State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. EDS 10660-18

AGENCY DKT. NO. 2018-28359

A.D.,

Petitioner,

v.

WILLINGBORO TOWNSHIP BOARD OF EDUCATION,

Respondent.

Julie Warshaw, Esq., for petitioner (Warshaw Law Firm, LLC, attorneys)

Patrick J. Madden, Esq., for respondent (Madden & Madden, P.A., attorneys)

Record Closed: April 13, 2020 Decided: May 29, 2020

BEFORE **KATHLEEN M. CALEMMO,** ALJ:

STATEMENT OF THE CASE

This matter arose with the June 11, 2018, filing of a due-process petition under the Individuals with Disabilities Education Act[1] (IDEA), 20 U.S.C.A. §1415 et seq., by C.J. and A.D, who is the petitioner in interest in this matter.[2] Petitioner maintains that the

[1] Petitioner also asserts claims under the N.J. Law Against Discrimination; Section 504 of the Rehabilitation Act; Americans with Disabilities Act and Amendment Act; New Jersey Civil Rights Act; and Child Find. In addition to the due-process petition herein, C.J. and A.D. filed a Notice of Tort Claim.

[2] On July 5, 2017, A.D. appointed her mother, C.J., as her limited attorney-in-fact to make all educational decisions on her behalf. (P-51.)

Willingboro Township Board of Education (the Board or Willingboro) denied a Free and Appropriate Public Education (FAPE) to A.D. during the 2015-2016, 2016-2017, and 2017-2018 school years, entitling A.D. to compensatory education and other damages.[3]

PROCEDURAL HISTORY

The contested case was transmitted to the Office of Administrative Law (OAL) and filed on July 26, 2018. Due to ongoing settlement discussions, the three hearing dates scheduled between August 16, 2018, and September 27, 2018, were adjourned by the parties and the case was scheduled for hearing on November 5, 2018. These dates, together with dates scheduled in January, were all adjourned at the request of the parties so that settlement discussions could continue to resolve this matter and other matters that C.J. filed against the Board on behalf of her other children.

The hearing was scheduled for May 13, 2019, so the parties could file motions for partial summary decision. The Board filed a motion for partial summary decision on March 5, 2019. Petitioner filed her opposition and cross-motion on March 21, 2019. On April 8, 2019, the Board filed its reply and opposition. By Order, dated April 29, 2019, I denied the motions and directed that the parties proceed to hearing.

The matter was heard on May 13, 2019, July 8, 2019, July 9, 2019, and July 12, 2019. The record was kept open to allow the parties to receive and review the hearing transcripts and submit closing briefs. There was a problem with the recording which caused an unusual delay with providing a complete transcript. The recording system malfunctioned and lost the testimony of petitioner's witness. Despite much effort, a complete transcript was not received by the parties until on or before March 31, 2020. After allowing the parties time to submit closing briefs, I held our last hearing on April 13, 2020 to make sure the record was complete.

STATEMENT OF FACTS

[3] Petitioner is also seeking an award of all costs, evaluation expenses, expert fees, out of pocket expenses, attorney's fees, and punitive and compensatory damages.

The following background facts are uncontroverted, and I **FIND**:

A.D. was born on July 4, 1999. In seventh grade, A.D. entered the Willingboro School District (the District) during the 2012-2013 school year. A.D. was a classified student with an Individualized Educational Program (IEP) from her former school in Philadelphia, Pennsylvania. On September 17, 2012, Willingboro proposed three assessments: educational, social, and psychological. (P-2.) The psychological evaluation report was prepared on October 23, 2012. (P-3.) The educational report was prepared on November 7, 2012. (P-4.) The social assessment report was prepared on November 11, 2012. A.D. had additional psychological testing on February 14 and 15, 2013. (P-5.) On March 12, 2013, as a result of the evaluations, Willingboro determined that A.D. was eligible for special education services under the category of specific learning disability (SLD). (P-9.)

A.D. entered high school in the District with an IEP in place. For A.D.'s tenth grade year from September 1, 2015 through June 30, 2016, A.D.'s IEP program and placement provided for inclusion classes for Mathematics, Science, and History, and a Learning Disabled (LD) class for English. (P-16.)

On October 8, 2015, C.J. lodged a Harassment, Intimidation, and Bullying (HIB) complaint alleging that her children were being targeted and harassed by a District administrator. (P-20.) After an investigation, the Board did not find any evidence to support the complaint. (P-21.)

For A.D., tenth grade was marked with numerous in-school suspensions (R-12) and absences (P-28). An email sent on January 19, 2016, from Thomas Mole, A.D.'s case manager for the 2015-2016 school year, stated that if A.D. reached ten days of suspension from her program, it would trigger a formal meeting with the child study team (CST). (P-73.) By letter dated March 2, 2016, to Abdel Gutierrez, Director of the CST, Sean Benoit (Benoit), a staff attorney with Disability Rights New Jersey, representing C.J., requested an independent educational evaluation, independent psychological evaluation, and an independent functional behavioral assessment of A.D. (P-23.)

By letter dated March 23, 2016, the Board's attorney notified C.J. that her future communication with the District was limited to telephonic, writing, or email to one specific email address because of her alleged harassing and abusive behavior. (P-25.)

On April 19, 2016, A.D. was involved in an altercation wherein it was alleged that A.D. hit a school official as he was trying to break up a fight between A.D. and another student. The Willingboro Police Department was called to the scene, A.D. was arrested, and Willingboro suspended her from school. On April 25, 2016, the CST revised A.D.'s IEP by placing her on home instruction in English, Mathematics, Science, and History from April 25, 2016, until May 23, 2016. (P-30[4].) On that same date, Willingboro proposed a reevaluation plan for A.D. that included an educational and a psychological assessment. (P-29.)

A.D. did not return to school on May 24, 2016. She remained on home instruction for the remainder of the 2015-2016 school year without an IEP. On July 13, 2016, Willingboro conducted an educational evaluation of A.D. (R-28.) The testing showed that at age seventeen, A.D.'s basic reading skills were the age equivalent of a six-year and seven month old child. Her reading comprehension skills, math calculation cluster skills and math problem solving skills were also in the low range. Id. On July 13, 2016, Willingboro also conducted a psychological evaluation of A.D. (R-28.) A.D. completed the Wechsler Adult Intelligence Scales, 4th Edition (WAIS-IV). Her global reasoning abilities were within the below average range of cognitive functioning. Id. In the report the School Psychologist, Holly Ricker, MA, CSP, wrote that "These results indicate that A.D. is likely to progress academically at a rate which is comparable to her same age peers when provided appropriate modifications and supports. Untimed testing is strongly supported by current assessment results." Prior to the start of the 2016-2017 school year, the CST never conducted an annual review or proposed an IEP for A.D.'s eleventh grade at Willingboro. She remained on home instruction without an IEP.

[4] The only participants who signed the IEP were the general education teacher, the special education teacher, and A.D.'s case manager. It was marked on the IEP that the parent did not attend the meeting.

On October 20, 2016, Willingboro conducted an eligibility determination review. (R-28.) As noted on the form, Gutierrez called C.J. on the telephone after the start of the meeting and she participated via phone conference. Id. Willingboro determined that A.D. was not eligible for special education services because the psychological and educational testing conducted on July 13, 2016, did not find a significant difference between cognitive ability and performance. Id.

On November 1, 2016, C.J., on behalf of A.D., through her attorney, Benoit, filed a due process petition challenging Willingboro's decision to declassify A.D. (P-39.) In addition, on November 1, 2016, Benoit, on behalf of A.D., requested independent educational and psychological evaluations. (P-40.) On December 12, 2016, the due process petition was resolved by an Agreement (P-41) which provided as follows:

> 1. Parties agree that student will remain eligible for special education services.
>
> 2. The District will pay for independent educational and psychological evaluations as previously agreed.
>
> 3. An independent psychiatric evaluation will be completed by the first available doctor under CENTRA.
>
> 4. An IEP meeting will be scheduled once all the independent evaluations are received.
>
> 5. This resolves all issues in the due process petition dated 11/1/16.
>
> 6. Each party bears its own costs and attorney's fees.

On March 6, 2017, Benoit, sent a letter to the Director of OSEP requesting enforcement of the December 12, 2016, settlement agreement, to compel Willingboro's cooperation in facilitating the independent evaluations from Leonard Educational Evaluation, LLC (Leonard). (P-42.) On April 12, 2017, Leonard conducted an educational evaluation and prepared a written report. (R-14.) On April 20, 2017, Leonard conducted a psychological evaluation and prepared a written report. (R-15.) Based on the

evaluations, Leonard issued recommendations for A.D.'s IEP goals, classroom accommodations, and related services. (R-16.)

On a form notice, dated June 1, 2017, Willingboro determined that a psychiatric evaluation of A.D. was warranted before her return to school. (P-49.) On June 1, 2017, Willingboro convened an IEP meeting and proposed an IEP from June 1, 2017 until June 20, 2017, that continued A.D.'s classification as specific learning disability and provided for home instruction for English, Math, Science, and Social Studies. (R-30.) A.D. had remained on home instruction for the entire 2016-2017 school year, without an IEP until the June 1, 2017, meeting.

On June 12, 2017, C.J. filed another due process petition on behalf of A.D. contesting the June 1, 2017 IEP. (P-50.) In the petition, C.J. alleged that the District violated the IDEA by keeping A.D. on home instruction without an IEP. Id. She further alleged that Willingboro agreed to conduct a psychiatric evaluation as part of the December 2016, settlement and failed to do so. Id.

CENTRA conducted its psychiatric evaluation of A.D. over four days, from June 22, 2017, through June 29, 2017, and issued a report. (R-13.) In the report, Casey Berson, M.D. recommended therapeutic supports for A.D. at school. Id. Dr. Berson also recommended the following interventions: extra time on tests; a cue to A.D.'s attention prior to asking questions; modified assignments; preferential seating; decreased unstructured stimuli; and behavioral accommodations. Id.

On July 21, 2017, at a mediation hearing, the parties resolved the due process petition by written agreement. (R-1.) The Agreement resolved all issues presented in the due process petition, in addition to the following: the scheduling of a transition/orientation meeting to review the expectations for A.D.'s readmission to the high school for her senior year; placement at the high school; scheduling an IEP meeting; ramifications of future disciplinary actions; designation of a "point person;" and providing that if the student reports a perceived bullying incident, the District would report it to the HIB coordinator. Id.

On July 28, 2017, Willingboro conducted an IEP meeting and proposed an IEP for September 7, 2017 through June 20, 2018. (R-3.) In the proposed IEP, A.D.'s classification was changed to Other Health Impaired (OHI). Her program and placement was in-class resource for English and individual counseling services. Id.

A.D. only attended one semester of her senior year and was on an early dismissal schedule. Instead of being placed in an in-class resource English 12 class, the District placed A.D. in a general education English 12 class with one general education teacher and no special education teacher. A.D. received an "A" in the class.

Willingboro had an early graduation policy for qualifying students. According to the Willingboro guidelines, A.D. met the qualifications set forth in the policy for early graduation by parent petition. On January 12, 2018, Willingboro conducted a summary of performance meeting in anticipation of A.D.'s graduation. (R-19, 20, and 21.) On January 17, 2018, C.J. sent an email to Willingboro advising that A.D. would not be returning to school and requesting all material needed to complete her graduation requirements be sent home. (R-22.)

On June 11, 2018, A.D., through her attorney, filed the pending due process petition, seeking, inter alia, that A.D.'s diploma be withheld, that A.D. receive an appropriate classification, and that A.D. be awarded compensatory education services. (P-56.) On June 14, 2018, A.D. filed a request for emergent relief seeking stay-put with home instruction, requesting that the District be prevented from graduating A.D., or rescinding any diploma, if already awarded. (P-57.) On June 26, 2019, A.D.'s attorney notified the Administrative Law Judge assigned to the emergent hearing that the parties reached an amicable agreement, and as a result, A.D. was withdrawing her request for emergent relief. (P-58.) There was no written, executed, or Board approved settlement agreement.

A.D. participated in the graduation ceremony and received a high school diploma as a graduate of Willingboro. (P-24.)

TESTIMONY

The following is not a verbatim recitation of the testimony. Rather, it is a summary of the testimony and evidence that I found helpful to resolving the issues presented in this matter.

Respondent

Marchelle Coleman (Coleman) started as a school social worker for Willingboro in October 2001. She remained in that position until September 2009, when she became the family liaison. In April of 2015, Coleman was reassigned and became the school social worker for the CST. In April of 2017, Coleman became the Program Administrator. As the Program Administrator, Coleman oversees the special education department. Her current supervisor is Dr. Melody Alegria (Alegria), the Director of Special Education.

Coleman was familiar with A.D. and her mother, C.J. She recalled meeting A.D. when A.D. was a freshman at Willingboro when she tried to recruit her for the girls' basketball team. However, Coleman had no knowledge regarding A.D.'s programs and placements during tenth and eleventh grade. She participated in the June 1, 2017 IEP meeting (R-30) and the July 28, 2017 IEP meeting (R-3) but had no input in drafting the IEPs. As the District representative, Coleman believed her role at the meetings was to observe and listen. Holly Ricker was the case manager assigned to A.D. and responsible for drafting the IEP.

As Program Administrator, Coleman also participated in a mediation meeting in July 2017. Prior to the meeting, Coleman became aware that A.D. had been on home instruction for a long period of time. She understood that the purpose of the meeting was to develop an IEP so A.D. could come back to the high school in September 2017 for her senior year. As part of A.D.'s transition, she recalled a discussion about assigning A.D. a contact person at school.

Coleman was copied on an email from the former Director of Special Education, John Ragan (Ragan), setting forth the agenda for the two meetings scheduled to discuss

A.D.'s readmission to the high school. (R-6.) She attended both meetings and recalled discussions about A.D. receiving a fresh start. She also recalled discussions about how many credits A.D. needed to graduate.

Coleman identified A.D.'s audit report listing the classes that were assigned to A.D. (R-10.) As noted on the report, A.D. was assigned an early graduation homeroom and permitted an early dismissal from school each day. As reflected on the audit, Health 11, Physical Education (PE) 11, Spanish 2, College Prep Physics with lab, Political and Legal Education, 3D Design, and Drawing Experience and Painting were all dropped from A.D.'s class schedule. English 12 and Health 12 were active. Coleman recalled that C.J. wanted A.D. to graduate early and leave school before the two o'clock dismissal. She also recalled that early dismissal was to accommodate A.D.'s part-time job.

For early graduation a student needed to have 120 credits and submit a written petition signed by the student, parent, and school counselor. Coleman was not involved with A.D.'s petition for early graduation but was aware that it had been approved. (R-17.)

Coleman reviewed her handwritten notes that she took during the July and August 2017 meetings involving A.D.'s transitioning back to the high school. (R-25.) On July 21, 2017, Coleman wrote "April 2016 – home instruction." On July 28, 2017, Coleman wrote that A.D.'s classification changed to other health impaired based on psychiatric and medical evaluations and that she would be returning to counseling. On August 28, 2017, Coleman wrote that A.D. had 110 credits and would not be having lunch at school. Coleman recalled that C.J. made the request about no lunch at school.

On cross-examination, Coleman was asked whether A.D. ever had a manifestation determination meeting. Coleman recalled having a discussion with Ragan and Holly Ricker about that subject, but she was not aware if a meeting had occurred. There would have been documentation in A.D.'s files about a manifestation meeting, but there was none.

The proposed IEP, dated July 28, 2017, did not contain a specific reference to a "point person" for A.D. but it described her immediate access upon request to see her school counselor.

In reviewing the Student Schedule Audit Report, Coleman did not know whether the dropped classes were ever discussed at a meeting with A.D. and her mother. Willingboro required five core credits for the full year of course work.

After A.D.'s return to school, Coleman recalled a conversation with C.J. about A.D. not having a point person after an incident involving Mr. Booker.

In her capacity as Program Administrator, Coleman stated that she was aware that keeping a student out of school for more than ten days required a Board of Education meeting. She was also aware that there was no meeting concerning A.D.

Coleman testified that she was not aware prior to the hearing that C.J. had a power of attorney to act on behalf of her daughter A.D.

Coleman had no knowledge about threats made to A.D. to coerce her into early graduation.

John Ragan was the interim Director of Special Services for Willingboro from May 1, 2017 to October 15, 2017. For ten years, Ragan worked in various capacities, including director of professional residential services, for the Division of Developmental Disabilities. He was a past principal at Yale, a private school for behavioral disabled students. After leaving Yale, Ragan worked at Great Egg Harbor Regional High School District as Director of Special Services. After fifteen years in special education at Great Egg Harbor, Ragan retired but continue to work for Education Information Resource Center as a consultant. Thereafter, Ragan took the interim position at Willingboro.

On May 1, 2017, when Ragan became Interim Director, A.D. had been on home instruction since April 19, 2016. He understood that Willingboro needed to develop an

IEP for A.D. At a reevaluation meeting on June 1, 2017, Willingboro presented C.J. with an IEP. (R-30.)

On July 21, 2017, Ragan participated in mediation that resulted in a resolution agreement. (R-1.) The mediation discussions centered on scheduling an IEP meeting with educational placement at the high school and conducting a transition meeting to address any challenges with A.D.'s return to the high school setting from homebound instruction. The purpose was to enact a systematic and consistent approach to meet A.D.'s needs relative to her frustration and ability to handle conflict. Ragan recalled a discussion about fulfilling her high school requirement in physical education, requiring an in-class support setting for English, and formulating a behavioral intervention plan with counselling services.

Ragan attended the July 28, 2017 IEP meeting and was familiar with the proposed IEP. On August 9, 2017, Ragan wrote "ok" on the draft IEP to note that the draft was inclusive of the discussions at the meeting and it was ready to be mailed to the parent and student for review and approval. Ragan had no direct knowledge whether the IEP was ever mailed to C.J. and A.D. However, by reviewing the documents, it appeared that the IEP was mailed to the home address of the student (R-4) and the parent (R-5) on August 9, 2017. After the IEP is sent, there is a response time of fifteen days for any objections or modifications. If there are no modifications, the IEP becomes finalized. When there are no changes to the IEP, the finalization process is a clerical function in the computer system.

Ragan testified that he reviewed the final IEP that was maintained in the Willingboro computer system and noted no substantive difference between the computerized document[5] in the system and the document marked "draft." (R-3.)

[5] The computerized document was not submitted by respondent under the five-day rule and was not admitted into evidence. During the hearing, Mr. Madden marked the document for identification purposes as R-45 and showed it to Ms. Warshaw. The tribunal was not provided a copy and I have not seen this document or considered it.

On August 27, 2017, Ragan drafted an email to Willingboro's principal, Ms. Ash, and the District Administrator, Ms. Lucas, and copied Dr. Alegria, Ms. Coleman, and a member of the CST, highlighting important aspects for the two meetings with C.J. and A.D. scheduled for August 28, 2017. (R-6.) After those meetings, Ragan did not recall having any further contact with C.J. or A.D.

On cross-examination, Ragan recalled that A.D.'s fulfillment of her high school courses was discussed at the meeting he attended in August 2017. He understood that A.D. only needed English and physical education to fulfill her graduation requirements.

Ragan's recollection was that A.D. had been on home instruction for a least a year and he was not aware of any agreement between the CST and the parent that provided for home instruction. As the interim Director of Special Services, it was Ragan's job to oversee a student's IEP and placement. When Ragan took over on May 1, 2017, he discovered that A.D.'s last IEP ended on May 23, 2016.

Ragan agreed that a draft IEP is not an enforceable document until it is finalized. After Ragan wrote "ok" on the draft IEP, he believed it was mailed to C.J. and A.D. but he had no direct knowledge of any mailing.

According to the discussions at the July 28, 2017, IEP meeting and as reflected in the draft IEP, A.D. was scheduled to be in an in-class support English class. Ragan was not aware of any change to that placement. Ragan recalled the he reviewed the evaluations of A.D. by Leonard and the findings that A.D.'s academic levels were below age level expectations. As set forth in the draft IEP (R-3), A.D. had identified academic challenges in reading and math. Ragan agreed that there were no goals identified relating to reading and math in the draft IEP.

Ragan could not answer whether A.D. met her foreign language requirement for graduation or whether it was waived by the CST. He had no specific response to questions about teacher progress reports for A.D. or parental concerns.

After A.D.'s independent evaluations by Leonard, her classification was changed to "other health impaired." Ragan did not recall anything in the Leonard evaluations about A.D. being emotionally disturbed. However, in the June 1, 2017, notice for the reevaluation meeting "emotionally disturbed" was marked by Willingboro as an area of suspected disability. (P-49.) Ragan responded that a psychiatric evaluation would assess whether A.D. presented with any behaviors that were indicative of her need for homebound instruction. It would also be a useful tool in determining future behavioral needs upon her return to school. A psychiatric evaluation was conducted, and recommendations made for A.D.'s return to school. (R-13.) There was no finding that A.D. was emotionally disturbed.

Ragan did not know why Willingboro did not propose a psychiatric evaluation in April 2016, after placing A.D. on home instruction. There were no behavior issues reported to Ragan from A.D.'s home instructors.

Dr. Melody Alegria has been the Director of Special Services for Willingboro since August 2017. As Director, she oversees the CST, special education programs through the District, and the IEP process. Alegria started teaching special education in Philadelphia in 2006. In 2014, she was the supervisor of special education for the Trenton School District in New Jersey. In 2015, she was the supervisor of special education for Lumberton School District until she left there to take the job in Willingboro. As part of her transition plan, she worked with interim Director, Ragan, during July 2017, until her official start in August 2017.

Alegria first met A.D. and C.J. at the transition meeting and the afternoon meeting at the high school on August 28, 2017. During the meeting at the high school, she recalled a discussion about designating certain teachers or administrators to be point persons for A.D. when she was in distress or dealing with conflict. The three people designated were the new vice-principal, Ms. Cummings, the climate and culture specialist, Ms. Johnson, and the principal, Ms. Ash. Alegria recalled that C.J. liked the idea of the new administrator, Ms. Cummings, being in this role because she would provide a fresh start for A.D. Both C.J. and A.D. were present for the meeting.

There was also a discussion about A.D.'s classes and C.J.'s desire for A.D. to graduate early and have early dismissal to accommodate her job. There were only two classes that A.D. needed to graduate, English and Physical Education (PE). The in-class support English 12 class was only offered in the afternoon. The morning class was a general education English class. Both classes were taught by Ms. Lewis.[6] According to Alegria, C.J. expressed no hesitation about A.D. being in Ms. Lewis' general education morning class because her children had prior positive experiences with Ms. Lewis.

Alegria reviewed the audit report that reflected added and dropped classes, and active classes for A.D.'s schedule. (R-10.) The report reflected early dismissal and early graduation for A.D. The students, including A.D., who were graduating early were assigned to the same homeroom. At that time, parents could petition for their student to graduate early; it is no longer an option offered by Willingboro. At the transition meeting, C.J. insisted that A.D. graduate early, have an early dismissal, and a point person while at school. In addition, C.J. wanted to make sure that A.D. could participate in all senior activities including prom and graduation. A.D. attended those meetings with her mother. Alegria recalled that A.D. sat quietly throughout the meetings.

Alegria stated that the following documents were maintained in the CST file for A.D.: July 27, 2017, IEP (R-3); August 9, 2017, letter to A.D. (R-4); and August 9, 2017, letter to parent (R-5). Willingboro used software called "IEP Direct" when drafting an IEP. Draft IEP documents and finalized IEP documents are reflected in the system. Alegria reviewed the IEP Direct and noted that the computer system showed a finalized IEP for A.D.

Alegria stated that Willingboro never insisted that A.D. graduate early. If A.D. had decided to continue in school and not graduate early, adjustments to her IEP could have been made at a meeting. Alegria reviewed A.D.'s transcript for the semester she was in school. (R-9.) A.D. received an "A" in English CP[7] and an "A" in Physical Education/Health. Alegria also reviewed A.D.'s gradebook assignments from Ms. Lewis'

[6] Ms. Lewis was also referred to as Ms. Richardson or Ms. Rich.
[7] "CP" refers to college prep.

English class. (R-11.) A.D. had some absences, but her performance was great. A.D.'s attendance record for the 2017-2018 school year showed nineteen excused absences and five unexcused absences for the one semester she attended. (R-8.)

After A.D.'s return to school, Alegria only recalled email contact with C.J. There was an email, dated September 17, 2017, regarding A.D. completing a gym packet instead of completing her eleventh grade PE requirement. Towards the bottom of the email, C.J. wanted assurance that A.D. would be finished with her course requirements by January. (P-74.) Alegria stated that the packets are offered to students who for various reasons are unable to participate in the class. Those students would have to demonstrate their understanding of the concepts covered in the class through a written format. As stated in the email, C.J. wanted A.D. to graduate early. Alegria never recalled any discussions with C.J. wherein C.J. requested that A.D. continue past January.

On October 30, 2017, C.J. sent an email to Kristin Brown, A.D.'s guidance counselor, (P-74), referring to A.D. as an early dismissal student. That reference was consisted with Alegria's understanding that C.J. wanted A.D. to be dismissed early from school each day.

On December 12, 2017, C.J. sent an email to the principal, Ms. Ash, about an incident with Mr. Booker. (P-74.) In this email, C.J. referred to the agreement at the IEP meeting that A.D. have an appointed point person. She also stated that if the school had followed the IEP the incidents could have been avoided. During numerous emails, C.J. referenced A.D.'s IEP and bemoaned Willingboro's failure to follow it. (P-74.) C.J. never voiced a complaint about not receiving the IEP.

Upon her review of A.D.'s academic records, Alegria stated that A.D. met all the requirements to graduate from Willingboro. She made progress and received an "A" in each of her classes. During the 2017-2018 school year, A.D. did not have any extenuating disciplinary issues or behavior issues that caused her to be removed from school.

On cross-examination, Alegria stated that she was unaware of A.D. being threatened with losing senior activities, such as prom and graduation, if she did not graduate early. While A.D.'s petition for early graduation was not dated (R-17), Alegria recalled that early graduation was discussed at the August 28, 2017 transition meeting. Any student requesting early graduation must petition for it. Petitions for early graduation were not part of the IEP process.

Alegria claimed she was not aware that C.J. was A.D.'s power of attorney and did not know whether a power of attorney was required to be invited to school meetings involving the student.

Alegria was aware that A.D. was taking remedial classes at Rowan College of Burlington County (RCBC) that were not credit bearing.

Under the proposed IEP, A.D.'s placement was an inclusion class for English 12. Instead, A.D. was placed in a general education class for English 12. Alegria admitted that such a change should have been put in her IEP. How did A.D. receive special education services in the general education class? Alegria stated the teacher is still responsible for complying with the IEP, although she acknowledged that the general education teacher may not be a special education teacher. Alegria did not know whether A.D. received any counseling after her return to school.

On re-direct examination, Alegria reiterated that C.J. never contacted her about A.D. being threatened to graduate early. Her experience with C.J. was that C.J. confirmed every contact by email and she documented all perceived issues with the school involving her children. It would have been out of character for C.J. not to respond to such a threat.

Petitioner

Adrienne Lewis (Lewis) was a seventeen year employee for Willingboro as a general education English teacher. She was set to retire on June 30, 2019. Lewis was familiar with A.D. because A.D. was a student in her English 12 class from September

2017 through January 2018. This class was a general education class; there was no special education co-teacher assigned to the class.

A.D. was a good student, but Lewis noticed that she struggled with the lessons and assignments. After a lesson, Lewis would give A.D. extra help. Although Lewis was unaware that A.D. needed modifications, Lewis allowed motivated students to make corrections and retake tests. A.D. was never a discipline problem. She worked hard and earned her "A", with much needed assistance from Lewis.

Lewis recalled an incident involving A.D. and her case manager, Ms. Haughey. Lewis was in the guidance suite and Haughey asked her to come in and sign a form. According to Lewis, it was not unusual to be asked to sign something and she usually complied without even reading what she was signing. Although she did not recall what she signed, she recalled hearing a conversation between Haughey and A.D. Haughey said something about attending the prom and walking at graduation in the context of A.D. having to graduate early. A.D. seemed upset and stated that she did not want to graduate early. In Lewis' opinion as A.D.'s teacher, A.D. was not ready to graduate early.

On cross examination, Lewis stated that she is familiar with C.J., but their relationship is no different than her relationship with any other parent. Lewis is generally well-liked by her students. She stated that she never talked to C.J. about this lawsuit and never talked to C.J.'s attorney.

Before testifying in this proceeding, Lewis never discussed the early graduation discussion between Haughey and A.D. She only brought it up because it was relevant to the question she was asked.

Lewis acknowledged that her signature appeared on the sign-in sheet as being in attendance for the summary of performance meeting on January 12, 2018. (R-21.) She had no independent recollection of attending that meeting. Lewis reviewed the summary statement written by Haughey attributed to her. Id. She only took exception with the words "minimal support from the teacher" because A.D. required constant support but everything else was accurate.

Lewis acknowledged that she never heard Haughey threaten A.D. However, she recalled that A.D. seemed upset and she heard Haughey say something about not being able to graduate and not being able to go to prom. Lewis surmised that A.D. was told she had to graduate early, but she never confronted Haughey about the statement and never asked why A.D. had to graduate early.

When A.D. was a student in her general education class, Lewis was unaware that A.D. was a classified student with an IEP. She recalled that IEPs were given to teachers in a sealed envelope. She was unaware that the IEP could be accessed through the Genesis computer system that contained her class list. When she taught an inclusion class, the special education teacher would have the student's IEP. Lewis never recalled having a student with an IEP in her general education classes.

C.J. is A.D.'s mother. C.J. had many concerns pertaining to A.D.'s time as a student at Willingboro. Among them were as follows: Willingboro's failure to follow A.D.'s IEP; Willingboro's failure to provide her with an IEP while A.D. was kept out of school on homebound instruction; Willingboro's removal of A.D. from school in sophomore year and keeping her out until senior year; and Willingboro's failure to protect A.D. from disparate treatment and harassment from teachers and administrators.

Willingboro suspended A.D. for an incident that occurred in April 2016, when she was a sophomore. A.D. remained out of school on homebound instruction until the start of her senior year in September 2017. A.D. was supposed to be getting ten hours of home instruction. The home instructor complained to C.J. that she never saw A.D.'s IEP so she had no way of anticipating A.D.'s needs or knowing the goals and objectives. C.J. stated that Willingboro denied her access to the parent portal and blocked her email communications. C.J. denied that any of her emails were harassing or disruptive. She considered herself a concerned and involved parent, who was protective of her children.

C.J. recalled receiving a telephone call from Willingboro that was framed as good news. This occurred while A.D. was on home instruction at the beginning of her junior year. The CST decided without notice to C.J. that A.D. no longer needed an IEP because

she was being declassified. C.J. was recovering from a stroke and this information came as a complete surprise.

On behalf of her daughter, C.J. filed a due process petition to prevent Willingboro from declassifying A.D. On December 12, 2016, the due process petition was resolved by a settlement agreement. (P-41.) As part of the settlement, Willingboro agreed to pay for the independent evaluations for A.D. that C.J. had requested the previous school year. C.J. picked Leonard for the evaluations, but Willingboro failed to do its part and issue the contract. As months passed, it took a letter from C.J.'s attorney requesting enforcement of the settlement agreement to get Willingboro to act. (P-42.) The delay in the evaluations contributed to A.D. remaining on home instruction for her entire junior year, without an IEP.

On June 1, 2017, C.J. recalled having a meeting with Willingboro. (P-49.) C.J. stated that her primary concern was to get A.D. back in school. At the meeting, C.J. recalled discussions with Ragan, the new Director of Special Education, about scheduling a psychiatric evaluation for A.D. This was just another ploy to keep A.D. from returning to school. Willingboro did not bother to perform a psychiatric evaluation when it removed A.D. from school but would not allow A.D. back in school without one. C.J. asked for a manifestation determination hearing when A.D. was removed from school, but Willingboro denied her request. Moreover, Willingboro's request for a psychiatric evaluation had been part of the December 12, 2016 settlement agreement, Willingboro failed to honor.

On June 12, 2017, C.J., on behalf of A.D., filed a due process petition because A.D. did not have an IEP in place for the entire 2016-2017 school year and was kept on home instruction. (P-50.) On July 21, 2017, at a mediation conference, C.J. entered into a settlement agreement with Willingboro because she was desperate for A.D. to return to school. (P-53.) C.J. maintained that Willingboro made agreements but failed to honor them.

On July 21, 2017, C.J. received notice of an IEP meeting scheduled for July 28, 2017. (R-2.) C.J. did not recall seeing a draft IEP at that meeting because Willingboro was in the process of changing A.D.'s classification and discussing what services were

needed. C.J. wanted outside tutoring because A.D. was significantly behind and she wanted to incorporate the recommendations from the independent evaluations. She also expressed a concern that A.D. be permitted to participate in prom and graduation because Willingboro had excluded A.D. in the past from extra-curricular activities. She also wanted A.D. to have a designated point person at school that A.D. could go to when she felt anxious or needed help. The designation of a point person was a term of the settlement agreement. It was not until an incident at school occurred that C.J. learned that Willingboro never designated a specific point person for A.D.

C.J. stated that she knew what was supposed to be in the IEP because of the discussions at the July 28, 2017, meeting but she never saw a written document. C.J. became concerned when she learned midway through the semester that there was only one teacher in A.D.'s English class. C.J. tried to speak to Alegria, but she was not available, so she spoke to Ms. Coleman. C.J. was not faulting the English teacher, who worked well with A.D., but was concerned that A.D. was not getting the services she needed. At the July IEP meeting, C.J. understood that A.D. would be placed in an inclusion classroom for English. An inclusion classroom would have a special education teacher to assist the classified students.

During her first semester back at the high school for senior year, A.D. told C.J. that she was being bullied. Pursuant to the July 21, 2017 settlement agreement, all bullying incidents reported by A.D. were to be directed to the HIB coordinator. (P-53.) C.J. recalled an incident when A.D. was singled out about wearing a commemorative tee-shirt in honor of a deceased classmate. A.D. called her mother after a male teacher, Mr. Booker, told her to remove her tee-shirt. C.J. told A.D., to go to her point person. Although C.J. was not present, she stayed on the phone with A.D. until the principal, Ms. Ash, arrived. Booker insinuated to A.D. that he was acting as Ms. Ash. This was the type of incident that should have been handled by A.D.'s point person if there had been someone in place.

After A.D. returned to school and while C.J. was her power of attorney, Willingboro had meetings with A.D. without C.J.'s knowledge or consent. C.J. gave a copy of the power of attorney to the Board's former attorney at the July 21, 2017 mediation meeting.

Although counseling services for A.D. were discussed at the July 2017 IEP meeting and recommended in her evaluations, A.D. never received any counseling services during her senior year. C.J. believed that A.D. only received two courses, English and PE, during her senior year. A.D. did not take PE in eleventh grade because she was on home instruction. On September 17, 2017, C.J. addressed this issue in an email asking whether A.D. needed to attend eleventh grade PE to meet her graduation requirements. (P-74 at 4.) This was not the only time that C.J. feared that A.D. would not have enough credits to graduate on time. Freshman year, A.D. received an "F" in band after dropping the class because it was too advanced. She was placed in cosmetology but was missing five credits at the end of the year. (P-72.) After C.J. raised the concern, an allowance was made so that A.D. got the required credits. However, before this was resolved, A.D. was not allowed to participate in any extra-curricular activities her freshman year. Because of a scheduling mistake by Willingboro, C.J. felt A.D. was unfairly treated.

A.D. fell further behind academically while on home instruction because the teacher did not have any work for her. C.J. claimed she used her savings to pay for private tutoring for A.D. with Lindamood-Bell for instruction in reading.[8]

Before the end of A.D.'s senior year, C.J. on behalf of her daughter, through her attorney, filed the due process petition that is the subject of this matter. (P-56.) She also filed an application for emergent relief to prevent A.D. from graduating but that was withdrawn because she believed they reached an agreement with the Board that would have allowed A.D. compensatory education through a program known as Project Teach. (P-57 and P-58.)

According to C.J., A.D. told her that after being in English class, she realized how much she missed school and she wanted to stay in school. From A.D.'s private therapist

[8] C.J. never provided this tribunal with any documentation to support payment or services from Lindamood-Bell. C.J. provided a hand-written note from a tutor. (P-62) Notwithstanding the admissibility of hearsay evidence, this note did not meet the requirements of the "residuum rule." N.J.A.C. 1:1-15.5(b). As there was no legally competent evidence to support the reliability of the note, I afforded it no weight.

C.J. learned that Willingboro threatened A.D. with losing the prom and not being able to walk at graduation if she did not graduate early. When C.J. asked A.D. what happened, A.D. told her that Ms. Haughey threatened her.

Early graduation had been discussed by Willingboro during the summer meetings before A.D. returned to school. At the July 28, 2017, IEP meeting, C.J. did not recall any discussion about A.D.'s deficits in reading and math. Willingboro never offered any classes to A.D. from January 2018 through June 2018. A.D. never took a foreign language and C.J. did not know if the foreign language requirement was waived by Willingboro so A.D. could graduate early.

C.J. had no idea why Willingboro placed A.D. in a general education English class rather than an inclusion class. A.D. had a part-time job, but it was never a factor.

C.J. became very emotional testifying about how A.D. was affected by Willingboro's actions in keeping her out of school for almost two years. It was detrimental to her self-esteem, self-confidence, and robbed her of a high school experience.

At C.J.'s insistence, A.D. is currently enrolled at RCBC. (R-35.) C.J. testified that A.D.'s took the placement examination, but her score was too low for admission to the community college. However, A.D. is auditing remedial classes and C.J. is paying for her to be tutored by a student peer. A.D. enrolled in an art class but did not realize that it was art history. She received an "F" in that class. C.J. also audited an English and a Pre-Algebra class for which she received a "C" in each but no credit hours because she was only auditing the classes. (R-35.) C.J. stated that A.D. was never offered any standardized testing in high school that would have allowed her to even apply for college. In addition, C.J. asked Alegria for more courses for A.D. in high school but Alegria refused.

On cross-examination, C.J. was asked to review the IEP, dated July 28, 2017. (R-3.) C.J. attended the July 28, 2017 meeting. She admitted that the results from the independent evaluations were recorded in the document. Id. C.J. maintained that she never received an IEP for A.D. for the 2017-2018 school year. However, she did recall

receiving the July 21, 2017 invitation to the IEP meeting and she confirmed that her address on the mailing was correct. (R-2.) On August 9, 2017, the District sent a notice to A.D. and a separate notice to C.J. enclosing a copy of the IEP, which C.J. maintained she never received. (R-4 and R-5.) These notices were sent to the same addresses as the July 21, 2017 invitation and were also signed by Holly Richer with her handwritten initials placed after her signature.

It was C.J.'s usual practice to send an introductory email at the start of a school year to her children's teachers. C.J. confirmed that she tried to email the school to document her concerns or to address certain issues involving her children. In response to a question why C.J. did not send an email asking for the IEP, C.J. stated that she might have sent an email. However, no such email was among her documents. C.J. remained adamant that she never saw the IEP until December 2017 or January 2018. In an email written by C.J. on December 12, 2017, to Ms. Ash, C.J. referenced the IEP and the school's responsibilities under the IEP. (P-74.) In a separate December 12, 2017 email to the school, C.J. wrote that A.D. has an "active IEP" and she listed the accommodations contained in the IEP. Id. C.J. stated that she sent those emails based on her knowledge of what should have been in the IEP from the discussions at the meetings.

On direct examination, C.J. had testified that it took the district a year to perform the independent evaluations. In reviewing the documents, including the December 12, 2016 Mediation Agreement (P-41) and the April 12, 2017 evaluation report (P-43), the time period was closer to five months. However, C.J. stuck to her original response because she had asked the District to perform the evaluations during the previous school year.

C.J. testified that the District blocked her emails which affected her ability to communicate with them. In reviewing the emails, C.J. was confronted with emails she sent to District personnel, which were received and to which she received a response. (P-74 and 75.) C.J. stated that sometimes the emails went through and sometimes they did not. In order to get her emails to go through, C.J. would use different email addresses. If her email address was rejected, she would use her husband's address and then it would

be accepted. C.J. admitted that she had email communication with the District between 2015 and 2018.

A.D. told C.J. that she had a meeting with Ms. Haughey, who pressured her to graduate early. C.J. was questioned about how inappropriate it would be for the District to pressure a student to take early graduation and threaten a student with loss of prom or graduation. In response to why C.J. never notified the school of this pressure, C.J. responded that it was too late; she was already looking for a lawyer. It was just one more injustice. C.J. confirmed her signature and A.D.'s signature on the bottom of the notice which contained the requirements for early graduation. (R-17.) She also confirmed that she believed she signed the accompanying Petition for Early Graduation. However, she did not recall signing the document or the events that led to its signing. Her signature was very light, and she could not be sure it was hers without seeing the original. Initially, C.J. was in favor of A.D. graduating early. However, after she learned that A.D. had not been put in an inclusion class, C.J. wanted A.D. to stay in school and get the classes and services she needed. She was also encouraged that A.D. wanted to stay in school because she had enjoyed English class and missed being in school.

During the meetings in July and August 2017, C.J.'s primary concern was to get A.D. back in school. She was willing to accept whatever terms Willingboro offered to accomplish this objective. When asked why C.J. did not send an email asking for more classes for A.D., C.J. responded that she might have sent an email from a different account and could not locate it. On September 15, 2017, C.J. wrote an email to the District to make sure that A.D. stayed on track to finish all classes by January 2018. (P-74 at 4.) At the end of the semester, on January 17, 2018, C.J. wrote an email that referenced early graduation and informed the school that A.D. had a doctor's note that excused her for the remainder of the term. (P-75.)

C.J. admitted that A.D. really liked being in Ms. Lewis' English class. During the semester, C.J. spoke to Ms. Lewis' about A.D.'s progress in her class. She recalled that Ms. Lewis had some concerns about A.D. in the beginning of the school year, so Ms. Lewis reached out to C.J. One of her concerns was A.D.'s ability to keep up with her classmates. C.J. never thought it was her place to inquire about the special education

teacher who was supposed to be in the classroom with Ms. Lewis. However, C.J. knew that an inclusion class would have two teachers.

On re-direct examination, C.J. informed this tribunal that she suffered a stroke in August 2017, and recently suffered a heart attack in June 2019.

C.J. reviewed the draft IEP, dated July 28, 2017, and believed that the District violated its terms. (R-3.) A.D. was not in an inclusion class. The District did not follow the recommendations set forth in the independent evaluations. The District never identified a point person to help A.D. cope with her struggles at school. When C.J. realized that A.D. did not have an IEP in place, she spoke to Ms. Coleman and sought legal representation.

In December 2017, C.J. requested an IEP meeting because the District was not following anything, and no one seemed to know what was in place. C.J. received a confirming email from Alegria but no IEP meeting was ever convened. (P-74.)

C.J. initially asked for independent evaluations for A.D. on February 16, 2016, when she sent a letter to Gutierrez. (P-76.) The independent evaluations were never conducted until April 2017, which was over a year later. The District agreed to the educational and psychological but refused to do the functional behavioral.

Through her attorney, C.J. requested all A.D.'s student records. By letter dated June 10, 2016, the Board's attorney responded to the request but did not enclose any email communications. (P-63.)

C.J. made numerous attempts to address A.D.'s academic and behavioral problems to no avail. As noted in an email, dated March 3, 2016, C.J. referenced going to school fifty-two times for issues related to her children. (P-73 at 16.)

On re-cross examination, C.J. was asked about her allegations against Mr. Booker, an administrator, making sexually inappropriate comments to A.D. C.J. reported the allegations to Ms. Coleman but could not recall if she reported Mr. Booker to the police

or child protective services. Despite the inappropriate nature of his comment, C.J. could not produce any document which stated that she reported Mr. Booker's conduct.

On re-direct examination, C.J. stated that she verbally told Coleman and the principal, Ms. Ash, about Booker's inappropriate comments. In an email, dated December 12, 2017, to certain administrators and teachers, C.J. referenced that "Mr. Booker is a grown man and should not have done that to A.D., and let's be clear that what you saw once you got to the office was 'the reaction' to the abuse she suffered from Mr. Booker." (P-74.)

Rebuttal - Respondent

Sharon Haughey has been an employee of the Willingboro School District for twenty-six years. For the past nineteen years, she has been a member of the child study team (CST). Haughey was A.D.'s case manager from September 2017, until January 2018, when A.D. returned to the high school for senior year. As A.D.'s case manager, Haughey was responsible for making sure her IEP was being implemented and that A.D. was receiving the necessary services and supports.

After Haughey was assigned as A.D.'s case manager, she met with Ms. Lewis to discuss A.D.'s progress and consider whether any modifications were needed to help A.D. achieve. According to Haughey, Ms. Lewis was aware that A.D. had an IEP, but she expressed no concerns about A.D. and indicated that no modifications were necessary.

By letter dated January 16, 2018, Haughey sent A.D. a copy of her Summary of Performance Report. (R-21.) On January 12, 2018, Haughey conducted a meeting to discuss A.D.'s performance and recommendations for after graduation. (R-19 and 20.) The meeting sign-in sheet was signed by A.D., her case manager, Haughey, her general education teacher, Lewis, plus a special education teacher, a member of the CST, a school district representative, and the school counselor. (R-21 at 3.) Haughey stated that C.J. attended the meeting but did not sign the attendance sheet. The meeting was held in January because the parent had requested early graduation for the student. Haughey stated that there was no indication from either A.D. or C.J. that A.D. wished to

continue at Willingboro and not graduate early. In addition, Haughey stated that she never told A.D. that if she did not graduate early, she would not be permitted to participate in prom and graduation.

On cross-examination, Haughey indicated her assurance that C.J. attended the meeting. However, she admitted that she was at other meetings with C.J. and could not recall any other instance when C.J. did not sign the attendance sheet.

The information in the Performance Summary about A.D.'s performance in English class was typed by Haughey from her notes after meeting with Lewis. (R-21.) Haughey did not ask Lewis to review it for accuracy.

Haughey denied the accusation that she conducted IEP meetings without the teachers being present. It was alleged that the teachers would sign the attendance sheet but not stay for the meeting. Haughey could not recall whether C.J. ever complained about teachers not being present at one of her daughter's IEP meetings. To refresh her recollection, Haughey reviewed an email, dated February 2, 2018, regarding a manifestation meeting for one of C.J.'s other daughters wherein C.J. accused Haughey of leaving the meeting to get signatures from the teachers. (P-80.) Alegria forwarded the email to Haughey for a response, who indicated that the "meeting had not ended when the general and special education teachers entered the room." Id. The email refreshed her recollection that C.J. issued a complaint, however, Haughey did not agree that C.J.'s perception of what occurred was accurate.

Regarding the January 12, 2018, summary of performance review, Haughey was asked whether the visitor's sign-in log would establish whether C.J. was in the building the day of the meeting. Haughey stated that those sign-in sheets are for security and she never reviewed them.

Haughey reviewed a December 13, 2017 email from C.J. to Alegria requesting an IEP meeting for A.D. (P-74 at 13.) Haughey could not recall if she ever scheduled the meeting. However, she offered the excuse that the January 12, 2018 summary of performance meeting was akin to an IEP meeting because it is part of the IEP process.

During the summary of performance meeting, there was a review of how A.D. was performing in her classes and a discussion of her interests as she was preparing to graduate.

Haughey knew that A.D. was in a general education English class and not in an inclusion English class for the 2017-2018 school year. She did not recall whether A.D.'s IEP indicated that A.D. needed to be in an inclusion class.

Haughey worked with Lewis for fourteen years at Willingboro. Lewis is not a certified special education teacher. Haughey stated that she could not respond whether Lewis was an honest person because she had a very limited relationship with her.

Melody Alegria was present when Lewis testified and she was present at a meeting with Lewis prior to her testimony. In response to a question about A.D.'s performance, Lewis stated that A.D. was a leader in the classroom, and she required no additional modifications in comparison to other students in the classroom. Lewis indicated that A.D.'s performance in her classroom was up to par. Alegria reviewed A.D.'s grades with Lewis. Most of the grades were "A's", and Lewis indicated that the grades had not been modified.

On cross-examination, Alegria acknowledged that the IEP, dated July 28, 2017, placed A.D. in an English 12 inclusion class. (R-3.) Alegria stated that A.D. was placed in Lewis's general education class because of the parent's request.

Alegria admitted receiving an email request from C.J. requesting an IEP meeting for A.D. that she forwarded to Haughey. As the Director, Alegria claimed it was not her responsibility to schedule the meeting. Because she never heard anything further from C.J., she did not feel as though she needed to intervene. In addition, on January 12, 2018, Haughey conducted the summary of performance meeting to track A.D.'s progress. Alegria did not attend, so she had no knowledge whether C.J. attended but failed to sign the sign-in sheet. Alegria believed there may have been times involving C.J.'s other children, when C.J. attended a meeting without signing the attendance sheet. She only had one specific recollection of C.J. not signing the attendance sheet during a

manifestation meeting involving a different daughter. Alegria stated that if a parent does not sign, the case manager will write on the attendance sheet that "parent attended but did not sign." There was no such writing on the January 12, 2018 attendance sheet. (R-21.)

In general, Alegria stated that the summary of performance meeting is the opportunity for the parent and student to discuss issues and concerns regarding transitioning from high school. Alegria does not know what was discussed because she was not present.

Although Alegria was not at the January 12, 2018 meeting, she believed that Haughey's summary of Lewis' assessment of A.D.'s performance was accurate. It reflected what Lewis told Alegria at their meeting prior to Lewis's testimony at the hearing. Alegria did not know when Lewis received a copy of A.D.'s IEP. However, she knew that through the electronic Genesis system, classified students were identified. By checking that system, Lewis should have known that A.D. was a classified student. Alegria recalled a discussion at the August transition meeting that C.J. did not object to A.D.'s placement in Lewis's general education class. The draft IEP from the July 28, 2017 IEP meeting placed A.D. in an inclusion class. There was never an amended IEP that changed the placement to a general education class. The CST communicates and collaborates with parents as part of the IEP process. However, any change to an IEP would require documentation.

Alegria stated that she had limited interaction with Lewis. Prior to the meeting for this hearing, she recalled one incident during the 2017-2018 school year involving a time sheet that needed to be corrected when Lewis was a home instruction teacher.

In her limited interaction and experience with A.D., Alegria did not have any concerns about A.D. graduating high school.

ADDITIONAL FINDINGS OF FACT

It is the duty of the trier of fact to weigh each witness's credibility and make a factual finding. In other words, credibility is the value a fact finder assigns to the testimony of a witness, and it incorporates the overall assessment of the witness's story considering its rationality, consistency, and how it comports with other evidence. Carbo v. United States, 314 F.2d 718 (9th Cir. 1963); see, In re Polk, 90 N.J. 550 (1982). Credibility conclusions "are often influenced by matters such as observations of the character and demeanor of witnesses and common human experience that are not transmitted by the record." State v. Locurto, 157 N.J. 463, 474 (1999). A fact finder is expected to base decisions on credibility on his or her common sense, intuition or experience. Barnes v. United States, 412 U.S. 837 (1973). "Testimony to be believed must not only proceed from the mouth of a credible witness but must be credible in itself," in that "[i]t must be such as the common experience and observation of mankind can approve as probable in the circumstances." In re Perrone, 5 N.J. 514, 522 (1950). A fact finder "is free to weigh the evidence and to reject the testimony of a witness . . . when it is contrary to circumstances given in evidence or contains inherent improbabilities or contradictions which alone or in connection with other circumstances in evidence excite suspicion as to its truth." Id. at 521-22.

In determining credibility, I am aware of the bias and motives of the parties. There is clearly a history between these parties that transcended this proceeding[9].

I have no doubt that C.J. is a loving, protective, and concerned parent. However, her testimony was rambling and incoherent. C.J. testified about events that were told to her by A.D. Some of this testimony was second or third-hand hearsay, without any corroborating support. C.J. accused Willingboro of not providing her with the proposed IEP or with an invitation to the summary of performance meeting. Willingboro was able to produce letters showing the various mailings that are in dispute. (R-4, R-5, and R-19.) C.J.'s stable home address and her receipt of numerous other mailings from Willingboro

[9] On or about May 1, 2018, C.J. filed a Notice of Tort Claim against the Willingboro District Board of Education, certain administrators, members of the Child Study Team, and teachers. (P-55.)

hurt her credibility on that issue. C.J. also maintained that Willingboro blocked her emails, but the numerous emails exchanged between the parties refuted her claim.

Notwithstanding the above, the evidence showed that C.J. had to file due process petitions to compel Willingboro to provide A.D. with the procedural protections and safeguards granted her under the IDEA and the New Jersey Administrative Code. The evidence also showed that C.J. was willing to work with Willingboro and resolve differences through agreement. C.J. filed the November 1, 2016, due process petition (P-39) in response to Willingboro's decision to declassify A.D. The due process petition was resolved by an Agreement dated December 12, 2016. (P-41.) Under this Agreement, A.D. remained eligible for special education services. The IEP meeting was delayed pending the evaluations. The seemingly innocuous language inserted into the Agreement that referenced the independent evaluations as being "previously agreed" referenced agreements from the previous school year. C.J. testified that she had been asking for independent evaluations before A.D. was placed on home instruction but to no avail. Her February 2016 letter to Gutierrez and her March 2016 emails with A.D.'s case manager corroborated her testimony. (P-76, and P-73.) Given C.J.'s past requests and knowing that A.D. was without an IEP, Willingboro's delay in providing Leonard with a purchase order and A.D.'s student records was egregious. (P-42.) Even more egregious was Willingboro's failure to schedule its own psychiatric evaluation of A.D. Adding insult to injury, Willingboro used the lack of a psychiatric evaluation as its justification for the continuation of home instruction from June 1, 2017 until June 20, 2017, in a proposed IEP. (R-30.) In his testimony, Ragan stated that the reevaluation planning meeting scheduled for June 1, 2017, continued home instruction because the psychiatric testing was needed for A.D.'s classification and placement.

To reject the June 1, 2017 proposed IEP, C.J. filed a due process complaint seeking, inter alia, compensatory education for Willingboro's failure to provide A.D. with an IEP. (R-30.) Once again, C.J. resolved the due process petition at mediation and entered into an Agreement with Willingboro resolving all claims in the due process complaint. (R-1.) The first line in the Agreement reads as follows: "This Agreement resolves all issues presented in the due process petition." Id. Because of the above line, Willingboro maintained that as a binding settlement agreement and under the doctrine of

res judicata petitioner's claims predating July 21, 2017, were extinguished. Under the circumstances herein and for the reasons discussed below, I disagree. Under the doctrine of unclean hands, Willingboro cannot reap the benefit of one provision in the Agreement when it failed to comply with the terms and the intent of the Agreement as a whole. The Agreement consisted of six provisions that pertained to A.D.'s reentry into high school from home instruction with an IEP in place. The Agreement set definite times for certain meetings and Willingboro met those time frames. Substantively, provision number three scheduling the IEP meeting and provision number five providing a point person to address A.D.'s behavioral issues were the crux of the Agreement.

Provision Three

Technically, the Agreement only required Willingboro to schedule an IEP meeting, which it fulfilled. However, it would defy common sense to interpret the Agreement so literally. The purpose of the meeting was to formulate an IEP. A determination that the Agreement only obligated Willingboro to hold an IEP meeting without responsibility for formulating a final IEP would violate the IDEA. A settlement agreement that violates a federal public policy or federal statute may be invalidated. *Miller Tabak Hirsch & Co. v. Commissioner of Internal Revenue*, 101 F.3d 7, 10 (2d Cir. 1996).

The IEP had been delayed pending the CST psychiatric evaluation by Berson. (R-13.) The CST had the Leonard evaluations and recommendations. (R-14, 15, and 16.) Therefore, the final IEP should have incorporated the recommendations from the evaluations deemed appropriate by the CST in accordance with N.J.A.C. 6A:14-3.7.

Willingboro presented three witnesses, Coleman, Alegria, and Ragan during their main case, and Haughey in rebuttal to prove that A.D. had a valid IEP in place during the 2017-2018 school year. Coleman and Ragan were both present at the July 28, 2017 IEP meeting. Coleman took notes at the meeting. Her notation for July 28, 2017, stated: "IEP meeting for A.D. change in classification from SLD to OHI based off of psychiatric and medical evaluations." (R-25.) Coleman considered herself an observer at the meeting and she testified that she had no input in drafting the proposed IEP. Ragan testified that he reviewed the Draft – IEP and wrote "8/9/17 ok" on the top right hand corner of the

document because it incorporated what had been discussed at the July 28, 2017 IEP meeting. The Draft - IEP that Ragan approved on August 9, 2017, placed A.D. in an in-class resource for English from September 7, 2017 until January 26, 2018, and provided individual counseling services during that same time period. (R-3.) C.J. testified that she never saw a Draft - IEP during the meeting because the document was still a work in progress. By letters, dated August 9, 2017, bearing the initials of Holly Ricker DeLeo, School Psychologist, the proposed IEP was purportedly mailed to the home address of A.D. and C.J., by separate mailings. (R-4 and R-5.) C.J. testified that she never received this mailing. Willingboro only produced the Draft - IEP with Ragan's "ok" as evidence of a final IEP. (R-3.) Alegria and Ragan testified that this exact IEP was in the Willingboro computer system as a final IEP. Willingboro acknowledged that the IEP it presented as a final IEP placed A.D. in an inclusion class for English. (R-3.) However, A.D.'s actual placement was a general education English 12 class.

The IEP was never amended to reflect A.D.'s change in placement to a general education English 12 class. In accordance with N.J.A.C. 6A:14-3.7(d), an amendment was required:

> The IEP may be amended without a meeting of the IEP team as follows:
>
> **1.** The IEP may be amended if the parent makes a **written** request to the district board of education for a specific amendment to a provision or provisions of the IEP and the district agrees;
>
> **2.** The school district provides the parent a **written** proposal to amend a provision or provisions of the IEP and, within 15 days from the date the written proposal is provided to the parent, the parent consents in writing to the proposed amendment;
>
> **3.** All amendments pursuant to (d)1 and 2 above shall be incorporated in an amended IEP or an addendum to the IEP, and a copy of the amended IEP or addendum shall be provided to the parent within 15 days of receipt of parental consent by the school district; and
>
> **4.** If an IEP is amended pursuant to this subsection, such amendment shall not affect the requirement in (i) below that

> the IEP team review the IEP at a meeting annually, or more often if necessary.
>
> [emphasis added]

Willingboro's failure to comply with N.J.A.C. 6A:14-3.7(d) contributed to the controversy in this matter. It never produced any writings showing the change in placement. Even more disturbing, A.D.'s English teacher, Lewis testified that she did not know that A.D. was a classified student with an IEP when she was in her class.

As a result of Lewis' testimony, Willingboro presented A.D.'s case manager, Haughey as a rebuttal witness. In accordance with N.J.A.C. 6A:14-3.2(c), as A.D.'s case manager, Haughey was required to be "knowledgeable about the student's educational needs and program." Haughey testified that she met with Lewis to discuss A.D.'s needs and modifications but Lewis told her none were needed. Her use of the word "absolutely" conferred that she had no doubt that Lewis knew that A.D. had an IEP. Haughey also knew that Lewis was not a special education teacher. On cross-examination, Haughey admitted that A.D. was not in an inclusion class for English 12. However, she also responded that she was not aware or could not recall any draft IEP which indicated A.D.'s placement in an inclusion class for English 12.

Haughey and Lewis were dedicated professionals with long-standing careers. Each professional testified with certainty, leaving the implication that the other must be mistaken. Haughey impugned her credibility when she could not recall whether A.D.'s IEP placed her in an inclusion class. Her description of her meeting with Lewis lacked detail. She also knew that Lewis was a general education teacher responsible for implementing A.D.'s IEP. For such a critical responsibility, Haughey's acceptance that Lewis needed no additional support lacked probability. Moreover, Haughey provided no documentation from her meeting with Lewis. Pursuant to N.J.A.C. 6A:14-3.7(a)(3) documentation that the teacher had been informed of her responsibilities relating to implementing a student's IEP is required.

> **2.** Every student's IEP shall be accessible to each regular education teacher, special education teacher, related services

> provider, and other service provider who is responsible for its implementation;
>
> **3.** The district board of education shall inform each teacher and provider described in (a)2 above of his or her specific responsibilities related to implementing the student's IEP and the specific accommodations, modifications, and supports to be provided for the student in accordance with the IEP. The district board of education **shall maintain documentation that the teacher and provider, as applicable, has been informed of his or her specific responsibilities related to implementing the student's IEP**; . . .
>
> [Id. emphasis added]

Alegria also testified on rebuttal that Lewis should have known about the IEP because it was inputted on the Genesis system. Her cavalier response does not excuse or justify Willingboro's lack of documentation as required by N.J.A.C. 6A:14-3.7(a)(3). Alegria also testified that the change in placement from the inclusion class to the general education class was done at the parent's request. Alegria presented no documentation to support this statement as required by N.J.A.C. 6A:14-3.7(d)(1). This lack of required documentation and Haughey's noncommittal response created doubt whether a final IEP existed.

Ragan testified that he approved the IEP with an inclusion English class on August 9, 2017, and he was not aware of any change in placement. Coleman, Alegria, and Ragan were present at the August 28, 2017 transition meeting where A.D.'s course and graduation requirements were discussed. Coleman's contemporaneous notes make no mention of a change in placement under the IEP, but her notes did reflect "behavioral supports with IEP." (R-25.) Consequently, Alegria's statement about parent request was not supported by the testimony from the other Administrators who were present during the August 28, 2017 meetings.

Alegria and Ragan attempted to rehabilitate the document marked "Draft - IEP" by asserting that it was only a computer clerical function for a draft to be put in final form with no changes. However, the problem with the document is not with the word "Draft." If that was the only issue, I may have accepted that the Draft - IEP was mailed to A.D and C.J.

on August 9, 2017, for approval and became final after fifteen days under N.J.A.C. 6A:14-2.3(h). However, that is not what occurred because Willingboro's own testimony confirmed that discussions about the IEP continued after the purported August 9, 2017 mailing. According to Alegria, the discussions on August 28, 2017, with C.J. about A.D.'s schedule resulted in the change of placement from the afternoon inclusion class to the morning general education class. That change was never put in writing. There is no documentation to support that petitioner approved an amendment changing the placement from "In-Class Resource: English" to general education English.

Therefore, I **FIND** that Willingboro failed to provide petitioner with written notice of its intent to place A.D. in a general education English 12 class. I further **FIND** that the "Draft – IEP" approved by Willingboro on August 9, 2017, was never finalized because it had been modified and the modifications were never presented to the petitioner in writing for approval.

Willingboro maintained that its failure to amend the August 9, 2017 IEP was a possible procedural error that did not deprive A.D. of a FAPE. In support of its position, Willingboro relied upon N.J.A.C. 6A:14.2-7(k):

> The decision made by an administrative law judge in a due process hearing shall be made on substantive grounds based on a determination of whether the child received a free, appropriate public education (FAPE). In matters, alleging a procedural violation, an administrative law judge may decide that a child did not receive a FAPE only if the procedural inadequacies:
>
> 1. Impeded the child's right to a FAPE;
> 2. Significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of FAPE to the child; or
> 3. Caused a deprivation of educational benefits.

Willingboro considered the change in placement from inclusion to general education to be a change in schedule that was done at petitioner's insistence and for petitioner's benefit. There could be no harm to A.D. because she received an "A" in the

class. Willingboro's argument that, because A.D. achieved academically, it automatically provided a FAPE is misplaced. Following Willingboro's reasoning, Willingboro could ignore the impact flowing directly from A.D.'s behavioral and other challenges, so long as she received good grades. While A.D. may have received an "A" in English 12, she was unable to complete a full semester of school. On January 17, 2019, C.J. submitted a doctor's note that excused A.D.'s attendance for the remainder of the semester. (R-22.)

The Leonard evaluations and the Berson evaluations made specific recommendations for A.D.'s successful return to school. Leaving on a doctor's note before the end of one semester does not mark a successful return to school. Willingboro's proofs only concentrated on A.D.'s progress in her English class. Even though the Leonard evaluations identified specific deficiencies in Reading and Math and the Berson evaluation recommended therapeutic supports and an appropriate action plan, the proposed IEP for 2017-2018 only offered "In-class Resource English" and "Counseling Services: Individual." Willingboro provided no evidence of the resources that A.D. received in her English class or whether despite her grade any goals and objectives were achieved to address her deficiencies. In the purported IEP, Willingboro noted that A.D.'s behavior impeded her learning. (R-3 at 3.) Willingboro presented no evidence to show that A.D. received the counseling service under the IEP or whether she made progress on her social, emotional, and behavioral goals.

Willingboro changed the placement without any safeguards or consideration to A.D.'s needs as enumerated in the evaluations. Our courts have observed that "[t]he procedural requirements of the IDEA are essential to the fulfillment of its purposes." D.B. and L.B. o/b/o H.B. v. Gloucester Twp. Sch. Dist., 751 F.Supp. 2d 764 (D.C.N.J. 2010).

Therefore, I **FIND** that Willingboro's failure to document this change in placement was not simply a procedural violation of N.J.A.C. 6A: 4-3.7(d)., it also impeded A.D.'s right to a FAPE. In addition, I also **FIND** that the failure to document the change in placement impeded the parent's right to participate in the decision making process. C.J. expressed her satisfaction with Lewis as A.D.'s teacher but claimed she never knew that A.D. did not have additional support from a special education teacher in the classroom. One of the main purposes of documentation is to prevent uncertainty. Because Willingboro never

provided petitioner with an amendment or an IEP that placed A.D. in a general education class with no supports, petitioner was denied her opportunity to participate in the decision making progress.

Provision Five

The July 21, 2017 Agreement required the District to designate a "point person" and a back-up person for A.D. to go to when she felt "vulnerable, uncomfortable or at risk regarding her ability to appropriately respond to a situation." (R-1.) In her notes (R-25) from the August 28, 2017 meeting, Coleman wrote the following:

> Behavior Supports with IEPs
> Mrs. Gittens-Johnson
> Ms. Cummings, A.P.

Coleman's notes were corroborated by Alegria's testimony naming the three individuals designated to be A.D.'s point persons. The only additional person named by Alegria was the principal, Ash. As Coleman correctly testified the Draft - IEP dated August 9, 2017, did not identify these specific individuals by name. The names were not in the proposed IEP because the individuals were not identified until the August 29, 2017 meeting. Simply designating certain individuals to act as A.D.'s point person without establishing a Behavioral Intervention Program (BIP) does not satisfy the requirement of the settlement agreement. Without constructing a BIP or putting the safeguards in the IEP, there was no evidence presented by Willingboro to show how this program was intended to work. C.J.'s testimony about the particulars of the incident with Booker was inadmissible hearsay under the residuum rule. However, the fact that an incident occurred was corroborated by not only C.J.'s email exchange with the principal (P-74) but also by Coleman's and Alegria's testimony. There was an incident with Booker that caused an acceleration of behavior by A.D. but no plan in place to address the behavior. Willingboro's email advising that A.D. would receive an in school suspension for her uniform violation, using profanity towards and administrator, and open defiance made no mention of the "point person" program for A.D. or how it was followed. (P-74.) Therefore, I **FIND** that Willingboro failed to implement its point person agreement to provide A.D. with a person to go to when she was uncomfortable or unable to appropriately respond to a situation as demonstrated by the incident with Booker.

For the reasons set forth above, I **FIND** that Willingboro failed to formulate an IEP for the 2017-2018 school year and failed to implement a point person program to address A.D.'s behavioral issues. I further **FIND** that Willingboro breached the July 21, 2017 Agreement by failing to implement its substantive terms.

The alleged third settlement agreement that purportedly resolved Petitioner's emergent petition was submitted under a separate filing after this due process petition and assigned to a different Administrative Law Judge. There was no evidence of a written agreement. I **FIND** that petitioner has no grounds to enforce the alleged third settlement agreement as part of this due process petition.

Finally, I **FIND** that A.D. graduated Willingboro High School and received a diploma under the early graduation program requirements. (R-24.) C.J.'s testimony that she wanted A.D. to remain at the high school for the entire school year and that she requested additional classes was not credible and contradicted by her own emails. Early graduation and early dismissal from school were discussed at the IEP meeting on July 28, 2017, and the transition meetings on August 28, 2017. The early graduation program was by petition process; C.J.'s and A.D.'s signatures appear on the petition. (R-17.) C.J.'s actions on January 17, 2018, refute her claim that she wanted A.D. to stay in school and receive more classes. By email, dated January 17, 2018, (R-22) C.J. withdrew A.D. from school and claimed as follows:

> A.D. went to the doctor's office today due to stress and fear that she may be entrapped to miss out on her graduation/prom. The doctor has written A.D. out and factoring in she is a student who will be graduating Early she will not be returning to Willingboro High. Please provide any work she needs to complete to graduate via email.

From the above email, C.J. implied that A.D. had been threatened with missing her prom and graduation ceremony. She also testified that by that point, she was finished with Willingboro and looking for an attorney.

The only indication that C.J. and A.D. intended to rescind the early graduation request was when they filed this due process petition. However, after filing the petition, A.D. attended graduation and received her diploma.

LEGAL ANALYSIS AND CONCLUSIONS OF LAW

As a recipient of Federal funds under the IDEA, the State of New Jersey must have a policy that assures that all children with disabilities will receive a FAPE. 20 U.S.C. §1412. FAPE includes Special Education and Related Services. 20 U.S.C. §1401(9); N.J.A.C. 6A:14-1.1 et seq. The responsibility to deliver these services rests with the local public-school district. N.J.A.C. 6A:14-1.1(d). In order to provide a FAPE, a school district must develop and implement an IEP. N.J.A.C. 6A:14-3.7. An IEP is "a comprehensive statement of the educational needs of a handicapped child and the specially designed instruction and related services to be employed to meet those needs." Sch. Comm. of Burlington v. Dep't of Educ. of Mass., 471 U.S. 359, 368, 105 S. Ct. 1996, 2002, 85 L. Ed. 2d 385, 394 (1985). To meets its obligation to deliver a FAPE, a school district must offer an IEP reasonably calculated to enable a child to make appropriate progress in light of the child's circumstances. Endrew F. v. Douglas Cnty. Sch. Dist., 580 U.S. ___ (2017);137 S. Ct. 988; 197 L. Ed. 2d 335.

Where, as here, the Board offered no IEP whatsoever from May 23, 2016 through June 1, 2017, I must inescapably **CONCLUDE** that A.D. was denied FAPE for the last month of the 2015-2016 school year and for the entire 2016-2017 school year. I further **CONCLUDE** that because the Board never finalized the IEP for the 2017-2018 school year, A.D. was denied a FAPE for the five months that she attended during her senior year as an early graduation student prior to receiving her diploma.

A claim for compensatory education may be adjudicated even though the student graduated from high school. J.T. ex rel. J.T. v. Neward Bd. Of Educ., 564 Fed. Appx. 677, 680 (3d Cir. 2014). The remedy of compensatory education is meant to provide educational services to make up for the time during which the school district deprived the eligible student of a FAPE. M.C. v. Cent. Reg'l Sch. Dist., 81 F.3d 389, 395 (3d Cir. 1996), cert. denied, 519 U.S. 866, 117 S. Ct. 176, 136 L. Ed. 2d 116 (1996). It allows a

disabled student to continue receiving educational benefits beyond the age of twenty-one to make up for an earlier deprivation. Ridgewood Bd. of Educ. v. N.E., 172 F.3d 238, 249 (3d Cir.1999).

Compensatory education is an equitable remedy, and one that requires a fact sensitive case-by-case analysis. Our courts have recognized that "[a]ppropriate relief is relief designed to ensure that the student is appropriately educated within the meaning of the IDEA." Parents of Student W. v. Puyallup Sch. Dist. No 3, 31 F. 3d 1489, 1497 (9th Cir. 1994). See also: Neena S. v. Sch. Dist., 2008 U.S. Dist. LEXIS 102841 (E.D. Pa., 2008). Courts have awarded compensatory education in the form of tuition reimbursement or an injunction requiring school districts to pay for private school tuition or other services. Compensatory education relief has also taken other shapes. 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. v. Gilhool, 916 F.2d 865, 873 (3d Cir. 1990).

My task is "to weigh the interests on both sides and determine the equitable outcome. This is not an easy task, [and I must] balance the interests of finality, efficiency, and use of the School District's resources with the compelling needs [of the student]." Ferren C. v. Sch. Dist. of Phila., 595 F. Supp. 2d 566, 577 (E.D. Pa. 2009), aff'd 612 F. 3d 712 (3rd Cir. 2010). Some courts award by rote a block of compensatory education equal to time lost by a denial of FAPE, referred to as a "cookie cutter approach." See: Cent. Sch. Dist. v. K.C., 2013 U.S. Dist. LEXIS 94065, *32 (E.D. Pa. 2013), citing Reid v. D.C., 401 F. 3d 516, 523 (D.C. Cir. 2005). As the Ninth Circuit held, "[t]here is no obligation to provide a day-for-day compensation for time missed." Ibid. See also: Neena S. v. Sch. Dist., 2008 U.S. Dist. LEXIS 102841 (E.D. Pa., 2008). The award "should aim to place disabled children in the same position they would have occupied but for the school district's violations" by "replacing educational services the child should have received in the first place." Reid v. D.C., 401 F.3d 516, 518, 365 U.S. App. D.C. 234 (D.C. Cir. 2005) (cited with approval by Ferren C., 612 F.3d at 717-18). An hour-for-hour replacement for the period of deprivation, however, is not the only appropriate method of calculating a compensatory education award. Reid, 401 F.3d at 523 (finding that "this cookie-cutter approach runs counter to both the 'broad discretion' afforded by

the IDEA's remedial provision and the substantive FAPE standard that provision is meant to enforce.") Compensatory education is an equitable remedy and requires the court to "consider all relevant factors." Ferren C., 612 F.3d at 718 (quoting Florence Cnty. Sch. Dist. v. Carter, 510 U.S. 7, 16, 114 S. Ct. 361, 126 L. Ed. 2d 284 (1993)).

With this analysis in mind, in this case, A.D.'s choice to graduate early and leave high school is a relevant factor that must be taken into consideration. In fashioning a compensatory education award, the comprehensive independent evaluations from Leonard in April 2017 and Berson's psychiatric evaluation from June 2017 provide the basis for the services that were needed. The evaluations alerted Willingboro to A.D.'s need for services to improve her reading, writing, and math skills and the need for counseling services and behavioral interventions which she did not receive.

I **CONCLUDE** that fairness and equity dictate that A.D. be awarded compensatory education for the sixteen months that she was without an IEP during high school as a classified student entitled to specially designed instruction and related services. After graduating from high school, A.D. enrolled at RCBC for the 2019 Spring Term from January 1, 2019 through May 20, 2019. (P-35.) She received no credit hours and no quality points. Id. While enrolled at RCBC, A.D.'s tuition and fees were covered by a Federal Pell Grant. (R-46 and 47.) While a Federal Pell Grant does not have to be repaid, it does have a lifetime limit of twelve semesters.[10] Accordingly, the District must reimburse A.D. in the amount of $2,548.02 paid by financial aid on her behalf to RCBC for the Spring 2019 term because she lost a semester under her Pell Grant Award and received no educational benefit.

Her compensatory education shall be fashioned as a continuation of remedial coursework in the community college or an equivalent educational setting until such time as A.D. qualifies for regular admission under the college entrance standards or receives a certification in a field of employment, such as, cosmetology. Based on academic need, A.D. would also be entitled to private tutoring while she is enrolled in remedial non-credit

[10] According to the website, https://www.benefits.gov/benefit/417, a Federal Pell Grant has a lifetime limit of twelve semesters.

bearing courses until she meets the standards for college admission. While attending an educational program on non-credit status, A.D. would be entitled to take advantage of the counseling and psychological services offered by the educational institution. All such fees and costs while A.D. remains on non-credit status shall be paid by the Board upon submission of appropriate proof by A.D. This compensatory education award would allow A.D. to accomplish her post graduate plans to attend college and graduate. (R-17.)

I **CONCLUDE** that there is no further relief that can be afforded this petitioner relative to compensatory education for Willingboro's denial of FAPE.

ORDER

I hereby **ORDER** an award of compensatory education to A.D., consistent with the above, for Willingboro's failure to provide A.D. with a FAPE.

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

Kathleen M. Calemmo

May 29, 2020
DATE

KATHLEEN M. CALEMMO, ALJ

Date Received at Agency

Date Mailed to Parties:

KMC/tat

APPENDIX

WITNESSES

For Petitioner:

Adriene Lewis, English Teacher
C.J., mother of A.D.

For Respondent:

Marchelle Coleman, Program Administrator
John Ragan, Interim Director of Special Education
Melody Alegria, Director of Special Education

Rebuttal:

Sharon Haughey, Case Manager
Melody Alegria

EXHIBITS

For Petitioner:

P-1 District's correspondence re-entry, IEP meetings to petitioner, C.J., dated September 17, 2012
P-2 Re-evaluation plan, dated September 17, 2012
P-3 District's psychological evaluation by Gladys Rosario-Hubbard, dated October 23, 2012

P-4 District's educational evaluation by Senora Dance-Lowther, LDT/C, dated November 7, 2012

P-5 Confidential social assessment by Tonee C. Lloyd, MSS, LCSW, ACSW, dated November 11, 2012

P-6 District's psychological evaluation by Lordi Field, M.Ed., E.D.S., NCSP, Certified School Psychologist, dated January 28, 2013

P-7 District's correspondence to petitioner regarding new Language Arts Reading Enrichment course, dated February 12, 2013

P-8 District's correspondence to petitioner regarding IEP annual review meeting, dated March 12, 2013

P-9 District's eligibility determination, dated March 12, 2013

P-10 Medical visit records by Dr. Steven Levy, M.D., dated April 5, 2013

P-11 District's correspondence to petitioner forwarding proposed IEP, dated February 26, 2014

P-12 District's correspondence to petitioner regarding IEP becoming effecting, dated March 4, 2014

P-13 District's correspondence to petitioner regarding IEP annual review meeting, dated April 22, 2014

P-14 District's correspondence to petitioner forwarding proposed IEP for 2014-2015, dated November 20, 2014

P-15 Invitation to an IEP team meeting, dated February 9, 2015

P-16 IEP, dated February 15, 2015, for 2015-2016

P-17 Consent to amend an IEP without a meeting, dated May 19, 2015

P-18 Consent to amend an IEP without a meeting, dated June 5, 2015

P-19 District's correspondence to petitioner forwarding proposed IEP, dated August 11, 2015

P-20 Not in evidence

P-21 Not in evidence

P-22 District's correspondence to petitioner, C.J., regarding allegations and recording, dated November 10, 2015

P-23 Disability Rights of NJ correspondence by Sean Benoit, Esq., staff attorney to Abdel A. Gutierrez, Child Study Team, regarding copies of all HIB related documents, dated March 2, 2016

P-24 Disability Rights of NJ correspondence by Sean Benoit, Esq., staff attorney to Dr. Ronald G. Taylor, Superintendent, regarding copies of all HIB related documents, dated March 2, 2016

P-25 District's correspondence to petitioner, C.J., regarding behavior towards staff, dated March 23, 2016

P-26 District's correspondence to petitioner, C.J., regarding denial of request for a hearing, dated March 30, 2016

P-27 Not in evidence

P-28 District's fourth and final notification regarding potential non-credit status, dated April 13, 2016

P-29 Re-evaluation plan, dated April 25, 2016

P-30 IEP revision, dated April 25, 2016

P-31 Not in evidence

P-32 Not in evidence

P-33 Medical records of office visit with Dr. Jodi L. Berg, M.D., dated May 24, 2016

P-34 One page email, dated June 3, 2016 from C.J. to Gutierrez

P-35 French, handwritten notes, dated June 3, 2016

P-36 District's correspondence from Mr. Gutierrez to petitioner, C.J., regarding scheduling learning and psychological re-evaluations, dated June 22, 2016

P-37 Invitation to an IEP team meeting, dated September 30, 2016

P-38 District's eligibility determination, dated October 20, 2016

P-39 Petitioner's request for DP hearing, dated November 1, 2016

P-40 Disability Rights correspondence to Mr. Gutierrez regarding request for Independent Educational Evaluation and Independent Psychological Evaluation, dated November 1, 2016

P-41 Notice of Agreement, dated December 12, 2016

P-42 Disability Rights of NJ correspondence to NJDEP OSEP regarding request for enforcement, dated March 6, 2017

P-43 Leonard Educational Services Independent Educational Evaluation by Carol P. Candidi, M.A., dated April 12, 2017

P-44 Not in evidence

P-45 Leonard Educational Services Independent Psychological Evaluation by Jacqueline Farace, Ed.S., NCSP, dated April 12, 2017

P-46 Not in evidence

P-47 Leonard Educational Services recommendations for Amber DeShields

P-48 Not in evidence

P-49 Re-evaluation planning, proposed action and meeting attendance sheet, dated June 1, 2017

P-50 Disability Rights request for DP with petitioner's affidavit, dated June 12, 2017

P-51 Limited Power of Attorney, dated July 5, 2017

P-52 Notice of Mediation Conference, dated July 20, 2017

P-53 Notice of Agreement and Medication attendance form, dated July 21, 2017

P-54 Petitioner's PD petitioner, dated January 16, 2018

P-55 Notice of Tort claim, dated May 1, 2018

P-56 Not in evidence

P-57 Not in evidence

P-58 Correspondence from J. Warshaw to Hon. Susan Olgiati, ALJ, regarding withdrawal of petitioner for emergent relief due to settlement agreement, dated June 26, 2018

P-59 Not in evidence

P-60 Not in evidence

P-61 Not in evidence

P-62 Note from tutor

P-63 District's discovery production

P-64 Not in evidence

P-65 Not in evidence

P-66 Emails between Leonard Educational Evaluations and District

P-67 Emails between Sean Benoit, Esq. and District

P-68 Not in evidence

P-69 Emails between petitioner and School District personnel - 2012

P-70 Emails between petitioner and School District personnel - 2013

P-71 Not in evidence (missing in exhibit list)

P-72 Emails between petitioner and School District personnel – 2015

P-73 Emails between petitioner and School District personnel – 2016
P-74 Emails between petitioner and School District personnel – 2017
P-75 Emails between petitioner and School District personnel – 2018
P-76 February 16, 2016, handwritten letter from C.J. to Gutierrez
P-77 Not in evidence
P-78 Not in evidence
P-79 Not in evidence
P-80 Email exchange, dated February 2, 2018

For Respondent:

R-1 Notice of Agreement, dated July 21, 2017
R-2 July 21, 2017, Invitation for Annual Review of IEP
R-3 Draft IEP, dated July 28, 2017
R-4 August 9, 2017, Reevaluation Eligibility Determination sent to A.D.
R-5 August 9, 2017, Reevaluation Eligibility Determination sent to parent
R-6 Emails from Ragan regarding meetings for A.D.
R-7 Attendance Report – Grade 11
R-8 Attendance Report – Grade 12
R-9 Student Academic History
R-10 Student Schedule Audit Report – Grade 12
R-11 Gradebook Assignments
R-12 Student Conduct List
R-13 CST Psychiatric Evaluation - CENTRA
R-14 Leonard Independent Educational Evaluation
R-15 Leonard Psychological Evaluation
R-16 Leonard Recommendations for A.D.
R-17 Notes, Petition for Early Graduation, and Policy
R-18 January 10, 2018, Invitation for summary performance meeting to A.D.
R-19 January 10, 2018, Invitation for summary performance meeting to parent
R-20 January 12, 2018 – Proposed Action
R-21 January 16, 2018, Summary of Performance Notice to A.D.

R-22 Emails from January 17, 2018 through January 22, 2018, regarding issues effecting early graduation

R-23 Emails from January 19, 2018 through January 22, 2018, regarding excused absences and non-credit status

R-24 Diploma

R-25 Notes from Coleman

R-26 November 27, 2017, Invitation to A.D. to an IEP review meeting

R-27 December 18, 2017, Invitation to A.D. to an IEP review meeting

R-28 Eligibility Determination

R-29 June 20, 2017, notice enclosing IEP

R-30 June 1, 2017, IEP

R-31 Meeting Attendance Sign-In Sheet

R-32 Not in evidence

R-33 Letters regarding CST psychiatric evaluation

R-34 Not in evidence

R-35 Enrollment Verification and Official Transcript from Rowan College at Burlington County

R-46 RCBC – student statement

R-47 Emails regarding financial aid payments to RCBC on A.D.'s behalf