



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NOS. EDS 10025-2020 AND
EDS 10385-2020

AGENCY DKT. NOS. 2020-31086 and
2021-32218

CONSOLIDATED

J.G. AND D.G. ON BEHALF OF D.G.,

Petitioners,

v.

WASHINGTON TOWNSHIP BOARD OF EDUCATION,

Respondent.

J.G. and D.G., on behalf of D.G., petitioners, pro se

Joseph F. Betley, Esq., for respondent (Capehart and Scatchard, P.A., attorneys)

Record Closed: June 15 , 2022

Decided: July 27, 2022

BEFORE **CATHERINE A. TUOHY**, ALJ:

STATEMENT OF THE CASE

In accordance with the provisions of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C.A. § 1415, J.G. and D.G. have requested a due process hearing on behalf of their son, D.G., who is classified as eligible for special education and related services. Petitioners' dispute the district's proposed IEP and seek compensatory education and reimbursement for the unilateral out-of-district placement at St. Joseph

Academy. At issue is whether the district, provided D.G. with a Free and Appropriate Public Education (FAPE) in the Least Restrictive Environment (LRE).

PROCEDURAL HISTORY

Petitioners filed for due process on August 24, 2020, seeking placement in the general education setting with related services, supplementary aids, and positive behavioral supports. A second due process petition was filed seeking compensatory education for a private school placement necessitated by respondent's alleged failure to offer FAPE in the LRE. These matters were consolidated by the undersigned by order dated December 10, 2020. A pre-hearing order was issued February 18, 2021.

On March 19, 2021, respondent filed a motion to dismiss the consolidated petitions, alleging mootness and failure to state a claim, since D.G. had been removed from the district and unilaterally placed at St. Joseph Academy without providing the district with the ten (10) day notice set forth at N.J.A.C. 6A:14-2.10(c). Petitioners opposed the motion by letter, with exhibits attached, dated April 8, 2021, and respondents filed a reply, dated April 16, 2021. Respondent's motion was denied by letter Order dated May 11, 2021.

Numerous telephone status conferences were conducted. A hearing was conducted through Zoom audio/video technology on July 6, 2021, July 8, 2021, July 30, 2021, August 27, 2021, August 31, 2021, September 14, 2021, September 29, 2021, and November 1, 2021, due to the continued COVID-19 emergency and the suspension of in-person hearings at the OAL. The record remained open to settle evidentiary issues, allow the parties to submit a jointly agreed upon binder of hearing exhibits and to file closing briefs. The record closed on June 2, 2021, following the receipt of closing briefs, and thereafter was reopened following respondent's objection to a subsequent closing statement filed by petitioner. A further telephone hearing was conducted on June 15, 2022, and the record closed at that time.

FACTUAL DISCUSSIONS AND FINDINGS

Testimony

Jennifer Kraft testified on behalf of the respondent. She has been employed by the respondent for the past two years as a special education teacher in their self-contained Behavioral Disability (BD) program at the high school. The students stay with her for all of their academic courses. She has been teaching for twenty-one years previously in various schools throughout the country including New Jersey, Florida, Kansas City, and Pennsylvania. She is a certified special education teacher and English teacher by the State of New Jersey. She received her New Jersey teaching certifications in 2007 and 2012. She graduated with her BA in English from Rutgers and received a Master's in Curriculum and Instruction from the University of Scranton. She has a graduate certificate from Rowan University in special education and an education specialist certificate from Liberty University. She is currently pursuing her Doctorate in curriculum and instruction from Liberty University. She has taught advanced placement classes, honors courses, general education classes, in class support, and resource room classes. Ms. Kraft has also been a dean of students and an instructional coach. Immediately prior to her employment with respondent, she was employed by the Pennsville public school system as a lead teacher in their self-contained BD program and a small group resource teacher.

Ms. Kraft's first contact with D.G. was in March 2020, when he entered her BD self-contained class as a ninth grader. D.G. previously had been on home instruction. She was the lead teacher responsible for the core academic subjects and had a teacher's assistant (TA), Ryan Francisco as well as a behavior technician, Jermaine Morris from DiNovi and Associates (DiNovi) to assist her in the classroom. The TA, Mr. Francisco had a math degree from Rowan and has been a TA with Ms. Kraft for two years. DiNovi is the behavioral support program in the district, and they collect data and interpret data based on the behaviors derived from the six classroom rules. They would collect data from infractions as well as successes. The behavior technician was present in the classroom to monitor behaviors and collect data so that she could be free to teach the students academically. The behavior technician was present every day in the class to

support all of the students. In addition to Mr. Morris, his supervisor at DiNovi, Joseph Major would be present quite often to supervise Mr. Morris and oversee the program. The BD class followed the general core curriculum for ninth grade. In total, there were seven students in the BD class, including D.G., six boys and one girl. Ms. Kraft had limited knowledge as to why D.G. was in the BD program other than that it involved inappropriate behavior with a female. She was not familiar with any of the details.

The goals of the BD self-contained program are to identify problem behaviors and teach appropriate behaviors in an academic setting and providing academics that meet the student's individual academic needs. Once in the program, there is a process as to how the student could exit the BD class. DiNovi collects behavioral data, interprets the data and then a team meeting is conducted to discuss a placement based on where the student wishes to be placed so that they would succeed in that placement. At the end of the time period when DiNovi were able to collect the data and a determination can be made based on the data, Ms. Kraft has some input as to the student's placement. There is also a social skills component in the BD class where Mr. Semen, the school psychologist would 'push in' to the class several times a week and teach a social skills class and present various scenarios for the students to discuss.

D.G. was polite, respectful, and completed all of the assignments requested of him. He was an active participant in class. He advocated for himself. He was in person ten days (two weeks of class) before the pandemic closed the school for in-person live instruction. The remainder of the year consisted of asynchronized instruction, i.e. Ms. Kraft would post the assignments on-line and the students would log on when they were available to complete the work. She would record her lessons. If the students had questions, they would email her, and she would respond. There was no remote synchronized instruction where the class would all be present on Zoom and the teacher would teach the class live on Zoom remotely. Ms. Kraft recorded her lessons. There was no class interaction during this period of time from March 16, 2020, through the end of the school year in June of 2020.

The BD class academics were not 'watered down' but followed the WTHS ninth grade curriculum and covered all of the content areas. In science they were studying

thermodynamics and an in-class project involved building “Newton’s cradle.” Their history course followed the curriculum, and they were covering Pre-WW II through WW II and the Russian Holocaust. In English class they were reading “Ashes in the Snow,” a high school ninth-tenth grade level fiction novel involving the Russian holocaust. In math they were using an online program IXL that assesses students for diagnostics and identifies areas of strength and weaknesses and will push them up to their appropriate grade level. All of DG’s classes were on the ninth-grade level as were his textbooks. He did all of his assignments. All of the grade level textbooks were sent home so the students would have access to them at home. D.G. did well on his ninth-grade assignments. At the end of his ninth-grade year D.G. was on par with the curriculum goals.

Ms. Kraft was provided with D.G.’s IEP for March 2, 2020. (J-2.) This was the IEP that governed D.G.’s entrance into the BD program. The June 9, 2020, IEP was proposed for the 2020-2021 school year. (J-3.) The September 9, 2020, IEP meeting was a continuation of the June IEP meeting. (J-4.)

Ms. Kraft was not involved in the Functional Behavioral Assessment (FBA) process although she was aware one was to be done for D.G. While remote, D.G. was engaged. He emailed her frequently with any questions or technology issues. Integrated math and integrated science mean they hit all of the general education topics but maybe modified the pace and presentation to meet the student’s needs. If D.G. was doing well, he could go faster and if he needed help, the pace could be modified. Ms. Kraft has a special education certification and a science and English certification at the high school level.

Ms. Kraft attended the June 9, 2020, IEP meeting. The PLAAFP narratives for the academic content areas were prepared by her. (J-3, page 2-1.) Mr. Semen prepared the general description. The PLAAFP accurately reflects D.G.s levels at the time they were written. The June 9, 2020, IEP team recommended D.G. continue in the BD program for the next school year. Ms. Kraft agreed with this placement because there was not sufficient time with D.G. in person to make any other decision. She did not recall any discussion at the June 9, 2020, meeting regarding the FBA not being completed. The parents attended the meeting remotely. No accusations were made by the parents that the team was harassing or intimidating them at this meeting. Ms. Kraft did not recall this

at all. She did not recall Ms. Goodwin raising any concerns about D.G. continuing in the BD program at the June IEP meeting. She does recall some transition planning being discussed in the June IEP meeting about collecting appropriate data and then being able to make a determination regarding transitioning out of the BD program and back into the general education setting. Her attention was called to the narrative contained in J-3, page 15-1 entitled, "Describe any options considered and the reasons those objections were rejected." Ms. Kraft did not draft that narrative, but it was consistent with what was discussed in that D.G. would remain in the BD placement until a FBA could be completed. This is a typical plan to transition the child out of the BD program.

The parents did not review the BD program prior to D.G. entering the program. Ms. Kraft did meet with the parents and explained the program to D.G. and his parents to introduce them to the program. Ms. Kraft had open lines of communication with the parents, and they exchanged emails as to how D.G. was doing. They had good lines of communication in the 2020 school year, and they responded to each other promptly.

Ms. Kraft did write a letter for D.G. and to each of her students to provide encouraging notes to her students, including D.G., and at the end of the year she wrote each one to praise them for the attempts they had made during the school year and included a donut coupon. Ms. Kraft was in agreement that D.G. should continue in the BD program for the 2020-2021 school year. Ms. Kraft did not recall being aware of D.G.'s participation in a cognitive skills group therapy program called "Ascenda."

The PLAAFP statement in J-3 and J-4 are the same. Ms. Kraft prepared the PLAAFP section in the June 9, 2020, IEP. (J-3.) The PLAAFP statements did not change from the June IEP to the September 9, 2020, IEP. Mrs. Kraft did participate in the September 9, 2020, IEP meeting and recalled the discussions regarding transitioning D.G. out of the BD program and into the general education setting after they collected data and the FBA was completed. Assuming he was going to do okay, the time frame for him to be pushing into the general education environment she believed was thirty days. The BD program follows the same standards regarding the curriculum as the general education grade level class and in the resource class, so there should not be difficulty transitioning academically from the BD class to the general education class. Also, the

teachers are in constant communication with each other to make sure the student is transitioning. Even if the pace was different in the BD class, during study skills they can bring the student up to speed once they are back in the classroom.

Ms. Kraft wrote the academic goals and objectives set forth in the March 2, 2020, IEP for D.G. (J-2, page 8-1.) These were appropriate goals for D.G. She was not involved with the counseling goals. Mrs. Kraft was involved with drafting the modifications and supplementary aids and services section of the IEP and she believed they were appropriate for D.G. (J-2, page 9-1.) The September 9, 2020, IEP (J-3,) contained the same modifications and goals for D.G.

D.G. signed in for class and communicated with Mrs. Kraft at the beginning of the school year in September 2020. He was not physically in attendance, but he was communicating with her during class time. D.G. did not mention anything to her about enrollment in St. Joseph Academy nor did the parents, J.G. or D.G. She does not recall the advocate mentioning anything about D.G. enrolling in St. Joseph's Academy. If D.G. is moved from the BD to general education during the year, he will not be at a disadvantage educationally because they have transitioned other students successfully.

Learning was asynchronous and there was no interaction among classmates once they went to remote for the remainder of the year after D.G. was in the BD class. Data was collected regarding D.G. during the first ten days D.G. was in the program. The BD program does move at a slower pace because they deal with other behavioral issues. It would be a legitimate parental concern regarding the difficulty transitioning. However, Ms. Kraft does believe it would not be a problem for D.G. D.G. was on par with his peers at the end of his ninth-grade year. She only had interactions with D.G. regarding emails once they went to remote instruction and she had no opportunity to observe D.G. There was no Zoom instruction in the school at all when they went to remote.

D.G. was attending her class in the beginning of September for tenth grade. She received an email from D.G.'s mother, Mrs. G., when he transferred. On September 14, 2020, the BD program was to be in person four days a week and one day Wednesday was virtual.

School closed for in-person instruction on March 16, 2020. Eventually there was a social skills class conducted through Zoom by Mr. Semen, the school psychologist and D.G.'s case manager, with the BD class. Mr. Semen also provided D.G. with 1:1 social story session through Zoom as emotional support sessions for D.G. Ms. Kraft occasionally attended the social skills group session on remote with Mr. Semen. Various emails were exchanged between Mrs. G. and Ms. Kraft including an April 30, 2020, email from Ms. Kraft confirming Thursday 1:00 p.m. meetings with D.G. and Ms. Kraft for D.G. to check in with her to see how he was doing and with any questions he may have. (P-5.)

Ms. Kraft does not have a certificate for social studies, science, and math but has taught it. She was in a special education setting when she taught these subjects as a special education teacher. Ms. Kraft follows the same curriculum and content for her ninth and tenth grade BD students. She gives assessments to her students, but they are not the same as the general education students in math, science, or social studies. She does not give the exact same homework or projects as the ninth-grade general education teachers. D.G. was her student for approximately four months and he did all of his work while he was remote. During the two weeks he was in her class in person he did not break any rules or violate the schools code of conduct. For the two weeks he was in her classroom D.G. did interact with his classmates appropriately. D.G.'s behavior did not suggest his behavior was a danger to others during the two weeks he was in her class. The coursework she teaches is challenging to the students. She was able to challenge D.G. in math and give him help where needed. The curriculum is designed to improve students. There were very few interruptions while she is teaching the BD class and none from D.G. They were minimal and the students were easily redirected. DiNovi staff walked with the students around the building and with the faculty member, Mr. Francisco. There are always two people in the classroom with Ms. Kraft. Breaks are not allowed during instruction time. If a student finishes early they may take a break with a DiNovi associate and D.G. would be allowed to go also but the breaks never interfered with instructional time.

Ms. Kraft did not have formal meetings with the staff in her class regarding D.G. in the ten days he was in-person in the BD class.

Ms. Kraft did not attend the February 26, 2020, IEP meeting. The June 9, 2020, Zoom IEP meeting she attended. (J-3.) The parents and the student are allowed to participate in the IEP meeting. Ms. Kraft does not remember Ms. G. being 'shooshed' at the meeting. She did not recall any discussions regarding the settlement. She does recall the topic of the FBA being discussed. She does not recall Mr. Hoopes saying she already had her one IEP meeting of the year. Ms. Kraft recalls D.G. being involved with the guitar while he was in the BD class. Ms. Kraft did not recall Ms. G. bringing up the three hours of Ascenda cognitive skills class in addition to the group session and individual sessions he had in school. When D.G. became her student on March 2, 2020, she had met him previously. He did not tour the program. Parents are not permitted to volunteer in the BD class for parties or projects.

When school started in September of 2020 remotely, a DiNovi staff member was present and Mr. Francisco as well as Ms. Kraft. D.G. did miss a few assignments but made them up. Ms. Kraft did not recall attendance in the BD program during the two weeks D.G. was there. She could not say whether she gave her instruction more slowly because of children missing time. Any instruction that was missed would be made up on a one-to-one basis during study skills or lunch. Before D.G. entered her class, Ms. Kraft was given his IEP. In homebound instruction, she did not know where D.G. was in the curriculum. They covered the Russian revolution and post WW II and pre-Cold War. Ms. Kraft did not know why the titles of her BD courses are named differently from the general education courses. The students in the BD have electives and lunch which is scheduled by Mr. Semen, the school psychologist who works with the guidance counselor and case managers. They ate lunch in the classroom. Physical education class is with the PE teacher and a DiNovi associate. D.G. was never with nondisabled peers. The BD program does not allow for any opportunity for interaction with general education, nondisabled peers. D.G. was never alone with the female student or any of the other students while in the BD program for the two weeks. One of the reasons for the parties agreeing to the BD program was to have eyes on D.G. as he interacted with other female

students. It was Ms. Kraft's understanding that the parents had agreed to the BD program for the remainder of the school year.

Ms. Kraft was satisfied that after having D.G. in ninth grade he was ready to move on to tenth grade. D.G. followed the behavioral contract by reporting the fact that the female involved in the prior incident tried to contact him.

Joseph Hoopes is the Special Education Supervisor for respondent at the high school. His duties are various and include observing teachers, overseeing curriculum, adopting programs, and attending IEP meetings. Currently he supervises grades nine through twelve, but came from the middle school and oversaw the BD program for grades six through eight. He holds a master's degree in school leadership from Wilmington University and has a supervisor's certificate and is certified as a teacher of the handicapped. He received his BA in history from Montclair State University. He also attended graduate level special education courses at Rowan and Rutgers University. In February 2016, he was hired as a supervisor of special education. He became a teacher in the district in 2008 and taught middle school special education. Previously, he worked in the Bainbridge Regional School in the BD self-contained classroom in the middle school, grades six through eight for the Gloucester County Special Services School District from September 2002. In 2001-2002 he was a BD classroom assistant at Eastern High School and had worked the year before that as a substitute teacher at Eastern.

The BD program at the middle and the high school he oversees, uses Applied Behavior Analysis (ABA) and a data-based approach to tracking behaviors that help to make successful students. Behavior is tracked in ten-minute intervals. The six different behaviors that are tracked are: non-compliance, verbal disruption, physical disruption, off task behavior, elopement, and aggression. They look at data to see where the students are successful and where they need some intervention, they use positive reinforcement techniques which the students have to earn such as the use of electronics, physical activity, or appropriate edibles. The positive reinforcements are embedded in the program and the approach is individualized to the student based on what the data shows. He started this program in the middle school and started a relationship with Brett DiNovi. The Board-Certified Behavior Analysts (BCBA) is a behavior specialist.

The Board employs Brett DiNovi and Associates as their behavior specialists. They oversee the data and are trained in ABA and can-do FBA and write the behavioral plans for the students when they need one. Joseph Major was assigned to the high school program. The DiNovi clinical associate Jermaine Morris was in Ms. Kraft's ninth-tenth BD class. Ryan Francisco was an employee of the district as a classroom assistant. Overseeing the clinical associate was the BCBA, Joseph Major. Mr. Semen, the school psychologist, oversaw the program as did Mr. Hoopes and the administration. The BD program is a self-contained program and contact with nondisabled peers is limited. The mission of the program is to get the student into their least restrictive environment where they are going to be successful.

The BD program is data driven. The six different data points are taken, and it is either a yes or no. They either observed the behavior or did not. Throughout the day they add up to 100 points. A ninety or above is a successful day. Then they look at what causes the behavior. To transition the student out they look at thirty to forty days of consistent ninety points and then see what subject the student would like to go out for. Some like the program and do not want to leave but are encouraged to transition out but are not forced to.

Mr. Hoopes first involvement with D.G. was receiving the IEP that was developed pursuant to the settlement agreement that placed D.G. in the BD program. He spoke with Ms. Miller regarding his placement. D.G.'s first day in the program was March 3, 2020, and a FBA was to be done as part of the settlement agreement. Mr. Hoopes was aware that the underlying infractions that led to D.G.'s placement in the BD program was alleged sexual aggression towards female students, verbal and physical, that had occurred in school during middle school. It was Mr. Hoopes understanding that D.G. had to be in the B.D. program for fifteen days before the FBA was started. When D.G. first entered the program, they discussed the need for the FBA and taking data. The FBA was not completed during his ninth- grade year because he was in the program ten days when the school went remote on March 16, 2020, because of the pandemic and they did not meet the fifteen-day threshold to begin the FBA. They discussed with Mr. Major, the BCBA, completing the FBA remotely but they determined that an FBA for D.G. in a remote

setting would not give them the information they needed because they would not be able to replicate the situations interacting with peers.

D.G. was subject to a behavior contract as a result of the settlement agreement. (J-1.) The behavior contract dated February 26, 2020, was part of the settlement agreement and at paragraph three specified inappropriate conduct that D.G. agreed not engage in. (J-5.)

The BD program academically has the same subjects as other high school classes. D.G. took integrated math, integrated science, history, English literature and composition, Spanish for Communication 1, physical education, study skills, and guitar. Prior to the BD placement he was on a homebound instruction. D.G. received credit for all of his classes for ninth grade both on home instruction and in the BD class. He passed all of his courses. D.G.'s grades for the 2019-2020 school year were a ninety-one for guitar; ninety-two for history; eighty-seven for integrated math; ninety-two for integrated science; ninety-five for lit and comp English; hundred for phys. ed; eighty-eight for Spanish for Communication 1; and hundred for study skills. (P-32.) All of these subjects were taught at a ninth-grade curriculum level. Assessments in-person did not occur when they went to asynchronous learning during the pandemic. Mr. Hoopes believed D.G. was instructed in English at a lower grade level, based on his recollection of his conversations with Ms. Kraft.

Mr. Hoopes was not aware that Mrs. G. was concerned about the rigors of the BD program and the pacing of the program until the September 9, 2020, IEP meeting. He was present at the June meeting and the recommendation of the IEP team was that D.G. remain in the BD program for the 2020-2021 school year. He was not a member of the IEP team, but he agreed with the recommendation because they had not been able to satisfy the terms of the settlement agreement to conduct the FBA. They did not feel that they had the data to determine success out of the program because of the nature of the underlying disciplinary infractions. They had not determined he had acquired the skills to be successful outside of the structure of the BD program. Mr. Hoopes does not recall anything contentious between himself and the parents or anyone from the district and the parents. He does not recall anyone gesturing towards Mrs. G. to be quiet or "shoosh."

He recalls the parents engaging and interacting in the meeting and being active participants in the meeting. When asked if they wanted anything noted in the parental concerns in the June 9, 2020, IEP meeting they said none at this time. We were going to conduct a FBA and have a meeting after the FBA to decide if D.G. would continue in the BD program. Transition was not specifically discussed in the June meeting just that placement would be discussed. D.G. had to have five more days in the BD program in person before the FBA would be started.

The notice requirements for the IEP and placement section of the June 9, 2020, IEP state:

“Describe any options considered and the reasons those options were rejected.” “To change placement; however, the district has not had the opportunity to satisfy the conditions of the settlement agreement in regard to the Functional Behavioral Assessment (FBA.) Due to remote learning because of COVID-19, the FBA was unable to be conducted, and will be conducted once we are able to physically return to the school. Upon returning, after 5 full school days, with D. attending each day, the FBA will then be conducted because per the settlement agreement, the FBA would not be conducted until after D. has attended 15 school days. He was in school 10 school days prior to remote learning. Therefore, an additional 5 days would be needed once we physically return back into the school setting. Once the FBA is conducted and completed, another IEP meeting will be held closer towards the end of the first marking period, to discuss the results of the FBA, as well as D.’s placement within the Self-Contained Behavioral Disabilities Program.”

(J-3, page 15-1.)

This narrative was written by Mr. Semen, but Mr. Hoopes reviewed it prior to sending the IEP out. The parents never signed this IEP.

Towards the end of the summer of 2020, Mr. Hoopes was forwarded an email that Mrs. G. had sent requesting due process, but his name in the email was misspelled so he did not receive it initially. Upon his receipt of it, he forwarded it to Ms. Miller and Ms. Ashbridge, the director to see how they wanted to handle it. It was his understanding that

the parents were being assisted by an advocate at this time. It was decided that another IEP meeting be scheduled for September.

Prior to the September 2020 IEP meeting, Mr. Hoopes did not receive anything from the parents regarding D.G.'s participation in any therapy or counseling or psychiatric sessions. He did not see the June 10, 2020, Ascenda Integrated Health letter regarding D.G.'s participation in cognitive life skills therapy counseling sessions that was submitted by the juvenile justice counselor, Giovanna Drummonds. (P-30.) This was the first time Mr. Hoopes saw this document and it had not been presented to the CST.

Mr. Hoopes was aware D.G. was in counseling from conversations with his mother but he does not believe the specifics were discussed. Mr. Hoopes is aware that there was a psychiatric report dated May 2019 in D.G.'s file from Dr. Joseph Mobilio, but he does not recall the specific recommendations.

The September 9, 2020, IEP meeting was attended by D.G., his parents, their advocate; Marybeth Gilliland, Mr. Betley, Ms. Miller, Mr. Semen, Ms. Kraft, Mr. Major, and Mr. Hoopes. At this meeting, for the first time, the parents stated that they did not want D.G. placed in the BD program and that D.G. had demonstrated he could be successful. He had completed counseling through the juvenile justice system which was a court ordered part of his probation. The district felt that D.G. should remain in the BD program because there was not enough data to support his placement out of the program so the recommendation was that he remain in the BD program. They did discuss a transition plan as to how D.G. could transition out of the program if he demonstrated the proper behaviors and the data supported it. The district put the transition plan in writing to show good faith. Mr. Hoopes recalled the advocate wanted a detailed transition plan back into the general education setting. So, the September 9, 2020, IEP contained a more detailed transition plan. (J-4, page 2-1, and page 15-1.) They explained it to the advocate who stated it sounded like a reasonable plan and it was fair. Mr. Hoopes believed it was fair in that it was not ambiguous and gave timelines as to when things would occur and actually would move a little faster than they usually would. Usually, it is thirty to forty days, but they put thirty days. The transition plan provided that on October 14, 2020, based on success in the BD program (that is, behavioral/anecdotal data) D.G. will be

pushed out to trial two courses outside of the BD program. D.G. will trial these courses for approximately thirty days. On November 13, 2020, if D.G. is showing continued success in the BD program, as well as in the two courses he's trialing (that is, based on behavioral/anecdotal data), he will be pushed out to trial a third course. Then, at the end of the first semester, an IEP meeting will be held to review the data (that is, behavioral/anecdotal) and D.G.'s placement for the second semester. (J-4, page 2-1.) The BD program was going to be in person instruction as of September 14, 2020, and D.G. could potentially be placed in two general education courses by October 14, 2020, and if successful would be placed in a third general education class on November 13, 2020, and at the end of the first semester following an IEP meeting D.G. could be potentially out of the BD program altogether.

At the September 2020 IEP meeting, Ms. G. wanted D.G. removed from the BD program and placed into the general education setting immediately. In transitioning a student out of the BD class, they usually find out what class the student wants because they will be more successful. Then they talk about the student with the teacher and the program they are coming from and the data sheet they use. They do not track the data in ten-minute intervals, but the teacher will just monitor the six behaviors they are tracking for that class period. They would also send a clinical associate or behavior technician with the student in the general education class to help with the transition and then fade that support as appropriate.

There was discussion at the September 9, 2020, IEP meeting why the FBA was not done in the remote setting. Although Mr. Hoopes deferred to Mr. Major, the BCBA, Mr. Hoopes recalled stating that it was not appropriate to do an FBA in a remote environment for a student with D.G.'s profile of offenses. D.G. would not have authentic experiences in a remote environment for them to take data on and he would not have the interactions he would have in an in-person environment which would not provide them with any information for a behavior plan for D.G. if one was even needed. They did not feel that it would supply them with anything.

There were discussions regarding parental concerns at the September 9, 2020, IEP meeting. Ms. G. asked if she could submit her parental concerns in writing, which she did after the meeting. Her concerns were included in the IEP. (J-4, page 15-2.)

There were no discussions at the June 6, 2020, IEP meeting or the September 9, 2020, IEP meeting of D.G. enrolling in a private school. Mr. Hoopes learned D.G. enrolled in St. Joseph Academy in Hammonton shortly after the September 9, 2020, IEP meeting.

Graphs were taken of the behavioral data while D.G. was in the BD program. (R-31.)

Given the nature of the underlying issues with D.G. in the eighth grade and the fact that those girls would not be in the self-contained BD class, Mr. Hoopes was questioned as to how they would be able to address if D.G. had the skills necessary to be successful in the general education class setting. The whole thing with a FBA is tracking what you observe and then write a report. The BCBA would conduct the FBA over time and write a report based on their observations of D.G. in a variety of situations. Mr. Hoopes said although there are no general education students in the BD class, D.G. would be able to have some interaction with general education students during transition time from class to phys. ed or going to get lunch, even though he had no classes with general education peers, he would have the opportunity to walk with and to engage with general education peers. The BD program is housed in the eleven-twelve wing of the high school. Mr. Hoopes was not able to say whether they could use those settings to gage his behavior and that information, or these interactions could be used since Mr. Hoopes has never written a FBA and the question was better directed to Mr. Major, although he assumed they would be used but he did not want to do that.

Mr. Hoopes does not recall who was at the February IEP meeting other than the IEP team unless he saw the title page. (J-2.) Mr. Hoopes had a pre-law minor at Montclair State University. As a special education administrator, he attends special education professional development seminars and courses. He did not recall telling Mrs. G. at the June IEP meeting that she only gets one meeting a year and she already had one. He is aware parents can call a meeting at any time. He does not recall telling her that the settlement never said anything about changing placement of D.G. Teachers are not

permitted to leave their students unattended under normal circumstances. The BD program follows the same bell schedule as the rest of the school. The BD program sometimes allows breaks during academic time if it is earned. They can take walks at two different times a day that is scheduled. They can take a walk if they need it to clear their mind. The gym teacher for the BD class used activities such as basketball, track, and some structured and some unstructured activities. The students were able to interact. Ms. Kraft did a cooking class that was a social skills interaction. The case manager for D.G. was Mr. Semen. Mrs. G. had concerns about the settlement after March 16, 2020, because COVID-19 happened, and she called Mr. Semen who advised her that he had to talk to his supervisor which would be Mr. Hoopes. Mr. Hoopes does not recall any conversation with Mr. Semen at that time.

The settlement agreement provided that the petitioners will sign a written authorization to allow the High School counselor, social worker, and psychologist to communicate and/or consult with D.G.'s counselor that is providing services to D.G. through Gloucester County juvenile proceedings. (J-1, paragraph 2, page 4.) Mr. Hoopes stated that Mr. Semen would be better able to answer this question as to whether this happened. Mr. Hoopes does not know if this happened.

A FBA is done to see if a behavior plan needs to be implemented. It can be requested if there is a change of placement. A FBA should take sixty days on average to complete. On June 9, 2020, the school was on a different schedule than September. Marking periods run ten weeks.

The school considers important all data, behavioral, educational, and formal assessments by CST members. The BD program and resource room follows the general education standards for the grade level and design the instruction to meet the needs of the student. The transition plan would consider what was the least restrictive environment for the child from the BD program to either resource room or general education depending on the needs of the student. The least restrictive environment for a student is where they can reach their potential independently. Special education is a continuum of services provide in either self-contained, resource room or general education room depending on the needs of the student.

Mr. Hoopes does not recall knowing whether D.G. was on Adderall. He knows what it is and what it is used for.

On September 14, 2020, social COVID-19 restrictions were to remain six feet apart and wear masks. It was not difficult to observe children's actions due to social restrictions. They could still hear what they were saying and observe what they were doing. There was no physical interactions or sports. Students still participated in hands on activities, but not just as often because of the amount of planning involved. They had ESY for those that qualified in the summer. The school did open in person on September 14, 2020, for the BD program four days a week, with Wednesdays still remote. They went remote again sometime in November.

Students can play sports if they have behavioral problems in general. There are academic requirements to participate in sports. D.G. did play sports privately when he was on homebound instruction, but Ms. G. did not provide the district with any of this information.

Mr. Hoopes' attention was called to the actual data that was collected during the ten days that D.G. was in the BD program, in person. (R-31.) The behavior analyst took data every ten minutes in the classroom regarding the six categories and a 90% or above is a successful day. D.G. did very well during the ten days he was in person and monitored by the behavior analyst. His scores were 100%, 100%, 99.4%, 99.4%, 99.4%, 100%, 98.2%, 99.4%, and 100%. The district still needed five more days in person pursuant to the settlement agreement. When they went remote, they went to asynchronous learning and did not get to compile data because they were not live. They could not speculate what would happen for the next five days. There were discussions between DiNovi and the district regarding conducting a remote FBA for this case. DiNovi said they did not think a remote FBA would provide the information necessary given the limit of contact D.G. would have with students given the nature of why he was put in the BD program. There were discussions between Mr. Major and Mr. Hoopes that they would have to come up with some creative solutions if the school continued remote instruction, but they did not have to pursue that since school resumed in person in the fall. The initial shock of the pandemic put a hold on things initially, but they realized they would have to come up with solutions to deliver students access to education. They did have a

synchronous social skills class that was provided by DiNovi. Anecdotal data was collected but not formal data. The data was not as important as the interaction. The social skills classes were weekly. Counseling sessions were delivered by the school psychologist, Mr. Semen. D.G. had twelve sessions scheduled with Mr. Semen.

An email dated March 30, 2020, from Mr. Semen to D.G. offered remote behavioral supports from DiNovi. (P-9.)

Eren Devin Semen, is employed as a school psychologist for respondent and has been for six years. As a school psychologist, Mr. Semen's job is to support the needs of all students whatever their background may be and support them academically, socially, behaviorally, and emotionally so that they can be successful. He is assigned to the high school, ninth through twelfth grade. His first two years were at the middle school, and he has been at the high school the past four years. He is a member of the CST. His undergraduate degree in psychology is from Rutgers Camden and then he attended the Philadelphia College of Osteopathic Medicine to pursue his degree in school psychology. He completed his master's degree in school psychology in 2011-2012 and has his educational specialist certificate in school psychology. He is a nationally certified school psychologist. He also acts as a case manager and works with the students to make sure they are placed appropriately and provides resources to parents and students to navigate any challenges in the school setting and access the curriculum to be successful. He is also involved in the drafting of IEPs, attending IEP meetings and will provide counseling services to those students who have the services specified in their IEPs and will work towards achieving their IEP goals. The counseling services he provides are usually one-on-one but sometimes he does group counseling.

In March 2020, he was the case manager of the BD program at the high school and provided counseling support to individual students and also provided social emotional learning development for the class weekly to help the students develop social and emotional competence. There were two BD classes at the high school, Ms. Kraft's class, and Mr. Hasset's class. He was involved in both classes. His first involvement with D.G. was at the Bunker Hill Middle School when he was D.G.'s case manager in sixth grade.

He worked with D.G. for one year and then he moved up to the high school. He later became D.G.'s case manager again when D.G. moved up to the high school.

Mr. Semen is familiar with the February 2020 settlement agreement in which D.G. would be admitted into the BD program and is familiar with its terms. He was not involved in the drafting of the March 2, 2020, IEP placing D.G. in the BD program. (J-2.) His name is on the document as the case manager and participant, but his signature is not on the document. He was not involved in the formal IEP meeting and did not participate in the meeting. He does not recall being involved in any of the narrative portions of the IEP. The counseling goals in the IEP were not written by him. (J-2, page 8-2.) He is familiar with them and worked with D.G. on those goals.

Mr. Semen knew in general that D.G. came to be in the program because of some sexual interactions with other students, involving touching and verbal comments, although he did not know the details. Mr. Semen met D.G. on March 2, 2020, when he entered the BD program and Mr. Semen went to the class to meet him. Mr. Semen provided individual counseling sessions to D.G. A social skills class was embedded in the BD program and provided to the whole class and was not part of D.G.'s IEP. The individual counseling sessions were a related service set forth in D.G.'s IEP. (J-2, page 14-1.) In the thirty to forty-minute weekly BD class group counseling, Mr. Semen worked on the five competencies of social emotional learning. They are self-awareness, self-management, social awareness, relationship skills, and positive, responsible decision making. D.G. transitioned well into the program. The curriculum he used to deliver these components were from a website called 'CASEL.org' which goes through each of the components and gives a lesson, discussion, and activities for each of the areas. These sessions continued in the remote environment. D.G. attended all the sessions and missed only one.

The individual counseling sessions he worked on with D.G. were related to D.G.'s counseling goal which was "When given real or imagined scenarios of social conflict, D. will demonstrate problem solving skills by identifying the problem and generating two solutions appropriate to the solution without prompting with 80% accuracy as measured by observational data records." (J-2. Page 8-2.) Mr. Semen would come up with different

scenarios and D.G. would come up with some and they would discuss working towards appropriate responses and solutions to the problems. An example of a social conflict scenario they discussed was that if you were walking in a crowded hallway transitioning between classes and you shouldered someone, and they turn around and say, "what is your problem." His first response was "my bad" and apologized, which was an appropriate response. Building on that scenario, Mr. Semen further asked D.G. what if they kept yelling at him and D.G. responded that he would keep walking away which was an appropriate response. Then Mr. Semen added what if he kept yelling and said, "keep walking you baby," D.G. said he would then punch them in the face, which Mr. Semen said was not an appropriate response and then D.G. added that he was just joking, but that was after Mr. Semen said it was not an appropriate response.

There were twelve individual counseling sessions offered and D.G. attended six and missed six sessions.

Mr. Semen prepared a document that accurately reflects the records Mr. Semen took regarding the social skills class dates and the topics being discussed and who was attending during remote instruction. There is a notation that D.G. missed the class on April 29, 2020, and that his mother called to apologize it was her fault and there was a mix up regarding the time. (R-1.)

Mr. Semen prepared a three-page document regarding D.G.'s attendance for the individual counseling sessions during remote instruction. (R-2.) He did have in-person counseling sessions with D.G. when they were still in person which was more of a 'meet and greet' before they closed for in person instruction. D.G. was very engaged in the counseling session and was receptive when his responses were not appropriate, and he understood Mr. Semen's explanations.

Mr. Semen reached out to Ms. G. by email on March 30, 2020, regarding behavioral supports in the in-home setting that was being offered by DiNovi. Mrs. G replied back on April 2, 2020, but it went to her husband's email and was not forwarded to Mr. Semen until April 23, 2020. (R-6.) The behavioral supports were being offered to those students not engaged in doing their work in order to help them get engaged in their

academic work. D.G. was engaged in his work and was logging on and therefore did not need these supports.

A May 13, 2020, email from Mr. Semen was sent to D.G. stating that the social skills class was taking place on Teams, but Mr. Semen's did not see D.G. on-line. (R-7.) Mr. Semen's email was read by D.G. and then he jumped on-line after receiving the email and did join the class. (R-1.) Mr. Semen sent D.G. an email on May 14, 2020, advising him that he was on-line for their individual counseling session but D.G. did not attend. (R-8 and R-2.) Mr. Semen sent D.G. a counseling homework assignment by email May 15, 2020, requesting he come up with one real or imaginary problem that he or someone else may come across and generate two or more appropriate solutions pursuant to his IEP goal. (R-9.)

Mr. Semen attended the June 9, 2020, IEP meeting as the case manager. (J-3.) The parts of the PLAAFP he completed were regarding the counseling services. (J-3, pages 2-3.) Mr. Semen recommended that D.G. continue with individual counseling because he did not master his goals. The team recommended D.G.'s continued placement in the BD program which he agreed with because the reasons he was brought into the BD program was his interactions with other students and he was not able to see if he could translate his skills into a real-life setting with other students. The parents were engaged in the meeting, and he does not recall Mrs. G. being 'shooshed' or the meeting being contentious. Mr. Semen did not recall if the parents wanted anything included in the parents' concern section of the IEP during the June meeting. He does remember a transition plan being discussed and the FBA requirement and it not being conducted because they were not in school fifteen days and needed another five days in school before starting the FBA. Mr. Semen does not do FBAs. It was his understanding the DiNovi would be handling the FBA portion of the settlement agreement. He did not recall the specifics of how long it would take DiNovi to do the FBA. The Notice requirements were drafted by Mr. Semen. (J-3, page 15-1.) A transition timeline was discussed that at the end of the first marking period they would look at the data and discuss placement in the BD program and begin pushing out classes. Mr. Semen does not recall discussing the transition plan with D.G. Mr. Semen does not specifically recall any discussion regarding completing the FBA in the remote setting.

The parents did not sign the June 9, 2020, IEP although Mr. Semen sent it to them. Mr. Semen does not work in the summer and learned of the parents request for another IEP meeting when he returned to school after the summer and then contacted his supervisor and everyone necessary to schedule another IEP meeting as soon as they could. He does not recall anyone ever advising the parents that they were only entitled to one IEP meeting. That would be contrary to the law.

The September 9, 2020, IEP meeting was held remotely and was attended by himself, Ms. Miller, Mr. Hoopes, the parents, the parents' advocate; Marybeth Gilliland, Mr. Betley, the behavior analyst from DiNovi; Mr. Major, the special education teacher; Ms. Kraft, as well as a general education teacher. At the September 9, 2020, meeting the parents' concerns were that Mrs. G wanted D.G. to return to the general education setting on September 10, 2020, which option was not agreeable to the CST team. The CST wanted D.G. continued in the BD program because he had not reached mastery of the social interaction goal and the FBA had not been conducted and Mr. Semen could not observe D.G. interact with other students so he did not feel he had the skills to translate outside of the BD program. Mrs. G. did forward emails from past instructors and sent some character references to Mr. Semen, but he does not believe that was before the June meeting. Details of the transition plan were discussed at the September 9, 2020, IEP meeting. D.G. was to be in the BD program for thirty days and transitioned out for a couple of classes. In November, they would revisit how D.G. was doing and if he was successful, to transition D.G. out for three courses. After the first semester they would review all of the data from the BD program, counseling sessions, as well as the classes he was transitioned out for and at the end of the first semester discuss D.G.'s continued placement in or out of the BD program, so after thirty days he could transition out for two courses he preferred and after another thirty days if all went well he could go out for another third course in the general education setting and possibly be out of the BD program after the first semester. The purpose of the BD program is to strengthen the student's weaknesses and is supposed to be a temporary placement.

The advocate sent Mr. Semen the parents' concerns they wanted included in the IEP. The advocate wanted D.G. out of the BD program sooner. Nothing was said at the

September 9, 2020, IEP meeting about D.G. applying to St. Joseph's in Hammonton. He recalls an email from Mrs. G. advising of D.G.'s placement at St. Joseph Academy. A September 21, 2020, email from Mrs. G. to Ms. Kraft advised that D.G. was attending a different school. (R-23.) Mr. Semen does not specifically remember how he was made aware of this fact. An email stream shows Mr. Semen being advised on September 22, 2020, that D.G. was enrolled in a private school. (R-25.)

Mr. Semen is aware of the IDEA and special education students and FAPE. He has attended continuing seminars and workshops. Special education students were still to get their services even during the COVID-19 pandemic. Mrs. G. sent an email to Mr. Semen dated April 2, 2020, regarding her concerns moving forward with FBA and academics during remote instruction. Telephone logs reflected telephone calls between Mrs. G. and Mr. Semen. (P-18.)

Mr. Semen is the school psychologist and works mainly with the special education students, but he will help with other students who need assistance. He has worked in a school setting during graduate school. Mr. Semen does recall being a case worker for D.G. at Bunker Hill. D.G. entered the BD program on March 2, 2020, and he had to get adjusted to the setting. On February 12, 2020, it was decided he would be in the program, and he arrived on March 2, 2020. Mr. Semen knew D.G. would be entering the program. He believes he was aware of his diagnosis of ADHD. Mr. Semen could not recall specific traits of ADHD that D.G. had. Mr. Semen did not recall when D.G. forgot his medication and Mr. Semen had to meet the father to deliver the medication. Prior to D.G. starting the BD program, the parents came in for a meeting with the whole team, which Mr. Semen did not recall.

During the individual counseling sessions Mr. Semen worked with D.G. on his counseling goals in the IEP. The June 9, 2020, IEP counseling goal was "When given real or imagined scenarios of social conflict, D. will demonstrate problem solving skills by identifying the problem and generating two solutions appropriate to the scenario without prompting." (J-3, page 8-1.)

The objectives for the goal were as follows:

“When given real or imagined scenarios of social conflict, D., will demonstrate problem solving skills by identifying the problem and generating two solutions appropriate to the scenario with minimal assistance 90% of the time Anecdotal/counseling notes.

When given real or imagined scenarios of social conflict, D. will demonstrate problem solving skills by identifying the problem and generating one solution appropriate to the scenario with moderate assistance 80% of the time. Anecdotal/counseling notes.”

(J-3, pages 8-1, 8-2.)

The reason Mr. Semen said D.G. did not meet the goal was when he gave the earlier example of a social conflict in the hallway related to the school setting in between classes when there was a lot of students and traffic and he bumped into someone his initial response was that he would say ‘My bad’ and would apologize. When Mr. Semen took the scenario a step further and said what if the person said, ‘keep walking baby.’ D.G. replied that he would have turned around and would have punched him in the face. This led Mr. Semen to believe that D.G. needed more counseling. D.G. said he meant it as a joke after Mr. Semen said that was not an appropriate response. Mr. Semen knew that D.G. was going to have to transition/push out of the BD program and would be in these situations and wanted to make sure he had the social conflict skills to transfer to the general education setting. Although he said he was joking, it was after the fact and after Mr. Semen looked shocked at the response then D.G. said he was joking. Mr. Semen is not in D.G.’s head and does not know whether he was joking or not, but physical aggression is not an appropriate response. Mr. Semen is not aware of D.G. ever having punched anyone in the face before since he has been in the school district.

Mr. Semen somewhat recalled receiving an email from Mrs. G. regarding an incident that occurred with D.G. and T.C. the first week when D.G. came back to school but did not recall the specifics of the email. D.G.’s behavioral contract requires him to stay away from certain individuals T.C. called the house and Ms. G. emailed the team. Mr. Semen does not recall discussing this real-life situation with D.G. during his conflict

resolution counseling sessions. Mr. Semen was aware that the behavior that caused D.G. to be in the BD program involved D.G. making very vulgar sexual comments and inappropriate sexual physical contact with various other students. Mr. Semen does not recall discussing any of his sexual misconduct with other female students with D.G. Mr. Semen did not observe any sexual misconduct by D.G. during the two weeks he was present in the program. Mr. Semen is familiar with FBAs. It is a functional behavior assessment and is used to determine any behaviors and the function of those behaviors if there is one. A student should be observed a minimum of three times in three different settings when doing a FBA. The counseling goal was not met so they would continue that goal since it was not mastered. If D.G. was in a different placement outside of the BD program, Mr. Semen would provide counseling if it was in the IEP. He would provide the related service, no matter where in the high school the student was placed.

In Mr. Semen's opinion, D.G. had to stay in the BD program because they were not able to comply with the settlement agreement in conducting a FBA after D.G. had been in the BD program fifteen days and the fact that D.G. had not met his counseling goals. Mr. Semen does not recall his conversations with Mrs. G. regarding the FBA, and it not being done.

Mr. Semen does recall conversations with Mrs. G. regarding behavioral supports for D.G. from DiNovi. If students were having trouble logging on it was to help them access the lessons and the teachers. DiNovi was working during the COVID-19 pandemic with families that were referred to them by the school. Depending on the circumstances, they provided services in the home and in person on a case-by-case basis. The settlement called for a FBA to be conducted after D.G. was in-person fifteen school days and then it would be conducted. It was his understanding that D.G. be in the BD program in-person fifteen days before the FBA was started.

The last page of the settlement agreement was signed by the parents on February 25, 2020, and the signature of Ms. Miller, and a member of the board were not until May 11, 2020. (J-1.)

The settlement agreement paragraph two of page four states “Petitioners will sign a written authorization to allow the high school counselor, social worker, and psychologist to communicate and/or consult with D.G.’s counselor that is providing services to D.G. through Gloucester County juvenile proceedings.” (J-1, page 4.) He did not recall if this ever happened. He did not recall petitioners signing an authorization. Mr. Semen does not recall receiving an email from D.G.’s primary care physician or the outside counseling service.

Giovanna Drummonds. A juvenile justice counselor from Ascenda submitted a June 10, 2020, letter indicating D.G.’s participation in their cognitive life skills program. (P-30.) Mr. Semen does not recall this document or seeing it before. He is aware of Ascenda. Mr. Semen was not aware that D.G. had counseling three hours a week for counseling cognitive support from Ascenda. Mr. Semen was aware that D.G. was receiving supports outside of school but did not know the specifics.

During D.G.’s freshmen year, Mr. Semen was aware of a psychiatric evaluation being done by Dr. Joseph Mobilio at the request of the school district. (P-3.) His report indicated that D.G. had no loose associations, hallucinations, no psychotic thinking, not homicidal, not suicidal. Mr. Semen has no reason to disagree with what Dr. Mobilio found in his report, since he has not witnessed any such things with D.G. Dr. Mobilio further stated that he did not believe D.G. was a current danger to himself or others and that with the aid of counseling and psychiatric intervention he believed he could be a more productive student and be more successful in the interpersonal realm. (P-3, page 5.) Mr. Semen could not say he agreed with this statement in light of D.G.’s telling him that he would punch someone in the face during a counseling session. Although this session concerned him, it was not reported to the parents or his supervisor because he was not an immediate threat to other students since it was a role-playing scenario. If D.G. did physically harm someone, he would notify all the appropriate parties. The diagnostic impressions section of Dr. Mobilio’s report states that D.G. most certainly has attention deficit disorder hyper-active type, that is not well controlled or treated. Mr. Semen has research and books to reference on strategies and modifications to deal with attention deficit disorder as a school psychologist. Dr. Mobilio also indicated that he would want to rule out a form of bipolar disorder, which would require further assessment. Dr. Mobilio

also indicated that a general anxiety disorder may also be present. This psychiatric report went to the school because it was the school district's doctor.

D.G. was in school for ten days in person and then remote due to the COVID-19 pandemic in the BD class. Although there was school, there was no FBA done. (J-1, page 5.)

During the September 9, 2020, IEP meeting transitioning was discussed. Preferred academics were discussed as opposed to electives. The transition plan for D.G. was choosing a preferred academic class. Mr. Semen explained that they were going to discuss this further with D.G. which class he preferred but D.G. never came back to school. They would ask the student which class they prefer because they would have more motivation to succeed. The district would then check if there was room in the schedule and many factors were considered including teacher input and schedules. When school went back in September 2020, they were a hybrid. They went back to being remote again after returning but he did not recall when. Mr. Semen did not recall discussions about what happened if the school went remote during the IEP meeting in September. Mr. Semen recalled corresponding with the advocate regarding the parental concerns. He did clearly remember the discussions regarding transitioning D.G. out of the BD program and that Mrs. G. and her advocate believed it was a good game plan, but Mrs. G. wanted to check with her husband.

On October 2, 2020, Mr. Semen sent an email to Mrs. G.:

“Good morning Mrs. G.!

I wanted to thank you for your updates and keeping me in the loop regarding D. and his new school. I really hope the best for him there and know he will do great!

I meant to send this updated IEP the other week, but I realized I never hit send. I had sent you one on 9/14/20 that included the plan to transition D. out of the BD program, as well as your parental concern statement. However, the updated 'options considered and reasons why they were rejected' on page 15 (we discussed during our meeting on 9/9/20), I realized was not included. So, I wanted to make sure to send it to you.

I hope you and your family have a wonderful weekend!

Best,

Mr. Semen”

(P-33.)

The IDEA governs special education. Interventions and supports are provided the student according to their IEP. Mrs. G. was part of the IEP team as the parent and has input as to her thoughts and concerns. There was a draft or skeleton IEP made in advance of the June 9, 2020, before the Zoom conference was conducted and things are added during the meeting. D.G. advised the team that he felt better in person with social skills and counseling sessions than remotely, and he was involved in the IEP process. The least restrictive environment was considered in both the June and September IEP. It is always discussed at the IEP meeting. The BD program was to be continued because D.G. did not master the counseling goal and that the FBA was not done that was part of the settlement agreement.

DiNovi, the behavioral consultants were working during the COVID-19 pandemic. D.G. was in the BD program on the fifteenth day. Mr. Semen is not aware if DiNovi was contacted on the fifteenth day regarding the FBA for D.G. As D.G.’s case manager, he did not look into it because D.G. was only in school ten days he was not in it for the last remaining five days. D.G. needed to be observed in a school setting. DiNovi provided services for lack of engagement and to make sure students were accessing curriculum and logging on. The company was working and going to the home to provide these services. They were not doing any FBAs in the home or other behavioral analyses. There are many components to a FBA. Observations are data, as well as interviews with parents and the teachers and record reviews. If something is not observed, it is also data. It is important when observing the student for it to be present behavior.

In response to whether a FBA could have been conducted in the home setting or remotely, or something else substituted instead, Mr. Semen stated that a FBA in the home setting would not make sense when the behavior was in the school setting. As far as

other sources of data from teachers, doctors, or counseling, Mr. Semen stated that D.G. had weekly social skills classes, which were virtual and not physical interactions with other students. Everyone was not in the same physical proximity to each other.

Joseph Brian Major is employed by Brett DiNovi and Associates as a behavioral consultant. He oversees the behavioral programs for learners who exhibit behavioral difficulties both in district and in the home environments. He oversees teachers and plans and oversees the implementation of the plans. He received his master's degree in 2013 in behavioral analysis and also has a bachelors' degree. He is a BCABA. He obtained his behavioral analysis board certification in either 2016 or 2017. This allows him to do a FBA or a functional behavior assessment which identifies the problem behaviors and determine the function (the why) of the behavior and formulates a plan to teach positive replacement behaviors for the maladaptive behavior. He has been doing consulting work with WTHS for three years and oversees the two BD classes at the high school. He oversees the staff helping with the program, conducts data analysis, does FBAs, and works with the staff as well as teachers. His primary contact in the district is Mr. Hoopes. The program initially started at the middle school and then was carried over into the high school. It is team based and now mostly overseen by Mr. Major and Mr. Hoopes. In March 2020 pre-coronavirus, the BD program was supervised by Mr. Major with Mr. Hoopes as direct support. There were two BD classes, rooms C-2 and C-4, the younger students being in C-4 and the older ones in C-2. Germaine Morris was the registered behavior technician in C-4 and Ryan was the WTHS district assistant and the teacher was Ms. Kraft. The other teacher was Mr. Hassett. The registered behavior technician provides direct support to the learners and gives Mr. Major data. Both rooms have a DiNovi RBT, a district support, and a teacher.

Mr. Major first met D.G. when he attended in early March 2020, and he had several conversations with D.G. but nothing sticks out. He had done well. He had data taken on him during the two weeks in the class. Every learner has data taken every ten minutes. They take partial intervention interval data throughout the day and then the information is graphed. The categories are task refusal, physical aggression, elopement, etc. Nothing stood out when he first met D.G. The long-term goal of the BD program is to increase positive behaviors and replace the maladaptive behaviors so they can be systematically

reintegrated into the general education setting. Throughout the day they take data and reinforce positive behaviors. A successful day is considered 90%. So, if a learner has 90% consistently over a long enough time period and they can demonstrate that they can be successful in general education, they will gradually push them out. They have been very successful in WTHS. He has other public-school districts he supervises and consults with. He has worked in other BD programs.

The partial interval data sheet regarding D.G., taken in the BD program class C-4, tracked the behaviors of non-compliance; off track; verbal disruption and physical disruption. (R-30.) D.G. was 0% non-compliance and had off-task behavior 3-4% on March 10, 2020, and physical disruption a couple of times. The registered behavior technician took the data, and the district employee is trained to take data also. The district aide in classroom C-4 was Ryan Francisco. The behavior graph for D.G. is made based on the data. (R-31.) This data is different from a FBA as it is programmatic to the BD program, but it can be used for a FBA. To transition out of the program they want to see scores above 90% for thirty to forty-five days. They look at data, grades, social skills, and all of the things necessary to be successful in general education. Then they look to trial other classes outside of the BD room and systematically push them out to either one they prefer or are doing well in. The timeline is usually thirty to forty-five days to push the student out of the BD program because that gives them enough data. The student would first be put in class they prefer or are doing well in and then maybe take an elective for their second class. The BD class is a very structured environment, and they basically stay with their class. They eat lunch in their room and walk together to gym class.

Mr. Major had knowledge of the settlement agreement in March 2020 and was aware of the charges against D.G. that caused him to be out of school. The charges were sexual in nature and highly inappropriate. A FBA was never done for D.G. Mr. Major had discussions with Mr. Hoopes and Mr. Semen regarding the FBA having to be done in the school environment. During the pandemic they were not even in synchronous learning. The FBA would have to be done in the environment where you were seeing the maladaptive behavior. From March 2020 until the end of the school year, DiNovi was not doing any FBAs in WTHS and not providing any services in the home. DiNovi was providing behavior support remotely.

Mr. Major attended the June 9, 2020, IEP meeting and they talked a little bit about what D.G.'s transition would look like. He does not recall any discussion about the FBA. If D.G. engaged in positive behaviors for thirty days, he would be offered a general education class to trial and if successful, in another thirty days adding another class. He does not recall any controversy during the meeting. He does not recall anyone saying why the FBA was not done. The decision was made to continue D.G. in the BD program for the next year, which he agreed with in order to get more data before a change of placement would be made.

The September 9, 2020, IEP meeting included the parents' advocate, there were discussions regarding the transition plan needing to be in person and in school to collect the data and the FBA needed to be conducted in the environment they were measuring it in. Mr. Hoopes commented that on October 14, 2020, he would trial D.G. to two academic classes and after another period of time, an elective would be tried and if successful, D.G. would be moved into a less restrictive environment. When the transition plan was discussed again at the September IEP meeting, the advocate was in favor of the plan as was Mrs. G., but she wanted to get back to the team and did not accept it at the meeting. The IEP team at the September 9, 2020, IEP meeting decided to continue D.G. in the BD program. Although, Mr. Major was not part of the IEP team he agreed with the decision since D.G. had been out of school for some time, and they needed more time in the school setting to get more data points. He understood that the parents wanted D.G. returned to the general education setting right away but he disagreed.

D.G. was in the program for ten days scoring above 90% and was considered successful. (R-30.) They needed five more days to get the baseline data. Subsequently, they would start the FBA with a records review and interviews with the teachers, parents, and staff. Followed by direct observations of the behavior and targeting the behaviors they witnessed, if any, to determine why they were occurring and formulating a behavioral plan. If there were synchronous learning through Zoom, he still believed they needed to be in person. This specific case he believed required the data to be collected in person. They did take less stringent data during the COVID-19 pandemic, more anecdotal, but it would be difficult to quantify elopement and physical aggression remotely. D.G. had

certainly had a good start during the time he was in person, with no maladaptive behaviors observed, but it was not a long enough time period. They have learners that start out fine and then engage in maladaptive behaviors.

As far as the data being collected in the BD program, they would need thirty to forty-five days of successful behavior before beginning transitioning D.G. out of the program. According to Mr. Major, the FBA was a separate issue that was in the settlement agreement. The FBA would not really have an effect on the change in placement.

In the BD program, the students are not allowed to walk around the building without supervision. If a student is on their way out of the program, they may win the privilege to walk in the hallway unsupervised, but basically, they are in the same class with supervision all of the time. They have a separate entrance and exit into the school. FBAs were not common on learners in the program. The BD program uses positive reinforcement procedures. At the September 9, 2020, IEP meeting he recalled Mrs. G. being on board with the IEP plan. A FBA can be done after a manifestation determination hearing. He was not sure if they can be done in a ten-day timeframe.

The procedures followed for a student with an IEP are still followed in the BD program and do not conflict with the requirements of the student set forth in their IEP. Creating a BIP following a FBA, would assist a child being placed in a least restrictive program. During the September 9, 2020, meeting, Mrs. G. wanted D.G. in the general education class. He recalls discussions regarding Mrs. G.'s concerns about D.G.'s academic rigor by keeping D.G. in BD with Ms. Kraft but allowing D.G. to have some general education classes remotely. However, the district did not agree to this plan. The only data on D.G. collected by DiNovi was reflected in exhibits R-30 and R-31.

The BD program collects data on the student until they are out of the program and even then, they still would do check-ins with the teacher in their new class to make sure the student was successful. The timeframe of successful days for D.G. to be transitioned out of the BD program was thirty days. Even in September of 2020, when school resumed with social restrictions such as masking and maintaining six feet social distance, there was still ample opportunity to observe behaviors in the school setting. There were some

cooperative learning experiences in the BD program. He is not part of the CST, but he still helps and supports them. He is privy to the learners in the BD program and works with their goals. Mr. Major would have discussed any behavioral concerns with Mr. Semen.

Mr. Major knew the charges against D.G. were sexual in nature and inappropriate and that there was a settlement agreement. When a student is transitioning from the BD class they are escorted back and forth to the class and slowly the learner transitions to independence. Lunch is considered an unstructured program that a learner can go to see if they can be successful as there is lots of opportunity for interaction.

Mr. Major would not be conducting the FBA of D.G., it would be done internally by a WTHS behavioral specialists based on their own data and observations. Mr. Major would assist. The internal personnel would do their own observations and could use the DiNovi data, but do not have to, although it would make sense to use their data. He does not know who from the district was going to conduct the FBA on D.G. There was no other data collected by his firm aside from the charts and graphs.

There were discussions between DiNovi and the district regarding conducting the FBA remotely, however they did not come up with any strategies to accomplish this plan. Mr. Major did see D.G.'s reports when he entered the program. Mr. Major did not receive any records regarding counseling that was part of D.G.'s probation in the juvenile proceeding. He believes counseling was mandatory, but he does not remember receiving anything, in writing, but he may have learned of the counseling in conversations with personnel.

Annette Miller is assistant superintendent of special education and student services for respondent school district. Her duties and responsibilities include oversight of individuals and programming for special education and student services including related services such as nursing, health services, and counseling services and she is also the COVID-19 czar for the school. She is the co-chair of the district health and safety committee which is comprised of district officials, staff, and community members and they

work closely with the Department of Health to come up with the rules and guidelines for the district.

Her entire career has been with the district. She started in 1985 as a special education teacher in the high school in a program for the perceptually impaired and students who were classified as emotionally disturbed and then moved to an elementary special education position at the Birches Elementary School. While at Birches Elementary School, she also became a teacher in charge and eventually became the building principal at Birches Elementary School in 2007. In 2014, she moved up to the central administration offices. Since 2014 she has held her current title.

She graduated in 1985 from East Stroudsburg University with her BA in special education/ teacher of the handicapped and then graduated from Rowan University in 1992 with her master's degree in special education with a certification as a learning disabilities teacher consultant. She received a certification for student personal services which is now known as school counseling. She graduated from Wilmington University in 2006 with a master's degree in educational leadership and holds certifications as a school principal and school administrator.

Ms. Miller knows D.G. and is generally aware of his inappropriate behavior in eighth grade related to sexual misconduct with female students that lead to the disciplinary action. He was suspended in eighth grade in 2019 and the parents requested he be on home instruction. D.G.'s freshman year he was on home instruction. The recommended placement of the CST was a therapeutic placement at the Creative Achievement School which is a private school in Vineland with a small population that provides heavy doses of social skills and counseling. They have a large animal program. Ms. Miller visited the school to make sure it was appropriate and calm for D.G. The parents disagreed with that placement and D.G. remained on homebound instruction. The Board's recommendation of suspension was supposed to be for the remainder of ninth grade. Ms. Miller was involved in the settlement agreement. She had discussions with the parents regarding their concerns with homebound instruction. Although this was their decision, she agreed that homebound instruction was the most restrictive placement you could put a child in and believed that D.G. should return to a general education

learning environment. After discussions with the attorneys and reaching the settlement agreement, Ms. Miller advocated before the Board to allow D.G. to return to school. She asked them to reconsider the year-long suspension and allow him to come back to the high school in their BD program, which she was very familiar with. The Board had a lot of concerns based on the nature of the sexual misconduct, the safety of the females involved, and whether if repeated, D.G. find himself in trouble again. The Board was persuaded to give D.G. a chance to return to the high school. While D.G. was suspended and on home instruction, he was not permitted to participate in extracurricular activities. D.G. was allowed to participate in sports when he returned. The parents felt D.G. enjoyed sports and needed to continue. He was interested in baseball at the time the settlement was being entered and Ms. Miller called the athletic director, Mr. Murphy, to make sure his health appraisal form and the strict deadlines would not prevent D.G. from being allowed to participate. D.G. ultimately did not join baseball, but Ms. Miller wanted to make sure if he wanted to it would be possible.

Ms. Miller refers to the BD program as the “emotional support” classroom. There are three levels of support in place including counseling, social skills, and a curriculum in line with the standards, as well as the opportunities to develop life skills. They have highly educated teachers, and the program has the direct support of a behavioral analyst, Mr. Major of DiNovi, as well as the registered behavioral technicians assigned to the program. This program has allowed students with challenges not only with behavior issues but with difficulties with low tolerance for frustration, self-regulation, and anxiety issues to develop the skills to be successful not only in school but in life and have seen tremendous success. Mr. Semen, the school psychologist is assigned to the BD program and works hard with the students in establishing a relationship and in providing counseling services. Ms. Miller really wanted D.G. back to school and out of home instruction and knew the instructors and Ryan the paraprofessional in the BD program would be able to embrace D.G. and develop the skills he needed.

The mission of the program is to give the student the tools to get the student back in the least restrictive environment as quickly as possible with success in a more natural setting with typical peers. They also want them to be a WTHS student and participating in anything they need to participate in to be that student. As far as the academics, the

district has contracted with the American Reading Company for a program that allows students to access the curriculum at their various reading and writing levels. Most of the students in the BD program are either at grade level or close to grade level but they do have some students that are below grade level and need differentiated materials and this program does that and is an outstanding program. It is not a special education program. Math, science, and social studies students use the same materials used in the high school program and the school counselor's role is to make sure they are getting adequate credits. If D.G. transitioned from the BD program, because it is a small class, the teachers work closely to make sure the transition is seamless.

The FBA was part of the settlement agreement. The attorney for the parents and D.G. requested a FBA and the district agreed. The FBA would be conducted after D.G. had time to acclimate back to a school environment since he had been out of school for a long time and would need time to acclimate to a new setting. He was in middle school when he left and now, he was going into a larger high school. They wanted to give him an opportunity to acclimate and then do a FBA. Due to COVID-19, it did not happen. The fifteen days were going to collect data. After the fifteen days the FBA would be done across various settings to see if a BIP was needed. She has not completed a FBA herself. The purpose of a FBA is to identify the function of a behavior to identify the antecedents of the behavior and to reinforce positive behavior and give a replacement behavior which would be in a behavior improvement plan. The district had two in-house behavior consultants, and they would do independent FBAs because they do not use DiNovi because they are heavily entrenched in their BD program. The behavior consultant (BC) in-house that would probably have done the FBA was Jennifer Mannelly. Ms. Miller is of the opinion that the behavior impacting D.G.'s education occurred in the educational setting, so they needed to conduct a FBA in an educational setting at different times of the day. A FBA at home is only if the behavior is happening in the home for example, if the student is school phobic. They are perfectly fine in school, but the behavior happens in the home. So that is where a FBA would be conducted in the home. D.G.'s behavior happened in a school environment with students and not adults.

Ms. Miller reviewed the IEP from June although she was not in attendance at the meeting. Mr. Hoopes attended the meeting and she spoke to him after the meeting. He

did not say there were any problems, and the meeting went well. She reviewed the parental concerns. Prior to this hearing she was never made aware of any complaints regarding how the IEP meeting was conducted or that the parents were intimidated or harassed at the June IEP meeting. Based on her review of the June IEP, she believed D.G. received FAPE for the 2019-2020 school year. The district provided the program that had an education that was also supported by related services. The district provided an asynchronous learning environment during the pandemic. Regardless, the teachers still taught, counseling was offered to D.G., social skills classes were occurring, and teachers kept data. D.G. did well his ninth-grade year and was on the honor roll, he turned things in, and completed his academic requirements. The team recommended D.G. continue in the BD program for his sophomore year. This was the same recommendation made at the September meeting which she attended. She agreed with the recommendation. D.G. benefited from an individualized program the BD/emotional support program with those supports and FAPE was provided in the LRE.

The BD/emotional support program had academics, daily social skills entrenched in the program, counseling, and the support of a behavior analyst. Also, he had the opportunity to participate in extracurricular activities. Also, the aid in the BD program Ryan, is a football and lacrosse coach who encourages the students to do sports, which Ms. Miller thought would be good for D.G., as did his parents.

Ms. Miller agreed that D.G. needed the BD program for his sophomore year based on the information they had. He required the counseling and the social skills to help him with his decision making and interacting with female students in particular, knowing the covert behavior involved in the sexually oriented activities that got D.G. into trouble. So, when he did transition out of the BD program and eventually into the world in general, he would be able to act appropriately independently without prompting.

Mrs. G. had sent Ms. Miller an email and asked for another IEP meeting at the end of August to discuss the parental concerns. The parental concerns were raised regarding D.G. being put into less restrictive courses outside of the BD program. Ms. Miller's recollection of the transition plan was that D.G. would trial a course and elective in the middle of October and then another class added thereafter so that he may be trialing

three classes by mid-November. The advocate felt it was a great step and so did Mrs. G. but she wanted to speak to her family. Nothing was discussed regarding anything inappropriate happening at the June meeting. When she left the September IEP meeting, the team expected D.G. to come back to school in-person the next week in the BD classroom. She did not receive any word from the parents that they were rejecting either of the IEPs. She did not receive any notice from the parents that they intended to enroll D.G. in an out of district placement. The first time she was aware D.G. enrolled in St. Joseph Academy was when she received word from Mr. Semen and Mr. Hoopes after the September IEP meeting when they were transferring D.G. out. She herself was not specifically notified.

The June 9, 2020, IEP transition plan indicates that the FBA was unable to be conducted due to remote learning because of COVID-19 and would be conducted once they were able to physically return to school. D.G. was in school ten days prior to remote learning and therefore an additional five days would be needed before the FBA commenced. Once the FBA was conducted and completed, another IEP meeting would be held towards the end of the first marking period to discuss the results of the FBA, as well as D.G.'s placement within the self-contained BD. (J-3, page 15-1.) The parents were concerned about D.G. being allowed to participate in classes outside of the emotional support classroom and requested another IEP meeting which was conducted September 9, 2020, at which a more detailed transition plan was discussed. (J-4, page 2.1.) Under the "General Description" narrative the transition was discussed. Mr. Hoopes had indicated that this transition plan, although it was discussed with the parents at the June 9, 2020, IEP meeting, was not set forth specifically in the June 9, 2020, IEP. (J-3, page 15-1.) The September 9, 2020, IEP specifically reflects the transition plan Mr. Hoopes discussed at the June IEP meeting. Board approval was not necessary for a change in placement for D.G.'s tenth grade year. The settlement agreement had provided that if the CST was considering a lesser restrictive environment than the BD program during the ninth-grade year, the Board wanted to be made aware of that and approve any change because they were concerned about the safety of the girls involved and for D.G. not to find himself in the same predicament as before. Ms. Miller had advocated for D.G. to return to school and be in the emotional support/BD classroom and receive the necessary emotional support, counseling, and strong social skills the class offered. The

Board reluctantly agreed to the settlement, but the agreement also required board approval for any change in placement for D.G. for ninth grade. No such board approval was required for D.G.'s sophomore year.

Dr. Mobilio, prepared a psychiatric report at the district's request dated May 30, 2019. (P-3.) Dr. Mobilio at page five, paragraph two of his report stated, "I do not believe D. is currently a danger to himself or others and, certainly, with the aid of counseling and psychiatric intervention, I believe he could be a much more productive student and be much more successful in the interpersonal realm." At paragraph four of his report Dr. Mobilio stated that he strongly believed that the summer months should be utilized to have D. engaged in psychiatric care and be on psychiatric medications and also have regular counseling with at least a master's level counselor who is well versed in ADHD and anxiety disorders and anger management to assist with D. being able to re-integrate into a mainstream situation in the fall and that he recommended these things to D.'s parents. Ms. Miller is not aware if D.G. underwent any psychiatric counseling in the summer of 2019. She did see a counseling letter from Ascenda as part of his juvenile probation proceedings, but she did not get any specific information about this. The Ascenda document was not given to the CST or anyone else from the district before these proceedings.

The Ascenda certificate of program completion dated June 10, 2020, was not provided to the district prior to this proceeding. (P-30.) Ms. Miller maintains a paper file, and this was not in it. She did not recall receiving any reports or evaluations from any health care providers indicating that D.G.'s behavior had improved due to medication.

Ms. Miller believes the June and September IEPs were designed to deliver FAPE to D.G. They were individualized educational programs designed to meet D.G.'s needs and provide services that would allow him to grow and be productive outside of the WTHS school district. The IEPs had a strong educational component. It is individualized and had services especially important to D.G. such as the very strong counseling and social skills component integrated within the classroom activities as well as the private one-on-one sessions with D.G. and Mr. Semen, the school psychologist. The program also had the school counselor involved in the program as well as a BCBA providing direct insight

and guidance to the staff and an RBT in the classroom to implement the strategies so that they have a behavior plan for the classroom with focused goals to make sure D.G. can work on some of the issues that lead to him being in the program, such as impulsivity.

Although the parents' position was that D.G. should be back in the general education setting because he had no behavioral issues between March and June, completed his juvenile justice disposition, completed the Ascenda counseling, and was now on medication, Ms. Miller disagreed. The data that needed to be collected had to be done in an educational environment. The ten days that he was in-person in the BD program were his time to acclimate back to the school setting. They considered the ten days, and they consider everything. Sometimes a student will do okay initially and then things start to fall apart, especially if they have been home a long time. They refer to the initial period back in school as the 'honeymoon' phase.

Ms. Miller has reviewed the documents that Mrs. G. provided regarding D.G.'s tenth grade year at St. Joseph Academy (P-22 - 25 and P-27.) She looked at the documents in her exhibit binder, including the documents from the Camden County Educational Services Commission, which were individualized educational service plans they developed for D.G. at St. Joseph Academy. (P-28 and P-29.) The service plans did not provide for individual or group counseling or social skills training in any capacity. Ms. Miller does not know if St. Joseph Academy is accredited, but she does know that it is not an approved school for special education by the State of New Jersey. The classification listed for D.G. in the service plans were "Other Health Impaired." D.G.'s classification when he left WTHS was "Emotionally Disturbed." (J-3 and J-4.)

The settlement agreement from February 12, 2020, arose from the parent's filing of due process and were before ALJ Trisha Caliguire. The settlement agreement was approved on the recommendation of counsel and the recommendation of Ms. Miller. The FBA was requested by the parents and the district agreed. The parents felt it was part of the process regarding D.G.'s emotional issues. The FBA is an evaluation that requires parental consent. It is designed to gather information. She believes the parents requested the FBA because they felt it would give them some information regarding his programming and education. A FBA is a component of many different things including

when a student has a change of placement under certain circumstances. The FBA here came as a request by the parents to be included in the settlement agreement. The FBA was part of the settlement agreement. It was not a service but an evaluation they knew they had to conduct as part of the settlement agreement. It is part of Ms. Miller's job to make sure that the rules are followed, and services are provided to the student according to their IEP. In most cases, pre-determining a student's placement or services before an IEP meeting is not procedurally correct. D.G.'s placement was not pre-determined at the June 9, 2020, IEP meeting. The placement was established at the settlement agreement and then there was an IEP meeting with participants to determine progress and if goals have been met and all of the information is considered by the team and a new IEP is then drafted. Ms. Miller was not at the June 9, 2020, IEP meeting. It is a procedural error to not let the parents have input at the meeting. The decision-making process is done during the IEP meeting including parent input. A parent can ask any questions outside of the IEP meeting.

Mrs. G. sent an email dated April 2, 2020, to Mr. Semen raising various concerns she had as to how things were going to be handled due to COVID-19. (P-9.) Although Ms. Miller indirectly oversees Mr. Semen, he has a direct supervisor. Ms. Miller never saw this document, and nothing raised in this email regarding Mrs. G.'s questions regarding D.G.'s services were brought to her attention.

Students were still receiving services during asynchronous learning and guidance was coming out intermittently from the State and it was new to everyone. Ms. Miller knew they did not do an FBA for D.G. She knows D.G. could not get his FBA. Knowing the reason, they needed to do a FBA, there was nothing to substitute for the FBA. Two in house behavioral specialists worked directly for WTHS. Mr. Hoopes would have handled any contact between the behavioral specialists conducting a FBA. During the summer break there is an IEP team on call. Evaluations began in person towards the tail end of July and August (psychological, educational) and those that required in classroom observation would wait until they were back in school. Ms. Miller would not do something informally in place of a FBA when there is an agreement to conduct one in place. The stay put IEP was the home instruction chosen by the family and not the creative achievement placement offered by the district. There is a progress report on goals when

a student has an IEP. It was quarterly or by semester. She directed all personnel to provide progress reports on the students. She did not see D.G.'s progress report and did not know if D.G. was meeting his goals or not. That was more on a building level. When a student is not meeting their goals, they change interventions, supports, and monitor the progress towards the goals and then come up with a strategy to see why the student is not reaching the goals and set new goals.

Ms. Miller was present when Mr. Semen testified regarding the scenario of a student walking in the hall and banging into D.G. and D.G. gave an appropriate response and then tiered up the example and D.G. gave an inappropriate response. Ms. Miller was not part of the therapy sessions.

The September 9, 2020, IEP meeting was remote, and she did not know what anyone else had in front of them, but she had a copy of the June IEP, and the case manager would have a copy of the June 2020 IEP and should have had the parental concerns. Ms. Miller had reviewed the June IEP. Everyone agreed that the transition plan could be beefed up and it was a working meeting and they were going to work on that.

There was discussion regarding switching to semesters from marking periods at that meeting. The primary teacher, Ms. Kraft was involved in the development of D.G.'s IEP. D.G. was still a part of the BD program when the schools closed for COVID-19 March 16, 2020. D.G. was part of the BD program on the fifteenth day of school in a home remote setting for the BD program. All of D.G.'s data was reviewed in developing an IEP as that is the normal process. Parents are a part of the IEP team, and their input is valuable and considered. Parent input can refine goals. The IEP team is responsible to develop an IEP that meets D.G.'s needs. FBAs provide information relative to a target behavior if one is determined. The FBA would provide strategy and information relative to the targeted behavior. If there is targeted behavior, they would devise a plan to remediate the behavior. A FBA is an evaluation tool used to determine targeted behavior. A FBA is required to be done if a student has a manifestation of a disability, determined at a manifestation determination hearing, but in D.G.'s case it was not. The FBA was required by the settlement in this case. In planning the IEP for D.G., the team used any information

available to them including information from all of the staff working with D.G., his evaluations and input from the parents.

D.G. had a deferred disposition which required the school to report certain school issues regarding D.G.'s attendance or suspensions. They would report a violation which would be done by the building principal. She did not confer with anyone regarding D.G. They did not report when D.G. was absent when he went to Florida. To Ms. Miller's knowledge, nothing adverse was reported to the juvenile authorities during his deferred disposition. Everything would be considered by the IEP team, so this would be something considered by the IEP team. The school has an agreement between the police and the school district when a student is involved with the authorities. D.G. was not involved with any police authorities while he was in school in the BD program. It is a requirement to review and evaluate data when formulating an IEP and considering parent input. When a child is not making adequate progress towards a goal, it would be reflected in the IEP. The high school principal usually sends a letter to the house when a student makes the honor roll even if they are in the BD program. Ms. Miller did not know whether D.G. did or did not get a letter. They do have different weighting for different courses, but she was not familiar with the weighting of the courses in the BD program. When they do transfer out of the BD class, the transfer is seamless. Ms. Kraft's class for BD was for ninth and tenth grade. Ms. Miller does not know what Ms. Kraft's lessons plans were. As the assistant superintendent, she is not familiar with the books used in the BD program as she is not involved with the academic programs and defers to personnel in curriculum and instruction including the teachers.

During the September IEP meeting she recalls various conversations regarding preferred academics and electives. Mr. Palmer, D.G.'s counselor, and school counselors in general have a good understanding of various courses and availability. Ms. Miller does not recall recommending that D.G. go into a resource room class after the BD program and she would not have the authority to determine the placement. She does recall various options being discussed at the meeting. The BD/emotional support program did exist in 2019. D.G. was on a home instruction IEP at the parent's choice rather than Creative Achievement. The ombudsman program is used for disciplinary reasons, but the parents did not want D.G. in that program.

The data from Ms. Brenda Taylor, one of D.G.'s homebound instructor for Spanish I in ninth grade was part of D.G.'s report card data and she provided information for the IEP. (J-2.)

DiNovi was the independent contractor provider for the BD program. The FBA meant for D.G. was to be conducted by one of two district internal behavior consultants. Ms. Miller indicated that the behavior consultant who probably would have been assigned to conduct D.G.'s FBA would be Jennifer Macaffee, because she usually handled the high school. She had not yet been assigned the FBA because it was not to commence until after the fifteen days in the BD program. After the fifteen days, the internal behavior consultant would have begun her FBA and collected data at that point and not before. The FBA was to be completed twenty days after commencing it, which was accelerated. DiNovi were not going to do the FBA because they were heavily involved in the BD program and the internal behavioral consultants would be more independent.

Ms. Miller does not recall Mr. Major saying at the September 2020 IEP meeting that there are no behavioral issues with D.G.

Sara Jean DiBenedetto was called as a witness for petitioners. Ms. DiBenedetto is an eighth- grade teacher in Mullica Hill and a driving instructor. She was D.G.'s driving instructor at the Harbor Driving School in Pitman, NJ. She provided D.G. with three hours of driving instruction about one year ago and described D.G. as very respectful, attentive, paid attention, and that he followed directions well. She first met D.G. when she was a student teacher at Birch Hill, and he was a fourth grader and had occasional contact with D.G. over the years. She was also a member of the same swim club, Lake Candle, and would see D.G. around there. D.G. did pretty well with the driving instructions and she did not notice anything peculiar about anything. The lesson was three hours and they stopped at Wawa for a break and to get something to eat. She currently teaches at Kingsway Middle School, seventh and eighth grade physical education and health class, but she has taught all grades.

Mrs. G., testified on behalf of the petitioners.

The IEP meeting of September 9, 2020, was recorded through Webex and played by Mrs. G at the hearing. (J-8.) The following is a summary of what transpired at the meeting:

Mr. Hoopes indicated that Ms. Marybeth Gilliland, the parents advocate, requested on behalf of the petitioners, that the meeting be recorded.

Mr. Semen opened the September 9, 2020, Zoom meeting, and indicated that Mrs. G. had requested another IEP meeting to go over some concerns she had that she listed in an email, and he wanted to go over some of her concerns. (P-11.) Her first concern was that she was seeking clarification regarding item number four in the behavioral contract. Regarding the FBA, she wanted to know what problem behaviors would they be analyzing? Also, due to the ongoing remote learning situation, what steps can be taken to make sure that an analysis of behavior can be conducted in a timely manner. Ms. Goodwin also raised concerns regarding D.G.'s access to general education and what could be done to provide D.G. with the appropriate support to meet his needs, while also providing him access to the general education curriculum and access to his nondisabled peers to the greatest extent possible?

Mr. Semen did not have a copy of the behavioral contract with him.

The advocate spoke on behalf of the parents and indicated that point number four of the behavioral contract was regarding interacting with the four accusers back from eighth grade. The way the behavioral contract is written now it states that D.G. will have no contact with any of the four female students from Orchard Valley Middle School during school or at any school sponsored event/activity (dance, practice, game, etc.) This includes any physical contact, telephone, email, messaging apps, and/or on social media. If any of the four victims attempt to contact D.G., he is to immediately report the contact to his school counselor. Is this indefinite or can that be relaxed since the girls have tried to contact him as the parents have reported? Mr. Betley stated that part would be in place throughout the coming school year as well, until there would be no need for it and Ms. Miller agreed. The school district wanted to keep it in place for the tenth- grade year.

Mrs. G. stated that the settlement agreement was for the rest of the school year and ended in June at the end of the school year. There was no end date in the agreement. The district wanted Mrs. G. to continue to report any contact to the principal, Mr. Passante. Ms. Miller brought up that she should also contact Mr. Hoopes so the CST is also in the loop. Mr. Hoopes mentioned that if he was to be a contact person to make sure his name was spelled correctly. Earlier in the summer, Mr. Hoopes name was misspelled, and he was not aware of the request for the additional IEP meeting. That had since been corrected. There was discussion involving Mr. Semen and Ms. Miller that Eren Semen should also be involved because he could address these issues in his counseling sessions with D.G. as real life scenarios with social conflict if the girls were to contact D.G. and how he would respond to those scenarios. D.G. understood this and will continue to notify the school and Mr. Semen and his new counselor, Carl.

The parents' advocate, Marybeth, stated that the biggest question from the parents was D.G.'s placement. The parents had agreed to the BD program back in the spring. Unfortunately, two weeks later COVID-19 hit and with the shutdown of classes the FBA has not been able to take place. They understand that the settlement agreement called for a FBA to be done and that is the sticking point since traditionally a FBA is done with having "eyes on the student" and that is why the parents requested that the behaviorist, Mr. Major, attend the Zoom meeting. The advocate asked if any groundwork had been done on the FBA such as, has the targeted behavior been identified, have there been any assessments or gathering of anecdotal data or has a game plan been decided. Mr. Hoopes responded that according to the settlement agreement, the FBA was only to be started after fifteen days and no data aside from the behavior sheets maintained in the BD classroom have been collected because the FBA was not formally started. That data would be included once the FBA began, but it was not formally started. Mr. Major stated that they did have the data from the days D.G. was in the program but the plan going forward would be to start when the student returns to the environment of the building. Mr. Major did not believe there were any particular behaviors being targeted, and that would come out once the assessment was started. But it was to be a clean slate and he would observe.

Mr. Major described the behaviors targeted in the BD program as elopement, off task behavior, physical disruption, verbal disruption, and noncompliance. Anything above a 90% indicated a successful day and D.G. generally was between 99% to 100%. He may have had two days where he was at 99% due to a verbal disruption where he may have slipped and cursed fooling around with another classmate in the room, but they only had eight days of data and needed more.

The advocate brought up that physical and sexual contact with female students led to his placement in the BD class so what were the behaviors that were keeping him in the BD class. They need long term data to have before they send D.G. back to the general education setting. There is no specific behavior keeping him in the BD program, it is just that they do not have enough data collected at this time. Mr. Major's role during virtual instruction in the spring was that he oversaw the staff and worked with the teachers and provided program support. He did not have much interaction with the students. The advocate pointed out that the settlement agreement says fifteen days in the program and D.G. has been a member of the BD program for three and a half months receiving the supports and counseling the program offered. The advocate raised the issue as to whether there was a way to collect data even though they are virtual to which Mr. Major indicated that they needed to collect data in the school environment. Mr. Betley indicated that no one expected the BD program to not be in person when the settlement agreement was drafted. The underlying issues involved interactions with fellow students live and not remote. It does not make sense to have a FBA done without being in the school environment. Mr. Betley brought up the genesis of the FBA was that the parents and their attorney wanted it done. If they are still wanting it, they will do it but if they do not want the FBA, Mr. Betley said to let them know. The advocate understood that was the sticking point but if the district is willing to forego the FBA, the parents would consider not requiring the FBA, but Mr. Betley stated that they would have to amend the settlement agreement. The goal of the parents is to get D.G. back in the general education setting and Mr. Betley did not know if doing the FBA would get him back in the general education setting sooner. The advocate suggested letting D.G. start on virtual for now in the general education setting. Mr. Hoopes responded that they had discussed a transition plan in the spring. Initially it was understood that the settlement agreement had to be adhered to. No one knew we would have a pandemic. The plan was that if they return to school in person in

a hybrid setting which could happen September 14, 2020, they could collect baseline data over the course of thirty days and then allow D.G. to choose a preferred academic subject and an elective to start the transition out of the BD program. In another thirty days, they would look at the data and add another course and in another thirty days, they would look at the data and see how he has done with the three courses and look to transition him out of the BD program by the end of the semester since they had recently switched to semesters. The advocate said that sounded feasible, however she explained that this detailed plan was not what was communicated to the parents at that meeting. The parents understood that what was discussed in the spring was that the school would continue to collect data and then a transition would not occur out of the BD program until the end of the marking period or semester until January. That it would take until January was alarming to the parents. Mr. Hoopes indicated that the advocate was not at that meeting, and it was discussed although it may have been stated differently because over the summer, they switched to a semester schedule. Mr. Semen referred to the notice section in the June 2020 IEP. (J-3, page 15-1.)

The “Notice Requirements for the IEP and Placement” section of the IEP, under the heading “Describe any options considered and the reasons those options were rejected (N.J.A.C. 6A:14-2.3(g):

“To change placement: however, the district has not had the opportunity to satisfy the conditions of the settlement agreement in regard to the Functional Behavioral Assessment (FBA). Due to remote learning because of COVID-19, the FBA was unable to be conducted, and will be conducted once we are able to physically return to school. Upon returning, after 5 full school days, with D. attending each day, the FBA will then be conducted because per the settlement agreement, the FBA would not be conducted until after David has attended 15 school days. He was in school 10 school days prior to remote learning. Therefore, an additional 5 days would be needed once we physically return back into the school setting. Once the FBA is conducted and completed, another IEP meeting will be held closer towards the end of the first marking period, to discuss the results of the FBA, as well as D.’s placement within the Self-Contained Behavioral Disabilities Program.”

(J-3, page 15-1)

Mr. Semen also said what Mr. Hoopes explained about transitioning out was also discussed at the June IEP meeting. Mr. Hoopes said Mrs. G. wanted D.G. out of the BD program in September, but they did not have enough information to do so, and they were following the terms of the settlement agreement which terms had not yet been fulfilled.

The advocate pointed out that the “options considered” section of the June IEP did not specifically discuss the transition plan as Mr. Hoopes was explaining it at this meeting. The details might have been mentioned but were not heard by the parents and the specific details regarding the transition plan are not set forth, in writing, in the IEP. Mr. Hoopes agreed that it could be written up specifically following this IEP meeting. The advocate inquired of the parents and D.G. if they were agreeable to starting in the BD program in September and after thirty days slowly transferring into one class at a time to the general education setting. Mrs. G. said it sounds good but wants to talk it over with her husband, but she was concerned that D.G. was falling further behind academically. The general education math class moves at a quicker pace and may be further ahead of the BD class and how would D.G. be able to transition out smoothly without being behind the eight ball academically. The advocate suggested that D.G.’s stronger classes be identified now and that perhaps he could plug into the general education classes remotely while still being in Ms. Kraft’s class. Ms. Miller stated that this conversation be had after they have more data. They need more data as D.G. has not been in a traditional class for a while and the goal is to make sure he is successful not only academically, but socially and emotionally as well. Ms. Miller suggested a resource room setting may also be a possibility in transitioning D.G. out of the BD program. They would have these conversations with D.G.’s teachers to see where his strengths lie. Mr. Hoopes stated that Ms. Kraft can differentiate the curriculum between her ninth and tenth grade students and Mr. Hassett, who has the eleventh and twelfth grades also teaches math in his room. D.G.’s transition would be a well-thought-out process and they would not just plop a student in a class without consulting with the teachers as to where he stood. Ms. Miller also thought Carl Palmer as D.G.’s guidance counselor and Mr. Semen as the school psychologist should be included in this conversation so they can discuss with D.G. what potential electives he would prefer, and they can consider what was available in his grade level. This would also be a good opportunity for D.G. to engage with his peers and also

participate in a course he has interest in. Mr. Palmer agreed and noted that D.G. took guitar as an elective last year and did well in it and he may wish to continue in the performing arts or switch over to tech or business classes. Pretty much all electives are open to him in tenth grade and above. Mr. Palmer said they can work out a plan based on what D.G.'s interests and goals are.

The advocate brought up the possibility of plugging D.G. into his best academic course in general education and let him participate virtually since he is ready for more of an academic challenge and he does not want to fall behind his peers. She explained that the expectations in a general education science class are different than in a multi-level class such as the BD program no matter how wonderful a teacher Mrs. Kraft is. The advocate said D.G. would still be in Mrs. Kraft's class since the district did not want him transferred out of the BD program yet, but could he virtually attend a general education class like science. Mr. Betley thought that would be a violation of the settlement agreement. Mr. Hoopes explained that everyone is synchronous and is on the same schedule from 7:20-11:45 a.m. for their four periods of courses including their electives. The district was planning to resume the BD program in person September 14, 2020, for in person instruction Monday, Tuesday, Thursday, and Friday so D.G. would be back in school in person. The advocate, as a special education teacher, raised her concerns that D.G. was not getting the rigor in his courses since the BD program has to deal with various other issues of the students in the class including their ability levels. Mr. Hoopes believed they did not have enough data to push him out to general education and would want another thirty days to collect data and then perhaps administer the STAR test to screen where D.G. scores in math and English. Since they were planning on bringing back the BD program in person on September 14, 2020. Mr. Hoopes believed an October 14, 2020, date to begin to push him out was fair and appropriate. The advocate expressed the parents' concerns that Mrs. Kraft or any of the teachers do what they could to make sure D.G. can transfer from the BD program and into general education smoothly from an academic perspective. They wanted it on record that the parents were concerned with his academics. Mr. Hoopes indicated that they won't do the FBA if the settlement agreement is amended.

The advocate inquired as to what would happen if the district went remote again without having a chance to have “eyes on” D.G. before the thirty days because that is the big picture here. The advocate and the parents explained, they do not want D.G. being held up and maybe the district can be creative to formulate a plan to obtain data from other situations or social situations if the district were to go remote again. Mr. Hoopes said they would have to have a plan, not only for D.G. but for all of the students if this were to happen.

Ms. Miller stated that when students are in a remote environment it is critical that they participate. She was aware that D.G. had some participation issues which were explained by his parents but that it was important that he participate remotely. They have to be involved. If they do flip to virtual, everyone has to participate in the academics, counseling, and whatever the school sets forth as the learning process. Mr. Semen did state that they did address the missed counseling sessions at the June IEP meeting and that D.G. did not intentionally miss the sessions. Mr. Semen believed there were twelve sessions and D.G. may have attended eight, he was not sure. He was always very respectful, apologized, and explained what happened. Mr. Semen said D.G. was engaged in the counseling sessions he attended and did make progress. D.G. said he had good cause for missing the meetings such as mowing his neighbor’s lawn or helping his parents. D.G. said he did participate as best he can. D.G. understood he has to tune in and participate. Mrs. G. stated that there was some confusion about the number of individual counseling sessions, and she sent emails to Mrs. Kraft and Mr. Semen. D.G. always followed up when he missed a session. Mrs. G. stated that D.G. has had enough repercussions and was trying to comply but sometimes the school’s technology prevented it from happening.

Ms. Miller applauded that D.G. was present at the meeting and moving forward she wants to make sure students are participating in the virtual world.

Mr. Semen said he and Mr. Palmer can discuss what classes D.G. may want to take in thirty days. If D.G.’s starts on September 14, 2020, they can discuss starting to transition out on October 14, 2020, after the STAR testing is done. The advocate stated that they wanted the parents’ concerns listed in the IEP and they could do so, or she could

submit the parents' concerns in writing to be included in the IEP and submit that to the district to incorporate. Mr. Betley and Ms. Miller said they would like to have the advocate submit the written parental concerns to be incorporated in the IEP so there is no misunderstanding. The advocate stated that Mrs. G. wished to speak to her husband before the FBA requirement was eliminated so Mr. Betley could wait on revising the settlement agreement until he heard from the parents or the advocate or Mr. Semen.

The advocate said that Mrs. G. had numerous letters of recommendations and positive behavioral examples although not in an educational setting that she wanted to submit to the CST for their consideration. D.G. demonstrated a lot of maturity over the summer and positive behavior she wished the team to consider. Mr. Semen indicated he would like to share in D.G.'s positive accomplishments. She will send them to Mr. Semen.

This concluded the video conferenced IEP meeting.

J.G. is the mother of D.G. She and her husband on behalf of their son, D.G. filed a due process petition regarding D.G.'s IEP, placement, and settlement agreement of February 2020. Mrs. G. stated that D.G. was not provided FAPE in the LRE from respondent.

D.G. was on home bound instruction for eleven and half months. On January 25, 2019, he was put on school exclusion and was suspended for an infraction. She thought they would receive a notice for a manifestation determination hearing from the school which did not happen. They got a stay put order for August 2019, which was for homebound studies. The CST had offered Creative Achievement as a placement for D.G. in May 2019. She was also offered the ombudsman program that was at the high school at the time. Mrs. G. did not wish either placement for D.G. and his stay put placement became homebound instruction. Mrs. G. tried to get D.G. into the automotive mechanic program at Gloucester County Technical which did not work out. She hired an attorney who amended the due process petition and started conversations with the respondent.

On February 12, 2020, the matter was going to be heard before Judge Caliguire, but the hearing was converted into a settlement conference and a settlement agreement

was reached between the parties. (J-1.) D.G. was going to be placed in the BD program at the high school. They did not sign anything at the settlement conference. Mrs. G. did appear before the school board because they had to vote him back in the district. The day of the board meeting, February 25, 2020, the petitioners met with the IEP team and had an IEP meeting to go over the plan because there was going to be a placement change. D.G. was taken to look at the program by Mr. Semen. There were many people at the IEP meeting including Ms. Kraft, Mr. Major, Mr. Tortoriello; the guidance counselor, petitioners, Mr. Passante; the ninth-grade principal at the high school, and Mr. Semen.

They went to the board meeting that night and there was a lot going on at the meeting. Mr. G. has a bad back so after waiting two hours they were going to leave, when Mr. Betley came out to them as they were walking to their car and told them it was going to happen, which was very nice of him. The Board did approve D.G. being placed in the BD program at the high school and D.G. started in the program on March 2, 2020. D.G. was in the program five full days for two weeks, before the COVID-19 restrictions.

According to the settlement agreement, D.G. was supposed to have a FBA. It was Mrs. G's understanding that a FBA would identify target behaviors and is used to allow the student to remain in the LRE with whatever services and modifications are needed. She was under the impression the FBA would take place. She knew that the infraction that caused D.G. to get into trouble was not normal behavior for him. Dr. Mobilio indicated that D.G. was not a sociopath. There were also many other things going on including D.G. being on medication that was helping D.G. Mrs. G. was trained as a nurse and believes medication can help together with counseling. D.G. did see a doctor and was put on medication. (P-31.) She took D.G. to Dr. Jessica Horvath-Matthews at Cooper University who was his primary care physician who put him on medication. Mrs. G. said she knows there was correspondence between her attorney and the board's attorney advising that D.G. was on medication now and she feels that this was data that should be considered. As his mother, knowing him before and after him being on the medication, it has done so much for him. He is able to concentrate, and she saw improvement. He was not as easily distracted. She was apprehensive about him not sleeping or losing his appetite. It was time-released, and he had no difficulty with the medication. Initially it was a small dose and increased gradually. The doctor saw D.G. every month. D.G. had

seen Dr. Mobilio in May 2019, and a couple of months thereafter he was prescribed Adderall by Dr. Horvath-Matthews. Dr. Jessica Horvath-Matthews is D.G.'s primary care physician who put him on Adderall. Mrs. G. believes her then attorney, Jonathon Porchnoy, provided this information to the district. The June 11, 2020, letter of Dr. Jessica Horvath-Matthews of Cooper Hospital re: D.G. addressed To Whom It May Concern, stated that D.G. is currently under her care for medical reasons and is currently treated with daily medications. (P-31.) This was sent to the school on June 11, 2020, or shortly thereafter. The next page of the exhibit is a list of appointments her or her husband took D.G. to Dr. Jessica Horvath-Matthews for his ADHD treatment with Adderall. The only person who prescribed Adderall to D.G. was Dr. Horvath-Matthews of Cooper. (P-31.)

The settlement was in February 2020, to get D.G. back into the high school and into the BD program. The time for D.G. to be in the BD program was through ninth grade. If the FBA was done there may have been a BIP. Mrs. G. believes something else could have been done if they could not do a FBA to allow appropriate education and services for D.G.

Ms. G. was not able to look at the program before D.G. went into the program because there was not enough time to look at it. She had already agreed to place D.G. in the program.

The district witnesses and Mr. Betley have stated that it was the parents request to have the FBA included in the settlement agreement and the district just agreed to it. When D.G. began the program, it was her understanding that the IEP was from the eighth-grade year. The parents signed off on the IEP and D.G. started the program. (J-2.) The first week he was in the program one of the alleged victims reached out to him which Mrs. G. reported right away to Ms. Hoopes, Mr. Semen, and Ms. Kraft. Mrs. G. was trying to move ahead and that is why she brought it up at the IEP meeting that was recorded. D.G. has rights too and she did not want him to have anxiety. One of the alleged victims was in the same circle of friends as D.G. and it was hard for him to constantly worry about removing himself from situations because she was there. For example, if her son was in the middle of a football or basketball game, would he have to then leave because the girl was there? The behavioral contract provided that D.G. have no contact with any of the

four alleged victims and Mrs. G. was concerned about this especially after the one girl contacted him.

Nobody anticipated the pandemic. It was a horrible thing and was no one's fault, but education went on and schools were still responsible to educate children. There was a lot of technology available. D.G.'s IEP and needs were not being met. The assessment was supposed to be done according to the settlement agreement to identify what behaviors were interfering with D.G.'s own education as well as the peers around him so as to eliminate, rectify, or modify those behaviors that had been causing problems in the past or present and this was not being done.

Mr. Semen, D.G.'s caseworker sent petitioners an email March 30, 2020, regarding remote behavioral support. (P-9 and R-6.) Mrs. G. sent an email in reply on April 2, 2020, to her husband's email at david@calgary.com. On April 23, 2020, Mrs. G. forwarded the email to Mr. Semen. In the email, Mrs. G. raised concerns about how things were going to be handled in light of the COVID-19 pandemic and what was going to be done regarding the FBA and various concerns she had regarding D.G. falling behind in his academics in the BD program. (P-9 and R-6.)

Mrs. G. produced her Verizon records which indicated various telephone calls with Mr. Semen at telephone number 856-292-5841. (P-18.) On April 23, 2020, at 12:12 p.m. she spoke to Mr. Semen for thirty-five minutes; on April 30, 2020, at 2:01 p.m. she spoke to Mr. Semen for fourteen minutes; and on June 15, 2020, at 2:05 p.m. she called Mr. Semen and left a message which was a two-minute call; and on June 15, 2020, Mr. Semen returned her call at 5:08 p.m. and they spoke for forty-one minutes. On June 22, 2020, at 8:39 a.m. Mrs. G. called Mr. Semen and left a message which was a two-minute call. (P-18.)

Mrs. G. reached out to Ms. Kraft first through email what was going on and how they were moving forward (Exhibit E, #11 26-41 correspondence with Ms. Kraft) but did not receive a response. A March 17, 2020, email from Mrs. Kraft to Mrs. Goodwin advised that she is D.G.'s teacher at the high school and the virtual classroom was being implemented. (P-5.) Mrs. G. emailed her back on March 18, 2020, and indicated D.G.

was working on the packets that were sent home, but it would be easier to use his laptop. (P-5.) The first two weeks D.G. was working on packets that was mailed home. He completed it and handed it in. Then D.G. wanted to do the work on the computer and Ms. Kraft was cooperative with letting him do it on the computer and communicate with his teacher. The group social sessions started after that.

D.G. had been on home instruction for a long time, approximately eleven months. He had tutors for only a few hours per week, so Mr. G. tried to fill his time with interesting projects for him to do to create structure. He was allowed to take guitar lessons through Zoom when he was on home instruction. There was some confusion when they went to remote instruction with the scheduling of various things as is evidenced by the emails. D.G. was home a long time before COVID-19 and he was on a very structured schedule. D.G. was also involved with Ascenda which was a cognitive skills group therapy program he was required to attend as part of his deferred disposition through the Superior Court. It started at the end of February 2020 and was for three hours once a week for fifteen weeks. Initially it was in person and then went to an online platform after March 16, 2020.

D.G. had various projects and his days were filled. He started a small lawn care business and was engaged in a long-term project raising baby chicks. Between his schoolwork, projects, job, and Ascenda, he was busy. Initially there was no definite time that D.G. was required to log on the computer to do his work. Then that changed as can be seen from the emails between Mrs. G., Mrs. Kraft, and Mr. Semen and there was confusion as to when D.G. had to be online for various classes and sessions. Mrs. G. tried to keep it all straight.

Ms. Kraft had the Teams group and Mr. Semen would have a one-on-one Zoom session with D.G. which was new for D.G. D.G. was in his room and she checked to make sure he was doing his work or on the computer with his teacher. Ms. Kraft in her emails said D.G. was doing great and it was only fifteen minutes. Mrs. G. said that was good as he had other things going on, but school was first and D.G. knew that. Mr. Semen would join in on the Teams or Zoom with Ms. Kraft. Teams was for social counseling/ social story and was every Thursday at 1:00 p.m. with the BD class. There were seven people in the BD class from March 16, 2020, to June 2020. There was never more than

a couple of children in the class. Ms. Kraft said D.G. was doing well and he only needed fifteen minutes for her to check on his work progress and making sure D.G. understood the work. D.G. had other things going on such as his lawn care business. Mr. Semen referred to it as 'Teams' and Mrs. G. is unclear whether it was social counseling and academics. Mrs. G. said guitar was always the same time, as were the Ascenda sessions. Mr. Semen would be on Teams and then Mr. Semen would want D.G. to have an individual meeting at 2:30 p.m. She asked Mr. Semen to include her on the scheduling so she could make sure D.G. logged on. Mrs. G. was just trying to keep the schedule straight. It was all new to everyone and Mrs. G. was trying to keep a schedule and that nothing interfered.

Once Mrs. G. received the DiNovi email from Mr. Semen, she reached out to Ms. Kraft through email on April 3, 2020, to which she did not respond. (P-5.) Mrs. G. then emailed Mr. Semen trying to find out what was going on with their settlement. D.G. was supposed to have a FBA on the fifteenth day of school after he had time to get acclimated to school. He was in school for two full weeks, ten days, and then they went remote. Mrs. G. spoke to Mr. Semen numerous times as to what was going to happen with the settlement. Mrs. G. was worried about D.G. being out of the structured environment. She reached out to Mr. Semen right after she received the DiNovi letter. Mr. Semen said he did not know what was going to happen or how the settlement was going to be handled and that he would have to speak to his supervisor, Mr. Hoopes. At least three or four times Mrs. G. would follow up and spoke to Mr. Semen as to what was going to happen, and he would say that he either forget or had not had a chance but that he would follow up and ask Mr. Hoopes. Mrs. G. was concerned that because they were remote how were they going to do the FBA and decide if D.G. needed a BIP.

Mrs. G. was with D.G. every day. He took his medication. All new things were happening and D.G. matured and changed. He started the program and moved forward. He had a deferred disposition which he was responsible for, and he won an award for perfect attendance at the Ascenda program. D.G. had a lot going on and was handling it. He was doing what he was supposed to be doing and doing it well. Ms. Kraft sent an email that he was doing well. Mrs. G. understood that the teacher may have a reason to send a positive letter of enforcement, but Mrs. G. telephoned and spoke Ms. Kraft to make

sure that D.G. really did earn her praise and he was really doing everything he was supposed to be doing and he was. (P-5.) From April until she received notice of the June IEP meeting, all of her telephone calls to Mr. Semen amounted to nothing because he never got back to her. She received an email that the June 9, 2020, IEP meeting was going to be through Zoom. Mrs. G. was told all of her questions would be answered at the June IEP meeting. She never received any answers to her questions from Mr. Semen despite her telephone calls to him. She was told it would be discussed at the meeting, so she had no idea in advance of the meeting what was going to be discussed. Maybe Mr. Semen knew what was going to happen, but she did not.

Mr. Semen never got back to her as to what was going to happen with the FBA. She received an email that an IEP meeting was going to take place on June 9, 2020. The IEP meeting took place on June 9, 2020, through Zoom. Mr. and Mrs. G. and D.G. were present on Zoom as was Mr. Major, Mr. Semen, Ms. Kraft, and Mr. Hoopes.

Mrs. G. wanted Mr. Passante to be at the IEP meeting to discuss the fact that the alleged victim T.C. did try to contact D.G. Mrs. G. sent an email to him advising him of that and she was reporting it to the school as they were required to do. (R-4.) He emailed Mrs. G. back. (R-4.) Mrs. G. was not comfortable with the fact that T.C. tried to contact D.G. after he returned to school in the BD program. T.C. is one of the females that D.G. did admit to having contact with and was the subject of his deferred disposition. On March 9, 2020, Mrs. G. emailed the principal Mr. Passante, as well as the rest of the group including, Mr. Semen, Mr. Hoopes, and Mrs. Kraft that T.C. contacted D.G.'s friend on Facetime who was sleeping over D.G.'s house at the time. (R-4.) Mr. Passante was not at the June 2020 meeting because he said he would not be there. That meeting was not recorded.

They had the June 9, 2020, IEP meeting. Mrs. G. felt that it was already pre-determined what D.G.'s placement was going to be. She never met with anyone and none of her questions were responded too. There was no correspondence with anyone from the team. D.G. told her that he asked Mr. Semen several times what was going to happen and what was going on and Mr. Semen responded to him "I don't know D., we'll see what happens." Mrs. G. never met with anyone and never had any answers to her

questions moving forward as to what was happening regarding the settlement terms now that they were remote. She only emailed Mrs. Kraft once regarding her concerns and did not receive a reply. Mrs. G. asked Mr. Semen at least seven times in their telephone conversations as to what was going to happen, prior to the June 9, 2020, IEP meeting, and continuing thereafter.

At the meeting it was discussed that nothing could happen because of COVID-19. D.G. will come back to the BD program and after the first five days being in school in person and they will have the FBA. The school was still on marking periods which were four periods and then finals. There were two marking periods from September to December and then two more from January to June. When they initially planned the settlement, the FBA was to be done and completed and then they would meet to discuss the results of the FBA, placement changes, a BIP, whether there were any behaviors targeted, and any modifications that may be allowed to make sure any behaviors were not getting in the way of D.G.'s education or his peers or of the teachers teaching. The district said it needed to collect data. Mrs. G. responded that this was not the settlement, and it was not being addressed and it was in D.G.'s IEP that he was supposed to have a FBA.

After the meeting began it was said the placement was not going to be changed the IEP was staying the same with the same restrictions same social story with Mr. Semen and same goals regarding real and imaginary situations with D.G. to get the best and most appropriate outcome until D.G. does it on his own. They still needed to collect data. Mrs. G. said this was not what was agreed to in the settlement.

Mrs. G. told the IEP team that a lot had changed with D.G. He had gotten a job, had learned to drive, and was finishing a deferred disposition on the juvenile matter. She was the mother and caregiver and supposed to be a part of the IEP team and said no one contacted her about gathering data. She had wonderful emails with Mrs. Kraft, D.G.'s teacher, who did not say anything, neither good nor bad, at the IEP meeting. Mr. Hoopes, Mr. Semen, and Mr. Major did most of the talking. When Mrs. G. started to speak, Mr. Hoopes "shooshed" her by putting his finger over his lips and making the 'shooshing' sound. Mr. Hoopes said Mrs. G. was lucky to have this IEP meeting since she already

had one. Mrs. G. said she thought they were going to be discussing a change in placement to which Mr. Hoopes responded that a change in placement was not part of the settlement agreement. Mrs. G. said the FBA and the collection of data was all part of the settlement agreement and the behavioral consultant was supposed to do a FBA. Then Mr. Semen brought up the social session one-on-one classes that D.G. had missed. He said he was not in trouble, but that the sessions were pro-rated based on the prior IEP. After the IEP meeting, she had a telephone conversation with Mr. Semen. If missing the social sessions was going to be held against D.G. she inquired as to whether he could make it up over the summer as ESY since they were already doing the sessions through Zoom.

She received the email offering behavioral supports from DiNovi and although D.G. did not qualify for them, they were behavioral certified consultants for the district and Mrs. G. believed they could have done a report. She discussed this with Mr. Semen. Mrs. G. complained to him about the rigor in the instruction, the IEP, and the FBA in her telephone calls to him. Mr. Semen would respond that he did not know that as he is not an attorney. At the June IEP meeting, the team did not even know that D.G. was taking guitar. The guitar class was not included in Mrs. Kraft's classroom. In an email to one of the teachers, she advised that D.G. had hurt his thumb and had to postpone guitar lessons. The gym teacher responded and said could he still do gym which he could because he only hurt his thumb and could not do guitar but could do gym. The gym teacher said she did not even know he had guitar lessons. Mrs. G. said the district was supposed to be collecting data from all of the teachers and she does not think that data was being collected.

The first two weeks in the BD class, D.G. had gym class which included playing basketball with his peers and data could have been collected then. There was more than one conversation with Mr. Semen after the IEP meeting. She could not even print out the IEP aside from the signature page. The medication D.G. is on is listed in his IEP. Things that could have done, but were not done, and should have been done because in fifteen days, the behavioral analysis was going to be done. When you have a FBA, interviews are taken of the mother, father, siblings, the student in question, and the teachers. This could have been done because of technology and the FBA could have been completed. D.G. was still in the BD class until the end of the year in June even if it was remote.

Schools were still obligated to provide services. D.G. was still part of the BD program until the end of the year in June.

Mrs. G. was keeping a diary because she did not want D.G. to be involved in anything that he should not be involved in, and she wanted to make sure he was doing everything that he was supposed to be doing.

During the IEP meeting of June 9, 2020, Mrs. G. brought up the fact that D.G. had irritable bowel syndrome and she was concerned about him using the bathroom because in the BD program, they all are escorted whenever they had to go places such as to the gym as a group. Mr. Major said not to worry that her son would not have a problem using the bathroom and it would not be an issue. There were other things that always were in his IEP that were not discussed, for instance getting directions explained when taking a test. Then she was told by Mr. Hoopes that she chose the placement. Mrs. G. said Mr. Hoopes was not a part of the IEP team when her son was in eighth grade or a teacher of his and was not involved in how the settlement came about.

After the meeting, Mrs. G. spoke with Mr. Semen over the telephone and discussed D.G. completing the social story sessions over the summer. He said he would get back to her and did not. She did speak to him several times but not in regard to that. They spoke regarding the IEP, and she expressed that this was not what the settlement said, and Mr. Semen said he was not an attorney. He asked her if she got the IEP, signed it, and sent it back. She was getting it, but it would not open and when it did it was only the page she had to sign and a spot for putting in the insurance information for the social sessions he had with Mr. Semen. Mrs. G. wrote to Judge Caliguire who advised that the matter was settled, and she would have to file for due process. Mrs. G. received an email from the Judge's assistant, Nancy.

Mrs. G. then contacted James McBee and his assistant, Beth Smith of Gloucester County, to find out what would be the next step at the end of June 2020 to enforce the settlement. She felt her son's rights to a FAPE in the LRE were being violated. She thought they were liaisons between the school and the County. She filed for due process and then got an advocate, Marybeth Gilliland. She sent an email requesting another

meeting but did not receive a response. They then reached out to Ms. Miller and Mrs. Aldridge because she did not receive a response from the others. They had a meeting that they called a continued IEP meeting in September of 2020. All this time went by, and no solutions or substitutions were discussed until the September meeting. The district said she was unhappy because she was not getting her way, but the district was not doing what they were supposed to. She was calling District personnel since March 2020 for clarification, and nobody responded to her all summer, and they should have. She had no contact until she contacted Ms. Miller and she facilitated another meeting.

They went into the September IEP meeting with their concerns regarding the academic rigor of the program, that D.G. was in a crucial time of development, and how the BD placement was no longer necessary since there had not been any behavioral issues.

At the end of August, D.G. applied to St. Joseph Academy in Hammonton. They were not opened as they had split from the archdiocese and were operating separately. Mrs. G. was advocating for D.G. to be with his friends in the high school. When this first erupted, she and her husband did not know if it was good for D.G. to continue in the district, but D.G. wanted to return to his friends and sports. D.G. was between fourteen and sixteen years old, a crucial developmental stage. They are a close family and are a strong family unit supporting each other. She and her husband have been together since they were eighteen and have been married twenty-seven years and have two children. They have always been there for each other. They had to make a family decision. That's when D.G. started to change his mind after all of the difficulties they were having getting his placement changed in the district. Mrs. G felt her son was being held back from developing socially and academically. Also, around this time, her daughter and niece got the coronavirus and D.G. was also exposed to the coronavirus.

The IEP meeting was on September 9, 2022, and D.G. got accepted to St. Joseph Academy on September 11, 2020. D.G. was scheduled to attend the district in-person in the BD program on September 14, 2020. The district wanted to have eyes on D.G. in the BD program with his peers. She and her husband are autoimmune compromised, and her daughter was sick. The family had to agree before they did anything. This was a

major decision regarding D.G. St. Joseph Academy was forty minutes away. They discussed the problems they were having with the school district. If COVID-19 restrictions happen again the district did not know how they would handle it. If D.G. had to go back into the BD program for at least thirty days, he was getting further and further behind. Mrs. G. said D.G. did more on home instruction than he did in the BD class academically. He had been in general education classes his whole educational career. They were concerned with his academic future and college. She spoke to Mr. Palmer about needing a lab for college. D.G. had a culinary class but not a lab. Then she was asking for the recorded IEP and a copy of the IEP, and she still did not even have everything in writing. Mr. Semen did not email her the IEP from September 9, 2020, until October 2, 2020. He had to revise it to list the parental concerns, but he forgot to hit the 'send' button. (P-33.)

The whole idea was that D.G. had to be in-person so that they could have 'eyes' on him. He was one of seven in the BD class and attendance was a problem, so it was hard to study D.G.'s social interactions with such low attendance. She was concerned that this would be another issue and the district still would not be able to do the FBA. It was not like they took their ball and went home because they were not getting their way.

St. Joseph Academy did not open until September 21, 2020. She did not let anyone know from the school what was going on until her advocate emailed the school for her. Mrs. G emailed Ms. Kraft and Mr. Semen. She eventually made an appointment with Mr. Hoopes afterward. She did not transfer D.G. out of WTHS until she registered D.G. in the middle of the week of the first week at St. Joseph Academy, because she had to give them a deposit. She had a telephone conversation with Mr. Hoopes and Mr. Semen. She called Mr. Palmer regarding transcripts. When it was decided that D.G. would go to St. Joseph Academy, it was rushed because her daughter was sick and there was a lot going back and forth with her son and discussions regarding what was appropriate and what was not.

Mrs. G. does not believe that she was aware that you had to give ten-day notice but when she was and read the statute at the end if it is detrimental to the child's emotional social and academic well-being, then it is up to the judge to decide. D.G. completed tenth grade at St. Joseph Academy and is there now for eleventh grade. She did inquire of Mr.

Hoopes if and how they could come back what would be his placement and they had said they would have to see. They were still negotiating after the September 9, 2020, IEP meeting. She had requested the district put in writing their refusal to put him in the general education and then they asked for an independent of psychiatric assessment which they later withdrew.

Basically, they did not know that D.G. would be going to a different school as of the September 9, 2020, meeting. They were just finding out if the district was even going back in-person. They did not know. As soon as she knew, she let the school know, but unfortunately it did not cover the ten-day rule. The most important thing was her son's well-being. D.G.'s individual need to thrive, learn, and be educated is why they made the decision to go to St. Joseph Academy.

Mrs. G., her husband, and D.G. attended the June 9, 2020, IEP meeting through Zoom. She attended the entire IEP meeting but was not sure if her husband or son stayed for the entire time. She did not have an advocate at this meeting. Mr. Hoopes made a gesture of a 'shooshing' sound to her half-way through the meeting. She was shooshed as she was arguing with Mr. Hoopes that the settlement agreement and the IEP that got D.G. back into the district and into the BD program of February 2020, was a contract and included in the IEP. The FBA was not done, and data was not collected. Mr. Hoopes said that the settlement agreement did not say anything about a change in placement and that "you don't want to rush it." He said that she should not even be having another IEP meeting because she already had one. Mrs. G. said she was trying to advocate for her son and was emotional by the end of the meeting, but she was not loud. Mrs. G. was shocked and felt Mr. Hoopes' conduct was inappropriate, but she did not make any complaints to his supervisors, Annette Miller, or Kathy Ashbridge about his conduct. She did not complain to the superintendent either. She did not recall her husband or son say anything to Mr. Hoopes about the shooshing gesture. Mrs. G. did not feel at the June 9, 2020, IEP meeting that she was given the opportunity to advocate for her son as everything was already predetermined. She argued her position regarding what the settlement said, and that the IEP did not contain certain data that she thought should have been taken and included. As she was trying to bring these concerns up, she was shut down. Although the CST disagreed with her, she was allowed to make her

arguments. Mrs. G. had made many inquiries prior to the June 9, 2020, IEP meeting as to what was going to happen, and no one ever got back to her. The settlement was not followed by the district. She understood COVID-19 happened, but she was calling and did not receive any responses.

Mrs. G. asked what happened to the FBA and how were they going to go forward and do the FBA. There was no explanation given as to why the FBA had not been started during the school year from March until June 2020. Mr. Semen started to explain that due to COVID-19 they could not start the FBA. She was advocating that it was a service and wanted collaboration and months and weeks went by. Mr. Semen explained that COVID-19 occurred before the fifteenth day of school when the FBA was supposed to have been started. She did not recall if Mr. Semen or Mr. Hoopes saying it could not be done in a remote environment. Mrs. G. said that now it was in June and Mrs. G. was talking about the summer and doing it then. Pursuant to his IEP he was not aware of any ESY services during the summer. Mr. Hoopes said it could not be done in the summer. She did not recall if Mr. Major from DiNovi Associates who worked with the BD program was at the June 9, 2020, IEP meeting and said that the FBA could not be done in a remote setting. All she recalled from Mr. Major was the issue regarding D.G. being escorted to the bathroom and said not to worry about it. When she left the June IEP meeting, Mrs. G. understood that the FBA would be started after he was in school five days. Mrs. G. believes the FBA would have an effect on his placement although it does not state in the settlement agreement that placement was dependent on the results of the FBA. Mrs. G. said that a FBA is done to develop accommodations to allow the student to remain in the LRE and prevent behaviors from occurring that would interfere with a student's education or those of his peers. Target behaviors are identified in the FBA. Mrs. G. understood that the allegations against D.G. occurred in a live classroom environment in a regular school setting.

Mrs. G. recalls that a proposed transitioning from the BD program was discussed. After five more days upon return to school in person, the FBA would be able to start. Following the results of the FBA and continued satisfactory performance in the BD program, at some point they would perhaps pick an academic class in the regular education setting and an elective could be selected. She believed only one and then

another would be added, but she is not clear if he would also get an elective. She recalled a timeline being discussed but cannot remember the exact time frame. The district was still in marking periods in the June 2020 IEP meeting and there were discussions regarding transitioning at the end of the first marking period provided certain things had occurred – they had to be in person, D.G. had to be doing well in the BD program, the FBA would have been completed and then at the end of the first marking period he would have one class in general education. After another month of D.G. doing what he was supposed to be doing, another class would be added. She does not recall a third class being added after that time. For D.G.'s ninth grade year, the Board of Education would have to approve a change in placement. Nothing in the agreement said it had to approve a change in placement for D.G.'s tenth grade year. Nothing was said about it at the meeting regarding any approvals by the Board.

Mrs. G.'s correspondence to the court indicated that "we received written notice that D.G. must remain in the BD program until a FBA could be completed, the IEP could meet, and any recommended placement changes could be approved by the Board of Education. We were told that this could take until January 2021." (R-33, page 004.) The "we" are the petitioners, the written notice she is referring to is the IEP meeting. She was under the impression when she wrote the statement, that the Board would have to approve a change in placement. Mr. Semen and Mr. Hoopes said it was a slow process. At the June 9, 2020, IEP meeting, neither Mr. Hoopes nor Mr. Semen or any representative of the school district told her that the Board of Education had to approve D.G.'s placement for tenth grade.

Mrs. G.'s letter she submitted to this tribunal in advance of the due process hearing she believed to be true and accurate. She indicated that the district failed to provide FAPE to D.G. in the LRE despite "your" advocacy efforts at two IEP meetings in June and September 2020. Mrs. G. did not have anyone else write this for her even though she refers to herself in the third person. (R-33, page 006.)

Dr. Joseph N. Mobilio's psychiatric evaluation of D.G. on May 30, 2019, was done as part of the CST evaluation of D.G. following the incident and was relied on by Mrs. G.

in support of her assertion that D.G. is not a danger to himself or others. (R-33, pages 007-012.)

D.G. did see another psychiatrist after May of 2019. D.G. had to have the cognitive skills class at Ascenda and had to be evaluated by a doctor, a psycho-sexual psychiatrist in Camden. It was a long day. There were five hundred questions D.G. had to answer. Part of the appointment was that D.G. took the test. Part of the time D.G. saw the doctor and part of the appointment they were all together. This took place in September of 2019. This was part of the juvenile proceedings in family court and the deferred disposition. There was no written report, and no further evaluation was required. D.G. saw their family physician who is a D.O. D.G. saw a psychologist from Cooper in the pediatrics division for an ADHD evaluation. They saw the Perform Care people who came to the house to evaluate D.G. but they did not fit the criteria for services. D.G. saw a psychiatric nurse practitioner in June 2021, and another over the summer of 2021, named Lee Ann McCauley from Garden State Psychiatric Services. The family decided privately that D.G. should see her. It was not part of the juvenile justice system.

Mrs. G. believes there has been a significant change with D.G. being on the medication and they wanted an updated and most accurate evaluation regarding D.G. to make appropriate decisions. St. Joseph Academy did not require this evaluation. The Ascenda cognitive skills program was for fifteen weeks and was required as part of his deferred disposition. The program started in February 2020 and ended in July 2020.

The diagnostic impression by Dr. Mobilio indicated that D.G. had ADHD that was not being treated. D.G. was not on any medication when he saw Dr. Mobilio. (R-33, page 010.) On page five of Dr. Mobilio's report regarding recommendations, at number three, he indicates that D.G. with regards to treatment needs to be on some form of psychiatric medication, whether it be Ritalin or Adderall, but that the family had to first be on the same page about the benefits of psychostimulants. (R-33, page 011.) Mrs. G. wanted D.G. to be on medication for ADHD but her husband initially was not in agreement, but the family did decide to follow that advice and D.G. did get on medication.

Dr. Mobilio also recommended at paragraph four that “I strongly believe that if the summer months are not utilized to have D.G. engaged in psychiatric care and be on psychiatric medications and also have regular counseling with at least a Master’s level counselor who is well-versed in ADHD and anxiety disorders.” (R-33, page 011.) During the summer of 2019 there was no psychiatric counseling aside from the primary care physicians, Dr. Danielle Nardone and Dr. Jessica Horvath-Matthews who prescribed the ADHD medications. Psychiatric care or counseling for anxiety disorder, ADHD, and anger management was provided by the primary care physicians to a certain extent but she does not have any reports. It was not until February 2020, that he had any type of counseling through the juvenile justice system with Ascenda. This was discipline. He was required to participate in the program as part of the conditions of his deferred disposition.

There was no other voluntary counseling by anyone following Dr. Mobilio’s recommendations. D.G. received one on one counseling with Mr. Semen and group counseling in the BD program in ninth grade which was part of his IEP. He did not have any individual counseling at St. Joseph Academy, but they have some group counseling once a month with the whole school. D.G. did not receive any small group counseling at St. Joseph Academy.

Mrs. G. wanted D.G. psychiatrically evaluated by Lee Ann McCauley to get an update on D.G. for educational matters. She did not issue a report to Mrs. G. She did not provide it to St. Joseph Academy. It may be in the file of D.G.’s primary care physicians.

The one-page letter from Ascenda, dated June 10, 2020, was from Giovanna Drummonds. (R-33, page 042.) There were several counselors involved and parents were not allowed in the Zoom sessions. Mrs. G. requested this document be generated because she was collecting data for the June 9, 2020, meeting including recommendations, although it was dated after the IEP meeting. Mrs. G. does not recall providing this document to the CST. She’s almost positive she did provide it to her advocate, Marybeth Gilliland, but does not know specifically. She met the advocate in the summer of 2020 after the first IEP meeting in June. The advocate is from Family

Advocacy, and she did not have to pay for her services. Mrs. G. sent her documents and wanted her services to get a better IEP for D.G. Mrs. G. shared with her advocate the June 2020 IEP before she attended the September 2020 IEP. After Ms. Gilliland said the transition plan sounded reasonable at the meeting in September, although Mrs. G. did not agree, she did not fire her or request the agency to appoint someone else.

St. Joseph Academy registration application is in Mrs. G.'s handwriting except for the email, which is not in her handwriting and is not her email. (R-33, page 019.) Mrs. G. filled this document out at the school in the beginning of the school year. The date on the application says today's date: "9 - -20." It says September 2020, but there is no day specified. She did not white out anything. When you do application, you have to give them a deposit and she had to get money from her bank. Mrs. G. was advised that the principal of St. Joseph Academy called her on September 11, 2020, saying D.G. was accepted. Mrs. G. does not know if the application was filled out before she got the telephone call of acceptance.

At the end of August beginning of September, they were coming from her brother's house and stopped at St. Joseph Academy in Hammonton. Just she and her husband were in the car. They went to St. Joseph Academy to get an application for her son to attend St. Joseph Academy. She does not know if he got an application, but he got out of the car and spoke to someone outside the VFW. The first time she was there she did not realize what was going on. They were coming from a barbeque at her brother's and her husband was driving and they stopped at St. Joseph Academy. There was no school there, they were in a VFW. She believes her son visited the school before he was enrolled but does not know the date. This visit to St. Joseph Academy for the first time was before September. The application she believes was submitted when they paid the \$300.00. The next page of the application is also in her handwriting. There is a part of the form where it asks why do you want to enroll your child in St. Joseph Academy? Mrs. G. wrote "Over all reputation of school. Faith based, curriculum oversee discipline and achievement to set up for successful life." (R-33, page 020.) Her reason for sending D.G. to St. Joseph Academy was for the faith-based curriculum. She went to Catholic school her whole life. She believes in the discipline of Catholic school. The school is opened to all persons. She does not know if he is required to go to mass Friday once a month with

the student body. Mrs. G. met D.G.'s teacher during tenth grade. Mrs. Leonchuck was the special education teacher and she taught study skills every day. Mrs. G. knows the math teacher, Mr. Curcio was a Harvard graduate and an attorney. Mrs. G. did not know if any of D.G.'s teachers were licensed certified teachers in New Jersey.

She does not know if St. Joseph Academy is accredited by the State of New Jersey. The personnel from Camden County Educational Services Committee provides services to the students in the Catholic schools.

Prior to the September 9, 2020, she does not recall if she told her advocate that she and her husband were considering enrolling D.G. at St. Joseph Academy. Her daughter was sick with COVID-19 but was misdiagnosed with a respiratory problem at the end of August beginning of September because she had already moved away. Her niece lives in the same house with her daughter and Mrs. G. was responsible for her too.

Prior to the September 9, 2020, meeting, Mrs. G. believed they filled out the application for St. Joseph Academy and sent it to Gina Gardner at St. Joseph Academy. She stated that they were not all together on this decision at the time. D.G. had not visited the school prior to the meeting. She did not have any communications with St. Joseph Academy before the September 9, 2020, IEP meeting. She may have contacted St. Joseph Academy after the meeting regarding the fact that her son had an IEP and she needed to talk to someone about that. Mrs. G.'s attention was called to an email dated June 17, 2020, from herself to Beth Smith at Mr. McPhee's office that was forwarded on September 8, 2020, by Mrs. G. to Gina Gardner on September 8, 2020, at 5:24 p.m. and an email dated September 9, 2020, at 1:07 p.m. from Gina Gardner at St. Joseph Academy to Mrs. G. saying "got it thank you. G." (R-33, page 022.)

Mrs. G. does not know what was sent to St. Joseph Academy on September 8, 2020. She recalls sending Mr. McPhee and Beth Smith the settlement agreement. She may have also sent them the letters of recommendation (R-33, pages 024-025) and forwarded them to Gina Gardner. She does not recall sending the June 2020 IEP to St. Joseph Academy on September 8, 2020.

The receipt for \$300.00 for D.G.'s registration for St. Joseph Academy is dated September 18, 2020, and is signed by Gina Gardner. (R-33, page 026.) There is an email from Mr. G. to Gina Gardner dated September 16, 2020, indicating that he will have the paperwork and deposit money to her tomorrow or Friday by the latest. (R-33, page 025.)

The principal of St. Joseph Academy called on September 11, 2020, to advise that D.G. had been accepted so Mrs. G. agreed that some paperwork had to be sent regarding D.G.'s application to enroll if D.G. was accepted by phone call on September 11, 2020. She does not know what paperwork her husband's email is referring to. Mrs. G. did not tell anyone at the September 9, 2020, IEP meeting that paperwork was sent to St. Joseph Academy because it was not decided then by the family what they were going to do because it was not decided yet. On September 11, 2020, D.G. was accepted. She did not tell respondent that they were considering St. Joseph Academy because it was not yet decided. Mrs. G. would not have been advocating and researching things with her advocate to decide the most appropriate placement for D.G. in Washington Township, if they had already decided to send D.G. to St. Joseph Academy.

After September 11, 2020, when D.G. got accepted a final decision was not made until Sunday, the day before school.

St. Joseph Academy had the number one football team. It is a good school overall and a good sports school. Her husband and her have different ideas and they respect each other's opinion. There were a lot of things to take into consideration and she believed things were going to work out with the district. However, it was a tug of war. She would pull and the district would pull harder. It was not like she did not get her way and decided to take her ball and go home. Mrs. G. cannot understand how this process could take so long. She has been through a criminal attorney, an educational attorney and spent countless hours on her own researching issues and she does not get paid. She did it because she loves her child. She was on the ball with everything, and her son was on the ball with everything. There were a lot of things to take into consideration. Mrs. G. thought things were going to work out with respondent but every time she pushed, they pushed back harder. She felt that there was no collaboration.

Mr. G. felt sports in general was important and was in favor of St. Joseph. D.G. played football in tenth grade at St. Joseph Academy. She was not overruled by her husband in making the decision to send D.G. there. Mrs. G. stated that sports was not the biggest determining factor in her husband's wanting to send D.G. to St. Joseph Academy, but it was his wanting to get D.G. away from Washington Township that played the biggest role in the decision after all they had been through. Honestly her husband loved sports, but the main reason was to get her son an appropriate education in the least restrictive environment where he can strive with peers.

On September 18, 2020, they paid the deposit. On Monday, September 21, 2020, was the first time Mrs. G. notified the district that D.G. was attending St. Joseph Academy. (R-24, page 2.) Prior to September 21, 2020, she vaguely recalls a discussion with her advocate about the duty to advise the district in advance prior to unilaterally placing the child in a private school. That whole week Mrs. G. was in a shutdown mode and had not transferred out D.G. with the paperwork. She had asked her advocate to notify the district. Her daughter was sick, and it was scary because her husband and her are autoimmune and then everything was going on with D.G. Mrs. G. does not specifically recall knowing that she had a duty to notify them in advance of the unilateral placement before she sent the deposit check into St. Joseph Academy. Mrs. G. does not remember the timeline as everything happened close together. During the time frame, she was filing for due process. Her conversation with Ms. Gilliland was that she was not going to be able to be her advocate anymore. The advocate sent an email to the IEP team.

Mrs. G. filed for due process and her advocate doesn't get involved in due process hearings. Mrs. G. did not speak to her for quite some time. The advocate sent an email to Mr. Betley on September 21, 2020. Mrs. G. does not believe Ms. Gilliland told her she had a duty to notify the district. Mrs. G. does not know if Ms. Gilliland was aware of that statute. She was a special education teacher. The advocate found out about the placement when it happened. Mrs. G. was not on board with the decision until the very end. Mrs. G. believes Ms. Gilliland did not know about D.G. being placed at St. Joseph Academy until Ms. G. called her and asked her to notify the district. Mrs. G. does not recall Ms. Gilliland saying anything about the decision to remove D.G. aside from saying

she would send the email and that she would have to fill out paperwork to remove D.G. She left off with her advocate on September 10, 2020, the day after the IEP meeting.

Mrs. G. says the settlement was binding, and the discipline should not have continued after June 2020. It was only in effect until the end of June 2020 and D.G. was only required to be in the BD program until the end of ninth grade. The FBA that was supposed to be conducted was supposed to arrange these services and place D.G. in the least restrictive environment. An IEP was not supposed to be made for the new year without having the FBA done.

Mrs. G. did not advise the district of her intent to enroll D.G. in St. Joseph Academy prior to removing him from the district. She did inform Mr. Semen, the case manager that she did not agree with the June 9, 2020, IEP. Everybody was making up her son's IEP without her input and when she got to the meeting, they told her this was how it is going to be.

The Individualized Service Plan (ISP) for D.G., dated December 11, 2020, was done by the Camden County Educational Services Commission as a private school's IEP. (R-33, pages 030- 037.) Mrs. G. agreed that some private schools cannot offer the level of services that public special education services can. D.G. was not offered individual or group counseling at St. Joseph Academy. Mrs. G. always wanted to be true and honest. D.G.'s classification was emotionally disturbed in his IEP. Mrs. G. did not give false information about D.G.'s classification. The form indicated that D.G. had been evaluated by a CST and she wrote yes and then wrote D.G. was Other Health Impairment (OHI) and not ED. She did not lie. She filled this out to get a learning and psychological evaluation. St. Joseph Academy had a copy of the settlement and the IEP. This paper was filled out to get services with Mrs. Leonchuck. The form is dated in September 2020, and it says it is an admissions form. (R-33, page 021.) Mrs. G. was upfront with St. Joseph Academy as to what was going on. The ISP-Transfer form has the classification specific learning disability crossed out and "Emotional Disturbance" handwritten in the classification section. (R-33, page 030.) In the Transfer Meeting Written Notice of Re-Evaluation Plan meeting of December 11, 2020, in the Summary of Reasons for Referral (Transfer Case, Reevaluation): It states that "D.G. transferred into St. Joseph from WTPS

with a classification of ED. He was previously classified as OHI due to a dx ADHD. It is recommended to update D.G.'s CST evaluations in order to have a better sense of his overall cognitive and academic functioning. Parents have expressed concern with the ED classification." (R-33, pages 031 – 032.)

Mrs. G. stated that they told her that D.G. did not have to be classified. She did not want the classification changed until a doctor changed it. She was concerned about it not being accurate. She believed that because his ADHD was not being controlled, it led to an incorrect diagnosis. When D.G. went on the medication, it did something and there was a significant change she believed that required he be reassessed. She did not want him labeled for something he was not. If you looked at his psychological and learning evaluations, it is typical ADHD. Mrs. G. wanted D.G. reassessed. Under the section "parental comments" parents would also like classification changed based on updating the CST records. (R-33, page 032.) She wanted an update to make sure it is current. She did not know why there was no psychiatric evaluation. She did tell them she was getting one on her own because that was the plan. Proposed assessments to be done and the areas of suspected disability checked off were a psychological assessment to be done by D. Hauck and a learning disabilities assessment by K. McGowens. Psychiatric evaluation is not checked off on the form because she was to get one on her own which she did eventually, but she was not supposed to put anything in the documents after June she believed. (R-33, page 033.)

The eligibility conference report of March 25, 2021, indicates that the classification for D.G. is OHI. (R-33, page 038.) Mrs. G. does not know how the classification changed without an updated psychiatric report. (R-33, page 038.)

It was not a fair statement that despite no special education counseling services being provided to D.G., it was more important to petitioners that D.G. play football and pray and go to St. Joseph Academy.

In order to make the honor roll at the high school you need all Bs. D.G. made honor roll his first semester freshman year 2019-2020 school year. (R-33, pages 017-018.) In ninth grade he was progressing academically according to Mrs. G. because he

had been in the dining room with her for twelve months and his teachers that came to the house while he was on homebound instruction were excellent.

The final average for the year reflects the lowest grade as an eighty-seven which is a B. The lowest score she sees is an eighty-seven which is honors. In marking period three, D.G. needed an eighty-five or above and in Integrated science he got an 83, which was still good, but not above 85. In marking period four he did not earn honor roll status for third and fourth semesters, but he did have good marks. (R-33, pages 015- 016.)

Mrs. G. stated that the study skills class with Mrs. Leonchuck's class with an aide assists the special education students with whatever is required in their service plan. Mrs. G. does not know if this was the same level of service that Mr. Semen was providing. Perform Care came to assess D.G. at the home because it was required by her insurance before she could get a psychiatric evaluation. D.G. was spoken to one and one and D.G. was not considered a candidate for continued counseling.

Mrs. G. does not know when she first found out that she had an obligation to notify the district before the unilateral placement. She felt that the statute was like blackmail. Mrs. G. did not want to leave, D.G. did not want to leave, nor did her husband. After the settlement, they thought they would be moving forward. D.G. signed the behavioral contract. This has gone on so long and they are out of money. She is not well, and she does not want to do this until he graduates. He was home since eighth grade. Mrs. G. does not know when she learned about the requirement to notify the district prior to removing D.G. as she does not remember. All she did was advocate for D.G. since the settlement and she had no intention of leaving and was hoping things would work out. The FBA would see if there still is behavior that needs targeting, but no data was collected and she understood the data to be collected was more than the data from the BD class.

Mrs. G. looked at the PRISE handbook she received when she filed for due process. On page fifteen of the PRISE handbook, it explains the ten-day notice requirement before placing your child in a nonpublic private school, but she was not aware of that section of the PRISE handbook.

Despite COVID-19, Mrs. G. believes there were other ways to do the FBA and the more she requested help they were ignored. She reviewed what a FBA is and then Mr. Major is telling her that they need long term data when a FBA can be done in thirty days. All Mrs. G. knows about the psychiatric evaluation ordered by the Court was that the psychiatrist found that D.G. was not a danger to himself or others.

Discussion

It is the duty of the trier of fact to weigh each witness's credibility and make a factual finding. Credibility is the value a fact finder assigns to the testimony of a witness, and it contemplates an 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 findings "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 (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).

In order to assess credibility, the witness' interest in the outcome, motive, or bias should be considered. Furthermore, a trier of fact may reject testimony because it is inherently incredible, or because it is inconsistent with other testimony, or with common experience, or because it is overborne by other testimony. Congleton v. Pura-Tex Stone Corp., 53 N.J. Super. 282, 287 (App. Div. 1958).

Mrs. G. was a truthful and credible witness. Although there were a few scheduling issues when remote instruction began, Ms. G. made sure D.G. attended his remote classes and counseling sessions and did his work. D.G. was engaged and logged in for remote instruction and did not need the remote behavioral supports offered by DiNovi for those students who were not engaged/and or logged in for remote instruction. Mrs. G. expressed her concerns as to how the FBA was going to get done once they went to remotes instruction and her concerns that the academics in the BD class were less rigorous and that as a consequence, D.G. would fall further behind academically if he was

not returned to the general education setting. She produced her telephone logs and emails sent to district personnel to show her contacts with the district. I believe her testimony that she contacted Mr. Semen at least seven times before the June 9, 2020, IEP meeting regarding what was going to happen with the settlement agreement and the FBA and Mr. Semen having no answers for her. Following the June 9, 2020, IEP meeting recommending D.G. remain in the BD program for tenth grade, Mrs. G. continued to advocate for her son's placement in the general education setting with appropriate supports. Mrs. G. sent Mr. Semen letters of reference from D.G.'s teachers as well as community references. She requested another IEP meeting in July and again in August and pointed out various reasons in support of D.G. being returned to the general education setting including his positive response to the medication he was taking for his ADHD, his academic achievement in ninth grade, the many positive letters of recommendations and references he had received, his completion of counseling, and the dismissal of the juvenile charges. Mrs. G. retained Ms. Gilliland as an advocate to assist her and who accompanied petitioners to the September 9, 2022, IEP meeting.

Mrs. G. was candid in her testimony that they did look into St. Joseph Academy sometime during the summer. They had concerns for D.G.'s academic, social, and emotional well-being given the district's insistence on D.G. remaining in the BD program at the start of tenth grade. I believe petitioners conduct in exploring other options was reasonable under the circumstances. Mrs. G. was credible in her testimony that they did not make up their mind to send D.G. to St. Joseph Academy until the last moment. They attended the September 9, 2020, IEP meeting accompanied by Ms. Gilliland and with the district to raise all of their concerns and explore options for D.G. to continue to attend in district. Despite discussing a transition plan at the September 9, 2020, meeting, D.G. was not permitted to attend any general education classes when he would return for the beginning of tenth grade and had to remain in all of the BD classes until the FBA was conducted and a gradual transition plan implemented which could take months. Petitioners were concerned if the school went remote again, they would still be in a position of not having the FBA conducted and D.G. not being able to be transitioned out of the BD program.

Mrs. G. was honest and testified that petitioners found out through a telephone call that D.G. was accepted at St. Joseph Academy on the evening of September 11, 2020. However, they still had not decided to attend and actually advised the district that D.G. would be returning to school on September 14, 2020. D.G. actually did log into Ms. Kraft's BD class when tenth grade started. Mrs. G.'s testimony was credible that petitioners were working with the district until the ultimate decision was made. She would not have been working with her advocate for a suitable placement in the high school if they had already decided to send D.G. to St. Joseph Academy. Petitioners paid the St. Joseph Academy enrollment deposit on September 18 and school started September 21, 2020. She sent Mr. Semen and Ms. Kraft an email on September 21, 2020, that D.G. was attending another school. Mrs. G. was honest in her testimony that she was unsure if she knew in advance of the ten-day notice rule.

The rationale set forth in both IEPs proposed for tenth grade for keeping D.G. in the self-contained BD class was the district's inability to commence a FBA on D.G.'s fifteenth day in the BD program because D.G. was only in school in-person ten days in the BD program before schools closed for in-person learning. Therefore, according to the district, D.G. needed another five days in school, in-person, before the district started the FBA. However, the settlement agreement did not specify whether it was in person or not, just that D.G. had to be in the BD program for fifteen days before the FBA was started. D.G. was in fact in the BD program for all of ninth grade – ten days in person and the remainder of the year remote, like everyone else. The settlement agreement also stated that no matter what the results of the FBA, if the district's board of education decided he would have to stay in the BD program, D.G. would remain in the BD class for all of ninth grade, which he did anyway, without a FBA ever being performed. There was no provision in the settlement agreement that the BD program was to be his placement for tenth grade.

There is no question that the pandemic caused significant disruption to the educational process. The FBA was not done as called for in the settlement agreement. Petitioners argue that it should or could have been done virtually. The district witnesses testified that it was necessary that the FBA be done in an in-person school environment and that therefore, it could not be done virtually, and had to wait until D.G. returned to the

BD class in person for five more days before it could be started. Although it is questionable whether conducting a FBA of D.G. in the self-contained BD class would provide any significant data comparable to a FBA performed in a general education setting with peer contact, the fact of the matter is that a FBA does not determine a student's placement. The failure to conduct the FBA is not a persuasive argument to maintain D.G. in the restrictive self-contained BD classroom beyond ninth grade. As set forth in both IEPs, the district's rationale for maintaining D.G. in the BD program was that they needed D.G. to be in person five more days there before the FBA could be started. Such a constrained interpretation of the settlement agreement 'freeze frames' D.G. in the BD setting until the next school year, when that was not the terms of the settlement agreement.

Although it is understandable that district employees would want to defend the proposed IEPs that they formulated for D.G., their rationale for maintaining him in that restrictive setting is not persuasive, especially given the requirement that all decisions regarding a student's placement are based on the individual needs of the student and must begin with the consideration of placement in the general education setting. The district should have engaged in a more collaborative approach in working with the parents and considered the factors petitioners brought up showing that D.G. had demonstrated progress socially, emotionally, and academically and demonstrated the need for a less restrictive placement. The district was aware D.G. was on medication to manage his ADHD as it is reflected in both the June and September IEPs. They were aware that D.G. was involved in a counseling program through the juvenile justice system and had even included a provision in the settlement agreement that they be provided permission to access these records. The district could have obtained these records if they wished. However, they maintained a narrow interpretation that D.G. stay where he was in the BD program until a FBA be done, even though it was obvious from the testimony that the district was not the one pushing for the inclusion of the FBA in the settlement agreement. It was the parents desire that this be included in the agreement in hopes that it would help D.G. in the general education setting. It certainly was never intended to prevent D.G. from re-entering the general education with supports, which was the educational setting he had been in his entire academic career, before the incident in eighth grade.

Given the emphasis placed on the necessity of the FBA, it was interesting to learn during the course of the testimony from district personnel that it was unclear who exactly was to perform the FBA. The settlement agreement called for the FBA to be performed by the board's service provider, which presumably was DiNovi. Mr. Semen and Mr. Hoopes testified that they believed that to be the case, but Mr. Major from DiNovi said it was not going to be done by DiNovi, but by district personnel. Ms. Miller testified it was going to be done by one of their in-district behavioral specialists, although no one had been assigned to do it as of D.G.'s tenth day in person in the BD program and no data had been collected. At the September 9, 2020, IEP meeting, district personnel confirmed that the FBA had not been started and that no data had been collected because the FBA was not supposed to be commenced until day fifteen in the program and D.G. was only in person in the program ten days before instruction went remote.

Although the district's main argument for keeping D.G. in the BD program was the district's inability to conduct a FBA, they also raised the argument that D.G. had not mastered his counseling goals as testified to by Mr. Semen. This argument is not persuasive as D.G. could have been provided the related service of counseling sessions outside of the BD program. Also, the district's arguments that the academic rigor of the BD program rivaled that of the general education class was also not credible. Mrs. G.'s concerns for D.G.'s academic progress while in the BD program were warranted.

Based upon due consideration of the testimonial and documentary evidence presented at this hearing, and having had the opportunity to observe the demeanor of the witnesses and assess their credibility, I **FIND** the following as **FACTS**:

D.G. was diagnosed with attention-deficit hyperactivity disorder (ADHD) in 2015. (J-2.) He was receiving special education and related services under the classification OHI (other health impaired) and was placed in the general education setting with in-class support.

In January 2019, when D.G. was in eighth grade, he was involved in an incident involving inappropriate behavior with a female student which resulted in him being suspended and placed on homebound instruction on January 25, 2019, for violation of

the middle school code of conduct. He remained on home bound instruction for eleven and half months, the remainder of his eighth-grade year and continuing into his ninth-grade year.

The CST had a psychiatric evaluation of D.G. done on May 30, 2019, by Dr. Joseph N. Mobilio, D.O. (P-3.) Dr. Mobilio did not believe D.G. was a danger to himself or others and believed he needed to be on some form of psychiatric medication, whether it be Ritalin or Adderall. Dr. Mobilio believed D.G.'s lack of judgment and impulse control was related to his ADHD as his past discipline record does not look like someone who has sociopathic tendencies. (P-3, page 5.) Dr. Mobilio opined that D.G.'s current classification could be continued, but emotionally disturbed could be added to his classification. (P-3, page 5.)

D.G. was prescribed Adderall by his treating physician, Dr. Jessica Horvath-Matthews, M.D. of Cooper Family Medicine. Medical records indicate that he was seen for an Adderall check in November 2019 by Dr. Matthews. A letter dated March 10, 2020, from Dr. Jessica Horvath-Matthews, M.D. of Cooper Medicine addressed To Whom It May Concern states "Please be advised, D. takes the following medication: amphetamine-dextroamphetamine XR (Adderall XR) 25 mg Oral cp. Please allow D.'s mother J.G. to come to the school to administer the medication when necessary." (P-31.) On June 11, 2020, the doctor's office sent an email that D.G. was under Dr. Matthews' care and is being treated with daily medications. (P-31.)

While on homebound instruction for ninth grade, D.G. received a 92% in CP English 9; a 91% in Algebra 1B; a 95% in Integrated Science; an 87% in CP World History; a 97% in Introduction to HS Spanish; a 100% in Health/Physical Education; and a 99% in Guitar. (J-2.)

D.G. made the honor roll for the first marking period and for the first semester of the 2019- 2020 school year. (P-30.)

Both the June and September 2020 IEPs indicate that D.G. is taking Adderall (generic version) – ADHD (25mg) extended release in the morning. (J-3 and J-4.)

On February 25, 2020, petitioners and respondent entered into a settlement agreement whereby D.G. would be re-admitted to the high school on March 2, 2020, and placed in the self-contained behavior disabilities (BD) program. After D.G.'s first fifteen school days in the BD program, a Functional Behavioral Assessment (FBA) would be performed by the Board's service provider. The FBA was to be completed within twenty school days after its commencement. After completion, the CST and the petitioners would meet within ten school days to discuss the results of the FBA. D.G.'s special education program was to remain in the BD program for the remainder of his ninth-grade year unless the CST recommended a less restrictive environment and the Board agreed to the recommended change in placement. (J-1.)

D.G. also entered into a behavioral contract as part of the settlement agreement (J-5.). D.G. complied with the behavioral contract and petitioners notified district personnel when one of the girls involved in the underlying incident attempted to contact D.G.

Pursuant to the settlement agreement, it was also agreed that petitioners would sign a written authorization to allow the high school counselor, social worker, and psychologist to communicate and/or consult with D.G.'s counselor that is providing services to D.G. through Gloucester County juvenile proceedings. (J-1, paragraph 2.)

There was no evidence introduced that the high school counselor, social worker, and psychologist sought written authorization from petitioners allowing them to communicate and/or consult with D.G.'s counselor that was providing services to D.G. through Gloucester County juvenile proceedings.

D.G. started in the ninth-tenth grade BD program on March 2, 2020, with Ms. Kraft as his teacher, assisted by her teaching assistant, Ryan Francisco as well as a behavior technician, Jermaine Morris from DiNovi and Associates. There were seven students in D.G.'s BD class including D.G. There was one female student in the class.

The self-contained BD program does not allow for any opportunity for interaction with general education, nondisabled peers. The BD classroom is located in the 11th-12th wing of the high school and has its own entrance. The class eats lunch together in their classroom. They are supervised on walks in the hallway and to go the bathroom.

The BD program included a social skills class taught by the school psychologist, Mr. Semen. D.G. also received one to one counseling sessions with Mr. Semen.

Mrs. Kraft indicated that D.G. was polite, respectful, and completed all of the assignments requested of him. He was an active participant in class and advocated for himself.

The Board employs Brett DiNovi and Associates as their behavior specialists. They are Board Certified Behavior Analysts (BCBA). They oversee the data and are trained in ABA, can perform FBAs, and write the behavioral plans for the students when they need one. Joseph Major was assigned to the high school program. The DiNovi clinical associate Jermaine Morris was in Ms. Kraft's nine-ten BD class. The BD program is a self-contained program, and its mission is to get the student into their least restrictive environment where they are going to be successful.

The BD program at the high school uses Applied Behavior Analysis (ABA) and a data-based approach to tracking behaviors that help to make successful students. Behavior is tracked in ten-minute intervals. The six different behaviors that are tracked are: non-compliance, verbal disruption, physical disruption, off task behavior, elopement, and aggression. The BD program is data driven. The six different data points are taken, and it is either they observed the behavior or did not. Throughout the day they add up to 100 points. A ninety or above is a successful day.

The data collected on D.G. in person in the BD class from Monday, March 2, 2020, through Thursday, March 12, 2020, indicates that he had all successful days. (R-31.) D.G.'s scores were as follows: March 12, 2020 – 100; March 3, 2020 – 100; March 4, 2020 – 99.4; March 5, 2020 – 99.4; March 6, 2020 – 99.4; March 9, 2020 – 100; March 10, 2020 - 98.2; March 11, 2020 – 99.4; and March 12, 2020 – 100. (R-31.)

D.G. had been in school in person for two weeks in the BD class, when the COVID-19 pandemic caused the schools to switch from in-person instruction to asynchronous remote instruction on March 16, 2020, through the end of the school year.

D.G. remained in the BD class for the remainder of his ninth-grade year.

A FBA was not performed by the Board's service provider after D.G.'s first fifteen school days in the BD program.

No FBA was performed during D.G.'s ninth grade year in the BD program.

While remote, D.G. was engaged and frequently emailed Ms. Kraft with any questions or technology issues. D.G. did well on his ninth-grade assignments and at the end of his ninth-grade year, D.G. was on par with the curriculum goals. Ms. Kraft prepared the PLAAFP narratives for the academic content areas set forth in both the June 9 and September 9, 2020, IEPs which were the same. (J-3 and J-4.) Ms. Kraft indicated that D.G. demonstrated strength and proficiency in all of his academic areas. His Spanish teacher, Shannon Schooch, indicated that D.G. joined the Spanish for Communication class in the self-contained setting during the third marking period and earned a ninety-four. As of June 4, 2020, he had earned a ninety for the fourth marking period. While on remote learning, he had been able to maintain his grades and completed every assignment. (J-3, pages 2-1 to 2-3.)

The school psychologist and D.G.'s caseworker Mr. Semen completed the counseling section of the PLAAFP on June 8, 2020. At that time D.G. had attended six of the twelve individual counseling sessions. Mr. Semen indicated that D.G. and his parents were always very polite and apologetic in their response as to why D.G. did not make the missed sessions (that is, parent accidentally gave him the wrong time, D.G. forgot about the session, he was helping his neighbor mow the lawn, etc.). During the sessions D.G. was very engaged, fully participated and was able to understand the scenarios presented to him. When given the scenarios of social conflict, D.G. was able to identify the problem, but not on every occasion. Once the problem was identified, D.G.

was able to generate a solution appropriate to the scenario. His solutions were not always the most appropriate to the scenario, however, when he was guided, prompted, and explained the reasoning for why the solution may not be appropriate, D.G. was very receptive to the feedback and demonstrated that he understood the reasoning given to him based on the responses he gave in return. Mr. Semen indicated that although D.G. has shown progress towards the goal, it was being recommended that he continue receiving individual counseling. It was also recommended that D.G. continue to work on the current goal, as well, as he has not yet demonstrated mastery.

By email, forwarded on April 23, 2022, from Mrs. G. to Mr. Semen, Mrs. G. raised concerns that the FBA was supposed to take place in the classroom amongst classmates and a classroom instructor by a certified associate from DiNovi and how was this going to be done now due to COVID. Mrs. G. also raised concerns about D.G.'s academics and lessons taking place at an appropriate pace and that she was afraid he was falling more behind. Mrs. G. indicated that she wanted to work with him and do what is most appropriate for D.G. She advised that they would be available whenever Mr. Semen needed them to be available. She also advised Mr. Semen if he would rather call, please feel free (856) 761-4185. (P-9.)

Mrs. G. reached out to Mr. Semen on numerous occasions to find out what was going to happen regarding the settlement and conducting the FBA now that they were remote. Mr. Semen did not have an answer for her and stated that he would have to speak to his supervisor, Mr. Hoopes, and then when Mrs. G. followed up, he would state he forgot to ask. Mrs. G. did not receive any feedback regarding what was going to happen regarding the settlement and the FBA not being done before she attended the June 9, 2020, IEP meeting.

Mrs. G.'s telephone records indicate that on April 23, 2020, at 12:12 p.m. she had a thirty-five-minute telephone call from 856-292-5481. On April 30, 2020, at 2:01 p.m. she received a fourteen-minute telephone call from 856-292-5481. On June 15, 2020, at 5:08 p.m. she received a forty-one-minute telephone call from 856-292-5481. (P-18.)

Mrs. G sent an email to Mr. Semen on June 8, 2020, confirming the IEP meeting for June 9, 2020, and advising him that he would be receiving references letters from past homebound certified instructors and or physicians that she wanted placed in D.G.'s file and wanted to make sure Mr. Semen had access to D.G.'s current behavioral instructors/teachers over the past several months and to make sure that the child study team has had time to review them. She also advised Mr. Semen that D.G. was working part time and had a small lawn maintenance business and she was trying to get a letter of reference sent to Mr. Semen. Mrs. G. also advised Mr. Semen that D.G. had been working on an animal project/experiment for the past four years involving hatching baby quail and has been successful with it due to his time, hard work and effort he put into it. Mrs. G. also requested a drivers instruction manual as D.G. was taking his driver's permit test the first week in July. She also inquired about getting working papers for D.G. (R-15.)

Mr. Semen replied to Mrs. G's email on June 9, 2020, thanking her for her email and said that they can discuss everything at the meeting at 1:00 p.m. (R-15.)

On June 8, 2020, Victoria Devone, a Washington Township instructor, sent Mr. Semen as email reference at Mrs. G.'s request. Ms. Devone tutored D.G. in social studies and science for almost a year during eighth and ninth grades when he was on homebound instruction. She advised that D.G. was a conscientious student and worked diligently on his work with her. He also completed homework in a timely fashion. If Mr. Semen needed any more information, she advised him to feel free to contact her. (R-11.)

On June 8, 2020, Brenda Taylor, D.G.'s Spanish teacher while on homebound instruction sent Mr. Semen a reference letter indicating that D.G. was always on time and willing to work. D.G. completed most assignments on time and put forth effort. He was always polite and respectful to her. Although there were times that he would get off task, he was easily redirected. (R-10.)

Kim Hamilton, the owner, and operator of Ambassador Cleaning Specialist employed D.G. the summer of 2019 and the summer of 2020 and provided a letter of recommendation for D.G. She indicated that although D.G. was one of her youngest

employees, his maturity, level of responsibility and professionalism made him an asset to the company. (P-30.)

On June 9, 2020, Tina Ferringo, a resident of Washington Township sent an email letter of recommendation to Mr. Semen. She advised Mr. Semen that she had many positive interactions with D.G. since D.G. had started a lawn maintenance business and she utilized his services. Ms. Ferringo stated that as his case manager, she would like him to be made aware of D.G.'s strong and diligent work ethic. D.G. is a responsible young man who possesses a courteous demeanor. He was always punctual, took his time to complete the work and made sure she was pleased with the end result. If something needed to be adjusted, he did so without complaint. Her front and back yard look superb and professionally maintained. She welcomed Mr. Semen to contact her in regard to this email. (P-30, R-12.)

D.G. completed a cognitive life skills program through Ascenda Health during the Spring of 2020 and received a certificate of program completion. Giovanna Drummonds, juvenile justice counselor, by letter, dated June 10, 2020, provided a letter of reference for D.G. indicating that he had been doing very well in the program and was an active, helpful, and engaged participant and assisted other youth with activities without being asked. She indicated he was kind and respectful and never hesitated to volunteer when others may not want to engage. He had perfect attendance and was always on time for group and had no disciplinary issues while in the program. (P-30.)

The annual review June 9, 2020, IEP meeting to discuss D.G.'s placement for tenth grade was held through video/telephone conference due to the continued public health concerns occasioned by the COVID-19 pandemic. Petitioners all attended together with John Tortoriello, Joseph Hoopes, Eren Semen, George Passante, Jessica Tanski, Jennifer Kraft from the District, as well as Joseph Major from DiNovi. The IEP proposed to continue D.G. in the self-contained BD program for tenth grade for all of his courses. (J-3, pages 21-1 and 21-2.) The notice requirements for the IEP and placement section of the June 9, 2020, IEP required a description of any options considered and the reasons those options were rejected, which stated as follows:

“To change placement; however, the district has not had the opportunity to satisfy the conditions of the settlement agreement in regard to the Functional Behavioral Assessment (FBA.) Due to remote learning because of COVID-19, the FBA was unable to be conducted, and will be conducted once we are able to physically return to the school. Upon returning, after 5 full school days, with D. attending each day, the FBA will then be conducted because per the settlement agreement, the FBA would not be conducted until after D. has attended 15 school days. He was in school 10 school days prior to remote learning. Therefore, an additional 5 days would be needed once we physically return back into the school setting. Once the FBA is conducted and completed, another IEP meeting will be held closer towards the end of the first marking period, to discuss the results of the FBA, as well as D.’s placement within the Self-Contained Behavioral Disabilities Program.”

(J-3, page 15-1.)

The June 9, 2020, IEP called for D.G.’s continued placement in the BD program and did not set forth, in writing, any transition plan out of the BD program.

On June 18, 2020, Mrs. G. emailed Mr. Semen advising that they received a copy of the IEP from the June 9, 2020, IEP meeting and she had questions and concerns which she tried to go over with him on their phone call the other day. She stated in the email that she was not trying to put him in an awkward position but he did say that he doesn’t get involved in any type of legal matters so she would try to reach out to the supervisor on the team. (R-15.)

The parents did not sign the June 9, 2020, IEP.

The parents requested another IEP meeting during the summer and sent an email requesting same on July 23, 2020. The parents requested the chance to collaborate with the IEP team to identify a less restrictive environment for D.G. starting in September. (R-16.) On August 24, 2020, the parents sent an email requesting mediation and requesting that D.G.’s placement be changed to the general education setting with appropriate related services and supplementary aids, services, and supports. (P-10.) On August 25, 2020, the parents followed up with Ms. Miller and Ms. Ashbridge when they did not receive

a response from the district to their July 23, 2020, request for another IEP meeting. (R-16.) In these various emails, the parents indicated that the BD program was no longer an appropriate placement for D.G. as it was too restrictive for a student demonstrating no behavior problems with no need for such intensive intervention. As of July 15, 2020, D.G. had met all of the terms of his deferred disposition agreement and the matter was dismissed. D.G. worked hard and made the honor roll in the 2019-2020 school year. The parents had received numerous favorable recommendations written on D.G.'s behalf. Dr. Mobilio's psychiatric report concluded that D.G. was not a harm to himself or others. D.G.'s ADHD/impulsivity was being managed effectively by medication and D.G. had participated in private group counseling sessions for the past year and demonstrated growth and maturity. In the BD program, D.G. is segregated completely from his peers for 100% of the school day, including lunch, electives, and even his bus ride. The parents stated that D.G. was missing out on opportunities for socialization and emotional development at an extremely critical age. (P-10.)

The parents also stated that the CST had more than five months to complete a FBA using teacher and parent reports, records review, and direct observation, among other things, which could have been done virtually. (P-10.)

As a result of petitioners' request, the district scheduled another IEP meeting for September 9, 2020. The September 9, 2020, IEP meeting was also virtual and was attended by D.G., his parents, their advocate Marybeth Gilliland, Mr. Betley, Ms. Miller, Mr. Semen, Ms. Kraft, Mr. Major, and Mr. Hoopes. The September 9, 2020, IEP meeting was recorded. (J-8.)

In advance of the meeting and by email dated September 8, 2020, the parents submitted a list of questions/concerns that they wanted added to the agenda. (P-11.) The parents sought clarification of item number four of the behavioral contract which prohibited D.G. from having any contact with the four female students from the middle school and if any of them attempted to contact D.G., he was to immediately report the contact to his school counselor. The parents were concerned that there was no time frame set forth in this contract as to when it would expire and that it was anxiety producing for D.G. to always have to worry about having to remove himself from a situation (dance,

practice, game, etc.) if any of the girls happened to be present when he was. Regarding the FBA, the parents wanted to know what behaviors the FBA was analyzing and what steps could be taken to make sure the FBA was done in a timely manner due to the ongoing remote learning situation. The parents also wanted D.G. to have appropriate supports to access the general education curriculum and his nondisabled peers to the greatest extent possible. (P-11.) The parents ended their email stating that they were very open to working collaboratively with the IEP team to come up with fair, creative solutions during these unprecedented times.

At the September 9, 2020, IEP meeting, the district did not agree to put an end date on the behavioral contract and wished it extended through tenth grade, even though the settlement agreement was only for ninth grade. The parent's advocate, Ms. Gilliland stated that the parents main concern was D.G.'s placement. They had agreed to the BD program back in the spring with the understanding that a FBA was to have been done. The advocate asked if any groundwork had been done on the FBA such as has the targeted behavior been identified, have there been any assessments or gathering of anecdotal data or has a game plan been decided. Mr. Hoopes said no because the FBA had not been started. Mr. Major stated that they did have the data from the days that D.G. was in the program, but the plan going forward would be to start when the student returns to the environment of the building. Mr. Major did not believe there were any particular behaviors being targeted. Ms. Gilliland pointed out that D.G. had been a member of the BD program for three and a half months receiving the support and counseling the program offered and wasn't there a way to collect data, even if they were virtual. Mr. Major indicated that they needed to collect data in the school environment, but there was no specific behavior keeping D.G. in the BD program, just that they did not have enough data collected at this time. Mr. Hoopes indicated that a transition plan out of the BD program had been discussed at the June IEP meeting, although it was not specifically set forth in the IEP and would be specifically set forth in the IEP following this IEP meeting. The advocate inquired as to whether D.G. could virtually take general education courses. As a special education teacher, Ms. Gilliland expressed hers and the parents' concerns that D.G. was not getting the rigor in his courses since the BD program has to deal with various other issues of the students in the class, including their ability levels. The parents wanted it on record that they were concerned with D.G.'s academics.

Ms. Gilliland also raised the issue of what would happen if the district went remote again in September before the FBA was completed. The parents did not want D.G. being held up again. Mr. Hoopes said that they would have to have a plan, not only for D.G., but for all of the students if this were to happen. (J-8.)

The September 9, 2020, IEP continued D.G.'s placement in the self-contained BD program but stated that a plan to transition D.G. out of the BD program was discussed.

“On October 14, 2020, based on success in the BD program (i.e., behavioral/anecdotal data), D. will be pushed out to trial two courses outside of the BD program. D. will trial these courses for approximately 30 thirty days. On November 13, 2020, if D. is showing continued success in the BD program, as well as in the two courses he's trialing (i.e., based on behavioral/anecdotal data), he will be pushed out to trial a third course. Then, at the end of the first semester, an IEP meeting will be held to review data (i.e., behavioral/anecdotal) and D.'s placement for the second semester.”

(J-4, pages 2-1 and 15-1.)

By email, dated September 11, 2020, Mrs. G. advised the district that D.G. would be returning to class on Monday, September 14, 2020. (R-21.)

On September 21, 2020, Ms. Kraft sent an email to petitioners inquiring if everything was okay since she had not seen D.G. logged in to Schoology since September 11, 2020. (R-22.)

On September 21, 2020, Mrs. G. responded through email, thanking Ms. Kraft and Mr. Semen for their time, and advised that D.G. was attending a different school at this time. (R-22.)

By email, dated September 21, 2020, Mr. Betley, the attorney for the district emailed petitioner's advocate advising that the district had received petitioner's email and was hoping she could elaborate. Ms. Gilliland responded through email to Mr. Betley on September 22, 2020, that the petitioners were given an opportunity last week to enroll

D.G. in a private school they felt would be a better fit for him and give him a fresh start. She also advised that Mrs. G. would be following up with Mr. Semen to tie up any loose ends. Ms. Gilliland further advised that Mrs. G. was interested in learning about procedures if they choose to re-enroll D.G. back in the district in the future. (R-25.)

By email, dated September 23, 2020, petitioners formally advised the district that they disagreed with the proposed IEP sent on September 14, 2020, and that D.G. remaining in the BD program was inappropriate and harmful to both his academic and social/emotional development and that they had chosen to enroll D.G. in a private school and would be seeking reimbursement for the private school tuition. (P-15.)

D.G. enrolled at St. Joseph Academy in Hammonton. The registration receipt for \$300.00 was dated September 18, 2020. (R-33, page Board 026.) A registration application was submitted in September 2020. (R-33, page Board 019.) D.G. was advised he was accepted at St. Joseph Academy on September 11, 2020. School for St. Joseph Academy started on September 21, 2020.

St. Joseph Academy in Hammonton, New Jersey is a private Catholic college preparatory school that is accredited by the Middle States Association of Colleges and Schools. (P-22.)

D.G. was provided with an ISP through the Camden County Educational Services Commission when he transferred to St. Joseph Academy. (R-33, pages Board 030-040.)

Susan Leonchuck is the special education teacher at St. Joseph Academy that teaches a skills support class designed to assist students with general curriculum classes and move toward academic independence. Students have the opportunity to develop and strengthen good study habits and learn strategies through various instructional methods and approaches. The goals and objectives found in the students' service plans are incorporated into the class. The skills support teacher collaborates with the regular education teachers on an on-going basis in an effort to meet the needs of each student. (R-33, page Board 029.) D.G. took the skills support class with Ms. Leonchuck.

By email, dated October 2, 2020, Mr. Semen sent the updated IEP to Mrs. G. He had previously sent her an IEP on September 14, 2020, following the September 9, 2020, IEP meeting that included the transition plan as well as the parental concern statement. However, the updated “options considered and reasons why they were rejected” on page fifteen was not included so he wanted to make sure he sent it. (P-33.) The options considered and the reasons those options were rejected stated:

“To change placement; however, the district has not had the opportunity to satisfy the conditions of the settlement agreement in regard to the Functional Behavioral Assessment (FBA). Due to remote learning because of the COVID-19, the FBA was unable to be conducted, and will be conducted once we are able to physically return to the school. Upon returning, after 5 full school days, with D. attending each day, the FBA will then be conducted because per the settlement agreement, the FBA would not be conducted until after D. has attended 15 school days. He was in school 10 school days prior to remote learning. Therefore, an additional 5 days would be needed once we physically return back into the school setting. Once the FBA is conducted and completed, another IEP meeting will be held closer towards the end of the first marking period, to discuss the result of the FBA, as well as D.’s placement within the Self-Contained Behavioral Disabilities Program.”

(J-4, page 15-1.)

D.G.’s courses at St. Joseph Academy for tenth grade (2020-2021 school year) included Spanish II, United States History 1, Geometry, English II, Drivers Education, Mental Health, Chemistry with Lab, and Skills Support. (P-23.) D.G. received ‘A’ s in all of his courses. (P-23.)

D.G.’s Discipline Record at St. Joseph Academy indicated that he had no discipline issues. (P-24.)

D.G. participated in J.V. Basketball at St. Joseph Academy during the 2020-2021 season and Varsity Football. (P-25.)

LEGAL DISCUSSION AND ANALYSIS

The Individuals with Disabilities Education Act (IDEA), as amended by the Individuals with Disabilities Education Improvement Act (IDEIA), 20 U.S.C. §§ 1400-1482, provides the framework for special education in New Jersey. It is designed “to ensure that all children with disabilities have available to them free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for employment and independent living.” 20 U.S.C. § 1400(d)(1)(A); See generally id. § 1400(c), (d) (describing need for, and purposes of, the IDEA). A State may qualify for Federal funds under the IDEA by adopting “policies and procedures to ensure that it meets” several enumerated conditions.

This Act requires that boards of education provide students between the ages of three and twenty-one who suffer from a disability with a free appropriate public education, or FAPE. In fulfilling its FAPE obligation, the Board must develop an IEP for the student, and the IEP must be reasonably calculated to confer some educational benefit. Hendrick Hudson District Board of Education v. Rowley, 458 U.S. 176, 192, 73 L. Ed. 2d 690, 703, 102 S. Ct. 3034 (1982) (Rowley). The Third Circuit Court of Appeals has clarified the meaning of this “educational benefit.” It must be “more than trivial and must be significant” and “meaningful.” Polk v. Central Susquehanna Intermediate Unit 16, 853 F.2d 171, 180 (3rd Cir. 1988), cert. denied, 488 U.S. 1030 (1989) (Polk); Ridgewood Board of Education v. N.E., 172 F.3d 238, 247-48 (3rd Cir. 1999) (Ridgewood). In evaluating whether a free, appropriate public education was furnished, an individual inquiry into the student’s potential and educational needs must be made. Ridgewood, supra, 172 F.3d at 247. In providing a student with a FAPE, a school district must provide such related services and supports as are necessary to enable the disabled child to benefit from the education. Rowley, 458 U.S. at 188-89. To meet its obligation to deliver FAPE, a school district must offer an IEP that is reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances. Andrew F. v. Douglas Cnty. Sch. Dist., 580 U.S. (2017); 137 S. Ct. 988; 197 L. Ed 2d 335.

Furthermore, the IDEA includes a mainstreaming requirement requiring education in the “least restrictive environment.” 20 U.S.C.A. § 1412(a)(5) mandates that:

[t]o the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

The law describes a continuum of placement options, ranging from mainstreaming in a regular public school setting as least restrictive, to enrollment in a residential private school as most restrictive. 34 C.F.R. § 300.115 (2015); N.J.A.C. 6A:14-4.3. Federal regulations further require that placement must be “as close as possible to the child’s home.” 34 C.F.R. § 300.116(b)(3) (2015); N.J.A.C. 6A:14-4.2; Oberti v. Clementon Bd. of Educ., 789 F. Supp. 1322 (D.N.J. 1992.)

Courts in this Circuit have interpreted this mainstreaming requirement as mandating education in the least restrictive environment that will provide meaningful educational benefit. “The least restrictive environment is the one that, to the greatest extent possible, satisfactorily educates disabled children together with children who are not disabled, in the same school the disabled child would attend if the child were not disabled.” Carlisle Area Sch. v. Scott P., 62 F.3d 520, 535 (3d Cir. 1995), cert. den. sub. nom., Scott P. v. Carlisle Area Sch. Dist., 517 U.S. 1135, 116 S. Ct. 1419, 134 L. Ed. 2d 544 (1996).

Parents who are dissatisfied with an IEP may seek an administrative due-process hearing. 20 U.S.C.A. § 1415(f). The burden of proof is placed on the school district. N.J.S.A. 18A:46-1.1. If an administrative law judge finds that a district has not made FAPE available to a student who previously received special education in a timely manner prior to his enrollment in a nonpublic school, the judge may require the district to reimburse the parents for the cost of that enrollment if the private placement is appropriate. N.J.A.C. 6A:14-2.10.

Thus, the first issue is whether the district's proposed IEPs of June 9, 2020, and September 9, 2020, provided D.G. with FAPE. Both IEPs kept D.G. removed from the general education setting and continued in the self-contained BD program with the rationale being that:

"The district has not had the opportunity to satisfy the conditions of the settlement agreement in regard to the Functional Behavioral Assessment (FBA). Due to remote learning because of COVID-19, the FBA was unable to be conducted, and will be conducted once we are able to physically return to the school. Upon returning, after 5 full school days, with D. attending each day, the FBA will then be conducted because per the settlement agreement, the FBA would not be conducted until after D. has attended 15 school days. He was in school 10 school days prior to remote learning. Therefore, an additional 5 days would be needed once we physically return back into the school setting. Once the FBA is conducted and completed, another IEP meeting will be held closer towards the end of the first marking period, to discuss the results of the FBA, as well as D.'s placement within the Self-Contained Behavioral Disabilities Program."

(J-3, page 15-1, J-4, page 15-1).

The district's rationale did not take into account D.G.'s needs in deciding this placement. D.G. had remained in the BD program all through ninth grade as was called for in the settlement agreement. He had done well academically and made the honor roll. He had completed private group counseling and demonstrated growth and maturity. The juvenile charges were dismissed. Numerous favorable recommendations and references were written on behalf of D.G. The BD program was no longer an appropriate placement for D.G. as it was too restrictive for a student demonstrating no behavior problems with no need for such intensive intervention. Dr. Mobilio's psychiatric report concluded that D.G. was not a harm to himself or others. D.G.'s ADHD/impulsivity was being managed effectively by medication.

The benefits of placement in the general education class setting include exposure to non-disabled peers, social interaction with the general education students, modeling of age appropriate social and communication skills in a natural environment, peer modeling of appropriate behavioral characteristics, and exposure to the student learning standards at grade level.

A general education class with in-class support at WTHS is the least restrictive environment that would provide D.G. meaningful education benefit. Prior to the incident in eighth grade, D.G.'s special education placement had always been in the general education setting with supports. However, both the June 9, 2020, IEP and the September 9, 2020, IEP continued D.G. in the BD program which was the most restrictive placement in the high school setting with no opportunity for contact with non-disabled peers, no social interaction with general education students, no modeling of age appropriate social and communication skills in a natural environment, and no peer modeling of appropriate behavioral characteristics. Also, there was no opportunity for exposure to student learning standards at the tenth-grade level. D.G. should have been allowed to return to the general education setting with the necessary supports including counseling sessions for tenth grade.

Based on the foregoing, I **CONCLUDE** that the June 9, 2020, IEP and the September 9, 2020, IEP failed to offer D.G. FAPE in the least restrictive environment.

If an educational agency failed to provide a student with a FAPE, the court is broadly empowered to fashion relief that is appropriate in light of the purpose of the IDEA. School Comm'n of Burlington v. Mass. Dept. of Educ., 471 U.S. 359, 369 (1985). The right of parents to make unilateral private placements when they disagree with the educational programs provided to their disabled children is well established. In the Burlington case, the United States Supreme Court held that the IDEA empowers courts to order school authorities to reimburse parents for their expenditures on private special education for a child if the court ultimately determines that such placement is proper under the IDEA. Ibid. This was considered to be a valid exercise of courts' broad powers to ensure that the purposes of the statute are carried out, i.e., to ensure that all disabled children have access to a FAPE. Ibid. The Court concluded that this would not unduly burden school districts. Rather, it merely requires a school district to belatedly pay expenses that it should have paid all along and would have borne in the first instance had it developed a proper IEP. Id. at 359.

Reimbursement is still dependent upon the parents establishing that the unilateral placement provides the pupil with an appropriate education. Burlington, 471 U.S. at 359. They may be entitled to reimbursement for the costs of their unilateral private placement only if a court finds that the proposed IEP was inappropriate, and that the private placement was appropriate under the IDEA. 20 U.S.C. § 1412(a)(10)(C)(ii); N.J.A.C. 6A:14-2.10(b). Having determined that the IEPs of June 9, 2020, and September 9, 2020, did not offer FAPE, I must now determine whether the St. Joseph Academy placement was appropriate. Our courts have held that “when a public school system has defaulted on its obligations under the [IDEA], a private school placement is ‘proper under the [IDEA]’ if the education provided by the private school is ‘reasonably calculated to enable the child to receive educational benefits.’” Florence Cty. Sch. Dist. v. Carter, 510 U.S. 7, 11 (1993) (quoting Carter v. Florence County Sch. Dist. Four, 950 F.2d 156, 163 (4th Cir. 1991)). Since the Florence decision, the Supreme Court in Endrew F. has redefined FAPE. The placement made by petitioners is proper if it was “reasonably calculated to enable [D.G.] to make progress appropriate in light of his circumstances.” Endrew F., 137 S. Ct. 988 at 1001.

D.G.’s placement at St. Joseph Academy was appropriate. St. Joseph Academy is a private Catholic college preparatory school that is accredited by the Middle States Association of Colleges and Schools Commissions on elementary and secondary schools. It provides an academic environment that makes accommodations for students with special needs. D.G. has progressed in his education and done well at St. Joseph Academy and earned ‘As’ in all of his academic subjects for tenth grade. The Board’s argument that the school was not appropriate because it was not approved, and does not appear to employ certified teachers, is unpersuasive. Our courts have held that “parents [are] entitled to reimbursement even [when a] school lacks State approval because the [FAPE] State standards requirement[s] . . . [apply] only to placements made by a public authority.” L.M. ex rel. H.M. v. Evesham Twp. Bd. of Educ., 256 F. Supp. 2d 290, 297 (D.N.J. 2003) (citing T.R. v. Kingwood Twp. Bd. of Educ., 205 F.3d 572, 581 (3d Cir. 2000)); see also Warren G. v. Cumberland Cty. Sch. Dist., 190 F.3d 80, 83 (3d Cir. 1999); 34 C.F.R. § 300.148(c) (2019); N.J.A.C. 6A:14-2.10. I therefore **CONCLUDE** that D.G.’s placement at St. Joseph Academy was appropriate.

Having concluded that the Board denied FAPE to D.G., and that the placement at St. Joseph Academy was appropriate, I am authorized to “grant such relief as [I determine] is appropriate.” 20 U.S.C. § 1415(i)(2)(C)(iii). Our courts have held that “equitable considerations are relevant in fashioning relief under the IDEA.” Sch. Comm. of Burlington v. Dep’t of Educ., 471 U.S. 359 (1985). A court may reduce or deny reimbursement costs based on the parents’ unreasonable behavior during the IEP process. 20 U.S.C. § 1412(a)(10)(C)(iii). New Jersey rules likewise confirm that the cost of reimbursement may be reduced or denied “[u]pon a judicial finding of unreasonableness with respect to actions taken by the parents.” N.J.A.C. 6A:14-2.10(c)(4). The rules specifically require that parents advise the district at the “most recent IEP meeting” that they were rejecting the IEP and give at least ten business days’ notice of their concerns or their intent to enroll their child in a nonpublic school. N.J.A.C. 6A:14-2.10(c)(1) and (2). The intent of the rule is to afford the district an opportunity to respond to the parents’ concerns; work collaboratively with the parents to develop an IEP that delivers FAPE; and obviate the need for unilateral placement. The intent of the rule is to afford the parties one last opportunity to develop a plan for the student in the manner that the Federal law intended.

In this case, petitioners in good faith sought to collaborate with the district on the development of an appropriate educational plan for D.G. Following the first IEP meeting on June 9, 2020, Mrs. G. repeatedly expressed her dissatisfaction with it and requested another IEP meeting to continue to work with the district. Although they obtained information about St. Joseph Academy sometime during the summer, there was no final decision to enroll D.G. at St. Joseph Academy until after the September 9, 2020, IEP meeting when again petitioners raised their concerns about D.G.’s continued placement in the BD program for tenth grade when the settlement agreement only required D.G. to be in the B.D. program for ninth grade. Petitioners wanted D.G. back in the general education setting and were concerned about his intellectual, social, and emotional well-being after all that he had been through since eighth grade. Following the June IEP meeting, Mrs. G. repeatedly wrote/mailed school personnel regarding her concerns with the IEP and why the BD program was no longer an appropriate placement for D.G. She requested another IEP meeting on July 23, 2020, and again on August 24, 2020, and

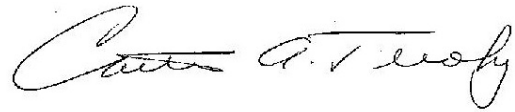
advocated for her son's change in placement from the BD program as it was not an appropriate program for D.G. for the many reasons she provided.

Although petitioner's notice to the district of the unilateral placement was late, it should not serve as a bar to the relief requested. The purpose of the ten-day rule is to allow the district the opportunity to remedy and or address the parents' concerns prior to the parents' unilateral placement. In this case, petitioners repeatedly attempted to work out an acceptable placement for D.G. at the first IEP meeting on June 9, 2020, and again as is evident from the discussions had at the September 9, 2020, recorded IEP meeting. The district would not even entertain D.G. 's remote participation in the general education setting while awaiting the completion of the FBA. I **CONCLUDE** petitioners' conduct was reasonable and that they continually attempted to work collaboratively with the district in formulating an appropriate IEP for their son. Our courts recognize that "[t]he IDEA was not intended to fund private school tuition for the children of parents who have not first given the public school a good faith opportunity to meet its obligations." C.H., 606 F. 3d. at 72; see also M.S. v. Mullica Twp. Bd. Of Educ., 485 F. Supp. 2d 555, 568 (D.N.J. 2007), aff'd, F. App'x 264 (3d Cir. 2008). Such is not the case here, where the petitioners have consistently given the district a good faith opportunity to meet its obligations to D.G. and to provide him with FAPE in the least restrictive environment, that is, a general education class with appropriate supports. The district did not, despite repeated requests from the parents to consider a less restrictive placement and providing the district with multiple and valid reasons supporting a change in placement. Petitioners wrestled with the decision whether to send D.G. to St. Joseph Academy until the very end and ultimately decided to do so in the best interests of their sons educational, social, and emotional well-being. I **CONCLUDE** that petitioners, having given the district a good faith opportunity to meet its obligations to provide D.G. with FAPE, are entitled to reimbursement for their expenses in enrolling D.G. at St. Joseph Academy.

ORDER

Based on the foregoing, together with the record as a whole, the respondent is directed to reimburse petitioners for their expenses in unilaterally enrolling D.G. at St. Joseph Academy, including transportation, retroactive to the date of his enrollment.

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



July 27, 2022
DATE

CATHERINE A. TUOHY, ALJ

Date Received at Agency

emailed July 27, 2022

Date Mailed to Parties:

emailed July 27, 2022

CAT/gd

APPENDIX

WITNESSES

For Petitioners:

Sara Jean DiBenedetto
J.G.

For Respondent:

Jennifer Kraft
Joseph Hoopes
Eren Devin Semen
Joseph Brian Major
Annette Miller

EXHIBITS

Joint Exhibits:

- J-1 Settlement Agreement dated February 25, 2020
- J-2 IEP dated February 28, 2020
- J-3 IEP dated June 9, 2020
- J-4 IEP dated September 9, 2020
- J-5 Behavior Contract dated February 26, 2020
- J-6 PRISE booklet
- J-7 WTHS Program of Studies 2021–2022
- J-8 USB drive – video IEP meeting September 9, 2020

For Petitioners:

- P-1 March 9, 2020, email to petitioners from George Passante
- P-2 Neuropsychological Evaluation dated April 29, 2015
- P-3 CST Independent Psychiatric Evaluation by Dr. Mobilio dated May 30, 2019
- P-4 **Removed from Evidence on Consent**
- P-5 J. Kraft/J.G. emails March 17, 2020-April 30, 2020
- P-6 J. Kraft/J.G. emails September 8, 2020
- P-7 J. Kraft letters to D.G.
- P-8 March 26, 2020, email from E. Semen to D.G.
- P-9 emails with E. Semen March 30, 2020 – April 2, 2020
- P-10 August 24, 2020 – August 25, 2020, email requesting IEP meeting and mediation
- P-11 September 8, 2020, email to E. Semen from parents re: list of questions for IEP agenda
- P-12 September 10, 2020, email to E. Semen re: Statement of Parents Concerns
- P-13 September 11, 2020, email to District (D.G. returning to school)
- P-14 September 14, 2020, email from E. Semen (attaching IEP)
- P-15 September 23, 2020, email to E. Semen (disagreeing with IEP)
- P-16 September 21, 2020, email to E. Semen (D.G. attending another school)
- P-17 September 29, 2020, email to E. Semen (re: disenrollment, re-enrollment, and requests for various information)
- P-18 telephone logs
- P-19 screenshot of email to CST
- P-20 June 21, 2020, correspondence with Capehart re: discovery
- P-21 screenshot of authorization to St. Joseph for release of records
- P-22 St. Joseph Sept. 2020 calendar and course catalog 2020-2021
- P-23 D.G.'s St. Joseph schedule and grades/attendance- tenth grade
- P-24 June 16, 2021, email from St. Joseph w/disciplinary record
- P-25 St. Joseph football roster and JV letter for basketball
- P-26 J.G. phone log
- P-27 D.G. - St. Joseph's honor roll for February and June 2021

- P-28 February 25, 2021, Camden County Educational Services Commission Psychological evaluation
- P-29 Camden County Ed. Services Commission Individualized Service Plan – Transfer, dated March 25, 2021; Eligibility conference report dated March 25, 2021; and Transfer Meeting Written Notice of Evaluation Plan
- P-30 Honor roll and character references for D.G.
- P-31 D.G.'s medical documents
- P-32 September 29, 2020, emails between Carl Palmer and J.G.
- P-33 October 2, 2020, email from Mr. Semen to Mrs. G.

For Respondent:

- R-1 Social skills during remote Instruction matrix
- R-2 Counseling session matrix
- R-3 various emails dated January 15, 2020, January 13, 2020, January 20, 2020, November 25, 2019, October 17, 2019, and September 24, 2019
- R-4 March 9, 2020, emails (contact)
- R-5 April 8, 2020, email (counseling)
- R-6 March 30, 2020, and April 23, 2020, emails (remote behavioral supports)
- R-7 May 13, 2020, email (social skills)
- R-8 May 14, 2020, email (counseling)
- R-9 May 15, 2020, email (counseling homework)
- R-10 June 8, 2020, email from B. Taylor to E. Semen
- R-11 June 8, 2020, email from V. Devone to E. Semen
- R-12 June 9, 2020, email from T. Ferringo to E. Semen
- R-13 June 18, 2020, email from E. Semen to J.G. (IEP consent)
- R-14 June 22, 2020, email from J.G. to E. Semen
- R-15 emails of June 8, 2020, June 9, 2020, June 18, 200 and June 22, 2020
- R-16 emails of July 23, 2020, and August 25, 2020, re: IEP meeting
- R-17 September 8, 2020, 9:55 a.m. email from E. Semen to D.G. and J.G.
- R-18 September 8, 2020, 2:41 p.m. and 1:17 p.m. emails between E. Semen and J.G.
- R-19 September 10, 2020, 11:59 email from J.G. to E. Semen, et al.

- R-20 September 10, 2020, 1:13 p.m. email from J.G. to E. Semen
- R-21 September 11, 2020, email (D.G. returning to school September 14, 2020)
- R-22 September 21, 2020, 9:18 a.m. email from J. Kraft (just checking in)
- R-23 September 21, 2020, 2:10 p.m. email to J. Kraft (D.G. attending different school)
- R-24 Emails from September 21, 2020, (2:17 p.m.); September 21, 2020, (2:30 p.m.); September 21, 2020, (2:47 p.m.); and September 22, 2020, (8:41 a.m.)
- R-25 Emails from September 21, 2020, (2:12 p.m.); September 22, 2020, (1:56 p.m.); September 21, 2020, (2:48 p.m.); and September 21, 2020, (2:10 p.m.)
- R-26 September 23, 2020, and September 27, 2020, emails
- R-27 September 29, 2020, (8:39 a.m.) email
- R-28 September 29, 2020, (10:10 a.m.) email
- R-29 December 2, 2020, emails
- R-30 DiNovi Behavioral Data Collection sheet re: D.G.
- R-31 DiNovi Behavioral Data re: D.G.
- R-32 HIB Investigation **NOT IN EVIDENCE**
- R-33 Documents used in cross-examination of J.G. (bate stamped Board 001 – Board 044)