the evaluation process. (OD R-13.) SHEMELEY identified a letter dated May 3, 2018 from the District indicating that it had received the petitioners' letter. (OD R-14.)

SHEMELEY testified that eventually the District received the Pennsylvania IEP, which mother had referenced. (OD R-15.) It indicated that O.D. and J.D. had been receiving services in a special education program in Pennsylvania and that there were speech and language, sensory, and motor concerns. (OD R-15 at 168.) SHEMELEY explained that there was a revision to the IEP to stop services and have O.D. and J.D. attend a community pre-school. This was for the 2017-2018 school year. SHEMELEY

testified that there was a May 11, 2017 IEP revision and a September 7, 2017 IEP update. SHEMELEY stated that the IEP indicated that in January 2017 there was a review of O.D. and J.D.'s cognitive development. This demonstrated that the petitioners had relocated to Pennsylvania by January 2017, because evaluations were completed. The entries in the IEP under January 23, 2017, were evaluation summaries. The District never received copies of these evaluations from petitioners. SHEMELEY testified that typically the District would receive and review prior evaluations, when a student transfers into the District. Those evaluations provide a lot of information about the student, how they performed on tests, their social, family, and medical histories, and any input the parents or previous schools might have. They also include input from teachers, performance, and present levels. SHEMELEY testified that the District never received the evaluations. The evaluation summaries in the IEPs were useful but did not contain test scores. That was significant to SHEMELEY, who utilizes those scores to know if a student was within an average range or a below average range.

SHEMELEY testified that the IEP showed what services O.D. and J.D. were receiving between January and May 2017. It showed their present levels and their goals. SHEMELEY detailed that the IEP indicated that O.D. attended nine class sessions prior to a revision to change the location of the services, which was requested by the parent. (OD R-15.) The IEP details that mother requested a change in the level of services, and that she no longer wanted O.D. to attend a special education classroom. She wanted O.D. to receive services in the community. This was implemented as of May 2017. The IEP was updated in September 2017. It indicated that petitioners decided that O.D. would receive speech therapy at pre-school and that they decided not to access physical therapy, (PT), services for O.D. The IEP noted that O.D. was receiving occupational therapy, (OT), PT, and speech weekly at Heart of Lancaster, and that O.D.'s teachers reported having a difficult time understanding O.D. The teachers sought collaboration with the speech teacher. At this point in time, O.D. and J.D. were attending Calvary Pre-school.

Shemeley explained that there is a difference between special education services in a public school and in a pre-school. The special education program would provide specialized instruction. There would be a lot of scaffolding, modeling, and guided instruction. A lot of speech and language techniques would be put into the classroom at this level, in addition to PT and OT. Shemeley opined it is very important to start working on some of the concerns early, because it is better for the students. Shemeley explained that special education classrooms at the pre-school level really emphasize a lot of language, which is paired with visuals and movement. There is a lot of previewing and pre-teaching of vocabulary.

Shemeley stated that petitioners moved into the District in December 2017. The services being provided in Pennsylvania ended at that point. Between December 2017 and September 2017, O.D. and J.D. attended Lenape Kiddie College, (Lenape), a community pre-school. Shemeley was familiar with its program. She likened it to a daycare. O.D. and J.D. were not provided special education services at Lenape. Shemeley explained that there is a difference between a community pre-school and a public school pre-school for students with IEPs. In a public school, whether it is an integrated program or a self-contained program, the curriculum would be State approved, and it would be Tools of the Mind or a creative curriculum. There would be scaffolding and modeling in the classroom. There would be specialized instruction geared toward the goals of the students in the classroom.

Shemeley testified that the District received a speech and language evaluation for O.D. from the Children's Hospital of Philadelphia, (CHOP). (OD R-16.) The District accepted and utilized this evaluation. As a case manager, Shemeley interpreted the evaluation. She indicated that O.D. had delays in language development, in receptive and expressive language. Shemeley concluded that O.D. would be in need of speech and language therapy and that his deficits had to be considered when looking at his whole learning profile. Shemeley testified that the parents were invited to attend an initial identification and evaluation planning meeting on May 21, 2018. (OD R-17.)

SHEMELEY explained the Kindergarten Screening Assessment, which is used for students who are registering for kindergarten. (OD R-18.) The assessment measures their pre-academic skills. SHEMELEY identified the initial identification and planning document which was used at the meeting with the parents. (OD R-19.) The District offered to do educational, psychological, social, and OT evaluations. The petitioners consented to those evaluations. SHEMELEY testified that the OT evaluation was conducted. (OD R-20.) It showed that O.D. had some below average visual motor skills and that occupational therapy was recommended. A social evaluation was conducted. (OD R-21.) During this evaluation, a social worker will contact the family to obtain birth and developmental histories and demographic information about the family. It will also obtain any concerns the family has. It showed that O.D. was diagnosed with pervasive developmental disorder at 18 months. (OD R-21 at 221.) This diagnosis was later changed to global developmental delay at age five.

A Cognitive and Educational evaluation was conducted on O.D. (OD R-22.) A school psychologist conducted the cognitive evaluation and SHEMELEY conducted the educational evaluation. She utilized the WIAT. SHEMELEY explained that the two tests are meant to be compared with one another to help inform each other. The cognitive evaluation looks at a student's abilities, like how they process auditory information, visual information, memory, processing speed. The psychologist then completes a rating scale to gather a little more information about behavior, too. When comparing the two tests, the LDTC is looking for different things. For example, there may be something in the cognitive evaluation that explains a student's academic performance, significant verbal processing weaknesses, or difficulties with academics in the areas of language or reading. SHEMELEY further explained that these tests are screening for specific learning disabilities. SHEMELEY opined that the cognitive evaluation tells about the student's ability and the learning tells where the student is at. That is why they are compared.

SHEMELEY identified the portion the school psychologist completed. (OD R-22.) SHEMELEY interpreted this report. It told her that O.D.'s strength was in non-verbal reasoning, things that have to do with pictures. O.D. was in the average range. He had

weaknesses in verbal comprehension, fluid reasoning, and fluid reasoning related to abstract concepts like math. His full-scale IQ, 86, was slightly below average. Relative to his weaknesses in fluid reasoning, SHEMELEY opined that O.D. would be a student who would need visual and concrete supports in the classroom. Relative to his verbal comprehension issues, she had significant concern that O.D. would have difficulty understanding the information presented in the classroom and expressing that knowledge. Relative to his non-verbal reasoning, O.D. would need visual learning. He could not rely on language to learn.

SHEMELEY testified that O.D. was below average and in the very low range for all of the academic areas. O.D. showed significant weaknesses in his early reading skills. The test was made up of different components of early reading, including letter sound, letter identification, some early rhyming, and a little bit of ability to identify sounds in the beginning of words. Relative to expressive vocabulary, SHEMELEY testified that this is naming pictures. O.D. scored a standard score in the 75<sup>th</sup> percentile. Relative to oral word fluency, O.D. was very low. This was difficult for O.D. because it involves naming things within categories. This involves verbal and long-term memory skills. This comported with the cognitive piece SHEMELEY explained previously and the CHOP speech and language evaluation. Relative to sentence repetition, during which O.D. would hear a sentence and have to repeat it, this tests language and memory skills. Receptive skills required O.D. to listen for details and select the picture. Receptive language is following a direction and choosing the correct picture. Relative to oral discourse comprehension, O.D. had to listen to a passage and answer comprehension questions about it. There are no visuals. It is completed through listening only.

SHEMELEY explained that early reading skills include letter recognition, letter sounds, and rhyming. These are all pre-reading skills. On this portion, O.D. had a standard score of forty-seven. That is less than the first percentile. SHEMELEY opined that these are skills that would have been worked on in pre-school.

Shemeley detailed the following: Math problem solving consists of some early math, vocabulary, identification of some shapes, and looking at whether a glass is full or empty. Writing fluency consists of giving the student thirty seconds to form as many letters as possible.

Shemeley then explained the composite scores for oral language. O.D. had some weaknesses in both expressive language and then the receptive understanding of language.

Based on these evaluation results, Shemeley testified that O.D.'s profile showed he had language weaknesses. She was concerned about his ability to understand a teacher's instruction and ability to respond orally in the classroom. She acknowledged that O.D. and J.D. may be communications impaired. She did not know if they are autistic or if they had ADHD, because that occurred after her time as their case manager. Generalized anxiety disorders were not part of their initial evaluations. After interpreting the various evaluations, Shemeley drafted the initial proposed IEP. (OD R-24.) She analyzed the various placement options in the District. A typical student attends kindergarten in a general education program. Sometimes there is a special education assistant in the room. The next more restrictive placement is an in-class resource setting. In that class, there are a general education teacher and a special education teacher, who co-teach together. This is the two-teacher model, in which the special education teacher might be providing alternative assignments within the general education program. The special education teacher may teach small groups to reinforce skills within the classroom. There are typically developing students in that classroom.

The next more restrictive placement is a kindergarten resource program, which is taught by a special education teacher. This is the pull-out classroom, the teacher would be providing the modifications that are in the IEP. That programming has a lot of structure and modeling. It would be a combination of phonological instruction, comprehension in early reading fluency, vocabulary, and early math skills. This class is generally less than eight students. There is one special education teacher and at least one assistant in the

classroom. SHEMELEY testified that this was selected for O.D., who would have the resource program for language arts, writing, and math. The rest of his day would be with typical kindergarten students. SHEMELEY detailed the summary of those pull-out resource services in the IEP. It was as follows:

Language Arts	60 minutes	5 x per week
Writing	60 minutes	5 x per week
Math	60 minutes	5 x per week
OT	30 minutes	3 x monthly
Speech-Language Therapy Group (not to exceed 5)	30 minutes	6 x monthly

SHEMELEY opined that pullout replacement was appropriate for O.D. because it provided more intensive instruction in early reading, writing, and math in a setting in which the language of the classroom could be broken down into a slower pace. There are more opportunities for repetition of information, and the teacher can work individually with students or in even smaller groups in that classroom. In this setting, the teacher can preview a lot of vocabulary for the student and pair it with a lot of visuals and movement. The instruction is presented in multiple modalities.

Relative to the proposed IEP's modifications, SHEMELEY testified that these are those that the District felt would be helpful for the student in their setting. O.D. had the following modifications:

Limiting the number of concepts, he was expected to learn at once.

Giving him time to process any verbal information, because he may need extra time to understand any verbal information.

Allow extra time for tests.

Preview any new vocabulary.



Shemeley then detailed the proposed IEP's goals, which she drafted. (OD R-24.) IEP goals are to measure a student's specific progress on specific academic or social or behavioral concepts. For example, Shemeley testified that O.D. would benefit from multi-sensory techniques for identifying and forming letters. Shemeley testified that the Foundations program was being utilized for O.D. Foundations is a systematic multi-sensory approach to learning letter sound patterns. Foundations is an Orton-Gillingham, (O-G), based program. Shemeley testified that she is familiar with Wilson and Foundations. She stated that she is also familiar with Lindamood-Bell, which is also an O-G program. Shemeley testified that Foundations was chosen for O.D., because it is a research-based program for students, with goals focusing in phonological awareness, letter recognition, and forming letters. It is geared toward phonological awareness. Students are given direct systematic instruction in letters, letter sounds, letter formation, and as the program progresses, they get into more syllables, phonemes, and manipulating sounds and words. Shemeley opined that Foundations, alone is insufficient to teach a student to read. She explained that comprehension, vocabulary, and fluency must also be instructed. That is a balanced program. Shemeley opined that the District offered O.D. a balanced program. Shemeley opined that the proposed IEP was an appropriate education for O.D..

Shemeley testified that O.D.'s Goals 1, 3, and 9 address phonological awareness. The goals do not specifically state phonological awareness; however, there would be instruction and techniques utilized to allow the student to achieve the goal with incorporated phonological awareness. She testified that the speech and language goals and services cross over into phonological awareness, including, but not limited to, the production of some of those individual sounds. She testified that her testimony would be the same testimony for J.D.. She further testified that this was similar to the annual review proposed IEP relative to goals 1, 2, 3, 4, and 5, and instruction.

Relative to J.D., Shemeley identified all of the early intervention documents. (JD R-1-4.) Going through the same questions asked about O.D. because the brothers' profiles are similar, Shemeley identified the background documents from Pennsauken and Pennsylvania. (JD R-5.). J.D. was found eligible for special education by

Pennsauken with a classification of pre-school child with a disability. SHEMELEY identified the psychological, OT, and speech and language evaluations completed by Pennsauken. (JD R-6-8.) Like with O.D., these dated back to 2015. This was three years prior to their registration in respondent's District. SHEMELEY reviewed these evaluations and noted that there was developmental information. Relative to the psychological evaluation, it was a Battelle type of evaluation. It does not produce a full-scale IQ. Rather it shows an overall developmental index. It indicated that J.D.'s overall developmental index was in the low average range. (JD R-6.) Relative to the occupational therapy, the Peabody evaluation indicated that O.D.'s motor functioning was between average and below average. Relative to the speech and language evaluation, J.D.'s receptive language score was higher. However, he had a poor performance in expressive language. Relative to the social evaluation, SHEMELEY explained it recorded some family and medical histories. (JD R-10.) It noted that J.D. was diagnosed with pervasive developmental disorder at eighteen months.

Pennsauken invited petitioners to an eligibility meeting and found J.D. to be eligible for special education and related services. (JD R11-14.) As with O.D., SHEMELEY identified Pennsauken's annual review IEP for the following school year, 2016-2017. This IEP proposed the half-day pre-school program. It was the same one that J.D. had been attending since January 2017. Consistent with her previous testimony, SHEMELEY indicated that it was taught by a special education teacher and would provide special education and services.

SHEMELEY identified the registration form for the District for enrollment in September 2018. (JD R-18.) As with O.D., SHEMELEY identified the letter requesting evaluations and the District's responding letter. (JD R-19-20.) The same things occurred with petitioners regarding the Pennsylvania IEP, the release of records for Pennsauken and Pennsylvania, and the evaluations, as they did with O.D. SHEMELEY detailed J.D.'s Pennsylvania IEP. (JD R-17.) J.D. had been attending a public school special education classroom. There was a revision to the IEP and J.D. was transitioned into a community pre-school. It was the same fact pattern as with O.D. Evaluations were conducted in

January 2017. There was a revision to the IEP in May 2017 and then again on September 7, 2017. (JD R-1.)

Petitioners moved into the District in December 2017. They contacted SHEMELEY in May 2018, for services beginning in September 2018. SHEMELEY testified that the parents were invited to attend an initial evaluation planning meeting. (JD R-22.) Unlike with O.D., the District conducted a speech and language evaluation, because it could not be scheduled at CHOP, despite mother's efforts to have it scheduled there. The District conducted educational, psychological, speech and language, social, and occupational evaluations. J.D. took a kindergarten screening assessment. (JD R-23.) The results were similar to O.D.'s results. SHEMELEY identified the progress report from the summer enrichment program. (JD R-24.) SHEMELEY explained that the District offers a summer enrichment program for all students who have an IEP. It is during the month of July and is a half day program to reinforce skills that have already been taught for the year. SHEMELEY explained that, even though the evaluations had not yet been completed, J.D. was able to attend because he had previously been a special education student. SHEMELEY testified that, although there is not an exhibit for O.D., he also attended the summer enrichment program. In this program, O.D. and J.D. both received special education supports for language arts and math. They began working on those early reading, writing, and math skills. They had access to books at their level and were doing phonological awareness and reading.

SHEMELEY interpreted J.D.'s OT evaluation. (JD R-24a.) It recommended OT. Relative to the social evaluation, SHEMELEY indicated that like O.D., J.D. had a diagnosis of pervasive developmental disorder, which was changed to global developmental delay, which SHEMELEY explained is a medical term. It is considered to be cognitive impairment. It indicated that the petitioners were trying to obtain an evaluation at CHOP's Autism Center. Otherwise, the results were the same for J.D., as O.D.

Relative to the cognitive and educational evaluation, SHEMELEY explained its results. (JD R-26.) The evaluation indicated that J.D.'s full scale IQ was in the low

average range. His verbal comprehension score was eighty-three. His fluid reasoning score was eighty-eight. SHEMELEY testified that this meant that receptive and expressive language were weaknesses for J.D.. For J.D., fluid reasoning and abstract concepts were challenging. He needed concepts presented with more concrete visuals. SHEMELEY testified that J.D. and O.D. were similar, but that J.D. had a higher level of verbal comprehension. SHEMELEY explained that she used the WIAT, for the same reasons she described with O.D.. The results showed that most of J.D.'s academic skills were between below average and low. J.D. had significant weaknesses in early reading skills, including identifying letters, letter sounds, and rhyming. J.D. was in less than the first percentile for early reading skills. These are skills which would have been worked on in pre-school. Relative to math, J.D. fell within the low range. He was in the 23<sup>rd</sup> percentile. SHEMELEY testified that J.D. was a little bit higher in alphabet writing fluency. His scores were in the average range. This meant that he was able to form a few letters. The letter does not have to be matched to its sound. J.D. was in the low range for oral discourse comprehension, which is understanding language. All of these sub-test skills would have been worked on in a public school pre-school program. Relative to expressive vocabulary, J.D. scored in the 13<sup>th</sup> percentile. For oral word fluency, which included naming words within categories, J.D. scored in the 2 percentile. For sentence recognition, J.D. scored in the 2<sup>nd</sup> percentile. He was in the first percentile for and had significant problems in the next three below with comprehending and expressing language.

Like O.D., J.D. had significant language weaknesses that the district had to address in a special education classroom. Language instruction had to be tailored for this student. The language concepts would be reduced, paired with visuals, and slowed down in pace of presentations, so that the student had time to process the language of the classroom. SHEMELEY testified that J.D. had more spontaneous language and was more willing to try language than O.D. She did not make any further comparison because she is not a speech therapist. However, relative to the speech and language evaluation, SHEMELEY noted that speech and language therapy was recommended. (JD R-27.)

SHEMELEY identified the invitation to attend the initial IEP meeting. (JD R-28.) SHEMELEY detailed the 2018-2019 IEP. (JD R-29.) Similar to O.D., the recommendation was a kindergarten resource program, because J.D. needed specialized instruction across early math, reading, and writing and a classroom in which scaffolding, modeling, and reduced language occurred. J.D. and O.D. were placed in the same classroom. J.D., like O.D., was classified as communications impaired. SHEMELEY testified that O.D. and J.D. met the criteria for communications impaired classification. SHEMELEY disagreed that O.D. and J.D. should have been classified as multiply disabled. She consistently testified that they were communications impaired. SHEMELEY testified that they were classified as communications impaired, based directly on the scores that they received on the speech and language testing as conducted by the speech and language therapist.

The modifications for J.D. were similar to those for O.D., J.D.'s goals were substantially similar to those for O.D.. They were similar because their delays and skills were similar. The differences in services between J.D. and O.D. were mostly borne out in how the speech and language therapist would provide services. SHEMELEY opined that the IEP was the appropriate program for J.D.. Similar to O.D., Foundations was the appropriate program for J.D..

SHEMELEY explained the benefit of J.D. and O.D. having exposure to typically developing peers. She testified there are multiple benefits. They would form relationships with typical peers and experience language and social models.

SHEMELEY was at the annual review meeting. She recalled the IEP meeting being uneventful. SHEMELEY's case manager duties ended at that point because the IEPs recommended a program at the Tauten Forge School in the District. SHEMELEY is not the case manager in the Chairville school.

SHEMELEY observed O.D. and J.D. in their Newgrange placement on January 10, 2020. (OD R-54.) (JD R-59.) SHEMELEY testified that the facts related to the observation for both O.D. and J.D. are the same. SHEMELEY observed O.D. and J.D. in their

homerooms doing their morning routine. It began at 8:25 a.m.. Next, SHEMELEY followed them to their Wilson reading period with another teacher. Wilson reading was listed on their schedule. O.D., J.D., and another student were there. The teacher went through the components of a Foundations lesson. SHEMELEY stated that Foundations is part of the Wilson program. The District was also providing Foundations to O.D. and J.D..

Relative to the Foundations lesson, the teacher did several components. She started with the letter key word sound presenting it to the students. Then, they all recited it together. She pointed to the letter and had them recite those three cues. The teacher then used a pointer to identify the letters and had the students say it more independently. The teacher used a visual of models for where you would begin in letter formation. She then showed the letter to the students to identify which line they should begin on and verbally stated the actions of writing that letter.

Then, the class went on to another portion of the Foundations program using the magnetic tiles. The teacher read an oral story that was acted out with puppets. She asked the students some listening comprehension questions based on the story she presented. That was the end of the lesson. SHEMELEY testified that the Foundations lesson started at 8:30 a.m. and ended at 8:55 a.m. It was 25 minutes long. SHEMELEY testified that everything that she observed was part of the District's Foundations program.

After the Foundations lesson, SHEMELEY observed music class. It was a regular music class with a rhythm activity. SHEMELEY did not observe anything academic in the music class other than just matching rhythm to a visual pattern. J.D. and O.D. then returned to their homeroom where they reviewed a brief calendar activity, and Ms. BRANA did some instruction on proper and common nouns. SHEMELEY could not determine what type of program was being used. SHEMELEY testified that these are all part of what would have been done in the District's program.

At 10:34 a.m. there was a Lego play break. SHEMELEY did not recall Ms. BRANA using a timer at the time of the break. At about 10:45 a.m., J.D. and O.D. transitioned to

their math period. The teacher had a large analogue clock. She demonstrated telling time and then each student practiced it. She briefly also introduced time relative to the half-hour for just one try by the students. J.D. and O.D. then played a math card game, Uno, and did some skip counting. That was the end of the observation. SHEMELEY testified that these are all part of what would have been done in the District's program. SHEMELEY testified that there was no difference in the program at Newgrange than in the District, except that there were no general education students in the Newgrange program. This was significant because there would be no developmentally typical peers to model for language and social interaction. Prior to her observation at Newgrange, SHEMELEY had reviewed Colannino and Miller's reports.

SHEMELEY opined that Newgrange's program was not more appropriate than the District's program. It offered nothing more than the District's program did. The phonological components were similar in each. The District was able to provide comprehension and fluency work on the whole parts of reading. The District's program provided for scaffolding to reach their goals with modeling. The District provided Foundations, the concepts and lessons were reviewed and reinforced throughout O.D. and J.D.'s day. SHEMELEY explained that the Newgrange program provided less content. Almost everything that was presented at Newgrange was on an independent level. They could do the lesson independently. The lessons were not presented on an instructional level, during which the student can grow and learn with guidance from a teacher. The instructional level is a harder level. SHEMELEY testified that in the District the students are working at an independent level at sometimes, and then there are times during which the teacher is guiding them through it on an instructional level. SHEMELEY acknowledged that she had not observed J.D. or O.D. while they were students in the District.

SHEMELEY helped produce a report after the observation in which she offered opinions. SHEMELEY indicated that she did not write in the areas, where Colannino and Miller are mentioned in the report. The report was drafted jointly with Dr. Ferraro, (Ferraro). Ferraro wrote the bullet points in the report. SHEMELEY testified that when she

creates IEPs she bases the goals and objectives on the abilities and concerns for the subject student.

Shemeley testified that she and Ferraro were able to speak with Ms. Brana for ten to fifteen minutes at the end of the observation. Shemeley indicated that Ms. Brana felt both O.D. and J.D. were at a kindergarten level socially. Shemeley denied recalling that Ms. Brana indicated that their reading abilities were at a kindergarten level when they entered Newgrange or that they had a lack of phonological awareness. Shemeley indicated that Ms. Brana said that her O-G program was too high for O.D. and J.D., so they went to the other teacher for the Wilson reading period.

Shemeley indicated that the report indicated that the pattern of absences for O.D. and J.D. continued, as it occurred in the District, although Shemeley indicated that they were absent less at Newgrange. Absences are a problem for students because they miss instruction. Shemeley did not see the use of technology during the observation. She acknowledged that it could have been used at other times during the day, but she did not know. Shemeley testified that Foundations is a Wilson program. During her observation, the teacher did not take the opportunity to reteach the lessons or introduce new concepts. Shemeley did not see O-G skills infused in any other instruction. She did not see any other instruction or infusion for phonological awareness during her observation. She acknowledged there was a multi-sensory approach to telling time; however, the math class did not work on phonological awareness. There was some repetition of information.

Shemeley testified that the observation report made conclusions about progress through comparing scores and reducing the improvement to a numeral. She agreed with this statement in the report, although it was not authored by her. In explaining the conclusion that there was a thirty-point growth for O.D., and a similar growth for J.D., Shemeley testified that there was a thirty-point difference between the scores on the WIAT and the Woodcock. She testified that she learned during her education and training that you can correlate the scores on the WIAT and Woodcock this way. She agreed that the two scores cannot be compared directly. To reach the conclusion she would have



included more context, and the information she had reviewed and given a more in-depth explanation. She stated that is the role of the expert.

Shemeley testified that you can teach the concepts of a program with fidelity, but it is impractical to say that a student will never be exposed to other strategies. Shemeley explained that her understanding of scope and sequence is that there is a building upon what has been learned and that the teacher is not going to introduce something that is based on something that had not already been mastered. Mastery is identified as eighty-five percent for Foundations. Shemeley testified that she would never recommend using Guided Reading exclusively with special education students with phonological awareness, vocabulary, and rapid naming weaknesses. It has to be used in a comprehensive multi-component program. Guided Reading does not address phonological deficits. She testified that in the District's resource classroom there would always be multiple curriculums, approaches, and techniques that are at the discretion of the teacher. Shemeley opined that Guided Reading is not a harmful activity to students with phonological awareness deficits. Shemeley disagreed with petitioners' counsel's characterizations of the word Guided. She also disagreed with the assertion that Guided Reading prevented O.D. and J.D. from reading.

**Gale Ferraro, Ph.D.**, (Ferraro), testified on behalf of the respondent. Ferraro detailed her resume. (JD R-65.) (OD R-61.) Ferraro is employed by the respondent as the Director of Educational Support Services, which means that she oversees and supervises special education programming, staff, counseling, and health services in the District. She has been employed in this position with the District for nine years. She has been employed for thirty-four years in public school districts. She has also been employed as an adjunct professor. Ferraro possesses certifications as a teacher of the handicapped, elementary education, supervisor of special education, school principal, and school administrator, which is a superintendent. Ferraro is also a nationally certified educational diagnostician through the Council for Exceptional Children. She possesses a doctorate degree in special education administration. Ferraro was qualified and

accepted as an expert in special education, case management, LDTC, and director of CSTs with an emphasis on overseeing programs. This was Ferraro's first time testifying as an expert. She had never testified in court previously.

Part of her duties include overseeing the CST. In this regard, she hires the CST members, works with them on a daily basis as a resource discussing programs, developing programs, looking at projections for IEPs based on recommendations, providing professional development for staff, and meeting with them regularly. Relative to developing programs, programs are developed substantively and procedurally, for implementation in classrooms. This includes finding a location, finding staff to implement the program, deciding what students may require the program, reviewing and evaluating programs from other districts and other materials, selecting materials, determining supports and assistants needed in classrooms, determining what kind of progress the District would be looking for in the students, and how would the professionals in the District communicate with the parents. Ferraro also observes staff, students, case managers, teachers, OT providers, speech therapists, PT providers, and assistants. Relative to her observation of students, she reviews students in District programs and out of district placements. During her employment with the District she has observed out of district placements about ten to fifteen times. Ferraro is responsible for creating a budget. Ferraro testified that the respondent's Board has never told her that she cannot do that program and have not been denied funding for the programs she has recommended or proposed. On cross-examination, Ferraro denied that there was any financial pressure put upon her to keep these students in the District. She testified that the respondent budgets for contingencies and would be able to cover O.D. and J.D.'s tuition costs at Newgrange, should that be ordered after the hearing. Ferraro explained that other students in the District have programs, which cost more than the tuition would be at an out of district placement as a result of the number of assistants and other supports which were required to be placed in the classroom.

Ferraro supervises the school counselors who provide services in each of the District's school buildings. Those professionals provide social and emotional workshops,

small group lessons, both in and out of the classroom. Ferraro supervises the nurse, support services, and is the HIB coordinator for the District. Ferraro is not responsible for curriculum, although she works with the curriculum department and has overseen curriculum development specific to special education. During the summer, Ferraro usually runs curriculum writing groups that take the general education curriculum and develops modifications and accommodations to meet specific needs of students who may not be as ready. This would include special education students and some general education students with 504 Plans. This is done with the goal of helping students be successful and make progress. Ferraro testified that the District goes beyond just general education and special education programs to reach other students. She stated that people move into the District for these types of programs.

Ferraro goes into the classrooms at least two days per week. She talks to teachers and students. Sometimes she informally and formally observes students, teachers, and the programming. She testified that if she did not do this observation, she could not effectively speak with the parents. During her past employment, she supervised special education programs, developed programs, observed teachers formally, provided professional development to staff, and went into classrooms regularly. Ferraro was an LDTC. In this position, she provided educational assessments for students, worked on a child study team, and was a case manager for preschool to eighth grade students, in every classification. She was trained to conduct and interpret evaluations. Ferraro explained that you have to be trained to perform certain tests like the Woodcock Johnson or a WIAT, (Weschler Individual Achievement Test), but that there are other assessments that teachers conduct without a certification. In the role of case manager, Ferraro interpreted evaluations, helped formulate IEPs, communicated the components of IEPs and why it was appropriate for the student to parents, oversaw the IEP to make sure it was implemented, collaborated with professionals to make sure the goals were being addressed. She has conducted hundreds of evaluations and has served as a case manager for thousands of students. Ferraro explained that the TILLS test is not used in New Jersey public schools. The CTOPP is a test that provided by speech language

therapists. Ferraro is proficient in administering the WIAT and Woodcock Johnson assessments.

After being a special education teacher, Ferraro received a master's degree and LDTC certificate at Kean University. While working as a case manager, she was also an adjunct professor at Kean University at which she taught graduate level courses. Ferraro did this for eleven years. Among other special education courses, she instructed the LDTC program.

Ferraro was not a member of any of the O-G approach organizations. She was not certified in O-G. She explained that she did not believe there is a certification in the O-G approach. She was trained in the Wilson reading program, but not certified. Ferraro explained that there may be a difference between being certified or trained in Wilson depending on who the instructor is and what they do with their training. Ferraro has taught Wilson reading, as a special education teacher. Wilson is a very scripted explicit instruction program. In her opinion if you can read the manual you can teach Wilson. The certification for Wilson is provided by the publisher, not the State of New Jersey. Ferraro brought Kathy Bostock, (Bostock), in from Newgrange on three different occasions to train the District's teachers. The majority, approximately ninety-five percent, of the District's special education teachers have been trained in Wilson. Ferraro explained that the same people doing the training at Newgrange would be the same people doing the training at Medford. There are level one and level two Wilson certified teachers in the District. Ferraro has programmed Wilson for students.

Ferraro explained that O-G is an approach, which is a very explicit, direct instruction approach. The majority of public schools do not use an O-G program. Instead, they use a Wilson program which is based on the O-G approach. Both deal with phonological awareness, phonics, and being able to decode words. In this approach you start with small parts and move to words and sentences. There are only very small parts of comprehension in Wilson. It is not the focus of Wilson. O-G and Wilson are dry programs meant for grades three and subsequent. Foundations is fairly new and was

developed for younger students. You can use it in general education programs and in pull-out resource settings as an intervention. It has stories, puppets, etc. and is more motivating to the students. There is a manual which explains the basics of using sound cards and other tools. It is very scripted. In the District, teachers who implement Foundations receive the Wilson training.

Ferraro is familiar with O.D. and J.D. and observed them in Ms. Borreggine's, (Borreggine), class during the 2018-2019 school year. She anticipated attending the annual review meeting in April 2019. Ferraro identified the students' initial IEPs, as she was familiar with their programming. (OD R-24.) (JD R-29.) Ferraro explained that the students were receiving a variety of reading instruction. Ferraro opined that this was because there cannot be focus in just one area. When the students entered the District they really could not identify letters and numbers. They both could identify a few letters, mostly ones that were in their names. Normally, students would have learned these skills in the preschool level program. O.D. and J.D. attended a community preschool program, which was more play based.

Foundations was implemented to address phonological weaknesses. It does not focus on comprehension. The students also received Guided Reading, which was instruction in a group of two students and the teacher to focus on individual skills. This also focused on phonological weaknesses, through text. It could utilize a picture book and some sight word vocabulary. The instructor would present the word and the letter that starts the word. This would be repeated and infused for that student's needs, throughout the day. There is also work on comprehension skills outside of Foundations. Ferraro testified that even on the Wilson website, the instruction needs to also provide a comprehension program to go along with Foundations. Ferraro opined that reading is not just phonological awareness. It requires other skills, too. Students need to decode words and understand their meaning. Ferraro opined that it would not be good teaching to use the O-G approach across the entire curriculum without mixing in other methodologies with O-G certified teachers.

In District, particularly in kindergarten, students are not able to sit for a long time. The teachers will do lessons of eight to ten minutes duration, which are repeated and also changed at times. The District's program included at least a minimum of 60 minutes of reading each day. For O.D. and J.D., it was more like 90 minutes of reading instruction each day. O.D. and J.D. also received speech and language therapy as part of their learning to read. The teacher and the speech and language therapist collaborate for the students so that together they meet the student's goals and objectives. Ferraro opined that that is what makes a good program. That was what occurred for O.D. and J.D..

Ferraro identified the April 2019 proposed IEPs. (OD R-35.) (JD R-30.) Ferraro attended the annual review meeting. She believed that the meeting was less than what she expected. Mr. Morgan, (Morgan), was twenty minutes late for the meeting. The District was unable to review the IEP or the proposed IEP because Morgan tried to take over the meeting. He asked for different evaluations. Ferraro testified that she granted the requests. The only thing that was asked for specific to the proposed IEP was additional PT, which was requested by the father. It was increased from three times per month to four times. It was handwritten onto the proposed IEPs. In the proposed IEP, the same program was proposed, a pull-out replacement program. It would have included Foundations and the other reading approaches.

Ferraro testified that Miller observed O.D. and J.D. in their Tauten Forge classroom on May 17, 2019. Ferraro did not agree with Miller's observations or conclusions. Ferraro disagreed with Miller and Colannino's singular method approach. Ferraro opined that the multi-method approach was more appropriate. At the time of her Newgrange observation, Ferraro had not received Colannino's report. Ferraro had received Miller's report. After Miller's observation she contacted Ferraro with two inquiries. Miller first asked why the Wilson kit in the classroom had a different teacher's name on it. Ferraro explained that it was the teacher who taught the class several years before when the kit was purchased. It was passed down to the current teacher. Miller also asked if Borreggine had training in Foundations and Wilson. Ferraro explained that Borreggine had been trained in

Foundations and that she had also completed the three day training in the Wilson program. Ferraro disagreed that the smart board should not be used during the Foundations lessons.

In their specials and general education classes, O.D. and J.D. were provided teacher support. Ferraro further testified that in their District, students in self-contained classrooms still spend time, with lots of assistance support, during lunch and recess with typical peers.

Ferraro testified that O.D. and J.D. were offered the special education summer enrichment program. Ferraro explained that the summer enrichment program is for students who have made progress. ESY is for students who have not made progress. O.D. and J.D. made meaningful progress and therefore were invited to the special education summer enrichment program. The purpose was to prevent regression. J.D. was offered speech therapy, OT for four times at thirty minutes for the month of July, PT was added based on the discussion at the IEP meeting. The summer enrichment program focuses on specifically, reading, writing, and math. It is to reinforce what was covered during the school year. O.D. and J.D. were registered for the program; however, they did not attend.

Ferraro explained that O.D. and J.D. attended Newgrange for the 2019-2020 school year. Ferraro had the opportunity to observe the students at Newgrange. SHEMELEY observed with Ferraro. This observation was scheduled weeks before it occurred and Newgrange knew they would be observing on that day. They observed Newgrange for three hours. This was O.D. and J.D.'s entire morning. This was the first time that Ferraro produced an observation report. She indicated that this instant litigation necessitated the production of the report. Ferraro identified the observation reports and program evaluations for the students. (OD R-54.) (JD R-57.) The reports are essentially the same except for differences addressing each student. SHEMELEY and Ferraro both observed. They took their own notes and after the observation spoke briefly about what they had seen. SHEMELEY wrote the observation portion because that is her area of expertise as an LDTC. After it was drafted, Ferraro compared it to her notes for accuracy

purposes. Ferraro created the bullet points utilizing the observation notes and the broader picture of her observations. Ferraro wrote the bullet points because that is her area of expertise. Ferraro does program evaluations regularly. This was not the IEP program, but what was going on in the classroom.

Relative to the report for O.D., Ferraro testified as follows. During the observation, O.D. presented as he had at Tauten Forge. Ferraro also observed the Foundations lesson. He was immature socially. He was quiet and needed to be prompted to respond. He appeared to be focused. Mrs. Brana, (Brana), his Newgrange teacher, indicated that she felt he was at the kindergarten level socially. O.D. is the more serious of the brothers. Ferraro spoke to Brana after the observation. Much of the first bullet point was learned during the discussion with the teacher.

Relative to the report for J.D., Ferraro testified as follows, with the exceptions of the noted testimony above which was the same for O.D. and J.D.. During the observation, J.D. presented as he had at Tauten Forge. Ferraro also observed the Foundations lesson. He was immature socially. Brana indicated that she felt he was at the kindergarten level socially. J.D. spoke more and looked for teacher attention.

Ferraro detailed the second bullet point in the report. She observed that the other students in the class appeared to have more global delays. Ferraro stated that based on her thirty-four years in special education she could glean the students' classifications. Ferraro had a strong concern that O.D. would have no interaction with typical peers, from whom he could model appropriate skills and language. This would have occurred in the District's program. Although they would have been in a pull-out resource for reading, writing, and math, they would have been in science and social studies with typical peers. Ferraro opined that this serves a good social and emotional purpose. This is a factor that goes into program review. Typical peer students do not attend Newgrange. Brana informed Ferraro that the classroom was comprised of first through third graders. O.D. and J.D. were the only first graders.



Relative to J.D., Ferraro detailed the second bullet point in the report. She observed that the other students in the class appeared to have more global delays. Ferraro had a strong concern that J.D. would have no interaction with typical peers, from whom he could model appropriate skills and language. This would have occurred in the District's program. Although they would have been in a pullout resource for reading, writing, and math, they would have been in science and social studies with typical peers. Ferraro opined that this serves a good social and emotional purpose. This is a factor that goes into program review. Typical peer students do not attend Newgrange. Brana informed Ferraro that the classroom was comprised of first through third graders. O.D. and J.D. were the only first graders.

Ferraro detailed the third bullet point in the report. She noted that at the annual review meeting the parents were opposed to having both students in the same classroom for the 2019-2020 school year. To accommodate that concern, Ferraro had offered that one student could stay at Taunton Forge and the other could attend Chairville. Ferraro noted that at Newgrange, O.D. and J.D. were in the same self-contained classroom all day. Ferraro was surprised they were in the same classroom, given the parents comments at the IEP meeting. This bullet point testimony was the same for O.D. and J.D.

Relative to the fourth bullet point, regarding the use of assistive technology. Brana advised that she only had one iPad in the room which was provided by another school district. Ferraro testified that Brana indicated that there was really not much technology in the classroom. There were not any smart boards. Ferraro testified that respondent's students have regular access to iPads and Chromebooks. There are smart boards in each classroom and that they are regularly utilized for math and reading.

At the IEP meeting, assistive technology was discussed. The OT and PT providers showed samples of O.D.'s and J.D.'s handwriting. O.D.'s was perfect. J.D.'s was not great. Both therapists felt they were too early to start moving them over to a computerized program and that both had to practice still. The petitioners or advocate requested an

assisted technology evaluation. Ferraro granted this request. Ferraro testified that the evaluation indicated that both students did not need assistive technology at this point.

Relative to the fifth bullet point, Ferraro noted that at Newgrange, the students were given forty minutes daily of Wilson. Ferraro explained that the parents in the annual review meeting indicated that O-G and not Wilson instruction was required to meet their sons' needs. The parents and Morgan all indicated that Foundations was inappropriate for O.D. and J.D.. Additionally, Ferraro testified that Miller opined in her report that Foundations was not the right programs for O.D. and J.D.. However, O.D. and J.D. were not receiving O-G program at Newgrange, but they were receiving an O-G approach, according to Ferraro. This was contrary to Miller's recommendation. Brana advised that their skills were too low for an O-G program. In this regard, Ferraro explained that the petitioners' expert, Miller, indicated in her report that Foundations was not the program for these students. As a result, Ferraro was surprised at the observation that O.D. and J.D. were receiving the same program as the District's. While the Newgrange schedule indicated O.D. and J.D. were to receive forty minutes of instruction, Ferraro observed that they only received twenty-five minutes of the Foundations lesson. The remaining fifteen minutes was used as play time with the stuffed animals that accompanied the lesson. This was free time. This concerned Ferraro. Ferraro saw no purpose in the fifteen minutes of playing with stuffed animals. Ferraro further testified that in the District, the reading instruction is infused throughout the day in the various subjects. Brana could have done much more during the Foundations lesson to explore and infuse the lesson. Ferraro testified that O.D. and J.D.'s scheduled showed later lessons for language arts which was more like writing. Brana told Ferraro that she would really like to do more reading during the day; however, she would have to talk to the principal to see if she could take away from science or social studies. Ferraro concluded that the twenty-five minute Foundations lesson was the only reading instruction for the day. Ferraro noted that the District's program provided at least sixty minutes per day, but more frequently ninety minutes. It was additionally infused in other subjects as well. Although their schedules said Wilson, the lesson Ferraro observed was a Foundations lesson. Ferraro again

explained that Wilson is appropriate for grades three and subsequent. Brana used sound cards from Wilson, but the Foundations book.

Relative to the sixth bullet point, Ferraro explained that she observed O.D. and J.D. getting fifteen minutes of Wilson word work and another ten minutes of the teacher reading the story, which is basically listening comprehension. Ferraro stated that many approaches are multi-sensory, not just O-G. Although O.D. and J.D. were engaged, they did not have books in their hands or do any reading even in a picture book. The students had used magnetic tiles. However, Ferraro would have expected the teacher to return to the initial Foundations' letter sound and re-enforce it at the end of the story and bring it back around to the students. This did not happen. This would push the students further into learning the sounds and letters.

Ferraro noted that the book used by the teacher was the letter K. That is a kindergarten workbook. Ferraro made note that her observation was on January 10, 2020. They had been at Newgrange for five months. This would have been covered between mid-October and November in District; because this lesson is approximately level one, week eight. Ferraro acknowledged that some students might need additional time.

Ferraro explained that the Wilson website clearly states that Foundations is an intervention program for students in kindergarten through third grades. O.D. and J.D. are in first grade, but they are functioning much lower. Ferraro noted in her next bullet point that the Foundations' concepts were reviewed and reinforced throughout the day for O.D. and J.D. in the District. Brana said she was trained in O-G and not Wilson. Ferraro testified that the Foundations website specifically indicates that although Foundations includes comprehension strategies, it must be combined with a core literature-based language arts program for an integrated and comprehensive approach to reading and spelling.

Ferraro explained that the District broke the instruction down into smaller time units because O.D. and J.D. did not have the attention span for the longer unit. However, the entire unit was delivered during the day. Foundations has segments which are easily broken down based on a student's ability to attend. In District, O.D. and J.D. were provided Readers Workshop. This was delivered in smaller time units for the same reason. Readers Workshop was given to all of the students. O.D. and J.D. were also given Guided Reading in a group of two students and the teacher. It was individualized instruction. The Foundations concepts are infused in this instruction too during this individualized instruction. The District provided a predictable sentence centers instruction to O.D. and J.D., as part of their rotating individual centers. Foundations was infused in these centers. These were not offered at Newgrange. Ferraro was disappointed with the Newgrange instruction. There was a great deal of down time that does not occur in the District. Ferraro did not believe O.D. and J.D. were pushed to learn at Newgrange. Ferraro opined it was like an old-fashioned traditional program. The program was not rigorous. The pacing was slow. There was little encouragement and development of abstract higher-level thinking.

Relative to the patterns of absences for these students, O.D. and J.D. had absences when they were enrolled in Pennsauken prior to the respondent's District. In the respondent's District they had excessive absences, which amounted to approximately missing 150 hours of lost instruction based on an average of twenty-five days. O.D. missed twenty-eight days and J.D. missed twenty-one and one-half days. At Newgrange in four months, O.D. and J.D. had been absent five and seven days, respectively. This was strikingly similar to the pattern in the District during the 2019-2020 school year. It impacts the students' abilities to learn.

Ferraro opined that Newgrange was not providing anything out of the ordinary that the District did not do or cannot implement for the 2019-2020 school year. It did not provide anything the District did not provide in the 2018-2019 previous school year.

Relative to her final bullet point, Ferraro explained that she viewed Colannino's report, (OD P-9.), to see if the tests she used could be compared with the tests the District had done in 2018. Ferraro explained there were similarities in the subtests, like letter word identification in the WIAT and the Woodcock reading mastery. Ferraro explained they were close. Ferraro acknowledged that you cannot say they are exactly the same tests. She was looking for similarities to compare the standard scores of similar tests. Ferraro testified that she took the differences in scores and compared them. She found growth between the 2018 and 2019 subtest scores. O.D. grew from a score of forty-seven to seventy-seven. J.D. grew from a score of forty to sixty-nine. However, Ferraro noted that Colannino indicated that the students regressed from the growth between the 2018 and 2019 subtest scores. O.D. regressed to a score of sixty-four. J.D. regressed to a score of sixty-two. This was consistent with what Ferraro observed in O.D. and J.D. at Newgrange. Ferraro opined that you cannot compare exactly. Ferraro explained that you can compare similar subtests, which are essentially measuring substantially the same things. Ferraro indicated that Miller and Colannino's testing showed little or no growth for O.D. and J.D., while they were attending a school that focused on language and learning disabilities. Ferraro testified that Miller works for the RobinowitzRobinowitz Education Center, (RobinowitzRobinowitz), which she knew to be associated with Newgrange. Similarly, Colannino is associated with the RobinowitzRobinowitz and Newgrange.

Ferraro explained she compared the WIAT and Woodcock Johnson tests and based on her comparison she opined that there was substantial progress by both O.D. and J.D.. Ferraro qualified the straight comparison with the fact that it is not an exact comparison. Ferraro explained that when they get a transfer student from another district, sometimes the parents bring an evaluation report with a test that the District may not necessarily use. Ferraro would look at the subtest in the WIAT to the comparable subtest in the Woodcock Johnson because they are measuring the same areas. Ferraro indicated a general comparison can be made. Ferraro has done this general comparison thousands of times.

**Jill Fredericks Brown**, (Brown), testified on behalf of the respondent. Brown detailed her resume. (OD R-63.) (JD R-67.) Brown is employed by the respondent as a school psychologist and child study team case manager. She has been employed by the respondent for eighteen years. Prior to that she was employed in other districts for approximately two years. Brown is certified by the State of New Jersey in school psychology. Brown was qualified and accepted as an expert in school psychology and case management of disabled students.

As a school psychologist, she is responsible for evaluating students to determine if they are eligible for special education and related services. Brown conducts cognitive and social emotional evaluations. Cognitive evaluations look at the child's innate abilities, which include verbal, auditory, and visual abilities. It also includes short and long-term memory, processing speed, and abstract problem solving. Social emotional evaluations review factors which may be affecting the student and whether those factors are home or school related, by comparing data from the teachers and parents about the child. She also interprets school psychological reports, Brown has conducted hundreds of evaluations during her career and attended thousands of IEP meetings. Brown is familiar with the sub-tests used in completing these evaluations. She typically uses Wexler, Wechsler, Wechsler Intelligence Scale for Children. She has also utilized the Woodcock Johnson test. All of these tests evaluate the child's innate abilities.

Brown further is the case manager for each student's educational programs once they are determined to be eligible. She works in the respondent's elementary building and case manages approximately 50 students. As part of her duties, she meets with the special education staff regularly and helps them carry out the educational programs for each of those students. Brown drafts IEPs for these students. For new students, Brown would be responsible for handling the referral. She would meet with the family within twenty days to discuss whether the student is eligible and if further testing is warranted. If so, upon consent of the parents, evaluations would be conducted over the next ninety days. The team would then meet with the parents to review the recommendations and suggest a plan for the student. If the student had been classified at another school, then

Brown and the teachers would receive a copy of the previous IEP, which they would follow until it needs to be modified or changed.

Respondent's IEP team consists of a social worker, and a learning disabilities teacher consultant, (LDTC). It could include teachers, parents, speech therapist, and an occupational therapist. The IEP includes input from all of these disciplines and individuals. Each individual works on the shared document to identify the student's strengths and weaknesses.

The cognitive and educational evaluations were done together. (OD R-22.) Brown and the respondent's LDTC compared their results. Brown looked at the child's innate abilities and the LDTC looked at their academic achievement, that is what they have learned in school. If there was any discrepancy between those two things in one particular area, i.e. reading, writing, or math, that would be something typically defined as a specific learning disability.

For O.D., Brown did not complete the cognitive evaluation. However, as case manager she did review and interpret it. Brown reviewed the cognitive evaluation portion. Brown explained that this was the Weschler test. O.D. had a full-scale composite score of eighty-six, which is in the low average range at the 18<sup>th</sup> percentile. This means that he is below average overall since average is between the 25<sup>th</sup> and 75<sup>th</sup> percentiles. O.D. had weakness in the area of verbal comprehension for which he scored in the 8<sup>th</sup> percentile. This lowered his overall score. In relation to verbal comprehension, O.D. had two significant scores. The first related to the information subtest which evaluates background knowledge, like how many legs does a bird have. The second related to similarities and the child's ability to compare two words or categorize two words, like what do milk and water have in common. This has to do with the organization of language and concepts. O.D. had more deficiencies in the similarities area. Relative to the other subtests, O.D. was just below average in fluid reasoning in the 21<sup>st</sup> percentile. Matrix reasoning, picture concepts, and visual spatial skills test abstract problem solving. It is all non-verbal. Thus, O.D.'s non-verbal skills are slightly higher, so in developing a

program he would need focus on verbal skills. The working memory subtest and processing speed subtest contribute to O.D.'s full scale IQ. Based on his picture memory subtest results, Brown indicated that O.D. is a primarily non-verbal learner, which means that in the classroom, the program would pair anything auditory with a visual or multi-sensory technique, (touch it, see it, or feel it), to allow for other ways to grasp the information. Brown said relatively speaking that O.D.'s non-verbal reasoning was a strength in his profile.

Brown gleaned the following from the comparison of the two reports for O.D. O.D. had not been in the respondent's school district yet. O.D. was behind academically when he presented for enrollment in the respondent's district. O.D. required a fairly intensive small group program based on the composite scores. The small group program required multi-sensory instruction. O.D. would be placed in a replacement, small group resource room. This was the same for J.D.. Brown indicated in kindergarten there is not solely oral delivery of instruction. If that would have been used only, it would not have been appropriate.

Brown explained O.D.'s IEP. (OD R-29.) O.D. was offered a replacement, small group resource room program. Brown did not attend O.D. & J.D.'s IEP meeting. She was their case manager and implemented their IEPs. Utilizing multi-sensory instruction in this resource room was appropriate for O.D. because he had little academic knowledge in terms of letter identification, number identification, letter writing, and number writing. These are the basic pre-readiness skills that students learn in the respondent's preschool program. Students with language learning disabilities need extra small group support. O.D. might have known some of his letters but could not read.

The program for O.D. worked on letter identification, sound symbol relationships, increasing sight word vocabulary, and oral comprehension. These are the facets of reading. This classroom utilized Foundations, which works on decoding, sound symbol relationships, and phonemic knowledge. It has a handwriting component. Brown has not taught Foundations, but the District has utilized almost the entire time she has been



employed by it. She has not completed the three-day Wilson training. Brown does not possess certification in the O-G approach or any O-G curriculum.

In addition to Foundations, this classroom also utilized Guided Reading as a program. This instruction occurs in small groups. The students are leveled by the special education teacher, who works directly with two or three students at a time. The books are also leveled to the students in those groups. The books progress throughout the year. Brown opined that these programs were appropriate for O.D. and J.D. because they were multi-sensory programs that teach letter identification and tying the sounds to the letters in a systematic way.

Relative to the goals in the IEP for the 2018-2019 school year, Brown testified as follows. Goal 3 works on phonological awareness through working on recognizing and producing rhyming words and recognizing initial consonant and vowel consonant sounds. Brown reviewed an updated IEP from December 2018. This IEP added PT, after receipt of a PT evaluation report. (R-26.) There had been a physical therapy consultation request because the teacher and occupational therapist had some concerns. This request was made by the respondent. This was the same for J.D..

Brown detailed that O.D. had excessive absences, fourteen in January, which necessitated a letter to the parents. (OD R-31.) Brown opined that excessive absences impact the student's education experience, making it difficult for a student, especially one with a disability, to catch up on that level of instruction. Brown identified a note for four excused absences January 14<sup>th</sup> through January 17<sup>th</sup>. (OD R-32.) The petitioners received a second letter at the end of the third marking period for excessive absences and tardiness. (OD R-33.) The absences were eighteen and late attendances were two.

Brown observed O.D. and J.D. in the classroom throughout the year. She is more often in that classroom than others. She observed O.D. and J.D. participating in class and doing well. Brown testified that their parents visited the school and seemed happy with their classroom observations and the boys learning. "Every time I had a conversation

with mother, she seemed like she was happy with how things were going, and the boys were making progress.” Brown testified that O.D. and J.D. were lower than level “A” of Guided Reading levels, when they entered school and they were progressing through the Guided Reading levels. Brown opined that O.D. and J.D. were making progress. They completed their class work, which was building on skills. They had not plateaued and were continuing to grow. This was consistent with the claim that they were appropriately placed and that they were receiving a free and appropriate public education (FAPE). If they had plateaued, then Brown would have researched other types of supplemental programs and collaborated with the team to determine why the students were not progressing.

Relative to their social and emotional performance, Brown did not observe and was not made aware of any issues in the classroom, relative to the students being anxious. Brown indicated that mother had indicated that O.D. was experiencing anxiety, licking his lips, and that she had pursued an outside consultation about the anxiety. However, Brown indicated that was not observed in school and therefore, there was no reason to change his academic program. There was nothing going on that interfered with their ability to access their education and make progress. Brown testified that if any anxiety had been observed which interfered with their access to their education, she would have contacted the parents. While a placement change would not have been the first course of action, if the anxiety became severe, then they would have considered if a change in placement could occur. However, there was no interference by any anxiety or observation of it during the school year. Brown identified the invitation sent to the parents for the annual review meeting and the proposed IEP. (OD R-35 and R-35.)

As with O.D., Brown did not conduct the evaluation of J.D. for the 2018-2019 school year. Brown explained J.D.’s cognitive evaluation. (JD R-26.) Brown explained J.D.’s profile. J.D.’s full scale IQ is in the low average range and his verbal comprehension was low average. His fluid reasoning was also low average. While J.D.’s overall IQ is similar to O.D.’s, there is a difference in percentile. This was because J.D. performed better on the categorical thinking, although he was still in the below average

range. However, J.D.'s score on block design was lower than O.D.'s. This meant that J.D.'s non-verbal skills are not as high as O.D.'s based on his block design, matrix reasoning, and picture concept results. Brown explained that there was not any non-verbal reasoning score listed. It was not required to put in the report. It is an extra composite score that can be listed that includes the visual special and fluid reasoning. For whatever reason, the psychologist that did the evaluation did not include it in the report. Despite this, the subtests that make up that score were within the report. J.D.'s non-verbal score would be a combination of block design, matrix reasoning, and picture concepts, which would be very similar to the fluid reasoning score which was listed. In sum, J.D.'s profile when comparing the cognitive and educational results to O.D.'s is not much different. As a result, the small group, replacement resource room, with multi-sensory instruction, was also appropriate for J.D.. Brown explained J.D.'s 2018-2019 IEP. (JD R-29.) J.D. received small group pull out replacement in the resource room for language arts, writing, and math, with multi-sensory programming for those core subjects like O.D. They received centers, like science and social studies type activities, specials, lunch, and recess in a general education classroom with a teacher and a resource teacher. He received Foundations, Guided Reading, and Readers' Workshop, like O.D.

Relative to the goals, Goal 2 understands, spoken words, syllables, and sound phonemes are directed at progress in phonological awareness. This goal works on rhyming words, blending and segmenting sounds, and isolating and identifying initial sounds. O.D. and J.D. received speech and language therapy, and OT. PT was added to J.D.'s IEP, after receipt of a PT evaluation report. (JD R-33.) There had been a physical therapy consultation request because the teacher and occupational therapist had some concerns. This request was made by the respondent.

Brown detailed that J.D. had excessive absences, ten as of March 29<sup>th</sup> and two late attendances, which necessitated a letter to the parents. (JD R-36.) Brown opined that excessive absences impact the student's education experience, making it difficult for a student, especially one with a disability, to catch up on that level of instruction.

Brown observed J.D. and his progress over the year. She also received input from J.D.'s teacher. Brown opined that he was appropriately placed. J.D. was making progress and was starting to be able to read. Brown did not observe and was never made aware of any anxiety issues related to J.D.. Had Brown become aware that J.D. was not making progress or that he was experiencing severe anxiety then she would have scheduled a meeting to determine what was going on and how it could be addressed.

Brown identified the invitation sent to the parents for the annual review meeting. (JD R-37.) Brown detailed the proposed IEPs for the 2019-2020 school year. (OD R-35.) (JD R-38.) For both students, they recommended that the students continue in a small group resource room for reading, writing, and math based on their response to the academic program. They were making good progress and appropriately placed. The programs for O.D. and J.D. were the same. They were to receive the multi-sensory approach through Foundations, Guided Reading, and Readers Workshop. For J.D., phonological awareness and decoding were provided for in Goal 2, which provided for pronouncing and recognizing initial, medial, and final sounds in words. That is basically decoding words. O.D.'s proposed IEP was the same. J.D. and O.D. had the same program because they were achieving at the same level. They are working towards using upper case letters appropriately. They were working on providing details in their writing and revising using a rubric. These are for learning the mechanics of writing.

Relative to comprehension goals, Brown explained the first one is working on letter identification. Their goals were to work on recognizing high frequency words. This was related to Guided Reading and Readers Workshop. Brown explained that you cannot decode every word. Some words you just need to know. Brown explained that Foundations, Guided Reading, and Readers' Workshop are part of the respondent's curriculum.

Brown attended the annual review meeting with the parents and the child study team. Typically, the meeting commences with each person that worked with the child going over their progress on how they have met or are meeting their current goals, and

why they are making that recommendation for the following year. Each section of the proposed IEP would be reviewed with the parent. If the parent had concerns with the recommendations, then it would be noted in the IEP. If the IEP had to be edited or changed it would be done during the meeting. The student's progress is what leads to the recommendation for each student. This meeting procedure is typical of IEP meeting in school districts.

Relative to these students, the meeting did not occur as most meetings do. Brown was the facilitator of the meeting. Her duties were to move through the various people and their reports, keep an eye on the clock, make sure everyone had a chance to say what they needed to say, and move through the documents. The meeting could not proceed. Brown testified that Morgan, the parents' advocate, kept interrupting and challenging the members of the team. Brown felt that the members were kept from providing their full discourse. He kept trying to give feedback. For example, the first professional to provide their report was the physical therapist. Morgan kept interjecting specific questions about therapy before the therapist was able to go over everything that she had to say about the student's progress. Brown opined that Morgan's actions prevented everyone from providing the proper amount of feedback about the students' progress. The members were prevented from sharing all of the information they had. Morgan's conduct frustrated the timely progress of the meeting. It prevented the District from conveying to the parents what progress the children had made on each individual therapy. It prevented the teacher from going over samples of the student's work showing where they began and the progress over the school year. The conduct made the teacher's presentation disjointed because there had to be repeated redirection.

During the meeting, the father raised a concern that he believed J.D. and O.D. needed more physical therapy. The District agreed to extend that recommendation from three times per month to four times per month. It was handwritten onto the front page of both proposed IEPs. The petitioners raised a concern that J.D. might have ADHD, which had not been addressed. They requested a psychiatric evaluation. They also requested some rating scales to be done to further look into the social and emotional pieces. Brown

testified that the petitioners also asked for an assistive technology assessment. Brown had no idea why that was requested. Brown testified that she was perplexed by the petitioners' requests, because in her opinion based on the students' school needs, they were receiving a lot of services which were being delivered appropriately. They were making progress. Brown believed that petitioners and Morgan came in with an agenda, and that they were not concerned about hearing the progress their sons made. Brown stated that ultimately there was a request for a number of evaluations. The respondent did not deny any of those requests. Every single request was granted.

Brown indicated that she passed the father a note during the IEP meeting asking him how much he had been paying Morgan. She acknowledged that it was inappropriate for her to do that. Brown explained that she did this in response to father's comment made during the meeting. Brown explained the father shook his head and said, "this f---ing guy," in reference to Morgan. He made that comment after multiple interjections by Morgan which were interfering with the meeting.

There was a discussion about the students being placed at the same school. The students home school was the Chairville School. The program suggested for them for kindergarten was not available at that school, so they attended the Tauten Forge school. If possible, the respondent attempts to make that programming available back in their home school with their neighborhood peers for the next year. The respondent suggested that they go back to Chairville for the following year. There is only one resource room for that grade, so J.D. and O.D. would be in the same class.

Brown testified that she was unable to go over either of the IEPs with the petitioners, because they ran out of time. Brown was unable to go through them step by step and go over any modification. The meeting was the interaction with the individuals and going over specific requests for evaluations. When the meeting ended, the petitioners were provided with the IEPs. The plan was that the petitioners were to provide the proper paperwork to get their consent and the respondent would organize the evaluations. Those evaluations took place. Brown continued as J.D. and O.D.'s case

manager for a brief period of time. Brown was not the case manager, when all of the reports were received. The District was unable to hold another IEP meeting after the evaluations were received to adjust the program, because the parents were already pursuing an alternate placement.

Brown reviewed O.D.'s therapy logs. (OD R-36.) These were provided to the parents. Brown identified the agreement for the psychiatric evaluation, the consent from the parents for the evaluation, and for completing rating scales and a non-verbal intelligence scale. Brown identified a BASC. (OD R-37.) These were the tests requested at the IEP meeting. Brown identified the form from the Educational Services Unit regarding the assistive technology request.

Brown identified O.D.'s final progress report for the year. (OD R-39.) This reported the student's progress over the whole year. It was completed by the teacher. However, Brown reviewed the progress to make sure there was achievement and was able to glean information from the goals and the teacher's report. Relative to Goal 1, O.D. was making progress. There are certain goals that he had that started off as progressing satisfactorily and then were achieved by the end of the fourth marking period. Brown opined that O.D. made meaningful progress.

Brown indicated that O.D. had a total of twenty-eight absences during the 2018-2019 school year. (OD R-40.) That was an excessive amount. Brown opined it impacted the student educationally.

Relative to J.D.'s therapy logs. (JD R-40.) These were provided to the parents. Brown identified the agreement for the psychiatric evaluation, the consent from the parents for the evaluation, and for completing rating scales and a non-verbal intelligence scale. Brown identified the BASC for J.D.. These were the tests requested at the IEP meeting. Brown identified the form from the Educational Services Unit regarding the assistive technology request.

Brown identified J.D.'s final progress report for the year. This reported the student's progress over the whole year. It was completed by the teacher. However, Brown reviewed the progress to make sure there was achievement and was able to glean information from the goals and the teacher's report. J.D. was making progress because he was either marked as progressing satisfactorily or the goal was achieved in most areas. Brown opined that J.D. made meaningful progress and should stay in the program he was in.

Brown indicated that J.D. had a total of twenty-one and one-half absences during the 2018-2019 school year. (JD R-53.) That was an excessive amount. Brown opined it impacted the student educationally.

Brown reconciled both students' excessive absences with the fact that they still made progress by explaining that much of the absences were at the end of the year, the time leading up to that increase in absences was utilized appropriately in the classroom and they were programmed appropriately. They were still able to learn.

Brown reviewed an email from Borreggine to mother, which responded to an email from mother. (OD R-60.) Mom said: "The strides O.D. is making in reading and writing are amazing and we are so happy he has a teacher who is truly invested in him." Brown opined this was consistent with an appropriate education. This statement was consistent with Brown's communications with mother during the year. Brown acknowledged that there were some concerns about anxiety in O.D., not J.D., expressed in that email. It appeared related to being "clipped down" on the class wide behavior system. Brown testified that the District did not see anxiety or any issues in the classroom that impacted the student's education. Brown responded to mother that there were some behaviors in the classroom that really had nothing to do with O.D., and possibly O.D. had a little anxiety from that. She assured mom that that situation was being taken care of in the classroom.



Brown indicated that O.D. was having anxiety at home. O.D. was crying at night and did not want to go to school. The teacher observed some licking of the lips, but it was not interfering with the student accessing their education. The time frame for these emails was November 1, 2018, and November 2, 2018. Around the same time the physical therapist requested an evaluation, which was agreed to by the district and parents. In response, mother wrote:

Thank you, Jill, I absolutely adore this school, everyone is so on point. I was going to request evaluations for PT. O.D. has done PT in the past and I was unsure if he still required it. I will send the forms on Monday. Thank you. Also, I'm receiving speech homework and I know the boys are doing OT. Will Amy be giving them homework or will we get a monthly update etcetera.

Brown stated again that communications with mother were positive throughout the year.

Leading up to the annual review meeting, Brown emailed mother inquiring about them hiring an advocate, because she did not think that the petitioners were unhappy with anything. Brown inquired if she had missed something or if there was something to do in the interim to help the situation. (OD R-60.) Mother responded that O.D.'s anxiety was concerning and now J.D. started saying he was dumb because he was in two classes. Mother indicated that Morgan was recommended by the child psychiatrist that was treating O.D. The mention of anxiety was only the second time it had been mentioned all year. Brown testified that back in October she had sent an email to mother to check and make sure everything was appropriate and that there were no concerns. Brown received the following response:

Thank you so much for reaching out, Jill, they love it. We're grateful for the staff and teachers at Tauten Forge. Even their bus driver Nicole, and the aide Carol are incredible. They sing and talk the whole way to school. We attended a birthday party for the twin girls ... and the boys had an awesome time and fit in great. Thank you for everything.

Brown indicated that the father had told the teacher he was concerned about the behavior of some students in the classroom. She denied ever mentioning the students by name to dad. Brown acknowledged that she spent little time speaking to J.D. and O.D..

The students progressed from level A books to level C books. Petitioners requested the behavior reading inventory of executive functioning be completed. The report is dated July 2, 2019. Relative to impulsivity, emotional control, there was a difference between what the teacher was experiencing in school as compared to what the petitioners were experiencing at home. The teacher saw behaviors never, sometimes, and often. The petitioners saw the behaviors sometimes and often.

Brown stated that music class and PT/OT occurred in a trailer outside the building. Speech and language therapy was taught in the school building. Brown continued as the case manager, until the petitioners requested a different case manager, just after the annual review IEP meeting.

**Maria Hansen**, (Hansen), testified on behalf of the respondent. Hansen detailed her resume. (OD R-65.) (JD R-69.) Hansen is employed by the respondent as a speech language pathologist. Hansen was qualified and accepted as an expert in speech and language therapy. Her duties range from evaluating children, screening kindergartners, and sitting on an intervention and referral service team (IRNS). Hansen is an active member of the child study team. She works with the family and the educators to figure out what the child's needs are and then does testing. Hansen is an active case manager of children that are eligible for speech language services only. Hansen works in the school. She consults with teachers when children come into the district initially. She works directly with the children. Hansen is not Wilson trained.

Hansen generally completes two types of evaluations. A speech evaluation relates to articulation, fluency, stuttering, and voice. These would be evaluations for children eligible for speech and language on their own. Hansen explained that if a child has language concerns it can be anything from social pragmatics, language comprehension,

or language expression. If those are found, then evaluations would occur as part of the CST assessment. These assessments are varied. There is a complete language battery of assessments. Hansen indicated that a language sample and an informal language sample assessments are always completed. The student is observed in the classroom to obtain functional information. Hansen would speak to the teachers. If the student has a speech domain concern, then an articulation assessment might occur. These are all standard assessments, except for the observation and the informal language sample. The standard assessments are accepted evaluations in the speech and language field. They are normed nationally with the respective norm for these standard assessments. Hansen has been providing these assessments for over twenty-five years. She estimated that she has completed thousands of assessments in her career.

Implementing speech and language therapy in a student is varied depending on their needs. However, Hansen has extensive experience in providing such therapy, as needed by students. Hansen has experience interpreting speech and language evaluations as part of her job duties. She does this routinely. Hansen has experience writing goals and interpreting speech and language goals in IEPs.

Hansen explained the speech and language evaluation performed by Children's Hospital of Philadelphia. (OD R-16.) This was the evaluation completed to determine whether speech and language therapy was appropriate for O.D. when he transferred into the District. The District did not do this evaluation. However, it accepted it.

Hansen explained that she reviewed the report. The composite scores were important. O.D.'s scaled scores and the percentile ranks were all below the 10<sup>th</sup> percentile. This was significant because it indicated that O.D. is communication impaired. O.D. had significant needs. Relative to the Goldman Fresko Test of Articulation, O.D. ranked in the 1<sup>st</sup> percentile. That was significant. Hansen explained that the results indicated that O.D. needed a lot of therapy. Hansen agreed with the scores in the evaluation. Both O.D. and J.D. were in the bottom ten percent or below. Hansen

indicated that she took the recommendations for actual speech production and the language goals and used them to write the district's IEP. (OD R-24.)

During the school year, Hansen provided O.D. and J.D. with speech and language therapy. The evaluation recommended that O.D. receive services six times monthly for 30 minutes in a group of no more than five students. After meeting with O.D., Hansen determined that he needed individual therapy, based on the severity of his needs. O.D. worked very hard. He would practice something, like sound targets, up to seventy times in a 30 minute session. Speaking sound targets, being aware of sound targets, hearing them in the instructor's speech, using auditory discrimination, hearing them in the student's speech, these are all basics for phonological awareness. This is being able to say them and then do it. The therapy takes the student from syllables to multi-syllabi words, to phrases, and on to sentences. The whole goal is to go from being highly supported, during which the instructor models it and the student says it back to being less supported. In such instance, the instructor provides a word, and the student puts it into a sentence. The repetition in the sessions also works the students motor memory.

In the IEP, these are the goals Hansen worked on with O.D. during the school year. Hansen worked on actual speaking and articulation with O.D.. She worked on several different targets, like "s" blends, which occur in words like spider and stir. Hansen testified that what worked best for O.D. was when he would listen to Hansen produce the sound right and wrong. Then, he would produce the sound right and wrong. Hansen would then model it for O.D. and have him produce it. Hansen testified that what worked best for O.D. was pairing the production with visual and tactile things for which Hansen and O.D. would drag their fingers for the "s" to include it. Hansen testified that this was a multi-sensory approach. This articulation therapy also worked on phonological awareness. The sounds he learns were then paired with written symbols. This progresses to learning how to mark syllables and include syllables in longer words. It provides an awareness of words, word families, and writing.

Hansen and O.D. worked on skills like labeling and having a basic vocabulary that is used in school. He would look at photos of common objects. Hansen would have him do rapid automatic naming. This is used as a precursor to reading because you have to be good at rapid automatic naming in order to learn to read. This is where speech and language therapy fits into the overall learning of language. Hansen explained that in order to access learning you have to be able to understand and communicate language. Hansen worked on this with O.D.. His IEP goals included using whole sentences to express himself. O.D. worked on labeling. He made progress. He was not “super-rapid” but he got better at the skill. O.D. worked on describing the things he saw. These were the fundamentals that Hansen worked on with O.D. These are attending to what is being said, being able to engage in discourse, understanding what is being said, using complete sentences when he spoke, using correct grammar such as pronoun forms, marking words, including all of the syllables in a word, and being able to say that back at the instructor.

Hansen also interfaced with O.D.’s teacher. Hansen kept her abreast of what O.D. was working on in therapy. If there was any difficult sound for him to say, the teacher would know to say it for them if they were working on spelling it. Hansen would have the teacher say it for him and show him the way. This reinforced the concepts throughout O.D.’s day.

Hansen made recommendations for the proposed IEP and attended the meeting. Hansen recommended that the therapy continue but in a much smaller group, no more than two students. Hansen did this because she believed it was important for O.D.’s needs to continue in a small group. The proposed IEP goals were broken down into working on articulation, sound production, the sounds k and g, continued work on the s blends, the l and l blends, and r to get O.D. to a longer context. The goals were also to continue to work on his functional vocabulary and using it at the sentence level. The goals were to continue comprehension of linguistic concepts, when and why questions, and other pieces. The idea was to learn language comprehension and expression skills. This is a precursor to reading.

Hansen reviewed the progress reports she prepared about O.D. (OD R-39.) Her reports showed comments that applied to multiple goals. O.D. was working on s blends, and initial l sounds. K and G sounds were hard for O.D.. Relative to number 9, Hansen reported that O.D. was progressing gradually and that he was making less than anticipated progress. However, Hansen wrote that he may still achieve the goal. In June, O.D. was still making less than anticipated progress for Goal 9.

Hansen explained that K and G sounds were very difficult for O.D. His progress on them was slower and he did not progress a whole lot. For objective 9.1, O.D. made progress. He could do speech that was in shorter context, like words or phrase, but his articulation or the clarity would degrade when he spoke ad lib. It became harder for O.D.'s motor skills to keep up and this was reflected in his ratings on the goals. Relative to goal 10, O.D. made progress on his S blends. The phonological process cluster, relates to leaving a S off a S blend. Over time, with repetitions O.D. did really well and progressed.

Number 11 dealt with liquid simplification. This is the l sound. Children will say "w" or "y" for "l." O.D. started off slower, but he started to get it. He was moving his tongue around more. This is more about production than phonological process. However, it does affect how well you become aware of phonological sounds.

Number 12 dealt with speaking in whole sentences when sharing a story related to personal experiences. Hansen worked with O.D. on giving information for the beginning, middle, and end.

Hansen opined that she believed the services she provided to O.D. were appropriate and that he made progress. O.D. improved with therapy over the course of the year.

Relative to J.D., Hansen explained the speech and language evaluation which unlike O.D.'s was completed by the District. (JD R-27.) The same background testimony about speech therapy presented for O.D. applies to J.D. The District's report is also one that Hansen would interpret. J.D. was determined to have a severe articulation delay. J.D. completed vocabulary testing and the big language battery, similar to what O.D. did. J.D. had pretty low scores. His core language skills were in the 12<sup>th</sup> percentile. His receptive language score, which is his understanding, is in the 9<sup>th</sup> percentile. His expressive language score was in the 10<sup>th</sup> percentile. His language content was in the 7<sup>th</sup> percentile. His language structure was in the 12<sup>th</sup> percentile. J.D. performed slightly better than O.D., but was still significantly delayed. He too was communication impaired.

In J.D.'s IEP, he was to receive speech and language therapy in a group not to exceed five students, six times per month for 30 minutes each. Hansen provided that therapy. J.D. was seen at least one time individually and the other time in a group of two. J.D. did not have the drive to do all of the repetitions that O.D. did. J.D. would get bored quickly and want to have fun. Hansen explained that this was not unusual for a child his age.

J.D.'s IEP had goals related to sharing familiar stories. This was similar to O.D.'s, using that beginning, middle, and end goals. J.D. worked on using pronouns correctly and talking in complete sentences. Hansen worked a lot on process and respond questions related to a short story. These related to why, when, and how questions. J.D. had goals related to understanding the basic concepts related to the curriculum like math's more than, less than, and sequential order. J.D. also had articulation goals in number 11.

Hansen interfaced with J.D.'s teacher to make sure he was following what was being taught in the classroom. Hansen testified that there was a coordination and reinforcing concepts throughout the day. Hansen testified that J.D. showed good progress. The first goal was about sharing information about a personal story. He showed good progress. Relative to his use of pronouns, he made progress, but it was

more gradual. J.D. progressed well with using complete sentences. He showed progress in responding to questions related to a story. Hansen opined that J.D. showed progress across the board. J.D. also progressed across the year with articulation. Hansen was working with J.D. on some phonological awareness, like with O.D..

Hansen explained an email she sent to mother. (R-60 at 677.) She wrote to mother relative to getting some homework done and keeping work coming back and forth. Hansen provided target words so that the concepts could be reinforced at home. Hansen stated that the petitioners were trying to help the students at home.

Hansen indicated O.D.'s speech and language deficits were more severe than J.D.'s deficits.

Hansen prepared the goals for the 2019-2020 proposed IEP. Hansen was at the meeting. Her recommendation for J.D. was for the same frequency of therapy, six times a month for thirty minutes. Hansen recommended the group not exceed two students. That was based on J.D.'s performance and to keep him from being lost in a larger group. In reviewing the proposed IEP, Hansen indicated that she did not see her goals listed but that she had proposed them as she testified.

**Ariana Borreggine**, (Borreggine), testified on behalf of the respondent. Borreggine identified her resume. (OD R-64.) (JD R-68.) Borreggine was qualified and accepted as an expert in the field of teaching special education and as a special education teacher. This was the first time she was qualified and accepted as an expert. Borreggine has a Master's Degree in Literacy, a reading specialist certificate and a supervisor's certificate. She has an elementary pre-k through four teaching certificate. Borreggine is employed by the respondent as a kindergarten special education teacher. She has been employed by the respondent for four years. Borreggine's duties include developing and teaching guided reading groups, modifying reading lessons for special needs students, planning and teaching readers' workshop, adapting writing lessons for special needs students, modifying and adapting math lessons for special needs students, differentiating



instruction to meet students' needs, creating behavior plans, evaluating students' weekly behavior, and when necessary, completing required discrete trial training with students. Borreggine is further responsible for developing and implementing IEPs for students. She is responsible for monitoring and tracking the goals that are set forth in the IEPs for students. Borreggine participates in IEP meetings as part of the CST. Borreggine has been taught and is comfortable with her ability to review instructional material, curriculum manuals, and implement those curriculums in a kindergarten resource classroom.

Borreggine is familiar with the O-G approach and with the Wilson program. She was trained in Wilson, during a three-day training taught by Bostock. Borreggine is familiar with Foundations. Before she began teaching kindergarten, she attended a two-day workshop for Foundations. The first day of the workshop was for Foundations in kindergarten and the second day was for first grade. Borreggine testified that they do not offer a certification in Foundations. Borreggine uses the Foundations program every day in her classroom. Borreggine testified that she uses O-G strategies in her classroom.

Borreggine was familiar with O.D and J.D. because they were in her kindergarten resource classroom. There were approximately ten students in her classroom for reading and six in her classroom for writing. There were two other assistants in the classroom for reading and writing. There was one assistant for math. Most of the students had language-based learning disabilities. Borreggine identified O.D.'s IEP for the 2018-2019 school year. (OD R-29.) She also identified O.D.'s proposed IEP for the 2019-2020 school year. (OD R-35.) Borreggine identified J.D.'s IEP for the 2018-2019 school year. (JD R-24.) She implemented these IEPs.

For the 2018-2019 school year, O.D.'s placement was pull-out replacement for language arts, writing, and math. This was the same for J.D. During the school year, Borreggine taught them for three hours in her classroom and then assisted in teaching them in the general education classroom for science, play centers, and those kinds of activities and subjects. In this regard, Borreggine saw O.D. and J.D. every day for the

majority of every school day. She testified that O.D. and J.D. were similar in their educational needs.

Borreggine explained the students' typical school day. They would start off with ten minutes of Foundations and morning meeting, introducing sight words, and calendar time. Borreggine testified that she broke up Foundations into chunks because O.D. and J.D. did not have the stamina for a whole Foundations lesson. As a result, she broke the thirty-minute Foundations lesson into three ten-minute parts. Borreggine still completed the Foundations lesson during the day. Borreggine testified that O.D. and J.D. were more successful when the Foundations lesson was broken into these three parts. They were less frustrated. Borreggine opined that she did not see any accuracy after O.D. and J.D. reached their frustration point. In the morning, O.D. and J.D. would focus on the letters and sounds, skywriting letters, practicing writing letters on their boards, or some kind of Foundations' paper. Foundations works on decoding and phonics. Foundations is a direct, explicit, sequenced instruction. Borreggine indicated that she helps students who appear to be having difficulty during the Foundations lessons. Borreggine utilized some of the Foundations unit tests if they were appropriate. She acknowledged that she did not always use the specific monitoring probes for teachers to measure progress on each individual part of the Foundations spoken sequence. She modified the program to meet the student's needs, but it was still taught with fidelity.

Then they would do math. The District uses the Envisions math program. It consists of a two-to-three-minute video introduction describing what they were going to learn that day. Then the students were broken up into groups. A group would work with Borreggine, and another group would work with the assistant. The students would learn the concept of the day from Borreggine. The Envisions math is a guided practice at the beginning and then towards the end, the students are supposed to start being able to complete the concept by themselves. That is more like independent practice. There would also be a math game taught during the day to reinforce the concept being covered that day. Borreggine testified that Foundations was used in the math lessons. She explained that depending on the lessons that were taught, Foundations would be woven

into the instruction. For example, if the math concept was subtracting, then Borreggine testified that her instruction would be as follows:

Oh, I see an S at the beginning of subtract. Let's get our mouths ready to say the word "subtract. Or, if there was a diagraph of a word, I would point that out to the students so they could – so we could just revisit and they could see that we can apply these strategies throughout the day, not just in Foundations, during Foundations time or reading time.

Borreggine further testified that multi-sensory approaches were used during the math lesson also, for example, physically manipulating counters during a lesson on addition. Borreggine testified that multi-sensory approaches to instruction were used in science, during experiments, also. She explained that Foundations was incorporated into science sometimes. Borreggine testified that phonics was usually not part of science or math.

After that, they would have Readers Workshop, which addresses reading strategies and comprehension. These lessons are based on the Lucy Calkins' units of study. There is a focus lesson in which Borreggine teaches a strategy or skill for that day. She would show the students what to do and then it is a gradual release, during which they practice reading with Borreggine, a partner, and then themselves. During this time Borreggine is pulling strategy groups or any kind of group in which she notices a student needs more assistance in a certain area. She would take them to the back table and work with them.

Then, they would have another Foundations block. During this block, depending on the unit, they would work on, for example, vowel/consonant words. O.D. and J.D. would be given a word. They would practice tapping out the word. They would then practice blending and segmenting those words. They would spell out the words with their tiles or have to write those words on their Foundations boards. Next, they would do their Daily Five, which consisted of five different stations.

The third ten-minute Foundations lesson part was during the Daily Five. The purpose of Daily Five is to increase student's stamina so that they become able to do Readers or Writers Workshop for an hour. It breaks down the lessons and adds a hands-on approach to the lessons. As a result, Guided Reading was implemented during the Daily Five. Borreggine testified that Daily Five is a mixture of reading and writing. The students will have five different stations each day. One of the stations was Read to Self, for which they read from their predictable sentence books that they get to create. Another consists of books that they can read from in their Readers' Workshop bins. Borreggine explained that there are a mixture of books that are introduced that the students can read from throughout the year. The other stations are Listening, Guided Reading, Work on Writing, and Word Work. Word Work is a sight word activity working with parts of words and putting them together.

Throughout the day, they would have different literacies, such as balanced literacy, which is reading aloud, shared reading, predictable sentences, and interactive writing. O.D. and J.D. also went to Borreggine's room for writing workshop. Borreggine explained that the District's curriculum includes a multi-faceted approach to reading through a balanced literacy model, Reader's Workshop, Guided Reading and Foundations. In her classroom, O.D. and J.D. received thirty minutes of Readers Workshop, twenty minutes of Guided Reading, and ten minutes of Foundations, in addition to Daily Five and other instruction. Borreggine did not know if Readers Workshop qualifies as a certified O-G curriculum.

After Daily Five, O.D. and J.D. went to lunch and recess. Then, the students would go back to Borreggine's classroom for Writers Workshop, which addresses parts of reading and writing. This instruction began with a focus lesson during which Borreggine would introduce a new skill or concept. She would show the students how to do it and then they would try it with her. They would practice with a partner. Again, it would be a gradual release to them doing it for themselves, at which point they would go back to their seats and independently write. The room's assistant is floating among the students helping the students. During this time, Borreggine would pull students having difficulties

into a strategy group and show work on the skills with which they are having difficulty. Depending on the circumstances, Borreggine would pull students out for a writing conference, which would be one-on-one instruction focusing on a specific skill.

Borreggine testified that there are many strategies that the students learn in kindergarten. A lot of reading strategies are introduced, including check the picture, run their fingers under the word, making sure the sounds that they are saying match the word they are reading. She testified that phonics and comprehension ability go hand in hand. Phonics plays a huge part in being able to decode words. Comprehension plays a huge part understanding what you read. Fluency helps with comprehension. Guided Reading works on this. Borreggine opined that all of these skills are equally essential to learning to read.

Borreggine testified that O.D. and J.D. came into the school year not knowing any letters and only recognizing two or three letters. By the end of the year, they were able to spell consonant/vowel/consonant words.

Borreggine identified Miller's reports for O.D. and J.D. (OD P-4.) (JD P-2.) She recalled Miller observing her classroom, while O.D. and J.D. were in class. Borreggine testified that Miller started her observation at 8:40 a.m. and left before the class started Daily Five. Miller missed the beginning lesson of Foundations. As a result, Miller missed the sight words introduction, sky writing those words, introducing letters and sounds, and sky writing those letters. Then she missed all of the Daily Five, with Guided Reading. She also missed the end of our Foundations lesson. Borreggine indicated that Miller missed two blocks of the Foundations lesson. Borreggine indicated that there are five-minute brain breaks during the day. Contrary to Miller's report, Borreggine testified that she did not tell the students to cover a difficult word, make a guess and then use letter/sound correspondence. Miller was observing Readers Workshop and the students were asked to move their eyes through a word, looking at the beginning and ending sounds.

Borreggine explained that she uses the Smart Boards in her classroom. During snack she plays Heidi songs, which are fun ways to sing a sight word that had been introduced. It also helps students remember how to spell the word. Borreggine would place the word on the Smart Board for about five minutes for the students to practice two or three songs to sing and spell. Borreggine explained that she did this during snack time, so that the time was educational. Borreggine testified that she noticed that both O.D. and J.D. would sing these songs during Writers Workshop to help them spell some of their sight words as they were working. Borreggine acknowledged that sometimes it took O.D. and J.D. a minute to focus on the screen, but that they would participate in the songs. Borreggine stated that she did not use the Smart Board, during the Foundations lesson.

Borreggine explained that Miller's explanation in her report was inaccurate. (OD P-4.) Borreggine explained that the strategy being taught for that day was for the students to move their eyes through a word, looking at the beginning and the ending sounds. The students were not expected to understand the middle of the word. The beginning and ending sounds had been introduced. This was being taught during Readers Workshop. Relative to sound cards, Borreggine explained the difference between the large letter key sound cards from the teacher's unit and the standard sound cards. (OD P-4.) Borreggine explained that the large cards have the letters and then a picture that goes along with it. She was using it as a way to help the students, just give them a visual to remember that letter and sound. The smaller cards just have the letter. Borreggine testified that she regularly uses both.

On the date of Miller's observation, Borreggine only used the large cards in the second Foundations lesson, because the students need that visual at times to be able to see the letter and that picture to help them remember the letter they needed to use that day. Borreggine testified that she did not use the Smart Board during the lesson with the letter keyword sound cards. The lesson proceeded as follows. Borreggine went over some of the letters and vowels with the students. Borreggine would say the letter, picture sound. The students would repeat it after Borreggine. Then, the students broke into

groups and were practicing tapping out words and then writing those sounds that they had heard on the Foundations whiteboards. These boards have different Foundations lines on the board, so the top line is the sky line, then there is the plane line, graph line, and worm line. The lines and pictures are just a visual to help the students see where they need to and how to form the letter.

Borreggine explained that her Foundations teacher's kit was given to her by the teacher she replaced in the district. It was not a new kit. Borreggine testified that she did not keep the Foundations kit out during instruction because it was distracting to the students. Instead, she would outline the concepts on a post-it note for herself. Borreggine would look at the Foundations lesson and kit before the students came into the classroom. She would write some notes down about what was being introduced for that day and what materials needed to be used. She would have everything planned before the students entered the classroom and the lessons were taught.

Relative to sight words, they were introduced in the morning, but they would be reintroduced and reinforced throughout the day. Borreggine would introduce the word and she and the students would then practice spelling it together. Borreggine would then use it in a sentence. The students would then practice skywriting it. They loved to write it on the ground or their shoe. Borreggine would then do shared reading with them. For this, the students had a shared reading binder, which they would read during Daily Five and there are different poems that are introduced that have their sight words in it. Borreggine and the students would read the poem together and look for the sight words. This was another approach to finding the word, spelling it, and seeing it in context, not just in isolation. Borreggine testified that this was how the Foundations teacher's kit instructed to teach sight words. She indicated that the shared reading was just a little bit extra. Borreggine testified that she never used the Smart Board for introducing or teaching sight words, except during snack time as a review.

Miller referred to Flashlight Friday in her report. Borreggine explained she would have a fun activity to go along with reading on Fridays. The students had headlamps.

The lights would be turned out and the students would read with their headlamps during Reader's Workshop and independent time. The purpose was just a fun way for them to engage in reading.

Relative to leveled books, Borreggine had these in her classroom. (OD P-2.) The lower the level, the more basic the words. These were heavily supported by pictures. The books become harder in subsequent letters by removing the picture support. Students have to use more decoding strategies to figure out what the words are saying. Borreggine addressed Miller's concern that the Foundations lesson was not delivered. Borreggine explained that Miller only saw one of the three parts of the Foundations lesson. Borreggine reiterated that when teaching Foundations, she based it off the Foundations book. Borreggine testified that she taught Foundations with Fidelity in her classroom. Borreggine testified that during those ten-minute sessions, she does not deviate from following the Foundations manual. Borreggine opined that Foundations alone is insufficient to teach a student how to read in kindergarten. Borreggine opined that the balanced literacy model is effective for teaching students how to read in kindergarten, specifically special education students. It was effective for O.D. and J.D..

Borreggine was present at the annual review meeting. She did not get to say as much as she would have liked to, or needed to, in order to share the progress and growth that O.D. and J.D. made during the school year because she was interrupted multiple times when she was trying to speak. She was prevented from explaining how she taught the Foundations lesson divided into three parts during the day.

Borreggine explained O.D.'s progress throughout the year. (OD R-55.) O.D. was able to identify numbers one through nine. That was one of his goals. Borreggine explained the purpose of the table was to track O.D.'s progress throughout the year. The Xs represented the numbers that O.D. was not able to identify. As of April 17, 2019, O.D. was able to identify all of his numbers. This achieved his goal. Borreggine compared this to O.D.'s kindergarten placement test, on which he scored a forty-two percent. (OD R-56.) O.D. entered kindergarten well below where he needed to be. Borreggine then



compared that to O.D.'s end to the year test, which is more comprehensive than the kindergarten placement test. (OD R-56.) Borreggine testified that O.D. was able to write the numbers from zero through twenty. There were some reversals of his numbers, but that is developmentally appropriate for his age. O.D. scored an eighty-eight percent on his end of year test. He mastered most of the math concepts that were introduced in kindergarten. This information was logged into O.D.'s progress report for the 2018-2019 school year. Borreggine opined that O.D. achieved every goal and objective, except for "O.D. will demonstrate the meaning of six order words." For that goal, he was progressing satisfactorily. In making these conclusions, Borreggine gathered data throughout the school year. O.D. achieved goals, including benchmarks, 6.1, 6.2, 7, and 7.1. Borreggine opined that O.D. made meaningful progress in math.

Borreggine then explained that she maintained a table of the lower-case letters, O.D. could identify throughout the year to chart his progress. (OD R-57.) At the end of the year O.D. was able to recognize twenty-four out of twenty-six lower case letters. (OD R-57.) This was meaningful progress because O.D. only knew two letters at the beginning of the year. At the middle of the year, he knew twenty lower case letters. O.D. was far behind at the beginning of the year. The result of recognizing twenty-four letters at the end of the year is typical of students. Relative to upper case letters, at the end of the year, O.D. could identify twenty-three of twenty-six upper case letters. (OD R-57.) At the beginning of the year, he could only identify three capital letters, and in the middle of the year he could recognize sixteen upper case letters. Borreggine opined that O.D. made meaningful progress recognizing his letters.

Borreggine explained O.D.'s early literacy assessment that kindergarten students receive at the beginning, middle, and end of the school year. By the end of the school year students are supposed to score close to one hundred percent. The cut off scores are based on what is expected of a typically developing kindergarten student. At the beginning of the year, O.D. scored a zero out of ten. By the middle of the year, he could answer eight of ten questions correctly and ten out of ten by the end of the year. He met

the cutoff score, designed for a typically developing kindergarten student at the end of the year. Borreggine opined that O.D. made meaningful progress in the area of early literacy.

O.D.'s Guided Reading assessment, used the Fountas and Pinnell Benchmark for the students to see their level. Borreggine administered this to O.D. in January. O.D. received a level B. This benchmark assessments measures, fluency, comprehension, decoding, and if the student is using meaning in the words they are reading. At the end of the year O.D. was on level C books. The cutoff level is D. Borreggine opined that O.D. made great progress, considering that at the beginning of the year he had to work a lot on letters.

Relative to this assessment and initial sounds, at the beginning of the year, O.D. could identify one out of eight initial sounds. By the middle of the year he could identify, eight out of eight. (OD R-57.) Relative to sounds for the letter identification and sounds, O.D. was able to identify eighteen out of twenty-six in January, and twenty-four out of twenty-six in May. Borreggine opined that O.D. made meaningful progress. Relative to the hearing and rhyming portion of phonological awareness, at the beginning of the year, O.D. was able to hear three out of ten rhymes and by the end of the year he could identify and hear ten out of ten rhymes. Borreggine opined that this was very meaningful progress. Relative to matching rhymes, at the beginning of the school year, O.D. could match one out of five rhymes and at the end of the school year he was able to match five out of five of the rhyme cards. Borreggine opined that he made great progress. Relative to generating rhyming, in January O.D. could make three out five rhyming words. At the end of the year, he could make five out of five. Borreggine opined that he made great progress. Relative to blending a word, O.D. scored below where he needed to in January. The cutoff was seven and he scored six out of ten. At the end of the year, he scored a nine out of ten, which was where he needed to be. Relative to segmenting, in January, O.D. scored a ten out of thirty-two and by the end of the year he scored a twenty-nine out of thirty-two, which was where he needed to be. In sum, Borreggine opined that relative to phonological awareness O.D. was where he needed to be at the end of the school

year. He met the cutoff scores. O.D. made meaningful progress in the area of phonological awareness in his kindergarten year.

Relative to writing picture names assessment, in January O.D. scored ten out of twenty-five. At the end of the year, he scored a twenty-one out of twenty-five, which was above the cutoff. Borreggine opined that he made great progress. Borreggine testified that she was advised by the District's literacy instructor not to give this portion to O.D..

Borreggine opined that O.D. met all of his reading goals and benchmarks by the end of the year. This was reflected in his progress report. (OD R-39.) Borreggine detailed O.D.'s writing samples from throughout the year. (OD R-58.) They showed the development of his reading and writing skills throughout the year. They reflected his progress and were consistent with him meeting his goals. Borreggine opined that he made great progress throughout the year.

Borreggine opined that by the end of the year, O.D. achieved five out of his six goals. The one he did not achieve was, O.D. "will draw four details about an event in a selected text or piece of writing." He was progressing satisfactorily for that goal.

Borreggine opined that based on O.D.'s meaningful progress and growth during the year, the resource room was an appropriate placement. Borreggine testified that O.D.'s report card reflected this progress. (OD R-41.)

Relative to the proposed IEP, Borreggine came up with the goals and objectives after reviewing her notes, observations, and data she collected on O.D.. (OD R-35.)<sup>2</sup> Borreggine testified that O.D. missed twenty-eight days of school. She testified that was excessive because it was nearly a month of school. Absences have a negative effect on students. They can suffer anxiety when they come back because they are at a different place than the other students, or because they have to catch up on the missed work.

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<sup>2</sup> There was an amended IEP during the 2018-2019 school year which added physical therapy and did not modify the instruction Borreggine was providing in the classroom. (OD R-29.)

O.D. still made great progress throughout the year even with the excessive absences. Borreggine testified that J.D. said that they could take “chill days.” O.D. would get one during a week, and J.D. would get one the next week. This occurred frequently. Borreggine denied observing any anxiety or bullying in the classroom during school. Borreggine stated that during recess or lunch, J.D. was around a general education student, who had a behavior plan, who called some students dumb. J.D. was in the area when it was said. That student made comments about other students throughout the year. However, this was the only time Borreggine heard this about J.D. That student was not in Borreggine’s classroom.

Borreggine explained J.D.’s progress throughout the year. (JD R-60.) J.D. was able to identify numbers one through nine. That was one of his goals. Borreggine explained the purpose of the table was to track J.D.’s progress throughout the year. The Xs represented the numbers that J.D. was not able to identify. At the beginning of the year, he could only identify one out of nine numbers. As the end of the school year, J.D. was able to identify all of his numbers. This achieved his goal. Borreggine compared this to J.D.’s kindergarten placement test, on which he scored an eighty-three percent. (JD R-60.) J.D. entered kindergarten doing fairly well. Borreggine then compared that to J.D.’s end of the year test, which is more comprehensive than the kindergarten placement test. (JD R-60.) Borreggine testified that J.D. was able to write the numbers from zero through twenty. There were some reversals of his numbers, but that is developmentally appropriate for his age. J.D. scored a ninety-eight percent on his end of year test. He mastered most of the math concepts that were introduced in kindergarten. This information was logged into J.D.’s progress report for the 2018-2019 school year. Borreggine opined that J.D. achieved all seven of his math goals and objectives. In making these conclusions, Borreggine gathered data throughout the school year. Borreggine opined that J.D. made meaningful progress in math.

Borreggine then explained that she maintained a table of the lower-case letters, that J.D. could identify throughout the year to chart his progress. (JD R-61.) In the middle of the year, J.D. was able to identify thirteen out of twenty-six lower case letters. On April

17, 2019, J.D. was able to recognize twenty-five out of twenty-six lower case letters. (JD R-61.) This was meaningful progress because J.D. only knew three letters at the beginning of the year. J.D. was far behind at the beginning of the year. In the middle of the year, J.D. could identify nineteen out of twenty-six upper case letters. Relative to upper case letters, on April 17, 2019, J.D. could identify twenty-four of twenty-six upper case letters. (JD R-61.) At the beginning of the year, he could only identify three capital letters. Borreggine opined that J.D. made meaningful progress recognizing his letters. J.D. mastered his goals.

Borreggine explained J.D.'s early literacy assessment that kindergarten students receive at the beginning, middle, and end of the school year. (JD R-61.) By the end of the school year students are supposed to score close to one hundred percent. The cut off scores are based on what is expected of a typically developing kindergarten student. At the beginning of the year, J.D. scored a one out of ten. By the middle of the year, he could answer eight of ten questions correctly and ten out of ten by the end of the year. Borreggine stated that J.D. surpassed where he needed to be in January. He met the cutoff score, designed for a typically developing kindergarten student at the end of the year. Borreggine opined that J.D. made meaningful progress in the area of early literacy.

J.D.'s Guided Reading assessment, used the Fountas and Pinnell Benchmark for the students to see their level. Borreggine administered this to J.D. in January. J.D. received a level B. This benchmark assessments measures, fluency, comprehension, decoding, and if the student is using meaning in the words they are reading. At the end of the year J.D. was on level C books. The cutoff level is D. Borreggine opined that J.D. made great progress, considering that at the beginning of the year he had to work a lot on letters.

Relative to this assessment and initial sounds, at the beginning of the year, J.D. could identify one out of eight initial sounds. By the middle of the year he could identify, seven out of eight. By the end of the school year, he could identify eight out of eight. Relative to sounds for the letter identification and sounds, J.D. was able to identify sixteen

out of twenty-six in January, and in May he was able to identify twenty-six and produce twenty-five out of twenty-six of the letter sounds. Borreggine opined that J.D. made fantastic progress.

Relative to the hearing and rhyming portion of phonological awareness, at the beginning of the year, J.D. was right where he needed to be. He was able to correctly hear eight out of ten of the words. In January he was able to correctly identify ten out of the ten rhyming pairs. Borreggine opined that this was very meaningful progress because J.D. met the cutoffs for a general education student. Relative to matching rhymes, at the beginning of the school year, J.D. could match four out of five rhymes and by January he was able to match five out of five of the rhyme cards. Borreggine opined that he made progress. Relative to generating rhyming, in January O.D. could make five out five rhyming words. He met the cutoff score in January. Relative to blending a word, J.D. scored below where he needed to in January. The cutoff was seven and he scored three out of ten. At the end of the year, he scored a nine out of ten, which was where he needed to be. Relative to segmenting, in January, J.D. scored a fourteen out of thirty-two and by the end of the year he scored eighteen out of thirty-two, one below where general education students need to be. In sum, Borreggine opined that J.D. made meaningful progress in the area of phonological awareness in his kindergarten year.

Relative to writing picture names assessment, in January J.D. scored fourteen out of twenty-five. At the end of the year, he scored a twenty-one out of twenty-five, which was above the cutoff. Borreggine opined that he made fantastic progress. Borreggine testified that she was advised by the District's literacy instructor not to give this portion to O.D. because it is based on the expectations of a general education student.

Borreggine opined that J.D. met eight out of nine of his reading goals and benchmarks by the end of the year. For the one he did not achieve, which related to blend segments, he was marked as progressing satisfactorily. This was reflected in his progress report. (JD R-52.) Borreggine detailed J.D.'s writing samples from throughout the year. (JD R-62.) They showed the development of his reading and writing skills

throughout the year. They reflected his progress and were consistent with him meeting his goals. Borreggine opined that he made great progress throughout the year.

Borreggine opined that by the end of the year, J.D. achieved five out of his six writing goals. He was progressing satisfactorily for that goal. Borreggine opined that based on J.D.'s fantastic progress and growth during the year, the resource room was an appropriate placement.

Relative to J.D., Borreggine detailed a behavior rating inventory of executive function that she completed, based on what she observed in the classroom. (JD R-46.)

Borreggine identified the student daily attendance report for J.D. (JD R-53.) She testified that J.D. missed twenty-one and one-half days of school. She testified that was excessive because it was nearly a month of school. Absences have a negative effect on students. They can suffer frustration or anxiety when they come back because they have to catch up on the missed work. O.D. still made great progress throughout the year even with the excessive absences.

Borreggine regularly exchanged emails with the petitioners during the kindergarten year. (OD R-60.) Borreggine detailed an email from mother sent in September 2018. (OD R-60 at 631.)

Oh, my gosh. I'm so sorry. We will do back-to-back conferences. O.D. was thrilled now their (sic) certificates are both on the fridge. The competition is real. Thank you so much for all of the info and popcorn at Back to School Night. I loved your philosophy and the CAM Board. We are very grateful they have you and it is a nurturing environment. Do you think we could stop I sometime and read a book to the class?....

After emails regarding Back-to-School Night scheduling, mother wrote the following about J.D.:

I am so happy that J.D. is being such a good helper and you notice and praise him for it. He aims to please and tries hard. I love that you acknowledge good behavior. Our previous OT taught me to catch him displaying awesome behavior and then praise the action, etc. Positive parenting has worked. Such a simple concept, but it's all a learning curve. I am proud of him and thank you for sharing. ...

She further stated in that email:

Thank you so much for making them fall in love with (sic) school. It has been such a relief knowing they are excited every day to go. In Pennsylvania, J.D. would try to lock himself in the bathroom to avoid school door (sic) and cry. It was heart wrenching. Now he is raring to go at 5:30 a.m. He is so happy and I am....

Borreggine detailed an additional email dealing with the classroom's clip chart, which was to help reinforce positive behavior. Mother expressed to Borreggine that O.D. was potentially having some anxiety over the clipping practice. Borreggine offered an individualized chart for O.D. that they would use in case O.D. felt embarrassed when he was clipped down, which was not often. Borreggine testified that she did not see O.D. exhibit any anxiety.

In a February 2019 email, mother indicated as follows:

I am noticing a lot of anxiety in O.D.. He is back to crying before school and not wanting to go. He also talks a lot about the behavior chart and what will happen if he gets another yellow. I believe he has to work very hard to learn and it is discouraging him and may be causing this anxiety and worrying.

Borreggine did not see any anxiety in O.D. in February. He came to school happy and smiling. Borreggine offered the use of an individualized behavior chart for O.D. Borreggine praised O.D. for good actions. Mother declined the individualized behavior chart. As a follow up email, mother wrote:



I am so glad to hear your're clipping him up. I would just keep using that, as I don't want to give him more anxiety by changing it. We will work through it. J.D., on the other hand, loves school and is reassuring with O.D. in the mornings.

Borreggine testified that her interactions with the petitioners were positive. The petitioners never expressed that they were unhappy with the education and services being provided. O.D. and J.D. appeared happy in school. They spoke with their peers. They laughed and played with their classmates. Borreggine opined that the 2018-2019 IEP met their educational needs. They received a free and appropriate public education in kindergarten.

During cross-examination, Borreggine described her familiarity with J.D.'s handwriting and that his U sometimes looked like a V. Borreggine detailed a couple of J.D.'s writing samples, in which he spelled some of the words wrong either the first time he wrote it or when he traced it with the writing marker. Borreggine explained the spelling inaccuracies were not wrong, because the class was working on stretching out the sounds and recording the sounds that the student hears. They were not working on spelling. She acknowledged that there was an interplay for J.D. and O.D. with their stretching out sounds skills and their speech obstacles. Relative to O.D.'s writing example about Cheetahs, Borreggine could not recall if she had helped him with the spelling or tracing. Similarly, relative to the individual documents, Borreggine could not recall if O.D. or J.D. had specific help with their spelling and writing. Handwriting is not the main focus of writing in kindergarten.

***For petitioner***

**Kathleen Bostock**, (Bostock), testified on behalf of the petitioners. Bostock detailed her resume (OD P-30.) (JD P-28.) Bostock was qualified and accepted as an expert in special education, teaching students with reading disorders, language-based disabilities, O-G programs, including Foundations, creating IEPs for special education

students with language-based disabilities, expert teacher trainer of O-G programs, and an expert in evaluating student's educational testing.

Bostock has a Master's Degree in Learning Differences. She has taught undergraduate and graduate students. Bostock has worked as a Title I instructor. She is a Wilson Trainer. She had recently retired from being the director of the Scottish Right Children's Learning Center in Burlington, New Jersey, after approximately twenty years. Bostock provides a two-year practicum for certification in O-G reading at Farleigh Dickenson University. Bostock stated that she has a certificate as a dyslexia specialist. She testified that she is a trainer of practitioners and an advanced practitioner and trainer of trainer and trainer of therapists. She is a Wilson, level one and two trainer and is trained in Project Read. Wilson is an O-G program. It works on written language, spelling and comprehension. Bostock is a Foundations presenter. There is no certification for Foundations. Bostock had done training for the respondent's district. Bostock indicated that she was trained in several other O-G approaches.

Bostock is not an LDTC. Bostock is not a New Jersey Certified teacher. She does not have any certification in the State of New Jersey regarding education of disabled students. She is not a certified school psychologist, social worker, or special education teacher. She is not able to work in a New Jersey public school in any of these positions. Bostock acknowledged that those positions are members of an IEP team at a public school district. Bostock had served as a member of an IEP team as a school nurse over twenty years ago. Bostock acknowledged that she did not have any experience in drafting IEPs for in-district public school placements.

Bostock has experience with tests like the Woodcock Johnson, but she does not administer them because she is not an LDTC. Bostock stated that she had significant experience in evaluating student education.

Bostock has been employed by the Newgrange School since, 2003, as the Assistant Director of Education. She testified that she is part of an organization that has

three entities, Newgrange, RobinowitzRobinowitz, and the Laurel School. All three organizations are overseen by the same Board of Directors. Bostock acknowledged that all three are moving into one building. She further acknowledged that Miller works for RobinowitzRobinowitz and does private evaluations recommending enrollment at Newgrange.

In Bostock's position, she helps to test students, helps to develop their IEPs. Absent litigation, she helps develop IEPs for Newgrange students and sends them to school districts for approval. In these situations, Bostock and Newgrange are not crafting the entirety of the school District IEP for a student placed in Newgrange. This occurs because she does not have the New Jersey Certifications to create IEPs. She does not replace the school district's case manager, who pulls together the IEP. She helps support teachers and train teachers using multi-sensory structured language approaches, in decoding, comprehension, and writing. She schedules all of the classes for students at Newgrange. She holds professional development courses, many of which pertain to reading, cross-curricular content, reading comprehension, and writing. She is also responsible for a number of administrative tasks, including budgeting and hiring.

At RobinowitzRobinowitz, Bostock has a different role. She provides free dyslexia screenings, which are not an educational diagnostic type of assessment. It is solely to flag risk factors for students. Through RobinowitzRobinowitz, she is contracted with districts to provide training in Foundations, O-G, and DIBLES.<sup>3</sup>

Bostock testified that she drafted the IEPs for O.D. and J.D. at Newgrange. Bostock did not work with O.D. and J.D. on a daily basis. She has observed their classes and estimated that the total time of the observations was hours. Bostock reviewed Colannino's educational evaluations of J.D.. (JD P-75.) She also reviewed Colannino's educational evaluations for O.D.. Bostock agreed with the eligibility classifications

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<sup>3</sup> Bostock indicated that Miller is RobinowitzRobinowitz's DIBLES person. Miller was also an expert for the petitioners in this matter.

Colannino included in her reports. However, Bostock testified that Newgrange has never made classification determinations for students. That would be done by the District.

Relative to J.D., Bostock learned that he has definite problems with letter sound correspondences and phonological processing. He has difficulty with expressive and receptive language and reading comprehension. This was based on Bostock's personal observations, teacher information, and information from his reports and IEPs. Bostock testified that this is all the same for O.D..

Bostock testified about the science and method supporting the O-G approach. It is a very structured, sequential, explicit, cumulative, and multi-sensory way. It links knowledge that is known to what is unknown. Each level must be mastered before the student can move forward. Bostock stated that this can be utilized in any subject, but mostly used in reading. Bostock opined that this approach is effective based on her training and experience. There have been many studies demonstrating that O-G approaches are effective with students with language-based learning disabilities. O-G approaches have been around for approximately twenty to thirty years. O-G approaches require direct and explicit instruction. Bostock explained you tell the student, and show the student, so that they get a complete view of what their learning is, what it will be, and how it is linked to what they learned previously. Students are not left to their own devices with the exception of trying to apply some problem-solving skills. O.D. and J.D. have language-based learning disabilities. Bostock testified that the O-G approach would be effective for O.D. and J.D. because it provides them with the opportunity to receive direct, explicit, sequential, cumulative instruction in a multi-sensory way. Bostock testified that O.D. and J.D. also have problems with expressive and receptive language. Bostock opined that the appropriate approach to use with O.D. and J.D. is the O-G approach.

Bostock testified that she is familiar with Guided Reading. Bostock acknowledged she has never used Guided Reading and is not trained in it. She has read some articles and watched some videos about it. She stated that in Guided Reading, the instruction is not delivered with a specific sequence of skills. Instead, it deals with word recognition. It

lacks the skywriting, spelling, tracing, and highlighting of the O-G approach. Curriculum is the subjects to be taught. Program is how the subject is going to be delivered. Approach would be for example, lecture or multi-sensory. Bostock testified that Guided Reading is a program that is visual and auditory. Bostock testified that there is little reinforcement of concepts or mastery required to move onto the next skill. Bostock testified that in Newgrange's IEPs and through O-G the student has to achieve ninety percent to one hundred percent accuracy to move forward with specific skills. Bostock stated that Guided Reading is typically found in the regular education classroom. Bostock opined that Guided Reading was not appropriate to use with O.D. and J.D. because it did not give them enough supports. The program does not stimulate language and help them categorize language and words that they know. Bostock stated that at the time of her testimony, O.D. and J.D. are being taught to develop those skills because they are not able to read on their own yet.

Bostock was familiar with Teachers' College Reading and Writing Workshops and its level books. Bostock referenced one study from January 2020 which indicated that Guided Reading was not effective for students with language-based learning disabilities. They need scaffolding to be successful. Bostock opined that Readers and Writers Workshops were not appropriate for O.D. and J.D.. Bostock acknowledged that she did not do an observation of O.D. and J.D. when they were in District, and she did not know what occurred in their classroom relative to Guided Reading instruction and Readers Workshop. She did not know if the District was modifying the instruction to meet O.D. and J.D.'s needs. Bostock stated that she did not know what the District does in this instruction and assessing students relative to the program. Bostock admitted it is not bad for a student to hold a book and you do not want to prevent a child from holding a book. Books should not be removed from a student's home. Bostock explained that the difficulty with Guided Reading for students with these disabilities is that the techniques used in the instruction are inappropriate. However, she agreed that when the student goes home, the right approach that Bostock adheres to is not going to be followed, but the books should not be removed from the home.

Bostock reviewed O.D.'s proposed IEP. (OD R-35.) It indicated that O.D. has received reading instruction through a balanced literacy model using Reading Workshop and Guided Reading in a replacement small group setting. It also indicated that O.D. was receiving Foundations to help with decoding skills. Bostock opined that this was an inappropriate way to teach O.D.. She did not testify about the specifics of the District's actual delivery of these programs as it related to O.D.. She opined that those programs were inappropriate in general. Bostock testified that her opinion was the same as related to J.D.. Bostock testified that balanced literacy came from the National Reading Panel that talked about making sure that students were taught alphabets, some phonics, vocabulary, comprehension, and fluency. The O-G approach does all these things as well. Bostock testified that balanced literacy includes general education programs that are not tailored to students with language-based learning disabilities. Bostock submitted that those special education students do not effectively learn through those programs.

Bostock indicated that level reading books are not in a typical O-G and multi-sensory structured language approach to reading, because in the beginning there are no words on the pages. There are just pictures. The students are not decoding. The students can be listening to books. Bostock acknowledged that those students would be working on listening comprehension. However, for O.D. and J.D., their reading comprehension has to have letter sound correspondences that they know with accuracy to the point of automaticity, such that they can blend those sounds into words. Bostock opined that approaches that do not focus on phonological awareness were not appropriate for O.D. or J.D.. Bostock explained that what is holding O.D. and J.D. up from reading is that their phonological processing, visual processing, and working memory are not developing like their age peers. All of these interfere with them acquiring the skills to the point of automaticity for them to be successful readers.

Bostock testified that Foundations is "a regular education program, so that typical students would get what they need at their specific grade of instruction." Bostock indicated that Foundations cannot be modified based upon a student's IEP. That would break the fidelity of the program. She also indicated that Guided Reading and Readers Workshop

cannot be modified for a student's IEP. Bostock stated it is partnered with letter sound correspondences that would be typically taught in a kindergarten classroom. Bostock stated, "[t]here's an intervention model that can be done and implemented to help students who do struggle. And its typically not used with special education students. However, it can be adapted to lengthen the duration of the units depending on how they acquire the information." Bostock stated that they are using the adapted model with O.D. and J.D. at Newgrange. At Newgrange, O.D. and J.D. did not complete the first unit in the first thirteen weeks of school. So, Newgrange decided not to move them forward and repeat all of the skills until they mastered them. Bostock testified that the skills they had to master were focused mostly on letter formation, letter identification, sound and listening comprehension.

Bostock testified that using the Foundations program with fidelity means that there is a very specific scope and sequence to the lessons. Bostock stated this would include unit tests and daily lessons. Bostock opined that breaking the Foundations lesson into three, ten-minute sessions with other subjects taught in between the sessions was not an appropriate way to deliver the Foundations program, because the lesson is set up to maximize the potential in learning. It is a continuous lesson. Bostock acknowledged that the program allows a teacher to modify to go as fast or as slow as they must, in order to reach a level of mastery. Those modifications are not explicitly provided by the Foundations manual. Bostock testified that O.D. and J.D. do not lack stamina to get through their Foundations lessons or their school day at Newgrange.

Bostock stated that Miller identified that O.D. and J.D. had severe deficits in phonological awareness. Bostock reviewed Colannino's retesting of O.D. and J.D., which again indicated that O.D. and J.D. have deficits in phonological awareness. Bostock testified that at the time of her testimony O.D. and J.D. were still learning one letter, one sound. They still did not have the skills to decode because they are still working on the automaticity of letter sound recognition. Bostock stated that when O.D. and J.D. entered Newgrange they could not name their letters. They did not know the sounds of their letters. Bostock stated they may have known a couple, but they did not know 26 letters.

They were unable to identify capital letters. Bostock stated that when a word was presented to them auditorily, in their segmentation of those words it was not always accurate. They did not know how to chunk the words. Bostock opined that O.D. and J.D. would not progress in an approach that did not focus on their phonological awareness.

Bostock made the decision to place O.D. and J.D. into Foundations and not into the O-G program when they entered Newgrange. She did this because there is color coding and a lot of visual input. They are learning visually and auditorily. They are learning about formation. These three linkages solidify and help O.D. and J.D. master letter sound correspondences. Their handwriting on the plain line allows the teacher to check how well they are working on a particular portion of the unit.

Bostock was aware that the District observed O.D. and J.D. at Newgrange in January 2020. Bostock stated that O.D. and J.D.'s Foundations teacher that day was a substitute. Bostock testified that Foundations is an O-G program. Bostock acknowledged that multi-sensory instruction is done across core content areas. It is not only O-G that uses a multi-sensory approach.

When asked if using Teacher's College and Writing Workshop with O.D. and J.D. would be detrimental to their learning, Bostock stated as follows: "I don't think they're going to make any headway from the guided reading or the Readers' – Writers' Workshop." They will not be successful, and this could lead to self-esteem issues.

Bostock stated that Miller used the TILLS, CTTOP, Woodcock Johnson Reading Mastery, and Acadience Screener, when she tested O.D. and J.D.. Bostock testified that she is familiar with CTOPP, Woodcock and Acadience, because that is the DIBLES. She was not familiar with the TILLS, but thought it focused on language skills. Bostock never administered the TILLS and never read the manual.

Bostock identified the Newgrange unique program features. (JD P-16.) The font used was the same as what Miller used in her report. When reviewing Miller's first bullet



point, it mirrors the Newgrange's unique program features. Relative to Miller's recommendation that J.D. work with an O-G specialist four to five times weekly for thirty minutes a session, Bostock stated that J.D. is receiving that. It is provided at Newgrange. Relative to the third bullet point which recommends Lindamood-Bell Seeing Stars LIPS Program, Wilson, Right Flight and Take Flight programs, Bostock acknowledged these are all provided at Newgrange. The next bullet provided that J.D. needs O-G instruction to be reinforced throughout his instructional program. Bostock indicated that was occurring at Newgrange. J.D. required a learning environment where all the teachers are trained to employ O-G methodologies to successfully generalize his skill. Bostock acknowledged that this was occurring at Newgrange. Relative to J.D.'s need for an integrated approach to his learning to make meaningful progress, Bostock acknowledged that this was occurring at Newgrange. Relative to math, TouchMath and JUMP Math were recommended by Miller. Bostock acknowledged that TouchMath was used at Newgrange. Miller's recommendations for Lindamood-Bell's One Cloud Nine math program, was not being used at Newgrange.

Miller recommended that J.D. required direct explicit instruction in all areas of language, including writing. Bostock acknowledge that was occurring at Newgrange. Miller indicated that J.D. requires instruction in basic sentence mechanics, usage and ground rules. She specifically mentioned Framing Your Thoughts, Project Read, and Language Circle Enterprises. Bostock acknowledged that these are all being given to O.D. and J.D. at Newgrange. Bostock agreed that Miller wrote her report before O.D. and J.D. began at Newgrange.

Relative to O.D. and J.D., Bostock stated that they were born with their language-based learning disabilities. The deficits cannot be fixed. The skills need to be repeatedly worked on and internalized. As a result, instruction can only go as fast as the students can and as slow as the instructor must. The skill has to be mastered before moving on to the next skill. Review of the instructed skills must be constantly repeated. This is how the O-G approach builds skills and knowledge. Bostock opined that O.D. and J.D. needed this.

Bostock reviewed O.D. and J.D.'s IEPs. (OD P-12.) (JD P-12.) This described their program. Newgrange's IEP system does not have a section for social skills, so an addendum was created, which detailed the social skills program they had twice per week. Bostock testified that Brana gave O.D. and J.D. an initial assessment when they entered Newgrange. This assessment was more like a checklist. It was not based on Woodcock or another standard assessment. Bostock did not know if O.D. and J.D. attended ESY during the summer of 2019. Bostock testified that she most likely would have recommended that O.D. and J.D. attend ESY that summer, given their profiles, to prevent regression. Bostock agreed that if they were eligible at age three for special education and services they would have been working on language, sound skills, phonemic awareness. This education would have had an impact on the foundational skills O.D. and J.D. had when they entered Newgrange.

Bostock explained that the IEPs provided that all assignments should be within the students' abilities, so that they experience success in math, science, and social studies. She stated that at Newgrange they "teach to success." Bostock believed that the program was sufficiently rigorous for O.D. and J.D. and believed they made progress.

It was also infused throughout their days, during which they received direct instruction on appropriate social skills. This teaches them to regulate their behaviors and emotions. It teaches them how to make friends, have conversations, and resolve differences. O.D. and J.D. need direct instruction in this. Bostock testified that O.D. and J.D. have speech difficulties. The social skills program helps them with their oral communication. Both O.D. and J.D. are on the autistic spectrum. This program helps them learn to be empathetic.

Bostock identified O.D. and J.D.'s progress reports which were produced by Ms. Brana. (OD P-13.) (JD P-13.) These showed their progress throughout the year. Bostock testified relative to O.D.'s absences. (OD P-14.) O.D. had seven absences at the half year mark. At the time of Bostock's testimony, he had eight absences in total. Bostock

testified relative to J.D.'s absences. (OD P-14.) J.D. had five absences at the half year mark. At the time of Bostock's testimony, he had six absences in total.

Bostock detailed the "I Ready" computer program which the students take when they enter school and at the end of the year. (OD P-15.) (JD P-15.) J.D. was in the 13<sup>th</sup> percentile for reading when he entered. J.D. was in the 8<sup>th</sup> percentile in January. Bostock explained the decrease in score as being a result of regression and recoupment. They had just returned from a two-week winter break holiday. Bostock testified that O.D. was the exact opposite.

Bostock identified the unique programs and qualifications of the staff at Newgrange. (OD P-16.) (JD P-16.) Bostock could not say if these unique programs and qualifications of staff were in the District. Bostock explained that science is delivered to O.D. and J.D. through hands-on activities and visuals. Bostock insisted that Newgrange was delivering science following the traditional O-G approach. Newgrange starts small and builds upon the mastered skill. Brana is O-G certified. She employs the O-G approach throughout the day. All English teachers at Newgrange are certified in O-G, Wilson Reading, or both. Some other staff members, with a couple of exceptions, are also certified in O-G and Wilson. The remaining staff has been trained to implement the strategies of O-G. Bostock opined that at Newgrange, the O-G approach is being delivered with fidelity across all subject areas.

Bostock and the teachers drafted the goals and objectives in the IEPs for O.D. and J.D.. (OD P-11.) (JD P-11.) Bostock testified that the focus in drafting the goals and objectives was their reading, language skills, comprehension, writing, and organizing. Bostock opined that if an IEP was drafted for O.D. or J.D. that did not have goals and objectives which focused on phonological awareness, it would not be appropriate for him. Bostock opined that goals and objectives that just required O.D. or J.D. to identify and name numbers and letters would not be appropriate for them. Bostock opined that O.D. and J.D. are making progress at Newgrange. O.D. is now able to identify his letters and the sounds they make. He is able to form them correctly. Relative to J.D., he is now

linking letters to sounds. Both can form all of the lower-case letters of the alphabet, can produce their sounds, and identify them in random order. Bostock stated that a program would not be sufficiently rigorous if the student could identify upper-and lower-case letters during the prior school year, but mid-way through the subsequent school year they can only identify and have only been introduced to lower case letters. Bostock opined that that scenario would not make her agree that the students are not making sufficient progress.

Bostock reviewed the District's observation report. (OD R-54.) (JD R-59.) Relative to Ferraro's bullet point two, Bostock testified that the sentence does not make any sense because Wilson is an O-G reading program. It would not be typical for students to have a picture book in their hands for the Foundations lesson. In the reading comprehension portion of the Foundations lesson, the students first listen to the story. They then see the story. Sometimes students are directed to draw or make a visual representation of the different key points. That sentence was inconsistent because you would not see those things in a Foundations lesson. Bostock testified that puppets are used to deliver Foundations and repeating letter key word sounds. They are also used when chorale reading occurs and when students are acting out the story.

Bostock testified that Foundations is combined with core literature-based language arts program for an integrated comprehensive approach to reading and spelling at Newgrange. The framework for that delivery at Newgrange is developing metacognitive skills. They utilize other programs like Framing Your Thoughts, which is a writing program and is part of Project Read, and Language Basics which teach comprehension and vocabulary. Bostock testified that these are O-G types of programs. Bostock acknowledged that there is a phonic portion of Project Read that was based on the O-G method. Bostock conceded the other portions of Project Read, like Framing Your Thoughts, are not based on the O-G method. Foundations cannot be the only program taught. Bostock disagreed with Ferraro's conclusion that Newgrange is not providing anything out of the ordinary that the District had not provided.

While Bostock testified that O.D. and J.D. do not have attention issues, she also acknowledged that the service plan prepared by their teachers indicated in that they did.

Relative to Ferraro's comparison of the WIAT and Woodcock tests and conclusion that there was a thirty-point growth, Bostock testified that they are not normally compared because they are different tests. Bostock testified that she does not know all parts of the WIAT.

Bostock testified that O.D. and J.D. are receiving McGraw-Hill My Math at Newgrange, which is a curriculum provided in public schools. Relative to science their IEP indicates that Newgrange's science class "follows the core curriculum content standards." Bostock acknowledged that this is what public school districts do. For social studies, O.D. and J.D. receive the Houghton Mifflin Harcourt Discovery series for Social Studies, which is also done in public school districts. O.D. and J.D. are receiving a Technological Literacy class, which requires a significant amount of screen time. Bostock testified that she did not believe it was detrimental to O.D. and J.D. to have this significant amount of screen time.

**Carol Paine**, (Paine), testified on behalf of the petitioners. Paine detailed her resume. (OD P-31.) (JD P-29.) She has been employed by the respondent for fifteen years as a teacher. Paine was qualified and accepted as an expert special education teacher, specifically in teaching students with language-based learning disabilities and utilizing the O-G approach. Paine has a Master's Degree in Early Childhood Special Education. She is certified in Wilson, level 1 and level 2, Developing Metacognitive Skills, Project Read, and Framing Your Thoughts. She worked in other teaching special education and general education, and consulting capacities prior to her employment at Newgrange. While teaching, Paine utilized the Guided Reading, Writers Workshop, and Readers Workshop programs. She has worked in public and private schools and has served as a case manager for a disabled student. Paine is a certified teacher of the handicapped.

At Newgrange, she has a Wilson Reading class which uses Foundations and a language arts class, which uses Developing Metacognitive Skills and Framing Your Thoughts. At Newgrange she works with students who have language-based learning disabilities. Newgrange uses O-G type approaches throughout its classes with fidelity. She stated they do not mix approaches. Paine never observed the District's program or O.D. and J.D. while they were in-district.

Paine has taught Foundations to O.D. and J.D. since they entered Newgrange. They were placed in Foundations level K, the kindergarten Foundations program, because they did not have enough letter sound correspondences, phonemic awareness, when they entered school. They were not ready for Foundations level 1. She testified that J.D. is energetic and has a great sense of humor. He needs assistance to stay on task and redirection during a lesson. She stated that he is scattered and has lots to share. J.D. is excited to come to class each day. Paine testified that O.D. is much more sensitive. She has to be careful when providing redirection or constructive criticism, because he takes it personally. He is more pensive and thoughtful than J.D.. O.D. also needs redirection.

Paine testified that her Foundations class is forty minutes long. She spends between thirty and forty minutes doing instruction. She started at 30-minutes because that was the limit of their tolerance levels. They did not have the stamina when they entered Newgrange to tolerate a forty-minute Foundations lesson. Their stamina has increased; however, it varies from day to day. Paine opined that the Foundations lesson must be taught from beginning to end. It cannot be divided into ten-minute segments. It has to be repetitive and redundant for them to internalize it. The lessons are meant to be given over one solid period. O.D. and J.D. need the piece given to them. Often, Paine has to cycle back over that knowledge. That is the way O-G and Wilson work. Paine testified that O.D. and J.D. have difficulty with retention.

Paine testified that the observation report's bullet point reflecting the Chairville class's progress was not applicable to O.D. and J.D. because the students have to be where they are academically. Paine explained that Foundations was originally a general

education program. There are modifications for teaching Tier 2 and Tier 3 students. O.D. and J.D. are in Tier 3. The Foundations modification is to slow down the instruction. At the time of her testimony, she was covering uppercase O and uppercase P. Paine opined that O.D. and J.D. have made progress. Paine acknowledged that O.D. and J.D. were tested before they entered Newgrange and in January of 2020. Paine testified that she was aware that the testing did not show measurable improvement relating to phonological awareness and those key areas that the Foundations program is working on in her class. Paine could not explain why they are not registering some progress on those tests.

Paine has taught the Balanced Literacy Model in her previous employment. It is not utilized at Newgrange. She testified that Balanced Literacy, Readers Workshop, and Writers Workshop are not phonics-based approaches to learning for reading. Paine testified that these approaches are never appropriate for special education Tier 3 students with language-based learning disabilities, because those students have to be taught the phonics of language in order to figure out what the code is. Paine opined it was inappropriate to split up the Foundations lesson into three, ten minute sessions and mix in Guided Reading, Reading Workshop, and Writers Workshop to teach O.D. and J.D.. She indicated that it would be detrimental for attentional issues. She believed mixing approaches would be confusing to O.D. and J.D.. Guessing is not a strategy. Paine acknowledged that the Balanced Literacy Program she taught did not consist of Foundations, Readers Workshop, and Guided Reading. Paine opined that if the Foundations program was given with fidelity, and the Foundations concepts were utilized with the Guided Reading approach then it may be appropriate depending on the student. Paine maintained it was impossible to teach O.D. and J.D. with a Guided Reading approach. Paine did not believe it was improper for O.D. and J.D. to have a book in their hands that is at their level. Paine acknowledged that that is how Guided Reading works. Paine testified that if the same words are used in the Foundations lesson in the morning and then used in the Guided Reading lesson that is next and the same strategies are taught in both, that would make Guided Reading appropriate.

Paine identified the pre and post-test information entered before and after any break. (JD P-17.) The post-test information would be to document the student's regression. ESY is noted on the document. The information entered on this is one of the markers for summer ESY. Paine was consciously trying to track progression and regression as it relates to whether the student should attend ESY. Paine believed that O.D. and J.D. should be recommended for ESY.

Paine identified the DIBELS, which is a phoneme segmentation fluency assessment. This diagnostic inventory falls within the umbrella of how the O-G approach would tell her how to track students. There are examples that are straight from the Foundations manual.

Paine explained that in her classroom, O.D. and J.D. learn each letter. Before they actually write it on a dry erase board, they stand and skywrite it. They are instructed to be very aware of where a letter begins and where it ends, and how it should be formed. For example, an F is always going to start up at the skyline and go down to the grass line. It is never going to start at the grass line and go up to the skyline. They then write it on the giant dry erase board with a big marker. That is part of the multi-sensory approach. It involves gross motor movement. Then they write it with their finger on the table or on the palm of their hand to activate all of their senses. This is so that they can learn. Paine identified the magnetic journals. (JD P-17.) They have to find the magnetic tile that corresponds to the letter's sound.

Paine testified that J.D. and O.D. are not still struggling, because they are not being given a Balanced Literacy Model to teach them to read. Paine testified that it was "actually incredibly valuable" that learning to read is being addressed at this stage in O.D. and J.D.'s learning. Paine explained that sometimes students do not enter Newgrange until third or fourth grade and they cannot read and know it. Paine stated that O.D. and J.D.'s impressionable small minds are a benefit to learning to read. They have not internalized the common negative side effects of children lacking an ability to read. Paine has not



seen O.D. or J.D. express any negative feelings arising from their struggles to learn how to read.

Paine testified that the only program O.D. and J.D. receive focusing on reading and phonics is the Foundations program. When Paine has to go back and do additional exercises in a past Foundations concept she uses Foundations downloaded materials. Paine did not know if that was explicitly approved by the Foundations manual. It was explained to her at every Wilson workshop she attended. Paine denied this was going out of sequence. Paine indicated that she has gone out of order to meet the students' needs in a way not specifically prescribed in the Foundations manual. She qualified her testimony by saying it is not out of order because they already reviewed the material. Paine testified you can go back to review material with the students. Paine modifies the work to meet the student's particular needs. Paine acknowledged this is the point of special education.

Paine believes that O.D. and J.D. made progress, although she acknowledged that it was not very much progress on paper. On paper it does not appear they made progress. Paine testified that she did not have an explanation for why O.D. and J.D. have not made progress. Paine testified that between September and January she had spoken to Bostock about O.D. and J.D.. Specifically, she spoke to Bostock about O.D. and J.D.'s attention issues during the Foundations lesson.

**M.D.**, petitioner testified on his behalf and his sons, O.D. and J.D.. M.D. is college educated. He is employed as an account executive for a technology company. He's married to V.D., also a petitioner herein, and mother of O.D. and J.D..<sup>4</sup> The family lives together in the respondent's district. O.D. and J.D. were born in 2012. They are twins. When they were born, the family lived in Pennsauken, New Jersey.

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<sup>4</sup> M.D. also referred to his wife as T., during his testimony. This reflected the first initial of her nickname.

He explained that his sons hit all of their developmental milestones, during their first year, except for speech. Their pediatrician referred them for an Early Intervention evaluation. Subsequently, O.D. and J.D. were accepted into an Early Intervention program through the Pennsauken public school district. They were approximately fourteen months old. They were approved for speech, occupational, and behavioral therapies. The speech therapist advised that O.D. and J.D. were showing signs of Autism Spectrum Disorder, (ASD), and indicated that they should be evaluated by a neurologist. Petitioners took O.D. and J.D. to Dr. Brill, who diagnosed them at eighteen months with Pervasive Developmental Disorder Not Otherwise Specified. M.D. explained that diagnosis is antiquated. However, it suggested an ASD.

From eighteen months until they were three years of age, O.D. and J.D. received in-home services, speech therapy, physical therapy, and behavioral therapy. At three years old, they attended Baldwin Elementary Early Intervention program in Pennsauken. M.D. stated that his sons did well in this program. Pennsauken sent excessive absence letters to the petitioners, which indicated that the frequent absences and lateness were disruptive to O.D. and J.D.'s educational development and potential success. Pennsauken sent a second letter in April 2016, after the absences increased to ten days. The letter provided the same cautionary language. M.D. stated that O.D. and J.D. had many doctor appointments.

After approximately one year in this program, during the summer of 2016, the family moved to Manheim Township, Pennsylvania. O.D. and J.D. were four years old. M.D. indicated that they contacted the public school district and engaged in the Intermediate Units. M.D. explained that this is the way special education is provided in Pennsylvania. The unit reviewed O.D. and J.D.'s IEPs from Pennsauken and developed a learning plan for them in Lancaster County. O.D. and J.D. began their special education preschool within a school in Lancaster County, which M.D. referred to as IU-13. M.D. had forgotten the school's name. Initially, O.D. and J.D. were placed with peers having similar abilities. They were high-functioning disabled students with speech and language-based disabilities. O.D. and J.D. did very well in this program.

After an IEP review meeting, M.D. testified that the Unit stated that O.D. and J.D. no longer needed services. The petitioners questioned this recommendation and the IEP that was proposed. M.D. indicated that they still had speech delays and difficulties identifying their letters and understanding what they mean. The petitioners advised the Unit that they wanted to continue the special education preschool program. The Unit granted their request. However, O.D. and J.D. were placed in a different class. The petitioners became alarmed because the peers were not of similar ability. The majority of the students were severely disabled and non-verbal. M.D. recounted that there was a student who self-harmed during class. The petitioners determined that this was not a productive classroom. It was detrimental to O.D. and J.D.. M.D. testified that O.D. and J.D. expressed that they understood the differences between them and the other students.

M.D. identified the IU-13 documents including the IEP revision dated May 11, 2017. (OD R-15.) The revision indicated that petitioners had requested that O.D. and J.D. receive services in the community and not at the new special education placement. The petitioners enrolled O.D. and J.D. in Calvary Preschool in the spring of 2017. It was a private preschool. Petitioners privately supplemented Calvary's program. It was supplemented with occupational therapy and physical therapy. They paid out of pocket for these services. Speech was provided by IU-13 as a push-in at Calvary. M.D. stated they received one hour per week. There was not any special education instruction. O.D. and J.D. were surrounded by verbal peers at Calvary. They flourished at Calvary. M.D. acknowledged that the evaluations completed by Early Intervention and instruction in Pennsauken and in Pennsylvania showed that it was important that O.D. and J.D. receive special education instruction in reading, writing, and math. M.D. did not know if the teachers at Calvary were certified special education teachers. O.D. and J.D. did not have IEPs at Calvary. M.D. testified that the program at Calvary was intensive, direct, and specialized for O.D. and J.D. just as in the public schools they attended and Newgrange. M.D. then testified that Calvary's program was not as intensive as Pennsauken, the first placement in Pennsylvania, or in the respondent's district.

The family moved to the respondent's district in December 2017, after M.D. had a job change. The petitioners were happy to return to New Jersey because they had success in Pennsauken and has great mandates and resources for ASD students. The petitioners contacted the respondent's CST in December 2017. M.D. identified the kindergarten registration documents, which were dated February 13, 2018, and which he signed. (JD R-11.) O.D. and J.D. were five years old. M.D. testified that they had multiple conversations with Ferraro to try to determine the best course of action. M.D. did not have proof of those conversations. M.D. stated that Ferraro told the petitioners there were two options. The first was to place O.D. and J.D. in kindergarten halfway through the school year. Ferraro did not recommend this option. The second was to place O.D. and J.D. privately in a preschool and then supplement their program with the District's Summer Enrichment program. M.D. stated they followed Ferraro's recommendation and O.D. and J.D. attended Lenape and the District's summer enrichment program. M.D. did not know if the teachers at Lenape were certified in special education. M.D. testified that O.D. and J.D. did not receive any services at Lenape, like speech or physical therapy. M.D. further testified that Ferraro did not provide them with the option of an in-District preschool program.

M.D. testified that on May 3, 2018, he and his wife wrote to the respondent requesting evaluations. (O.D. R-13.) Subsequently, in September 2018, O.D. and J.D. attended Taunton Forge kindergarten. Prior to beginning the school year, there were IEPs formulated for O.D. and J.D.. Additionally, O.D. and J.D. were given kindergarten screening assessments. (OD R-18.) (JD R-23.) Petitioners met with the CST in August 2018 for an IEP meeting, after the evaluations were completed. (OD R-24.) (JD R-29.) M.D. identified the consent to conduct physical therapy evaluations. (OD R-26.) (JD R-30.) M.D. agreed the IEPs were advised to add physical therapy after the evaluations were completed.

The school year in respondent's district was fine for a few months. In November, the petitioners started noticing problems. O.D.'s personality changed. He started being

quiet and crying. He came home almost every day with soiled pants. O.D. and J.D. started expressing that he was having bad days and that they hated school. They did not want to talk about it.

M.D. explained an email from his wife to Borreggine dated November 2, 2018. (OD R-60.) M.D. testified that he and his wife did not see O.D. making amazing strides in reading and writing, as his wife stated in the email. He stated his wife just kills people with kindness. M.D. stated that his wife was expressing that the petitioners wanted to work with the District. M.D. further explained that the rest of the email about O.D. being upset and not wanting to go to school, because the day was too long, was accurate. M.D. testified that O.D. was experiencing more severe anxiety than J.D.. However, J.D. was experiencing it too. V.D. just chose to focus on O.D.'s issues. V.D. did not state that O.D. was soiling his pants or that both O.D. and J.D. had been expressing suicidal ideations. M.D. testified that in November it began being difficult to get O.D. and J.D. out the door to school in the morning. O.D. was worse than J.D.. M.D. testified that he and his wife did not contact the District about this. In a November 26, 2018, email to Borreggine, V.D. expressed that J.D. was able to explain why he was clipped up on the board and that he was not able to do that in September. V.D. stated that O.D. and J.D. were doing so well. She expressed that the book selection was awesome and that Borreggine was an awesome teacher.

M.D. also identified a December 3, 2018, email from V.D. to Borreggine which indicated that O.D. was doing wonderful and that he had no more tears. M.D. identified a February 18, 2019, email in which V.D. wrote to Borreggine and thanked her for all she did for O.D. and J.D.. V.D. wrote that “[t]hey are doing so well in school and talk about you all the time. They truly love you.” M.D. testified the emails were largely positive with the purpose of getting what they wanted from the District. M.D. testified that his wife is a positive person, who catches more flies with honey rather than vinegar.

M.D. identified an email to Brown in which she stated that O.D.'s anxiety may have been caused by another student in the classroom at that point. (OD R-60.) M.D. stated

he did not know if this was the case. O.D. and J.D. said they were getting bullied. They were getting made fun of because they are in two classes and that another student called J.D. “dumbo” and “dumb” because he did not know his ABCs and could not read.

M.D. testified that O.D. and J.D.’s anxieties increased exponentially between November 2, 2018, and March 2019. M.D. characterized it as alarming. The petitioners decided to take O.D. to Dr. Amy Carnall, (Carnall), in the middle of March. The petitioners did not take J.D. because of the cost. The petitioners thought if they could understand what was occurring with O.D., they could apply it to J.D. because they are so similar. M.D. testified that J.D. did not come home with soiled pants.

M.D. identified Carnall’s write-up from her meeting with O.D. on March 15, 2019. (OD P-1.) M.D. stated that Carnall identified O.D.’s concerns to be school based anxiety arising from the program he is being presented in school. M.D. indicated that he and his wife also saw that O.D. and J.D. were not progressing educationally. Carnall indicated to the petitioners that it was the District’s curriculum that was causing the problem. The petitioners applied this to J.D. and concluded that his issues were the same. Carnall recommended that the petitioners get an educational advocate. The petitioners engaged Morgan. M.D. testified that J.D. had the suicidal thoughts, but that they did not take him to Carnall. M.D. added that that was because J.D. did not make those statements until April 2019.

M.D. indicated that they received emails from Brown asking why they had hired Morgan. (OD R-60.) M.D. testified that his wife responded by indicating that O.D. has concerning anxiety and J.D. has been saying he is dumb because he is in two classes. M.D. indicated that J.D. said “Daddy, why she make me sit in a corner and hand me a book?...I not know how to read.” J.D. would say “stupid readers workshop.” M.D. indicated his almost six-year old sons were telling him that school was driving them crazy. M.D. stated that J.D. said he would rather be dead than go to school. For context, M.D. stated that their grandmother had just passed away. O.D. and J.D. never made these

statements in Pennsauken or Pennsylvania. M.D. stated that he and his wife were very diligent about their sons' development and education.

M.D. attended the annual review meeting in May 2019. M.D. testified that he and his wife thought that they could work out the issues they had with the District. M.D. said at this point they knew the difficulty was the way the District was teaching O.D. and J.D.. M.D. indicated that Miller had been retained by this point in time. She had evaluated O.D. and J.D. but had not issued her reports.

M.D. indicated that at the meeting, Morgan showed up late. M.D. stated that Morgan had a mustard stain on his shirt and that it perturbed M.D.. M.D. rolled his eyes about it. M.D. testified that it was then that Brown wrote the note saying, "how much are you paying this guy?" M.D. testified that this was the beginning of a frightening number of steps and responses from the District that the petitioners found to be extremely unprofessional and alarming. M.D. testified that the CST did not produce any data showing progress at the meeting. No quantifiable metrics showed improvement. M.D. testified that Dr. O'Reilly, (O'Reilly), the District's psychiatrist, recommended that O.D. and J.D. be in a class much smaller than the nineteen student class they were placed in, in Tauten Forge. M.D. indicate that the large class size was carried over into the proposed IEP for the 2019-2020 school year. M.D. testified that O'Reilly became involved after the annual review meeting because M.D. expressed that O.D. and J.D. were experiencing psychiatric issues. M.D. acknowledged that in Borreggine's classroom for reading, writing, and math there were eight students.

After the meeting, the petitioners received Miller's reports and it was then that everything made sense to them. A mediation was scheduled. M.D. testified that Miller made clear that there is scientific data that proves children with language-based disabilities must be taught with a program with fidelity. O-G has been scientifically proven to work with students like O.D. and J.D.. M.D. testified that Miller advised that Foundations cannot be broken into three sessions the way the District did it. M.D. stated that the District did not want to resolve the matter in mediation. Morgan then gave them a number

of options. Morgan said they can stay in-district and supplement O.D. and J.D. with other services and programs. M.D. stated that Miller said no to that option. Miller told petitioners that the District's methodology was detrimental to O.D. and J.D.'s education and well-being. Morgan told petitioners that they could enroll O.D. and J.D. in private school and pay for it. Morgan told petitioners that is not a FAPE. Morgan told petitioners they could sue the District and unilaterally place O.D. and J.D. in a state-approved school, which will provide a FAPE. M.D. testified that Morgan did not give petitioners the option of reconvening the IEP meeting after the results of the pending evaluation had been received. M.D. testified that after weighing their options they filed suit and unilaterally placed O.D. and J.D. at Newgrange. There are four students in O.D. and J.D.'s class at Newgrange. M.D. testified that for most of the school day in respondent's district O.D. and J.D. were placed with typical peers.

M.D. testified O.D. and J.D. love Newgrange. They are excited to do go to school and disappointed when they do not have school. M.D. stated that it is a tremendous expense to have them attend Newgrange but seeing how well O.D. and J.D. are doing makes it worth it. Petitioners also drive four hours a day back and forth to Newgrange and that is worth it too. O.D. does not soil himself at Newgrange. None of the other negative behaviors or statements have continued since O.D. and J.D. have gone to Newgrange. O.D. and J.D. are happy. They can read and write. M.D. could not speak to O.D. and J.D.'s attendance issues.

When Newgrange switched to remote learning during the pandemic, O.D. and J.D. did remote learning. Newgrange suggested multi-sensory chairs and the petitioners obtained them. M.D. indicated that it is like physical therapy and school are being done simultaneously. M.D. testified that since O.D. and J.D. have attended Newgrange he can see progress in their reading abilities. In the respondent's district, O.D. and J.D. knew sight words, but they did not read. They have learned letter sound correspondences. They tap out words. They are reading.



M.D. testified that Borreggine's testimony that O.D. and J.D. could read C and D level books was not true. M.D. testified that O.D. and J.D. never progressed beyond B level books. M.D. read to his children each night and they could not read beyond level B. They only knew some sight words. M.D. testified that the teacher sent home only up to level B books. M.D. acknowledged he had no formal training in special education or Foundations. M.D. acknowledged that Borreggine was a kindergarten special education teacher and that she received training in Foundations. M.D. stated that the teacher trained in Foundations was more qualified to do the Foundations lesson than he was. M.D. stated that Borreggine would have been more qualified to measure O.D. and J.D.'s progress with Foundations because she was more qualified than him. M.D. qualified this statement by saying their progress was optimistic at best. M.D. disagreed that O.D. and J.D. did better with reading in school, than at home after their six hour school day because they were tired.

M.D. testified that O.D. and J.D. were bullied and experienced anxiety. That they had suicidal ideation. M.D. testified that he spoke with Brown, who indicated that that student was getting an aide. M.D. testified that this was at back-to-school night, at homecoming, or in the beginning of 2018. M.D. indicated that the petitioners wrote to the superintendent about Brown's inappropriate behavior. M.D. indicated it was around this time that the petitioners engaged "our professional team." Petitioners did not tell the district that O.D. and J.D. were threatening suicide, because the school psychologist disclosed the details of another student's IEP to them. M.D. stated that the petitioners never told anyone in the District that one of their children was threatening suicide. M.D. stated that that was because the District could not be trusted with private information.

M.D. testified that O.D. and J.D., like many kids with ASD, have acid reflux and other gastrointestinal issues. Their acid reflux caused dental issues. When they were younger they had to be placed under anesthesia to have the complicated dental work they needed. M.D. testified that O.D. and J.D. missed school for their dentist appointments, and because they did well and did not need anesthesia he bought them

toys as a reward. That was what J.D. was talking about when he told his teacher about absences.

**Susan Miller**, (Miller), testified on behalf of the petitioners. Miller detailed her resume. (OD P-5.) (JD P-3.) Miller was qualified and accepted as an expert in teaching students with reading disorders and language-based learning disabilities, an expert in teaching and training the O-G approach and programs and DIBELS, and an LDTC.

Miller has a master's degree from NYU's Child Study Center, which included a practicum in the classroom and a supervised clinical practicum for reading remediation. Miller had additional post graduate credits from Harvard University in using technology with special education students. Miller is an LDTC. From 1994-1996 she received some formal instruction regarding Guided Reading. She has Level 1 and Level 2 Wilson reading certifications. Miller has a certification as a dyslexia therapist in Wilson, which is in addition to the Level 1 and Level 2 Wilson certifications. Miller is a Foundations trainer for teachers and a Language Essentials of Teachers of Reading and Spelling, (LETRS) which is the science of reading. It is not a program.

Miller is a certified mentor for Dynamic Measurement group, (DIBELS). DIBELS has recently been renamed Acadience. Miller indicated that this is a screener to red-flag students that are at risk of later reading problems. Miller trains teachers about how to administer the screener. The screener looks to identify students, who may be dyslexic or have other learning disabilities. Miller is not certified in Lindamood-Bell Seeing Stars, although it is an O-G curriculum. Miller is trained in Project Read and Framing Your Thoughts, which both come under the O-G umbrella. Miller indicated that Framing Your Thoughts is a curriculum that is sequential, cumulative, multi-sensory. Miller has experience with DMS.

Prior to working at Newgrange, Miller was employed for fourteen years as a teacher and reading specialist for middle school students with language-based learning disabilities. During this time, she also taught math and social studies. Miller has never

taught in a public school. Miller is a New Jersey certified teacher of the handicapped. Miller worked at Newgrange for approximately two years, during which she tested students and helped teachers develop IEPs. Miller then moved to RobinowitzRobinowitz. Newgrange is affiliated under an umbrella organization with RobinowitzRobinowitz. Miller testified that Newgrange is a stated approved school for special education. She testified that “[i]t’s essentially a public school.” The organization is comprised of Newgrange, RobinowitzRobinowitz, and Laurel School of Princeton. The latter two were private entities. Miller became the assistant director of RobinowitzRobinowitz in 2014. She continues in this position at present. Her responsibilities include tutoring students, providing professional development, conducting free dyslexia screenings, and doing some evaluations.

Miller stated that she has testified in three cases, all of which involved placements at Newgrange. She has written reports for students who were placed at other schools. She denied she was influenced by RobinowitzRobinowitz to recommend placement of students in Newgrange. Miller testified that Ferraro’s testimony was portrayed in a “lesser light” because she was testifying to keep the students in the District, which employs her. She differentiated her situation by stating that they are financially separate entities.

Miller testified that she came to test O.D. and J.D. because they went to RobinowitzRobinowitz, where Miller works. Miller is familiar with Newgrange. She worked there for several years. Miller testified that Newgrange School of Princeton Incorporated owns Newgrange and RobinowitzRobinowitz. Miller identified the website: [laureleducation.org/campus](http://laureleducation.org/campus). (R-73.) When questioned about the Hopewell Campus Integrated Education Center, Miller testified that RobinowitzRobinowitz and Newgrange have been housed in the same building, since July 2020. Miller testified that this new facility was announced in April 2020. When her memory was refreshed with an email dated February 6, 2020, from Tim Viands announcing the new facility, Miller testified that it was announced in February 2020 that RobinowitzRobinowitz and Newgrange moved into the facility in July 2020. Miller acknowledged she wrote her report in May 2019 and that O.D. and J.D. entered Newgrange the next school year. Miller denied there was any

influence over her as a RobinowitzRobinowitz employee to make recommendations. Miller acknowledged if public schools stopped sending students to Newgrange, it would close. She further testified that in such event, RobinowitzRobinowitz would close, also.

Miller testified that she is familiar with O.D. and J.D.. Miller identified her Diagnostic Learning Evaluation, which she conducted on May 10, 2019. (OD P-1.) (JD P-1.) Miller received information from petitioners that O.D. and J.D. suffer from a genetic deletion and language-based learning disabilities. She testified that the petitioners relayed that O.D. and J.D. had complex educational and health histories. Miller testified that O.D. and J.D. have similar profiles. Miller said they both struggle in the domain of language as it relates to reading, writing, and math. Miller testified that there are differences between O.D. and J.D.. Miller observed that J.D. was inattentive and easily fatigued. His attempts at conversations and conversational speech were challenging and unintelligible at times. Miller did not find O.D.'s speech to be intelligible. Miller explained that she tested O.D. first. J.D. remained with his mother.

Miller used the Acadience Math Screener, which was formally DIBELS. Miller explained the TILLS. It is a norm standardized test, which is fairly new. (OD P-3.) (JD P-1.) The testing occurred at essentially the end of O.D. and J.D.'s kindergarten year. Relative to O.D., his TILLS results were as follows. Relative to vocabulary awareness, O.D. was in the average range. He scored in the 35<sup>th</sup> percentile. This was consistent with the quality of O.D.'s conversation. Relative to phonological awareness, O.D. measured in the 0 percentile. He had extreme difficulty. This is a foundational skill for reading and spelling because it involves awareness of sounds. O.D. could not provide the first sound in a word. Relative to story retell, O.D. measured in the 0 percentile with a standard score of four. He was able to answer questions about the story he was read but could not retell the story. Relative to nonsense word reading, O.D. could not decode any of the testing. Miller attempted to determine if O.D. was familiar with any of the Foundations strategies. Miller found that O.D. did not know how to tap out a word, which is a Foundations strategy. Relative to listening comprehension, O.D. was in the 0 percentile. It was difficult for O.D. to retain the three sentences read to him and to answer

the questions. This tests what he is hearing and his ability to make inferences when necessary. This was difficult for him. Relative to reading comprehension, O.D. was in the 0 percentile. He was not able to decode any of the words in the two sentences presented to him. No pictures were presented.

In sum, Miller testified that he scored O.D. a 21, which fell below the cut off score of twenty-four. Twenty-one was a composite score. These results are way below his peers. Miller was not comfortable concluding that O.D. was dyslexic.

Relative to J.D., his results were as follows. Relative to vocabulary, J.D. was in the below average range in the 8<sup>th</sup> percentile. Relative to phonological awareness and nonsense word repetition, J.D. was in the 0 percentile. This was a combined score. He had extreme difficulty. This is a foundational skill for reading and spelling because it involves awareness of sounds. J.D. could not provide the first sound in a word. J.D. scored in the 5<sup>th</sup> percentile in phonological awareness, but relative to nonsense word repetition, J.D. could only repeat one two syllable word. Relative to story retell, J.D. was in the 11<sup>th</sup> percentile with a standard score of six. J.D. performed better on story retell than O.D.. J.D. was able to auditorily hear better than O.D.. Relative to nonsense word reading, J.D. could not decode any of the testing. Miller attempted to determine if J.D. was familiar with any of the Foundations strategies. Miller found that J.D. did not know how to tap out a word, which is a Foundations strategy. He could not decode any of the testing. Relative to listening comprehension, J.D. was in the 0 percentile. It was difficult for J.D. to retain the three sentences read to him and to answer the questions. This tests what he is hearing and his ability to make inferences when necessary. This was difficult for him. Relative to reading comprehension, J.D. unable to decode any of the words in the two sentences presented to him. No pictures were presented.

In sum, Miller testified that he scored J.D. out at sixteen, which fell below the cut off score of twenty-four. Sixteen was a composite score. These results are way below his peers. Miller was not comfortable concluding that J.D. was dyslexic. Miller opined

that J.D.'s language-based learning disability was a bit more severe than O.D.'s disability, but similar to his.

Miller gave O.D. and J.D. the CTOPP. It is a normed standardized test, which is designed to identify the areas of reading, language, phonological awareness, phonological memory, and rapid automatic naming. O.D.'s CTOPP results are as follows.

<u>Composites</u>	<u>Percentile</u>	<u>Description</u>
Rapid Non-Symbolic Naming	12 <sup>th</sup>	Below Average
Rapid Symbolic Naming	30 <sup>th</sup>	Average
Phonological Awareness	18 <sup>th</sup>	Below Average
Phonological Memory	12 <sup>th</sup>	Below Average

The subtests revealed the following:

<u>Composites</u>	<u>Scaled Score</u>	<u>Percentile</u>	<u>Description</u>
Rapid color naming	5	5 <sup>th</sup>	Poor
Rapid object naming	9	9 <sup>th</sup>	Below Average
Rapid digits	8	25 <sup>th</sup>	Borderline Average
Rapid letter naming	9	37 <sup>th</sup>	Average
Elision	6	9 <sup>th</sup>	Below Average
Blending words	9	37 <sup>th</sup>	Average
Sound Matching	8	8 <sup>th</sup>	Borderline Average
Memory for Digits	8	25 <sup>th</sup>	Below Average
Nonword Repetition	6	9 <sup>th</sup>	Average

Relative to his composite score, O.D. scored in the low average ranges for rapid non-symbolic naming, phonological awareness, and phonological memory. Miller opined these need to be developed to acquire reading and spelling skills.

Relative to his CTOPP results, J.D. did a little better than O.D. in phonological memory. (JD P-1.)

<u>Composites</u>	<u>Percentile</u>	<u>Description</u>
Rapid Non-Symbolic Naming	3 <sup>rd</sup>	Poor

Rapid Symbolic Naming	30 <sup>th</sup>	Average
Phonological Awareness	14 <sup>th</sup>	Below Average
Phonological Memory	30 <sup>th</sup>	Average

The subtests revealed the following:

<u>Composites</u>	<u>Scaled Score</u>	<u>Percentile</u>	<u>Description</u>
Rapid color naming	5	5 <sup>th</sup>	Poor
Rapid object naming	6	9 <sup>th</sup>	Below Average
Rapid digits	9	37 <sup>th</sup>	Average
Rapid letter naming	8	25 <sup>th</sup>	Borderline Average
Elision	8	25 <sup>th</sup>	Borderline Average
Blending words	7	16 <sup>th</sup>	Below Average
Sound Matching	7	16 <sup>th</sup>	Below Average
Memory for Digits	7	16 <sup>th</sup>	Below Average
Nonword Repetition	10	50 <sup>th</sup>	Average

Relative to his composite score, J.D. scored in the low average ranges for rapid non-symbolic naming, phonological awareness, and phonological memory. Miller opined these need to be developed to acquire reading and spelling skills.

Relative to the Woodcock Reading Mastery Test III, Miller explained the following. (OD P-1.) Relative to letter identification, O.D. was in the 1<sup>st</sup> percentile. He has not learned the letters of the alphabet to identify them by name. This result was consistent with the TILLS and CTOPP results. Relative to phonological awareness, O.D. was in the 8<sup>th</sup> percentile. This result was consistent with the TILLS and CTOPP results. Relative to word identification, O.D. was in the 6<sup>th</sup> percentile. His standard score was seventy-seven. There were no pictures in this subtest. Relative to word attack, O.D. measured in the 5<sup>th</sup> percentile. This was in the low range. This result was slightly different than the TILLS. It measured O.D.'s ability to apply letter/sound correspondences. He was not able to decode the first four items. This result was consistent with the TILLS and CTOPP results. Relative to passage comprehension, O.D. was in the 1<sup>st</sup> percentile. This was in the very low range. O.D. was not consistent in his use of the pictures to fill in the blanks. Relative to the use of synonyms and antonyms and analogies, O.D. could not do the reading.

Relative to listening comprehension, O.D. was in the 21<sup>st</sup> percentile, with a standard score of eighty-eight. This sub-test had pictures to support it, unlike the TILLS. In sum, Miller opined that O.D. performed on the Woodcock consistent with his performance on the TILLS and CTOPP.

Relative to J.D.'s performance on the Woodcock, Miller testified as follows. Relative to letter identification, Miller did not administer this test because J.D. was getting tired and she had sufficient information from the other tests. Relative to word identification, J.D. was in the 2<sup>nd</sup> percentile. There were no pictures in this subtest. Relative to word attack, J.D. was in the 5<sup>th</sup> percentile, which was in the low range. This is slightly different than the TILLS. It measured J.D.'s ability to apply letter/sound correspondences. He was not able to decode the first four items. This result was consistent with the TILLS and CTOPP results. Relative to passage comprehension, J.D. could not complete any portion of the sub-test, despite the pictures.

Acadience Math, formerly known as DIBELS, is a math screener designed to identify students that may struggle in math. Miller explained, J.D.'s results. Relative to beginning quantity, J.D. was above the benchmark range. This meant that this foundational skill, which is analogous to phonological awareness, is developing typically. Relative to number identification, J.D. was well below the benchmark. Relative to number fluency, J.D. was well below the benchmark.

Miller explained, O.D.'s results on Acadience. Relative to beginning quantity, O.D. was below the benchmark range. Relative to number identification, O.D. was well below the benchmark. Relative to number fluency, O.D. was well below the benchmark.

Relative to informal writing, O.D. could not form any of his letters correctly. This would have been provided in Foundations. Only some of the letters were eligible. O.D. demonstrated the ability to hear and process individual phonemes of the words provided to him; however, he could not read the words back to Miller.



After evaluating the test results, Miller made recommendations for O.D. and J.D. which were similar. (OD P-1.) (JD P-2.) The recommendations and her explanations for them are as follows. Miller recommended that O.D. and J.D. required a certified O-G practitioner to deliver a multi-sensory structure language intervention with fidelity, because they have more training and experience. O-G is based on science and is a structured program to reflect the neurological and physical processes that occur in learning to read. O-G addresses their decoding deficits and phonological awareness. Miller also recommended that the IEP goals and objective should provide for identifying initial sounds, final sounds, and median sounds, learning the names and sounds of the alphabet. The programs that should be utilized are Foundations, Framing Your Thoughts, and Project Read. Each meets the criteria of an O-G program. Miller indicated that instruction should be kept to a minimum based on their story retell, listening comprehension, and phonological awareness skills. Miller reviewed her recommendations. She indicated that her recommendations may be similar to Newgrange's program. She also stated that some public schools have some of the programs in her recommendations.

Miller detailed her observation reports for O.D. and J.D. (OD P-2.) (JD P-4.) Miller did her observation on May 17, 2019, at Tauten Forge in their kindergarten. Miller began her observation at 8:40 a.m. in Borreggine's classroom. She was presenting sight words at that point using flash cards. Miller could not recall whether the cards were from Foundations or just printed. Miller testified that Borreggine did not go through the Foundations sequence and tasks in her instruction. Miller opined that Borreggine's delivery was wrong. This Foundations lesson ended after ten minutes at 8:50 a.m.. Foundations is not designed to be divided into sections. It is designed to be delivered in a complete manner on a daily basis. Each task or activity fires all of the various domains which are needed for emerging readers and writers. Borreggine did not use the correct sound card. The large card is supposed to be paired with six standard sound cards. The kindergarten notebooks were not utilized, although Miller acknowledged they do not have to be used with every lesson. The procedure for teaching a new trick word was not employed, but rather a video was shown on the Smart Board. Use of a Smart Board is not recommended

by Wilson language. Borreggine did not prompt O.D. to stand and spell the two sight words.

Miller acknowledged she was critical of what she observed in the District. In her report, she indicated that she did not observe a Foundations lesson. She qualified her opinion by saying that she saw pieces of the materials, but not a per se lesson. She saw letter cards which is part of the Foundations lesson. She saw consonant diagraphs, which is part of the Foundations lesson. Miller attempted to explain away her criticism that the name on the Foundations materials box was that of another teacher to mean that she questioned whether Borreggine was properly trained or trained at all. Miller testified that “[w]e have no documentation of ever providing Foundations to – to the Medford School District.” When asked who “we” was, Miller testified that it was RobinowitzRobinowitz. Miller explained that RobinowitzRobinowitz records showed that Bostock did Wilson training in the respondent’s District, not Foundations training. Miller testified that RobinowitzRobinowitz is the only Foundations trainer in New Jersey. Miller criticized the video portion of the lesson she observed. However, she did not realize that it was not part of the Foundations lesson. She did not realize that this portion of the instruction was Reader’s Workshop or Guided Reading. Miller did not know if the remaining Foundations activities were being delivered during that day. Miller criticized the respondent’s program because they provided for a balanced approach. Miller testified that she does not believe that a balanced literacy approach is appropriate at all. Miller acknowledged she spoke to J.D. directly during the observation.

Miller testified that she expressed concerns to Ferraro after the observation. Ferraro advised Miller that Borreggine had training in Foundations. Miller maintained Borreggine did not adequately deliver a Foundations lesson. The concepts were not taught and reinforced. The Foundations curriculum was not being delivered with fidelity by Borreggine on that day.

Miller further testified that the Readers Workshop lesson she observed went against the basic tenets of Foundations. Miller testified that utilizing Readers Workshop

was part of a Balanced Literacy Model, which is used in certain districts. Miller read from her report in which she wrote that Readers Workshop and Guided Reading has attracted negative academic treatment because it is a general education methodology ineffective in teaching students, especially those with language-based learning disorders. Guided reading does not focus on and emphasize decoding. Those programs prompt students to guess which is ineffective for students who cannot decode and have phonological awareness deficits. Miller opined that Readers Workshop actually uses strategies that poor readers use. That is why the balanced literacy program should not be used for O.D. and J.D.. Miller conceded that Daily 5 could be used to reinforce Foundations concepts, depending on what the teacher provided. Miller opined that the District's program did not adhere to the O-G principles of instruction. Miller opined that the District's program was not appropriate. Miller conceded that Daily 5 could be used to reinforce Foundations concepts, depending on what the teacher provided. Miller opined that the District's program did not adhere to the O-G principles of instruction.

Miller reviewed the District's observation reports. (OD R-54.) (JD R-59.) Miller was not present for the District's observation. Miller also did not observe O.D. or J.D. at Newgrange. Miller indicated that her testimony about the District's observation was based on the observation report.

Miller explained the first bullet spoke to a Wilson Reading Period. Miller testified that the Foundations lesson lasted twenty-five minutes. Language arts lasted between 10:12 a.m. and 10:34 a.m.. This was a total of forty-seven minutes of a combination of language arts and Foundations instruction. Miller testified that nothing in this paragraph was inconsistent with the O-G approach or the Foundations program. The District and Newgrange used the large cards. Miller was familiar with the puppets. They are used in O-G and Foundations lessons daily. The puppets are part of the Foundations sequence. Relative to the music lesson, the lesson is consistent with O-G in that O.D. and J.D. were hearing something and repeating it in a sequence. That task is a phonological awareness task and phonological memory task. It is multi-sensory and consistent with O-G. Relative to the next bullet point, Miller explained that the language lesson was a Framing Your

Thoughts lesson, which is a program developed with the methodology and principles of O-G. Relative to playing with Legos and the clock instruction those are both hands-on activities. They are manipulative. Miller stopped short in her testimony of saying it was an O-G approach.

Miller conceded that the ninety minutes of reading instruction in the district was more than the forty-seven minutes provided at Newgrange. Miller was not aware that school districts compare the WIAT to the Woodcock regularly. Miller testified that you cannot compare the WIAT and the Woodcock. Miller testified that she would not have compared the WIAT and the Woodcock to conclude a numeric calculation of progress made by the students.

When questioned about the respondent's concern that O.D. and J.D. would not have typical peers who can model appropriate skills as well as language at Newgrange, Miller testified that that is not the issue for these students. O.D. and J.D. need intensive intervention in all areas of language. Miller testified that O.D. and J.D. would be isolated if they were placed in a larger general education class for portions of their day because their language skills are not on par with general education students. Miller refused to say that if O.D. and J.D. were in a class with students who were progressing more quickly that it would cause them harm. She simply stated that they would fall further behind.

Miller testified that the use of technology is discouraged for young students, by the Wilson Academy website. Miller found Ferraro and SHEMELEY's observation of the Newgrange class to include O-G being infused throughout the day.

Miller testified regarding the comparison between her testing results and Colannino's results. For O.D., relative to word attack, Miller stated that there was a three-percentile difference. Miller stated this was some progress. Miller stated she would want to look at the student's responses to the questions to see what progress there was. Miller stated that the numbers do not always tell if the student is progressing. Miller contended that O.D. and J.D. have made progress, because they could do more when Colannino

tested them, than when she had. Miller testified that J.D. increased in several areas as shown in Colannino's report. She maintained the balanced literacy model is inappropriate to teach O.D. and J.D..

Miller acknowledged that her testimony on direct examination about the comparison of her testing to Colannino's was intentionally limited to the TILLS, because it was the same test. Relative to vocabulary awareness, O.D. had a one-point scaled decrease. Relative to phonemic awareness, O.D. did not get any items correct, which was similar to Colannino's results. Relative to non-word repetition there was a three-point scaled increase. Miller acknowledged that O.D.'s scores decreased. Relative to non-word reading, Miller noted that O.D. was still unable to read any of the words presented to him. Relative to story retelling, O.D. had a three-point increase. Relative to listening comprehension, O.D. had his greatest increase of ten points. Miller testified that this sub-test does not have a great deal of encoding and decoding that is tested.

Relative to J.D., Miller testified that the comparison of his results was pretty similar to O.D.'s on the TILLS. J.D. had some decreases, some increases and he had a nine-point score increase in listening comprehension.

Miller testified about O.D. and J.D.'s CTOPP results. Miller acknowledged that O.D. and J.D. regressed in some of the scores. Relative to elision, O.D.'s score stayed the same. Relative to blending words, O.D. had a one-point decrease. Relative to phoneme isolation, Colannino did not do any testing for that because there is not any test for six-year-old children. Relative to non-word repetition, O.D. had a four-point increase. Relative to rapid digit naming, O.D. had a two-point decrease.

Relative to J.D., Miller testified that the comparison of his results was pretty similar to O.D.'s on the CTOPP. Relative to elision, J.D.'s score remained the same. Relative to blending words, J.D.'s score remained the same. J.D. was not given phoneme isolation because there is not any test for six-year-old children. Relative to memory for digits, J.D.'s score remained the same. Relative to non-word repetition, J.D.'s scaled score

decreased by one-point. Relative to rapid digit naming J.D.'s score decreased. Relative to rapid letter naming, J.D.'s score remained the same.

Miller stated that the progress she saw in O.D. and J.D. was characteristic of students with language-based learning disabilities. It takes a long time to make steady gains. Miller declined to classify the progress O.D. and J.D. made, except to say they made progress. When asked how many of the subtests the student would have to not make progress on for her to determine the student was not making progress, Miller testified she would want to do a full battery of testing in six months.

Miller maintained that programs other than O-G are not as effective. Miller identified the study entitled, "An Experimental Evaluation of Guided Reading and Explicit Interventions for Primary-Grade Students At-Risk for Reading Difficulties." (R-71.) This was the study Miller referred to on direct examination. Miller testified that this study referred to Tier 2 interventions. Miller acknowledged that Tier 3 is special education students and that this study did not study Tier 3 students. Miller conceded that this study considered Guided Reading in isolation and explicit instruction in isolation. There was a third group considered in isolation and that was the typical school instruction, (TSI), group. This study did not do a study of a group of students who received both. The study did not consider a group receiving both guided reading and explicit instruction intervention.

Relative to the second article Miller referred to on direct examination, Miller identified the National Reading Panel study. (R-72.) This was also referenced in Miller's report. This study was done by the government in 2000. It is a compilation of other studies. Miller conceded that the report indicated that "it is important to emphasize that systematic phonics instruction should be integrated with other reading instruction to create a balanced reading program. Phonics instruction is never a total program." Miller continued to maintain that it could not be the combination of Foundations and Reader's Workshop or Guided Reading. Miller refused to reconsider her opinion in light of the studies.

**Amanda Colannino**, (Colannino), testified on behalf of the petitioners. Colannino detailed her resume. (OD P-10.) (JD P-10.) Colannino was qualified and accepted as an expert LDTTC in testing and creating IEPs in a public school setting for special education students, an expert in the Wilson Reading Program and the O-G approach, and an expert in special education teaching students with reading disorders and language based learning disabilities.

Colannino has a Master's Degree in Special Education. She is an LDTTC. Colannino has a certification for elementary school and a special education certification. She has a supervisor certification. She is a certified Wilson dyslexia practitioner with a level 1 certification. She was working on her O-G certification and Wilson level 2. Colannino teaches O-G using a program called Preventing Academic Failure, during tutoring over the last eighteen years. She has worked with Lindamood-Bell's Visualizing and Verbalizing program. It is not an O-G program because it focuses on comprehension. It is multi-sensory comprehension. Colannino has worked with Project Read, for which the phonics program is an O-G based systematic phonics program. Framing Your Thoughts is a multi-sensory writing program and Report from Process is a multi-sensory program for nonfiction reading comprehension. Colannino has been trained in Guided Reading.

Colannino worked for four years as a fourth-grade teacher in New York. She also worked in Virginia. She worked for three years as a coordinator of exceptional student education, (ESE), which is similar to an LDTTC, and a special education teacher in Florida. As an ESE Colannino oversaw the writing of IEPs and was a case manager for all of the students. She also did some academic testing.

Subsequently, Colannino worked in a New Jersey public school district, for over ten years, as a special education teacher, and an LDTTC. As a special education teacher, she taught in a resource room, and a self-contained classroom. As an LDTTC she did all of the educational evaluations and oversaw the writing of IEPs.

Colannino has her own consulting and tutoring practice. Throughout her career, she has always done tutoring. She primarily tutors students for reading using either O-G or Wilson. Colannino also works at CBA, a private school, where she puts together a program for students with mild language-based learning disabilities. CBA is where she is primarily employed now. In her consulting company, Colannino did evaluations and tutoring.

Colannino testified that she did learning evaluations for O.D. and J.D. She produced reports dated January 11, 2020. Her educational evaluations took place on December 27, 2019. (OD P-9.) (JD P-9.) In her evaluations, Colannino focused primarily on reading in terms of phonological awareness and pre-reading skills. Colannino used the TILLS and CTOPP assessments. She also did certain subtests from the Woodcock Test of Achievement. Colannino initially testified that O.D. and J.D. were seven years, six months, zero days old when they took the assessments. She corrected herself on cross-examination, that they were six years, six months and zero days old. As a result, they were at the very youngest end of the scale, because the tests are given in six-month age increments. They were the youngest in their peer group. Colannino also observed them at Newgrange on December 17, 2019. Before the observation, Colannino reviewed the various learning evaluations, psychological evaluation, psychiatric evaluation, a couple of speech and language evaluations, and the IEPs.

During the observation, Colannino observed the Foundations lesson, in which Colannino has been trained. Foundations is an O-G based program. Colannino observed Foundations, language arts and literacy, and math, in that order. All three periods were delivered consistent with the O-G approach. Foundations followed a specific lesson plan. In language arts they read a story aloud and then went through sequences that touched on some vocabulary as well. These were delivered exactly the way they were supposed to be delivered. It was well-delivered. Nothing was inconsistent with the O-G approach. Colannino testified that there were three students, including O.D. and J.D., in the Foundations lesson with two teachers. In language arts and math, there were four students and two or three students.



Colannino acknowledged that she observed the Foundations lesson from 8:32 a.m., at which point the lesson was being delivered. At 8:42 a.m., Colannino observed use of the whiteboard during the Foundations lesson. At 9:03 a.m., the class read a book together, which is to learn listening comprehension. At 9:08 a.m., O.D. and J.D. went to a non-academic class, and Colannino left school. She returned at 10:05 a.m. to observe the language arts literacy class. In this class, the students were making gingerbread houses. The students did an assignment on the seasons which is a calendar activity from 10:05 a.m. to 10:10 a.m.. The teacher read a picture book story to the students. She went over the vocabulary that the students may not know, so that they may comprehend the story. Colannino then explained that Guided Reading is done in small groups, who are working on one particular skill while reading a book together. Colannino acknowledged that the teacher could be working on vocabulary and comprehension in Guided Reading. This was similar to the instruction at Newgrange. At 10:26 a.m. the class made gingerbread houses. Colannino indicated that this activity worked on sequencing and fine motor skills. Colannino stated that this was a fun activity the day before Christmas. They spent thirty-five of the forty-minute language arts class making gingerbread houses. Colannino did not express whether she thought O.D. and J.D.'s program was sufficiently rigorous, when asked. She did state that it was appropriate. She indicated the fact that they made mistakes during the instruction meant that it was challenging for them. She testified that the book that had been read to them was not on their decoding level but reading it to them was appropriate to challenge them. Colannino maintained that despite the fact that most of the day had been spent on non-academic instruction, the program was appropriate for O.D. and J.D. to make progress.

Colannino observed the math class from 10:40 a.m. to 11:14 a.m.. It was a McGraw-Hill math series. Colannino acknowledged this is a series which is available and taught in public schools. No math lesson was delivered during the observation because the students were taking a pre-break assessment related to ESY. After math class the students played with Legos for three minutes. After that, Colannino ended her observation.

Subsequent to the observation, she tested O.D. and J.D.. Colannino testified that they were both energetic and engaged in conversation very easily. Colannino gave them the TILLS to look at oral language skills, not written language skills.

Relative to O.D., Colannino testified that O.D. has very large deficits in the area of phonemic and phonological awareness and decoding. His scaled score was eight, which was considered average in terms of non-word repetition. In phonemic awareness and phonological awareness, O.D. had a low score. This was accurate for non-word reading, also. In vocabulary awareness, O.D. scored an eight out of twelve. That was average. Colannino conceded that O.D. had a one scaled score decrease from Miller's testing. In phonemic awareness O.D. scored a zero and was in the zero percentile. This type of deficit told Colannino that he needed direct instruction in these skills. O.D. showed no improvement between Miller and Colannino's testing. After six months of O-G instruction which is to address phonemic awareness, there was no improvement.

Colannino noted that in relation to non-word repetition O.D. appeared to make progress. He increased two points since May 2019. Colannino testified that his phonemic awareness is developing. He is starting to be able to hear the different sounds in a word. O.D. was improving. In non-word reading, O.D. scored a zero. This was the same as when Miller tested him. O.D. stayed the same level of proficiency and did not improve. Colannino testified that O.D. improved three scaled score points in story retell and ten scaled score points in listening comprehension. Colannino opined that this means that O.D. was using the metacognition program they are learning at Newgrange. They are using the strategies they are being taught. Colannino testified that they are much better able to take information in that presented orally, understand it, and restate it. These are the first steps in comprehension.

Colannino explained O.D.'s CTOPP results. In elision, a basic phonological awareness skill, O.D. scored a six, which was the same as on Miller's test. O.D. actually answered more questions, but because he is now older he is expected by the assessment

to do more work to gain that score. O.D. did not improve relative to elision. In blending words, O.D. had a one-point decrease from May 2019. Colannino said that this score was reflective of the fact that the curriculum in the District was not focusing on this issue and that there were no goals in the IEPs for phonological awareness. Colannino qualified the score decrease based on O.D. being older and being expected to achieve more on the assessment. Blending words is a later developing phonological awareness skill. Colannino opined that this skill does not increase with being exposed to the O-G approach because it is very sequential. The student does not move on until they have mastered the skill. O.D. had probably not gotten to that skill yet. Colannino opined that O.D. was able to identify his first and last sounds. He was struggling with the medial sound. This is spoken language, not reading.

In memory for digits there was no substantive improvement between May 2019 and when Colannino tested O.D.. This assesses memory, which is needed for fluency. It predicts how well they might be able to remember phonemes in the middle of words. In non-word repetition there was a four-point scaled score increase. This was significant to Colannino. Colannino stated that these are scaled scores and they are different from standard scores. There is a standard deviation, but the results were still significant statistically. This is a skill on which Foundations would be focused.

In rapid digit naming, O.D. decreased by one-point and in rapid letter naming O.D. decreased by two points. Colannino testified that because O.D. was being taught Foundations and it teaches O.D. to slow down, his scores are not going to be higher because he is not working rapidly. In rapid letter naming, O.D.'s score decreased by two points.

Colannino explained the composite scores for phonological awareness and phonological memory. In phonological memory, O.D. fell in the average range, but not for phonological awareness or rapid symbolic naming. Colannino testified that Miller's test results for phonological awareness placed O.D. in the 18<sup>th</sup> percentile. Colannino

placed O.D. in the 12<sup>th</sup> percentile for phonological awareness. She acknowledged that this was a decrease.

Colannino concluded and opined that O.D. should be classified as multiply disabled for communication impaired, autistic, other health impaired, specific learning disability in the area of written language, basic reading skills and reading comprehension. Colannino did the Woodcock Achievement test as well for O.D.. It showed that O.D. was not reading yet. He did not have the underlying skills to read.

Colannino testified that she was not surprised that O.D. did not make that much progress from May 2019. She was pleasantly surprised that his listening comprehension scores increased in light of his ADHD diagnosis. This was based on the strategies he was being taught. It shows that O.D. was learning how to focus and listen effectively. He was developing student skills. In letter word identification, his score decreased even though he could read the same number of words, because he was older, and more was expected of him. O.D. was not reading at this point and there are no pictures provided in the test. Colannino testified that you cannot compare the passage comprehension in the Woodcock Reading Mastery that Miller used with the Woodcock Achievement that Colannino used. Colannino testified that it is not a direct comparison between the Woodcock Reading and the Woodcock Achievement. She did her best to compare those scores. An LDTC would compare these scores.

In word attack, O.D. increased three points. He was able to match letter sounds to the correct picture and name the sounds for the letters presented to him. This is related to phonological awareness. In nonsense words, O.D. could not read any. There was only a slight increase in his score.

Colannino testified that O.D. could not read when she evaluated him. She explained the skill of reading. At the heart of reading is orthographic mapping, which is essentially when you have to attend to the letters and the sounds. Then, the letters and the sounds are put together to form words. A student has to learn the letters and then

the letter sounds, and how those sounds work together in writing. A student then has to pronounce the sounds and put them together to make a word. Colannino stated that you have to be directly taught the sounds to do that.

Relative to math, O.D. is in the lower average range. In spelling, O.D. was in the very low range. O.D. could write letters and could spell one word. He got some sounds. Colannino did an informal phonics assessment. It showed O.D.'s skills are emerging. Colannino opined that the programming at Newgrange is being successful based on the areas of improvement that she saw on her testing in relation to Miller's report. Also, Colannino further opined that the Foundations delivered with fidelity was helping O.D..

Colannino agreed that for O.D. a summary of his progress across the tests showed that he increased on four of the subtests, decreased on five of the subtests, and stayed the same on four of the subtests. Colannino opined that this was still meaningful progress.

Relative to J.D., Colannino also did an in-class observation of him. This was at the same time she did O.D.'s observation. Colannino reviewed J.D.'s IEP from the District. Colannino gave J.D. the TILLS assessment. J.D. was in the average range for story retell and listening comprehension. He still showed deficiencies in the area of phonemic awareness and phonological awareness. J.D. had a one point increase in vocabulary awareness from when Miller tested him. J.D. had no increase in phonemic awareness. J.D. had a two point increase in non-word repetition. Relative to non-word reading J.D. did not have an increase. Colannino noted that J.D. was not able to blend sounds together. He could say the individual sounds. Colannino testified that when Miller tested J.D. the prior May, J.D. was not able to apply any letter-sound correspondences. Colannino saw this as progress. Similar to O.D., J.D. had a two point increase in story retell and a nine-point increase in listening comprehension. These were significant to Colannino because J.D. is showing he is being taught how to attend to a story and what to listen for to comprehend.

Colannino administered the CTOPP to J.D.. Relative to elision, J.D.'s score did not change. This was similar to O.D.'s results. J.D. was still in the average range. Relative to blending words, J.D.'s score remained the same. The reason for this was the same as for O.D.. Relative to phonemic isolation, J.D. was able to identify first and last sounds like O.D. was able to do. Colannino again noted that Miller did not test for this. Relative to memory for digits, O.D.'s score remained the same. Relative to non-word repetition, J.D.'s score decreased by one point. Despite this, Colannino noted that when Miller tested J.D. he could only repeat words with three syllables, but during Colannino's testing he could repeat words with four syllables. Relative to rapid digit naming O.D.'s score decreased. Relative to rapid letter naming, O.D.'s score remained the same.

Colannino reiterated that J.D. was the youngest he could be for the test and that he was expected to have a greater performance as compared to when Miller tested him. As a result, Colannino was not surprised that the scores did not increase. J.D.'s phonological composite did not increase. Colannino testified that the testing and scoring was reliable and that the standardized assessments take the age ranges into account.

Colannino provided J.D. with the Woodcock Achievement. Colannino testified that relative to letter-word identification, passage comprehension, word attack, reading, and basic reading skills, J.D. scored in the very low proficiency range. Relative to letter-word identification, J.D. decreased by six points. Colannino qualified the decrease by indicating that these are standard scores and there is a fifteen point standard deviation. She testified that a six point decrease is not statistically significant. She testified that only fifteen points would be statistically significant. Colannino stated that the decrease did not surprise her because J.D. is scaffolding those phonological awareness skills before learning how to read words. There are no picture clues to go along with the words.

Colannino agreed that for J.D. a summary of his progress across the tests showed that he increased on four of the subtests, decreased on three of the subtests, and stayed the same on six of the subtests. Colannino opined that this was still meaningful progress.

Relative to word attack, J.D. could not blend the words and read them back. This was similar to his performance on the TILLS. Relative to spelling and writing samples, J.D. got some beginning and ending sounds, but he did not get the middle sounds. Relative to the informal phonics assessment, J.D.'s results were similar to those for O.D.. J.D. had all of his short vowels and more consonants than O.D.. Colannino stated that J.D. is struggling a bit more. Opposite of O.D., J.D. did better when he was told to produce the rhyming word versus identifying whether words rhyme.

Colannino opined that the programming as it is being delivered to J.D. is having a positive impact on his ability to read. Colannino suggested that J.D. should be classified as multiply disabled for communication impaired, autism, other health impaired including ADHD and general anxiety disorder and specific learning disability in reading comprehension, written language, and basic reading skill, just like she suggested for O.D.. Colannino stated that O.D. and J.D. have a very similar learning disability profile.

Relative to the IEPs they had in the District, Colannino testified that J.D. and O.D. were receiving reading instruction through a balanced literacy model using Readers Workshop and Guided Reading. They were also provided Foundations instruction to help with decoding skills. Colannino recommended something different for O.D. and J.D.. She recommended that they needed an O-G based reading program and only an O-G based reading program, which is delivered with fidelity. She recommended Foundations. Colannino opined that the O-G based reading program cannot be combined with another type of phonics instruction because it becomes confusing and contradictory. Colannino testified that the balanced literacy approach to teaching phonics is contradictory to the Foundations approach. Colannino stated that if O.D. and J.D. do not begin to improve in their reading abilities, then they are at risk for dropping out of school.

Colannino testified that the program they are receiving at Newgrange is what she recommended. The O-G approach is strictly phonics based. Readers Workshop uses the three cueing system and the whole word approach. Guided Reading is more for comprehension. It is small group reading instruction. It does not follow a particular

sequence. Colannino opined that utilizing Readers Workshop and mixing it with Foundations instruction is completely contradictory. Colannino testified that O.D. and J.D. need a prescribed systematic approach to teaching reading, so that their skills work every single time. Colannino testified that in her present position she teaches older children for whom she has to break their bad habits learned through Readers Workshop and teach them O-G skills. O.D. and J.D. cannot work independently on their reading skills as they would be required to do in the balanced literacy approach. Colannino stated that level books make the student guess which is inappropriate for O.D. and J.D.. Guided Reading and Reader's Workshop approaches are based on theory and observational data. When comparing those with the raw scientific data of the O-G approach, Colannino stated that Guided Reading and Reader's Workshop are treated negatively, but the O-G approach is treated positively, in the special education community. Colannino acknowledged that many public schools utilize both Guided Reading and Reader's Workshop for their special education students. Colannino stated that public schools are part of the special education community. Colannino conceded that not everyone in the special education community treats the two approaches negatively. She qualified her statement saying that the majority did. Colannino could not cite to a specific study to which she had referred during her testimony on this issue.

Colannino testified that O.D. and J.D. probably should have been in special education since age three, based on their profiles.

Colannino testified that, in two cases in which she has testified at the OAL, she was referred parents by Morgan, and she recommended Newgrange. Colannino testified in a prior case involving the East Windsor School District. In that case she had recommended Newgrange for the student. (R-70.) Colannino testified that she recommended Newgrange for O.D. and J.D. based on their test scores, and the Foundations lesson she observed. She stated that she was aware O.D. and J.D. were receiving Foundations in the respondent's district. She testified that it was not being delivered appropriately, because it was combined with the three-cueing system. Colannino refused to answer the questions of how many more subsections O.D. and J.D.



would have to decrease in for her to acknowledge that Newgrange is not appropriate. She indicated that just because the students decreased it did not mean they did not accomplish more skills. She would have to look into each of the tests to make that analysis. She indicated if they decreased in every assessment but the raw scores within the assessments increased, then Newgrange would still be her recommendation. Colannino noted O.D. and J.D. had only been at Newgrange for three months at that point in time. Colannino testified that O.D. and J.D. had the summer of 2019 off from school.

**Amy Carnall**, (Carnall), testified on behalf of the petitioners. Carnall detailed her resume. (OD P-2.) (JD P-5.) Carnall was qualified and accepted as an expert in advanced practice nursing, with a concentration in assessing patients with psychiatric concerns, and as an expert in developing treatment plans and making recommendations relative to a child's psychiatric conditions in the context of an advanced nursing practice.

Carnall has a Nursing degree. Subsequently, she obtained her nurse practitioner certificate and a Master's Degree in Nursing. She then obtained a Doctorate of Nursing Practice. She has completed a fellowship related to child and adolescent mental health fellowship. Carnall studied psychiatric disabilities in young children who are provided educational interventions and how those students progressed over time. In her studies, she observed that children who presented with exactly the same symptomatology who had interventions did not go on to proceed to have a higher risk or an elevated opportunity for polysubstance abuse. Carnall has worked as a nurse in pediatric neurosurgery. For three years, Carnall worked for one public school district in a school-based program, which provided mental health services for students in the district's high schools and middle schools. In this position, Carnall provided life skill training and therapeutic supports. Carnall worked with the students relative to issues outside of the classroom. Counselors provided the traditional therapeutic services, not Carnall. Carnall testified that she is not a teacher.

As a nurse practitioner in New Jersey, Carnall is permitted to have a fairly autonomous practice. She is required to have collaborative agreement with a physician,

who may prescribe medication. The collaborative physician, a certified psychiatrist, must review Carnall's charts regularly. The collaborative physician also reviews Carnall's work relative to school-based issues or legal proceedings. Carnall has been the co-owner of a psychiatric practice for three years. The physician signs off on the reports, including the ones related to O.D. and J.D..

As a nurse practitioner, Carnall does not engage in counseling. She engages in therapeutic supports. She is not a social worker. She is not a licensed therapist. She does not provide those types of therapeutic supports. Carnall provides recommendations. She makes diagnoses. She comes up with treatment plans based on her findings and treats. Carnall explained that her treatment plans include recommendations for supporting students in their school environment, as well as at home. Carnall denied making educational recommendations. She has been developing these treatment plans and consulting with school districts since 2006. She has been involved in IEP meetings. In those meetings, if there were issues that were relative to her diagnosis of the child, then Carnall would voice those concerns, if permitted by the parents. Carnall provides mental health evaluations for children. This entails looking at gait, muscle tone, thought process and content, mood, affect, and speech. She examines children for signs of neurological or genetic disabilities. In this evaluation, Carnall interviews the family and the patients. Carnall indicated that she has taken continuing education programs. (R-74.)

Carnall testified that she generally provides the majority of the same services as psychiatrists do in New Jersey. She has the collaborative physician sign off on her reports. As part of her training, she received particularized training in diagnosing psychiatric conditions in children. Carnall testified that she is permitted to make medical diagnoses. She stated that there is no distinction between a nurse practitioner's diagnosis and a medical diagnosis. Carnall explained that there are three areas that her practice is concerned about with kids, when talking about any psychiatric issues. The first is their emotional growth. The second is their social growth. The third is their educational growth. Carnal has made recommendations, which include a medication.

She has recommended changing educational approaches if the school is identified as the stressor. Carnall identified herself as an advanced nurse practitioner or a nurse practitioner. She practices with a concentration in the field of patients with psychiatric disorders. She develops treatment plans. She speaks to the family or caregiver about the implementation of the treatment plan. Relative to education if the student had anxiety related to school, then she would recommend to the parents that they explore a 504 Plan or an IEP with the school to implement additional strategies to help in that area of deficit.

O.D. and J.D. were referred to Carnall for anxiety and school-based issues. They had trouble in their academic setting. She developed treatment plans for them. Carnall identified O.D. and J.D.'s psychiatric evaluations that she completed on March 15, 2019. (OD P-1.) (JD P-4.) The collaborative psychiatrist signed off on these evaluations. Carnall testified that the purpose of these documents were to highlight and to give a good picture of what is happening with these students. Carnall reviewed school documentation that was provided by mother, including the most recent IEPs, prior IEPs, evaluations by previous providers who had evaluated the students. Carnall interviewed O.D. and J.D.'s mother.

Relative to O.D., he had escalating symptoms of what was reported as anxiety within school. It was reported that he was nervous and upset over school and attending school. After evaluating O.D., Carnall made recommendations. These are essentially a treatment plan. Carnall concluded that O.D. had issues with school. Carnall found some social issues. She did not find anything that was pertaining to the home environment. Based on the documentation she reviewed and her discussions with mother, Carnall concluded that O.D.'s issues were based in the academic area. She testified that the psychiatric and psychological damage that was being inflicted on O.D. and J.D. had to do with the educational pieces of their lives, rather than the home or ancillary social aspects. O.D. presented with anxiety. O.D. was still working on a sensory diet, and he is still hitting his head. He was having a hard time in school. When Carnall spoke to O.D. he expressed anxiety about school and issues with bullying. Mother relayed that bullying was going on at school. Carnall stated that mother said a younger boy made a gesture of a gun in

reference to a school-based shooting. Mother said the aide in the room bullied O.D. by encouraging him to make eye contact.

Carnall testified that mother reported that there were periods of time during which O.D. wet his pants. Carnall stated that this would be considered something that is a physical symptom related to anxiety. Carnall indicated that O'Reilly's report, which was written in July 2019, indicated that O.D. licks his lips frequently in school causing peri-oral irritation which resolves over the weekend when he is home and less anxious. Carnall testified that licking lips can be a sign of school-based anxiety. Carnall acknowledged that mother reported to O'Reilly that O.D. became toilet trained late. It was just prior to kindergarten starting. Carnall disagreed that this correlated with O.D.'s wetting himself.

Carnall testified that she believed O.D. was an anxious child. When she met with him, she testified O.D. would have described himself as sad. Carnall acknowledged that O.D. described himself as primarily happy, when given the choices of happy, sad, mad, or scared. She acknowledged that O'Reilly's conclusions differed from hers. She disagreed with O'Reilly's opinion that the respondent's program was not causing O.D.'s stress. She stated that O'Reilly found that there was an unspecified anxiety disorder under his psychiatric diagnosis. She stated that that is inconsistent with finding that O.D. and J.D. were happy. O'Reilly recommended medication for O.D. as well. Carnall testified that O.D. liked going outside at school and that he dislikes being at school. O'Reilly wrote that J.D. indicated he was called names at school. O'Reilly recommended that J.D. work with the counseling staff at the school because of anxiety and sadness.

Carnall made recommendations and some referrals for O.D.. Carnall recommended that the petitioners consider medication. The petitioners did not proceed with that recommendation. Carnall made a referral to the education advocate, Morgan. Carnall made a recommendation for Fragile X testing, which is genetic testing related to identifying markers for intellectual developmental delays. Carnall made a referral for private speech and private OT evaluations. She recommended school accommodations. Carnall recommended that the previous IEP be reviewed and changed to accommodate

O.D.'s psychiatric presentation, including a change in academic environment that can provide psychological and clinical services to meet O.D.'s needs.

Carnall reviewed the IEP at Newgrange. (OD P-11.) Carnall testified that O.D. and J.D.'s school should help them employ appropriate conflict resolution strategies and help them solve problems individually and collaboratively. The school should be working on helping them initiate conversation and making appropriate comments during a controversial exchange. The school should help them understand and demonstrate basic emotions and draw appropriate conclusions from body language.

Carnall identified the proposed annual review IEP for O.D.. (OD R-38) Carnall opined that the goals of identifying three positive qualities and verbalizing how they impact his successful accomplishment of tasks, making three positive self-affirmations and three positive statements about his qualities and accomplishments would not help to alleviate O.D.'s social and emotion concerns. She stated it is hard to make a positive statement about yourself when you do not feel positive about yourself. Carnall opined that O.D.'s anxiety was a result of school-based neglect and failure to provide appropriate accommodations in the classroom.

Carnall had follow up sessions with O.D. on June 8, 2020, and September 14, 2020. She testified that there was an extreme marked improvement in his symptoms. Carnall did not see anxiety during these visits.

Relative to J.D., Carnall identified her report. (JD P-4.) This was signed off on by the collaborative physician. Carnall saw J.D. in July 2019, four months after she saw O.D.. As with O.D., Carnall spoke with mother who relayed information. Carnall stated that J.D. presented with a lot of the same similarities that O.D. did. J.D.'s anxiety was also very prevalent. Mother indicated that it was difficult for J.D. to attend school based on name calling. Mother related that mornings were challenging with lots of meltdowns and crying that he did not want to attend school. Carnall said mother said J.D. also had physical symptoms of anxiety, but she did not state what they were. Carnall stated that

mother indicated that J.D. viewed himself as dumb or stupid. Carnall indicated that name calling potentiates suicidality in young people.

Carnall testified that when she spoke with J.D., he did not feel strong or good about himself. J.D. said he was dumb, stupid, dumbo, and a dummy. J.D. intimated that he did not want to be alive. Carnall testified that it would be detrimental to J.D. if the school does not address his social emotional issues. Carnall reviewed the proposed annual review IEP for J.D.. (JD R-38.) She indicated that she was unable to find any social and emotional goals for J.D..

Before making her recommendations for J.D., Carnall had reviewed Miller's report. Carnall recommended that the petitioners consider medication for J.D.. J.D. did receive medication for his lack of attention. Carnall recommended that the IEP be changed to address J.D.'s psychiatric presentation. As with O.D. she indicated that his symptoms were indicative of school-based neglect.

Carnall testified that for O.D. and J.D. she indicated it was school based anxiety because she did not find any in the home or social environments. Carnall identified O'Reilly's report about J.D.. (JD R-44.) Carnall acknowledged that O'Reilly wrote, "J.D. has made suicidal statements when he is told to go to his room when angry." (JD R-44 at 352.) Carnall conceded this is when he is at his home. Carnall indicated it could still be related to school. Carnall testified that O'Reilly indicated that J.D. worries about creepy things, like ginormous animals staring at him and it wakes him up super early. J.D. indicated that he gets angry at nighttime, when people do not listen to him, or when people punch or squirt him. Carnall agreed that all of these concerns occurred in the home environment. She indicated that he was experiencing worries from his day at night. J.D. further indicated things he wanted in his home environment and things that upset him in his home environment, like his disappointment involving an elf on the shelf at Christmas. Carnall did not link J.D.'s responses in this regard to his home life, because the question did not ask about the home or school environments. When asked about home, J.D. stated that "[i]t's not great." Carnall acknowledged that that is what the report said.

Relative to the name calling by another student, Carnall testified that she was told by mother that J.D. was called dumb, dummy, and dumbo directly by that student. Carnall testified that if the statements were not made to J.D. but to another student then that could potentially impact her conclusion.

Carnall conceded that J.D. was in a resource room placement, even though she had written that he had completed kindergarten with an IEP in a self-contained class. Carnall conceded when she wrote her report and came to conclusions about the respondent's program, she was under the belief that they were in a self-contained class. She qualified her opinion by stating that if J.D. was in a self-contained classroom, and had these concerns, it would be a further indicator of why J.D. needed to change his academic setting. She explained it would be better to change from a self-contained class to a resource room placement. She explained if J.D. was in a self-contained placement where is there to go, other than changing his academic placement to a different school.

Carnall was critical of the District's program. Carnall did not observe the District's program. She did not speak with the District's teacher or aide. Carnall indicated that would not be typical in her practice. Carnall conceded she determined there was nothing in the home or social environments after speaking with mother. She never looked into anything about the school environment when speaking with mother. Carnall maintained that nothing in O'Reilly's report changed her opinion that there were not any psychological stressors or problems at home. Carnall indicated that she had heard students and patients say things at home are not great a fair amount of times. Carnall testified that it is not her role to observe what is going on in the school district. She maintained she could still make recommendations about the respondent's program. Carnall maintained her opinion that O.D. and J.D.'s success was being significantly impacted by their inappropriate education setting. Specifically related to O.D., Carnall opined that it was impossible for her to discount years of neglect in O.D.'s symptomatology, which impacted his psychiatric presentation and impeded his developmental progress, in her March 2019 report. Carnall testified that she thought O.D. had been in respondent's district for one

to two years. She did not know that they had only been in the district for six to seven months. Carnall qualified her report by indicating it was a mistake.

Carnall confirmed that her recommendation stated a “change in academic environment to meet the advocacy team’s input.” By this, Carnall meant everyone who was supporting O.D. and J.D.. It included the parents, the educational advocate, and others who are part of the expanding team as “we” move through the process. She stated this would include Miller.

Carnall identified the BASC form, which is given to the parent and teacher. (JD R-41.) Carnall agreed that the teacher can only respond based on her observations in school and the parent based on her observations at home. She indicated that she hoped they would take a holistic approach when responding. Carnall indicated that the responses can speak to anxiety. Carnall agreed that Borreggine indicated that J.D. was not at risk for anxiety, depression, or somatization. The parent indicated that J.D. was at risk, bordering on clinically significant portion.

During her follow up sessions with J.D. on July 29, 2020, and September 25, 2020, she found J.D. was thriving and excelling. His school-based anxiety had resolved.

Carnall opined that O.D. and J.D. made progress psychologically and from social and emotional standpoints. Carnall believed that was based on the change in their educational placement. Carnall testified that if O.D. and J.D. returned to their previous placement that she would not expect things to be successful. She would expect their symptoms to increase.

Carnall testified as follows:

Q: Students have a level of increase in anxiety that when it corresponds with a specific program, and if that program has a level of expectations, a rigor that is reduced when the students go to a different school and the anxiety has a



corresponding reduction with that change in placement to a less rigorous placement, do you think that the level of expectations of the student would have an impact on the level of anxiety?

A: I don't think that question is pertinent to this case, because it's not less of an academic setting.

Q: Can you answer the question please? Listen. You heard the hypothetical twice. Can you answer it?

A: If the situation is less intense and it's less intense of work, meaning that there is no expectations on the children at all in any particular cases, then the answer is yes, of course you're going to see a decrease in anxiety.

[Transcript December 7, 2021, page 181 Lines 3-20.]

**Disha Patel**, (Patel), testified on behalf of the petitioners. Patel detailed her resume. (OD P-7.) Patel was qualified and accepted as an expert speech and language therapist. Patel has a Bachelor's Degree in Speech Language and Hearing Sciences. Her studies focused on basic speech and language disorders, and the communication process. She has a Master's Degree in Speech Language Pathology. In conjunction with her degree, Patel completed several practicals. She has worked in early intervention programs, which utilized an applied behavior analysis, (ABA), program. Patel did a rotation in a hospital setting, during which she conducted outpatient speech and language therapy for students and adults. Patel has worked with children between the ages of five and ten. Patel worked at Princeton Speech and Language, (Princeton), in 2019. At the end of 2019, Patel became employed in New York City public schools as a speech language therapist. In this position she works with students to implement the goals as outlined in their IEPs as it relates to speech language pathology. She works on receptive and expressive language skills, articulation, and social and emotional goals. The students Patel works with are between five and ten years of age. At the time of her testimony, she still had clients at Princeton, who she provided services to remotely. In her present employment, she is responsible for attending IEP meetings, and is a member of the CST. She provides speech and language therapy in the public school setting. Patel

is involved in drafting goals and objectives for speech and language for students. Patel is not a certified New Jersey teacher. Patel has a teacher of students with speech and language disorders certificate in New York. Patel never worked in a New Jersey public school district as a speech and language pathologist.

Patel conducted the speech and language evaluation on O.D.. (OD P-6.) Relative to the evaluation, Patel indicated that input from the parents about their perceptions of O.D.'s strengths and weaknesses was gathered. Mother reported that O.D. began using words at three to three and one-half years old, combined with words between four and five years of age, and engaged in conversation between the ages of four and five also. Patel stated that O.D.'s speech development was delayed. The IEP was reviewed. Patel also reviewed previous evaluations. This was done by Patel's supervisor at Princeton. Then a list of diagnostic evaluations was provided to Patel for her to follow. Patel conducted the evaluations of O.D. on August 26, 2019, and August 27, 2019. On the first day, Patel went through the basic expressive and receptive language tests, the CELF-V, and a vocabulary test. Patel indicated that those tests were the PPDT, the EBT, and the CELF-V. Patel explained that the tests are sequential. As a result, the assessments of higher-level language were conducted on the second day. The tests which were administered were the TAPS, the Test of Narrative Language, (TNL-2), and the Diagnostic Evaluation and Learning Variation, (DELV).

Patel testified that the first two assessments were to determine where O.D. is in terms of age level vocabulary expectations. The CELF looked at all parts of basic receptive and expressive language skills, and foundational language skills. Patel explained this is a comprehension test. On the second day, Patel administered the Test of Auditory Processing Skills, (TAPS-3), which is an auditory processing evaluation that also looked at O.D.'s phonological awareness skills. The TNL looked at O.D.'s ability to understand and tell stories, retain information in the stories, and grammar elements and O.D.'s level of comfort with them. The DELV looked at O.D.'s higher level social communication skills, inferencing ability, and those things which are a step further than just basic foundational expressive and receptive language.

Relative to the Peabody Picture Vocabulary Test, O.D. had average receptive vocabulary skills. He was given a picture of four items and was able to identify the word that Patel said by pointing to it. O.D.'s expressive vocabulary was also in the average range, although O.D.'s receptive language scores were higher. He exhibited some word retrieval difficulties.

Relative to the CELF-V, O.D. performed in the low average, below average, and impaired ranges in almost all of the categories. This test is more difficult than the vocabulary tests. The CELF-V looked at O.D.'s ability for concepts like morphological structure, understanding what plurals are, word classes, grouping different items together. The sub-tests were much harder for O.D.. The directives that Patel presented to O.D. were much harder also. O.D. had to fill in the blanks, instead of choosing the answer. Patel testified that it was hard for O.D. to follow through with most of the tests, despite multiple examples and models from Patel. Patel opined that the result of the CELF-V is that O.D. is really struggling with basic foundational receptive and expressive language skills. Patel testified that O.D. is going to struggle in the classroom with understanding what the teacher is telling him. O.D. will have difficulty expressing when he needs help, and with what exactly he needs help. O.D. is going to have trouble writing and reading. Patel testified that O.D. is going to have difficulty with everything that is built on these basic foundational skills.

Relative to the TAPS-3, Patel testified that O.D. struggled with auditory processing. Patel indicated this test was completed because mother had concerns about O.D.'s auditory processing. The two most important pieces in this assessment were the phonological segmentation and the phonological blending. Patel found that O.D. performed poorly on the TAPS-3. His ability to manipulate phonemes within words and his ability to create words given separate phonemes both were either below average or low average. Patel indicated, also of concern, were word memory, auditory comprehension, and auditory reasoning. O.D. scored as impaired. Patel explained the

TAPS-3 measures O.D.'s understanding of the phonological system. It showed O.D.'s awareness of speech sounds, (letter/sound correspondence), was poor.

The TNL-2 looked at O.D.'s narrative ability. That is his ability to listen to narratives that were auditorily read by Patel and answer questions based off the main idea, recalling details, some higher-level language skills like making predictions or inferences. The test progresses through three stories from least difficult to most difficult. Patel testified that O.D. struggled with auditory information. She stated that if O.D. was read a story in the classroom without the instruction being provided for in multiple modalities and being broken down into smaller manageable pieces, then O.D. was likely to struggle and not really understand what is expected of him.

Patel explained that the DELV looks at higher level language. It is similar to the CELF-V, but at a little higher level. Patel testified that the DELV supported the results of the CELF-V. O.D. showed deficits in basic foundational expressive and receptive language.

Patel found that relative to social communication, Patel testified that despite being given multiple examples during the tests, O.D. had great difficulty understanding the directives and did not ask for help even though he had been instructed how to do so. Instead, O.D. would just guess.

Patel testified that she made several diagnoses in her report. Patel explained that O.D. had previously been diagnosed with expressive and receptive language disorders. Patel indicated that O.D. had ASD. Patel made certain recommendations. Relative to classroom recommendations, Patel recommended that O.D. needed to be in a small language intensive environment. The class should contain less than twenty students. Six to twelve students in the class would be ideal. Patel indicated that the class had to be small enough to permit the teacher to modify the curriculum to meet O.D.'s needs. By language intensive, Patel indicated that O.D.'s goals and speech and language therapy need to be implemented throughout the whole day. Patel recommended that O.D. be

with students with a similar learning profile. Patel indicated that this was based on the information mother provided, that O.D. seemed to understand the difficulty he was having. Patel testified that was why she suggested that O.D. be with students of a similar learning profile. Patel further indicated that she had this information from Shemeley's evaluation. It does affect the social and emotional well-being of a student if they notice they are behind their peers. Patel recommended that O.D. be provided with structured, repetitive, multi-sensory instruction. Patel agreed that Foundations is a multi-sensory program. Patel testified that the information in her third bullet point, relating to O.D. being diagnosed with generalized anxiety disorder and being aware of his difficulties was from the information that mother provided in the case history forms for O.D..

Patel opined that a general education setting with fifteen to twenty students was not the right setting for O.D.. Patel agreed a self-contained classroom would allow the teacher to follow the recommendations on a continuous basis throughout the day for O.D. Patel agreed that a pullout replacement setting is a small, more intensive setting than a general education setting. Patel indicated that she recommended Visualizing and Verbalizing by Lindamood-Bell, which is based off the same framework that O-G is based on. This was recommended to work on O.D.'s narrative language skills and his ability to understand lengthier auditory information.

Patel made therapeutic recommendations in her report. Patel indicated that O.D.'s IEP provided for receive speech and language in a group not to exceed two, six times per month for thirty-minute sessions. Patel recommended that the therapy be individual therapy and that it be provided two times per week. The therapy should focus on receptive and expressive language skills. Patel agreed that if O.D. received an additional two sessions of one-to-one speech and language therapy each week in addition to the six sessions, that would be appropriate. Patel recommended that O.D.'s ability to formulate age appropriate grammatically correct sentences during academic situations and naturalistic environments with his friends should be addressed in his IEP. O.D.'s should have articulation goals focusing on his oral motor skills. It is important to make sure O.D.'s utterances are intelligible to unfamiliar listeners and familiar listeners

throughout his day. Patel indicated that at first she had difficulty understanding O.D.. Patel testified that O.D.'s goals must work on his foundational speech and language skills. Patel recommended that O.D. be provided with occasional pauses to assist with comprehension and asking specific questions for him to summarize the material to insure he understands it. Patel acknowledged that this was in O.D.'s district IEP. Patel opined that O.D.'s receptive and expressive language deficits were impacting his ability to really function throughout the day in school.

Relative to J.D., Patel reviewed a Princeton report. (JD P-6.) Patel did not prepare this report. She identified it as a Princeton record. It was completed by Lindsay Clayton, who worked at Princeton.

Patel testified that O.D. would have needed speech and language therapy in a private or public pre-school. Patel agreed that the respondent's IEP satisfied her recommendations. Patel did not observe O.D. in District.

### **FACT AND CREDIBILITY DISCUSSION**

After hearing the testimony presented and review of the documentary evidence submitted, and having had an opportunity to observe the witness and assess his credibility, I **FIND** the following as **FACT**:

O.D. and J.D. are twin boys. They were born in 2012. They reside with their parents, V.D. and M.D., the petitioners herein. The petitioners are loving and thoughtful parents, who are actively engaged in O.D. and V.D.'s upbringing and education. The family resides in Medford Township, in respondent's school district. O.D. and J.D.'s medical histories are similar. O.D. and J.D. accomplished most of the milestones during the year after their birth. However, O.D. and J.D.'s language development was delayed. At fourteen months, O.D. and J.D. were given an early intervention evaluation. O.D. and J.D. were initially diagnosed at eighteen months with Pervasive Developmental Disorder. O.D. and J.D.'s diagnoses have changed as they have matured. The PDD diagnosis was

changed to Global Developmental Delays. O.D. and J.D. also have genetic deletions on chromosome three. O.D. has been diagnosed with ASD. J.D. has been diagnosed with dyslexia and ADHD. There is a question about whether J.D. presents with ASD. It is undisputed that O.D. and J.D. are communications impaired.

Petitioners sought early intervention programs for O.D. and J.D.. At that time, O.D. and J.D. resided in Pennsauken, New Jersey. Between eighteen months and three years, O.D. and J.D. received early intervention services at home. They received speech therapy, physical therapy, and behavioral therapy.

O.D. and J.D. had varied and inconsistent pre-school experiences. After evaluations by Pennsauken, O.D. and J.D. received special education and related services in its public pre-school program. M.D. reported that O.D. and J.D. made progress when enrolled in this program. O.D. and J.D. received special education, speech and language therapy, and physical therapy. O.D. and J.D. remained in that program for approximately one year. During this year, O.D. and J.D. had significant absences, which necessitated two separate correspondences for each student to the petitioners, which indicated that each had missed five or more days of school by February 2016 and ten or more days of school by April 2016. The letters indicated in pertinent part as follows:

Please understand that your child's progress at school depends greatly on regular and timely attendance. Unfortunately, your child's frequent absences and/or latenesses are disruptive to his/her educational development and jeopardize his/her potential for success.

After one year in Pennsauken, the family relocated to Manheim Township, Lancaster County, Pennsylvania. Again, petitioners sought special education and related services for O.D. and J.D.. Initially, O.D. and J.D. were placed in a public school special education preschool program. This placement provided special education instruction, as well as speech and language therapy and PT in a public preschool setting. O.D. and J.D.

were placed with students, who had similar abilities and who were verbal. O.D. and J.D. did well in this placement.

Subsequently, Pennsylvania re-evaluated O.D. and J.D.. The petitioners disagreed with the results of those evaluations. Those evaluations and certain other records from the Pennsylvania public school district were not produced to respondent, because the petitioners did not provide consent for respondent to obtain the records. After the re-evaluations, O.D. and J.D.'s placement was changed to one in which their peers were non-verbal and not of similar abilities. Petitioners' believed that the other students' disabilities were far more significant than O.D. and J.D.'s.. Petitioners chose to terminate the public school special education preschool program per a revision to Pennsylvania's IEP in the spring of 2017.

Subsequently, petitioners sought some services through Heart of Lancaster. Petitioners spoke with their neighbors and members of the Manheim community about a preschool for O.D. and J.D.. The petitioners selected Calvary, which was a private preschool for the 2017-2018 school year. O.D. and J.D. continued to receive speech and language therapy as a push-in at Calvary. During the rest of the school day, they were not receiving special education services. Petitioners paid for private OT and PT therapies. O.D. and J.D. attended Calvary from May 2017 to December 2017.

Of related note, mother expressed in an email dated October 9, 2018, to Borreggine of respondent's district, that J.D. suffered from school aversion in Pennsylvania. Mother wrote as follows:

...Thank you so much for making them fall in love with (sic) school, it has been such a relief knowing they are excited every day to go! In Pennsylvania J. would try to lock himself in the bathroom to avoid school door (sic) and cry. It was heart wrenching. Now he is raring to go at 530am (sic). He is so happy, and I am ...



Mother did not testify during the hearings. It is uncertain when J.D. exhibited this behavior or what caused him to act this way in Pennsylvania. It is unknown if that behavior occurred during his first preschool placement, after the placement was changed, or when he attended Calvary. Petitioners did not produce any evidence that they contacted a behavioralist in their school district or privately, or sought counseling for J.D., at that time. What is known is that at the time of the email, J.D. was not experiencing any school aversion in respondent's district. However, petitioners were clearly aware that J.D. had a history of experiencing anxiety whether it was school based or home based long prior to attendance in respondent's district. Petitioners did not communicate that this may be a concern when enrolling J.D. in respondent's district.

In December of 2017, the family relocated back to New Jersey. Since then, petitioners, O.D., and J.D. have resided in respondent's district. In February 2018, petitioners contacted respondent and spoke with Ferraro about O.D. and J.D. and their enrollment in the District for the 2018-2019 school year. Petitioners chose to enroll O.D. and J.D. in Lenape, a private community preschool. This was a play based preschool. It was similar to Calvary, except there were not any push-in speech services provided. O.D. and J.D. attended Lenape between February 2018 and July 2018. As a result, O.D. and J.D. did not receive any special education or related services between December 2017 and July 2018. It was undisputed by father and most of the petitioners' and respondent's educational experts that it was important for J.D. and O.D. to have consistent special education and related intervention services in preschool before entering kindergarten. This inconsistent receipt of special education and services resulted in O.D. and J.D. lacking the expected and needed pre-reading and other skills needed for kindergarten.

By correspondence dated May 3, 2018, petitioners requested eligibility for special education determinations for O.D. and J.D. and evaluations from respondent. On that same day, respondent acknowledged receipt of petitioners' requests by correspondence. Respondent requested certain information from the petitioners. This information included O.D. and J.D.'s medical histories, diagnoses, prior IEPs, and prior evaluations. Petitioners provided all of the information, with the exception of the evaluations completed

by Pennsylvania that resulted in O.D. and J.D.'s change of placement. Petitioners indicated that they did not agree with the results of those evaluations.

An initial eligibility determination meeting was held on May 7, 2018, at which time, O.D. and J.D. were determined to be eligible for special education and related services. Their classification was communications impaired. Respondent performed educational, psychological, social, and OT evaluations. Respondent accepted and utilized O.D.'s CHOP speech and language evaluation. Respondent performed a speech and language evaluation for J.D., because CHOP had not yet scheduled an appointment for J.D.. IEPs were developed for O.D. and J.D. based on those evaluations. The evaluations indicated that O.D. and J.D. had language based learning disabilities which were significant. SHEMELEY testified that O.D. and J.D. had weaknesses in pre-reading skills, which were significant. Respondent followed the recommendations made in O.D.'s CHOP speech and language evaluation, which had been procured by petitioners privately.

O.D. and J.D. attended the respondent's Summer Enrichment Program in 2018 prior to the new school year. This program provided O.D. and J.D. with special education and related services, focusing on reading, writing, and math. This was the first time in, at least, seven months, that O.D. and J.D. had received special education and related services. O.D. and J.D. regress when not being given special education, as more fully described below, including an example demonstrating that O.D. and J.D. regressed over a two week holiday break at Newgrange, as BOSTOCK explained. It is likely that O.D. and J.D. regressed from what instruction and skills they had been provided, and had internalized during their preschool education and experiences. O.D. and J.D. lacked crucial foundational skills before entering kindergarten.

On August 7, 2018, an IEP meeting was held, and petitioners consented to the proposed kindergarten IEPs. Respondent incorporated the recommendations from the evaluations, which were completed after the eligibility meeting and O.D.'s CHOP speech evaluation into O.D. and J.D.'s IEPs for the 2018-2019 school year. Petitioners consented to those IEPs. Ferraro was qualified and accepted as an expert in special

education, case management, LDTC and director of CSTs with an emphasis on overseeing programs. SHEMELEY was qualified and accepted as an expert LDTC and case manager of disabled students with IEPs. BROWN was qualified and accepted as an expert in school psychology and case management of disabled students. FERRARO, SHEMELEY, and BROWN opined that the IEPs were appropriate, because they met O.D. and J.D.'s individual needs when they entered kindergarten, were modified further to meet their needs during the school year, and because the data showed at the end of the year they made meaningful progress, as discussed below.

O.D. and J.D. began full day, formal public school in September 2018, when they entered kindergarten in respondent's district. Per the implemented 2018-2019 IEPs, it was determined that a resource pull-out room at Tauten Forge was the appropriate classroom placement for O.D. and J.D.. In anticipation of the kindergarten year and to provide for their individualized needs, O.D. and J.D. were provided kindergarten assessment tests by BORREGGINE. She was qualified and accepted as an expert in the field of teaching special education and as a special education teacher.

Generally, the results of the assessments were consistent with O.D. and J.D.'s language based learning disabilities. More specifically, the assessment showed that O.D. and J.D. were far below what was to be expected of students entering kindergarten in their prereading skills. In this regard, O.D. scored a 42% on the kindergarten assessment test. O.D. was able to recognize two of twenty-six lower case letters. Relative to uppercase letters, O.D. could identify three of twenty six in the beginning of the year. On the early literacy assessment given at the beginning of the year, O.D. could only answer one questions correctly. At the beginning of the year, he was unable to write.

J.D. scored 98% on the kindergarten assessment test. At the beginning of kindergarten, J.D. was able to recognize three of twenty-six lower case letters. Relative to uppercase letters, J.D. could identify three of twenty six in the beginning of the year. On the early literacy assessment given at the beginning of the year, J.D. could only answer one questions correctly. At the beginning of the year, he was unable to write.

The IEPs provided as follows. Both IEPs recommended a placement in the pull-out resource setting. This provided for special education in a small group setting of approximately eight students. O.D. and J.D. would receive small group, intensive instruction in Borreggine's pull-out resource room for reading, language arts, writing, and math. Delivery of these subjects could be slowed and broken down to meet O.D. and J.D.'s individualized needs in this setting. Borreggine and the two other teachers in her classroom would be able to work with O.D. and J.D., individually. Borreggine was with O.D. and J.D. for a majority of the day. Per the IEPs dated August 7, 2018, Foundations was delivered in the resource classroom. O.D. and J.D. would receive the following:

Pull-out Resource Replacement: Language Arts:	5x weekly	60 min
Pull-out Resource Replacement: Writing:	5x weekly	60 min
Pull-out Resource Replacement: Math:	5x weekly	60 min
OT	3x monthly	30 min
Speech-Language Therapy: Group (not to exceed 5)	6x monthly	30 min

With Borreggine, O.D. and J.D. started class with a ten-minute Foundations lesson, which consisted of working on letters and sounds, skywriting letters, practicing writing letters on their boards and Foundations lined paper. They also had morning meeting, introducing sight words, calendar time, and math. Then, Borreggine would have Readers Workshop and another ten-minute Foundations lesson, which would include tapping out the word given to them. Readers Workshop addresses comprehension and reading strategies. O.D. and J.D. would then work on the Daily Five, which consisted of five different stations. Guided Reading was implemented during that time as well. Borreggine testified that the Daily Five was beneficial for O.D. and J.D., due to their stamina issues. The class had additional balanced literacy model instruction during the day. This included reading aloud, shared reading, predictable sentences, and interactive writing. O.D. and J.D. had Writers Workshop in Borreggine's classroom. Borreggine opined that O.D. and J.D. made progress. There were other multi-sensory approaches used in the class, that did not involve phonics, like science class.

Respondent uses a balanced literacy model for its curriculum and programs. It was the opinion of petitioner's experts that Wilson and Foundations must be paired with a comprehension instruction. The Wilson website indicates that the instruction needs to also provide a comprehension program to go along with Foundations. Ferraro and some of respondent's other experts, credibly opined that reading is not just phonological awareness. It requires other skills, too. Students need to decode words and understand their meaning. Ferraro opined that it would not be good teaching to use the O-G approach across the entire curriculum without mixing in other methodologies with O-G certified teachers. Petitioner's experts, Bostock, Colannino, and Miller disagreed. However, Colannino reluctantly acknowledged that many public schools utilize both Guided Reading and Readers Workshop for their special education students. In this regard, Colannino stated that public schools are part of the special education community and she conceded that not everyone in the special education community treats the two approaches negatively. Miller maintained that a balanced literacy program for O.D. and J.D. was simply inappropriate. Despite her reliance on a government study, which indicated that "it is important to emphasize that systematic phonics instruction should be integrated with other reading instruction to create a balanced reading program," and that [p]honics instruction is never a total reading program, "Miller maintained that it would not change her opinion relative to the District's use of a balanced literacy program for O.D. and J.D. This adherence to the Newgrange model at all costs undermined Miller's credibility and made her opinions unpersuasive.

The math program provided to O.D. and J.D. was Envisions. The phonics concepts from the Foundations lessons would be used in the math lesson, where words would arise such as subtract. Borreggine would have O.D. and J.D. revisit and apply the strategies they learned in Foundations to learn and read the math words.

O.D. and J.D. were placed in a general education classroom for homeroom, specials, lunch, recess, science, and social studies, with approximately twenty typically developing peers. This provided O.D. and J.D. with models for language, social, and emotional concerns, and generalization of these behaviors outside of school. O.D. and

J.D. received reading, language arts, writing, and math in the resource pull-out classroom with Borreggine. This classroom had approximately eight students, two of whom were O.D. and J.D.. There were two other teachers in the classroom to assist the eight students during instruction. Borreggine was trained by Bostock in Wilson and Foundations. Foundations is a program consistent with the O-G approach. Borreggine delivered it with fidelity. It was direct, sequenced, explicit, and multi-sensory instruction. The instruction included skywriting, physical movement, visual aids, sound cards, and puppets, as required. O.D. and J.D. were provided significant instruction in learning their letters and sounds, because they had not acquired and internalized these skills in their varied preschool experiences. O.D. and J.D. entered school with less than the requisite language skills.

O.D. and J.D. were provided Guided Reading and Readers Workshop in small group instruction with Borreggine and the two other teachers. Their Daily Five activities included Guided Reading and Readers Workshop activities, for which Borreggine would provide multi-sensory instruction and infuse the day's Foundations' concepts, as explained above. Their Daily Five activities were also provided in small group instruction. O.D. and J.D. were provided multi-sensory instruction in science, as this was a hands-on curriculum in kindergarten. O.D. and J.D. were provided speech and language therapy by Hansen. O.D. and J.D. were provided OT and PT. All of the special education and related services were delivered in accordance with O.D. and J.D.'s IEPs.

The transition to attending public school in kindergarten appeared to be without issue in the beginning of the year for O.D. and J.D.. Borreggine reported that O.D. and J.D. were happy and positively engaged with their classmates and friends in school. O.D. was sensitive and pensive. J.D. was more outgoing, spontaneous, and easily distracted. Respondent consistently collected data on O.D. and J.D. to continuously assure that their IEPs were appropriate and individualized, and that they were progressing towards their goals. This was evident when the respondent modified the special education and related services being provided to O.D. and J.D. during the Fall, after the school year commenced. In this regard, it became apparent that O.D. and J.D. lacked the stamina

for lessons lasting nearly an hour. This lack of stamina resulted in their frustration, after which O.D. and J.D. could not internalize and accurately learn the instructed concepts. O.D. and J.D. had attention and focus concerns.

Accordingly, respondent modified and made O.D. and J.D.'s programs, approaches, and special education and services even more individualized. Based on performance, Hansen modified O.D.'s speech and language therapy to provide him individual therapy based on his needs. This was in excess of what the 2018-2019 IEP provided and in excess of CHOP's recommendations. J.D.'s group speech and language therapy was also modified by Hansen to be in a group not to exceed two students. This was in excess of what the 2018-2019 IEP provided. She also provided individualized therapy. Any omission of O.D.'s speech and language goals from any IEP was inadvertent. However, those goals were the same as J.D.'s. Based on the totality of circumstances herein, the omission did not mean that the District did not provide FAPE.

Hansen provided O.D. and J.D. speech therapy for articulation. This therapy also worked on phonological awareness by learning to mark syllables and include syllables in longer words. Ms. Hansen worked on S blends by having O.D. and J.D. listen to her do it right and wrong, and then getting them to hear himself doing it right and wrong. Hansen modeled it for them to try to get him to produce it. Ms. Hansen said the approach that worked best when she used visuals and body movement methods like dragging his finger to include the S sound. This was a multi-sensory approach. In speech therapy, O.D. and J.D. worked on labeling, basic vocabulary, and rapid automatic naming. This therapy focused on pre-reading ability. Hansen coordinated her instruction with Borreggine, by letting her know what they were working on, if O.D. or J.D. had difficulty with certain speech tasks, instruction, or concepts.

Hansen collected data, and made modifications to the therapy, as needed for O.D., as well as J.D.. Similarly, to address the stamina, frustration, and attention issues, Borreggine in consultation with the respondent's staff modified the Foundations lesson to provide for three ten-minute instruction periods. This was effective for O.D. and J.D.'s

progress. Noticing areas related to concerns with their motor skills, the respondent in November 2018 requested that PT evaluations be completed for O.D. and J.D.. The petitioners consented to the evaluations. Subsequently, their IEPs were amended to provide for additional PT three times monthly for thirty minutes. This revised IEP was dated December 19, 2018.

Between September 2018 and December 2018, when additional PT services were added, O.D. and J.D. made meaningful progress academically. Petitioners expressed that they were delighted with respondent's district, staff, and special education. Specifically, mother wrote as follows.

In response to an email from Borreggine dated September 21, 2018, Mother emailed:

Ohmygosh (sic) Im so sorry we will do back to back conferences! O--- was thrilled now their certificates are both on the fridge! The competition is real! Thank you so much for all of the info and popcorn at back to school night. I loved your philosophy and the CAN board. We are very grateful they have you, and it is a nurturing environment. ...

The following is a September 24, 2018 email from mother to Borreggine:

Yes, I would love to come in 11/19, just let me know what time. So happy we get to do that. On a side note we had our 1<sup>st</sup> birthday party for the twin girls in ----'s class, and the boys did wonderful, they even sat through the 1.5 hr magitian (sic) show with no problems whatsoever!

.....

I will make a copy of the paperwork from chop for the teacher so I'll put it in there (sic) folders for tomorrow!  
We are off to a great year! Thank you!!!

Ms. Borreggine responded that same day. In this regard, respondent's staff and teachers were responsive in replying to mother's emails and reaching out if O.D. or J.D. had achievements or if there were any concerns. Petitioners were active participants in their sons' educations. For example, on October 18, 2018, mother emailed Borreggine as follows:



I'm so sorry to keep bothering you with these emails but I wanted to let you know we are working on a routine for homework and have been struggling a little bit. I'm proud of them because they do mostly understand, its just hard having them sit down and focus, I'm going to try doing it when they get home. I have giving them a snack and then an hour rest but it's not working out too good! I didn't want you to think we're being negligent. We are working on it.

Borreggine emailed back the next morning, and stated,

Thank you for letting me know about the homework. Feel free to modify the homework if you notice that it is too much for J. and O. I am okay if they only complete 2 or 3 of the math problems on homework page.

Again, Borreggine modified O.D. and J.D.'s instruction to meet them where they were and individualize their instruction further. Petitioners' communications with school were nearly all positive. Petitioners' appeared happy with the progress O.D. and J.D. were making.

There were few negative communications which were received by the respondent from petitioners. Father expressed that there may have been an isolated incident of bullying of J.D. by a younger student, who may have called J.D., or another student in J.D.'s earshot, dumb, dummy, or dumbo. The respondent expressed that the comments were not addressed to J.D.. J.D. overheard them when they were made to another student at recess or lunchtime. The issue was resolved when that younger student was provided with an aide. No evidence was produced that this was an ongoing pattern of behavior, or that it occurred in the classroom. Mother relayed that O.D. thought the school day was too long.

A different partly negative communication from mother was made in relation to O.D.'s reaction to being clipped down on a behavior measure in the class. While the email is in part negative, this email is also positive about O.D.'s progress. On November 2, 2018, mother wrote as follows:

The strides O. (sic) making in reading and writing are amazing, and we are so happy he has a teacher who is truly invested in him. We have noticed the past week and a ½ O. has been having anxiety in regards to attending school. He has been crying at night and in the morning saying he doesn't (sic) want to go, is nervous, and embarrassed. I have tried different ways to have him elaborate on his feelings however he only will say the day is too long. I know you are doing everything in your power to make it a positive and fun learning environment. I want to help alleviate some of O. (sic) anxiety, but at (sic) a loss as to what is causing it. Could it simply be adjusting to a full day of kindergarten?

Do you think O. may feel embarrassed to clip down if other students are present? I love the behavior chart and I think it is great (sic) way to not only reward stellar behavior but also give incentive to strive for better. O. can be very sensitive if he feels he has disappointed us or his teachers and perhaps some of the anxiety he is feeling is due to having to clip down in front of his classmates? I may be way off the mark, and not sure of a solution there. He seems to be grasping all of the academics that are being taught.

It has been a long and challenging week for both boys and I kept them home to catch up on sleep! I have pushed their bedtime ahead and will see if this helps. I also included their caseworker; Jill Brown, on this email, the more input (sic) the better! It's hard to know what is typical behavior of a kindergartener and what is nontypical and maybe this anxiety will abate as time goes on? I don't want to make a big deal about it but also don't want to sweep it under the rug. I know we all want to help O. succeed and I truly appreciate everyone's input. (sic)

In response, on the same day Brown wrote to mother indicating there was another student acting out in the class and that may be contributing to O.D.'s anxiety. That situation was being resolved. She offered to talk to O.D. or have her colleague talk to O.D., if mother wanted that. Borreggine provided options in response to mother's email which included a private clip chart or not to clip O.D. down, but only to clip him up when he did well or achieved. The latter was implemented by Borreggine. This repeated responsiveness to petitioners' concerns when they communicated them to the district, diminished the viability of petitioners' contention that O.D. and J.D. were experiencing significantly

distressing school based anxiety, which petitioners did not believe the respondent would address properly. This petitioners' contention was inconsistent with the conduct of the respondent's staff and teachers, who addressed and took action on every concern the petitioners' reported to them. The bulk of the other communications from mother were contrary to the petitioners' position that O.D. and J.D. were in distress arising from their school attendance. Additionally, petitioners had conferences with O.D. and J.D.'s teachers during this time and did not express any concerns about the special education O.D. and J.D. were receiving, their progress, or the programs provided to O.D. and J.D.. Mother did not testify at the hearing to provide clarity on this issue. Father's explanation that mother was a very positive person and that is why she did not say anything was unconvincing.

Of concern for the District were the excessive absences that O.D. and J.D. had during the 2018-2019 school year. This was similar to the excessive absences which occurred in Pennsauken. No records were provided to document what attendance O.D. and J.D. had in Pennsylvania. It was undisputed that excessive absences impact the student's education experience, making it difficult for a student, especially one with a disability, to catch up on that level of instruction. This would be particularly challenging for O.D. and J.D., who entered kindergarten with significant deficits in prereading and language skills. For the entire year in respondent's district, O.D. had twenty-eight absences. J.D. had twenty-one and one-half absences. This means that each missed almost one month of school. Additionally, J.D. provided that he and his brother were given "chill out" days with mother, during which he or O.D. would alternate and get to stay home. Similarly, as noted in the email above dated November 2, 2018, mother kept O.D. and J.D. home from school to catch up on sleep.

In March 2019, mother obtained a referral for O.D. to Carnall. Carnall was qualified and accepted as an expert in advanced practice nursing, with a concentration in assessing patients with psychiatric concerns, and in developing treatment plans and making recommendations relative to a child's psychiatric conditions in the context of an advanced nursing practice. J.D. was not referred to Carnall at that time.

Mother told Carnall that O.D. suffered from anxiety arising from school-based issues. Mother reported that O.D. had escalating symptoms of anxiety within school and that he was nervous and upset about attending school. Both O.D. and J.D. had trouble in their academic settings, according to mother. Carnall conducted psychiatric evaluations of O.D. and J.D.. Of significant note to the operative facts in the instant matter, Carnall completed O.D.'s evaluation in March 2019.

Carnall developed a treatment plan for O.D.. Carnall concluded that O.D., and in a later evaluation J.D., suffered from school-based anxiety. In reaching that conclusion, Carnall relied upon information from mother and O.D., and subsequently J.D.. Carnall described O.D. and J.D. as anxious children. It should be noted that Carnall indicated that mother provided an example of bullying at school in which a younger boy made gesture of a gun in reference to a school shooting. Mother's statement to Carnall appeared nowhere else in the evidentiary record. This was never conveyed to the District by mother, or vice versa. Thus, this information was suspect. Carnall recorded that when she interviewed each of them, O.D. and J.D. described themselves as happy. Carnall did not find that anything in their social or home environments was causing their anxiety. She concluded that they suffered from school-based anxiety. Carnall noted that mother advised that O.D. licked his lips frequently in school, but not on the weekends, and that there were periods of time during which he soiled his pants at school.

Carnall recommended medication for O.D. and J.D. Petitioners did not follow this recommendation. Carnall referred petitioners to Morgan, for him to serve as an education advocate. Carnall recommended genetic testing. Carnall made a referral for private speech and OT evaluations. Of particular note, Carnall recommended a change in academic placement to accommodate O.D. and J.D.'s psychiatric presentations, including a change in academic environment that can provide psychological and clinical services to meet their needs.

No competent evidence existed to support the position that Carnall had any expertise in education relative to school placement and programs. While she provided some advance nursing in a school district program which provided mental health services for high school and middle school students, that program was insufficient to support Carnall being an expert in any education field or discipline.

It is at this point that petitioners appeared to have made a decision to go ahead with the placement of O.D. and J.D. in Newgrange for the following school year. In this regard, Carnall's report was dated March 15, 2019. Specifically related to O.D., Carnall opined that it was impossible for her to discount years of neglect in O.D.'s symptomatology, which impacted his psychiatric presentation and impeded his developmental progress. Carnall testified that she thought O.D. had been in respondent's district for one to two years. She did not know that the children had only been in the district for six to seven months. Carnall qualified her report by indicating it was a mistake. That explanation did little to rehabilitate her report and opinion. This error highlighted that the decision was already to seek another placement out of district. Notwithstanding that fact, this statement was consistent with the respondent's positions that the varied preschool educational experiences and lengthy lapses in the receipt of special education and related services by O.D. and J.D., caused them to have significant deficits when they entered kindergarten and that the deficits and lack of progress occurred prior to their enrollment in respondent's district.

Additionally, Carnall conceded that J.D. was in a resource room placement, even though she had written that he had completed kindergarten with an IEP in a self-contained class. Carnall conceded when she wrote her report and came to conclusions about the respondent's program, she was under the belief that they were in a self-contained class. She qualified her opinion by stating that if J.D. was in a self-contained classroom, and had these concerns, it would be a further indicator of why J.D. needed to change his academic setting. She explained it would be better to change from a self-contained class to a resource room placement. She explained, if J.D. was in a self-contained placement

there was nowhere to go, other than changing his academic placement to a different school.

As such, if recommending a change of academic placement had been within the scope of her expertise, which it was not, this recommendation was still unsupported because it was based upon material errors in the facts and assumptions.

Further, Carnall recommended a “change in academic environment to meet the advocacy team’s input.” Carnall testified that when she wrote this in March 2019, approximately one month prior to the annual review meeting, “the advocacy team” meant everyone, who was supporting O.D. and J.D.. Carnall testified that this included the parents, the educational advocate, and others who were part of the expanding team as “we” move through the process. Carnall acknowledged that this included Miller. Carnall use of the word “we” foreshadowed the group of Newgrange affiliated experts who testified in this matter. The petitioners were being guided to Newgrange only. Like most of petitioners’ experts, Carnall exhibited an unusual affinity for Newgrange. Unexpectedly during her testimony, she felt the need to defend Newgrange’s program, despite the fact that it was not within her expertise and was not the subject of a question to her during the hearing. In this regard, Carnall testified as follows:

Q: Students have a level of increase in anxiety that when it corresponds with a specific program, and if that program has a level of expectations, a rigor that is reduced when the students go to a different school and the anxiety has a corresponding reduction with that change in placement to a less rigorous placement, do you think that the level of expectations of the student would have an impact on the level of anxiety?

A: **I don’t think that question is pertinent to this case, because it’s not less of an academic setting.**

Q: Can you answer the question please? Listen. You heard the hypothetical twice. Can you answer it?

A: If the situation is less intense and it's less intense of work, meaning that there is no expectations on the children at all in any particular cases, then the answer is yes, of course you're going to see a decrease in anxiety.  
[emphasis added]

This exchange made her recommendation of a change in academic placement and her other recommendations unpersuasive and suspect. Her defense of Newgrange and its program was perplexing, given that she was developing and tracking the implementation of treatment programs for O.D. and J.D. in her role as an advanced nurse practitioner specializing in psychiatric disorders. She was not their education expert.

Although it had little weight, Carnall's statement and report did provide context for petitioners' position and actions in March 2019. Notably, Carnall did not include the District in her "we." The fact that the District was not part of the advocacy team was actually demonstrated, when the petitioners failed to contact respondent, the CST, Ferraro, Shemeley, Brown, Borreggine, or Hansen with any concerns for O.D. and J.D.'s wellbeing, after meeting with Carnall. The petitioners did not take J.D. to Carnall for psychiatric help, despite their claims that he had suicidal ideations arising from attending the respondent's school until July 2019, after the school year had ended. At no time during the school year was it conveyed to the District that O.D. and J.D. suffered from such severe psychiatric concerns. O.D. and J.D. did not present these concerns in school.

After petitioners were referred by Carnall to Morgan, Morgan referred petitioners to Miller for educational evaluations. Prior to Miller's evaluations and observations of O.D. and J.D., petitioners attended the annual review IEP meeting with the District. While petitioners maintained during the hearing that they wanted to resolve their concerns with the respondent at the CST meeting and that was what they were prepared to do, their prior actions with Carnall and Morgan, and Carnall's statements left their professed desire to continue in respondent's district unsupported. The respondent did not question petitioners' right to engage an advocate, when Brown contacted them about Morgan. Brown recognized that petitioners had not presented to or communicated any concerns

or displeasure with the District. To Brown, any such displeasure was completely unknown. This was consistent with mother's communications, petitioners interactions with respondent's staff and teachers, and respondent's staff and teacher's observations of O.D. and J.D..

The annual IEP review meeting was conducted on April 9, 2019, approximately one month after Carnall met with mother and O.D.. A proposed IEP had been formulated based on the data collected throughout the year about O.D. and J.D.'s progress, the district's observations, and various other material information. Morgan interfered with the annual IEP meeting. Ferraro and Borreggine testified credibly about this. He arrived twenty-minutes late. Based on their conduct at the meeting, petitioners and Morgan attended with an undisclosed agenda to move ahead with an out of district placement at Newgrange for the 2019-2020 school year. Morgan obstructed the various members of the CST from providing specific examples and data regarding O.D. and J.D. and their progression in meeting their goals during the 2018-2019 school year. This prevented the petitioners from understanding and analyzing O.D. and J.D.'s progress. The various CST members were prevented from explaining the proposed IEP for the 2019-2020 school year.

The proposed annual review IEP provided for the following:

Pull-out Resource Replacement: Language Arts:	5x weekly	60 min
Pull-out Resource Replacement: Writing:	5x weekly	60 min
Pull-out Resource Replacement: Math:	5x weekly	60 min
OT: Group	3x monthly	30 min
Speech-Language Therapy: Group (not to exceed 2)	6x monthly	30 min
Physical Therapy with prescription from medical Physician: Group	4x monthly	30 min

It proposed appropriate goals and objectives for O.D. and J.D..

Instead of reviewing the data and the proposed IEP, Morgan and the petitioners expressed several concerns and made certain requests. Father asked for additional OT at the meeting. Ferraro immediately agreed to it and it was hand written on the proposed



IEP. O.D. and J.D. would receive “OT Group-push-in” 1 x per month for thirty minutes. Morgan requested psychiatric and assistive technology evaluations. Ferraro agreed to all of their requests at the meeting and had the evaluations completed over the summer of 2019.

For the first time, Morgan and petitioners expressed concern that for first grade O.D. and J.D. would be in the same classroom, although it was unclear what the basis was for their concern. Ferraro addressed that by indicated that one could go to their neighborhood school, Chairville, and one could remain at Tauten Forge. There were concerns about assistive technology. The District did not believe O.D. and J.D. needed assistive technology, but Ferraro agreed to obtain an assistive technology evaluation. The evaluation ultimately recommended that assistive technology not be implemented at this point in O.D. and J.D.’s education. Despite the respondent’s good faith effort, there was no collaboration at this meeting by Morgan or the petitioners. The requests made by petitioners and Morgan relative to the assistive technology evaluation and the discussion about O.D. and J.D. needing to attend separate classrooms in first grade seemed to be self-created to disrupt the IEP meeting, in light of the fact that petitioners were not concerned about these issues subsequently at Newgrange. There, O.D. and J.D. were not only in the same classroom, but they were the only two first grade students in the self-contained classroom, and O.D. and J.D. were not utilizing any assistive technology. Respondent granted all of the petitioners’ requests at the meeting in a good faith attempt to work with the petitioners. It was anticipated that the meeting would reconvene after receiving the recommendations from the evaluations to determine if the proposed IEP should be modified.

Bostock was qualified and accepted as an expert in special education, teaching students with reading disorders, language based disabilities, O-G programs, including Foundations, creating IEPs for special education students with language based disabilities, expert teacher trainer of O-G programs, and an expert in evaluating student’s educational testing. Bostock has been employed by Newgrange since 2003. She is the Assistant Director of Education. She testified that Newgrange, Robinowitz, and the Laurel School

are three organizations which are overseen by the same Board of Directors. Presently, they are all housed in one building.

Bostock criticized the respondent's initial and proposed IEPs. However, her criticism was unpersuasive because she did not have any experience in public schools. Bostock cannot develop an IEP without the District reviewing it and consenting to it. Bostock is not an LDTC or a New Jersey certified teacher.

O.D. and J.D. were referred to the District's psychiatrist, O'Reilly for evaluations. The purpose of his evaluation was to determine whether O.D. and J.D. required additional services during the following 2019-2020 school year that could be included in their IEP. The evaluations were conducted in June 2019. To the contrary of Carnall's conclusions, O'Reilly's report indicated that the anxiety and suicidal ideations arose from things that occurred in the home based on the statements from O.D. and J.D.. O'Reilly wrote, "J.D. has made suicidal statements when he is told to go to his room when angry." Even Carnall conceded that this is when J.D. is at his home. When asked about home, J.D. stated that "[i]t's not great." O'Reilly found O.D. and J.D. to be anxious. Like Carnall, O'Reilly recommended medication. O'Reilly recommended that O.D. and J.D. work with the counseling staff at the school because of anxiety and sadness. O'Reilly recommended that O.D. and J.D. participate in school social skills groups. Relative to O'Reilly, despite the fact that this evaluation was agreed to at the annual IEP review meeting, in anticipation of incorporating any recommendations into the proposed 2019-2020 school year, the petitioners unilaterally placed O.D. and J.D. at Newgrange prior to that review and modification of the proposed IEP. The unilateral placement prevented respondent from adding services and accommodations to address O.D. and J.D.'s anxiety, social, or counselling needs. The District was prevented from including his recommendations in the proposed IEP for the 2019-2020 school year, because the petitioners unilaterally placed O.D. and J.D. in Newgrange.

Miller was qualified and accepted as an expert in teaching students with reading disorders and language based learning disabilities, in teaching and training the O-G

approach and programs and DIBELS, and as an LDTC. Miller worked at Newgrange in the past. Miller then became employed by Robinowitz. She is the Assistant Director of Robinowitz.

Miller met with O.D. and J.D. on May 10, 2019. Miller did her observation on May 17, 2019, at Tauten Forge in their kindergarten classrooms. Miller was critical of what she observed in the District. Miller did not observe the entire day in the District. Miller began her observation at 8:40 a.m. in Borreggine's classroom. She was presenting sight words at that point using flash cards. Miller could not recall whether the cards were from Foundations materials or just printed. Miller testified that Borreggine did not go through the Foundations lesson's sequence and tasks in her instruction. Miller opined that Borreggine's delivery was wrong. This Foundations lesson ended after ten minutes at 8:50 a.m.. Foundations is not designed to be modified into sections, according to Miller. Of note, Paine reduced the time for her Foundations lesson, because O.D. and J.D. lacked stamina for the full forty minutes. Miller stated that the kindergarten notebooks were not utilized, although Miller acknowledged they do not have to be used with every lesson. The procedure for teaching a new trick word was not employed, but rather a video was shown on the Smart Board. Use of a Smart Board is not recommended by Wilson language. Borreggine did not prompt O.D. to stand and spell the two sight words.

Miller noted that there was another teacher's name on the classroom's Foundations kit and not Borreggine's. Miller oddly deduced that because Borreggine's name was not on the kit, Borreggine had not been trained properly. This conclusion was without merit and contributed to Miller's disabled credibility which made her opinions unpersuasive. Miller testified that "[w]e have no documentation of ever providing Foundations to – to the Medford School District." When asked who "we" was, Miller testified that it was Robinowitz. Miller explained that Robinowitz records showed that Bostock did Wilson training in respondent's District not Foundations training. This was to support her conclusion that Borreggine could not have been trained properly in Foundations, because her name was not on the kit. Borreggine had in fact attended Wilson and Foundations in

the respondent's district. The kit was left behind by the previous teacher in that room. It was now Borreggine's kit.

Borreggine clearly explained that Miller did not observe the entire Foundations lesson. Miller's conclusions in this regard were unsupported. Borreggine explained that she utilized the smart board to play a song for the students, including O.D. and J.D., during snack time. Borreggine observed O.D. and J.D. singing the songs about the day's vocabulary. It helped O.D. and J.D. repeat their sight words.

Miller further testified that the Readers Workshop lesson she observed went against the basic tenets of Foundations. Miller testified that utilizing Readers Workshop was part of a Balanced Literacy Model, which is used in certain districts. Miller read from her report in which she wrote that Readers Workshop and Guided Reading has attracted negative academic treatment because it is a general education methodology ineffective in teaching students, especially those with language based learning disorders. Guided reading does not focus on and emphasize decoding. She indicated that those programs prompt students to guess which is ineffective for students who cannot decode and have phonological awareness deficits. Miller opined that Readers Workshop actually uses strategies that poor readers use. That is why the balanced literacy program should not be used for O.D. and J.D.. Despite her unwavering defense of her opinion and Newgrange, Miller conceded that the Daily Five could be used to reinforce Foundations concepts, depending on what the teacher provided. Miller opined that the District's program did not adhere to the O-G principles of instruction.

Miller gave O.D. and J.D. the TILLS. O.D.'s results were as follows:

<u>Subtest</u>	<u>Scaled Score</u>	<u>Percentile Rank</u>
Vocabulary Awareness:	9	35
Phonological Awareness:	0	0
Nonsense Word Repetition:	6	8
Nonsense Word Reading:	N/A	
Story Retell:	4	0

Listening Comprehension:           0           0

Relative to J.D., on the TILLS he scored as follows:

<u>Subtest</u>	<u>Scaled Score</u>	<u>Percentile Rank</u>
Vocabulary Awareness:	6	8
Phonological Awareness:	0	0
Nonsense Word Repetition:	4	5
Nonsense Word Reading:	N/A	
Story Retell:	6	11
Listening Comprehension:	0	0

Miller gave O.D. and J.D. the CTOPP. It is a normed standardized test, which is designed to identify the areas of reading, language, phonological awareness, phonological memory, and rapid automatic naming. O.D.'s CTOPP results are as follows:

<u>Composites</u>	<u>Percentile</u>	<u>Description</u>
Rapid Non-Symbolic Naming	12 <sup>th</sup>	Below Average
Rapid Symbolic Naming	30 <sup>th</sup>	Average
Phonological Awareness	18 <sup>th</sup>	Below Average
Phonological Memory	12 <sup>th</sup>	Below Average

The subtests revealed the following:

<u>Composites</u>	<u>Scaled Score</u>	<u>Percentile</u>	<u>Description</u>
Rapid color naming	5	5 <sup>th</sup>	Poor
Rapid object naming	9	9 <sup>th</sup>	Below Average
Rapid digits	8	25 <sup>th</sup>	Borderline Average
Rapid letter naming	9	37 <sup>th</sup>	Average
Elision	6	9 <sup>th</sup>	Below Average
Blending words	9	37 <sup>th</sup>	Average
Sound Matching	8	8 <sup>th</sup>	Borderline Average
Memory for Digits	8	25 <sup>th</sup>	Below Average
Nonword Repetition	6	9 <sup>th</sup>	Average

Relative to his composite score, O.D. scored in the low average ranges for rapid non-symbolic naming, phonological awareness, and phonological memory. Miller opined these need to be developed to acquire reading and spelling skills.

Relative to his CTOPP results, J.D. did a little better than O.D. in phonological memory.

<u>Composites</u>	<u>Percentile</u>	<u>Description</u>
Rapid Non-Symbolic Naming	3 <sup>rd</sup>	Poor
Rapid Symbolic Naming	30 <sup>th</sup>	Average
Phonological Awareness	14 <sup>th</sup>	Below Average
Phonological Memory	30 <sup>th</sup>	Average

The subtests revealed the following:

<u>Composites</u>	<u>Scaled Score</u>	<u>Percentile</u>	<u>Description</u>
Rapid color naming	5	5 <sup>th</sup>	Poor
Rapid object naming	6	9 <sup>th</sup>	Below Average
Rapid digits	9	37 <sup>th</sup>	Average
Rapid letter naming	8	25 <sup>th</sup>	Borderline Average
Elision	8	25 <sup>th</sup>	Borderline Average
Blending words	7	16 <sup>th</sup>	Below Average
Sound Matching	7	16 <sup>th</sup>	Below Average
Memory for Digits	7	16 <sup>th</sup>	Below Average
Nonword Repetition	10	50 <sup>th</sup>	Average

Relative to his composite score, J.D. scored in the low average ranges for rapid non-symbolic naming, phonological awareness, and phonological memory. Miller opined these need to be developed to acquire reading and spelling skills.

In Miller's math, O.D. scored below the benchmark in Beginning Quantity Discrimination. He needed to provide twelve answers and he provided eight. O.D. scored well below the benchmark in Numbers Identification. He needed to identify three numbers

between 1 and 99. He named three. O.D. scored below the benchmark on Next Number Fluency. He needed to provide thirteen answers and he provided three. O.D. did not form any of his letters correctly or remember all of the letters.

Relative to the Woodcock Reading, O.D. scored as follows where a 90-110 score was average:

<u>Subtest</u>	<u>Scaled Score</u>	<u>Percentile Rank</u>
Letter Identification:	66	1
Phonological Awareness:	79	8
Word Identification	77	6
Word Attack:	0	5
Passage Comprehension:	66	1

Relative to the Woodcock Reading, J.D. scored as follows where a 90-110 score was average:

<u>Subtest</u>	<u>Scaled Score</u>	<u>Percentile Rank</u>
Word Identification	68	2
Word Attack:	0	5
Passage Comprehension:	unable to provide correct responses	

Miller opined based on her limited observation, that the District's program was inappropriate for O.D. and J.D.. She opined that O.D. and J.D. required a certified O-G practitioner to deliver a multi-sensory structured language intervention with fidelity. Miller was vested in O.D. and J.D. receiving their education at Newgrange. Her recommendations were strikingly similar to Newgrange's own literature highlighting why it believed the education and program it provided was unique. In this regard, Miller recommended that O.D. and J.D. work with an O-G specialist four to five times weekly for thirty minutes a session. It is provided at Newgrange. Miller recommended Lindamood-Bell Seeing Stars LIPS Program, Wilson, Right Flight and Take Flight programs, Bostock acknowledged these are all provided at Newgrange. Miller recommended O.D. and J.D. need O-G instruction to be reinforced throughout his instructional program. Bostock indicated that was occurring at Newgrange. O.D. and J.D. required a learning

environment in which all the teachers are trained to employ O-G methodologies to successfully generalize his skill. Bostock acknowledged that this was occurring at Newgrange. Relative to Miller's recommendation that O.D. and J.D. need an integrated approach to his learning to make meaningful progress, Bostock acknowledged that this was occurring at Newgrange. Relative to math, TouchMath and JUMP Math were recommended by Miller. Bostock acknowledged that TouchMath was used at Newgrange. Bostock indicated that these are all the programs used at Newgrange. Miller wrote her reports just before O.D. and J.D. entered Newgrange.

Miller refused to say that O.D. and J.D. would be harmed, if they were in a class with students who were progressing more quickly than them. She simply stated that they would fall further behind. She did not testify that a balanced literacy model in addition to Foundations would be detrimental to O.D. and J.D.. None of the petitioners' experts opined that it would be detrimental. This disabled the credibility of their opinions that Newgrange, and not the District, was the appropriate placement for O.D. and J.D..

As indicated more briefly above, Miller referenced the National Reading Panel study article in her report and during her testimony. This study was done by the government in 2000. It is a compilation of other studies. Miller conceded that the report indicated that "it is important to emphasize that systematic phonics instruction should be integrated with other reading instruction to create a balanced reading program. Phonics instruction is never a total program." Miller continued to maintain that it was inappropriate for O.D. and J.D. to combine Foundations and Reader's Workshop or Guided Reading. Miller's refusal to reconsider her opinion in light of the studies and as indicated above, disabled her credibility. She was also repeatedly evasive when answering questions. This made her opinions less persuasive.

Miller's testimony was further compromised by her professional connection to Robinowitz and Newgrange. Miller tested O.D. and J.D. because they went to Robinowitz, where Miller works. Miller is familiar with Newgrange, because she worked there for several years. Miller testified that Newgrange School of Princeton Incorporated



owns Newgrange school and Robinowitz. Miller identified the website: [laureleducation.org/campus](http://laureleducation.org/campus). When questioned about the Hopewell Campus Integrated Education Center, Miller testified that Robinowitz and Newgrange have been housed in the same building, since July 2020. Miller testified that this new facility was announced in April 2020. When her memory was refreshed with an email dated February 6, 2020, from Tim Viands announcing the new facility, Miller testified that it was announced in February 2020 that Robinowitz and Newgrange moved into the facility in July 2020. Miller acknowledged she wrote her report in May 2019 and that O.D. and J.D. entered in September 2019. Miller denied there was any influence over her as a Robinowitz employee to make recommendations. Miller acknowledged if public schools stopped sending students to Newgrange, it would close. She further testified that in such event, Robinowitz would close, also. While there may be nothing improper with Miller evaluating a student who subsequently attend Newgrange, the business relationship made her recommendations in this instant matter, based on the totality of circumstances, suspect.

In weighing Miller's testimony about her observations and recommendations, and Borreggine's testimony about what occurred in her classroom throughout O.D. and J.D.'s days and her opinions, Borreggine's testimony was more credible and given more weight. She was the individual who spent the most time teaching O.D. and J.D.. No evidence of bias was presented which would negatively impact her credibility. Borreggine's testimony and opinions were more persuasive.

The information relative to O.D. and J.D.'s progress during the 2018-2019 school year that respondent's CST was unable to present at the annual review IEP meeting showed the following. For O.D., he had scored a 42% on the kindergarten assessment test at the beginning of the year. O.D. was given an assessment at the end of kindergarten, on which he scored and 88%. At the beginning of kindergarten O.D. was able to recognize two of twenty-six lower case letters. At the end of the year, he could recognize twenty-four of twenty-six lower case letters, per Borreggine's data which she had accumulated throughout the year. Relative to uppercase letters, O.D. could identify three of twenty-six in the beginning of the year, and twenty-three of twenty-six at the end

of the year, per Borreggine's data which she had accumulated throughout the year. On the early literacy assessment given at the beginning of the year, O.D. could only answer one questions correctly. At the mid-year, O.D. made progress and could answer eight of ten questions correctly. By the end of the year, O.D. was able to answer ten of ten questions correctly. O.D. achieved above the cut off score for typically developing students. A review of O.D.'s kindergarten work, showed that O.D. progressed in his ability to write sentences. At the beginning of the year, he was unable to write. At the end of the year, O.D. could write capital letters at the beginning of his sentences. His sentences showed finger spaces, stretched out words, and recorded sounds. On the Guided Reading assessment, O.D. could read level C books at the end of the school year. Of note, relative to phonological awareness, a great weakness for O.D., he met all of his cut off scores by the end of the school year. These cut off scores were for typically developing students. O.D. had achieved most of his math concepts by the end of kindergarten, per Borreggine's data which she had accumulated throughout the year.

At the end of the 2018-2019 school year O.D. had achieved all of his reading goals provided for in the IEP. O.D. achieved his math goals. O.D. had achieved five of his six writing goals. Relative to the remaining sixth goal, O.D. was progressing satisfactorily. Borreggine opined that O.D. made great and meaningful progress, especially in light of the fact that O.D. entered kindergarten with a deficit of skills and had excessive absences.

The 2018-2019 IEPs provided for speech and language therapies. Hansen provided more expansive speech and language therapies to O.D. and J.D., than was provided in their IEPs. O.D. and J.D. received speech and language therapy in a group of students which never exceeded two, and they received speech and language therapy individually during the school year. Hansen opined that O.D. and J.D. did very well in therapy and that they made meaningful progress based on the data she collected throughout the year. This therapy helped O.D. and J.D. achieve their reading and writing goals, and make progress in those areas. She recommended that the therapies continue as she had modified them to make the more individualized and intensive. She developed goals for O.D. and J.D..

For J.D., he had scored an 83% on the kindergarten assessment test at the beginning of the year. J.D. was given an assessment at the end of kindergarten, on which he score and 98%. At the beginning of kindergarten J.D. was able to recognize three of twenty-six lower case letters. At the end of the year, he could recognize twenty-five of twenty-six lower case letters, per Borreggine's data which she had accumulated throughout the year. Relative to uppercase letters, J.D. could identify three of twenty-six in the beginning of the year, and twenty-four of twenty-six at the end of the year, per Borreggine's data which she had accumulated throughout the year. On the early literacy assessment given at the beginning of the year, J.D. could only answer one questions correctly. At the mid-year, J.D. made progress and could answer all ten questions correctly. J.D. achieved above the cut off score for typically developing students. A review of J.D.'s kindergarten work, showed that J.D. progressed in his ability to write sentences. At the beginning of the year, he was unable to write. At the end of the year, J.D. could write capital letters at the beginning of his sentences. His sentences showed finger spaces and correct spelling of sight words. On the Guided Reading assessment, J.D. could read level C books at the end of the school year. Of note, relative to phonological awareness, a great weakness for J.D., he met all of his cut off scores by the end of the school year. These cut off scores were for typically developing students. J.D. had achieved all seven of his goals for math, by the end of kindergarten, per Borreggine's data which she had accumulated throughout the year.

At the end of the 2018-2019 school year J.D. had achieved eight of his nine reading goals, provided for in the IEP. J.D. was progressing satisfactorily to achieving the ninth goal. J.D. achieved all seven of his math goals. J.D. had achieved five of his six writing goals. Relative to the remaining sixth goal, J.D. was progressing satisfactorily. Borreggine opined that J.D. made great and meaningful progress, especially in light of the fact that J.D. entered kindergarten with a deficit of skills and had excessive absences. O.D. and J.D. exceeded the cut off scores in several areas at the end of the year which were for typically developing students.

Other than when the Foundations lesson was too long, before it was broken down, Borreggine did not observe any significant or nontypical frustration or anxiety in J.D.. Brown did not observe any anxiety by J.D., and the respondent's records did not reflect any in-school anxiety. Similarly, other than when the Foundations lesson was too long, before it was broken down, Borreggine did not observe any frustration or anxiety in O.D.. Brown did not observe any anxiety by O.D., and the respondent's records did not reflect any in-school anxiety. Borreggine did observe that O.D. was sensitive and she had to be careful when providing him with any criticism because it upset him. Any frustration or anxiety that she did observe or was made aware of, she attempted to ameliorate the concern and communicated effectively with mother. Upon receipt of an email communication from mother expressing that O.D. was anxious about the clipping up/down chart, Borreggine responded to mother with an alternative individual chart for only him to see, or not to clip him down, but only clip him up. Mother did not choose the individual chart, so Borreggine only clipped O.D. up on the chart. This seemed to positively impact O.D.. Mother did not express further concern about O.D.'s anxiety about this.

O.D. and J.D. were recommended in the proposed IEP to attend the District's summer enrichment program in 2019, because they made progress during the school year. Also, it was to prevent them from regressing. O.D. and J.D. did not attend. O.D. and J.D. also did not attend any Extended School Year Program during the summer of 2019, as Colannino confirmed in her report. Again, O.D. and J.D. lacked special education and related services for an extended period of time, between June 2019 and September 2019.

Taking into account the various evaluations and recommendations, Newgrange helped develop IEPs for O.D. and J.D.. Those IEPs provided as follows. First, The IEP provided for a full-time self-contained special education classroom. O.D. and J.D. were the only first graders in their class. They were in the same classroom. There was a third grader in their class. In this regard, Newgrange provided for a more restrictive educational environment than O.D. and J.D. had in kindergarten. No typically developing peers were in the classroom. The IEP provided for Speech/Language therapy, OT, PT, and additional

social skills services. It provided for participation in ESY for the 2020 school year focusing on language arts literacy, mathematics, and science. The programming for O.D. and J.D. provided for Wilson reading.

Newgrange's IEP for the 2019-2020 school year included reading, writing, and language arts delivered with a sequential, direct, explicit, and multi-sensory O-G approach, which was infused throughout O.D.'s and J.D.'s school day. The IEP provided for Wilson reading for O.D. and J.D.. However, when they entered Newgrange it was determined that their skills were too low for Wilson reading and therefore, they were again provided with Foundations to meet their individual needs. They were provided with forty-minutes of Foundations instruction. Foundations is a Wilson program. O.D. and J.D. were provided with Project Read at Newgrange. Bostock conceded that the phonics portion of Project Read was based on the O-G method. However, she conceded that the other portion of Project Read, like Framing Your Thoughts were not based on the O-G method. O.D. and J.D. were provided with Project Read and Framing Your Thoughts at Newgrange. The use of these programs was inconsistent with Miller and Colannino's opinions. O.D. and J.D. were provided with McGraw Hill math and Houghton Mifflin Harcourt Discovery for social studies, both of which are used in public schools. O.D. and J.D. were provided with speech and language therapies for articulation and receptive and expressive language. O.D. and J.D. were provided with OT and PT. O.D. and J.D. were provided with counseling and social skills services.

It was argued that Newgrange implemented O-G, through its programs including Foundations, throughout the entirety of O.D. and J.D.'s school day. It was argued that the delivery of the programs was done with fidelity. It was argued that Newgrange's staff was more highly trained, certified, and competent to teach O.D. and J.D..

Paine testified that her Foundations class is forty minutes long. She spent between thirty and forty minutes doing instruction. She too observed that O.D. and J.D. had stamina and attention issues. As a result, Paine started delivering the Foundations lessons in thirty minutes blocks, because that was the limit of their tolerance levels. She increased

the blocks of time over the year. Paine testified that O.D. and J.D. have difficulty with retention. Paine testified that she taught Foundations with fidelity. She modified the Foundations block of instruction to meet their stamina. She also went back and repeated concepts out of order, although Foundations did not specifically provide for this instruction method. Like Borreggine she modified the delivery of the Foundations lessons. As respondent had maintained, Paine testified that if the same words that are used in the Foundations lesson in the morning are then used in the Guided Reading lesson that is next, and the same strategies are taught in both, that would make Guided Reading appropriate.

Paine acknowledged that O.D. and J.D. were tested before they entered Newgrange and then in January of 2020. Paine testified that she was aware that the testing did not show measurable improvement relating to phonological awareness and those key areas that the Foundations program is working on in her class. Paine could not explain why they were not registering some progress on the tests Colannino administered. Like the other experts, Paine stated that O.D. and J.D.'s impressionable small minds were a benefit to learning to read. This demonstrated that O.D. and J.D. would have benefitted from consistently delivered special education focusing on prereading skills during preschool.

On January 10, 2020, Ferraro and SHEMELEY observed O.D. and J.D. in their Newgrange classroom. SHEMELEY authored the observation portion of their joint report. Ferraro authored the conclusions portion of the report. To the contrary of petitioners' arguments, the fact that the two co-authored the report did not make them experts in all areas of the report. They only served as experts relative to the portions they wrote, despite the fact that they each had reviewed the entirety of the report. To find otherwise would allow the petitioners to unilaterally declare one of them to have an expertise she did not have and then cross examine her using her lack of expert knowledge to impeach her credibility and make her testimony unpersuasive. Such a result would be inappropriate.

Ferraro opined that she observed nothing by way of program, instruction or delivery at Newgrange that could not have been delivered in the District. Ferraro expressed concern that there were no typically developing peers for O.D. and J.D. to model for social, emotional, and speech and language behaviors. The classroom placement was more restrictive than the District's resource pull-out classroom. It was a self-contained classroom. Newgrange was not within the petitioner's neighborhood community. As a result, O.D. and J.D. would not interact with neighborhood friends during school. Ferraro opined that generalization of skills based on this placement will be more challenging for O.D. and J.D. Additionally, the petitioners at the IEP meeting wanted O.D. and J.D. in separate classrooms. It cannot be determined with certainty why they raised this issue at the IEP meeting. However, it appeared not to be a significant concern for the petitioners that O.D. and J.D. were in the same classroom at Newgrange. Ferraro testified that the use of assistive technology at Newgrange was absent.

Ferraro noted that the Foundations lesson she observed lasted for twenty-five of the forty scheduled minutes. During the missing fifteen minutes of instruction observed by Ferraro, O.D. and J.D. were allowed to play with stuffed animals. It was not academic time. Ferraro opined that the teacher could have done more instruction by way of repetition in that fifteen minutes. This would have benefited O.D. and J.D.. In contrast, the District provided sixty minutes of reading each day, which was more frequently ninety minutes. Reading concepts were also infused throughout the day in other subjects. Ferraro opined that the information being presented at Newgrange was very slow. It was not sufficiently rigorous for O.D. and J.D..

Ferraro compared the cognitive educational evaluation conducted by the District in 2018 for O.D. with the evaluation conducted by Miller in 2019. Ferraro wrote that in comparing the scores there was an approximately thirty point standard score difference and that this showed O.D. and J.D. had significant growth in the District. Ferraro qualified this opinion with the fact that she was attempting to compare the similar components of two different tests and that it was not an exact comparison. Petitioners' argued that this was not a generally accepted practice for LDTs. This was borne out by Schemley's

testimony. While that may be the case, that “thirty point increase” to quantify progress did not diminish the basic thrust of Ferraro’s testimony or her credibility. Her conclusion was consistent with the overwhelming evidence that O.D. and J.D. made meaningful progress. The data collected throughout O.D. and J.D.’s kindergarten year in District and their beginning, mid-year, and end of year testing demonstrated that they made meaningful progress throughout their kindergarten year. As a result, petitioners’ argument that the faulty calculation method made Ferraro’s testimony and opinions completely unreliable was attributed little weight. The thirty-point increase calculation was not relied upon to find that O.D. and J.D. made meaningful progress in kindergarten.

While Newgrange maintained that its programs and approaches were delivered with fidelity by highly trained and certified special education teachers and that this was the only appropriate way to educate O.D. and J.D., as a result of their language based learning disabilities, O.D. and J.D. did not make meaningful progress during their first four months at Newgrange, as reflected in Colannino’s assessment results and report. Petitioners’ arguments that they did make progress were not supported by the evidence. Having been immersed in a more restrictive, intensive, educational environment, and being instructed throughout each day with O-G programs and approaches delivered with fidelity, O.D. and J.D. should have progressed. Paine could not explain why the assessments showed they did not progress.

Colannino was qualified and accepted as an expert LDTC in testing and creating IEPs in a public school setting for special education students, an expert in the Wilson Reading Program and the O-G approach, and an expert in special education teaching students with reading disorders and language based learning disabilities. Colannino has her own consulting and tutoring practice. She is presently employed by CBA.

Colannino evaluated O.D. and J.D. in December 2019. This was approximately seven months after Miller’s evaluations. She observed O.D. and J.D. at Newgrange on December 17, 2019. Her reports were issued in January 2020.



Colannino happened to observe O.D. and J.D. on the day of the pre-holiday break test. Bostock explained that Newgrange tests its students pre- and post-school breaks, to determine the need for ESY and to measure any regression. Bostock opined that O.D. and J.D. had regressed during their two week holiday break in 2019. This supported the District's position that O.D. and J.D. were students, who were likely to regress if not continuously exposed to their curriculum, program, and approaches. It also supported the District's argument that O.D. and J.D. lost valuable time, special education, and services, during the critical early intervention stage of their preschool years. If they regressed in two weeks, as Bostock indicated, then certainly they regressed in skills, concepts, therapies, and education, during their long lapses without special education between ages eighteen months and five years old when they entered the District. Similarly, it would be logical to extrapolate that O.D. and J.D. regressed between June 2019, when they last attended the District, and September 2019 when they entered Newgrange.

Colannino's report indicated as follows. When observing O.D. and J.D. at Newgrange, she noted that she observed the Foundations lesson from 8:32 a.m. to 9:08 a.m.. This was thirty-six-minutes long. After Foundations, there was one hour of specials, that she did not observe. Colannino observed the language arts lesson, during which the teacher read the class a book called the Mouse before Christmas, which was a picture book. This lesson was for vocabulary and comprehension. Colannino found this instruction at Newgrange to be consistent with O-G and appropriate.

Relative to the District's program, Colannino explained that Guided Reading is done in small groups, who are working on one particular skill while reading a book together. Colannino acknowledged that the teacher could be working on vocabulary and comprehension in Guided Reading. Colannino agreed that without comprehension, O.D. and J.D. would not be able to understand a word, when they read it. She further acknowledged that not everyone in the special education community treats Guided Reading and Readers Workshop negatively, as also indicated above. However, she still maintained it was inappropriate for O.D. and J.D.

After the picture book, O.D. and J.D. made gingerbread houses, which worked on fine motor skills. Colannino indicated that making gingerbread houses was not 100% academic instruction for O.D. and J.D. Colannino opined that this was an appropriate use of academic time. She opined that O.D. and J.D. would make progress with this instruction.

Colannino administered the TILLS, CTOPP, and Woodcock Achievement to O.D. and J.D.. They were six and one-half years old and zero days on the date of the testing. Relative to the TILLS, O.D. scored as follows where an 8-12 scaled score was average:

<u>Subtest</u>	<u>Scaled Score</u>	<u>Percentile Rank</u>	<u>Score Comparison Miller's</u>
Vocabulary Awareness:	8	16	1 point decrease
Phonological Awareness:	0	0	stayed the same
Nonword Word Repetition:	8	19	3 point increase
Nonword Word Reading:	4	10	stayed the same
Story Retell:	4	0	3 point increase
Listening Comprehension:	10	38	10 point increase

Relative to the CTOPP, O.D. scored as follows where a 8-12 score was average:

<u>Subtest</u>	<u>Scaled Score</u>	<u>Percentile Rank</u>	<u>Score Comparison Miller's</u>
Elision:	6	9-Below Avg.	stayed the same
Blending Words:	8	25-Average	1 point decrease
Phoneme Isolation:	7	16-Below Avg.	N/A
Memory for Digits:	8	25-Average	stayed the same
Nonword Repetition:	10	50-Average	4 point increase
Rapid Digit Naming:	7	16-Below Avg.	1 point decrease
Rapid Letter naming:	7	6-Below Avg.	2 point decrease
Phonological Awareness:	82	12-Below Avg.	
Phonological memory:	95	27-Below Avg.	
Rapid Symbolic Naming:	82	12-Below Avg.	

Relative to the Woodcock Achievement, O.D. scored as follows where a 90-110 score was average:

<u>Subtest</u>	<u>Scaled Score</u>	<u>Percentile Rank</u>	<u>Score Comparison Miller's</u>
Letter-Word Identification:	64	1-Very Low	score decreased
Passage Comprehension:	<40	<0.1-Very low	
Word Attack:	79	8-Low	
Reading:	46	<0.1-Very low	
Basic Reading Skills	71	3-Low	

In math, O.D. scored in the low average range. He scored in the low average range for calculation and applied problems.

Relative to the Woodcock Achievement, O.D. scored in the very low proficiency range in spelling, writing samples, and written language. In an informal phonics assessment, O.D. was able to say letter sounds for four of five letter sounds. He could rhyme all ten pairs of words. He could produce a rhyming word 70% of the time.

Comparing Miller's results and Colannino's results, O.D. decreased in five areas, stayed the same in four areas, and increased in four areas.

Relative to the TILLS, J.D. scored as follows where an 8-12 scaled score was average:

<u>Subtest</u>	<u>Scaled Score</u>	<u>Percentile Rank</u>	<u>Score Comparison Miller's</u>
Vocabulary Awareness:	7	10	1 point increase
Phonemic Awareness:	4	2	stayed the same
Nonword Word Repetition:	4	3	2 point increase
Nonword Word Reading:	2	0	stayed the same
Story Retell:	8	21	2 point increase
Listening Comprehension:	9	30	9 point increase

Relative to the CTOPP, J.D. scored as follows where a 8-12 score was average:

<u>Subtest</u>	<u>Scaled Score</u>	<u>Percentile Rank</u>	<u>Score Comparison Miller's</u>
Elision:	8	25-Average.	stayed the same
Blending Words:	7	16-Below Avg.	stayed the same
Phoneme Isolation:	7	16-Below Avg.	N/A
Memory for Digits:	7	16-Below Avg.	stayed the same
Nonword Repetition:	9	37-Average	1 point increase
Rapid Digit Naming:	8	25-Average.	1 point decrease
Rapid Letter naming:	8	25-Below Avg.	stayed the same
Phonological Awareness:	84	14-Below Avg.	
Phonological memory:	88	21-Below Avg.	
Rapid Symbolic Naming:	88	21-Below Avg.	

Relative to the Woodcock Achievement, J.D. scored as follows where a 90-110 score was average:

<u>Subtest</u>	<u>Scaled Score</u>	<u>Percentile Rank</u>	<u>Score Comparison Miller's</u>
Letter-Word Identification:	62	1-Very Low	decreased
Passage Comprehension:	<40	<0.1-Very low	
Word Attack:	63	1-Very Low	
Reading:	48	<0.1-Very low	
Basic Reading Skills	64	1-Very Low	

In math, J.D. scored in the low average range. He scored in the low average range for calculation and applied problems.

Relative to the Woodcock Achievement, J.D. scored in the low proficiency range in spelling, and writing samples. In an informal phonics assessment, J.D. was able to say letter sounds for five of five short vowel sounds. He could rhyme pairs of words 70% of the time. He could produce a rhyming word 90% of the time.

Colannino testified that you cannot compare the passage comprehension in the Woodcock Reading Mastery that Miller used with the Woodcock Achievement that Colannino used. Colannino testified that it is not a direct comparison between the Woodcock Reading and the Woodcock Achievement. She did her best to compare those scores. An LDTC would compare these scores.

Comparing Miller's results and Colannino's results, J.D. decreased in three areas, stayed the same in six areas, and increased in four areas.

While Colannino's testing results were accurate, her explanations and justifications for her conclusions and opinions were unpersuasive. Colannino's was evasive in answering questions challenging her opinions and the basis for them. She appeared to be an advocate for Newgrange, sometimes to the exclusion of what may have been best for O.D. and J.D.. In this regard, given O.D. and J.D.'s lack of measurable progress, Colannino refused to answer the questions about how many more subsections O.D. and J.D. would have had to decrease in for her to acknowledge that Newgrange is not appropriate. She indicated that just because the students decreased it did not mean they did not accomplish more skills. She would have to investigate each of the tests to make that analysis. This tribunal could have accepted that explanation. However, she went on to indicate that even if they decreased in every assessment, then Newgrange would still be her recommendation. Colannino noted O.D. and J.D. had only been at Newgrange for three months at that point in time in an attempt to deflect and qualify her responses to these questions. Colannino opined that O.D. and J.D. were making progress at Newgrange. The objective evidence did not support this conclusion. It made Colannino's opinion less persuasive.

Further, the persuasiveness of Colannino's opinion was disabled by her reluctant acknowledgment that many public schools utilize both Guided Reading and Reader's Workshop for their special education students. In this regard, Colannino stated that public schools are part of the special education community and she conceded that not everyone in the special education community treats the two approaches negatively. She qualified

her statement saying that the majority did. Colannino could not cite to a specific study to which she had referred during her testimony on this issue. This further enhanced her unwavering allegiance to Newgrange and membership in Carnall's "we" group. As a result, her opinion was less persuasive, relative to O.D. and J.D., than those of the respondent's experts.

Patel opined that O.D. should have received speech and language therapy consistently, since he was three years old, to allow him to progress, given his medical diagnosis and language based learning disability. Patel recommended that O.D. should be provided with structured, repetitive, multi-sensory instruction, like Foundations. Patel recommended more time and checks to allow for comprehension, extra time for task completion, and the repeating and rephrasing important information. Patel recommended that O.D. receive speech and language therapy twice per week for thirty minutes per session individually for receptive and expressive language, and six times per week for thirty minute sessions, in a group with no more than two students for articulation. Patel indicated that the pull-out replacement setting was a small, more intensive setting. Patel suggested that O.D. be with students with a similar learning profile, based on information that O.D. seemed to understand the difficulties he was having. This can affect the social and emotional wellbeing of a student if they notice they are behind their peers.

Patel seemed to genuinely and credibly be concerned for O.D.. Although her recommendations suggested attendance at Newgrange, they were not so tailored as to fit only Newgrange's curriculum, programs, and approaches. She focused on what therapies should be provided and how they should be provided. This added credibility to her recommendations. As a result of the unilateral placement, the District was never provided the opportunity to review Patel's recommendations and determine if they were appropriate for O.D. and could be delivered in District. Patel's report was dated August 2019. Patel provided a clear picture of O.D.'s deficits and needs.

Patel testified that O.D. would have needed speech and language therapy in a private or public pre-school. Patel agreed that the respondent's IEP satisfied her

recommendations. Unlike the rest of petitioners' witnesses, Patel's willingness to determine if the District's program satisfied her recommendations made her testimony more credible.

Relative to Clayton's evaluation of J.D., she too suggested Newgrange for J.D.. She noted J.D.'s dyslexia diagnosis and his ADHD. It was unknown if Clayton had the expertise to recommend a change to a specialized school or to Newgrange, specifically, because she did not testify. It is likewise unknown whether she would have opined that the District's IEP satisfied her recommendations.

Relative to both evaluations, the District was prevented from considering their recommendations, because O.D. and J.D. were unilaterally placed at Newgrange.

Respondent provided FAPE to O.D. and J.D. during the 2018-2019 school year. Respondent provided them with an education designed to give O.D. and J.D. meaningful learning individualized to meet their needs. O.D. and J.D. made meaningful progress, during that year, while enrolled in the District. The respondent's 2018-2019 IEPs dated August 7, 2018 and revised by the District on their initiative to add PT on December 19, 2018, provided for an appropriate placement, appropriate program, and the special education and related services O.D. and J.D. needed. The petitioners never made a request for a change in placement, program, or service during the 2018-2019 school year. The respondent's staff and teachers responded quickly to petitioner's communications and concerns. The respondent never denied any request made by the petitioners or Morgan. The District complied with its responsibilities and obligations. Newgrange provided O.D. and J.D. with a more restrictive educational environment. There was nothing provided in the Newgrange IEPs or program that could not be provided in the District. In fact, in several material areas, as detailed above, the respondent provided far more special education and services than Newgrange. Newgrange is not an appropriate placement for O.D. and J.D.. It is not sufficiently challenging or rigorous for O.D. and J.D..

## **LEGAL DISCUSSION AND ANALYSIS**

As a recipient of Federal funds under the IDEA, the State of New Jersey must have policies and procedures that assure all children with disabilities the right to a free appropriate public education (FAPE). 20 U.S.C. §1412. State regulations track this requirement that a local school district must provide FAPE as that standard is set under the IDEA. N.J.A.C. 6A:14-1.1. A free, appropriate special education and related services must be provided to all students with disabilities from age three through twenty one: a.) at public expense, under public supervision and direction, and without charge; b.) to the standards of the State educational agency; c.) include an appropriate preschool, elementary, or secondary school education in the State involved; and d.) in conformity with the individualized education program (IEP) required under 20 U.S.C. §1414(d). 20 U.S.C. §1401(9); N.J.A.C. 6A:14-1.1 et seq. The responsibility to deliver these services rests with the local public-school district. N.J.A.C. 6A:14-1.1(d).

In order to provide a FAPE, a school district must develop and implement an IEP for every student eligible for SE and related services. N.J.A.C. 6A:14-3.7. An IEP is “a comprehensive statement of the educational needs of a handicapped child and the specially designed instruction and related services to be employed to meet those needs.” Sch. Comm. of Burlington v. Dep’t of Educ. of Mass., 471 U.S. 359, 368, 105 S. Ct. 1996, 2002, 85 L. Ed. 2d 385, 394 (1985). An IEP should be developed with the participation of parents and members of a district board of education’s CST who have participated in the evaluation of the child’s eligibility for SE and related services. N.J.A.C. 6A:14-3.7(b). The IEP team should consider the strengths of the student and the concerns of the parents for enhancing the education of their child; the results of the initial or most recent evaluations of the student; the student’s language and communications needs; and the student’s need for assistive technology devices and services. The IEP establishes the rationale for the pupil’s educational placement, serves as the basis for program implementation, and complies with the mandates set forth in N.J.A.C. 6A:14-1.1 to -10.2.

Parents who are dissatisfied with an IEP may seek an administrative due-process hearing. 20 U.S.C. §1415(f). The school district bears “the burden of proving the appropriateness of the



[IEP that it has proposed] but the school district is not required to prove the inappropriateness of any alternative IEP that a student's parents might suggest." Carlisle Area Sch. v. Scott P. by and Through Bess P., 62 F.3d 520, 533 (3<sup>rd</sup> Cir. 1995); N.J.S.A. 18A:46-1.1.

The IDEA does not require the District to provide O.D. and J.D. with the best possible education, S.H. v. State Operated Sch. Dist. of Newark, 336 Fed. 3d 260, 271 (3<sup>rd</sup> Cir. 2003), but must provide personalized instruction with sufficient support services to permit O.D. and J.D. to benefit educationally from instruction. Hendrick Hudson Cent. Sch. Dist. Bd. of Educ. v. Rowley, 458 U.S. 176, 203, 102 S. Ct. 3034, 3049 (1982). Noting that Rowley involved a student who, though disabled, was fully integrated in a GE classroom, the United States Supreme Court explained that while "a child's IEP need not aim for grade-level advancement if that is not a reasonable prospect, [the IEP] must be appropriately ambitious in light of his circumstances[.]" Andrew F. v. Douglas Cnty. Sch. Dist. RE-1, 580 U.S. \_\_\_\_, 137 S.Ct. 988, 992 (2017). The Third Circuit found the directions of the Supreme Court in Andrew to treat "a child's intellectual abilities and potential as among the most important circumstances to consider" to be consistent with its standard that an "IEP must provide significant learning and confer meaningful benefit." Dunn v. Dowlintown Area Sch. Dist., 904 F.3d 248, 254 (3<sup>rd</sup> Cir. 2018). "IEPs must be reasonable, not ideal [and] slow progress does not prove" the deficiency of an IEP. Ibid.

Toward this end, an IEP must contain a detailed statement of annual academic and functional goals related to the Core Curriculum Content Standards of the GE curriculum and be measurable so both parents and educational personnel alike can be apprised of expected levels of achievement attendant to each goal. N.J.A.C. 6A:14-3.7(e)(2). These annual academic and functional goals must also include benchmarks or short-term objectives to help the student both participate and progress in the general education curriculum, as well as meet the student's other educational needs that result from his or her disability. N.J.A.C. 6A:14-3.7(e)(3). "Without an adequately drafted IEP, it would be difficult, if not impossible, to measure a child's progress, a measurement that is necessary to determine changes to be made in the next IEP." Lascari v. Bd. of Educ., 116 N.J. 30, 48-49 (1989) (IEP was inappropriate and incapable of review where the goals and objectives were vague, the measure of progress was equally unclear, it lacked objective analysis and remarks were subjectively based).

The IDEA also requires states to educate disabled children in the LRE to the maximum extent appropriate, with children without disabilities. See, 20 U.S.C. §1412(a)(5)(A). Thus, removal of children with disabilities from the GE environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. Ibid. "This provision evidences a 'strong congressional preference' for integrating children with disabilities in regular classrooms." Oberti v. Bd. of Educ. of Clementon Sch. Dist., 995 F.2d 1204, 1214 (3d Cir. 1993) (citations omitted).

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

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

Moreover, a program and placement does not turn on the intensity of the services or the superiority of the program. 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. Ibid. A program is appropriate if it confers some educational benefit; it need not be the superior alternative. Ibid. The Act does not require more. Ibid. In short, an IEP must be designed to confer some educational benefit in the least restrictive educational environment. Ibid.

I **CONCLUDE** that respondent has satisfied its burden in this matter. I further **CONCLUDE** that respondent provided a FAPE to O.D. and J.D. during the 2018-2019 school year. Respondent provided them with an education designed to give O.D. and J.D. meaningful learning individualized to meet their needs. O.D. and J.D. made meaningful progress, during that year, while enrolled in the District. The respondent's 2018-2019 IEPs dated August 7, 2018 and revised by the District on their initiative to add PT on December 19, 2018, provided for an appropriate placement, appropriate program, and the special education and related services O.D. and J.D. needed. The District provided O.D. and J.D. the opportunity for significant learning and a meaningful educational benefit. The petitioners never made a request for a change in placement, program, or service during the 2018-2019 school year.

The data collected over O.D. and J.D.'s 2018-2019 kindergarten year demonstrated that they made meaningful progress. They accomplished nearly all of the goals set forth in their IEPs. They were provided direct, multi-sensory instruction in the small, resource pull-out room for reading, language arts, and math. They were provided with speech and language therapies that exceeded the requirements of their IEPs. In fact, the services they received were consistent with Patel's recommendations. This was a modification made on the District's initiative. Likewise, on the District's initiative PT evaluations and PT were added to O.D. and J.D.'s IEPs.

The District was responsive to the petitioners' concerns and communications. The District was willing to address any concerns that the petitioners' may have had about the subsequent 2019-2020 school year. In this regard, the District agreed to all of the

requests for evaluations at the annual IEP review meeting in April 2019. During that meeting the District agreed to add additional OT to O.D. and J.D.'s IEPs providing for group push-in therapy; thus, granting father's request. The record is void of any event demonstrating that the District was non-responsive or non-compliant in any way relative to O.D. and J.D..

Petitioners based much of their arguments and positions on the fact that the respondent failed to provide a FAPE to O.D. and J.D., because the District did not implement O-G curriculums, programs, and approaches with fidelity. There is no legal obligation on the part of the respondent to adopt an O-G curriculum or to hire certified O-G instructors. This is not required by the State of New Jersey. Despite that fact, respondent did have its teachers and staff attend training in Wilson and Foundations. The respondent programmed Foundations for O.D. and J.D.. Borreggine implemented direct, systematic, multi-sensory instruction to teach O.D. and J.D.. She infused the Foundations' concepts throughout O.D. and J.D.'s academic day. O.D. and J.D.'s IEPs and instructions were developed and implemented to meet them where they were individually.

No competent evidence demonstrated that O-G was the only methodology appropriate for O.D. and J.D., due to their language based learning disabilities, as petitioners contended. The Wilson website indicates that although Foundations includes comprehension strategies, it must be combined with a core literature based language arts program for an integrated and comprehensive approach to reading and spelling. As this tribunal has already found, Bostock's, Miller's, and Colannino's credibility was disabled relative to this issue. Their testimonies and opinions were less persuasive than respondent's experts on this issue and others. As already found and discussed above, their opinions suffered from unwavering allegiance to O-G, Newgrange, and RobinowitzRobinowitz, even when the facts did not support their positions. As petitioners acknowledge in their closing summation, "the weight to be given to the testimony of an expert depends upon '[the witness]' candor, intelligence, knowledge, and especially upon the facts and reasoning which are offered as foundation of [his or] her opinion." County of Ocean v. Landolfo, 132 N.J. Super. 523, 528 (App. Div. 1975). Petitioners' expert

opinions relative to the efficacy of using O-G as the sole methodology to educate O.D. and J.D. were inconsistent with the measured, meaningful progress O.D. and J.D. made during the 2018-2019 school year in achieving their goals, while not being exposed to only O-G methodologies.

In considering the appropriateness of an IEP, 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 (3<sup>rd</sup> Cir. 1995). An IEP is “based on an evaluation done by a team of experts prior to the student's placement.” Fuhrmann v East Hanover Bd. of Educ., 993 F.2d 1031, 1041 (3rd Cir. 1993) (emphasis in original). 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 a child's placement.” Susan N., 70 F.3d at 762, citing Fuhrmann, 993 F.2d at 1040.

The Third Circuit in Ridgewood Bd. of Educ. v. N.E. for M.E., 172 F.3d 238, 247 (3d Cir. 1999) 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.

Having found that the respondent provided a FAPE to O.D. and J.D., it is not necessary to analyze whether placement at Newgrange is appropriate under the IDEA. It is well-established that the appropriateness of an IEP is not determined by a comparison of the private school and

the program offered by the District. S.H. v. State Operated Sch. Dist. of Newark, 336 Fed. 3d at 271. Rather, the pertinent inquiry is whether the District's IEP offered FAPE and the opportunity for meaningful educational benefit in the LRE. G.B. and 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. Ibid. (citation omitted); Scott P., 62 F. 3d at 533 (District is not required to prove the inappropriateness of the more restrictive placement).

Based on the totality of circumstances herein, I **CONCLUDE** that petitioners did not meaningfully engage in the annual IEP review meeting in April 2019.

### **ORDER**

Given the findings of fact and conclusions of law herein, I **ORDER** that both consolidated matters, EDS 11208-2019 and EDS 11455-2019, be **DISMISSED** in their entireties.

This decision is final pursuant to 20 U.S.C. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2019) and is appealable by filing a complaint and bringing a civil action either in the Law Division of the Superior Court of New Jersey or in a district court of the United States. 20 U.S.C. § 1415(i)(2); 34 C.F.R. § 300.516 (2019). If the parent or adult student feels that this decision is not being fully implemented with respect to program or services, this concern should be communicated in writing to the Director, Office of Special Education Programs.

July 6, 2021

DATE



DOROTHY INCARVITO-GARRABRANT, ALJ

Date Received at Agency:

August 11, 2021

Date Mailed to Parties:

\_\_\_\_\_

/dm

**APPENDIX**

**WITNESSES:**

For respondent:

Corrine SHEMELEY  
Gail Ferraro, Ph.D.  
Ariana Borreggine  
Jill Fredericks Brown  
Maria Hansen

For petitioner:

Kathleen Bostock  
Susan Miller  
Amanda Colannino  
Carol Paine  
M.D.  
Amy Carnall, Ph.D.  
Disha Patel

**LIST OF EXHIBITS**

**Respondent**

For O.D.

- R1 Our Lady of Lourdes Medical Center – Early Intervention Program, April 29, 2014
- R2 New Jersey Early Intervention System Prior Written Notice and Consent for Subsequent Evaluation/Assessment, October 16, 2014
- R3 New Jersey Early Intervention System Individualized Family Service Plan and Child Outcome, by Jeanette Melendez, November 7, 2014
- R4 New Jersey Intervention System Notification, February 16, 2015



- R5 Pennsauken Public Schools Eligibility/Classification Conference Report, June 4, 2015
- R6 Pennsauken IEP, June 4, 2015
- R7 Family Conference Form, February 17, 2016
- R8 Family Conference Form, June 13, 2016
- R9 Absent Letter to Parents from Diane D, Joyce, Principle, February 5, 2016 and April 18, 2016
- R10 IEP Summary – Annual Review, May 25, 2016
- R11 Medford Township Public Schools Student Registration form, September 6, 2018
- R12 Authorization to Release/Obtain Records for Information, February 13, 2018
- R13 Letter from Parents to Dr. Gale Ferraro and Dr. Joseph Del Rossi
- R14 Letter of Acknowledgment to Parents from Dr. Gale Ferraro, May 3, 2018
- R15 Individualized Family Service Plan (IFSP) Individualized Education Program (IEP), September 15, 2017
- R16 Children’s Hospital of Philadelphia Speech and Language Evaluation, April 24, 2018
- R17 Invitation for Initial Identification and Evaluation Planning, May 7, 2018
- R18 Kindergarten Screening Assessment
- R19 Initial Identification and Evaluation Planning – Proposed Action, May 21, 2018
- R20 Report of Occupational Therapy Evaluation by Amy LePage, OTR/L, July 10, 2018
- R21 Report of Social Evaluation by Tara M. Frangipani, LSW, July 12, 2018
- R22 Report of Cognitive and Educational Evaluation by Corrine Shemeley, M.Ed., LDT-C and Venus Ferry, M.Ed., Psychologist, July 26, 2018
- R23 Invitation for Initial Eligibility Determination and IEP Development, July 26, 2018
- R24 IEP, August 7, 2018
- R25 Physical Therapy Consultation Request. October 9, 2018
- R26 Consent for Physical Therapy Evaluation, November 3, 2018
- R27 Report of Physical Therapy Evaluation by Kelly Cole, PT, MS, December 5, 2018
- R28 Invitation to Assess Progress and Review or Revise IEP, December 17, 2018
- R29 IEP, December 19, 2018
- R30 Prescription Script for Physical Therapy from Esther Harris, M.D., January 21, 2017
- R31 Excessive Absence/Tardy Notification Letter, January 25, 2019
- R32 Letter Excusing Absences, January 15, 2019, January 21, 2019 and February 13, 2019
- R33 Excessive Absence/Tardy Notification Letter, May 29, 2019
- R34 Invitation for Annual Review of IEP (PRISE Annual Notice)
- R35 IEP, April 9, 2019
- R36 Letter to Parents from Dr. Gale Ferraro Enclosing Therapy Logs, May 9, 2019
- R37 Agreement for Psychiatric Evaluations, May 3, 2019
- R38 Assistive Technology Services Request Form, May 20, 2019
- R39 Progress Report for IEP Goals and Objectives 2018-2019, June 19, 2019
- R40 Student Daily Attendance Report, 2018-2019
- R41 Pupil Progress Report – Kindergarten, 2018-2019
- R42 Authorization to Release/Obtain Records or Information, June 28, 2019

- R43 Report of Psychiatric Evaluation by Thomas O'Reilly, MD, June 18, 2019
- R44 CTONI-2 Examiner Record Form
- R45 GARS – 2 Summary/Response Booklet
- R46 GARS – 2 Summary Response Booklet, 2019
- R47 Assistive Technology Questionnaire, July 11, 2019
- R48 Assistive Technology and Augmentative Alternative Communication (AAC) – Request for Services, June 26, 2019
- R49 Report of Assistive Technology Evaluation by Jennifer Fraczekiewicz, MS, CCC-SLP, ATP, July 15, 2019
- R50 Report of Psychiatric Evaluation by Susan E. Miller, M.A., LDT/C, March 15, 2019
- R51 Diagnostic Learning Evaluation, Susan Miller, May 10, 2019.
- R52 School Observation by Susan E. Miller, M.A., LDT/C, May 17, 2019
- R53 Report of Assistive Technology Evaluation by Kevin J. Cohen, M.S., CCC-SLP, November 8, 2019
- R54 Observation Report of the New Grange School dated January 21, 2020, Dr. Gale Ferraro and Corrine Shemeley
- R55 Math Data, 2018-2019 School Year
- R56 Math Work Samples, 2018-2019 School Year
- R57 Language Arts Data and Work Samples, 2018-2019 School Year
- R58 Writing Samples, 2018-2019 School Year
- R59 Int. Writing Samples, 2018-2019 School Year
- R60 Emails, 2018-2019 School Year
- R61 Resume of Gale Ferraro, Ed. D., LDT-C, NCED
- R62 Resume of Corrine Shemeley
- R63 Resume of Jill Brown
- R64 Resume of Ariana Borreggine
- R65 Resume of Maria Hansen
- R66 Resume of Regina McLaughlin
- R67 Resume of Venus Ferry
- R68 Resume of Amy LePage
- R69 Resume of Elizabeth Asbury
- R70 EDU 05541-19 Decision
- R71 “An experimental evaluation of guided reading and explicit interventions for primary grade students at risk for reading difficulties”
- R72 National Reading Panel Study
- R73 Laurel Education Group Website
- R74 KySS Mental Health Fellowship: Child and Adolescent

For J.D.

- R1 New Jersey Early Intervention System
- R2 BDI Comprehensive Report, September 25, 2014

- R3** New Jersey Early Intervention System Developmental Assessment Summary, May 10, 2014
- R4** Pennsauken Public Schools Notices
- R5** Pennsauken Public Schools Identification/Evaluation Planning Meeting Notices and Forms
- R6** Report of Psychological Evaluation by Azucena G. Calderon, M.A., April 21, 2015
- R7** Report of Occupation Therapy Evaluation by Nicoleta Houtras, MA, OTR/L, April 30, 2015
- R8** Report of Speech/Language Evaluation by Diane J. Powell, MA, CCC-SLP, SLS, April 20, 2015
- R9** Pennsauken Public School Document Transmittal, June 8, 2015
- R10** Report of Social History Evaluation by Hilda Guzmán, MSW, April 30, 2015
- R11** Invitation to a Meeting Notice, May 26, 2015
- R12** Pennsauken Public Schools, Eligibility/Classification Conference Report, June 4, 2015
- R13** Absent Letter to Parents from Diane D. Joyce, Principle, February 5, 2016 and April 18, 2016
- R14** Family Conference Form, June 13, 2016 and February 17, 2016
- R15** Individualized Education Program – Annual Review, May 25, 2016
- R16** IEP Summary – Annual Review, May 26, 2016
- R17** Individualized Family Service Plan (IFSP), Individualized Education Program (IEP), September 15, 2017
- R18** Medford Township Public Schools Student Registration Forms
- R19** Letter from Parents to Dr. Gale Ferraro and Dr. Joseph Del Rossi requesting evaluation
- R20** Letter from Dr. Gale Ferraro to Parents acknowledging request for evaluation, May 3, 2018
- R21** Invitation for Initial Identification and Evaluation Planning, May 7, 2018
- R22** Initial Identification and Evaluation Planning – Proposed Action, May 21, 2018
- R23** Kindergarten Screening Assessment, Spring 2018
- R24** Special Education Summer Program Progress Report, July 2018
- R24A.** Occupational Therapy Report of Amy LePage, July 11, 2018
- R25** Report of Social Evaluation by Tara M. Frangipani, LSW, July 12, 2018
- R26** Report of Cognitive and Educational Evaluation by Carin SHEMELEY, LDTC and Venus Ferry, M.Ed., July 26, 2018
- R27** Report of Speech/Language Evaluation by Gina McLaughlin, M.A., July 24 and 25, 2018
- R28** Invitation for Initial Eligibility Determination and IEP Development, July 26, 2018'
- R29** IEP, August 7, 2018
- R30** Physical Therapy Consultation Request, October 9, 2018
- R31** Consent for Physical Therapy Evaluation, November 4, 2018
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- R34** IEP, December 19, 2018

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- R37** Invitation for Annual Review of IEP (PRISE Annual Notice), March 25, 2019
- R38** IEP, April 9, 2019
- R39** Authorization to Release/Obtain Records or Information, May 3, 2019
- R40** Letter to Parents from Dr. Gale Ferraro enclosing therapy logs, May 9, 2019
- R41** Behavior Assessment System for Children, Third Edition, May 7, 2019
- R42** Behavior Assessment System for Children, Third Edition, June 3, 2019
- R43** Conners 3 Comparative Report
- R44** Report of Psychiatric Evaluation by Thomas O'Reilly, MD, June 18, 2019
- R45** BRIEF 2, Parent Form Interpretive Report, June 28, 2019
- R46** BRIEF 2, Teacher Form Interpretive Report, July 1, 2019
- R47** BRIEF 2, Protocol Summary Report, July 2, 2019
- R48** Authorization to Release/Obtain Records or Information, June 28, 2019
- R49** Report of Assistive Technology Evaluation by Jennifer Fraczkiwicz MS, CCC-SLP, ATP, July 15, 2019
- R50** Information Form for Assistive Technology Evaluation: Special Education Teacher, November 4, 2019
- R51** Pupil Progress Report – Kindergarten, 2018-2019
- R52** Progress Report for IEP Goals and Objectives 2018-2019, July 22, 2019
- R53** Student Daily Attendance Report, 2018-2019
- R54** Student Nurse Visits
- R55** Report of Diagnostic Learning Evaluation by Susan E. Miller, M.A., LDT/C, May 10, 2019
- R56** Ann Robinowitz Education Center, Student Observation by Susan E. Miller, M.A., LDT/C, May 17, 2019
- R57** Report of Psychiatric Evaluation by Amy B. Carnall, APN, DNP, July 30, 2019
- R58** Report of Assistive Technology Evaluation by Kevin J. Cohen, M.S., CCC-SLP, November 8, 2019
- R59** Observation Report of the New Grange School dated January 21, 2020, Dr. Gale Ferraro and Carin SHEMELEY
- R60** Math Data and Work Samples, 2018-2019 School Year
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- R70** Resume of Venus M. Ferry
- R71** Resume of Tara M. Frangipani
- R72** Resume of Regina McLaughlin
- R73** Resume of Amy C. LePage, MS, OTR/L

- R74** Resume of Elizabeth Asbury
- R75** EDU 05541-19 Decision
- R76** “An experimental evaluation of guided reading and explicit interventions for primary grade students at risk for reading difficulties”
- R77** National Reading Panel Study
- R78** Laurel Education Group Website
- R79** KySS Mental Health Fellowship: Child and Adolescent

### **Petitioners**

#### **For O.D.**

- P1** Psychiatric Evaluation by Dr. Amy Carnall, DNP, APN-BC
- P2** CV of Dr. Amy Carnall
- P3** Diagnostic Learning Evaluation by Susan Miller, MA, LDT/C.
- P4** School Observation by Susan Miller
- P5** CV of Susan Miller
- P6** Comprehensive Language Evaluation by Disha Patel, MS, CC-SLP
- P7** CV of Disha Patel
- P8** Assistive Technology Evaluation by Kevin Cohen, MS CCC-SLP
- P9** Education Evaluation by Amanda Colannino, MS Ed, LDT-C
- P10** CV of Amanda Colannino
- P11** IEP – Newgrange
- P12** Social Strides Social Skills – Newgrange by Renee Brana
- P13** Report Card – Newgrange
- P14** Attendance Report – Newgrange
- P15** i-Ready Diagnostic Results
- P16** Curriculum Scope and Sequence
- P17** Work Samples – Newgrange
- P18** Petitioner’s Witness List
- P19** Evaluation by Dr. Stephen Schaffer
- P20** Neurological Evaluation by Dr. Charles Brill
- P21** MRI Results from Nemours Dupont Pediatrics
- P22** Genetics Evaluation by Dr. Karen Gripp
- P23** Speech and Language Evaluation by Angie Connor, MA CCC-SLP
- P24** CHOP Developmental and Behavioral Pediatrics & Autism Integrated Care Intake Questionnaire
- P25** Correspondence between Andrew Morgan and Gale Ferraro
- P26** Acceptance Letter from Newgrange School
- P27** Letter from Andrew Morgan to Andrew Li, Esq.
- P28** IFSP/IEP Review by Amy Stitzel
- P29** Speech and Language Evaluation by Alexis Bouman, MS, CCC-SLP
- P30** CV of Kathy Bostock, MA OG-THT
- P31** CV of Carole Paine, Teacher at Newgrange

For J.D.

- P1** Diagnostic Learning Evaluation by Susan Miller, MA LDT/C
- P2** Classroom Observation by Susan Miller
- P3** CV of Susan Miller
- P4** Psychiatric Evaluation by Dr. Amy Carnall, DNP, APN-BC
- P5** CV of Dr. Amy Carnall
- P6** Comprehensive Language and Social Communication Evaluation by Lindsay Clayton, MS, CCC-SLP
- P7** CV of Lindsay Clayton
- P8** Assistive Technology Evaluation by Kevin Cohen, MS CCC-SLP
- P9** Education Evaluation by Amanda Colannino, MS Ed, LDT-C
- P10** CV of Amanda Colannino
- P11** IEP – Newgrange 2019
- P12** Social Strides Social Skills – Newgrange by Renee Brana
- P13** Report Card – Newgrange 2019-2020
- P14** Attendance Report – Newgrange 2019
- P15** i-Ready Diagnostic Results
- P16** Curriculum Scope and Sequence
- P17** Work Samples – Newgrange
- P18** Petitioner’s Witness List
- P19** Evaluation by Dr. Stephen E. Schaffer
- P20** Neurological Evaluation by Dr. Charles Brill
- P21** IFSP/IEP Review by Carly Wese, MS, CCC-SLP
- P22** Speech and Language Evaluation by Alexis Bouman, MS, CCC-SLP
- P23** Neurological Evaluation by Steven Gottfried, MD
- P24** “CHOP” Developmental and Behavioral Pediatrics & Autism Integrated Care Intake Questionnaire
- P25** Letter from Andrew Morgan to Gale Ferraro
- P26** Letter sent to Petitioners from Robert Hegedus, Principal of the Newgrange School
- P27** Letter from Andrew Morgan to Andrew W. Li, Esq.
- P28** CV of Kathy Bostock, MA OG-THT
- P29** CV of Carol P. Paine