



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

**CORRECTED**

**FINAL DECISION**

OAL DKT. NO. EDS 10964-24

AGENCY DKT. NO. 2024-37757

**J.D. AND K.D. ON BEHALF OF C.D.,**

Petitioners,

v.

**HADDONFIELD BOROUGH**

**BOARD OF EDUCATION,**

Respondent.

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**Sanmathi Dev**, Esq., for petitioners (Capehart Scatchard, Attorneys at Law,  
attorneys)

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

Record Closed: March 3, 2025

Decided: March 28, 2025

BEFORE **KATHLEEN M. CALEMMO**, ALJ:

**STATEMENT OF THE CASE**

Petitioners maintain that C.D. was not ready to graduate from Haddonfield Memorial High School (Haddonfield) and required continued eligibility for special education under the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C.A. §1415 et seq., and Section 504 of the Rehabilitation Act of 1973 (Section 504). Despite C.D.'s passing grades, petitioners assert that Haddonfield Borough Board of Education's (District) failure to address C.D.'s deficits in executive functioning, self-management,

social development, and his dominant behavioral issue of task avoidance denied him a Free and Appropriate Public Education (FAPE). When the District refused to collaborate on finding a suitable program for C.D.'s thirteenth year of high school, petitioners enrolled C.D. in the Y.A.L.E. School's Standard 9 program. They seek compensatory education or alternatively reimbursement for their expenses in placing C.D. at Y.A.L.E.

The District contends that through appropriate Individualized Education Programs (IEPs), C.D. was educated in a rigorous college preparatory general education setting where he exceeded graduation requirements for a high school diploma and satisfied high school proficiency testing. As a result, the District determined that graduation was appropriate, terminating the District's obligation to provide future educational services pursuant to the IDEA.

### **PROCEDURAL HISTORY**

Petitioners J.D. and K.D. on behalf of their son, C.D. (collectively, petitioners), filed a request for due process with the Office of Special Education Programs, New Jersey Department of Education on June 17, 2024.

The Department of Education transmitted the contested case under N.J.S.A. 52:14B-1 to 15 and N.J.S.A. 52:14F-1 to 13 to the Office of Administrative Law, where it was filed on August 8, 2024.

At the parties' request, the matter was scheduled for a settlement conference before the Honorable Margaret Monaco, ALJ, on August 15, 2024. When the matter did not settle, it was assigned to me and I conducted a telephone conference on August 19, 2024. The parties agreed to three hearing dates scheduled for October 21, 2024, October 29, 2024, and October 30, 2024. At the status telephone conference on September 16, 2024, after a discussion about outstanding discovery, I set a discovery deadline of September 30, 2024, for the completion of discovery.

To address prehearing issues, I entered an Order, dated October 8, 2024, wherein, I struck respondent's discovery request, dated September 30, 2024, as untimely and dismissed petitioners' claims under Title II of the Americans with Disabilities Act, 28 U.S.C. 12132 (ADA), and the New Jersey Law Against Discrimination, N.J.S.A. 10:1-2, for lack of jurisdiction by this tribunal.

Prior to the start of the hearing, I granted petitioners' motion to quash the subpoena issued to C.D. to prevent him from testifying in this matter. However, I advised the parties that I would revisit the issue if respondent needed C.D. for rebuttal.

At the parties' request, the following additional hearing dates were added: November 15, 2024, November 21, 2024, December 3, 2024, December 11, 2024, and December 13, 2024. The parties mutually requested additional time to request transcripts of the hearing dates and to provide written summation briefs. By agreement of the parties the summation briefs were due on February 28, 2024.

### **FINDINGS OF FACT AND FACTUAL DISCUSSION**

Based on the testimony presented at the hearing, my assessment of its credibility and weight, the documents admitted in evidence, and my assessment of their sufficiency, I **FIND** the following **FACTS**:

C.D. is an eighteen year old student, who has been eligible for special education services since the age of three. Upon transferring to the District in second grade, C.D. was determined eligible for special education under the classification of autism. C.D. continued to be educated in the District through his senior year of high school.

According to C.D.'s ninth grade IEP, dated April 21, 2020, C.D. received in-class resource support for all subjects. (P-8.) The Child Study Team (CST) deemed that behavior supports were necessary to address verbal protests, non-compliance, inappropriate social behavior, vocal disruptions, and perseverations. (P-8, at C.D.B.O.E.788-790.) Under his IEP, C.D. was offered pull-out supplementary instruction

twice a week for thirty minutes and counselling service twice a month for twenty minutes. (P-8, at C.D.B.O.E.796.) The supplementary instruction was an IEP mandated class.

There were numerous weekly emails from the counsellor, Holly Penna, and the supplementary instruction special education teacher, Cynthia Kolaski, throughout the school year about C.D.'s lack of attendance. (P-5, pages 3 – 324.) C.D. was reluctant to attend office hours, even when he was directed to do so by his teacher. (P-5, at 327-328, 336.) By email, dated January 12, 2021, Ms. Penna informed J.D. that C.D. had only attended two of six scheduled counselling sessions. (P-5, at 424.) C.D.'s case manager, Michele Scott, (Scott) sent an email to J.D. to inform him that C.D. was not showing up for his supported study hall. (P-5, at 436.)

Under his tenth grade IEP, C.D. continued to receive in-class resource support for all subjects. (P-9.) The IEP indicated, under the Concerns of the Parent section, that the team discussed C.D.'s difficulty with assignment completion. The Present Levels of Academic Achievement and Functional Performance (PLAAFP) section documented certain areas of concern. Holly Penna, C.D.'s counselor for ninth grade wrote: "C.D. has trouble making his sessions unless his father is also CC'ed on the email to make sure he signs in." However, she noted that counselling is beneficial for C.D. (P-9, at C.D.B.O.E. 805.) For tenth grade, individual counselling services twice a month for twenty minutes was continued. It was even included as an IEP goal that C.D. would work towards becoming more self-sufficient with attending counselling. (P-9, at C.D.B.O.E. 822.) The PLAAFP also reported C.D.'s irregular attendance, reluctance to accept help, missed work, and aversion to organizational assistance in his Study Skills class. Behavior interventions remained appropriate for C.D.

C.D.'s initial eleventh grade IEP was dated March 1, 2022. He had in-class resource support for all classes, except Spanish, where he received a pull-out resource replacement. (J-8.) It was noted under Special Alerts that "[w]hen C.D. gets overwhelmed, avoidance becomes the dominant behavior." Ibid. C.D.'s counselling mandated ended because of C.D.'s lack of attendance and engagement. Under his PLAAFP, the Board Certified Behavior Analyst (BCBA) noted that C.D. "would benefit

from continued support and modification in the areas of executive functioning/ organization and self management to ensure that all assignments are submitted.” (J-8, at C.D. BOE 828.) The CST decided to fade C.D.’s behavior plan but recognized that he needed support for self-management, task initiation, and completion. Ibid.

Juniors and seniors at Haddonfield, who meet the requirements of good academics, behavior, and attendance, can earn the privilege of “open campus.” The student must be on time for the school day and attend all classes on time. Open campus can be revoked after the student initially earned it. During open campus, the student is allowed to go anywhere and is not required to report to a specific location. The student can leave the campus, walk home, or go downtown. The student could go to the courtyard, to the cafeteria, or to the library without obtaining any specific permission. Scott testified that the purpose of open campus is to help students with time management and simulate the freedoms of a college setting. C.D. earned the privilege of open campus and never had it revoked.

During the summer before C.D.’s junior year, the District reevaluated C.D. in three areas: social; learning; and psychological. On July 28, 2022, in preparation for C.D.’s social work assessment, Scott emailed J.D. a questionnaire to complete. In describing his son’s behavior, J.D. responded that C.D. only wants to play video games and becomes cranky or angry when asked to stop or do something else. He also stated that C.D. rarely takes the initiative and procrastinates to the point of becoming overwhelmed with assignment due dates. Another behavioral concern for J.D. was C.D.’s temper when told to work on his homework or assignments. J.D. spends countless hours each evening trying to help C.D. with his schoolwork. J.D. also expressed his concern that C.D. does not understand how his behavior affects other people. As an example of C.D.’s inattentiveness, J.D. mentioned that C.D. was asked not to return to his summer job as a camp counselor because of being constantly on his phone. In J.D.’s view, there was a large gap between C.D.’s intelligence and his performance. (P-5, at 467-468.)

Scott conducted the social work assessment on August 9, 2022, and issued the report. (J-13.) She noted J.D.’s concerns in her report.

On August 10, 2022, Anne Marie Murray Pousatis, MA, LDT-C, NCED, conducted a Learning Assessment. (J-14.) C.D.'s teachers noted that organization continued to be an area of weakness and avoidance turns into feelings of being overwhelmed. Ibid. She administered the standard battery of the Woodcock-Johnson Tests of Achievement IV (WJ-IV) to C.D. to estimate his achievement levels in reading, writing, and mathematics. C.D.'s developmental levels in broad reading, mathematics, and written language were within the average range. Ibid.

On August 1, 2022, Alice Lee, School Psychologist, administered the Psychological Evaluation and authored a report dated August 11, 2022. (J-15.) C.D. answered ten subtests from the Wechsler Intelligence Scale for Children-Fifth Edition (WISC-V). C.D.'s Full Scale Intelligence Quotient (FSIQ) of 100, placed him in the average range of intelligence/cognitive ability. C.D. also answered five subtests comprising the General Ability Index (GAI). In comparing the two scores, it was noted that C.D.'s working memory and processing speed skills are areas of specific weakness. C.D. demonstrated very low processing speed, average verbal comprehension and working memory, high average fluid reasoning, and very high visual spatial ability. C.D.'s very low processing speed can lead to frustration or confusion when material is presented quickly. C.D.'s cognitive processing speed is the weakest of his skill set.

On September 15, 2022, the CST met to review the evaluations and revise the IEP for eleventh grade, if needed. (J-9.) Under the Concerns of the Parents section, notetaking was listed to help C.D. with paying attention. Behavioral consultation was added twelve times per year for sixty minutes.

The Consultation Summary documents provided began on October 21, 2022. (R-26, CD.BOE 2434.) The supervising BCBA listed the two goals from C.D.'s IEP :

By June 2023, when working independently at school on an instructional-level assignment. C.D. (will use a resources checklist to independently problem-solve what to do next to

complete an assignment/task prior to asking the teacher for help.

By June 2023, during a structured academic task in the classroom C.D. will stay on-task while refraining from maladaptive behaviors (e.g. using his phone, completing other tasks etc.) for duration of the class period 85% or more of direct observations

The only documented concern from the first observation was C.D.'s frequent breaks during class time. Ibid.

The observation note from November 17, 2022, of C.D.'s math class indicated no maladaptive behaviors, but reinforced the concern that C.D. did not work on the assignment or engage in independent work. C.D. was also late for class and did not immediately begin working on the assignment after his late arrival. (R-26, CD.BOE 2435-6.)

The December 13, 2022, observation of C.D. in his English class occurred when the special education teacher was not present. The class started at 12:00 p.m. and C.D. asked to go to the bathroom at 12:01 p.m. C.D.'s teacher reported to the BCBA that C.D. had "excuses for every assignment, does not accept help." She also noted that he can become very "nasty" and argumentative. He wants the teachers to do his work for him. His frequent breaks cause him to miss instruction. (R-26, CD-BOE2437-9.)

Ms. Flynn, the special education support teacher, confirmed her absence from the class on December 13, 2022. She did not dispute that the observed behaviors occurred, but emphasized those behaviors were not her experience with C.D. Ms. Flynn was very familiar with C.D. as a learner, because she was his special education support teacher for History 1 in freshman year, global studies in sophomore year, English 3 in junior year, and English 4, in senior year. She believed they had a good rapport. Flynn testified that C.D. could self-advocate. In her experience, C.D. asked for and accepted help. She admitted that like a typical teenager, C.D. could be rude and demanding when he wants you to do his work for him. However, such behaviors were infrequent. Because of her

relationship with C.D., motivation was not a problem that she encountered. Flynn conceded that C.D. used his frequent breaks to avoid work but noted that he was always back promptly. If his break request was made during instruction, Flynn could redirect C.D. back to task and give the break at a different time. According to Flynn, the BCBA never informed her of C.D.'s behavior when she was away.

In Flynn's professional opinion, C.D.'s behaviors did not interfere with his learning. His deficits with executive functioning, were addressed during English class by using his accommodations. Flynn helped him with the tools needed to organize the material before he wrote his essays. C.D. was given study guides and taught how to create his own study guide. Flynn checked in with C.D. to make sure he understood what was expected from him, confirmed due dates, made timelines, and chunked material. Flynn provided specialized instructions so that C.D. could complete the task on his own. C.D.'s accommodation allowed him to hand his assignments in late and request extensions when needed.

On December 2, 2022, The BCBA observed C.D. in math class. He asked to use the bathroom at the beginning of class. C.D. was working with a partner. When he was supposed to be helping his partner, he was looking at his phone. He left his partner during the assignment to go to the bathroom. (R-25, CD.BOE 2440-1.)

The last observation note for C.D.'s junior year was dated March 1, 2023, during a quiz in math class. C.D. looked out the window, towards the door, and out the window rather than working on his test. He raised his hand repeatedly asking for help. The teacher showed him the review sheet and how the same questions are on the test. The teacher did not think that C.D. looked at the review sheet. He did not finish the test by the end of the class but asked to go to the bathroom for the second time that period.

The Progress Report for the goals identified by the BCBA for the November, January, and April marking periods showed that C.D. was Progressing Gradually (PG).



C.D. did not receive BCBA consultation services for the last marking period because the BCBA left the District and was not replaced. (J-18, CD.BOE413.)

C.D.'s case manager, Ms. Scott, testified that beginning in eleventh grade, consultation observations were added in place of counseling, which had not been effective because C.D. refused to attend. Scott testified that she did not get any updates from the BCBA and had never reviewed her consultation notes. These notes identified maladaptive behaviors, the avoidance through breaks, and the refusal to attend to tasks. The behaviors were noted in C.D.'s IEPs for eleventh and twelfth grades. It was never explained and remained unclear how the data provided by the BCBA's consultation notes was utilized to address C.D.'s behaviors.

At the beginning of junior year, C.D.'s schedule included a supported study hall. Scott testified that executive functioning skills would have been worked on during this study hall. However, she agreed that C.D. did not benefit as he should because of his refusal to go and participate when he was present. Due to C.D.'s non-compliance with supported study hall, it was removed from his schedule for the second semester junior year. J.D. questioned C.D.'s counselor, Steven J. Fluharty, Jr., MA, about the removal. In an email, dated February 8, 2023, Mr. Fluharty advised J.D. that he contacted C.D.'s supported study hall teacher, Mrs. Gaspari. Mrs. Gaspari reported that C.D. never took advantage of the supported study hall last semester. He did everything, but work. She offered an example of when she asked him to work on math, and in defiance he pretended to work on English instead. J.D. responded to Mr. Fluharty that he was unaware of any issues. (P-5, page 475.) Afterwards, Mr. Fluharty spoke with C.D.'s case manager, Ms. Scott, and they agreed to change C.D.'s schedule and place him back in supported study hall.

The CST met on February 27, 2023, to prepare C.D.'s IEP for twelfth grade. (J-10.) The Special Alert about avoidance was still noted. C.D.'s special education programs and related services were in-class resource support for English and Math for one hundred twenty-nine minutes and individual behavioral consultation ten times throughout the year for forty-three minutes. Ibid. Under the PLAAFP, for Social

/Emotional/Behavioral, the BCBA noted that there were no significant behavior concerns, but that C.D. would benefit from continued support and modification in the areas of executive functioning/organization and self-management. She also noted that C.D.'s disability affects his task initiation and task completion skills. C.D.'s only Social/Emotional/Behavioral goal was task initiation and completion with less than three prompts of assistance. Ibid.

C.D. took his SATs in October of his senior year. C.D. was required to take the New Jersey Graduate Proficiency Assessment (NJGPA). Despite not being required to pass the NJGPA to meet graduation requirement under his IEP, C.D. passed the NJGPA.

Prior to the start of senior year, on August 28, 2023, J.D. emailed Mr. Fluharty about placing C.D. in a statistics class instead of precalculus for math, at the recommendation of C.D.'s Huntington Learning Center tutor. (P-5, at 496.) Mr. Fluharty responded that C.D. was enrolled in a collaborative CP precalculus course with in-class support. However, his special education teacher was not able to start at the beginning of the year. It was also noted that C.D. had fulfilled his high school math requirement. Other math options were explored, but C.D. stayed with precalculus.

Precalculus became a source of frustration for C.D. and he withdrew from the class before the second semester. C.D.'s inability to independently seek help with the material through traditional means greatly contributed to his frustration and inability to succeed. In an email dated January 12, 2024, to J.D. from Ms. Reckeweg, C.D.'s special education teacher in his precalculus class, Ms. Reckeweg informed J.D. that C.D.'s grade had dropped below a 50 but she believed he was "capable" of doing better. (P-5. At 544.) Ms. Reckeweg expressed her concern that C.D. was not completing homework or classwork. Ibid. Her main point in sending the email was the following concerns:

I notice C.D. is easily distracted. He is allowed frequent breaks per his IEP, but what I fear I may be seeing is extended periods of work avoidance. He will sometimes advocate for help (which is amazing!) and sometimes I will redirect him by

offering help. Unfortunately, it seems that the only independent classwork that is turned in recently is work I have done directly with him and in my absence there is often minimal to no work turned in, I know that even when I am not able to be present in class, Mrs. Hayes will offer frequent redirection and is always available to answer questions as well.

[Ibid.]

C.D. was encouraged to use his teachers as resources to advocate for help on his own. (P-5, at 506.) Ms. Reckeweg indicated that C.D. was not using his time wisely. However, she also believed that C.D. could “succeed in this class.” Ibid.

J.D. brought his concerns to Mr. Fluharty. In a January 23, 2024, email, Fluharty offered a return to the structured study hall:

It appears that C.D. is not receptive to accepting extra support from his math teachers – they do offer review sessions for their students prior to quizzes/tests and he has not attended them as of yet. He should really start taking advantage of these review sessions to help him get back on track. I was thinking . . . we do have a supported study hall during period 4 with Mrs. Fingerman which works well in C.D.’s schedule. I can easily place him there at least a few times a week so he can get his math and other school work completed in a quiet and structured environment. . . . Also – DAWG Time (Tuesdays and Wednesdays at 7:45 a.m.) is another excellent option for obtaining extra help.  
[P-5, at 508.]

Another source of frustration from the start of senior year was C.D.’s inattention to his college essay. On October 4, 2023, Mr. Fluharty contacted J.D. about C.D.’s progress with his college applications on his Common App account. Mr. Fluharty reported that he had two meetings with C.D. but because of C.D.’s frustration nothing was accomplished. (P-5, at 501.)

Mr. Fluharty acknowledged that C.D. did not always respond to emails and missed appointments. Mr. Fluharty described C.D. as a typical teenager, who wanted to do things

on his own time. He witnessed C.D. being argumentative with his father. C.D. was resistant to working on his college essay needed for the common application. Mr. Fluharty acknowledged that C.D. did not like meeting with him. His behavior was never to the level of a disciplinary issue but C.D. could be rude. Mr. Fluharty recognized that C.D. would shut down when frustrated.

C.D. had access to tools needed to support his success but he did not take advantage of those tools. C.D. was not receptive to supported study hall or offers of help. C.D. showed difficulty with time management. Mr. Fluharty met with C.D. on October 5, 2023, at the beginning of senior year. C.D. was not making progress with his essay and Mr. Fluharty suggested that he meet with the administrative representative from Camden County Community College in November at the college fair. Mr. Fluharty emailed C.D.'s father about options for C.D., including community college as a steppingstone. (R-31.) C.D. met with a representative from the community college and started the application. It was never completed.

Mr. Fluharty recommended community college because C.D. did not complete his college essay. According to Mr. Fluharty, C.D. was overwhelmed with the process. Ms. Flynn testified that working on the college essay was part of the English curriculum for senior year. C.D. had shown her a draft of his essay but he never completed it.

C.D.'s BCBA consultations continued for senior year but the number had been reduced to ten. The first consultation note from BCBA Samatha Ryan was a records' review, dated October 9, 2023. (R-25, CD.BOE 2444.) Ms. Ryan intended to observe C.D. in precalculus because that was his lowest grade. Ibid. On October 17, 2023, Ms. Ryan observed C.D. in his English 12 class. During this observation, the "task" was watching a movie. Ms. Ryan noted that C.D. followed along. (R-25, CD.BOE 2445.) The third consultation summary was dated January 22, 2024. (R-25, CD.BOE 2446.) In her notes, Ms. Ryan wrote that C.D. asked to use the restroom at the start of class. When he returned, he made two comments unrelated to content and looked at his phone. C.D. looked at his phone throughout class and left to use the restroom with five minutes of class remaining and never returned. Ms. Ryan noted that this was an independent period

designed for students to work on assignments. The precalculus teacher reported to the BCBA that C.D. is not focused and only turns in classwork with the work they did together. (R-25, CD.BOE 2447.)

On January 26, 2024, J.D. sent an email to Scott, expressing that C.D.'s struggles have made it clear to him that C.D. was not ready to graduate. (P-5, at 509.) In this email, J.D. proposed a transition program for his thirteenth year. He also indicated that his concerns were not limited to math.

I want to be clear that concerns are not limited to CXXXXXX's performance in math. He would certainly struggle in college with writing papers. Firstly [sic] his grammar certainly needs improvement. Secondly, he should be able to write a structured essay but currently cannot. Also, he has never learned the importance of study skills, organization, note taking, and how to follow up with a teacher.

[Ibid.]

Scott responded by acknowledging that C.D.'s refusal to seek out his teachers and meet with them for help was an overall concern for him. (P-5, at 612.) She also offered to switch his math class and suggested transition counselling. Ibid. In his responsive email dated January 28, 2024, J.D. asked for a meeting with the director of special education. (P-5, at 516.)

On February 8, 2024, C.D. and his parents were invited to an IEP Meeting scheduled for March 1, 2024. (R-11.) C.D. did not attend. J.D. testified that it would not have been beneficial for C.D. to be present. J.D. wanted to spare his son's feeling and be able to speak freely about his son's abilities at the meeting. The District disagreed and felt strongly that C.D. should have been present. When Fluharty advised C.D. about his new counselling mandate, C.D. was not pleased and questioned when that happened and why he was not consulted. (R-26.) Mr. Fluharty also believed that C.D. should have attended the IEP meeting on March 1, 2024.

In the new IEP, the CST added a counseling mandate of one time per week for thirty minutes and behavioral consultation twice a month for forty-three minutes. (R-11, at CD.BOE 299.) The District offered a structured study hall to work on executive functioning skills, note taking and college expectations of organization skills. (R-11, at CD.BOE 315.)

By email, dated March 20, 2024, Scott emailed the BCBA, Ryan, about the District's proposal for increased behavioral consultation "to help with executive functioning skills, support for motivation, etc." (R-12, CD, BOE 2485.) Scott also sent an email to Ms. Fingerman to work on executive functioning skills during the structured study hall. (R-12 at CD, BOE 2487.)

On March 27, 2024, in response to J.D.'s email asking what C.D. would be doing during the executive functioning session, Scott explained that

During the executive functioning sessions, the teacher would work with C.D. on various skills such as organization, time management, planning, establishing routines, and problem-solving skills. The teacher will collaborate with C.D.'s teachers, the BCBA, and the counselor to work on generalizing and applying these skills to what he is working on in class.

[R-17, CD.BOE 1127.]

On March 21, 2024, the BCBA, Ms. Ryan, emailed C.D. to inform him that she would be working with him to help him with organization and task completion. Their first meeting was scheduled for March 27, 2024, in the library. (R-20, CD.BOE 1273.) Ms. Ryan sent reminder emails to C.D. to attend these sessions. (R-20, CD.BOE 1274, 2456, 2457, 1275, and 1276.) C.D. never attended one session.

Under the IEP, dated March 1, 2024, Ryan was assigned to work directly with C.D. to address executive function deficits. When C.D. did not attend any sessions, Ryan responded that based on C.D.'s independent functioning and age, it would not have been appropriate to force him to attend. She also determined based on her observations that

he had achieved his goal of task completion. (J-18, at 1245.) None of the services described by Scott to J.D. in her email, dated March 27, 2024, were ever provided to C.D.

C.D. did not attend any of the counselling sessions mandated in his March 1, 2024, IEP. His only response to the new sessions was in an email, dated April 10, 2024, when he apologized for missing his session. However, he also stated, “when was my counseling MANDATED? I did not request this whatsoever.” (R-26, at CD.BOE1211.) Penna responded that counselling was added back to his IEP. She also stated that “[a]nything in an IEP is considered mandated (required).” Ibid.

Scott prepared a Summary of Performance after the IEP meeting held on May 22, 2024, wherein the District proposed that C.D. should graduate in June 2024. (R-23.) In the Summary of Performance, it was noted that the CST agreed to increase behavioral services with a primary focus on executive functioning. Despite weekly email reminders, C.D. never attended a single session. It was also noted that the CST mandated counselling sessions. There was no progress to report because C.D. was unwilling to attend a single session and did not respond to the email reminders. The school counselor also noted that she tried to assist C.D. with his transition to post-secondary placement but was unsuccessful. The counselor noted that C.D. failed to fully complete his application to Camden County Community College from the November 2023, on-site admissions day. (R-12, CD.BOE 1214-15.)

The District proposed that C.D. met all requirements for graduation and progressed on the goals and objectives in his IEP. Therefore, the District recommended that C.D. graduate with his peers. The District did not attach any consequence to C.D.’s failure to attend the mandated counselling sessions or the BCBA services. (R-23, CD.BOE 1219.)

The New Jersey Department of Education requires 120 credits to graduate high school; C.D. earned 132.75 credits. He fulfilled all required courses and passed the NJGPA.

### **Testimony**

A summary of pertinent testimony is as follows:

**Scott** testified as an expert witness in the fields of special education, school social work, and educational programming and design. Her testimony was especially relevant because she served as C.D.'s case manager during his last three years in high school.

Transition services were provided to facilitate C.D.'s plan to attend a four year college. The focus was on academics and targeted classes needed for graduation and to attend college. C.D. was placed in general education large group classes, with in-class support from special education teachers. The purpose was to build independence.

C.D. passed all required courses for graduation. He passed the state requirement testing and achieved college ready scores on his SATs in Math and English.

Structured study hall was built into his schedule to provide extra support. Executive functioning skills would have been worked on during structured study halls – C.D. did not benefit as he should because of his refusal to go and participate. Scott understood that refusal is a behavior that C.D. exhibited throughout high school.

Scott also acknowledged that C.D.'s motivation was a factor. He needed to be a willing participant to benefit from the support provided in his IEP. Scott testified that open campus was a privilege. She did not explain how C.D. earned this privilege or maintained this privilege when he refused to attend mandated services in his IEP. Her only explanation was that he always returned from his breaks and progressed in all his classes.

**Fluharty** testified as an expert in school counseling and college and career planning. Mr. Fluharty was C.D.'s counselor for tenth, eleventh, and twelfth grades.

Like Scott, Fluharty described C.D. as a typical teenager, who wanted to do things on his own time. Fluharty worked with both C.D. and J.D. to provide class schedules that met C.D.'s needs. C.D. was given access to the tools to support his success but he



lacked the initiative to take advantage of these tools. Fluharty knew that C.D. was not receptive to the supportive study hall or offers of help. Work completion was also a problem. Even in a supportive study hall, Fluharty acknowledged that C.D. would have to ask for help.

**Flynn** testified as an expert in special education. Flynn was C.D.'s special education teacher during each of his four years at Haddonfield High School. Flynn described C.D. as an average teenage boy. He was very capable and self-aware. He could self-advocate and ask for help when needed. He understood that organization for him was a weakness.

Flynn worked on executive functioning skills with C.D. in English 11 and 12. She identified C.D.'s difficulty with organization, time management, task initiation, and self-monitoring. She felt that the accommodations in his IEP addressed these difficulties.

Flynn was responsible for the reading and writing goals in C.D.'s Progress Report. Although C.D. did not achieve his writing goal, he made appropriate progress.

Flynn believed C.D. was ready for college. His weaknesses require continued effort, she did not believe they were a reason to stop him from graduating. She saw growth in C.D.'s ability to ask for help and accept feedback.

**Ryan** is the BCBA, who only worked with C.D. during his senior year. She explained that a BCBA studies behaviors and tries to replace them with more appropriate behaviors. For senior year, she provided behavior consultation for C.D. by observing him in the classroom and monitoring for task completions.

Under the March 1, 2024, IEP, Ryan was assigned to work directly with C.D. to address executive function issues. C.D. did not attend any session. Despite not attending any sessions, she determined that C.D. achieved his goal of task completion. (J-18, at 1245.)

In Ryan's opinion, it would not have been appropriate to force C.D. to attend these sessions. She accepted that C.D. might have decided the sessions were not necessary. Ryan separated the IEP goal of task completion from the avoidance behavior of failing to attend related services. Ryan commented that the March 1, 2024, IEP went above and beyond what was needed for C.D.

### Petitioners

**Emily Perlis**, PSYD, testified as an expert in testing and programming for children with disabilities. (P-3.) She conducted a neuropsychologic evaluation of C.D. on May 29, 2024, and May 30, 2024, and authored a report. (P-1.) Dr. Perlis was contacted by C.D.'s stepmother in April 2024, with concerns about C.D.'s readiness to graduate high school. C.D.'s parents were concerned about next steps for C.D. and believed a neuropsychological evaluation would be helpful in planning his future education. As part of her evaluation, she administered psychological testing to C.D. and received input from C.D., his parents, and his therapist. She also reviewed the rating scales provided by C.D.'s special education teacher, Ms. Flynn, and C.D.'s father.

In academic achievement testing, C.D.'s scores were in the high average to average range for word reading, reading comprehension, math computation and problem solving, spelling, written expression, and academic fluency. However, his overall processing speed and working memory were areas of significant weakness. The discrepancy was significant. Working memory is the ability to take in information and hold it in your mind so you can use it for something else. Processing speed affected how quickly C.D. could keep up in the classroom. His deficit in executive functioning prevents him from demonstrating what he knows because he falls off task, does not plan, or organize. According to Dr. Perlis, the problems C.D. was having in school with initiating work, sustaining his efforts, checking over his work, and organizing himself to produce were related to his deficits in executive functioning.

C.D. is bright and articulate but requires significant support to initiate and complete assignments and homework. He continues to exhibit weakness with his motivation, social

awareness, and social communication skills. However, with his academic profile, C.D. would be able to attend college with support and services. C.D. would need support with executive functioning, including time management, organizational skills, checking over his work, making sure he's completing his assignments, and producing what is expected of him. C.D. also has some interpersonal challenges, so he continues to need supervision to make sure he is connecting socially and making good decisions. He is resistant to being told what to do. His lifetime of processing information differently can lead to excessive frustration. Dr. Perlis believed his refusal behavior was related to his autism.

Dr. Perlis believed that C.D. needed direct instruction. The District attempted to provide such direct instruction through the structured study hall or the counselling but C.D. refused to go. Dr. Perlis did not believe that accommodations and modifications were not enough to address his deficits in executive functioning.

C.D.'s placement at Y.A.L.E. provided him with a standardized study skills program. Y.A.L.E.'s use of the Next Step program provides direct instruction in developing an effective system for organizing academic materials, knowing when long-term assignments are due, and allotting enough time to ensure completion of long term assignments.

Dr. Perlis opined that C.D.'s IEP goals never addressed his work avoidance. Dr. Perlis believed C.D. needed a behavior plan to figure out why C.D. was refusing services. C.D.'s refusal did not take away his need for the services. Dr. Perlis would never describe C.D. as a typical teenager because he has a disability.

On September 18, 2024, Dr. Perlis observed C.D. at Y.A.L.E. There were eight male students, all with disabilities, in the classroom and the specific curriculum lesson was on setting goals. C.D. did not stand apart from the other students. His schedule allows for two college courses at CCC. Based on her observation, C.D. was appropriately placed. The program addresses C.D.'s avoidance and argumentative behaviors.

**Dr. Thomas Mann** is a clinical psychologist who has been treating C.D. since he was in second or third grade. They have fifty minute weekly virtual sessions.

Dr. Mann believed that providing outlines and copies of notes was not enough for C.D. to grasp what was expected of him. The model where C.D. had to ask for help was not successful. C.D. simply avoided those tasks. Dr. Mann believed that C.D. should have had direct one-on-one support in study hall to work on assignments and homework. That would have reduced his frustration and conflict at home with not getting his work done.

C.D.'s goal was to attend a four year college. Dr. Mann did not believe that C.D. had the skills to obtain that goal. He would have great difficulty with study skills, planning, and living in an environment with a roommate.

Dr. Mann disagreed with the perception of the District personnel who termed C.D. a "typical teenager." Dr. Mann believed that C.D.'s love of video games is the only thing that he would consider to be typical teenage behavior. C.D.'s refusal is not typical it is related to his autism.

**Jennifer Hicks** is the lead special education teacher at the Y.A.L.E. School located on the Camden County College campus. She oversees the Standard 9 Transition Program.

The Standard 9 Program is for students who have completed their high school graduation requirements but need extra help before becoming independent college students or employees in the work world. There are three tiers to the program. Vocation tier for students who are primarily focusing on the work world. The exploration tier is for students who are unsure about their future so they get a blend of vocation and academics. The scholars' tier is for students focusing on college. C.D. is in the scholars' tier.

The scholars' tier students take college classes at Camden County Community College and classes with Y.A.L.E. They must take life and career skills, practical math and

financial literacy, English, digital and global citizenship, health, and skills development. Interested students also can experience a work site. The classrooms are located at the college.

C.D. is in a class of eight male students; all the enrolled students are disabled. The students attend their college classes without assistance. However, they are guided through every other step of the college process. Assistance is provided in obtaining a letter of accommodations through the Office of Disabilities, registering for classes, navigating the campus, and participating in campus events with peers. They are also helped with reading their syllabus, contacting professors, using the email system, tracking their grades, and utilizing the tutoring center. The program is five days a week from 8:30 until 2:20.

C.D. was enrolled in the program on August 27, 2024. He is taking two college classes, political science and math. He has a C average in both classes. His weekly schedule consists of attending his college classes two days per week plus all the classes in his program. C.D. is currently working at Dave and Busters, maintaining the machines. C.D. has an independent travel plan, meaning he must arrange for his own transportation. One of his goals is to get to campus on time. This goal is to demonstrate job readiness and learn the importance of time management. C.D. is using Uber to come and go from campus. (P-6.)

Y.A.L.E. School Educational Planning Conference Annual Review (APC) describes his present levels of performance and his plan for the school year. (P-6, at 10.) The document is like an IEP. For C.D. his program was planned after his thirty day review period to assess his strengths and weaknesses.

The program is very structured. C.D. must sign out when he leaves the classroom, record the time, and state where he is going. If his college class ends at 10:30, he is required to return to his Y.A.L.E. classroom. One of C.D.'s executive functioning deficits is organization. Staff and teachers are working with C.D. to keep his desk free of clutter,

read his syllabus, and encourage note taking. They use chunking for large projects. Teachers and staff are employing different strategies to address C.D.'s refusal to work.

C.D. has individualized counselling for thirty minutes once a week with a social worker. His goal is to use the "appropriate expected tone when speaking to others." He regularly attends his sessions because the social worker comes to the classroom and escorts him to her office.

Although C.D. is argumentative and work avoidant, Hicks believes he is making progress. Hicks noticed avoidance even with preferred tasks. C.D. has expressed a strong interest in getting his driver's license. Despite this strong motivation, he avoids studying for the test and must be redirected to put his phone away.

**J.D.** has two children, a son, C.D., and a daughter who is two years younger. J.D. lost his wife in 2012 from a rare form of cancer when C.D. was only six years old. J.D. was the only parent until he remarried, K.D., in 2023. He now has two stepchildren.

C.D. was diagnosed with autism spectrum disorder (ASD) when he was three years old. C.D. was also diagnosed with Attention Deficit Hyperactive Disorder (ADHD) by Dr. Emily Perlis in 2024.

J.D. worked with C.D. every night on his homework and school assignments. He noticed avoidant behaviors, with C.D. consistently running to the bathroom and staying there for almost an hour. They would usually work on homework until 11:00 p.m. every night. J.D. regularly received emails about C.D. missing his supplemental instructions class. (P-5.) J.D. was always looking for help. He emailed the school psychologist and C.D.'s freshman case manager, Alice Lee on December 23, 2020, looking for a tutor to help C.D. with organization and consistency. (P-5, at 90.) The reminder emails continued. When C.D. missed a morning session, his teacher offered him an afternoon session. J.D. was thankful and responded that C.D. really struggles with the concept of studying. (P-5, at 161.) From the start of high school, C.D. did not attend his supplemental instruction or his counselling that were prescribed in his IEP. No strategies

were offered to get C.D. to attend. It was left to J.D. to send reminders and track C.D. down.

During ninth grade, J.D. had numerous emails with C.D.'s algebra teacher about C.D.'s assignments and completion of work. He also received emails about C.D. not doing the reading in English class. On April 16, 2021, J.D. received an email from Lara Dabrowski:

[C.D.] is very resistant to group work, and he continues to try and leave the classroom throughout the period. Today he filled his water bottle and went to the bathroom before class began, but then asked me to go to the bathroom again once group work had begun. I told him he could not go again, but when I was with another group he asked Jess instead because she was not aware that he had already gone and asked me for a second trip. I worry that he spends too much time actively disengaging with the conversation in class, which only further diminishes his understanding of the material. Perhaps we should revisit some set rules and expectations with [C.D.] on his bathroom visits?

[P-5, at 325]

The back and forth emails with J.D. showed that C.D.'s inability to follow up with teachers started as a concern in ninth grade. (P-5, at 380.) C.D. was not able to independently do his work.

In his tenth grade IEP, Concerns of the Parent section noted that the "Team had a discussion regarding increasing CXXXX's assignment completion. What has been helpful in math/science is for CXXXXX to have clear and concise expectations. Consistency is key. Getting too much prompting (i.e. getting attention) becomes aversive." (P-9, at 4.)

Adding to J.D.'s difficulty with C.D. each night was that C.D. could not navigate Canvas. Because neither J.D. nor C.D. understood how to access Canvas, the tools it provided were lost on them. C.D. did not understand his homework and never knew when assignments were due. C.D. was doing everything at the last minute. J.D. understood that C.D. needed prompting but too much prompting frustrated him. When

C.D. escalates, he gets loud and insulting. Everything shuts down. J.D. did not feel that his concerns were accurately portrayed in the IEP. Concern has always been about C.D.'s ability to follow up and do his work independently.

The same struggles continued in sophomore year. J.D. sent Penna an email asking for continued counselling and help with C.D.'s study habits.

Also, would you happen to know anyone who is involved in tutoring that would be a match for C.D.? I believe there is a disparity between his current academic performance and his abilities. He suffers from general disorganization and does not have a grasp on the concept of study skill/habits.  
[P-5, at 413.]

C.D. had an IEP goal for the 2021-2022 school year to complete homework and classroom assignments for all his classes. (P-12, at 15.) The data showed that C.D. was progressing gradually. According to J.D., C.D. never achieved that goal during high school.

J.D.'s concern throughout was C.D.'s ability to work independently. He knows his son is very bright and articulate but C.D. does not have the skills to use his abilities and succeed. J.D. hoped that the structured study hall would have helped but C.D. was non-compliant.

Originally, J.D. used Huntington Learning Center to help C.D. with SAT preparation. After C.D. took the SAT in the fall of his senior year, J.D. continued C.D.'s work with Huntington on basic skills. In his senior year, to lesson his adversary role with his son, J.D. stopped helping him with homework every night. He wanted to just be his mentor for Eagle Scouts. J.D. paid Huntington to also work with C.D. on homework and assignments.

J.D.'s doubts about C.D.'s readiness for college started at the end of eleventh grade. He received information about Rowan's program at Burlington County College, which he thought would help transition C.D. to Rowan after two years.



For twelfth grade, J.D. did not recall any services that C.D. got to help with executive functioning or social skills. Mr. Fluharty tried to help C.D. complete the Common App, but he was unsuccessful.

J.D. always felt that C.D.'s senior year schedule was too easy. It was mostly free periods. English and precalculus were C.D.'s only challenging classes.

C.D. was struggling in precalculus and he was frustrated. Before second semester, C.D. dropped precalculus because there was no agreement on an adequate method of support. The supported study hall had failed miserably.

J.D. felt that C.D. was getting blamed for not asking for help or going to the supported study hall or DAWG time. J.D. did not believe that C.D. had the wherewithal to access that type of support.

When the District continued to offer the same failed methods of support, J.D. started to think that C.D. needed a transition program for the year after high school. In January, J.D. wrote to the District with his concerns that C.D. was not ready to graduate.

At the IEP meeting on March 1, 2024, the District offered to work with C.D. on various needed skills. When C.D. did not go to any of the services offered, no alternatives were suggested.

When the District refused to help, J.D. and K.D. explored the program at Y.A.L.E. because it focused on life and practical skills, which C.D. needed. J.D. believed C.D. is benefitting from the Y.A.L.E. program.

### **Additional Factual Findings**

It is the obligation of the fact finder to weigh the credibility of the witnesses before making a decision. In determining credibility, I am aware that the District employees

would want to support the programs they developed for C.D. and their decision to graduate him at the end of the 2023-2024 school year. I am also aware that J.D. and K.D. love their son and only want him to realize his full potential. In addition to considering each witness' interest in the outcome of the matter, I observed their demeanor, tone, and physical actions. I also considered the accuracy of their recollection; their ability to know and recall relevant facts and information; the reasonableness of their testimony; their demeanor, willingness, or reluctance to testify; their candor or evasiveness; any inconsistent or contradictory statements; and the inherent believability of their testimony.

The District witnesses were knowledgeable about C.D.'s programs, progress, strengths, and weaknesses. Scott, Fluharty, and Flynn were dedicated and caring professionals, who each had an extensive involvement with C.D. throughout his high school experience. They each played a unique role in his development as a student. Despite their extensive knowledge and understanding of C.D., I was troubled by their characterization of C.D. as a "typical teenager" which appeared dismissive of C.D.'s known disabilities and overlooked his behaviors that were interfering with his education.

From her observations, the BCBA witnessed C.D.'s avoidance behaviors. She never addressed them or brought them to the CST's attention. Her cavalier response about mandated services in an IEP hurt her credibility and afforded her testimony little weight.

The District's witnesses did not dispute C.D.'s need for the services proposed in the March 1, 2024 IEP. The response that C.D. progressed from year to year was not sufficient because it was well known that the IEP services were not being implemented. The lack of response to C.D.'s refusal to accept the services in his IEP undermined the District's position that his IEPs were sufficient to adequately and appropriately address his needs.

Based on the testimony presented at the hearing, my assessment of its credibility and weight, the documents admitted in evidence, and my assessment of their sufficiency, I **FIND** the following **FACTS**:

The District maintained that C.D. met the requirements to graduate from high school because he exceeded the credit requirement, passed all the required courses, and passed the NJGPA. The District failed to appreciate the distinction between a student's right to receive educational services pursuant to the IDEA, and a student's right to a remedy for a district's failure to provide those services during the student's education in the district, even when a student progresses from grade to grade. Beginning in ninth grade and continuing through twelfth grade, J.D. expressed his concern with his son's ability to work independently, seek assistance from his teachers, and take notes. These concerns were shared by J.D.'s teachers in his core subjects of English 11, algebra, precalculus, and supported study halls. A shared sentiment and common theme was that C.D. wanted his teachers to do the work for him. Although C.D. is a bright student, he required related services to address his areas of weakness with executive function and his dominant behavior of avoidance. Penna indicated C.D.'s need for counselling but acknowledged that it was ineffective because C.D. did not attend. The CST acknowledged C.D.'s need for supported study hall but it too was ineffective because C.D. refused to cooperate. Finally, the CST acknowledged C.D.'s need for direct instruction in executive functioning, but it was ineffective because C.D. refused to attend. Initially, the CST eliminated or reduced services because of C.D.'s refusal. When the services were reintroduced, C.D. continued his refusal behavior without consequence. The CST repeatedly offered the same ineffective services without adjustment and did not address C.D.'s work avoidance behavior issues. The District never identified the root of C.D.'s behavior.

J.D.'s testimony was heartfelt, sincere, and believable. The avoidance behavior that J.D. encountered at home was also prevalent throughout C.D.'s school day. The number of emails that passed between J.D. and District staff showed that J.D.'s concerns did not just materialize in January 2024 and were not because J.D. changed his mind about wanting his son to graduate.

J.D. tried to educate his son himself at night and when that proved detrimental to his father/son relationship, he paid Huntington Learning Center to work with C.D. It was

clear from the testimony that J.D. only advised Mr. Fluharty that he had engaged Huntington for SAT prep. While there may not have been a need for Huntington, if C.D. had benefitted from the supplemental study halls, there is nothing to indicate that J.D.'s decision to enroll C.D. in Huntington was ever discussed at an IEP meeting or that the District was given an opportunity to provide alternatives, if needed, to those services.

J.D.'s request for transition services was discussed with the IEP team and rejected. Petitioners were left on their own to find an appropriate program. They engaged the services of Dr. Perlis and reviewed the Y.A.L.E. program. The District did not consider Dr. Perlis' report before making its decision that C.D. was ready to graduate. The dispute in this case is not over testing scores, it is over the services the District provided in its IEPs to address C.D.'s known deficits and behaviors. Dr. Perlis's testimony highlighted the District's failure to adequately address C.D.'s deficits in executive functioning and avoidance behaviors.

After Dr. Perlis administered her testing and issued her report, she observed C.D. at the Y.A.L.E. program. (P-2.) She observed him during a lesson from the Next Up transition curriculum and found him to be an appropriate classroom participant. Her impression was that the Y.A.L.E. program provided the needed direct instruction in the areas of transition planning, organization, and completing assignments.

Ms. Hick's testimony about the Y.A.L.E. program was very beneficial. The structure of the program does not give C.D. the option to avoid his counselling sessions. Ms. Hick's also stated that they are adapting different strategies to address C.D.'s work avoidance.

### **LEGAL ANALYSIS AND CONCLUSIONS**

This case arises under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1401 et seq., which makes available federal funds to assist states in providing an education for children with disabilities. Receipt of those funds is contingent upon a

state's compliance with the goals and requirements of the IDEA. Lascari v. Bd. of Educ. of Ramapo-Indian Hills Reg. Sch. Dist., 116 N.J. 30, 33 (1989).

As a recipient of federal funds under the IDEA, the State of New Jersey must have a policy that assures that all children with disabilities receive a FAPE. 20 U.S.C. §1412. FAPE includes special education and related services. 20 U.S.C. §1401(9); N.J.A.C. 6A:14-1.1 et seq. The responsibility to deliver these services rests with the local public school district. N.J.A.C. 6A:14-1.1(d). To fulfill its obligation to deliver a FAPE, the District must offer an educational program “reasonably calculated to enable [C.D.] to make progress appropriate in light of [his] circumstances.” Endrew F. v. Douglas Cnty. Sch. Dist., 580 U.S. 386, 399 (2017).

The IEP is the vehicle by which the local public school district provides each eligible student with an IDEA-mandated FAPE. Shore Reg'l High Sch. Bd. of Educ. v. P.S. ex rel. P.S., 381 F.3d 194, 198 (3d Cir. 2004) (citing 20 U.S.C. § 1414(d)). The IEP spells out how a school will meet an individual disabled student's educational needs. Y.B. v. Howell Twp. Bd. of Educ., 4 F.4th 196, 198 (3d Cir. 2021). Among other requirements, an IEP must include a statement of the “child's present levels of academic achievement and functional performance,” consider the impact of that child's disability on his/her ability to be involved and “progress in the general education curriculum,” offer “measurable annual goals” to “enable the child to . . . make progress in the general educational curriculum,” and describe “supplementary aids and services . . . provided to the child” to meet those goals. 20 U.S.C. § 1414(d)(1)(A)(i)(I), (II)(aa), (IV)). The educational benefit conferred to the student through an IEP must be “meaningful.” Polk v. Cent Susquehanna Intermediate Unit 16, 853 F.2d 171, 180 (3d Cir. 1988).

The District bears the burden of proving that it offered a FAPE. N.J.S.A. 18A:46-1.1. It must be able to offer “a cogent and responsive explanation for [its] decisions that demonstrates that the IEP meets the requisite standard. Endrew F., 580 U.S. at 404. Further, the District must collaborate with parents (and vice versa) to design an appropriate IEP. 20 U.S.C. § 1414 (d)(1)(B); see also N.J.A.C. 6A:14-2.3; N.J.A.C. 6A:14-3.7(b). This mandated, collaborative process reflects a recognition that the

development of a sufficiently individualized program of education necessarily involves a “fact-intensive” inquiry that is “informed not only by the expertise of school officials, but also by the input of the child’s parents.” Endrew F., 580 U.S. at 399–400.

As the Supreme Court stated in Bd. of Educ. of the Hendrick Hudson Cent. Sch. Dist. v. Rowley, 458 U.S. 176, 203 (1982), “grades and advancement system” constitutes a factor in determining educational benefit, but “not every handicapped child who is advancing from grade to grade in a regular public school is receiving a free and appropriate education.

The District’s primary argument focused on C.D.’s receipt of a rigorous college preparatory general education curriculum and his ability to achieve passing grades in that environment. His academic achievements were bolstered by his passing marks on the NJGPA, which exceeded the expectations in his IEP, and his SAT scores. C.D.’s SAT Score Report showed that he met the benchmark scores for college readiness after graduation in English and Math. (R-5.)

Despite the District’s arguments about C.D.’s readiness to graduate, the District acknowledged through its offered IEPs that C.D. needed direct instruction in executive functioning and counselling. The IDEA requires that services and supports contained in an IEP must be implemented. 34 CFR 300.323(c). The District never addressed C.D.’s refusal of his counselling mandate or his dominant behavior of avoidance. The services and supports contained in the March 1, 2024 IEP were never implemented because C.D. refused them. This was a continuing pattern that had begun in ninth grade. Services were either discontinued as not effective or adjusted with behavioral consultation which only highlighted the behaviors without a plan to address them. By failing to provide the services in his IEPs and failing to address the underlying cause of C.D.’s refusal and avoidance behaviors, the District deprived C.D. of a FAPE during his junior and senior years of high school. Thus, I **CONCLUDE** that the District’s failure to adjust C.D.’s IEPs during eleventh and twelfth grades so that his services could be effectively implemented was a denial of a FAPE.

I recognize the validity of the District's position that C.D. should have been present at the IEP meetings held during the second semester of his senior year so that his input could have been considered. I would have weighed the District's argument more favorably, if the District had informed J.D. at any time that C.D.'s presence was needed at an IEP meeting to address the root causes of his avoidance behavior or his aversion to counselling. The District stressed the importance of C.D.'s attendance, without elaborating on why C.D.'s attendance was necessary.

A student is entitled to compensatory education when he is denied a FAPE. Ridgewood Bd. of Educ. v. N.E., 172 F.3d 238, 247 (3d Cir.1999). The purpose of compensatory education is to remedy past deprivations of a FAPE. Lester H. v. Gilhool, 916 F.2d 865, 872 (3d Cir. 1990). It "serves to 'replace educational services the child should have received in the first place' and . . . such awards 'should aim to place disabled children in the same position they would have occupied but for the school district's violations of IDEA.'" Ferren C. v. Sch. Dist. of Phila., 612 F.3d 712, 717–18 (3d Cir. 2010) (quoting Reid ex rel. Reid v. D.C., 401 F.3d 516, 518 (D.C. Cir. 2005)). The authority of a court to remedy a deprivation of FAPE is "a profound responsibility, with the power to change the trajectory of a child's life." Thus, the "courts, in the exercise of their broad discretion, may award [compensatory education] to whatever extent necessary to make up for the child's lost progress and to restore the child to the educational path he or she would have traveled but for the deprivation." Upper Darby Sch. Dist. v. K.W., 2023 U.S. Dist. LEXIS 129803, \*35–36 (E.D. Pa. 2023) (quoting G.L. v. Ligonier Valley Sch. Dist. Auth., 802 F.3d 601, 625 (3d Cir. 2015)).

Here, petitioners sought services through a thirteenth year at Y.A.L.E. At the March 1, 2024 IEP meeting the District's offer of transitional services, including direct instruction in executive functioning, demonstrated C.D.'s need for such services. Despite the District's apparent knowledge, it did not endeavor to address C.D.'s refusal of services in his IEPs in a robust manner. The record does not demonstrate in adequate detail what the District attempted to do in response to the problem, other than advise J.D. when C.D. did not attend counselling or send reminder emails to C.D. The IDEA required the District to take more action to address C.D.'s behaviors than that which is demonstrated here.

C.D.'s failure to avail himself of his related services does not obviate the District's obligation to adequately attempt to address his behaviors. The District's less than comprehensive effort to address C.D.'s avoidance behavior and executive functioning deficits led to a substantive, not merely procedural, violation of the IDEA. Accordingly, I **CONCLUDE** that C.D. is entitled to relief in the form of compensatory education.

C.D. should be provided compensatory education sufficient to permit him to achieve the education he missed due to his avoidance behaviors, keeping in mind when the District knew or should have known that it needed to take additional steps to address C.D.'s needs. By junior year, the District knew that C.D. refused to attend counselling, refused to effectively participate with a structured study hall, and avoided independent work. The District should have endeavored to address the situation by means other than repeating ineffective services, without consequences. Even when faced with the complete failure to provide C.D. with the executive functioning services required under the March 1, 2024, IEP, the District failed to consider the benefits of a thirteenth transitional year in a structured program.

For these reasons, I **CONCLUDE** that the District shall reimburse petitioners for the full cost of C.D.'s 2024-2025 placement at Y.A.L.E., including transportation, as the most beneficial and complete form of compensatory education for the District's denial of FAPE.

### **ORDER**

For the foregoing reasons, it is **ORDERED** that petitioners' request for relief pursuant to the IDEA is **GRANTED**, and the respondent is **ORDERED** to reimburse petitioners for the costs of C.D.'s placement at Y.A.L.E. School, Inc., Standard 9 Program,



including tuition, costs, and transportation to and from school, for the 2024–2025 school year, subject to proof of payment of all costs sought to be reimbursed.

It is further **ORDERED** that any and all other requests for relief as set forth in petitioners' due process petition, if not addressed above, are **DENIED**, including petitioners' request for an award of additional compensatory education and reimbursement of any other costs and expenses.

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



March 28, 2025

DATE

KATHLEEN M. CALEMMO, ALJ

Date Received at Agency

March 28, 2025 (sent via email)

Date Mailed to Parties:

March 28, 2025 (sent via email)

KMC/tat

## **APPENDIX**

### **List of Witnesses**

#### **For Petitioners:**

Emily S. Perlis, Psy.D.

Dr. Thomas Mann

Jennifer Hicks

J.D.

#### **For Respondent:**

Michele Scott, MSW, LCSW

Steven Fluharty

Rachel Flynn

Samantha Ryan

### **Exhibits**

#### **Joint**

J-1 Complaint

J-2 Answer

J-3 Board's Motion to Dismiss

J-4 Petitioners' Opposition

J-5 Board's Reply

J-6 Pre-Hearing Order

J-7 Order regarding discovery and scope of hearing

J-8 IEP for 11<sup>th</sup> Grade, dated March 1, 2022

J-9 IEP for 11<sup>th</sup> Grade, dated September 15, 2022

J-10 IEP for 12<sup>th</sup> Grade, dated February 27, 2023

J-11 IEP for 12<sup>th</sup> Grade, dated March 1, 2024 (Draft)

- J-12 IEP for 12<sup>th</sup> Grade, dated March 1, 2024
- J-13 Social Work Assessment
- J-14 Learning Evaluation
- J-15 Psychological Evaluation
- J-16 High School Transcripts
- J-17 Final Report Cards
- J-18 Progress Reports for IEP goals
- J-19 BCBA Consultation Summaries

### Petitioners

#### Evaluations

- P-1 May, 2024 Neuropsychological Evaluation, Dr. Emily Perlis, Psy.D.
- P-2 September 2024 Classroom Observation, Dr. Emily Perlis, Psy.D.
- P-3 C.V., Dr. Perlis

#### Other

- P-4 Various Correspondence Pages: 1-25, 30
- P-5 Various Emails between petitioners and respondents:  
  
Pages: 3-5, 11-12, 15-16, 17-22, 25-27, 34-37, 43-45, 50-53, 60-62, 68, 80-81, 90-95, 120-21, 126-29, 136-37, 161-62, 182-83, 325-36, 380-89, 402-03, 413-15, 422-24, 427, 436, 444-445, 466-69, 473-80, 484-85, 495-501, 504-11, 514-18, 529-30, 542-45, 568-70, 574-75, 587, 601-11
- P-6 Various Y.A.L.E. documents
- P-7 Various Huntington Learning Center documents

#### District Documents

- P-8 April 21, 2020, IEP for 9th grade, 2020-21
- P-9 March 4, 2021, IEP for 10th grade, 2021-22
- P-10 Omitted.
- P-11 Student Report Cards, Genesis Records, and Interim Reports

P-12 Progress Reports for IEP goals, 2020 through 2024

P-13 District Invitations to IEP meetings, 9th through 12th grade

P-14 Student Schedule, 12th grade

Respondent

- R-1 July 12, 2022, Reevaluation Planning – Proposed Action (CD.BOE 103-106)
- R-2 July-August 2022 emails between Michele Scott and JD regarding Social Work Assessment (CD.BOE 1141-1144)
- R-3 March 1, 2023, email from Michele Scott to JD regarding college application process and 12th grade IEP (CD.BOE 1047-1066)
- R-4 Summer/fall 2023 emails between Steven Fluharty and JD regarding college applications (CD.BOE 1740-1743, 1846-1855, 2107-2110, 1642, 1637, 1720-1722, 1676, 1884-1885)
- R-5 October 7, 2023, SAT Score Report (CD.BOE 2576-2577)
- R-6 October 9, 2023, offering additional assessment to apply for 504 plan in college or adult services and programs (CD.BOE 1067, 1036-1038)
- R-7 November 29, 2023, On-Site College Admissions Program (CD.BOE 2464)
- R-8 January 2024 emails between Michele Scott and JD (CD.BOE 1122-1123)
- R-9 February 1, 2024, Request to Amend IEP without a Meeting (CD.BOE 65-67)
- R-10 February 8, 2024, notices to CD and parents for IEP meeting scheduled for March 1, 2024 (CD.BOE 1-4)
- R-11 Omitted.
- R-13 March 21, 2024, email from Michele Scott to JD regarding IEP and services (CD.BOE 1073-1093)
- R-14 March 21, 2024, notices to CD and parent for IEP meeting scheduled for April 23, 2024 (CD.BOE 341-344)
- R-15 March 23, 2024, offering additional assessment to apply for 504 plan in college or adult services and programs (CD.BOE 184-186)

- R-16 March 2024 Student Data Assessment (CD.BOE 349)
- R-17 March 2024 emails between Michele Scott and JD (CD.BOE 1127-1128)
- R-18 March-April 2024 emails between JD, Steven Fluharty & Michele Scott regarding supported study hall (CD.BOE 2072-2075, 2113-2114)
- R-19 March-May 2024 emails between Samantha Ryan and CD (CD.BOE 1273-4, 2456-7, 1275-6)
- R-20 Omitted.
- R-21 April 26, 2024, notices to CD and parents for IEP meeting scheduled for May 22, 2024 (CD.BOE 2627-2630)
- R-22 May 6, 2024, letter from counsel for District to parents' counsel regarding May 22, 2024 IEP meeting (CD.BOE 347)
- R-23 May 22, 2024, Summary of Performance and Notice Recommending Graduation at end of 2023-2024 School Year (CD.BOE 1213-1221)
- R-24 Omitted.
- R-25 Consultation Summaries (CD.BOE 1040-1045; 2434-2455)
- R-26 Offering of Additional Counseling (CD.BOE 1211-1212)
- R-27 Omitted.
- R-28 February 22, 2022, email from Steven Fluharty to CD and JD regarding grade 11 courses and college applications (CD.BOE 1674)
- R-29 January 2024 emails with Steven Fluharty (CD.BOE 1697-1699)
- R-30 August-September 2023 emails between Steven Fluharty and JD (CD.BOE 1714-1716)
- R-31 Steven Fluharty's Meetings (CD.BOE 2465, 2626)
- R-32 Emails between Rachel Flynn & CD (CD.BOE 2540-2541, 2551, 2547, 2548-2552, 2543-2544)
- R-33 Omitted.
- R-34 Partially presented. Resumes of Michele Scott (CD.BOE 2646-2648), Rachel Flynn (CD.BOE 2649), Steve Fluharty (CD.BOE 2650-2651), Samantha Ryan (CD.BOE 2652)

R-35 Work Samples (CD.BOE 2555-2572)

R-36 Omitted.

R-37 September 12, 2023, email from Rachel Flynn to JD (CD.BOE 2539)