



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

**FINAL DECISION**

OAL DKT. NO. EDS 08155-18

AGENCY DKT NO. 2018-27971

**J.F. AND D.J. ON BEHALF OF J.F.,**

Petitioners,

v.

**SOUTH ORANGE-MAPLEWOOD BOARD OF EDUCATION,**

Respondent.

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**Catherine Merino Reisman, Esq.**, for petitioners (Reisman, Carolla Gran,  
attorneys)

**Rita Barone, Esq.**, for respondent (Purcell Mulcahy Flanagan, attorneys)

Record Closed: May 22, 2019

Decided: May 29, 2019

BEFORE **KIMBERLY A. MOSS**, ALJ:

Petitioners J.F. and D.J. on behalf of their child J.F. (J.F.J.), dispute that the IEP of respondent South Orange-Maplewood Board of Education (District) provided J.F.J. with a free and appropriate education (FAPE). They also request reimbursement and compensatory education. The District contends that the IEP provides FAPE to J.F.J. and petitioners are not entitled to reimbursement or compensatory education.

## **PROCEDURAL HISTORY**

This matter was transferred to the Office of Administrative Law (OAL) as contested matters on June 7, 2018. I granted a Motion in Limine on September 13, 2018, precluding testimony and evidence regarding IEP's of J.F.J. subsequent to February 13, 2018. A second Motion in Limine was filed on October 30, 2018, requesting Respondents' Exhibit R-1, an IEP be excluded because it was created after February 13, 2018. I heard testimony preceding the hearing and concluded that petitioners did not receive Exhibit R-1 until two weeks prior to the hearing date; therefore, R-1 was precluded. Hearings were held on November 2, 2018, December 14, 2018, January 25, 2019, and February 22, 2019. Post-hearing submissions were received on April 26, 2019. On May 22, 2019, an oral argument was held and the record closed.

## **FACTUAL DISCUSSION AND FINDINGS**

### **TESTIMONY**

#### **Daniel Lemond**

Daniel Lemond (Lemond) has a master's degree in clinical psychology and counseling. He testified that he became a licensed professional counselor in 2013. In 2016 he received a certificate as approved clinical supervisor. He is the coordinator of the Effective School Solutions program (ESS). ESS is an agency that provides comprehensive therapeutic services for students that are identified as being at high need for the services. As the Coordinator of ESS, Lemond oversaw the delivery of group, individual, and family services. His office was on the first floor of Columbia High School (CHS or Columbia).

The number of students in a group therapy session can be from six to ten students. ESS is not exclusively for special education students. A student can be in the CAP program and ESS. ESS staff speaks to the student's case manager at least once a week, parents once a week, and any student's outside provider once a month. The

students in ESS get feedback from the teachers. The academic support group is different from the study-skills group that meets five times per week.

If a student is school avoidant, the student can use alternative entrances to school. If a student refuses to go to school, ESS can do home visits. There is structured lunch where ESS students eat.

Once a student is referred to ESS, the student needs several approvals. The first level of approval is a gatekeeper, who is someone at the school. There are assessments, but not every referral gets an assessment. At those times ESS consults with the referrer and makes a recommendation. ESS will not offer an assessment to a student unless it is willing to take the student into the program. There is a limit to the number of students that can be in the ESS program at any given time.

There are exclusions from the ESS program. The exclusions include: fire starting within the last two years, eating disorder, and substance use. If substance use is reported in a high level, the student would need to go to substance-abuse treatment before being accepted to ESS. Developmentally disabled students would struggle in ESS. The goal of ESS is for the student to function and maintain themselves in school. ESS has had students who were in intensive outpatient programs and had partial hospitalization.

Lemond was at an October 19, 2017, meeting regarding J.F.J. He gave recommendations based upon what was said regarding J.F.J.'s substance abuse and emotional issues. Lemond provided a list of providers with higher levels of care. At this time, J.F.J. was in an outpatient program. There was a referral for J.F.J. to ESS the next day. An appointment was scheduled for J.F.J. on October 31, 2017, which was cancelled by petitioners and not rescheduled. Lemond does not know why the appointment was cancelled.

Lemond believes that petitioners were informed of the ESS program at the October 19, 2017, meeting. It is his practice to hand out a brochure to the parents of students considering the ESS program. At that time, the ESS program was at capacity,

but J.F.J. was offered an assessment because of need. J.F.J.'s substance abuse was brought up at the meeting. He was not aware that J.F.J. was suspended due to substance abuse. Nothing at this meeting would have automatically precluded J.F.J. from ESS. If he offers an assessment, he is prepared to accept the student into ESS if the student is appropriate. After the October 17, 2017, meeting it was Lemond's understanding that he was going to schedule an assessment for J.F.J.

Lemond's next conversation about J.F.J. occurred on November 27, 2017. At that time J.F.J.'s substance abuse had increased and his school attendance decreased. Lemond recommended a higher level of care appointment for J.F.J. J.F.J. could have been assessed for ESS while receiving the higher level of care or the assessment could have occurred after he completed the higher-level treatment. J.F.J. received higher-level care at High Focus.

Lemond received a referral for J.F.J. from Robin Straus (Straus) in January 2018, because J.F.J. was continuing to be school avoidant, he was discharged from High Focus. J.F.J. was discharged from High Focus because he continued to use marijuana. Lemond did not agree to assess J.F.J. at this time because it was recommended that J.F.J. needed a higher level of care than High Focus. Lemond envisioned the higher level of care for J.F.J. to be at a program like Daytop which has inpatient residential substance abuse and mental health diagnosis. J.F.J. needed more medical treatment before he could return to school. Lemond became aware that J.F.J. went to a wilderness program through the report of Dr. Harvey. The evaluations of Dr Harvey were done when J.F.J. was at High Focus. Until J.F.J. received the higher level of care the ESS program was not appropriate for him. High Focus recommended a higher level of care for J.F.J.

The IEP assumed that J.F.J. did not need a higher level of care. He could not be accepted into ESS until he received a higher level of care. Lemond has experience with wilderness programs. He would not consider a wilderness program a higher level of care.

Robin Straus

Robin Straus (Straus) is currently retired. During the 2017-2018 school year she was a school social worker and on the child study team (CST) at Columbia. She did assessments, evaluations, and updates. She is a licensed social worker. She became J.F.J.'s case manager in his freshman year, 2016-2017. She reviewed J.F.J.'s January 15, 2016, eligibility conference report when she became his case manager. At that time J.F.J.'s broad reading was at fifth-grade, second-month level. His math was at fourth-grade, fifth-month level and his writing was at fifth-grade level. In January 2016 J.F.J. had difficulty staying on task, unless the teacher was next to him. He began having difficulty getting work done. He was having anxiety and social stress. The IEP does not note the source of the anxiety or social stress.

Counseling was a related service on this IEP. The counseling goal was to demonstrate improvement in personal emotional functioning. The objective was to decrease the number of negative self-references. The counselor would make a subjective assessment as to whether he has made progress. Straus does not know what the present levels of the counseling goals were. J.F.'s general educational goals included develop independent work skills and to ask for help eight out of ten times when needed.

He received a grade in math of ninety and ninety-one percent in the first two marking periods. In history his grades were ninety-one percent and eighty-four percent in the first two marking periods. In English he had a B+ average in October 2015 and a B- average in January 2016.

The November 15, 2016, IEP removed counseling. J.F.J. was in special education math class. He was impulsive and distracted in science class, he was easily distracted and off task in history, and he underperformed and was off task in English. Counseling goals of increasing attention and impulse control were not in the November 15, 2016, IEP. J.F.J.'s lack of focus and distractibility impede his ability to learn. There was a meeting with petitioners on September 19, 2017, which discussed counseling, but it was not indicated at that time and J.F.J. had outside counseling.

Straus worked with guidance counselors and Student Assistance Counselors (SAC). She worked with students with substance-abuse problems or who were in crisis. Preform Care is a resource outside of the school that goes into the home of families in crisis. She is not responsible for students with substance abuse, the SAC is, but she is called in those cases. She does not put recommendations in the IEP regarding active substance abuse. Straus recommends outpatient and inpatient programs. The inpatient programs have an educational component called bedside instruction, where the school sends the instructions to the facility. She works with the facility to determine what will happen once the student is released. ESS will not accept a student who needs a higher level of care at the time of the referral. ESS provides services at home. ESS has two behaviorists on staff who will go into the home when school avoidance is an issue.

Straus met with petitioners in September 2017 to discuss J.F.J.'s programming and review or revise the IEP. Two special education and one general education teacher was present at the meeting. They reviewed J.F.J.'s schedule and discussed if counseling should be added to it.

J.F.J. was suspended from school for three days on September 20, 2017, for possession of drugs. He was seeing a SAC at that time. Straus became aware of the suspension on September 28, 2017, she attempted to set up a Child Study Team meeting. There was a meeting on October 19, 2017, discussing a change in program for J.F.J. with an escort between classes, speak to a therapist, an intensive outpatient substance-abuse program, and ESS referral. They reviewed services in the community. J.F.J. needed an intervention before intake to ESS could occur.

In October 2017 Straus recommended the ESS program for J.F.J. and the CAP program which has students with above-average intelligence and intellectual curiosity in small classes. An ESS assessment was scheduled for J.F.J. but it was cancelled. Various outpatient programs were discussed. The District would pay the educational portion of the programs. The District was given permission to speak with J.F.J.'s therapist, Jennifer Weberman. Straus sent consent to change the IEP to petitioners, but

it was not returned. She could not make the changes to the IEP until the consent was returned.

The October 2017 program that J.F.J. was in included replacement geometry. He had in-class support for U.S. History, dual teachers, general education and a special education teacher. All of the teachers were dual certified. J.F.J. also had physical science in a small-class setting and English support class that had twenty-five students. J.F.J. has ADHD. The related services he received were counseling consultation.

The CAP program had smaller classes with eight to twelve students with dual certified teachers and a mainstream curriculum. Petitioners did not sign the consent to amend the IEP in October 2017 therefore the ESS and CAP were not implemented. Petitioners told Straus that J.F.J. was taking the medication Depakote.

Straus received an email from petitioners on October 23, 2017, stating that J.F.J. was school avoidant. Straus wanted to speak to Weberman, J.F.J.'s therapist, before creating a new schedule for J.F.J. She spoke to Weberman on November 13, 2017. At that time J.F.J. was cutting classes and abusing drugs. In the Fall of 2017, the ESS program was not available to students who were abusing drugs.

On or around November 27, 2017, J.F.J. still had a substance abuse problem. He had an intake appointment at High Focus. J.F.J. was cutting classes. Petitioners were trying to get J.F.J. into an outpatient program. A SAC Counselor went to get J.F.J. from class and he ran off. Straus was concerned with the amount of time it was taking to get J.F.J. into a substance-abuse program. She left a voice mail with Weberman regarding the delay.

An IEP meeting was scheduled for November 2017 which did not occur. J.F.J. was accepted into High Focus. Straus received notification from High Focus that he was admitted on December 6, 2017. He was receiving his educational instruction at High Focus by PESI Contractor. The District pays for that instruction. Straus contacted J.F.J.'s case manager at High Focus. J.F.J. completed the partial-care program at High Focus and was transitioned to the intensive outpatient program. She later learned that

J.F.J. was discharged from High Focus for continued use of marijuana on January 11, 2018. She set up a meeting with petitioners to put J.F.J. on home instruction. An IEP meeting was scheduled for January 29, 2018. It was not held because petitioners wanted to get a private assessment of a psychologist. The psychologist report was reviewed by the District. The IEP meeting was rescheduled for February 13, 2018. J.F.J. was referred to ESS again prior to the February 13, 2018, meeting. Straus was waiting for medical documentation from his home instruction to reactivate the ESS. In the referral to ESS, J.F.J.'s diagnosis was ADHD, Anxiety, Depression, and recently diagnosed Bipolar Disorder. His risk factors were substance abuse and other. ESS needs medical documentation when the student has substance abuse history.

The February 13, 2018, IEP had a comprehensive educational and therapeutic program with CAP classes and ESS. The CST went over the psychological report of Dr. Harvey. The District accepted the social history and chronology of Dr. Harvey's report. It did not accept the rest of his report. They rejected the recommendation that J.F.J. attend a residential therapeutic program because they believed that the District's program was appropriate. There were many in-District services that the parents were made aware of such as Preform Care, which the petitioners did not use. There are services where a behaviorist can go into the home and work with the family.

The structure that Dr. Harvey recommended for J.F.J. would be fulfilled by CAP and ESS. Small classes are addressed by CAP, social skills are addressed by ESS, the sleep studies are medical, and substance abuse cannot be addressed by the District. The report of Dr. Harvey was not addressed, instead there was concern about J.F.J.'s reading at the meeting. It was proposed that a learning consultant do a reading evaluation and a psychological evaluation be done. Petitioners did not reject the proposal. The IEP recommended that a District behaviorist consult with J.F.J. and his family.

Petitioners were recommending a residential placement for J.F.J. at the February 13, 2018, IEP meeting. Petitioners stated, at the meeting, that J.F.J. was doing better, enjoyed home instruction and was staying home more. Petitioners spoke to Lemond about an ESS assessment but were non-committal about ESS. Once J.F.J.'s



substance abuse was under control he could enter ESS. Once J.F.J. was in ESS a new IEP would be developed within thirty days. A behaviorist consult was offered by the District as well as a referral to Preform Care. Every student in ESS has a counselor that works with the student and the family. ESS also has group counseling.

The general education teachers were responsible for the IEP goals in the general education classes. These goals were organization and executive function. In the February 13, 2018, IEP the science goal is not specific. There was a modification to the math goal where the replacement teacher would break down the instructions, the tests were modified, and he had extra time for tests and quizzes.

The IEP lists the length of school day as two hours. This is the length of school day for students on home instruction. Straus did not recommend two-hour school days. The ESS and CAP are full-day programs. There are nine periods in the school day. At the time of the IEP J.F.J. was on home instruction.

In a February 3, 2018, email, petitioners requested J.F.J. be placed in a therapeutic boarding school once he completes substance-abuse treatment. She spoke to petitioners about drug-treatment programs in the community. When a student is in a drug-treatment program, the district pays for ten hours of educational services provided at the rehabilitation facility per week.

Petitioners were non-committal at the February 13, 2018, IEP meeting. Straus believed that home instruction of J.F.J. would continue until a decision was reached. Medical documentation is required for home instruction. Once J.F.J. was released from High Focus, Straus asked petitioners for medical documentation. Although Straus kept J.F.J. on home instruction, she never received the medical documentation from petitioners. Straus told petitioners they could meet with Preform Care and the district behaviorist, but she did not receive a response. Preform Care had to be initiated by the parents. It is a comprehensive program.

On February 26, 2018, petitioners emailed the District to inform them that J.F.J. was enrolled in True North Wilderness Program. They requested the home instruction

be discontinued and J.F.J. remain enrolled in the district. True North is for students with emotional issues and substance abuse. Straus believed that the wilderness program was appropriate. She was never informed when J.F.J. was discharged from True North.

ESS and CAP programs are appropriate for J.F.J. ESS has a closed lunch component, a family component, and can deal with school avoidance. The ESS and CAP teachers are dual certified experienced teachers. The students can participate in extracurricular activities. The students have counseling when the students reach benchmarks in ESS and CAP the therapy lessons. J.F.J. was never assessed for ESS, his appointment was cancelled by petitioners. He was in CAP classes in October 2017.

### Michael Loupis

Michael Loupis (Loupis) is a student assistance counselor. He assists students with emotional and substance abuse issues at Columbia. He has a master's degree in Counseling. He is a licensed professional counselor. He began at Columbia in Spring 2017.

Loupis first met J.F.J in the Spring of 2017. J.F.J. was not on his radar at that time for drug or emotional issues. He was copied on J.F.J.'s suspension notice. Loupis met with J.F.J. on the day of his suspension. J.F.J. had one-half ounce of marijuana and drug paraphernalia and was taken for a drug test. J.F.J. tested positive with a score of eighty, which is higher than a score for casual use. Loupis let the case manager know the test results. Loupis met with J.F.J. again on October 9, 2017. They discussed the drug test results, how J.F.J. was doing, why was he using drugs and school. At that time J.F.J. was failing math, English, history, and science. Loupis contacted petitioners about the drug test results.

On October 19, 2017, Loupis was present at a meeting to discuss options for J.F.J. He discussed extensive outpatient treatment three times a week. Loupis pushed for the IEP to focus on substance abuse because the drug test came back positive.

On November 3, 2017, Loupis went to pick J.F.J. up from his ninth-period class, but J.F.J. went the other way and left out the back door.

Dr David Velder

Dr. David Velder (Velder) has a Ph.D. in Clinical Psychology. He is licensed in New Jersey and New York. He is a certified school psychologist and has worked as a school psychologist in Maplewood-South Orange since 2000. As a school psychologist he case manages special education students, writes IEP's, assists students in crisis, and does psychological evaluations. Most of his case managing is for students with emotional disabilities. He case manages most of the students in the ESS program. Emotional disabilities include anxiety, depression, bipolar, and psychotic episodes.

Substance abuse counseling is limited to sending the student to SAC at the high school level. If a student has a mild substance abuse problem, he can be accommodated in ESS. If the problem is not mild, they look for a treatment facility.

Velder received the report from Dr. Harvey for J.F.J. He was asked to review the report because he is a psychologist. He did not accept the findings in Dr. Harvey's report. He only accepted the IQ analysis of Dr. Harvey. J.F.J.'s IQ was ninety-six on the full scale. His prior IQ score in 2015 was ninety-one, which is consistent. Community treatment should be tried before therapeutic placement. Dr. Harvey had a Utah license, Velder does not know the licensing requirements of Utah. Dr. Harvey evaluated J.F.J. in Pennsylvania.

Dr. Harvey's assessments of J.F.J. were done in December 2017, while J.F.J. was at High Focus for substance abuse. Velder is concerned that the results may be skewed because J.F.J. may have been under the influence of substances. If someone is actively using or recently stopped using, that is not the right time for an evaluation. The results will be skewed.

Dr. Velder had concerns with Dr. Harvey's use of the trauma and attachment belief scale to assess trauma. It is used to assess trauma, but Dr. Harvey ruled out

trauma. Dr. Harvey used the social responsive scale, which is used for children on the autism spectrum. J.F.J is not on the autism spectrum. Dr. Harvey did not have the data on the Conners test, which shows how ADHD affects the student in the classroom. He is not sure how Dr. Harvey interpreted the data in the MACI test, an internal measure of responding to see if responses are truthful. Dr. Harvey did not say that he interpreted the validity concern of whether J.F.J. was exaggerating.

Dr. Velder had concerns with J.F.J.'s truthfulness. Although Dr. Harvey does say that adolescents are not fully accurate, he does not state J.F.J.'s history should be read with caution. He does not agree that inaccurate self-reporting by J.F.J is due to fallible memory but may be due to psychological reasons. Dr. Harvey did not rely on objective data. Dr. Harvey did not reference conversations with teachers or social worker.

Dr. Harvey tried to establish a criterion for a diagnosis of Bipolar Disorder but did not clearly delineate everything that would establish that diagnosis. Dr. Harvey does not state which pleasurable activities J.F.J. is no longer interested in. Dr. Harvey lists symptoms of Bipolar Disorder as overreaction, restless, and impulsive. These are symptoms of ADHD.

Most psychologists use the DSM-5 for diagnosis, it is more specific. The ICD 10 is broader than the DSM-5. In the DSM-5 substance abuse needs to be considered for a Bipolar Disorder diagnosis.

Dr. Harvey diagnosed J.F.J. with anxiety disorder, the symptoms of which are feeling nervous and rapid breathing. There is no report of J.F.J. having any of these symptoms. Dr. Harvey diagnosed J.F.J. as having Oppositional Defiant Disorder, which needs four or five symptoms—one of which is anger—which J.F.J. denies. The Connors scale lists the frequency of behaviors on a scale was given to J.F.J. and petitioner but his teachers were not asked about this. J.F.J.'s substance abuse may have had an influence on the MACI test. Velder does not use the MACI test to make a diagnosis. Evidence from multiple sources is needed to make a diagnosis. The MACI test looks at the stable patterns and ways people approach the world.

Harvey's report says that J.F.J. had significant levels of depression but that did not come through in the symptom checklist. Depression is shown on the adolescent depression scale. This shows a discrepancy. J.F.J.'s statement about how he was feeling does not evidence severe depression. Anxiety did not come through on the symptom checklist but did come through on the manifest anxiety scale. Dr. Harvey did not address the discrepancy.

Velder is not sure that J.F.J. had a poor response to lower levels of therapeutic support. He connected with the mental health therapist. She convinced him to go to High Focus. ESS could address his anxiety depression, self-esteem, and social deficits. This could be addressed in school through an IEP. School behaviors are reported weekly in the ESS program. A structured setting with rules and restrictions can be provided in the IEP and ESS. A district behaviorist can help set rules at home. ESS has behavior contracts and a behavior level system. ESS has weekly feedback.

Velder does not believe that there was enough evidence in Harvey's report to diagnose J.F.J. with Bipolar Disorder. Predictable structure, multiple methods of providing instruction, visual and auditory aides, and limiting the number of instructions at one time can be provided in the proposed IEP. Group and individual social skills training can be done in ESS. Impulsivity and avoidant nature can be addressed the impulsivity can be addressed as it is with other ADHD students. The avoidant nature could be addressed with checks on him in his individual therapy.

If a student is actively abusing substances, treatment for the substance abuse happens first, then ESS maintains the recovery.

Velder has not administered any assessments to J.F.J. He has not personally interacted with J.F.J. If a student's substance abuse is under control ESS will do an intake. He does not know if J.F.J.'s substance abuse was under control in February 2018.

In Velder's rejection of Dr. Harvey's report, he did not mention concerns about J.F.J. substance abuse, or validity of Dr. Harvey's tests. He did not speak to Dr.

Harvey. He disagrees with the recommendations of Dr. Harvey. Velder does not agree that J.F.J. needs a residential placement. If J.F.J. has Bipolar Disorder, ADHD and anxiety, they could be handled in district. A district behaviorist and Preform Care can provide services at home. The IEP cannot state the exact services the behaviorist or Preform Care would provide.

Residential programs are needed for students who have no other way to benefit from education. These students cannot function in the community, cannot do daily activities, need an extremely high level of care, and the disorder is so highly impaired that the student is hallucinating or needs a hospital setting.

Dr. Velder reviewed the recommendations from the True North program that J.F.J. attended. It did not change his opinion that ESS and CAP would be appropriate for J.F.J.

#### Dr. Quinten Harvey

Dr Harvey is a psychologist who does psychological educational testing. He uses the ICD-10 code for diagnosing mental health issues. ICD-10 is no different than DSM-5 code.

Dr Harvey interviewed J.F.J. During the interview he gathered information and observed body language and social skills. He also interviewed J.F. and Weberman. He used the Connors third edition parent long form. He did not do the Connors rating scale for the teacher because J.F.J. was at High Focus at that time and there was no teacher to interact with. He had concerns about the validity of J.F.J.'s responses but since J.F.J. was in High Focus where he was drug tested and the evaluation was done at High Focus, his concerns were lessened. Harvey did not review the IEP. His report is not dated.

J.F.J. completed the Social Responsiveness Scale to differentiate between some issues and rule out others. In his report Harvey noted that information provided by adolescents is not always clinically accurate; therefore, it is important to get information

from family members and therapist. D.J. and J.F. both told him about J.F.J.'s substance abuse.

There is a fair amount of comorbidity with ADHA and Bipolar Disorder, as they overlap. He could not make a differentiation between Bipolar Disorder and ADHD without a full clinical picture.

The MACI test showed that J.F.J. emphasizes his negative self-attributes and inflates common concerns. MACI scores have a self-correcting aspect. When one over-focus on flaws or negativity about yourself the validity scales are diminished. The Rorschach test can be informative about response patterns and personality styles. It is also useful for thought disorders. These tests showed J.F.J. to be irritable and frustrated. This leads to a depressive experience, anxiety, and self-absorption. J.F.J. did not show elevated scores for depression on the symptom checklist. The Reynolds Adolescent depression scale showed that J.F.J. had depressed mood and physiological expression of emotional distress. The Substance Abuse Subtle Screening Inventory showed that his responses were valid and that J.F.J. was at elevated risk for problems associated with substance abuse.

Dr. Harvey administered the Children's Manifest Anxiety scale to J.F.J. because he had a persistent issue with anxiety. J.F.J.'s total scores for worry and physiological expression of anxiety were elevated. The resiliency scale showed J.F.J. had a diminished sense of personal resources and very high vulnerability. Dr. Harvey believed that he had an accurate level of J.F.J.'s functioning.

Dr. Harvey diagnosed J.F.J. with Bipolar Disorder based on the test results and J.F.J.'s symptoms. Dr. Harvey recommended that J.F.J. have residential therapeutic intervention with academic and psychological intervention because when J.F.J. is in a therapeutic setting with structure there is measurable improvement. His second recommendation is J.F.J. needs a structured setting with predictable rules and restrictions. Dr. Harvey does not believe this can be achieved for J.F.J. outside of a residential setting.

J.F.J. was in a less-restrictive setting at High Focus, which did not work. Dr Harvey is not sure if he reviewed the District's recommendations. He does not recall discussing the ESS program with anyone. Once a student completes a substance-abuse program emotional stability and a stable environment is the student's primary need. Dr. Harvey's report was done prior to J.F.J. going to the Wilderness program. He believes that J.F.J. would regress if he was not in a residential program. J.F.J.'s response to outpatient treatment with Weberman is part of the reason that Dr. Harvey believes that he needs a residential placement. He had a poor response to lower-level supports. Dr. Harvey's report does not include the details of Weberman's treatment of J.F.J. including frequency of treatment and when treatment began.

John Powers is an educational consultant that referred petitioners to Dr. Harvey. Dr. Harvey interviewed Powers but does not note anything regarding what Powers said in his report.

Harvey used ICD-10 for his Bipolar Disorder diagnosis. Bipolar Disorder includes hypomania and major depressive episodes. Hypomania includes increased behavioral activity, increased risk issues with behavior; hyper sexuality is an example. There is a need for a differential diagnosis of Bipolar Disorder when an adolescent also has ADHD. ADHD can be misdiagnosed as Bipolar Disorder. A discrete episode of Bipolar Disorder was J.F.J. engaging in sexual activity that he would not have normally done. Sleeplessness is another example.

The Bipolar Disorder criteria of major depressive episode include depressed mood most of the day every day. This does not include feeling blue and not being able to get out of bed some days. Dr Harvey's report did not list J.F.J.'s decrease in pleasurable activity, weight loss or gain, or recurrent thought of death or suicide. J.F.J. reported fatigue, but not chronic fatigue.

J.F.J.'s Bipolar Disorder and anxiety contributed to J.F.J.'s self-medicating. It is not uncommon for people with substance abuse problems to have therapeutic treatment. His depressive diagnosis was based on test results, history, observed



behavior, and parents' report. J.F.J. being in a program with supports at school and at home would raise concerns.

### Evan Oppenheimer

Evan Oppenheimer is employed at True North Wilderness Program (True North), which is an individualized licensed residential treatment center. True North uses clinical methods combined with self-reflection and experimental learning to develop proficiency in social and emotional independent living. It is not primarily a substance abuse program.

J.F.J. had a substance abuse problem, but True North felt that it was a secondary problem. Oppenheimer worked with J.F.J. from February 23, 2018, to June 13, 2018, twice a week for one to three hours. The report from True North recommends that J.F.J. would benefit from a structured therapeutic milieu. He did not think substance abuse was a primary issue for J.F.J. because he was not using drugs when he entered True North and he was free from substance abuse for the time that he was at True North. J.F.J. had a history of having issues before he started abusing substances. The students at True North are monitored constantly.

J.F.J. had immature developmental maturity. This includes poor social relationships and the inability to function in school. J.F.J.'s self-doubt comes from a deep sense of shame and not having a good anchor to who he is as a person.

J.F.J. needs a residential program because he was in a day program that did not work and he needs more time to generalize what he learned at True North. He struggles with interactions with people. If he was not in a residential program, his problems would be compounded because if he was having a hard time at home, he would bring that to school.

Oppenheimer was never provided with information regarding the ESS program but living at home and being able to self-regulate his behaviors and emotions is not realistic. When J.F.J. was in-District, he was in special education classes with peers.

He began using marijuana because his peers used marijuana. J.F.J.'s anxiety, depression, and Oppositional Defiance Disorder make him susceptible to peer pressure to use drugs.

There was no educational testing done on J.F.J. at True North. True North did not diagnose him with ADHD but can confirm that diagnosis through observation.

Oppenheimer has worked with guidance counselors and teachers but is not employed by a school district. He has never developed an IEP.

### J.F.

J.F. is the father of J.F.J. J.F.J. has received special education services since he was in the second grade. He has ADHD, slow processing, math-learning disability, and reads below grade level. During the January 15, 2016, IEP there were concerns because J.F.J. could not get the work done. It took hours for J.F.J. to do the homework, which caused anxiety for J.F.J. Modifications were requested including reduced homework. There was no conversation regarding the goals and modifications at the meeting. Petitioners concerns were J.F.J.'s reading and math levels. In June 2016 in the eighth grade, J.F.J. was failing inclusion math. The special education teacher, Keegan, was also a coach whose coaching took him away from the class. At the same time in the math class when the special education teacher was not present the general education teacher, Mr. Feldman, said "What's wrong, [J.F.J.], forgot to take your meds today?" This comment devastated J.F.J. because the other students did not know that he was on medication. At that time, J.F.J. refused to take medication. It became difficult to get J.F.J. to take medication. Petitioner brought this subject up in an email with Lynn Irby on July 24, 2016. In that email he was also concerned that J.F.J. tested at a fourth-grade level in math.

Petitioners are not contesting J.F.J.'s classification as other health impaired by virtue of ADHD. At the January 15, 2016, IEP meeting J.F.J. broke down due to being in the wrong placement or too much homework was not among the parents' concerns.

The November 2016 IEP was J.F.J.'s ninth-grade IEP. There was no discussion of goals or progress reports on the IEP. His counseling on the IEP in middle school was removed from this IEP. He was scheduled for replacement Algebra 1 and it was projected that he would have replacement Geometry the next year. At the time of the IEP J.F.J.'s math grade was C+. The IEP had goals for general education courses and math courses. There were modifications for math as well as other subjects.

J.F.J. had replacement math in 2016-2017. He stopped taking ADHD medicine in the ninth grade. He told Dr. Harvey that he stopped the ADHD medication because it made him depressed and anxious.

On May 8, 2017, J.F. sent an email to Straus to determine if J.F.J. needed to be moved into all replacement classes. On May 22, 2017, J.F. signed a consent to amend the IEP for J.F.J. to be placed in replacement physical science. On September 19, 2017, there was a meeting for Amendment to related services. Counseling was changed to a consulting model since J.F.J. was receiving private counseling.

On September 19, 2017, petitioner received a notice of suspension for J.F.J. The vice principal called him to say that J.F.J. had marijuana and he needed to be taken to the doctor for a drug test. He was told that J.F.J. had one-eighth of an ounce of marijuana in his system but at the meeting with the school it was stated that J.F.J. had one-half of one ounce of marijuana in his system. J.F.J. was suspended for two days and J.F. was concerned that J.F.J. would be farther behind in his classes.

Petitioner met with Loupis on October 4, 2017. Loupis stated that J.F.J.'s drug test results were not that high. There was a meeting with the District on October 19, 2017. Options discussed were the ESS program for J.F.J. and sheltered lunch, where he would stay in the building for lunch. J.F.J. having an escort to his classes was also discussed. At that time J.F.J. was school avoidant. J.F.J. had a psychological evaluation by Dr. Shaley Sehgal. She determined that he had Bipolar Disorder. He was prescribed Depakote.

Straus contacted J.F. to arrange a meeting with Dan Lemond to determine J.F.J.'s eligibility for the ESS program. An appointment with Lemond was scheduled but J.F. cancelled the appointment on October 31, 2017, because J.F.J. had left school on October 30, 2017, and could not be located. J.F.J. missed the first three days of school in November 2017. J.F. called Lemond on November 27, 2017, to reschedule the assessment. J.F. never saw the consent to amend the IEP dated October 30, 2017, where J.F.J. would be placed in CAP classes. It was not mentioned in the emails between J.F. and Straus.

J.F.J. told Dr. Harvey that he began using marijuana daily in the summer of 2017. J.F. does not believe this is accurate because J.F.J. told him in the summer of 2017 that marijuana would get in the way of his acting. J.F. believes that by December 2017 that J.F.J.'s use of marijuana was significant. Being in High Focus did not stop J.F.J.'s marijuana use. J.F. was told by High Focus that J.F.J. needed inpatient rehabilitation. After J.F.J. was discharged from High Focus, he was put on home instruction. On January 10, 2018, J.F. was told that ESS was at full capacity. Lemond told him that J.F.J. was not eligible for ESS because he had an active drug problem. On February 3, 2018, J.F. sent Straus the report of Dr. Harvey.

The February 2018 IEP states that J.F.J. would have home instruction, which is incorrect. He wanted the placement to be a residential placement or a treatment center. Petitioners requested the recommendations of Dr. Harvey be followed in the IEP.

Petitioners sent J.F.J. to True North because of his lack of focus, low self-esteem, and it was a drug-free environment. J.F.J. was discharged from True North in June 2018.

### Brian Tomes

Brian Tomes (Tomes) is the Director of Admissions and Academics at of Equinox Residential Treatment Center (RTC). Greg Osler is J.F.J.'s primary therapist. The students have three hours of individual family therapy weekly. This can be two hours of individually therapy and one hour of family therapy. There is also group therapy with a

maximum of twelve people in the group. Certified Recreation therapists apply the therapeutic process to experimental settings like rock climbing, hiking, or kayaking. Dialectical Behavioral Therapy is therapy in many different settings to learn to function better. The goal of Equinox is healing and reunification with the family.

Tomes attends J.F.J.'s weekly academic meetings, which includes all of the licensed teachers, therapists, and staff when necessary.

Every week the student's treatment team which includes the primary therapist, dorm parent, residential supervisor, team teacher, the student, the clinical psychiatrist, the nurse, and the recreational therapist, meet to discuss current and future needs and treatment goals and objectives. They then take this information back to their departments.

J.F.J.'s academic abilities prior to going to Equinox showed he was above average in some areas and significantly below average in other areas. He struggled finding motivation for school. At Equinox, J.F.J. began to feel more confident and motivated. His attendance has improved, but he still has difficulty doing work in a timely manner. Socialization and anxiety are still difficult for J.F.J. A huge part of his support is the integration of academics, residential therapeutic, and psychiatric interventions. He has access to his primary therapist and group therapy.

J.F.J. has special education instruction with pull out reading and geometry. He has one-to-one support in reading and geometry. He receives reading one-to-one support from the science teacher. In geometry there are five students. In English there are ten students. He struggles with staying on task and distractions. J.F.J. does not have access to drugs at Equinox, but he still has educational problems.

There is a Master Treatment Plan that has clinical goals and objectives. By clinical he means application of therapeutic strategies from clinicians in charge of the case. Tomes believes that the Master Treatment Plan's goals are a hybrid between goals in an IEP and goals of an outpatient treatment program.

J.F.J. is with a licensed clinician about three hours per day. He also has group therapy two to three times per day. On the therapeutic and residential side Equinox RTC is providing J.F.J. with medical services.

Equinox breaks down the costs of clinical support, room and board, and education by daily rates. The clinical support includes: all therapies that are received, admission and discharge evaluations, nursing-care residential staff, and recreational program is \$320. The room and board includes lodging, meals, and basic daily living cost is \$100. The education is the scholastic program is \$100. When a psychiatrist sees J.F.J. face to face, petitioner's insurance is billed. J.F.J. could not attend the academic portion of Equinox without attending the clinical portion of Equinox.

Equinox RTC is required to follow the Americans with Disabilities Act recommendations. Equinox will not sign contracts with school districts if the rate was not enough for them to treat the student or if the district does not pay upfront; but there can be a thirty- to sixty-day gap in the payment. Equinox RTC does not release the student's clinical chart to the parents or school districts. The clinical chart is the therapists notes of what was discussed during therapy.

Equinox RTC spoke to petitioners' educational consultant John Powers to get insight into J.F.J.'s background. He has previously worked with True North. Powers has not sent any other clients to Equinox RTC. Tomes has not previously worked with Dr. Harvey.

Having considered the testimony and reviewed the evidence I **FIND** the following **FACTS**:

J.F.J. was an eight-grade student at South Orange Middle school. He was receiving special education services under the classification of other health impaired due to ADHD. He received replacement math and in class support in language arts, science, and social studies. An educational evaluation done by Susan Boney, which is listed in the January 15, 2016, IEP meeting show that J.F.J. 's broad reading was at 5.2 grade level, his math was at 4.5 grade level and his written language was at 5.7 grade

level. The present level in math stated that his program was changed to replacement math in November 2015. In language arts the present level showed his average was a B-. The IEP did not list and math, reading, or writing goals. J.F.J. received counseling services once per week in a group setting.

J.F.J. began the ninth grade at Columbia High School. The IEP of November 15, 2016, shows that J.F.J. received replacement algebra and in-class support in biology, English, and world history. He did not receive the related service of counseling. The present levels in math show that he was doing satisfactorily in class, although he had difficulty staying on task and doing homework. In language arts he was underperforming. His grade was a 47. He was often off task and easily distracted. He does not keep up with the reading at home and missed assignments including the mini essay. In science he had difficulty getting to class and often missed his lab. He did not complete homework or class work. In history J.F.J. was easily distracted and not always on task. There are general academic goals for J.F.J. and math goals. There are no language arts, history, or science goals where he was having difficulties as set forth in the present levels. The general education goals and objectives are identical to the general education goals and objectives in the January 15, 2016. There is no indication of the progress if any J.F.J. made from January 15, 2016, to November 15, 2016, on the general education goals and objectives. In November 2016 he still had difficulty turning in his assignments and completing his classwork.

On May 22, 2017, there was an amendment to the IEP where J.F.J. would receive resource replacement for physical science and a supplemental resource period for the 2017-2018 school year. On September 19, 2017, there was an additional amendment to the IEP to include a counseling consultation once a week for twenty minutes.

On September 20, 2017, J.F.J. was suspended from school for three days because he had marijuana and drug paraphernalia. J.F.J. was taken for drug testing, which came back positive for marijuana. At that time J.F.J. was failing math, English, history, and science. J.F.J had become school avoidant at this time. There was a meeting on October 19, 2017, wherein there a discussion of options for J.F.J. including

the ESS program, shelter lunch for J.F.J, and escorts to class. The ESS services were a wrap-around model with a daily group period with psychoeducational curriculum that includes family, anger management, self-esteem, substance use and awareness, emotional regulation, coping strategies, and mindfulness. Behavior modification is worked into the curriculum. The students receive feedback from the teachers. It uses points to show progress. Once per week there is an academic support group. The students have a weekend plan, where they identify things that they will do that might put them at risk or be less structured. ESS also uses Dialectical Behavioral Therapy (DBT) and Cognitive Behavioral Therapy to influence behavior. Individual therapy is once a week with the assigned therapist and family therapy is twice per month. There is also a parent support group. All of the staff are licensed professionals. If a student has an active substance abuse problem that are not allowed into ESS until the substance abuse problem is addressed. There is a limited number of spots in the ESS program.

At this time a psychological evaluation on J.F.J. was done by Dr. Shaley Sehgal where it was determined that he had Bipolar Disorder.

In October 2017 Straus sent petitioners consent to amend the IEP for J.F.J to be on CAP classes and the ESS program. J.F. stated that he never saw this consent to amend the IEP. J.F.J. was scheduled for an intake with Lemond, who is the coordinator of ESS at CHS, on October 31, 2017. Petitioners cancelled the appointment because J.F.J. left school on October 30, 2017 and could not be found. J.F.J.'s substance abuse was increasing at this time.

J.F.J. was accepted into High Focus an inpatient substance abuse treatment facility on December 6, 2017. The District paid for the educational instruction that J.F.J. received at High Focus. A psychological evaluation of J.F.J. was done at this time by Dr. Harvey. J.F.J. was discharged from High Focus on January 11, 2018, because of his continued use of marijuana. High Point determined that J.F.J. needed a higher level of care than they could provide. At that time J.F.J. was put on home instruction by the District.



An IEP meeting was held on February 13, 2018. The District rejected Dr. Harvey's recommendation that J.F.J. be placed in a residential program. The IEP incorrectly states that J.F.J. will receive home instruction. The IEP provide English, environmental science, geometry, history, and study skills in a special education class once a day for forty-five minutes. It also provided for related service of ESS once a week individual therapy and once per week group therapy. At the time of the IEP, J.F.J. had not been assessed by ESS. ESS does not accept students with active drug use. J.F.J. was discharged from High Focus for continued use of marijuana one month earlier. In addition, petitioners were told that the ESS program was at capacity on January 10, 2018.

The IEP had counseling goals of increase awareness of feelings and emotional regulation in school, improvements in personal/emotional function in school environment, and increase attention and impulse control. The IEP also included general education and science goals. It did not include math or language arts goals.

On or about February 23, 2018, J.F.J. enrolled in True North. True North is an individualized residential treatment program. J.F.J. was free from drugs while he was in True North. He had counseling twice a week from one to three hours. J.F.J. was discharged from True North in June 2018.

J.F.J. was placed in Equinox RTC by petitioners in June 2018. The students have three hours of individual family therapy weekly. This can be two hours of individually therapy and one hour of family therapy. There is also group therapy with a maximum of twelve people in the group. J.F.J. receives his academic programing at Timbersong Academy, which is on-site at Equinox. Timbersong is accredited by Advanced Education. Timbersong and Equinox is the same entity with different names. All of the teachers at Timbersong are certified, but none of them are special education teachers. There is a special educator who comes weekly to supervise and access progress. She has provided no direct instruction for J.F.J. J.F.J. has pull-out reading and geometry. He has one-to-one support in reading and geometry. Therapy was integrated into J.F.J.'s academics. The students do community service on Saturdays. Equinox RTC has a dual license with clinical oversight from the State Department of

Health and the Council of Accreditation of Rehabilitative Facilities. At Timbersong, J.F.J.'s attendance improved and he began to feel more confident and motivated. J.F.J. still has problems with staying on task, anxiety, and distractibility.

Dr. Harvey is a psychologist who does psychological evaluations. He uses ICD-10 for diagnosing mental health issues. Harvey evaluated J.F.J. at High Point and administered the WIC-5 test to him. In all areas except Visual Spatial functions, J.F.J. is in the average range. In visual special function he is one point below average. The WIAT-III test was also administered to J.F.J. This test was done to sense his academic skills. His score showed a limitation in written expression, math, and math fluency. He had a reduction in academic skills compared to his cognitive ability. Anxiety was not shown in the symptom check list but it was shown to be elevated on the Children's Manifest Anxiety Scale. J.F.J. was diagnosed by Dr. Harvey with Bipolar II Disorder, Generalized Anxiety Disorder, ADHD Specific Learning Disorder with Math, Impairment Cannabis Disorder, and Oppositional Defiant Disorder.

Dr. Velder is a clinical psychologist and a certified school psychologist. He did not evaluate J.F.J. He disagreed with the diagnosis of Bipolar Disorder and Anxiety Disorder because Dr. Harvey's report does not list that J.F.J. has all of the criteria for these disorders. However, J.F.J. was previously diagnosed as having Bipolar Disorder by Dr. Sehgal.

Dr. Velder is an expert in school psychology and case managing students with emotional disabilities. Dr. Harvey is an expert in psychology and psychoeducational testing. Dr. Oppenheimer is an expert in mental health counseling.

### **LEGAL ANALYSIS AND CONCLUSION**

The IDEA provides federal funds to assist participating states in educating disabled children. Hendrick Hudson Cent. Sch. Dist. Bd. of Educ. v. Rowley, 458 U.S. 176, 179 (1982). One of purposes of the IDEA is "to ensure that all children with disabilities have available to them a [FAPE] that emphasizes special education and related services designed to meet their unique needs and prepare them for further

education, employment, and independent living.” 20 U.S.C. § 1400(d)(1)(A). In order to qualify for this financial assistance, New Jersey must effectuate procedures that ensure that all children with disabilities residing in the state have available to them a FAPE consisting of special education and related services provided in conformity with an IEP. 20 U.S.C. §§ 1401(9), 1412(a)(1). The responsibility to provide a FAPE rests with the local public school district. 20 U.S.C. § 1401(9); N.J.A.C. 6A:14-1.1(d).

The district bears the burden of proving that a FAPE has been offered. N.J.S.A. 18A:46-1.1.

The United States Supreme Court has construed the FAPE mandate to require the provision of “personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction.” Rowley, 458 U.S. at 203. New Jersey follows the federal standard that the education offered “must be ‘sufficient to confer some educational benefit’ upon the child.” Lascari v. Bd. of Educ. of Ramapo Indian Hills Reg’l High Sch. Dist., 116 N.J. 30, 47 (1989) (citing Rowley, 458 U.S. at 200). The IDEA does not require that a school district “maximize the potential” of the student, Rowley, 458 U.S. at 200, but requires a school district to provide a basic floor of opportunity. Carlisle Area Sch. v. Scott P., 62 F.3d 520, 533-34 (3d Cir. 1995).

In addressing the quantum of educational benefit required, the Third Circuit has made clear that more than a “trivial” or “de minimis” educational benefit is required, and the appropriate standard is whether the IEP provides for “significant learning” and confers “meaningful benefit” to the child. T.R. v. Kingwood Twp. Bd. of Educ., 205 F.3d 572, 577 (3d Cir. 2000); Ridgewood Bd. of Educ. v. N.E., 172 F.3d 238, 247 (3d Cir. 1999); Polk v. Cent. Susquehanna Intermediate Unit 16, 853 F.2d 171, 180, 182-84 (3d Cir. 1988), cert. den. sub. nom., Cent. Columbia Sch. Dist. v. Polk, 488 U.S. 1030 (1989). In other words, the school district must show that the IEP will provide the student with “a meaningful educational benefit.” S.H. v. State-Operated Sch. Dist. of Newark, 336 F.3d 260, 271 (3d Cir. 2003). This determination must be assessed in light of the individual potential and educational needs of the student. T.R., 205 F.3d at 578; Ridgewood, 172 F.3d at 247 48. The appropriateness of an IEP is not determined by a comparison of the private school and the program proposed by the district. S.H.,

336 F.3d at 271. Rather, the pertinent inquiry is whether the IEP offered a FAPE and the opportunity for significant learning and meaningful educational benefit within the least restrictive environment.

Toward this end, an IEP must be in effect at the beginning of each school year and be reviewed at least annually. 20 U.S.C. § 1414 (d)(2) and (4); N.J.A.C. 6A:14-3.7. A complete IEP must contain a detailed statement of annual goals and objectives. N.J.A.C. 6A:14-3.7(e)(2). It must contain both academic and functional goals that are, as appropriate, related to the Core Curriculum Content Standards of the general education curriculum and “be measurable” so both parents and educational personnel can be apprised of “the expected level of achievement attendant to each goal.” Ibid. Further, such “measurable annual goals shall include benchmarks or short-term objectives” related to meeting the student’s needs. N.J.A.C. 6A:14-3.7(e)(3). The New Jersey Supreme Court has recognized that “[w]ithout an adequately drafted IEP, it would be difficult, if not impossible, to measure a child’s progress, a measurement that is necessary to determine changes to be made in the next IEP.” Lascari, 116 N.J. at 48.

In addition, when scrutinizing a FAPE claim, there is a two-part inquiry. A court must first ask whether the state or school district has complied with the procedures of the Act when developing the IEP, and second, whether the IEP developed through the Act’s procedures is “reasonably calculated to enable the child to receive educational benefits.” Rowley, 458 U.S. at 207. While the IDEA does not require a school district to provide an IEP that maximizes “the potential of a disabled student, it must provide ‘meaningful’ access to education and confer ‘some educational benefit’ upon the child for whom it is designed.” N.E., 172 F.3d at 247 (citations omitted).

One issue in this matter is whether the IEP of February 13, 2018, provides FAPE to J.F.J. The District’s position was that J.F.J. being in the ESS program would provide him with the structure and counseling and his math, language arts, and science classes being replacement classes was the proper placement. The District focused in on the ESS program being a key component to J.F.J.’s program. However, ESS program does not take students with active substance abuse issues. J.F.J. had been discharged from High Focus, a substance abuse treatment program on January 11, 2018, because he

was still using marijuana. High Focus stated that he needed a higher level of care. There was no reason to believe that J.F.J. would have been eligible for the ESS program because his substance abuse issues were still ongoing. The IEP listed programming that J.F.J. was not eligible to access because of his sustenance abuse problem, which was known by the District. I **CONCLUDE** that the IEP of February 13, 2018, did not provide J.F.J. with FAPE.

The next issue is whether J.F.J. is entitled to compensatory education. Compensatory education is a remedy not specifically provided for in the IDEA. However, the courts have recognized that “Congress expressly contemplated that the courts would fashion remedies not specifically enumerated in IDEA.” W.B. v. Matula, 67 F.3d 484, 494-95 (3d Cir. 1995). Thus, a student deprived of a FAPE may be entitled to an award of compensatory education, which is an available remedy even after the student has reached age twenty-one. Ridgewood, 172 F.3d. at 249; M.C. v. Central Reg. Sch. Dist., 81 F.3d 389, 395 (3d Cir. 1996); Scott P., 62 F.3d at 536; Lester H., 916 F.2d at 873.

The legal standard for the granting of such relief is summarized by the Third Circuit as follows:

[A] school district that knows or should know that a child has an inappropriate IEP or is not receiving more than a de minimis educational benefit must correct the situation. If it fails to do so, a disabled child is entitled to compensatory education for a period equal to the period of deprivation but excluding the time reasonable required for the school district to rectify the problem.

[M.C., 81 F.3d at 397.]

Awards of compensatory education have included an additional two-and-one-half years of special education where the school district had been lax in its efforts to provide a proper placement, Lester H., 916 F.2d at 873, and payment of college tuition where the disabled student would apply credits obtained toward acquisition of a high school diploma. Sabatini v. Corning-Painted Post Area Sch. Dist., 78 F.Supp.2d 138, 145-146 (W.D.N.Y. 1999).

J.F.J.'s January 15, 2016, IEP showed that he was reading at 5.2 grade level, his math was at 4.5 grade level, and his written language was at 5.7 grade level. This educational assessment was done on December 1, 2015. He was put into math replacement classes at that time. That IEP did not list any goals or objectives for J.F.J. in math, reading, or writing. He had group counseling once a week.

In his ninth grade IEP of November 15, 2015, J.F.J. was in replacement Algebra and had in class support for biology, English and world history. He had difficulty staying on task and doing math homework and his English grade was a 47. He did not keep up with the reading and missed assignments. He had difficulty getting to class, missed labs, and did not complete his homework or school work in science. He was easily distracted and not on task in history. The IEP had no English, history or science goals, although the present levels showed that he was having difficulty in these classes. In May 2017 the IEP was amended to change the science class to resource replacement physical science and a supplemental resource period. There was an additional amendment in September where J.F.J. would receive a counseling consultation once a week for twenty minutes.

The February 13, 2018, IEP had J.F.J. in special education classes for English, environmental science, geometry, history, and study skills. The IEP did not have any math or English goals. At this point, J.F.J. had become school avoidant, was entered and discharged from High Point, and was on home instruction.

Consistently, J.F.J.'s IEPs did not contain goals and objectives in his individual subjects. The December 1, 2015, Educational evaluation stated that J.F.J. was two years behind in reading and written language and three years behind in math. In the January 2016 his present levels showed that he had difficulty in English but no changes were made to his IEP for English until February 2018 when he was placed in replacement English. There were still no English goals and objectives in that IEP.

I **CONCLUDE** that J.F.J. is entitled to two years of compensatory English education and two years of compensatory history education.

The next issue is whether Equinox RTC is an appropriate placement for J.F.J. Timbersong Academy is part of Equinox. It is accredited by Advanced Education, its teachers are certified, and therapy is integrated into J.F.J.'s academics. Although he does not have special education teachers in reading and math, J.F.J. has one-to-one support in those classes and there are only five students in the geometry class and ten students in the reading class.

I **CONCLUDE** that Equinox is an appropriate placement for J.F.J.

### **ORDER**

The IEP dated February 13, 2018, did not provide J.F.J with FAPE. It is therefore **ORDERED** that the District provide J.F.J. with two years of compensatory education in English and History.

It is further **ORDERED** that Equinox is an appropriate placement for J.F.J. and petitioner must be reimbursed for the educational cost of J.F.J.'s placement at Equinox.

This decision is final pursuant to 20 U.S.C. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2018) 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 (2018). 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.

May 29, 2019



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DATE

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**KIMBERLY A. MOSS, ALJ**

Date Mailed to Parties:

May 29, 2019

ljb



**WITNESSES**

**For Petitioners:**

J.F.  
Brian Tomes  
Dr. Quinten Harvey

**For Respondent:**

Dr. David Velder  
Evan Oppenheimer  
Robin Straus  
Michael Loupis  
Daniel Lemond

**EXHIBITS**

**For Petitioners:**

P-1 2.13.2018, IEP  
P-2 0025 to 0058 various Emails  
P-5 1.4.2016, Meeting Confirmation Form  
P-8 1.15.2016, Notes for 1.15.2016, IEP meeting  
P-9 10.31.2016, Invitation to IEP meeting  
P-11 12.19.2017, Psychological Assessment of Dr. Quinten Harvey  
P-14 6.14.2018, Admissions Agreement  
P-16 6.25.2018, Report by Evan Oppenheimer, LMHC  
P-17 2018-2019, Class schedule  
P-18 Summary – Equinox programming  
P-19 Quinten J. Harvey, Ph.D. resume  
P-20 Evan Oppenheimer, M.A., LMHC resume  
P-21 Bryan Tomes resume  
P-22 Greg Ostler, MSW, LCSW, LCAS resume  
P-23 Transcription of voice mail from R. Straus

P-24 11.13.2013, IEP

P-27 1.24.2019, Report card

For Respondent:

R-2 9.9.2017, IEP

R-3 5.22.2017, Consent to Amend

R-4 11.15.2016, IEP

R-5 1.15.2016, Eligibility Conference Report and IEP

R-6 10.19.2017, Meeting Attendance Form with Consent to Release Confidential Information

R-7 3.5.2018, Notification of Placement

R-8 1.17.2018, Notification of Placement

R-9 ESS program information

R-10 Loft pamphlet

R-11 1.4.2016, Educational Evaluation (S. Boney)

R-12 2.12.2018, Report Acceptance Rejection Form (Straus)

R-14 2.9.2018, Report Acceptance Rejection Form (Velder)

R-16 2.9.2018, Invitation to 2.13.2018, Meeting

R-17 1.26.2018, Invitation to 1.31.2018, Meeting

R-18 1.24.2018, Invitation to 1.29.2018, Meeting

R-19 9.14.2017, Invitation to 9.19.2017, Meeting

R-20 2.26.2018, Email from Parents to E. Aaron

R-21 2.26.2018, Email from E. Aaron to Parents

R-22 Undated Email re home instruction

R-24 2.13.2018, Letter from R. Straus to Parents

R-25 2.3.2018, Email from J. Freedson to R. Straus

R-26 1.30.2018, Emails – Parents and school staff

R-29 11.28.2017, Letter from R. Straus to Parents

R-30 11.28.2017, Email – Parents and R. Straus

R-31 11.21.2017, Email – Parent and R. Straus

R-32 11.14.2017, Email – Parent and R. Straus

R-33 11.3.2017, 11.6.2017, Emails – school staff

R-34 11.3.2017, 11.4.2017, Emails – Parent and school staff

R-35 10.31.2017, Email – Parent and school staff  
R-37 10.23.2017, 10.24.2017, Emails – Parent and school staff  
R-38 10.23.2017, 10.24.2017, Emails – Parent and R. Straus  
R-39 10.24.2017, Emails – Parent and R. Straus  
R-41 10.18.2017, Emails re meeting  
R-42 9.20.2017, Notice of Out-of-School Suspension  
R-45 10.4.2017, Student Meeting Note  
R-46 9.26.2017, Student Meeting Note and drug screen  
R-47 David M. Velder, Ph.D. resume  
R-48 Undated Memo to File  
R-49 Daniel Lemond, resume  
R-51 Effective School Solutions brochure  
R-52 1.26.2018, Wraparound Referral Form  
R-53 1.16.2018, Letter from Professional Education Services to S. Maietta  
R-54 1.11.2018, Progress report  
R-55 1.22.2018, Letter from High Focus  
R-57 10.30.2017, Consent to Amend IEP Without Meeting