



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

**FINAL DECISION**

OAL DKT. NO. EDS 11394-19

AGENCY DKT. NO. 2020 30377

**M.A. AND J.A. ON BEHALF OF M.A.,**

Petitioners,

v.

**WEST MORRIS REGIONAL**

**BOARD OF EDUCATION,**

Respondent.

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**Beth A. Callahan**, Esq., for petitioners (Callahan & Fusco, attorneys)

**Jodi S. Howlett**, Esq., for respondent (Clearly Giacobbe Alfieri Jacobs, attorneys)

Record Closed: April 6, 2021

Decided: May 21, 2021

BEFORE **KELLY J. KIRK**, ALJ

**STATEMENT OF THE CASE**

Petitioners, M.A. (Dad) and J.A. (Mom) (collectively, the parents) on behalf of M.A., filed for due process against the West Morris Regional Board of Education (the Board or the District), seeking reimbursement for the costs of M.A.'s placement at the SUWS-Wilderness Program and Fusion Academy, including tuition and transportation,

reimbursement for the out-of-pocket costs for M.A.'s private therapist, and compensatory education.

### **PROCEDURAL HISTORY**

On or about July 16, 2019, the parents filed a Petition for Due Process against the Board alleging failure to conduct an evaluation and propose an IEP and seeking, inter alia, reimbursement for the costs of M.A.'s placement at the SUWS-Wilderness Program and Fusion Academy, including tuition and transportation; continued placement at Fusion Academy; and compensatory education. The matter was transmitted by the New Jersey Department of Education (the Department), Office of Special Education Policy and Dispute Resolution, to the Office of Administrative Law (OAL), where it was filed on August 19, 2019.

The hearing was scheduled for December 18, 2019. Said hearing date was adjourned at the request of the petitioners' attorney, with consent. The hearing was rescheduled for February 28, 2020. By letter dated February 3, 2020, respondent's attorney advised that the parties were unable to negotiate a settlement and requested a conference relative to a motion and hearing dates. A telephone conference was held on February 5, 2020, at which time petitioners' attorney advised that the Petition for Due Process would be amended to reflect that M.A. was no longer enrolled at Fusion Academy. The February 28, 2020 hearing date was adjourned, and the hearing was rescheduled for May 6, 2020, May 12, 2020, and June 2, 2020.

Petitioners filed an amended Petition for Due Process (Amended Petition) on February 14, 2020, seeking reimbursement for the costs of M.A.'s placement at the SUWS-Wilderness Program and Fusion Academy, including tuition and transportation; reimbursement for the out-of-pocket costs for M.A.'s private therapist; and compensatory education. Respondent filed a motion to bar reimbursement for unilateral placement on February 18, 2020. Petitioners filed opposition to the motion on March 3, 2020. On March 11, 2020, respondent objected to the Amended Petition because it "deviates substantially" from the initial Petition for Due Process. A telephone conference was held on May 15, 2020, at which time the District consented to the filing of the Amended Petition.

The May and June hearing dates were adjourned, and the pending motion was deemed moot due to the Amended Petition. Respondent filed its answer to the Amended Petition on May 29, 2020. The hearing was rescheduled and held on October 19, 2020, October 26, 2020, October 30, 2020, and the parties submitted briefs in lieu of oral summations on a final hearing date of April 6, 2021.

## **FACTUAL DISCUSSION**

### **Findings of Fact**

Hillary Klimowicz (school counselor), Tamara D'Alessio (student assistance coordinator), Frank Fell (school psychologist), Kathleen Bradshaw (learning disabilities teacher-consultant) and Alison Michno (school social worker) testified on behalf of respondent. J.A. (Mom), M.A. (Dad), and Joshua Glawe (licensed clinical social worker) testified on behalf of petitioners.

Having had an opportunity to consider the evidence and to observe the witnesses and make credibility determinations based on the witnesses' testimony, I **FIND** the following **FACTS** in this case:

In 2015–2016, M.A. attended Black River Middle School for eighth grade. M.A.'s PARCC Algebra I Mathematics Assessment Report (score 738) and PARCC English Language Arts/Literacy Assessment Report (score 726) for 2015–2016 were both within Level 3 "Approached Expectations." (J-1; J-2.) There are five levels to the PARCC scores: Level 1 suggests the student requires remediation and is not ready to move on to the next course; Levels 2 and 3 suggest the student is ready to move on to the next course but may require some extra help; and Levels 4 and 5 suggest the student is ready to move on to the next course.

In 2016, M.A. met the scholastic requirements<sup>1</sup> for the Black River Scholars Chapter of the National Junior Honor Society. (J-3.) His grades for the 2015–2016 school year in all courses ranged from at lowest one B- (Band) to at highest A+. (J-4.)

Hillary Klimowicz has been a school counselor (formerly known as a guidance counselor) at West Morris Mendham High School (WMMHS) for eight years. School counselors work with students on social, emotional, and academic issues. High school counselors meet with eighth graders, so Klimowicz met with M.A. and his parents during winter of his eighth-grade year. The middle school provides WMMHS with course recommendations for students, but the student/family may either follow the recommendations or “waive” into a higher-level course. WMMHS has three levels of courses: academic level—the baseline college prep courses; advanced level—faster paced and more in-depth courses; and honors level (International Baccalaureate and Advanced Placement)—the fastest paced and most in-depth courses. The District relies more upon grades than standardized tests to make placement decisions.

In 2016–2017, M.A. attended WMMHS for ninth grade. His April 1, 2017 PARCC scores were 751 for GEO01 and 756 for ELA-09. (J-6; J-7.) His New Jersey Biology Competency Test Individual Student Report, dated May 2017, reflects a scaled score of 243 and proficiency level of “proficient.” (J-8.) M.A. ran for three seasons: cross country, winter track, and track.

M.A. had no school attendance or school disciplinary issues during his ninth-grade year. M.A.’s official student transcript, reflects his final grades for ninth grade as follows:

English 1 (AV): B-  
US History 1 (HN): B  
Spanish 2 (AV): C+  
Geometry (HN): C+  
Biology (HN): C-  
Band (AC): B+

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<sup>1</sup> The required grade-point average (GPA) from seventh grade and the first marking period of eighth grade is a B+. (J-3.)

Phys Ed 9: P  
Health Ed 9: B+

[J-31.]

In 2017–2018, M.A. attended WMMHS for tenth grade. His October 11, 2017, PreACT composite score was 24. (J-11.) He correctly answered 28 of 36 math questions, 25 of 20 science questions, 29 of 45 English questions, and 17 of 25 reading questions. (J-11.)

Around Thanksgiving, M.A.’s girlfriend since ninth grade broke up with him, resulting in behavior Mom described as “teenage boyish”—argumentative and a little oppositional, preferring to be alone in his room than with his family.

On December 8, 2017, Johanna Ruiz (Spanish teacher) emailed Mom and stated that M.A. currently had a D in Spanish, primarily due to missed homework, to see if Mom could encourage him to keep up with homework so his grade would be a better reflection of his capabilities. (P-11.) Ruiz further stated that M.A. did poorly on the first quiz but much better on the last one, and does well with participation, which would help his grade at the end of the marking period. (P-11.) This was the first time the parents had ever been contacted by a teacher about any issue.

On December 19, 2017, Mom emailed Samantha Larkin (English teacher) and stated that the parents had checked PowerSchool and saw that M.A. had not handed in some assignments, but when they approached M.A. about it, he said he did submit them, so she asked what Larkin was seeing with M.A. (P-8.) Mom also stated that they had noticed some missing assignments in a few classes, which is not normal for M.A., and they were hoping to get some feedback from teachers about any changes in attitude or attention. (P-8.) Larkin replied that M.A. had turned in the wrong assignment and that she spoke to him and he was going to turn in the correct assignment the following day and would not be penalized because he was absent when it was collected, and he had misunderstood which packet was being collected. (P-8.) Larkin stated that she would update the grade upon receipt of the correct assignment and that she had not noticed any changes in attitude or attention to work and would email the parents if she did. (P-8.)

The family traveled to North Carolina over the holiday break. M.A. was contacted by his teammates and told that a female tenth grader from the track team had committed suicide. M.A. was shaken by the news and wanted to return from North Carolina a day early in case the track team was going to attend services as a team. The family returned a day early, but M.A. did not attend any services.

In January 2018, M.A. began experiencing gastrointestinal symptoms for the first time. M.A. underwent medical procedures to investigate the cause, and in February 2018 he was diagnosed with ulcerative colitis. M.A. did not handle the diagnosis well and he viewed it as negatively impacting his running and any military or law-enforcement career. The parents thereafter observed emotional outbursts and changed behaviors.

On February 17, 2018, Mom emailed Klimowicz to set up a meeting to discuss M.A.'s ulcerative-colitis diagnosis and academic struggles. The meeting was held on February 23, 2018. The parents requested to meet without M.A. so they could be honest about the diagnosis and his behavior. Klimowicz prefers that the student also participate, so she first met with the parents and then M.A. was called to the meeting. M.A. was slouched, chewing gum, and had a negative attitude during the meeting. A 504 plan was discussed to address M.A.'s diagnosis and academic struggles.

A letter dated March 21, 2018, ostensibly from Alycia Leiby, M.D., pediatric gastroenterologist, substantively reflects the following:

[M.A.] is a patient who is currently under our Center's care for Inflammatory Bowel Disease (IBD). As you may be aware, IBD is a chronic, intestinal disorder. [M.A.] suffers from Ulcerative Colitis (UC), a form of IBD which affects the colon. Those suffering from UC may experience abdominal pain, frequent bouts of diarrhea and rectal bleeding. UC is treated aggressively, requiring numerous medications. [M.A.] is no exception to this.

Due to [M.A.] having this medical condition, he will require accommodations throughout the school year. Therefore, we are recommending that he receive services under Section 504 as many of our other patients do.

Recommended accommodations include:

- Liberal restroom privileges
- Free access to go to the nurse[']s office
- It is our Center's philosophy to encourage our patients to attend school when they are medically able to do so. During periods when [M.A.] experiences an exacerbation though, he may need to be late/leave early from/miss class completely. Tutoring should be provided during extended absences and necessary schoolwork should be sent home daily for sporadic absences.
- Should [M.A.] need to leave the class to use the restroom and/or go to the nurse[']s office during a test taking time, he should be given extra time to complete testing.

[J-12.]

Klimowicz created a 504 Student Accommodation Plan (504 Plan) after receipt of Dr. Leiby's letter. M.A.'s tenth-grade 504 Plan reflects the following as "Reasonable Accommodations": (1) liberal restroom privileges, (2) liberal access to the nurses, and (3) excused lates/early dismissals when symptoms persist. (J-13.)

On April 5, 2018, Klimowicz emailed Mom stating that she gave M.A. the 504 Plan for signatures and asked him to think of anything else he may need because she can adjust accommodations as needed, and asked Mom to let her know if anything should be changed on the proposed tenth grade 504 Plan. The parents never expressed any concerns about or objections to the 504 Plan, and never requested that anything be changed or added to the 504 Plan.

On April 6, 2018, Klimowicz emailed the parents about teacher feedback, stating that "it's looking more positive than last time we reached out to everyone," and that his teachers reported the following:

**Math:** [M.A.] seems to be in better spirits though his most recent quiz wasn't good. Mr. Acker seems hopeful that if [M.A.'s] attitude remains as is now, he'll be able to concentrate better for this fourth quarter.

**History:** [M.A.] is showing more focus and awareness in class than he did when Mrs. Schartner last gave an update. He is engaged in class discussions again and she said that you can see it in his eyes and in his responses to one on one conversations that he has his focus back. [M.A.] is not in any way a behavioral problem in class, but she is concerned about his grades a bit. Around the time he was having health problems, he was missing assignments, but he seems to be back on track completing assignments.

**Spanish:** Mrs. Ruiz reported that [M.A.] could be doing better in the class and has potential, but his effort isn't there . . . . On the positive side, he's attentive in class and tries to participate in every class.

**English:** Mrs. Larkin has moved [M.A.] to the front of the room and he is definitely a lot more vocal and engaged now. In terms of his work ethic—[M.A.] seems to continue to be doing the minimum. Mrs. [Larkin] believes [M.A.] has more potential in English than he's currently showing.

**Band:** I guess there was an incident with Mr. Beadle while Mr. Stephens was out last week. In general in band, he's been pretty apathetic and has difficulty focusing and putting forth a positive effort.

So it sounds like his attitude is a bit better—and when I spoke with [M.A.] about the 504 plan he seemed more like the [M.A.] I worked with last year than the [M.A.] I saw at the meeting we had a little bit ago.

I'll be on the lookout for the signed 504 plan for [M.A.]. Please don't hesitate to reach out if you have any other questions.

[P-4.]

Tamara D'Alessio has been a student assistance coordinator (SAC) at WMMHS for eight years. She provides individual and group counseling to students. The parents requested to meet with her about M.A.'s behavior, attitude and grades. During the meeting, the parents advised that M.A. was angry at home and unmotivated at school, and they wanted someone to check on him.



On April 9, 2018, Mom forwarded the teacher feedback email to D'Alessio. (P-4.) D'Alessio replied that she was "going to meet with him today during band if he's willing!" (P-4.) D'Alessio introduced herself to M.A. to see if he would be willing to use her as a support person, but M.A. was unwilling to speak with her.

M.A. and his parents signed the tenth grade 504 Plan on April 9, 2018. (J-13.) The 504 Plan was entered into PowerSchool, so teachers were alerted to it.

M.A.'s May 21, 2018, PARCC scores were 739 for ALG02 and 737 for ELA-10. (J-9; J-10.) M.A.'s official student transcript reflects his final grades for tenth grade as follows:

Algebra 2 (HN): C  
Chemistry (AV): B  
Driver Ed Theory: C+  
English 2 (AV): C  
Financial Literacy (AV): A  
Phys Ed 10: P  
Spanish 3 (AV): C+  
US History 2 (AP): C  
Wind Ensemble (AV): B

A letter dated August 27, 2018, ostensibly from Dr. Leiby, reflects that, due to the UC diagnosis, she was recommending the following services under Section 504:

- Liberal restroom privileges
- Free access to go to the nurse's office
- Two sets of books, 1 set for school and the other for home
- Tutoring—it is our Center's philosophy to encourage our patients to attend school when they are medically able to do so. During periods when [M.A.] experiences an exacerbation, though, he may need to be late to class or miss classes completely. Tutoring should be provided during extended absences and necessary schoolwork should be sent home daily for sporadic absences. Consideration of tailoring missed assignments to include only the most pertinent would be appreciated. Additionally, once he has returned back to school, [M.A.] should have the opportunity to receive extra assistance through the continuation of tutoring and/or receive extra assistance from his teachers. [M.A.] may need to leave

class to use the restrooms or to go to the nurse's office during a test taking time. In this situation, he should be given extra time to complete testing.

[J-14.]

During summer 2018, M.A. turned sixteen. He attended all running captain practices and had a part-time job at a local restaurant. In August 2018, M.A. attended the Morris County Police Academy summer youth program to which he had applied and been accepted. However, at home he was difficult for his family to be around. Due to his behavior, including angry outbursts, resistance to boundaries like curfew and rules, and punching holes in sheetrock, the parents advised M.A. they would not allow him to obtain a driver's permit unless he agreed to see a therapist and his behavior improved. Mom first attended two sessions with Rapkin, a therapist, without M.A. Thereafter, M.A. attended a session with Rapkin, but M.A.'s responses to his questions were curt, his language was inappropriate, and M.A. asked to record the session, which was not permitted. After about fifteen or twenty minutes, Rapkin ended the session and escorted Mom and M.A. out of the office, stating, "this kid is going to need to go away." M.A. was smug about getting out of therapy and they never returned for therapy with Rapkin.

Home life continued to be stressful for the family. M.A. wanted to be self-sufficient, hated any attempt by the parents to set boundaries, and he wanted no assistance. Attempts to discipline him only made him angrier. M.A. regularly yelled and cursed, and the parents tried to provide a buffer between M.A. and his siblings.

In September 2018, M.A. jumped out the second story window of their cape cod home to go to a girl's house. It was the middle of the night and the parents did not know where he was, so they called the police. The police located M.A. and brought him home, but when officers were questioning him, he was uncooperative, shouting and using profanity, and not in control of his emotions. The parents were not comfortable having the police leave M.A. at the house, so he was taken to Morristown Medical Center for a psychiatric evaluation. M.A. tested positive for cannabis. At that time, the incident was not reported to the school and medical records from the incident were not provided to the school.

M.A.'s eleventh-grade 504 Plan reflects the following as "Reasonable Accommodations": (1) liberal use of the restroom, (2) liberal access to the nurses, and (3) an extra set of textbooks. (J-16.) The parents signed the eleventh-grade 504 Plan on September 13, 2018, and M.A. signed it on September 17, 2018. (J-16.) The parents never expressed any concerns about or objections to the 504 Plan, and never requested that anything be changed or added to the 504 Plan.

M.A. took the PSAT in October 2018 and his score was 1230. (J-25.)

On November 1, 2018, Mom emailed Katherine Gallaway (Pre-Calculus) stating that she noticed her comment in PowerSchool about [M.A.'s] inconsistent attendance and asked for more detail. (P-5.) Mom explained that the last three absences were for a cross country meet, sick day, and a doctor's appointment, and she wanted to make sure there were not others of which she was unaware. Gallaway replied on November 5, 2018, stating that she was sorry that she put in that comment, which must have been accidental, and that [M.A.'s] effort has been inconsistent, but not his attendance. She further stated that M.A. seems a bit overwhelmed when he gets to her class, so she spoke with him the other day and he said that he has three really tough classes in a row and is a bit exhausted by it; that he did a make-up test from one of the absences and earned an 80 percent; and that she was available for extra help on Tuesdays after school or at lunch any day. (P-5.)

In November 2018, the parents were informed by another parent that it had been reported to the principal (Stephen Ryan) that M.A. had been observed using marijuana at a sporting event. The parents were not contacted by Ryan nor did they contact Ryan about this information.

M.A. was referred by Dr. Bernard Maria (pediatric neurology) to Elsa Hahn, Ph.D., a board-certified clinical neuropsychologist/board-certified subspecialist in pediatric neuropsychology at Morris Psychological Group, for a neuropsychological evaluation. (J-15.) Dr. Hahn conducted a neuropsychological evaluation of M.A. on November 29, 2018. (J-15.)

In December 2018, M.A. was still running track and attending school. However, M.A. did not want to be in the house with his family anymore and had threatened to start telling lies about the parents to get his siblings taken away. He caused damage to their house and property. M.A.'s brother shared a room with M.A., but instead slept with Dad, and Mom slept with M.A.'s sister so they were safe on nights when M.A. was amped up.

On December 5, 2018, M.A. was walking in the WMMHS hallway when he was stopped by Ryan because he was wearing a hood up in violation of the dress-code policy. Ryan asked M.A. to remove his hood, and when M.A. did not comply, Ryan put his hand on M.A.'s shoulder. M.A. later emailed Ryan and stated that if Ryan ever touched him again, he would file for a restraining order. Ryan called Mom after school and requested a meeting the following morning.

On December 6, 2018, the parents and M.A. arrived before school for a meeting with Ryan. M.A. had an attitude and asked if he could record the meeting. Ryan advised that he could not record the meeting and had M.A. wait outside with D'Alessio. M.A. spoke with D'Alessio for approximately one hour while the parents met with Ryan. Mom was crying and the parents explained to Ryan problems that they had been having with M.A. and told Ryan that they had been having trouble getting information from the District about his behavior and demeanor at school. Ryan advised that an Intervention and Referral Services (I&RS) meeting would be scheduled.

M.A. had an appointment with Dr. Hahn on December 6, 2018. He spoke with Dr. Hahn for approximately half an hour alone before his parents joined the appointment. (P-10.)

On December 6, 2018, Gallaway emailed the parents and advised that M.A. had earned a 54 percent on his math test, bringing his average to a D for that marking period so far; that he has seemed very withdrawn during class recently and was not participating at all; and that she would like to see him succeed and was happy to stay after school or help him during lunch. (P-6.)

On December 6, 2018, Klimowicz emailed Mom about scheduling the I&RS meeting and attached a parent input sheet. (P-9.) Klimowicz stated that she would send out for teacher feedback; that, in addition to Gallaway, there is math help with Ms. Hill in the library during M.A.'s study hall; and that she could email a list of available math tutors for hire but was not sure it was an issue of incapability. (P-9.) Klimowicz further stated that she was glad M.A. had opened up to D'Alessio that morning. (P-9.) On December 7, 2018, Mom replied that they had a discussion with Dr. Hahn about her preliminary finding but that a formal report would not be ready for a couple weeks and asked about the process and if it made sense to move forward with the meeting or wait for the report. (P-9.) Mom also stated that M.A.'s math and English teachers contacted her in the past week, and that the parents emailed the physics teacher to request copies of his last two tests (0% and 14%) to assess what the issue is. (P-9.) Klimowicz replied with a possible I&RS date and stated that she would email M.A.'s teachers input forms to complete, and that the I&RS team was comprised of Klimowicz, McGoldrick (director of guidance), Meagher (assistant principal), Leonard (school nurse), D'Alessio (SAC) and a member of the child study team (CST). (P-9.) Klimowicz further stated, "Since we will be talking about [M.A.], I think it's very important he have a voice in the conversation and is there for the duration of the meeting. Having a different perspective will help us brainstorm different ways we might be able to support [M.A.]." (P-9.)

On December 7, 2018, Mom emailed D'Alessio and attached the consent for release of information for Dr. Hahn, stating that they had signed a reciprocal one for Dr. Hahn on December 6, 2018. (P-10.) Mom also stated that although the parents discussed with Dr. Hahn in detail her findings, her report would not be ready for a few weeks, but Dr. Hahn would be happy to speak with D'Alessio in the interim. D'Alessio replied that she would give Dr. Hahn a call. (P-10.)

An I&RS Information Request, from Michael Kunz, dated December 7, 2018, reflects M.A.'s current grade as "F" in "Physics (AV)" and that M.A. was performing below the teacher's expectations, does not complete assignments adequately and completely, does not make up missed work, and does not perform well on tests and quizzes. (J-17, J-19.) Kunz noted that he "does not come for extra help" and "work is incomplete on tests. Has the appearance of carelessness. Does not work on assigned material in

groups.” Kunz additionally commented that “Behavior issue on Tuesday 12/4 [M.A.] involved in what [D.Q.] [described] as attempting to incite others to join him in refusing to take a test the following day (I was on jury duty).” (J-17).

An I&RS Information Request, from Katherine Gallaway, dated December 7, 2018, reflects M.A.’s current grade as “D” in “Pre-Calculus (AV)” and that M.A. was performing below the teacher’s expectations, does not complete assignments adequately and completely, does not submit work on time, does not make up missed work, does not attend extra help sessions, and does not perform well on tests and quizzes. (J-17; J-19.) Gallaway additionally commented that “[M.A.] is often very withdrawn during class. He has also performed very poorly on the last few quizzes tests. He also has not turned in many homework assignments. I have recently moved his seat and am hopeful he will become more engaged.”

An I&RS Information Request, from Robert Kertesz, dated December 10, 2018, reflects M.A.’s current grade as “B-” in “World History (AV)” and that M.A. was performing at the teacher’s expectations, and that “[M.A.] is a very good student in class [with] cooperation [and] participation he could probably do more outside of class to prepare.” (J-17.)

An I&RS Information Request, from Jenna Bauberger, dated December 10, 2018, reflects that M.A. was performing at the teacher’s expectations in “Health Ed 11,” and that “[M.A.] does a fine job in Junior Health class. At times he appears overtired or disengaged, but he sits up and stays . . . when directed to do so. He has been somewhat responsible with making up missed work after absences, . . . only needing some minor reminders from me to do so. Overall I have not noticed any areas of concern in his . . . nor in his academic performance in my class (his current grade is a 98%).” (J-17; J-19.)

An I&RS Information Request, from Joy Burdette, dated December 10, 2018, reflects M.A.’s current grade as “A-” in “Spanish 4 (AV)” and that M.A. was performing at the teacher’s expectations, and that his “presence enriches the classroom atmosphere [and] he provides a model for others. May not always complete homework but is attentive [and] participates actively in class. Uses Spanish outside of the classroom. Takes risks.

Speaks well [and] with confidence. Has a good ear for the language. Shows skill in listening [and] speaking activities [and] excellent communication [and] interpersonal skills.” (J-17; J-19.)

An I&RS Information Request, from Samantha Larkin, dated December 11, 2018, reflects M.A.’s current grade as “D-” in “English 3 (IB-SL)” and that M.A. was performing below the teacher’s expectations, and that “[M.A.] does not complete assignments adequately and completely, does not submit work on time, does not take adequate notes or maintain a notebook, does not submit written work on time, does not make up missed work, does not attend extra help sessions, and does not perform well on tests and quizzes.” (J-17; J-19.) Larkin additionally commented that he “has difficulty staying awake in class;” “seems uninterested and does not put forth any effort;” and “I think he could/does understand the material and do very well in the class, but he does not put forth any effort to complete work or get involved in discussion.” (J-17.)

On December 12, 2018, Klimowicz emailed the parents and asked if they had filled out the parent input form in advance of the December 14, 2018, I&RS meeting. (P-9.) D’Alessio spoke to Dr. Hahn about M.A. by telephone. No report was available.

The Parental Input Form, dated December 12, 2018, reflects that the parents’ greatest concerns were M.A. “getting organized for both current workload and for beginning the college application process, improving attitude toward his 3 classes’ [sic] with poor grades and getting academic help where needed, finding a way to manage stress at school and tune out distractions.” (J-18.)

On or about December 13, 2018, Mom contacted Glawe, a licensed clinical social worker (LCSW) recommended by Dr. Hahn. Glawe has worked extensively with children, adolescents, young adults, and adults at various levels of care, including intensive out-patient-based programs and school-based programs, on mental health and addiction and substance abuse.

The I&RS meeting was held on December 14, 2018. M.A.’s declining grades and the information on the I&RS information requests were discussed. The parents talked

about the issues going on at home and disclosed that M.A. had been taken to Morristown Medical Center. The behaviors reported by M.A.'s teachers were of concern. The team first met with the parents and then M.A. was called to the meeting. M.A.'s posture (manspreading) and demeanor suggested that he was trying to be in a position of dominance or control. M.A. did not think he needed any help, was angry that they were talking about him, and he was not appropriate at the meeting. When he had enough of the meeting, he requested to record the meeting. His request was denied, and he was asked to leave.

On December 18, 2018, Mom and M.A. attended the first therapy session with Glawe. M.A. was generally cooperative. Most of the dialogue was about marijuana, legalization and M.A.'s use of marijuana. M.A.'s behaviors were also discussed, but M.A. did not view his behaviors as a problem. Glawe diagnosed M.A. with social phobia (an anxiety disorder), oppositional defiant disorder (ODD) (a behavior disorder) and cannabis use disorder, mild. No written documentation or records from Glawe were ever provided to the District, and there was no authorization or release for Glawe to speak to the District.

On December 21, 2018, Mom emailed Gallaway stating that she noticed M.A. missed a Pre-Calculus test on December 18, 2018, due to a doctor's appointment and she asked if M.A. had yet attempted to make it up and if his attitude had improved any. Gallaway replied that she had just spoken with M.A. and he was going to take the test the day he returns from break; that he has definitely been less checked-out during class; and that she changed seats and he has two girls near him who love helping him. (P-6.)

There was no follow-up I&RS meeting or other meeting.

Mom and M.A. attended a second therapy session with Glawe on December 27, 2018. Mom suspected M.A. was using marijuana. M.A. fought with Mom about going to the session, and M.A. yelled at Mom during the full half hour drive from home to the office, that "this is so fucking stupid"; that he did not want to do it; that he did not need help; that it is not going to work; that they were wasting their money and time; and that it was not going to help "anything with us." Unlike the first session, M.A. was not cooperative. He arrived wound up, agitated, and hostile. M.A. told Glawe that he would not participate,



that he was uncomfortable with a “shrink,” and that he did not want to let a therapist in his head. M.A. made it clear that Glawe was not going to be able to help him and that he would not accept help, so Glawe suggested to Mom that Glawe work with the family to address some of the most high-risk behaviors. Mom agreed and the parents attended regular therapy sessions with Glawe. The parents and Glawe implemented drug testing and discussed protocols for certain situations and handling any emergent crisis situations while preserving the safety of the household.

On the way home from the second session, M.A. jumped out of Mom’s car at a traffic light. Mom did not know where he went, but assumed he went into the mini mart to purchase nicotine vaping products because it was known for selling to children. Mom pulled into the parking lot and called Glawe. Glawe stayed on the phone with Mom and advised her to call the police if M.A. did not return in a certain amount of time. M.A. returned with a vape and was vaping in her car. Glawe was still on the phone and advised M.A. that if he did that again, Mom was to call the police.

Thereafter, M.A. refused to return to Glawe for therapy, so the parents continued to attend therapy sessions without him. It became increasingly apparent to Glawe that M.A. was too far gone for an outpatient level of care. Glawe recommended to the parents that they follow up with the District and move forward with classification.

Dr. Hahn prepared a Pediatric Neuropsychological Evaluation, dated January 2, 2019 (Dr. Hahn’s Report). (J-15.) The reason for referral reflects, in part, “an unusually complex presentation,” and that “current concerns include cognitive difficulties and affective distress.” The “BACKGROUND INFORMATION” in Dr. Hahn’s Report includes, in part:

**Medical & Development History: . . .**

As previously noted, [M.A.’s] medical history is remarkable for UC, which was diagnosed a year ago. [M.A.] recently experienced rectal bleeding, considered a flare-up, and began medications for treatment. Following a recent behavioral outburst that resulted in law enforcement transporting [M.A.] to the Morristown Medical Center Emergency Department,

[M.A.] was diagnosed with Oppositional Defiant Disorder (ODD). He also tested positive for cannabis. At the recommendation of his pediatrician, he was evaluated by Dr. Bernard Maria. Dr. Maria ordered an EEG and brain MRI, which were negative, and recommended a consultation with a psychiatrist and neuropsychologist.

....

Psychiatric history is also notable. [M.A.'s] parents reported a significant behavior outburst triggered when they attempted to address difficulties with homework. At that time, [M.A.] was a 4th grade student. His parents could not calm him down and brought him to the Emergency Department at Morristown Medical Center. During the evaluation, [M.A.] endorsed auditory hallucinations. Reportedly, the team at Morristown determined [M.A.] was not actively hallucinating nor was he experiencing a psychotic break. [M.A.] was discharged home with his parents without further incidents. While he was referred to a psychologist for therapy, [M.A.] refused to participate.

**Educational History:** [M.A.] is an 11<sup>th</sup> grade student at West Morris Mendham High School in Mendham, New Jersey. Since beginning high school, [M.A.'s] grades have declined. As a student in middle school, he earned above average grades. A section 504 plan was implemented in 10th grade to accommodate [M.A.'s] medical needs related to Ulcerative Colitis. [M.A.] has never required special education services or private tutoring for academic needs.

...

**Current Concerns:** Concerns regarding affective distress and acting out behavior emerged approximately a year ago following several psychosocial and medical stressors. At that time, [M.A.'s] girlfriend, whom he was dating for about 8-months, ended their relationship. A month later a track teammate committed suicide. Further, [M.A.'s] picture with an unknown message was posted in the boy's bathroom at the school. [M.A.'s] track coach addressed the team requesting that someone come forward and identify the culprit. This resulted in [M.A.] feeling as if he was further victimized and humiliated. Then in January of 2018, [M.A.] experienced gastrointestinal symptoms and was diagnosed with Ulcerative Colitis. [The parents] also reported [M.A.] distanced himself from a close track teammate. They are unsure what transpired to change their friendship. According to [M.A.'s] parents, this past year he has been "sullen and angry." He is

easily triggered and will scream at family members. He throws items, punches the walls, and threatens to harm his parents. He has not, however, been physically aggressive toward his family members. He frequently makes self-deprecating remarks. Notably, his parents reported [M.A.] appears happy when he is with his friends. They have observed him laughing and smiling, which he does not do when at home. [M.A.'s] behavior has impacted his younger siblings who are afraid of [M.A.] and often need to be moved to another room because of safety concerns when [M.A.] is engaging in a verbal outburst or threatening to harm his parents. As previously noted, [M.A.] was evaluated by a psychiatric team at Morristown Medical Center several months ago after he left home without parental permission.

The Wechsler Adult Intelligence Scale—Fourth Edition (WAIS-IV) “revealed an overall “Full-Scale IQ of 112 (79th percentile), which is high average” compared to same-age peers. (J-15.) Dr. Hahn diagnosed M.A. with “Adjustment Disorder with Mixed Disturbance of Emotions and Conduct.” (J-15.)

The family traveled during the school holiday break. M.A. continued to reject any relationship with his parents and refused to adhere to any of their requests or rules. The parents continued therapy sessions with Glawe. There were several incidents at home where M.A. damaged things, attempted to break into their safe, and engaged in a confrontation with Dad, spitting on him and attempting to goad him into a physical altercation. On January 26, 2019, the parents called police and M.A. was transported to St. Clare’s Denville Hospital (St. Clare’s Hospital) for a psychiatric evaluation. The incident was not reported to the school and medical records from the incident were not provided to the school.

M.A. was unpredictable and there had been an escalation in his behavior and attitude around the end of January. M.A. was almost sixteen and a half and he knew he would need a driver’s permit for six months to get a driver’s license. He repeatedly asked for driving lessons so he could get his driver’s license when he turned seventeen. One evening, Mom and M.A. had a discussion and Mom told him that driving lessons were not going to happen because his behavior had not changed, he had not continued therapy with Glawe, and they did not want M.A. behind the wheel with his explosive anger

outbursts. M.A. threatened to slip something into his parents' food so they would test positive for drugs and his siblings would be taken away if they did not schedule the lessons. As he said it, M.A. was jabbing a knife from the kitchen into the sofa table. It was at that point Mom realized he was beyond what the parents could handle with other children in the house and she decided that he needed to go away for help.

Glawe recommended that M.A. be removed from his environment for a reset. The parents began looking at possible programs for M.A. They needed to quickly find an appropriate match and environment based on M.A.'s resistance to treatment and his flight risk. Glawe recommended Phoenix Outdoor/SUWS of the Carolinas (SUWS) in North Carolina. The parents asked Glawe about Newport Academy in Connecticut because it was closer, but Glawe warned them that M.A. could run away and/or be picked up by his friends.

M.A. had asked Mom to sign an exemption waiver to have study hall in lieu of gym because he had a sport in season. On January 29, 2019, Mom asked Bauberger to let her know the dates of unexcused absences Mom noticed on PowerSchool. (P-12.) On January 30, 2019, Bauberger replied that M.A. had not attended any of his physical education classes for that marking period so far, and that she understood he had applied for an exemption for that marking period, but per Goldrick (Guidance Department), the exemption was not approved, and he should attend physical education. Bauberger further stated that she had emailed M.A. about this the day before, but he had not responded or checked with her. (P-12.) Mom did not know the exemption had been denied and she did not know where M.A. had been during those absences.

At some point thereafter, Mom emailed D'Alessio, and asked her to help her understand what was going on with M.A. and the physical education exemption because there was a note in PowerSchool that he was not attending. (P-12.) Mom further stated that there was little communication between the parents and M.A. at that time, but that she had signed the exemption form for him. (P-12.)

In December 2018, January 2019, and February 2019 the parents regularly attended therapy sessions with Glawe and shared drug-test results.

Because of M.A.'s resistance and flight risk, the parents contacted a transport service and secretly arranged for M.A. to be removed in the middle of the night and transported to SUWS while their other children were out of the house. M.A. was admitted to SUWS on February 11, 2019. (P-14.) SUWS "is an intensive, flexible length-of-stay wilderness program for adolescents between the ages of 13 and 18 . . . designed to be a powerful intervention for students that need structure, supportive counseling, motivational improvement, and the development of self-esteem, self-reliance, and self-respect." (P-15.) M.A.'s presenting problems were noted as "substance use, family conflict, emotional regulation" and his primary admitting diagnoses were cannabis use disorder, mild; parent/child relational problem; and unspecified anxiety disorder; with an additional diagnosis of unspecified disruptive behavior disorder. (P-14.)

SUWS allowed very limited parent interaction. M.A. could not call his parents, and they could not call him. Nine or ten nights were spent out in the woods, and then two or three nights were spent back at base camp. M.A. had group and individual therapy sessions weekly with therapist Kevin Whaler. The parents had weekly therapy sessions with Whaler, who provided updates on M.A. and arranged a weekly exchange of letters between M.A. and the parents. SUWS did not provide an educational component.

A couple days after M.A.'s admission to SUWS, the parents notified Ryan and requested a meeting. The parents met with Ryan on February 15, 2019. (J-20.)

Several days after M.A.'s admission to SUWS, M.A. left the group in the middle of the night. The State Police located him several hours later, approximately fifteen miles away at a truck stop. He was returned to camp under stricter observation so he could not run away again. A few days later he was diagnosed with mononucleosis. He spent five to seven days in the infirmary before he was able to return to his group.

By letter to Ryan, dated February 18, 2019, the parents requested that M.A. be referred to the CST "for evaluation of services and implementation of an Individual Education Plan." (J-20.) The school nurse completed a Summary of Health & Medical Information on February 22, 2019, for the referral to the CST. (J-21.) M.A.'s teachers

completed Confidential Student Progress Reports (Progress Report(s)), which requested information on class participation, class preparation, attitude and behavior. (J-21.)

The Progress Report from Kunz (Physics) reflects that M.A.'s current grade was a "C+" and includes the following comments: "Class Participation: Does not participate in discussions except when with friends at a lab table"; "Class Preparation: NA"; "Attitude: Seems to be an undercurrent of negativity. I sometimes hear him say under his breath, "I'm not f-ing doing that" when talking about another class"; and "Behavior: Quiet mostly and otherwise is well behaved. One exception was Dec[.] 4th when I was at jury duty." (J-21.) The Progress Report from Brenda DeRogatis ("Entrepreneurship: Bus. Development (AV)") reflects that M.A.'s current grade was "[Other]" and explained that he was "missing one project—otherwise he has an A" and includes the following comments: "Class Participation: Great! [M.A.] is highly engaged with the principles of entrepreneurship"; "Class Preparation: M.A. is very creative and produces great presentation"; "Attitude: Great" and "Behavior: Well-behaved." (J-21; J-19.) The Progress Report from Burdette (Spanish) reflects that M.A.'s current grade was "A" unless missing work is counted. All missing work is from the medical absences or the 2 classes just before," and includes the following comments: Class Participation: solid, helpful"; "Class Preparation: not apparent"; "Attitude: positive" and "Behavior: respectful and appropriate." (J-21.) The Progress Report from Kertesz (World History) does not reflect M.A.'s current grade and includes the following comments: "Class Participation: Excellent"; "Class Preparation: Solid overall"; "Attitude: Overall, very good" and "Behavior: Excellent", and further comments, "[M.A.] is a pleasure in the classroom and has performed above average for his level. He could probably be in an honors level class if he wanted that kind of work level." (J-21.) The Progress Report from Gallaway (Pre-Calculus) reflects that M.A.'s current grade was "D," noting that "[M.A.] had been doing very well. Completing every HW assignment. This low grade is due to him missing a test while absent," and includes the following comments: "Class Participation: [M.A.] does not often participate in class"; "Class Preparation: [M.A.] has been consistently prepared for class this marking period"; "Attitude: [M.A.] has had a very pleasant attitude toward me and his peers" and "Behavior: [M.A.'s] behavior has been good and has definitely improved since the beginning of the year." (J-21.) The Progress Report from Larkin (English) reflects that M.A.'s current grade was "F" and includes the following comments:

“Class Participation: Typically [M.A.] only participates when he is forced to; When he does participate he has strong, valid opinions”; “Class Preparation: Has the bare minimum; Has a notebook but not necessarily a dedicated English notebook; has the book when we are reading at times;” “Attitude: disinterested, unengaged; Maintains respect towards teacher; knows he has the capability to do the work and do it well, but chooses not to”; and “Behavior: falls asleep at times, head is often down; maintains respectful attitude towards me/teacher”. (J-21.)

An Invitation to an Initial Identification Meeting, dated March 7, 2019, reflects that an initial identification meeting was scheduled for March 12, 2019. (J-22.) Mom signed the invitation on March 10, 2019, and noted that only the parents would attend. (J-22.)

The meeting was held on March 12, 2019, and the parents, general education teacher (Larkin), case manager (Bradshaw), school social worker (Tracy Costa), school psychologist (Fell), guidance counselor (Klimowicz), and student assistance coordinator (D’Alessio) attended. (J-23.) At that meeting, the parents provided to the District for the first time a copy of Dr. Hahn’s Report, dated January 2, 2019. The parents had never previously reported M.A.’s substance use to the District or requested substance abuse counseling from the District.

A Parental Notice Following an Initial Identification/Evaluation Planning Meeting—No Evaluation, dated March 12, 2019, reflects that “the members of the child study team and your child’s teacher(s) have determined that an evaluation of your child for special education and related services is not warranted. Therefore, an evaluation will not be conducted because: your son is not accessible for evaluation due to enrollment in a behavioral therapeutic wellness program. This determination is based on a review of your child’s records, current progress and information you provided. Enrollment at the SUWS of N. Carolina—Wilderness Program. No project release date.” (J-23.)

Fred Fell is certified as a school psychologist and a licensed professional counselor for private practice. He has been a school psychologist at WMMHS for twenty-eight years. His job with the CST includes IEP development, crisis intervention, CST

evaluations, teacher consultation and school-based counseling. He reviewed Dr. Hahn's report. He had no knowledge of M.A. prior to March 2019.

Kathleen Bradshaw has been employed by the Board as a learning disabilities teacher-consultant (LDT-C) for eight years. She was previously an LDT-C in other school districts and was a special education teacher for three years.

About halfway through M.A.'s stay, the parents flew to SUWS for an onsite three-day training program. Parents were not permitted to see their children.

Per his third-marking-period (01/19/2019–04/03/2019) report card (J-24), M.A.'s grades for the first, second and third marking periods of the 2018–2019 school year and absences for the third marking period were as follows:

Spanish 4 (AV): B+, B, IC (25 absences)  
World History (AV): A-, B, B (23 absences)  
Entrepreneurship (Bus. Opportunity (AV)): A- (Q1), A (Q2) (0 absences)  
Entrepreneurship (Bus. Development (AV)): IC (Q3) (22 absences)  
Physics (AV): C-, D-, IC (23 absences)  
Phys Ed 11: P (Q1), IC (Q3) (29 absences)  
Health Ed 11: A+ (Q2) (0 absences)  
English 3 (IB-SL): C-, C-, F (23 absences)  
Pre-Calculus (AV): C, C-, IC (21 absences)

M.A.'s unweighted GPA was 2.742 and weighted GPA was 3.237. (J-24.)

While M.A. was at SUWS, Glawe continued therapy sessions with the parents to help them manage the situation and prepare for M.A.'s return. There were many letters and exchanges of information in the therapeutic process at SUWS, and Glawe assisted the parents by reading, reviewing, and helping facilitate certain messages. Glawe had weekly contact with Whaler about M.A.'s progress.

In a letter to Ryan, dated April 14, 2019, the parents stated:

In follow-up to our meeting with the Child Study Team on March 12<sup>th</sup>, regarding our initial request for an Individual



Education Plan, we were informed that our son [M.A.] needs to be present to start the process. He will be returning home April 18, 2019. We request again that he is referred to the child study team for evaluation of services and implementation of an Individual Education Plan.

[J-26.]

M.A. was discharged from SUWS on April 17, 2019, after sixty-six days. (P-14.) The Discharge Summary, dated April 22, 2019, reflects that his primary discharge diagnoses were cannabis-use disorder, moderate, and unspecified anxiety disorder, with an additional diagnosis of parent/child relational problem. (P-14.) Services provided to M.A. at SUWS were: "individual psychotherapy," "case management," "family," "group psychotherapy," "psychosocial evaluation," "assessment," "psycho-educational groups," "medical evaluation," and "referral services and transition counseling." (P-14.) Services not provided to M.A. at SUWS were "academic instruction" and "psychological & educational testing." (P-14.) The recommendations were:

1. Continue to implement the following effective treatment strategies: a positive peer culture; clear boundaries and expectations; one on one mentorship; role modeling, Acceptance and Commitment Therapy; psycho-education; Reality Therapy; Cognitive-Behavioral Therapy; and 12-Step support meetings.
2. Placement in a new learning environment to provide structured academic and social support, while minimizing past triggers.
3. Skills training to address social difficulties.
4. Individual and Group Therapy to facilitate sober living and positive self-image.
5. Regular family involvement in therapeutic process.
6. Opportunities to pursue and develop intellectual, aesthetic, spiritual, athletic and recreational interests to enhance identity formation process and sober living.
7. Participation in service-learning activities to foster a sense of self within a community and family.

[P-14.]

The parents contacted the District on April 18, 2019, and requested an IEP evaluation meeting. A Special Education Referral, dated April 18, 2019, reflects the presenting problem requiring referral for special education services as follows:

[M.A.'s] behavior has been argumentative [and] defiant progressing over the last 2 years. [M.A.] is unwilling to ask or recognize if he needs help. His behavior led him to miss school since February, which has affected our ability to provide academic programming.

[J-27.]

The Pre-Referral Intervention Information states: "M.A. has been unwilling to utilize resources at school [and] has not acknowledged appointments with our student assistance counselor" and "[M.A.] was referred to I&RS earlier in the school year and was attending therapy outside of school for a period of time." (J-27.)

Upon his return from SUWS, M.A. attended daily A.A. meetings, sometimes twice daily, and ultimately completed "90 in 90." He attended therapy sessions with Glawe twice per week for the first week or two and then weekly thereafter. The parents also continued therapy sessions with Glawe. The parents did not enroll M.A. in a therapeutic placement on his return. His behavior had improved, and he was quiet and respectful. A behavior contract had been created during appointments with Whaler, and any behaviors in violation of the contract would result in consideration of a therapeutic boarding school. M.A. was interested in his academic career and wanted to get into the best school he could.

An Invitation to An Initial Identification Meeting, dated April 18, 2019, reflects that an initial identification meeting was scheduled for May 3, 2019. (J-28.) The meeting was held on May 3, 2019, and was attended by M.A., the parents, general education teacher (Mary Hill), case manager (Michno), guidance counselor (Klimowicz), school psychologist (Fell), and LDT-C (Bradshaw). (J-29.) The Parental Consent Conference for Initial Referral reflects that "[Dad] would like to have attorney review prior to signing anything." (J-29.)

The Parental Notice Following an Initial Identification/Evaluation Planning Meeting, dated May 3, 2019, reflects that the District would evaluate M.A. for special education and related services and proposed evaluations by the school psychologist, LDT-C, and school social worker, and a psychiatric evaluation. (J-29.) The District proposed in-home tutoring for M.A. during the ninety-day evaluation period. No counseling or other support was proposed. The parents rejected in-home tutoring based on recommendations from SUWS and Glawe that M.A. should not have that much down-time at home. The parents stated that they were going to place M.A. at Fusion Academy (Fusion). Glawe had recommended Fusion to the parents. The parents had not signed a release for the District to speak to Glawe, and Glawe did not speak to any District personnel about what programs the District could offer a student returning from a wilderness program. The parents did not request that the District place M.A. at Fusion. The parents did not request that the District provide school-based counseling.

By letter dated May 3, 2019, petitioners' attorney notified the District via certified mail that "M.A. is being unilaterally placed by his parents at Fusion Academy in Morristown, New Jersey, in accordance with N.J.A.C. 6A:14-2.10." (P-16.)

The parents consented to the District's evaluations on May 9, 2019. (J-29.)

M.A. was absent sixty-one days from the start of the 2018–2019 school year through May 10, 2019. (J-30.) Eight of those absences occurred in October through January, before he attended SUWS. (J-30.)

The parents received a Withdrawal Form and Student Transfer Verification Form, with a sticky note: "Please complete the attached two withdrawal papers and return them to the guidance office. Thank you." (P-13.) M.A. began attending Fusion on or about May 22, 2019. Fusion did not provide M.A. with any counseling or therapeutic supports. Fusion did not work with Glawe.

M.A. was evaluated by psychiatrist J.G. Moreno, M.D., on May 31, 2019. (J-32.) She prepared a Confidential Report, dated June 13, 2019. (J-32.) Dr. Moreno's impression diagnoses were unspecified mood disorder, rule out attention deficit

hyperactivity disorder, oppositional-defiant disorder, rule out conduct disorder, and cannabis abuse.

Dr. Moreno's Confidential Report assessment and recommendations emphasizes:

The behavioral aspect of [M.A.'s] clinical condition must be considered carefully, but it should be stated that, based on the information provided, there has been marked improvement in his overall demeanor and behavior. Quite clearly, attendance at the Wilderness Program was beneficial, and it may be postulated that such intervention, along with the discontinuation of the use of addictive substances, provided [M.A.] with the right opportunity to recompensate emotionally and improve his behavior. This is not to say that on-going supervision for the use of substances is not necessary any longer, but only to emphasize the point that, ***since affective disorders, disruptive behavior disorders, and drug use and abuse have a very high incidence of recidivism, ongoing psychiatric and behavioral monitoring is necessary.***"

.....

In terms of treatment, psychiatric and psychological interventions are necessary. At the time of this examination, there is no acute symptomatology that would warrant the prescription of psychotropic medications. However, if any vegetative symptomatology reappears or any symptoms of psychoticism surface (considering the description of hallucinations in [M.A.'s] history), re-evaluation of his mental status will be imperative to determine whether there is need for medications. ***In addition, reinvolvement in the use of marijuana or any other addictive substances could easily trigger off or worsen psychiatric symptomatology; therefore, within the context of ongoing psychotherapeutic intervention, evaluation should be provided in terms of use or abuse of addictive substances, and in order to provide [M.A.] with enough emotional and behavioral support so that he is able to maturely deal with any maladaptive behaviors that may try to emerge.***

[J-32.]

Lois Green, ACSW, LCSW, evaluated M.A.'s academic and emotional status and needs on June 18, 2019, and she prepared a Confidential Social History. (J-33.) Nicole Parkes, LDT-C/school psychologist conducted a psychological assessment of M.A. on August 11, 2019, and she prepared a Confidential Psychological Assessment. (J-34.) The Confidential Psychological Assessment summarized, in part, as follows:

Reports from the neuropsychological evaluation indicate [M.A.'s] general cognitive ability, as estimated by the *WAIS-IV*, fell in the High Average range when compared to his peers (Full Scale IQ = 112; 79%). [M.A.'s] performance on tasks assessing verbal intellectual abilities (Verbal Comprehension Index) was high average. Nonverbal intellectual abilities (Perceptual Reasoning Index) fell within the average range. [M.A.'s] ability to sustain attention, concentrate, and exert mental control (Working Memory Index) was in the High Average range. [M.A.'s] ability in processing simple or routine visual material without making errors (Processing Speed Index) was in the Average range when compared to his peers. [M.A.'s] social/emotional functioning, as assessed by the *Behavioral Assessment for Children – Third Edition (BASC-3)* yielded no At-Risk or Clinically Significant scores on the self-report. *As per the Behavioral Assessment for Children – Third Edition (BASC-3 parent report)* yielded several At-Risk scores. [M.A.'s] scores, as rated by [Mom] indicated scores in the At-Risk classification for externalizing, hyperactivity, aggression, conduct problems, internalizing problems, depression, somatization, atypicality, adaptive skills, adaptability, social skills, and functional communication.

[M.A.] presents as a motivated, extremely determined, and confident young man. [M.A.] was articulate throughout this evaluation. His level of vocabulary and ability to converse appeared above average. He displays with a charming and intelligent personality. [M.A.] was relaxed and engaged throughout his evaluation. [M.A.] strives to be very successful in his future. [M.A.] stated to this examiner that he plans on attending a four-year college post high school graduation. [M.A.] stated that he is interested in pursuing a career in the finance industry. He reported that he would like to earn his MBA. He would like to attend college in North Carolina. [M.A.] stated that he is very much looking forward to attending college. Social functioning seems to be within normal limits. [M.A.] indicated that he interacts with his peers and is involved with activities outside of school. He reports having friends who he associates with both in and outside of school. Emotional functioning seems to be somewhat of an area of

concern. The BASC-3 self-report and parent report yielded very different scores. Those scores in the [At]-Risk classification range may need follow-up, as per the parent report. However, [M.A.] does not report any difficulties in the areas that were assessed in the BASC-3 self-report. [M.A.] was a pleasure to converse and work with.

[J-34.]

The Confidential Psychological Assessment stated that specific recommendations regarding academic program would be discussed pending completion of all CST assessments and reflected the following instructional recommendations and interventions: [M.A.] may learn well through verbal lectures, discussions, talking things through, and listening; Minimize distracting influences; [M.A.] should take short breaks when studying. The brain retains the information that is studied at the beginning and the end better than what is studied in the middle; Check in with [M.A.]; provide genuine praise and/or acknowledgment; Continued communication between parent and school; Continued counseling may be beneficial; and Provide positive reinforcement, encouragement. (J-34.)

M.A. attended Fusion and completed his schoolwork. There was never an issue of getting him to go to school or to stay in school. He completed the A.A. twelve-step program. M.A. decided that he was ready to return to school and get a diploma from WMMHS.

In September 2019, Glawe referred M.A. to a colleague for several months during a period of medical leave.

M.A. returned to WMMHS for twelfth grade. An IEP Eligibility Meeting was held on October 1, 2019. (J-35.) The IEP team “concluded that [M.A.] is not eligible” for special education and related services. (J-35.) The parents did not and do not challenge the determination of ineligibility.

Klimowicz created a 504 Plan. M.A.’s twelfth grade 504 Plan reflects the following as “Reasonable Accommodations”: (1) Liberal use of the restroom in the nurse’s office.

Please write [M.A.] a handwritten pass to the nurse for bathroom usage; (2) Weekly checklists sent home from teachers; (3) Mrs. Michno, School Social Worker, will make contact with [M.A.'s] outside therapist 1x/month; (4) Extended time on school-based tests, assignments, and quizzes and state assessments. \*The student or parent must contact the SSD coordinator at WMMHS to apply for accommodations on PSAT, SAT and/or ACT tests; (5) Allow student to turn in take-home assignments up to two days late without penalty for absences related to medical conditions; and (6) [M.A.] can see Michno, School Social Counselor, D'Alessio, Student Assistance Counselor, or Klimowicz, School Counselor as needed. (J-36.) The parents never expressed any concerns about or objections to the 504 Plan.

Alison Michno is a certified school social worker and a licensed social worker. She has been employed by the Board as a social worker at WMMHS for twelve years. On October 10, 2019, October 18, 2019, October 25, 2019, and November 4, 2019, Michno forwarded a set of form questions (questionnaires) to his teachers and asked that they respond by email to the parents, with a copy to Michno, by October 14, 2019, October 21, 2019, October 28, 2019, and November 6, 2019, respectively. (J-37.) His teachers responded each time to the questionnaires via email to the parents. (J-37.) The responses to the questionnaires were overwhelmingly positive in terms of M.A.'s behavior, academic performance and attendance. (J-37.)

M.A. performed extremely well academically at WMMHS in twelfth grade. His attitude when he returned to WMMHS was positive and he worked hard. He had no disciplinary or behavior issues. M.A. graduated and was accepted to college.

Glawe resumed treating M.A. in January 2020 and continues to treat M.A. He diagnosed M.A. with social phobia, ODD, and cannabis-use disorder. He prepared a report, dated February 28, 2020. (P-20.) Glawe never previously provided a written report to the parents and he never had contact with any District personnel about M.A.

Testimony

Hillary Klimowicz

M.A. had some difficulty in his ninth-grade Honors Geometry class and Klimowicz was contacted by the parents via email. Klimowicz confirmed with M.A. that he was aware of the extra help available—access to a math teacher each period, extra help in the library during a study hall, peer tutoring, and access to teachers after school one hour per week. M.A. earned a C+ in Honors Geometry. Typically, Klimowicz advises that if a student earns a B- or higher, the student should remain at the current level, but otherwise may want to move down a level. However, the family opted to have M.A. waive into Honors Algebra 2 for tenth grade.

At the I&RS meeting, M.A. was angry and felt that if someone thought there was an issue it should have been addressed with him directly. They discussed at the meeting how to help M.A., but whenever anyone said “help”—including counseling from the SAC or extra academic help from teachers or peers—M.A. insisted he did not need or want help. M.A. stated that he wanted to keep his packet and he left. M.A. was very resistant to help so Klimowicz did not feel as though anything was resolved at that meeting. It was decided that D’Alessio would talk with M.A. No counseling was assigned.

M.A.’s personality in eleventh grade was different than it had been in ninth grade and tenth grade. However, she does not refer every eleventh grader with a bad attitude or who argues with his parents or who presents negatively to the CST.

Tamara D’Alessio

During the second half of tenth-grade year, M.A.’s parents requested to meet with D’Alessio because they had concerns at home. Up to that point D’Alessio had no communications from M.A. or his teachers about any troubles at school. During the meeting, M.A.’s parents stated that M.A. was angry at home and unmotivated at school, and they wanted someone to check on him. D’Alessio thereafter introduced herself to



M.A. to see if he would be willing to use her as a support person, but M.A. was unwilling to speak with her. He was not angry; he was just not open to help.

D'Alessio briefly met with M.A. after he was not attending physical education to inform him that his application for an exemption was not approved and he was required to attend. M.A. only said "okay."

Prior to the I&RS meeting, D'Alessio spoke with Dr. Hahn about her evaluation. Dr. Hahn thought M.A. had adjustment disorder and was having difficulty coping with his medical diagnosis. D'Alessio did not recall Dr. Hahn recommending that an IEP be developed. At the I&RS meeting, M.A. was very assertive and talked about how he likes to have power a lot. He also appeared very defensive and not open to help from school. D'Alessio advised that she would be available to M.A. if he needed assistance, but M.A. never met with her. The parents did not contact D'Alessio about counseling M.A., nor did any teachers.

D'Alessio never observed M.A. in class. Based upon her meetings with M.A., D'Alessio did not have information warranting a referral to the CST.

#### Fred Fell

Dr. Hahn's report was comprehensive and well-written, and her conclusions seemed valid. M.A.'s scores on the Wechsler Intelligence Scale (WIS) indicate that he is bright, his cognitive skills are intact, and he is functioning in the upper end of the average range to the high average range. His scores are very consistent and do not reveal any inability to think, reason or problem solve. All M.A.'s scores on the Wechsler Individual Achievement Test (WIAT) were within the average range or well above the average range. He had several academic strengths that were high average or above average. Dr. Hahn found the Minnesota Multiphasic Personality Inventory (MMPI) to be a valid profile suggesting an adolescent with significant affective distress, related to numerous psychosocial factors. Dr. Hahn's report did not indicate any type of behavior or attention issue. An adjustment disorder is considered a reaction to a significant stressor or event and is typically less than six months in duration.

Parkes' report and the BASC for parent and child appeared valid. Parkes found M.A.'s psychological functioning to be better than what Dr. Hahn found. At the time of Parkes' evaluation, M.A. was doing quite well, and his level of adjustment seemed to be within normal parameters, and he seemed to be coping. Mom's BASC reporting reflected adjustment issues within the range of normal for M.A.'s age or that could be addressed, but not of clinical significance. There was no clinically significant information at that time regarding M.A.'s level of functioning. Parkes did not find any significant behavioral or emotional factors.

There were some good teaching strategies provided by Parkes that could be utilized, but based upon the reports and information, M.A. did not meet the criteria for special education services. Even based upon Dr. Hahn's diagnosis, M.A. did not meet the criteria for emotionally disturbed and Fell did not recommend special education.

Kathleen Bradshaw

At the March 12, 2019, meeting, it was explained to the parents that the District was unable to accept the referral because they could not perform evaluations on M.A. while he was out of state in the wilderness program. The District recommended that the parents re-request a referral when the parents had knowledge of a release date.

M.A.'s grades in ninth grade and tenth grade were similar. Most of the information from teachers was positive. She would not consider a single disciplinary incident a significant change in behavior.

Alison Michno

At the May 3, 2019, meeting the CST went over the documents listed in the evaluation plan. Michno did not speak to anyone at SUWS. The recommendations were a psychiatric evaluation and functional review of data by the school psychologist and a social history. The CST decided there was no learning disability, and the parents agreed so no educational evaluation was recommended. A social history was completed with

parent interview and student interview and observation. Dad did not want to sign anything until after he spoke to his attorney.

The reports were discussed with the parents at the October 1, 2019, meeting. The CST did not find M.A. eligible for special education. He did not meet all three prongs of having a disability defined by code, that impacted him academically and needed remediation. Dr. Moreno had listed a mood disorder, but the CST did not feel it was impacting him educationally, considering his grades, attendance, discipline, and teacher feedback, or that he required special education and related services. The CST recommended a 504 Plan. M.A.'s grades were A's or A's and B's in September 2019. There were no significant attendance issues or disciplinary issues after M.A.'s return to WMMHS. The parents did not object to the finding of ineligibility or voice any concerns. Through the time she was involved with M.A., Michno shared with the parents that she would be happy to speak to his therapist. As part of the 504 Plan, she was going to be in contact with his therapist. She requested a release, but never received one.

Within a week after the meeting, they began collecting teacher feedback and continued to do so weekly for most of the 2019–2020 school year. The teachers did not express any concerns. The parents did not request any further assessments or evaluations of M.A., an IEP, or a 504 plan meeting. M.A. completed his senior year with no disciplinary incidents and almost straight A's.

#### M.A. (Dad)

M.A. had changed significantly in tenth grade. He had previously been an A–B student, and he had never been a behavior or disciplinary problem at school or at home. M.A.'s eleventh-grade year was very difficult. M.A. was defiant and disobedient. He would not come home when told, he ran away, and he damaged their home and destroyed their property. He was verbally abusive and used expletives, especially to Mom, whom he referred to by her first name. The parents had called the police multiple times. Ultimately, M.A. became threatening to the family.

At the December 2018 meeting with Ryan, the parents told Ryan about M.A.'s emotional issues, his grades, the problems they were having at home, including that M.A. had run away and been to Morristown Medical Center. They also told Ryan that they had been constantly reaching out for help, and had met with Klimowicz and D'Alessio, but were not getting assistance and were at their wits end and did not know what to do.

At the I&RS meeting, M.A. had a smirk on his face, and answered all questions directed at him in a circular, snarky way and was not very cooperative. The parents were embarrassed. The parents discussed the changes in M.A.'s behaviors, the emotional outbursts, defiance, declining grades, and that he had been to Morristown Medical Center. His 504 Plan was discussed. At the end of the I&RS meeting there was no plan in place, and they had not helped M.A. The parents were told that the CST would start an evaluation and an IEP would be put in place. The parents never received a notice of an evaluation planning meeting after the I&RS meeting.

At the February 15, 2019, meeting, the parents told Ryan that nothing had been done after the I&RS meeting and the situation had gotten worse so M.A. was transported to SUWS. There was no discussion about what happened with M.A. being referred to the CST after the I&RS meeting. Ryan said to send a letter to the CST to formally request an IEP.

No one asked for documentation from Morristown Medical Center at the meeting with Ryan or the I&RS meeting. No one at the I&RS meeting had said the parents had to write a letter or nothing would happen.

At the May 3, 2019, meeting, the parents told the District they were enrolling M.A. at Fusion. Fell stated that he did not think evaluations could proceed if M.A. were a dual-enrolled student and that the parents would have to withdraw him, but the parents ignored it. The parents did not withdraw M.A. from the District. Fusion provided an individual study plan and direction and structure in a peer group. Fusion provided a written academic schedule, but not a written plan to reintegrate M.A. Fusion did not have the same triggers as WMMHS. Fusion would not have been appropriate without the support of Glawe and A.A. The parents did not have Glawe speak to the CST between December

2018 and February 2019 because by the time they engaged Glawe, they were in crisis-management mode. They were not purposely hiding anything from the school.

The parents did not sign a release for the District to talk to Glawe in fall 2019 because Glawe was on medical leave and had temporarily changed jobs. M.A. had a new therapist, but it was not going well, so there was no one for the District to talk to who was actively treating M.A.

Upon M.A.'s return, the parents were looking for a plan or direction on how to integrate M.A. back into WMMHS without triggering a relapse, knowing that the environment was a problem. If there had been a plan Dad would have discussed it, but there was nothing offered except tutoring and starting the IEP process. The parents did not specifically ask the District for counseling. The parents asked what the District could do and were told they needed to go through IEP process. The parents did not specifically ask for the 504 Plan to be amended or for counseling. He did not know the 504 Plan could include counseling. They did not sign a release to allow the District to speak to Glawe. By the time M.A. returned to the District senior year, he did not need counseling and support from the District; M.A. needed it from tenth grade until SUWS.

J.A. (Mom)

M.A.'s behavioral and attitude problems began in tenth grade. At the beginning of eleventh grade, M.A. hated any attempt by the parents to set boundaries. He wanted to be completely self-sufficient and did not want assistance in any way, shape, or form. He just wanted Mom to provide transportation. M.A. would say he hated their perfect little house in perfect little Chester, that the parents were goody two-shoes and organized and anal about doing things timely, and that they needed to get off his back and let him live his life. Trying to mother or discipline him only made him angrier. She tried to provide a buffer for his two siblings, who would regularly hear M.A. yelling and cursing at her.

In September 2018 the evaluator at Morristown Medical Center told the parents M.A. had oppositional defiance and that he tested positive for marijuana and was going to require intensive therapy.

After the I&RS meeting, Mom was under the impression that they were going to start the IEP process, based on Dr. Hahn's verbal recommendations relayed to the parents and the SAC, and that they would have a meeting with the CST. There was no written plan or clear instructions following the I&RS meeting. She did not receive an IEP meeting notice. No one offered to amend the 504 Plan or any other help. Everyone at the meeting except M.A. agreed he needed help. No meeting occurred after the December I&RS meeting and then M.A. left for SUWS. Sending him to SUWS was not solely to treat his drug addiction; it was to treat everything that was happening.

Therapy sessions with Glawe and Whaler helped the parents understand M.A. and his behavior and that the parents and M.A. have very different personality styles. The parents are very punctual and organized, timely complete things, and are very conservative in many ways, whereas M.A. is more fly-by-the-seat-of-his-pants and does not mind taking risks. Therapy helped them understand that they needed to adjust their behavior and responses to some of M.A.'s behaviors to get him to change.

The parents had only about a week's notice from SUWS that M.A. was ready to return home, and they needed to address next steps. Her understanding at that point was that M.A. would require therapy with Glawe and some type of support structure at school when he returned. The parents did not have a plan for M.A. to go to school. They knew that it was not realistic for him to attend WMMHS.

At the May 3, 2019, meeting, after the parents advised that M.A. was being placed at Fusion, Fell informed them that M.A. could not be evaluated if he were not a District student, so the parents were confused. Ultimately, although M.A. was attending Fusion, the District did evaluate him. M.A. was being evaluated at the same time the parents received the District's early-June letter request to disenroll him, so the parents did not sign the letter.

M.A. was concerned about not graduating on time. Fusion would afford M.A. the flexibility to continue therapy as often as needed, including daily A.A. meetings, and ease him back into completing eleventh grade. The parents did not know how successful M.A.

was going to be at home. They figured things out week by week and M.A.'s calendar included therapy appointments, classes, and meetings. The parents and M.A. continued therapy with Glawe, some of them joint sessions. Things went surprisingly fine. M.A. completed eleventh grade at Fusion but did not participate in the social areas at Fusion because he was intentionally there just for school. M.A. preferred to return to WMMHS and Glawe guided them through the process. Glawe recommended that for M.A. to return to WMMHS, the parents would have to be explicit with what was needed from school to ensure M.A.'s safety regarding substances and his recovery. M.A. did not attend the first two weeks of twelfth grade because evaluations had not been fully completed. M.A. was no longer in the system for WMMHS because unbeknownst to the parents he had been deactivated in June, despite that they had not signed the letter to disenroll him.

To her knowledge, when M.A. returned from SUWS he was no longer using marijuana. His grades were great and weekly teacher feedback was very positive in twelfth grade. The parents never provided a release for the school to talk to Glawe. At the time M.A. returned to WMMHS, Glawe was on a medical leave of absence and they were seeing another therapist in his office. The parents did not challenge the determination that no IEP was required because they were advised that the 504 Plan could address the behavioral and mental-health issues.

Joshua Glawe

In December 2018, he diagnosed M.A. with social phobia, oppositional-defiance disorder, and cannabis-use disorder. He documented the diagnoses in writing at that time and provided the information to the parents. M.A.'s behaviors were extreme, and Glawe recommended that the parents follow up with the school and move forward with classification. M.A.'s ulcerative-colitis diagnosis became a major contributor to his anxiety and may have contributed to his substance abuse. Dr. Hahn's report reinforced that M.A.'s medical diagnosis was contributing to his distress. Based on Dr. Hahn's report, Glawe believed M.A. needed help in school, like a meeting with the SAC or school psychologist, and at a bare minimum a urine screen because of the red flags in terms of behaviors and grades.

Based upon M.A.'s personality and interests, it was clear that a wilderness program would be an environment where he would most likely excel. Glawe recommended SUWS. Glawe was concerned that if M.A. went to a traditional residential treatment center, he would not cooperate whatsoever and would just do his time. Wilderness centers are more equipped to address non-cooperation. Typically, the biggest problem with wilderness therapy is where to send the children afterward. Glawe offers custom treatment and experiential work, so many of the sessions when M.A. first returned home were hiking or fishing. Outdoors was where therapy was most effective with M.A.

M.A. needed an environment where he could thrive, and he was not clinically ready to return to public school at that time with all his triggers. M.A.'s public-school peers were not making good choices. M.A. needed a safer practice environment to continue to hone his skills and implement what he learned at SUWS. Glawe did not think in-home tutoring was appropriate because M.A. needed to be able to move at his own pace in a real school academic environment. M.A. could not be left alone, but having a parent always home to supervise M.A. would have been a risk for relapse and family fights that would undo all the family and relationship work that had been done.

Glawe did not believe there were clinically any public-school programs that could meet M.A.'s needs of relapse-intervention and distress tolerance. M.A. needed constant therapeutic interaction with someone with specialized training in relapse intervention and anxiety disorders. Glawe gave the parents a few choices and Fusion was selected. Fusion would engage M.A. academically because he needed to be moving at a certain pace in his learning or he would get bored and then into trouble. There were not many children in recovery at Fusion, but there also was not much drug use so it was a safe environment.

The CST evaluations complicated Glawe's treatment, because M.A. felt like he was being punished and that it was a disincentive for his wellness. M.A. was not where he was before and could not make sense of it all and he felt like it was a dog-and-pony show that wasted his time.



Glawe did not think that Dr. Hahn had the expertise to assess for the substance abuse and he disagreed with Fell's testimony that Dr. Hahn's diagnosis was temporary. He did not know why Dr. Hahn did not diagnose ODD or social phobia. It is impossible to determine whether the marijuana issue or emotional diagnoses impacted him more. Both contributed to the problem. There was a triad of medical, substance, and mental health. His opinion that M.A. met the criteria for an emotionally-disturbed classification was based upon M.A.'s diagnoses.

By the time M.A. arrived at school for twelfth grade, there was no need for the District to speak with Glawe. Glawe prepared his February 28, 2020, report from his notes, assessment materials, memory, and experience. Glawe was surprised that M.A. was not eligible for an IEP because of his history and diagnosis.

### **LEGAL ANALYSIS AND CONCLUSIONS**

Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, provides, "No otherwise qualified individual with a disability in the United States . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 29 U.S.C. § 794(a). Such program or activity includes the operations of a local educational agency. 29 U.S.C. § 794(b)(2)(B). An "individual with a disability" is defined under the Rehabilitation Act as any person who has "a physical or mental impairment that substantially limits one or more major life activities of such individual," has "a record of such an impairment," or is "regarded as having such an impairment." 29 U.S.C. § 705(20)(B).

To establish a violation of § 504 of the Rehabilitation Act, it must be established that (1) M.A. has a disability; (2) M.A. was "otherwise qualified" to participate in school programs or activities; (3) the District received federal financial assistance; and (4) M.A. was excluded from participation in, denied the benefits of, or subjected to discrimination under any school programs or activities. Ridley Sch. Dist. v. M.R., 680 F.3d 260, 280, (3d Cir. 2012).

The Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§ 1400–1482, ensures 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, and ensures that the rights of children with disabilities and parents of such children are protected. 20 U.S.C. § 1400(d)(1)(A), (B); N.J.A.C. 6A:14-1.1. Under the IDEA, a “child with a disability” means a child with intellectual disabilities, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities, and who, by reason thereof, needs special education and related services. 20 U.S.C. § 1401(3)(A).

States qualifying for federal funds under the IDEA must assure all children with disabilities the right to a free “appropriate public education.” 20 U.S.C. § 1412(a)(1); Hendrick Hudson Cent. Sch. Dist. Bd. of Educ. v. Rowley, 458 U.S. 176 (1982). Each district board of education is responsible for providing a system of free, appropriate special education and related services. N.J.A.C. 6A:14-1.1(d). A “free appropriate public education” (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-school, or secondary-school education in the state involved; and (D) are provided in conformity with the individualized education program required under 20 U.S.C. § 1414(d). 20 U.S.C. § 1401(9); Rowley, 458 U.S. 176.

“The IDEA protects the rights of disabled children by mandating that public educational institutions identify and effectively educate those children, or pay for their education elsewhere if they require specialized services that the public institution cannot provide.” P.P., 585 F.3d at 735. Accordingly, schools must: (1) identify children in need of special education services (Child Find); and (2) provide a FAPE to disabled students.

[D.K. v. Abington Sch. Dist., 696 F.3d 233, 244 (3d Cir. 2012).]

An individualized education program (IEP) is a written statement for each child with a disability that is developed, reviewed, and revised in accordance with 20 U.S.C. § 1414(d), 20 U.S.C. § 1401(14), and 20 U.S.C. § 1412(a)(4). When a student is determined to be eligible for special education, an IEP must be developed to establish the rationale for the student’s educational placement and to serve as a basis for program implementation. N.J.A.C. 6A:14-1.3, -3.7.

“School districts have a continuing obligation under the IDEA and § 504”—called “Child Find”—“to identify and evaluate all students who are reasonably suspected of having a disability under the statutes.” P.P., 585 F.3d at 738 (emphasis added); accord 20 U.S.C. § 1412(a)(3); 34 C.F.R. § 300.111. A school’s failure to comply with Child Find may constitute a procedural violation of the IDEA. E.g., D.A. ex rel. Latasha A. v. Houston Indep. Sch. Dist., 629 F.3d 450, 453 (5th Cir. 2010) (calling the Child Find requirement a “procedural regulation[.]”); Bd. of Educ. of Fayette Cnty., Ky. v. L.M., 478 F.3d 307, 313 (6th Cir. 2007) (characterizing noncompliance with Child Find as a procedural violation).

Child Find extends to children “who are suspected of [having] . . . a disability . . . and in need of special education, even though they are advancing from grade to grade.” 34 C.F.R. § 300.111(c)(1); accord L.M., 478 F.3d at 313; Taylor v. Altoona Area Sch. Dist., 737 F. Supp. 2d 474, 484 (W.D. Pa. 2010). As several courts have recognized, however, Child Find does not demand that schools conduct a formal evaluation of every struggling student. See, e.g., J.S. v. Scarsdale Union Free Sch. Dist., 826 F. Supp. 2d 635, 661 (S.D.N.Y. 2011) (“The IDEA’s child find provisions do not require district courts to evaluate as potentially ‘disabled’ any child who is having academic difficulties.”). A school’s failure to diagnose a disability at the earliest possible moment is not per se actionable, in part because some disabilities “are notoriously difficult to diagnose and even experts disagree about whether [some] should be considered a disability at all.” A.P. ex rel. Powers v. Woodstock Bd. of Educ., 572 F. Supp. 2d 221, 226 (D. Conn. 2008).

[D.K. v. Abington Sch. Dist., 696 F.3d 233, 249 (3d Cir. 2012).]

Districts are required to identify disabled children within a reasonable time after school officials are on notice of behavior likely to indicate a disability. Id. at 250. Districts

must develop written procedures for students, including students attending nonpublic schools located within the school district regardless of where they reside, who reside within the school district with respect to the location, and referral of students who may have a disability due to physical, sensory, emotional, communication, cognitive, or social difficulties. N.J.A.C. 6A:14-3.3(a).

Petitioners argue that the District violated the procedural safeguards of the IDEA, which rose to the level of denying M.A. a FAPE; that the District breached its “Child Find” obligation; that M.A.’s eleventh-grade 504 Plan was inappropriate and not individualized to meet his educational or behavioral needs and did not offer M.A. a FAPE; and that the District failed to provide an appropriate education through I&RS. Petitioners further argue that they are entitled to reimbursement for the unilateral placements at SUWS and Fusion and out-of-pocket costs for his private therapy, and compensatory education. Conversely, the District argues that it upheld its “Child Find” obligation; that laws permitting reimbursement for “unilateral placement” are inapplicable to general education students; that petitioners are barred from seeking reimbursement for private-school costs because M.A. is ineligible for special education and related services; that petitioners are not entitled to reimbursement for SUWS or Fusion because M.A. had not previously received special education and related services; that petitioners are barred from reimbursement because they failed to provide timely notice to the District of the unilateral placements; and that petitioners are not entitled to reimbursement because neither SUWS nor Fusion provides special education services. The District bears the burden of proof and the burden of production whenever a due-process hearing is held pursuant to the provisions of the IDEA. N.J.S.A. 18A:46-1.1.

The Amended Petition alleges that “[i]n November of 2017, M.A. began exhibiting behavioral and emotional issues”; that “M.A. has a history of medical, emotional and behavioral issues that escalated during his sophomore year”; that “in January of 2018, M.A. had several emotional and/or behavioral outbursts at home and at school”; that “[d]uring MA.’s sophomore year of high school, his behavior became extremely erratic and he engaged in several aggressive episodes with staff”; that “[i]n June of 2018, teachers were reporting difficult and strange behaviors on M.A.’s part”; that M.A. “had an

altercation with the Band teacher”; and “[d]uring this period of time M.A. went from a student who primarily achieved A’s and B’s to B’s and low C’s.”

There is little question that beginning in 2018, M.A.’s attitude and behavior began to change, and that as 2018 progressed it became increasingly worse. Mom testified that she had never seen M.A. behave inappropriately in a public setting before the February 23, 2018, meeting with Klimowicz, which was shortly after his ulcerative-colitis diagnosis. In spring 2018, teacher feedback noted lack of effort and missing assignments, but some of the missing assignments were attributed to absences. The only reported behavioral incident in tenth grade was in spring 2018 when a teacher called Mom to tell her that it seemed out of character that M.A. was talking and misbehaving during band class, and that when asked to stop talking and return to the task, M.A. denied that he was talking and refused to comply. Given his recent diagnosis, it is not surprising that M.A.’s medical issues might negatively impact on his attitude, behavior and schoolwork. However, while M.A.’s academic grades were not as high as they had been in middle school, his tenth-grade grades were all average or above average, in advanced level and honors level courses. Further, there is little difference in M.A.’s academic subject grades from ninth grade to tenth grade. He went from an advanced level B- to an advanced level C in English; he went from an honors level B to an advanced placement honors level C in History; his grade remained the same in advanced level Spanish; he went from a C+ in honors level Geometry to a C in honors level Algebra 2; and he went from a C- in honors level Biology to a B in advanced level Chemistry. He passed physical education both years, he went from a B+ in Health Education to a C+ in Driver Education Theory, and in tenth grade he received an A in Financial Literacy (AV). Based upon his behavior in school and his grades, it is not unreasonable that the District did not suspect a disability.

M.A.’s first private therapy session was not until the summer after tenth grade, and his first psychiatric evaluation (at Morristown Medical Center) was not until September 2018. The psychiatric evaluation by Dr. Hahn was not until November 29, 2018. The only disciplinary incidents in school in eleventh grade were on December 4, 2018, where teacher feedback reported that M.A. attempted to incite other students to join him in refusing to take a test, and on December 5, 2018, where M.A. was stopped by Ryan for

the dress-code violation and M.A. emailed Ryan stating that he would file for a restraining order.

The I&RS meeting was held on December 14, 2018. Petitioners argue that the District “was provided information, documents, and independent evaluations from the parents and still failed to follow up after the I&RS meeting,” and that the District’s failure to assess M.A. in all areas of suspected disability was a procedural violation of the IDEA that rose to the level of a denial of a FAPE.

The only records the District had at the time of the I&RS meeting were letters from Dr. Leiby relative to M.A.’s ulcerative-colitis diagnosis. Dr. Leiby’s letters did not mention any emotional concerns or recommend any emotional supports. Dr. Hahn did not testify, and although she had a verbal telephone conference with D’Alessio prior to the I&RS meeting, a written report was completed until January 2019, and the parents did not provide the report to the District until March 12, 2019. No records from Dr. Hahn were provided to the District at the I&RS meeting. Dr. Hahn diagnosed M.A. with “Adjustment Disorder with Mixed Disturbance of Emotions and Conduct,” but it is not clear what information about that diagnosis was communicated to D’Alessio at the time, whether it was expected to be of limited duration, or if Dr. Hahn recommended accommodations or special education and related services.

The Parental Input Form for the I&RS meeting reflects that the parents noted M.A.’s weaknesses as: “[M.A.] has trouble asking for help when struggling in a subject”; M.A. “is very black and white and struggles to see gray area”; M.A. “can make a mountain out of a molehill when interpreting a situation”; and his “effort isn’t consistent but goes through ups and downs.” Further, the parents noted their “greatest concern(s)” for M.A. as: “getting organized for both current workload and for beginning the college application process, improving attitude toward his 3 classes with poor grades and getting academic help where needed, finding a way to manage stress at school and tune out distractions.” The parents did not provide the District with any records from Rapkin, Morristown Medical Center, Dr. Maria, or Dr. Hahn at or prior to the I&RS meeting. The Parent Input Form does not mention substance abuse, an ODD diagnosis, or adjustment disorder, and it does not request any services, such as counseling or therapy for the same. In the

absence of any specific references, M.A.'s area of suspected disability cannot be determined.

There appears to have been some confusion or misunderstanding about what would occur after the I&RS meeting, because the parents testified that they had expected to be contacted by the CST about classification and an IEP, but no other witnesses testified that after the I&RS meeting M.A. was being referred for an IEP, and there was no invitation. There is no question that after the I&RS meeting and until M.A.'s admission to SUWS, the parents were dealing with turmoil at home. However, although Mom had emailed D'Alessio and Bauberger about absences, the parents never contacted the District to inquire about the status of any expected meeting or IEP, and they did not provide the District with any of M.A.'s records from Rapkin, Morristown Medical Center, Dr. Maria, or Dr. Hahn after the I&RS meeting. Additionally, the parents did not provide the District with any records from Glawe, with whom M.A. had two therapy sessions in December 2018 after the I&RS meeting and with whom the parents had numerous sessions, or any records from St. Clare's Hospital relative to M.A.'s January 2018 psychiatric evaluation, despite the testimony that M.A. again tested positive for cannabis and again was diagnosed with ODD.

When the parents next contacted the school in February 2019 to request a meeting with Ryan and the CST, M.A. had already been placed at SUWS at the recommendation of Glawe. At that time, the District still had not been provided with any medical or therapy records despite that M.A. had been to at least two therapists, had two hospital psychiatric evaluations, had reportedly been diagnosed with ODD twice, had tested positive for cannabis at least twice, and Dr. Hahn's report had been issued to the parents in early January 2019.

The meeting was held on March 12, 2019. The CST denied the referral for an IEP because M.A. was already at SUWS and not accessible. Petitioners argue that the evaluation process should have started, but M.A. had been placed at SUWS without any prior notice to the District and given the extremely restrictive nature of the SUWS program, including parent-child communication only via letters, it is not reasonable to expect that any appropriate evaluations could have been conducted while M.A. was at SUWS.

Ultimately, the parents never advised the District of M.A.'s marijuana use until Dr. Hahn's Report, despite that he tested positive for cannabis at Morristown Medical Center and St. Clare's Hospital, that he had been referred to Glawe because of Glawe's experience with substance abuse and mental health, and that they had implemented regular drug testing<sup>2</sup> of M.A. The parents never provided the District with information or records from Morristown Medical Center or St. Clare's Hospital, Dr. Maria, Rapkin, or Glawe. The parents did not provide the District with Dr. Hahn's Report, which noted the positive marijuana test, until March 12, 2019. There was no testimony from the parents that they had advised the District that M.A. had been diagnosed with ODD, and the first time the District was provided with any record referencing ODD was when it received Dr. Hahn's Report.

Generally, it is understandable that parents might not want to disclose a child's drug use or medical records to the school for privacy reasons. However, in a situation where the parents allege that the child's drug use and/or medical diagnoses are impacting the child to such a degree that it requires accommodations or special education and related services, the parents simply cannot withhold that information. Failure to provide any written documentation beyond the ulcerative-colitis diagnosis resulted in the District being expected to create a 504 plan or IEP based solely upon parent reports, in the absence of any significant decline in grades or corroboration of extreme behavior or discipline in school in tenth grade or even in the first few months of eleventh grade. While M.A. may have exhibited a negative attitude or lack of respect, such conduct from a teenager is not necessarily indicative of a disability or a need for accommodations. Moreover, his first two marking period grades in eleventh grade for International Baccalaureate honors level English 3 were C- and C-; for advanced level World History were A- and B; for advanced level Spanish 4 were B+ and B; for advanced level Pre-Calculus were C and C-; and for advanced level Physics C- and D-. He passed Physical Education 11, got an A+ in Health Education, and his grades for Entrepreneurship were

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<sup>2</sup> In November 2018, the parents were informed by another parent that it had been reported to the principal that M.A. had been observed using marijuana at a sporting event. Petitioners' brief asserts that "[t]his incident was reported to the school principal, but the school never called the parents to inform them." While the school never called the parents, there was no evidence in the record that it was in fact reported, and the parents did not contact the school about the incident.



A- and A. Thus, while his grades were undoubtedly not indicative of his best efforts, in certain classes, which could perhaps be due to preferred subject matter or teachers, M.A. still performed at or above expectations with minimal attitude or behavior problems, even with absences due to ulcerative colitis.<sup>3</sup>

The record reflects a significant difference between what the parents verbalized to the District and what the parents documented for the District. The Amended Petition states that the parents were told in September 2018 at Morristown Medical Center and in February 2019 at St. Clare's Hospital that M.A. was exhibiting symptoms of ODD. However, the record is devoid of any evidence that the parents communicated to the District that he had been formally diagnosed with ODD, and it is not disputed that no records from either hospital were ever provided. Likewise, though the record reflects that he tested positive for cannabis at Morristown Medical Center and at St. Clare's Hospital, the record is devoid of any evidence that the parents communicated that he was using marijuana to the District prior to March 12, 2019, when it appeared in Dr. Hahn's report. Although Glawe diagnosed M.A. with social phobia, it is observed that no other evaluator diagnosed M.A. with social phobia, and although the records from his two hospital psychiatric evaluations were not provided, there was no testimony from the parents that any other evaluator had formally diagnosed him with an anxiety disorder.

Petitioners argue that “[i]f the District had addressed the parents’ concerns, drug tested M.A., evaluated him, given him support when developing the 504 plan, he may not have had to attend the wilderness program and intensive one to one instruction.” This is not supported by the evidence. In September 2018 he tested positive for cannabis at the hospital, but that was not disclosed to the District and no records were provided. In December, Glawe was aware of the marijuana use, but the parents did not authorize Glawe to speak with the District and no records were provided. In January 2019 he tested positive for cannabis at the hospital, but that was not disclosed to the District and no records were provided. Mom candidly testified that she did not report substance use to

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<sup>3</sup> M.A.'s third-marking period grades, which were drastically lower, are not considered reliable evidence of his performance, as it is observed that M.A. was admitted to SUWS on February 11, 2019, at which time he could have attended, at most, fifteen days of the third marking period, and he did not return for the remainder of the 2018–2019 school year.

the school or ever seek substance-abuse counseling from the school. Thus, it is not reasonable to assert that M.A. should have been drug tested by the District simply because of his attitude and behavior, or his grades.

There is no dispute that M.A. was eligible for accommodations by way of a 504 plan due to his diagnosis of ulcerative colitis. Petitioners argue that no one offered to amend M.A.'s 504 plans to address the parents' concerns, but it is apparent from the record that M.A.'s conduct at home was vastly different from and exponentially worse than his conduct at school and the District did not suspect a "disability" based upon his conduct and performance in school. Further, although there were parent reports of behavioral concerns, there was no evidence that M.A. was under the care of any private professional, including a psychologist, psychiatrist, or pediatric neurologist, until summer 2018, when the parents first contacted a private therapist, and there were no medical or therapy records of any suspected disability or diagnosis other than ulcerative colitis provided to the District until March 12, 2019. The tenth-grade 504 Plan was signed in April 2018 and the eleventh-grade 504 Plan was signed in September 2018. At that time, M.A. was not attending any therapy, and none of the letters from Dr. Leiby mentioned any behavioral or emotional issues or recommended any such accommodations. Neither the parents nor M.A. ever requested that any further accommodations, such as therapy or counseling, be added to the 504 plans or expressed any concerns about or objections to the 504 plans. Further, M.A. had already refused any academic assistance available to him, and had refused to speak with Klimowicz, D'Alessio, and a private therapist, so it is not clear what should have been written into the 504 plans at that time, as it appears that even if therapy or counseling had been written into his 504 plans, M.A. likely would have refused. It is not surprising that D'Alessio was unsuccessful in getting M.A. to talk with her, because the attempt at private counseling during summer 2018 was unsuccessful, as was the attempt at counseling with Glawe, which was discontinued after the first two sessions until M.A. returned from SUWS. Moreover, Glawe testified that M.A. benefited most from outdoors therapy, which is different from school-based therapy.

In view of the foregoing, including the absence of any therapy or medical records beyond that pertaining to ulcerative colitis until March 12, 2019, I **CONCLUDE** that the District's tenth-grade 504 Plan and eleventh-grade 504 Plan were appropriate and did not

deny M.A. a FAPE. I further **CONCLUDE** that there was no failure on the part of the District with respect to Child Find and M.A. was not denied a FAPE. Even after evaluations were conducted, M.A. was determined by the CST ineligible for special education and related services, which was not challenged by the parents. There is no evidence in the record of this proceeding warranting creation of an IEP for special education and related services before or after M.A.'s admission to SUWS.

Petitioners allege multiple procedural violations by the District. 20 U.S.C. § 1415 sets forth the procedural safeguards for children with disabilities, which safeguards are codified at 34 C.F.R. § 300.530 (2020). Pursuant to 20 U.S.C. § 1415(a), any local educational agency that receives assistance under 20 U.S.C. §§ 1411 et seq. must establish and maintain procedures to ensure that children with disabilities and their parents are guaranteed procedural safeguards with respect to the provision of a FAPE by such agencies. However, 20 U.S.C. § 1415(f)(3)(E)(iii) provides that in matters alleging a procedural violation, a hearing officer may find that a child did not receive a FAPE only if the procedural inadequacies (I) impeded the child's right to a free appropriate public education; (II) significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a free appropriate public education to the parents' child; or (III) caused a deprivation of educational benefits. I **CONCLUDE** that the evidence falls short of establishing that the District impeded M.A.'s right to a FAPE, significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a FAPE to M.A., or caused any deprivation of educational benefits.

The parents seek reimbursement for any and all costs of M.A.'s placement at SUWS and Fusion "due to the district[']s failure to provide him with either an appropriate 504 plan or conduct an evaluation and propose an IEP," and reimbursement for all out-of-pocket costs for private therapy. However, even after M.A. returned from SUWS, no therapy records for Whaler or Glawe were provided, and, in fact, the only therapy or medical records provided to the District consisted of Dr. Hahn's Report.

Pursuant to 20 U.S.C. § 1412(a)(10)(C)(i), and subject to 20 U.S.C. § 1412(a)(10)(A), a local educational agency is not required to pay for the cost of

education, including special education and related services, of a child with a disability at a private school or facility if that agency made FAPE available to the child and the parents elected to place the child in such private school or facility. See also N.J.A.C. 6A:14-2.10(a). However, if the parents enroll the child in a private elementary school or secondary school without the consent of or referral by the public agency, a court or a hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency has not made FAPE available to the child in a timely manner prior to that enrollment. 20 U.S.C. § 1412(a)(10)(C)(ii); see also N.J.A.C. 6A:14-2.10(b). When a local educational agency fails to provide a FAPE, it must reimburse parents for resulting private-school costs. See T.R., 205 F.3d at 577 (citing Sch. Comm. of Burlington v. Dep't of Educ., 471 U.S. 359, 370 (1985)). Pursuant to 20 U.S.C. § 1412(a)(10)(C)(iii), the cost of reimbursement described in clause (ii) may be reduced or denied—

(I) if—

(aa) at the most recent IEP meeting that the parents attended prior to removal of the child from the public school, the parents did not inform the IEP Team that they were rejecting the placement proposed by the public agency to provide a free appropriate public education to their child, including stating their concerns and their intent to enroll their child in a private school at public expense; or

(bb) 10 business days (including any holidays that occur on a business day) prior to the removal of the child from the public school, the parents did not give written notice to the public agency of the information described in item (aa);

(II) if, prior to the parents' removal of the child from the public school, the public agency informed the parents, through the notice requirements described in section 615(b)(3) [20 USCS § 1415(b)(3)], of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child available for such evaluation; or

(III) upon a judicial finding of unreasonableness with respect to actions taken by the parents.

See also N.J.A.C. 6A:14-2.10(c).

The record reflects no “disability” requiring additional accommodations or special education and related services beyond those in the 504 plans and no denial of a FAPE. The record likewise reflects there were no substantive violations of the Rehabilitation Act or the IDEA, including “Child Find,” or any procedural violations that resulted in the denial of a FAPE. Accordingly, the parents are not entitled to reimbursement for SUWS or Fusion. However, even if there had been a denial of FAPE, SUWS is a strictly therapeutic environment, not an educational one. While it is obvious from the record that M.A.’s time at SUWS was positive and beneficial, especially since he was no longer using marijuana afterward, SUWS is not a school and SUWS did not provide any academic instruction to M.A., special education or otherwise. Further, even if M.A. had been classified, the parents failed to provide the District with any notice of the placement at SUWS until after M.A. was already in North Carolina. In view of the foregoing, I **CONCLUDE** that the reimbursement for SUWS should be denied.

With respect to Fusion, there was zero documentation from Fusion in the record, and no witness from Fusion testified. Fusion is not State approved for special education. While reimbursement may be allowed for non-accredited and non-approved placements, there was no evidence that M.A. required a 1:1 teacher-student ratio, and the record reflects that M.A. was not provided with any special education or related services at Fusion, nor was he provided with any counseling services at Fusion. Rather, it appears that Fusion was selected not for special education and related services but to keep M.A. occupied and out of the house and allow him flexibility to attend A.A. and therapy sessions. Additionally, “the IDEA was not intended to fund private school tuition for the children of parents who have not first given the public school a good faith opportunity to meet its obligations.” C.H. by Hayes v. Cape Henlopen, 606 F.3d 59, 72 (3d Cir. 2010). The parents have an “obligation to cooperate and assist in the formulation of an IEP.” Ibid. The core of the IDEA is the cooperative process that it establishes between parents and schools. Schaffer v. Weast, 546 U.S. 49, 53 (2005). Although the parents had looked at Fusion prior to May 3, 2019, they did not request that the District place M.A. at Fusion, or that the District provide any therapy or counseling. Additionally, even though Glawe had sessions with M.A. twice, had sessions with the parents regularly since December

2018, and had communicated regularly with M.A.'s SUWS therapist, there was nothing provided to the District from Glawe reflecting that "continuing to be out of school would add to his anxiety and potentially cause regression," and there was no release for Glawe to speak to the District. Further, except for Dr. Hahn's Report, which was based upon a November 2018 evaluation and prior to M.A.'s completion of SUWS and a twelve-step program and his consistent therapy sessions, no medical or therapy records were provided to the District in advance of the May 3, 2019, meeting. Instead, when the District offered in-home tutoring, the parents advised at the meeting that they were placing M.A. at Fusion, and the District was notified via certified mail, by letter from petitioner's attorney dated May 3, 2019—the same date as the meeting—that M.A. was being unilaterally placed at Fusion. In view of the foregoing, I **CONCLUDE** that reimbursement for Fusion should be denied.

Based upon the foregoing, I also **CONCLUDE** that reimbursement for the out-of-pocket costs for M.A.'s private therapist and compensatory education should also be denied.

### **ORDER**

It is hereby **ORDERED** that the relief sought by petitioners is **DENIED** and the Amended Petition is **DISMISSED**.

This decision is final pursuant to 20 U.S.C. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2020) 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 (2020).

May 21, 2021

\_\_\_\_\_  
Date

  
\_\_\_\_\_  
KELLY J. KIRK, ALJ

Date Received at Agency

\_\_\_\_\_

Date Mailed to Parties:  
db

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**APPENDIX**

**List of Witnesses**

**For Petitioners:**

J.A.

M.A.

Joshua Glawe

**For Respondent:**

Hillary Klimowicz

Tamara D'Alessio

Frank Fell

Kathleen Bradshaw

Alison Michno

**List of Exhibits**

**Joint:**

J-1 2015–2016 PARCC Algebra 1 Report

J-2 2015–2016 PARCC Grade 8 ELA Report

J-3 National Junior Honor Society letter, dated February 18, 2016

J-4 2015–2016 Report Card

J-5 Report Card Change

J-6 2016–2017 PARCC GEO01 Score

J-7 2016–2017 PARCC ELA-09 Score

J-8 New Jersey Biology Competency Test Individual Student Report, dated May 2017

J-9 2017–2018 PARCC ALG02 Score

J-10 2017–2018 PARCC ELA-10 Score

J-11 ACT Student Report, dated October 11, 2017

J-12 Dr. Leiby letter, March 21, 2018



- J-13 2018 504 Plan
- J-14 Dr. Leiby letter, dated August 27, 2018
- J-15 Pediatric Neuropsychological Evaluation, dated January 2, 2019
- J-16 2018–2019 504 Plan
- J-17 Confidential I&RS Information Requests
- J-18 I&RS Parental Input Form
- J-19 2018–2019 School Schedule
- J-20 Parents' letter, dated February 18, 2019
- J-21 Summary of Health & Medical Information and Confidential Student Progress Reports
- J-22 Invitation to an Initial Identification Meeting, dated March 7, 2019, and Meeting Confirmation Form
- J-23 Meeting Participants, Parental Consent Conference for Initial Referral, and Parental Notice, dated March 2019
- J-24 2018–2019 Q1–Q3 grades
- J-25 PSAT score
- J-26 Parents' letter, dated April 14, 2019
- J-27 Special Education Referral
- J-28 Invitation to an Initial Identification Meeting, dated April 18, 2019, and Meeting Confirmation Form
- J-29 Meeting Participants, Parental Consent Conference for Initial Referral, and Parental Notice, dated May 2019
- J-30 2018–2019 Attendance Record
- J-31 Official Student Transcript, dated May 10, 2019
- J-32 Confidential Report of J.G. Moreno, M.D., dated June 13, 2019
- J-33 Confidential Social History, dated June 18, 2019
- J-34 Confidential Psychological Assessment, dated August 11, 2019
- J-35 Eligibility Meeting Participants, Evaluation Sequence and Eligibility Determination Report, dated October 2019
- J-36 2019–2020 504 Plan
- J-37 Weekly Feedback Reports

For Petitioners:

- P-1 (Not in evidence)

- P-2 (Not in evidence)
- P-3 (Not in evidence)
- P-4 April 2018 emails
- P-5 November 2018 emails
- P-6 December 2018 emails
- P-7 (Not in evidence)
- P-8 December 2017 emails
- P-9 December 2018 emails
- P-10 December 2018 emails
- P-11 December 2017 email
- P-12 January 2019 emails
- P-13 Withdrawal Form
- P-14 Phoenix Outdoor/SUWS Discharge Summary
- P-15 SUWS Graduate Academic Transcript
- P-16 Ms. Callahan letter, dated May 3, 2019
- P-17 (Not in evidence)
- P-18 2018–2019 Q1–Q4 grades
- P-19 (Not in evidence)
- P-20 Certification of Joshua Glawe
- P-21 Certification of J.A.
- P-22 (Not in evidence)

For Respondent:

None