

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

DECISION

OAL DKT. NOS. EDS 12783-14 AND
EDS 01792-15
AGENCY DKT. NOS. 2015-21676 &
2015-22205

N.S. AND M.S. ON BEHALF OF A.S.,

Petitioners,

v.

WEST MILFORD TOWNSHIP

BOARD OF EDUCATION,

Respondent.

Rebecca K. Spar, Esq., for petitioners (Cole, Schotz, Meisel, Forman & Leonard,
attorneys)

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

Record Closed: August 31, 2015

Decided: September 1, 2015

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

STATEMENT OF THE CASE

On October 1, 2013, West Milford proposed an Individualized Education Program (IEP) for A.S., which included, among other things, a multisensory approach to reading for twenty-five minutes each day, plus speech and language therapy for thirty minutes twice a week. Petitioners, however, wanted more. Did West Milford provide A.S. with

an appropriate IEP? Yes. An IEP must be reasonably calculated to provide significant learning and meaningful educational benefit, not maximize the potential of each child.

PROCEDURAL HISTORY

I.

A.

On August 28, 2014, N.S. and M.S., on behalf of their son A.S., filed a petition for a due process hearing with the Office of Special Education Programs. In their petition, petitioners describe the nature of their problem and the facts they alleged relate to their problem. At the time petitioners filed their petition, A.S. was nine-years-old and had just completed third grade.

B.

Petitioners allege that in second grade, A.S. still confused his b's and d's and complained the words seemed like they were "on top of each other." At the time, A.S. was attending parochial school and his teachers referred him to Bergen County Special Services for an educational assessment. According to the educational assessment, A.S.'s reading comprehension was at the 9th percentile, his pseudo-word decoding was at the 4th percentile, his word reading was at the 5th percentile, his listening comprehension was at the 2nd percentile, and his numerical operations was at the 5th percentile. Petitioners write that these results were in contrast to his oral expression, which was at the 42nd percentile, and lower than expected based on his verbal comprehension index score on the WISC-IV. As a result, A.S. was found to have a specific learning disability and was provided with supplemental instruction each week in reading, language arts, and mathematics.

C.

Petitioners reveal in their petition that they had been concerned about the difficulties A.S. was having with reading before second grade and that they had retained a private tutor for him in the summer of 2012. Petitioners write that the tutor noted A.S. had difficulty storing the sounds associated with letters, expressing himself through written language, and grasping math concepts. Petitioners also write that because of these difficulties, the tutor noted A.S. was resistant to writing and had difficulty applying math concepts consistently. According to petitioners, the tutor believed A.S. had dyslexia. As a result, the tutor used a multisensory approach to her teaching—namely an Orton-Gillingham approach.

II.

Petitioners continue in their petition that they remained concerned about the difficulties A.S. was having with reading throughout second grade and paid for a psychological evaluation at the end of second grade. Jennifer Zeisz, Ph.D., performed the psychological evaluation. Petitioners write that Zeisz first reviewed the educational assessment by Bergen County Special Services and then administered additional ones. According to the psychological evaluation, A.S.'s accuracy and fluency were at the 5th percentile, his oral reading quotient was at the 8th percentile, and his ability to spell words and write sentences were at the 6th percentile. The psychological evaluation also stated that A.S. read very slowly and made numerous errors pronouncing words. As a result, A.S. was found to have a specific learning disorder with an impairment in mathematics.

A.S. was also found to have attention deficit hyperactivity disorder combined type.

Given these diagnoses, Zeisz recommended intense interventions for reading, spelling, and writing, following a planned sequence with a writing specialist trained in methods such as Orton-Gillingham.

Zeisz also recommended specific interventions for math.

III.

A.

On August 15, 2013, petitioners sent a copy of the psychological evaluation to West Milford, together with the educational assessment conducted by Bergen County Special Services, and asked West Milford to schedule a meeting to develop an IEP for A.S. as quickly as possible.

On September 6, 2013, a transfer planning conference was held. At the conference, West Milford recommended replacement resource classes for reading, language arts, and math and modified general education classes for science and social studies. West Milford also recommended a speech and language evaluation. Finally, West Milford recommended informal measures to evaluate the transition to school.

Petitioners note in their petition that the transfer plan was to be implemented immediately and that they consented to its immediate implementation.

B.

On September 9, 2013, the first day of school in West Milford, A.S. began at Upper Greenwood Lake Elementary School, which the parties referred to at the hearing as UGL.

IV.

In their petition, petitioners write that they consented to a speech and language evaluation as long as it did not delay the development of the IEP. From September 10 to September 17, 2013, Jennifer Wallin, a learning-disabilities-teacher consultant and a speech-language specialist, performed the speech and language evaluation. According to the speech and language evaluation, A.S.'s core language score on the CELF-4 was at the 8th percentile and his working memory index was at the 3rd percentile.

Wallin summarized that A.S. presented with an articulation and a phonological disorder and demonstrated word-retrieval difficulties. In addition, Wallin summarized

that retaining orally presented material was an area of significant concern for A.S. Furthermore, Wallin summarized that A.S. demonstrated significant difficulty maintaining attention to the speech tasks and required frequent verbal cues and breaks to maintain attention. Moreover, Wallin summarized that these difficulties could impact his literacy and learning.

B.

On September 19, 2013, a pupil review meeting was held. On that date, a benchmark assessment was performed and A.S.'s reading level fell at midway through first grade. As a result, the parties agreed that a more multisensory approach to reading be discussed for A.S. at the IEP meeting scheduled for October 1, 2013.

C.

On October 1, 2013, the IEP meeting was held to develop the IEP for third grade. At the meeting, West Milford presented petitioners with a proposed IEP. According to the draft, A.S. was to continue in the replacement resource classes for reading, language arts, and math, and he was to continue in the modified general education classes for science and social studies, but A.S. was to receive a specific multisensory approach to reading for twenty-five minutes each day within the ninety minutes of his replacement reading and language arts class plus speech and language therapy for thirty minutes twice a week in a small group. In addition, A.S. was to receive supplementary aides and services for twenty-five minutes each day within his modified science and social studies classes. Finally, A.S. was to remain in the general education classes for gym, art, music, library, and lunch.

D.

Petitioners, however, wanted more. More pointedly, petitioners wrote in their petition that they wanted instruction that was more integrated, more systematic, and more specialized. In addition, petitioners wrote that they wanted smaller group instruction at A.S.'s level throughout the day and more one-to-one instruction as

needed. Petitioners were also concerned that Kristin Yuhas, the special education teacher in the replacement reading and language arts class, and the one who would be using the multisensory approach to reading for A.S., had been trained in, but had not yet been certified in, the Orton-Gillingham approach, despite the fact that the proposed IEP stated petitioners would be notified if A.S.'s needs ever exceeded Yuhas's level of experience.

Petitioners write in their petition that they believed the IEP was inappropriate, that they asked West Milford to place A.S. in The Craig School, and that they withdrew A.S. from UGL and placed him in The Craig School after West Milford refused to do so.

Petitioners placed A.S. in The Craig School on October 18, 2013.

IV.

Petitioners later retained Lois Mishkin, a learning-disabilities-teacher consultant and a speech-language therapist, who met with A.S., reviewed his educational records, observed him at The Craig School, and observed the program West Milford had proposed for A.S. at UGL.

A.

Petitioners write in their petition that Mishkin opined the proposed IEP would not have provided A.S. with an appropriate education because twenty-five minutes was insufficient time for the specialized reading, spelling, and writing instruction A.S. needed; the specialized reading, spelling, and writing instruction was not integrated throughout A.S.'s other classes; and the reading material was above A.S.'s reading level.

In addition, petitioners write that Mishkin opined no plan existed to integrate the decoding skills A.S. would have been taught into his replacement reading and language arts class and no multisensory program could be identified to teach the writing.

Finally, petitioners write that Mishkin opined the general education science class was too large for A.S. to be successful because his sustained attention would likely be compromised and the independent reading and required vocabulary would have been too challenging for him.

B.

Meanwhile, petitioners write in their petition that Mishkin opined The Craig School could offer A.S. an appropriate education because its classes were smaller, the rooms were carpeted to reduce noise, and the teachers spoke softly. Petitioners continue that the Orton-Gillingham approach was used in all of the classes and organizational skills were reinforced throughout the day. Finally, petitioners highlight in their petition that A.S. did not want to write sentences when he began at The Craig School because he did not know how to spell but learned a specific process for completing written work and how to use assistive technology for spelling at The Craig School to help remove that barrier.

VI.

A.

Petitioners gave a copy of Mishkin's report to West Milford and their consent for West Milford to observe A.S. at The Craig School but West Milford maintained that its IEP was appropriate and refused to place A.S. at The Craig School.

B.

When the parties could not resolve their dispute through mediation, petitioners filed their petition for due process.

On October 3, 2014, Office of Special Education Programs transmitted the case to the Office of Administrative Law under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15, and the act establishing the office, N.J.S.A. 52:14F-1 to -23, for a

hearing under the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6, and the Special Education Program, N.J.A.C. 1:6A-1.1 to -18.5.

The case bears Office of Administrative Law docket number EDS 12783-14 and agency docket or reference number 2015-21676.

C.

In its answer, West Milford writes, among other things, that A.S. was evaluated according to law, was appropriately determined eligible for special education and related services, and was provided appropriate services and the opportunity to make meaningful educational progress in the least restrictive environment through his IEP.

In addition, West Milford writes that IEP teams are not obligated to accede to parental requests for student placement, especially when insufficient evidence exists a student requires an out-of-district placement to make educational progress in his or her area of weakness.

Moreover, West Milford writes that the child study team and members of the IEP team appropriately reviewed the existing information regarding A.S.'s educational functioning and determined the proposed IEP would meet his needs.

Indeed, West Milford writes that the child study team and members of the professional staff working with A.S., or who would be working with A.S., opined and concluded the proposed IEP was reasonably calculated to provide A.S. with significant learning and meaningful benefit.

As such, West Milford seeks an order dismissing the petition for due process in its entirety.

VII.

On December 12, 2014, an IEP meeting was held to develop an IEP for fourth grade. At the meeting, West Milford presented petitioners with a proposed IEP. According to the draft, A.S. would return to the replacement resource classes for reading, language arts, and math, and he would return to the modified general education classes for science and social studies, but A.S. would receive a specific multi-sensory approach to reading for thirty minutes each day (instead of twenty-five minutes each day) within the ninety minutes of his replacement reading and language arts class, plus speech and language therapy for twenty minutes each day (instead of thirty minutes only twice a week) in a small group. In addition, A.S. was to receive supplementary aides and services for forty minutes two to three times per week (instead of twenty-five minutes each day) within his modified science and social studies classes. Finally, A.S. was to remain in the general education classes for gym, art, music, library, and lunch.

VIII.

A.

On January 7, 2015, petitioners filed another petition for due process. In their petition, petitioners repeat their allegations from the previous petition for due process but add that West Milford refused to hold the IEP meeting at The Craig School where A.S.'s teachers could have participated in the meeting. As a result, petitioners assert that this refusal is a violation of the IDEA, and that this refusal alone constitutes a denial of a FAPE.

B.

Petitioners allege that their concerns about the proposed IEP were also ignored. In particular, petitioners write that the IEP would still place A.S. in general education classes for science, social studies, and specials where the classes would be too large for him, no aide would be present, and a certified special education teacher would not be in the classroom. As such, petitioners assert that the A.S. wouldn't be able to read the textbooks or keep up with the pace of the classes.

Petitioners also write that A.S. would only get ninety minutes of language arts and reading instruction per day plus one thirty-minute session per week. Petitioners continue that the daily thirty-minute, small-group instruction would be a pull-out from the ninety-minute class. As such, petitioners assert that the reading and language arts instruction A.S. would receive at UGL would be far less than A.S. needs and receives at The Craig School and that it would be in a group with widely divergent skills.

As another example, petitioners write that the organizational goals were nothing more than statements of what one would like any student to be able to do and contain nothing about what it proposed A.S. should be able to do.

C.

More pointedly, petitioners allege that the proposed IEP does not offer the intensive, integrated instruction A.S. needs. In particular, petitioners write that West Milford does not use the software The Craig School uses. For example, petitioners write that West Milford does not use Inspiration software, a graphic organizer; Co:Writer 6, a word-prediction program; and Kurzweil software, a multisensory reading program. Similarly, petitioners write that West Milford does not use the reference sheets or checklists that The Craig School uses to help A.S. every step of the way throughout the writing process and to help reinforce the steps A.S. needs to take to be a better writer. Indeed, petitioners write that the modifications in the IEP made less demands of A.S. and held him to a lower standard. As such, petitioners assert that to bring A.S. back to West Milford would cause him to lose all the gains he has made at The Craig School.

IX.

A.

On February 6, 2015, Office of Special Education Programs transmitted this second case to the Office of Administrative Law under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15, and the act establishing the office, N.J.S.A. 52:14F-1 to -

23, for a hearing under the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6, and the Special Education Program, N.J.A.C. 1:6A-1.1 to -18.5.

That case bears Office of Administrative Law docket number EDS 01792-15 and agency docket or reference number 2015-22205.

B.

In its answer, West Milford repeats that A.S. was evaluated according to law, was appropriately determined eligible for special education and related services, and was provided appropriate services and the opportunity to make meaningful educational progress in the least restrictive environment through his IEPs.

In addition, West Milford repeats that IEP teams are not obligated to accede to parental requests for student placement, especially when insufficient evidence exists a student requires an out-of-district placement to make educational progress in his or her area of weakness.

Moreover, West Milford repeats that the child study team and members of the IEP team appropriately reviewed the existing information regarding A.S.'s educational functioning and determined the IEP would meet his needs.

Indeed, West Milford repeats that the child study team and members of the professional staff working with A.S., or who would have been working with A.S., opined and concluded the IEP was reasonably calculated to provide A.S. with significant learning and meaningful benefit

As such, West Milford seeks an order dismissing the petition in its entirety.

On February 3, February 4, February 23, March 24, March 30, and April 27, 2015, I held the hearing; on June 30, 2015, the parties submitted their closing briefs; and on August 31, 2015, I closed the record.

FINDINGS OF FACT

Based on the testimony the parties provided and the documents they submitted, I **FIND** the following as **FACT**:

I.

West Milford

Kimberly Walker

A.

Walker is a literacy specialist and test coordinator at West Milford. She has a bachelor's in elementary education from Montclair State University, a master's in reading specialization from Kean University, and an endorsement as a reading specialist from the Department of Education. At West Milford, Walker assesses and analyzes student literacy performance using the Benchmark Assessment Kit by Fountas & Pinnell. Similarly, Walker instructs students who are performing below grade level in the areas of reading and writing and provides explicit instruction in small group or individual settings using the Leveled Literacy Intervention Kit by Fountas & Pinnell. Walker was offered and accepted as an expert in elementary education and in reading specialization and proved to be both a credible and reliable witness.

B.

Walker testified that she has been serving as the literacy specialist and test coordinator at UGL for the past six years and performs the Benchmark Assessment for all incoming students at UGL. Walker stated that on September 9, 2013, she performed the Benchmark Assessment for A.S. and determined his reading level was what Fountas & Pinnell would expect for the second interval of first grade. As such, Walker believed that A.S. needed intensive intervention.

Walker further testified that she shared this assessment with members of the IEP team and believed the replacement resource class for reading and language arts with the multisensory approach to reading the child study team proposed was appropriate for A.S. because it was what he needed based on his assessment. Walker emphasized that the replacement resource class included small-group instruction and guided reading and that Yuhas was more than capable of delivering the instruction. Moreover, Walker noted that the grade disparity in the classroom would have been of no consequence to A.S. because the reading level and not the grade level is what drives the instruction.

Likewise, Walker testified that she believed the modified general education classes for science and social studies were also appropriate for A.S. for a number of reasons: first, all of the material would be introduced before class; second, an extra period for support would have been provided after class; third, all of the assignments could have been tiered during class; and fourth, many of the projects would have been in groups.

C.

Regarding the IEP for fourth grade, Walker testified that she believed it was also appropriate for A.S. because it still included the multisensory approach to reading, it still included the small-group instruction, it still included the guided reading, and it still included the same configuration of students.

Kristin Yuhas

A.

Yuhas is the resource teacher for the replacement reading and language arts class. She is highly educated, having received a bachelor's in psychology from Rutgers University in May 1991 with high grades and a master's in general-theoretical psychology from Farleigh Dickinson University (FDU) in December 1992 with high

grades. Yuhas received her teaching certificate in Orton-Gillingham from FDU in July 2014.

Yuhas explained that the Orton-Gillingham program at FDU is a two-year program and that she was halfway through the program when A.S. began at UGL. Yuhas further explained that she had already taught the Orton-Gillingham approach to four students at UGL plus a group of five students off-site with reading challenges, including dyslexia, and that she was monitored by the program administrators at FDU throughout the entire time she was in the Orton-Gillingham program. Yuhas was offered and accepted as an expert in both special education and Orton-Gillingham instruction. Like Walker, she proved to be both a credible and reliable witness.

B.

On September 27, 2013, Yuhas administered a multisensory reading assessment for A.S. to determine whether A.S. would be a fit for her class. Yuhas testified that she believed A.S. would have been a good fit for her class and presented her findings to the members of the IEP team at the IEP meeting on October 1, 2013. Yuhas specified that she thought A.S. would have been a good fit for her class because the Orton-Gillingham approach is foundational, meaning it builds upon itself, and all of the students in the class would have been at the same level of skill. Like Walker, Yuhas emphasized that the reading level and not the grade level is what drives the instruction.

Yuhas further specified that the twenty-five-minute block of time A.S. would have spent with her each day, one-on-one, would have been appropriate because the skills learned during that twenty-five-minute block of time were meant to be generalized, and that she would have coordinated the generalization of those skills with all of the other teachers, as well as Walker, in a collaborative effort. Yuhas also emphasized that the general education setting, including electives, is equally important because the whole point of teaching these skills is to access the material in general education classes. Indeed, Yuhas asserted that just because a student can't decode a word doesn't mean the student doesn't understand the word. For example, Yuhas said just because a

student can't decode "photosynthesis" doesn't mean the student doesn't understand photosynthesis.

Finally, Yuhas testified that any student or teacher who needs extra help can always cometo her for that extra help.

C.

Regarding the IEP for fourth grade, Yuhas testified that she believed it was also appropriate for A.S. because it still included the multisensory approach to reading, which A.S. still needed based on the information she reviewed from The Craig School, and because the twenty-five-minute block of time A.S. would have spent with her each day, one-on-one, would have been increased to thirty minutes.

Jennifer Magnotta

A.

Magnotta is the resource teacher for the third and fourth graders in the resource room. She is highly qualified, having been certified to teach reading, language arts, math, science, and social studies. Magnotta had come to UGL the previous year to teach kindergarten through sixth grade as a maternity-leave replacement and collaborated with administrators, case managers, general education teachers, and related-services providers to provide instruction in reading, language arts, and math. Magnotta also helped prepare lessons and provide feedback on IEPs. The year before she came to UGL, Magnotta was a teacher's aide for fifth and sixth graders in the resource room of another school where she worked with individuals and small groups to reinforce materials and lessons in reading, language arts, math, science, and social studies. As such, Magnotta was offered and accepted as an expert in special education. Like Walker and Magnotta who testified before her, Magnotta proved to be both a credible and reliable witness.

B.

Magnotta testified that she met petitioners at the transfer meeting on September 6, 2013, where petitioners expressed their concerns about A.S. and his struggles with reading and writing, with reading being the focus of their concern.

Magnotta further testified that she met A.S. the first day of school and that he was excited to start school. Magnotta stated that A.S. was friendly, got along with all of his classmates, and was eager to participate. According to Magnotta, A.S. wanted to prove himself.

To be sure, anyone who testified about A.S. testified that A.S. was friendly, that he got along with everyone, and that he was a joy to have in class. Indeed, everyone who testified about A.S. had nothing but superlatives to say about him and his winning personality. If anything, the witnesses from West Milford were uniformly disappointed that he only lasted five weeks in their program and did not remain longer at UGL.

C.

Magnotta testified that she prepared written notice of what was discussed at the transfer meeting on September 19, 2013, in preparation for the IEP meeting on October 1, 2013. In that notice, Magnotta wrote that A.S. had made a positive transition to UGL, that his strengths and weaknesses were discussed, and that A.S. would be assessed for a more multisensory approach to reading. Toward this end, Magnotta explained that a speech and language evaluation was to have been conducted and that Yuhas was to have been consulted about the Orton-Gillingham approach to reading.

Magnotta continued that both Dragon software and Inspiration software were available to A.S. but explained that petitioners did not want A.S. to use the Dragon software because they wanted him to learn how to type. Magnotta further explained that she does not encourage her students to use Inspiration software because she believes they become distracted by it and prefers them to use graphic organizers instead. Still, Magnotta stated that a whole host of other supports and strategies were

available to A.S. for reading and writing—as they were for all students who work with Yuhas on reading and writing—including Explode the Code, Good Habits for Great Readers, Reading A-Z, Raz Kids, and Good Habits for Great Writers.

Indeed, Magnotta believed that A.S. was doing grade-level work before he left UGL, had already shown great improvement in the five weeks he was in her class, and was fitting in well within the group at UGL, both socially and academically. Magnotta specified that A.S. had good comprehension but had trouble getting his thoughts down on paper. Toward this end, Magnotta noted that A.S. was very creative and would even draw pictures to get his thoughts across.

Similarly, Magnotta stated that she used guided reading with A.S. because she fully supported Yuhas with the Orton-Gillingham approach to reading and wanted A.S. to progress as quickly as possible.

D.

Regarding the IEP for fourth grade, Magnotta testified that she thought it was appropriate because West Milford was going to pick up where The Craig School left off and that the IEP provided A.S. with everything he needed to succeed. Magnotta explained that she was not needed for the science and social studies classes and thought it was just as important for A.S. to interact with his peers in the general education setting as it was to learn how to read in the resource room. In fact, on cross-examination, Magnotta noted that A.S. only needed an average amount of attention in class. More specifically, Magnotta noted that A.S. could not complete a paragraph independently (which is why his reading level fell where it did) but that A.S. could link ideas graphically (which is why A.S. needed help).

On redirect examination, Magnotta clarified that she differentiates the work for all of the students in her class, even when she teaches in groups; that every student in third grade needs help, even those working at grade-level; and that A.S. needed help with decoding, while others needed help with comprehension.

Thus the implication that A.S. would not get the attention he needed in her class was inapposite.

E.

Once again, Magnotta proved to be a credible and reliable witness. She was very well connected to her work, on top of the materials, and very confident in her ability to deliver the instruction needed. I have no doubt Magnotta would have been able to implement the IEP for A.S. with great competence.

Jennifer Harris

A.

Jennifer Harris is a general education teacher for third grade and the general education teacher A.S. had for the five weeks he was in third grade at UGL. Harris received a bachelor's in interdisciplinary liberal studies with a minor in early childhood education as well as a bachelor's in dance from James Madison University in May 2008. In addition, Harris received a master's in education administration from Scranton University in May 2014. Harris received all of her degrees with high grades. Finally, Harris holds a certificate in elementary education for kindergarten through sixth grade and a certificate in dance education for kindergarten through twelfth grade from the Department of Education.

Harris testified that she has had special education students in her classes before and that she becomes familiar with their IEPs in order to become familiar with their needs.

Harris was offered and accepted as an expert in elementary education and instruction with a focus on third grade and proved to be both a credible and reliable witness with command of both her class and its curriculum.

B.

Harris testified that she had nineteen students in her third-grade class in the beginning of the 2013-14 school year, four of whom were classified, including A.S. Harris recounted that a typical day involved taking attendance, taking the class to specials, allotting time for snack, and doing morning work, which was tiered. Harris specified that the first assignment every morning was an assignment every student could do and the reading and language arts were the replacement reading and language arts for A.S. Harris explained that both science and social studies did not require reading the text because she provided the instruction and had implemented a buddy system for students to help one another. Moreover, Harris noted that those who needed extra support such as A.S. were seated near her so she could provide such help.

C.

Harris testified that A.S. was a joy to have in class; that the students loved him, especially because he was new; and that he constantly earned recognition for his kindness. Harris thought A.S. had been fitting in well with the accommodations he was receiving and believed A.S. would have done even better with the additional accommodations, which were contemplated. Harris noted that A.S. was already in the resource room for replacement reading and language arts, was taking advantage of the buddy system for science and social studies, and was seated near Harris for extra help. Harris added that A.S. was also receiving study guides, which pulled out the important parts of the text for him. More pointedly, Harris explained that A.S. did need help writing but was strong verbally so she simply helped A.S. write down what he told her.

Harris testified that she shared this information with petitioners at the pupil review or progress meeting on September 19, 2013, and that she highlighted her observations A.S. seemed happy and positive. As Harris put it, A.S. loved his peers and they loved him. Finally, Harris stated that A.S. had fit in well socially and academically in his specials and that his character and social skills were his strengths.

D.

Regarding the IEP for third grade, Harris testified that she wrote in the Present Levels of Academic Achievement and Functional Performance section that A.S. always came to school with a positive attitude, seemed to adjust well to his peers, enjoyed science and social studies, but required support in groups, on tests, and staying on task:

A.S. always comes to school with a positive attitude. He seems to enjoy school and is adjusting well to his peers. He has made several friendships within the classroom. A.S. enjoys Science and social Studies. He is always eager to try his best and participates well in discussions. He is always polite. A.S. does require one-on-one support in the whole group setting. All tests have been completed with one-on-one support. He struggles with organization and staying on task without frequent, consistent support.

[J-20.]

Harris specified that A.S. needed directions broken down for him (but a full-time aide was recommended for him), that A.S. needed help with organization (but the buddy system had provided that support for him), and that A.S. needed extra support in science and social studies (but the materials were to be reinforced in the resource room). In addition, Harris stated that A.S. did do well in science and social studies. Moreover, Harris asserted that she had direct experience with Magnotta and Yuhas, was confident in their ability to provide the extra support for A.S., and thought A.S. would do even better with the full-time aide, the additional modifications, and the speech therapy.

On cross-examination, Harris testified that A.S. had already improved over time, that he just needed help getting started with his work, and that she made sure his reading challenges did not inhibit his work.

On redirect examination, Harris testified that she made ample use of the smart board, the documents camera, and the video clips.

Finally, Harris testified that computers and iPads were available to A.S. in the resource room.

Jennifer Wallin

A.

Once again, Wallin is a learning-disabilities-teacher consultant and the speech-language specialist for UGL. She received a bachelor's in history from Bingham University in June 1996, completed a post-baccalaureate program in communication sciences and disorders at Long Island University in June 2008, and received a master's in communication sciences and disorders at Montclair State University in January 2011. Wallin holds a certification as a speech-language specialist from the Department of Education and a license for speech and language from the Division of Community Affairs. Wallin also holds a certificate of clinical competence from the American Speech Language Hearing Association (ASHA).

Wallin testified that she has evaluated thirty to forty students for speech and language in West Milford over the past three years and has helped develop fifty to sixty IEPs over the same period of time. Wallin also noted that her thesis at Montclair State University was the relationship between phonemic awareness and phonological impairment in children, which is the very disability at issue in this case. Wallin was offered and accepted as an expert in speech and language.

B.

Wallin testified that she first called petitioners on September 12, 2013, to set up an appointment for a speech and language evaluation, and that she was finally able to observe A.S. on September 18, 2013, having received the case history form from M.S. and the teacher input form from Magnotta. Wallin continued that she had concerns about A.S.'s articulation and his need for redirection. Her speech and language report was admitted into evidence as R-14, and is fully corroborated by her testimony.

Dated September 10, 2013, through September 17, 2013, the report revealed an articulation and phonological disorder, warranting services. The Goldman Fristoe Test of Articulation placed A.S. below normal limits for his age and gender; the CELF-4 placed him in the borderline range of functioning or the low range of functioning for all subtests; and the EOWPVT-4 placed him within the average range for his age and gender. Meanwhile, the TAPS-3 was analyzed to determine his overall auditory processing skills and it placed A.S. below normal limits for his age and gender as well.

Wallin testified that she participated in the IEP meeting on October 1, 2013, and that she recommended the multisensory or Orton-Gillingham approach to reading with Yuhas for twenty-five minutes each day in the reading and language arts replacement class. In addition, Wallin recommended speech and language therapy with her two times a week in a group setting for thirty minutes per session to practice strategies for overcoming his speech and language difficulties. Moreover, Wallin explained that these strategies were to be used both inside and outside of the classroom, and that she would have collaborated with the general education and special education teachers to integrate these strategies into the classroom.

For example, Wallin testified that she would have focused on the vocabulary of the work A.S. would do in class and the vocabulary of the tests he would take on the material. Wallin also explained that the help she would have given A.S. with his reading and writing would have also helped A.S. generate ideas about his work and how to write them down. Similarly, Wallin stated that she would have given A.S. phonological therapy too, helping him visualize the words and read them aloud.

Wallin testified that she had experience working with Yuhas but never got a chance to work with Yuhas on implementing any of these strategies or providing any of the therapy because petitioners never gave her their consent for her to work with A.S.

C.

Regarding the IEP for fourth grade, Wallin testified that she participated in the IEP meeting on December 12, 2014, and that she had recommended the same program

for fourth grade because A.S. had the same difficulties with semantic relationships and recalling sentences as he had in third grade, but that she had limited information from The Craig School and wanted to see more test results and teacher reports about how well A.S. had done in class. Wallin noted that she had asked The Craig School for this information before the IEP meeting but the information had not been forthcoming until after the meeting. Regardless, Wallin asserted that the information she did end up receiving from The Craig School and later from Mishkin would not have changed her opinion about the appropriateness of the proposed IEP.

Daniel Novak

A.

Novak is the principal at UGL and has been the principal at UGL for the past six years. He received a bachelor's in elementary education and English with an emphasis on writing composition from William Paterson University in May 2000 and a master's in educational administration from Caldwell College in July 2004. He holds standard teaching certificates for kindergarten through fifth grade, for principal, and for school administrator from the Department of Education. Finally, Novak holds a supervisor certificate of eligibility from the department.

Novak testified that he is the one who planned, initiated, and then implemented the Reader's and Writer's Workshop at UGL. Novak added that his priority at UGL is to improve reading and writing. Moreover, Novak testified that the Reader's and Writer's Workshop has been so successful at UGL that West Milford has adopted it district-wide.

Novak further testified that he is the one who brought Fountas & Pinnell to West Milford; that he is the one who brought technology such as multi-media projectors, computers, smart boards, and hand-held devices into the classrooms; and that he is the one who augmented the Intervention and Referral Service Department at UGL.

Novak was offered and accepted as an expert in elementary school administration.

B.

Novak testified that he was especially familiar with A.S. while he was at UGL because his son and A.S. were in class together and were friendly with one another. Novak stated that A.S. was a happy, pleasant child, who was transitioning positively at UGL. Novak noted that he was especially familiar with Yuhua and the reading and writing program she administered because he was the one who helped her build it. In fact, Novak asserted that reading was his number one priority at UGL and the main focus of his staff meetings. Indeed, Novak explained that if any student is not advancing in reading, it is brought to the attention of the Intervention and Referral Service Department immediately.

Novak further testified that he sees students with special needs as an advantage to his school based on the culture he and his staff foster at the school where every student counts, so much so that UGL has been recognized as a “National Character School” by United States Department of Education for having this culture.

On cross-examination, Novak testified that this recognition by the United States Department of Education is based on the integration of character into programming, including service learning. Novak was clearly proud of this recognition, which he shares with his colleagues, and made it equally clear that he was ready, willing, and able to meet any emergent needs A.S. presented. For example, Novak noted on redirect examination that the IEP team offered more multisensory programming in the IEP for fourth grade because petitioners asked for it.

In short, Novak proved to be a credible and reliable witness who demonstrated great enthusiasm for his job, a creative mind at coming up with innovations for learning, and someone who truly seeks to provide the best for his students and staff alike.

II.

Petitioners

Lois Mishkin

A.

Once again, Mishkin is a learning-disabilities-teacher consultant and a speech-language specialist. Mishkin received a bachelor's in speech and hearing from New York University in 1967, a master's in speech pathology from New York University in 1970, and a post-master's certification in learning disabilities from Montclair State University in 1980. Mishkin holds a certification as a speech-language specialist from the Department of Education and a license for speech and language from the Division of Community Affairs. Mishkin also holds a certificate of clinical competence from ASHA and is a former special education teacher.

Mishkin is an experienced learning-disabilities-teacher consultant and a speech-language specialist, having assessed and treated more than 200 children with language-based disabilities and having dealt with more than ninety school districts in the development of IEPs. She has also been part of IEP teams in the past, but Mishkin's specialty and area of focus is serving as a consultant to schools in developing educational programs for students with brain injuries. It is also in presenting in-service training to staff on brain injuries.

During her lengthy career, Mishkin has never taught in a classroom and has only been part of an IEP team for one four-year stretch, from 2002-06, in the Scotch Plains-Fanwood School District. Mishkin has no formal training in the Orton-Gillingham approach to reading and holds no supervisory certificate or endorsement from the Department of Education. The only other time Mishkin ever worked for a school district was from 1972-80 when she served as a "speech-language correctionist" for the Mountainside Board of Education.

Mishkin was offered and accepted as an expert in special education and an expert in language-based disabilities such as dyslexia and as a speech-language therapist.

B.

Mishkin testified that she first met A.S. in December 2013, gave him an informal reading activity, and saw that he was struggling to read at a first-grade level.

Mishkin testified that she then reviewed a number of documents. First, Mishkin stated that she reviewed the educational assessment from Bergen County Social Services dated February 24, 2013, and saw that A.S.'s WIAT-III scores indicated a severe disability. In particular, Mishkin noted that his decoding was poor. More specifically, Mishkin asserted that eight of the twelve subtests ranked between the 2nd and 9th percentiles and that the stanine values were below average too.

Second, Mishkin stated that she reviewed the psychological report from Bergen County Social Services dated March 1, 2013, and saw that his full-scale intelligence quotient ranked in the 21st percentile, which was low average. In particular, Mishkin noted that all of his composite scores fell in the low-average to average range. As such, Mishkin asserted that a severe discrepancy existed between his cognitive ability and academic achievement.

Third, Mishkin stated that she reviewed the Initial Service Plan from Bergen County Social Services dated March 12, 2013, and believed it was inappropriate for A.S. because it was not as intensive as it should have been, yet Mishkin provided no additional explanation why.

Fourth, Mishkin stated that she reviewed the psychological evaluation from petitioners dated June 24, 2013, and saw that the score on the GORT-IV was consistent with the score on the WIATT-III for oral reading.

Fifth, Mishkin stated that she reviewed the speech and language evaluation from West Milford dated September 18, 2013, and saw that his CELF-4 scores were low. In particular, Mishkin noted that his core language score, which is considered to be the most representative of a student's language skills and provides an easy and reliable way to quantify a student's overall language performance, was a seventy-nine and ranked in the 8th percentile, which placed A.S. in the borderline range of functioning. As such, Mishkin asserted that A.S. had a language disorder.

Finally, Mishkin stated that she reviewed the draft of the proposed IEP dated October 1, 2013.

C.

More significantly, Mishkin testified that she observed the programs at both West Milford and The Craig School and prepared a report. On December 16 and December 19, 2013, Mishkin observed A.S. at The Craig School, and on December 27, 2013, she observed the program at UGL. Mishkin did not observe A.S. at UGL because A.S. was already at The Craig School when she observed the program at UGL. Mishkin's report was admitted into evidence as J-30 together with her curriculum vitae.

Mishkin testified that she looks for a number of things when she observes a program: the teacher-to-student ratio, the existence of any distractions in class, the amount of multisensory instruction in the program, the amount of assistive technology available, and the amount of time for reading.

At the hearing Mishkin testified and in her report Mishkin wrote that the program at UGL would not have met A.S.'s needs. At the hearing, Mishkin specified that the time devoted to reading would have been insufficient, that A.S. would have been grouped with students at different reading levels, and that multisensory strategies would not have been integrated into the general education classes. How Mishkin could predict that multisensory strategies would not be integrated into the general education classes was never explained.

Mishkin also specified that the textbooks in his general education classes were above A.S.'s reading level. Mishkin then speculated that having an aide read the textbooks to A.S. would have hurt his confidence and that A.S. would not have learned how to learn. Finally, Mishkin asserted that no assistive technology was available to A.S. in the classroom.

In her report, Mishkin added that the science class was too large for A.S., that his focus would have been compromised, that the tests would have been above his reading level, and that an aide would have made A.S. dependent:

[UGL] offered a program for [A.S.] that could not meet his academic needs. He has a significant reading disability or dyslexia and math disability that has already been diagnosed through the many evaluations discussed in this report. The program does not provide sufficient time devoted to reading/spelling/writing as 25 minutes daily is too short. He has to learn to decode and make up for significant gaps in his reading skills before he gets to middle school when the work increases in length and complexity and the demand for reading and understanding also increases. The science class is too large, and [A.S.] would be frustrated since the textbook is above his reading level; his sustained focus would likely be compromised in this mainstreamed class. Tests would also be above his reading level and having an aide read it to him would make him dependent. Language Arts at UGL does not integrate the decoding skills being taught, making the program very fragmented. This creates even more frustration for dyslexic students who need ongoing review, reinforcement, and help generalizing skills to a different content area.

[J-30 at page 7.]

D.

The Craig School, however, was another story. Mishkin testified and wrote that the program at The Craig School would have met A.S.'s needs. At the hearing, Mishkin specified that The Craig School integrated the Orton-Gillingham approach into all of the classrooms and used the Framing Your Thoughts software and materials, which she preferred. Mishkin also specified that The Craig School used more assistive technology

than UGL and provided all students with binders to organize their work. Finally, Mishkin specified that all of the classrooms at the Craig School had FM systems, were carpeted, and were not overly decorated.

In her report, Mishkin added that all of the teachers at the Craig School spoke to the students in soft, gentle voices.

Indeed, Mishkin testified that she had no concerns about A.S. at The Craig School and was pleased with his progress there because A.S. liked it there so much.

E.

On December 5 and December 6, 2014, Mishkin performed an educational evaluation. At the hearing, Mishkin testified that petitioners requested one so they could determine whether A.S. was making progress at The Craig School and if he needed any additional services or support. Mishkin specified that a comparison between the CELF-4 scores from 2013 and the CELF-5 scores from 2014 revealed an improvement in formulating sentences from 9 percent to 84 percent, in recalling sentences from 16 percent to 75 percent, in understanding spoken paragraphs from 9 percent to 50 percent, and in following directions from 16 percent to 25 percent.

Some scores, however, remained below average.

Mishkin also specified that a comparison between the GORT-4 scores in 2013 and the GORT-5 scores in 2014 revealed an improvement in reading accuracy from 5 percent to 25 percent and in reading fluency from 5 percent to 16 but explained that the decrease in reading comprehension from 25 percent to 9 percent did not reflect a loss of comprehension as much as a focus on decoding and that this score too would improve as A.S. would come to spend less time on decoding and more time on meaning.

Finally, Mishkin specified that the decoding skills had improved with its integration into the curriculum and the use of assistive technology.

F.

Regarding the IEP for fourth grade, Mishkin testified that it was still inappropriate for A.S. because it still provided insufficient time for reading and language arts and still placed A.S. in general education classes for science and social studies. Mishkin speculated that A.S. cannot be educated in general education classes because they will isolate him from his peers and make him feel different. Yet Mishkin acknowledged that A.S. still cannot do language arts or mathematics at grade level and that she did not know the kind of supports West Milford would provide A.S. at UGL.

G.

In her report, Mishkin compared UGL to The Craig School and wrote that The Craig School offered A.S. more.

1.

First, Mishkin wrote that A.S. would have been in a replacement language arts class at UGL for sixty minutes each day and in a multisensory program for thirty minutes each day in a small group consisting of students in grades one to four. In addition, Mishkin wrote that if A.S.'s skill level did not fit within the group at UGL, he would have met a teacher for twenty-five minutes once a week—although the IEP notes that the individual session once a week would have been for thirty minutes and it would not have been conditional. Thus, Mishkin wrote that A.S. would have been in a reading and language arts for a total of ninety minutes a day at UGL plus the individual session once a week for thirty minutes.

Similarly, Mishkin wrote that A.S. would have been in a replacement math class at UGL for sixty minutes each day and out-of-class support for twenty minutes each day to focus on study skills, test taking strategies, and completion of assignments. In addition, Mishkin wrote that A.S. would have been in general education science and social studies classes at UGL with supplementary aides for each class for forty minutes two to three times per week for each class. Finally, Mishkin wrote that A.S. would have

been provided speech and language therapy for thirty minutes two to three times per week at UGL in a small group setting.

2.

By comparison, Mishkin wrote that A.S. would have been in a reading and language arts class at The Craig School for three hours each day in a small group consisting of students in fourth grade.

In addition, Mishkin wrote that all of his other classes would have been taught at his level with textbooks written for his reading level and that A.S. would have worked directly with teachers and not aides.

Moreover, Mishkin wrote that the increased amount of time spent on reading and writing at The Craig School was significant, that the improvement in his decoding was attributable to it, and that the multisensory program was threaded throughout the entire day.

Meanwhile, Mishkin wrote that the multisensory program at UGL weighs heavily on students to generalize the skills learned:

Given that [A.S.] has been diagnosed with dyslexia, double the time spent on Reading and Language Arts was significant to his progress. Improvement in his decoding can be attributed to the intensive time spent on Reading/Language Arts and to the multisensory curriculum threaded throughout the entire day. It is not fragmented part of his day, but the focus of his education all day every day in all subjects at Craig School. At UGL it is a fragmented program that weighs heavily on the student to generalize the skills to other subject such as General Education Science and Social Studies.

[P-31 at page 13.]

3.

Mishkin praised the use of the school-wide binder system at The Craig School to help students with their executive functioning but asserted that such support would only be available to A.S. at UGL for twenty minutes each day in a pull-out class and believed that such suppurate was a fragmented approach.

4.

Yet Mishkin wrote in her report, just as she testified at the hearing, that A.S. still cannot do language arts or mathematics at grade level:

[A.S.] continues to lack automaticity in applying phonetic knowledge to decode in a quick and efficient manner. This impacts his reading fluen[cy,] which also affects [his] reading comprehension. [A.S.] makes some auditory confusions . . . as well as errors and transportations of small words . . . when reading

. . .

Math findings are in the low-average range except for quantitative concepts, which are in the low range. Subtraction of 2 digits from 2 digits and single[-]digit multiplication were problematic. Word problems, read to him and often accompanied by pictures, were weak from multi-step problems. Although he can calculate single[-]digit addition and subtraction, when timed, he did not always attend to the operational sign.

[P-31 at pages 14-15.]

5.

The above notwithstanding, Mishkin continued in her report that schools for dyslexia, like The Craig School, focus on the structure of language, knowledge of which is necessary to become a skilled reader, and for this reason, language must be part of every class every day. As such, Mishkin exclaimed that the time UGL devoted to language in its IEP for A.S. was insufficient. Indeed, Mishkin was effusive about The

Craig School, writing that the teachers at The Craig School teach students how to learn and how to think about what it takes to complete a project, homework, or lesson by deciding what steps are needed to be completed and how to divide the work into chunks.

Likewise, Mishkin wrote that executive functioning strategies are directly addressed and reviewed in all classes with individual attention given to students. Furthermore, Mishkin wrote that the student population at The Craig School was small, allowing for teachers to know all of the students and for students to feel comfortable and supported. Moreover, Mishkin wrote that for A.S. to have a sound education, all of his teachers must have knowledge of the multisensory program used, and that the same strategies would have to be employed in all of his classes, just like they do at The Craig School.

H.

On cross-examination, Mishkin acknowledged that the results from A.S.'s TerraNova achievement tests at the end of second grade, before he came into district, were at or below the 6th percentile in reading, vocabulary, language, mechanics, and math but were significantly higher in science and social studies, at the 59th and 18th percentile respectively. Mishkin also acknowledged that a speech and language evaluation was conducted to determine whether A.S. would benefit from any speech and language therapy, that the speech and language evaluation determined A.S. would in fact benefit from speech and language therapy, but that only West Milford had planned to provide speech and language therapy, while The Craig School never provided A.S. with any at all. Indeed, Mishkin acknowledged that Wallin, who is also an LDTC, was to have provided A.S. with such speech and language therapy.

Mishkin further acknowledged that she did not participate in any of the IEP meetings for A.S., never provided the IEP team with any of her input, did not know anything about the curriculum at UGL for third grade, and did not know anything about the curriculum at UGL for fourth grade.

Mishkin similarly acknowledged that the goals and objectives in the IEP for speech addressed articulation errors, expressive language, and receptive language; agreed that speech therapy for articulation errors, expressive language, and receptive language would have been beneficial for A.S.; yet acknowledged that no such speech therapy was provided for A.S. at The Craig School for any of these.

Mishkin also acknowledged that she never observed A.S. at UGL.

Curiously, Mishkin testified that she would not have rendered an opinion about the appropriateness of the program at The Craig School without having seen A.S. in it but had no problem rendering an opinion about the program at UGL without having seen A.S. in it. In fact, Mishkin acknowledged that she never saw some of the most important components of the program for A.S. at UGL—not the speech and language therapy at UGL, not the reading program at UGL, not the math class at UGL for third grade, nor any class at all at UGL for fourth grade. Indeed, Mishkin acknowledged that West Milford had ordered books on CD for A.S. for science and social studies, speculated that they would have benefited A.S. depending on the class, but asserted that she could not comment whether they would in fact have benefited A.S. because she never saw the science or social studies class. As such, Mishkin acknowledged that she primarily wrote about A.S. and his disability in his report, and that she did not write much about UGL and its program for him.

Finally, Mishkin acknowledged on cross-examination that a multisensory approach to reading can be employed in a public school.

I.

Mishkin testified on redirect examination that she was looking to fit A.S. into a program rather than trying to create a program for A.S. around his needs, even though that is the express purpose of an IEP, and that she disapproved of the aide to assist A.S. at UGL rather than a special education teacher.

Then on re-cross, Mishkin declared that if the teacher read the question aloud to the entire class it was fine, but if the aide read the question to A.S. alone or in a small group, it was discrimination.

Mishkin also resigned to the fact on cross-examination that A.S. excelled at science.

III.

West Milford

Eileen Horn

A.

Horn is learning-disabilities-teacher consultant (LDTC) and a speech-language specialist. She was the case manager for A.S. when he was at UGL but she was not his case manager from the start. Horn is now an LDTC in the Montville Township Public Schools.

She received a bachelor's in English from Rutgers University in 1993 and a master's in educational technology from William Paterson in 2002. Horn completed the LDTC Endorsement Program at William Paterson University in 2012 and the Supervisor Certification Endorsement Program at William Paterson University in 2014. Horn holds a certificate as a teacher of the handicapped for kindergarten through twelfth grade and a certificate in general education for kindergarten through eighth grade from the Department of Education. Horn also holds a certificate as an LDTC and a certificate as a supervisor from the Department of Education.

Horn was offered and accepted as an expert in language disabilities.

B.

Horn shadowed Mishkin when Mishkin observed UGL on January 28, 2014, and was impressed with UGL's program. First, Horn testified that she observed Harris in homeroom and thought it was a great routine. Horn noted that Harris first checked student planners, folders, and homework to keep them organized. Horn then noted that the class was quiet, that the students stayed on task, and that the students worked at their own pace. Moreover, Horn noted that students praised and helped one another.

Next, Horn testified that she observed Yuhas in the multisensory room. Horn noted that it was a group setting but asserted that individual needs were being met. Horn further noted that Yuhas moved the class at a nice pace, gave immediate corrective feedback to students, and transitioned the students smoothly. In short, Horn thought Yuhas had great classroom management and suggested that her multisensory approach to reading was exemplary.

Third, Horn testified that she observed Magnotta in the replacement reading and math classes and thought the students were fully engaged and participatory. Horn noted that the lessons were connected to prior lessons, that the visual aids were easy to follow, and that the students stayed on task. Horn also noted that the students were well organized with their own baskets for their own books.

Last, Horn testified that she observed Harris in science class and thought it was very dynamic. Horn noted that Harris modeled expectations of the lessons on the smart board, paused so students could think about the lesson and record their connections to it, and kept students organized with the use of their binders. Horn also noted that Harris used choral reading and a multisensory approach to reading and assisted students in staying on task and making connections to the lesson. Indeed, Harris stated that she was particularly impressed with Harris because there was a lot of learning being done in her class, it was very fluid, and there was room for all learning styles.

Horn testified that she shared her observations with the case manager for A.S. and that she ultimately shared her opinions with the Child Study Team. In short, Horn

asserted that UGL would have provided A.S. with a high quality education. To be sure, Horn stated that she was highly impressed with UGL and its program.

C.

Horn later observed A.S. at The Craig School with Mishkin on May 30, 2014, and was not as impressed. First, Horn testified that when she observed A.S. in his reading class, another boy was disrupting the class and distracting A.S., as well as the other students in the class, and that the teacher in the classroom had to redirect the disruptive student. Horn noted that while the teacher was able to redirect that student, the teacher still had to redirect that student often. In her report, Horn wrote that several distractions and transitions were occurring as the class wrapped up and came to an end.

Second, Horn testified that when she observed A.S. in his math class, it was an abbreviated class. Still, there was no direct instruction, the students worked independently, and A.S. used math sheets and multiplication charts for assistance. Horn noted that while it was helpful for the students to work together in groups, the groups were still distracting to one another at times. In her report, Horn wrote that students were frequently redirected to task and that the teacher called transition time two minutes before the centers ended.

Third, Horn testified that when she observed A.S. in his language arts class, a writing assessment had been administered. Still, there was no direct instruction in this class either. Horn noted that the teacher simply worked one-on-one with one student, looking up facts for him on the internet for the new writing assignment. In her report, Horn wrote that the students needed assistance writing information in their journals.

In summary, Horn thought the instruction at The Craig School was frenetic and choppy. She said that she did not see a lot of instruction and had expected more. She commented that she saw a lot of interruptions, especially by students, and while she saw they were redirected, she saw no other behavior management.

By contrast, Horn reiterated that the program at UGL was fluid, well-managed, and inclusive. She thought it met individual needs, was infused with technology, and multidisciplinary. She also noted that a lot more time was spent on task at UGL than at The Craig School. In short, Horn thought that the program at UGL was optimum.

D.

On cross-examination, Horn testified that she only spent thirty minutes in the reading class, fifteen minutes in the math class, and ten minutes in the language arts class. Horn further testified that she did not speak to anyone at The Craig School about anything because no one was made available to talk to her but that she was aware of the curriculum at The Craig School and was observing its program so she could compare it to the program at UGL. In addition, Horn testified that she saw no technology in the classroom at The Craig School and only some computers in the math center. Finally, Horn testified that she disagreed with Mishkin's criticism that the reading level of the story Harris used in her class at UGL was above A.S.'s reading level because Harris was only using the story as a model for a concept and not for the students to read.

Elizabeth McQuaid

A.

At the time McQuaid testified at the hearing, she was the Supervisor of Special Services at West Milford, but in July 2015, she became the Director of Special Education for West Milford. Her resume is impressive: McQuaid received a bachelor's in health sciences with a specialization in pediatrics, a certificate in gerontology, and a master's in occupational therapy from Misericordia University in May 2005, a master's in educational administration from the University of Scranton in June 2011, and a doctorate in occupational therapy from Misericordia University in December 2014. McQuaid has also served as the supervisor of special services in another school district from July 2011 to August 2013 and then as the acting director of special education for that school district from December 2010 to August 2013. As such, McQuaid was

offered and accepted as an expert in the supervision of special services. She was a most reliable and credible witness.

B.

McQuaid testified that at the first meeting with petitioners on September 6, 2013, the Child Study Team told petitioners it was confident it could implement the Initial Service Plan but petitioners wanted West Milford to match what The Craig School would have provided so the Child Study Team agreed to add additional benchmarks and measures. McQuaid further testified that at the following meeting on September 19, 2013, the Child Study Team continued to convey its confidence that it could implement the ISP. Moreover, McQuaid testified that at the IEP meeting on October 1, 2013, the Child Study Team added a multisensory component, speech and language therapy, and the additional benchmarks or measures it had promised.

Petitioners, however, questioned whether Yuhas was capable of delivering the multisensory instruction.

Significantly, McQuaid assured petitioners that Yuhas was capable of delivering the multisensory instruction but further assured petitioners that if A.S. surpassed Yuhas's skill-level, the Child Study Team would address it. Indeed, the proposed IEP specifically states, "Parents understand that Mrs. Yuhas, special education teacher, is being trained with Orton and if at any point [A.S.] exceeds Mrs. Yuhas'[s] level of experience[,] the IEP team will notify [petitioners.]" Although petitioners still placed A.S. in The Craig School, McQuaid asserted that the Child Study Team was still willing to resolve this issue—but neither petitioners nor their advocate pursued UGL as a viable alternative.

C.

McQuaid testified that when Mishkin finally observed the program at UGL and asked her questions about it, she immediately answered them in a letter to Mishkin dated March 23, 2014. First, Mishkin asked if the computer was used for written

language and McQuaid answered that it is typically used for creating final drafts of writing assignments. McQuaid explained that the students start with graphic organizers, move on to rough drafts, and then proof-read and edit them on the computer. Still, McQuaid noted that the computer could be used for the entire process and that iPads and Alphasmart word processors were also available. McQuaid also stated that West Milford had access to Inspiration software for the visual mapping but that most teachers prefer to use the graphic organizers.

Second, Mishkin asked if any other assistive technology was used in class and McQuaid answered that West Milford had access to computers, smart boards, document cameras, iPads, and e-readers. McQuaid, however, explained that assistive technology is ever changing. Thus, McQuaid stated that if an IEP ever called for something West Milford did not have, she would have requested it for that student.

Third, Mishkin asked if decoding skills are taught in the multisensory reading class and McQuaid answered that they were but explained that the frequency and duration of the instruction varies from class to class and depends on the needs of the individual students within the classrooms.

Fourth, Mishkin asked which multisensory programs West Milford was using in its special education classes to teach written language and McQuaid answered none in particular. McQuaid explained that West Milford incorporates multisensory strategies and principles of instruction into its lessons to teach written language as a process and that West Milford uses a variety of materials to deliver this instruction. McQuaid specified that West Milford has access to Wilson materials, Merrill Linguistic materials, Explode the Code materials, Orton-Gillingham materials, PAF materials, RAZ Kids, and level-guided reading books. Finally, McQuaid noted that West Milford has numerous other reading programs available to it as well as those that have been retired.

D.

McQuaid testified that on May 30, 2014, she went to The Craig School to observe it with Horn and saw the reading class. McQuaid referred to her report at the

hearing. In her report, McQuaid wrote that A.S. was one of only four students in the reading class and that the room was still tight. McQuaid also wrote that A.S. was late and that the teacher explained A.S. was usually late. Indeed, only one of the four students arrived on time while the others arrived late. The one student who arrived on time arrived at 8:30 p.m. while the other three arrived at 8:48 a.m., 8:50 a.m., and 8:58 a.m., respectively. Moreover, McQuaid wrote that one of the boys kept disrupting the three other students. At the hearing, McQuaid reiterated that this one student was very distracting, that the teacher had to keep redirecting him, and that she was concerned about the effect this distraction had on the overall functioning of the class.

E.

McQuaid testified that on June 9, 2014, she participated in a telephone conference call with Janet Corzine, the Director of the lower and middle schools at The Craig School, and was surprised to learn that A.S. was not receiving speech and language therapy. McQuaid testified that she also relayed her concern about the tardiness of the students to Corzine. McQuaid further testified that she believed UGL could match the mentoring The Craig School offered with its own programming, especially since UGL was a nationally recognized character school, and that UGL could match the technology The Craig School offered as well. Above all, McQuaid testified that that West Milford could have delivered a FAPE for A.S. in third grade and that the IEP it had proposed for A.S. in third grade had been appropriate.

E.

Similarly, McQuaid testified that the IEP West Milford had proposed for A.S. for fourth grade was appropriate as well. McQuaid noted that Yuhas had been fully trained and certified in Orton-Gillingham instruction by that time and that A.S. could have listened and participated in class with the appropriate modifications as he was learning to read. Indeed, McQuaid emphasized that West Milford holds great value in having special education students in general education settings.

G.

On cross-examination, McQuaid shared her belief that petitioners were never serious about A.S. enrolling at UGL and that they intended to enroll him at The Craig School all along.

More significantly, McQuaid opined that The Craig School was inappropriate for A.S. As an example, McQuaid explained that it did not matter that the student she observed at The Craig School was off-task because she was there to observe how the teacher handled the student and that she saw that the teacher was unsuccessful in redirecting the student. By comparison, McQuaid attested that UGL has a culture of respect and rapport based on the Danielson Model and that UGL has high expectations for its students. More pointedly, McQuaid stated they are expected to stay on task and meet curriculum regardless of special needs.

McQuaid further stated that UGL adheres to the State standard of twenty-minute pacing, which The Craig School doesn't; that UGL adheres to the State common core curriculum, which The Craig School doesn't; and that UGL enforces a stricter attendance policy, which The Craig School doesn't.

Moreover, McQuaid exclaimed that A.S. was in fact accessing the curriculum at UGL with the appropriate supports.

Finally, McQuaid noted that the IEP the Child Study Team proposed on October 1, 2013, for third grade was just a draft, and that the Child Study Team was willing to modify it. According to McQuaid, this fact was overlooked by petitioners who had already made up their minds about UGL and placing their son in The Craig School. Indeed, McQuaid noted that all of The Craig School personnel were permitted to participate in their IEP meeting for fourth grade but none of them participated.

IV.

The Craig School

Grant Jacks

A.

Jacks has been the Head of School at The Craig School since 2013, and is responsible for its total operation, including its academics and its business. Jacks, however, is not directly responsible for its curriculum. He is only responsible for reviewing it. Corzine is the one responsible for the curriculum. As such, Jacks had little personal knowledge about A.S. and his program at the lower school in particular and merely testified about The Craig School in general.

B.

Jacks testified that The Craig School is accredited by the Middle States Commission of Higher Education and the New Jersey Association of Independent Schools and is aligned with the common core curriculum content standards for the State of New Jersey. Jacks also testified that students are grouped by reading level, age, and grade level at The Craig School. Jacks then continued that all staff at The Craig School are professionally trained.

More specifically, Jacks testified that all of the teachers at The Craig School are trained in Orton-Gillingham instruction and are trained on all new software. Jacks also testified that all of the teachers participate in substantive continuing education and receive in-house training in speech and language. Finally, Jacks testified that all of the teachers at The Craig School are certified as general education teachers by the State of New Jersey and that all of the homeroom teachers are also certified as special education teachers by the State of New Jersey.

C.

Jacks asserted that the objective of The Craig School is to mainstream students, that it takes the average student at The Craig School two to three years to be able to return to their public school, and that only one-third of the students from the lower and middle schools at The Craig School continue to high school at The Craig School. Jacks acknowledged that students at The Craig School do not interact with nondisabled peers because every student at The Craig School has a disability. Jacks noted that the only opportunity students at The Craig School have to interact with nondisabled peers is during extra-curricular activities when The Craig School plays other private school in sports.

D.

Jacks did correct the record that A.S. did receive some speech and language therapy in third grade: one session per week through the Morris County Commission and one session per week with a Harriet Hughes-Rex. Jacks also noted that teachers in the classroom do read texts to their students, a criticism Mishkin never levied at The Craig School. Finally, Jacks advised that the mentoring program replaces science every Friday morning and that club activities replace social studies every Friday morning, which means science is only from Monday through Thursday and social studies is only on Wednesdays and Thursdays, something Mishkin never mentioned in her review of The Craig School either.

The PLAFP

A.

The Present Levels of Achievement and Functional Performance (PLAFP) at The Craig School from the fall of 2014 reads much like the PLAFP at UGL from the fall of 2013. The teacher in the language arts class writes A.S. has a positive attitude towards school and wants to succeed, does well with one-on-one support, but struggles to use grade-level vocabulary in writing. The teacher continues that A.S. often needs help with

brainstorming and organizing his writing. Toward this end, the teacher writes that A.S. needs concepts delivered in a sequential way and at a much slower pace and that he needs strategies and technology to help him produce a decent piece of writing.

The teacher also states that A.S. benefits from small class sizes, assignments that are tiered, and frequent checks from the teacher. Indeed, the teacher notes that A.S. is encouraged to use strategies learned in reading to help with the reading and spelling of words, having a word bank and tests read to him to make sure he understands what is being asked of him, and help sheets on the topics that are covered in class. Moreover, the teacher asserts that A.S. responds very well to multisensory lessons and positive reinforcement with lessons and assignments are tailored to fit his needs.

Specific to writing, the teacher writes that A.S. needs verbal prompting and much assistance to expand his thoughts and elaborate on his ideas in addition to organizing his thoughts and ideas. The teacher then states that A.S. needs to be reminded to use his reference sheets, checklists, and assistive technology. Finally, the teacher notes that A.S. needs teacher modeling to help him organize his work.

B.

These challenges were largely if not exactly the same challenges West Milford recognized when A.S. began at UGL the year before and these interventions were largely if not the exactly the same interventions West Milford implemented or sought to implement when A.S. began at UGL the year before.

C.

Meanwhile, the teacher in science wrote that A.S. was strong in science. She stated that A.S. is motivated by a natural curiosity for science and is extremely creative in discovering new ways to arrive at solutions. Indeed, she noted that A.S. excels in hands-on activities. Still, the teacher observed that A.S. was distractible in class—

whereas no such distractions were ever exhibited at UGL—and that A.S. required the material to be read to him—the very criticism Mishkin had levied against West Milford.

V.

Rebuttal

Mishkin testified on rebuttal that the student West Milford alleged was disruptive in the reading class at The Craig School was not disruptive to A.S. and that A.S. was totally focused on his lesson. Likewise, Mishkin testified that she had no concerns about the classroom management. Mishkin testified that it was highly structured with direct instruction. Similarly, Mishkin testified that she saw direct instruction in the math class and the language arts class.

In short, Mishkin restated her opinion that the program at The Craig School was appropriate for A.S. and that the program at UGL was not. She then speculated that A.S. could not have done well at UGL. Mishkin also repeated that A.S. would have been isolated in the general education classes because the texts would have been read to him. For Mishkin, this was one of her biggest concerns—asserting that it would be discrimination for the texts to have been read to A.S. Finally, Mishkin restated that The Craig School did not provide enough intensive instruction for A.S.

On cross-examination, Mishkin acknowledged that she never saw A.S. at UGL, that she never saw A.S. getting speech and language therapy at The Craig School, and that she never saw the support class at UGL.

Ultimately, Mishkin concluded that A.S. cannot do well in a pull-out program and has to be in a fully integrated program like the one at The Craig School.

CONCLUSIONS OF LAW

I.

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

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

The threshold issue in this case is whether West Milford provided A.S. with a FAPE.

II.

In short, the Act defines FAPE as special education and related services provided in conformity with the IEP. See 20 U.S.C.A. § 1401(9). The Act, however, leaves the interpretation of FAPE to the courts. See Ridgewood Bd. of Educ. v. N.E., 172 F.3d 238, 247 (3d Cir. 1999). In Board of Education of the Hendrick Hudson Central School District v. Rowley, 458 U.S. 176, 203, 102 S. Ct. 3034, 3049, 73 L. Ed. 2d 690, 710 (1982), the United States Supreme Court held that a state provides a handicapped child with FAPE if it provides personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction. The

Court reasoned that the Act was intended to bring previously excluded handicapped children into the public education systems of the states and to require the states to adopt procedures that would result in individualized consideration of and instruction for each child. Rowley, supra, 458 U.S. at 189, 102 S. Ct. at 3042, 73 L. Ed. 2d at 701.

A.

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

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

B.

The Third Circuit has since held that this educational benefit must be more than “trivial.” See Polk v. Cent. Susquehanna Intermediate Unit 16, 853 F.2d 171, 180 (3d

Cir. 1988). Stated otherwise, it must be “meaningful.” Id. at 184. Relying on the phrase “full educational opportunity” contained in the Act and the emphasis on “self-sufficiency” contained in its legislative history, the Third Circuit inferred that Congress must have envisioned that “significant learning” would occur. Id. at 181-82. The Third Circuit also relied upon the use of the term “meaningful” contained in Rowley, as well as its own interpretation of the benefit the handicapped child was receiving in that case, to reason that the Court in Rowley expected the benefit to be more than “de minimis,” noting that the benefit the child was receiving from her educational program was “substantial” and meant a great deal more than a “negligible amount.” Id. at 182.

Nevertheless, the Third Circuit recognized the difficulty of measuring this benefit and concluded that the question of whether the benefit is de minimis must be answered in relation to the child’s potential. Id. at 185. As such, the Third Circuit has written that the standard set forth in Polk requires “significant learning” and “meaningful benefit”; that the provision of “more than a trivial educational benefit” does not meet that standard; and that an analysis of “the type and amount of learning” of which a student is capable is required. Ridgewood, supra, 172 F.3d at 247-48. In short, such an approach requires a student-by-student analysis that carefully considers the student’s individual abilities. Id. at 248.

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

III.

Not only must an IEP be reasonably calculated to provide significant learning and meaningful educational benefit but it must also be provided in the least restrictive environment. See 20 U.S.C.A. § 1412(a)(5)(A). To the maximum extent appropriate, children with disabilities are to be educated with children without disabilities. Ibid. Thus, removal of children with disabilities from the regular education environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved

satisfactorily. Ibid. Indeed, this provision evidences a “strong congressional preference” for integrating children with disabilities in regular classrooms. Oberti v. Bd. of Educ. of the Borough of Clementon Sch. Dist., 995 F.2d 1204, 1214 (3d Cir. 1993).

A.

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

B.

Accordingly, a school must consider, among other things, the whole range of supplemental aids and services, including resource rooms and itinerant instruction, speech and language therapy, special education training for the regular teacher, or any other aid or service appropriate to the child’s needs. Id. at 1216. “If the school has given no serious consideration to including the child in a regular class with such supplementary aids and services and to modifying the regular curriculum to accommodate the child, then it has most likely violated the Act’s mainstreaming directive.” Ibid. Indeed, the Act does not permit states to make mere token gestures to accommodate handicapped children and its requirement for modifying and supplementing regular education is broad. Ibid.

C.

To underscore this point, the Third Circuit has emphasized that just because a child with disabilities might make greater academic progress in a segregated special

education classroom does not necessarily warrant excluding that child from a general education classroom or offering the same educational experience that is generally provided for nondisabled children:

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

[Id. at 1217 (citations omitted).]

IV.

Finally, the United State Supreme Court warned in Rowley that courts must be careful to avoid imposing their own preferred view of educational methods upon the States. Rowley, supra, 458 U.S. at 207, 102 S. Ct. at 3051, 73 L. Ed. 2d at 712. In particular, the Supreme Court noted that the Act left the primary responsibility for formulating the educational program—and for choosing the most suitable educational method—to the child study team. Ibid. “In the face of such a clear statutory directive,” the Court stated, “it seems highly unlikely that Congress intended courts to overturn a State's choice of appropriate educational theories” Rowley, supra, 458 U.S. at 207-08, 102 S. Ct. at 3051, 73 L. Ed. 2d at 712. Therefore, the Rowley Court concluded that questions of methodology are for resolution by the States once the requirements of the Act have been met. Rowley, supra, 458 U.S. at 208, 102 S. Ct. at 3051, 73 L. Ed. 2d at 712.

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

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

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

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

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

[W.R. v. Union Beach Bd. of Educ., 2011 US App. LEXIS 3131.]

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

IV.

Petitioners

A.

The Determination for Third Grade

Petitioners argue that West Milford predetermined its program and placement at UGL because West Milford did not agree with the program and placement at The Craig School. Petitioners write in their closing brief that they asked for an intense, multisensory, Orton-Gillingham-based reading program; that they asked for the instruction be delivered by a trained and experienced teacher; and that the program be integrated throughout the day. Petitioners further write that they also asked for assistive technology and unspecified software to meet A.S.'s needs. Moreover, petitioners write that they were impressed with The Craig School before they even met with West Milford for the first time, that they thought it would be appropriate for A.S., and that they asked West Milford to consider it for him.

B.

FAPE for Third Grade

Petitioners further argue that West Milford failed to provide A.S. with a FAPE for third grade.

1.

First, petitioners argue that West Milford failed to provide A.S. with a FAPE for third grade because the proposed IEP included a "specific multisensory reading approach" but did not specify an "Orton-Gillingham-based reading program." Similarly, petitioners argue that Yuhas did not possess the training and experience necessary to

deliver the instruction. Likewise, petitioners argue that West Milford failed to provide A.S. with a FAPE because the reading program was for only twenty-five minutes per day, when it was supposed to be one hour, and was a pull-out from the reading and language arts class. Ultimately, petitioners rely on the testimony of Mishkin who testified that twenty-five minutes a day was an insufficient amount of time to meet A.S.'s needs.

2.

Second, petitioners argue that West Milford failed to provide A.S. with a FAPE for third grade because the reading and language arts class consisted of students at different reading levels. In further support of their argument, petitioners note that Magnotta had to break the students into three different reading groups, which petitioners argue reduced the amount of direct instruction she could provide to A.S. Moreover, petitioners argue that the time she was not working with A.S. was wasted time because A.S. was unable to work independently.

3.

Third, petitioners argue that West Milford failed to provide A.S. a FAPE for third grade because Magnotta failed to modify the instructional materials in the reading and language arts class and because no software was specifically selected for A.S. except for the Inspiration software and only because petitioners specifically requested it.

4.

Fourth, petitioners argue that West Milford failed to provide A.S. with a FAPE for third grade because the IEP included guided reading and Mishkin deemed that guided reading was inappropriate for A.S.

5.

Fifth, petitioners argue that West Milford failed to provide A.S. with a FAPE for third grade because Mishkin did not observe West Milford using any assistive technology when she observed the program at UGL.

6.

Above all, petitioners argue that West Milford failed to provide A.S. with a FAPE for third grade because Mishkin did not see how A.S. would have been able to generalize what he was taught in his specialized reading class without the constant repetition and review of what he had learned in his specialized reading class.

7.

Finally, petitioners argue that West Milford failed to provide A.S. with a FAPE for third grade because Mishkin asserted that the text books in his general education classes were above his reading level and inaccessible to A.S. without the use of assistive technology, that A.S. made no positive gains while in those classes, and that Mishkin emphasized having the text books read to A.S. would not have cured these defects and would have only stigmatized him.

C.

FAPE for Fourth Grade

Petitioners also argue that West Milford failed to provide A.S. with a FAPE for fourth grade because West Milford continued to offer its in-district program and place A.S. at UGL. More pointedly, petitioners argue that West Milford ignored the information and recommendations provided by The Craig School, as well as the expertise and recommendations provided by Mishkin, and only added five minutes to the twenty-five minutes of specialized reading instruction each day. Likewise, petitioners argue that West Milford added just one individual thirty-minute session with

Yuhas each week and only one additional twenty-minute session of out-of-class support each week.

V.

West Milford

A.

FAPE for Third Grade

West Milford argues that it provided A.S. with a FAPE for third grade because the IEP was reasonably calculated to provide A.S. with significant learning and meaningful educational benefit.

1.

In support of its argument, West Milford notes that Walker, Yuhas, Magnotta, Harris, and Wallin all testified that the IEP would have provided A.S. with as much.

In particular, West Milford notes that Walker and Yuhas testified A.S. would have benefited from the replacement instruction in reading, language arts, and math and that A.S. would have benefited from the guided reading infused throughout the curriculum at UGL, with Walker specifying that the Fountas & Pinnell reading system would have given all of the teachers at UGL guidance on how to help A.S. generalize the skills and strategies he learned with Yuhas in the specialized reading program and its multisensory approach to reading.

Similarly, West Milford notes that Yuhas testified A.S. would have been a good fit for her specialized reading program because all of the students in the program were at the same level of skill.

Moreover, both Yuhas and Magnotta testified that they worked together to ensure the appropriate supports were in place for A.S, with Magnotta detailing all of the specific supports available to A.S., such as Explode the Code, Habits for Good Readers, Reading A to Z, and Good Habits for Great Writers.

2.

In addition, West Milford notes that Harris testified about the importance of having A.S. in the general education class for science and social studies with the appropriate aids and supports and how common it was for students in her general education class to be at different reading levels. Indeed, West Milford notes that all of its witnesses testified how A.S. would have benefited from being educated with his nondisabled peers in the general education classes. Moreover, West Milford notes that Harris testified she would have provided additional modifications to her general education classes for A.S. if she had been asked.

3.

Finally, West Milford notes that Wallin testified she had created appropriate goals and objectives in the IEP for third grade in the areas of articulation, expressive and receptive language, comprehension, and auditory processing and that she had recommended speech instruction and speech therapy to meet those needs and help generalize what A.S. had learned.

B.

FAPE for Fourth Grade

West Milford argues that it also provided A.S. with a FAPE for fourth grade because the IEP was reasonably calculated to provide A.S. with significant learning and meaningful educational benefit. Again, West Milford notes that Walker, Yuhas, Magnotta, and Wallin all testified that the IEP would have provided A.S. with as much.

In particular, West Milford notes that Walker testified the IEP continued the specialized reading program and its multisensory approach to reading.

In addition, West Milford notes that Yuhas testified the IEP provided an additional thirty minutes of individualized one-to one instruction to build upon what was being worked on during the specialized reading program and that A.S. would have continued to benefit from being educated with his nondisabled peers in his general education classes.

Similarly, West Milford notes that Magnotta testified A.S. would have received designated homework plans and organizational assistance from teachers as well as a twenty-minute support period.

Finally, West Milford notes that Wallin testified she had created appropriate goals and objectives in the IEP for speech and language and had recommended speech instruction twice a week in a small group as well as speech therapy to help generalize what A.S. had learned based on the then current information available, including a TOWL subtest provided by The Craig School.

Indeed, West Milford asserts that petitioners eschewed its efforts to provide this appropriate programming and placement for A.S. and never engaged in the collaborative process envisioned by the IDEA in any meaningful way.

C.

Least Restrictive Environment

West Milford argues that its IEP was not only reasonably calculated to provide A.S. with significant learning and meaningful educational benefit but also in the least restrictive environment.

1.

In support of its argument, West Milford notes that it received reports from Bergen County Social Services about A.S. and his prior placement, which supported his continued placement in a school with nondisabled peers. In addition, West Milford notes that its evaluations and observations of A.S. indicated the need for a multisensory reading program with appropriate related services, including speech and language therapy and the use of assistive technology, which it provided. Moreover, West Milford notes that it took into account A.S.'s strong social skills and his positive peer relationships to mainstream A.S. for science, social studies, and electives. Indeed, West Milford notes that all of its witnesses testified and documented about how smoothly A.S. transitioned to UGL, how happy he was reported to be, and how successfully he interacted with his nondisabled peers in his specials and during unstructured periods such as lunch and recess.

2.

To be sure, West Milford argues that A.S. demonstrated all of the skills needed to be included with his nondisabled peers at UGL—not excluded from them as he was at The Craig School—and that its witnesses stressed the importance throughout the hearing of this inclusion with his nondisabled peers at UGL.

In particular, West Milford notes that Harris testified it was her practice to meet with case managers to stay current with the modifications for her special education students and to meet with their special education teachers to make sure she was addressing their needs, which Magnotta corroborated. West Milford also notes that Harris testified she addressed the different reading levels of her students in her classroom through multisensory instruction, which included hands-on activities, experiments, songs, videos, and the use of the buddy system. More important, West Milford notes that Harris testified A.S. had been successful in her class.

In addition, West Milford notes that Magnotta testified she used Explode the Code and Good Habits for Good Readers and that A.S. had access to leveled-reading

books in the classroom, texts from the resource room, and additional resources to support the texts, such as vocabulary activities and discussion cards.

Moreover, West Milford notes that Wallin testified the IEPs provided A.S. with speech and language therapy, which would have furthered his communication and interaction with his nondisabled peers as it was to be integrated into his entire program.

Indeed, West Milford notes that Wallin testified A.S. already had some foundational skills in this area as he was able to respond to questions from teachers and peers, ask for help, and interact appropriately in the classroom setting.

3.

Finally, West Milford notes that all of its witnesses testified the resource room for reading, language arts, and math and the general education class for science, social studies, and specials was the least restrictive environment for A.S.

D.

Unclean Hands

West Milford argues that even if it failed to provide A.S. with a FAPE, petitioners are not entitled to the equitable remedy of reimbursement for The Craig School because they have not acted in good faith. In support of its argument, West Milford notes that petitioners had applied to The Craig School for admission even before they notified West Milford in late August 2013 that A.S. was transferring into district. Likewise, West Milford notes that petitioners had already visited The Craig School before their first meeting with West Milford in early September 2013 and intended to place A.S. at The Craig School even before the first IEP meeting. Toward this end, West Milford notes that petitioners requested the IEP meeting to be held sooner so they could change the placement to The Craig School sooner. Moreover, West Milford notes that petitioners gave it no opportunity to address any of their concerns about the IEP as they rejected it the day after it was proposed and before any final draft. Indeed, West Milford notes that

none of the experts who testified on behalf of petitioners ever observed A.S. at UGL and that no one from the Child Study Team was ever included by petitioners in making educational decisions for A.S. as petitioners had already secured placement at The Craig School before the initial IEP meeting.

VI.

Analysis

A.

Petitioners' argument that West Milford predetermined its program and placement for A.S. for third grade is misplaced. West Milford provided A.S. with an Orton-Gillingham-based reading program and provided A.S. with a trained instructor in Yuhas. West Milford even noted in the proposed IEP for third grade that should A.S.'s needs ever exceed Yuhas's experience, West Milford would have notified petitioners.

The program at UGL was also integrated throughout the day in that the skills taught during the specialized reading program and the strategies taught during the speech and language therapy were meant to be generalized and that both Yuhas and Wallin collaborated with all of the general education and special education teachers to ensure that these skills and strategies were in fact being integrated into the classroom.

Similarly, Magnotta testified she met with Harris to make sure Harris was addressing these needs.

Various assistive technology devices were also available to A.S. such as iPads and e-readers. Likewise, numerous software programs were available to A.S. such as Dragon software and Inspiration software. Indeed a whole host of other supports and strategies were available to A.S. for reading and writing such as Explode the Code, Good Habits for Great Readers, Reading A-Z, Raz Kids, and Good Habits for Great Writers.

Given this analysis, I **CONCLUDE** that West Milford did not predetermine the program and placement for A.S. for third grade.

B.

Petitioners' argument that West Milford failed to provide A.S. with a FAPE for third grade is also misplaced.

1.

First, a preponderance of the evidence does not exist that West Milford failed to provide A.S. with a FAPE because the IEP did not specify the Orton-Gillingham approach to reading. To repeat, West Milford proposed a specific multisensory approach to reading. That the IEP did not specify the Orton-Gillingham approach to reading is of no moment because the IEP need not be that specific and because West Milford did in fact provide the Orton-Gillingham approach to reading. Yuhas earned all of the credentials necessary to deliver the instruction and the IEP contained a contingency should A.S.'s needs ever exceed Yuhas's experience.

In addition, both Yuhas and Wallin testified that the twenty-five minutes each day for Orton-Gillingham instruction was sufficient.

Likewise, Yuhas testified that A.S. would have been a good fit for her class because the Orton-Gillingham approach is foundational and all of the students in the class were at the same level of skill.

To be clear, I am more persuaded by the expert testimony West Milford provided than the expert testimony petitioners provided. As I noted above, I found all of West Milford's witnesses to be credible and reliable witnesses. On balance, I found Mishkin to be less so. For example, Mishkin had no experience with A.S. in the classroom and had never observed A.S. in the program at UGL. In my opinion, Mishkin was wedded to The Craig School. Moreover, Mishkin undermined her testimony when she exaggerated

her opinion that a teacher or aide reading to A.S. in the classroom and no one else was discrimination. To be sure, such an opinion is nothing more than conjecture.

2.

Second, a preponderance of the evidence does not exist that West Milford failed to provide A.S. with a FAPE because the reading and language arts class consisted of students at different reading levels and A.S. would not have received enough direct instruction. Magnotta testified that A.S. was doing grade-level work before he left UGL and had already shown great improvement in the five weeks he was in her class. Magnotta further testified that that she used the guided reading with A.S. in support of Yuhas and the Orton-Gillingham approach to reading. Moreover, Magnotta testified that she differentiates the work for the students in her class and that every student in her class, even those working at grade-level, needs help. As above, the argument that A.S. would not have received enough direct instruction is nothing more than conjecture.

3.

Third, a preponderance of the evidence does not exist that West Milford failed to provide A.S. with a FAPE because Magnotta failed to modify the instructional materials and no software was specifically selected for A.S. Once again, Magnotta testified that A.S. was doing grade-level work in her class, that he had already shown great improvement in the short amount of time he was in her class, and that he had fit in well both socially and academically in her class. And once again, Magnotta testified that she differentiates the work for the students in her class and that every student in her class, even those working at grade-level, needs help. In addition, Magnotta testified that Dragon software and Inspiration software were available to A.S., that petitioners did not want A.S. to use the Dragon software, and that Magnotta preferred to use the graphic organizer instead of the Inspiration Software. Finally, Magnotta testified that a whole host of other software was also available to A.S.

4.

Having been more persuaded by the expert testimony West Milford provided than the expert testimony petitioners provided, I reject the argument that West Milford failed to provide A.S. with a FAPE for third grade because the IEP included guided reading and Mishkin deemed it inappropriate for A.S.

5.

Likewise, I reject the argument that West Milford failed to provide A.S. with a FAPE for third grade because Mishkin did not observe West Milford using an assistive technology when she observed the program at UGL. A.S. was not at UGL when Mishkin observed the program there and to extrapolate that West Milford would not have used any assistive technology with A.S. is once again conjecture. To repeat, various assistive technology devices were available to A.S. such as iPads and e-readers. McQuaid even commented that assistive technology is ever-changing and that if an IEP ever called for something West Milford did not have, she would have requested it for that student.

6.

The argument that West Milford failed to provide A.S. with a FAPE because Mishkin did not see how A.S. would have been able to generalize what he was taught in his specialized reading class goes to the heart of this case. Petitioners rely on Mishkin to gird their legal arguments and Mishkin did not believe anything but The Craig School would have been appropriate for A.S. In doing so, neither petitioners nor Mishkin allowed for the possibility that the program at UGL could be appropriate for A.S. Mishkin never even observed A.S. at UGL. Meanwhile, West Milford had a corps of experts who worked with A.S. and testified that the program at UGL was appropriate for him, that they would have collaborated to make sure he would have been able to generalize what he was taught in his specialized reading class, and that he had in fact been successful in the program at UGL for the short amount of time he was there.

Once again, the argument that A.S. would not have been able to generalize what he was taught in his specialized reading class is nothing more than conjecture.

7.

Finally, a preponderance of the evidence does not exist that West Milford failed to provide A.S. with a FAPE for third grade because the text books in his general education classes were above his reading level and were inaccessible to him without the use of assistive technology. Walker testified that all of the material in class was to be introduced to A.S. before class and that an extra period of support was to be provided to A.S. after class. Walker further testified that all of the assignments could have been tiered and that many of the projects would have been in groups. Similarly, Yuhas testified that what she taught was meant to be generalized and that she would have collaborated with all of the special education and general education teachers to ensure what she taught was generalized. Indeed, Yuhas testified that this was the whole point of the specialized reading program and its multisensory approach to reading.

Meanwhile, Harris testified that both science and social studies did not require reading the text because she provided the instruction and A.S. received study guides, which pulled out the important parts of the text for him. Harris further testified that she implemented a buddy system for students to help one another and that she seated A.S. near her so she could provide him with extra help. More important, Harris testified that A.S. had already improved during the short time he was in her class, that he just needed help getting started, and that she made sure his reading challenges did not inhibit his work, making ample use of the smart board, the documents camera, and the video clips.

Like Yuhas, Wallin testified that she too would have collaborated with all of A.S.'s special education and general education teachers to make sure the strategies A.S. learned with her, as well as the skills A.S. learned with Yuhas, were integrated into the classroom. For example, Wallin testified that she would have focused on the

vocabulary of the work A.S. would do in class and the vocabulary of the tests he would have taken on the material.

Given this analysis, I **CONCLUDE** that a preponderance of the evidence exists that West Milford provided A.S. with a FAPE for third grade as the proposed IEP for third grade was reasonably calculated to provide A.S. with significant learning and meaningful educational benefit.

C.

Petitioners' argument that West Milford failed to provide A.S. with a FAPE for fourth grade because West Milford continued to offer its in-district program is likewise misplaced. Walker testified that the program at UGL was still appropriate for A.S. because it still included the multisensory approach to reading, the small-group instruction, and the guided reading. Magnotta testified that West Milford was going to pick up where The Craig School left off and how important it was for A.S. to interact with his nondisabled peers. Finally, Wallin testified that the program at UGL was still appropriate for A.S. because A.S. still had the same difficulties with semantic relationships and recalling sentences as he had in third grade.

In short, the evidence is overwhelming that the IEP for third and the IEP for fourth grade were appropriate for A.S. The programs at UGL provided everything A.S. needed to succeed and they were staffed by skilled, caring, and passionate personnel who were committed to reading and writing. Indeed, Novak testified that he had made reading and writing the cornerstone of the educational program at UGL—so much so that McQuaid opined that the program at UGL was superior to the program at The Craig School.

Given this analysis, I **CONCLUDE** that a preponderance of the evidence exists that West Milford provided A.S. with a FAPE for fourth grade as the proposed IEP for fourth grade was reasonably calculated to provide A.S. with significant learning and meaningful educational benefit.

D.

The IEP for third grade and the IEP for fourth grade were not only reasonably calculated to provide significant learning and meaningful educational benefit but also in the least restrictive environment as case law is clear that the removal of children with disabilities from the regular education environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. In this case, the least restrictive environment is the resource room classes for reading, language arts, and mathematics, and the general education classes for science, social studies, lunch, gym and specials, with all of the speech and language therapy, special education training for the general education teachers, and the numerous aids and services appropriate to A.S.'s needs. Just because a child with disabilities might make greater academic progress in a segregated special education classroom or in an out-of-district program and placement does not necessarily warrant excluding that child from a general education classroom or from an in-district program and placement.

Case law is equally clear that courts must be careful not to impose their own preferred views of educational methods upon school districts. Likewise, neither parents nor courts have the right to compel a specific methodology in educating a student. As such, a program and placement does not turn on the intensity of the services or the superiority of the program.

On this score, McQuaid testified that West Milford incorporates multisensory strategies and principles of instruction into its lessons to teach written language as a process and that West Milford uses a variety of materials to deliver this instruction—not any particular educational method as each child with special needs presents with his or her own unique requirements.

Given this analysis, I **CONCLUDE** that a preponderance of the evidence exists that the IEP for third grade and the IEP for fourth grade were not only reasonably calculated to provide A.S. with significant learning and meaningful educational benefit but also in the least restrictive environment.

Having concluded that a preponderance of the evidence exists that the IEP for third grade and the IEP for fourth grade were not only reasonably calculated to provide A.S. with significant learning and meaningful educational benefit but also in the least restrictive environment, I need not determine whether the program and placement for A.S. at The Craig School for third grader nor the program and placement at The Craig School for fourth grades was appropriate and make no such determination one way or the other.

ORDER

Given my findings of fact and conclusions of law, I **ORDER** that the petitions for due process in this consolidated case be **DISMISSED**.

This decision is final pursuant to 20 U.S.C.A. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2014) and is appealable by filing a complaint and bringing a civil action either in the Law Division of the Superior Court of New Jersey or in a district court of the United States. 20 U.S.C.A. § 1415(i)(2); 34 C.F.R. § 300.516 (2014). 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.

September 1, 2015

DATE

BARRY E. MOSCOWITZ, ALJ

Date Received at Agency

September 1, 2015

Date Mailed to Parties:

dr

APPENDIX

Witnesses

Petitioners:

Lois Mishkin
Grant Jacks
M.S.
N.S.

Respondent:

Kimberly Walker
Krista Yuhas
Jennifer Magnotta
Jennifer Harris
Jennifer Wallin
Eileen Horn
Daniel Novak
Elizabeth McQuaid

Documents

Joint or Respondent:

- J-1 Educational Assessment by Sharyn Pasternack dated February 24, 2013
- J-2 Psychological Report by Kenneth Schulman dated March 1, 2015
- J-3 Initial ISP dated March 12, 2013
- J-4 Psychological Evaluation by Jennifer Zeisz dated June 24, 2013
- J-5 Letter from MS to Alice Steinheimer dated August 15, 2013
- J-6 Student Registration Form for West Milford dated August 26, 2013
- J-7 Letter from Maria Van Lenten to petitioners dated September 5, 2013
- J-8 Written Notice of Transfer Plan dated September 6, 2013
- J-9 Child Study Team Review of Records dated September 6, 2013
- J-10 Written Notice of Meeting dated September 6, 2013

J-11 Consent to Amend IEP dated September 10, 2013

J-12 Letter from Van Lenten to petitioners dated September 11, 2013

J-13 Agreement for Use of School Equipment dated September 14, 2013

J-14 Speech and Language Evaluation by Wallin dated September 18, 2013

J-15 Written Notice of Meeting dated September 19, 2013

J-16 Became R-16

R-16 Benchmark Assessment by West Milford dated September 19, 2013

J-17 Health Information for West Milford dated September 26, 2013

J-18 Became R-18

R-18 Multisensory Reading Assessment by Yuhas dated September 27, 2013

J-19 Draft of Schedule for Third Grade dated September 30, 2013

J-20 Proposed IEP for Third Grade dated October 1, 2013

J-21 Letter from petitioners to West Milford received October 2, 2013

J-22 Letter from McQuaid to petitioners dated October 10, 2013

J-23 Letter from Steinheimer to petitioners dated October 11, 2013

J-24 Letter from Van Lenten to petitioners dated October 11, 2013

J-25 Student Transfer Card for A.S. dated October 17, 2013

J-26 Letter from Steinheimer to The Craig School dated November 1, 2013

J-27 Letter from MS to Steinheimer dated November 2, 2013

J-28 Attendance Report for A.S. at UGL as of October 18, 2013

J-29 Proposed Schedule for A.S. on December 10, 2013

J-30 CV for Mishkin undated

J-31 Letter from McQuaid to petitioners dated March 23, 2014

J-32 Became R-32

R-32 Letter from Simon to Spar dated April 18, 2014

J-33 Became R-33

R-33 Observation Report of The Craig School by McQuaid, together with report of conference call with Janet Corzine, dated July 14, 2014

J-34 Became R-34

R-34 Not in Evidence

J-35 Became R-35

R-35 Observation Report of The Craig School by Horn dated June 26, 2014

J-36 Became R-36

- R-36 Letter from Simon to Spar dated July 2, 2014
- J-37 Letter from Van Lenten to petitioners dated October 3, 2014
- J-38 Letter from MS to Van Lenten dated October 9, 2014
- J-39 Letter from Van Lenten to petitioners dated October 15, 2014
- J-40 Letter from Van Lenten to petitioners dated October 22, 2014
- J-41 Letter from Van Lenten to petitioners dated November 24, 2014
- J-42 Proposed IEP for Fourth Grade dated December 12, 2014
- J-43 Became R-43
 - R-43 Therapist Contact Sheet from West Milford dated September 12-16, 2013
- J-44 Became R-44
 - R-44 Speech and Language Observation Form dated September 18, 2013
- J-45 Became R-45
 - R-45 Classroom Teacher Input for Evaluation Planning by Magnotta dated September 18, 2013
- J-46 Became R-46
 - R-46 Speech and Language Services, Case History Form, dated September 16, 2013, together with letter from Wallin to Petitioners, dated September 16, 2013
- J-47 Became R-47
 - R-47 Notes from Magnotta dated September 6 and October 1, 2013
- J-48 Became R-48
 - R-48 Notes from Van Lenten dated September 6, September 19, and October 1, 2013
- J-49 Became R-49
 - R-49 Notes from Van Lenten dated September 18 and September 26, 2013
- J-50 Became R-50
 - R-50 Multisensory Reading and Writing Curriculum by Magnotta for A.S. for Third Grade
- J-51 Became R-51
 - R-51 Assessments, Tests, Quizzes, and Work Samples for A.S. in Math for Third Grade
- J-52 Became R-52
 - R-52 Assessments, Tests, Quizzes, and Work Samples for A.S. in Reading and Writing for Third Grade

J-53 Became R-53

R-53 CV of McQuaid undated

J-54 Became R-54

R-54 CV of Horn undated

J-55 Became R-55

R-55 Not in Evidence

J-56 Became R-56

R-56 CV of Harris

J-57 Became R-57

R-57 CV of Yuhas

J-58 Became R-58

R-58 CV of Walker

J-59 Became R-59

R-59 Not in Evidence

J-60 Became R-60

R-60 CV of Wallin

J-61 Became R-61

R-61 CV of Magnotta

R-62 Became R-62

R-62 CV of Novak

J-63 Clinician Report for WIAT-III dated October 31, 2014

J-64 Pro-Score Report for TOWL-4 dated September 8, 2014

J-65 Card from AS to Novak in October 2013

J-66 Fountas and Pinnell, Text Level Ladder of Progress for AS, undated

J-67 Email from MS to Van Lenten and Steinheimer dated October 9, 2013, and response from Van Lenten to MS dated October 10, 2013

J-68 Craig School Application dated August 22, 2013

J-69 Email thread between MS and Steinheimer from August 15 to September 4, 2013

J-70 Became R-70

R-70 Book List for Science in Third Grade

J-71 Became R-71

R-71 Button Board for Third Grade Class

J-72 Became R-72

R-72 Emails in file from Mishkin

J-73 Became R-73

R-73 Handwritten notes from Horn dated January 28, 2014

J-74 Became R-74

R-74 Typewritten notes from Horn dated January 28, 2014

J-75 Became R-75

R-75 Email thread between MS and McQuaid from September 16 to September 20, 2013

J-76 CV for Jacks

Petitioner:

P-1 Email from MS to McQuaid dated September 16, 2013

P-2 Email from MS to McQuaid dated September 18, 2013

P-3 Not in Evidence

P-4 IEP documents given to petitioners at beginning of IEP meeting on December 12, 2014

P-5 IEP documents given to petitioners at the end of IEP meeting on December 12, 2014

P-6 Letter from petitioners to Van Lenten dated December 16, 2014

P-7 General facts about The Craig School

P-8 Certificate of Accreditation by Middle States Association of Colleges and Schools for The Craig School from May 1, 2008 to May 1, 2018

P-9 Reading curriculum at The Craig School

P-10 List of textbook and materials, together with general daily format, for fourth grade at The Craig School

P-11 Student and Parent Handbook for The Craig School

P-12 Enrollment contract at The Craig School for third grade

P-13 Enrollment contract at The Craig School for fourth grade

P-14 Letter from The Craig School to petitioners dated January 28, 2015

P-15 Transportation summary by M.S. dated January 21, 2015

P-16 Summer Progress Report for A.S. at The Craig School dated July 29, 2014

P-17 Student Schedule for A.S. at The Craig School for third grade

P-18 Present Levels of Achievement for A.S. at The Craig School as of January 2014

- P-19 Progress Reports for A.S. at The Craig School for third grade
- P-20 Report Card for A.S. at The Craig School for third grade
- P-21 Speech and Language Progress Report for A.S. at The Craig School for third grade
- P-22 Phonics Evaluation for A.S. at The Craig School for third grade
- P-23 Report Card for A.S. at The Craig School for fourth grade
- P-24 Present Levels of Academic Achievement and Functional Performance at The Craig School from October 31 to November 13, 2014
- P-25 Attendance Record for A.S. at The Craig School for fourth grade
- P-26 Not in evidence
- P-27 Not in evidence
- P-28 Not in evidence
- P-29 Not in evidence
- P-30 Observation Report of The Craig School by Mishkin undated
- P-31 Educational Evaluation of A.S. by Mishkin undated
- P-32 Student Schedule for fourth grade
- P-33 Email from Van Lenten to members of the Child Study Team dated September 18, 2013
- P-34 History and Mission of The Craig School
- P-35 Keys for Report Cards
- P-36 Auditory Progress Report for third grade
- P-37 Various certifications of teachers at The Craig School
- P-38 Student practice sheets from Framing Your Thoughts, Inspiration graphic organizer, and written work undated
- P-39 Notes from Mishkin undated
- P-40 Email thread between M.S. and Van Lenten from December 2 to December 5, 2013
- P-41 Email from Spar to Simon dated April 28, 2014
- P-42 Email thread between MS and Van Lenten from October 9 to December 16, 2014