



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

**FINAL DECISION**

OAL DKT. NO. EDS 00389-25

AGENCY DKT. NO. 2025-38378

**K.L. and K.S. ON BEHALF OF J.S.,**

Petitioners,

v.

**MOUNT LAUREL TOWNSHIP BOARD**

**OF EDUCATION,**

Respondent.

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**Amelia Carolla**, Esq., for petitioners (Carolla Law Offices, LLC, attorneys)

**Susan Hodges**, Esq., **Emily Strawbridge**, Esq., and **Melissa Kolaski**, Esq. for  
respondent (Parker, McCay, P.A., attorneys)

Record Closed: November 12, 2025

Decided: December 24, 2025

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, K.L. and K.S. have requested a due process hearing on behalf of their son, J.S. who is classified as eligible for special education and related services. Petitioners' dispute the district's proposed IEP and seek placement at Fusion

Academy, reimbursement for associated costs with placement at Fusion, and compensatory education. At issue is whether the IEPs offered by the district were reasonably calculated to enable J.S. to make progress appropriate in light of J.S.'s circumstances in the least restrictive environment for the period from January 2023 to June 2023 and for the 2023-2024 and 2024-2025 school years.

### **PROCEDURAL HISTORY**

Petitioners filed a request for due process with the Office of Special Education (OSE) on November 22, 2024. Respondent filed an answer to the petition for due process on December 2, 2024. The matter was transmitted by the OSE to the Office of Administrative Law (OAL) where it was filed as a contested case on January 7, 2025, pursuant to N.J.S.A. 52:14B-1 to B-15 and N.J.S.A. 52:14F-1 to F-13. A telephone pre-hearing conference was conducted on February 12, 2025, and a pre-hearing Order was entered on February 14, 2025, scheduling the matter for hearing April 3, April 15, April 17, May 13, May 15 and May 29, 2025. The April 3, April 17, and May 29 hearing dates were adjourned on consent and additional hearing days added. The matter was heard in person on April 15, May 13, May 15, May 21, June 26, June 27, July 10, and July 16, 2025. A post hearing telephone conference was conducted October 1, 2025, to discuss receipt of the hearing transcripts, stipulation of exhibits into evidence and date for the submission of closing briefs. The parties submitted a Joint Stipulation of Exhibits to be entered into evidence, dated October 10, 2025. The record closed on November 12, 2025, following receipt of written closing briefs.

### **FACTUAL DISCUSSIONS AND FINDINGS**

#### **Testimony**

**Ellen Chirip** testified for the district. She is the school psychologist and case manager for seventh grade, overseeing implementation of the IEPs, conducting psychological evaluations and behavioral assessments, reviewing outside evaluations and interpreting them, and spending time in the classroom to see how the IEPs are being implemented. She also acts as a liaison between teachers and parents and teachers and

the administration. As the case manager, she would go into the classroom to make observations to make sure all the modifications that are supposed to be in place are in place. She would communicate with parents about how things were going in the classroom, and parents would communicate with her things that might be going on at home that might impact a student's performance in the classroom.

Prior to her employment with Mount Laurel, she was employed at the Atlantic County jail as a social worker.

She received her bachelor's in psychology from Ursinus and attended Rowan University and obtained her master's and certification in school psychology. (R-25.) She is certified by the State of New Jersey in school psychology, which allows her to provide psychological assessments to look at the strengths and weaknesses within a student's cognitive and learning profile and to take that information and communicate it to the teachers to allow them to best help the student within the classroom. She participates in IEP meetings and has done tens of thousands of them. Ms. Chirip was accepted as an expert in school psychology and special education case management.

Ms. Chirip is familiar with J.S. She provided him with counselling services and was his case manager for seventh grade. She first learned of J.S. at the end of his sixth-grade year at his annual review meeting before he transitioned to seventh grade. She attended the IEP meeting for the development of J.S.'s seventh grade IEP (J-17.) J.S. was scheduled to receive in-class supplementary instruction for language arts, math, social studies and science, which meant that there were two teachers in the classroom, a general education teacher and a special education teacher. In that classroom, there can be no more than ten students with an IEP. The curriculum taught was the standard seventh grade curriculum. J.S. was also to receive individual counselling two times a month and social skills instruction one time a month in a group. This IEP was implemented for 2023-2024 school year, which was J.S.'s seventh-grade year. Ms. Chirip provided the counselling services. Although he was to receive counselling every other week, she scheduled him weekly because sometimes he would not come so she would call him to come down the next week. If he did not want to come, she took it to mean that he had nothing pressing he wanted to discuss with her. She did not press him to

participate if he did not want to. Ms. Chirip testified that J.S. was good with her and they had a good rapport. He enjoyed sharing activities he was involved in. His counseling was supposed to be focused on social interactions, but he had a very positive year in seventh grade in terms of social interactions with peers and was not having any issues.

An independent neuropsychological evaluation was conducted by Dr. Emily Perlis. (R-7.) Ms. Chirip accompanied Dr. Perlis for the classroom observation of J.S. Mom, K.L. emailed Ms. Chirip a copy of Dr. Perlis' evaluation on December 19. (R-17.) This report did not change the services provided in J.S.'s IEP. She reviewed the recommendations contained in the report. The first recommendation was that "J.S. will meet criteria for services under the autism, OHI, ADHD and/or specific learning disability, written expression classifications." Ms. Chirip explained that J.S. had the classification of autism in his IEP. Recommendation number two stated "It is recommended that the school conduct a functional behavioral assessment so that a positive behavior support plan can be implemented in the class to address the behaviors that are interfering with J.S.'s ability to properly engage in class and produce assigned work." An FBA was not initiated immediately after receiving this report because in December they were not seeing significant behavioral concerns that were not being addressed by the current behavior plan that was in his IEP. Recommendation number three stated "It is recommended that he continue to meet regularly with the school counselor and/or autism support teacher who can provide support to him as needed if interpersonal challenges with other students persist. He would also continue to benefit from a group social skills program to further support his social and emotional growth." J.S. was already receiving individual counselling two times a month and social skills in a group one time a month, so they did not need to make any changes based on this recommendation. Recommendation number four in R-7 stated, "To support learning in executive functioning skills at school J.S. should be provided with a supported study hall or executive functioning course where he can work with an instructor on issues related to time management, organizational skills and homework completion." Modifications that were being implemented in the classroom setting included allowing extra time, allowing typed rather than handwritten responses, modifying the homework assignments regarding the amount he was receiving, breaking down tasks into manageable units, assisting student in setting short-term manageable goals. (J-17 at 12.) In terms of assessment

modifications, these included providing a word bank for J.S., not penalizing him for spelling errors, allowing him to type rather than handwrite his responses, and providing word banks for recall.

There were some things not in the IEP that the teacher was in fact doing to be able to assist him as good teaching practices. The special education teacher in the classroom was responsible for providing modifications. She would provide him with notes and did a lot of transcribing for him. He dictated a lot to her, and she would write the answers for him rather than have him handwrite the answers. They also encouraged the use of speech-to-text as well. Therefore, the recommendations in number four were implemented for J.S.

Recommendation number five stated “It was recommended that J.S. continue to receive in-class resource support for English especially during the written portion of the course.” J.S. was placed in an in-class supplementary instruction for English within the mainstream classroom. Recommendation six stated “The teacher should work with him to be sure that he is producing on-topic and concise work as well as effectively self-monitoring his work for accuracy.” The special education teacher implemented this recommendation by writing the answers down that J.S. dictated to her and encouraged him to use his speech-to-text as much as possible. The assessment accommodation and modification allowed him to type rather handwritten responses and scribe as needed. (J-17 at 12.)

Ms. Chirip completed a Related Services Individual Student Request Form for J.S. to have an occupational therapy evaluation. (R-8.) The form is dated December 21, 2023. The evaluation was previously requested by the parents at the end of sixth grade, but it was overlooked by Ms. Chirip and not requested until December 21, 2023. The occupational therapy evaluation was completed by Mary Hargadon. (J-11.) OT services were not recommended for J.S. for the 2023-2024 school year based on this evaluation.

Dr. Perlis’ report at recommendation # 8, a. stated that J.S. should be administered tests in a quiet private setting free from distractions; b. J.S. should be afforded fifty percent extra time to complete tests in class; c. when J.S. takes a test with other students in the

room, even a smaller number of students, he should consider using a three-panel tall cardboard divider that can be used to reduce visual distractions; and d. J.S. may also want to consider using noise-cancelling headphones as needed to drown out bothersome background noises. (R-7 at 14.) All of these recommendations were available to J.S., but he did not need all of them such as the noise-cancelling headphones. J.S. was able to come to her office to take a quiz or test if needed. He was afforded more than fifty percent time for completion of tests and homework. He was given as much time as he needed within a given trimester to finish his work and as long as he completed it within that timeframe he was not penalized.

Recommendation #9 stated that “During class time J.S. may require additional time to complete tasks, particularly those that require an extensive writing component.” (R-7 at 14.) J.S.’s IEP for seventh grade list an accommodation that J.S. would be allowed extra time for task completion. (J-17 at 12.)

Dr. Perlis also recommended at #10 that J.S. would benefit from direct assistance in the development of study skills, specifically, assisting him in developing effective systems for managing his belongings and his time would be important. This recommendation was being implemented by the special education teacher within the classroom assisting him in going through his folder and organizing his things day to day for each subject and getting rid of paperwork he did not need anymore.

Recommendation #11 stated: “Breaking tasks into smaller and more manageable units should help J.S. complete assignments more efficiently.” (R-7 at 14.) Under organizational accommodations in the IEP it stated, “Break down tasks into manageable units”. (J-17 at 12.)

Recommendation #12 states: “As J.S. learns to take notes in class, he will benefit from the provision of a class outline so that he can compare the notes that he took in class to what his teachers feel are key points that he should be learning. This is especially important given his weakness in handwriting. In this way, J.S. will be able to better develop his own note-taking skills, as well as ensure that he is focusing on the correct material when preparing for tests.” (R-7 at 14.) That recommendation was being

addressed by the usual practice of giving the students with IEPs an extra set of notes from the teacher or it could be from another student within the class that the teacher deems to take good notes in order to help J.S. find the most important key words in the document.

Recommendation #13 stated that “J.S. should be provided with preferential seating.” (R-7 at 14.) The IEP under accommodations for attention and focus provided for preferential seating. (J-17 at 12.)

Recommendation #14 stated that “Given his attentional difficulties, J.S. may miss some details provided in verbal instructions. His teachers should be sure that his attention is secured before giving him directions. For example, begin all instructions or requests by saying his name, make frequent eye contact with him, and repeat directions as necessary to assure that he has heard and understood them.” (R-7 at 14.) This recommendation was being implemented by the special education teacher being in close proximity to him when directions were being given. It could have been a hand on his shoulder to make sure he was attending and then following up with having him repeat the directions to make sure that he understood what was going on.

Recommendations #15-17 were a combination of home and school recommendations. In school he got breaks and worked for short periods of time. His parents were worried about J.S.’s social adjustment and Ms. Chirip continued to follow through with this during counselling. All of these modifications and accommodations were implemented for J.S. as soon as he entered Harrington Middle School and prior to receiving Dr. Perlis’ report.

Ms. Chirip submitted a request for a sensory profile on February 29, 2024. (R-10.) The parents had previously requested a sensory profile when they requested an occupational therapy evaluation at the end of sixth grade. It was her fault that she did not request the sensory profile with the OT and when she was aware the sensory profile had not been completed, she requested it. A regular OT evaluation looks at more hands-on things that the student is doing with paper and pencil skills whereas a sensory battery is looking at how the student responds to external stimuli, such as noise, touch or movement

in the classroom. An OT Sensory Profile evaluation was conducted by Mary Hargadon on March 20, 2024. (R-12.) No additional accommodations, modifications or services were recommended as a result of this evaluation as there was no indication that interventions were required after an interview with the teacher and parents.

During the 2023-2024 school year, Ms. Chirip was in contact with J.S.'s parents regarding his day-to-day progress, how he was doing, things that he may have encountered that might have upset them – those types of things. She was regularly providing updates to the parents via email communication, for example at R-17 at 00138 there is an email from Ms. Chirip to K.L. wherein she stated: “Good Morning, I had my weekly meeting with J.S. and he seemed upbeat and enthusiastic about his day. He shared stories of his camping trip last weekend and spoke positively about the change in math. He was also happy to report on connecting with a friend from last year and is looking forward to gaming with him this evening. Overall he seemed to be doing well and did not seem anxious at all about his day.”

At the start of seventh grade, Ms. Chirip would typically go in and observe the classroom just to see how the children were functioning overall. She really did not go in and do anything one to one with J.S. until later in the year, in approximately March – May as she was spending more time in the classroom to see about assisting J.S. spending less time on the computer or his book and more time focusing on the lesson and any work that was supposed to be done.

Ms. Chirip was copied into an email between J.S.'s special education teacher, Bonnie Wireback and Traci Dobelman, the behavioral consultant, in regards to difficulties with the computer and the proposal to remove the computer from J.S. to take away the distraction. (R-17 at 170, 171.) Ms. Chirip wrote “I think we need to schedule breaks for him especially during the double periods. I see him tomorrow for counselling and we can talk about what that looks like. I’m so proud of him for pushing through today. I feel like he is off to a really good start.” (R-17 at 170.) Ms. Chirip was involved in the decision to implement a temporary plan which was discussed at an IEP meeting. The outcome of the meeting was that they were removing the computer and using pencil and paper tasks to assess him and providing paper and things for him to have in his hand as opposed to

the computer. Nothing else was proposed or agreed to between the parents and district at that meeting. They were going to be offering an FBA as the parents actually requested one and everyone agreed that should be done.

The team was considering providing J.S. with a one-to-one aide and Ms. Chirip started going into the class a little bit more and acting like a one-to-one aide sitting with him and trying to support him doing his work at that time to see how he would respond to somebody. The team did not recommend or offer a one-to-one aide during the seventh grade school year because at that point it was at the end of the school year and whoever worked with J.S. it was important that their personalities aligned and that there was an understanding of J.P.'s strength and weaknesses and at that point in time, she did not have anybody she felt would meet that requirement that was available. In spending time with him in the classroom and assisting him and seeing the way that he responded to somebody that he already had a rapport with, he was not very open to her being there helping him so she was hesitant to make the recommendation for a one-to-one aid because she thought it would be more detrimental to him at that point.

Ms. Chirip sent an email dated May 7, 2024, to K.S. "I've had a chance to speak with Dr. Willard and Mr. Besler, and it appears that we don't currently have a paraprofessional available at this point in the year. However, arrangements are in place for one for next year. In the interim, I will be present in science two days a week to provide assistance. Regarding Yvette's schedule, I'll await specific information from her before confirming any further plans." (R-17 at 216.) Yvette was the person who was conducting the FBA.

When going about assigning a one-to-one paraprofessional to a student, they consider a lot of things including their temperament. They have some aides that speak with a heavy accent so that is somebody she would avoid placing with J.S. to make sure their personality is going to be easygoing and not something that is going to upset J.S. Although they did not have staff available at the time she wrote the email, she did not think that a one-to-one aide was appropriate for him, or she would have put in a request to the child study team for Dr. Willard to look into hiring someone. When Ms. Chirip stated that arrangements were in place for next year for an aide, she was proposing that

someone in the classroom help everyone in the class, not just focusing on J.S. A one-to-one aide is assigned specifically to that student, and all of their attention would be focused on that student whereas a paraprofessional circulates around the room and provides assistance to whoever is requiring the help.

J-20 is the draft IEP they started preparing at the end of seventh grade planning for eighth grade. They met in July. The parents had requested to look at their resource center and Ms. Chirip showed them their two different resource center programs they have for eighth grade. It is a small group setting with less students so they would be able to focus more on handling J.S.'s behaviors. The parents also wanted him in the least restrictive environment in a coteaching setting which was more appropriate for J.S. academically in the large group setting. Based on some of the concerns of the parents and the team they were also discussing other potential programs. Ms. Chirip recommended they look at New Hope Academy and she also recommended Y.A.L.E., but the parents were not interested. She also discussed with them Burlington County Special Services and Burlington County Alternative Middle School (BCAMS).

R-17 at 250 is a June 19, 2024, email from K.S. to Ms. Chirip, copying in K.L., Dr. Willard and Ms. Carolla. The email reads:

"Hello

You mentioned an application this morning we needed to fill out. I'm not sure exactly what it was. Please send me any paperwork you need completed so that I can ask Amy to review it first.

As we discussed at the last IEP meeting, we would like J.S. to be able to have FAPE at Harrington but we don't know if this is possible. We do not agree that Burlington County Alternative School is appropriate.

We are privately paying for J.S. to go to Fusion for the summer. In August, if he does well there, we would like to discuss a Naples placement at Fusion in September. We do not believe there are any NJ approved schools that would meet J.S.'s needs out of district.

If J.S. does not do well at Fusion, we would like him to attend Harrington in the fall as we do not see any other viable alternatives.

Thanks

K.”

At the time the parents sent this email, they had not toured the Burlington County Alternative School. The district proceeded with planning for J.S.’s eighth grade year by making arrangements and moving staff so that the teachers’ personalities jived with the student’s and rearranged staff so that J.S. would be with a team of teachers that they thought would be able to best support him. They also were going to provide a classroom aide and make sure that he had a circle of friends that were placed with him. They rearranged staff to make sure that J.S. had a really nice group of teachers that he was going to get along with.

A June 19, 2024, email from K.L. to Ms. Chirip stated “ We agreed placement in a mainstream inclusion room with additional aide would be most beneficial at HMS. We also determined that resource room placement at this time is NOT appropriate, especially in terms of J.S.’s recognized aptitudes and gifted qualities (twice exceptional). Positive peer role models who are known to J.S. at this time, for the purposes of team/classroom and lunch placements, are to include the following additional eighth graders in descending order.” (R-17 at 251.) Ms. Chirip responded that they would accommodate as many as they could but because of electives they had they could not be on his team but whoever she was able to pair with him and place in his classroom she did.

In Ms. Chirip’s opinion the academic program in terms of the in-class supplementary instruction was appropriate for J.S. for eighth grade. They handcrafted a teaching team as well as peers that J.S. would be with based on concerns from the seventh-grade year. There were certain teachers that were more hands-on and had a more interactive classroom that J.S. would do better with. The IEP and the program designed for J.S. proposed for eighth grade was appropriate.

Ms. Chirip did a write-up of her observation of J.S. at Fusion on the last day of the Fusion program for approximately forty minutes. (J-22.) “As a reward, he was permitted to bring his gaming device. During the observation, J.S. was engaged in a one-on-one writing session with a teacher. However, he appeared highly distracted by his gaming device and required multiple prompts to put it away before the lesson could begin. Although J.S. briefly placed the device in his lap when asked, he repeatedly resumed playing after a few seconds. After approximately five minutes of redirection attempts by the teacher, the observer intervened and placed the device on the floor behind J.S.’s seat. The teacher then initiated a discussion on potential writing topics, and J.S. selected a video game of interest as his subject. During this attempt to integrate his interest into the assignment, J.S. remained distracted by the presence of his device. He eventually retrieved it from the floor and placed it back on his lap. While the teacher allowed J.S. to discuss the game he was playing, he continued to struggle with redirection and had difficulty maintaining focus on the writing task for the remainder of the session.” (J-22 at 1.)

Ms. Chirip observed J.S. again at Fusion for a little over an hour on January 29, 2025, during instruction at Fusion. Under “Impressions” Ms. Chirip indicated: “J.S. requires a significant amount of prompting to transition between activities and initiate independent work. While he demonstrates an understanding of academic concepts when engaged in instruction, his reliance on teacher prompts raises concerns about his level of independence and self-initiation. His current one-on-one instructional setting, while beneficial in providing individualized support, may be fostering dependence rather than encouraging self-sufficiency. Socially, J.S. has minimal peer interaction, which is a concern. The one-on-one model limits opportunities for social engagement and collaboration, which are critical for developing communication and interpersonal skills. While he benefits from a lower teacher-to-student ratio, a structured small-group setting may better support his academic and social development by providing the necessary individualized attention while also fostering peer interaction and independence. Overall, J.S. is capable of academic success but requires structured support to build independence. A setting that balances individualized instruction with opportunities for peer engagement may be more effective in promoting both academic progress and social development.” (J-22 at 4-5.)

J.S.'s behavior at Fusion was typical of what his behavior was in district with the computer being a distraction and J.S. needing to be redirected.

An Individual Reassessment of Commitment (IROC) report on J.S. from Fusion was emailed to Ms. Chirip on March 28, 2025, and she forwarded it on to Dr. Willard (R-29). The report states that goals are rated from zero to five with zero representing no progress and five representing that the goal has been met. The first goal listed states: "J.S. will answer all homework questions in complete sentences and will provide text evidence where instructed." J.S.'s score was a two. The second goal stated: "J.S. will be an active participant in 50% of homework café events and activities per month." J.S. received a two for this goal. The third goal stated: "J.S. will report to class within five minutes of the start time and no more than one reminder." J.S. scored a one on this goal and the teacher team notes indicated that "J.S. requires several reminders to come to class and is typically late. He acknowledges the reminder but does not make his way to class. Often there is refusal or continued delay." (R-29 at 2.)

The special education and related services provided to J.S. and the IEP for the 2023-2024 school year provided J.S. with services necessary to meet his needs. Based on her expertise and familiarity with J.S., Ms. Chirip believes the IEP proposed for J.S. for the 2024-2025 school year was reasonably calculated to provide J.S. with a meaningful benefit. It is her opinion that they developed a strong program for him. Regarding Fusion, the one-on-one instruction is really great, but she had a concern that J.S. learns a lot of his information while listening when lectures are going on in the classroom and he is taking in a lot of information. With the one-to-one instruction they would introduce a skill, J.S. would work on it and then they would move on. She believes that J.S. missed things that happen in a classroom that cannot be reproduced in a one-to-one setting. For J.S. to receive a meaningful educational benefit, his program should be a coteaching classroom with two teachers in the classroom for language arts, math, science and social studies and a paraprofessional in the classroom to try and reinforce the material.

Ms. Chirip took over J.S.'s case management in seventh grade. Prior to that she reviewed his prior IEPs and evaluations. She was aware that the district had proposed that J.S. was no longer eligible for special education and suggested his needs could be met with a 504 plan. She agreed that J.S. needed an IEP. In preparation for becoming J.S.'s case manager, she reviewed the psychological evaluation, (J-8) but not the educational evaluation (J-7) because the psychological part is her area and what she would write. Looking at J.S.'s scores, all of his scores were average except for processing speed. (J-8 at 2). A processing speed of eighty-three certainly may affect his ability to access his education in relation to his much higher scores. She also reviewed the behavioral consultation prepared by Yvette Owens (J-9) who also was J.S.'s behavior consultant in seventh grade. It was her understanding that the behavior consult was requested in sixth grade and included in his IEP because he was not getting off the computer and it was a distraction from his work. As a case manager in Mount Laurel for approximately twenty-nine years she has worked with many children with autism and ADHD. Students with these diagnoses can have problems with focus, staying on task and work avoidance and a behaviorist can help with that. So even if these children have average or above average IQ scores, they still need assistance because of this other emotional, social, behavioral side. She agreed that in seventh grade when she was working with J.S., he had behaviors that were interfering with his education.

When Ms. Chirip took over as J.S.'s case manager for seventh grade, she looked at his sixth grade IEP (J-13) but did not read it in detail. She paid more attention to the seventh grade IEP that was being developed which she would be responsible for implementing for seventh grade. The social, emotional, behavioral section of the 6<sup>th</sup> grade IEP (J-13 at 7) was filled out by the teacher and indicates that J.S. was very capable but is not always motivated to do work that he finds uninteresting (work avoidance). His receptiveness to feedback has gotten better, but he does have difficulty with accepting it sometimes; he does not always work to potential due to behaviors; he had difficulty with attention and focus. Ms. Chirip found this was a fair description of how J.S. was when she was with him in seventh grade. She disagreed that J.S. had social difficulties with peers in seventh grade as she did not see that and socially, he was doing very well. She did agree that J.S. had difficulty with compliance and behaviors in the classroom, following directions, oppositionality and transitions. Ms. Chirip did not look to see if he

made progress on his sixth-grade goals from the previous year because she was in the meeting where they reviewed his progress for the year and obtained the information through the meeting. Ms. Chirip did not see the Progress reporting on the IEP goals for sixth grade 2022-2023 school year. (J-23.) She did not recall discussing at the May 25<sup>th</sup> meeting at the end of sixth grade whether J.S. made progress on his goals. The seventh grade IEP that Ms. Chirip had to implement was J-17. At that meeting the team decided that there would be an occupational therapy evaluation in September 2023 and inadvertently that was not started. Within thirty days of school starting there was a meeting with J.S.'s teachers and parents to discuss his strength and weaknesses but it was not an IEP meeting. No IEP meeting was scheduled at the beginning of the seventh-grade year. The thirty-day review meeting was just an opportunity for the parents to come in and meet the teachers and talk about their child and what they would like to see happen within the classroom and what their expectations are. Ms. Chirip agrees that no changes can be made to a student's program without the full team meeting. Ms. Chirip said they did have a meeting, but it was not an IEP meeting where they made a change from J.S. being in compacted math and moving him into a co-taught class and that was in the beginning of the seventh-grade year.

At the end of sixth grade, because of his grades and obvious intelligence, there was a discussion about declassifying J.S. but because there were continuing concerns about J.S.'s social, emotional and behavioral needs, the team decision was to provide him continued in-class support. The IEP stated that an eligibility meeting was to be held at the end of the first making period to review J.S.'s transition to his new school and discuss whether he continues to be eligible for special education and related services. (J-17 at 17). No meeting was held.

H. Friederichs was J.S.'s special education teacher in sixth grade and she provided the PLAAFP for the Social/Emotional/Behavioral Section of the IEP. (J-16 at 5 of 17.) She indicated that in sixth grade J.S. was earning five to ten-minute breaks and he would watch video games or play you tube during the breaks, and it had to be monitored to keep him from doing things he was not supposed to do. She indicated that in sixth grade this positive reinforcement with the breaks of the video games kept him on track. The teacher also indicated that J.S. had work avoidance. Social skills instruction was delivered by

Ms. Dobelman who would go into the classroom and work with J.S. as things came up in the classroom once a month. At the end of the school year, she was going in more frequently. The social skills instruction is listed on page 1 of the IEP as one time monthly for thirty minutes. Ms. Dobelman would push into the classroom and work with J.S. and his peers.

The sixth grade IEP (J-13 at 8) behavior plan compared to the seventh grade IEP behavior plan (J-17 at 8) is an identical cut and paste from the sixth-grade IEP. The behaviorist, Yvette Owens' recommendations at J-9 when she went in at the end of sixth grade and listed seven recommendations for J.S. relating to his task avoidance were not incorporated into the seventh grade IEP.

Looking at J-17 at 10 the IEP she was responsible for implementing, he had social/emotional/behavioral goals which included goal #5 identifying his own emotions and feelings and implementing three strategies when required to transition from a more preferred activity to a lesser one; identifying and complying with teacher directives; maintaining his attention for thirty minutes during classroom instruction with seventy-five percent success; and when faced with a social conflict using positive strategies. Looking back at the sixth grade IEP, he had the same goals the previous year. Ms. Chirip said this did not surprise her since very often children are working on the same goals from year to year. She was not sure if he had mastered any of those goals in seventh grade.

The IEP goals progress report (J-23 at 12) is filled out by the special education teacher, Bonnie Wireback, and as his case manager she is responsible for monitoring J.S.'s progress. Progressing inconsistently means he is progressing, but it varies. PG is progressing gradually which means he is showing slow consistent growth. Looking at J.S.'s social/emotional behavioral goals, he is progressing inconsistently for goal #5. (J-23 at 18.) Ms. Chirip did not know if Ms. Wireback collects data in order to report PI. The sixth goal is "transitioning from one activity" indicates J.S. is progressing inconsistently. "identifying, and complying with teacher directives, classroom rules, expectations and school rules throughout the school day" also was listed as progressing inconsistently as was "maintaining his attention for thirty plus minutes."

The purpose of the IEP goals is to identify areas that require support and direct instruction. These are things that the school is working on with J.S.

The modifications contained in this seventh grade IEP (J-17 at 12) included “allow typed rather than handwritten responses”, which he needed a computer for. “Allow use of a word processor” he needed a computer for. J.S. to have these types of accommodations because writing was difficult for him and when he did not have access to the computer, the teacher would write the responses so he would not have to actually write it because it was something that was difficult for him. These accommodations and modifications were in his IEP to allow him equal access. On page one of the IEP, it says he is going to have in-class support for language arts, math, science and social studies but there are no behavioral services indicated and he had no one-to-one aide. The in-class supplemental is the two-teacher model. He did not have that for math in the beginning of the year because he was in compacted math which is an advanced math class and they did not feel he required that at the time. J.S. was in compacted math with only one teacher for about two weeks and then went back to the co-teach classroom for math. He was having difficulty and there was a lot of avoidance not wanting to show his work and how he reached answers and he had a difficult time cooperating with writing down his work. He also had difficulty keeping up with the class. There was only one teacher in compacted math and no aide. He was in advanced math with no support and that could have been the reason he was moved back down. At the May 2023 IEP meeting to develop an IEP for seventh grade, the parents requested in-class supplemental support for all of his academics so he would be supported. He did not have that support in compacted math and so he was not doing well and moved to a lower math class.

The district had received the evaluation report from Dr. Perlis (R-7) and had already implemented all of her recommendations except for the FBA. Ms. Chirip said they did not do the FBA because he was not having problems that were significantly impacting how he was performing in the classroom. Dr. Perlis observed J.S. at Harrington middle school on October 12, and Ms. Chirip was with her. The special education teacher was not there that day and she was the one that typically would work closely with J.S. to help him finish his work because he needed her support. J.S. was caught playing video games on his Chromebook earlier that day and when he was caught, he apologized. Dr.

Perlis then went to math class and during math J.S. took out his iPad and started playing video games. He intermittently attended but also spent a lot of time reading his book that he had in his lap. Dr. Perlis noted that Ms. Chirip approached J.S. a third time to get him to attend the lesson because he was reading his book. In October, the book, the iPad and the computer were interfering with J.S.'s paying attention.

The recommendation page indicated J.S. was bright but he had emotional/social challenges and should continue to get special education based on the work avoidance and distractibility that was observed during Dr. Perlis' evaluation. Ms. Chirip agreed that J.S.'s challenges were not academic but were social, emotional and behavioral. He was smart and could do the work, but he needed a lot of reinforcement and support. He had severe challenges during Dr. Perlis' observation of stopping and looking at the iPad and the book when he should not have been and she recommended an FBA. Ms. Chirip stated that a lot of what Dr. Perlis observed was due to the fact that the special education teacher was not there. She agreed that J.S. was distracted by his computer, but if there was the second teacher to redirect him, she would have been able to do so. Ms. Chirip admitted that J.S. was distracted by his computer, his iPad and his book in September, October, November and December and that it was interfering with his school day, but an FBA was not done until April because the behaviors had escalated.

J.S.'s disciplinary record (J-23 at 21) indicates that on October 17, 2023, he was written up for "abusing computer/network privileges" and received a one-day administrative detention. On November 1, 2023, he was written up for a third electronic violation, which is he was on his computer or phone when he was not supposed to be. On November 13, 2023, he was written up for a fourth electronic violation. On November 15, 2023, he was written up for a fifth electronic violation. He was also disciplined on February 7, 2024, February 15, 2024, May 1, 2024, and May 2, 2024, all related to electronics and disobeying authority and received an after-school detention. Ms. Chirip was not saying that the computer did not interfere with his school day, but she said it was typical of a seventh grader to get write-ups for doing things they are not supposed to be doing on the computer. She did admit that J.S. does have autism, and ADHD and work avoidance related to the computer, iPad, and trying to avoid schoolwork, which is why they modified the discipline policy for him.

Mr. Beyer was the challenged based learning (CBL) teacher, an elective course J.S. had and there is an email exchange in November 2023 (P-9 at 12) about J.S. playing games on the computer when he should have been doing his work and taking the computer away from J.S. and Mr. Beyer's indicating he was not going to fight with J.S. because he had a class full of students and would give J.S. every chance to use the computer to do his work.

A November 5 email from Mr. Beyers indicated that J.S. was not doing well in class because he was not doing the work asked of him and requested a meeting which would include J.S. to figure out how to correct the situation. (P-9 at 22.) Although it seems that there were a lot of behavioral incidents and challenges with J.S. in seventh grade and the year before, but as the case manager she did not call a meeting to pull in a behaviorist and do an FBA.

The OT evaluation recommended that in addition to modifications included in J.S.'s current IEP, "It is suggested that the team consider strategies to address possible executive functioning weakness and weak processing speed in order to promote J.'s handwriting skills as well as intrinsic motivation to complete paper/pencil tasks." (J-11 at 8.) After receiving this report in January 2024, Ms. Chirip did not call an IEP meeting.

After the Christmas break, school personnel noticed that J.S.'s computer use was becoming more problematic, and he was having a more difficult time putting the computer away and transitioning from the use of the computer to other tasks. The decision was made to take away J.S.'s Chromebook after a discussion with the parents as to the proposal to take away his computer because it was so much of a distraction. The parents were in agreement to trying this as a strategy. This was not done at an IEP meeting.

Bonnie Wireback, J.S.'s seventh grade special education teacher sent an email February 21, 2024, (R-17 at 00171) indicating that she has been having challenges with J.S. in regards to his refusal to work and follow directions all year and has shown through innumerable interventions that he is unable to abide by the board of education policy 6142 which outlines their acceptable use guidelines. Ms. Wireback indicated that she believed

the reasons J.S. was noncompliant related to the Chromebook were beyond his control. The district did not have an IEP meeting to discuss how this plan would be implemented or obtain the parents input and include it in the IEP, even though that is how the process is supposed to work. J.S. had accommodations and modifications in his IEP that he needed his computer for. Ms. Chirip indicated that they accommodated for him not having his computer. Ms. Chirip admitted that had they called an IEP meeting the changes could have been documented as a team and how he would have been accommodated would have been put in his IEP. That is the reason why you have an IEP team meeting. The parents have a right under the law to have a say at an IEP meeting in developing his program. Ms. Wireback's plan was not implemented where he was given warnings and written up because what ended up happening was that the behavior with the computer to avoid work was replaced with J.S.'s use of a book to avoid work. What ended up happening, which the parents were in agreement with, was that rather than forcing him when he refused to do the work, he was allowed to take it home and complete the work at home. So, most of his work was being done at home at night.

Ms. Chirip does not recall the parents advising her that they were not in agreement with taking away J.S.'s computer. She does recall them being concerned that J.S. would look a lot different than anybody else by taking away his computer but explained that he already looked a lot different because he was not doing what he needed to do. (P-8 at 16-19.)

Ms. Chirip does recall attending an IEP meeting March 1 and parents requesting an FBA. They were also concerned with how J.S. was going to do his work without his computer. The parents were worried about J.S. looking different because he did not have his Chromebook anymore. The draft IEP from the March 1 meeting was the revised IEP for seventh grade and Ms. Chirip is listed as the case manager. (J-18.) The prior IEP was dated May 25, 2023. (J-17.) The parents requested the sensory profile at the March 1 IEP meeting which they had previously requested.

The Occupational Therapy Sensory Profile from March 2024 (R-12) indicated that J.S.'s "ways of acting related to sensory experiences (i.e. is distressed by changes in plans, routines or expectations) is described as inflexible compared to same age peers".

Ms. Wireback's response was that "J.S. demonstrates an avoiding and sensitivity pattern of behavior that can almost always be described as inflexible compared to same-age peers." The gym teacher, Mr. Poehls, said J.S. was better in gym because he was participating eighty to eighty-five percent. J.S. received a score of 'much more than others' within the area of avoiding-avoider and 'more than others' when you are looking at the degree at which a child misses sensory input. The last page of the report the evaluator indicates that "J.S. demonstrates an avoiding and sensitivity pattern of the behavior in which he is almost always inflexible compared to same-age peers, can be stubborn or uncooperative, perseverates to a point that interferes with participation withdraws, gets frustrated easily." (R-12 at 95.) Ms. Chirip described that as accurate. This evaluation was completed in March 2024 but had been requested almost a year earlier in May 2023. The district did do an FBA that was finished on April 22, 2024. (J-12.) The FBA was added to the draft IEP at J-18 page 2. Therefore, this draft IEP did not come out until at least April 26 because they did not have the FBA. So, when they met on March 1, 2024, because J.S. was disengaged from school, was not paying attention, was using the computer and then the book, the district did not offer any additional time with the behaviorist. They also did not offer a one-to-one aide. At the March 1 IEP meeting, the parents asked to look at other classes within the district, and Ms. Chirip showed them two resource centers in seventh grade and two in eighth grade so they could see the group of children he could possibly be placed with and the teachers of the classes that would be teaching him the following year. The district did not request he be changed to the resource class because they did not think it was appropriate for J.S. because socially and academically it was below him.

In March Ms. Chirip suggested to the parents that they look at out-of-district placements including New Hope Academy, Y.A.L.E. (which they were not interested in at all), Burlington County Special Services and Burlington County Alternate Middle School which is an approved school. She requested they sign a release to send records later in the year in June.

Looking at the FBA, the evaluator at her observation on March 8, 2024, saw J.S. was not complying and not doing his work and not paying attention. (J-12 at 10.) The observation was in the ELA class with two teachers present and J.S. was reading his

book and had it in his lap and would continue to go back to it instead of doing his work. He was redirected. Even if he was looking at this book, he was still taking in the information. They would need to prompt him. The book would still be in his lap, he would not put it down, but he would engage. They assessed J.S. differently. They assessed him verbally to avoid having him have to write things. The special education teacher spent a lot of time with J.S. even though she was responsible for all the other children in the class. He did not have a one-to-one aide to redirect him. The FBA evaluator also observed J.S. in math class, but Ms. Wireback was not there that day. J.S. was allowed to wear his hood because he had eczema and was nervous about it and also to prevent him from itching. The evaluator described J.S. as “Only doing work when someone was prompting him. For example, he was agreeable to try something. He picked up his pencil, wrote one equation, but incorrectly. The teacher walks away. He put the pencil down and went back to reading his book.” This is what was happening in March 2024. The observation of the social studies class was the same. (J-12 at 10.) J.S. was not attending any of his classes. After the behaviorist completed this evaluation at the end of April 2024 a plan was developed, and another IEP meeting occurred. From January through April J.S. did not have a behavioral consultation, a one-to-one aide or individualized behavior plan other than what had been carried over from the previous year and what they were trying. Ms. Chirip explained that they did have an increase in staff going in with J.S. although it was not in the IEP. Ms. Chirip, the behavioral consultant, Ms. Owens went in with J.S. to see how he would respond to someone working with him one on one in the classroom.

An April 24, 2024, email from Ms. Carolla to Ms. Strawbridge stated that they wanted to move forward with the IEP meeting tomorrow and indicated concerns that J.S. was getting an “F” in ELA and science. (P-9 at 338-339.) These were not his actual grades but reflected that work was still outstanding and needed to be completed within the trimester. This was accommodation given to J.S. Even if the work was handed in late, he would be given credit for it. J.S. was not doing his work because he made a choice not to do his work at that point in time. The J-18 IEP, although dated March 1, was not drafted until probably around April 26<sup>th</sup> because it included the FBA and added behavioral intervention consultation group one times per month for thirty minutes. That was the only supplemental service that was added, no one-to-one aide was added for J.S. The district

made that decision based on how J.S. responded to them going in and working with him one on one. The parents did request a one-to-one aide and at that point there was not one available, but they could have hired one if they needed to. Ms. Chirip made the recommendation not to proceed with a one-to-one aide because she did not think it would be appropriate because she spent so much time in the classroom with him and he was not responsive to her at all. She also had the behavioral consultant who had a rapport with J.S. go in and work with him so her fear was that a one-to-one aide would not be appropriate for him. She was not sure that he needed more support to get the work done but acknowledged he needed something since he was not doing it in school and his work was being sent home every day to complete at home.

At the April meeting it was decided that J.S.'s Chromebook would be kept at the teacher's desk, and he would be able to use it during a specific time and then he would move from the computer and go back to his desk. This did not work as J.S. had a hard time transitioning back to the work at hand. The May 1, 2024, email referencing the April 26 IEP meeting confirmed that the parents were requesting a one-to-one aide and additional behavioral support of thirty minutes per week. (P-9 at 359.) Ms. Chirip had advised the parents there was no aide available that late in the year, but a request could be made to the CST and look to hire someone if the team thought it appropriate. The additional behavioral support might not have been in the IEP, but the behaviorist was going in weekly, if not more, but that was not reflected in the IEP.

The principal did attend an IEP meeting to discuss the disciplinary issue. Ms. Chirip did not recall the principal offering to put an aide in the classroom. The IEP developed after the April 26<sup>th</sup> IEP meeting, under 'parental concerns' indicates that "Parents are concerned J.S.'s avoidance behaviors are interfering with his ability to learn since March 2024." (J-18 at 6.) The IEP was developed after the Carolla May 1 email (P-9 at 359) listing parents' concerns. So even though the IEP is dated March 1, which was when it was originally formulated, it was revised and never finalized and is the only one that the parents were provided.

After the April 26<sup>th</sup> IEP meeting, J.S. continued to have problems disengaging from his book. A May 1, 2024, email from the parents to the behaviorist states "Dear Yvette

following up because we received several communications today informing us that J.S. has been given detention because he would not put his book away.” (P-9 at 360.) This was happening every day, and it was being addressed multiple times a day and he did receive detention. On May 2, 2024, Thomas LaMorrte, the vice principal indicated that J.S. was being disciplined for not putting his book away. (P-9 at 368-369.) Ms. Wireback checked with the vice principal to confirm that J.S. was subject to the school’s discipline code. He was in a coteach general education class with a special education teacher and no aide. An April 30, 2024, disciplinary referral states that J.S. was asked four times by Ms. Wireback to put his book away and J.S. refused. (P-9 at 373.)

An updated IEP was sent to the parents on May 2, 2024, changing the way they were implementing J.S.’s use of the computer and no longer having a home base. The teacher would give it to him and then take it back. J.S.’s parent emailed Ms. Chirip on May 2, 2024, indicating that “J.S. did not have his computer for social studies and half of science, and he was unable to participate when the other two children were using their devices.” Ms. Chirip does not recall what was going on with this email but said there was never a time when J.S. could not do his work because he did not have his computer and the other kids did. They would either give him a paper copy or an alternate way of doing the project. A May 2, 2024, email indicated that J.S. was not finishing his work and that he was excused from some of it because the teachers were satisfied, he had mastered the information and did not require any more practice in that area. (P-9 at 391.)

The behaviorist went to see J.S. in ELA and he was reading his book instead of paying attention in class. (P-9 at 397.)

A May 7, 2024, email from Ms. Chirip indicates that she did not think J.S.’s profile aligned with programs such as CASTLE or Princeton House and stated “At this juncture it seems our best course of action would be to offer assistance through an aide demonstrating our efforts to support him. However, I’m skeptical of its effectiveness.” (P-9 at 44-45.) However, she did not offer the assistance of an aide at that time. The director of the child study team, Dr. Willard was thinking of recommending CASTLE or Princeton House for J.S. which are programs for children with behavioral needs. Ms. Chirip did not agree. These programs were not suggested by Ms. Chirip to the parents because those

types of programs were for kinds that were more in crisis and she did see J.S. as a student in crisis or requiring services like that.

On May 6, 2024, parent K.S. emailed Ms. Chirip “Can we please have the behaviorist and an aide assigned to assist? He can use some strategies to get past this.” (P-9 at 46.) A behavior specialist, Traci Dobelman, was going in and working with J.S. weekly and sometimes more than weekly. Ms. Dobelman would go into the classroom and work on behavioral skills interacting with him in the classroom setting as things came up. She was never assigned to work with J.S. individually. She did social skills with J.S. thirty minutes monthly in a group. Although it was not in his IEP, Ms. Dobelman did work one on one with J.S. Ms. Chirip indicated it was not in his IEP because they did not want to include it until they saw if it was working. That is not how the IEP process works. Collectively the team decides what is best and then it is put in the IEP and developed so that it can be delivered with efficacy. Although not written in the IEP, Ms. Chirip stated they were providing it but it was not made a part of his program. She was not working with J.S. all day and it was not consistent. She would work with him for a period here and there and she would keep an eye on him, but she also had other kids to watch.

A series of emails from May 7-8, 2024 (P-9 at 170, 171) included an email from the parents to the director of special education, Dr. Willard, asking to please provide them with any help because J.S. was struggling. Dr. Willard had spoken with the parents by phone. Dr. Willard’s response was “I look forward to meeting with you May 24<sup>th</sup> and I’ll follow up with Ms. Chirip and Ms. Owens regarding additional time with our behaviorist.” Parents wrote the director and said, “We have been working with our attorney to get behavioral support for our son whose refusal behaviors are escalating and he’s been disciplined increasingly.” “The district’s BCBA has only been given 30 minutes to consult with us per month and J.S. has no aide. None was available, but he needs more support.”

The principal and vice principal attended the prior meeting because J.S. was being disciplined as a willful student and there was not going to be another meeting until May 24<sup>th</sup>. A May 8<sup>th</sup> email from Bonnie Wireback to parents copying in Ms. Chirip stated “J.S. is still not doing any work in any of his classes. If the inability to do the work is due to reading or being on the computer, I give him three warnings and he receives administrative

discipline. He doesn't have permission to read books but he was doing it anyway." Then there was another issue that J.S. was not taking responsibility for his Chromebook and leaving it places where it was not supposed to be. (P-9 at 422.)

Ms. Chirip indicated that when they were talking about assigning an aide for the next year, they were referring to a classroom aide and not a one-to-one aide for J.S.

There was an email from the parent indicating that Traci D., the aide was fabulous with J.S. today and he was beaming when he walked out of school. They had a great productive day. (P-9 at 195.) She was the behavioral specialist, and she could not be with him all day long. Ms. Chirip did not know if the district could provide an Registered Behavior Technician (RBT) as an aide to a student or if they had ever done so.

Ms. Chirip did recall at the May or June IEP meeting that was almost at the end of the school year that the parents told the team that they did not think there was anything else available and they were thinking of placing J.S. at Fusion to try and see if it worked and then they might ask the district to place J.S. there by way of a Naples placement because Fusion was not an approved program. The parents did express that they wanted J.S. to remain in the district but they did not think it was appropriate. Ms. Chirip believed that the school year was tough for J.S. He did pass all of his subjects.

The parents sent a June 19, 2024, email to Ms. Chirip copying Dr. Willard and Ms. Carolla indicating that they would privately pay for J.S. to go to Fusion for the summer. If he did well there, they would like to discuss a Naples placement for Fusion in September since they did not believe that there were any N.J. approved schools that would meet J.S.'s needs out of district. "If he does not do well at Fusion we would like him to attend Harrington in the fall as we don't see any other viable alternatives." (P-9 at 216.) At this point the parents did not think that the Burlington County Alternative School was appropriate and told Ms. Chirip that.

The district did not propose an IEP for any alternative school. They were just asking the parent to go and look at the programs. J.S. did submit an application to the Burlington County Alternative School on August 29<sup>th</sup>. Ms. Chirip did not know if he was

accepted there or if he completed the process. She went with the parents to tour the school and did think it would be appropriate for J.S. and told the parents that. She thought it was appropriate because it had a small student to teacher ratio. It only had two kids to one teacher, but she could not guarantee that that was going to stay that low and the numbers might go up. (P-11.) Ms. Chirip did not offer this placement because they wanted records to be sent there and parents were not in agreement with having records sent anywhere. At the end of one of their meetings, not an IEP meeting, Ms. Chirip had recommended Y.A.L.E. and having them look at Y.A.L.E. and New Hope and the parents were not interested.

There were a lot of IEP meetings for J.S. his seventh-grade year.

Ms. Chirip did an observation at J.S. at Fusion on the last day of the summer program because she worked at the ESY program and could not go when she was working. She went by herself and did not speak to any of the professionals at Fusion. She admitted that the last day of a program the least amount of work is being done. J.S. had his device with him on the last day as a treat. He normally would not have had his device with him, so Ms. Chirip does not know if what she observed that day was what usually happened in class. (P-15 at 5-6.)

The parents provided Ms. Chirip with the contact information for the head of school at Fusion, and she did contact them to arrange to see J.S. They gave her a brief overview when she got there. On June 14, 2024, the parent emailed Ms. Chirip and provided J.S.'s schedule and indicated they paid for some tutoring spots. They also advised Ms. Chirip that other public schools from Camden, Cumberland and Philadelphia-area schools send students to Fusion. (P-9 at 207-209.)

There was an IEP meeting scheduled for August 12 that was postponed because Dr. Willard was unavailable. The IEP meeting took place on August 23, 2024, and she does not remember the parents requesting the district placing J.S. at Fusion. She recalls discussions about Fusion and the parents saying J.S. enjoyed it. They did not really report on his progress. Ms. Chirip did not know if J.S. had any disciplinary problems while at Fusion. She did not know anything about J.S.'s grades. She is not aware if kids that

go to Fusion go on to four-year colleges. She had no other information about Fusion aside from the forty-minute visit over the summer and the one visit in January. She did not know that it is an accredited school.

At the August 23, 2024, IEP meeting, Ms. Chirip recalled Ms. Carolla advising the district that the parents were going to pay for Fusion and seek reimbursement.

J-20 is the IEP proposed for eighth grade. It does not have a one-to-one aide. It does not have any consultations with a behaviorist. It called for social skills once a week. J-20 at page 9 indicates that “his diagnoses of ADHD and autism impact him behaviorally and emotionally in the classroom. It impacts his socialization with peers at school.” “J.S.’s work production doesn’t match his intellectual capabilities because he doesn’t do as much as he can.” (J-20 at 10.) He had work avoidance and would not willingly participate in any activities. He was placed in the same class that he was in seventh grade but with different teachers. The IEP does not have a classroom aide being assigned, although Ms. Chirip said they were planning on having a classroom aide available to him.

On redirect, Ms. Chirip testified that she did not develop the seventh grade IEP, his sixth-grade case manager Erica Nikoo developed it. Ms. Chirip attended the meeting purely to learn about J.S.

The behavioral interventions listed on page 8 of J-17, the seventh grade IEP, were to be implemented by both of his teachers, but primarily his special education teacher, Ms. Wireback. Ms. Chirip assisted J.S. and had him come into her office and worked with him to make up science labs three times

R-17 at 172 is Ms. Wireback’s email communicating her concerns and plan as to how she wanted to move forward with removing J.S.’s Chromebook, the bottom of which indicates that the parents were copied in.

The IEP draft reflects the original date of the draft, and the date does not change as revisions are made.

When the team moved forward and removed J.S.'s Chromebook, his assignments were printed out and a paper copy provided to J.S. to complete, and they would modify it so J.S. could talk to the teacher verbally and it could be written.

On J-17 page 12 under accommodations and modifications, J.S. was allowed to type rather than handwrite responses and scribe as needed. Ms. Chirip's understanding was that J.S. most frequently used the scribe accommodation.

Ms. Chirip was not certain how long J.S. was without his Chromebook, approximately two to three months.

Ms. Chirip said they were recommending the Burlington County Alternate Middle School in discussions, although it was not reflected in any offered IEP. The district was willing to place him out of district because of the difficult times that had in district. Ms. Chirip did not go out with the parents and look at the school until September when they already had given notice, they were placing J.S. at Fusion and had paid for it.

Ms. Chirip believes they could have accommodated J.S. at Harrington with the personnel that she picked for him with a paraprofessional in place and he would have done well at Harrington.

**Bonnie Wireback** testified for the respondent. She is employed by respondent as a special education teacher and has been teaching at Mt. Laurel BOE for twenty-three years. She is the special education teacher in the general education inclusion classroom which has two teachers, a general education teacher and a special education teacher to support the special education students and to make sure they are receiving the services set forth in their IEPs. She has always been a special education teacher in the district just teaching different grade levels. She received her B.S. in education of the deaf and hard of hearing from The College of New Jersey and received her master's degree in special education at Temple University. She is certified by the State of New Jersey as a special education teacher K to 12, teacher of the deaf K to 12 and elementary language arts, K to 8. She estimates she has participated in over 200 IEP meetings in the course

of her twenty-five years of teaching. Ms. Wireback's resume accurately reflects her education and employment history to date. (R-22.)

Ms. Wireback was accepted as an expert in special education. She became familiar with J.S. prior to the start of his seventh-grade school year when she met with Ellie Conover, his case manager, because he was becoming her student for seventh grade. She received J.S.'s IEP for seventh grade before school began and that is the one she worked off of for the year. (J-17.) Ms. Wireback was J.S.'s special education teacher for seventh grade. He received instruction in the standard seventh-grade curriculum. They have eight periods of instruction, and his first two periods would be electives, such as Spanish or gym and his final six periods would be his academics in a co-teaching or inclusion class for language arts, math, social studies and science. J.S. was with Ms. Wireback and a general education teacher for his academics. Ms. Wireback was with him as his special education teacher from 9:15 a.m. until 2:00 p.m. There were approximately twenty to twenty-five students per class.

J.S.'s disabilities affected his performance in the classroom in that J.S. would not comply with directions from the general ed teacher, herself or pretty much any authority figure. The lion's share of her time was working through that one-on-one with him to help him succeed in seventh grade and to help him access the curriculum.

J.S. started the year in a compacted math class, which is like an honors math program with an eighth-grade curriculum. Ms. Wireback was not in that class with him. His IEP for math stated in class supplementary instruction so the regular education teacher was responsible for providing the accommodations and modifications contained in his IEP. J.S. had a lot of trouble in compacted math. The teacher expressed concerns that J.S. was refusing to take notes, which Ms. Wireback explained is pretty normal for this age especially for students who are of higher intelligence and do not see the value of taking notes because they have always gotten by on their intelligence. So, the teacher and Ms. Wireback spoke and decided to see how he does on assessments to see if he was okay, but he did not do well on the assessments. In the other classes, no matter what work was going on, J.S. would not comply and do the work and would just sit there and be on his computer at the beginning of the year.

In the beginning of the year, Ms. Wireback was very cognizant of her need to earn J.S.'s trust and respect and help him understand that she was there to help him and to have a positive relationship with him.

When the teacher would begin the lesson, there usually was a question on the board or a task to perform when the students entered the room. J.S. would come in and he would sit down and open his computer and in the beginning he would go on almost exclusively YouTube. Ms. Wireback would repeat whatever the directions were and redirect him to not use the computer but to do the assignment the teacher had given. He would not comply and she kept repeating herself telling J.S. to get back to work and focus on what they were doing. This happened throughout the day. The behavior plan in his IEP (J-17 at 8) was the game plan she used to ensure that J.S. had success in school and she did everything that was there. There was not an issue with verbal instructions, it was more of an issue of noncompliance. She would use forced choice language like tell him he can either answer her or answer Ms. Paatterson, or he could write his answer or if he preferred, he could type his answer. The forced language was that she was going to get what she needed from him, but he had a choice of how he goes about doing it. The use of introductory strategies like, "hey J.S. let's close your computer and let's focus on Ms. Patterson". Ms. Wireback would even offer to allow J.S. to leave the building and go for a walk to reset, but he never took her up on that and preferred to stay in the room. They did use fidgets, but not until the end of the year. They provided quick, quiet praise in J.S.'s ear discreetly. Her relationship with J.S. was very positive even though she was intervening a lot, but it was always with a positive tone and not authoritative.

There was an indication in the behavior plan "Reflection on how his behavior has affected his class peers when applicable." J.S. was not disruptive to his peers, but it was common when students are disruptive to advise them, they are part of a community and when they are disruptive it is not fair to other students. J.S. was always amenable to that. This was not a big concern in seventh grade, because even though J.S. was not compliant, he was not disrupting the other students in the classroom.

Ms. Wireback felt the targeted behavior was noncompliance and not verbal disruption. Initially she found the most effective strategies were the forced language and repeating directions to make sure he understood what was expected of him.

Ms. Wireback explained that for a long time there were no consequences imposed on his noncompliant behavior, and she would be communicating with the parents and the entire team as to what was going on. She was not sure if what she saw was a manifestation of his disability or if it was a behavior that needed consequences to shape. So, in the beginning it was more of just talking to him and constantly reminding him of what was expected of him. She was gathering information on J.S. and looking for patterns or for reasons to explain his behavior. J.S. responded well to positive reinforcements. He also responded well to being respected and acknowledging that he has a voice and deserves to be heard and when he would see that they were listening to him and valuing his input he responded well as opposed to the 'I'm the teacher, you're the student, I talk, you listen'. That did not go over well. J.S. never stopped being responsive to the interventions they had in place. In her opinion, the IEP they had in place was working for him.

The IEP had a list of modifications and accommodations necessary for J.S. to succeed including getting extra time, allowing typed rather than handwritten responses, and breaking down tasks. (J- 17 at 12.) For example, if the teacher said to start your argument essay and gave the class eighty minutes to work on it, Ms. Wireback would go over to J.S. and say let's start with your topic sentence and then give two more sentences supporting the topic sentence as opposed to just giving him eighty minutes to work on a big global assignment. All of the modifications listed are what Ms. Wireback would be doing in the classroom with J.S., while the general education teacher was leading the class.

Modifications and accommodation were provided for any kind of assessment whether it was a test or a writing sample. A word bank was provided for filling in the blank tests. At the beginning of the year the teacher would give the students a blank map of the fifty states for them to fill out. Ms. Wireback would have a list of the fifty states for J.S. If he had spelling errors, he would not be penalized. He was always given the option to

type rather than handwriting. In seventh grade there were not a lot of tests, mostly ongoing assignments.

There were accommodations and modifications for attention and focus for J.S. which included preferential seating which involved letting J.S. pick where he felt more comfortable and Ms. Wireback would work with him. J.S.'s test performance was monitored by Ms. Wireback, either by watching what he was doing or through the online software 'Go Guardian' where the teacher can see the students' computer and can interact with their screens in that the teacher can open and close tabs and limit the sites that the student can go on. Other accommodations for attention and focus included: "Arrange private signal to cue student to off-task behavior; Establish and maintain eye contact when giving oral directions; Stand in proximity to student to focus attention; Provide short breaks when focusing is needed; Refocusing and redirection; and Seat student near positive role model." (J-17 at 12.) They were very cognizant of what happened to J.S. in the past and were making sure that any students that were near him were not triggers from the past, so they made sure he was with students who were not a behavior problem. J.S. did not have a lot of negative interactions with his peers in seventh grade as there were a lot of nice kids.

Written language accommodations included "brainstorming as a pre-writing activity". Language arts was a lot, so that when the students were told they would be writing an argument essay, she would sit down with J.S. and discuss what they were going to talk about, what interests J.S. and then she would help him. Instead of just telling him to go write on a topic, she would help pull out ideas he was interested in. The general education teacher would be teaching the writing process, but Ms. Wireback was breaking it down for J.S. by telling him first we are going to start with a topic sentence and introduce what they were talking about and then discuss with J.S. to come up with three reasons why their argument was right. Another accommodation was to edit his written work with teacher guidance so whatever J.S. had written the teachers would help him through. They also would use graphic organizers like a Ven diagram to compare things. J.S. was also allowed the use of a word processor, that was the Chromebook, which was an accommodation under written language accommodations in the IEP. (J-17 at 4.).

J.S.'s seventh grade IEP contained social and behavioral accommodations, which was a big part of Ms. Wireback's interactions with J.S. The social/behavioral accommodations included: "Discuss behavioral issues privately with student". All of Ms. Wireback's interactions/communications with J.S. were private. "Communicate with supportive personnel" was also a listed accommodation and Ms. Wireback was in constant communication with the whole team including Ellie the case manager, the vice principal, the principal, the ABA support person, the speech therapist and the parents. Another accommodation listed was to present alternatives to negative behavior which would be if he was on his Chromebook, suggest other things for him to do such as take a walk with her, but J.S. never took her up on that so that went to the wayside pretty quickly. Ms. Wireback believed J.S. did not want to leave the classroom because he loved knowledge and information and he did not have any negative interactions with peers in seventh grade so there was nothing that he was trying to get away from. They were constantly communicating positively and pleasantly with J.S. She would try and identify triggers, for example, if she knew she was going to be out, she would let J.S. know she was going to be out because sometimes students are troubled when suddenly a person they expect is not there. Helping student manage antecedents was also something she did so he would understand what is going to happen and know what is coming so his anxiety is not triggered. Although another accommodation was 'develop a signal for when break is needed' Ms. Wireback and J.S. communicated constantly, and J.S. did not need a signal to communicate with Ms. Wireback. She always gave J.S. choices to allow him control. Ms. Wireback was constantly in communication with his parents and providing positive reinforcement. She loved having fun with J.S. and always kept it positive. The other accommodation listed was to be able to teach J.S. social skills and provide feedback. Ms. Wireback did not participate in the social skills group as this was done through Ellie and Tracey. Both the general education teacher and Ms. Wireback implemented the services outlined in the IEP. J.S. was provided with these accommodations the entire year. J.S.'s assignments were usually modified by Ms. Wireback as the special education teacher, but depending on what was happening, the general education teacher could also modify his assignments.

Ms. Wireback did not stand or sit right next to J.S. in the classroom because she was careful not to embarrass a seventh-grade boy so she was always close enough to

him that she could see what he was doing, but she kept her distance to not draw attention to him. When she did approach J.S. or he approached her, it was always congenial and not adversarial, as they had a positive relationship. Overall, J.S. responded well to Ms. Wireback as his special education teacher.

Writing was one of J.S.'s weakest skills and anything that required a lot of writing she had to modify as to volume. So, if language arts called for a five-paragraph essay, she would let J.S. give four or five sentences where he could at least show the different elements.

When it came to writing, they switched to scribing which became J.S.'s main accommodation throughout the year. He would talk to Ms. Wireback, and she would write down what he said for the record and assessed him verbally to make sure he was accessing his curriculum. This became a big accommodation throughout the whole year, throughout every classroom including math, social studies, science and all of his classes. They would be in a lab, and she would ask him the questions, and he would verbally respond to her, and she would just write down his response. Ms. Wireback said this was a big accommodation all year long. She believed this accommodation definitely worked well for J.S.

A science project which required the students to cut up individual triangles and then glue them onto another piece of paper and if glued correctly would match up with the definition and form a pyramid. The science teacher gave them directions on what to do and J.S. refused to cut the triangles, so the science teacher cut up the pieces for him and put it on J.S.'s desk and asked him to please match them up and J.S. refused to glue, so the teacher offered scotch tape, and J.S. refused, so the teacher offered staples which J.S. also refused. Ms. Wireback was not sure whose idea it was, but J.S. was allowed to draw lines from the definition to the word. (R-16.) J.S. drew the lines and his handwriting is on the document as well. This demonstrated that although J.S. had a little trouble, at least it showed them what he knew. These were all considered to be modifications/accommodations because J.S. was still expected to do the seventh-grade curriculum, but they were accommodating him as to how he went about it as he refused to cut, paste, tape and staple, so they settled on drawing the lines. (R-16.)

There are two organizational accommodations set forth in the IEP: “Break down tasks into manageable units” and “Assist student in setting short-term goals.” (J-17 at 12.) When the teacher gave the students a multistep assignment or gave them a long time to work on it, Ms. Wireback would come in and assist J.S. and break down the big assignment into manageable parts and continually check on him and monitor him throughout the process making sure he met the short-term goals along the way of completing the whole assignment.

Heather Friedrichs was J.S.’s sixth grade teacher and the progress report dated November 21, 2022, was for sixth grade. (J-23 at 1.)

The progress report for IEP goals and objectives for 2023-2024 was for J.S.’s seventh grade year. (J-23 at 12-20.) The legend is that “A” means the goal was achieved. If the goal had not been achieved it would be “NA”. If the goal had not been introduced yet it would be “NI”. If he was progressing gradually toward the goal, it would be “PG”. If he was progressing inconsistently towards the goal, it would be “PI”. If he was progressing satisfactorily towards the goal, it would be a “PS”. Any comments would also be included by Ms. Wireback. Ms. Wireback had firsthand knowledge of the goals and inputted the codes for November, January and June. They only have three grading periods at Harrington. The sixth-grade teachers created the goals that Ms. Wireback implemented. Goal 1 for Reading stated, “When presented with narrative and/or informational text from J.P.’s content area subjects on the Seventh grade level, J.S. will cite 3 examples of textual evidence to support analysis of what the text says explicitly as well as inferences drawn from the text.” Ms. Wireback put in “PG” progressing gradually. Basically, J.S. would be unable to write any responses, but when she verbally assessed him, he was progressing in regard to those goals across his academics. He was appropriately accessing the curriculum at school. The Objective/Benchmark 1.1 stated “When presented with a teacher-stated inference made from the text, J.S. will cite 3 text-based details to support the inference.” She verbally assessed him and he was able to respond so she put progressing gradually. Objective/Benchmark 1.2 stated “When presented with text, J.S. will draw an inference from the text and cite 3 text based details in support”. Ms. Wireback was able to verbally assess J.S. and indicated he was progressing gradually towards this goal. (J-23 at 14.)

J.S.'s writing skills were his most difficult challenge. She put in progressing inconsistently ("PI") for each of his writing goals because although she was able to verbally assess him, when it came to the writing or typed production they were having difficulties. Writing Goal 2: "When given a written assignment, J.S. will utilize correct capitalization" – PI; Objective Benchmark 2.1 "J.S. will begin every sentence with a capital letter within a writing assignment." – "PI"; Objective/Benchmark 2.2 "J.S. will capitalize all proper nouns (such as people, places, things) within a writing assignment." – "PI"; Objective/Benchmark 2.3 "J.S. will use underlining, quotation marks, or italics to indicate titles of works and capitalize as needed within a writing assignment." – "PI". Writing Goal 3: "J.S. will write a formal informational/explanatory text, of up to 3 paragraphs, with relevant content to develop points, including text-supporting graphics and multimedia, transitions to clarify ideas, and a logical introduction and closing statement, written in a formal style using expository text patterns (e.g., compare/contrast, cause/effect, time/order, problem/solution, description) utilizing a writing rubric to quantify." – "PI". (J-23 at 15.)

Ms. Wireback coded all of his writing goals as progressing inconsistently because she was the one doing the scribing because he would not comply with producing the work on his own. She would offer J.S. to review her scribed notes but he usually was not interested in reviewing them. The reason she coded all of the writing goals progressing inconsistently is because J.S. did not write anything for her. That was always true. Ms. Wireback did observe some progress but had trouble answering as to how, because she spent so much time just getting J.S. to comply. She would say as the year went on, there were times she got work out of him, specifically in math more than other classes or if the subject interested him and he was motivated. Ms. Wireback measured academic progress during the seventh-grade year through verbal assessments, talking to J.S. and seeing that he does have the knowledge and documenting it on her own. She was also able to assess his progress in his grades. He also did very well on standardized testing.

The IEP she participated in drafting was the IEP for eighth grade. (J-20.) The FNP score is a reading assessment based on A to Z, A being kindergarten and Z being 8<sup>th</sup> grade and Z+ being beyond eight grade level. The first FNP score for the fall was that

he was independent at the eighth-grade level and had no trouble reading, understanding, and decoding what he read. His score for the winter was a Z+. (J-20 at 9.) J.S. showed steady growth in the NJSLA and the Star 360. J.S.'s scores were high on both tests and above grade level.

J.S.'s standardized test scores in seventh grade for math was a 740 and for ELA 729. (R-14.) These were in the same range as his scores from sixth grade. He was provided with modifications such as small group implementation, test directions pre-read to him and could use a fidget and allowed breaks. Ms. Wireback was his examiner as J.S. was familiar with her. His scores were high scores, but she did not know what percentile they would be ranked off the top of her head.

The grade seven ELA assessment for spring 2024 showed J.S.'s score at 729, which is level 3 and indicates that he approached expectations. (J-23 at 39.) The parent report for J.S. for reading showed he did better than ninety percent of students in the same grade and his instructional reading level was 11.6. The zone of proximal development was between 5.0 – 13.0 which indicates reading levels that are appropriately challenging for reading practice, but the range is approximate. (J-23 at 40.) These scores show that J.S. was independent in reading at seventh grade level, that is, he would not need any guidance or instruction to understand what was happening in the story. If the social studies teacher gave him a reading assignment that was on the seventh-grade level, this shows that J.S. is capable of reading and understanding it.

J.S.'s final report card for seventh grade indicated he got a B in gym, an A in compacted math but he was only there for a short period of time. When he went into regular seventh-grade math and was with his math teacher and Ms. Wireback as his special education teacher, he received a C for the year. He received an A in social studies and a B in science. (J-23 at 26.) In Ms. Wireback's opinion, J.S. made appropriate progress in seventh grade. She believes the district's program was completely appropriate for J.S. and the staff was involved. His goals and objectives were all reasonable and workable. She was willing and able to do anything to ensure J.S. accessed the curriculum and achieved success in seventh grade and had a good year.

Some of the recommendations she made for his eighth grade IEP. (J-20 at 4.) Ms. Wireback wrote the PLAAFP in order to provide the eighth-grade teacher everything they need to know about J.S. - good and bad, what works what does not work, what he achieved and what he did not achieve. J-20 was the draft IEP for eighth grade. In drafting goals for J.S. Ms. Wireback would indicate where she left off in seventh grade and where she would like the eighth-grade teacher to pick up, which is what the sixth-grade teacher did for her, so she knew where to pick up for seventh grade. She used his seventh-grade goals in creating his eighth-grade IEP goals. They have a program called IEP writer and she reads each of the goals and although every student can use all of them, she selects which ones she needs the eighth- grade teacher to focus on. When she is writing his new IEP, she does not have the old one in front of her although she has knowledge of it and worked from it all year, she develops the new IEP based on what she believes J.S. needs. If there was any carryover from the last year, it was because that was something that continued to be difficult for him. She would also carry over things that worked for J.S. There was no copy and pasting and the PLAAFP contained in the draft eighth- grade IEP was written by her. A lot of the accommodations and modifications she continued in the eighth-grade IEP because they continued to be successful. Ms. Wireback wrote the goals set forth in the eighth-grade IEP by going through the IEP writer and determining which needed to be continued to work on in eighth grade. (J-20 at 13.) She did not recall how his eighth-grade goals might have been different from his seventh-grade goals but assumed they would be similar since J.S. was consistent in what he would do and would not do. Ms. Wireback believed those goals set forth in the draft IEP for eighth grade would be appropriate for J.S. in eighth grade and that he would be able to make academic progress in eighth grade.

The September 5, 2023, email from Ms. Wireback to J.S.'s parents was an introduction to let them know what they and their child needed to know to ensure they started off the year successfully. (R-17.) Ms. L. responded very kindly and let Ms. Wireback know what she needed to know about J.S. Ms. Wireback had a very good relationship with J.S.'s parents and communicated regularly with them.

When J.S. transitioned from compacted math, where he had received poor grades, into general education seventh-grade math and after the first test in the new math class

did well, Ms. Wireback sent a September 2023, email to his parents letting them know that he was doing well. (R-17 at 136.) The parents were in agreement that J.S. switch out of compacted math to the general education math class. Ms. Wireback also emailed the parents on November 7, 2023, and shared with them when J.S. was the top scorer in a fun math game in Mr. Beyer's elective class. (R-17 at 142.)

Ms. Wireback sent the parents an email on December 12, 2023: "He and I have sort of accepted that his use of the computer is not going to go away, but he is consistently putting in a significant effort to complete the tasks for each class. So he sort of forced me into a compromise with this, but I can't deny that it's a significant improvement over where we were. What Ms. Traci saw is pretty standard. He's on his computer, but he's getting the work done. Showing his work in math is still a sore spot but that is a standard behavior for every child with whom computation and number sense comes easy to. So that is a separate issue that will likely be an issue until he hits the higher tasks. We'll continue to work with him on that, but it's not a J.S. issue, it's a math has always been easy for me issue. In fact, I did not get a chance to share this major improvement. He's been doing his math warmups every day without being prompted by me. I'm not sure if Mr. Pfeffer is prompting him before I get a chance, but every time I check in with him, it's done. We're still not where I would like him to be in the sense of compliance, but I definitely sense a change in his understanding of this is what I have to do versus this is what I want to do, so we're definitely moving in the right direction. Plus as a bonus he's been chanting his torah portion with me. I literally squeal in delight every time he does. I may have to crash the service." (R-17 at 147-148.) The parents responded positively to this email and were having similar difficulties at home but were encouraged and were optimistic.

Based on this email a couple of months into the school year, Ms. Wireback felt that they were on the right track and that she was still earning J.S.'s trust and respect because she realized getting J.S. to do what he is asked to do versus what he wants to do is very difficult for J.S. to manage so she recognized that she could not force J.S. to do anything, so they were still going back and forth negotiating such as she would let him use the computer as long as he did his assignment. There were days that were fantastic and he did more than she asked or he was very compliant, so there were significant bright spots.

Go Guardian is a computer program that allows the teachers to monitor the student's computer activity. On January 12 Ms. Wireback sent an email to the head of the school technology department, the assistant principal, J.S.'s case manager, the language arts teacher and Traci, the ABA therapist because she suspected J.S. was doing something to prevent her from seeing his screen on Go Guardian. She looked at his Chromebook to get the serial number on it and J.S. became very paranoid as to why she wanted it and what was going on. When she went back to her desk, J.S. came up and was watching her type the email. She let him read it that she could not see his screen, and he said hold on he thinks he can fix it and went back to his computer and suddenly she could see his screen, so it confirmed her suspicions that he had done something to his computer. (R-17 at 155.) J.S. did admit to Ms. Wireback that he was turning off his Wi-Fi because he realized he could and not be seen. He expressed his frustration with Go Guardian, and he did not like being watched and felt he was being micro-managed in all areas of his life, and he was very frustrated with the teachers watching him. This was the beginning of the removal of the Chromebook. Initially they were playing back and forth and now it was different because he was changing settings to prevent her from seeing him and therefore disobeying the tech policies. If a teacher did not have Go Guardian up the students were not allowed to be on their computers.

In the beginning of the year, J.S. was constantly on YouTube, so she had asked the principal to block YouTube. Then it became a game where she was constantly putting up Go Guardian blocks on J.S.'s computer and he started doing things to circumvent Go Guardian which then became a discipline issue that was above Ms. Wireback and she had to involve the assistant principal since he was circumventing the software which was a security concern.

Things began to change with the 'heavy' email of February 21, 2024. (R-17 at 171.) Ms. Wireback felt that J.S.'s computer use, whether characterized as a compulsion or obsession, was an impediment to his achieving his goals, both behaviorally and academically. She felt that everything that she had been doing with J.S., the computer was different. His non-compliance across the board was complicated and complex, but when it came to the computer it was beyond difficult, so therefore, due to his circumventing Go Guardian and his insistence on being on the computer she felt that she

had exhausted her options. Go Guardian works with a browser and when she shuts down the browser, J.S. could go on other apps such as the calculator or Google Maps. They would be in class and J.S. should have been listening to instruction, but he would be on Google Maps looking at his house or other places and at that point the only other option she had would have been to physically walk up to him, close his Chromebook and take it away. However, if she were to do that, she felt that would cause major damage to their relationship, so she brought it up to the team and they all agreed. Ms. Wireback had indicated in the email that J.S. had shown through numerous interventions she had tried, that he was unable to abide by the board of education policy 614210 which outlines acceptable use guidelines for safety and technology. Ms. Wireback sent this email because she did not want J.S. to be punished for things that she felt were completely out of J.S.'s control. She felt that he was not fully capable of restraining himself from the computer. This is what led them to decide that they had to remove the Chromebook. She did not view this as a punishment for his actions but rather as the removal of a significant impediment to their goal of teaching J.S. compliance. Questions of when he will get it back or if he will get it back were secondary to their goal. At this point he was getting in trouble for circumventing safety protocols because it was a violation of the school's computer usage policy.

As his teacher, Ms. Wireback was focused on why J.S. was being noncompliant and not that he was noncompliant and should be punished. The parents on their own and through the CST were trying to figure out what was causing the noncompliance and looked at related services, and a number of evaluations were obtained. It was not a psychological issue, or a speech issue or an OT issue. That is when Yvette Owens came in and said this is a child with a behavioral issue.

J.S. would be noncompliant in regards to authority figures instructing him to do something he does not want to do or does not see value in and would passively refuse by staying in his seat and do what he wanted to do which would be on the computer, read a book, sit and stare at the ceiling but he would not do what was being asked of him and this was all day, across the board with every teacher. He was still noncompliant without the Chromebook. She did not come up with this plan herself but consulted with the case manager, Ellie Conover, Mr. Lamorte the vice principal, Mr. Besler, the principal, Yvette

Owens the behaviorist, Traci, the ABA therapist, the general education teachers and Emily Size who did J.S.'s initial speech evaluation and who works with autistic children. This was not a behavior plan. It was her way of explaining clearly to everyone what they were going to do based on what they were determined to do as a team so as to be consistent with J.S. in order to be successful.

J.S. was very upset when the computer was taken away and he was crying so they took him into the office for privacy and called his parents. He promised he would be good if he got the computer back. (R-17 at 172.) Once the computer was taken away and J.S. got over the shock, the behavior was immediately replaced with a book. Ms. Wireback would not just take the book from J.S. for fear of damaging her relationship with him. Initially he brought a book from home, and they asked the parents to not allow him to bring it in and then he got a book from somewhere else as there are books all over the school.

After this email exchange, they had an IEP meeting, and the parents brought counsel with them and the question came up that they had not done a behavior evaluation and removing the Chromebook was punishing J.S. for something that was a manifestation of his disability. Ms. Wireback also believed the parents felt that she had unilaterally decided what to do and was not listening to their witnesses. The parents were concerned that their child was being punished for something that was not within his control, which is why Ms. Wireback waited so long for other experts to come in and rule out various reasons why he was not compliant. When it was determined that it was a behavioral issue, based on her twenty-five years as a special education teacher this is how they could achieve success.

She did not recommend an FBA, although the parents requested one. Ms. L. emailed Ms. Wireback letting her know that J.S. was upset about the Chromebook being taken away and receiving a detention. (R-17 at 167-169.) On February 21, 2024, he received his first after school suspension and he was scared, anxious and upset so Ms. L. wanted Ms. Wireback to check on him to make sure he was okay, which she did throughout the day. She also excused the work that was due that day in language arts and math as an accommodation. At the end of the day, she walked J.S. to the main office where they have to go to detention and told the detention teacher that he was really

anxious since it was his first time. Ms. Wireback emailed the parents that overall J.S. had a good day and handled it well.

Once the Chromebook was removed and J.S. got over the shock of it, the behavior 100% was replaced with the book. It turned out he was not actually reading the book but was going through the motions of reading and it was more of a way of managing his anxiety. Ms. Wireback emailed the parents that bringing a book to school was a distraction and they agreed with her and were no longer sending in a book. (R-17 at 186.) However, J.S. would still get a book from the classroom library.

An April 30<sup>th</sup> email concerns the next strategy they tried for J.S.'s noncompliance. If he did not do the work in school, it was sent home and his parents would help him complete the work. Later in the email Ms. Wireback indicates she had to write J.S. up. She believed not putting the book away was something J.S. could control, but not the computer. When she told J.S. she was going to write him up to Mr. LaMorte, he put the book away and would sulk. (R-17 at 190.) She believes he received a lunch detention for the noncompliance with the book.

Yvette Owens did a behavior plan for J.S. dated April 26, 2024, once she completed the FBA. (R-13.) Some of the strategies recommended were to present the task twice and if behavior continues the work will be sent home for completion and if he did not complete it he would receive an incomplete or the appropriate grade. When they were reintroducing the Chromebook, the suggestion was that there be a specific place for it and then Ms. Wireback would give it to him when he needed it. Then they changed it to be placed on the Chromebook cart when he did not need it. The students did not use Chromebook all day so in a forty-minute period, twenty minutes were on the computer and the other twenty minutes the Chromebook would be on the cart. If J.S. did not comply with transitioning from a preferred task, his next preferred reinforcement interval would be lost or significantly decreased. J.S. would be able to earn more independence with the computer as he showed compliance in the form of work completion in all academic classroom settings for three days would earn J.S. the ability to earn extra reinforcement time at the computer in the teacher's discretion. He was never penalized for submitting late work and he would have until the end of the trimester to turn it in.

J.S. was accommodated and provided with modifications both when the computer was taken away and in general. If there was a computer assignment when he wasn't allowed to have the computer, they printed out the information and gave it to him and scribed for him. They offered him an iPad several times, but he did not like the interface. Then there were times that they absolutely gave him the computer and monitored him and as time went on, he became much more able to manage his behavior. Once they started reintroducing the Chromebook back to him it was significantly better and much more manageable. J.S. always received accommodations and modifications. He received poor grades and sometimes a zero when he would not turn in an assignment even when provided with accommodations. When the work was sent home the parents would monitor him as he completed the work and bring it back and then they would change the grade. That is why by the end of the year he received all As and Bs and one C because he eventually by the end of the marking period got the work done.

It was always a strategy of Ms. Wireback to work with J.S. and value him and allow him to have a voice, even if it was not listed as a strategy. J.S. had told Ms. Wireback in the beginning of the year that he was very frustrated that all of these adults were micromanaging him and she wanted him to feel that he did have a voice in all of this.

Ms. Wireback estimated she spent eighty to eighty-five percent of her time with J.S. and he reacted positively. She was always mindful that giving him one-to-one intervention might embarrass him and she would back off or she could intervene through the chat option on Go Guardian.

Ms. Wireback believes the 2023-2024 IEP was appropriate for J.S. She also believes that he received all the services necessary to meet his needs and that appropriate supports and services were put in place to provide him with a free and appropriate public education and he made meaningful progress in seventh grade.

On cross-examination, it was pointed out that J.S.'s sixth grade IEP under the "social, emotional, behavioral section" stated that J.S. needed to work on complying with directions, completing his work and taking breaks and he was not motivated to do work.

This is consistent what she found when she was working with J.S. in seventh grade and seventh grade was not the first time that he had these behaviors of work avoidance. (J-13 at 7.) J.S.'s disabilities are autism and ADHD. Children with these disabilities sometimes have behavior symptoms like work avoidance, focus problems and social difficulties with their peers. In her experience, compliance can be a behavior related to having these disabilities and that was the case for J.S. J.S.'s IEP for seventh grade was J-17 which was drafted before Ms. Wireback was his special education teacher and she was not at the IEP meeting that drafted it. The IEP did say J.S. needed a behavior intervention plan. (J-17 at 1.) It also called for him to be in class supplementary instruction for language arts, math, science and social studies. There was only a regular education teacher in his compacted math class, and she was responsible for providing J.S. with the modifications and accommodations. Ms. Wireback was the special education teacher for J.S. in science, social studies and language arts with another teacher and when J.S. went to the lower-level math class she became his special education teacher in math. She has never pushed into a general education class to work with a student who has an IEP because there was no special education teacher present. J.S. was failing compacted math until he moved out. Ms. Wireback did observe J.S. in compacted math and saw the same behaviors they saw in all of his classes where he was not participating. There was no special education teacher and no aide in compacted math. Traci Dobleman would go in and observe J.S. in math a few times. Ms. Wireback was not in compacted math to help J.S. out although she needed to help him about eighty-five of the time in his other classes. The only person in compacted math was the general education teacher to help him and that is all. J.S. did better when he moved to the math class with two teachers and Ms. Wireback was there to help him and he did better. J.S. did not have a special education teacher in Spanish, CBL, STEM, music, gym and health. Ms. Wireback believed she heard from all of his teachers that he was refusing in all of those classes. There were problems in gym, but she was not sure if it was refusal. From the beginning of the school year in September, J.S. was refusing in all of his classes.

Power School is the school's on-line database for all of their students. (J-23 at 21.) She does not believe teachers have access to this and it is for the administrators. The document indicates that in October 2023, the beginning of the seventh-grade school year, J.S. had been abusing computer/network privileges and disciplined for it. He had

another electronic violation on November 1, 2023, and received a lunch detention November 13. He had another disciplinary violation on November 15, 2023, and received a lunch detention for electronic violations. These were for violations of the district policy of not being on your computer when you're not supposed to and doing things on the computer that you were not supposed to be doing. Her earlier testimony that J.S.'s behavior had not gotten to the level of discipline until January because she was handling it, was not accurate because he was being disciplined by the school, if not her, for violating policy, and she might not have been aware of it and did not have access to this document.

P-5 is the neuropsychological evaluation that the parents had done and shared the results with the team. Ms. Wireback had a chance to review it during the seventh-grade year. The observer had conducted an in-class observation in October in the language arts class, but Ms. Wireback was not there that day. The observation noted that J.S. was not completing his assignment and refused to engage in writing and that the teacher permitted him to read instead of doing the writing twice during the lesson. The teacher had indicated that the absence of the special education teacher that day made it impossible to work with J.S. because typically the special education teacher works more closely with J.S. to help him complete the required work. That is because the general education teacher has to work with all of the other children. J.S. was caught playing video games on his Chromebook and apologized. The observation also noted that J.S. was spending a lot of time reading his book when he was supposed to be paying attention to the lesson. (P-5 at 4.) Ms. Wireback stated that this was consistent with what she was seeing all year long. The outside evaluator noticed that J.S. was off task and recommended that an FBA be done. (P-5 at 13.) Ms. Wireback was not sure if she agreed that would be appropriate for him because he had a behavior plan in his IEP already that she was following but he was still having these behaviors. At this point, Ms. Wireback felt that she could handle it. However, Ms. Wireback agreed that would be a team decision.

Ms. Wireback was not provided with the consult that Yvette Owens did in sixth grade referencing observations she did on January 12, 27, February 8, March 8 and 9, 2023, wherein J.S. was not always paying attention and on his computer. She made certain recommendations. (J-9 at 2-3.) At the end of sixth grade, Yvette Owens

recommended providing J.S. with a checklist, task breakdowns so he could earn computer time, for example, do this and you can get some time. His IEP for seventh grade J-17 at page eight did not incorporate the behaviorist's recommendations. J.S. went to a new school, Harrington Middle School, for seventh grade and Ms. Wireback, although an experienced special education teacher, did not have the recommendations from the behaviorist when J.S. had some of these issues before in sixth grade.

J.S. is very bright and was placed into the higher math class. When he was having refusal behaviors in math, she did not call an IEP meeting to discuss what support he needed in math because Ms. Wireback did not think there was anything missing despite the fact that there was no aide or special education teacher in compacted math. They did not call an IEP meeting before moving J.S. into the lower math class but it was definitely a decision by the team and not done unilaterally. She believes she asked the parents to move him to the lesser math class but did not call an IEP meeting to discuss what supports could be provided to J.S. in the compacted math class where he was placed. He was smart enough to get into the compacted math class. J.S.'s needs were really in the social and emotional realm because of his focus and noncompliance behaviors. The problems Ms. Wireback saw in the compact math class was that he was not taking notes and following the teacher's directions and participating. Although Ms. Wireback acknowledged that there was no special education teacher to support J.S. in compacted math, the general education was there to support him even though she had all of the other students in the class. J.S. was going on YouTube when he was supposed to be doing his math.

Looking at J.S.'s seventh grade IEP (J-17 at 1) no behavioral support service or consult is listed but she was providing support as the special education teacher, but they did not have a behaviorist or an aide working with J.S. at the beginning of seventh grade. Ms. Wireback, as the special education teacher spending eighty-five percent of her time with J.S., was the most qualified aide he could have, and she was almost working one on one with J.S. for most of his classes and she was still having trouble with him complying despite all of her skills. She was very fond of J.S. and liked his parents as well. The parents were always willing to try Ms. Wireback's suggestions until the end when they were not in agreement with taking away the computer and the behavior plan with the three

warnings. They had always been willing to cooperate and consider everything in talking to Ms. Wireback about J.S.

Ms. Wireback provided the accommodations and modifications listed on page twelve of the seventh grade IEP (J-17) every day as the special education teacher. Although the general education teacher could provide this support it would be very difficult for them to provide it at the level that J.S. needed. There were some general education teachers that found it more difficult to support J.S. and she believed there was an incident with the science teacher, but she did not remember.

Some of J.S.'s accommodations and modifications require the use of a computer, for instance allowing typed rather than handwritten responses and scribes as needed. When the computer was taken away, he was still accommodated by either giving him the computer with Ms. Wireback monitoring him. He would verbally give a response and then Ms. Wireback would write it or type it. In those classes where she was not present, the teachers did not penalize him for anything where he needed to use the computer, and the general education teacher would find a way to accommodate him. There were times when documents were printed in those classes where Ms. Wireback was not there to support him, and the parents were given the work to do at home. He was also exempted from things if he could not do the work.

When J.S. was not doing his work in class and he was sitting there, his parents would do the work with him at home. He was receiving instruction, but he was sitting there and not complying and doing the work.

A November 7, 2023, email from Mr. Beyer requested a meeting to include J.S. so there was a clear understanding of expectations. Mr. Beyers had indicated that J.S. will improve his standing in class the minute he starts to do the worked asked of him when given the opportunity in class to do so. Mr. Beyer was J.S.'s teacher for CBL or Challenged Base Learning which was an elective and J.S. was refusing to do his work. (P-9 at 24-25.) Traci Dobleman went into the class and J.S. did better. Ms. Wireback was not in that class and there was no other support since J.S. had no aide. Ms. Dobleman gave J.S. reminders to stay on task and check-ins, and he was able to

complete most of chapter one. Ms. Dobleman went into the class and did what Ms. Wireback had been doing with J.S. like check-ins and reminding him to stay on task which helped J.S. Ms. Wireback found that during seventh grade J.S. did better when she was working with him eighty-five percent of the time one on one rather than if he was left to just the general education teacher and the whole class population.

The first IEP meeting after the computer was taken away was March 1. There were a lot of IEP meetings at the end of the seventh-grade school year. She believes she attended all of the IEP meetings for seventh grade while school was in session. Ms. Wireback did not go to the August 2023 IEP meeting because she does not work in the summer.

There were four IEP meetings for J.S. in seventh grade all because of his non-compliance and the problems that he was having. She recalls talking about placement options and exploring as a team what would be best for J.S. She recalls discussions about a resource classroom setting where the teacher would be better able to individualize the instruction for J.S. and they were trying to hand-pick the teacher that would be best for J.S. and his needs. They did not move him to a resource classroom for seventh grade because the parents did not agree with it and there was discussion that the resource class was too low functioning academically for J.S.

Ms. Wireback does recall the parents asking for one-to-one aide for J.S. but believes that the district said that they did not have one available.

In January 2024 J.S. outsmarted Go Guardian and Ms. Wireback was starting to be concerned that he was engaging in this behavior that was really interfering with his work. (P-9 at 266.)

The parents had gotten a note from J.S.'s doctor dated February 8, 2024, and requested that he be allowed to wear his hoodie, which was a dress code violation, because of his eczema. (P-9 at 277-280.) Ms. Wireback was reaching out to people and asking if she should reach out to the parents and say that the hoodie is related to his refusal behavior, but she did not because it was decided that the doctor's note trumped

her opinion on the matter. On February 13, the assistant principal said to let the hood go. (P-9 at 279.) At this point in time, J.S.'s IEP had no support from the behaviorist, and he did not have an aide and the FBA had not been done. The FBA was not done until April 2024.

Ms. Wireback described J.S. as an incredibly complex child. All autistic children are different and require different interventions. She also believed the way J.S. was raised complicated the situation in that he was taught that he was equal to the teacher. There was a lot of complexity as to why he was being defiant. Was it a manifestation of his disability or just bad behavior and there was no clear answer. One day he might be noncompliant because of his disability and another day he was just being a nudge. She understands that as a special education teacher, when a child has behaviors that are related to his disability, the IEP team is supposed to make decisions about a plan to minimize the behaviors including a decision on whether the behaviors are a manifestation of his disability.

Around February 21<sup>st</sup> it was decided to take the computer away. It was Ms. Wireback's idea, but she consulted with the assistant principal, Tom, who is the seventh-grade principal and in charge of discipline, Ellie, the case manager, and Traci Dobleman the behaviorist. They had a meeting about this that the parents were not invited to because it was a meeting to strategize a plan. Taking away the computer was the nuclear option, and they were trying to avoid that by trying other options but then were in agreement that the computer had to be taken away because it was an impediment to his education and they agreed as a team to do it. After they had this meeting, they let the parents know and, in the February 21<sup>st</sup>, email described what they were going to do so all of the teachers would be consistent throughout the day. (P-9 at 298.) The noncompliant behaviors were due to his ADHD and autism. This plan was developed to reduce J.S.'s noncompliance. It was not part of his IEP because Ms. Wireback just sent the email. On March 1 a meeting was held wherein the parents asked that an FBA be conducted.

The computer was taken away on February 21 or February 22. The FBA was completed on April 26. So, from February until April J.S. did not have the use of his

computer the same as his peers because they took it away because he was not paying attention in class. The neuropsychologist had said in October 2023 that an FBA should be done because J.S. was having these noncompliant behaviors. A plan to diminish behaviors that are related to a child's disability is supposed to be a team decision.

On February 22, the parents requested an IEP meeting be convened as soon as possible. (P-9 at 301.)

J.S.'s noncompliance continued throughout the end of the school year. When she worked with him one on one, he did better because he was not able to refuse.

On April 30, 2024, Ms. Wireback wrote to the parents telling them that J.S. did not do his ELA, science and social studies work and was getting written up for not doing his work and that Ms. Wireback had to write him up three times over the past two days for not putting his book away. (P-9 at 344-346.) At the end of April, he was not doing his work and was getting written up repeatedly because he was reading his book instead of complying. He did not have an aide.

On May 1, 2024, Mr. LaMorte, the assistant principal, emailed K.S. that J.S. had received four write-ups for not doing his work and for refusing to put his book away and would be receiving an after-school detention. (P-9 at 356-357.) On May 6, 2024, Ms. Wireback wrote to the parents and J.S.'s other teachers stating that J.S. was still not doing work in any of his academic classes and he was getting in trouble because of reading or being on the computer. He also refused to take responsibility for his Chromebook and was leaving it behind for the teachers to pass to each other. (P-9 at 413.) In response to this email, J.S.'s parent K.S. emailed Ms. Wireback "We would really like the behaviorist to assist us. Our IEP meeting is several weeks away, and he could use strategies to assist him. We are still hoping to have an aide assist him as well". (P-9 at 414-415.)

The J-18 draft IEP from the meeting of April 26 (although dated March 1) contained the April 22, 2024, FBA (J-12) recommendations. The special education and related

services section now includes a once a monthly consultation with the behaviorist. (J-18 at 1.)

Ms. Wireback never considered a different class for J.S. because it would be emotionally detrimental for him and she was more concerned with working with him within the general education or coteach program. She attended the IEP meeting in April and then there was another one in May but no changes were made and no aide or more than thirty minutes a month support by Yvette was included in his IEP.

After they took his computer away, J.S. continued to get written up for insubordination, inappropriate computer usage or reading the book all throughout March, April and May and he needed constant redirection. He would not work unless she told him to do it. J.S. needed the attention of one-on-one teaching.

Ms. Wireback attended a June IEP meeting but did not recall at the June meeting the parents discussing placing J.S. at Fusion for the summer. She did not know that he was going to the summer program at Fusion and only found out when she returned in September.

She does recall telling the parents at the IEP meeting that she was not able to find the special sauce to teach J.S. That was because he was complicated.

On September 3, 2024, Ms. Wireback filled out P-14, 'Checklist of Specific Behaviors' at the request of Ms. Chirip. She believes she knew at this point in time that J.S.'s parents placed him at Fusion.

Ms. Wireback prepared the PLAAFP for the 8<sup>th</sup> grade IEP proposed by the district on April 1, 2024. (J-20.) Ms. Chirip prepared the rest of the document. The proposed placement is in class support for language arts, math, social studies and science, with counselling and social skills. There were no behavioral support in this IEP. (J-20 at 1.) Although she was not at this IEP meeting, she believed the IEP was appropriate insofar as J.S. returning to Harrington for eighth grade. The special education and general education teacher would have provided behavioral support.

Ms. Wireback has not seen J.S. at Fusion and has never visited Fusion Academy.

J.S.'s goals and objectives at J-23 at 18 for seventh grade social and emotional goals, J.S. was progressing inconsistently except for using positive strategies to resolve a conflict, goal number nine. With respect to goals five, six, seven, eight and nine, she did not keep data on those goals. It was more her observation of J.S. that she determined he was progressing inconsistently or gradually. In sixth grade his goal was transitioning from one activity to the next including transitioning from a more preferred to a less preferred task. (J-23 at 5.) This was also a goal for seventh grade, and he was only doing that inconsistently. This was also a goal she included in his eighth- grade IEP so he still needed to work on this goal in eighth grade as well. Goal number seven in seventh grade was complying with teacher's directives which he did inconsistently in seventh grade. This goal was reworded in the eighth grade IEP as J.S. will complete assigned work on a daily basis. (J-20 at 14.)

Despite all of the challenges she had with J.S. during his seventh-grade year, she still believed that he made appropriate academic progress and that all of the accommodations that were in his IEP were provided throughout the year.

**Yvette Owens** testified on behalf of the respondent. She is currently employed as the Director for the Learning Well for Children. She has a master's in special education from the University of Cincinnati she obtained in 2015 and a master's in applied behavioral analysis and is in the process of sitting for her BCBA exam. Her resume does not reflect that she has a master's in special education from the University of Cincinnati. (R-21.) She is not a BCBA. She holds the registered behavior technician (RBT) certification. An RBT provides behavior analytical services under the supervision of a board-certified behavior analyst (BCBA). An RBT must have a high school diploma and complete forty hours of training and take an assessment, which Ms. Owens did orally and passed. Ms. Owens as an RBT is supervised by Jessica Young, a BCBA at The Learning Well who provides services to Mt. Laurel. She oversaw Ms. Owens work at least weekly and came to Mt. Laurel to oversee her work monthly. Ms. Owens, as the director of The Learning Well oversees the behavioral consultants and Learning Well staff that they have placed

in public school districts and supports them in the field. She goes into classrooms as the behavioral consultant and conducts observations, collects behavioral data, models implementing strategies within behavior plans that have been written and works one on one with teachers and staff and trains them on strategies supporting social skills modeling and behavior plan strategy implementation. The Mount Laurel School District through Dr. Willard has contracted with the Learning Well to provide services to the district. She began writing FBAs with The Learning Well ten years ago. Ms. Owens was accepted as an expert RBT.

She is familiar with J.S. and was contacted by the school district to do an observation when J.S. was in sixth grade at Hartford due to his noncompliance with academic-based tasks and transferring from the laptop. She prepared a Behavioral Consultation Report dated March 24, 2023, following her four observations of J.S. in class on January 12, 27, February 8 and March 9, 2023. (J-9.) She did not do an FBA because she was not requested to do one. She did not believe one was warranted but provided recommendations that could provide support. (J-9 at 3.) She does not know if the district implemented her recommendations. The IEP for seventh grade, the 2023-2024 school year contained behavioral interventions. (J-17 at 8.) These were not the recommendations Ms. Owens made in her report. (J-9 at 3.) She does not know who drafted these, but she reviewed them and believed they were appropriate and some were similar to her recommendations such as interrupt and redirect strategies, but others were not, such as a classroom-based calm-down area. Based on her observations of J.S., she did not know if he needed an aide. Ms. Owens recommended proactive strategies for J.P.

Ms. Owens was consulted during seventh grade to do an FBA, and one was prepared dated April 22, 2024. (J-12.) Data collected for an FBA included parent interviews, teacher interviews, record review, direct observation of the student and completing a Functional Analysis Screening Tool (FAST), a scale that they use to analyze the data. A home observation was offered but the parents declined as they had things going on at the time. Both parents completed the parent interview and described J.S.'s biggest challenges and greatest areas of difficulty like staying on track, focusing on tasks, a hyperfocus on digital technology, rigidity in transition especially transitioning from a

pleasant activity to one that is challenging, especially writing, written expression/typing, handwriting and articulating emotions. (J-12 at 7.) Ms. L stated that in the past to mitigate these behaviors at home they were on a technology hiatus as they examined their relationships with devices and purposes and responsibilities with the devices. (J-12 at 8.) Ms. S. stated that in the past to mitigate these behaviors at home they have used redirection and talking it through. (J-12 at 9.) The district was using the same strategies in school as the parents were using at home.

The teacher interviews for the FBA were completed by J.S.'s seventh-grade teachers, Ms. Wireback, Ms. Patterson, Mr. Winkelman and Mr. Pottieger. They collectively reported that J.S.'s strengths included being helpful, honest and having a good sense of humor and kind to adults. They identified his preferences as reading a book, using his computer, playing games on his computer, discussing Twilight episodes, multitasking on work assignments, and working one on one. J.S. also prefers someone to scribe for him and typing over writing. His teachers also reported that the overall behaviors of concern were noncompliance and refusal to work and transition from a preferred to a nonpreferred task and accepting instruction. All of the teachers reported the same concerns, which were consistent with what the parents had shared. The strategies that were working with J.S. prior to Ms. Owens' recommendations were working one on one with the preferred teacher.

The partial interval data on the noncompliance and engagement behavior was collected by Ms. Wireback when she was with J.S. on the dates reflected. (J-12 at 16.)

Ms. Owens made a number of Behavior Support Recommendations, including both Positive (Proactive) Behavior Supports and Consequence (Reactive) Strategies. (J-12 at 17-18.)

A behavior intervention plan was developed from the strategies outlined in the FBA. (R-13.) The recommendations from Ms. Owens' FBA is in this plan. Ms. Owens tweaked the behavior plan in May, after their April meeting because J.S. was still not complying. Ms. Owens wrote in a May 7, 2024, email "Right now J.S. is more reinforced by engaging in anything other than academics at school and has been successfully

reinforced by continuing to occur, which is why success is minimal to trying to implement the strategies.” (R-17 at 219.) His being able to noncomply for so long led to him receiving the reinforcement that he did not have to do it. There was another meeting to discuss adding changes to the BIP to include giving time frames for reinforcement which are listed in #5 and #11 which were not originally in the FBA recommendations. Ms. Owens went in to try and implement the strategies she had recommended regarding the reinforcement times. In an email exchange, Ms. Owens reached out to the parents to let them know she was unable to implement the plan because J.S. would not pair with her or engage with her and turned himself away from her. (R-17 at 218-220.) Ms. Owens was not able to build a rapport or relationship with J.S. She had not been involved with J.S. face to face before this. She did observe Ms. Wireback who saw J.S. every day and had a close relationship with him trying to implement the plan, but J.S. was still not engaged and did not give up or put the book away when asked at that time.

The behavior plan that Ms. Owens participated in drafting is contained in the 2024-2025 IEP. (J-19 at 9.) She believes the strategies she recommended would have ultimately worked to get J.S. to comply.

On cross-examination when reviewing the records for the FBA, Ms. Owens takes the summaries provided by the author and includes it in her report. There is a summary of the report from Emily Perlis, the neuropsychologist in the FBA. (J-12 at 5.) Ms. Owens took the summary from P-5 at page eleven of Dr. Perlis’ report and copied it. She did review Dr. Perlis’ recommendations and saw that the first and second recommendations related to behavior and avoidance and doing an FBA but did not include it in her report.

Ms. Owens did observe J.S. when he was in sixth grade on January 12, 27, February 8 and March 9, 2023. (J-9.) She does not believe that a BCBA provided any services to J.S. during his sixth-grade year. Ms. Owens did not include in her FBA report under data collection that she was there previously as a consultant to observe J.S. in sixth grade to provide suggestions for the exact same behaviors.

If a student is having severe behaviors, a BCBA is more qualified than an RBT to provide a behavior plan. A BCBA oversees Ms. Owens.

The sixth grade IEP (J-13) states that J.S. had a behavior intervention plan. She did not review that IEP. When she was asked to do the behavioral consultation in sixth grade, she was not provided with the IEP. She was not provided with any documents and just went to do the observation. An FBA provides an assessment of the function of the behavior. In sixth grade no one requested Ms. Owens to determine the function of J.S.'s noncompliance. In sixth grade she did the observations and did the report and that was it. She was not involved in J.S.'s program until someone requested, she do an FBA in seventh grade.

The IEP behavioral interventions when J.S. started seventh grade (J-17 at 8) are identical to the ones for sixth grade (J-13 at 9) even though Ms. Owens did a consultation during sixth grade in March 2023 and made seven recommendations. (J-9.)

Ms. Owens went to a June 1, 2024, meeting where she recalls the parents talking about how difficult the school year was and that J.S. was struggling with compliance and completing tasks. She did not know if there were other placements discussed. The parents did ask Ms. Owens to spend more time with J.S. Ms. Owens found the parents to always be cooperative and responsive to anything she needed. Ms. Owens has worked with J.S. since almost second grade.

Ms. Owens did not recall seeing the plan discussed at R-17 at 171-172 and did not have anything to do with developing it.

After Ms. Owens did her three observations referenced in her FBA she observed J.S. on May 20 in Mr. Corrado's science class, and he was not complying. J.S.'s behavior did not improve in any way and the behaviors he was having were interfering with his learning every time she saw J.S. Ms. Owens' log for May 24, 2024, indicated there was a meeting to discuss plans for the rest of the year and next year and a reference is made that they would continue 'as is' for the rest of this year. (P-10 at 9.)

She attended the IEP meeting on June 14 and there is a reference in the P-10 log that J.S. would be attending afternoons at Fusion.

Princeton House and CASTLE are out of district placements for students that they are unable to support in their public school. Ms. Owens had written to Dr. Willard that those would be good options to suggest, especially Princeton House, but she did not recall sending the email. (P-9 at 42.) There is also an email from Ms. Owens to Dr. Willard that the parents were requesting weekly behavioral consultation from Ms. Owens and wanted to know what they should do. Ms. Owens explained the FBA called for monthly consultations and she was contracted by the school district so Dr. Willard would have to authorize additional services. (P-10 at 5.) Ms. Owens cannot do anything if the district does not approve it. Ultimately at the meeting it was decided to keep the monthly consults at thirty minutes. Ms. Owens never suggested at any of the IEP meetings that J.S. have an aide, an RBT as an aide, or a smaller class, or that a BCBA come in for some extra strategies that could be implemented.

Ms. Owens did not know that the district proposed J.S. attend Harrington for eighth grade, the 2024-2025 school year. J-19 is an undated draft IEP and J-20 is the July 30, 2024, IEP for eighth grade. Ms. Owens had not seen this IEP before today and has no opinion whether it was appropriate for J.S. She did note that it contained no behavioral services, which was less than what was being provided by her in seventh grade, not even monthly consultations. She did not participate in developing this IEP. She would agree that behavior was a very big impediment to J.S.'s education. Ms. Owens did not know whether J.S. met any of his sixth or seventh grade IEP goals related to behavior. She has not seen J.S. since she interacted with him in seventh grade doing the FBA. She has not seen him at Fusion Academy, and she has never been to Fusion Academy.

**Traci Dobleman** testified on behalf of the respondent. She has been employed by the district for seven years as an ABA trainer. Prior to that she was employed by Learning Well as a one-to-one aide, an RBT and an ABA. She wrote out behavior plans and did data collection. She is an RBT and is now completing her bachelor's degree. R-28 is her job description as an ABA trainer. She supports behavior in the classroom and in the school and writes drills for the self-contained class. She works with the teachers and staff to provide behavioral support in and out of the classroom. She has social skills in and out of the classroom as well. Her position is different from that of an aide as she

is not assigned to one child. She has a caseload and gets students that have social skills needs all throughout middle school. She has a flexible schedule and sees kids as needed. She pulls out children into her social skills class, or she pushes into the general education classroom. She has a plethora of resources that she is able to do with students. She can implement behavior plans, she can take them to the sensory room, and she has an office to do things, whereas a one-to-one is strictly assigned to the student, to the class to their schedule and the student is to follow whatever is already written down. She would push into a class if the IEP team decided it is necessary to see the natural effect of working with a child for the social needs or the academic needs of the child. She would go into whatever class was necessary and implement every modification and accommodation that was in their IEP. She is working with the teacher and implementing all of the modifications and accommodations and on top of it working with the socialization piece, getting the child to be an active participant in the class. She does not hold any NJ licenses or certifications. She has been working with students and their behaviors since she was 18 and working one on one with special needs children.

Ms. Dobleman is familiar with J.S. as he was on her caseload at the beginning of the year for seventh grade as a once a month pull out for social skills. She began seeing him once a week to establish a rapport with him. Originally, he was a pull out for social skills and then she reached out to the case manager and the IEP team to ask it to be moved to a push in. The IEP requires one time a month for social skills. After a few weeks, it was harder to build a rapport with him outside of the classroom and she felt she built a better rapport with J.S. when she pushed into the classroom.

Initially, social skills pull-out was with his two friends and was easier. There were four students in the social skills class in her office. If it was with students he did not know he was very shut off, closed down. In the classroom in the beginning, he was hesitant to open up, but as the year went on, she felt that she had a great relationship with J.S. He was later pulled out to her office to finish an assignment or work one on one but not pulled out for social skills.

J.S. was initially resistant to Ms. Dobleman, as he did not wish to look different and did not want her around. After breaking a few barriers and understanding that she

was there for him and they could compromise and work together, by the end of the year she felt that she had a great relationship with him.

When J.S. switched math classes on September 26, Ms. Dobleman switched to pushing into the classroom as opposed to pulling him out. She was with J.S. in the classroom once a week if not more, depending on if he had a project or was struggling with something and needed motivation and support. She believed J.S.'s parents were happy with her working with him. She believed she had a good rapport with the parents and understood their concerns. Ms. Dobleman was pushed into compacted math to support J.S. because it was the one class that his special education teacher, Ms. Wireback, was not in, so Ms. Dobleman would be lending support. The first week J.S. told her to go the back corner because that is where she belonged and did not want to look different and did not want help. The second week they discussed how he was going to get a copy of the notes every week and that she was there to help him scribe. She was there to modify whatever he needed and at that point they started to realize that the workload was a lot regarding the amount of work that was expected and the pace. She was only with him in compacted math once a week for the first two weeks, but her office was next to the classroom, and she would touch base with the teacher. She saw J.S.'s noncompliance got better when she started working with him. The first couple of months it was very hard for her to even get J.S. to do anything, but his noncompliance was not every day. He still learned and understood work. He did not always resist every single thing they did. There were days that he would do everything that they asked.

R-17 at 142-146 is an email chain from November 7, 2023, Ms. Dobleman sent to the parents letting them know that she had made progress with J.S. in completing a project for the Challenged Base Learning (CBL) class, which is a computer and technology class and he was engaged and there was another email from Ms. Wireback that J.S. was the winner of a cahoots game they played in class, so it was a good day for J.S.

Ms. Dobleman noticed that J.S. was becoming less compliant after Christmas when they came back from break and it was getting harder to keep J.S. on task with the computer and he was trying to divert and go to games. In the beginning of the year the

computer was not really an issue. There was not one thing that consistently worked to get him to comply and complete his assignments. They were motivating him by giving him breaks in the sensory room, giving him breaks, modifying the work and helping him with the work.

Ms. Dobleman sent an email to the parents suggesting scheduled breaks where he could go into the sensory room or walk. Her office had a Lego table and was a place for him to unwind. (R-17 at 170.) A lot of times J.S. would do his work quickly and efficiently because he knew he was getting the downtime he wanted. There were days that the noncompliance was so strong that nothing seemed to want to motivate him.

Even though J.S.'s IEP had Ms. Dobleman providing services to J.S. once a month, she was going into J.S.'s class once a week. After the FBA was complete, she began to have a better rapport with J.S. She was not the oppositional figure anymore and could go in and sit next to him in math and complete work. He would complete projects with her, but then there were other days when she walked in, that he did not want any assistance. She would see J.S. in class with Ms. Wireback, or whoever teacher was in the room and sometimes he was very oppositional about where staff would give a direction and he would completely ignore what they were asking and do what he wanted to do. There were other days that he did follow the directions of the teacher.

When the code of conduct started being enforced regarding his noncompliance with the computer it seemed there was a burst of noncompliance because they were enforcing something he did not want and he was more resistant. It did get better after a while when he would listen and put his hood down if asked or when told to put his book away he would. She believed he was progressing academically as he was a very smart student.

Looking at the draft IEP for eighth grade (J-20), the social skills increased to several times a week, which is what Ms. Dobleman had been doing with J.S. already, which was a benefit to him, even though the seventh grade IEP only said once a month for social skills.

Ms. Dobleman knows that J.S. did not return for eighth grade. She believes social skills as proposed in the eighth grade IEP would have helped J.S. in his eighth-grade year.

Ms. Dobleman testified she is an RBT but has not submitted recertification papers as she did not know she had to do so. She applied to be an RBT years ago.

Ms. Dobleman was not aware of J.S.'s disciplinary record from the fall regarding electronics violations. She only know if there is a problem when the teachers ask her for help and she provides an extra set of hands. She is not a teacher. She is responsible for many students, not just J.S.

When Ms. Dobleman took him out and brought him to her office for scheduled breaks and said if you finish this you can have a break that did not motivate him all of the time and it was about a 50/50 shot. She did not have access to J.S.'s records and could only review them if the case manager allowed her. She does not have access to independent evaluations and would not know if the neuropsychologist recommended an FBA at the beginning of the year. Ms. Dobleman reports to the case manager Ellie Chirip and the CST. She does not attend IEP meetings.

Ms. Dobleman recalls seeing the FBA that Ms. Owens did (J-12) and was provided with the recommendations on page seventeen and most of these strategies she was using. She was in constant communication with Ms. Owens towards the end. From September until February, she was only in the building three days a week helping J.S. and the other students on her schedule. Thereafter, she was only out of the building one day a week and was able to pop in with J.S. more.

Ms. Wireback came up with the plan referenced in R-17 at 172 and they talked about the modifications and accommodations. It was coming up with getting J.S. to have a forced choice and reinforcement. There was a conference in Ellie's office with Ms. Wireback and Ms. Dobleman every day. It was not a scheduled meeting, but they touched base on numerous children every day.

A November 17, 2023, email from Mr. Beyer to the parents indicated that J.S. was not doing well in his class. (R-17 at 141.) Ms. Dobleman went to look in on him. When she was in social studies with J.S., she did not sit next to him all the time and sometimes would sit in the back. If she saw him not complying the first step was to nonchalantly go over to him and tap his computer with a nonverbal suggestion to get him to try and follow along. That did not always work and then she would kind of kneel down to his level and suggest in his ear verbally telling him what she wanted or expected. That did not always work either. At that point they were in a power struggle, and she would take a step back, wait and try and redirect him again. Sometimes he would just not do the work and would have to do it later at home or with her or get a zero depending on the class and the assignment. Ms. Dobleman did not believe this happened at the beginning of the year but it was happening at the end of the year.

Ms. Dobleman would not say he was refusing his work all of seventh grade but more towards the end she started seeing more refusal. The beginning of the year he was always learning, even on his worst days he was soaking up whatever the teacher was saying. So even if he was not writing or complying with the physical part, he was always listening to what the teacher was saying.

The progress report for social/emotional/behavioral goals for seventh grade all indicate that J.S. was progressing inconsistently, and Ms. Dobleman would agree with that. (J-23 at 18.) She did not take data. She provided feedback based on her experience. She has not seen J.S. since he left school and has not seen him at Fusion or ever been to Fusion.

**Drew Besler** testified on behalf of the respondent. He is the principal of Harrington Middle School. (R-24.) He attends about ten IEP meetings per year. He became familiar with J.S. in June 2023 prior to J.S. starting seventh grade when he went to the CST and spoke to Ms. Chirip who advised that J.S. had some difficulties at Hartford along the lines of bullying. In October 2023 Mr. Besler became more aware of issues with J.S. from his Vice Principal, Tom LaMorte, that J.S. was having difficulties following directions and with the computer. He discussed J.S. with Ms. Chirip and Ms. Wireback. J.S. had a tendency

to use Chromebook for noneducational purposes. The strategies used to keep J.S. focused were redirection and Go Guardian which can close certain tabs on a student's Chromebook.

In an email dated April 30, 2024, Ms. Wireback asked Mr. Besler to come and observe J.S. in ELA. (R-17 at 188.) Mr. Besler observed J.S. with his back to the teacher and smartboard, holding a book straight up to his face. J.S. appeared disinterested in the lesson. Ms. Wireback tried to redirect him, but he never turned around and the book would come back up.

On May 1, 2024, Ms. L. emailed that they had received several communications informing them that J.S. had been given detention for not putting his book away. (R-17 at 195.) J.S. was subject to the school discipline code. Mr. Besler handled the after-school detention with J.S. He believed J.S. was a young man who believed the rules did not apply to him and Mr. Besler wanted to try and connect with J.S. in an educational way. There was a discussion with the IEP team whether J.S.'s behavior was a manifestation of his disability. It was determined that it was not, that his disability did not mean he did not understand what he was doing, so discipline was issued.

J.S.'s disciplinary history was set forth in an incident list which essentially consisted of electronics use, disobeying authority and computer use. (J-23 at 21.) Mr. Besler decided on an after-school detention in May in order to have a one-on-one conversation with J.S. to try to connect with him and get him to take steps to improve. He wanted J.S. to view him as an ally. This detention took place in the main office lobby. Mr. Besler also thought lunch was important for J.S. to socialize and did not want to give him lunch detention.

Mr. Besler had reached out to Dr. Brent Elder of Rowan University for some strategies to use in dealing with J.S. They had never done this for any other student. The school had a partnership with the university who provided professional development to their special education teachers, until funding dried up. Dr. Elder came and observed J.S. and had some discussions with the parents. (R-17 at 236.) Some strategies were discussed but Mr. Besler did not know what they were.

Mr. Besler had not seen the sixth-grade evaluation from the behaviorist at Learning Well who was called in because J.S. had not been attending in class. (J-9.) Mr. Besler had not seen the expert report from petitioner's expert who observed J.S. on October 3, 2024. (P-5.) Mr. Besler was hearing from his teachers that J.S. was on the computer many times during seventh grade when he was supposed to be paying attention to the teachers. Also, he was hearing that J.S. was sneaking on Chromebook to play video games when he was supposed to be doing classwork. Mr. Besler also observed that J.S. would have his book up in his face and reading when he was supposed to be paying attention to the class.

Mr. Besler knew that J.S. had ADHD. He was aware that there initially was some disagreement with the parents regarding an autism diagnosis. He was not aware that it was changed in seventh-grade and the parents were now in agreement with that diagnosis. He believes because of other disabilities there was the OHI classification because of the specific learning disability, impairment in written expression and dyspraxia. Mr. Besler was not aware that his classification in seventh grade was autism. He was shown the seventh grade IEP which refreshed his recollection. (J-17 at 1.) He was not aware that the evaluator had recommended an FBA be done because of J.S.'s work avoidance behaviors. (P-5 at 13.) The CST did an FBA (J-12), but he had not seen it. He knows Yvette developed a BIP (R-13) but he did not see that before the hearing but was informed of the strategies created in the April 26, 2024, plan. The May 1, 2024, email from Ms. Wireback indicates that J.S. is subject to discipline. (R-17 at 194-195) because all of the interventions in the BIP were followed. However, there was not much time and only about a week, between the implementation of the BIP and J.S. receiving discipline.

Mr. Besler believes he was present for the April 26, 2024, IEP meeting and recalls that he said that there might be an aide in another class that he could have come in and support J.S. a little bit. He does not believe that happened. He did not remember the parents requesting J.S. be given a 1:1 aide. He would agree that would be a strategy that would help with J.S.'s behaviors. Mr. Besler was not aware if the parents requested the district to add more time with Yvette, the behaviorist, before enacting the discipline policy.

Mr. Besler was not aware how much time the behaviorist was spending with J.S. The initial IEP for seventh grade (J-17) had no time specified for a behavior specialist to support J.S. The parties met on March 1, 2024, and a new IEP added the behavior intervention consultation group once monthly with Yvette. (J-18.)

Looking at J.S.'s disciplinary record (J-23 at 21) prior to seventh grade, he had one disciplinary issue for inappropriate physical contact and then in seventh grade he had eight. However, because of progressive discipline, he probably had more than ten instances because he only received the first discipline for the third electronics violation. (J-23 at 21.) At the time he was getting these disciplinary infractions in November, he did not have a behaviorist consultation in his IEP, and he did not have a one-to-one aide. The policy requires that before you discipline him, you were supposed to make sure that the CST meets to determine whether everything has been done if the behavior is related to the child's disability, yet there was no meeting until March 1 for J.S., because that is the date of the next IEP.

Mr. Besler does not have any certifications in special education. When he testified earlier that he thought J.S.'s behavior was not related to his disability, he did not know that J.S. also had an autism diagnosis. He did not know that in sixth grade the district proposed that J.S. be declassified and given a 504 plan instead. Mr. Besler was aware that during seventh grade, J.S. was not doing his work and had to take it home to do it there. He was aware that Ms. Wireback was spending a lot of time with J.S. and had to do more for him than any others in the class.

Mr. Besler agreed that it was not common to have five IEP meetings in one year for one student and most usually have one or two meetings a year.

Mr. Besler saw the draft IEP for eighth grade (J-20) in August 2024. It places J.S. in the in class supplementary instruction for his classes and he also has counseling and social skills. There is no time with the behaviorist and no one to one aide, even after everything that happened in seventh grade. He agreed that those services may have been beneficial to J.S. The thing that was interfering with J.S.'s education was his behavior during seventh grade. He would agree if that was because of his autism that

the IEP team was responsible for providing him with services before discipline was imposed.

In February 2024 Mr. Besler recalled that the district made a decision that J.S. was not going to have access to his Chromebook anymore. The decision was done with the team – Ms. Wireback, Ms. Chirip and Mr. LaMorte to try to determine another intervention to get J.S. to do his work. He believes there was a meeting in Mr. LaMorte's office. He was not present, but he was made aware of the plan from Mr. LaMorte. He was not aware if prior to that meeting the case manager called an IEP meeting to talk about this behavior plan with everyone. In Mr. Besler's experience, if a plan was developed for behaviors related to a student's disability, the parents are supposed to be involved.

Ms. Wireback described a behavior plan that was going to be implemented because of the Chromebook and the steps that were going to be taken. It was a plan to reduce his noncompliance. (R-17 at 172.) The computer was taken away in February. Mr. Besler was aware that the IEP had certain accommodations that required a computer because of dysgraphia. Mr. Besler understood that J.S. would be accommodated by Ms. Wireback holding the computer and letting him use it in class while watching him. Mr. Besler was not aware that the computer was taken away from J.S. for a period of time.

Mr. Besler was J.S.'s principal for all of seventh grade and reached out to the parents many times and had conversations with them. The parents always cooperated with Mr. Besler. They were always calling him back and willing to do anything to help J.S. He had a good rapport with the parents.

Mr. Besler has not seen J.S. at Fusion and has never been to Fusion to do a tour or place any children.

A May 7, 2024, email from Ms. Chirip to Diane Willard and copying in Mr. Besler states that someone suggested the Castle or Princeton House program. (P-9 at 44.) He remembers something about this email as his wife used to work for Princeton House which provides therapy for students. He did not have an understanding what Castle provides aside from an alternative learning environment for students who may need

therapy and some behavioral modification program. Ms. Chirip's email states that she does not think J.S.'s profile aligns well with those programs and that their best course of action may be to offer J.S. assistance through an aide demonstrating their efforts to support him. Ms. Chirip was skeptical whether it would work as she was worried that J.S. would not respond to the aide. A one-to-one aide was never provided to J.S. during seventh grade because there was so much time being spent with him by Ms. Wireback, an award-winning special education teacher who was spending eighty-five percent of her time with J.S. Ms. Wireback was much more qualified than an aide and she was still running into roadblocks with J.S. because she is not a behaviorist. That is why they were looking at potential alternate placements such as Castle or Princeton. Yet the district's IEP for eighth grade recommended in class support with no behaviorist, no one to one aide and less services than he had in seventh grade. Mr. Besler stated that the eighth grade IEP was a draft and things could be added.

The parents had asked about maybe a resource placement at Harrington but Mr. Besler's opinion was that it was not adequate because J.S. was too advanced.

Mr. Besler did not know that the parents were asking for a placement at Fusion.

The last sentence of the email regarding the plan to take away the Chromebook copying in the parents, suggests that the parents were informed of the plan as Ms. Wireback indicated "That being said, Ms. S. and Ms. L. I'm virtually hugging you both, we can do this #team J.S." (R-17 at 172.) Mr. Besler does not know if the parents had any input in developing this plan or how it would be implemented.

**Erica Nikko** testified on behalf of the respondent. She is employed by Mt. Laurel as the school psychologist and has been for fifteen years. She is a N.J. licensed school psychologist which allows her to work in a school setting and do assessments of students' needs both academic and behavioral and uses the data to develop the necessary programs for the student collaboratively with the CST. R-23 is her resume, and she was accepted as an expert in school psychology and special education and as a case manager. She is familiar with J.S. as she was his case worker in sixth grade at Hartford

School. J.S.'s IEP for sixth grade was developed at the end of his fifth-grade year at an annual review meeting and recommendations for programming were made for the upcoming school year. (J-13.) His classification is listed as Other Health Impaired as J.S. had diagnoses of autism and ADHD. His fifth grade IEP had a diagnosis of autism which the parents wanted removed because they were concerned with the label and that it might negatively impact his potential future career opportunities and thought ADHD was what was really impacting him.

The special education programs and services listed in his IEP (J-13) were in class resource support for language arts which is when a special education teacher was present for the duration of the language arts period and would be the person who would provide a modified curriculum for him. He also received group social skills instruction and there was a classroom aide that was available to him throughout the school day. His IEP called for social skills ten times per year so it would be about once a month and was implemented by Ms. Nikoo. In fifth grade he came regularly and at the start of the sixth-grade year and around mid-year he started to opt out. His teachers would remind him that he had social skills, but he would choose to go to the cafeteria instead of going up to her office. Ms. Nikoo indicated that J.S. made minimal progress in social skills in understanding the give and take of social relationships. In fifth grade he was an active participant in social skills and in sixth grade he withdrew from participating in the actual group setting.

The classroom aide was a paraprofessional who was present in the classroom during academic times who can provide support by giving assistance with organization, prompting back to a task, and helping to break up tasks into units. The aide can also support behaviorally and take students for a walk or pull a student to the side to take a break. J.S. often understood the directions given and would become irritated or annoyed if prompted to do something a second time so in her various observations she saw J.S. say to the aide that he knew what to do, or don't talk to me or would turn his back to the aide. In sixth grade he was very resistant to accepting help from the aide from what she observed herself and what she was told by the teachers.

If J.S. was not willing to do the work in the classroom setting, the parents requested that he be allowed to bring it home and he would do it at home and bring it back the next day. This can be common practice for kids who shut down in the classroom setting because they do not want to have an unwillingness to complete a task become an argument in the classroom and become a bigger issue or a trigger emotionally. So, a lot of times they chose to back off and give J.S. some space, and he would take the work home and complete it.

The in-class resource setting consists of a general education teacher and a special education teacher present in the general education setting, with the special education teacher modifying the presentation to the special education students in order for them to be able to access the information being taught. In class supplementary instruction can be provided by either the general education or the special education teacher. In sixth grade he had two teachers in his language arts, social studies and science classes. Because he was in compacted math, he had one teacher present. A compacted math student is working above grade-level expectations and therefore does not need a modified curriculum. He was in compacted math his entire sixth grade year. She believed he was making academic progress although there were things that were challenging for him to complete because of preference, only because of his unwillingness in the classroom, but she thinks that when he completed the work, he showed that he understood the material presented.

On October 31, 2022, J.S. was having a difficult day and not willing to do the work in math and his math teacher, Ms. McKeever emailed the parents who requested a meeting. (R-6 at 17-19.) Ms. Nikoo believed she met with the parents about four times during sixth grade.

The concerns Ms. Nikoo observed or were being reported to her regarding J.S. in sixth grade were shut down behaviors in the classroom regarding work that was being produced or presented to him. He was given breaks with electronics to try and increase his compliance. He would have a difficult time following directions given by teachers and staff. There were some peer concerns and conflict between J.P. and other peers.

The target behaviors listed in J.S.'s sixth grade IEP were for noncompliance and verbal disruption. (J-13 at 9.) Ms. Nikoo personally observed these behaviors although verbal disruption was observed a little less in sixth grade. His interventions in fifth grade included a lot of breaks and the ability to take a walk or go to the CST office to take a break where they would supply him with fidgets. In sixth grade he was more resistant to leaving the classroom when he was upset so they just gave him space between the classrooms. Those interventions probably would have continued to help in sixth grade, but J.S. was not willing to accept them, and they cannot force a student to accept a break or force an intervention that might support him.

On October 7, 2022, Ms. McKeever emailed the parents for guidance about what could be put in place to motivate J.S.'s behavior in the classroom and Ms. L. responded that there would be a home consequence (a privilege suspended). (R-6 at 22-24.)

There is a long list of modifications in J.S.'s IEP included everything from additional time, to providing him with positive reinforcement and social, behavioral modifications. They were careful not to do anything that would embarrass him. They would discuss any issues with him privately. They were all aware that these were necessary in order to keep him engaged and comfortable in the classroom setting. (J-13 at 12-13.) These modifications were being implemented for J.S. daily.

A December 7, 2022, email chain from Ms. L. requested an IEP meeting as a result of the science teacher discussing that J.S. had a difficult time during her class and when she attempted to work with him, he refused. Ms. L. was concerned about the overall rise in anxiety for J.S. (R-6 at 28-30.)

J.S.'s grades for sixth grade were all As and Bs and an A+ in gym. (R-15.) Based on these grades, it is her opinion that he made progress during the school year. J.S.'s sixth grade SLA scores were three and four, which indicate that he was meeting expectations or near meeting expectations in language arts and math.

J.S.'s progress report indicated that the New Jersey Start Strong for English language arts, math and science indicated that he was level three for all three which

indicated that he needed less support. (J-23.) The special education teacher authored a mid-year progress report that was sent home indicating that J.S. was progressing satisfactorily towards his goals. (J-23 at 8-11.) The progress reporting on the goals did not include the social, emotional and behavioral goals. Ms. Nikoo testified that J.S.'s IEP did include social, emotional and behavioral goals which progressed, but these goals were not achieved.

In March of sixth grade, they had Yvette Owens, a behaviorist, come in to provide support. Ms. Owens was familiar with J.S. from when he was in elementary school. She did a behavior consultation report dated March 24, 2023 to provide recommendations for teachers to better support J.S.'s behaviors in the classroom. (J-9.) An FBA was not done at this time because they usually do an FBA for students whose behavior is highly disruptive or when they are a danger to themselves or others, or when they are not sure what the function of the behavior is. J.S.'s behavior was well documented from fourth grade on that he would become non-compliant when given directions. At the time, they were doing updated evaluations, and they felt it would be more appropriate to complete an updated psychological with the behavior assessment prior to completing an FBA. These recommendations were considered when creating J.S.'s seventh grade IEP.

There were a couple of incidents with peers during sixth grade which turned into a push and shove match. There is a district discipline policy managed by the administration. There was an allegation that J.S. was bullied and an investigation conducted which was unfounded.

J.S. was eligible for re-evaluation at the end of his fifth-grade year, and the team recommendation was that they would roll over his eligibility without any updated evaluations until sixth grade because they could see he needed supports and they did not need any new information to appropriately program for him. The parents agreed with this decision. In sixth grade, the parents requested updated evaluations, and the district conducted a learning evaluation, a psychological evaluation and completed a social history update.

The educational evaluation completed by the LDTC in February 2023 indicated that J.S. was in the high average range for overall reading, in the average range for overall writing and in the average range for broad mathematics. His overall broad achievement cluster was within the average range. (J-7.)

Ms. Nikoo completed the psychological assessment in February 2023. During the student interview section J.S. shared with her that earlier in the year he had a difficult time getting along with some of his peers and he felt that he was being bullied. On the BASC assessment, J.S.'s special education teacher, Ms. Friedrichs rated J.S. in the clinically significant range for aggression, withdrawal, social skills and leadership. Her overall behavioral assessment came out in the clinically significant range. The only category that would impact academics would be the withdrawal which speaks to the work refusal in the classroom and not interacting with teachers and staff. (J-8.)

Following the evaluations, the parents also provided updated medical documentation and requested that the autism diagnosis be put back into his IEP in their discussion about eligibility and whether J.S. continued to be eligible for special education supports. In sixth grade J.S. received in-class resource support for ELA, science and social studies and attended a compacted math class. He received the support of a shared aide in all academic settings and also received social skills instruction in the form of a periodic lunch bunch. (J-8 at 1.)

The district was considering de-classifying J.S. because when considering eligibility for special education, they look at three different things. They look to see if there is a diagnosis present or an identified disability. Then they consider if the disability negatively impacts the student within the classroom setting. In J.S.'s case, they acknowledged that J.S. had a diagnosis, and they could see there was an impact for him at school, but the third prong is does the student need specialized instruction in order to academically progress. Since all of his scores on the learning evaluation showed that J.S. was in the average range and working at grade level, the district believed he was no longer eligible for special education. This information was communicated to the parents who were not in agreement with the recommendation to change the IEP to a 504 plan. (R-6 at 42-46.) Ms. Nikoo believed that J.S. could have succeeded academically with just

a 504 plan. They ultimately decided to stay with the IEP at the May IEP meeting. J.S. was transitioning into Harrington school and the parents felt from a behavioral standpoint, J.S. needed more support. However, a special education teacher does not modify behavioral instruction and counseling, and social skills could have been provided under a 504 plan.

The district does not provide a special education teacher in compacted math because the students take a placement test to be eligible and must obtain a certain score and show that they are working above grade level. Special education is not provided because if you are operating above grade level, you do not need a modified curriculum. The modifications that were recommended for J.S. could all be provided by the general education teacher, such as providing additional time and helping with organization. His modifications do not call for the curriculum or work being provided to him to be modified or changed. He does not need something different than the other students; he needs accommodations to be able to complete the work that is given.

The IEP recommended for J.S. at the end of sixth grade for his seventh-grade year stated J.P. would receive in class supplemental instruction for language arts, math, science and social studies. He would receive individual counselling twice a month and social skills group once a month. (J-17.) The behavioral interventions that are documented indicated the target behaviors remained the same as in fifth and sixth grade, that is no compliance and verbal disruption and then it documents what had been tried prior to this behavior plan and then gives a list of supports and interventions that can be utilized in seventh grade. A majority of the interventions remained the same from the prior year because they were appropriate for the target behavior and for a student his age. The last positive support intervention states: "J.S. responds well to positive reinforcement, including for work completion and group participation. Positive strategies should be utilized with J.S. as they minimize his anxiety." (J-17 at 8.) This specific intervention was added at the parents' request. If it was included, the team also felt it was appropriate for him.

The special education teacher is the person who generally creates the academic goals for a student. The reading and writing goals are what the teacher felt needed to be

monitored for progress in the upcoming year, and then there are a number of social, emotional and behavioral goals included as well. If a goal was not met from the IEP, they would continue it in the IEP for the next year. They would review the prior IEP in coming up with goals for the next year. The seventh-grade goals and objectives for academic subjects would be different because they involve a different curriculum. The social, emotional, behavioral goals could be very similar since you are working on the same coping skills or the same behavioral compliance skills.

It is Ms. Nikoo's opinion the IEP for sixth grade (2022-2023) provided him with the services necessary to meet his needs, the appropriate supports were put in place to provide him with FAPE and that that J.S. made meaningful academic progress in sixth grade.

In 2019, J.S.'s previous eligibility evaluations consisted of a speech and language evaluation, an OT evaluation, a psychiatric evaluation, a behavioral assessment, a learning evaluation report and a psychological evaluation. (J-13.)

J.S.'s classification of OHI was based on his parents request to have autism removed. As he had an ADHD diagnosis, they decided to keep him classified under the category of OHI. J.S.'s full scale intelligence score was higher in 2019 than when Ms. Nikoo tested him. She was his case manager for fifth and sixth grade. J.S.'s academic scores were either average or above average except for processing and written language, which is considered an academic area, although he was not classified as having a specific learning disability. Many children with autism have social skills deficits. In fifth grade, he put his hands on other students, but it was not aggressive, and he would have to be prompted to keep his hands to himself. In sixth grade she recalls J.S. had acts of aggression in throwing food in the cafeteria and pushing another student into a door jamb. These two incidents were not interfering with his ability to learn in sixth grade. Academics is only one area of concern as school districts have to address social, emotional and behavioral concerns in children with disabilities. She would agree that in sixth grade J.S. had work avoidance behaviors that were interfering with his day, but not his learning. Ms. Nikoo believes it would have made it easier for J.S. to learn if he was not having those behaviors. An FBA can be done to address work avoidance but one was not done in sixth

grade. The IEP references that since at least second grade J.S. had avoidance behavior at school and that he was capable but not always motivated to do work. The “needs” section of the IEP is reviewed by teachers each year and a lot of time the needs remain the same, so the fifth-grade teacher would have agreed that was appropriate if it was not written by her.

Social skills were just having the kids interact with each other and helping scaffold interactions for them. In fifth grade J.S. was part of a group of six or seven. In sixth grade social skills was a smaller group of maybe three or four students done at lunch, but J.S. often did not come. If a program is in an IEP, Ms. Nikoo agrees that the student needs the service, however, it is not something that can be forced upon a student. She agreed that a fifth or sixth- grader is not in a position to determine whether they should be going to a class or program that the team has decided is appropriate. When he did not come, she probably discussed it with the parents at some point but did not know if she reported his failure to attend the social skills class. If he did not meet his sixth grade social and emotional goals, it could be in part that he did not come to the social skills group. Not meeting the goals was really the noncompliance that was observed repeatedly in the classroom.

On October 11, 2022, Ms. L. explained that J.S. had a problem with the Chromebook and should only be allowed to use it for assigned tasks and not unless instructed to do so. (R-6 at 22-23.) On December 6, 2022, Ms. Loedenthal, the science teacher, reported that J.S. was disagreeable and argumentative and slammed his computer closed and did not do the work. (R-6 at 30.)

She does vaguely remember an incident about J.S. being bullied as she was his counselor and is sure she spoke to him about it. She recalled an incident where another student shoved J.S. into a locker. It was investigated and determined that J.S. put his hand on the student first. Ms. Nikoo recalled that J.S. was in a hurry to get out of the classroom and pushed multiple students out of the door and the student who shoved him shoved him in response to being pushed out the classroom door. She remembers another incident the parents reported that happened at the end of the year on a trip to Fun Flex during laser tag.

Ms. Nikoo agreed that when you have a child with a behavior problem the most comprehensive way to evaluate it is to conduct an FBA. She is qualified to do it, or a behaviorist can do it. When doing evaluations, all areas of suspected disabilities are to be evaluated. The last time a behavioral evaluation and a psychiatric evaluation were done was in 2019.

J.S.'s parents had him privately tested by Summit evaluations in the Spring of third grade due to behavioral and emotional difficulties J.S. was having in the classroom as well as J.S.'s resistance to writing. At the time, his testing was all in the average and above average range for academics, except for writing which was the low average range. His weaknesses were evident in emotional self-regulation, attending, focusing skills, non-compliance following classroom routines and directions, transitioning between non-preferred and preferred activities, motivation and peer interactions. Dr. Trigliani was the psychiatrist who diagnosed J.S. with autism spectrum disorder with features of attentional difficulty and some oppositionality. (J-8.)

J.S. had a classroom aide in compacted math in sixth grade and on multiple occasions refused their help, so they did not consider putting an aide into his compacted math class moving forward because he was not utilizing the support. He was resistant and it seemed to trigger him and upset him.

**Diane Willard** testified on behalf of the respondent. She is the director of the child study team and special services and has been since 1992. Her resume sets forth her employment and educational background. (R-26.) She has New Jersey certifications as an elementary teacher, teacher of the handicapped, LDTC and principal. She was accepted as an expert in the field of special education services.

Dr. Willard is familiar with J.S. from discussions with the child study team case managers which took place near the end of sixth grade, and she did attend his transition IEP meeting prior to going into seventh grade. His sixth and seventh grade case managers were both present for this IEP meeting as was parents' attorney.

Starting midyear in sixth grade he was making progress academically, but he had inconsistencies with his progress behaviorally. She does recall there being a concern about bullying and aggression at that time. His sixth-grade grades were mostly 'A's with some 'B's which indicated that he was making progress and met the standards. (R-15.) J.S.'s sixth grade IEP had behavioral interventions listed to reduce the targeted behaviors of noncompliance and verbal disruption. (J-13 at 8-9.) As J.S. got older, the verbal disruption was reduced. In sixth grade J.S.'s behavioral problems were noncompliance, some verbal disruption and some aggression. A behavioral consultation report was prepared for J.S. in sixth grade after he was observed in class several times by the behaviorist. (J-9.) The behaviorist's recommendations were implemented for J.S. They are not required to include all recommendations in the IEP. It was Dr. Willard's understanding that the district decided to do a behavioral consult and not an FBA at this time because the behaviors were not at a significant level and classroom supports and strategies used would be most appropriate. She was aware at the end of sixth grade that there were discussions to declassify J.S. Based on input from the parents, who are part of the IEP team, and consideration of his needs and their concerns, the team decided that they would continue classification. At his IEP transition meeting at the end of sixth grade, J.S.'s teachers reported he made progress. Reviewing his report card, J.S. performed very well academically and that would allow her to conclude that he was making academic progress. (J-23 at 26.)

Dr. Willard was also familiar with J.S. during his seventh-grade year as more concerns regarding J.S. were raised by the team. The IEP for seventh grade in Harrington called for J.S. to have in-class supplemental instruction for language arts, math, social studies and science, and individual counseling services and social group instruction. (J-17 at 2.) In-class supplemental instruction is instruction that can be delivered by the special education teacher, the general education teacher or other uncertified individuals for a student working on any of the IEP goals and objectives that could provide instructional support for that student including accommodations and modifications. A general education teacher can implement a special education student's IEP goal.

In seventh grade, the behaviors most discussed with Dr. Willard was J.S.'s oppositional behavior. The district received a neuropsychological evaluation from Dr.

Perlis, who the parents had privately arranged to evaluate J.S. The district is not required to adopt the recommendations provided in a private evaluation, but they definitely are considered. Dr. Willard makes the arrangements for an FBA to be conducted by an outside agency the district contracts with, since they do not have a BCBA on staff. The FBA was received by the district which recommended proactive and reactive recommendations. (J-12.) Proactive recommendations are ones that are more positive and try to prevent behavior before it starts. Reactive ones are more consequential. When they receive an FBA, they are not required to put the exact recommendations in the IEP. The team will look at the recommendations and see if they are consistent with what is in the IEP already or may add additional ones or omit ones, they do not think appropriate.

The school discipline policy is followed unless it is specified in the IEP that the student is exempt. J.S. was not exempt from the school's discipline policy. A May 6, 2024, email from Ms. S. to Ellie Chirip, Yvette Owens and Bonnie Wireback stated: "Mrs. Chirip Can we please have the behaviorist and an aid assigned to assist? He can use some strategies to get past this." This email was forwarded to Drew Besler, Dr. Willard and Thomas LaMorte. (R-17 at 207.) An email from Ms. Chirip to the parents, copying in Dr. Willard stated: "I've had the chance to speak with Dr. Willard and Mr. Besler, and it appears that we don't currently have a paraprofessional available for this point in the year. However, arrangements are in place for one next year. In the interim, I'll be present in the Science class two days a week to provide assistance. Regarding Yvette's schedule, I'll await specific information from her before confirming any further plans." (R-17 at 216). Dr. Willard said this was not accurate and that if the IEP team decided an aide was appropriate, they could have obtained one from one of the agencies they contract with, including the Learning Well and ESS which provided substitute aides. It was determined through the IEP team that an aide was not needed at this time. The teacher was able to address the needs that the aide would have been addressing regarding instruction, and the ABA social skills person would also provide assistance.

The parents contacted Dr. Willard via email on May 7, 2024, requesting behavioral support for J.S. because his refusal behaviors were escalating and he was being disciplined increasingly. The district's BCBA had only been given thirty minutes to consult with the parents per month and J.S. had no aide. The parents were requesting an IEP

meeting, but the team was not available until May 24, 2024. Dr. Willard replied to the parents via email May 8, 2024, and stated: "I was happy to speak with you today by phone to learn that J.S. is making good progress in completing his assignments. I look forward to meeting with you on May 24<sup>th</sup> to develop a support plan for the Harrington team. I will be following up with Mrs. Chirip and Mrs. Owens regarding additional times with our behaviorist." (R-17 at 221.)

An out of district placement was requested for J.S. at the end of his seventh-grade year at an IEP meeting. A June 19, 2024, email was sent by Ms. S. to Ellen Chirip and copying in Ms. L., Dr. Willard and Ms. Carolla:

"Hello

You mentioned an application this morning we needed to fill out. I'm not sure exactly what it was. Please send me any paperwork you need completed so that I can ask Amy to review it first.

As we discussed at the last IEP meeting, we would like JS to be able to have FAPE at Harrington but we don't know if this is possible. We do not agree that Burlington County Alternative School is appropriate.

We are privately paying for JS to go to Fusion for the summer. In August, if he does well there, we would like to discuss a Naples placement at Fusion in September. We do not believe there are any NJ approved schools that would meet JSs needs out of district.

If JS does not do well at Fusion, we would like him to attend Harrington in the fall as we do not see any other viable alternatives."

(R-17 at 250.)

Dr. Willard was not certain if the parents toured the Burlington County Alternative Program. She believed it could have been an appropriate placement for him based on her observations of the program. It is a program that has both general and special education students. They do work with children with behavioral issues such as anxiety and oppositional behavior. They have had children placed there and were successful and went on to Lenape High School. Also, that school was very close to Mount Laurel

and students who went there could go back to Harrington for sports activities, clubs and social events such as dances. However, that being said, she still believed Harrington was the first choice to provide him with a FAPE. She did not know much about Fusion when she received this email aside from what she saw on the internet but knew it was not on the New Jersey State approved list of schools for special education.

Dr. Willard went to look at Fusion with Ms. Chirip once in January and they both prepared a written statement of their observations. (J-22.) The behaviors J.S. exhibited at Fusion were the same behaviors that were reported to her at Mt. Laurel. It did not appear that the academic instruction she witnessed being provided to J.S. was consistent with his grade level. The math teacher said she had not seen J.S.'s IEP. An individual reassessment of commitment form from Fusion was reviewed by Dr. Willard and indicated J.S.'s commitment as a learner. (R-29.)

In Dr. Willard's expert opinion, Fusion was not an appropriate placement for J.S. because it was not the least restrictive environment and she did not see him challenged and engaged academically to meet his potential, based on her observation. She believed Mt. Laurel was an appropriate placement for J.S. and that they could have easily met his goals and objectives through the IEP process.

On May 7, 2024, Dr. Willard emailed Ms. Chirip and indicated "I think the changes/additions are appropriate, but I doubt it will work. Do you think we should recommend Castle or Princeton House? In response, Ms. Chirip emailed "I don't believe his profile align well with programs of that nature. At this juncture, it seems our best course of action may be to offer him assistance through an aide, demonstrating our efforts to support him. However, I am skeptical of its effectiveness, considering he's already distressed by the prospect." (P-9 at 64.) Dr. Willard explained that Castle and Princeton House are short-term therapeutic programs a child may attend for six to eight weeks in order to work on some type of behavioral strategies. They are not special education programs.

The proposed draft eighth -grade IEP offered to J.S. and the services listed in the IEP were appropriate. (J-20.) Behavioral interventions were recommended by the IEP

team that had worked on his seventh-grade IEP who also considered the FBA that had been done. (J-20 at 11-12.) Dr. Willard believes the strategies listed would enable J.S. to receive FAPE in Mt. Laurel. The goals listed in the IEP are drafted by the teachers in conjunction with the case manager. (J-20 at 13-15.) If a previous goal, whether academic or behavioral, has not been met they will include it in the next year's IEP.

Dr. Willard believes Mt. Laurel provided J.S. with a FAPE and that he made meaningful progress in sixth and seventh grade and that the draft IEP for eighth grade was appropriate for J.S.

Sometimes children with disabilities like J.S. need social skills and emotional and behavioral supports which are just as important as academics. J.S.'s scores on standardized tests were above average. Her understanding of why J.S. was classified was because he was diagnosed with autism early on in elementary school and that impacted his ability to benefit educationally, and special education services were provided. In sixth grade he had interfering behaviors such as work avoidance and some aggression. Dr. Willard never observed J.S. in school. She agreed that students with disabilities can have above-average academic skills but still have deficits that require special education. A district cannot use cost or unavailability as a reason to deny a student a service. The May 2023 transition IEP meeting at the end of sixth grade was the first IEP meeting Dr. Willard attended for J.S.

Ms. Nikoo had sent an email to the parents that J.S. was no longer eligible for special education per New Jersey code as a result of his test results. This was supposed to be a decision made at an IEP meeting. Ms. Nikoo also stated that J.S. continues to benefit from classroom accommodations and this could be accomplished in a 504 plan. The email of April 6, 2023, at 2:26 p.m. from Erica Nikoo, J.P.'s case manager, was forwarded to Dr. Willard after Ms. L. advised that they were represented by Ms. Carolla and wanted to have a meeting to talk about potential declassification. (R-6 at 42.) Dr. Willard became more involved once she knew parents hired counsel and then the district would have their counsel present at the meeting as well. They would not have a meeting with a parent's lawyer unless they had their own lawyer present as well. Dr. Willard attended the May 23 IEP meeting which Ms. Carolla also attended and resulted in the

IEP draft for seventh grade. (J-14.) J.S. was not going to be declassified. He was going to Harrington, which was a new school for him and the district was going to provide services.

Dr. Willard believed J.S. had fewer behavioral incidents in seventh grade as his aggression had decreased. Her attention was called to his disciplinary records which showed an incident in fifth grade, none for sixth grade and eight for seventh grade. (J-23 at 21.) There were multiple IEP meetings for J.S in seventh grade – March 1, April 26, May 24, June 14, and August 23. Looking at his disciplinary record, she agreed that J.S. had more behaviors related to his disability in seventh grade than in sixth grade. She heard J.S.'s teacher and Ellie Chirip testify that they had to work with J.S. one on one on many occasions when he refused to do his work. Progress monitoring on IEP goals is done three times a year. A student is supposed to be provided with the services listed in the IEP. J.S. was supposed to have a social skills class that he did not always go to and that was not reported to the parents who may have been able to assist in getting him to get the services he was supposed to have.

Sometimes goals can be repeated year after year in an IEP if appropriate if a student is making some progress, even if minimal. However, she said it is possible a discussion be had as to how to change the program or strategies to improve the progress.

Dr. Willard was asked if the district was going to declassify a student, whether it would have been more prudent for the district to reevaluate J.S. based on all previously identified needs as opposed to just the two evaluations recommended by Ms. Nikoo for psychological and learning. J.S. had previously also had a psychiatric, behavioral, speech and OT evaluation when being determined eligible for special education. Her response was that she was not at the reevaluation meeting, but J.S. had previously been tested in all areas of suspected disability and at the reevaluation meeting it was determined that some of the evaluations were not needed in the reevaluation and the parents agreed. Dr. Willard agreed that J.S. had emotional and behavioral concerns and the psychiatrist had diagnosed him with an oppositional disorder. She does remember the May IEP meeting being very cordial and they were all going to work together and have new evaluations done in seventh grade and the district was going to have another thirty-

day review meeting to review eligibility, which was placed in the IEP, but that meeting did not happen. (J-17.)

Dr. Willard agreed that students with disabilities have a right under the IDEA to be placed in advanced classes. The district has to provide supplemental supports and services so they can be successful in those classes if they are smart enough to be placed in the class. That can be provided by the general education teacher and where appropriate by an aide or behavioral support. Dr. Willard said it was her understanding an aide was not provided to J.S. because he was not receptive to that assistance in sixth grade. J.S. was moved from the compacted math class in seventh grade before an IEP meeting was held on March 1.

They do contract with the Learning Well when a child needs more intensive behavior services such as a one-to-one aide or an individualized behavior plan if it is determined by the team that the services being provided were not sufficient.

Dr. Willard testified the seven behavioral incidents listed on his incident report regarding refusal behaviors were not necessarily significant. This is despite the multiple emails from teachers indicating that J.S. was refusing to do his work in almost every class in seventh grade. The teachers were working on this and the ABA person was working on this as well. The ABA person was not assigned to J.S., and she had many students to attend to, but she did provide him with services although it was not listed in his IEP. His special education teacher was providing eighty to eighty-five percent of her time with J.S. Dr. Willard testified that based on that, he was being provided with the services he needed.

More than once during seventh grade the parents reached out to Dr. Willard for help. There were five IEP meetings to try and develop programming for J.S. and the IEP team worked diligently to provide services for him. No additional services were added but the intensity of the services by the teacher and the ABA person increased. There was no behavioral support classroom available in seventh grade. There was a self-contained program but that would not have been appropriate for him because the other students were functioning lower.

Dr. Willard agreed that there were no other classes available that he could move to in seventh grade.

In February, Bonnie Wireback wrote an email to the team that she is going to implement a plan to reduce J.S.'s behaviors of not complying with requests to get off his computer and this was the strategy provided. His computer was taken away, and this was the plan the teachers followed. This plan was not developed pursuant to an IEP meeting. (R-17 at 71.) Even after his computer was taken away in February 2024, it did not extinguish the problems and J.S. continued to have refusal behaviors. Initially it may have improved but then in fact J.S. substituted using a book to avoid doing his work. He was looking at his book in all of his classes instead of doing his work. He was not completing his assignments and teachers had to pull him aside and find other times to do it with him. They would work one on one with him to get his work done. Dr. Willard agreed that J.S. benefited from one-on-one instruction with the teacher.

As early as February 28 the district behaviorist was engaged in trying to address J.S.'s behaviors. (P-10.) Following the March 1, 2024, IEP meeting, a behavioral consult of thirty minutes was added. (J-18.) This was never increased despite the parents requesting additional behavioral support. Dr. Willard does not believe she said no. She also does not believe she said no to the parents request for a one-to-one aide because one was not available. (P-9 at 44.)

In an email of May 4, 2024, Mr. Corrado the science teacher was reporting "J.S. would have plenty of time to get all his worked finished if he would participate in class. He continues to only read his book and refuses to follow directions. If he would do the assignments in class without me having to constantly ask him to put his reading book away he could finish the work for the day and have time left over to catch up on the assignments he refused to do before. He is falling further and further behind at this rate he needs to make a serious change and focus on the things we are asking him to do instead of choosing to do what he wants to do. Hopefully Monday will be the start of better things." (P-9 at 47.)

On May 6, 2024, Mr. Corrado emailed again “Just an update for Monday. J.S. refused to get his computer today during class to the point where I left my class and got it for him. He was supposed to be working on his climate project but instead spent the entire period looking at random maps and did not get any of the thirty-five slides completed. At the end of the day, he walked out of class leaving his Chromebook behind. I asked him five times to get his Chromebook and return it to his homeroom. He ignored me and left the Chromebook behind. I gave it to CST at the end of the day. I am not going to assume responsibility for his Chromebook going forward. I am also not going to retrieve his Chromebook from wherever he left it last class. If J.S. does not come prepared to class and refuses to get his Chromebook, he will just fall further behind. Please communicate to him that at the very least he needs to comply to the simple rules that every student at Harrington must follow. I can’t help a child that doesn’t want to help himself first. I will do whatever I can to try and help J.S. but I can’t force him to do the work. Please try to help him understand the importance of doing the work he is more than capable of doing.” (P-9 at 46-47.)

Ms. S. emailed Ms. Chirip on May 6 “Can we please have the behaviorist and an aide assigned to assist? He could use some strategies to get past this.” (P-9 at 46.) Ms. Chirip responded to Ms. S. on May 7 “I’m going to involve Dr. Willard and get back to you.” (P-9 at 46.) Ms. Chirip forwarded the email to Dr. Willard and indicated that “At this juncture maybe we should offer him assistance through an aide demonstrating our efforts to support him.” (R-17 at 208.)

In response to the parent’s request, on May 7 Ms. Chirip emailed Ms. S. and blind copied in Dr. Willard: “I’ve had the chance to speak with Dr. Willard and Mr. Besler, and it appears that we don’t have a paraprofessional available for this point in the year. However, arrangements are in place for one for next year. In the interim, I’ll be present in the Science class two days a week to provide assistance. Regarding Yvette’s schedule, I’ll await specific information from her before confirming any further plans.” (R-17 at 216.)

Dr. Willard believes Ms. Chirip misinterpreted availability. Dr. Willard was asked if she believed Ms. Chirip would miscommunicate something like this if it was not true.

She explained that one may not have been available at the moment but that is not to say one could not be gotten.

The only service increased in the seventh grade IEP was for a thirty-minute monthly consult with the behaviorist. An aide was not provided.

Dr. Willard testified that she understood J.S. was getting sufficient support from the special education teacher who was working with him. Even despite his shutting down often and not doing his work, she believed the teacher was addressing it.

There was a May 7, 2024, email discussion of what programs may be available, but she was not recommending an out of district placement and neither recommendation – Princeton House or Castle was recommended to the parents. (P-9 at 122.)

At the June 14 meeting the parents advised they were going to place J.S. at Fusion and see how he did.

The July 30, 2024, IEP for eighth grade (J-20) recommended Harrington Middle School for the 2024-2025 year with in-class supplemental instruction, counseling and social skills and no behavioral services or an aide. The district was going to provide more carefully selected teachers. (P-8 at 22.)

The parents were always cooperative and collaborative with the district in trying to get services for J.S.

**Dr. Emily Perlis** testified on behalf of the petitioners. She has a doctorate in clinical psychology with concentrations in neuropsychology and school psychology and completed a postdoctoral fellowship in pediatric neuropsychology in 2006 at Cambridge Hospital at Harvard Medical School. She is a licensed clinical psychologist in New Jersey and Pennsylvania and certified as a school psychologist in Pennsylvania. (P-7.) She is a sole practitioner and maintains neuropsychology practice in Bryn Mawr, PA and performs neuropsychological evaluations. A neuropsychological evaluation is a comprehensive evaluation where information is gathered via standardized tests,

behavioral observations, clinical interview to try and assess a person's neuropsychological strengths and weaknesses with an idea of diagnosis and treatment planning, including making recommendations for educational settings. She administers intelligence and achievement tests and is hired by both parents and school districts. Dr. Perlis makes recommendations to parents and school districts about IEPs and programming and reviews student's IEPs for appropriateness. She typically sees children with learning disabilities, developmental disabilities, autism spectrum disorder, attention disorder, genetic disorders - any sort of disorder affecting learning, cognition or behavior. Dr. Perlis was accepted as an expert in neuropsychology with expertise in the field of programming for children with disabilities, but not as an expert in special education.

Dr. Perlis came to know J.S. when K.S. called her in late spring, early summer of 2023 to schedule an evaluation because the parents wanted clarity regarding their son's learning strength and weaknesses and they were specifically concerned that he had the necessary supports for when he entered seventh grade the following year. Dr. Perlis also learned from the parents that the district was considering declassifying J.S. for special education and that they would be meeting a couple of weeks into the following year to make the decision. Dr. Perlis prepared a report following six hours of testing that was done over the course of two days, which she believed resulted in a valid overall assessment of J.S.'s strength and weaknesses. (P-5.) There were a few parts of the test that may have been affected by inattentiveness or lack of motivation, however that was part of the process of understanding J.S. In addition to conducting the testing, Dr. Perlis interviewed the family, observed J.S. at school, and obtained rating scales and written feedback from some of his teachers. She was satisfied that she had enough evidence to support the opinions in her report. (P-5.)

Ms. Wireback reported her concerns for J.S. were "a cocktail of behaviors that include perseveration, impulsivity and repetitive actions, work avoidance, passive opposition and refusal to work. J.S.'s use of his Chromebook has become out of control in that it encompasses his entire day. He will do anything to get access to it when it's denied."

Dr. Perlis observed J.S. at Harrington Middle School on October 12, 2023, for about an hour and observed J.S. in English Language Arts and in math. In English, J.S. was on his computer reading and Dr. Perlis was told by the teacher that he was supposed to be doing a writing assignment like the rest of the class, but was reading instead because the special education teacher was not there that day which made it impossible for the general education teacher to work through the writing assignment with him because there was no other support in the classroom. In math, Dr. Perlis observed J.S. taking out his computer and reading a book during the lesson. The school psychologist was with Dr. Perlis during the observation, and she made several interventions to get J.S. to put the distracting materials away and to get J.S. back on task. There were two teachers in math class. The teacher would go up to J.S. and ask him to put his book away, which worked briefly and then J.S. would take it out again. At some point, for the last eight to ten minutes of class J.S. did stop and was attentive and did participate in the lesson. J.S. was reading a book on his lap in math when the class was doing a group math lesson. He was not paying attending to the lesson and doing his own thing on the computer and reading a book when he was supposed to be listening. When Dr. Perlis did her testing of J.S., he started off fairly attentive which diminished over time and he became irritable. She was able to redirect him. She gave him breaks and he completed what was sked of him. Dr. Perlis wrote in her report that "He benefitted from movement breaks and was especially interested in looking at his iPad during the break times and he required some coaxing to put it away." It was not an immediate response but working with him one on one she was able to get him off of the iPad to go back to the testing.

Dr. Perlis gave J.S. the DAS-II IQ test which showed that his overall IQ was in the superior range. His scores were above average and showed that he was an intelligent child. J.S.'s fluency scores were low, not because he could not do the test but because he chose to do it his way, making it a more challenging test and taking him longer to do. The BRIEF-2 is a rating scale of executive functioning input for which was provided by Ms. L., Ms. Wireback and J.S. evaluated himself. J.S. did not have any concerns about his own executive functioning, but mom and the teacher reported more challenges. Executive functioning is a broad range of behaviors looking at his regulation of attention and behavior, how flexible he can be, how he organizes himself, how he starts his activities. It is the ability to apply your skills. The teacher's scores show elevations and

concerns in those areas. J.S. was administered the Children's Memory Scale and J.S. did well on the visual memory test. On the story-memory test, J.S. was less enthusiastic and less motivated and could not spontaneously tell Dr. Perlis about it, but when she asked him yes or no questions, he was able to tell her. This indicated to her that he did learn it and remember it but he was not able to spontaneously tell the story back to her. The California Verbal Learning Test looks at verbal learning and memory and showed J.S.'s memory was good. J.S.'s scores on the fine motor test, which is a pegboard test, showed his scores were normal and his fine motor manipulation was mostly intact. Dr. Perlis also gave J.S. the WIAT-4 achievement test which indicated that most of J.S.'s reading skills were within the average range as well as his math skills were within normal range. His math problem solving was a strength and he had much more difficulty on writing tasks including spelling, sentence writing and essay writing. His scores of sixty-six and seventy-eight in essay composition indicated he did not produce a lot of writing and the writing he did produce was not very good for his age. His sentence completion, sentence building and sentence combining were low average scores. His IQ score of 120 was low for him as well. The scores show that writing is a significant weakness for J.S. and that he needs specialized instruction in the area of writing.

The BASC behavior rating scale covers different areas of emotional and behavioral functioning. Input for this scale was provided by mom, Ms. Wireback and Mr. Beyer. Ms. Wireback reported many concerns, more than Mr. Beyer.

Dr. Perlis also did the ADOS test, which is a play-based assessment to elicit communication and to get a sense of whether the child meets criteria consistent with an autism spectrum disorder. She did this because the family had received different opinions from different professionals whether autism was an appropriate diagnosis. J.S.'s presentation during the ADOS was consistent with the algorithm for autism.

Dr. Perlis diagnosed J.S. with autism, ADHD, a learning disability with impairment in written expression, a motor coordination weakness and dyspraxia. Writing was very difficult for J.S., and he displayed significant effort when writing, which Dr. Perlis believed was consistent with a developmental coordination disorder or a motor-based disorder. She also diagnosed J.S. with dysgraphia a disorder of written expression. She added

dyspraxia because she felt that there was something specific about the actual mechanical aspect of writing that was hard for J.S. It took him a long time to write and it was effortful. (P-5 at 13.)

With J.S.'s profile, she would expect him to receive special education in the area of writing. Scribing is not special education; it is an accommodation. J.S. would need assistance with all aspects of the writing process including generating ideas, getting the ideas down, editing, and organization of his writing.

Dr. Perlis' first recommendation was that J.S. continue to receive special education. The behaviors she observed and received input on were related to J.S.'s disabilities.

Her second recommendation was that an FBA be done to better understand what was happening during the school day and why J.S. was engaging in those behaviors which significantly interfered with his education.

Dr. Perlis' third recommendation was for J.S. to have counselling and social skills sessions because the family had said there were concerns with bullying in the previous school year and with an autism diagnosis social interactions were an area of need for him and he needed that support in school.

The fourth recommendation was to work on executive functioning concerns to help J.S. become more organized, more responsible for his own schedule and being more attentive, which would be either a supported study hall or learning support classroom where J.S. learns how to get started easier and be more organized.

Dr. Perlis' fifth and sixth recommendation related to writing and when she saw him, he was receiving support for writing in the in-class resource model and she felt that should continue. The sixth recommendation was a general recommendation for supporting the writing process and helping him with writing.

The seventh recommendation was for an occupational therapy evaluation because Dr. Perlis stated J.S. had slow visual-motor processing speed and that he did not like to write. She thought it would be helpful to assess whether he could benefit from occupational therapy services or assistive technology where he could become more independent in his writing, if it was not going to be with using a pencil.

Dr. Perlis' eighth recommendation was regarding his slow visual motor speed, fine motor weaknesses and academic fluency and that since it would take him longer, he would need extended time on tests.

She provided J.S.'s parents with her written report and they shared it with the district.

J.S. is a bright child and if you are only looking at him that way, you would expect him to be successful, but his disabilities certainly get in the way of success. However, with the right supports J.S. could be successful. She believes his work avoidance behavior and his writing disability interfered with him at school and with his ability to be successful.

When Dr. Perlis observed J.S. in August and October of seventh grade, she agreed that his autism, ADHD and writing disabilities were interfering with his ability to learn at school. He had executive functioning deficits, trouble paying attention, refusing to work and was emotionally inflexible. J.S. was inflexible with Dr. Perlis when she was asking him to do tasks, but she was able to redirect him when it was just her and J.S.

Dr. Perlis had a chance to review J.S.'s sixth grade IEP which noted concerns with J.S.'s behavior. (J-13 at 3.)

Dr. Perlis reviewed the seventh grade IEP drafted May 23, 2023, and was concerned it did not have any behavior consultation because the behaviors, inattentiveness and focus she saw and that were reported required more supplemental services than what is contained in this document. There needed to be more of a systematic addressing of his behaviors. The seventh grade IEP at page eight contained

behavioral interventions which were in place at the time she went to see J.S. because this is the IEP that was in effect. From what she was seeing and what was being reported, these interventions were not being implemented in such a way that J.S. was focusing, paying attention and doing what he was supposed to be doing in class, which is why Dr. Perlis recommended an FBA.

She later learned an FBA was completed near the end of April 2024 but was something that should have been done much earlier. An individualized behavior plan was developed at the end of seventh grade and at some point, a behavioral consult was added to the seventh grade IEP.

When Dr. Perlis sees a child with behaviors interfering to the level that she saw with J.S. and escalating she would recommend an IEP meeting to discuss changes or support and services. If she saw J.S. not doing his work during class and the work was being sent home on a regular basis for his parents to do because he was reading a book or on his computer, that would not be an appropriate program. Also being pulled aside on a regular basis to do work one on one with a teacher that he refused to do during class would also not seem to be an appropriate program.

Dr. Perlis saw his goals for seventh grade, which included a reading goal which was not an area of concern. He had a writing goal that involved capitalization which she thought was appropriate because he only wrote in capital letters for her. The third and fourth goals were for writing, which Dr. Perlis thought were appropriate because J.S. had a big area of weaknesses in writing. Dr. Perlis would have wanted to see progress on these writing goals in order for J.S. to have an appropriate program in seventh grade.

J.S. also had social-emotional goals which Dr. Perlis also saw as weaknesses for J.S., and she would have liked to see progress in those areas.

Progress monitoring for seventh grade indicated that J.S. made gradual progress on his reading goal. All of his writing goals indicated he was progressing inconsistently which indicates it was not effective consistently. When you see something like this you would expect an IEP meeting to be called and try to revise the program. You would not

suggest that he have the same program for the following year. The progress monitoring shows that J.S.'s program was not working. (J-23 at 12.)

J.S.'s progress monitoring for his social, emotional and behavioral goals (J-23 at 18-19) indicate that except for #9, all show inconsistent progress, which gives Dr. Perlis concern because it does not seem to be working. It shows the seventh-grade program was not appropriate. She would have recommend a different program for eighth grade based on the lack of progress shown.

Dr. Perlis is aware that J.S. got passing grades in sixth and seventh grades and even some As but that does not affect her opinion on whether the seventh-grade program was appropriate because she is evaluating the program based on his progress in his areas of need. She does not know what J.S. produced to achieve those grades and what the grades were based on.

J.S.'s greatest area of need was his behavior in the classroom, work avoidance specifically around writing and the quality of his writing. Dr. Perlis has not seen or reviewed anything that showed J.S. made appropriate progress in those targeted areas where he really needed help. Dr. Perlis has had the opportunity to review the district's offer of programming for eighth graders. (J-20.)

The IEP proposed for eighth grade placed J.S. in-class supplementary instruction for language arts, math, science and social studies for eighth grade at Harrington Middle School which was the same program J.S. had in seventh grade, except the counselling services were reduced and the behavioral consult was taken away. She questions why there is no behavioral consult in the IEP. J.S. did not have an appropriate program in seventh grade because his behaviors were not appropriately or sufficiently addressed. The district offering the same program for eighth grade with less supportive services does not seem appropriate to her.

At the end of seventh grade a behavior plan was developed for J.S. and was added to the seventh grade IEP. According to the information Dr. Perlis had, the interfering behaviors did not decrease for the remainder of seventh grade. Even if it was included

in the proposed eighth grade IEP, it does not say who is implementing or evaluating the effectiveness of it, so without a behavioral consultant, it would not be appropriate.

Dr. Perlis does not believe the seventh grade IEP provided J.S. with FAPE. She also does not believe that offering the eighth grade IEP placing J.S. back at Harrington with less supplemental services was FAPE.

There came a time when Dr. Perlis learned that J.S. was attending Fusion Academy which is a private school. J.S.'s parents reached out to her, and she went at their request to observe J.S. at Fusion in December 2024 and prepared a summary of her observation of J.S. at Fusion. (P-6.) She observed J.S. receive one-to-one instruction for academics. She is aware that Fusion is not on the New Jersey approved list of schools for students with disabilities. She is aware that it is accredited. She observed a small group of students and there was a large room where they had a lunch café and that there also was another room that was a quieter café. There were some group activities. She observed J.S. in a group of about eight students decorating cookies together and J.S. appeared to be social and engaging. She observed J.S. in a lesson on the economy after World War I. J.S. was reminded at the beginning of the lesson not to open Minecraft. There were a couple of attempts during the lesson to get on his computer, but for the most part he did not do that. The teacher was able to effectively redirect him because it was one on one instruction. He was participating in the discussion but required prompting, which is not surprising because that is part of his disability. The teacher was not doing the work for him. She observed J.S. in a class where he had to read and then there was a discussion and the teacher asked him to write some sentences which he was not happy about, but he did do it and wrote on the board. Dr. Perlis' impression was that he was doing work, he was socializing a little bit during free time. It seemed to her that he had made a fairly positive transition.

Dr. Perlis did not expect J.S. to go to Fusion and not have any work avoidance behaviors or other behavior because it is part of his presentation and will take a long time to change that. She believes Fusion was appropriate for J.S. because he was comfortable, he was producing work and he had opportunities for socialization that was comfortable for J.S., and he was getting things done. Dr. Perlis believes that the one-on-

one instruction at Fusion was more appropriate for J.S. because he was doing what he was supposed to be doing with the support he was given. She has learned that J.S. has received passing grades at Fusion. She believes he is getting a benefit from attending that school because he has been presented with academic material that he is completing. From an emotional health perspective, he is comfortable going there and seems to have been making friends and having a positive relationship with an educational environment that hopefully can be built upon, so she thinks it is appropriate that J.S. attends Fusion.

She would agree that J.S. continues to need supports and services based on his profile and would not expect these behaviors to extinguish without significant services and time and maybe not even ever.

On cross, Dr. Perlis stated that she is not a medical doctor, but she can make an autism diagnosis. She was not aware of a New Jersey regulation that specifically requires a medical doctor to diagnose autism. When she observed J.S. at Mt. Laurel, she never observed him with his special education teacher, Ms. Wireback. She was aware that J.S. had a classroom aid in sixth grade. Dr. Perlis did not review the behavioral consultation report (J-9) and was not aware this was completed. She reviewed the recommendations one through seven made in the report and agrees they are consistent with her recommendations.

When Dr. Perlis testified that she did not know what J.S.'s grades were based on, Dr. Perlis did not review the curriculum at Mt. Laurel or at Fusion. J.S.'s standardized testing results from fifth grade show he was making academic progress then. (J-23 at 27-31.) She did not review his standardized test results for sixth or seventh grade and did not ask to review them. J.S. did have an occupational therapy (OT) evaluation in 2024, and the results indicated that he did not need any OT. She disagrees that there could not be some supports for J.S. in that realm.

The seventh grade IEP recommended behavioral interventions. (J-17 at 8-9.) These were similar to the recommendations made by Dr. Perlis in her report. (P-5.) Dr. Perlis does not know what services were provided to J.S. outside of his IEP. Dr. Perlis

did not recommend a one-to-one aid for J.S. Dr. Perlis was being compensated for her appearance at this hearing by the parents.

Dr. Perlis' report indicated that J.S. had been formally diagnosed with autism by a medical doctor, psychiatrist Alexander Strauss, M.D. in March 2023 and she was doing her report in follow up to someone who had already diagnosed J.S. with autism.

Scribing is a modification that could be helpful to J.S. if they were trying to learn what his knowledge base was about a certain topic. Scribing should not replace specialized instruction for a student with a writing disability unless J.S. was telling the scribe when to capitalize, how to spell all of the words, when to indent for a paragraph, when to use a period. It is hard to get that particular instruction if J.S. is not producing the work either by writing it or typing himself or by editing something he may have dictated in voice recognition.

If the district was doing everything that Dr. Perlis recommended and J.S. was still having escalating behaviors, her recommendation would be to do an FBA to see if a programming change or additional supports were needed.

Dr. Perlis considered the setting that would be the least emotionally impactful for J.S. and she considered providing one-on-one teaching the most effective way of working with J.S. at that time. There may have been another option that was less restrictive, but between the two, she considered Fusion to be the most appropriate least restrictive environment. Dr. Perlis was aware that J.S.'s IEP required him to be with general education students eighty percent of the time and that was not done at Fusion.

**Douglas Albright-Pierce** testified on behalf of the petitioners. He is the Head of School at the Fusion Academy campus in Cherry Hill. It is a fully accredited private school serving students in grades six through twelve. They have five schools in the State of New Jersey. Fusion is accredited by Cognia, which is a national accrediting body as well as Middle States which is a regional accrediting body. To be accredited, a school is subject to an external or independent review of the school's academic program as well as other programs the school provides and is reviewed for quality and integrity. Mr. Albright-Pierce

started at Fusion in 2016 as an economics and math teacher and in 2022 became director of admissions and then Head of School. He has a dual bachelor's degree in German and economics and a master's degree in educational leadership. He does not hold any New Jersey certifications. Fusion is not a New Jersey approved school for children with disabilities. Fusion has nondisabled students and there is no requirement that a student have an IEP or 504 plan to attend. School districts do place children at Fusion and pay for them to attend. These students are placed at Fusion via the Naples Act. Fusion does have some public schools bussing their students there.

Fusion's mission is to ensure that their students are thriving academically, socially and emotionally through a completely customized school program and matching them with mentors who can help guide them through their middle school and high school journeys. Each academic class is taught with a student-teacher ratio of one-to one for all core academics and most elective classes. Outside of the classroom setting students can participate in their homework café periods which are always supervised by a homework café teacher. There are opportunities for students to participate in groups, clubs, activities and school events and participate in homework activities for the day, so they do not take home any of their homework. Socially, every Tuesday they have a student meeting where all of the students come together to meet and talk about events and upcoming activities. They choose Fusion Fun Fridays, which is their field trip equivalent, but it is not mandatory but highly encouraged. They have lots of different activities during the week such as mini-holiday celebrations, movie days, board games and different learning events such as symposiums.

During the 2024-2025 school year they had twenty to twenty-three full time students at Fusion. The teachers are not required to be special education teachers and are not required to be certified by the State of New Jersey as teachers. Their teachers must at a minimum have their bachelor's degree in the subject matter they are teaching, and they go through an interview process that tests their ability to instruct on a one-to-one basis. Fusion does not offer related services such as occupational or speech therapy. Any related services that a school district wants to provide would allow space to bring in their provider.

When a student comes to Fusion, they review their transcript to see what courses they need to earn their diploma. They have a planning meeting with the family and their director of student services to review courses that they recommend as well as allowing the student to choose electives. The Fusion curriculum is aligned to the state Common Core standards. They would review a student's IEP to work to implement policies, strategies or individualized programs for the student-based on those documents but they do not follow the IEP as it were, they use it to inform their instruction and to provide supports.

Fusion supports students with autism, ADHD, executive functioning difficulties and the gambit of specific learning differences such as dysgraphia, dyslexia, auditory processing disorder, dyscalculia, dyspraxia and students with anxiety, depression or other social-emotional diagnoses. School refusal has been a big issue for them since the pandemic. P-15 is information from Fusion's website. A student needs 230 credits to graduate. A sampling of college acceptances is also provided as well as course offerings.

J.S.'s parents are privately paying for him to attend Fusion. Mr. Albright-Pierce took an inquiry call from J.S.'s mother early last year and she gave him a little background on J.S. and that they were looking for him to be in a smaller educational setting personalized to him that could provide him with the tools to be successful. During their initial conversation there was mention of bullying and reluctance to participate inside of his classes. As director of admissions, he primarily met with both moms and met J.S. after his admission meeting with their then head of school, Michele Blasberg. The first time he came to Fusion was the summer 2024 as a tutoring student. The atmosphere is more relaxed than it usually is during the school year.

At the middle school level, each year of content is going to have two terms, sixty sessions of classes split into two thirty-session semesters. Each session is fifty minutes long of instruction and each session has a fifty-minute homework café period for the student to complete any independent practice that they are assigned for that class. The core classes are English, math, science and social studies. Both the silent and social homework café is the only classes that will have more than one student and is supervised by a teacher to help get the students get started on their assignments and provide them

with direct academic support should they have any questions or concerns. Everybody on campus knows strategies that are effective in supporting students with initiating and organizing themselves in the homework café.

The Mount Laurel School District came out to observe J.S. during the summer program at Fusion. (J-22.) On a traditional day in an academic setting J.S. would not be permitted to have a gaming device.

During the summer program J.S. was permitted to have one of the school laptops with him when he was inside the homework café space. The laptop was brought up as a concern for his attention. The laptop or any piece of technology was a preferred activity for J.S., and it was very difficult for him to transition from the preferred activity to the lesser preferred activity such as a class. He required a lot of multiple prompts, a lot of redirection, a lot of reminders for him to shift away from the technology to the class activity. After redirection, he would not refuse to get off the laptop, but he would negotiate for more time. It impedes his ability to get started on his work, but it does not prevent him from doing his work in class.

It is part of the Fusion core philosophy to get the students' work done on campus and relieve their families of navigating that at home. J.S. has participated in the homework café and got his work done with the teacher support they have. Mr. Albright-Pierce worked with J.S. directly while he was supervising the homework café. Every Fusion course has a ten-minute passing period before the start of the next class and J.S. usually will participate in reading or computer in the ten-minute passing period, so it is important to give him a heads-up when the transition is about to occur. Mr. Albright-Pierce would give J.S. a five-minute heads-up that homework café is starting and he needs to wind down his laptop time and look at his to-do list. Every student at Fusion has a to-do list that has all of their assignments outstanding as well as completed assignments on their student portal that they use to help keep the students organized with due dates as well as how much work there is to do. After five minutes, he would go back and say the time is up and J.S. would ask for five more minutes and then they'd go back and forth some more, but ultimately, with heavy prompting, he would place the laptop aside and

participate in work. He has built up a rapport with J.S. over months of working together and overall, he believes the prompting has lessened.

Fusion issues a diploma from Fusion upon graduation, just like any other private school and it is accepted by colleges.

J.S. enrolled in the fall 2024 as a full-time student at Fusion. He took the core classes of English language arts, math, social studies and science and also had electives. J.S.'s unofficial middle school transcript indicated he took English A, Language Arts 8A, modern history A, pre-algebra, and physical science. (P-15 at 7.) Language arts is more focused on the technical components of the English language such as differentiating types of nouns, adjectives, verbs and sentence structure where English is literary-focused. Reading versus writing. By the end of the year J.S. will have taken the second term of all of these courses, designated "B" as well as a group art class. He passed all of his classes. J.S. has not been disciplined since attending Fusion. The laptop has been a positive reinforcement mechanism for J.S. so if he is following expectations, he is rewarded with laptop time during the homework café periods.

Mr. Albright-Pierce taught J.S. a couple of times in math during the winter term and did not have any difficulty with him and the computer while teaching him because he did not have his computer on his person coming into class. He has fond memories of J.S. and described J.S. as sassy with a great sense of humor. J.S. likes to do things in his head as much as possible and they know that fine motor control is difficult for him and handwriting is a struggle and thinks that is where it comes from. He and J.S. developed this back and forth where J.S. would say he was right, and Mr. Albright-Pierce would say prove it and have J.S. write it on paper and Mr. Albright-Pierce would do the problem on the side and compare answers and if J.S. got it wrong, he would have to write it out. J.S. begrudgingly did it and figured out where he made the mistake and that is how they operated. He was able to do this with J.S. because they were working together one-to-one for fifty minutes.

During the summer tutoring session, J.S.'s teachers provided daily summaries of their sessions. (P-17 at 5.)

J.S. has attended school regularly at Fusion and there have been no problems with his attendance since he started at Fusion. The family was up to date with all payments to Fusion. (P-15 at 8.)

J.S. has participated in the Fun Friday field trips at least once. The Fun Friday trips are every other month or once every quarter of a semester. J.S. has participated in other social events at Fusion including the fusion face-off events and holiday events and games such as Uno and Apples to Apples which involve other students some of which are disabled and some which are not and staff as well. Mr. Albright-Pierce has seen J.S. engaging positively with his peers.

Daily summaries for J.S.'s classes include an entry for January 29, 2025, by Sarah Collins who was teaching J.S. language arts and is a special education teacher. (P-15 at 3.) It can be difficult for J.S. to navigate transitions independently from a free period such as lunch to class and he would need prompting. If students do not do their homework they have an extended homework café on Fridays to catch up. J.S. has completed all of his work with the prompting and support provided.

Diane Willard reported in her observation that the teacher, rather than J.S. did the work. Mr. Albright-Pierce disagreed that this occurred as the teachers do not do the work for the students. All he could think of was that a teacher provided a step-by-step problem for the student to see from start to finish. The sessions do not end early. After a class, the students have ten minutes of free time and in the common room there are puzzles set up and other activities in the social homework café. School is always open on Fridays and even if every other month there is a field trip on Friday, students can choose not to go and they also have extended homework café.

J.S.'s case manager also came to observe Fusion on the same day, and she reported that J.S. needs prompting to transition back to class after being in the café, which he would agree with as well as J.S. needing significant amount of prompting to transition between activities and initiate independent work. (J-22 at 4.) She wrote "His current one-on-one instructional setting while beneficial in providing individualized support may be

fostering dependence rather than encouraging self-sufficiency.” Mr. Albright-Pierce addressed this that J.S. being in eighth grade as a student with autism and ADHD required more scaffolding to reach independence. J.S. benefits from a lower teacher- to-student ratio. J.S. is capable of academic success but requires structured support to build independence.

An Individual Reassessment of Commitment (IROC) are student specific goals that can cover social/emotional, academic, behavioral and post-secondary goals that a student has. The teacher, student and the parent can participate. These are not like IEP goals that are legally binding. These goals are based on the highest order of need and the student’s personal goals and the goals of the family. The IROC goals were developed for J.S. November 7, 2024. (R-20.) Progress was reported on these goals on March 29, 2025, IROC report after they had gathered data for J.S. after he started at Fusion. (R-29.) The goals are rated 0 to 5 with 0 being no progress and 5 representing that the goal has been met. The first goal was that J.S. would answer all homework questions in complete sentences and would provide text evidence where instructed. He received a 2 on this goal and the teacher noted that J.S. had started to submit assignments without any work attached. The second goal was that J.S. will be an active participant in fifty percent of Homework Café events and activities per month. J.S. received a 2 for this goal and the teacher noted that he does participate in some activities, however, he usually declines. He has signed up to attend the Fusion Fun Fridays but does not always make it to the event. J.S. will sometimes participate in Community Meeting after a few requests to join. J.S.’s third goal was that he would report to class within five minutes of the start time and no more than one reminder. J.S. got a 1 on this goal and the teacher notes that J.S. requires several reminders to come to class and is typically late. He acknowledges the reminder but does not make his way to class. Often there is refusal or continued delay. Mr. Albright-Pierce explained that it is not that he refuses to come to class at all, but that he does not come when he is supposed to and without asking for more time. These scores do not indicate that J.S. is not making progress at Fusion. A score of 2 or 3 shows the goal is appropriate and that they need additional support. A one means that there is more support that needs to be provided to help the student achieve this goal.

J.S. has attended Fusion all through the year and completed all of the academic requirements for eighth grade. He has not received any discipline for his behaviors. His parents have participated in all aspects of planning that Fusion needed them to participate in and have been cooperative and supportive of J.S.

Mr. Albright-Pierce believes J.S. is benefiting from being at Fusion in building positive relationships with adults and sustaining and developing positive peer relationships. He has seen J.S. participating very positively in a mix of social situations. J.S. still has a continued need for supports and services and children's development takes a long time. There is a lot of time, practice, repetition, reinforcement of skills needed to be maintained over the course of several years with supports and scaffolds gradually taken away as a student can demonstrate that they can do things independently.

As a full-time student, J.S. would have taken the Measures of Academic Progress (MAP) assessment which is used to identify areas of strength and areas of additional support for a student. The MAP assesses students' skills across reading, language use and mathematics. It is the only standardized test used by Fusion and is administered to students twice a year.

Fusion teachers and administrators would make a decision to remove the computer during his down time if that was impeding his ability to get his work done and then they would follow up with the parents to let them know so they could sign off and agree on the strategies that they wanted to implement. The parents did agree that the school could take away the computer as a consequence. Not having his computer as a consequence was in between passing periods. He would put the computer back on the laptop cart and then pick it up if he needed it for his class. So, it was just a matter of when he would have access to it during his downtime, not that he would have completely restricted access to the computer.

During Dr. Perlis' observation of J.S. at Fusion on December 5, 2024, J.S. was on a break using his laptop when the teacher said the five-minute break was over. J.S. asked for another minute, and the teacher said no and took away his laptop and asked him to complete a written chart on the wall. J.S. immediately stood up and completed this task.

(P-6 at 2.) The computer was not blanketly taken away from J.S. in such a way that he was prevented from doing his work in class.

Mr. Albright-Pierce did not know if any of the teachers at Fusion scribed for J.S.

The support provided to J.S. at Fusion was one-to-one instruction and group social settings. During his eighth-grade year at Fusion J.S. was enrolled in the tutoring and mentoring courses which met every other day in February and at other different times depending on the classes and teacher availability. (P-15 at 13.) J.S.'s transcripts indicate he received B grades. (P-15 at 7.) These were based on the work that J.S. did and graded according to the Fusion rubric in their learning system and are real.

Mr. Albright-Pierce appeared at the hearing pursuant to a subpoena and was not being paid for his testimony.

As a mastery learning model, Fusion makes sure their students independently demonstrate that they can complete the learning objectives before moving on to the next level.

**K. L.** testified on behalf of the petitioners and is one of the mothers of J.S. She lives in Mt. Laurel with her spouse, K.S., their son, J.S. and their pets and have lived there seventeen years. J.S. turned fourteen this past summer and is their only child. They had him evaluated for early intervention when J.S. was two and a half for some minor delays, but he did not qualify for early intervention and caught up. He was first diagnosed with ADHD by his primary care physician, Dr. Melissa Labroli who has treated him since he was four months old. He was diagnosed by Dr. Charles Trigiani with autism following second grade through evaluations done in the summer of his rising third grade year by the Mt. Laurel School District CST. What led them to seek out services were J.S.'s inflexibility, difficulties in transitioning from a preferred activity to a less preferred activity, staying on task and focused, picking up on social cues, difficulties writing, staying organized and work avoidance were all things affected by his disability. He experienced increasing anxiety as he got older. His strength is that he is smart. He was found eligible for special education and given an IEP in third grade.

J.S. has had a psychiatrist, Alexander Strauss, since Spring 2023. They also have J.R. Griffin as a parent-child integrated therapist (PCIT), which provides family therapy. J.S. has been prescribed a Ritalin-type medication by Dr. Strauss for focus since 2019. J.S. also has eczema which can worsen with stress and is prescribed hydroxyzine to relieve itching but also is an off-label medication to relieve anxiety which is why it was prescribed by both J.S.'s dermatologist and psychiatrist.

J.S. is in Hebrew school working towards his confirmation in tenth grade. This is post bar-mitzvah religious education. He has been a boy scout since he was four or five years old. They are involved in mountain biking. J.S. loves to ride his bike, tabletop games, Dungeons and Dragons, and the card game Magic the Gathering. He played board games a lot in summer camp at YMCA the Pines for a few years. He is athletic but does not like the competition.

Erin Munch of Summit Evaluations is a school psychologist they hired in 2019 to get the school on board with the parents' beliefs that they needed to evaluate some of J.S.'s learning challenges. (P-1.) The parents were referred to her by their pediatrician, Dr. Labroli. The parents requested an FBA at the end of first grade, but the CST declined to do an FBA.

Ms. Munch prepared a consultation dated December 10, 2022. (P-1.) Ms. L. shared with the evaluator emails from J.S.'s sixth-grade teachers, Ms. Fredericks and Ms. McKeever regarding J.S. being on his computer when he should not be, being on YouTube, being off task, reading at inappropriate times and having to send homework for J.S. to complete since he would not do it in school. (P-1 at 2-3.) Teachers reported to the parents that in sixth grade J.S. was avoiding his work. Ms. Munch recommended that a goal be added to J.S.'s IEP regarding his work completion. She also made other recommendations including doing an FBA. (P-1 at 4.) The information in the consultation was shared with the district because the parents wanted to contribute as much as possible and bring as much information and suggestions as they could. They always advocated for positive reinforcements.

On March 13, 2023, Dr. Strauss provided a letter confirming J.S.'s diagnoses of Autistic Spectrum Disorder, Attention Deficit Hyperactivity Disorder – Combined Type, fine motor impairments and learning disability. (P-2.) The parents requested Dr. Strauss provide this letter because the district was considering that J.S. was no longer in need of services.

Christina Costanza is an occupational Therapist with Sensational Kids in Marlton, N.J. who worked with J.S. for about a year, once or twice a week to address fine motor issues such as writing and typing that the teachers were reporting he was having difficulty with. (P-3.)

Sixth grade was J.S.'s second year attending Hartford School. The parents had another consultation with Ms. Munch because the district was considering declassifying J.S. in March 2023 and they wanted advice on what to do. (P-4.)

The parents received phone calls and emails from Ms. Fredericks and Ms. Nikoo in sixth grade regarding J.S.'s behaviors at school including work avoidance and J.S. being on YouTube and how to get him off YouTube which was accessible on his Chromebook in sixth grade. They did not have YouTube at home, so this was a new problem for the parents as well, although they knew he had a fixation with devices. J.S. had a lot of behaviors at school and would get frustrated and not do his work. (R-6 at 18.) Ms. L. responded that J.S. can become hyper focused/mono focused on two areas which they were aware of games, videos, even epic and reading. (R-6 at 22-23.) These behaviors are struggles that are consistent with J.S.'s history and it is her understanding that these behaviors are related to his disabilities. J.S. leans on these activities to escape stress. Ms. L was a very communicative parent and tried to make herself available and be as supportive as possible at all times.

In October 2022, in sixth grade, the parents received emails reporting that J.S. was having difficulties completing his work, being on his computer watching YouTube or other sites and when the computer was taken away, reading a book when he should not have been. (R-6 at 24.)

No one from the district suggested convening an IEP meeting during sixth grade to see if more supports and services could be added to his IEP, as adding services would be the opposite of declassifying J.S. J.S.'s sixth grade IEP had in-class resource language arts, social skills instruction group and a classroom aide. (J-13.)

During sixth grade, J.S. was subject to bullying, which they reported. He had brought in a cupcake to share, and the other children were mocking him, tossing the cupcake around saying don't touch it, J.S. touched it, he's gross and by the time somebody noticed the item was being tossed around, J.S. was accused of throwing food. J.S. was signaled out for being different and being mocked for his eczema. Another instance was when J.S. was leaving class in a rush because the mocking was so bad and another student, who was one of the regular perpetrators bumped into him and shoved him into a locker, calling him "weak" causing J.S. to drop his homework. This happened behind Ms. Fredericks back. Ms. L went back with J.S. to get his homework and reported it to Mr. Maldonado. She believes they filed at least one HIB claim during sixth grade. There were five kids in particular that were giving J.S. a hard time in sixth grade and the class in general was becoming hostile enough that the teachers sent an email indicating that a 'restorative circle' was being implemented for the whole class. During a field trip at the end of the year Ms. L. saw another student shove J.S. Later on, the principal reported that J.S. had been in an altercation with a group of students. J.S. told his mother that students were continually shooting him in a laser tag game and ganging up on him in a mean way which ended up in a fight with several students on top of him. Ms. L. felt her son was not being treated kindly by his peers in sixth grade and she saw him change from an outgoing, friendly child wanting to make friends with everybody, to becoming more socially reluctant. The HIB they filed was determined to be unfounded.

Initially the parents were concerned about the autism classification and wanted OHI because he has autism, ADHD, social deficits and written expression deficits. They initially decided to change the classification because autism is what was most affecting him. Up to that point, ADHD was what he was being treated for most effectively and they saw a big improvement when J.S. went on stimulant medications, which were a big game changer for J.S.

In 2019, the district had done six evaluations of J.S. (J-13 at 2-3.) He was re-evaluated in 2023, which was four years later, as opposed to three years for reevaluations on the recommendation of Ms. Nikoo. The district did a psychological and educational evaluation and a behavioral consultation report. (R-2 at 2.) Ms. L had requested that an FBA be done, but Ms. Nikoo told her they were understaffed and it would be okay if she just did a behavioral consult report so they could do as much as possible for J.S. as soon as possible. That is why the parents consented to whatever Ms. Nikoo was offering at the time.

Ms. L. did not know that J.S. was not attending his social skills class until she heard Ms. Nikoo testifying at this hearing.

J.S. did pass his classes in sixth grade and did well in the statewide testing, although there was a little bit of a decline from the year before. She does not believe J.S. had a good sixth grade year as the social climate in the classroom was untenable and they received constant emails and calls that J.S. was not accessing his aptitudes as the screen was becoming such a hindrance. In sixth grade he still struggled with his writing and written expression. His work avoidance using the computer increased in sixth grade based on the number of calls the parents were getting.

The sixth-grade progress monitoring lists J.S.'s social, emotional and behavioral goals for the first quarter. (J-23 at 5.) Ms. L. feels that he did not make appropriate progress towards these goals.

The educational evaluation indicated that J.S. struggled with following teacher directions, rushed through his work and was stubborn, and attempted to use his computer during class time. (J-7.) The psychological evaluation by Ms. Nikoo documented that J.S. was not consistently following teacher directions, was on his computer when he was not supposed to be and was reluctant to participate. (J-8.) The behavioral consult report indicated that J.S. was observed January 12, 27, February 8 and March 9, 2023, and was observed going on YouTube and not following directions. (J-9 at 2.)

On March 7, 2023, before an IEP meeting was held, Ms. Nikoo called Ms. L. and advised her that the educational and psychological testing revealed that J.S. was no longer eligible for special education because his academic scores were too high and that the district was going to put together a 504 plan instead of offering an IEP. The parents were shocked by this news as they believed J.S. needed more support and not less after the sixth-grade year that he had. This is when they contacted their other supporters, including Dr. Strauss and other providers, to provide letters in support of J.S.'s needs. This is also when the parents decided to retain Ms. Carolla to advocate for them. On April 23, 2023, Ms. Carolla sent a letter of representation to the district. (P-8 at 1.)

An IEP meeting was conducted on May 25, 2023, and the district agreed to continue J.S.'s classification and agreed to have an eligibility meeting at the end of the first marking period to review J.S.'s eligibility for continued special education and related services. (J-14 at 1.) After the IEP meeting, parents, through counsel requested numerous changes to the draft IEP, including in-class supplementary instruction for all academics, social skills instruction, changing 'father' to 'parent' next to K.L.'s name, noting his diagnosis of autism and including parental concerns. (P-8 at 7-8.) The finalized IEP incorporated many of parents requested changes and compromised language regarding behavioral support, including that J.S. responded better to positive reinforcement. (J-17.) The parents did not expect J.S. to be exempt from the discipline code, only that he responds better to positive reinforcements rather than punishment and fear was a bad motivator. They were requesting that positive behavior interventions be used first instead of discipline.

Although J.S. was supposed to be in-class supplementary instruction for compacted math in seventh grade, Ms. Nikoo emailed the parents to advise that the general education teacher would be providing the supplementary instruction if he took compacted math and there would be no special education teacher present. (R-6 at 59.) J.S. did poorly in compacted math in seventh- grade from the beginning with no special education teacher and no aide present. The district offered Ms. Dobleman to help when she could but she was not consistently assigned to J.S. as a one-to-one aide. J. S. was mathematically advanced and had been in advanced math since third grade. The parents

agreed to move J.S. to a less challenging math class because he was failing. The district did not schedule an IEP meeting or offer him more support before moving him.

In seventh grade, J.S. was disciplined starting in October, November, and then February and May of 7<sup>th</sup> grade for electronic usage/ inappropriate use of his computer or not listening to his teachers when he was told to stop. (J-23.) The distraction and work avoidance due to the computer continued for all of seventh grade. Ms. Wireback, the special education teacher, was very communicative with the parents.

In February 2024, the district informed the parents that J.S. would not be able to use his Chromebook computer in school anymore. (R-17 at 171-174.) Ms. Chirip, J.S.'s case manager telephoned the parents to report they were taking this step. Ms. Wireback also came on the call with J.S. and said she believed it was a crisis situation for J.S. J.S. responded that he was upset, but not in crisis. He said he was upset because they took his Chromebook away and asked how he was going to be able to do his work without the computer. Ms. Chirip said that they would find other ways to deliver the curriculum that did not involve the Chromebook. This plan was presented to the parents, and they did not have input. This is when things were getting more discipline oriented. Work refusal continued in school and removal of the Chromebook did not change that. The parents worked with him at night to complete the work he would not do during school so he would not fail. The Chromebook was taken away from J.S. for a long time.

A February 28, 2024, email from the parents requested an FBA and an IEP meeting and inquired if a sensory profile had been completed by the OT as requested. (R-17 at 174.)

After the computer was taken away, J.S. continued to avoid doing work at school by reading a book. Parents complied with requests to stop sending J.S. in with a book, but that did not help as the school was full of books and he just took books from the school to use in order to avoid doing his schoolwork. J.S.'s grades were dropping mostly due to incomplete work in all of his classes. The parents worked on J.S.'s schoolwork with him at home one-to-one and were able to complete the work so he would pass the classes.

An IEP meeting was scheduled for March 1, 2024, and parents asked for support for J.S. The district offered behavioral intervention group consultation services once a month for thirty minutes. (J-18 at 1.) The district also agreed to do an FBA which was not completed until the end of April. They continued to ask for more supports for J.S. whether with the behaviorist or a one-to-one aide. Ms. L. indicated that if Ms. Dobleman or someone like her was J.S.'s aide consistently they might have had a better response. An aide was not provided, whether it was because it was too late in the year or because of availability.

The science teacher, Mr. Corrado became very upset with J.S. for his behavior in not doing his work or following directions and blamed J.S. saying if he just would do his work, he would not have any trouble. (R-17 at 207.) In response to Mr. Corrado's emails, on May 7<sup>th</sup> the parents requested a behaviorist and an aide to assist and provide J.S. with some strategies to get past this. (R-17 at 207.) No behaviorist or aide was provided. There was one occasion that Mr. Corrado yelled at J.S. in class. J.S.'s anxiety was increasing at this time and his eczema was exacerbated.

At the end of seventh grade, J.S. did not make adequate progress on any of his 7<sup>th</sup> grade IEP goals. (J-23 at 12-20.) He made inconsistent progress in nearly all of his IEP goals. She does not believe J.S. received an appropriate education in seventh grade, although she wishes she could say otherwise.

In June 2024 the parties met for another IEP meeting which included Dr. Willard. The parents told the team they were looking at Fusion because they did not know of any classroom within the public school that would meet J.S.'s needs. Ms. Chirip had shown them three different resource room classes in the district but agreed they were not appropriate for J.S. as the students were lower functioning. The parties discussed doing a Naples Act placement since Fusion was not on the approved list of special education schools in New Jersey. The parents told the district they were going to place J.S. at Fusion over the summer at their own expense, give the district permission to visit J.S. there and then meet again in August to see if that would be a placement for J.S. for eighth grade. Dr. Willard certainly did not tell them no that J.S. could not go to Fusion at the June IEP meeting and Ms. L. remained optimistic.

The only two options at the time were for Fusion or Harrington. The district never offered an out of district placement for J.S. If J.S. did not do well during the summer program, the parents saw no other alternative than to place J.P. at Harrington and Ms. L. emailed Ms. Chirip her input as to what peers to avoid if Fusion did not work out and J.S. had to go to Harrington for eighth grade.

J.S.'s special education teacher, Bonnie Wireback admitted that she had never found the "special sauce" on how to teach J.S.

J.S. attended Fusion in the summer 2024 and did well there. Another IEP meeting was conducted on August 23, 2024, and the parents believed the district would agree to place J.S. at Fusion. There was a huge change in tone, and the district was not talking about a Naples placement anymore. The district proposed Harrington for eighth grade with in- class supplementary instruction for all of his subjects, counseling services which were reduced, social skills group and no behavioral support. (J-20.) Ms. Chirip indicated that the difference for eighth grade was that the district would have more carefully selected teachers. Ms. Carolla advised at that meeting that they would be placing J.S. at Fusion and seeking reimbursement from the district. Prior to the meeting, the parents had not signed a contract with Fusion.

Ms. L. stated Fusion was recommended by their occupational therapists and PCIT as an alternative. It is accredited and they have seen success with cases like J.S.

In September the parents toured the Burlington County Alternative School at the suggestion of Dr. Willard. The parents did not believe it was appropriate for J.S. and Ms. Chirip did not think so either. This placement was not offered for eighth grade.

The parents paid \$63,000 for J.S. to attend Fusion. Ms. L. drove J.S. to Fusion and back every day.

## 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).

All of petitioner's witnesses testified truthfully and credibly. Witnesses for the district testified truthfully and were credible, however their ultimate opinion that J.S. made meaningful progress and that the district provided FAPE was not supported by the evidence.

All of the district witnesses testified that J.S. received FAPE in sixth and seventh grade and that the IEP proposed for eighth grade would have provided him with FAPE. He received passing grades in sixth and seventh grade and did well on standardized testing which district personnel argue supports the premise that he made meaningful progress. I am not persuaded by this argument. It is undisputed that J.S. is intelligent, which is why the district initially suggested that J.S. be declassified at the end of sixth grade. However, because of continuing concerns about J.S.'s social, emotional and behavioral needs, he remained eligible for special education.

J.S. received passing grades because he was oftentimes excused from doing work, allowed to hand in work late without penalty and took work home every day to complete it at home since he refused to do it in class. The primary basis for assessing J.S. was his teacher orally asking him questions and the teacher would scribe his answers down to assess that he understood the concepts of what was being taught. Scribing was the main accommodation provided to J.S. since he would not do any of his work. Although J.S. had writing goals in his IEP, none of the goals were attained because he did not produce any written work and scribing, although an accommodation provided in his IEP, is certainly not a method of instruction to develop writing skills.

Although I am not unmindful that district personnel would testify in favor of its program, the facts developed over the eight days of hearing indicate that J.S. had significant social, emotional and behavioral issues including work avoidance that were not adequately addressed in sixth and seventh grade and worsened in seventh grade to the point that J.S. was refusing to participate in class and refusing to produce any written work, typed or handwritten. An FBA was not timely completed to allow sufficient time to implement a behavior intervention plan until the end of seventh grade, which was too late to adequately address J.S.'s work avoidance and refusal behaviors.

The progress reporting for the Social/Emotional/Behavioral Goals for the sixth-grade IEP (September 8, 2022, – June 20, 2023,) only covered the first marking period through November 2022. (J-23 at 5-7.) The progress reporting for the sixth grade IEP goals for Reading and Writing only covered through January 2023. (J-23 at 1-11.) The district has not demonstrated that J.S. met any of his sixth grade IEP goals since progress reporting was conspicuously absent. Ms. Nikoo testified that J.S. made minimal progress in his social, emotional and behavioral goals in sixth grade. Furthermore, Ms. Friedrich's reference to J.S.'s preference for scribing rather than writing and her inclusion of basic IEP writing goals for seventh grade further supports the fact that J.S. did not achieve any of his writing goals in sixth grade.

J.S. also had social, emotional and behavioral goals, most of which were not met in seventh grade. None of his writing goals were met in seventh grade. (J-23 at 12-20.)

District personnel were aware of their difficulties in appropriately supporting J.S. and in March 2024, Ms. Chirip suggested to the parents that they look at out of district placements including New Hope Academy, Y.A.L.E. School, Burlington County Special Services School and the Burlington County Alternate Middle School. Dr. Willard was considering recommending CASTLE or Princeton House for J.S. which are programs for children with behavioral needs. A May 7, 2024, email from Ms. Chirip in reply indicated that she did not think that J.S.'s profile aligned with such programs and indicated that at that juncture, their best course of action would be to offer J.S. assistance through an aide demonstrating the district's efforts to support him. However, no aide was offered and no out of district placement was offered for eighth grade.

Ms. Wireback, J.S.'s special education teacher for seventh grade, indicated that J.S. would not comply with directions from the general education teacher, herself or any authority figure and that the lion's share of her time was spent working one on one with J.S.

Ms. Wireback candidly admitted that she told the parents at the June 2024 IEP meeting that she was not able to find the 'special sauce' to teach J.S.

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**:

J.S. is eligible for special education and related services under the IDEA with the eligibility category of autism. J.S. also has diagnoses of ADHD, dysgraphia and dyscalculia. All of these disabilities affect J.S.'s access to his education. Cognitively, he is average to above average intelligence but his diagnoses of ADHD and Autism impact him behaviorally and emotionally in the classroom and also impacts his socialization with peers in school.

J.S.'s sixth grade IEP, dated April 28, 2022, provided for In-class Resource for Language Arts, one time daily for eighty minutes; Group Social Skills Instruction, ten times

a year for thirty minutes; and a Group Classroom Aide one time daily for two hundred forty minutes. (J-13.)

The progress reporting on the sixth-grade IEP (IEP September 8, 2022, - June 20, 2023,) goals for Reading and Writing through the November and January marking periods generally indicated that for the goals that were introduced, J.S. was Progressing Satisfactorily-which indicated that he was making satisfactory progress and was expected to achieve the goal. (J-23 at 1-11.) His writing goal #2 was: "J.S. will write a formal argument, of up to 4 paragraphs, with three examples of evidence and reasons to support his claim, using language that relates to the claims and reasons and a logical closing statement. (Criteria: 75% success)". J.S.'s writing goal #3 was: "When given a writing assignment, J.S. will use the writing process of planning and revising utilizing a writing rubric to evaluate and quantify the planning and revision processes. (Criteria 75% success)." Writing goal #4 was "When given a writing assignment, J.S. will use the writing processes of editing, rewriting or typing a new approach utilizing a writing rubric to evaluate and quantify the editing and rewriting process. (Criteria: 75% success). (J-23 at 10.) There was no progress report provided for after the January 2023 marking period.

The progress reporting for the Social/Emotional/Behavioral Goals in the sixth-grade IEP (September 8, 2022, -June 20, 2023,) only covered the first marking period through November. (J-23 at 5-7.). Goal 5 was that J.S. "will transition from one activity to the next, including from more preferred to less preferred tasks or activities (Criteria: 80% success)". J.S. received a "PG" on this goal, which indicated that he was "Progressing Gradually- The student is making less than anticipated progress but may still achieve the goal". Goal 6 was that J.S. "will adapt to changes in his environment (Criteria: 80% success)." J.S. received a PG on this goal also. Goal 7 was that "When faced with a social conflict with peers or adults, J.S. will use positive strategies (e.g. seeking social support from an adult or peer, taking deep breaths, engaging in another activity). (Criteria: 80% success; Method: Teacher Observation). J.S. received a "PI" on this goal which indicated that he was "Progressing Inconsistently – The student is making inconsistent progress and may not achieve the goal." (J-23 at 5-6.) There was no progress report produced for these goals after the first marking period.

In sixth grade J.S. exhibited shut-down behaviors in the classroom regarding work being presented to him and would not do the work. On October 7, 2022, Ms. McKeever emailed the parents for guidance about what could be put in place to motivate J.S.'s behavior in the classroom. (R-6 at 22-24.) On October 31, 2022, J.S. had a difficult day and was not willing to do the work in math class and his teacher emailed the parents who requested a meeting. (R-6 at 17-19.) A December 7, 2022, email chain from Ms. L. requested an IEP meeting as a result of the science teacher stating J.S. had a difficult time during her class and when she attempted to work with him, he refused. (R-6 at 28-30.) Ms. Nikoo believes she met with J.S.'s parents about four times during the sixth grade. When J.S. refused to do his work, the parents requested that he be allowed to bring it home and he would do it at home and bring it back the next day, which he was allowed to do.

Yvette Owens of Learning Well was requested by the district to do a behavioral consult to provide recommendations for the teachers to better support J.S.'s behaviors in the classroom. (J-9.) She observed J.S. in the classroom on January 12 and 27, February 8, and March 9, 2023, at varied times and class periods. These recommendations she provided were not included in J.S.'s IEP.

Erica Nikoo, J.S.'s case manager for sixth grade was responsible for implementing his Group Social Skills Instruction, which was ten times per year or once a month for thirty minutes as set forth in his IEP. She testified that J.S. 'opted out' around mid-year and started not attending. His teachers would remind him that he had social skills instruction, but J.S. chose to go to the cafeteria instead of going to her office. Ms. Nikko testified that J.S. made minimal progress in social skills in understanding the give and take of social relationships. She did not know if she reported J.S.'s failure to attend the social skills class.

Heather Friedrichs, J.S.'s special education teacher in sixth grade, prepared the Present Levels of Academic Achievement and Functional Performance (PLAAFP) contained in the seventh grade IEP. Under "Language Arts" she wrote: "J.S. is currently placed in a co-teaching Language Arts class with modifications as needed. J.S. loves to read books. This year he practiced reading and responding to books with jots, reading

responses and book clubs. J.S. continues working on expanding his responses to literature. This was sometimes challenging for him, so teachers would often scribe for him and encourage him to give more details about what he read. He has very good thoughts but would prefer telling instead of writing them. His F&P level is Z.

J.S. continues to grow as a writer. This year the focus was on Personal Narratives, Theme and Literary Essays, Research and a Fiction piece. He has good ideas for his writing but needs to expand his ideas. We also focused on introductions and conclusions, adding dialogue, developing characters, revising/editing and punctuation/grammar and supporting evidence to claims.”

Under “Social/Emotional/Behavioral” Ms. Friedrichs wrote: “During class throughout the day J.S. would earn 5-10 min. breaks depending on the length of the class. If the class was a single period, he would earn a five -minute break. He preferred to play video games or watch utube for his break and a timer was set for him. This needed to be closely monitored using go guardian. At times, he would need to be given reminders to be on correct websites and/or class instruction. He also enjoys reading scholastic magazines and was encouraged to read instead of playing video games or watching utube.”

There is also a note that “J.S.’s diagnoses of ADHD and Autism impact him behaviorally and emotionally in the classroom, and it also impacts his socialization with peers in school.” (J-17 at 4-5.)

Under the section “Needs – Academic, Developmental, Functional and any other Needs that result from the Student’s Disability and Special Considerations”, the “Educational” section states: “J.S. struggles with written assignments, including in math (support him adding details, encourage him to take his time and stay on topic). Reading comprehension (J.S. reads many, many high-level books, but does not always understand the deeper inferential subtexts).

Under the “Social/Emotional/Behavioral” needs section it states “Very capable, but is not always motivated to do work that he finds uninteresting (work avoidance).

Receptiveness to feedback has gotten better, but he does have difficulty with accepting it sometimes.

Does not always work to potential due to behaviors

Attention/Focus

Can have social difficulties with peers

Compliance and behaviors in the classroom

Following directions

Oppositionality

Transitions

Will rush to complete assignments.

Social skills instruction will be provided.”

(J-17 at 5-6.)

The seventh-grade IEP dated May 25, 2023, (J-17) provided for In-class Supplementary Instruction for: Language Arts, Math, Social Studies and Science. Individual Counseling Services were to be provided twice monthly for twenty minutes. Group Social Skills Instruction was to be provided once monthly for thirty minutes. (J-17 at 1.)

J.S. was in compacted math for the first two weeks of seventh grade, which is an advanced math class with only the general education teacher and no aide. J.S. had difficulty and was not showing his work as to how he reached answers and writing down his work. He was failing and had to drop down to a regular seventh-grade math class, although he had been in advanced math for several years and had tested into compacted math.

The parents obtained a neuropsychological evaluation of J.S. from Dr. Emily Perlis, who prepared a report. (P-5.) K.L. emailed this report to Ms. Chirip on December 19, 2023. (R-17 at 153.) Dr. Perlis made a number of recommendations in her report, including #2 “During my observation of J.S. at school he showed reluctance to engage in certain academic tasks, as well as severe challenges refraining from looking at his I-pad or book at inappropriate times in class. It is recommended that the school conduct a Functional Behavioral Analysis so that a positive behavior support plan can be

implemented in the classroom to address the behaviors that are interfering with J.S.'s ability to properly engage in class and produce assigned work." (P-5 at 13.)

Bonnie Wireback, J.S.'s special education teacher for seventh grade, spent eighty-five percent of her time working with J.S. due to his noncompliance. He would be constantly on his Chromebook when he was supposed to be attending to a lesson or doing his work. In an email of February 21, 2024, she indicates that she has been having challenges with J.S. in regard to his refusal to do work/follow directions all year. She described his pattern of behavior as that when he is asked to do something he does not want to do he passively refuses to work or follow directions consistently throughout the academic day. In her email she indicates that "J.S. has shown through innumerable interventions that he is unable to abide by the Board of Education Policy #6142.10 which outlines our acceptable-use guidelines for Internet Safety and Technology." The email continues that they have decided to remove the Chromebook not as a punishment for J.S.'s actions but "rather as the removal of a significant impediment to our goal of teaching J.S. compliance." (P-8 at 171.) She then outlines a plan. "PLAN: Due to J.S.'s repeated noncompliant behavior, we are going to be consistent with the consequences of his actions. If J.S. does not comply with any instruction a teacher/staff member given him (whether it is academic or behavioral), he will receive one warning. If he continues to not comply, he will be written up to Mr. LaMorte for insubordination. (P-8 at 172.)

There was no IEP meeting held in advance to discuss the plan about removing J.S.'s Chromebook, how it would be implemented, or obtain the parents' input for this plan.

J.S.'s IEP provided for accommodations in allowing typed rather than handwritten responses and the use of a word processor for his written language accommodations. (J-17 at 12.) He needed his computer for these accommodations.

Once the Chromebook was removed, J.S. replaced it with his use of a book. He would have a book with him and read or pretend to read the book rather than do his classwork or attend the lesson.

The district hired Ms. Owens of the Learning Well to conduct an FBA, and one was prepared dated April 22, 2024. (J-22.)

The draft IEP, although dated March 1, 2024, (J-18), included in the PLAAFP section, referenced the recently completed April 22, 2024, FBA and the Behavior Support Recommendations contained therein. (J-18 at 2-4.) One of the follow up recommendations in the FBA “B” called for “Monthly consultations/observations by a BCBA or behavior consultant is recommended to ensure consistent and correct follow through with behavior strategies and plan.” (J-12 at 18.) As a result of the FBA, the seventh grade IEP was amended to include a “Behavioral Intervention Consultation: Group 4/26/24 – 6/20/24 1 X monthly 30 min.” (J-18 at 1.)

J.S. remained non-compliant with his teachers’ instructions throughout the year and was either on his computer when he should not have been or reading his book when he should not have been. Numerous emails were sent to the parents from various teachers documenting J.S.’s non-compliance with doing his work in class. (P-9 at 12, 46-47 and 360; R-17 at 206-207; 212-213 and 229.)

Parent K.S. sent an email on May 6, 2024, to Ms. Chirip “Can we please have the behaviorist and an aid assigned to assist? He can use some strategies to get past this. Thank you.” (R-17 at 207.) On May 7, 2024, Ms. Chirip responded to K.S. that she would have to involve Dr. Willard and get back to her. (P-9 at 46.)

There is an email exchange between Dr. Willard and Ms. Chirip wherein Dr. Willard on May 7, 2024, at 7:13 a.m. is asking Ms. Chirip if she thinks they should recommend Castle or Princeton House. Ms. Chirip replies at 7:37 am “I don’t believe his profile aligns well with programs of that nature. It seems our best course of action may be to offer him assistance through an aide, demonstrating our efforts to support him. However, I’m

skeptical of its effectiveness, considering he's already distressed by the prospect." (P-9 at 44.)

Ms. Chirip followed up with an email dated May 7, 2024, to K.S. "I've had a chance to speak with Dr. Willard and Mr. Besler, and it appears that we don't currently have a paraprofessional available at this point in the year. However, arrangements are in place for one for next year. In the interim, I will be present in science two days a week to provide assistance. Regarding Yvette's schedule, I'll await specific information from her before confirming any further plans." (R-17 at 216.)

J.S. was allowed to take home any work he did not do in class and finish it at home so he would not fail his classes. His parents worked with him at night to make up all of his schoolwork that he did not do during the day.

Ms. Chirip was J.S.'s case manager for seventh grade and provided him with counseling services. Although he was to receive counseling every other week, she scheduled him weekly because sometimes he would not come so she would call him to come see her the next week. If he did not want to come, she took it to mean that he had nothing pressing he wanted to discuss with her. She did not press him to participate if he did not want to.

When J.S.'s noncompliant behaviors did not improve following the implementation of the behavior plan following the FBA, the parents requested an increase in the amount of behavioral support from the thirty minutes of behavioral consultation allowed in J-18. Ms. Owen's services had to be approved by Dr. Willard as the supervisor of the CST. Yvette Owens' logs indicate on May 24, 2024, at 7:50 a.m. "Meeting to discuss plans for the rest of this year and next year. Continue as is for this year. Parents observe the resource room for next year." (P-10 at 9.) The behavioral consult of thirty minutes per month did not increase, despite parents requesting additional assistance.

J.S.'s disciplinary record (J-23 at 21) indicates that on October 17, 2023, he was written up for "abusing computer/network privileges" and received a one-day administrative detention. On November 1, 2023, he was written up for a third electronic violation, which is he was on his computer or phone when he was not supposed to be. On November 13, 2023, he was written up for a fourth electronic violation. On November 15, 2023, he was written up for a fifth electronic violation. He was also disciplined on February 7, 2024, February 15, 2024, May 1, 2024, and May 2, 2024, all related to electronics and disobeying authority and received an after-school detention.

J.S.'s progress report for his IEP goals and objectives for the 2023-2024 seventh grade school year was completed by Ms. Wireback, his special education teacher (J-23 at 12-20) who had firsthand knowledge of the goals and inputted the codes for November, January and June. There were only three grading periods at Harrington. The sixth-grade teachers created the goals that Ms. Wireback implemented.

Goal 1 for Reading stated, "When presented with narrative and/or informational text from J.S.'s content area subjects on the Seventh grade level, J.S. will cite 3 examples of textual evidence to support analysis of what the text says explicitly as well as inferences drawn from the text." Ms. Wireback put in "PG" progressing gradually. Basically, J.S. would be unable to write any responses, but when she verbally assessed him, he was progressing regarding those goals across his academics. He was appropriately accessing the curriculum at school. The Objective/Benchmark 1.1 stated "When presented with a teacher-stated inference made from the text, J.S. will cite 3 text-based details to support the inference. She verbally assessed him and he was able to respond so she put progressing gradually. Objective/Benchmark 1.2 stated "When presented with text, J.S. will draw an inference from the text and cite 3 text based details in support". Ms. Wireback was able to verbally assess J.S. and indicated he was progressing gradually towards this goal. (J-23 at 14.)

J.S.'s writing skills were his most difficult challenge. Ms. Wireback put in progressing inconsistently ("PI") for each of his writing goals because although she was able to verbally assess him for his reading goals, when it came to the writing or typed

production J.P. would not produce any of the work. PI, progressing inconsistently, means that the student is making inconsistent progress and may not achieve the goal.

The following were his IEP writing goals for seventh grade. (J-23 at 15-17.)

Writing Goal 2: “When given a written assignment, J.S. will utilize correct capitalization” (Criteria: 75% success). J.P. received a “P.I.” for all three marking periods for this goal.

Writing Goal 3: “J.S. will write a formal informational/explanatory text, of up to 3 paragraphs, with relevant content to develop points, including text-supporting graphics and multimedia, transitions to clarify ideas, and a logical introduction and closing statement, written in a formal style using expository text patterns (e.g., compare/contrast, cause/effect, time/order, problem/solution, description) utilizing a writing rubric to quantify. (criteria: 75% success)” J.P. received a “P.I.” for this goal for all three marking periods.

Writing Goal 4: “When given a writing assignment, J.S. will use the writing process of planning and revising in assessing if audience and purpose have been adequately addressed utilizing a writing rubric to evaluate and quantify the planning and revision processes with audience and purpose as the focus. (Criteria: 75% success)”. J.S. received a “P.I.” for all three marking periods for this goal.

Ms. Wireback coded all of his writing goals as progressing inconsistently because she was the one doing the scribing because he would not comply with producing the work on his own. She would offer J.S. to review her scribed notes but he usually was not interested in reviewing them. The reason she coded all of the writing goals progressing inconsistently is because J.S. did not write anything for her. That was always true.

Ms. Wireback wrote in the PLAAFP for the eighth grade IEP “J.S. has been in a co-taught Language Arts class receiving the standard seventh grade curriculum with modifications. J.S. had difficulty producing work in spite of modifications and accommodations provided to him. The accommodation that seemed to be the most

effective was scribing. If a teacher scribed for him, he was able to produce enough work to be able to evaluate his abilities with a modified rubric.” (J-20 at 8.)

J.S.’s Social/Emotional/Behavioral Goals were as follows:

Goal 5: “When prompted, J.S. will accurately identify his own emotions/feelings (e.g. anxiety, stress, frustration, anger, sadness), the intensity of those emotions/feelings and strategies for dealing with those emotions/feelings. (Criteria: 75% success).” All three marking periods he received a “P.I.” for this goal.

Goal 6: “J.S. will transition from one activity to the next, including transitioning from more preferred to less preferred tasks or activities (Criteria: 75% success). All three marking periods he received a “P.I.” for this goal.

Goal 7: “J.S. will identify and comply with teacher directives, classroom rules/expectations and school rules throughout the school day. (Criteria: 75% success). J.S. received a “P.I.” for all three marking periods for this goal.

Goal 8: “J.S. will maintain his attention for 30+ minutes during classroom instruction. (Criteria: 75% success). J.S. received a “P.I.” for all three marking periods for this goal.

Goal 9: “When faced with a social conflict with peers or adults, J.S. will use positive strategies (e.g. perspective taking, assertive-communication, problem solving. Seeking appropriate assistance) to resolve the conflict. Criteria: 75% success). J.S. received a “P.G.” for this goal for all three marking periods indicating that he was “Progressing Gradually – The student is making less than anticipated progress but may still achieve the objective/benchmark”.

The parents sent a June 19, 2024, email to Ms. Chirip copying Dr. Willard and Ms. Carolla indicating that they would privately pay for J.S. to attend Fusion for the summer. If he did well there, they would like to discuss a Naples placement for Fusion in September since they did not believe that there were any N.J. approved schools that would meet J.S.’s needs out of district. “If he does not do well at Fusion we would like him to attend Harrington in the fall as we don’t see any other viable alternatives.” (P-9 at 216.)

The July 30, 2024, IEP proposed for eighth grade (J-20) provided for In-class Supplementary Instruction for: Language Arts, Math, Social Studies and Science. Individual Counselling Services were to be provided once a month for twenty minutes. Group Social Skills Instruction was to be provided once a week for thirty minutes.

No Behavioral Consult was provided and no aide was provided in the proposed IEP for eighth grade. (J-20 at 1.)

For eighth grade, the district was going to select certain teachers that would be best able to support J.S. and whose personalities would 'jive' with J.S. The district was also going to try and place J.S. with positive peers in his classes and lunch.

A letter dated August 23, 2024, from Ms. Carolla to Ms. Strawbridge (P-8 at 22) stated:

"Dear Emily:

I am writing to follow up on the IEP meeting that occurred today, August 23, 2024. This meeting was postponed at your client's request because the director, Dr. Diane Willard was not available on the previously agreed upon date, August 12, 2024.

Your client proposed an IEP dated July 30, 2024 that places J.S. at Harrington Middle School for the 2024-2025 school year. During the meeting today, case manager Ellie Chirip explained that the difference between what the district was able to provide for the 2023-2024 school year was more carefully selected teachers.

As we mentioned to you during the IEP meetings that we attended March 1, April 26, May 24, and June 14, parents would have preferred to keep J.S. in district. However, there is no appropriate program available, and he cannot receive a free and appropriate education with the IEP your client proposed on July 30, 2024.

Today, during the IEP meeting, I notified you that parents are placing J.S. at the Fusion Academy in Cherry Hill, New Jersey, because the district has failed to offer J.P. a program that complies with FAPE and that the July 30, 2024 IEP was

rejected. We will seek reimbursement. Please be guided accordingly.

Thank you for your assistance with this matter.

Very truly yours,

Ameilia Carolla”

Fusion Academy is an accredited private school for grades 6 through 12. Fusion Academy Cherry Hill is accredited by COGNIA and The Middle States Association. Courses are offered at Essential, College Prep and Honors levels. Fusion offers a one-to-one student to teacher ratio, that is one student and one teacher per class. (P-15 at 1.) Fusion has both disabled and nondisabled students. There are opportunities for socialization in the Homework Café and other school activities.

J.S. enrolled in the fall of 2024 as a full-time student at Fusion. He took the core classes of English language arts, math, social studies and science and also had electives. The Fusion curriculum is aligned with the state Common Core standards. (P-15 at 7, 13.) He has completed all of the academic requirements for eighth grade. He was provided with one-to-one instruction and group social settings. Fusion has both a silent and social homework café supervised by a teacher to help students get started on their assignments and provide them with direct academic support. J.S. has passed all of his classes and received “B” grades. Part of the Fusion core philosophy is to complete all of the student’s assignments on campus. J.S. has participated in the homework café and gotten all of his homework done with the teacher support at Fusion. J.S. has not been disciplined since attending Fusion. The laptop has been a positive reinforcement mechanism for J.S. so if he is following expectations, he is rewarded with laptop time during the homework café periods.

On December 5, 2024, Dr. Perlis observed J.S. at Fusion and noted that “Overall, J.S. appears to have made a positive transition to Fusion Academy. He has developed a good working relationship with school staff, which was reflected in his behavior both in and outside the classroom. J.S. requires and clearly benefited from the one-on-one support provided during the academic course. With patience, structure and scheduled

breaks to participate in an activity of his choosing, J.S. effectively completes the work that was asked of him. Socially, it was very encouraging to see him participate in a group activity and engage so nicely with other students. (P-6 at 2.)

Dr. Perlis testified that Fusion was appropriate for J.S. because he was comfortable, he was producing work and he had opportunities for socialization that was comfortable for J.S., and he was getting things done. Dr. Perlis believes that the one-on-one instruction at Fusion was more appropriate for J.S. because he was doing what he was supposed to be doing with the support he was given. He is getting a benefit from attending that school because he has been presented with academic material that he is completing. From an emotional health perspective, he is comfortable going there and seems to have been making friends and having a positive relationship with an educational environment that hopefully can be built upon, so she thinks it was appropriate that J.S. attended Fusion.

J.S.'s parents have always been cooperative and collaborative in working with the school district to provide for an appropriate education for their son.

The parents paid \$63,000 in tuition for J.S. to attend Fusion Academy for eighth grade. Ms. L. drove J.S. to Fusion and back every day he attended.

### **LEGAL DISCUSSION AND ANALYSIS**

This case arises under the Individuals with Disabilities Education Act (IDEA), as amended by the Individuals with Disabilities Education Improvement Act (IDEIA), 20 U.S.C. §§ 1400-1482, which provides the framework for special education in New Jersey. One purpose of the Act, among others, is to ensure that all children with disabilities have available to them a “free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living.” 20 U.S.C.A. § 1400(d)(1)(A). This “free appropriate public education” is known as FAPE. In short, the Act defines FAPE as special education and related services provided in conformity with the IEP. See 20 U.S.C.A. § 1401(9). A FAPE and related services must be provided to all students with

disabilities from age three through twenty-one. N.J.A.C. 6A:14-1.1(d). A FAPE means special education and related services that: a) have been provided at public expense, under public supervision and direction, and without charge; b) meet the standards of the State educational agency; c) include an appropriate preschool, elementary, or secondary school education in the State involved; and d) are provided in conformity with the individualized education program (IEP) required under sec. 614(d). 20 U.S.C.A. § 1401(9); N.J.A.C. 6A:14-1.1 et seq. The responsibility to deliver these services rest with the local public-school district. N.J.A.C. 6A:14-1.1(d).

In order to provide a FAPE, a school district must develop and implement an IEP. N.J.A.C. 6A:14-3.7. An IEP is “a comprehensive statement of the educational needs of a handicapped child and the specially designed instruction and related services to be employed to meet those needs.” Sch. Comm. of Burlington v. Dep’t of Educ. of Mass., 471 U.S. 359, 368, 105 S. Ct. 1996, 2002, 85 L. Ed. 2d 385, 394 (1985). An IEP should be developed with the participation of parents and members of a district board of education’s CST who have participated in the evaluation of the child’s eligibility for special education 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 communications 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.

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. Endrew F. v. Douglas Cnty. Sch. Dist., 580 U.S. (2017); 137 S. Ct. 988; 197 L. Ed 2d 335.

The IDEA also 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 sixth, seventh and proposed eighth grade IEP provided J.S. with FAPE. As set forth in the findings of fact, J.S.’s diagnoses

of ADHD and autism impact him behaviorally and emotionally in the classroom and impacted his socialization with peers in school. His sixth-grade special education teacher indicated that he struggles with written assignments, including in math. His teachers would often scribe for him and although he has very good thoughts, he would prefer telling instead of writing them. Under the social, emotional, behavioral needs section it indicates that J.S was very capable but not always motivated to do work that he finds uninteresting (work avoidance). He does not always work to potential due to behavior. He has problems with attention/focus; compliance and behaviors in the classroom, following directions, oppositionality and transitions. Also, in sixth grade J.S. would earn five to ten minutes breaks depending on the length of the class and preferred to play video games or watch YouTube for his break and a timer was set for him. This needed to be closely monitored and at times he needed to be given reminders to be on correct websites and/or class instruction. In late 2022, the district asked the Learning Well to do a behavioral consult because of J.S.'s interfering behaviors that were occurring. None of the recommendations were communicated to the seventh-grade teachers or included in the 6<sup>th</sup> or seventh grade IEP.

The district reevaluated J.S. in sixth grade in the areas of Psychological and Learning. (J-7, J-8.) After the evaluations were completed, Ms. Nikoo advised parents that he was not eligible for special education, before conducting an IEP meeting, denying parents an opportunity to participate in the decision. After parents hired counsel and provided evaluations, the district continued J.S.'s classification. The evaluations had not looked at all areas of suspected disability, including psychiatric, functional behavior assessment, speech and language, or occupational therapy. J.S.'s classification had always been based on his social/emotional/behavioral needs, not academics. His academic weakness was writing.

The progress reporting for the Social/Emotional/Behavioral Goals for the sixth-grade IEP (September 8, 2022, – June 20, 2023,) only covered the first marking period through November 2022. (J-23 at 5-7.) The progress reporting for the sixth grade IEP goals for Reading and Writing only covered through January 2023. (J-23 at 1-11.) The district has not demonstrated that J.S. met any of his sixth grade IEP goals.

The seventh grade IEP (J-17) provided for in-class Supplementary Instruction for Language Arts, Math, Social Studies and Science. Individual counseling services were to be provided twice monthly for twenty minutes. Group social skills instruction was to be provided once monthly for thirty minutes. (J-17 at 1.) J.S. was placed in compacted math class for the first two weeks of seventh grade which was an advanced math class with only the general education teacher and no aide. J.S. had difficulty and was not showing his work and how he reached his answers. He was failing and had to drop down to a regular seventh-grade math class, although he had been in advanced math for several years and had tested into compacted math. J.S. was not provided supports to allow him to have access to advanced math.

In December 2023, parents provided the district with an evaluation of Dr. Emily Perlis recommending that an FBA was needed because J.S.'s work avoidant behaviors were interfering with his learning. J.S.'s refusal behaviors continued all year and escalated as the year went on. The district did not complete an FBA until April 22, 2024, and a BIP offered on April 26, 2024, when the school year was almost over. As a result of the FBA, a Group Behavioral Intervention Consultation once a month for thirty minutes was added to J.S.'s seventh grade IEP on April 26, 2025.

J.S. worked best one on one with a preferred teacher to get his work done. J.S. was able to produce some work when provided one on one assistance with either Ms. Wireback, Ms. Chirip or Ms. Dobleman. Ms. Chirip showed the parents the resource classroom in Harrington which was a smaller class setting, but all agreed it was not appropriate academically for J.P.

J.S. remained non-compliant with his teachers' instructions throughout the year and was either on his computer when he should not have been or reading his book when he should not have been. Numerous emails were sent to the parents from various teachers documenting J.S.'s non-compliance with doing his work in class. (P-9 at 12, 46-47 and 360; R-17 at 206-207; 212-213 and 229.) J.S. was taking all of his work home to be completed since he would not do it in class. Parents worked with him at home to complete his work so he would not fail his classes.

Parent K.S. sent an email on May 6, 2024, to Ms. Chirip, “Can we please have the behaviorist and an aide assigned to assist? He can use some strategies to get past this. Thank you.” (R-17 at 20.7.) On May 7, 2024, Ms. Chirip responded to K.S. that she would have to involve Dr. Willard and get back to her. (P-9 at 46.) Although Ms. Chirip believed the district’s best course of action would be to offer J.S. assistance through an aide demonstrating their efforts to support J.S., she later responded to K.S. that in speaking to Dr. Willard and Mr. Besler, they did not currently have a paraprofessional available at this point in the year but arrangements are in place for one for next year.

Despite J.S.’s continued behavioral difficulties and the parents request for an aide and additional behavioral support, neither was provided.

The IEP proposed for eighth grade (J-20) continued J.S. at Harrington and provided for In-class Supplementary Instruction for Language Arts, Math, Social Studies and Science. Individual Counseling Services were to be provided once a month for twenty minutes. Group Social Skills Instruction was to be provided once a week for thirty minutes. No aide and no behavioral support was offered. (J-20.) The district never offered an out of district placement for J.S. although there had been discussions concerning same.

Based on the foregoing, I **CONCLUDE** that the district did not provide J.S. with FAPE for sixth grade from January 2023 to June 2023, or seventh grade (2023-2024 school year) and did not offer an appropriate IEP that would provide FAPE for eighth grade (2024 – 2025) because it did not provide sufficient behavioral supports to J.S. to assist him with his work avoidance /refusal behaviors that were significantly interfering with his access to his education. J.S. did not make meaningful progress on any of his IEP goals for sixth or seventh grade. The IEP offered for eighth grade did not have any behavioral support included or the provision for an aide.

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 sixth grade, seventh grade and proposed IEP for eight grade IEP did not offer FAPE, I must now determine whether the Fusion 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 [J.S.] to make progress appropriate in light of [his] circumstances." Endrew F., 137 S. Ct. 988 at 1001.

Fusion Academy was recommended to the parents by J.S.'s occupational therapist and PCIT as an alternative placement in that it is an accredited school that they have seen success with cases such as J.S.

J.S.'s placement at Fusion Academy was appropriate in that Fusion Academy provided J.S. with one-to-one instruction in all of his academic courses. Although I am

mindful that it is a more restrictive placement than his public school, J.S. required and benefited from the one-on-one instruction and would not be able to refuse/avoid doing his work with the teacher working so closely with him one on one and constantly re-directing him and providing him with instruction. Fusion Academy is an accredited private school for grades six through twelve. Fusion has disabled and non-disabled students attending and there are opportunities for socialization in the homework café and other social programs offered at the school. Fusion Academy Cherry Hill is accredited by COGNIA and the Middle States Association. J.S. enrolled in the fall of 2024 as a full-time student at Fusion. He took the core classes of English Language Arts, math, social studies, science and also had electives. He has passed all his classes. J.S. has not been disciplined since attending Fusion. The laptop has been a positive reinforcement mechanism for J.S., so when he followed expectations, he was rewarded with laptop time during the homework café periods. J.S. has progressed in his education and done well at Fusion Academy. Although Fusion Academy is not a state approved school for students with disabilities, 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 J.S.’s placement at Fusion Academy was appropriate as it was reasonably calculated to enable J.S. to make progress appropriate in light of his circumstances.

Having concluded that the Board denied FAPE to J.S., and that the placement at Fusion 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.

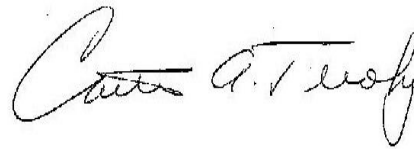
In this case, petitioners notified the district via email on June 19, 2024, that they would privately pay for J.S. to attend Fusion Academy for the summer. If he did well there, they would like to discuss a Naples placement for Fusion in September since they did not believe there were any N.J. approved school that would meet J.S.’s needs out of district. (P-9 at 216.) Parents consented to allow district personnel to visit Fusion. They were scheduled to meet again on August 12, 2024, for an IEP meeting which was adjourned until August 23, 2024, because Dr. Willard was not available. Ms. Carolla followed up with an email confirming that she had advised the district at the meeting that parents were rejecting the proposed July 30, 2024, IEP (J-20) and were placing J.S. at Fusion Academy in Cherry Hill and would seek reimbursement because the district had failed to offer J.S. a program that complies with FAPE. (P-8 at 22.) Petitioners had in good faith sought to collaborate with the district on the development of an appropriate educational plan for J.S. There has been no testimony that the parents acted unreasonably in any way in their dealings with school personnel. On the contrary, all school personnel have testified that the parents worked collaboratively with the district.

Therefore, I **CONCLUDE** that the parents did not engage in any unreasonable conduct that would warrant reduction in the reimbursement of the costs of tuition for Fusion Academy and reimbursement for transportation.

**ORDER**

Based on the foregoing, it is **ORDERED** that respondent reimburse petitioners for their expenses in unilaterally enrolling J.S. at Fusion Academy Cherry Hill, including transportation, for his eighth-grade school year.

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.



December 24, 2025

DATE

CATHERINE A. TUOHY, ALJ

Date Received at Agency:

emailed December 24, 2025

Date Mailed to Parties:

emailed December 24, 2025

CAT/gd

## **APPENDIX**

### **WITNESSES**

#### **For petitioner**

Dr. Emily Perlis  
Douglas Albright-Pierce  
K.L.

#### **For respondent**

Ellen Chirip (Conover)  
Bonnie Wireback  
Yvette Owens  
Traci Dobleman  
Drew Besler  
Erica Nikoo  
Diane Willard

### **EXHIBITS**

#### **Joint**

J-1 Due Process Complaint  
J-2 OSE Due Process Acknowledgement  
J-3 Respondent's Answer  
J-4 Prehearing Order  
J-5 Subpoena for BCAS  
J-6 Subpoena for Learning Well  
J-7 Educational Assessment  
J-8 Psychological Assessment  
J-9 Behavioral Consultation Report  
J-10 Speech and Language Initial Evaluation  
J-11 Occupational Therapy Evaluation  
J-12 Functional Behavioral Assessment

- J-13 Sixth Grade IEP (April 28, 2022)
- J-14 Seventh Grade Draft IEP (May 25, 2023)
- J-15 Seventh Grade Draft IEP (May 25, 2023)
- J-17 Seventh Grade IEP (May 25, 2023)
- J-18 Seventh Grade Draft IEP (March 1, 2024)
- J-19 Eighth Grade Draft IEP (Undated)
- J-20 Eighth Grade Draft IEP (July 30, 2024)
- J-21 Notices from District to Parent
- J-22 District Observations of Fusion Academy
- J-23 Report Cards, Progress Monitoring on IEP Goals, NJSLA Reports, Disciplinary Report

**For petitioner**

- P-1 Consultation Evaluation by Psychologist, Erin Munch, Ed. S., Summit Evaluations (December 10, 2022)
- P-2 Psychiatric Evaluation by Alexander Strauss, M.D., Centra
- P-3 Letter from Occupational Therapist, Christina Costanzo, OTR/L, Sensational Kids
- P-4 Consultation Evaluation by Psychologist, Erin Munch, Ed. S., Summit Evaluations (March 16, 2023)
- P-5 Neuropsychological Evaluation by Emily Perlis, Psy. D.
- P-6 Classroom Observation of Fusion Academy by Emily Perlis, Psy. D.
- P-7 Curriculum Vitae of Emily Perlis, Psy. D.
- P-8 Various Correspondence between District and Petitioners
- P-9 Various Emails between District and Petitioners
- P-10 Responsive Documents from Learning Well
- P-11 Responsive Documents from Burlington County Alternative School
- P-14 Correspondence Regarding Burlington County Alternative School
- P-15 Fusion Academy Documents

**For respondent**

- R-2 Request for Additional Assessments and Invitation to IEP Meeting
- R-6 Emails from Sixth Grade School Year, 2022-2023

- R-8 Individual Student Request Form for Occupational Therapy Evaluation
- R-10 Individual Student Request Form for Sensory Profile
- R-12 Occupational Therapy Sensory Profile
- R-13 Behavior Intervention Plan
- R-14 Collective State Test Scores from Fifth Grade through Seventh Grade
- R-15 Collective Grades from Fifth Grade through Seventh Grade
- R-16 J.S. Work Product from Seventh Grade
- R-17 Emails from Seventh Grade School Year, 2023-2024
- R-20 Fusion Academy Individual Reassessment of Commitment (November 12, 2024)
- R-21 Yvette Owens's Resume
- R-22 Bonnie Wireback's Resume
- R-23 Erica Nikoo's Resume
- R-24 Drew Besler's Resume
- R-25 Ellen Chirip's Resume
- R-26 Diane Willard's Resume
- R-28 Applied Behavior Analysis Trainer Job Description
- R-29 Fusion Academy Individual Reassessment of Commitment (March 25, 2025)