



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

**FINAL DECISION**

OAL DKT. NO. EDS 11047-23

AGENCY DKT. NO. 2024-36429

**L.H. AND R.H. ON BEHALF OF J.H.,**

Petitioners,

v.

**FREEHOLD REGIONAL HIGH SCHOOL**

**DISTRICT BOARD OF EDUCATION,**

Respondent.

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**Hilary D. Freeman**, Esq., for petitioners (Freeman Law Offices, LLC, attorneys)

**Jacob K. Mintun**, Esq., for respondent, (Comegno Law Group, P.C., attorneys)

Record Closed: April 9, 2025,

Decided: May 2, 2025

BEFORE **WILLIAM T. COOPER III**, ALJ:

**STATEMENT OF THE CASE**

This case arises under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§ 1400 to 1482, and 34 C.F.R. §§ 300.500 et seq. (2024). Petitioners L.H. and R.H., on behalf of minor child J.H. (referred to collectively as “petitioners” or “J.H.”), bring this action against respondent, Freehold Regional High School District (FRHSD) Board of Education (respondent or District), seeking: an Individualized Education Program (IEP)

that recognizes and meets J.H.'s individualized needs and provides him with an appropriate program and placement out-of-district at the Camden Military Academy in Camden, South Carolina (CMA); reimbursement for all costs associated with J.H.'s unilateral placement at CMA for the 2022–2023 and 2023–2024 school years; reimbursement for all out-of-pocket costs incurred by petitioners in connection with this matter, including but not limited to attorney's fees, evaluations, private therapies, and/or tutoring; and other appropriate relief.

### **PROCEDURAL HISTORY**

On August 28, 2023, the petitioners filed a Petition for Due Process (Petition) with the New Jersey Department of Education, Office of Special Education. Mediation was unsuccessful, and this matter was then transmitted to the Office of Administrative Law, where it was filed as a contested case on October 20, 2023. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13.

A pre-hearing conference was conducted on November 15, 2023, and thereafter, on December 15, 2023, the petitioners filed a motion for partial summary decision. Respondent filed opposition to the motion on January 5, 2024, and oral argument was conducted on February 16, 2024. On March 15, 2024, an order denying the motion for partial summary decision was issued, and a prehearing conference was scheduled for May 3, 2024.

On May 3, 2024, the respondent advised that petitioners had not provided answers to interrogatories pertaining to the Americans with Disabilities Act (ADA) and Section 504 claims and that it would be filing a motion to compel same. A briefing schedule was established, culminating with a hearing scheduled for July 7, 2024. On June 21, 2024, the petitioners withdrew their ADA and Section 504 claims. On July 11, 2024, the parties agreed to hearings being held on September 16, 2024, and October 3, 2024.

On September 9, 2024, the respondent filed a motion seeking to preclude certain evidence based on the petitioners' failure to disclose the evidence in discovery. Petitioners filed a response on September 11, 2024. On September 16, 2024, at the

beginning of the hearing, the respondent filed a second motion seeking to exclude expert witness testimony based on petitioners' failure to provide the proposed opinions to be solicited and/or the basis for same. The parties agreed to adjourn the scheduled hearings in order for petitioners to provide details as to the proposed expert testimony to respondent. A follow-up conference was held on September 20, 2024.

On October 20, 2024, the respondent filed a motion for summary decision, the parties fully briefed the issue, and oral argument was held on November 13, 2024. On November 15, 2024, the respondent's motion for summary decision was denied, and the petitioners were directed to provide expert reports ahead of evidentiary hearings but no later than November 25, 2024.

Evidentiary hearings were conducted on December 2 and December 4, 2024, and continued on February 4, 2025. Based upon a joint request by the parties, the record remained open to allow for the submission of written summations. Written summations were received by April 8, 2025, and the record closed.

### **FACTUAL DISCUSSION AND FINDINGS**

The parties stipulated the following statements, and therefore, I **FIND** as **FACTS**:

1. J.H. is an eleventh-grade student who is currently attending CMA and is currently eligible for special education through the classification of "Other Health Impaired."
2. Prior to attending CMA, and upon graduating middle school at Marlboro K-8, J.H. entered as a freshman into Colts Neck High School (CNS) in 2022, which is a part of the District.
3. Upon entering the District, J.H. had an Individualized Education Program ("IEP") that was in place and remained in place during the 2022-2023 school year, dated April 14, 2022.

4. J.H.'s IEP provided for: Pull-out Resource Replacement: English, five days a week; in-class Resource: Math, five days a week; in-class Resource: Modern & World History & Geography, five days a week; and in-class Resource: Lab Biology, five days a week.
5. The IEP provides for twenty-nine specifically identified modifications to J.H.'s special and general education curriculum.
6. J.H. also has access to a behavioral specialist and the Child Study Team as needed.
7. Upon J.H.'s entry into the District, he had already received six evaluations that were incorporated into his IEP. These include an educational evaluation on November 25, 2015, a psychological evaluation on November 24, 2015, a pediatric neurologic evaluation on February 16, 2016, an occupational therapy evaluation on September 12, 2019, a speech and language evaluation on September 11, 2019, and September 24, 2019, and a psychiatric evaluation on March 4, 2020.
8. On November 25, 2015, Lance Halpern, E.Ds., LPC noted that: J.H.'s overall Full-Scale Intelligence Quotient (FSIQ) score fell in the Low Average range when compared to other children his age (FSIQ = 85). J.H. demonstrates the ability to socialize and relate well with his peers. When J.H. is not in a good mood, he refuses to complete his assignments, refuses to participate with the class, and acts in a disrespectful manner.
9. On March 4, 2020, Rajeswari Muthuswamy, M.D. diagnosed J.H. with Attention Deficit Hyperactivity Disorder (ADHD), Oppositional Defiant Disorder (ODD) and Anxiety Disorder. Her recommendations included: for the family to continue therapeutic intervention to address J.H.'s difficulties and that J.H. can benefit from behavioral modification therapy with rewards for positive behaviors and consistent consequences for negative behaviors. She notes that J.H. exhibited challenges with anxiety and can benefit from counseling to address his anxiety.

10. No parental concerns are noted in the April 14, 2022, IEP.
11. J.H.'s disability generally affects his involvement or progress in the General Education curriculum in that he requires constant redirection and refocusing, as well as organizational assistance, to maintain pace in the classroom.
12. Starting in October 2022, disciplinary reports were generated by the District as a result of J.H.'s conduct, listed below:
13. As a result of this pattern of conduct, two additional evaluations were recommended by the IEP team, including a Psychoeducational Evaluation on November 17, 2022, and a Social Evaluation on November 23, 2022.

Student Conduct List							
Incidents for Halim, Jayden- School Year:2022-23							
	Date	School (Gr)	Infractions	Action	Dates To Serve	Points	Reported By
1	11/30/2022	007 (09)	1. Insubordination/Defiance of Authority 2. Outrageous Conduct/Aggressive Behavior 3. Vulgarly/Disrespect towards a Staff Member 4. Threat Simple	1. Out-of-School Suspension	1. 12/01, 12/02, 12/05, 12/06, 12/07, 12/08, 12/09, 12/12, 12/13, 12/14	0	Guirguis, Jennifer
2	11/22/2022	007 (09)	1. Insubordination/Defiance of Authority	1. In School Detention	1. 11/29	0	Lipkind, Audrey
3	11/18/2022	007 (09)	1. Cutting Class	1. In School Detention	1. 11/29	0	Pray, Erin
4	11/16/2022	007 (09)	1. Insubordination/Defiance of Authority	1. In School Detention	1. 11/29	0	Pellegrini, Anne
5	10/28/2022	007 (09)	1. Vulgarly/Disrespect	1. Lunch Detention	1. 11/02	0	Guirguis, Jennifer
6	10/27/2022	007 (09)	1. Student Misconduct	1. Lunch Detention	1. 11/03	0	Pray, Erin
7	10/20/2022	007 (09)	1. Outrageous conduct	1. In-School Suspension 2. Out-of-School Suspension	1. 10/25 2. 10/21, 10/24	0	Guirguis, Jennifer
8	10/14/2022	007 (09)	1. Insubordination/Defiance of Authority	1. In School Detention	1. 10/18, 10/19	0	Dunn, Gladys
9	10/07/2022	007 (09)	1. Insubordination/Defiance of Authority	1. Lunch Detention	1. 10/11	0	Dunn, Gladys

14. During his Psychoeducational Evaluation, examiner Lauren Green, E.Ds. NCSP administered ten subtests from the Wechsler Intelligence Scale for Children-Fifth Edition (WISC-V). As measured by the WISC-V, his overall FSIQ score fell in the Low Average range when compared to other children his age (FSIQ = 88, 21st percentile).
15. In his Social Evaluation, Linda Harold, LCSW, notes that J.H. was having difficulties with anger, aggression, hyperactivity, and running away behaviors. J.H. had seen a counselor previously but was not currently receiving services. J.H. has been successful with his school grades despite missing schoolwork, he has struggled with his conduct in the biology class and had to be removed, and he will

go on his phone in class and has been requesting to use the restroom and then wandering the hallways.

16. During this period of approximately a month and a half, two manifestation determination meetings were held, one on October 20, 2022, and the other on November 30, 2023. These were for the purpose of determining whether J.H.'s conduct that resulted in disciplinary action was a manifestation of J.H.'s disabilities. It was determined on both dates that it was.
17. The parties disagree as to whether the severity of the conduct escalated and the extent of J.H.'s actions, but it eventually culminated in an incident where J.H. became angry to where the District called police to the building, and J.H. was escorted off the premises.
18. J.H. received a ten-day out-of-school suspension for his actions on November 30, 2022.
19. A disciplinary hearing was scheduled for December 13, 2022; however, J.H.'s parents did not attend because they withdrew him from FRHSD prior to the hearing taking place, with the intention of enrolling J.H. in the private school, St. John Vianney.
20. On approximately January 3, 2023, J.H. was re-enrolled in the District, and an IEP meeting was scheduled for January 17, 2023, to which J.H. was to be on home instruction pending alternative placement at an out-of-district school.
21. Alternative placement options were recommended by the District's IEP team for Collier and Burlington County Alternative School—Lumberton Campus.
22. J.H.'s parents did not agree to either of the alternative placements proposed.
23. On March 1, 2023, J.H.'s parents withdrew him from the District to attend CMA.

24. On July 18, 2023, J.H. was re-enrolled in the District. On the same day, counsel for petitioners sent a letter to the District advising the District of their intent to unilaterally place J.H. in the event the matter cannot be amicably resolved.
25. Counsel for the District responded on July 19, 2023, noting the disagreements petitioners had with the previously recommended alternative placements and requested that petitioners submit their recommendations for placement.
26. Counsel for petitioners responded on July 26, 2023, explaining why the alternative placements were rejected, and advising the District that their current preference is CMA.
27. An IEP meeting was scheduled for July 27, 2023, but it was rescheduled due to confusion about whether records were received from CMA. The parties disagree as to whether the records were properly sent.
28. On July 28, 2023, counsel for petitioners contacted counsel for the District, who was on vacation, requesting notice of the rescheduled IEP meeting.
29. On August 4, 2023, counsel for petitioners notified counsel for the District, who was on vacation, that they have unilaterally placed J.H. at Camden Military Academy.
30. On August 7, 2023, counsel for the District emailed counsel for petitioners, seeking available dates for the rescheduled IEP meeting and recommending the Regional Achievement Academy as a possible alternative placement, given J.H.'s need for structure and discipline.
31. On August 9, 2023, counsel for petitioners stated that arrangements have already been made to place J.H. at CMA, and that they will agree to discuss the matter further but are otherwise intending to proceed to Due Process to seek reimbursement.

32. Classes in the District did not start until September 5, 2023.
33. Classes for CMA started on August 21, 2023, and they would accept enrollment contracts up until November 1, 2023.
34. J.H. has since attended CMA.
35. While at CMA, J.H.'s transcript dated July 22, 2024, indicates that he received A's, B's, and two C's, with a weighted GPA of 4.01 out of 5.00.
36. J.H. was accepted into the Honor's Society, earning a GPA that was higher than 3.75/5.00.
37. CMA does not maintain a Special Education department.

### **DISCUSSION AND ADDITIONAL FINDINGS**

Based on consideration of the testimony and review of the documentary evidence, I **FIND** the following additional **FACTS**:

#### For Respondent

**Dr. Jessica Howland (Howland)** was qualified as an expert witness in special education. Howland is the Director of Special Services for the District, and she holds a bachelor's degree in psychology from Rutgers University and a master's degree in special education. She was certified as a teacher of the handicapped, she holds both principal and supervisor certifications from the College of New Jersey, and she earned a doctorate from Rutgers University. She has served as a Director of Special Services for over a decade and has been in the field of special education for over twenty-five years. Howland is responsible for ensuring that all special education students receive the appropriate special education services, including modifications and accommodations in and out of the classroom. This includes overseeing modifications to curriculum, assessments, and instruction. She also ensures that students who are not eligible for special education

receive appropriate accommodation through 504 plans or broader initiatives such as the Intervention and Referral Services (I&RS) within a multi-tiered system of support. Her responsibilities include overseeing the Child Study Team, related services, paraprofessionals, teachers, and special education supervisors. Additionally, she holds sole responsibility as the primary respondent in all litigation related to special education and Section 504 matters. Howland estimates that she has drafted hundreds of IEPs.

Howland reviewed J.H.'s IEPs dating back to fifth grade, as well as numerous evaluations, including psychological, educational, and psychiatric evaluations, dating back to 2016. She also examined his conduct and attendance records, teacher statements, incident reports related to the manifestation determination meeting, and records from CMA.

She first became aware of J.H.'s case in early October 2022 when his parents contacted her via email. J.H. was enrolled in the District for approximately three to three and a half months. Upon entering as a freshman, he already had an IEP in place from the Marlboro K-8 district (Marlboro), which included modifications and accommodations. J.H. has received diagnoses of ADHD, anxiety, and ODD.

Howland explained that ADHD commonly presents as difficulty with attention, impulse control, executive functioning, and staying on task, particularly when unmedicated. Behavioral challenges may include outbursts, off-task behavior, or avoidance, such as leaving the classroom. ODD is characterized by a persistent refusal to comply with directives and distrust of authority figures, making relationship-building difficult. Behaviors range from quiet noncompliance to overt defiance, including inappropriate language or aggression. Students with ODD often resist forming trusting relationships with teachers, complicating classroom management. Anxiety manifests in varied ways, from extreme shyness to behavioral outbursts resembling ODD. Some students exhibit avoidance behaviors, such as reluctance to participate in social activities, while others experience school phobia despite engaging in non-school social settings.

The IEP that was in place from Marlboro continued to be in place when he entered FRHSD. This IEP was correctly incorporated into his education when he entered ninth

grade. The IEP alone contained twenty-nine modifications, including structured breaks, simplified task directions, and modified pacing for processing time. Academic supports included graphic organizers, class notes, small group instruction, and guided instruction in math. Assessments were adjusted with extended time and modified content as needed. Behavioral supports included maintaining a structured routine, breaking tasks into manageable steps, and providing a predictable learning environment.

Additional strategies included verbal guidance, teacher proximity for focus, short breaks, and seating near a positive role model. Behavioral issues were to be addressed privately to avoid escalation, and positive reinforcement was to be given carefully to avoid adverse reactions. On-task performance was monitored, and a read-aloud option was available for online programs. Supplementary support included consultation with a behavioral specialist and an open pass to a case manager or behaviorist when needed. J.H. also had pull-out resources available to him with this IEP.

Howland noted that IEPs are fluid documents and should be changed to reflect the growth of the child, and that IEP meetings can be initiated by the parents or the District. If a parent objects or disagrees with something contained in an IEP, they would be permitted to communicate those concerns with the IEP team. In the first few months J.H. was within the District, J.H.'s parents never objected to the modifications in the IEP, and when the next IEP meeting occurred, the parents did not note any concerns. Likewise, at no point did petitioners claim that the 2022–2023 IEP was deficient in some way.

J.H.'s IEP referenced several evaluations that Howland relied upon when coming to her conclusions. In J.H.'s psychiatric evaluation, Dr. Muthuswamy diagnosed J.H. with ADHD, ODD, and Anxiety Disorder. Recommendations included continued therapeutic intervention, behavior modification therapy with rewards for positive behaviors and consistent consequences for negative behaviors, and implementation of this program both at home and at school. J.H. also had a Functional Behavioral Assessment ("FBA"), which indicated that J.H.'s target behaviors—work refusal, off-topic language, and elopement—were primarily maintained by escape or delay through task avoidance. The behaviors were most often triggered when presented with an instruction or task demand. Off-topic language frequently occurs alongside work refusal. While staff responses

varied, including verbal redirection, offering breaks, or delaying activities, the overall effect of his behavior was reinforcement of avoidance. Elopement behavior also resulted in both adult attention and avoidance of work demands.

Howland testified that J.H. had also received a speech and language evaluation, specifically noting that J.H. was easily distracted by outside noises and had difficulty remaining still in his seat and that he exhibited significant weaknesses in interpersonal negotiation, which impacted his total score on the Social Language Development Test—Elementary. These deficits affected his perspective-taking and ability to resolve conflicts in a mutually beneficial manner, and while he could identify problems and propose solutions, his responses lacked dialogue and only considered a single perspective. These challenges contributed to difficulties in classroom conflict resolution, as evidenced by work avoidance and refusal.

In total, J.H.'s IEP upon his entry into the District consisted of eight separate evaluations, including a psychological educational evaluation, a social evaluation, a psychiatric evaluation, a speech and language evaluation, an occupational therapy evaluation, a pediatric neurologic evaluation, a psychological evaluation, and an educational evaluation.

Howland testified that when J.H. first entered the District, the petitioners specifically requested that J.H. not have a behavior plan, as having one would harm his self-esteem. As a result, when the Marlboro IEP transferred to the high school, it was adopted without a behavior plan. However, the modifications and accommodations section of the IEP incorporated most of the previous behavior plan's interventions to ensure continued support in the high school setting. The modifications that are present in J.H.'s IEP reflect the assistance that J.H. would have received through a behavior plan.

When J.H. first entered the District, there were no concerns within the first month. It was not until October 2022 when behavioral issues arose. Howland indicates that patterns of behavioral issues serve as data for the IEP team, providing information on the antecedent, behavior, and consequence of an incident. A well-documented report helps assess the effectiveness of consequences and informs future interventions, and patterns

of disciplinary issues are a cause for concern in special education, as they may indicate the need for further evaluation and support. In this case, J.H. experienced numerous disciplinary infractions. At no point was J.H. ever expelled from the District because of these disciplinary infractions.

Due to this pattern of disciplinary infractions over approximately a month and a half, two additional evaluations were ordered, including a psychological educational evaluation and a social evaluation. A social evaluation may be ordered after a pattern of disciplinary conduct to determine whether behaviors are linked to known diagnoses or new developments. Since behavior is a form of communication, the evaluation helps assess whether external factors, such as family changes, grief, trauma, or major transitions, are contributing to behavioral issues. This ensures that any underlying concerns outside of school are identified and addressed. A psychoeducational evaluation may be ordered in response to disciplinary conduct for several reasons, including its helpfulness in determining whether a student's cognitive functioning remains consistent with previous evaluations or whether declines in areas such as processing speed, working memory, or fluid reasoning indicate new concerns. The evaluation also identifies previously undiagnosed learning disabilities or widening academic gaps that could contribute to task avoidance and increased behavioral issues.

On November 14, 2022, the IEP team created J.H.'s first IEP progress report. Progress reports inform the District's decisions regarding a student's services by tracking progress toward IEP goals and objectives. The IEP team evaluates whether the goals, designed to support one year of growth, are being met or need adjustment, and based on the student's progress, the team may modify goals, set new objectives, or determine if special education services in a particular area are no longer necessary. The IEP team relies on these reports to assess whether changes to the IEP are needed. The IEP progress report largely shows that J.H. was progressing inconsistently in the majority of areas.

Howland testified that J.H. was withdrawn by his parents after the November 30, 2022, incident so that he could be home schooled. The parents did not show up for J.H.'s disciplinary hearing on December 13, 2022, but requested that J.H. be deemed withdrawn

prior to the November 30, 2022, incident so that it would be erased from his record. The District declined this request and was still attempting to work with petitioners to find a solution to the disciplinary problems.

Howland confirmed that neither an I&RS nor a multi-tiered system of supports would apply to a student already classified in special education. Howland further disagreed with the conclusion that a behavioral intervention plan (BIP) should have been in place. Howland furthered that observing a student is important for conducting an FBA. At least two behaviorists are involved to ensure greater reliability and to prevent bias. Observations take place across multiple school settings, including both structured and unstructured activities. Observations are conducted during different subject areas to identify patterns, such as increased behavioral issues in a particular class, which may indicate a learning disability or a conflict with a teacher. The goal is to identify antecedents to behaviors to develop appropriate intervention strategies rather than making assumptions. Howland then confirmed that J.H. was not in the District long enough to complete the FBA after the manifestation determination meeting.

The District would also not have completed an FBA for a student not enrolled, at least in the present case. An FBA would likewise not be completed in an instance where a student lunged at a principal, as it would just create a situation where the child could do it again. Additionally, Howland notes that behavioral threat assessments were not passed into law at that time.

An alternative placement may be necessary when a student is unable to succeed within the comprehensive high school setting despite all available accommodations and modifications. The placement may be within a self-contained program in the district or an out-of-district setting that better meets the student's academic, behavioral, social-emotional, and therapeutic needs. Even after a student is placed in an alternative setting, the district remains responsible for monitoring progress, providing case management, and serving as the local education agency. Parents are expected to have ongoing communication with the district regarding the student's IEP.

Howland stated that an alternative placement may be necessary in the event of disciplinary concerns. Specifically, if a student is frequently removed from programming due to behavioral issues, a school-wide behavioral support program may be required, which may be more effectively implemented in an out-of-district placement. Oppositional defiant behaviors in particular may necessitate specialized interventions beyond what a comprehensive high school can provide. These schools feature smaller overall settings, increased clinical and counseling support, and extensive behavioral interventions at both the classroom and individual levels. Out-of-district placements are considered only when a student's needs exceed the capabilities of the district's self-contained programs. The requirement for the student to be placed in the least restrictive environment was taken into consideration.

For J.H., the discipline committee deferred placement decision to the child study team because it knew his needs best based on the data. The District recommended alternative placement between January 2023 and March 2023. Howland testified that this was due to approximately ten disciplinary incidents within six weeks that were increasing in severity, and/or decreasing in the time frame between the infractions. In their search for alternative placements, parental input is considered. The alternative placements that are recommended are special education schools approved for students with disabilities.

Three alternative placements were considered for J.H.: Collier, Burlington County Special Services (BCSS), and Regional Achievement Academy (RAA). Collier provided a higher level of therapeutic intervention for students with mental health needs, including anxiety and ADHD, in a smaller school setting with structured clinical supports. It was recommended to J.H.'s parents, but they rejected it as inappropriate, stating that J.H. had learning differences rather than therapeutic mental health needs. BCSS offered alternative programming that combined clinical therapeutic support with behavioral interventions. J.H. was recommended for a program that balanced therapeutic and behavioral support there. Petitioners rejected this placement because they said he was not a bad child. RAA focused primarily on behavioral needs, with structured routines, behavioral monitoring, and a merit-based system for reinforcing appropriate conduct. It also provided therapeutic support through counselors and maintained academic

standards aligned with the District. Howland was not aware if petitioners ever responded to this recommendation.

Marlboro High School, which is one of the six high schools within the District, was considered as a placement, but ultimately rejected by the District because it did not have any additional supports, either therapeutic or behavioral, that were offered even in comparison to Colts Neck High School.

Howland testified that petitioners re-enrolled into the District on July 18, 2023, and requested an IEP meeting. When the District was made aware of this, they got a team together within ten days to schedule an IEP meeting. Shortly thereafter, a letter dated August 4, 2023, from petitioners' attorney to the District's attorney stated that the District refused to create or offer an IEP for J.H. for the 2023–2024 school year, and in response, J.H.'s parents had re-enrolled him at CMA. An IEP meeting had been attempted, but the records had been sent to a secretary during the summer, and the IEP team was unaware of their existence at the time. As a result, the meeting was unable to proceed on the original day.

After a single continued IEP meeting, petitioners unilaterally enrolled J.H. at CMA. Howland noted that an email from the District's counsel sent on August 7, 2023, stated that the IEP team was also recommending the Regional Achievement Academy. Howland indicated that the petitioners had already made arrangements to attend CMA. Howland confirmed that the original IEP meeting was held in late July or early August and that this final letter was dated August 9, 2023. During this time, J.H. did not miss a single day of tutelage because it was summer. Petitioners would have had at least a month to reschedule the IEP meeting prior to the start of classes. Howland does not believe that a single continued IEP meeting denied J.H. a free, appropriate, public education (FAPE) or deprived J.H. of any kind of educational benefits.

Howland testified that while she has not visited CMA, she has reviewed its websites. She testified that none of the services offered by CMA are considered special education, including study hall, tutoring, or teachers overseeing work. Special education supports are specifically supports meant to be special, in that they are things not available

to all students but rather based on what a student with an IEP needs. Specifically, if it is available to all students, then it is not targeted intervention based on a disabling characteristic that is impacting your ability to access the curriculum. Howland testified that she also reviewed the staff biographies on the CMA website, and none had a background in special education. She notes that it is imperative that a team reviews an IEP and has people who are qualified to speak to different areas where a child may have a disability so that recommendations and modifications to the student's education can be made. She concluded that CMA was not appropriate for J.H. as a special education student.

Howland testified that upon review of documents submitted by the parties, there is no indication that special education services were provided by CMA. Specifically, there were no work samples, no reports, no IEP or Behavioral Improvement Plan (BIP), and no 504 plan. The mere fact that a school accepts students who already has IEPs or 504 plans does not make it a special education school. Additionally, a student being on an honor roll does not correlate at all to their special education needs. Howland testified that the District would not be permitted to make a recommendation for a student to be placed at an out-of-district military academy, as it would be a violation of State code, and that the county special education supervisor would not approve a recommendation for a placement at an out-of-district military academy.

Howland testified that at all times, the District stood ready and willing to implement J.H.'s IEP as recommended by the IEP team, and that an IEP was drafted for the 2023–2024 school year. The IEP was considered a draft because it was unsigned by the petitioners.

**Dr. Brian Donahue (Donahue)**, Principal at CNS, holds a bachelor's degree in history and secondary education from Salisbury University, a master's degree in educational leadership from Jersey City, and a doctorate in leadership from Rowan University. He is certified as a superintendent (chief school administrator), principal, supervisor, and K–12 history teacher, with an additional elementary certification. He has served as the principal of CNS for eight years, overseeing operations and instruction at the building level. While not handling daily discipline, he is responsible for supervision

throughout the school and became involved in disciplinary matters when they escalated to a significant level or required progressive disciplinary action.

CNS follows a progressive discipline approach, as outlined in the student handbook. Disciplinary actions range from administrative warnings to suspensions, depending on the severity of the infraction. Consequences may include lunch or after-school detentions, in-school suspensions where students are removed from study hall or Physical Education (PE), and loss of privileges. In more serious cases, students may face removal from school.

The school emphasizes a “culture of respect,” expecting students, teachers, and staff to treat one another respectfully. Parents and students are made aware of disciplinary policies through the parent-student handbook, which they acknowledge at the beginning of each school year. When a student violates the code of conduct, such as by engaging in a fight, the school follows a structured disciplinary process.

Staff involved in this process may include teachers, guidance counselors, Child Study Team members, security officers, and assistant principals, who are responsible for administering discipline. All disciplinary actions are documented through incident reports and written narratives submitted by teachers detailing the events. When disciplining a student with special education needs, the District considers the student’s IEP and individual needs. The case manager and guidance counselor are typically consulted to ensure that disciplinary actions align with the student’s specific circumstances. While special education students must follow the code of conduct, disciplinary responses may be adjusted based on their needs.

A disciplinary response may differ between a general education student and a special education student in certain cases. Serious infractions such as physical violence or drug-related offenses are generally treated the same, but incidents linked to a documented disability, such as medically recognized outbursts, may be handled differently. Suspensions and expulsions may also be considered differently depending on the nature of the infraction and the student’s IEP requirements.

When a student faces disciplinary action, parents are contacted immediately, typically after the assistant principal meets with the student. For more serious incidents, parents are asked to come to the school for an in-person meeting. In cases involving possession of substances or suspected impairment, parents are responsible for ensuring the student receives medical evaluation and care.

Donahue first became aware of J.H.'s disciplinary issues in early October when the assistant principal handling J.H.'s case informed him of ongoing disciplinary struggles. One of the primary concerns was elopement, which refers to a student leaving class without permission and roaming the building. Elopement posed a safety and security risk, as students were required to check in when leaving class, and their whereabouts needed to be accounted for. J.H.'s elopement became a documented concern from October through November.

J.H. was involved in multiple disciplinary incidents from October through November, each resulting in progressive consequences aligned with the school's code of conduct.

- **October 7:** J.H. was written up for a cell phone violation and received a lunch detention, which was deemed an appropriate response.
- **October 14:** J.H. had a loud outburst and refused to see a counselor, responding, "I don't care, send me to administration." He was assigned two in-school detentions for insubordination and defiance of staff.
- **October 20:** J.H. had an issue in class and later became aggressive while meeting with a counselor. He was suspended for two days and assigned one day of in-school suspension for outrageous conduct.
- **October 25:** A behavioral contract was created following J.H.'s suspension, outlining expectations for seeking support and meeting with his counselor or case manager as needed. The student and parents refused to sign it.

- **October 27:** J.H. received a teacher-issued detention for being late to class, which escalated to an administrative detention when he failed to attend.
- **October 28:** J.H. made a vulgar comment about another student, including allegations that the student had sex with a younger student, resulting in a lunch detention. Given his prior disciplinary history, the principal noted that a stricter penalty could have been assigned.
- **November 16:** J.H. repeatedly refused to stop eating in class, leading to an in-school detention for insubordination.
- **November 18:** J.H. cut class for a period, resulting in an in-school detention.
- **November 22:** J.H. left class without permission, refused to complete assignments, and engaged in unwanted physical contact with classmates despite being told to stop. 12/2/24 Testimony at 252:12–21. He was assigned an in-school detention for insubordination.
- **November 29:** J.H. cut class again. This incident was addressed the following day along with other related disciplinary matters.
- **November 30:** J.H. was placed on pass restrictions due to repeated incidents of leaving class without permission. Under this restriction, he was required to be escorted whenever leaving the classroom. However, he refused to comply, leading to an insubordination violation and a one-day suspension. As this was his fourth disciplinary suspension, a manifestation determination meeting was scheduled to assess whether his behavior was a manifestation of his disability. During the manifestation determination meeting, J.H. became upset about the pass restriction and grew increasingly aggressive. Donahue informed him that the restriction would remain in place but could be reconsidered after a period of compliance. Initially, J.H. engaged in a discussion, but he then escalated, cursing at staff and his mother, swatting at her hand, and posturing aggressively over the table. Due to his behavior, the meeting was ended, and as J.H. and his mother

were leaving the building, he continued screaming and cursing at staff. At the exit, he physically blocked the door from closing, confronted Donahue, and refused to leave. A police officer was called, but J.H.'s mother managed to remove him from the building. Following this incident, his suspension was increased to ten days, with a disciplinary hearing to follow. Each disciplinary action followed the school's progressive discipline policy, with escalating consequences, as J.H.'s behavioral issues continued. Donahue confirmed that J.H. does have a case manager, and that none of the reports or responses from the District ever prevented him from seeing a case manager.

### For Petitioner

**Major Nicholas Paramore (Paramore)**, Dean of Academics at CMA, has a bachelors in secondary education from Citadel Military College and a master's in leadership from Citadel Graduate College. He confirmed that neither himself nor any other administrator or staff member have training or certifications in managing 504 plans or IEPs, but that he attended undergrad classes where they talked about IEPs. Paramore also confirmed that CMA does not have a special education department or even a special education coordinator. He testified that while there are no teachers who specialize in special education, a person wouldn't need specialized education to understand small class sizes or to have individualized tutoring with kids.

Paramore testified that CMA has students with IEPs or 504 plans. Despite this, he admits that CMA does not have an IEP or CST team. He states that students with disabilities may come to CMA because they provide tutoring, small class sizes, and positive reinforcement. He describes the tutoring program as being required for students who have a grade below 70 and states that it's twenty minutes long. Paramore asserts that tutoring, study hall, small class sizes, and positive reinforcement are available to all students and that in his opinion, these are special education services. Paramore testified that the special education services J.H. receives at CMA are tutoring and positive reinforcement. Paramore described positive reinforcement to entail allowing students to correct their mistakes and giving them a pat on the back.

While Paramore testified that he is not aware of any disciplinary infractions, he admits that students will receive two verbal warnings on discipline before anything is documented, including one in class and one where the student is pulled out of class. If a third incident happens, only then is an administrator called. The discipline is broken down into these three steps, where the first step is a verbal warning, the second step has the student step outside the classroom with the teacher, and the third step involves calling an administrator. Each disciplinary instance elevates the step, and the first two steps are verbal warnings only. Paramore states that physical restraints have been used at CMA before. Paramore attested that if a student accumulates too many demerits, that student can be prevented from going home on the weekends, and that whether a student has an IEP or 504 plan is not taken into consideration.

Paramore testified that he knows J.H. because he was his golf coach and that J.H. is a “cool kid,” and they have informally talked in hallways and through the National Honor Society. While at Camden Military Academy, J.H.’s transcript dated July 22, 2024, indicates that he received A’s, B’s, and two C’s, with a weighted GPA of 4.01 out of 5.00. With a range of grades from A’s to C’s, J.H. was accepted into the Honor’s Society, earning a GPA that was higher than 3.75/5.00. Paramore confirms that he observed J.H. crying while in school because he was disciplined by having his phone taken away. Paramore testified that CMA does not employ anyone who specializes in conducting functional behavioral assessments. Paramore testified that during the summer of 2023, J.H. was furloughed at CMA, meaning that he was on summer break and was not withdrawn from school. J.H. went on summer break on May 18, 2023, and signed next year’s enrollment contract on August 7, 2023. Paramore testified that student contracts for enrollment at CMA would be accepted up until the start of November.

**Dr. Leah McGuire (McGuire)**, pediatric neuropsychologist, testified that despite meeting J.H. on February 14, 2023, she did not author any type of report until November 15, 2024, a little under two years later. McGuire testified that she only had a single, verbal meeting with J.H. and his family, and that is why she did not originally draft a report. Her meeting with J.H. only lasted approximately two hours. The purpose of petitioners coming to McGuire was to figure out a verbal game plan. A full neuropsychological evaluation was not done.

McGuire admitted that after conducting the DSM-5 test, J.H. met all of the requirements for symptoms of inattention, including meeting 9 out of 9 symptoms. Additionally, he met 6 out of 9 symptoms for hyperactivity impulsiveness. Specifically, this included difficulty sustaining attention, failing to listen when spoken to directly, not following through on instructions, struggling to complete schoolwork, difficulty organizing tasks, avoiding activities requiring sustained mental effort, frequently losing necessary items, being easily distracted by extraneous stimuli, and being forgetful in daily activities. McGuire testified that she was surprised that there were no threat assessments conducted while admitting that she was unaware that threat assessments were not required by law until late 2023. McGuire claimed that the documents she reviewed had vague wording that she needed clarification on, but at no point did she contact the District for clarification.

Dr. McGuire stated that what she read in the documentation provided by petitioners was different than what she experienced in person when she met J.H. a single time, but she never followed up on that discrepancy. McGuire admits that upon review of the District records, she thought J.H. would be possibly non-compliant and unsafe. This was different than the single time she met him, during which she described J.H. as sweet. McGuire notes that J.H.'s prior actions in the District were a mix of anxiety and impulsivity. McGuire claimed that there was a lack of support from the District but admitted that at no point did she reach out to the District for documentation to verify this claim.

McGuire testified that J.H. was denied access to a counselor, which was like gasoline thrown on a fire. McGuire admitted that the information about access to his counselor was just from a parent report. McGuire is aware that J.H.'s IEP permitted him access to a counselor at any time. McGuire stated that she found J.H. to be very motivated and very ambitious, but also anxious and impulsive due to his diagnoses.

McGuire testified that the alternate placement option of Collier was too restrictive yet admits to making a recommendation to an out-of-state military boarding school. McGuire attested that placing a student at an alternative placement where there are other students with diagnoses would be too anxiety-provoking. 12/4/24 Testimony at 135:13–

18. She also noted that its huge campus of 260–300 acres would be cause for concern for elopement. Regarding the Lumberton-Burlington alternative placement, Dr. McGuire did not recommend this placement because the goal of Burlington is to allow students to be functional and prepared to get them back into their home districts, where the goal of a more structured setting is to prepare them to be leaders. She found the Regional Achievement Academy to not be appropriate as it offered too many intensive supports, and she stated that this would have caused J.H. to regress but failed to explain why.

None of McGuire’s findings regarding other alternative placements were stated in her report because she has many thoughts that are not written on paper. McGuire states that those thoughts didn’t seem relevant, despite admitting that her conclusion in her report is for J.H. to have alternative placement.

McGuire admits that she only reviewed other placement options aside from CMA “in [her] head.” She further admits that none of these other placement options she reviewed in her head were included in her report. McGuire admits that while she claims the District’s reports characterized J.H.’s behaviors as extreme, she was not present for any of those incidents. She further admits that J.H.’s behaviors were dysregulated. McGuire states that in her career, she has never recommended a military school for a child with special education needs. She recommended one for J.H. for its consistency, equal applicability of rules, warmth connection, and respect, but she does not state anything relating to special education in her explanation. She admits that these are things that every school should have, regardless of whether or not a student has a 504 plan or an IEP. McGuire further admits that these are general education requirements or are not requirements at all. McGuire stated that an out-of-state military boarding school meets her standards of the least restrictive environment but then backtracked on that conclusion. McGuire states that many of these things could have been offered at Collier, Burlington, and the Regional Achievement Academy, including supervised study hall, teacher monitoring, and tailored guidance.

Her recommendation for CMA was based off of looking through its website. She admits that CMA does not have any special education services or have a single employee with a special education background. Dr. McGuire testified that J.H. does not need

special education services at CMA. All of the information Dr. McGuire reviewed in preparing a report was supplied by the petitioners. Dr. McGuire admits that had she received additional information from the District, her conclusions could have changed. Dr. McGuire agreed that J.H.'s behavior, based on the discipline reports, was escalating. Her report found that J.H. was experiencing clinically significant executive functioning weaknesses.

**Dr. Robert Zywicki** admitted that he has never been a special education teacher. He further states that he does not hold any certificates in that regard. He has never been qualified as an expert in special education services before. He is not a licensed therapist or psychiatrist. Dr. Zywicki testified that in his mind, this case is about administrative compliance "with school law." Dr. Zywicki's report does not identify any expertise in "special education."

Dr. Zywicki admits that he has never actually met J.H. He further admits that he has never observed J.H. in the classroom. He never witnessed how J.H. interacted with the teachers or staff. Dr. Zywicki admits that he never reached out to anyone from the District prior to making any conclusions. Dr. Zywicki admits that he has never been to CMA and has only researched their program online. He did not reach out to either Collier or Burlington regarding the services they provide and only relied on their website because that is what the petitioners asked him to do. He admits that their website claims that individualized instruction, structured support, and behavioral intervention can be offered at these locations, which he knows from the website.

Dr. Zywicki admits that he testifies as a "generalist as a superintendent who is aware of the administrative code." Dr. Zywicki testified about his opinion on what the "best practice" is regarding discipline in schools. He testified that one of the best interventions for a student who fits J.H.'s profile is a "graduation coach" and a check-in-check-out system, where the student would have to check in at the beginning of the day and check out at the end. Dr. Zywicki testified that after reviewing the discipline report, J.H.'s behaviors "seem[ed] pretty consistent." He admits that this differs from the report he wrote, where he said that the behaviors were escalating, although he attempted to

explain that he should have put quotation marks around the word “escalating.” Dr. Zywicki testified that J.H. has a “tremendous amount of anxiety.”

Dr. Zywicki admits that he does not have evidence to support his conclusion that J.H. was prevented from seeing his case manager. He further admits that even if he had additional information in this case, his opinion wouldn't have changed. In Dr. Zywicki's mind, a District ruling out a potential alternative placement would be a “unilateral conclusion by the District which is illegal” because the parents were not consulted. He then admits that the IDEA does not actually state this.

Dr. Zywicki relies on the New Jersey Tiered System of Supports Manual to support his assertion that the District should have a behavioral plan in place. He further opined that a multi-tiered system of supports or a New Jersey tiered system of supports should be used to “screen all students” in relation to the behavior plan. He admits that the multi-tiered system of supports is available for all students. He further opines that J.H. should have been screened for a behavioral intervention plan because all students should be screened for behavioral intervention plans, and that this is “best practice.” He confirms that he would recommend this even if there had been no disciplinary infractions. Dr. Zywicki contradicts himself, stating that to conduct an evaluation you need “frequency data” of disciplinary conduct, such as going to the nurse, seeing a counselor, etc.; however, he then states that it is best practice to do this all in a single day of watching the student.

Dr. Zywicki admits that it is the District's responsibility to walk through the other alternative option placements presented in N.J.S.A. 18A:46-14 first. 2/4/25 Testimony at 61:1–8.

**R.H.**, petitioner and J.H.'s father, testified that J.H.'s behavioral challenges that he was facing were not new, but that he had had them ever since he started going to school. These behavioral challenges lasted through Marlboro Middle School and carried over to Colts Neck High School. R.H. confirms that these challenges are why J.H. had an IEP, and that he had been diagnosed with ADHD, ODD, and anxiety. J.H. made frequent use of his case manager when he was attending Marlboro Middle School. R.H. testified that

J.H.'s knowledge that he had support like a case manager available kept him grounded. R.H. read through parts of J.H.'s IEP that referenced various needs that J.H. has in relation to the services that were provided.

R.H. admitted that J.H. had access to his case manager, as R.H. recalled a situation from October 20, 2022, where J.H. came from a biology class to speak with his case manager. R.H. notes that J.H. was not necessarily struggling in classes, specifically that he wasn't struggling in biology. R.H. states that the school wasn't listening to his son and wasn't cooperating in diffusing situations as they arose. At one point, R.H. admitted that he refused to sign documentation presented to him regarding the student contract. R.H. testified that they had "no choice" in determining whether to agree to the plan of prior restrictions. R.H. said that if he had been consulted then he would have explained that a pass restriction would be counter-intuitive; however, R.H. admits that he is in no way a professional educator, and neither is his wife. R.H. testified that the pass restriction would mean that in the time it took for a staff member to come to J.H., J.H. would "spin out of control."

R.H. testified that J.H.'s first report card at FRHSD indicated that he received A's, B's, and two C's. R.H. admits that he bought his current house so that he could "strategically" go to Colts Neck High School. R.H. admits that J.H. has learning disabilities but is not a troubled kid. R.H. testified that one of the big reasons why he turned down Collier as an alternative placement was because he saw a student who put a strainer on their head while he was on tour there. Further, R.H. indicated that he and his wife would have convinced J.H. to attend Collier as long as J.H. was willing to attend. J.H. was not amenable to attend Collier because he would not be allowed to attend Collier and play on the CNS golf team.

R.H. admits that when they met with Dr. McGuire, she "drew up some documents." R.H. then admits that he, not Dr. McGuire, was the one who found CMA. R.H. states that his initial goal of sending J.H. to Camden Military Academy was for a "reality check."

### Witness Credibility

The respondent's witnesses, Howland and Donahue, were professional in their demeanor and easily shared their specific knowledge of J.H. They testified in a courteous and concise manner and showed no bias or animus toward petitioners. It was clear from the testimony that the District had J.H.'s best interests in mind. I found both witnesses to be entirely credible.

The petitioner's witnesses, Paramore, McGuire, Zywicki, and R.H., were similarly professional in their demeanor, but only Paramore and R.H. had specific knowledge regarding J.H. Paramore easily recounted how well J.H. transitioned from a public-school setting to a military academy setting and how well J.H. has been progressing overall. I found Paramore to be a credible witness. R.H. provided insight into how the family dealt with J.H.'s disabilities and the impact that those disabilities had on his behaviors at school. I found R.H. to be a credible witness; however, I reject his conclusions that the District was not listening to J.H. or cooperating with the petitioners.

McGuire was admitted as an expert, and overall, she supported the District's position that an alternate placement was necessary. However, McGuire rejected the special education placements initially offered by the District. In McGuire's opinion, those placements were too restrictive. McGuire then undercut her own opinion by recommending as an appropriate school setting a military academy, which are, by their very nature, restrictive environments. Also, McGuire was unable to adequately explain how J.H. moving from a public-school setting with available special education services to an out-of-state military academy with no special education services complied with the IDEA. Zywicki was also qualified as an expert in school administrative processes only as he admittedly had little to no experience in special education services. His testimony was solely aimed at the alleged procedural violations under the IDEA in the disciplinary process employed by the District. Zywicki's testimony was of limited value. In general, he disagreed with how the District handled the disciplinary issues and with the lack of a BIP in J.H.'s IEP. However, his opinions are unsupported by the credible evidence.

I **FIND** greater support in the record for the conclusions of Howland and Donahue, who concluded that the 2022–2023 IEP provided J.H. with FAPE. As will be discussed more fully below, respondent’s witnesses were appropriately dealing with a student who experienced multiple disciplinary issues over a short period of time. Further, these disciplinary issues were expanding from insubordination to more aggressive conduct. Howland testified as to the steps respondent undertook to determine the cause of J.H.’s disciplinary issues and how to appropriately deal with them.

### **Alleged Procedural IDEA violations**

Petitioners allege that respondent procedurally violated the IDEA by; refusing to properly implement J.H.’s April 14, 2022, IEP when it removed the “open pass” to the office or his case worker; refusing to conduct an FBA and implement a BIP; failing to develop an IEP and placing J.H. on home instruction pending out-of-district placement after the December 13, 2022, disciplinary hearing; failing to provide the petitioner with procedural safeguards and written notice of disciplinary hearing; failing to return J.H. to CNS after the ten-day suspension; failing to properly implement J.H.’s home instruction; pre-determining J.H.’s placement after his July 2023 re-enrollment; and failing to hold an IEP meeting for the 2023–2024 school year.

I cannot accept the petitioners’ claims of procedural violations, as the witness examination and the stipulated summary above reveal no credible evidence supporting them. I **FIND** as follows: in September 2022, when J.H. transferred from the Marlboro grade school district to CNS, he had an approved IEP in place; the IEP was adopted without a BIP, because the petitioners specifically requested that J.H. not have one as it would harm his self-esteem; the District agreed to this request because the modifications and accommodations section of the IEP incorporated the previous behavior plan’s interventions to ensure continued support in the high school setting; due to J.H.’s elopements from the classroom, he was not permitted to leave the classroom on his own, but the District allowed him to see his case worker as needed; the petitioners were unhappy with this arrangement because it required an escort; and petitioners were fully aware of the ongoing disciplinary issues. They participated in two manifestation determination meetings, held on October 20, 2022, and November 30, 2023, for the

purpose of determining whether J.H.'s conduct that resulted in disciplinary action was a manifestation of his disabilities. Petitioners were aware of the December 13, 2022, disciplinary hearing; however, rather than attend the hearing, the petitioners withdrew J.H. from the District prior to the hearing in a misguided attempt to have the November 30, 2022, incident removed from J.H.'s record; the re-enrollment of J.H. in late July 2023 revealed that the petitioners had pre-determined J.H.'s continued placement at CMA; the record reveals that the petitioners were unwilling to cooperate with the District by refusing to conduct additional meetings after the initial meeting of July 27, 2023, was adjourned; and the petitioners' justification that time was of the essence is unsupported. I **FIND** that no credible evidence was presented to support the alleged procedural violations of the IDEA. I further **FIND** that no credible evidence was presented to establish that the alleged procedural violations impeded J.H.'s right to FAPE, impeded the petitioners' opportunity to participate in the decision-making process regarding the provision of FAPE, or caused a deprivation of educational benefits.

### **Alleged Substantive IDEA violations**

The petitioners also argue that the District's proposed out-of-district placement was a substantive violation of the IDEA. Relying upon McGuire's testimony, they maintain that the proposed placements did not provide J.H. with the least restrictive environment and they prevented him from being with age-appropriate peers. As noted above, McGuire supported the District's position that an alternate placement was necessary. However, McGuire rejected the special education placements initially offered by the District. In McGuire's opinion, those placements were too restrictive. McGuire then undercut her own opinion by recommending as an appropriate school setting a military academy, which are, by their very nature, restrictive environments. I **FIND** that the District was acting in good faith and was willing to discuss alternate placements. I **FIND** that the petitioners abandoned the collaborative process and instead unilaterally enrolled J.H. at CMA.

I **FIND** that the IEP for the 2022–2023 school year was reasonably calculated to provide J.H. with learning and meaningful educational benefit in light of his individual needs and potential but that his escalating disciplinary conduct impacted, and will continue to impact, his ability to make progress across all academic subjects as required

under the IDEA. I further **FIND** that the disciplinary issues were a manifestation of J.H.'s disabilities. I **FIND** that an out-of-district placement was appropriate. I **FIND** that an IEP for the 2023–2024 school year was created by the District but remained as a draft document because the petitioners did not sign and execute it.

### **Compensatory Education**

Petitioners requested relief in the form of compensatory education but did not specify which compensatory measures are needed to address J.H.'s educational deficits, notwithstanding the request for an out-of-district placement.

### **LEGAL ANALYSIS AND CONCLUSIONS**

As a recipient of federal funds under the IDEA, the State of New Jersey must have policies and procedures that assure all children with disabilities the right to a FAPE. 20 U.S.C. §1412. State regulations track this requirement that a local school district must provide FAPE as that standard is set under the IDEA. N.J.A.C. 6A:14-1.1. A free, appropriate special education and related services must be provided to all students with disabilities from age three through twenty-one: a.) at public expense, under public supervision and direction, and without charge; b.) to the standards of the State educational agency; c.) include an appropriate preschool, elementary, or secondary school education in the State involved; and d.) in conformity with the IEP required under 20 U.S.C. §1414(d). 20 U.S.C. §1401(9); N.J.A.C. 6A:14-1.1 et seq. The responsibility to deliver these services rests with the local public school district. N.J.A.C. 6A:14-1.1(d).

An IEP is “a comprehensive statement of the educational needs of a handicapped child and the specially designed instruction and related services to be employed to meet those needs.” Sch. Comm. of Burlington v. Dep’t of Educ. of Mass., 471 U.S. 359, 368 (1985). An IEP should be developed with the participation of parents and members of a CST who have participated in the evaluation of the child’s eligibility for SE and related services. N.J.A.C. 6A:14-3.7(b). The IEP team should consider the strengths of the student and the concerns of the parents for enhancing the education of their child; the results of the initial or most recent evaluations of the student; the student’s language and

communication needs; and the student's need for assistive technology devices and services. The IEP establishes the rationale for the pupil's educational placement, serves as the basis for program implementation, and complies with the mandates set forth in N.J.A.C. 6A:14-1.1 to -10.2.

Parents who are dissatisfied with an IEP may seek an administrative due-process hearing. 20 U.S.C. §1415(f). The school district bears "the burden of proving the appropriateness of the IEP it has proposed . . . [b]ut that does not mean that the school district also bears the burden of proving the *in*appropriateness of *any* alternative IEP that a student's parents might suggest." Carlisle Area Sch. v. Scott P. by and through Bess P., 62 F.3d 520, 533 (3d Cir. 1995); N.J.S.A. 18A:46-1.1.

The IDEA does not require respondent to provide J.H. with the best possible education, S.H. v. State Operated Sch. Dist. of Newark, 336 F.3d 260, 271 (3d Cir. 2003), but it must provide personalized instruction with sufficient support services to permit J.H. to benefit educationally from instruction. Hendrick Hudson Cent. Sch. Dist. Bd. of Educ. v. Rowley, 458 U.S. 176, 203 (1982). Noting that Rowley involved a student who, though disabled, was fully integrated in a general education (GE) classroom, the United States Supreme Court later explained that while "a child's IEP need not aim for grade-level advancement if that is not a reasonable prospect[,] . . . [the IEP] must be appropriately ambitious in light of his circumstances[.]" Andrew F. v. Douglas Cnty. Sch. Dist. RE-1, 580 U.S. 386, 387–388 (2017). The Third Circuit found the directions of the Supreme Court in Andrew F. to treat "a child's intellectual abilities and potential as among the most important circumstances to consider" to be consistent with its standard that an IEP "must be reasonably calculated to enable the child to receive meaningful educational benefits in light of the student's intellectual potential and individual abilities." Dunn v. Downingtown Area Sch. Dist., 904 F.3d 248, 254 (3d Cir. 2018). An IEP must be "*reasonable*, not . . . ideal [but] the IEP *must aim* to enable the child to make progress." Id. at 255 (quoting Andrew F., 580 U.S. at 399) (emphasis added).

Toward this end, an IEP must contain "detailed measurable annual academic and functional goals" related to the Core Curriculum Content Standards of the GE curriculum so both parents and educational personnel can be apprised of "the expected level of

achievement attendant to each goal.” N.J.A.C. 6A:14-3.7(e)(2). These annual academic and functional goals must also include benchmarks or short-term objectives to help the student both participate and progress in the GE curriculum, as well as meet the student’s other educational needs that result from his or her disability. N.J.A.C. 6A:14-3.7(e)(3). “Without an adequately drafted IEP, it would be difficult, if not impossible, to measure a child’s progress, a measurement that is necessary to determine changes to be made in the next IEP.” Lascari v. Bd. of Educ., 116 N.J. 30, 48–49 (1989) (IEP was inappropriate and incapable of review where the goals and objectives were vague, the measure of progress was equally unclear, it lacked objective analysis, and remarks were subjectively based).

These individualized goals and objectives are not intended to be broad, aspirational statements, but are meant to be achieved within one year, and objectives should be accomplished in an even shorter period of time. 20 U.S.C. §1414(d)(1)(A)(ii)(I). As the New Jersey Supreme Court stated in Lascari, the purpose of including individualized goals and objectives in an IEP is to enable parents, students, and educators to monitor progress during the year and, if appropriate, to revise the IEP consistent with the student’s instructional needs. 116 N.J. at 49. The determination of whether a child has benefitted from an educational program is based upon the child’s progress towards goals and objectives. See Taylor v. Honig, 910 F.2d 627, 629 (9th Cir. 1990).

In Andrew F., the Supreme Court held the IEP must be “appropriately ambitious in light of the child’s circumstances,” 580 U.S. at 399, thereby sanctioning what has already been the standard in New Jersey: the IEP must be reasonably calculated to provide significant learning and meaningful benefit in light of a student’s individual needs and potential.

Finally, the IDEA requires states to educate disabled children in the least restrictive environment to the maximum extent appropriate, with children without disabilities. See 20 U.S.C. §1412(a)(5)(A). Thus, removal of children with disabilities from the GE environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be

achieved satisfactorily. Ibid. “This provision sets forth a ‘strong congressional preference’ for integrating children with disabilities in regular classrooms.” Oberti v. Bd. of Educ. of Clementon Sch. Dist., 995 F.2d 1204, 1214 (3d Cir. 1993) (citations omitted).

Applying the law to the facts, I **CONCLUDE** that the District offered J.H. FAPE as required under the IDEA and interpretive case law for the 2022–2023 and 2023-2024 school years. I further **CONCLUDE** that his escalating disciplinary conduct impacted, and will continue to impact, his ability to make progress across all academic subjects as required under the IDEA. I further **CONCLUDE** that the disciplinary issues were a manifestation of J.H.’s disabilities.

### **Out-of-District Placement**

Here, the petitioners unilaterally placed J.H. at CMA, where he is currently enrolled. In accordance with N.J.A.C. 6A:14-2.10, parents may receive reimbursement for a unilateral placement as follows:

- (b) If the parents of a student with a disability who previously received special education and related services from the district of residence enroll the student in a nonpublic school, an early childhood program, or approved private school for students with disabilities without the consent of, or referral by, the district board of education, an administrative law judge may require the district board of education to reimburse the parents for the cost of enrollment if the administrative law judge finds that the district board of education had not made a free, appropriate public education available to the student in a timely manner prior to enrollment and that the private placement is appropriate.

The New Jersey regulation mirrors well-established federal law. Parents who unilaterally withdraw their child from public school and place him in a private school without consent from the school district “do so at their own financial risk.” Sch. Comm. of Burlington v. Mass. Dep’t of Educ., 471 U.S. 359, 374 (1985); see also N.J.A.C. 6A:14-2.10(b)(1).

Reviewing courts recognize that parents who unilaterally place their child by necessity do so without the expertise and input of school professionals that is contemplated by a truly collaborative IEP process. The courts recognize that under these circumstances, parents essentially do the best they can, holding that, “when a public school system has defaulted on its obligations under the [IDEA], a private school placement is ‘proper under the Act’ if the education provided by the private school is ‘reasonably calculated to enable the child to receive educational benefits.’” Florence Cnty. Sch. Dist. Four v. Carter, 510 U.S. 7, 11 (1993) (quoting Rowley, 458 U.S. at 207).

Here, I have already determined that the District was providing J.H. with FAPE. I now also **CONCLUDE** that because the placement of J.H. at CMA was unilateral, the petitioners are not entitled to reimbursement. Having reached this conclusion, it is not necessary to address the respondent’s arguments that CMA, an out-of-state military academy, was an inappropriate placement.

### **Request for Compensatory Education**

Compensatory education is a judicially created remedy that may be awarded to account for the period in which a disabled student was deprived of their right to FAPE. Burlington, 471 U.S. at 369 (1985) (finding that tuition reimbursement was an appropriate remedy under the Education of the Handicapped Act, predecessor to the IDEA); Coleman v. Pottstown Sch. Dist., 983 F. Supp. 2d 543, 566 (3d Cir. 2013).

Compensatory education may be awarded if it is determined that a school district failed to provide FAPE to a disabled student and the district knew or should have known that FAPE was not provided. M.C. ex rel. J.C. v. Cent. Reg’l Sch. Dist., 81 F.3d 389, 396 (3d Cir. 1996). A finding for compensatory education does not require bad faith or egregious circumstances; it only requires a finding that a disabled child was receiving less than a “de minimis” education. Id. at 397.

Here, while petitioners alleged that the District failed to provide J.H. with FAPE, I concluded otherwise. Accordingly, I **CONCLUDE** that petitioners are not entitled to compensatory education service.

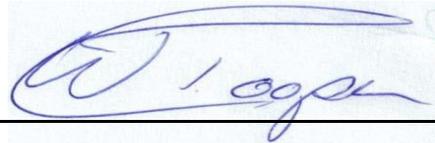
**ORDER**

It is hereby **ORDERED** that the due process petition of L.H. and R.H. on behalf of J.H. is **DENIED**.

This decision is final pursuant to 20 U.S.C. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2024) and is appealable by filing a complaint and bringing a civil action either in the Law Division of the Superior Court of New Jersey or in a district court of the United States. 20 U.S.C. § 1415(i)(2); 34 C.F.R. § 300.516 (2024). If the parent or adult student feels that this decision is not being fully implemented with respect to the program or services, this concern should be communicated in writing to the Director, Office of Special Education Programs.

May 2, 2025,

DATE



**WILLIAM T. COOPER, ALJ**

Date Received at Agency:

\_\_\_\_\_

Date Mailed to Parties:

\_\_\_\_\_

WTC/am

**APPENDIX**

**Witnesses**

**For Petitioners:**

Maj. Nicholas Paramore  
Dr. Leah McGuire  
Dr. Robert Zywicki  
R.H.

**For Respondent:**

Dr. Jessica Howland  
Dr. Brian Donohue

**Exhibits**

**For Petitioners:**

- P-3 3/1/23 Student Transfer Verification Form from Freehold Reg. to Camden Military Academy
- P-4 7/17/23 Transcript from Camden Military Academy
- P-6 7/27/23 Letter from Hillary D. Freeman, Esq. to Andrew Li, Esq.
- P-7 Letter from Hillary D. Freeman to Andrew Li, Esq.
- P-11 Camden Military Academy calendar
- P-12 8/7/23 Camden Military Academy Enrollment Contract
- P-13 Freehold calendar
- P-14 3/14/24 Letter from Maj. Nicholas E. Paramore
- P-15 2024 Camden Military Academy Transcript
- P-16 Leah McGuire's resume
- P-17 Dr. McGuire's report
- P-19 Robert Zywicki's resume
- P-20 Dr. Zywicki's report

For Respondent:

- R-11 2023–2024 Draft IEP
- R-12 4/14/22 IEP
- R-13 1/11/22 IEP
- R-20 Psychological eval
- R-21 Social eval
- R-22 Psychiatrist eval
- R-23 Speech eval
- R-24 Occupational eval
- R-25 Neurological eval
- R-26 Psychological eval
- R-27 Educational eval
- R-29 Conduct Report
- R-30 Attendance Report
- R-31 Discipline reports
- R-33 8/1/23 Camden Military Academy Letter
- R-34 Camden Military Academy Expense sheet
- R-35 Camden Military Academy Tuition information
- R-37 2/14/23 Email from Comegno Law Group to Lenore Boyarin, Esquire
- R-38 7/18/23 H. Freeman 10-day letter to M. Toscano
- R-39 7/16/23 email
- R-40 7/26/23 Email from H. Freeman to M. Toscano
- R-43 8/4/23 Letter from H. Freeman Letter to A. Li
- R-44 Email from M. Toscano to H. Freeman
- R-45 8/9/23 Email from H. Freeman to M. Toscano
- R-58 2022–2023 Report card
- R-60 10/20/22 Manifestation Determination Decision
- R-64 Educere Home Instruction
- R-65 New Student Request Form
- R-66 11/14/22 Progress reports