



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. EDS 4386-17

AGENCY DKT. NO. 2017-25796

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

Petitioners,

v.

**RANDOLPH TOWNSHIP BOARD OF
EDUCATION,**

Respondent.

Mariann Crincoli, Esq., for petitioners M.S. and D.S. on behalf of N.S. (Susan Greenwald & Wesler, attorneys)

Robin S. Ballard, Esq., for respondent Randolph Township Board of Education (Schenck Price Smith & King, attorneys)

Record Closed: June 30, 2018

Decided: July 16, 2018

BEFORE **GAIL M. COOKSON**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

On or about February 23, 2017, M.S. and D.S. filed this petition on behalf of their

son N.S., (petitioners) who turned eighteen (18) during the hearings¹, and requested a due process hearing on the issue of whether respondent Randolph Township Board of Education (District) had failed to properly evaluate and classify him, and hence, failed to provide a Free and Appropriate Public Education (FAPE) under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C.A. §§ 1400 to 1419. N.S. was on a Section 504 Plan under the Rehabilitation Act of 1973 (504 Plan), 29 U.S.C.A. § 794, during many of his years at Randolph. As relief, the petition sought reimbursement for the petitioners' voluntary placement of N.S. at the Waypoint Academy in Huntsville, Utah.

The Office of Special Education Programs (OSEP) transmitted the petition to the Office of Administrative Law (OAL) on or about March 29, 2017. After a mediation conference at the OAL did not result in a settlement, the matter was assigned to me on April 6, 2017, for determination as a contested matter. During the initial case management conference convened telephonically on April 21, 2017, we discussed hearing dates and probable witnesses. I also advised counsel of my mandatory protocols as set forth in my Standing Case Management Order for Special Education Cases. In accordance with that Standing Case Management Order, on which there were no objections or exceptions filed, all direct testimonies of witnesses were proffered through pre-filed written submissions and the witnesses were then presented for oral cross-examination and re-direct examination, as needed. Pre-filed direct testimonial certifications were made part of the record herein.

The plenary hearings were held on August 25, September 11, 13, October 10, and November 14, 2017. After the final post-hearing written briefs were received on March 16, 2017², I allowed an additional date for oral argument on June 30, 2018, should same be needed, but I ultimately found I did not require same. The matter is now ripe for determination.

¹ A Power of Attorney was submitted to allow his parents to continue the case on his behalf.

² At the time of the receipt of the briefs, I was involved in a highly complex public utilities case which kept me from turning my attention to writing this decision.

SUMMARY OF TESTIMONY

N.S. has attended Randolph Township schools throughout the relevant period. N.S. had an older brother who, it was said, excelled at Randolph High School, and a twin sister who was enrolled in five AP classes and doing very well academically. He has had a Speech and Language Only IEP since second grade. In middle school, N.S. was provided with a 504 Plan to address some anxiety reported by petitioners.

Deborah Iosso (Iosso) is the Principal at Randolph High School and oversees the Intervention and Referral Services (IR&S) Team and the 504 Team. Iosso has been the high school Principal for five years and has previously held positions as an elementary school principal, supervisor of the Child Study Team (CST), and was a special education Teacher of the Handicapped for over twenty years. She testified on behalf of respondent in this proceeding.

Iosso described the high school as having an enrollment of 1,640 students, with less than 100 on 504 Plans. N.S. began attending the high school during the 2014-2015 school year. Iosso participated in his IR&S and 504 meetings. She reported that N.S.'s records indicated a strong academic performance. He had achieved A's and B's in all of his subjects during middle school. N.S. had achieved proficient or advanced proficient on all State standardized tests. N.S. began his freshman year with a 504 Plan already in place since November 2012 (with annual revisions) for Generalized Anxiety Disorder. The high school's IR&S Team prepared his 504 Plan on September 4, 2014.

During that school year, N.S. was on home instruction due to a concussion from January 9, 2015, to April 16, 2015. His 504 Plan was updated on January 9, 2015, to reflect this. Iosso testified that when N.S. returned to school, his 504 Plan was reviewed on April 16, 2015, to include accommodations as recommended by N.S.'s doctor for his return to school. Other than this medical absence, N.S. missed only seven days of school and was tardy four times his freshman year, and he received A's and B's in all academic subjects.

N.S. was recommended to take B level classes for English and History for tenth grade by his ninth-grade teachers. He opted to waive into level A classes that are more academically rigorous and require more work, despite his teachers' recommendations. For Spanish, he was in an honors class and despite his parents' suggestion that he go to the lower A level Spanish class, N.S. insisted on staying in the honors class.

Within six weeks of the start of that sophomore year, N.S.'s psychiatrist advised the District in writing that N.S. required home instruction due to anxiety. Home instruction was provided but by November 15, 2015, petitioners had removed N.S. from the home to Mountain Valley Treatment Center in New Hampshire. N.S. remained in that program until February 15, 2016. In preparation for his return, the IR&S Team and petitioners met in late January to discuss his transition back into the school setting. The Team agreed to provide N.S. with a half-day schedule in school supplemented with home instruction to get caught up.

N.S. returned to school for half-days starting on February 22, 2016. By March 22, 2016, N.S. returned to school full time. N.S. finished the school year with a C+ in Accelerated English, a B+ in Accelerated Chemistry, and A's in the rest of his courses. He made the Honor Roll. With the exception of the time he spent at Mountain Valley and on home instruction, N.S. missed twelve and one-half days of school and was tardy six times. Iosso stated that his 504 Plan was updated on June 20, 2016.

Prior to the start of N.S.'s junior high school year, the District was contacted about another revision of his 504 Plan. Again, N.S. had signed up for classes at a higher level than recommended. Revisions were made to N.S.'s 504 Plan on October 7, 2016, with the petitioners' consent. Iosso does not participate in the high school CST but she understood that the petitioners had requested a referral of N.S. for evaluation.

Iosso explained that for any student experiencing difficulty with anxiety, school avoidance or any other emotional issues, therapeutic supports are offered through general education by Sage Day. In October 2016, N.S. was referred to Sage but the

petitioners declined the support. In November 2016, N.S. stopped attending school.³ A prescription dated December 19, 2016, was submitted to the District from Dr. Charles Martinson to indicate that N.S. was not medically able to attend school. The District approved that request and on January 4, 2017, additional revisions were made to N.S.'s 504 Plan.

After another referral was made and accepted for therapeutic supports from Sage, Linda McGovern began working with N.S. on January 6, 2017. On February 27, 2017, McGovern and N.S.'s guidance counselor met with each of his teachers to obtain information on his schoolwork. According to his Spanish teacher, N.S. was caught up and could return any time. His Physics instructor thought N.S. required a few more sessions to catch up. N.S. continued to be behind in Math, English and U.S. History.

losso reported that N.S.'s 504 Plan was again revised on March 9, 2017. At around that same time, petitioners informed the District that N.S. wanted to return to school for at least Physics and Spanish. He never did return to Randolph High School. On March 24, 2017, the District's attorney received a letter from the petitioners' attorney indicating that they intended to place N.S. in a residential treatment center. losso believed that N.S. was placed at Waypoint Academy in Utah on or about May 22, 2017.

losso was cross-examined about the role emotional intelligence plays in a child's success and development in school. She concurred that academics is just one aspect of education but maintained that grades, assessments and tests are pretty good at indicating success. With respect to N.S.'s transition from middle to high school, losso explained that the teams and guidance counselors meet together and she would have received an overview, although she had no specific recollection of it at the hearing.

losso later reviewed the communications of concerns between petitioners and the staff but at the time, she was unaware of any "red flags" for N.S. She stated that it is not uncommon for smart kids to be missing homework or assignments for which they

³ Perhaps coincidentally, N.S. turned sixteen on November 6, 2016, at which point he was above the age of compulsory education. As such, losso stated that the District was not able to do anything to try to compel him to attend.

get a zero. She was also unaware that petitioners wanted a referral to the CST for possible evaluation and classification before N.S. returned to the District from Mountain Valley. Iosso was not involved with any day-to-day interaction with N.S. or petitioners.

On continued cross-examination, Iosso reviewed and compared N.S.'s various 504 Plans. She admitted that there were not many adjustments from plan to plan, even during the period of his recovery from a concussion. Iosso noted that Sage counseling and additional time accommodations for larger projects were added in the fall of 2016. Because the parents reported that N.S. was not receiving therapy, Iosso was not familiar with Dr. Suckno's or Glawe's involvement with the child. While she acknowledged that N.S. missed a lot of home instruction sessions, she believed that the plan to return him to the classroom was not given enough time to work. Iosso had also suggested to N.S. and his parents that he consider "Option 2" -- an independent study path to graduation. That alternative includes the ability to get credit for work or internship opportunities, as well as to take college or online courses. The family rejected this suggestion.

On further direct examination, Iosso remarked that the 504 planning process evolves with input from the petitioners as well as the team members. She reported that N.S. did not exhibit behavioral or emotional issues when he was in school. She was of the opinion that the District had provided appropriate supports and accommodations to N.S.

Maria Renken testified next for the District. At the time of these hearings, Renken was in her first year as a School Psychologist, having only received her Education Specialist Degree in School Psychology in May 2016, preceded in May 2014 by a Master of Education in School Psychology, both from The College of William and Mary. Prior to obtaining her latest credential, Renken had prepared over forty assessments under supervision as an intern or practicum student with other districts. In this first school year for her in the District, Renken had undertaken another forty psychoeducational assessments to determine eligibility for students and have interpreted her findings at eligibility meetings. Renken also regularly counsels students

exhibiting emotional, academic or behavioral difficulties, I qualified her as an Expert in Psychological Assessments and Eligibility for Special Education.⁴

Renken is the case manager and a member of the CST for approximately forty students. She became familiar with N.S. when petitioners sought a referral to the CST in September 2016. The CST met on September 30, 2016, at which they reviewed 504 Plans, the documentation submitted to support the request for the referral, his academic record, standardized testing, existing evaluations, including the report from Dr. Kevin O'Keefe from Mountain Valley Treatment Center, which N.S. attended from November 15, 2015, to February 15, 2016. Renken summarized in her testimony the cognitive and achievement assessments given to N.S. by Dr. O'Keefe. On the Wechsler Adult Intelligence Scale - IV, N.S. obtained a full-scale IQ score of 113, placing his cognitive functioning in the high average range. On achievement testing using the Wechsler Individual Achievement Test - III, Dr. O'Keefe found N.S. to be functioning in the average to above-average range, with standard scores ranging from 103 to 123. N.S. was not achieving below expected levels in any academic areas and was achieving above expectations in Math. The CST accepted Dr. O'Keefe's assessments. Renken also acknowledged Dr. O'Keefe's diagnoses of N.S. with Generalized Anxiety Disorder and Persistent Depressive Disorder.

Petitioners were at the CST meeting and reported their past experiences with N.S. and the 504 Plans. They also reported that they did not feel that Mountain Valley had helped N.S.; however, Renken noted that N.S. returned to school full-time after a gradual transition from Mountain Valley and successfully completed his sophomore year. In order to address the petitioners' concerns, the CST recommended that N.S. lower the level of his English course, but the parents declined to do that.

The CST agreed to complete social and psychological assessments of N.S. to determine whether he met criteria for eligibility for special education and related services. A psychiatric evaluation of N.S. was deemed not to be warranted as he was

⁴ Petitioners objected to her being qualified as an expert because of the lack of presentations or papers on her resume. I overruled the objection but noted that those objections would properly go to the weight of her testimony.

already diagnosed with General Anxiety Disorder and had been provided accommodations for that condition previously. At the evaluation planning meeting, the CST recommended that the parents seek some outside counseling for N.S. Petitioners did not follow up on that recommendation.

Renken undertook the psychological assessment of N.S. on November 3, 2016. She interviewed him and utilized the Behavioral Assessment Scale for Children (BASC III) in her evaluation of him. During the interview, N.S. told her that he felt fine in school and liked his classes but had difficulty with the work. N.S. noted that he would miss school when he had not completed an assignment, as he did not want to be the only student who had not done it. He admitted that he did not get anxious about responsibilities outside of school. When Renken questioned him about the extra stress of being in accelerated academic classes, N.S. said that he did not want to go down to lower levels and that the 504 accommodations were all he needed.

Renken also learned from N.S. that he enjoyed watching and playing sports, playing video games, watching television, and hanging out with friends. He felt frustrated that therapists had not been able to figure out why he had trouble completing his school work. Renken observed N.S. during an English class, chosen because N.S. reported he had a hard time with writing. During her observation, N.S. actively participated in his English class in group work. He was attentive, on task and cooperative. N.S. expressed his opinions appropriately during class as well. When Renken spoke with his other teachers, the biggest issue reported was N.S.'s absenteeism and failure to make up work that was missed. His teachers commented that he was often unprepared for class and did need the accommodations allotted to him in some of his classes.

Renken administered the BASC to six of his teachers. All the scores were considered validated under the protocols. One teacher, however, had too many "I don't know" responses to be included. One teacher found N.S. to be typical in all areas. Of the reports of the other four teachers, only one assigned scores that were in the clinically significant range for N.S. exhibiting anxiety. Other clinically significant ratings

were from one teacher in the area of somatization and from two teachers in the area of social skills. The ratings from the four teachers placed N.S. at risk in several different areas: withdrawal; functional communication; adaptability; leadership; study skills; depression and atypicality. None of N.S.'s teachers expressed concern with his ability to access the curriculum through general education.

On December 16, 2016, the CST reconvened on the subject of N.S.'s eligibility for special education. Ten days prior, they received the report of petitioner's independent psychiatric evaluator, Dr. Charles Martinson. Renken noted that Dr. Martinson had not observed N.S. in the school environment, nor had he spoken with any staff or teachers. She found that he made medical treatment recommendations, which the school cannot enforce or endorse as it is a personal family decision, and that he did not make any recommendations for specialized instruction for N.S. to access his education.

During the meeting, the IDEA criteria were discussed and considered. The CST was unable to determine that N.S.'s lack of attendance was due to a disabling condition. The CST concluded that N.S. did not demonstrate a need for special education and related services, *i.e.*, specialized instruction. The possibility of Sage counseling services was again proposed to support N.S., including visits to his home, to assist him with returning to school. The Sage clinician was present at the CST meeting and answered questions from the family and their attorney regarding the services available.

On cross-examination, Renken confirmed that she had not met N.S. prior to the first evaluation meeting. She later spent approximately an hour with him during her assessment and then observed him in his English classroom. Renken described the gradual transition back to high school for N.S. after Mountain Valley. Neither the parents nor N.S. felt that Mountain Valley had been successful, although N.S. had stated otherwise on another occasion. Renken was questioned on the criteria for classification of a student as emotionally disturbed. She stated that school refusal could be atypical. Renken was also aware that N.S. was reported to have physical

symptoms of anxiety and issues even with home instruction. She testified that the CST agreed that he had a medical disability and needed the 504 Plan, but they disagreed with any classification because he had no need for specialized education.

Renken did not speak with Dr. O'Keefe or anyone from Mountain Valley about N.S. She did talk to Dr. Suckno but received no response to her request for his psychiatric evaluation, which petitioners had never made available to the District. Separate from the BASC assessments she undertook, she also had some informal surveys from his teachers. While Renken is light on experience as a school psychologist, I **FIND** that her assessments were objectively completed and coupled with her observations of N.S., entitle her testimony to some weight. More important, she testified as a representative of the CST which includes other persons who participated in the eligibility determination.

Linda McGovern was called as a witness for the District. She is the Clinical Supervisor through the Sage Day School for the Randolph District, one of Sage's public-school partnerships. McGovern achieved a Bachelor's Degree in Psychology from William Paterson University in 1999 and my Master's Degree in Counseling from William Paterson University in 2008. McGovern is a Licensed Professional Counselor in New Jersey and a Nationally Certified Counselor. She is certified as a school counselor and an elementary education teacher for grades kindergarten through eighth. Her certificate was obtained through the alternative teaching route. McGovern began as a teacher in 2001 for the Sage Day School in Boonton working with middle school students with emotional difficulties.

In 2008, McGovern became a therapist at the Sage Day Middle School in Mahwah conducting group, individual and family therapy sessions, and crisis intervention as needed. McGovern also has a private counseling practice at Brighter Horizons Counseling, LLC. In her work there, she diagnoses clients, formulates treatment plans, and provides short and long-term therapy to children, adults and families. School avoidance is an area of sub-specialty for McGovern. She collaborates with schools and outside providers to ensure continuity of treatment.

Randolph offers therapeutic supports to general and special education students through Sage counselors, who have demonstrated success in returning school-avoidant students, like N.S., to Randolph High School. I qualified McGovern as an expert in School Avoidance and Counseling.

McGovern became familiar with N.S. as a general education student potentially in need of counseling in the 2016-2017 school year. She was aware that he was on a 504 Plan and that the CST was evaluating him for special education. It is McGovern's practice to meet with both the parents and the student before commencing counseling. She spoke with D.S. on October 14, 2016, who expressed a willingness for these services; however, she was resistant to the idea of N.S. being pulled out of any classes. A few days later, McGovern met with N.S. who also was upset about pull-out counseling sessions. She found that N.S. was generally resistant to receiving counseling services. On October 25, 2016, D.S. advised McGovern that they were declining her assistance.

McGovern next became involved with N.S.'s case when she was asked to attend the CST meeting on December 16, 2016. She did not contribute to the evaluation but was there to offer counseling services to N.S. again. By then, she understood that N.S. had stopped attending school. In preparation for providing counseling to N.S. in the home, as was academic instruction, McGovern reviewed the school-sponsored and private evaluations. The initial schedule was for weekly hour-long individual counseling sessions in the home. The first session was conducted on January 6, 2017. The goal of the counseling sessions was to help N.S. address what made it challenging for him to attend school while he was working with home instructors to catch up on missed work.

McGovern began working with N.S. by trying to build a rapport and providing him with some strategies for a transition back to RHS. N.S. arrived from his room to the in-home counseling sessions on average twenty minutes late. Each session, N.S. stated that he did not want to participate in a counseling session. McGovern believed that N.S. was trying to convince her that he was fine except for school. He told her that he still went out socially and reported having gone to the movies and a basketball game with friends. McGovern floated several suggestions including: reducing his academic

load through class level adjustments, which he declined and his parents backed his decision; returning to a modified schedule of just electives and specials for social interaction with peers, which he declined and his parents backed his decision; considering placement in an intensive outpatient program for mental health to stabilize him and further assist in the goal of transitioning back to high school, which D.S. apparently declined because she did not think group therapy was appropriate for N.S.; accepting family counseling from McGovern with crisis support, which they declined; and setting up consequences for N.S.'s refusals, which D.S. stated had been tried before and failed, and were tough on the rest of the family.

During February 2017, N.S. became more reticent to participate or even show up for counseling sessions in the home. Apparently, he was also skipping home instruction sessions. McGovern coordinated with the District's guidance counselor on these issues. McGovern was told that N.S. was caught up with his work in Spanish and almost caught up in Physics. She proposed, therefore, to the parents that at the beginning of March, N.S. would start attending an abbreviated school day in those subjects, with home instruction in his other subjects. Additionally, extra help was offered to N.S. for Math in the library while at school. N.S. rejected this plan as well and his parents backed his decision. The response of petitioners was that N.S.'s refusal was proof that he required classification and a residential program.

Throughout the duration of McGovern's sessions for N.S., she suggested to D.S. that some changes be made in the home to help aid N.S. with returning to school. These suggestions included eliminating electronics during the day, and N.S. participating in chores or any other appropriate responsibilities that would make his afternoons more structured. There was no evidence provided by the family that they had implemented these suggestions. It appeared to her that N.S. was in control of whether he attended school or participated in services offered to him. McGovern's last session with N.S. was on February 24, 2017.

During the period that McGovern tried to work with the family, she spoke with Glawe about his therapeutic work with N.S. Glawe reported to her that he had offered

to go to the home in the morning to assist N.S. in attending school and to come to the home during a home instruction session. Glawe stated that N.S. rejected his offers of assistance and that the parents never availed themselves of the offer of morning assistance. Glawe also reported that he had stopped seeing N.S. in January of 2017.

According to McGovern, all appropriate academic and therapeutic supports were made available to N.S. from the District for him to access his education through 504 accommodations, home instruction, and in-home therapy. The family and N.S. declined to take advantage of them for him to return to school. In McGovern's clinical judgment and expert opinion, N.S. did not exhibit paralyzing anxiety. Rather, she witnessed a huge oppositional piece to his behaviors in the home. It did not appear to her that N.S. was unable to attend school. Rather, it appeared he was unwilling.

McGovern orally supplemented her pre-filed direct testimony with respect to her review of the pre-filed testimony of D.S. McGovern disagreed with the perspective and efforts of petitioners concerning utilizing an Intensive Outpatient Program (IOP) with N.S. McGovern also felt that D.S. came into the Sage counseling interview with her mind set on an out-of-district residential placement. McGovern also believed that D.S. was recording their discussion which made her feel both uncomfortable and contrary to principles of confidentiality. It was clear that D.S. did not share the goal of returning N.S. to school.

On cross-examination, McGovern reiterated that she is not a member of the CST but addresses emotional struggles and other therapeutic needs. She agreed that N.S. needed accommodations and coping skills to deal with his school anxiety. McGovern's paramount purpose is to aid a student in being in school, and not to recommend or make referrals to out-of-district placements. Between her October meeting with the family at school and the December meeting in the home, it was difficult for McGovern to say whether N.S. got worse. The reports she was hearing were conflicting and ambiguous.

At the eligibility meeting, to which McGovern was invited, the parents shared their perceptions of N.S.'s anxiety and refusals of cooperation. Yet she also noted that N.S. is on grade level academically even with his emotional struggles. While D.S. reported more symptomatology than N.S., McGovern was queried as to whether he was very self-aware. She provisionally agreed but also stated that his teachers reported less anxiety than the parent. She repeated the problems she had with establishing a rapport with N.S. or getting him to even come down and engage. McGovern agreed that avoidance was one of his coping mechanisms such that avoiding therapist after therapist would not be unusual. N.S. did not think that he needed therapy and his mother had advised McGovern and the CST that nothing had worked in the past. She was unable to confirm whether the parents took away privileges or gave N.S. additional responsibilities as consequences for his school refusal.

On further direct examination, McGovern had offered and highly recommended family counseling as N.S.'s struggles had a definite family component. She recalled that Dr. O'Keefe had found that N.S. harbored a lot of anger toward the family which intensified his anxiety and the general chaos that took place in the home. McGovern testified that she had explained to petitioners that implementing her strategies will usually make the situation worse at first, but then gets better with consistency.

Walter Curioni was the last witness for the District.⁵ Curioni has been the Director of Special Services in Randolph since 2015. He holds numerous teaching and supervisory certificates in New Jersey. Prior to being employed in the District, Curioni worked with the North Arlington Board of Education as Director of the CST and then Director of Special Services. In those capacities, he stated that he had reduced the number of students in out-of-district placements, reduced the percentage of classified students, and expanded the in-district inclusion offerings. One means of achieving those reductions was to provide more supportive programming overall to the student body such that fewer CST referrals were necessary. Curioni has already been able to reduce the number of out-of-district placements in Randolph approximately forty (40%)

⁵ The Confidential Social Assessment of Jane McGarry, LCSW, was admitted into evidence without objection and without her testimony. [J-26.] It is basically a transcription of an interview of petitioners and adds nothing new to the record.

percent since assuming his new position. He has supervised hundreds of CST meetings. I qualified him as an expert in Eligibility and Programming for Special Education.

As Director, Curioni facilitated school records and evaluations being forwarded to the petitioners or their experts as requested by their attorney. He also directed the 504 Team to update N.S.'s 504 plan in September 2016 and made a referral to the CST in response to their requests. Curioni assigned Renken to be N.S.'s case manager and while he did not attend the initial eligibility meeting, he was kept apprised of the evaluations being undertaken and the discussions. Curioni did attend the meeting held on December 16, 2016. N.S. had stopped attending school in November 2016 but as he was over the age of compulsory education, the District could not compel him to attend.

Curioni agreed with the consensus of the CST that N.S. did not meet the requirements for special education eligibility. He specifically took note of the criteria that the student must be in "need of special education and related services." N.S. has consistently taken high level classes and excelled at them, even when those classes were not recommended for him, which he took with his parents' permission. Curioni reviewed Dr. O'Keefe's aptitude and achievement assessments, and N.S.'s above-average mastery of the curriculum through grades and standardized test scores. He concurred that N.S. evidences a need for medical treatment for his anxiety. This need is noted in the testing from Dr. O'Keefe and in the private reports obtained by the parents from Dr. Martinson and later Dr. DaSilva.

Whether to pursue medical treatment of a health condition is a decision for the family to make for their child. The District cannot require parents to medicate or otherwise treat a student. To further explore N.S.'s psychiatric state and possible impact on his education, Curioni agreed to a psychiatric evaluation of N.S. This evaluation was completed by Dr. Gerald Meyerhoff. Curioni reviewed his report and found that it confirmed that N.S. has treatment needs for his anxiety, but does not indicate any indication that N.S. requires special education. Curioni's expert opinion is

that N.S. was properly found ineligible for special education and related services by the CST.

N.S. was unilaterally placed at Waypoint Academy by his parents commencing in May of 2017, having notified the District on March 24, 2017. The District declined to accept financial responsibility for N.S.'s placement at Waypoint, as N.S. had been properly identified as not eligible for special education and because the District had no reason to believe that N.S. required residential placement for educational reasons. After some effort and in preparation for the due process hearings, Curioni was provided the opportunity to observe N.S. at Waypoint on August 18, 2017. He was informed that there was no full-time medical staff person who could administer medications to N.S. Curioni spoke with N.S.'s counselor, Nicole Phillips, who stated that N.S. had been experiencing difficulties recently. Curioni noted from his review of Waypoint records that N.S. is not attending all of his classes at Waypoint nor is he arriving on time to all of them, even though the school is attached to the residence where he lives.

Curioni observed N.S. in two classes, each of which had one instructor, and were "recovery" classes to help him catch up with credits. Curioni also observed classes in subjects that N.S. was enrolled but during sessions that did not include him. He did not see any therapeutic supports in the classroom, and very little technology. The room itself was partitioned with a temporary divider. In the Math class with N.S., he had difficulty completing his work. While his classmates finished a packet of work within twenty minutes, N.S. spent eight minutes on the first question and skipped questions within the packet in that time frame. Nevertheless, Curioni saw him ask the teacher if he could participate in an honors class, during which he was stammering using involuntary repetitions and prolongations of sounds and syllables.

N.S. was observed to pick up and eat lunch alone, without interactions with his peers. After lunch, he returned to the same classroom that he had been in during the morning as well but went to the other side of the partition for recovery English. Apparently, he was expected to read for fifty minutes. N.S. was observed with headphones on the entire time. He did no writing and the purpose of the lesson was

unclear. Curioni found the class methods and instruction to be outdated and did not include any special education. N.S. appeared to be functioning at a lower level than in Randolph. Also, N.S. did not engage with his peers. It was Curioni's expert opinion that N.S.'s functioning at Waypoint reinforced the District's conclusion that N.S. requires medical treatment for his anxiety but is not in need of special education.

On cross-examination, Curioni acknowledged that his first awareness of any request for a CST referral for N.S. came from counsel in September 2016. A request for psychoeducational testing in 2015 had been an email to the Guidance Department and not to the CST. Curioni was unaware of any referrals to CST after N.S.'s discharge from Mountain Valley in January 2016 until the September one. Sage services were recommended as part of the District's tiered approach to supplemental supports for students, even in general education. Curioni reasserted that IDEA services are individualized to the student, even one who might be in AP classes, but there still needs to be an educational impact of the emotional disturbance for those services to be offered. He conceded that Waypoint might have had therapeutic supports in place other than in the classroom but it definitely did not have them in the classroom.

Parent D.S. testified in support of this due process petition. She reported that N.S. reached all his childhood milestones on time. However, he started attending speech therapy at age four for articulation issues. N.S. received speech therapy through tenth grade. He was evaluated in 2006 by the Morris Township School District CST, where the family was living at the time. N.S. was determined eligible for speech and language services and received an IEP for those services in 2007. When the family moved into Randolph later that year, the District continued his speech-only IEP. D.S. described N.S. as a bright child. Prior to sixth grade, petitioners applied to have his twin sister and he placed in the Gateways gifted/talented humanities class, a supplemental academic course. N.S. was also placed in an accelerated English class.

D.S. stated that N.S. began to show anxiety during sixth grade and found the research projects difficult to complete. If incomplete, N.S. would exhibit reluctance to go to school. Concerned that the stress was too much for him, D.S. requested that he

be removed from the Gateways class after the first marking period. N.S. had a difficult time catching up with missed work and he was visibly anxious about it. He was not able to manage the missing work and petitioners had to help him to complete his missing assignments, especially English. D.S. stated that she had to pull him into the car at times to get him to school and that sometimes he would cry and would refuse to get out of the car when they got to school. During N.S.'s sixth grade year, D.S. communicated regularly with his teachers regarding his anxiety. In February 2012, N.S. had missed a few days of school after going to the hospital with vomiting and stomach pains. He was very worried about returning to school because of the missing schoolwork, especially a poetry assignment in English.

In planning for seventh grade, N.S. wanted to stay in the advanced English track but D.S. was concerned about his anxiety. N.S. was worried about being bored in a lower level and what other kids would think. In May 2012, petitioners took N.S. to see a psychiatrist, Dr. Eric Bartky, because of the anxiety symptoms. Dr. Bartky diagnosed N.S. with an anxiety disorder. He recommended a therapist who works with him and provides cognitive behavioral therapy. N.S. saw her for approximately one year but petitioners did not see an improvement. A medication regimen was recommended and Dr. Bartky developed a plan. D.S. stated that no one from the District referred N.S. to the CST to address his anxiety during sixth grade.

During the summer of 2012, N.S. attended a sleepaway camp in New York for four weeks and did not experience anxiety issues and was able to make friends. Shortly after he began seventh grade, D.S. testified that N.S.'s anxiety reemerged and worsened. He exhibited sadness, physical symptoms, and had difficulty sleeping and completing school work. He was experiencing stomachaches and headaches. Sometimes he would stay up until 1:00-2:00 a.m. and would still not be able to get work done. Also, D.S. described how he sometimes would sit and stare at his computer for hours and not be able to start his schoolwork. He would tell her that he felt stuck and could not do the work. N.S. cried often and was always overwhelmed.

In early October 2012, D.S. again emailed N.S.'s teachers regarding his school related anxiety. She requested help from N.S.'s teachers and explained that he was not comfortable advocating for himself. D.S. attended an IEP meeting on October 15, 2012, and raised her concerns about N.S.'s anxiety. The District continued to propose only speech/language services for him. In November, D.S. requested that N.S. be permitted to go to the Guidance Department when he was feeling anxious because otherwise he wanted to come home early from school. He was exhibiting school refusal in the morning, requiring petitioners to physically force N.S. into the car.

Petitioners shared Dr. Bartky's diagnosis of N.S. with the District in early November and that the therapist had recommended that he receive accommodations under a 504 Plan. His teachers were willing to work with him but it never seemed to improve his level of anxiety. After the 504 Plan was established, D.S. stated that N.S. reported that "Homework Club" was unproductive and when he attended, he was teased by one other student about his stuttering. This upset N.S. and made him very uncomfortable and stressed. The school undertook an investigation into the matter and advised the other student's parents about the District's position on bullying. Despite the 504 supports, D.S. reported that N.S. continued to shut down and experienced significant anxiety related to his homework assignments. D.S. shared this information with District staff. No one from the District suggested referring N.S. to the CST for evaluation.

From December 2012 through February 2013, N.S.'s anxiety continued despite 504 supports, private therapy and medication. D.S. continued to write to N.S.'s teachers regarding his anxiety and they were accommodating. According to her, his anxiety reemerged at the beginning of eighth grade, notwithstanding attending the same summer camp without such anxiety. At the speech and language IEP meeting in October 2013, D.S. again raised her concern about N.S.'s anxiety but no one from the District suggested that he be evaluated regarding his emotional issues.

Throughout the winter months of eighth grade, N.S.'s physical symptoms got worse. D.S. reported that there were nights when he stayed up all night and spent most

of the time in the bathroom and expressed that he was feeling really overwhelmed about his schoolwork and group projects. D.S. stated that it was the last year that she was physically able to force him to get into the car to go to school. She wrote to his guidance counselor about the difficulty with getting him to school. D.S. also requested a meeting to discuss additional 504 accommodations for N.S. because some teachers were marking him with incompletes. During that school year, N.S. continued to see Dr. Bartky for medication management. N.S. was also seeing a different therapist, Marc Gironda, but he was not very receptive to the therapy. He refused to follow any of the suggestions that Dr. Gironda made.

Following eighth grade, N.S. again spent four weeks at camp and he enjoyed the rest of the summer with his family. D.S. took him to Randolph High School in August so that he could find his locker and classrooms, and run through his schedule. She described it as a positive experience and he was looking forward to starting high school. Nevertheless, D.S. found that N.S.'s anxiety heightened shortly after the start of his freshman year. By October 2014, D.S. began emailing his teachers to inform them about his struggle with school related anxiety and his refusal to go to school. On a few occasions, N.S. agreed to go to school only if he could meet with his guidance counselor first. By the end of the first half of his freshman year, D.S. was receiving reports from teachers about missing homework and other assignments. She also said that she could no longer physically force him into the car due to his size and strength.

D.S. remarked with interest that N.S. joined the high school forensics team during his freshman year with a friend. He did very well and it was voluntary and ungraded. He memorized a two-person script and performed it with his friend in front of many people. He came home with trophies from many speech tournaments. He really enjoyed his participation in forensic activities. Unfortunately, on January 9, 2015, N.S. suffered a concussion while he was playing hockey at school.

On January 15, 2015, D.S. provided the District with an Academic Excuse letter from the Concussion Center at Overlook Hospital. The letter stated that N.S. was not allowed in the gymnasium and that he required accommodations including no timed

tests, tutoring, reduced workload when possible, help with focusing, and frequent breaks from class. The District was to consider excusing N.S. from mid-term examinations as well as postponement of exams. He was also required to leave class five minutes early, to have lunch in a quiet environment, and wear sunglasses for light sensitivity. N.S. continued not to feel well following his concussion. He was suffering from terrible headaches and had a lot of difficulty sitting for long periods of time. N.S. was highly anxious about the work that he was missing. In February, home instruction was gradually introduced. D.S. stated that even on home instruction, N.S.'s anxiety persisted and some of the tutoring sessions had to be cancelled because he was too stressed out to participate. D.S. had to negotiate with teachers regarding his missing assignments. It was anticipated that N.S. would return to school on April 16, 2015. The Concussion Center updated his restrictions for participation at school.

N.S. continued to struggle with finishing assignments and his anxiety for the remainder of the spring, according to his mother. In June 2015, she met with the IEP team to discuss the speech services N.S. had been receiving. D.S. again raised her concerns about his anxiety but felt that no one from the District offered any guidance. There was no suggestion that he be evaluated or provided with an IEP to address his anxiety. At that point, D.S. felt that the speech therapy was not really helping him so she decided to discontinue speech therapy.

D.S. testified that N.S. spent another summer away at camp and experienced no anxiety. To his mother, it had become abundantly clear that when school was not in session, he was happy and well-adjusted. He even went on a four-night kayaking trip with his camp friends and had no anxiety issues. N.S. was tapering off Prozac under medical supervision by Dr. Bartky, which had not improved his anxiety and had caused nose bleeds.

At the beginning of tenth grade, the pattern of anxiety about school and school refusal reappeared. N.S. was insistent that he remain in honors Spanish but his anxiety the first few days of school was severe. He had a really hard time getting back into the school routine. In early October 2015, N.S. began texting his mother from school

demanding that she pick him up early. D.S. tried to resist picking him up and alerted the guidance counselor for her assistance. N.S. often cried at home and it became increasingly difficult to get him to school in the morning. On some occasions, the only way petitioner could get him to school was if she agreed to pick him up early before a class where an assignment was due. On October 15, petitioners met with the I&RS team to discuss some additional ideas to help N.S. get through his school-related anxiety. D.S. continued to communicate with his teachers requesting extensions of time for assignments and N.S. continued to struggle with severe anxiety and physical symptoms.

In October 2015, D.S. obtained a letter from Dr. Bartky supportive of N.S. returning to home instruction. Dr. Bartky also recommended that the child study team perform psychoeducational testing to see if Noah has any underlying learning disabilities that are increasing his anxiety level to the point of mental paralysis. While it took some time for the proper supporting information to be received and a decision made, home instruction started by the end of October. However, by early November, N.S. refused to come down from his room and participate in home instruction. Dr. Bartky had recommended that petitioners consider a residential treatment center for adolescents with anxiety. D.S. communicated all of this to N.S.'s tutors and the guidance counselor.

Petitioners visited Mountain Valley Treatment Center in New Hampshire. When they told N.S. about the placement, he became very angry and barricaded himself in his room. He would come down from his room occasionally to eat and would taunt his parents about their decision to place him at Mountain Valley. Ultimately, they retained a crisis transport company to assist in getting N.S. to the facility. D.S. described it as a horrible experience for the entire family but felt it was essential to get him help. Nevertheless, Mountain Valley did not provide an academic experience for N.S. so he did not really suffer from much anxiety when he was there. There was very little actual classroom experience, and the instruction was basic. Academic instruction was provided by an outside agency called Knower Academics. In December 2015, the

District requested a contract from Knower to begin providing educational instruction. Noah was tutored in only three subjects and it was not daily for all subjects.

N.S. stayed at Mountain Valley for ninety days. It was D.S.'s belief that the lack of academics was the reason for his lack of most of his usual anxiety, giving Mountain Valley a false impression of N.S.'s issues. Prior to N.S.'s discharge from Mountain Valley, D.S. inquired of a District social worker, Erin Donnelly, about a referral to the CST so that N.S. could be provided with an IEP. D.S. stated that Donnelly dissuaded her and told her that N.S. would be labeled "emotionally disturbed." Mountain Valley recommended that N.S. be placed on home instruction for the first week following his return, start attending school part-time and that he receive home instruction until he was caught up with his schoolwork, at which time he could attend school full-time.

D.S. described that while on home instruction, N.S. experienced extreme anxiety over having fallen behind in classwork, especially a group project in his Mass Media class, and Chemistry. D.S. emailed his guidance counselor to inform her and she responded a week later suggesting it was a good time for N.S. to return to school. N.S. was not caught up with his schoolwork when he returned to school almost full-time and his anxiety about school work reemerged even though the school was providing home instruction in Chemistry. In March, N.S. began seeing another therapist for weekly sessions but this lasted for only one month, when the therapist advised D.S. that N.S. was resisting trying any of the suggestions or techniques.

In May of N.S.'s sophomore year, he insisted that he remain in an accelerated English class in his junior year despite his anxiety in classes that involved significant writing. His teacher recommended the lower level class but N.S. was concerned that dropping to a lower level class would make him look different to his friends and he was not comfortable with that perception. N.S. said he would refuse to go to school if he was forced to take a lower level class and that it would increase his anxiety because he knew he could do the work academically. His parents felt like they were caught between a rock and a hard place and the last thing they wanted to do was cause him more anxiety.

D.S. stated that by mid-June, she had met with the 504 Team but the supports being offered for N.S.'s junior year were the same as they had been. No member of that team suggested an evaluation or referral to the CST for his anxiety issues. She acknowledged that N.S. completed tenth grade but with significant anxiety and struggle. He was regularly tearful at home and spent a lot of time in his room and in the bathroom. He complained of physical symptoms including stomachaches and headaches.

Concerned that N.S. was not receiving the appropriate supports in school, petitioners retained an attorney in August 2016, just prior to N.S.'s junior year. Petitioners, through counsel, sought additional accommodations, only some of which were agreed to by the District. D.S. testified that N.S.'s anxiety reemerged with a vengeance in September of his junior year. He fought with his mother about attending school by the second week. His physical symptoms were increasing, he was unable to start his work and stopped doing homework because his anxiety was so severe. She began to email N.S.'s teachers in mid-September regarding his anxiety.

Initially, the District referred N.S. to a Sage clinician, Linda McGovern. Petitioners accepted the referral; however, N.S. resisted therapy with McGovern, as he had with prior therapists and refused to return to see her, in part because it was a pull-out service that meant he missed more classes. The District recommended an outside therapist by the name of Bernie Ivan. He offered a program called Strength for Change. D.S. brought N.S. to see him but he completely rejected this therapy, thought that Ivan sounded rehearsed, and he did not feel comfortable opening up to him. Petitioners then sought out yet another therapist, Josh Glawe, LCSW. N.S. saw Glawe on approximately ten occasions but resisted therapy with him as well. N.S. was also brought to a psychiatrist that fall, Dr. Lee Suckno, who put him on a Lexapro regimen.

D.S. agreed to psychological evaluation and social assessment of N.S. when she met with District representatives. In addition, petitioners consulted with Dr. Daniel DaSilva, Ph.D., whom she said recommended a residential placement for N.S. D.S.

admits that she supplied most of the information for these evaluations. By November 21, 2016, N.S. had missed eight consecutive days of school. D.S. wrote to his guidance counselor and notified her that N.S. felt stuck and that he had anxious thoughts and despite encouragement, was refusing to go to school. D.S. inquired about home instruction. Around this time, petitioners also retained Dr. Charles F. Martinson to undertake a psychiatric evaluation of N.S. because the District was not doing one.

N.S. stopped attending school altogether at the beginning of November 2016 due to his extreme school-related anxiety. D.S. stated that although no specific plan was offered by the District during the eligibility meeting, petitioners agreed to allow McGovern another opportunity to work with N.S. Petitioners met with Linda McGovern prior to the holiday break. It was decided that she would come to the petitioners' home during the first week of January 2017 to begin to work with N.S. to develop a plan to get him to return to school. Petitioners implemented several of McGovern's strategies including taking away his electronic devices, implementing chores, and making him accountable to home instructors. None of those strategies resulted in N.S. returning to school.

Home instruction began in early January. N.S. inconsistently participated. From January 2, 2017, when home instruction started, through May 12, 2017, D.S. testified that he missed approximately 62 home instruction sessions due to his anxiety or refusal to leave his room. On or about January 23, 2017, Linda McGovern recommended an IOP program for N.S. Petitioners explored these programs and spoke to Glawe regarding this recommendation. Neither petitioners nor Glawe believed that this would be appropriate for N.S. Sessions between N.S. and McGovern proceeded in fits and spurts, according to D.S. N.S. did not like meeting with her and said it made him more anxious and less available for home instruction. Some additional miscommunications between petitioners and McGovern occurred. D.S. also insisted to McGovern that they were trying to implement her negative and positive strategies with N.S.'s refusals but that nothing was working. That spring, N.S. stopped seeing McGovern, Glawe, and Dr. Suckno because he was resistant to everything anyone tried.

On March 22, 2017, the District offered to place N.S. in the OPTION-2 Program. At that time, petitioners were told that it was an independent study program whereby he would have to develop a plan to meet graduation requirements in an alternative manner. D.S. considered the program but did not believe that it would be a good fit for N.S. because he froze when it came to anything related to school work. She also felt that it was not a highly structured program like the one that was recommended by Drs. O'Keefe and Martinson, or DaSilva.

Petitioners began to explore residential schools for their son with the assistance of an educational consultant, Pam Bard. D.S. testified that they met with her and discussed N.S.'s history of school anxiety and she recommended Waypoint Academy. D.S. researched Waypoint and they decided to visit the school. They met with the founders at Waypoint who explained that the school treats students with severe anxiety and school refusal. In those generic discussions, D.S. said she heard them describe N.S., his behaviors, mannerisms, and reactions to stress almost perfectly, as if they knew him. They spent several hours there and had the opportunity to speak to some current and former students. Petitioners were informed that there was one vacancy available in March and that there would be two in May. D.S. felt like they had no viable alternative to Waypoint because the District's efforts were not working and there was no plan to get N.S. to return to school for his senior year. The District refused to agree to the placement at Waypoint. Nevertheless, petitioners signed the contract with Waypoint on April 27, 2017.

D.S. stated that N.S.'s program at Waypoint includes academic classes and that he was completing recovery credits in the summer. She said that he also receives intensive group therapy and individual therapy, and that her husband and herself participate in family therapy via Skype once per week. His therapist told them during one family therapy session that N.S. is becoming less rigid in his thinking, and is more teachable. N.S. has told his parents that he wants to go to college and that he is determined to start college on time and do what he needs to get there.

Prior to cross-examination, the District objected to the details elaborated upon by D.S., only some of which were just summarized above, as to what she was told by the Waypoint Educational Director about how N.S. was doing and their educational and attendance policies there. I concur and sustain that objection because the District had no opportunity to hear testimony from anyone at Waypoint or to cross-examine them. While the OAL rules allow for the admissibility of some hearsay, it must still be tied to a residuum of competent evidence. Weston v. State, 60 N.J. 36, 51 (1972). It is also inadmissible testimony for D.S. to report that none of N.S.'s absences from classes at Waypoint were not the result of school "avoidance" per se when she had no means of knowing that. In addition, any statements by her offering reasons why N.S. was tardy to certain classes that first summer at Waypoint are speculative as well as inadmissible hearsay. Accordingly, I give those testimonial statements by D.S. no weight. On cross-examination, D.S. admitted that she and her husband placed N.S. at Waypoint before they knew all its educational policies and programs, and that she called Waypoint to obtain the information about excused absences and tardiness only after Curioni testified in these proceedings.

D.S. was also questioned on her direct knowledge of N.S.'s anxiety during school hours because she never observed him in that setting. She did state that his anxiety impacted his speech fluency such that he stuttered more. D.S. also acknowledged that his teachers did not report that N.S. had anxiety during classes in school, but would sometimes reflect that D.S. was telling them that he had anxiety about school at home. D.S. responded that N.S. always tried to hold it together in class so his friends or the other kids would not think that he was different.

D.S. was cross-examined on the communications that she had with the various psychiatrists and psychologists who treated N.S. Apparently, she never provided the District with the evaluation undertaken by Dr. Suckno in October 2016, prior to N.S.'s admission to Mountain Valley. Once N.S. was at Mountain Valley, D.S. was not aware of how his academic program was incorporated into this therapeutic setting but she had heard from a therapist that he did not have much anxiety while there. N.S. worked on his anger toward his family and expressed his belief that the placement was helpful.

Mountain Valley also provided suggestions for supports for N.S. in transitioning back to the District. D.S. acknowledged that N.S. did complete tenth grade with good marks. She also agreed that petitioners signed the waivers allowing him to remain in higher level classes at his insistence but contrary to teacher recommendations.

In addition, D.S. described that N.S. was provided tutors in sixth and seventh grades but not in eighth grade or beyond. They had helped N.S. but then he refused to work with them any longer. With respect to the suggestions made by several professionals to use negative consequences and positive reinforcers with N.S. when he refused to go to school, complete homework, or finish chores, D.S. was less than definite about how often she or her husband would actually engage those strategies. She would “sometimes” take electronics away from him, or he would “sometimes” finish some chores. According to what he told his mother, he would be unable to fall asleep if he did not have his iPad with him, so he had it with him virtually all the time except “sometimes” petitioners would take it away.

D.S. explained her reasons for not following up on the recommendations of McGovern in the winter of 2016-2017 to place N.S. in a local IOP. She felt that N.S. would refuse to go as he did with school, and that she could no longer physically force him into the car. She also clarified that they hired Pam Bard as an educational consultant to explore other options and who referred them to Waypoint. D.S. thought it had been in January 2017, but her recollection was refreshed that it was December 13, 2016, when Bard sent documentation about N.S. to Waypoint. This occurred before the CST eligibility meeting with the District.

Charles F. Martinson, J.D., M.D., presented testimony on behalf of petitioners. He reviewed his educational background and early professional career. From 1994 to the present, he has served as an Adjunct Professor at the University of Medicine and Dentistry, Robert Wood Johnson Medical School, Department of Psychiatry and as a lecturer in Forensic Psychiatry. Between 1996 and 2014, Dr. Martinson founded and served as Director of Alexander Road Associates in Psychiatry, Psychology & Counseling in Princeton, New Jersey. In September 2014, he founded Consultation in

Forensic Psychiatry, LLC. Dr. Martinson conducts psychiatric evaluations of children on behalf of families and school districts and make recommendations for classification and for the development of programming and placement for students with disabilities. His forensic psychiatric practice encompasses school matters, family litigation, and civil litigation. Dr. Martinson is the consulting psychiatrist for fifteen to twenty-five districts across the State at any given time. He has been retained as an expert in approximately one hundred special education disputes.

On voir dire examination, Dr. Martinson confirmed that he never practiced education law under this J.D. credential. He has retired from school consultations last summer and had been retired from private practice two years prior thereto. Any testimony he has provided at the OAL in special education cases was many years ago. I struck any proposed area of expertise in the legal requirements of special education, and in the educational or legal aspects of IEPs and placements, as well as paragraphs fifteen through nineteen of his pre-filed testimony. Accordingly, he was qualified only as an Expert in Child and Adolescent Psychiatry.

As reported to Dr. Martinson by D.S. N.S.'s anxiety symptoms emerged during sixth grade. N.S. would have difficulty starting and completing assignments and would often wait until the last minute to start assignments or not complete them at all. D.S. described the boy's anxiety as obvious in the home setting. Also, according to the parent, N.S. had difficulty communicating with his teachers and used avoidance as a coping mechanism. He also testified that he had reviewed the emails between D.S. and the teachers throughout this period. Dr. Martinson noted that N.S. achieved above average grades in his academic subjects during middle school despite his anxiety issues.

Dr. Martinson also heard from D.S. that N.S. began to engage in school refusal after his recovery from his concussion, would not come out of room, and experienced physical symptoms associated with his anxiety. Dr. Martinson described the home instruction and N.S.'s resistance to same during this period. With school accommodations, N.S. did return to school and completed ninth grade. Nevertheless,

Dr. Martinson noted that a circular dynamic occurred at that time. That is, when N.S. did not complete his work, he felt that he could not go to school because he was embarrassed that the work was not completed. He was self-conscious about it and the more school he missed, the more work he had to make up and his anxiety escalated making it harder for him to attend school.

Dr. Martinson did interview N.S. after he finished speaking with his mother. N.S. told him that Mountain Valley did not help him. He stated that none of the medications he had taken ever helped and that he started out the school year missing a lot of days because he was not getting his homework done. N.S. said that despite the supports the school offered when he returned from Mountain Valley, he still had trouble completing assignments and cutting back on the number of courses did not improve the situation. He stated that he got good grades in freshman and sophomore year because he was given extra time and the teachers waived certain requirements but that there was still a lot of anxiety on his part. As for his junior year, N.S. told Dr. Martinson that he knew he would not be as successful because early on he started feeling anxiety. He stated that it got so severe that he was not able to attend school at all or do the work. N.S. stated that he wants to go back to Randolph High School but he does not know how to succeed at that insofar as he has so much anxiety.

From Dr. Martinson's perspective, N.S. presented as superficially engaging and projected a sullen or peevish attitude. He found that N.S. was only minimally cooperative at times during the interview and required repeated questioning to draw him out which then irritated him. He denied depressive symptoms, mood sadness, tearful episodes, loss of interest in formerly pleasurable pursuits, social isolation and withdrawal, low energy, low motivation, sleep and appetite disturbance, or suicidal ideation; however, his mother endorsed many of these symptoms.

Dr. Martinson testified that N.S.'s therapeutic progress has been hampered by his open resistance to treatment and his shallow insight into the magnitude of his emotional stress and level of dysfunction which his emotional paralysis has created in his life. The child displaces feelings of anxiety and frustration onto those around him,

especially his parents, turning that household into turmoil and chaos and producing a toxic environment in which N.S. is emotionally unable to move forward. In the school-based setting, he understood that N.S. engaged in chronic work avoidance and school refusal. In the Mountain Valley therapeutic placement, N.S. was largely unavailable for both learning and for therapeutic recovery over the course of the three months he attended that program, although Dr. Martinson presented no basis for those statements. Dr. Martinson believed that he needs a treatment center that will compel him to confront openly his anxieties so that he can shed his irrational thought process and move forward.

Based upon these interviews, Dr. Martinson found N.S. to have a longstanding history of Generalized Anxiety Disorder, mostly with respect to academic expectations. He also considered N.S.'s perfectionistic work-style, together with temperamental obsessional qualities, to be factors in his anxiety. Dr. Martinson acknowledged that formal educational testing has disclosed that N.S. is a bright student with intellectual strength across all academic areas.

Dr. Martinson used standard self-rating materials with both D.S. and N.S. – BASC-3 and BRIEF-2 -- which are subjective by definition. He found that N.S.'s relative lack of insight into his emotional distress was displayed in that material. N.S.'s answers to those forms generated no Clinically Significant or At-Risk scores; while the answers of his mother did for one index on each inventory.

Dr. Martinson set forth that it was his professional medical opinion that if the District had evaluated N.S. earlier, he might have been a candidate for a therapeutic day school. Such a placement may have been able to provide appropriate services and interventions so as to avoid the need for a residential therapeutic placement. N.S.'s treatment needs cannot be satisfied in an in-district placement or even in a day therapeutic placement coupled with traditional outpatient treatment. These placements would not be appropriate because N.S.'s anxiety and unwillingness to engage in traditional therapy would lead to his refusal to attend, just as it has been all along.

In the professional medical opinion of Dr. Martinson, N.S. requires a more extended placement in a residential therapeutic educational setting. The child's school refusal and work avoidant behavior is less likely to occur in a setting where his classmates are also his dorm mates. According to Dr. Martinson, a therapeutic setting would include a rigorous behavioral reinforcement protocol, encouraging N.S. to exercise improved self-control and encouraging him to assume more academic responsibility in a naturalistic school setting. N.S. would also be required to attend school even if his anxiety was present, although the details are not explained, thereby removing his escape mechanism. The residential therapeutic school would also provide individual, group and family counseling.

Dr. Martinson testified that he is familiar with Waypoint and is aware that it is a residential therapeutic school for adolescent boys who have a profile and treatment needs like N.S. On July 27, 2017, he spoke to Jessica Hartmann, Academic Director at Waypoint, and Nicole Peters, N.S.'s therapist at Waypoint. He was advised that Waypoint provides a therapeutic setting, which is important for treating individuals who are suffering from severe levels of anxiety or depression. It offers treatment options that cannot be provided in the home setting. Waypoint offers specialized instruction necessary to teach students like N.S. the skills required to function appropriately in the face of academic demands.

Dr. Martinson also reviewed Dr. Meyerhoff's report in preparation of his testimony. He stated that he did not find it helpful. Dr. Meyerhoff made no recommendations for programming or school placement, nor did he dispute the nexus between N.S.'s emotional distress and his school dysfunction. According to Dr. Martinson, Dr. Meyerhoff's report maintains a "Freudian cast and contains generalities." Nevertheless, he agrees with Dr. Meyerhoff's diagnosis of Generalized Anxiety Disorder and that N.S. is not feigning symptoms of emotional distress.

On cross-examination, Dr. Martinson acknowledged that he had had no conversations with any of N.S.'s teachers, nor had he provided them with any rating scales to complete. Dr. Martinson also did not contact N.S.'s treating physician or

psychiatrist. It was also disclosed that he relied almost exclusively upon parent reports to understand N.S.⁶ Dr. Martinson agreed that N.S.'s report cards indicate almost all A's and B's, and that his standard test scores indicate his above-average intelligence and achievement. He was unaware of the number of times N.S. was absent from or tardy to school, and was surprised that it had only been at most eleven absences in the last few years.

Dr. Martinson admitted that many aspects of his pre-filed direct testimony were either not in his report or had no factual basis of which he would have direct knowledge. For example, he received some therapy notes from Waypoint through petitioner's attorney as the foundation of paragraph fifty-four. Dr. Martinson was also asked if the school can force a family to engage in therapeutic treatments or family sessions, to which he conceded one could not. He was similarly unaware of whether N.S. faced any consequences at home for school refusal or home instruction refusal, or refusing to cooperate with several therapists. Dr. Martinson admitted that the behavioral reinforcement protocol he recommended for N.S. is essentially the same as a parent requiring a child to complete homework prior to being allowed to watch television. His notes reveal that N.S. can get his school work done if he is not at home but failed to explain how that was consistent with encouraging a home-based solution until a residential program could be located. He also agreed that public schools could provide therapeutic support services to students like N.S., although he was unaware of what services the District offered.

It was also acknowledged by Dr. Martinson that N.S. was considered by his parents to be a toxic presence in the home. Petitioners expressed to him that they wanted N.S. in a boarding school. N.S. felt the pressure of sibling competition but his characteristics of being a perfectionist or off-putting was not anything that Dr. Martinson personally observed; rather, it was premised upon the parental interview. He found N.S. to be a little prickly or irritable during the interview, and considered the boy to be unrealistic in his desire to return to the District. Dr. Martinson had not reviewed the

⁶ Dr. Martinson also confirmed on cross-examination that petitioners saw his draft report and verified its accuracy before he finalized it.

observational notes of Dr. O'Keefe that N.S. makes friends easily and does not have destructive relationships.

Dr. Martinson was further cross-examined on the issue of the appropriateness of the parents' voluntary placement of N.S. at Waypoint. His sources for his statements about it were taken from the website and conversations with N.S.'s counselor and the Director of Educational Services. Dr. Martinson could not say whether the Director even knew N.S. There was also no information from teachers or direct observations. He referred to the intense exposure and response prevention as the therapy of choice for anxiety, but had no direct information as to how that was employed at Waypoint. It was asserted that forcing attendance desensitizes the student to school phobia and helps him overcome perfectionism.

Dr. Martinson defended his testimony on further examination by petitioners, stating that anxiety is not inconsistent with achieving good grades, and that N.S. met the factors for classification as emotionally disturbed. It is the school-based skills which he needs to address because that is the source of his anxiety, as illustrated by the fact that he has no anxiety at summer camp. He also reiterated that N.S. needs a residential setting from which he cannot escape or use other avoidance tactics.

Dr. Martinson was queried on additional cross-examination that N.S. struggled with group school assignments because his perfectionism could have been off-putting to the other students. But again, he never observed N.S. in any instructional setting, nor did he interview any teachers. Dr. Martinson could not opine as to whether the District offered therapeutic supports.

I **FIND** that Dr. Martinson's evaluation added little of a concrete nature to the discussion of the issues in this case. He spent most of his time reiterating points that he was given by D.S. or read in her emails, e.g., he "gleaned" from the Mountain Valley plan. He decided that his evaluation confirmed those of Drs. Bartky and O'Keefe, as well as their recommendations for a highly structured program for N.S. Yet, Dr. Martinson spent only forty minutes with N.S. and twice that amount of time with D.S.

Dr. Martinson filled his pre-filed testimony with paragraph after paragraph of hearsay summaries of the reports of others. I **FIND** that Dr. Martinson's expert opinion is not entitled to great weight because of its over-sized reliance on parental reports. G.R. o/b/o L.R. v. Tewksbury Twp. Bd. of Educ., OAL Dkt. EDS 2189-02 (2002).

Daniel N. DaSilva, Ph.D., also testified for petitioners. Dr. DaSilva has held a license in New Jersey since 1999. He attended Boston College (B.A. in Psychology), University of Massachusetts (M.A. in Counseling Psychology), and Fairleigh Dickinson (Ph.D. in Clinical Psychology). Dr. DaSilva undertook a post-doctoral internship in neuropsychology at the Veterans Administration Medical Center in East Orange, New Jersey, followed by a post-doctoral fellowship at Children's Specialized Hospital in Mountainside, New Jersey. He specializes in pediatric neuropsychology in his private practice, conducting evaluations and making recommendations for educational programming or related services. I qualified Dr. DaSilva as an expert in Pediatric Neuropsychology and Neuropsychological Assessments, but not in the proffered area of developing IEPs.

Dr. DaSilva was retained by petitioners in the fall of 2016 due to their concerns about N.S.'s psychological functioning and his school refusal behavior. He interviewed the parents on October 9, 2016. Dr. DaSilva also had access to prior evaluations and school reports. The petitioners described N.S. to Dr. DaSilva as a bright kid who wants to do well academically but his distress and resistance to therapy have negatively impacted his ability to succeed in school. By that school term, he had already been seen by four therapists and two psychiatrists but remained resistant to working with them. At the time Dr. DaSilva met with petitioners, N.S. was receiving incompletes on his assignments because he was not able to turn them in on time or at all. Until the 2016-2017 school year, Dr. DaSilva acknowledged that N.S. had received good grades on his report cards but significant accommodations have been provided to him relative to his completion of school work.

Dr. DaSilva summarized the interview with petitioners, which need not be repeated here. He also reviewed Dr. O'Keefe's evaluation from Mountain Valley and

found it to be consistent with his own assessment on N.S. as above-average in intelligence and achievement abilities, but experiencing significant emotional struggles due to his perfectionism and lack of confidence. Dr. O'Keefe diagnosed N.S. with General Anxiety Disorder and Persistent Depressive Disorder, finding support for same in the reports of Drs. Martinson and O'Keefe. At a minimum, Dr. DaSilva asserted that the District should have conducted a psychological and/or a psychiatric evaluation of N.S. given his history of anxiety, placement at Mountain Valley, and recommendations made by Dr. O'Keefe. Instead, the District offered 504 accommodations and planned to ultimately get N.S. to attend school on a full-time basis.

Dr. DaSilva also evaluated N.S. and conducted some assessments. The cognitive assessment re-confirmed the child's intact cognitive functioning. He undertook a behavioral psychological screening using the Youth Self-Report. Dr. DaSilva concluded from this that N.S. lacks insight into his own distress and showed a desire to return to public school but without a plan to accomplish this. He also administered to N.S. the Minnesota Multiphasic Personality Inventory – Adolescent (MMPI-A), a comprehensive true/false inventory designed to assess current psychological functioning. The validity indicators of this measure suggested that N.S. attempted to portray himself in an overly positive light by minimizing faults and denying psychological problems. As such, there is some risk that the resulting MMPI-A profile may be an underestimate of his psychological concerns, if present. Dr. DaSilva stated that teens with this profile may also appear rigid, inflexible, and not receptive to psychological solutions to their problems. N.S.'s clinical scales profile was moderately elevated. N.S. was also presented with the Millon Adolescent Clinical Inventory (MACI) which is a true/false inventory that taps more enduring features of the personality. N.S. identified schoolwork and body/looks as the problems that are troubling him the most. He exhibited a somewhat defensive approach characterized by a tendency toward avoiding self-disclosure.

Dr. DaSilva concurred that N.S. exhibits significant anxiety, which exerts a paralyzing effect on his ability to engage his work and attend school. He concluded that N.S. demonstrates inappropriate types of behaviors or feelings under normal

circumstances. He is paralyzed when it comes to attending school and consistently doing school work. His anxiety is so severe as it relates to school that he cannot get himself to be physically present in his school or to consistently receive home instruction. Dr. DaSilva set forth that N.S. cannot access his education like neuro-typical peers. N.S. lacks insight into the degree of his anxiety and while he purports to have a desire to go to school and to complete his work, he simply cannot do it, even with the supports previously provided.

Dr. DaSilva found that N.S.'s underlying psychological and behavioral states profoundly interfere with his ability to function in the traditional classroom. The driving force of these behaviors is his underlying anxiety, low self-confidence, and interpersonal sensitivity. His desire to be more conventional and to satisfy the expectations of others, particularly those in positions of authority, is undercut by his paralyzing anxiety. That anxiety is in part rooted in fear of not being able to meet those expectations and the fear of facing the resulting derision and rejection. Dr. Da Silva opined that N.S.'s availability to learn is essentially nonexistent as is his ability to function as a typical teenager outside of school, and that the least restrictive environment would be a therapeutic residential school because it is the only environment where he will be able to receive educational benefit. To date, he has not been available to learn in any other environment this school year. Given his age and high school grade, N.S. is at severe risk of irreparable disruption to his education and goals.

Dr. DaSilva spoke to Michael Bulloch, Co-Founder of Waypoint, on July 11, 2017. According to Bulloch, N.S. is making progress at Waypoint and is receiving an intensive integrated program that includes challenging academics and around the clock therapeutic supports among peers with similar profiles. N.S. is compelled to follow rules and is not permitted to engage in avoidant behaviors. Bulloch described N.S. as a rule follower who becomes rigid and flooded with shame when he struggles with schoolwork. Dr. DaSilva also spoke with N.S.'s therapist, Peters, who informed him that N.S. is his own worst enemy and that he suffers from extreme perfectionism and anxiety. He was initially resistant in the face of any perceived threat but has improved

his rapport building and is learning skills to push through his anxiety when it causes him to shut down and become paralyzed. In the professional opinion of Dr. DaSilva, Waypoint is an appropriate placement for N.S. and his parents had no choice but to place him in a therapeutic residential facility.

On cross-examination, Dr. DaSilva agreed that he had undertaken no observations of N.S. in District, nor had he provided an inventory to or interviewed any of his teachers. He wanted to observe N.S. but his attendance was too sporadic by the time he was involved in the case. Instead, he relied on the records and assessments provided and his interviews with N.S. and his parents, who also at some point presented a written background paper to him. Dr. DaSilva did not contact any of the therapists or doctors who had treated N.S. at home, in school, or at Mountain Valley. He was only generally aware that N.S. returned to the District and completed that school year. He was similarly unaware of the educational component of Mountain Valley or that school work was being sent to N.S. there.

Dr. DaSilva was challenged on the concept that a general academic education with therapeutic supports would only be available to N.S. at a residential program and not within the District. Dr. DaSilva acknowledged that N.S.'s 504 Plan sought to address anxiety and that his IEP was for speech and language only. He did not know what else the District could offer to N.S. in addition to the counseling at school and in-home, but reiterated that the parental concerns should have been followed with appropriate evaluations. Dr. DaSilva was stunned that his report did not convince the CST to classify N.S. because the child's inability to go to school clearly impacts his access to education. If the District doubted the depth of the parents' concerns, that should have been one more reason to have N.S. psychologically evaluated.

N.S. did present himself to Dr. DaSilva as a friendly and conversant, albeit somewhat guarded, teenager but he gave greater weight to the parents' report and the MMPI. It never occurred to him, however, to inquire into the family dynamics. He assumed that N.S. put pressure on himself as a perfectionist without examining both his and the parents' insistence that he stay in higher level classes. When asked if the

petitioners had given N.S. appropriate therapeutic supports, Dr. DaSilva reported that they had prevented Glawe from going to the home to assist with the school refusal behavior. Nevertheless, the fact that N.S. resisted therapy, medication, tutoring and intensive outpatient programs does not equate to the petitioners not trying to support him. N.S.'s thinking is disordered rather than logical such that he undermines his own best interests when making decisions about therapeutic compliance.

With respect to the petitioners' voluntary placement of N.S. at Waypoint, Dr. DaSilva relied on Peters' statements to him but he was not sure what strategies and coping skills were in place for the teachers to utilize with N.S. Dr. DaSilva had not seen the Waypoint Master Treatment Plan or the goals for N.S. While it was true that N.S. had missed between 19-24% of his classes during the summer, Dr. DaSilva thought that was acceptable if he was being pulled out for therapy. He was unaware that N.S. had reverted to stuttering at Waypoint.

On further direct examination, Dr. DaSilva conveyed some general information about Waypoint that he had received from Bullock. With thirty-six teenage boys, N.S. would have a peer culture of similarly anxious students. As far as he knew, N.S. was attending unless he was excused. He could not opine on the source of any renewed stuttering and could only state that it might not be his disfluency. As an example of N.S.'s disordered thinking, when N.S. was in the District and threatened to not go to school if his class levels were lowered because of a threat to his self-esteem, not going to school became necessary for him for the same reason. Dr. DaSilva believed a shortened school day would not have solved the triggers for N.S.'s anxiety. Once again, he stated that without the coping and organizational skills and psychological health, N.S. will not be able to access his education.

A treatment plan and some therapy notes from Waypoint were admitted into evidence (P-44, P-97), albeit there was no sponsoring witness available to testify and to be cross-examined on them. The initial Master Treatment Plan contained one goal and four objectives for the period June 20, 2017, through August 1, 2017. The long-term

goal was for N.S. to “be able to develop coping skills to the extent that symptoms of anxiety are no longer interfering with desired life style.” The short-term objectives were:

1. N[.S.]⁷ will identify passed [sic] worries, anxiety, and/or fear management strategies including the time/energy devoted to such by 8/1/17.
2. N[.S.] will complete a “My Fear Hierarchy” form within weeks.
3. With the assistance of the Primary Therapist, N[.S.] will complete a “Local Parent Visitation Plan” (i.e. goals, do and not do behaviors, managing technology, interaction with friends, etc.) by 7/15/17.
4. N[.S.] will identify how anxiety prevented him from doing the things in life that are important to him by 8/1/17.

The Weekly Milieu Progress Notes started out with an undated but pre-May 31, 2017, setting forth by an unknown recorder that N.S. was friendly, outgoing, shy or reserved but invested and caring, pleasant, compliant with staff, with no executive function deficits. He was doing his chores without prompts, eats well, sleeps soundly, is a good team-mate in peer relationships, and “shows ability to process inner states independently and appropriately.” [P-97 at 38 of 39.] Levels of Behavior were noted as Participation: Active; Openness to Feedback: Somewhat Open; Level of Self-Disclosure: Somewhat Guarded; Level of Congruence: Intellectualizing; Level of Involvement: Intermittent. Within two weeks, those levels, respectively, were: Active, Highly Open, Open, Congruent, Highly/Constant. During the course of that summer, some executive function deficits were noted but were not detailed and were not consistently noted.

Dr. Meyerhoff conducted a psychiatric evaluation of N.S. that was also submitted into the record as a Joint Exhibit (J-35), as well as referenced by other witnesses to these proceedings. Without setting forth his clinical observations and opinion in detail here, Dr. Meyerhoff concludes:

⁷ There is a number that precedes each of three of these objectives, which might indicate a selection from a standardized list of objectives; however, because there was no witness from Waypoint, I cannot determine this one way or the other.

NOTE: The above expresses a clinical rather than an educational recommendation. Also, all the above comments are made in consideration of the parents' unwavering, voiced, refusal to consider, as an alternative to "Utah", various new programs strongly suggested, and advised, recently, by Randolph.

FINDINGS OF FACT

Based upon due consideration of the testimonial and documentary evidence presented at the hearing, and having had the opportunity to observe the demeanor of the witnesses and assess their credibility and expertise, where applicable, I **FIND** the following **FACTS** by the preponderance of the credible evidence:

1. N.S. is a twin to his sister J.S. and was born on November 6, 1999. He also has a brother who is nineteen years old. All the children reside in the family home in Randolph, New Jersey. Though his rights transferred to him as of his eighteenth birthday, he has authorized his parents to act on his behalf in this matter.

2. N.S. was evaluated in 2006 by the Morris Township School District, where he was attending school at the time. He was determined eligible for speech and language services for a disarticulation issue and moderate fluency disorder. Accordingly, he received an IEP for speech and language services in 2007. When the family moved to Randolph the District continued speech services in 2007.

3. Randolph Township Public Schools offered N.S. speech therapy from second grade through tenth grade under Speech-Only IEPs. At the end of tenth grade, on May 24, 2016, petitioners requested that the District cease providing N.S. with speech and language services.

4. N.S. was diagnosed with an Anxiety Disorder by Eric J. Bartky, M.D., in May of 2012.

5. Petitioners shared Dr. Barkly's report and diagnosis of Anxiety Disorder with the District in November of 2012 and requested a 504 Plan for N.S. An annual IEP meeting was held on October 15, 2012, to address N.S.'s speech and language services. At that meeting, D.S. raised concerns about his anxiety. No recommendation was made to refer N.S. to the child study team for evaluation.

6. The District prepared a 504 Plan for N.S. on November 21, 2012, to provide reasonable accommodations for his anxiety. The Plan acknowledges that his disability is anxiety, that the anxiety is triggered by school performance, and that he also was exhibiting school phobia. The 504 Plan afforded N.S. additional time to complete long term assignments and offered him "Homework Club."

7. The 504 Plan was reviewed and updated as appropriate to continue providing N.S. with reasonable accommodations for his anxiety.

8. N.S. did well academically. Between sixth and tenth grades, his lowest grade was one C+ in Accelerated English in tenth grade, with all other grades being A's and B's.

9. N.S. also exhibited superior performance on state and local standardized testing.

10. In sixth grade, N.S. missed eleven days of school and was tardy five times.

11. For seventh grade, petitioners decided to take N.S. out of accelerated classes to allow him to better manage the workload.

12. In seventh grade, N.S. missed ten days of school and was tardy once.

13. Teachers provided extended time to N.S. for completion of homework assignments even though it was not a specified accommodation in his original 504 Plan.

14. In early May 2013, D.S. requested a meeting with N.S.'s teachers to discuss making changes to his 504 Plan because his school anxiety was not improving with the supports already in place. No one from the District suggested evaluating or referring him to the CST at that time.

15. The summers before seventh and eighth grade, N.S. attended a summer camp in New York at which he had no anxiety issues.

16. D.S. emailed N.S.'s teachers regarding his anxiety early in eighth grade.

17. D.S. attended an annual IEP meeting in October 2013 and again raised concerns about her son's anxiety.

18. N.S.'s 504 Plan for eighth grade was almost the same as his initial 504 Plan but did add one new accommodation: a two-day extension for long-term assignments and projects, if needed.

19. N.S. exhibited school refusal during his eighth grade. D.S. advised the guidance counselor about the difficulty with getting N.S. to school.

20. N.S. continued to see Dr. Bartky for medication management in eighth grade but he was seeing a different therapist, Marc Gironda.

21. N.S. was not very receptive to therapy throughout that school year.

22. N.S. required support at home to complete eighth grade.

23. In eighth grade, N.S. missed eight days of school and was tardy four times.

24. N.S. again attended summer camp between eighth and ninth grade and did not experience any issues with anxiety.

25. At the parents' request, the District held a meeting prior to the start of high school to discuss the 504 Plan and N.S.'s anxiety issues. The District developed another 504 Plan on September 4, 2014, with supports like those in prior 504 Plans.

26. During ninth grade, N.S. suffered a concussion on January 9, 2015, while he was playing hockey at school.

27. On January 15, 2015, petitioners provided the District with an academic excuse letter from the Concussion Center at Overlook Hospital. Home instruction was provided.

28. N.S. returned to Randolph High School from home instruction in April of 2015, with accommodations as recommended by his treating physician, and completed the school year.

29. In June 2015, D.S. met with District staff for N.S.'s IEP annual review meeting and again raised concerns about his anxiety. The District did not recommend a referral to the CST or any evaluations.

30. Other than the time N.S. was on home instruction for the concussion, in ninth grade, he was absent seven days and tardy four times.

31. N.S. attended summer camp between ninth and tenth grade and did not experience any anxiety issues.

32. For tenth grade, N.S. was recommended for B level classes in History and English. Petitioners waived him into the higher A level classes.

33. N.S.'s pattern of anxiety reemerged at the start of tenth grade.

34. On October 15, 2015, petitioners met with the I&RS team to discuss some additional ideas to help N.S. get through his school-related anxiety. No evaluations were recommended or pursued by the District.

35. On October 19, 2015, Dr. Bartky recommended home instruction for N.S. due to his anxiety. On October 22, 2015, Dr. Bartky sent an email to the Guidance Department recommending psychoeducational testing of N.S. The Guidance Department did not respond.

36. Home instruction commenced at the end of October 2015; however, N.S. refused to participate.

37. Shortly thereafter, the parents placed N.S. at Mountain Valley Treatment Center, Pike, New Hampshire, a residential treatment center for adolescents with anxiety, from November 15, 2015, through February 15, 2016, seeking medical treatment for N.S.'s anxiety.

38. During N.S.'s stay at Mountain Valley, which is not an educational institution, academic services in a few subjects were provided to him by an outside agency, Knower Academics. N.S. was tutored in only three subjects and it was not daily for all subjects.

39. While N.S. was attending Mountain Valley Treatment Center, he was referred for a psychological assessment that was completed by Kevin O'Keefe, Psy.D. on January 6, 2016.

40. N.S. informed Dr. O'Keefe that his parents had wanted him to stay home from school to help them find a place to help with his anxiety. He also informed Dr. O'Keefe that he was working on his anger toward his family and that the program at Mountain Valley Treatment Center had been helpful to him.

41. Dr. O'Keefe administered the Wechsler Adult Intelligence Scale-IV to N.S. as part of the psychological assessment and found N.S. to have a Verbal Comprehension Index of 118, a Perceptual Reasoning Index of 117, a Working Memory Index of 102, a Processing Speed Index of 100 and a Full-Scale IQ of 113, placing N.S.'s cognitive functioning in the high average range.

42. Dr. O'Keefe also assessed N.S.'s academic achievement and found that he was functioning in the average to above average range in all areas compared to students of his age and grade.

43. Dr. O'Keefe diagnosed N.S. with Generalized Anxiety Disorder and Persistent Depressive Disorder.

44. Dr. O'Keefe offered the treatment recommendation that N.S. would benefit from a "structured academic environment with strong therapeutic support, such as a therapeutic boarding school" following his discharge from Mountain Valley Treatment Center. He also opined that N.S. would benefit from individual, group, and family therapy.

45. When N.S. was discharged, the professionals who had treated him at Mountain Valley Treatment Center recommended that he be placed on home instruction for the first week and then start attending school partial days supplemented with home instruction until he was caught up, with full-time attendance as of March 22, 2016.

46. The District implemented the recommendations from Mountain Valley Treatment Center regarding N.S.'s transition back to school.

47. N.S. returned to school full time but his pattern of school refusal and anxiety reemerged. He started to see a new therapist at the end of March 2016, Michael Bodtmann, LCSW. He was resistant to this therapist as he had been to prior therapists. Bodtmann told the petitioners that it did not make sense for N.S. to continue therapy because he was refusing to follow any recommendations.

48. N.S. completed tenth grade at Randolph High School. Other than the three months when N.S. was at Mountain Valley Treatment Center, N.S. was absent 12.5 days and tardy six times in tenth grade.

49. For eleventh grade, N.S. was recommended for B level English. N.S. insisted on the accelerated English class and threatened not to attend school if his class level were lowered. Petitioners waived him into the A level class.

50. In June of sophomore year, the District opted to continue the 504 Plan with supports and accommodation for extensions for the following school year.

51. Petitioners requested that N.S. be evaluated for special education and related services on September 20, 2016.

52. The CST conducted an evaluation planning meeting for N.S. on September 30, 2016, at which petitioners consented to psychological and social assessments of N.S. The District did not seek a psychiatric evaluation.

53. The District also referred N.S. to a Sage clinician, Linda McGovern. Petitioners accepted the referral at first.

54. On October 17, 2016, McGovern met with N.S. at school to start providing therapeutic support to address the issues reported by the parents. N.S. resisted therapy with McGovern as he had with prior therapists and refused to return to see her.

55. N.S. rejected Glawe's offers of assistance in getting him to school or downstairs for home instruction. Petitioners also never availed themselves of the offer of morning assistance.

56. The social assessment was conducted by Jane McGarry, LCSW, on October 26, 2016, which consisted of an interview with the parents and a review of N.S.'s records.

57. The psychological assessment was conducted by Renken on October 31, 2016. As part of the psychological evaluation of N.S., Renken interviewed N.S. and observed him in class. Renken saw N.S. attending to instruction, working cooperatively

in a group activity with peers and expressing his opinions without hesitation in English class.

58. In her report of November 3, 2016, Renken noted that N.S.'s teachers reported significant concerns with N.S.'s attendance, which was negatively impacting him in multiple classes. On the BASC3, several of N.S.'s teachers rated him in the At-Risk or Clinically Significant range on the Depression and Atypicality-scales.

59. N.S. stopped attending school in November of 2016. N.S. also turned seventeen on November 6, 2016, and the District could not force his attendance through truancy mechanisms.

60. During the CST evaluation process, the parents informed Renken that N.S. had commenced seeing a new psychiatrist, Dr. Lee Suckno. If Dr. Suckno prepared an evaluation, it was never provided by petitioners to the District.

61. The parents also solicited private psychiatric and psychological evaluations of him, which were conducted by Drs. Charles Martinson and Daniel DaSilva, respectively.

62. Dr. Martinson's report was shared with the District on December 6, 2016, along with a renewed request from the parents for home instruction.

63. The District denied the second request for home instruction as it had no information to indicate that N.S. was medically unable to attend school. Previously, the District denied the request because it did not yet have any reports.

64. During the evaluation with Dr. Martinson, D.S. informed him that she wanted N.S. to be residentially placed to alleviate problems in the home and so N.S. would not feel he was in competition with his siblings. Dr. Martinson did not include that information in his report.

65. Pam Bard, an educational consultant hired by petitioners to explore residential placements, referred them to Waypoint. On December 13, 2016, Bard sent documentation about N.S. to Waypoint. It can be presumed that Bard was retained no later than early December by petitioners, and prior to the eligibility meeting.

66. Petitioners visited Waypoint. Waypoint generally provides clinical treatment and academic support to teenage boys who struggle with the effects of anxiety but no specific programming or therapeutic supports are in this record.

67. On December 16, 2016, the CST determined that N.S. did not meet eligibility criteria to be classified as eligible for special education and related services, as he did not require special education.

68. Following the eligibility meeting, on December 19, 2016, Dr. Martinson sent a letter to the District stating that N.S. was unable to attend school due to symptoms of the medical conditions of Generalized Anxiety Disorder and Specific Phobia. Based on that letter, the school physician verified the need for N.S. to receive home instruction.

69. N.S. evidences a need for medical treatment for his anxiety.

70. The family had decided before the end of 2016 on an out-of-district residential placement to reduce the chaos and turmoil in the home environment.

71. Petitioners agreed to allow McGovern to come to their home for therapy while N.S. was on home instruction in January and February of 2017.

72. In February 2017, McGovern offered a proposed schedule to return N.S. to school part time.

73. Initially, N.S. seemed open to returning to school. In actuality, he was refusing all school-based options, part-time or full-time, and his parents backed him up on those decisions.

74. Petitioners shared Dr. DaSilva's report with the District on or about March 14, 2017. Dr. DaSilva recommended that N.S. be classified as Emotionally Disturbed and placed in a therapeutic residential school.

75. At that time, it was announced that McGovern would only continue to provide services if N.S. participated in sessions. The District required an updated prescription for home instruction which it received from Dr. Suckno, dated March 21, 2017.

76. N.S. also refused to cooperate with Dr. Suckno or Glawe.

77. During the months of April and May 2017, N.S. did not participate in any home instruction sessions except for one at the end of April. N.S. never returned to school.

78. N.S. was accepted at Waypoint and petitioners notified the District in March 2017 of their intent to unilaterally place him there effective May 22, 2017. Petitioners signed the contract with Waypoint on April 27, 2017.

79. Waypoint offers curriculum in which the methods of instruction are outdated and do not include any special education services, technologies, or accommodations.

80. At Waypoint, N.S. has begun to stutter again and to function at a lower academic level than in Randolph. N.S. does not engage with his peers at Waypoint as he had in Randolph both in school and socially outside of school.

81. Waypoint utilizes individual, group, and family therapy (via Skype) as well as recreational opportunities and other unspecified techniques to work with adolescents with anxiety issues.

82. N.S. was being pulled out of academic classes at Waypoint for therapy, a circumstance that was objected to when he was in the District.

83. Waypoint does not have medical personnel on staff or at the facility full-time.

84. The Master Treatment Plan at Waypoint for N.S. for the summer of 2017 (recovery of academic credits) is extremely general and solely focused on therapeutic goals to be accomplished with the “help of his primary therapist.” There are no educational objectives and goals.

85. Drs. Martinson and DaSilva did not interview or provide standard psychological inventories to any of the staff or teachers at Randolph. They also did not observe N.S. in any educational or therapeutic setting.

86. Drs. Martinson and DaSilva did not explore any of the family dynamics that could be contributing to N.S.’s anxieties.

LEGAL ANALYSIS AND CONCLUSIONS

State and federal laws require local public school districts to identify, classify and provide a free and appropriate public education (FAPE) to children with disabilities. 20 U.S.C.A. § 1412; N.J.S.A. 18A:46-8, -9. School districts have an affirmative and continuing obligation to identify and evaluate students reasonably suspected of a disability under the IDEA and § 504 of the Rehabilitation Act. This duty is known as a district’s “Child Find” obligation. See D.K. v. Abington School Dist., 696 F.3d 233, 249 (3d Cir. 2012), 20 U.S.C. § 1412(a)(3); 34 C.F.R. § 300.111. A school’s failure to comply with Child Find may constitute a procedural violation of the IDEA. D.A. ex rel. Latasha A. v. Houston Indep. School Dist., 629 F.3d 450, 453 (5th Cir. 2010).

An “individual with a disability” is defined under Section 504 as any person who “has a physical or mental impairment which substantially limits one or more of such person’s major life activities, has a record of such impairment, or is regarded as having such an impairment.” 29 U.S.C.A. 705(20)(B). Section 504 defines a disability as a physical or mental impairment that substantially limits a person’s ability to participate in a major life activity, such as learning. Section 504 has a broad definition of “disability.”

Therefore, children who are not eligible for an IEP might be eligible for a 504 plan. As found above and is undisputed, N.S. was a child with an emotional disability for which the District provided accommodations through the 504 Plan.

Petitioners brought this due process petition on their allegations that the District improperly determined that N.S. should not be classified and made eligible for FAPE with an IEP under the IDEA. They claim that the 504 Plan was insufficient to address N.S.'s anxiety. Accordingly, they seek reimbursement for their voluntary placement of him at Waypoint. The legal standard to which I must abide is as follows:

If parents believe that the school district is not providing a FAPE for their child, they may unilaterally remove him from the school, enroll him in a different school, and seek tuition reimbursement for the cost of the alternative placement. *Id.* at 242 (citing 20 U.S.C. § 1412(a)(10)(C) and Sch. Comm. of Burlington v. Dep't of Educ., 471 U.S. 359, 374, 105 S. Ct. 1996, 85 L. Ed. 2d 385 (1985)). Parents who change their child's placement without the consent of state or local officials, however, "do so at their own financial risk." Burlington, 471 U.S. at 373-74. A court may grant the family tuition reimbursement only if it finds that the school district failed to provide a FAPE and that the alternative private placement was appropriate. See Florence Cnty. Sch. Dist. Four v. Carter, 510 U.S. 7, 15-16, 114 S. Ct. 361, 126 L. Ed. 2d 284 (1993)

Munir v. Pottsville Area Sch. Dist., 723 F.3d 423, 426 (3d Cir. 2013).

Thus, the District bears the burden of demonstrating that it complied with the IDEA in deeming him to be ineligible for special education services because he did not fit within a classification for emotionally disturbed children. M.B. v. South Orange/Maplewood Bd. of Educ., 2010 U.S. Dist. LEXIS 78163 *17 (D.N.J. Aug. 3, 2010), but the petitioners bear the burden of showing that Waypoint was an appropriate educational placement if the District indeed failed to provide FAPE. W. Windsor-Plainsboro Reg'l Sch. Dist. Bd. of Educ. v. J.S., 2005 U.S. Dist. LEXIS 25855(D.N.J. October 28, 2005); Molly L. v. Lower Merion School District, 194 F.Supp.2d 422, 429 (E.D.Pa. 2002). A private school placement is appropriate if it "provides significant learning" and "confers a meaningful benefit." Lauren v. Deflaminis, 480 F.3d 259, 276

(3d Cir. 2007). In other words, the forum must find that the residential program is the sort of program that the public school should have taken financial responsibility for in the first place.

The IDEA sets up a three-part test for determination of eligibility: (1) the student has one or more of the disabilities defined in N.J.A.C. 6A:14-3.5(c)1 -14; (2) the disability adversely affects the student's educational performance; and (3) the student needs special education and related services. H.M. v. Haddon Heights Bd. of Educ., 822 F. Supp. 2d 439, 450 (D.N.J. 2011). The use of the conjunction "and" means that all three criteria must be met. In turn, special education is defined in accordance with the IDEA, as "specially designed instruction...to meet the unique needs of a child with a disability." 20 U.S.C.A. §1401(29); N.J.A.C. 6A:14-1.3. "Specially designed instruction" is defined as:

[A]dapting, as appropriate to the needs of an eligible child under [the IDEA], the content, methodology, or delivery of instruction - (i) To address the unique needs of the child that result from the child's disability; and (ii) To ensure access of the child to the general curriculum, so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children

[34 C.F.R. § 300.39(b)(3) (emphasis added).]

That petitioners consistently chose to waive N.S. into higher level classes demonstrates that they do not believe he requires adapted content to access the curriculum. N.S.'s above-average performance on his report cards and on standardized testing reveal that he did not require any adaptations in methodology or delivery of instruction to meet the general education standards for all Randolph students.

When the CST nevertheless agreed to evaluate N.S.⁸, the suspected area of disability was Emotionally Disturbed. That classification category is defined as:

⁸ The IDEA requires that initial evaluations, upon suspicion of a disability --

[A] condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a student's educational performance due to:

i. An inability to learn that cannot be explained by intellectual, sensory or health factors;

ii. An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;

iii. Inappropriate types of behaviors or feelings under normal circumstances;

iv. A general pervasive mood of unhappiness or depression; or

v. A tendency to develop physical symptoms or fears associated with personal or school problems.

[N.J.A.C. 6A:14-3.5(c)5.]

Thus, to qualify for special education and related services under the classification category "Emotionally Disturbed," a student must "1) exhibit, to a marked degree, some of the behaviors listed [in the Code], and 2) as a result of those behaviors, h[is] educational performance was adversely affected." G.H. v. Great Valley Sch. Dist., 2013 U.S. Dist. LEXIS 70853, *18 (E.D. Pa. May 20, 2013) (emphasis in original).

Through the testimony presented, petitioners relied strongly on N.S.'s attendance issues to support their position that he is eligible for special education and

(A) use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent . . .

(B) not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability or determining an appropriate educational program for the child; and

(C) use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

[20 U.S.C. § 1414(b)(2)(A)–(C); 34 C.F.R. § 300.304(b)(1)–(3).]

related services, meaning that because N.S. was not in school, he could not access his education. However, N.S. did not have consistent attendance problems during middle school or early high school. It was not until N.S. exceeded the age of compulsory education during the 2016-2017 school year that he ceased attending school. Although far from having perfect attendance, at no time prior to eleventh grade did N.S. accrue the eighteen (18) absences which would trigger a loss of academic credit at Randolph High School. In all school years prior to the 2016-2017 school year, N.S. complied with the ninety (90%) percent attendance rate required for districts according to N.J.A.C. 6A:32-12.1. Soon after he ceased attending school in November 2016, petitioners retained a consultant and chose Waypoint as the place they wanted to send N.S.

I **CONCLUDE** that the District has established by the preponderance of the credible evidence that it has satisfied its obligations to N.S. and the requirements of the law by providing him with 504 accommodations. I **CONCLUDE** that the preponderance of the credible evidence does not support that N.S. requires specially designed instruction. Furthermore, the District did not ignore N.S.'s anxiety, as claimed by petitioners. Rather, it looked at the totality of information and determined that his anxiety did not interfere with his ability to access his general (not special) education or to have social interactions with peers and teachers. N.S. did not act out in school and was not overly anxious in his classrooms, according to teachers whom petitioners' experts did not interview.

Even if I concluded that N.S. was educationally impacted by his disability and entitled to FAPE through a comprehensive IEP rather than with 504 accommodations, I would not find that petitioners had met the factors as laid out in D.B. ex rel R.H. v Ocean Twp. Bd. of Educ., 985 F. Supp. 457, 503 (D.N.J. 1997) aff'd, 159 F.3d 1350 (3d Cir. 1998). In Munir, supra, 723 F.3d at 429, the hearing officer considered whether O.M.'s parents were entitled to compensation for the costs of a private placement, after finding that the issue of eligibility was a close call after several suicide attempts by the child. Relying on Mary T. v. School District of Philadelphia, 575 F.3d 235 (3d Cir. 2009), she determined that they were not entitled to reimbursement for the costs of attending their chosen school because the primary purpose of that placement

was the provision of mental health treatment rather than provision of special education. There is no dispute that the placement of N.S. at Mountain Valley was for medical or emotional reasons and not educational ones. The question here is whether the same is true of Waypoint. While the teachers at Waypoint reported that N.S. is bright, doing well, and making a solid effort, so did the teachers at Randolph.

Again, I find Munir to be instructive:

Although we recognized that the child may have received some educational benefit from her therapy sessions, those sessions were “predominately designed to make her aware of her medical condition and how to respond to it”; they were “neither intended nor designed to be responsive to the child’s distinct ‘learning needs.’” [Mary T., 575 F.3d] at 245. Therefore, the parents were not eligible for reimbursement.

[Munir, 723 F.3d at 432.]

N.S. was not placed at Waypoint by his parents primarily for educational reasons; his prior placement at Mountain Valley was not educational but emotionally-medically based; and Waypoint was not needed for any “significant unrealized potential.” Petitioners made the decision to place N.S. at Waypoint prior to the District’s eligibility meeting and in order to reduce the stress and chaos in their family home. Moreover, there is little to no competent evidence as to what Waypoint was providing N.S. educationally. He did not attend specialized classes, the goals and objectives were very general and solely therapeutic, and the largely unknown and unspecified additional supports alleged to be there were not educational. Because petitioners have not shown that they voluntarily placed N.S. at Waypoint to meet some “specialized educational” needs and that the placement was “appropriate,” I **CONCLUDE** that they are not entitled to reimbursement.

In sum, I **CONCLUDE** that the District has met its burden of proof that the 504 Plan proposed by the District for the 2016-2017 school year was appropriate to address N.S.’s medical condition of Generalized Anxiety Disorder. I **CONCLUDE** that the District did not fail petitioners in its Child Find obligations and that preponderance of the credible evidence supports its decision not to classify him as emotionally disturbed

under the IDEA. I **CONCLUDE** that an out-of-district placement was not necessary for N.S. to access his education, was predominantly based on medical necessity, and was primarily geared to addressing medically emotional issues. Accordingly, the petitioners' request for reimbursement of their voluntary placement at Waypoint is rejected.

ORDER

For the reasons set forth above, it is **ORDERED** that the relief sought in petitioners' due process petition is **DENIED**.

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

July 16, 2018

DATE



GAIL M. COOKSON, ALJ

Date Received at Agency

7/16/18

Date Mailed to Parties:
id

APPENDIX

LIST OF WITNESSES

For Petitioners:

D.S.

Charles Martinson

Daniel N. DaSilva

For Respondent:

Deborah Iosso

Maria Renken

Linda McGovern

Walter Curioni

LIST OF EXHIBITS IN EVIDENCE

Joint

- J-1 504 Plan (11/21/12)
- J-2 Report card from seventh grade (2012-2013 school year)
- J-3 504 Plan (11/14/13)
- J-4 504 Plan (1/30/14)
- J-5 Letter from Eric J. Bartky, M.D. (2/20/14)
- J-6 504 Plan (3/5/14)
- J-7 Report card from eighth grade (2013-2014 school year)
- J-8 504 Plan (9/4/2014)
- J-9 504 Plan revision (1/9/2015)
- J-10 504 Plan revision (4/16/15)
- J-11 Correspondence from Susan Brown (4/16/15)
- J-12 Report card from ninth grade (2014-2015 school year)
- J-13 New Jersey Biology Competence Test Individual Student Report
- J-14 Letter from Dr. Bartky (10/19/15)
- J-15 [not in evidence]

- J-16 Private Psychological Evaluation of N.S., Kevin O'Keefe, Psy.D., Mountain Valley Treatment Center (1/24/16)
- J-17 Correspondence from Nicole Smith (3/22/16)
- J-18 504 Plan (4/16/15, 6/19/15, 6/20/16)
- J-19 Report card for tenth grade (2015-2016 school year)
- J-20 Letter from Mariann Crincoli, Esq. to Robin S. Ballard, Esq. (9/20/16)
- J-21 Letter from Walter M. Curioni to Petitioners (9/26/16)
- J-22 Initial Identification and Evaluation Planning (9/30/16)
- J-23 504 Plan (10/7/16)
- J-24 [not in evidence]
- J-25 CST Psychological Assessment Report prepared by Maria Renken (11/3/16)
- J-26 CST Social Assessment prepared by Jane McGarry (11/21/16)
- J-27 Initial Eligibility Determination – Not Eligible (12/16/16)
- J-28 Letter from Charles Martinson, M.D. to Randolph School District regarding N.S., (Rec'd 12/19/16)
- J-29 504 Plan (1/4/17)
- J-30 [not in evidence]
- J-31 504 Plan (3/9/17)
- J-32 Report card for eleventh grade (2016-2017 school year)
- J-33 Transcript for N.S.
- J-34 Report of Standardized Test Scores for N.S. 2009-2016
- J-35 Psychiatric Examination by Gerald Meyerhoff, M.D. (5/2/17)

For Petitioner:

- P-1 E-Mails (2011-2012 SY)
- P-2 E-Mails (2012-2013 SY)
- P-3 E-Mails (2013-2014 SY)
- P-4 E-Mails (2014-2015 SY)
- P-5 E-Mails (2015-2016 SY)
- P-6 E-Mails (2016-2017 SY)
- P-7 [not in evidence]
- P-8 Academic Excuse (1/15/15)

- P-9 Letter from Ami A. Mehta, M.D. (1/24/15)
- P-10 Academic Excuse (4/6/15)
- P-11 [not in evidence]
- P-12 Mountain Valley Master Treatment Plan (11/22/15)
- P-13 [not in evidence]
- P-14 Letter from Steven Bennet, M.Ed., Therapist at Mountain Valley Treatment Center (2/10/16)
- P-15 Letter from W. Burluson Daviss, M.D. (2/16/16)
- P-16 Letter from Steve Bennet, M.Ed., Therapist and Fran Moriarty, Ed.D., Clinical Director at Mountain Valley Treatment Center (3/18/16)
- P-17 Letter from Jayne Wesler, Esq., to Robin Ballard, Esq. (8/11/16)
- P-18 Letter from Mariann Crincoli, Esq., to Robin Ballard, Esq. (9/8/16)
- P-19 [not in evidence]
- P-20 Letter from Mariann Crincoli, Esq., to Robin Ballard, Esq. (10/6/16)
- P-21 [not in evidence]
- P-22 Psychiatric Evaluation by Charles F. Martinson, J.D., M.D. (11/15/16)
- P-23 Curriculum Vitae of Charles F. Martinson, J.D., M.D.
- P-24 [not in evidence]
- P-25 [not in evidence]
- P-26 Letter from Mariann Crincoli, Esq., to Robin Ballard, Esq. (12/19/16)
- P-27 [not in evidence]
- P-28 Prescription Blank from Charles F. Martinson, J.D., M.D. (12/19/16)
- P-29 Letter from Mariann Crincoli, Esq., to Robin Ballard, Esq. (12/20/16)
- P-30 Letter from Mariann Crincoli, Esq., to Robin Ballard, Esq (1/3/17)
- P-31 Letter from Mariann Crincoli, Esq., to Robin Ballard, Esq (1/31/17)
- P-32 Report of Daniel DaSilva, Ph.D. (2/9/17)
- P-33 Curriculum Vitae of Daniel DaSilva, Ph.D.
- P-34 Letter from Mariann Crincoli, Esq., to Robin Ballard, Esq (3/14/17)
- P-35 Letter from Mariann Crincoli, Esq., to Robin Ballard, Esq (3/17/17)
- P-36 Letter from Mariann Crincoli, Esq., to Robin Ballard, Esq (3/24/17)
- P-37 [not in evidence]
- P-38 Note from Lee J. Suckno, M.D. (3/31/17)

- P-39 Description of Waypoint Academy
- P-40 Waypoint Academy Consent for Admission (4/21/17)
- P-41 Waypoint Academy Cost of Care
- P-42 Waypoint Academy Acceptance Letter
- P-43 Waypoint Academy Credit Worksheet
- P-44 Waypoint Academy Master Treatment Plan (6/19/17)
- P-45 E-Mail from Mariann Crincoli, Esq., to Robin Ballard, Esq. (4/24/17)
- P-46 Letter from Mariann Crincoli, Esq., to Robin Ballard, Esq. (4/27/17)
- P-47 Resume of Jessica Hartman
- P-48 Resume of Richard Vincent Smith
- P-49 Resume of Gentry Lyn Peppin
- P-50 Resume of Catherine Gardner
- P-51 Resume of Ericka Rountree
- P-52 Resume of Brittani Bulloch
- P-53 Prescription Log (6/27/17)
- P-54 Waypoint Academy Academic Update (7/17)
- P-55 SD Speech Evaluation by Rebecca Hitchcock (12/1/06)
- P-56 IEP (10/11/17)
- P-57 IEP Goals and Objectives (2007)
- P-58 IEP (10/24/08)
- P-59 IEP (10/23/09)
- P-60 Eligibility Determination (10/23/09)
- P-61 IEP (10/22/10)
- P-62 Progress Report (6/11)
- P-63 IEP (10/21/11)
- P-64 IEP (10/15/12)
- P-65 Eligibility Re-Determination & IEP Development (10/23/12)
- P-66 Re-Evaluation Planning – Proposed Action (10/23/12)
- P-67 [not in evidence]
- P-68 Progress Report
- P-69 [not in evidence]
- P-70 IEP (10/21/13)

- P-71 IEP (12/8/14)
- P-72 [not in evidence]
- P-73 [not in evidence]
- P-74 [not in evidence]
- P-75 Report Card (11/19/15)
- P-76 [not in evidence]
- P-77 [not in evidence]
- P-78 Revocation of Consent for Provision of Special Education Services – Proposed Action (5/24/16)
- P-79 Letter from Robin Ballard, Esq., to Mariann Crincoli, Esq. (9/14/16)
- P-80 Letter from Robin Ballard, Esq., to Mariann Crincoli, Esq. (9/26/16)
- P-81 [not in evidence]
- P-82 [not in evidence]
- P-83 Letter from Mariann Crincoli, Esq., to Robin Ballard, Esq. (11/29/16)
- P-84 Letter from Robin Ballard, Esq., to Mariann Crincoli, Esq. (11/29/16)
- P-85 IEP/Eligibility Meeting Invitation (11/30/16)
- P-86 Letter from Robin Ballard, Esq., to Mariann Crincoli, Esq. (12/1/16)
- P-87 Letter from Mariann Crincoli, Esq., to Robin Ballard, Esq. (12/6/16)
- P-88 Letter from Robin Ballard, Esq., to Mariann Crincoli, Esq. (12/13/16)
- P-89 Letter from Robin Ballard, Esq., to Mariann Crincoli, Esq. (12/19/16)
- P-90 Letter from Robin Ballard, Esq. to Mariann Crincoli, Esq. (1/6/17)
- P-91 [not in evidence]
- P-92 [not in evidence]
- P-93 Resume of Nicole Peters
- P-94 SD Authorization directed to Dr. Meyerhoff signed by Petitioner, M.S. (4/25/17)
- P-95 Waypoint Academy Final Report Card (2016-2017)
- P-96 Waypoint Academy Attendance Sheet (8/14/17)
- P-97 Waypoint Academy Individual Therapy Notes (5/24/17-8/17/17)
- P-98 Direct Testimony of Dr. Charles Martinson
- P-99 Direct Testimony of Dr. Daniel DaSilva
- P-100 Direct Testimony of Petitioner, Dara Sandler

For Respondent:

- R-1 Pre-filed testimony of Deborah Iosso
- R-2 Curriculum Vitae of Maria Renken
- R-3 Pre-filed testimony of Maria Renken
- R-4 Curriculum Vitae of Linda McGovern
- R-5 Pre-filed testimony of Linda McGovern
- R-6 Curriculum Vitae of Walter Curioni
- R-7 Pre-filed testimony of Walter Curioni
- R-8 Notes from Susan Brown, Guidance Counselor (11/15/15 - 3/23/17)
- R-9 Correspondence from Linda McGovern (10/25/16)
- R-10 Notes from Linda McGovern, Sage Therapist (1/6/17 – 3/17/17)
- R-11 Letter from R. Ballard to M. Crincoli (3/28/17)
- R-12 Report card from sixth grade (2011-2012)
- R-13 Correspondence between D.S. and S. Brown (2/26/15)
- R-14 Correspondence between D.S. and M. Danna (5/6-8/15)
- R-15 Correspondence between D.S. and P. Bond (5/6-7/15)
- R-16 Correspondence between D.S. and C. Ferrentino (9/9/15)
- R-17 Correspondence between D.S. and Susan Brown (6/2016)
- R-18 Letter from M. Renken to Dr. Lee Suckno (11/9/16)
- R-19 Correspondence between D.S. and L. McGovern (1/25/17 - 4/4/17)
- R-20 Notes prepared by Mr. Curioni of his observation of N.S. at WayPoint (8/18/17)