

STATE OF RHODE ISLAND and PROVIDENCE PLANTATIONS

DEPARTMENT OF EDUCATION

SPECIAL EDUCATION DUE PROCESS HEARING

( CASE # LL 19-09)

STUDENT: JOHN DOE

SCHOOL DISTRICT: JOHNSTON SCHOOL DISTRICT

HEARING OFFICER: ARTHUR G. CAPALDI, ESQ.  
1035 MAIN STREET  
COVENTRY, R.I. 02816  
TEL: (401) 821-3537  
FAX: (401) 821-9697  
Email: [acapaldi111@verizon.net](mailto:acapaldi111@verizon.net)

ATTORNEY FOR SCHOOL DISTRICT: WILLIAM J. CONLEY, JR. ESQ.  
123 DYER STREET  
UNIT 2B  
PROVIDENCE, RHODE ISLAND 02903-2040  
TEL: 415-9835  
FAX: 415-9834  
Email: [w.conley@wjclaw.com](mailto:w.conley@wjclaw.com)

ATTORNEY FOR PARENTS: MARY ANN CARROLL, ESQ.  
HENNEOUS CARROLL LOM BARDO, LLC.  
1240 PAWTUCKET AVENUE, SUITE 308  
EAST PROVIDENCE, RHODE ISLAND 02916  
TEL: 424-5224  
Email: [macarroll@hcllawri.com](mailto:macarroll@hcllawri.com)

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( CASE # LL 19-09)

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PROVIDENCE, RHODE ISLAND 02903-2040  
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Email: [w.conley@wjclaw.com](mailto:w.conley@wjclaw.com)

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EAST PROVIDENCE, RHODE ISLAND 0216  
TEL: 424-5224  
Email: [macarroll@hellowri.com](mailto:macarroll@hellowri.com)

**LEXICON**

For the purposes of the decision in the within hearing and to ensure confidentiality of the Student, the following Lexicon shall be used in this decision:

STUDENT: [REDACTED]

MOTHER: [REDACTED]

FATHER: [REDACTED]

SCHOOL DISTRICT: JOHNSTON SCHOOL DISTRICT

HEARING OFFICER: ARTHUR G. CAPALDI, ESQ.

ATTORNEY FOR SCHOOL DISTRICT: WILLIAM J. CONLEY, JR., ESQ.

ATTORNEY FOR PARENTS: MARY ANN CARROLL

STATE OF RHODE ISLAND and  
DEPARTMENT OF EDUCATION

ADMINISTRATIVE IMPARTIAL  
DUE PROCESS HEARING

IN RE: A.S.

CASE# LL 19-09

Vs.

JOHNSTON SCHOOL DISTRICT

POSITIONS OF THE PARTIES

PARENT: The School District failed to provide the Student with a free, appropriate, public education by refusing an out of district placement for the Student at the Sargent Center.

DISTRICT: The Life Skills Program at the Ferri Middle School will provide the Student with a free, appropriate, public education.

DECISION

The Life Skills Program at the Ferri Middle School will provide the Student with a free, appropriate, public education.

TRAVEL OF THE CASE

On June 2, 2019, the Rhode Island Department of Education received a request for an impartial due process hearing signed by the parent's attorney, Mary Ann Carroll.

On July 2, 2019, the Department of Education appointed this Hearing Officer to conduct a due process hearing and on July 2, 2019, an appointment notification letter was sent to the parent's attorney, Mary Ann Carroll, Esq. and to the School District's attorney, William J. Conley, Jr., Esq. by this Hearing Officer.

The following dates for hearing were given to the parties:

July 24, 2019  
July 25, 2019  
July 30, 2019  
July 31, 2019  
Pre Hearing Conference July 18, 2019

The prehearing conference was changed to July 16, 2019.

The following hearing dates were agreed to by the parties:

July 24, 2019  
July 30, 2019  
August 1, 2019  
August 5, 2019  
August 7, 2019  
August 28, 2019  
August 30, 2019  
September 3, 2019  
September 12, 2019

The decision due date of August 25, 2019 was extended by agreement to September 2, 2019, October 25, 2019, and finally, to November 25, 2019. Briefs from the parties were due on

October 25, 2019. The hearing produced 1,368 pages of transcript and 30 exhibits from the Parents and 74 exhibits from the School District.

Two subpoenas were issued for appearances of Witnesses for the parties. One was for Colleen McCarthy, BA, from Sargent Rehabilitation Center for the School District and one was for Karen Nault from Perspectives for the Parents.

### **The Student and Parents' Requests**

The Student is a [REDACTED] year old [REDACTED] who completed grade five at Winsor Hill School. The request for due process alleges that the District failed to provide the Student with a Free Appropriate Public Education; that the Student was taught in a class with no opportunity to work with other students or; that the Student had no opportunity for social interaction with peers; that the Student has regressed socially and emotionally; that the Student has not made the progress he should have made.

The Student has a longstanding diagnosis of Autistic Spectrum Disorder. Further, the Parents presented the following: The Student has mild to moderate range on the Autism Spectrum, receives 20-30 hours of applied behavioral analysis, has failed to make gains he should have, and his present program lacks social interaction with peers in the classroom. The Parents maintain the Student needs a program to provide more functional communication and symbolic play skills. He needs to continue working on math and reading skills where he is educated with their peers. He needs opportunity to have social skills and emotional goals. He needs a cohort of peers in the classroom, and he needs to be placed in a school that address the needs of Autistic children. The Parents are requesting that this Hearing Officer order placement

at the Sargent Center or other facility that will provide the Student with the Services he needs to receive FAPE.

### **Review of Evidence**

#### **Colleen McCarthy Testified On August 7, 2019**

Colleen McCarthy is employed by Sargent Rehabilitation Center as the senior vice-president of programs and professional services. (Trans. Aug. 7 P. 133 L. 8 to 14)

Sargent does not integrate students with physically disabilities with students that have behavior or mental disabilities. (Trans. Aug. 7 P. 135 L. 1 to 7) About eighty percent of the population are those on the autism spectrum. (Trans. Aug. 7 P. 135 L. 8 to 14) At Sargent ASD (Autism Spectrum Disorder) students would never be integrated into the classroom with neurotypical peers because there are no neurotypical peers at Sargent. (Trans. Aug. 7 P. 136 L. 18 to 21) The Witness testified that the students they serve are students who cannot be serviced in the school district. They are not able to be in classrooms with students without diagnosis needs. (Trans. Aug. 7 P. 136 L. 1 to 13) Referrals come from public schools. (Trans. Aug. 7 P. 137 L. 19 to 20) Sargent does not subscribe to the applied behavioral analysis. (Trans. Aug. 7 P. 139 L. 1 to 8) Referrals to Sargent must come from the School District. The tour of Sargent by the Parents was a mistake. (Trans. Aug. 7 P. 141 L. 18 to 23) Depending on the functioning level of the student on average there would be seven to ten students in the classroom. (Trans. Aug. 7 P. 149 L. 4 to 12) The number of teachers in the classroom consists of a special educator, at least one assistant up to four assistants. (Trans. Aug. 7 P. 150 L. 17 to 24) During course of the days students are pulled out from their speech therapy and their occupational therapy. (Trans. Aug. 7 P. 152 L. 14 to 22) If a student has a need for a one-on-one, it is a need required by the IEP

Team. (Trans. Aug. 7 P. 154 L. 20 to 23) When students are pulled out for therapy there is no opportunity for the student to socialize with neurotypical peers. (Trans. Aug. 7 P. 156 L. 4 to 5)

Sargent works with the School district to provide the common core curriculum, the Central elements in the IEP, so they can gain a diploma but final decision as to a diploma is made by the School District. (Trans. Aug. 7 P. 156 L. 18 to 23) If the District can meet the needs of the student, the student would not be referred to Sargent Center because it would be inconsistent with the LRE regs. (Trans. Aug. 7 P. 159 L. 10 to 13)

The Parents attorney examined the Witness.

The Witness was presented with Parent's Exhibit 2 ( Dr. Dinklage's Observations). The Witness responded that she could not respond to the recommendations found in Parent Exhibit 2) (Trans. Aug. 7 P. 163 L. 10 to 14)

As to social goals in the Sargent Program, they are front and center. (Trans. Aug. 7 P. 165 L. 24 to 25 P. 166 L. 1) There are behavioral specialists on staff to support teachers and students. (Trans. Aug. 7 P. 168 L. 15 to 22) Communication is a big component of the Sargent Program (Trans. Aug. 7 P. 169 L. 2 to 4) and they have two sensory rooms available. (Trans. Aug. 7 P. 169 L. 15 to 20)

### **Karen Nault Testified on August 7, 2019**

Karen Nault has a bachelor's degree in psychology, a master's degree in applied behavior analysis and a board certified behavior analyst. She is a licensed behavior analyst in the State of Rhode Island. (Trans. Aug. 7 P. 61 L. 19 to 25) (Joint Exh. 2 resume of Karen Nault) ABCBA is a board certified behavior analyst trained in applied behavior analysis which is the only methodology that's empirically validated to be effective with kids on the autism spectrum. (Trans. Aug. 7 P. 62 L. 8 to 12) She has worked with children on the autism spectrum for thirty-



three years. (Trans. Aug. 7 P. 64 L. 7 to 9) The Witness works for Perspectives and started working with the Student two and a half years ago. (Trans. Aug. 7 P. 65 L. 10 to 25)

The Witness is the Student's clinical supervisor for his home-based services. She develops his program, does assessments, measures his progress, develops his behavior program and collaborates with the school programs. (Trans. Aug. 7 P. 65 L. 11 to 24)

The Witness was presented with Parents Exhibit 20 (IEP 12-11-18 to 12-10-19) which meeting the Witness attended. The Student's social skills are one of his biggest deficits. (Trans. Aug. 7 P. 71 L. 17 to 23) In the Witness' opinion social skills need to be targeted throughout the Student's school day. (Trans. Aug. 7 P. 72 L. 20 to 25) Goal #10 in the IEP was reviewed and the Witness testified that it was not a fair goal because it only targeted the Student's ability to recognize feelings with verbal and visual prompts, including videos. To have a goal where it is reliant on prompts isn't teaching the Student independence. (Trans. Aug. 7 P. 74 L. 1 to 25) According to the Witness there should be more social goals in the Student's IEP. (Trans. Aug. 7 P. 75 L. 12 to 16) A key area for the Student is to be able to learn to interact with other people in his environment. (Trans. Aug. 7 P. 82 L. 21 to 25) The effectiveness of the Student's programming is to ensure constant access of the staff working with the Student and to have the experts who can help ensure that the program in place is being implemented correctly and to tweak the program when needed. (Trans. Aug. 7 P. 89 L. 3 to 10)

According to the Witness, the IEP of April 1, 2019 (Parent Exh. 20, School Exh. 15) does not meet the Student's needs because it does not go into depth that is required for social deficits that the Student has. (Trans. Aug. 7 P. 95 L. 15 to 25)

During the summer months the Witness works with the Parents to identify key opportunities for the Student to have social experiences both with like peers and neurotypical peers. (Trans. Aug. 7 P. 109 L. 1 to 6)

The Witness was cross-examined by the School's attorney.

The Witness does not have a degree in education or social work. (Trans. Aug. 7 P. 114 L. 17 to 21) The School Exhibit 17 (Team Meeting Notes 5-15-19) was presented to the Witness who attended that meeting. The IEP was ended by the Parent's attorney. (Trans. Aug. 7 P. 118 L. 16 to 21) The Witness testified that she felt that the goals as written were inadequate to meet the Student's needs based on there being no expectation of any level of independence. (Trans. Aug. 7 P. 125 L. 1 to 3)

On redirect, the Witness explained that she does not have a background in social work at all but she did have background in behavior analysis. (Trans. Aug. 7 P. 127 L. 11 to 18)

**Jasmine Davila Testified on July 30, 2019, August 1, 2019 and August 7, 2019**

Ms. Davila is a special education teacher for grades 1-6. She teachers in Johnston. She was appointed to a full time position in August of 2016. She serviced the Student for four years; she was with him every day. She became the Student's case manager. (Trans. July 30 P110 L1 to 23)

The Team was aware that the Student was having behavior concerns in the regular classroom, high numbers of them and the team met several times to discuss this. (Trans. Jul 30 P. 76 L. 17 to 25) The Student was in room 8 by himself. (Trans. July 30 P. 76 L. 134 to 21) The Witness did not have professional development working with autism. (Trans. July 30. P. 77 L. 4 to 7) Along with the Witness, the Student had a behavior technician and speech pathologist.

(Trans. Jul 30 P. 78 L. 5 to 11) The Witness worked with the Student with groups of students  
Trans. July 30 P. 79 L. 16 to 23) There were small group games, reading lessons so there were  
socialization opportunities. (Trans. July 30 P. 80 L. 1 to 6) The Witness coordinated the IEPs.  
(Trans. July 30 P. 80 L. 19 to 20) When the Student was in the third grade there were no social  
goals. (Trans. July 30 P. 81 L. 12 to 14) Parent Exhibit 15 (IEP) 9-26-2016 was reviewed. The  
Student received O.T. and Speech and Language support but no social goals. (Trans. July 30 P.  
82 L. 7 to 14) The Witness recommended social goal services in the second grade but the  
Parents did not want them. (Trans. July 30 P. 84 L. 18 to 24) Social goals were discussed over  
the years and every time it was discussed, the Parents said there were other things that they felt  
would be more important to focus on so it did not get added until the fifth grade. (Trans. July 30  
P. 87 L. 1 to 7)

The Witness mentioned that the Student was going to library and the Parents were unhappy with  
going to the library. (Trans. July 30 P. 88 L. 18 to 25)

The Witness reviewed Parent Exhibit 3 (Dr. Dinklage evaluation of June 20, 2018) the  
first recommendation was that the Student placement should be in a substantially separate school  
program. The Witness testified that she did not agree that the student needed to be in a separate  
school. She believed that they can offer that there. (Trans. July 30 P. 93 L. 8 to 20)

They did not receive Dr. Dinklage evaluation (Parent Exh. 3) until the school year  
started. (Trans. July 30 P. 95 L. 7 to 11) They did not implement recommendations #1 or #3 but  
did implement #2. (Trans. July 30 P. 95 L. 24 to 25, p 96 L. 1 to 2 P. 97 L 1)

The Witness was cross-examined by the School District's attorney. The Student would  
transition to the Life Skills Classroom at Ferri Middle School. (Trans. July 30 P. 104 L. 21 to 25)

Based on Team discussions and the Student's needs, they felt that would be the most appropriate placement for the Student, the Middle School. (Trans. July 30 P.105 L. 2 to 19)

The Life Skills Program uses Unique Learning Curriculum that is a curriculum designed for special education students and it is an academic curriculum but it embeds functional skills such as science, history and economics. (Trans. July 30 P. 107 L. 15 to 25) The Witness had regular communication with the Parents. (Trans. July 30 ' 111 L. 6 to 25)

School district Exhibit 17 (Team Meeting Notes for May 15, 2019) was presented to the Witness. She attended that meeting. They attempted to discuss the Student's strengths, needs and progress. (Trans. July 30 P. 115 L. 1 to 8) The members were prepared with documents, progress charts and data to share but they were redirected to answer whether or not they would consider sending the Student to Sargent Center. (Trans. July 30 P. 115 L. 8 to 16)

The Life Skills teacher at the middle school is Mrs. Wright. The Witness went to observe the classroom at the middle school. She knew that there are a lot of opportunities throughout the day in Mrs. Wright's class with like peers and typical peers coming in and out throughout the day. (July 30 P. 118 L. 1 to 14) A typically-developing peer is a typical peer and a like peer is one on the autism spectrum. The Witness came to understand that the Parents did not want the Student to go to Ferri Middle School because of their repeated request to consider Sargent Center. (Trans. July 30 P. 118 L. 7 to 25) School Exhibit 19 (Functional Behavior Assessment) was reviewed and because of it the Student needed a behavior intervention plan. (Trans. July 30 P. 121 L. 6 to 19) The Autism Project went in to offer recommendations to students with participation in school routines, positive social interaction and instructional time. (School Exh. 20) (Trans. July 30 P. 124 L. 17 to 21)

At the Team Meeting of February 15, 2019, the recommendations of the Autism Project were reviewed. (School Exh. 27) Some of the recommendations were already in place. (Trans. July 30 P. 129 L. 1 to 8)

The School Exhibit 24 was reviewed (Team Meeting of May 11, 2018) It provided that the Student would continue to be in small groups classroom. (Trans. Aug. 1 P. 117 L. 1 to 7)

The Student did not participate in field trips until the fifth grade per Parent request. (Trans. Aug. 1 P. 122 L. 5 to 13) The Unique Learning System was a multisensory approach and there were multisensory activities. (Trans. Aug. 1 P. 128 L. 7 to 10)

School Exhibit 28 (Team Meeting December 4, 2018) was presented to the Witness. The alternate assessment was offered to the Student but the Parents did not agree and the Student did not take it. (Trans. Aug. 1 P. 143 L. 1 to 17)

The Witness communicated with the Parents every day by e-mail, phone or face to face. (Trans. Aug. 1 p 148 L. 19 to 22) (School Exh. 40)

The Witness reviewed School Exhibit 42 (e-mail chain Sept. 2016). The Witness described an awesome day had by the Student in Ms. Landy's class with regular education students. (Trans. Aug. 7 P. 15 L. 1 to 15) School Exhibit 77 (Team Meeting Notes May 26, 2016) was reviewed in which the Parent declined extended school year services. (Trans. Aug. 7 P. 29 L. 20 to 25) The Student was qualified for ESY services every year but the Parents did not accept it. (Trans. Aug. 7 P. 31 L. 1 to 8)

The Witness toured the Sargent Center. There were no inclusion classrooms with neurotypical peers. (Trans. Aug. 7 P. 36 L. 1 to 2) The Witness testified that the Sargent Center is not an appropriate placement for the Student because there is no opportunity for inclusion with

typical peers. It does not provide the least restrictive educational environment. (Trans. Aug. 7 P. 38 L. 5 to 25, P. 39 L. 1)

The Witness was again questioned by the Parents attorney. Based on the DRA (diagnostic reading assessment) the Student went from kindergarten level to the beginning of the first grade in three years. (Trans. Aug. 7 P. 41 L. 13 to 24) The Student made minimal progress but it was progress especially compared to where he was before. (Trans. Aug. 7 P. 55 L. 15 to 25)

**Michele Zarcaro Testified on July 30, 2019**

Ms. Zarcaro was the principal of Winsor Hill School during the time the Student was there. (Trans. July 30 P. 3 L. 12 to 18) She was a special education teacher for ten years. (Trans. July 30 P. 3 L. 25, P. 4 L. 1 to 4) She did not have any training with autism. She had children with Asperger and other mix disabilities. (Trans. July 30 P. 4 L. 13 to 24) She testified that the Student has difficulty with the expressive piece of what he knows or what he comprehends. The Student almost has a language of his own. (Trans. July 30 P. 5 L. 10 to 25) the IEP of 10-1-14 (Parent Ex. 11) was reviewed. The Student was in a full inclusion class. This was the second grade and it was challenging. There were no social goals. (Trans. July 30 P. 8 L. 3 to 25) As to the Student, many kids can benefit from socialization piece but in the Student's case there was a lot of learning about him. (Trans. July 30 P. 9 L. 11 to 16) Parent Exhibit 12 was reviewed and that IEP increased reading support, writing support and math support. (Trans. July 30 P. 11 L. to 16)

Parent Exhibit 13 was reviewed by the Witness. This IEP was for the second grade. There were no socialization goals. (Trans. July 30 P. 12 L. 17 to 19) Parent Exhibit 15 (IEP) added O.T. service for the Student. (Trans. July 30 P. 13 L. 6 to 10). There were no socialization

goals and the Witness testified that socialization is important but the team was struggling with the socialization and academics. (Trans. July 30 P. 14 L. 8 to 13)

They reviewed Parent Exhibit 18, which is a team IEP meeting for the fourth grade. The Witness believed that the Team disagreed with Dr. Dinklage's evaluation and recommendation (Parent Exh. 1) (Trans. P. 18 L. 13 to 24)

The Team did re view Dr. Dinklage's evaluations as found in Parent Exhibits 3 (Trans. July 30 P. 21 L. 6 to 14. The Team did review Dr. Dinklage's report on his classroom observation. (Parent Exh. 2) (Trans. July 30 P. 24 L. 11)

Parent Exhibit 20, the IEP written for the second half of the 5<sup>th</sup> grade and going unto the 6<sup>th</sup> grade was reviewed. The Witness explained that when the Student was in the second grade he could only stay two or three seconds on a task and by the fifth grade he was able to focus a minute or two on task. (Trans. July 30 P. 27 L. 15 to 23)

As to social goals being front and center, the Witness testified that Dr. Dinklage did not give a prescriptive time of how much of the Student's time is to be for socialization. (Trans. July 30 P. 28 L. 3 to 7) As to the social piece, they were taking it in steps to see how much the Student could do. (Trans. July 30 P. 28 L. 11 to 14) Her opinion was that they would probably meet again and we would probably see an increase in that (socialization) depending on how the Student was changing or growing. (Trans. July 30 P. 28 L. 15 to 19) At the time of the April 1, 2019 IEP, the School District was focusing on the academics of the Student. (Trans. July 30 P. 33 L. 1 to 11)

The Witness was cross-examined by the School Attorney. When the Student was in the second grade, the socialization piece was addressed by the Student being in the full inclusion

classroom. (Trans. July 30 P. 38 L. 1 to 7) Socialization was always important for the Parents. (Trans. July 30 P. 40 L. 20 to 25)

As to the Student's program, the Witness testified that they were at the board revisiting, if it's academic, if it was his behavior, if it was RBT, if it was his home supports, they were always consistently revising. (Trans. July 30 P. 43 L. 6 to 9) As to socialization interaction, it was embedded into the school day when there was a full inclusion classroom. The Student was present during read aloud time, the library, the gym, lunch, and recess. (Trans. July 30 P. 43 L. 15 to 25) These activities would result in interaction with other students. (Trans. July 30 P. 45 L. 7 to 10) There was no reason to put them in the IEP. (Trans. July 30 P. 45 L. 14 to 16) The prescriptive social work piece in the last IEP (Parent Exh. 20) was a supplement to the interaction activities. (Trans. July 30 P. 47 L. 10 to 14)

As part of the IEP team the Witness observed the Life Skills Program at the Ferri Middle School. (Trans. July 30 P. 50 L. 20 to 23) The Witness thought it was wonderful and described the program. (Trans. July 30 P. 61 L. 1 to 18) The Witness attended the May 15, 2019 Team Meeting. (Trans. July 30 P. 61 L. 20 to 25) At that meeting they started to discuss the Life Skills Program but did not finish the discussion. (Trans. July 30 P. 62 L. 1 to 15)

**C [REDACTED] S [REDACTED] Testified on July 24, 2019 and August 1, 2019**

The Parents had questions about the Student when he was one or two years old. Their Pediatrician recommended an evaluation when the Student was three years old. (Trans. July 24 P. 5 L. 14 to 25) They took the Student to Rhode Island Hospital for an evaluation which according to the Witness went horribly wrong. (Trans. July 24 P. 6 L. 14 to 18) When the Student was four years old they had Dr. Dinklage evaluate the Student. (Trans. July 24 P. 7 L. 1



to 11) The Student began ABA Therapy (Applied Behavioral Analysis) from Perspectives for up to thirty hours a week. (Trans. July 24 P. 8 L. 14 to 25)

The Student went to Graniteville for preschool, to the Early Childhood Center for kindergarten, to Sarah Dyer Barnes elementary school for first grade, to Winsor Hill for second, third, fourth and fifth grades. (Trans. July 24 P. 9, 10, 17, 26, 41)

An IEP was developed at the end of the Student's kindergarten year. (Trans. July 24 P. 14 L. 17 to 19) and it was a good kindergarten experience. (Trans. July 24, P. 16 L. 16 to 17) The Witness testified that the first grade went well and it was a positive year. (Trans. July 24 P. 22 L. 1 to 16) The second grade was at Winsor Hill School and the Student's needs increased. They added speech and language as a functional need. (Trans. July 24 P. 27 L. 18 to 24) (Parents Exh. 12) The one-on-one was a district person instead of Perspectives. (Trans. July 24 P. 31 L. 21 to 25) By the end of the second grade there were no other children being educated with the Student. (Trans. July 24 P. 37 L. 22 to 25)

The Third grade was a continuation of the second grade. (Trans. July 24 P. 41 L. 1 to 8) (Parent Exh. 14) From the middle of second grade to June of 2019, the Student remained in the classroom by himself. (Trans. July 24 P. 44 L. 1 to 10) The Witness confirmed that there were no social or emotional goals for the Student. (Trans. July 24 P. 44 L. 22 to 25) According to the Parent, the Students opportunity to socialize with other students was minimal. (Trans. July 24 P. 46 L. 19 to 25) The IEP for the fourth grade introduced a social worker to provide social goals. (Trans. July 24 P. 48 L. 13, P. 49 L. 1 to 7) The Witness testified that the District never implemented recommendations 1, 2, or 3 of Dr. Dinklage's evaluation. (Trans. July 24 P. 50 L. 24 to 25, P. 51 L. 1 to 8)

The Parents agreed to take the Student out of Art class because it wasn't working. (Trans. July 24 P. 54 L. 7 to 22)

The Parents sent a letter to the district requesting that the Student no longer be in library. (Trans. July 24 P. 54 L. 19 to 25, P. 53 L. 1 to 20)

The Parents always looked at out-of-district placements. They reviewed the Groden Center, Meeting Street School and the Wolf School. (Trans. July 24 P. 57 L. 24 to 25, P. 58 L. 1 to 25) He visited the Sargent Center in 2019. He liked the focus was on Autism. (Trans. July 24, P. 59 L. 5 to 16) He understands the importance of the social piece and he was looking for like peers everywhere he went. (Trans. July 24 P. 59 L. 17 to 25) When he visited these schools through an educated parents' eyes of the level of the students and was it a good match? (Trans. July 24 P. 60 L. 1 to 5)

As to his observation of the Ferri School, he saw absolutely zero peer to peer interaction in that room. (Trans. July 24 P. 61 L. 8 to 9) As to the district, the Witness said "I don't believe they have the expertise in autism." (Trans. July 24 P. 67 L. 18 to 19) The Unique Curriculum is being used for the Student and the Witness statement was that the Student hasn't made any advancements that are substantial. (Trans. July 24 P. 67 L. 18 to 25)

Cross examination was conducted by the District's attorney. The Student lives at home with the Mother, Father and his fifteen year old sister, Sophia. (Trans. Aug. 1 P. 4 L. 15 to 16)

The Witness testified that they always considered an out-of district placement from the beginning. They were building something that didn't exist. (Trans. Aug. 1 P. 6 L. 2 to 5) They did not consider Groden because in his opinion it was not what he considered an autism school. (Trans. Aug. 1 P. 9 L. 12 to 25)

He opined that one major feature of a good autism program is for sensory needs. (Trans. Aug. 1 P. 10 L. 17 to 25)

The Witness researched the Wolf School, Pathways, Meeting Street and Sargent Center. (Trans. Aug. 1 P. 8, 9, 10, 11 and 12) He visited the Sargent Center and had discussion with Colleen, the director. (Trans. Aug. 1 P. 15 L. 9 to 21) In addition to his visit, he researched Sargent by online resources and by talking to other parents. (Trans. Aug. 1 P. 20 L. 19 to 25, P. 21 L. 1 to 4) The Witness visited and observed the Ferri School (Life Skills Classroom) (Trans. Aug. 1 P. 30 L. 7 to 20) He considered the classroom to be in disrepair. (Trans. Aug. 1 P. 36 L. 20 to 25) He believed there was a lack of inclusion in the Johnston program. (Trans. Aug. 1 P. 39 L. 12 to 17) As to the socialization and inclusion need, he testified that any of the itinerants certainly led properly could be an opportunity for the Student for inclusion and socialization such as library, health, music, art and gym. (Trans. Aug 1 P. 40 L. 1 to 20)

In October, 2017, the Parents objected to the introduction of one more student into the Student's classroom. (Trans. Aug. 1 P. 49 L. 12 to 18) The Witness reviewed School Exhibit 91 in which the Parents requested that the Student not attend itinerants during the school day. The Witness did not remember taking that position. (Trans. Aug. 1 P. 52 L. 19 to 25) School Exhibit 25 was presented to the Witness for review and he confirmed that it stated that the librarian was providing modifications for the Student during library time. (Trans. Aug. 1 P. 56 L. 7 to 18)

The Parent had concerns with the Student's placement at Graniteville and did not want the Student exposed to negative behaviors. (Trans. Aug. 1 P. 63 L. 12 to 23) (School Exh. 73) The Witness visited Barnes' self contained and inclusion room and he seemed to like the mix and makeup of the class. (Trans. Aug. 1 P. 71 L. 1 to 15) (School Exh. 85)

When asked why he thought the program at Barnes was not appropriate, he said that he did not think it was not appropriate. (Trans. Aug. 1 P. 79 L. 2 to 3) The Witness was presented with School Exhibit 86 which reported that the Father thought that Barnes was not ideal placement.

Dr. Dinklage suggested the Groden Center as an example of a proper school setting for the Student. (Trans. Aug. 1 P 94 L. 17 to 23)

An alternate assessment was offered to the Student but the Witness testified that the Student was not ready to give a valid result. Parents felt that if there is no benefit for the Student there is no reason for them to participate. (Trans. Aug. 1 P. 96 L. 8 to 20)

As to Sargent Center, the Witness did not have any information as to the size of the classroom or the number of students in the classroom (Trans. Aug. 1 P. 98 L. 1 to 20) When presented with School Exhibit 23, Team Meeting Notes, wherein it was reported that the Parents did not feel that the Public School Class was appropriate for the Student. The Witness did not think it was accurate at all. (Trans. Aug. 1 P. 101 L. 9 to 10)

**Dr. Dinklage Testified On July 24, 2019 and September 9, 2019**

Dr. Dinklage is an expert in neuropsychology. (Parent Exh. 1) He is a licensed Psychologist in Rhode Island and Massachusetts and has extensive experience in the field of child psychology.

He evaluated the Student in 2011 when the Student was four years old. A history was obtained from the parents and it included language delay, poor reciprocal communication and peer socializing. (Parent Exh. 6) He could not perform any tests because of the Student's age. His diagnosis was Pervasive Developmental Delay which is called Autism Spectrum disorder.

Dr. Dinklage recommended that the Student be placed in a true integrated classroom with normal developing and special education peers. (Trans. July 24, P. 78 L. 20) It was also recommended that the Student should begin ABA (Applied Behavioral Analysis).

The Student was examined by Dr. Dinklage when the Student was six years old. (Parent Exh. 5) He obtained a history from the Mother and one of the Student's ABA (Applied Behavioral Analysis) providers. The Student was tested. The Student's vocabulary was in the broad average range (Trans. July 24 P. 81 L. 2) but Dr. Dinklage was concerned that the Student had not expanded his social interactions and social development. (Trans. July 24 P. 81 L. 11)

He recommended the following: that the Student be in an inclusion classroom, (Trans. July 24 P. 81 L. 18), teaching strategies needed to be applied in the context of some peer relationships, (Trans. July 24 P. 82 L. 5), and the Student receive occupational therapy and speech and language skills. (Trans. July 24 P. 83 L. 5 to 16) The Student's social skills had to be developed. (Trans. July 24 P. 82 K, 14 to 19)

Dr. Dinklage examined the Student at age 8. (Parent Exh. 4) The Student was tested. He reported that the Student did not make progress over the past two years and he recommended placement in a substantially separate school program for Autistic children. Interventions should focus on developing functional and symbolic communication as well as play and daily living skills.

The Witness continued in his summary and provided this opinion: "The program should be a small substantially separate classroom for autistic children where the teacher has access to regular consultation from behavior and autism specialist." (Parent Exh. 4 – Summary)

Dr. Dinklage evaluated the Student when the Student was ten years old in June of 2018. The Parents were concerned because of significantly delayed speech. (Parent Exh. 3) In his

summary, the Student presented with low average cognitive reasoning skills on selected measures that required limited elaborated responses. Daily living skills, higher level conceptual tasks and social reciprocity are much more limited. The Student demonstrated strengths in word reading and phonetic analysis but is markedly delayed in math computation/concepts and reading comprehension. Dr. Dinklage repeated his final paragraph and recommendations from his 2016 evaluation. The Witness testified that the Student was not making progress and was regressing. (Trans. July 24, P. 89 L. 16)

In November, 2018, Dr. Dinklage observed the Student in the District's school. He found that the program did not focus on the goals of the IEP and there was no social skills intervention. (Trans. July 24 P. 92 L. 10 to 14)

When asked if he recommended on out-of-district placement, he stated that he did not use their term out-of-district. (Trans. July 24 P. 94 L. 20) The Witness recommended a substantially separate school program that would be more than just a classroom and would be a whole service. The teachers would have consultation, there would be a clear social curriculum and there would be resources available for kids with similar kinds of difficulties. (Trans. July 24 P. 94 L. 17 to 25 and P. 95 L. 1 to 2)

As to the Sargent Center, Dr. Dinklage stated that he did not have any clients or any firsthand knowledge of the Sargent Center. (Trans. July 24 P. 97 L. 25 P. 98 L. 1 to 2) He stated that Sargent Center appears to be an appropriate placement and there was an emphasis in their curriculum on developing social skills, social interactions. His opinion is not based on a detailed notion of the program curriculum but that it has the general structure of an appropriate placement. (Trans. July 24 P. 99 L. 7 to 18)

Dr. Dinklage described the program needed by the Student:

- 1) Small substantially separate classroom with students of similar level of disability (Trans. July 24, P. 100 L. 18 to 25)
- 2) There should be specific social skills training and peer-to-peer interaction. (Trans. July 24 P. 101 L. 1 to 12)

Dr. Dinklage did not recommend the Sargent Center to the Parents. The Parents advised him that they were looking at the Sargent Center. (Trans. July 24 P. 142 L. 2 to 8) Dr. Dinklage never visited the Sargent Center but did visit the Website. (Trans. July 24 P. 142 L. 2 – 25) As to the Sargent Center’s program, Dr. Dinklage said, “I can’t say specifically what is in it, except that I did look for the fact that they had a social skills curriculum.” (Trans. July 24 P. 145 L. 6 to 11)

Dr. Dinklage continued testified on September 9, 2019.

The attorney for the School District conducted a Voir Dire of the Witness. Dr. Dinklage reviewed the IEP about four days before the hearing. He did not review any of the Student’s academic records. (Trans. Sept. 9 P. 21 L. 1 to 23) The Witness does not have any degrees in special education. He attended two or three team meetings in Rhode Island over 30 years. He never participated in drafting an IEP in Rhode Island. (Trans Sept. 9 P 23 L. 1 to 13) Dr. Dinklage did not review the Rhode Island Board of Education regulations. He does not hold a certificate from Rhode Island. (Trans. Sept. 9 P. 24 L. 2 to 21)

The Witness does not hold a certificate from Rhode Island as a social worker and he is not considered an expert in school psychology in Rhode Island. (Trans. Sept. 9 P. 25 L. 2 to 15) He does not have a certificate in special education. (Trans. Sept. 9 P. 26 L. 12 to 18)

Dr. Dinklage only reviewed School Exhibit 15. (IEP of 4-1-2019) (Trans. Sept. 9 P. 27 L. 14 to 24) He understood the Student was presently in the sixth grade. (Trans. Sept. 9 P. 28 L. 2

to 18) The Witness's testimony for the IEP is based upon the Student receiving those services under that IEP for his sixth grades year. (Trans. Sept. 9 P. 28 L. 19 to 24)

The Witness did not review any other documents; did not speak to a single special educator in the Johnston School district; did not speak to the Director of Special Services and did not speak with the School social worker. (Trans. Sept. 9 P, 30 L. 6 to 24)

The Parents' attorney continued direct examination. Page 3 and 4 of the IEP of 4-1-19 were reviewed by the Witness. The Witness agreed with the needs sections. The social life and peer relationships have to be front and center. (Trans. Sept. 9 P. 41 L. 2 to 12) Page 8 of the IEP was reviewed. It is a social goal and according to the Witness there is not something wrong with it but it is a minimal goal. (Trans. Sept. 9 P. 41 L. 13 to 12) The Witness expected the social goals to be more elaborated.... As to the communication goal, the Witness did not find it problematic but it is in isolation. (Trans. Sept. 9 P. 43 L. 2 to 16) The social worker services in the Witness's opinion were inadequate. (Trans. Sept. 9 P. 44 L. 4 to 22) The accommodations in the IEP, pages 21, 22, and 23 were not sufficient for the Student. (Trans. Sept. 9 P. 45 L. 1 to 10) The Witness testified that the IEP (School Exhibit 15) did not provide the Student with FAPE. (Trans Sept. 9 P. 47 L. 1 to 2)

The Witness did not observe the life skills program. (Trans. Sept. 9 P. 56 L. 3 to 10) He knew that the class he observed last year is not the program the Student is going to attend. (Trans. Sept. P. 57 L. 11 to 14)

**Sally A. Mitchell, Ph.D. Testified on August 5, 2019, September 3, 2019 and  
September 12, 2019**

Dr. Sally A. Mitchell is the Director of Special Services for the Johnston School District for eight years. She was the practicing school psychologist for the Westerly School District for



twenty-four years. She achieved a Bachelor's degree in elementary education, a Master of educational psychology, and a certification with CAGS as a school psychologist. (School Dist. Exh. 2) Dr. Mitchell was called by the Parents as a witness.

When presented with Parents' Exhibit 6, Dr. Dinklage's evaluation, the Witness reviewed it in terms of historical information. (Trans. Aug. 5 P. 5 L. 18 to 24) As to Parents' Exhibit 5, Dr. Dinklage's evaluation of 2014, she agreed with parts of it. (Trans. Aug. 5 P. 6 L. 5 to 8) The Witness did not agree that a more intensive package of interventions were required. (Parent Exh. 4) To dispute that evaluation of 2016 by Dr. Dinklage, the School District had for review the functional measures, classroom-based measures, specialist measures and behavioral measures. (Trans. Aug. 5 P. 12 L. 15 to 21) Dr. Dinklage's evaluation of June 20, 2018, recommended that the program not be in an isolated classroom. (Parent Exh. 3 Neuropsychological Exam) The Witness testified that the team with the Parents' input felt that at that time that was an appropriate setting for the Student. The Student does have difficulty with transitions and routines. The Student continues to be provided socialization opportunities. That is where the Parents disagreed with the Team. Their focus seemed to be more on academic than on socialization opportunities. (Trans. Aug. 5 P. 17 L. 2 to 17) Parents' Exhibit 2, Observation of Classroom by Dr. Dinklage, was addressed. The Witness agreed with recommendation number 3. She testified that the Team was always in favor of increasing the Student's social opportunities, not through social goals but more socialization opportunities ... (Trans. Aug. 5 P. 23 L. 14 to 25) As to recommendation number 4 of that exhibit, the Witness testified that she had offered to have the Autism Project come in and do an observation before Dr. Dinklage had made that recommendation but the Parents were not interested (Trans. Aug. 5 P. 24 L. 4 to 9)

There were conversations about including social skills goals very early on... it was the Witness' recollection that the Parents were opposed to social skill goals. (Trans. Aug. 5 P. 26 L. 17 to 23)

On May 13, 2016, the School District made a referral to the Wolf School for a possible placement. (Parent Exh. 27) On June 3, 2016, the Wolf School responded that the Student was not an appropriate candidate for possible admission. In School District Exhibit 81, (Team meeting 11-9-15), the Parent stated that the Student needs social goals.

Parent examination of the Witness continued on September 3, 2019.

At the team meeting of April 1, 2019, the Parent was seeking an out-of-district placement. (Parent Exh. 35) School District Exhibit 15 (IEP from 12-11-18 to 12-10-19) was implemented after the April 1<sup>st</sup> meeting. (Trans. Sept. 3 P. 9 L. 1 to 2) In addition to Dr. Dinklage's evaluation, the School District had the Star Screening and RICAS results to determine that the Student should have an alternative assessment. (Trans. Sept. 3 P. 13 L. 7 to 12)

The Services for the Student as of the May 15, 2019 meeting was explained by the Witness: "The actual program for the student had not been fully developed at that time. The Team had not addressed the programming for the 6<sup>th</sup> grade and that's what was left out. So, yes, the student received all of the services that had been developed and proposed through the year as they were added ..." (Trans. Sept. 3 P. 17 L. 16 to 25)

The Witness was examined by the attorney for the School District.

The IEP meeting of April 1, 2019 was the last meeting date related to development of the IEP. (School Exh. 15) (Trans. Sept. 3 P. 29 L. 12 to 25, P. 30 L. 1) That IEP became finalized and became effective on that date. (Trans. Sept. 3 P. 30 L. 2 to 4) The Student is in a transition year because he was going into the 6<sup>th</sup> grade. The School Department would determine program

and services for the remainder of the current school year before developing the program for the first year at the new school. (Trans. Sept. 3 P. 39 L. 17 to 25) The Team Meeting of December 4, 2018 ended with the continuation of developing an IEP. (Trans. Sept. P 41. L. 1 to 25) (Trans. Sept. 3 P. 42 L. 1 to 8) The Team Meeting of February 15, 2019 (School Exh. 27) ended with a continuation of the IEP program. (Trans. Sept. 3 P. 44 L. 1 to 9) The purpose of that meeting was to review the results of the Autism Project and to review social goals. (Trans. Sept. 3 P. 44 L. 13 to 19)

Reference was made to School Exhibit 23. (Team Meeting of 4-1-19) The Student's program for the remainder of the grade year was finalized at that time. (Trans. Sept. 3 P. 46 L. 17 to 19) As to social goals there was an extraordinarily detailed discussion about type of goals and the measurability of the goals and that became the focus of the meeting. (Trans. Sept. 3 P. 46 L. 17 to 25) The Team did not discuss the 6<sup>th</sup> grade year. The Father requested at the end of the meeting that the Parents were seeking an out-of-district placement. The Team did not discuss the Life Skills Program at the Ferri Middle School. (Trans. Sept. 3 L. 2 to 11) Since the Team had formulated what appeared to be appropriate goals and services for the Student then the Team's task would be to consider how those services would be provided at the Middle School. (Trans. Sept. 3 P. 47 L. 13 to 25, P. 48 L. 1 to 17)

The School District wanted the services for the Student to be provided in a self-contained or a sub-separate classroom and the Parents had refused that type of programming. The School District created a program that was sort of a mini self-contained classroom. (Trans. Sept. 3 P. 48 L. 24 to 25, P. 49 L. 1 to 6) In a true sub-separate classroom at the Middle School social work goals and socialization opportunities are embedded in the program. (Trans. Sept. 3 L. 16 to 25)

Each time the Student is included in the general education program that would take away time that the Student would be instructed in the sub-separate classroom.

It comes down to service time and how does the School District meet those goals most appropriately for the Student while maintaining the least restrictive environment. (Trans. Sept. 3 P. 50 L. 16 to 25 P. 51 L. 1 to 2) There was a need for another Team Meeting to discuss the 6<sup>th</sup> grade program. (Trans. Sept. 3 P. 52 L. 1 to 6)

Prior written notice was prepared by the School District for the meeting of May 15, 2019. (School Exh. 16) Section 7 states “IEP needs to be developed.” That document was presented to the Witness. The Witness testified and explained the development of an IEP. The following steps take place: discuss the strengths and needs, discuss the goals and take the goals and services to determine service time and location. (Trans. Sept. 3 P. 61 L. 5 to 25)

The Team Meeting notes of May 15, 2019 was presented to the Witness. (School Exh. 17) The Witness testified that the School District redirected the discussion so each specialist and/or teacher could present the Student’s strengths, needs, goals and progress but the specialists were not allowed to do that. (Trans. Sept. 3 P. 67 L. 4 to 20) The Witness continued and reported that the Parents through their attorney made it clear that they wanted a placement at Sargent Center and asked each team member to offer their opinion about placement. (Trans. Sept. 3 P. 67 L. 21 to 25) The recommendations as found in the Autism Project report can be implemented through the life skills program at the Ferri Middle School according to the Witness. (Trans. Sept. 3 P 73 L. 1 to 10) The School District is required to consider recommendations in the Dr. Dinklage evaluations. The District did not disagree with Dr. Dinklage’s diagnosis or test result in his evaluation of 2018 or in the 2011, 2014 or 2016 evaluations. (Trans. Sept. 3 P. 74 L. 1 to 23) In the 2018 evaluation by Dr. Dinklage, (School Exh. 21) his first recommendation that

the Student's placement should be in a substantially separate school program was presented to the Witness. Her opinion was that if it is in an out-of-district placement it would not satisfy the least restrictive environment standard but in a public school program it would satisfy that standard. (Trans. Sept. 3 P. 77 L. 1 to 15) Dr. Dinklage recommended placement in a substantially separate school program for autistic children. (School Exh. 21) The Witness testified that a substantially separate school program that is designed specifically for students with ASD symptoms, that would be the Life Skills Program at the Ferri Middle School. (Trans. Sept. 3 P. 78 L. 1 to 5) The Witness agreed with Dr. Dinklage's recommendations in his 2018 evaluation. (Trans. Sept 3. P. 78 L. 6 to 13) According to the Witness, the Life Skills Program at the Ferry Middle School can provide all of those recommendations to the Student. (Trans. Sept. 3 P. 79 L. 5 to 7)

The Witness described the Life Skills Program: the technology opportunities are far advanced, the Unique Curriculum which is the Gold Standard Curriculum is used, there are several specialists available in the program such as occupational therapist, assistive technology expert, speech and language pathologist, and they have reverse mainstreaming where typical peers are invited into the classroom to interact, socialize and assist students ... . (Trans. Sept 3 P. 79 P. 80 P. 81)

The Father observed the Life Skills Class and reported at the Team Meeting of 4-1-19 that there were no other kids like him (the Student) in the class. (School Exh. 23) The Witness testified that she had an intimate knowledge of the class roster and there are many students in the classroom that are diagnosed with ASD. (Trans. Sept. 3 P. 85 L. 2 to 10)

The Student qualified for ESY services every year but the Parents did not accept ESY services. (Trans. Sept. 3 P. 91 L. 10 to 14)

Alternate assessment is designed for students with disabilities who are educated using an alternate curriculum. It is not productive for a student to sit through the RICAS testing if the student performs around the first percentile. (Trans. Sept. 3 P. 92 L. 9 to 25 P. 93 L. 1 to 9) The Student did not take the alternate assessment or the RICAS according to the Witness. (Trans. Sept. 3 P. 94 L. 1 to 11)

As to School Exhibit 59, the Witness testified about the Parents wanting the Student to utilize the time for health to be used for Math. (Trans. Sept. 3 P. 108 L. 6 to 24)

School Exhibit 91 (Team Meeting Note 10-13-17) was presented to the Witness and her opinion was that the Parents were resistant to the Student attending itinerant activities. The Parents were focused and more concerned with the Student being provided with academic instruction. (Trans. Sept. 3 P. 111 L. 2 to 15) Socialization opportunities throughout the school day are embedded in the Student's school day according to the Witness. (Trans. Sept. 3 P. 112 L. 9 to 19)

The Witness did not believe the Sargent Center is an appropriate placement for the Student. (Trans. Sept. 3 P. 139 L. 12 to 18)

The Witness testified that the Johnston School District can provide a free and appropriate public education in the least restrictive environment at the Ferri Middle School and give the Student opportunities to be included with his peers. (Trans. Sept. 3 P. 139 L. 16 to 25)

The Witness was again examined by the Parents' attorney. (School Exhibit 17 IEP Team Minutes of 5-15-19) was reviewed by the Witness. The Parents requested the meeting of May 15, 2019 for placement. (Trans. Sept. 3 P. 142 L. 1 to 11)

The draft that the School District had for the Team on May 15, 2019 was the IEP from April 1, 2019 according to the Witness. They were going to start from that then they would go

through those pieces to determine whether or not they continue to be appropriate. Then they would talk about placement. (Trans. Sept. 3 P. 145 L. 1 to 13) After six meetings they had not finished the Student's IEP for the 2018-2019 school year. (Trans. Sept. 3 P. 150 L. 17 to 20) As early as August of 2018, the Parents were looking to discuss placement for the Student according to School Exhibit 65 (Trans. Sept. 3 P. 157 L. 19 to 25) The Student should have social skills goals in his IEP according to the Witness. (Trans. Sept. 3 P. 161 L. 1 to 6)

**Michelle Lynn Brennan Testified on August 5, 2019**

Michelle Lynn Brennan is an Adaptive Physical Education teacher hired by the Johnston School District in 2003. The Witness knew of the Student as of 2017 when the Student was at Winsor Hill School where the Witness teaches. (Trans. Aug. 5 P. 40 L. 14 to 16) The Witness was part of the Student's IEP Team and they discussed his needs and strengths. She became aware of his medical needs and why he was going to need adaptive PE. (Trans. Aug. 5 P. 41 L. 2 to 9)

The Witness worked with children with autism and with all different severities from mild to severe from preschool up to 12<sup>th</sup> grade. (Trans. Aug. 5 P. 42 L. 8 to 14) The Witness provided services for the Student for two years. (Trans Aug. 5 P. 43 L. 1 to 4) The services were once a week for 45 minutes. The Student was in the 5<sup>th</sup> grade. The Witness provided modifications alongside the Student's RBT while he received his physical education class. (Trans. Aug. 5 P. 44 L. 6 to 9) She gave examples of some of her modifications: lower music if too loud, assist when the Student had sensory break, and assist the Student to join with peers. (Trans. Aug. 5 P. 44, P.45, P. 46) The Witness testified that she encouraged socialization by heaving a couple of girls join in a skill. There were a couple of preferred females that the Witness knew who were very

kind to the Student. (Trans. Aug. 5 P. 46 L. 13 to 25) The Student made progress in the APE part of his education with his motor skills. The Witness was proud of the Student that he had made skills and strengths with adaptive physical education. (Trans. Aug. 5 P. 47 L. 15 to 23)

The Witness was presented with the School Exhibit 17 (Team Meeting Notes of 5-15-19) The Witness did not have a chance or opportunity to provide her opinion regarding the Student's strengths and needs. (Trans. Aug. 5 P. 49 L.7 to 10) The Witness wanted to point out to the Parents that he was socializing with his peers ... (Trans. Aug. 5 P. 49 L. 13 to 16) She testified that they were cut off and redirected back to talking about the Sargent Center. (Trans. Aug. 5 P. 49 L. 20 to 22)

The Witness testified that she provides an adaptive physical education class that is structured. It is safe. It is a smaller environment. There are less kids and the Student will get more direct service. It is modified sound and it is repetition ... (Trans. Aug. 5 P. 52 L. 4 to 11) The Witness would continue to provide APE services to the Student at Ferri Middle School. (Trans. Aug. 5 P. 52 L. 12 to 16)

The Witness testified that it would not be safe for the Student to participate in an inclusion gym class because there are too many peers. (Trans. Aug. 5 P. 55 L. 17 to 25) School Exhibit 15 (IEP 2018 to 2019) was presented to the Witness. Goal #9 on page 19 of said exhibit according to the Witness was not appropriate for the Student. The time should be .8 two times a week, three times a month. (Trans. Aug. 5 P. 58 L. 14 to 22)

**Joan Marie Wright Testified on August 5, 2019 and September 5, 2019**

Joan Marie Wright is a special educator in the Johnston School District for twenty years. She attended approximately ten autism conferences. (School Exh. 10 resume') The Witness is a



case manager who plans the IEPs. She makes sure that the IEP goals and objectives are met during the school year. She does daily plans and tries to create programs and learning so that the students can make progress. (Trans. Aug. 5 P. 67 L. 6 to 20)

In the life skills classroom they not only teach academics, reading, writing, math, science, social skills, they incorporate life skills as well. (Trans. Aug. 5 P. 68 L. 1 to 7) They do vocational activities and start to talk about what the Student would like to do. They teach daily living skills such as making snacks, cooking, preparing meals and making shopping lists. (Trans. Aug. 5 P. 68 L. 7 to 19)

The Witness defined the “Unique Program” as a standard-based multi-sensory curriculum within which they have reading, writing, math, science, social studies and life skills.

The Witness testified that she makes sure that the general education teachers that support her students know all the accommodations prior to then teaching her students. (Trans. Aug. 5 P. 73 L. 21 to 25, P. 74 L. 1 to 6)

The Witness explained what are “peer buddies”. There are several students who come in and help the Students during academic times as well as social opportunities. (Trans. Aug. 5 P. 75 L. 1 to 11)

The Student’s classroom at the Ferri Middle School was the home economics classroom that the Witness considered to be perfect for her classroom. It had room to do large group lessons, group lessons and small group lessons. (Trans. Aug. 5 P. 78 L.1 to 8) The Witness explained the types of disabilities the Students in her class have. There are those on the Autism Spectrum Disorder, other Health Impairments (OHI) and those with (ID) Intellectual Disabilities. (Trans. Aug. 5 P. 79 L. 11 to 14) The students interact with other students and amongst themselves. (Trans. Aug. 5 P. 86 L. 3 to 12)

During homeroom the students interact with their aged peers. They interact when they go to their inclusion classes such as art, music, assistive technology and library. The students socialize throughout the day. (Trans. Aug. 5 P. 87 L. 1 to 13)

The Witness never met the Student. She reviewed the IEP to be effective from 12-11-2018 to 12-10-2019. The Life Skills Program could accommodate the services, supports and program modifications as found in that IEP on pages twenty-one to twenty-three.

The related services as found on page 20 of the IEP can also be accommodated at the Ferri Middle School. (Trans. Aug. 5 P. 93 L. 1 to 25)

School Exhibit 20 (Autism Project) was presented to the Witness. The social/emotional learning recommendations as found in School Exhibit 20 can be employed in the Witness's classroom.

The Witness was cross-examined by Parents' attorney. The Witness did not attend the May 15, 2019 Team Meeting.

The Witness never reviewed the Student's evaluations, the evaluation by Dr. Dinklage or any report by Dr. Dinklage. All her students with ASD were on the spectrum ranging from severe to mild. Two of her students are non-verbal. Four of her students have health or intellectual disability and one is in a wheelchair. (Trans. Sept. 5 67 L. 1 to 12, P. 68 L. 1 to 12)

#### **Donna Vendetti Testified on August 30, 2019**

School Exhibit 13 (Resume' of Donna Vendetti) was introduced. The Witness is a special education teacher employed in the Johnston School District for twenty-three years. She has a Master in special education. Her specific position is student coordinator. (Trans. Aug. 30 P. 6 L. 2 to 8) She is a student support coordinator. She runs the special education team from

the point of referral to eligibility and service. The Witness works as an interventionist working in the multi-tiered system. (Trans. Aug. 30 P. 7 L. 2 to 20) She had children who were on different places along the spectrum for ASD. (Trans. Aug. 30 P. 10 L. 1 to 9) She consults with classroom teachers and service providers in order to determine the most appropriate method for each student. She works with speech and language therapist, occupational therapists and service providers. (Trans. Aug. 30 P. 14 L. 14 to 25, P 15 L. 1 to 4) She works with any students with ASD at the Ferri Middle School and she had involvement with the Autism Project. (Trans. Aug. 30 P. 17 L. 15 to 25)

The Witness described the Unified Sports Program which is a sports program that children with special needs can participate in and it is with neurotypical peers. It is offered for grades 6 through 8 and every student has a buddy. (Trans. Aug. 30 P. 19 L. 6 to 23)

The Witness does not know the Student but knows of him. She did participate in meetings when the Student was in kindergarten. She knows that the Student has autism spectrum disorder. She is familiar with the Life Skills Program. (Trans. Aug. 30 P. 23 L. 1 to 14) In the Life Skills Program there are twelve students. There is one teacher, Ms. Wright, eight staff being registered behavior techs. Some are BTs (Behavior Technician) (Trans. Aug. 30 P. 25 L. 4 to 15)

School Exhibit 15 (IEP for 12-11-18 to 12-10-19) was presented to the Witness. She would be able to address the need with regard to reading. (Trans. Aug. 30 P. 28 L. 1 to 25) The Student's progress can be measured by the curriculum-based measures. (Trans. Aug. 30 P. 30 L. 1 to 15)

The Witness was cross-examined by the Parents' attorney. The only document reviewed by the Witness was the School Exhibit 15 (IEP) and she did not review any evaluations or reports of Dr. Dinklage. (Trans. Aug. 30 P. 39 L. 1 to 15)

**Mathew S. Tsonos Testified on August 30, 2019**

School Exhibit 11 was introduced. (Resume' of Witness) the Witness currently employed by the Johnston School District as the principal of the Ferri Middle School. He became aware of the Student when they started to begin the transition to the sixth grade and he read the Student's IEP. (Trans. Aug. 30 P. 46 L. 5 to 13) As to Mrs. Wright's room, the Life Skills Classroom, he testified that it is run really well and Mrs. Wright was nominated by two principals for teacher of the year. (Trans. Aug. 30 P. 47 L. 10 to 19)

There are twelve students in that classroom with teachers, aids, and service providers. (Trans. Aug. 30 P. 48 L. 16 to 24) There are students of varying cognitive and physical disabilities including those on the autism spectrum disorder. They have the opportunity to socialize or interact with neurotypical peers throughout the day. (Trans. Aug. 30 P. 50 L. 1 to 15) The students have an opportunity to be included in regular education classrooms. (Trans. Aug. 30 P. 52 L. 15 to 24) The Students participate in itinerant classes. (Trans. Aug. 30 P. 53 L. 5to 7)

The Student's IEP (School Exhibit 15) was reviewed by the Witness. The Johnston Public Schools can provide the Student with related service listed on page 20 of the IEP. (Trans. Aug. 30 P. 56 L. 12 to 18) The equipment identified on page 21 will be available for the Student and the District can provide supplemental aids, services, modifications and supports as found on pages 21 and 23 of the IEP. (Trans. Aug. 30 P. 59 L. 1 to 5)

The Witness was cross-examined by the Parents' attorney. The Witness is certified in adaptive physical education, physical education, health education and building administration pre-kindergarten through the twelfth grade. He does not hold a special education certificate. (Trans. Aug. 30 P. 60 L. 9 t 16) The Witness has not seen Dr. Dinklage's report of his evaluations or observations. (Trans. Aug. 30 L. 1 to 15)

**Katelyn A. Trombly Testified on September 9, 2019 and September 12, 2019**

School Exhibit 4 (Resume' of Katelyn A. Trombly) was presented to the Witness. She is employed by Momentum Behavioral Health Services that provides applied behavioral services. She is a Board Certified Assistant Behavioral Analyst. (BC & BA) They provide school based and home-based services. The Witness has a case load and the registered behavioral technician does oversee her. (Trans. P. 117 L. 5 to 25) When she finishes her Masters then she sits for her BCBA (Board Certified Behavioral Analyst). (Trans. Sept. 9 P. 119 L. 1 to 7)

The Witness knows the Student. She substituted for him around 2016 when he had a Johnston RBT. She was further introduced to the Student in 2017 to 2018 when she was collaborating with another BCBA in the District. The Student was on her case load in 2018. She was in charge of implementing his behavior plan, attending meetings, supervising his staff, visiting his school and make direct observations. The Student is in the sixth grade. (Trans. Sept. 9 P. 125 L. 1 to 17)

The Witness was presented with School Exhibit 19 (Functional Behavior Assessment from Momentum). She testified that they do not edit that document but from that document they would create a behavior plan and it would be a working document. (Trans. Sept.9 P. 129 L. 1 to 20)

School Exhibit 18 (Behavior Intervention Plan) was reviewed by the Witness. The intervention plan was revised on 5-14-18 and on 1-2-19. It was revised at that time to add the whining and they tweaked his self-injurious behavior. (Trans. Sept. 9 P. 135 L. 8 to 21) The direct staff and his RBT would implement the strategies. (Trans. Sept. 9 P. 137 L. 2 to &)

The Witness meets the Student weekly. She does not have a set day for each client. Everything is fluid. She gets e-mails from staff. (Trans. Sept. 9 P. 139 L.3 to 25) Every visit she sits with the Student's teacher and his RBT. (Trans. Sept. 9 P. 140 L. 4 to 13) School Exhibit 24 Team Meeting Notes 5-11-18 was reviewed by the Witness. The Witness was in attendance. The BIP (Behavior Intervention Plan) was addressed and the Parents asked about mischievous behaviors. (Trans. Sept. 9 P. 142 L. 12 to 23 P. 143 L. 1 to 5) School Exhibit 15 was also reviewed by the Witness. In the development of the strengths and needs, the Witness would have provided behavioral data. (Trans. Sept. 9 P. 144 L. 8 to 25) The Witness would be providing consultation and supervision of the RBT concerning the Supplemental Aides and Service section of that IEP. (IEP 2018 to 2019 page 23)

As to the Student having a one-on-one, the Witness testified that as far as starting off this school year, the Student would absolutely need a one-on-one, (Trans. Sept. 9 P. 158 L. 8 to 15)

**Susan Victoria Storey Testified on September 9, 2019**

The Witness's resume<sup>1</sup> was introduced. (School Exhibit 8) She is a speech-language pathologist and is employed by the Johnston School District at Winsor Hill School for twenty-one years. She diagnoses and treats a variety of speech and language disorders, evaluates for the district, creates reports, involved in IEP meetings, and generates IEP goals. (Trans. Sept. 9 P. 72 L. 15 to 20)

The Witness has been involved with the Student from pre-kindergarten and then from the second grade forward to Winsor Hill School. In all, she serviced him for six years. (Trans. Sept. 9 P. 73 L. 12 to 17)

The Student demonstrates significant language disabilities in terms of receptive language and using language. He has some deficits in academics as well. (Trans. Sept. 9 P. 75 L. 1 to 3) she has serviced upwards of twenty students with ASD ranging in severity. (Trans. Sept. 9 P. 75 L. 12 to 16) A severe autism is a student that is non-verbal. A moderate autism is a student that has the ability to produce verbal language but has deficits in language, understanding and use. (Trans. Sept. 9 P. 76 L. 9 to 17) The witness provides services to the Student in room 8 at Winsor Hill School.

In addition to the Witness, there is the teacher and two other special education providers who work as an inclusion teacher but they sometimes take students out to provide services. (Trans. Sept. 9 P. 77 L. 14 to 22) The Student will parallel with other children and as of late, he began engaging with those children to have some nice social opportunities. (Trans. Sept. 9 P. 79 L. 1 to 9)

The Witness understands that the Student goes to gym, health and library during the school day. (Trans. P. 81 L. 8 to 24) When the Student arrived at Winsor Hill School he displayed behaviors such as tantrums, yelling and self-injurious. (Trans. Sept. 9 P. 82 L. 9 to 25) The Witness testified that through the years at Winsor Hill, the Student seemed more comfortable and recently there was an uptick in his verbal and he became more assertive verbally. (Trans. Sept. 9 P. 83 L. 1 to 9)

School Exhibit 15 (IEP for 2018 to 2019) was presented to the Witness who participated in the production of the goals for communication. (Trans. Sept. 9 P. 84 L. 1 to 15) The Witness

provided the speech and language services found on page 20 of the IEP. (Trans. Sept. 9 P. 85 L. 6 to 9) The work performed by the Witness will continue for the Student at the Ferri Middle School. (Trans. Sept. 9 P. 88 L. 15 to 25) The witness compiled highlights of the Student's progress from 2015 to 2019. (School Exh. 94) ( Trans. Sept. 9 P. 92 L. 1 to 7)

School Exhibit 17 (Team Meeting of 5-15-19) was reviewed by the Witness. She was a participant of that meeting. She did not have an opportunity to discuss the Student's strengths, needs and progress at the meeting.

The Witness testified that they attempted to present information about the Student but the Parents asked them to stop and redirected them back to whether they would consider Sargent Center as a placement. (Trans. Sept. 9 P. 96 L. 11 to 25) The Witness explained what she knew about the Life Skills Program at the Ferri Middle School and the opportunities for socialization at that school. The program allows students to participate in the school store. There is homeroom, art, music, and gym with all other Students. They have a Peer Buddies program where kids come in and visit and work. (Trans. Sept. 9 P. 97 L. 17 to 25, P. 98 L. 1 to 6)

The Witness was presented with School Exhibit 23. (Team Meeting Notes of 4-1-19) They were continuing to review the IEP which had not been activated and at the end of the meeting transition for the Student was discussed. They would discuss transition to the Ferri Middle School in another meeting. (Trans. Sept. 9 P. 102 L. 5 to 25)

The Witness was cross-examined by the parents' attorney. School Exhibit 94 was again presented. The Witness prepared that document around May of 2019. (Trans. Sept. 9 P. 111, L. 11 to 25 P. 112 L. 1)



**Vanessa Pine Testified on September 5, 2019**

School Exhibit 3 (Resume' of Vanessa Pine) was introduced. She is employed by the Johnston School District as a clinical social worker for ten years. (Trans. Sept. 5 P. 5 L. 1 to 17) The Witness services students on the autism spectrum for three years while working at the League School in Massachusetts; she did placements at Bulter Hospital; she worked in ASD Connections at Galeway Healthcare in Rhode Island; she worked in homes with parents to find resources for children diagnosed with ASD. (Trans. Sept. 5 P. 7 L. 1 to 24) The witness worked with students in various ranges on the spectrum of autism from severe to mild and everything in between. (Trans. Sept. 5 P. 8 L. 1 to &) The Witness described behavioral issues presented by students on the autism spectrum such as physical aggression, compulsion, over-focusing, tantrums and self-injurious behavior. (Trans. Sept. 5 P. 9 L. 1 to 25, P. 10 L. 1 to 25)

The Witness was asked to add social skill goals to the Student's IEP. The School District Exhibit 89 (Social History 10-4-13) was reviewed by the Witness who prepared it with the Parents during the referral process. (Trans. Sept. 5 P. 14 L. 1 to 2) The witness became directly involved with the Student in April, 2019. (Trans. Sept. 5 P. 15 L. 1 to 12) She participated in drafting the Student's strengths for the IEP found in School Exhibit 15. (12-11-18 to 12-10-19

There were multiple changes made to the document with everyone in agreement, anything from adding operational definitions to conversations about whether or not the goal the Witness had was vigorous enough. (Trans. Sept. 5 P. 22 L. 12 to 18) The Student, according to that IEP, can recognize facial expressions and emotions with prompts. (Trans. Sept. 5 P. 23 L. 1 to 18) Based on the low scoring on the scale that the Witness got for the baseline data she wanted to make sure she provided a range of prompts to help the Student through the social skills

lessons in learning those goals. That is why she put visual, verbal and video prompts. (Sept. 5 P. 25 L. 1 to 11)

The Witness is scheduled to provide services to the Student twice a week for 15 – minute sessions which were provided in the Student’s classroom at Winsor Hill. (Trans. Sept. 5 P. 27 L. 6 to 12) Social work goals encompass social skills goals. In order to receive social skills goals, they do not have to be in the IEP. Many programs and especially special educators work on social skills throughout the day in their program. Social goals in an IEP are kind of an enhancement of that type of area. Teachers embed social skills goals every day in their group process, which is their classroom or their program. The time the Witness spends with the Student isn’t the only time that social skills goals are addressed throughout the Student’s school day. (Sept. 5 P. 30 L. 3 to 12, P. 31 L. 1 to 25, P. 32 1 to 14)

School Exhibit 23 (Team Meeting Notes 4-1-19) was presented to the Witness for review. The Witness collaborated with the home-based BCBA to develop the Student’s social goals during the meeting. She did not specifically agree with the home-based BCBA as to the level of vigor with feelings recognition goal. The BCBA and the Parents wanted benchmarks focused on why the Student feels certain feelings. (Trans. Sept. 5, P. 35 L. 6 to 18) The Witness believed the BCBA’s suggestions were related to behaviors outside of the educational environment. (Trans. Sept. 5 P. 36 L. 11 to 14)

The IEP of April 1, 2019 according to the Witness was complete but at the end of the meeting the Father wanted to talk about another placement. It was the Witness’s understanding that the IEP did not become active until 10 days after the meeting. She knew there was going to be another meeting because of the way the meeting ended with a request. (Trans. Sept. 5 P. 37 L. 3 to 17)

The Witness attended the May 15, 2019 IEP Meeting. She testified that the Parents' attorney wanted them to focus on their opinion of placement. The Witness never had the opportunity to address the Student's strengths and needs. (Trans. Sept. 5 P. 38 L. 9 to 25)

In doing the goals for the Student, the Witness found that he enjoyed the collaborative goal of working with peers playing a game. The Student will meet with success with the turn taking goal. They used a lot of verbal and visual prompts for turn taking. (Trans. Sept. 5 P. 39 L. 8 to 17)

As to Mrs. Wright's class, the Life Skills Class, the Witness testified that the social skill goals written into the IEP can be implemented in the life skills program. The Witness's opinion was that the life skills class would be an appropriate placement for the Student. (Trans. Sept. 5 P. 43 L. 1 to 5, L. 11 to 17)

The Witness was cross examined by the Parents' attorney. Socialization is an issue for ASD students. The Witness testified that socialization should be a focus of the student's program and that it was part of the program. (Trans. Pet. 5 P. 46 L. 6 to 13); further, it is not true that the Johnston School Department never addressed social needs for the Student. (Trans. Sept. 5 P. 47 L. 8 to 14) The Parents' Exhibit 19 (IEP of 3-2-18) was presented to the Witness and there were no social skills need listed for the Student. The Witness explained that social work and social skills are kind of all embedded. (Trans. Sept. 5 P. 48 L. 17 to 25)

The Witness had not seen Parents Exhibit 2 (Dr. Dinklage Observation 10-13-18) or Parents Exhibit 4 (Dr. Dinklage Evaluation 4-18 & 19 – 2016). (Trans. Sept. 5 P. 53 L. 14 to 16, P. 63 L. 5 to 7)

**Michelle L. Harris Testified on September 5, 2019**

School Exhibit 12 (Resume' of Michelle L. Harris) was presented and offered as a full exhibit which was entered as such.

The Witness is currently employed by the Johnston School District as a social worker at the Ferri Middle School. She was employed by the District for four years. (Trans. Sept. 5 P. 70 L. 12 to 21) The Witness has been licensed as a social worker since 1997 and receives continuing education credits in order to maintain said license. (Trans. Sept. 5 P. 71 L. 13 to 22) she provides direct services to the students individually or in group sessions. She has experience working with students with autism spectrum disorder. (Sept. 5 P. 72 L. 1 to 20)

The Witness has not met the Student but did review his IEP in order to understand the goals are working on and his strengths and needs. (Trans. Sept. 5 P 76 L. 16 to 20)

She is the provider for social work skills. There are usually ten to twelve students in the life skills program. (Trans. Sept. 5 L. 8 to 22)

School Exhibit 15 (IEP 12-10-18 to 12-11-19) was reviewed by the witness. She worked with students with similar needs as the Student. (Sept. 5 P. 79 L. 14 to 19) The Student's area of need is social skills and he has to identify how he feels in three out of five opportunities with the use of visual, verbal and video prompts. It is a goal that the Witness has used with other students. (Sept. 5 P. 80 L. 19 to 25), P. 81 L. 1 to 4)

The Witness is able to provide the related services as stated in the IEP. (Trans. Sept. 5 P. 83 L. 3 to 14)

The Parents' attorney cross-examined the Witness.

The IEP did not provide that the social worker would provide any kind of consult with the staff. The Witness testified that she typically does a lot of consultation with Mrs. Wright, working with other teachers too. (Trans. Sept. 5 P. 84 L. 6 to 14)

On redirect examination the Witness testified that consultation need not be in the IEP because she takes that to be what she does in the course of her job. (Sept. 5 P. 85 L. 16 to 22)

**D [REDACTED] S [REDACTED] Testified on September 12, 2019**

The witness is the Mother of the Student. School Exhibit 91 (IEP Team Meeting Notes 10-13-17 and School Exhibit 39 (E-mail Oct. 2017) were presented to the Witness. The Witness did not want the Student at library because the RBT reported to her that library really just was not working and the Student had to be pulled out. (Trans. Sept. 12 P. 30 L. 1 to 8) Bod Kidd reported that most likely what was being read went over the Student's head. (Trans. Sept. 12 P. 30 L. 12 to 17) As to health class, the Witness was concerned about what was going to be taught. Art class was a problem. The RBT would tell her what happened at art class. The Student would sit with no peers and after ten minutes, he would be disruptive. (Trans. Sept. 12 P. 3 L. 2 to 25, P. 32 L. 4 to 10) After the Student went to Winsor Hill there was never a discussion about the Student going back to a self-contained room. (Trans. Sept. 12 P. 33 L. 1 to 16) The Witness did not want ESY for the Student because there were kids more severe than the Student and she did not want the Student around kids who had very severe behaviors. The Student was in a very intensive program at home. (Trans. Sept. 12 P. 35 L. 2 to 17) The Witness did not want the Student in alternative assessment because it was for students who had a significantly cognitive impairment. (Trans. Sept. 12 P. 36 L. 17 to 25) In the opinion of the witness the Student does not have a significant cognitive impairment. School Exhibit 27 (Team Meeting

Notes 2-15-19), School Exhibit 29 (Team Meeting Notes 11-16-18), School Exhibit 72 (Team Meeting Notes 10-9-12), School Exhibit 81 (Team Meeting Notes 11-9-15) School Exhibit 86 (Team Meeting Notes 4-29-14) were presented to the Witness. Each team meeting records the Witness or Parents seeking social goals. (Trans. Sept. 12 P. 37 L. 19 to 25, P. 38 L. 7 to 24, P. 39 L. 3 to 25) The School district never asked to evaluate the Student. (Trans. Sept. 1 P. 42 L. 15 to 25, P. 43 L. 1 to 15)

The Witness did not feel like the socialization is embedded into the curriculum, it is not upfront and that is what she saw at Sargent Center. (Trans. Sept. 12 P. 48 L. 6 to 10)

The Witness was cross-examined by the School District.

The Witness did not observe the Student attending library. (Sept. 12 P. 53 L. 24 to 25, P. 54 L. 1) As to a BCBA, the Witness testified that having a BCBA on staff is important to her. (Trans. Sept. 12 P. 57 L. 10 to 15)

### **Review of the May 15, 2019 Team Meeting**

The IEP that the School District is presently using is found in School District Exhibit 15 (Effective from 12-11-18 to 12-10-19) The School District was very concerned about providing an IEP for the Student's sixth grade. It held team meetings on 11-16-18, 12-4-18, 1-11-18, 2-15-19, 3-22-19 and 4-1-19. The last meeting was held on 5-15-19. Even though it was requested by the Parents there is clear evidence that the School District expected to continue to discuss the program for the sixth grade and especially the Life Skills Program at that meeting.

The Team Meeting of 5-11-18 (School Exhibit 24) met to discuss the Student's behavior intervention plan (BIP). It provided that the Student would continue to be in small groups.

(Testimony of Jasmine Davila) Progress was reported in reading and the Student's writing. Programming for the upcoming year was discussed.

The Team Meeting for 11-16-18 (School Exhibit 29) was for the purpose of reviewing the Student's annual IEP and to update the team about the Student's progress in physical education class. The Parents wanted more socialization opportunities. Dr. Mithcell suggested that the Autism Project be brought in. The Team agreed to continue the meeting to December 4, 2018.

The Team Meeting of December 4, 2018 (School Exhibit 28) was for the purpose to review the goals of the Student's annual IEP. Behavior goals were reviewed and discussed. The follow-up IEP meeting was to add social goals. The date was set for the autism Project, December 13, 2018. The team presented affirmative answers to all three questions needed for the alternate assessment to be used for the Student. The Parent refused the assessment. The IEP was to be kept in draft form in order to add social work goals. After which, the IEP could be activated.

The Team Meeting of February 15, 2018 (School Exhibit 27) was for the purpose of reviewing social work goals and the Autism Project observation. The placement concerns would be would be addressed at another meeting.

Dr. Mitchell suggested that the social goals be discussed when the social worker is present. Team agreed to order more peer opportunities in the morning for the Student. The Team brainstormed about the Student's transition.

The Team Meeting of April 1, 2019 was for the purpose of continuing the IEP concerns as well as the concerns of the Parents regarding next year's programming. Mrs. Pine (Social Worker) added a peer component to the social work goals. The Father expressed that they were

seeking a placement at Sargent Center. He continued to explain his concerns about the Middle School placement. The Parents repeatedly expressed the importance of the Student having socialization opportunities with typical peers. The IEP was to be implemented on 4-22-19. As to placement, Dr. Mitchell explained that the team will consider this moving forward toward transition and will meet to discuss this further and to determine what option is best to offer the Student a Free and Appropriate Public Education. It is clear to this Hearing Officer that the transition referred to by Dr. Mitchell is the program for the Student in the 6th grade that was to start in September of 2019.

The Team Meeting of May 15, 2019 (School Exhibit 17) was to develop an IEP for the 6<sup>th</sup> grade. This was the last IEP meeting before the Parents' request for a due process hearing. Dr. Mitchell explained that each specialist will present the Student's present levels (strengths and needs) and progress. These attempts were repeatedly interrupted by the Parents who insisted that the team stop and make a placement decision. The Parents declined to engage in the required discussion to develop the IEP. The Special Educator, Jasmine Davila, reported the Student's present levels. He is in substantially separate program with 1:1RBT. Other students enter throughout the day. The Student is included for music, health, library and gym with typical peers. Ms. Davila's report was interrupted by the Parents and they pressed for the Team's opinion on placement at Sargent Center. Dr. Mitchell repeated the request for the opportunity for the Team to discuss the Student's present levels. The Social Worker, Vanessa Pine, attempted to share the Student's excitement in participating in social group with peers. The Parents continued to want to make a placement decision ahead of the IEP development. Finally, the Parents ended the meeting.

The information found in the Team Notes of May 15, 2019 concerning the fact that the



Meeting was ended by the Parents is supported by the testimony of the following witnesses:

Karen Nault, Jasmine Davil, Michele Zarcaro, Dr. Sally A. Mitchell, Susan Victoria Storey, and Venessa Pine.

The IEP (School District 15) of 4-1-19 was the last IEP that provided for the Student's program for the remainder of the 5<sup>th</sup> grade. They did not fully develop the program for the 6<sup>th</sup> grade. It is clear to this Hearing Officer that the IEP Meeting of May 15, 2019 was to develop the program for the Student's 6<sup>th</sup> grade. The Hearing Officer was not presented with an IEP Program for the Student's 6th grade. The Parents created an impass at the May 15, 2019 IEP meeting by not allowing the team to develop a program which would have included discussions about an out-of-district placement. Their single minded approach was to only discuss placement. It appears that the meeting was somewhat contentious and it ended by the Parents leaving the meeting. The Parents were focused on an out-of-district placement at the Sargent Center.

In order to determine whether an IEP provides FAPE, we usually look at the final version of the IEP the School District offered during the IEP process. County Sch. Bd. Of Henrico v. Z.P., 399 F. 3d 298 N.5 (4<sup>th</sup> Civ. 2005) "If there is no last best offer ... it makes very little sense to consider only the latest version of the IEP. This is especially true where the school system has acted expeditiously and the development of a final IEP has been frustrated by the parent's refusal to cooperate fully in the collaborative process." C.G. and B.S., as Parents and Next Friends of A.S., a Minor, Plaintiffs, Appellants v. Five Town Community School district et al, Defendants, Appellees, No. 07-1708, U.S. Court of Appeals, First Circuit, p. 286. I find that the incomplete IEP was created by the Parents' refusal to allow the Team to properly develop the IEP for the 6<sup>th</sup> grade. I find that the School District did act expeditiously.

The Parents knew or should have known that the IEP of April 1, 2019 had to be completed for the Student's ■th grade. The Hearing Officer has to now consider facts outside of the incomplete IEP to determine if the School District is offering FAPE.

### **Decision**

The Parents did not raise any procedural questions in their complaint. However, they did review the requirements of an IEP under the IDEA regulations. Unless alleged procedural violations are made part of the Parents' complaint, and part of the hearing, they will not be considered by the Hearing Officer.

The Parents have the Burden of persuasion:

The burden of persuasion  
in an administrative hearing  
challenging an IEP is  
properly placed upon the  
party seeking relief-whether  
that is the disabled  
child or the School District  
*Schaffer v. Weast, 546 U.S. 42, 126 S Ct. 528*

A free, appropriate, public education was defined by the Supreme Court in the following manner:

A free appropriate public  
education specifically designed  
to meet the unique needs  
of the handicapped child, supported  
by such services as  
are necessary to permit  
the child to benefit from  
instruction. Board of Education  
of Hendrick County et al v.  
Rowley 458 U.S. 188 & 189, 102 S. Ct. 3034

As to the weighing of the evidence and the facts in order to make a decision on the preponderance of the evidence, the Supreme Court in Rowley said:

The provision that a  
Reviewing court base its  
Decision on the “preponderance  
Of the evidence” is by  
no means an invitation  
to the courts to substitute  
their own notions of  
sound educational policy  
for those of the school  
authorities which they  
review. Hendrick  
County et al v. Rowley  
458 U.S. 206 & 207, 102 S. Ct. 3034

In the Supreme Court Case, Douglas county School District RE-1, in referencing the Rowley case said:

“We will not attempt to elaborate on what “appropriate” progress will look like from case to case. It is the nature of the Act and the standard we adopt to resist such an effort: the adequacy of a given IEP turns on the unique circumstances of the child for whom it was created. This absence of a bright-line rule, however, should not be taken for an invitation to the court to substitute their own notions of sound educational policy for those of the school authorities which they review.

At the same time, deference is based on the application of expertise and the exercise of judgment by school authorities. The Act vests these officials with responsibility for decision of critical importance to the life of a disabled child. The nature of the IEP process from the initial consultation through state administrative proceedings, ensures that parents and school representatives will fully air their respective opinions on the degree of progress a child’s IEP should pursue.” Endrew v. Douglas county School District RE-1, 137 S. Ct. 1002

To determine the appropriateness of an IEP, it is a prospective endeavor. Normally, the last IEP would be the starting point.

From there, we would look at the program offered for the future of the student. For this case, the Hearing Officer will review the facts and programs offered at the time of the last IEP meeting of May 15, 2019.

The Parents knew the program the District offered for the 6<sup>th</sup> grade was at the Ferri Middle School in the Life Skills Program. The Father viewed the Life Skills Classroom at the Ferri Middle School and in his opinion, he saw “zero peer to peer interaction.” He did not

believe the District has the “expertise in autism.” He considered the classroom to be in disrepair and there was a lack of inclusion in the program. It was reported in the Team Meeting notes of 4-1-19 that the sensory area was not adequate and he did not feel that the public school class was appropriate for the Student’s needs.

The Parents were concerned with social goals and they did not believe they were “front and center” in the proposed program offered for the 6<sup>th</sup> grade as recommended by Dr. Dinklage.

Dr. Dinklage conducted the only neuropsychological evaluations for the Student. He evaluated the Student at age 4, 6, 8 and 10. On November 15, 2018, Dr. Dinklage observed the Student in class at the Winsor Hill Elementary School. The problem with this observation is that it is not of the classroom to which the Student will be assigned at the Ferri Middle School for the 6<sup>th</sup> grade. His opinions concerning that classroom are not applicable.

When Dr. Dinklage testified on July 24, 2019, his opinions were based on a settlement proposal that was given to the Parents during the hearing process. The Hearing Officer would not consider that proposal because it was not evident that it was developed by the IEP process.

Over objection from the School District, the Hearing Officer allowed Dr. Dinklage to testify again concerning the IEP of 4-1-19. (School Exhibit 15) He testified on September 9, 2019. He agreed that his expert-opinion was whether or not the IEP of 4-1-19 is appropriate for the 6<sup>th</sup> grade.

Dr. Dinklage did not review any other documents, did not consult with anyone regarding the IEP, did not speak to a special educator, did not speak with the School Director of special services, and did not speak with a social worker.

His conclusion was that the IEP of 4-1-19 did not provide FAPE. It is understandable that the IEP for the 5<sup>th</sup> grade is not appropriate for the 6<sup>th</sup> grade. Further, Dr. Dinklage had no knowledge of the program at the Ferri Middle School, the life skills class with Mrs. Wright.

I find that Dr. Dinklage's testimony does not address the program at the Ferri Middle School and therefore his opinion on FAPE is not persuasive as is his opinion concerning placement at the Sargent Center.

The Hearing Officer cannot substitute his/her notion of sound educational policy for those of the school authorities. Deference is based on the application of expertise and exercise of judgment by school authorities. The Hearing Officer finds that the Parents fully aired their opinions concerning the Student's progress and during the IEP meetings.

Karen Nault who is a certified behavior analyst and is the Student's clinical supervisor for his home-based services. She gave considerable testimony on social goals for the Student. The Hearing Office relies on the testimony of those who are experts in that area. The witness testified that she did not have a background in social work. Lastly, she did not have knowledge of the Life Skills Program at the Middle School. She was not well versed on what it is. Her testimony was not at all persuasive.

Jasmine Davila was the Student's case manager and had four years experience with the Student. Based on Team discussions and the Student's needs, the Life Skills Program at the Ferri Middle School would be the most appropriate placement for the Student. The Program uses Unique Learning Curriculum which embeds functional skills such as science, history, and economics.

Social goals were discussed over the years but the Parents felt other areas would be more important to focus on. Social goals were added in the 5<sup>th</sup> grade. The Unique Learning System is

a multisensory approach. Ms. Davila viewed the Sargent Center and concluded that there was no inclusion classrooms with neurotypical peers and it did not provide the least restrictive environment.

Michele Zarcaro was the Principal of the Winsor Hill School during the time the student was there. In the second grade the Student could stay only two or three seconds on task but by the 5<sup>th</sup> grade he was able to focus a minute or two on task. As to socialization interaction was embedded into the school day when there is a full inclusion class. As part of the IEP team she observed the Life Skills class. At the May 15, 2019 Team Meeting, (School Exhibit 17) they started to discuss the Life Skill class but did not finish because of the Parents opposition.

Joan Marie Wright is a special educator for the School District for twenty years. In the Life Skills Program they teach academics, reading, writing, math, science, social skills, and life skills. Daily living skills include making snacks, cooking, preparing meals, and making shopping lists. She makes sure that the general education teachers that support her program know all the student's accommodations. The Students have peer buddies who help during academic times as well as social opportunities.

During homeroom students interact with their aged peers. The Students socialize throughout the day. The Life Skills program can accommodate the services and supports in the 4-1-19 IEP as related on pages 21 to 22. The social/emotional learning recommendations found in School Exhibit 20 (Autism Project) can be employed in her classroom.

Susan Victories Storey is a speech-language pathologist employed by the Johnston School District for twenty-one years. She is the speech therapist for the Student for six years. In Exhibit 94 (Language Progress Highlights), Ms. Storey kept notes concerning the Student's

progress. In her opinion, the Student through the years is gaining more ability to use expressive skills to talk about his wants and needs. The Student's ability to answer questions has increased.

She viewed the Life Skills Classroom for the Student's 6<sup>th</sup> grade. Students go to homeroom for art, music, gym with other students. They have a Peer Buddies program and there are after school opportunities.

Vanessa Pine is employed by the Johnston School District for ten years. She added social skill goals for the Student's IEP. Those goals can be implemented in the Life Skills program at the Ferri Middle School for the Student's 6<sup>th</sup> grade. Social skills and social work are embedded in the program.

Michelle L. Harris is a social worker at the Ferri Middle School and she reviewed the Student's IEP. She is able to provide the related services found in the Student's IEP. She does a lot of consultation with the teacher in the Life Skills Program and consultation does not need to be in the IEP because it is what her job requires.

Katelyn A. Trombly is employed by Momentum Behavioral Analyst. They provide school based and home based services. School Exhibit 19 (Functional Behavior Assessment) is a working document for the Student. That document forms the basis for a behavior plan. The Student would absolutely need a one-on-one.

Dr. Sally A. Mitchell is the Director of Special Services for the Johnston School District for eight years. She was the practicing school psychologist for the Westerly School District for twenty-four years.

The District did not disagree with Dr. Dinklage's diagnosis or test results and the District did consider the recommendations proposed by Dr. Dinklage. The substantially separate school program proposed by him is the Life Skills Program.

Dr. Mitchell agreed with Dr. Dinklage's recommendations in his 2018 evaluation. The Life Skills Program can provide some of his recommendations. As to an out-of-district placement at the Sargent Center such a placement would not satisfy the least restrictive environment standard. In the Life Skills Program the technology opportunities are far advanced, the Unique Curriculum is the Gold Standard Curriculum, there are several specialists available such as occupational therapist, assistive technology expert, speech and language pathologist and reverse mainstreaming where typical peers are invited into the classroom to interact and assist the students.

I find that Dr. Mitchell's experience is impressive and her testimony persuasive.

Based on the evidence presented and the testimony of the witness herein, I find that the Life Skills Program at the Ferri Middle School will provide the Student with a free, appropriate, public education.

DATED: Nov. 7, 2019

HEARING OFFICER



ARTHUR G. CAPALDI, ESQ.

1035 Main Street

Coventry, R.I. 02816

Tel: 401-821-3537

FAX: 401-821-9697

Email: [acapaldi111@verizon.net](mailto:acapaldi111@verizon.net)