State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION
OAL DKT. NO. EDS 00200-23
, AGENCY DKT. NO. 2023-35331

L.C. AND G.H. ON BEHALF OF J.C.H.,
Petitioners
v.
WAYNE TOWNSHIP BOARD OF EDUCATION,
Respondent.

Mark Voigt, Esq., for petitioners L.C. and G.H. obo J.C.H. (Law Office of Mark Voigt, attorneys)

Margaret A. Miller, Esq., for respondent Wayne Township Board of Education (Weiner Law Group, attorneys)

Record Closed: February 23, 2023 Decided: March 9, 2023

BEFORE **GAIL M. COOKSON**, ALJ:

STATEMENT OF THE CASE

By petition dated January 4, 2023, petitioners L.C. and G.H. sought emergency relief from or in relation to the alleged unilateral determination of the Wayne Township Board of Education (District) to place their fourteen-year-old son, J.C.H., on home instruction pending location of an appropriate out-of-district placement. Petitioners further allege that the District

expelled their son and requested his immediate reinstatement to the LLD/MM[1] classroom specified in his Individualized Education Plan (IEP) as the "stay put" placement. On the due process application, petitioners asserted that the District failed to provide a fair and appropriate public education (FAPE) in the least restrictive environment under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C.A. §§ 1400 to 1419, both with respect to home instruction and a placement at an out-of-district therapeutic day school. They also seek compensatory education for the hours not provided while J.C.H. has been on home instruction.

The petition for emergent relief and the underlying expedited due process application were docketed by the Department of Education, Office of Special Education Policy and Dispute Resolution (OSEP) and forwarded on January 6, 2023, to the Office of Administrative Law (OAL) on that same date pursuant to N.J.A.C. 6A:14-2.7. The emergent application was argued on Friday, January 13, 2023. I issued a decision on that application on January 18, 2023, incorporated herein, determining that the student had not been expelled or suspended, that his suicidal ideations were treated as a crisis, and that the emergent stay-put was the October 17, 2022, IEP.

The due process petition was tried on February 8, 9 and 10, 2023. I allowed an opportunity for the parties to submit their proffered exhibit lists and objections to any exhibits of the other party[2] by Monday, February 13, 2023, and thereafter, a written hearing summation. The record closed on February 23, 2023, upon receipt of those.

BACKGROUND FACTS FROM DECISION ON EMERGENT RELIEF

[1] LLD/MM refers to a language learning disabilities mild-to-moderate self-contained classroom.

[2] Petitioners' counsel continued to submit proposed exhibits well after the completion of the evidentiary hearing, without leave of this forum. Petitioners' counsel chose not to comply with my instructions to submit a pared-down list of the exhibits that he actually used and that were sponsored by a witness and omitting duplicates of respondent's exhibits and those I excluded during the hearings. Accordingly, I allowed respondent to submit its objections to certain of those exhibits. The Appendix contains a list and explanations in the footnotes of those documents that I admitted into evidence after review of the record. These actions by counsel are a substantial part of the reason for some delay in completing this case expeditiously. Moreover, the timeline for expedited hearings are expressed in school days, not calendar days. N.J.A.C. 6A:14-2.7(o)(2)(ii). In light of my decision on the emergency relief that this was not a discipline or manifestation case, there was no basis for an expedited plenary hearing; however, I am concerned about the child's lack of education and have done my best to move swiftly but deliberately.

J.C.H. is a fourteen-year-old student who has been receiving special education services from the District for a classification of Communication Impaired because of his diagnoses of persistent depressive disorder, ADHD, and ODD. J.C.H. attended regular classroom programs at the Abundant Christian Life School, Whippany, New Jersey, for kindergarten and first grade, and then Randall Carter Elementary School within the District for most of second grade. In each of these school settings, his teachers described him as angry, frustrated, refusing to engage in the schoolwork, socially awkward, and physically aggressive. The Randall Carter Child Study Team (CST) recommended placing him in a self-contained classroom at the District's Pine Lakes Elementary School. J.C.H. attended the remainder of second grade and all of third grade at Pine Lakes but was having behavioral issues in the classroom and reportedly suicidal ideations at home almost from the beginning. He demonstrated increased frustrations, tantrums, and physical and verbal outbursts at school. Accordingly, the CST recommended a therapeutic out-of-district placement.

J.C.H. started to attend Windsor Learning Center (Windsor) at the beginning of fourth grade in September 2017. Several assessments were undertaken in the spring of 2019 while J.C.H. was in fifth grade at Windsor. Those resulted in the diagnoses listed above. He also had speech and language deficits but was on a fourth-grade level in math and language arts during fifth grade, having made significant academic progress. As with every school in New Jersey, Windsor closed for in-person learning in March 2020 because of the Covid-19 pandemic. It engaged the students through virtual classrooms. This was sixth grade for J.C.H. Windsor instruction was back to in-person for his seventh grade (2020-2021) and eighth grade (2021-2022). Several evaluations were undertaken in that last school year, that are not relevant to this immediate proceeding.

Just prior to completion of eighth grade, the CST conducted an IEP meeting to plan for J.C.H.'s freshman year. Windsor was not recommending that he continue at their high school facility. The IEP discussed at a meeting held on August 8, 2022, with Windsor staff and both parents' participation and input, and then drafted by the District CST[3], provided for ninth grade at the Wayne Valley public High School (WVHS) in the LLD/MM classroom with related speech

[3] Albeit with some different participants due to summer recess.

and language supports. Then events occurred, which were and still are disputed, that brought the parties to this due process hearing.

TIMELINE OF EVENTS RELEVANT TO PETITION FOR EMERGENT RELIEF

8/8/22	J.C.H.'s IEP established his placement for his freshman year at Wayne Valley High School in the LLD/MM classroom.
9/6/22	First day of the current school year.
9/16/22	J.C.H. sent text messages to a friend expressing rage about bullying, loneliness during Covid, and suicidal thoughts. That friend's parents advised petitioners and apparently the District.
9/16/22	Parent called J.C.H. out of school for a "mental break" she said he needed.
9/16/22	District completed Crisis Intervention Summary Form.
9/16/22	Wayne Township police officers, at the request of the District, conducted a wellness check on J.C.H. Later that day, he was taken by a parent to the ER for mental health issues (e.g., anger management) caused allegedly by that police check.
9/17/22	J.C.H. was taken by a parent to ER for drug-induced acute dystonia, i.e., adverse reaction to the medication given to him the day before at the ER.
9/21/22	District completed Crisis Intervention Summary Form.
9/21-22/22	J.C.H. sent his friend two more text messages expressing rage and suicidal thoughts.
9/22/22	J.C.H. was taken by parent to ER for mental health issues.
9/23/22	An informal meeting took place where the parent met with the District Psychologist, Social Worker, and Counselor. Parent signed consent forms to release student's records to several therapeutic day schools. District placed J.C.H. on home instruction pending a therapeutic placement or psychiatric clearance to return to school because of his suicidal ideations.
10/17/22	IEP Meeting held which set forth FAPE as an out-of-district therapeutic day school, related services of speech and counseling, ESY for the summer of 2023, and home instruction pending a placement being found.

FINDINGS OF FACT

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

Barbara Pavlak has been employed as a Certified School Social Worker for the Board for twenty years. She was qualified as an expert in Licensed Clinical Social Work and in CST practices and procedures. Pavlak was assigned to J.C.H.'s case during the 2021 - 2022 school year. At that time, J.C.H. was attending Windsor, an out of district placement, pursuant to an IEP dated April 29, 2021. Pavlak reviewed the history of evaluations and placements for J.C.H. in the spring of 2022 and prior to the end of his eighth grade.

Pavlak testified that she conducted the Re-Evaluation Eligibility and then IEP meeting on August 8, 2022. Based on the evaluations, parental reports, and information provided by Windsor, it was agreed that J.C.H.'s classification would be changed to Communication Impairment. Likewise, based on the information available to it, the IEP agreed that J.C.H. would be returned to District and placed in the LLD/MM program due to his communication challenges. She further testified about the transition class provided for in J.C.H.'s IEP and why it was deemed sufficient at that time to address his counseling needs because no significant emotional support was indicated by anyone as needed for the student.

As evidenced by the IEP, which was not contested by petitioners, they agreed with J.C.H.'s placement and program. They did not raise any concerns at the IEP meeting that J.C.H. required additional counseling or additional transition services. Yet, beginning only later in August, the parents raised new concerns about their son's need for greater support and psychiatric therapy, his intimidation in large crowds, and whether he should even be held back. Pavlak's role ended with the conclusion of the summer because a different case manager – Daniel Liska - would assume responsibility for the school year.

On cross-examination, Pavlak confirmed that no peer mentor or 1:1 emotional or social supports offered in the August 8, 2022, IEP because no concerns were raised at that time and

that Windsor had not provided small group counseling. Pavlak was unaware that J.C.H. did not receive a ChromeBook before the start of school but she was aware that the Vice Principal offered an individual tour of the high school prior to the first day. She did not know if that took place. On further direct examination, Pavlak was also not in a position to know if Windsor had transmitted all of J.C.H.'s records by the start of classes.

Daniel Liska testified that he has been employed by the Board as a School Psychologist for sixteen years and has twenty-six years overall experience as a School Psychologist. He was qualified as an expert in School Psychology without objection. He is the case manager for about sixty-five students, and was on J.C.H.'s CST. Liska testified that he was first assigned to J.C.H.'s case for the start of the 2022-2023 school year. Prior to this assignment, he had not known J.C.H. or had any interactions with him. Upon the beginning of the school year, Liska was advised by the school nurse that J.C.H. was having difficulty navigating the building and the buses. His first real interaction with J.C.H. came on September 16, 2022, when he was advised by the school nurse that petitioners were keeping J.C.H. from school because of depression, which the mother described as greater than he had ever previously experienced. Shortly after receiving the nurse's email, Liska was notified that J.C.H. had sent a lengthy set of text messages to a peer, which texts raised concerns regarding J.C.H.'s emotional well-being as they contained suicidal ideations.

Liska explained that the Crisis Intervention procedures were initiated for the student, which involved calls to dad, mom and then J.C.H., because his mother reported that he was home alone. When J.C.H. did not respond to the call, the District initiated a wellness check through the Wayne Township Police Department, which is part of standard operating procedures. Liska testified that it was his understanding that the Police Department recommended that J.C.H. be sent to the hospital for evaluation. J.C.H. was provided with a clearance and returned to school on Monday, September 19, 2022. Liska testified that he met with J.C.H. upon his return and they discussed what occurred. Liska testified that J.C.H. attended school without issue for the next three days; however, J.C.H. then sent another string of text messages expressing his depression and suicidal ideations. Crisis Intervention was again initiated. Liska met with J.C.H., at which time the student stated to him that he needed immediate counseling because he was torn between living and dying. At that time, Liska had

J.C.H. sign a "contract", promising that he would not harm himself. On September 22, 2022, L.C. sent the school nurse an email stating that she was keeping J.C.H. home because he had spent most of the night in the emergency room due to his mental health issues. It was later discovered that J.C.H. had sent a third set of text messages in which he again expressed depression and suicidal ideations.

On that same date, Liska spoke to L.C., and she advised him that the hospital recommended that J.C.H. be admitted into an outpatient program at GenPsych. Liska explained at the hearing that GenPsych is an intensive outpatient therapeutic program with a residential option and that the hospital's recommendation that J.C.H. be placed in the program demonstrated the severity of J.C.H.'s emotional issues. He explained what services were available at a therapeutic program that were not available in District and why he believed, in his professional, expert opinion that such services were appropriate for J.C.H. During the Crisis Intervention meeting with petitioners, he set forth without hesitation that the parents agreed with J.C.H.'s placement on home instruction pending his placement in an out of district therapeutic setting. He advised that the parents willingly signed consent to have J.C.H. records sent to out of district schools. Liska learned that the hospital had recommended a residential intensive program with GenPsych for J.C.H. but that they had no availability for weeks. Liska testified that he did not send the student for psychiatric evaluation at that time because of the hospital intervention and recommendation.

Lisak further explained that he is not only not a Clinical Psychologist but that he also does not have the time for the type of intensive individual therapy J.C.H. needed. He also outlined the types of programs at WVHS and how they were not what was warranted under these circumstances. For example, the school had a "connections" program for students who had difficulty attending school, i.e., school avoidance, but that was not J.C.H.'s then-present issue. In response to why Tri-County Behavioral Care could not provide the therapeutic supports he needed, Liska stated that it was a private firm retained by the District for the limited purpose of guiding parents to outside resources for Covid mental well-being support.

At the October 17, 2022, IEP meeting, Liska detailed that J.C.H.'s program and placement was discussed and that Sylvia Basauci, who was in attendance from Circle of Care,

agreed that J.C.H. required a therapeutic educational setting. Because this would be an out-of-district placement, responsibility for case management of J.C.H. would transfer from him to John Colatrello, who spearheaded those cases.

On cross-examination, Liska confirmed that he was only J.C.H.'s case manager for a few weeks before he was transferred to Colatrello. When questioned about the fact that the student was without a ChromeBook when all the other freshman had one, Liska explained that it was only for a few days, that J.C.H. would have gotten it at freshman orientation if he had not left so abruptly, and that he personally provided one to him on September 7. With respect to questions about later interactions with petitioners by the District, Liska deferred to Colatrello.

On re-direct examination, Liska also stated that he had some concerns about J.C.H.'s social skills but that the predominant concern was the suicidal ideation. He had no medical release in order to be able to reach out to petitioners' private providers for their son. Liska was also clear that J.C.H. was not the best person to decide his own placement at only fourteen and with his impairments.

Samantha Rhinesmith testified that she began working in the District only in September of 2022, as a maternity leave replacement within the Guidance Department, and having just completed her education the preceding May. J.C.H. was referred to her by Liska and the school nurse after the crisis intervention for her to initiate home instruction for him. Rhinesmith testified about her efforts to secure home instruction for J.C.H. She advised that on three separate occasions, she sent out emails requesting instructors for him. She stated that five teachers, in addition to Corter, all attempted to arrange home instruction through the parents; however, when the parents failed to timely respond to their requests to provide J.C.H. with home instruction, they declined the assignments. Rhinesmith also testified about her conversations and emails with Corter regarding Corter's attempts to provide home instruction. Rhinesmith candidly admitted that as a new counselor, she did not know what to do about providing home instruction to J.C.H. since it was evident that staff did not want to take on these assignments and the parents were not cooperating. She reached out to her Assistant Principal, Liska and Colatrello to advise of her struggles and that they advised her that notwithstanding the parents'

lack of cooperation, she needed to continue to work to find J.C.H.'s instructors, even if it had to be virtual.

Rhinesmith admitted that she never reached out to the parent, believing her responsibility was simply to line up instructors who would then contact petitioners. Petitioners continued to refuse virtual instruction for J.C.H. and she understood that potential instructors were still having difficulty contacting the parents. On cross-examination, Rhinesmith conceded that she remained in the background of any meetings with the student and/or the parents. She knew that they were concerned about his isolation and lack of socializing, but she made no suggestions. Rhinesmith was advised to have his in-school teachers give him incompletes for the first marking period. She was also aware that he was not showing up for many instruction sessions, which was causing instructors to give up. On re-direct examination, Rhinesmith stated that she never heard directly from the parents.

The District then presented Catherine Penny Corter who has been employed as a Learning Disabilities Teacher-Coordinator for approximately seventeen years. She explained that in that capacity, she serves as a member of the CST, but she is also certified to teach special education. Her participation in J.C.H., however, was limited to providing home instruction to J.C.H. Corter explained how home instruction volunteers are sought out as needed and that she accepted some of these as extra work. When she received the assignment about J.C.H. from Rhinesmith, she immediately reached out to both parents via email on October 13, 2022. She testified that neither parent responded, so she again emailed both of them on October 18, 2022, and October 21, 2022. L.C. finally responded to her on October 24, 2022, and arrangements were made for her to meet with J.C.H. at the public library on October 27, 2022. Typically, Corter only communicated about scheduling with parents, especially initially. With some older students, she might interact directly with them once the relationship is established.

Corter set forth at the hearing that she originally agreed to instruct J.C.H. in English 9 and World History, but that she then also picked up Biology because the petitioners refused virtual instruction in that subject. She obtains the material from the teacher's lesson plans and from Google Classroom. Corter testified that J.C.H. at first gave her his attention but then his

behavior regressed. He threatened to leave the library, refused to show her his work on his Chromebook, perseverated on returning to WVHS, tried to elope from the session, and called her rude. The session ended early, and his mom was contacted to pick him up and thanked her for "trying."

Corter stated that neither parent ever initiated contact with her regarding home instruction after that first attempt. However, she tried to reengage with the parents by sending another email on November 17, 2022, inviting J.C.H. to again attempt instruction. When she did not receive a response by November 23, 2022, Corter stated that she advised Rhinesmith that she was no longer interested. L.C. finally contacted Corter on November 28, 2022, advising that she would like to procced with instruction provided that Corter delivered instruction in accordance with J.C.H.'s preferred schedule (Biology and World History on one day for an hour each and English on another day for an hour and one-half) and that he be permitted to socialize with his friends during this instruction.

On cross-examination, Corter reiterated that she was not responsible for scheduling other home instructors or for the broader question of J.C.H.'s progress on the goals and objectives of the IEP. As a home instructor, she was to work with the student on specific assignments provided by the in-class teachers to whom she deferred. In response to further questioning, Corter agreed that she was aware of the difficulties a child with ADHD has with focus and distractions, but she insisted that the issues with J.C.H. at the session had nothing to do with the location within the library. Corter found this experience to be very unusual and frustrating because she is most times successful with individual instruction.

Jason Colatrello was called to testify for respondent. He has seventeen years of experience working in education, nine of which he has spent in the District as a School Social Worker. Prior thereto, he had worked for out-of-district placement programs. Colatrello serves as the out-of-district case manager for WVHS students. I qualified him as an expert in School Social Work without objection. Colatrello testified that he first became involved in J.C.H.'s case when he met with the parents and Liska to assist in addressing concerns regarding WVHS's ability to provide J.C.H. with sufficient emotional supports near the beginning of the school year. His testimony buttressed Liska's about the September 23, 2022, meeting with Liska and

petitioners. He had actually heard about the suicidal texts and sought out Liska requesting to assist if he could. They met before the crisis meeting. During it, Colatrello confirmed that the parents stated that the hospital had recommended that J.C.H. be admitted into GenPsych. Colatrello was familiar with its program, describing it as intense therapy with just some educational component. It is not an educational placement, but Colatrello felt it did support the degree of therapy J.C.H. needed at that time. Petitioners advised, however, that there were no openings for J.C.H.

Colatrello acknowledged that while WVHS has guidance counselors, school social workers/psychologists, and Tri-County counselors, those services are not sufficient to afford J.C.H. the level of care he requires. He testified about the benefits of a therapeutic placement and reiterated that even with the aforementioned supports, WVHS does not meet the definition of a therapeutic placement. A therapeutic day program would provide J.C.H. intense therapy, counselors who were readily available, with counseling very infused into the educational programming in a smaller classroom setting. In addition, behaviors are more quickly addressed and behavioral moments become learning opportunities. During the September 23 crisis intervention meeting, it was decided that a new psychiatric evaluation was not needed because of the hospital's own workup on J.C.H. Accordingly, an out-of-district therapeutic day program was agreed upon, with home instruction pending acceptance into one.

Colatrello stated that petitioners never expressed any objection to these placements and willingly signed consent to have J.C.H.'s records sent to Sage, New Alliance, and Cornerstone. Colatrello explained that after the parental consent is obtained and the records are sent, the schools hold intakes and sometimes offer trial days. If the student is deemed appropriate for the program, then the program will offer enrollment. He explained that an IEP cannot be written containing the name of the out of district program, until a placement is secured. J.C.H. was offered intake at Sage and New Alliance. Colatrello attend both intakes with the J.C.H. and his parents. At Sage, Colatrello observed that J.C.H. was extremely oppositional to his parents and the Sage administrator. Following the intake, Colatrello received an email from the director at Sage who expressed concerns regarding J.C.H.'s appropriateness for their program, stating that its student population tended to be more fragile and that J.C.H. seemed in too much turmoil

to be a good fit for them. Nevertheless, she offered J.C.H. a shadow day, which he attended without success.

Colatrello testified that the intake at New Alliance was similar to that at Sage. New Alliance likewise offered J.C.H. a shadow day, which he attended. Following that shadow day, New Alliance sent Colatrello an email declining to admit J.C.H. into their program because of his lack of willingness to "buy into the program," the level of 1:1 attention he needed, and his level of social skills. Cornerstone was not thereafter pursued because it was so similar to the other two. Later, the petitioners agreed to have records sent to Chancellor; however, despite being notified that an intake had been scheduled, petitioners did not attend. Colatrello called the parents while he was there, and they acknowledged being aware of the appointment. The parents subsequently rescheduled the visit to Chancellor, but as the director subsequently confirmed in writing, petitioners failed to meaningfully participate in that intake process. Instead of taking a tour of the facility and asking questions about the program, petitioners and J.C.H. used their time to complain about their issues with WVHS. Nevertheless, Chancellor offered J.C.H. a shadow day, which petitioners declined.

On October 13, 2022, Colatrello received an email from L.C. requesting that J.C.H. be returned to WVHS. She asserted that enrolling J.C.H. in another program was putting him under stress. She claimed that such a placement would not be needed because J.C.H. "would be" receiving intensive therapy through PerformCare. Colatrello explained why this was not an appropriate option for J.C.H. He further noted that no updated treatment records, clearances, or experts' report were provided in support of the parents' "opinions" about J.C.H.'s ability to return to school. Colatrello testified that he sent out the notice for an IEP meeting to be convened on October 17, 2022, which meeting followed the intake at New Alliance. J.C.H.'s placement on home instruction and an out of district placement was discussed and eventually agreed to by the parents. According to Colatrello, there was no dispute as to what educational setting was necessary for J.C.H. Frankly, it was highly unusual for several intakes to be unsuccessful. He explained that returning J.C.H. to school at WVHS was not a viable option given J.C.H.'s psychiatric needs, even while petitioners kept requesting that he return there. Petitioners did not object to home instruction for J.C.H.; however, they requested that such instruction be in person and not virtually.

On cross-examination, Colatrello acknowledged that he had not observed J.C.H. at WVHS because he was not his case manager until after the concerning text messages and the intervention. It would not have been normal for him to have received any information from his teachers in early September. When questioned as to why he did not "want" J.C.H. at the school, Colatrello objected to the characterization and expressed his desire for an "appropriate" education for the child. He stated that the goal is ultimately to return a student to the public school when and if appropriate. Colatrello confirmed that he had not reviewed any progress notes or monitoring as to J.C.H.'s achievement of the IEP's goals and objectives but stated there was simply not enough school time from which to measure progress.

Colatrello also stated that home instruction is not a placement here but just a temporary circumstance. He testified that out-of-district placements do not usually take this long and that this was out of the ordinary. On additional cross-examination, Colatrello said that they referred petitioners to Circle of Care for therapy until a placement could be found. He acknowledged that J.C.H. had apologized and signed that contract, but that such by itself did not change his opinion that he needed a much more intense therapeutic environment than WVHS could provide. Colatrello admitted that home instruction is reported to the State and does count toward attendance records but that such was not within his scope of responsibility. Colatrello maintained his opinion that Chancellor would likely be the best placement to meet the educational and therapeutic needs of this student.

J.C.H. and his mother L.C. testified on his behalf and in favor of the relief sought in the due process petition. J.C.H. described how he has been making friends at WVHS and had just joined the ski club, which goes on chaperoned trips. He agreed that he had outgrown Windsor, which had been good at first, but that he needed more of a challenge now. J.C.H. said he was a little nervous and excited at the start of his freshman year at WVHS. He also testified about that he had suffered from childhood trauma, although unspecified, and that the Covid isolation was very hard for him and required virtual learning which is not how he learns.

J.C.H. confirmed that the freshman orientation made him very anxious and that he ran out of there after just a few minutes to his father who had waited in the car just in case. He

testified that not getting his ChromeBook at orientation made him feel different in a bad way. He believed he did go on a 1:1 tour but he had no assigned buddy or peer. J.C.H. also agreed that the LLD class was better for him because of its smaller size. He denied having trouble finding the school bus to take home more than once, but he also liked to walk home.

J.C.H. stated that his parents argue every day and that he could not go to them for advice or help when he is feeling pressure or depressed. He said that that was why he chose a trusted friend to vent to in those text messages. He denied intending actual suicide. J.C.H. then described the police wellness check incident. Because he had no notice and is of mixed race, he felt surprised and scared and a little traumatized, but admitted that the officers calmed him down. After the ER visit to St. Joseph's, J.C.H. felt he was fine to go back to the high school. He testified that he did not want either virtual learning or a therapy school. He also confirmed that he only had one library instruction session. He was prepared for English but did not know that it would also include World History or Biology. J.C.H. was disappointed that his regular teachers never contacted him. He does not feel successful now. While he can access Google Classroom, sometimes he has technical issues with it.

J.C.H. also testified about the intake visits to the therapy schools Sage and New Alliance. He stated quite emphatically that he just "didn't want to be there, like, period." He said he is getting some therapy virtually which he repeated is a means that he does not like. J.C.H. said the Abilify is somewhat helpful. He ended his testimony by stressing that he wants to return to WVHS, and believes he could catch up with tutors at the end of the day or in the summer.

L.C. also presented testimony at the plenary hearing. She described her son as having had persistent depression and nervousness from a young age. He had made a lot of progress at Windsor which was highly structured and good for his emotional and behavioral issues. By the end of Eighth Grade, she felt that J.C.H. was able to interact normally with his peers. She described how he has learned to de-escalate or calm himself. Sometimes he will have an outburst but will know to walk away and then come back to apologize.

L.C. described the August IEP meeting, the change in her son's classification, and that counseling was promised but never provided. She stated that he had been anxious at orientation with so many kids he did not know. She did not recall getting any invitation for a private tour of the school from the Vice Principal. When she received the email from "Anita" about his problems finding his bus, her son told her that it was not true and that he just liked to walk home. She could not answer my question as to the distance between their home and the school. L.C. acknowledged that the short delay in getting J.C.H. a ChromeBook was due to the fact that he had left the freshman orientation after only five minutes and that it made him feel left out for a few days. T here was also only a short period of time at the beginning of the school year when they had some technical difficulty logging into Google Classroom.

L.C. described how upsetting it was to her and J.C.H. when the police made their wellness check on him without waiting, as she had asked, for her to get home. She could tell he was very upset because he was pacing the room, his eyes were darting back and forth and he was anxious. L.C. refused the offer of transport by the police to the hospital and took him herself. At first, she declined administration of any medication to her son but finally consented because he was refusing to even allow a blood draw. J.C.H. did not calm down until he was given a second dose. He was released from St. Joseph's ER but she had never been advised by the District that she needed a written release to get him back into school.

Later, L.C. was told that J.C.H. had sent more suicidal texts and that the school wanted a meeting. She testified that she only consented to the records being sent to therapy schools and for intakes to be arranged. She never consented to him being placed on home instruction or at an out-of-district school, yet testified that she felt this was the only way to help her son and that she had no choice. L.C. did contact PerformCare and claimed that they could not give her an appointment for months unless her son was in crisis. She described it as urgent but not a crisis. She also testified to the second ER visit for his mental health issues. L.C. thought PerformCare would meet them there but did not. The hospital referral to GenPsych was, according to her, only if PerformCare could not help J.C.H.

On further direct examination, L.C. was taken through various documents and asked to comment on them, including the Crisis Intervention form on which she had no input, and the

fact that she was not provided with the IDEA procedural safeguard or parental rights statements except by reference to their location online. She noted that a psychiatric evaluation was not scheduled. With respect to the October IEP, she recalled the PerformCare therapist supporting a therapeutic placement for J.C.H. but only because the school had no therapist to help him.

L.C. testified that J.C.H. began receiving "intensive therapy" two to three times per week from PerformCare in October of 2022. When questioned as to what therapy he received, L.C. explained that J.C.H. did not actually attend regular therapy sessions and was only provided with counseling when he determined he needed it. In such cases, he was able to contact a telehealth professional for support.[4] She insisted that her son never tried suicide. It was also noted in their testimony that J.C.H. has opportunities to socialize with his peers through ski club, Boy Scouts, at the library, and while spectating football games.

L.C. testified further that both she and her husband implored the school to let their son return to WVHS. They felt that he was stable enough to get his education there, supplemented with outside therapy. She spoke on the instructive sessions in the library although she was not there and as such, it was hearsay and repetitive of her son's version of events. She stated that he only wanted help with English because he insisted he could do Biology and Algebra on his own. In response to my own questioning, petitioner advised that her son will not let her help him with getting his schoolwork done. L.C. confirmed the various doses of Abilify that they have tried and that he does not need to take it in school so no medication monitoring is necessary. She also repeated that he can handle being at WVHS even if he needs help navigating large groups of people.

On cross-examination, L.C. stated both that social skill services were not offered in August but also that he had good social skills. He was able to make friends and is past the anxiety of a large high school. She acknowledged that she had been home while he was texting his suicidal thoughts but he was likely in his bedroom. The hospital also told her to secure their knives. His threats of cutting himself date back even before Covid to when he was seven or eight, but continue more recently as well. He was never a threat to others. L.C.

[4] While a PerformCare Treatment Plan (P-39) is in the record, Glenn did not testify, the items are not self-explanatory or with a supporting, evidential foundation, and yet, they do indicate that individual therapy and family counseling would hopefully start prospectively, i.e., only after January 24, 2023.

expressed her belief that an out-of-district placement was punishment for kids who express suicidal ideation.

L.C. was questioned on her statement that they never consented to home schooling and a therapeutic day program when later they announced that they had "reconsidered" that placement. She also claimed that the intensive counseling from Circle of Care helped persuade them that their son was able to return to the high school. She believes her son's opinion is a very important consideration. L.C. testified in a confused manner about her allegation that the school did not use her proper email address to communicate with her while admitting her husband used the same one and that she just does not check them very often because of so much spam. She claimed that GenPsych offered a partial day program but never evaluated J.C.H., yet she also stated that she did not have time for an evaluation appointment.

The only expert witness presented by petitioners, Vody Vincent, a Psychiatric Nurse Practitioner (PNP) with the Mental Health Center of Passaic. She completed the PNP program at Fairleigh Dickinson in December 2021 and holds a certification as a Psychiatric Mental Health Nurse Practitioner. Previously, she had worked as a psychiatric nurse at University Hospital for twenty years. I qualified her as an expert in Mental Health Nursing without objection. Vincent initially saw J.C.H. with his mother on December 9, 2022. This first consultation lasted about one and one-half (1.5) hours during which time she interviewed them both. Follow-up appointments are only thirty (30) minutes. During this initial appointment, Vincent was told by J.C.H. that he was not suicidal but was anxious, mostly about returning to WVHS. He denied delusions or hallucinations. L.C. stated that he had never been on any psychiatric medications before. She described how he is home schooled now but not learning much, feels isolated, and is having trouble sleeping. Vincent observed that he seemed anxious, kept interrupting, spoke in a pressurized manner, and perseverated on WVHS. Her impressions were that J.C.H. had poor insight, depression, and mood disorder.

Vincent prescribed Abilify at this first appointment to help with J.C.H.'s depression, aggression, and inability to sleep. She did not know if they were getting family counseling and she could not recall if she even asked. Vincent noted that despite her prescribing Abilify to J.C.H. on December 9, 2022, as of their second appointment on December 23, 2022, J.C.H.

had not yet started this treatment protocol. His mother reported that he had been sick and did not want him taking the Abilify in addition to cold medications. On the next visit, Vincent increased the dose in order to help him sleep. As of J.C.H.'s appointment on February 2, 2023, which Vincent testified was not attended by J.C.H., she was still adjusting J.C.H.'s medication – this time downward because it made him too sleepy. Vincent agreed at the hearing that his medication was not yet stabilized.

It was Vincent's opinion that J.C.H. needs to be with his same-age peers and needs in-person education in a therapeutic environment equipped to meet his needs. On cross-examination, Vincent confirmed that while agrees that J.C.H. requires a therapeutic educational setting, she admittedly lacked the experience and expertise to testify as to what exactly a therapeutic educational environment is, whether WVHS constitutes a therapeutic educational environment, and/or what level of therapeutic services J.C.H. requires in an educational setting. She reiterated that J.C.H. was not at the last of his appointments to date and thus, unavailable for any talk therapy with her.

From the above, I **FIND** that –

1. Petitioners have not been following the advice of medical or health professionals to have J.C.H. attend intensive outpatient or residential mental healthcare programs, or even regular therapy sessions.

2. Petitioners have not cooperated with the educators who have attempted to provide home instruction, or to provide intakes, tours, and shadow days at potential therapeutic day school programs.

3. The behavior of J.C.H. during home instruction, and especially during those intakes, supported the District's impression that his oppositional defiance disorder and emotional well-being necessitated a holistic therapeutic placement with greater services and support than WVHS can provide.

4. Petitioners have repeatedly conflated people's areas of responsibility, for example, equating a guidance counselor with a therapeutic counselor, or a home instructor as the individual responsible for recruiting and scheduling at-home instruction.

5. Reference by petitioners in their post-hearing summation that J.C.H. began therapy and treatment soon after the September incidents is false and unsupported by the evidential record, insofar as the only document in evidence is the December 9, 2022, evaluation by PNP Vincent. There is no competent evidence that the child is attending regular therapy sessions.

6. Petitioners delayed for several weeks having J.C.H. take the medication Abilify prescribed by Vincent only in mid-December, have had a follow-up appointment without his presence, and his medication is still in an adjustment or titration stage.

7. No qualified special educational or therapeutic experts were presented by petitioners, and thus, the only testimony in rebuttal to the District's case consisted of the desires and wishes of the petitioners themselves. They presented no evidence that any professional has said that J.C.H. should return to WVHS. Vincent even recommended that he return to a "school setting with therapeutic environment equipped to monitor his needs."

8. Nevertheless, the District had no new psychiatric evaluation upon which to rely in October or at the hearing, and failed to even call as a witness Sylvia Basauci, a Circle of Care therapist who was present and upon whom they chose to rely at the IEP meeting.

9. The District has also been unable to find instructors who could provide J.C.H. with education in the home or at the library.[5] This was not an intentional failing on its part but a combination of petitioners' demands and behavior, and probably a staff supply shortage.

10. Colatrello's expert opinion must be weighed more heavily than any other witness because his educational expertise is both broader and deeper than a mental health nurse who admittedly had no basis for any opinion on WVHS or therapeutic day school programs.

[5] I do note, however, that J.C.H. was only engaged with an occasional therapist by way of virtual telehealth, yet the parents insisted he cannot undertake instruction through that means.

LEGAL ANALYSIS AND CONCLUSIONS

This dispute centers on the October 17, 2022, IEP that changed J.C.H.'s placement to a therapeutic day school with home instruction pending his acceptance into such a program. There is no dispute that it is the District's burden to show that it was appropriate, at the time it was proposed, to meet J.C.H.'s individual needs and that the IEP was designed to confer meaningful educational benefit on him in the least restrictive environment. Petitioners argue that J.C.H. must be returned to WVHS with sufficient related therapeutic supports as the only appropriate and least restrictive educational setting.[6]

State and federal laws require local public school districts to identify, classify and provide a free and appropriate public education (FAPE) to children with disabilities. 20 U.S.C.A. § 1412; N.J.S.A. 18A:46-8, -9. As a recipient of federal funds under the IDEA, the State of New Jersey has a policy that assures all children with disabilities the right to FAPE. 20 U.S.C.A. § 1412. The responsibility to provide FAPE, including special education and related services, rests with the local public school district. 20 U.S.C.A. § 1401(9); N.J.A.C. 6A:14-1.1(d). In accordance with N.J.S.A. 18A:46-1.1, and as stated, the burden of proving that FAPE has been offered likewise rests with school personnel. FAPE is an education that is "specially designed to meet the unique needs of the handicapped child, supported by such services as are necessary to permit the child to benefit from the instruction. G.B. v. Bridgewater-Raritan Reg'l Bd. of Educ., 2009 U.S. Dist. LEXIS 15671, *5 (D.N.J. Feb. 27, 2009) (citing Hendrick Hudson Cent. Sch. Dist. Bd. of Educ. v. Rowley, 458 U.S. 176, 189, 102 S. Ct. 3034, 3042, 73 L. Ed. 2d 690, 701 (1982)). FAPE includes special education and related services that are provided at public expense under public supervision and direction and without charge; that meet the standards of the State Educational Agency; that include an appropriate preschool, elementary

[6] Petitioners continue to argue their emergent "stay put" application and their position that J.C.H. was expelled, previously decided against them. They also continue to rely upon documents not admitted into evidence. Petitioners also argue that the District has violated "child find" provisions and procedural safeguards under the IDEA; that it was required to have undertaken a functional behavioral assessment and behavioral intervention plan after a ten-day removal from school. I have set aside consideration of the portions of their brief that did so. They also continue to argue that the crisis intervention for this fourteen-year-old with suicidal ideation violated his First Amendment rights because he did not use a school-issued device or texted on school property. Plainly, petitioners miss the point as it was concern for his mental well-being and not his speech *per se* which triggered the crisis intervention.

and secondary school education through age twenty-one if appropriate; and that are provided in conformity with an IEP as required under 20 U.S.C.A. § 1414(d).

Federal law is complied with when a local school board provides a handicapped child with a personalized education program and sufficient support services to confer some educational benefits on the child. Rowley. In Rowley the Court determined that although the Act mandates that states provide a certain level of education, it does not require states to provide services that necessarily maximize a disabled child's potential. Instead, the IDEA requires a school district to provide a basic floor of opportunity. Carlisle Area Sch. v. Scott P., 62 F.3d 520, 533-34 (3d Cir. 1995). While our courts have consistently held that the IDEA does not mandate an optimal level of services, an IEP must provide meaningful access to education, and confer some educational benefit upon the child. Rowley, 458 U.S. at 192. In order to be appropriate, the educational benefit conferred must be more than trivial. Ridgewood Bd. of Educ. v. N.E., 172 F.3d 238 (3d Cir. 1999). The central legal issue is whether the educational services and program offered are sufficient to confer an educational benefit that is meaningful and significant and, therefore, not de minimus, in nature. Lascari v. Ramapo Indian Hills Regional Sch.Dist., 116 N.J. 30 (1989).

The educational opportunities provided by a public school system will differ from student to student, based upon the "myriad of factors that might affect a particular student's ability to assimilate information presented in the classroom." Rowley, 458 U.S. at 198. The Rowley Court recognized that measuring educational benefit is a fact-sensitive, highly individualized inquiry, and that "[i]t is clear that the benefits obtainable by children at one end of the spectrum will differ dramatically from those obtainable by children at the other end, with infinite variation in-between." Id. at 202.

In determining where to deliver instruction, the district must be guided by the strong statutory preference for educating children 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 as least restrictive to enrollment in a non-approved residential private school as most restrictive. 34 C.F.R. § 300.115 (2009); 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) (2009); see also N.J.A.C. 6A:14-4.2.

In Oberti v. Board of Education, 995 F.2d 1204 (3d Cir. 1993), the Third Circuit established a two-pronged test for determining whether a school district has complied with the IDEA's mainstreaming mandate: first, whether education in the regular classroom, with use of supplementary aids and services, can be achieved satisfactorily; and second, if placement outside of the regular classroom is necessary for the child's educational benefit, whether the district has included the child in school programs with non-disabled children to the maximum extent appropriate. Id. at 1215. Before placing a child outside the district, "the school must consider the whole range of supplemental aids and services, including resource room and itinerant instruction, speech and language therapy, special education training for the regular teacher, behavior modification programs, or any other available aids or services appropriate to the child's particular disabilities." Id. at 1216; N.J.A.C. 6A:14-4.2. As the Oberti court astutely noted:

> In passing the Act, Congress recognized "the importance of teaching skills that would foster personal independence . . . [and] dignity for handicapped children" . . . Learning to associate, communicate and cooperate with nondisabled persons is essential to the personal independence of children with disabilities. The Act's mainstreaming directive stems from Congress's concern that the states, through public education, work to develop such independence for disabled children.
>
> [Oberti, supra, 995 F.2d at 1217.]

The Supreme Court noted in Rowley that judges have no expertise in the area of special education, and as such they must rely upon the determinations of experts in the field of special education. Rowley, supra, 458 U.S. at 208, 102 S.Ct. at 3051, 73 L.Ed.2d 690. Hendrick

Hudson District Board of Education v. Rowley, 458 U.S. 176, 188-189, 73 L.Ed. 2d 690, 703, 102 S.Ct. 3034 (1982). In making a determination of whether an IEP provides a FAPE, the court must rely heavily on the testimony of educational experts. Oberti, supra, 995 F.2d at 1216.

In the Third Circuit, it is well-established that the ALJ should use the "snapshot approach," which assesses the reasonable calculation based on what the CST team knew and had reason to know at the time of developing the IEP and which the Endrew F. Court appeared to endorse. K.D. v. Downingtown Area School District, 904 F.3d 248 (3rd Cir. 2018). In K.D., the court observed, "We may not rely on hindsight to second-guess an educational program that was reasonable at the time." Id. at 255. I **CONCLUDE** that the District has met its burden of proof that the IEP proposed by the District for the remainder of the current school year on October 17, 2022, was designed to confer a meaningful educational benefit on J.C.H. in the least restrictive environment appropriate to meet his educational, behavioral, and emotional needs at that time. Petitioners had not followed through on the intensive outpatient or residential therapy for J.C.H. as advised by the hospital; they had not even had him seen for medication management until mid-December; and they allowed him to call the shots on when and how to engage in talk therapy, as well as home instruction. They also presented no educational expert at the hearing, and thus, no witness competent to explain to me whether and how WVHS could mimic a therapeutic day school through extensive related services in the face of the District's experts to the contrary.

Lastly, I take note of the fact that the District has still not undertaken independent evaluations and its primary reliance upon statements made by Vincent or other providers not presented as experts herein, give me only small confidence that the October IEP is still meaningful. J.C.H. was never disruptive of or violent toward other students, but that could have been because his suicidal ideations and mental health issues arose so early in the school term. He has not been hospitalized or to the ER since the fall, but that might be because of the benefit to him of not being overwhelmed at WVHS. I do not think that any of the parties can say for sure. I certainly cannot, nor am I called upon to do so. The District's case correctly encompasses the period of August through October; while petitioners have only presented predominantly lay testimony and documents pertaining to the period of December through

February.[7] Nevertheless, what that mismatch demonstrates is that the District has not implemented the October IEP, with some of that attributable to the lack of cooperation by petitioners.

Accordingly, I consider and reach the issue of compensatory education for J.C.H., who petitioners correctly assert has been mostly without instruction since September 2022. First, as noted in the decision on emergent relief, any days between September 15 and September 23 when he was not in class should not be at issue because those absences were not only fewer than ten (10) days but were also absences for which petitioners sought a medical excuse from the school. Second, it is reasonable to provide the District with some leeway period in order to set up the mechanics of home instruction. Preciado v. Bd. Of Educ. Of Clovis Mun. Sch., 443 F. Supp. 3d 1289 (D.N.M. 2020). Third, the District has opposed this relief because of petitioners' lack of cooperation with home instruction or intakes, and the fact that it has provided him FAPE. I concur that J.C.H. is entitled to some compensatory education, notwithstanding my conclusion that the October IEP provided FAPE, but I have discounted the demand some because of the petitioners' lack of cooperation. As I have stated above, their fourteen-year-old son has been permitted to set the parameters of his access to education without being required to respect or adhere to adult directions. His parents seem to simply defer to him and appear to expect the District to do likewise. This has extended not only to therapy and therapeutic placement options, but also to his behavior in the library where "home" instruction was being delivered.

Based on the school calendar and the five major subjects J.C.H. is enrolled in (Biology, World History, Algebra I, Spanish I, and English), I **CONCLUDE** that he is to receive four hundred and fifty (450) hours[8] in compensatory education, plus ongoing home instruction. Parents of Student W. ex rel. Student W. v. Puyallup Schl. Dist., No. 3, 723, 31 F.3d 1489 (9th Cir. 1994) (there is no obligation to provide a day-for-day compensation for time missed when compensatory education is awarded). I also **CONCLUDE** that the parties are to treat these

[7] I do not fault petitioners for the difficulty they no doubt faced in obtaining counsel. Now that so much water has passed under the bridge, I direct the District to obtain the necessary educational and psychiatric evaluations immediately, and thereafter schedule another IEP meeting.

[8] This number was derived by taking the five hours of subject matter instruction and multiplying by a half-year of school days. To the extent that he has missed more than that number of days as of March 10, 2023, those days were deducted because of the lack of cooperation by the parents and the student.

compensatory hours as use-them-or-lose-them days and are directed to schedule these for any available space in the library on a regular basis in advance, with instructors to be located expeditiously. Just like with any regular school day, if J.C.H. is ill, refuses to attend, or walks out, he is deemed absent and they are not to be rescheduled. If the District cannot obtain sufficient instructors within fifteen (15) school days from the date of this Decision, they are required to provide payment at regular market rates to instructors obtained by petitioners, upon direct proof of instruction by those instructors plus proof of billing by the parents. Again, if J.C.H. is scheduled for instruction and does not appear or does not cooperate, those hours will not be made-up and will be deducted from the total set forth herein, and the instructors should certify to same. I decline to order any funds placed into escrow.

ORDER

Accordingly, and for the reasons set forth above, it is hereby **ORDERED** that the due process petition of petitioners L.C. and G.H. obo J.C.H. is hereby **DENIED**. It is further **ORDERED** that the Wayne School District provide J.C.H. with compensatory education in the amount of four hundred and fifty hours.

This decision is final pursuant to 20 U.S.C. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2022) and is appealable by filing a complaint and bringing a civil action either in the Law Division of the Superior Court of New Jersey or in a district court of the United States. 20 U.S.C. § 1415(i)(2); 34 C.F.R. § 300.516 (2022). 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.

March 9, 2023
DATE

GAIL M. COOKSON, ALJ

Date Received at Agency 3/9/23

Date Mailed to Parties: 3/9/23

id

APPENDIX

LIST OF WITNESSES

For Petitioners:

J.C.H.

L.C.

Vody Vincent

For Respondent:

Barbara Pavlak

Daniel Liska

Catherine Penny Corter

Samantha Rhinesmith

Jason Colatrello

LIST OF EXHIBITS IN EVIDENCE

For Petitioners:

P-1 [duplicate of R-15]

P-2 [duplicate of R-12]

P-3 WJ-4 Score Report – Windsor Learning Center, dated May 26, 2022

P-4 [duplicate of R-17]

P-5 [duplicate of R-2]

P-6 [duplicate of R-8]

P-7 [duplicate of R-2]

P-8 [duplicate of R-21–R-25]

P-9 [duplicate of R-27]

P-10 [not in evidence][9]

P-11 [duplicate of R-3]

P-12 Statement from Student, dated October 10, 2022

[9] This exhibit was not sponsored by any witness and is irrelevant.

P-13 [not in evidence][10]

P-14 Psychiatric Eval - Mental Health Ctr Passaic/Vody Vincent, dated December 09, 2022

P-15 Records - St. Joseph's Health, dated September 16-17, 2022

P-16 Authorization for Psychiatric Evaluation, dated December 22, 2022

P-17 [not in evidence][11]

P-18 [not in evidence][12]

P-19 [not in evidence][13]

P-20 [not in evidence][14]

P-21 Correspondence- Parents/ District, dated May 2021 – August 2022

P-22 Correspondence- Parents/ District, dated August 2022 to January 2023

P-23 [not in evidence][15]

P-24 Information re: Wayne Valley's LLD/MM Program 2023

P-25 [not in evidence][16]

P-26 Medical records- Advocare, dated April 2021 – January 2023 [partially in evidence][17]

P-27 Progress notes- Ms. Vincent/ MHCP, dated December 2022 – January 2023

P-28 Emails- Parent/ District re: Tutoring, dated November 2022 – January 2023

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[10] This exhibit was not sponsored by any witness and is irrelevant.
[11] This exhibit was not sponsored by any witness.
[12] This exhibit was not sponsored by any witness.
[13] This is a pleading and already part of the record.
[14] This is a pleading and already part of the record.
[15] Caselaw is not "evidence," and the Federal Rules of Appellate Procedure do not govern the OAL.
[16] It is well accepted that medical records, when introduced by a qualified witness, such as the physician that prepared them, fall within the business records exception to the hearsay rule. Nowacki v. Community Medical Center, 279 N.J. Super. 276 (App.Div.), *certif. denied*, 141 N.J. 95 (1995). Nowacki also set forth that our caselaw "clearly established that medical opinions in hospital records should not be admitted under the business records exception where the opponent will be deprived of an opportunity to cross-examine the declarant on a critical issue such as the basis for the diagnosis or cause of the condition in question." [Id. at 282-83.]

> To summarize, the combined impact of Rules 703 and 808 is to limit the ability of a testifying expert to convey to a [factfinder] either (1) objective "facts or data" or (2) subjective "opinions" based upon such facts, which have been set forth in a hearsay report issued by a non-testifying expert. In either instance, the [petitioner] may not serve as an improper conduit for substantive declarations (whether they be objective or subjective in nature) by a non-testifying expert source.
>
> [James v. Ruiz, 440 N.J. Super. 45, 66 (App. Div. 2015).]

[17] See fn. 14, supra. I will admit into evidence only pages 1-7 to the extent that I can understand this record without expert assistance, but the lack of a sponsoring witness will impact its weight and usefulness. The remaining pages are irrelevant.

P-29 [not in evidence][18]

P-30 [not in evidence]

P-31 [not in evidence][19]

P-32 [not in evidence][20]

P-33 Internal District Emails Re: Student, dated August 2022 – January 2023

P-34 Internal District Emails Batch #2, dated August 2022 -- January 2023

P-35 Pavlak Letter/Procedural Safeguards Statement, dated September 6, 2022

P-36 [not in evidence][21]

P-37 District Attendance and Grade Records

P-38 90-Day ISP - Circle of Care, dated January 24, 2023

P-39 Treatment Plan - Perform Care, dated January 26, 2023

P-40 [duplicate of R-4]

P-41 Report Cards - Windsor 2021 -- 2022

P-42 Letter of Recommendation - Tyler Phillippe 2022

P-43 Progress Update - Algebra 1, dated September 16, 2022

P-44 [not in evidence]

P-45 [not in evidence][22]

P-46 Wayne Valley High School Calendar/Daily Schedule 09/2022 - 02/2023

P-47 [not in evidence][23]

P-48 [not in evidence][24]

P-49 [not in evidence][25]

P-50 [not in evidence][26]

P-51 [not in evidence][27]

P-52 Outpatient Safety Plan, dated September 21, 2022

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[18] Subpoenas are not "evidence," and enforcement of same would have been available in the Superior Court of New Jersey. N.J.A.C. 1:1-11.5.
[19] This article is hearsay without a residuum of competent evidence.
[20] This is a pleading and already part of the record.
[21] Discovery is not per se evidential.
[22] This exhibit was not sponsored by any witness.
[23] This exhibit was not sponsored by any witness.
[24] This exhibit was not sponsored by any witness. Coincidentally, CarePlus has a therapeutic day school for students identified by the District as in need of a "more emotionally supportive environment."
[25] This exhibit was not sponsored by any witness.
[26] This article is irrelevant and also hearsay without a residuum of competent evidence.
[27] This exhibit was not sponsored by any witness.

P-53 [not in evidence][28]

P-54 Session Note- Vincent, dated February 02, 2023

For Respondent:

R-1 IEP, dated April 28, 2021

R-2 IEP, dated August 8, 2022

R-3 IEP, dated October 17, 2022

R-4 Progress Report for IEP Goals & Objectives (2021-2022), dated June 24, 2022

R-5 Re-Evaluation Plan, dated March 7, 2022

R-6 Correspondence from Barbara Pavlak to Parents, dated July 5, 2022

R-7 Reevaluation Eligibility/IEP Meeting Notice, dated July 25, 2022

R-8 Eligibility Conference Report-Re-Evaluation, dated August 8, 2022

R-9 [not in evidence]

R-10 [not in evidence]

R-11 [not in evidence]

R-12 Educational Evaluation, dated May 26, 2022

R-13 [not in evidence]

R-14 [not in evidence]

R-15 Speech-Language Evaluation Report, dated May 24, 2022

R-16 [not in evidence]

R-17 Psychological Assessment by Dania Diaz, dated June 8, 2022

R-18 Psychiatric Evaluation, dated April 25, 2019

R-19 Psychiatric Evaluation, dated December 9, 2022

R-20 IEP Team meeting Notice to Parents, dated October 7, 2022

R-21 Crisis Intervention Form, dated September 16, 2022

R-22 Crisis Intervention Form, dated September 21, 2022

R-23 Text messages, dated September 16, 2022

R-24 Text messages, dated September 21, 2022

R-25 Text messages, dated September 22, 2022

R-26 St. Joseph's Health Work/School Release Form, dated September 16, 2022

[28] Subpoenas are not "evidence."

R-27 Release of Information Placements, dated June 23, 2022
R-28 [not in evidence]
R-29 [not in evidence]
R-30 Letter from Kevin McNaught, dated January 10, 2023
R-31 [not in evidence]
R-32 Email chain between Barbara Pavlak and GH, dated November 9, 2021, at 10:25 a.m.
R-33 Email chain between Barbara Pavlak and GH, dated February 14, 2022, at 9:46 a.m.
R-34 Email chain between Barbara Pavlak and GH, dated March 23, 2022, at 1:13 p.m.
R-35 Email chain between Barbara Pavlak and Mary Burke, dated April 1, 2022, at 12:14 p.m.
R-36 [not in evidence]
R-37 Email chain between Barbara Pavlak, GH and Angela Karras, dated August 8, 2022, at 1:19 p.m.
R-38 Email chain between Barbara Pavlak and LCH, dated August 24, 2022, at 10:25 a.m.
R-39 Email chain between GH and Barbara Pavlak, dated August 30, 2022, at 2:02 p.m.
R-40 Email chain between GH and Daniel Liska, dated August 30, 2022, at 11:58 a.m.
R-41 Email from Anita Dispenziere, dated September 7, 2022, at 2:24 p.m.
R-42 Email chain between Anita Dispenziere and LCH, dated September 22, 2022, at 7:32 a.m.
R-43 Email from chain between Daniel Lisak and Anita Dispenziere, dated September 16, 2022, at 12:26 p.m.
R-44 Email from Anita Dispenziere to Parents, dated September 16, 2022, at 12:39 p.m.
R-45 Email chain between Daniel Liska and Kenneth Palczewski, dated September 22, 2022, at 12:04 p.m.
R-46 Email from GH to District, dated October 31, 2022, at 8:09 p.m.
R-47 Email chain from Catherine Corter to Parents, dated October 13, 2022, at 11:01 a.m.
R-48 [not in evidence]
R-49 Character Casting Call
R-50 Email chain between Jason Colatrello and Audrey Stone, dated September 29, 2022, at 12:28 p.m.
R-51 Email chain between Jason Colatrello to Daniel Liska, dated October 13, 2022, at 12:44 p.m.

R-52 Email chain between Jason Colatrello and David Leigh, dated October 19, 2022, at 12:16 p.m.

R-53 Email chain between Scott Wisniewski and GH, dated September 5, 2022, at 6:38 p.m.

R-54 Home Instruction Emails