

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. EDS 08250-14

AGENCY DKT. NO. 2014 21282

J.S. AND V.S. ON BEHALF OF A.S.,

Petitioners,

v.

TEANECK BOARD OF EDUCATION,

Respondent.

Lori Gaines, Esq., and **Lauren Miceli**, Esq., for petitioners (Barger & Gaines, attorneys)

Isabel Machado, Esq., and **Mariann Crincoli**, Esq., for respondent (Machado Law Group, attorneys)

Record Closed: August 10, 2015

Decided: August 24, 2015

BEFORE **KIMBERLY A. MOSS**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioners J.S. and V.S. on behalf of their daughter A.S., seek the unilateral placement of A.S. at the New Haven Residential Treatment Center be paid for by Teaneck Board Of Education (Teaneck or the district). The matter was transferred to the Office of Administrative Law (OAL) as a contested matter on July 3, 2014. A settlement conference was scheduled for July 11, 2014, August 20, 2014, and September 17, 2014. The parties requested an adjournment of the above dates. The

settlement conference was held on October 22, 2014, with Judge Cohen, which did not resolve the matter. I heard the case on the following dates February 6, 2015, February 27, 2015, March 3, 2015, March 17, 2015, April 13, 2015, June 1, 2015, and August 10, 2015. I closed the record at that time.

FACTUAL DISCUSSION AND FINDINGS

I **FIND** the following uncontested **FACTS**:

It was determined that A.S. had a math disability when she was in the first grade. She went to a private school at that time. A.S. went to the Brevier private school beginning in the second grade. When A.S. was in the sixth grade two female students bullied her. In addition to the bullying, the two female students beat her, bashed her head, threatened to kill her and her sister, and sexually assaulted A.S. The physical and sexual assault of A.S. continued throughout the time that she was in middle school. She was assaulted approximately fifty to sixty times. The assaults occurred in the school, the bathrooms, empty classrooms, and anywhere that did not have cameras. A.S. did not tell anyone about the assaults while they were occurring. The assaults ended when she graduated from middle school.

A.S. was registered with Teaneck on October 22, 2013. V.S. met with the Teaneck child study team (CST) on October 28, 2013. At that time A.S. had a service plan provided by Union County Educational Services Commission (UCESC). At the conference A.S. was classified as multiple disabled for math and emotional disturbed. She had major depressive disorder and post-traumatic stress disorder (PTSD), which adversely impacted her academic performance such that she needed special education and related services. It was determined that A.S. needed a therapeutic day school. A.S. was placed in the Sage School (Sage). She started at Sage on November 21, 2014; Sage had ninety to ninety-four students at that time. The students at Sage primarily are diagnosed with mood disorders, anxiety disorders, or are high-spectrum autistic. Audrey Stone (Stone) was A.S.'s therapist at Sage.

On March 11, 2014, A.S. was taken to the hospital because she swallowed a bottle full of pills and had a knife. She returned to school the next day. On March 19, 2014, A.S. was hospitalized at Silver Hill Hospital (Silver Hill) because of a suicide attempt and suicide ideation. At that time she was diagnosed with major depressive disorder and PTSD. She was discharged on March 24, 2014. At that time she returned to Sage. On April 24, 2014, A.S. was again admitted to Silver Hill because of threats of suicide and a dissociative episode. A.S. was released from Silver Hill on April 30, 2014. She returned to Sage, but only went for three days. On May 5, 2015, V.S. sent Teaneck a letter, through her attorney, regarding A.S.'s need for a residential therapeutic placement.

A.S. was unilaterally placed at New Haven Residential Treatment Center (New Haven) on May 27, 2014. New Haven is located in Utah. It is a therapeutic residential school for girls. It is an accredited school. There are approximately ninety-five students at New Haven. New Haven has a four-phase system: the first phase is expectation; the second phase is exploration; the third phase is insight; and the fourth phase is integrity. A.S. lost trust of her peers because of the trauma she experienced and isolated herself. New Haven is working with her on healthy relationships, trust, and emotional safety. A.S. is on the third phase of integrity. Each phase takes approximately two and a half months. Once a student is in the fourth phase she should be able to can stand on her own and work towards transition.

The day begins at New Haven with the girls waking up at 7:00 a.m. They have breakfast with the residential staff and set goals for the day. They have classes from 8:15 a.m. to 2:00 p.m. The teachers have credentials. The curriculum follows state of Utah regulations. After classes they students go to groups. The school does not have lockers. Parents come to the school every other weekend. Twenty-Five students at New Haven have IEP's. New Haven follows the IEP's for the special education students. The school is in a building that looks like a house. Students are helped with homework on the weekends and if trauma issues come up they help students process it. There are presently approximately ninety-five students at the school. The goal of the school is to get the students educational on their grade level.

Testimony

Dr. Maura T. Tuite

Dr. Maura T. Tuite (Dr. Tuite) has been employed by Teaneck as a school psychologist since 2007. She has a supervisor certification and a school psychology certification. She is part of the child study team (CST). As a case manager she is assigned students who are classified as special education students and makes sure there plans and evaluations are in effect and appropriate. All of the students that she case manages are in high school. She coordinates between the school, parents, and outside providers.

Dr. Tuite was not the case manager for A.S. Dr. Gordon Presley (Presley), who has since retired, was the case manager for A.S. Dr. Tuite has not met A.S. nor has she spoken to Silver Hill, Dr. Maggee Messing (Dr. Messing), Dr. Wilbert Yeung (Dr. Yeung) or Dr. Albrect regarding A.S. She has reviewed the IEP, evaluations done by Teaneck, documents from Silver Hill, and documents from New Haven regarding A.S. She has received information on A.S. from the Sage including report cards and progress notes.

Prior to registering with Teaneck, A.S. went to a private high school, Bruirah High School. The service plan stated that A.S. had a math disability. It also stated that her grades were good and she had a high I.Q. Her strengths were reading and spelling. UCESC did an educational re-evaluation of A.S. on March 21, 2012, which stated that she had difficulty with oral expression, math, story recall, and picture vocabulary.

A.S.'s psychologist, Dr. Messing sent a letter to the Teaneck CST recommending a therapeutic setting for A.S. to monitor her emotional needs. It states that A.S. is not safe in regular high school and she has PTSD.

Teaneck did a social assessment update for A.S. because she was an eleventh-grade student who had stopped attending school due to emotional issues. The PTSD

affected her attendance. The trauma that A.S. experienced was that she was emotionally, physically, and sexually assaulted by students while in a private middle school. A.S. revealed this trauma when she was in the tenth grade. This was the onset of PTSD.

A.S. was given the WAIS-IV test by Teaneck. The results showed that her I.Q. was in the low-average range. Dr. Leslie Nagy performed a psychiatric evaluation of A.S. on November 6, 2013. He noted that A.S. has suicidal ideation. His diagnosis was PTSD and depression. He also recommended a therapeutic program for A.S.

V.S. signed the classification and eligibility report. The IEP meeting followed the eligibility meeting. The proposed placement for A.S. was the Sage School on November 19, 2014. V.S. signed the IEP. Teaneck only did one IEP for A.S.

Dr. Tuite has visited Sage on at least thirty occasions. It is academically rigorous with nine to ten therapists. They have individual, family, and group therapy. The typical student at the Sage is a high achiever with emotional fragility. Sage was an appropriate placement for A.S., who did well academically based on her report cards. She was an A to B student. A.S. started Sage after the first quarter of the school year. She was absent for twenty-five days from November 2013 to May 2014. She was hospitalized for fourteen of the twenty-five days. A.S.'s report card showed that she had A's and B's with two incompletes in digital photography and gender studies. A.S. turned in work late in those classes. Once she turned in the work she received a grade in those classes. A.S. is scheduled to graduate high school in June 2015. There is no indication that she will not graduate at that time. During her last marking period at Sage, A.S.'s mood and behavior deteriorated while she was awaiting placement at New Haven. During that quarter, she received an F in history and gender studies. She received A's and B's in her other classes.

A.S. was hospitalized at Silver Hill from March 19, 2014, to March 25, 2014. A.S. was having nightmares and was unable to go to school. She went back to Sage after she was discharged.

A.S. was again hospitalized at Silver Hill from April 24, 2014, to April 30, 2014. A.S. stated that she feels that she is addicted to alcohol, sexual intercourse, and everything. The report from Silver Hill does not mention anything education-related. The course of treatment was to have A.S. admitted to a residential treatment. She was to return to Sage until she could be placed at New Haven. A.S. was unilaterally placed by her parents at New Haven. The Silver Hill discharge states that A.S. was going to New Haven. A.S. had consultations for eating disorder. At this time she stated that her addictions were drinking, self-harm, an eating disorder, and promiscuity. Her parents were in contact with New Haven on May 5, 2014. Dr. Tuite could not find any documentation that A.S.'s parent's contacted Teaneck prior to May 5, 2014, regarding placing A.S. at New Haven.

Silver Hill left a message for Stone on April 24, 2014, stating that A.S. was going to New Haven on May 23, 2014. This was the first notice the district received. Dr. Tuite does not know if there were conversations between J.S. and Stone at that time. The district was sent five letters from A.S.'s attorney from May 5, 2014, to May 21, 2014, regarding her need for a residential therapeutic school. Dr. Tuite believes that the district did not respond to these letters. She does not know if V.S. spoke to the case manager before A.S. was placed in New Haven. The Silver Hill records state that A.S. needs a residential level of care but nothing about academics is mentioned.

A Master Treatment Plan (MTP) at New Haven dated May 27, 2014, was done by Jeff Finch (Finch) for A.S. It references the 2012 and 2013 evaluations of A.S. There is no mention of the Teaneck evaluations, IEP, or Sage in the MTP. Teaneck had no input in the MTP. The discharge criteria at New Haven had twenty-two bullet points listed—none of which were educationally related. The MTP does not use the word academic. The New Haven enrollment agreement for A.S. was executed on May 27, 2014. Dr. Tuite has not spoken to anyone at New Haven. Documents submitted to Tuite from New Haven state that A.S. fits the medical necessity criteria to be at New Haven.

Sage completed all of the objectives related to A.S.'s problem areas. She was completing eighty percent of her assignments. Her interaction with peers and teachers

at Sage was appropriate. A.S. does not need a residential placement for academic reasons.

Dr. Messing's report noted that A.S. has flashbacks of her assault and does not feel safe in schools and A.S. cannot function in a school environment. She needs a therapeutic boarding school. Dr. Messing's findings about A.S.'s schooling are not consistent with A.S.'s grades. Dr. Yeung is a psychiatrist who also treated A.S. In his report of May 10, 2014, he stated that A.S. needed a therapeutic residential school setting. Dr. Albrecht of Silver Hill in a letter dated May 23, 2014, stated that A.S.'s educational, emotional, and social needs are intertwined and she cannot make educational progress. She needs a residential therapeutic school setting.

Jeffrey Finch

Finch has a Master's degree in social work. He is a licensed social worker. He has worked with people with developmental disabilities. He is a therapist at New Haven. He has worked there since November 2010. He does not have a teaching certificate in New Jersey or Utah. He has never worked in a public school system. He is not a doctor. He collaborates with the teachers at New Haven. He has had training in how the brain operates and dealing with people who have had trauma.

New Haven is a therapeutic residential school for girls with intense issues. One of the main focuses of New Haven is academics. It is a twenty-four-hour therapeutic school. The girls at the school have ADHD, anxiety, and suicidal ideations. It uses the relationship model. New Haven is an accredited school. The teacher-to-student ratio is four to one.

New Haven addresses trust to get students to deal with things that they have locked away to help them get back on track academically.

A.S. has PTSD, the symptoms of which are anxiety, depression, blacking out when reminded of the assaults (trauma), flashbacks, and nightmares. She used books to cope with the nightmares. A.S.'s trauma occurred in a school, so school is a trigger

for A.S.'s PTSD because this is where her trauma occurred. A.S. stated that school, peers, teachers, and subjects were triggers for her trauma.

When she first arrived at New Haven she was not doing well. She would relive her trauma; she resisted going to school; and she would not emotionally connect with others. Sunday nights and Mondays were difficult for her initially. She stated that she could not function. She struggled with going to class. She did not want anyone to touch her. She wanted to isolate and would not socialize with her peers. She had nightmares at New Haven related to her trauma which affected her ability to go to school. She had flashback while in school and had to leave. A.S. attempted to run away from New Haven in July 2014. She had to be put in safety holds. She attempted to run away from New Haven on three other occasions. Her attendance was sporadic in the beginning. She would be given a book if she stayed in class for a week.

A.S. has an anxiety about school bathrooms. She was sexually assaulted in the school bathroom and therefore would not use the bathroom in the school. The staff at New Haven worked with her and she now can use the bathroom in the school. She had flashbacks twice while at school. She was brought to his office with the teacher after the flashback. She could not complete assignments. She had to be helped with building her confidence and relationships. A.S. would dissociate during the school day which interfered with her school work.

A.S. was fearful of school because of the trauma she experienced in a school. Therefore, one of the goals was to resolve her fear and depression. It is educationally necessary for her to overcome her fear of school. Her nightmares and flashbacks were related to school.

Finch did not know that A.S. was on her grade level when she arrived at New Haven. He does not know if quarterly IEP's are done at New Haven. The director of New Haven, John Stewart is a licensed social worker. Finch does not know if Stewart has a teaching certificate. New Haven is accredited by the Joint Commission on Health Care. He does not know if New Haven sent for A.S.'s academic records from Teaneck or Sage. Finch states all of the teachers at New Haven are state certified except the

substitute teachers. He did not know that New Haven recruited Spanish language teachers stating accreditation was preferred but not required.

Finch initially saw A.S. four to five times per week for fifteen to twenty minutes each session. He does not recall receiving any documents from Teaneck regarding A.S. A.S.'s avoidance was related to her trauma. Her trauma interfered with her education. A.S. struggling to go to class is related to her trauma. Now Finch sees her once a week for an hour and a half session. A.S. is also in a recovery group and PTSD group.

There was an MTP for A.S. at New Haven. It listed trauma as one of her primary problems and the biggest concern. Interventions were implemented in school, at the residence, and on weekends. They were necessary for A.S. to get her back to a place where she could function. Parents are part of the treatment plan. Other problem area addressed in the MTP was rebuilding self-worth and establishing healthy relationships. This is educationally necessary because the brain does not work unless it is in a safe place with healthy relationships. At the time the MTP was written, Finch had no relationship with A.S. A.S. has made progress with having healthy relationships. The MTP does not state that school is a trigger for A.S. The school information in the MTP was obtained from Dr. Bunn. The 2012 evaluations of A.S. were the most recent evaluations used when forming the MTP. The MTP does not explicitly state that her problem areas impede her education. The discharge criteria that relates to her academic progress are as follows: A.S. will be able to recall and verbalize traumatic events to her therapist without becoming overwhelmed by negative emotions; A.S. will cope with conflict situations by verbalizing thoughts, feelings, and needs in a positive manner for thirty days prior to discharge; A.S. will develop a relapse-prevention plan for dealing with her substance abuse issues once discharged; and A.S. will demonstrate that she has returned to normal daily functioning and a willingness to share feelings of grief openly.

Finch reviewed an IEP while he was writing the MTP. Everyone that signs the MTP has input into it. Finch prepared the outline of the MTP. The others on the team

contribute to it. The MTP has twenty-two listings under the discharge criteria; however, the IEP is not mentioned in the master treatment plan.

Finch did the psychosocial assessment of A.S. for the MTP. It was done with her the first day she arrived. He received the information in it from A.S. It does not state any educational expectations. He does not know what her grades were at Sage.

Finch spoke to Dr. Messing several times about the MTP. A.S. needs a residential therapeutic school because of the trauma she experienced. She needs help constantly. Prior to coming to New Haven, she was regressing, not going to school, cutting herself, and drinking. She is now getting to a place where she will be going home from New Haven. Her attendance is now seventy-five percent better than it was when she arrived. She thinks better now and is doing well academically. She would not have made the progress that she made at New Haven if she was in a therapeutic day school. If A.S. did not work on her trauma, she would not advance in school. She is confident now and will be able to go to college.

Weekly treatment team notes were done at New Haven. The progress report for the fourth term of the 2013-2014 school year dated June 24, 2014, shows that A.S. had Algebra. The progress report for the fifth term of 2013/2014 school year dated June 24, 2014, does not show any math or science classes but has four study periods. The progress report for the fifth term of 2013/2014 school year dated July 8, 2014, does not indicate any math or science classes. The progress notes from June 2014 through August 2014 rarely show that A.S. had math classes. In September 2014 the progress report shows A.S. had a calculus class. A.S. missed classes in the fall of 2014 because she fell off of a horse.

The treatment note dated July 1, 2014, states that A.S. had not been in class for one week. A July 8, 2014, treatment note its states A.S. was missing assignments and had unexcused absences. A.S. was tardy twice in August 2014. In September 2014 A.S. had one tardy and three unexcused absences. In the October 7, 2014, treatment team note it states that A.S. had two unexcused absences. In the October 14, 2014,

treatment team note it states that A.S. had four unexcused absences. In the November 4, 2014, treatment team note A.S. had two unexcused absences.

Janet Bertelli

Bertelli is the clinical director of Sage. Sage is a high school with students in grades nine through twelve. She has worked in the mental health field since 1971. She has a registered nursing degree. She is a certified school social worker and a licensed clinical social worker. She does intakes at Sage to determine which students can be serviced at Sage. She reviews IEP's and child study teams (CST). Sage presently has eighty-seven students, all of whom are adolescents. Sage is an accredited school and has three campuses. The Rochelle Park campus has a staff of thirty-three; fourteen teachers, nine therapists, and nine associate teachers. Sage follows the New Jersey core curriculum standards.

The academic subjects at Sage are English, history, science, math, and Spanish. Sage school hours are 8:00 a.m. to 2:30 p.m. on Monday, Tuesday, Thursday and Friday. On Wednesday the school hours are 8:30 a.m. to 12:30 p.m. Every Wednesday afternoon the teachers and therapists meet regarding the students. Sage does not provide weekend, late night, or early morning schooling. Sage does not provide at home treatment.

Academically the students are average to above average. The class size is no larger than twelve students; however, most classes have seven to eight students. The related services at Sage are two weekly sessions of group therapy, two weekly sessions of individual therapy, and one weekly session of family therapy.

There are other therapeutic day schools including New Alliance in which the work is done on a more individual basis. Academic work is individualized and there is a psychologist and psychiatrist on staff. Students at this school have to discontinue outside therapy. Sage is a less restrictive therapeutic day school.

Bertelli met with A.S. and V.S. for an intake between November 11, 2014, and November 18, 2014. Prior to the intake she reviewed the educational, psychological, and social reports for A.S. She found that A.S. had average intelligence and was capable of doing average work except in math. She knew that A.S. had experienced an emotional trauma. Initially A.S. was unresponsive during the intake, but later started to talk. A.S. was concerned with her ability to make friends. A.S. and V.S. visited Sage. The social and educational portion of the intake form came from the districts evaluation. Bertelli did not work with A.S. on a daily basis. She was not the treating therapist for A.S. at Sage.

A.S. started at Sage on November 21, 2014. On December 12, 2013, A.S. had a panic attack between classes. She dropped to the floor and began hyperventilating. A.S. wanted to go to the next class, but she began to hyperventilate again. The class was cleared and she was helped to calm down. A.S. was told that if she left the building the police had to be called. She had a subsequent panic attack where she stated that she was going to leave the building. She walked out of class. A.S. was told that she could not leave the building and she complied. A.S. requested a new therapist. She was told to work through the issue with the therapist. Bertelli was not aware that A.S. would not be given homework or have any tests during the spring. Sage minimizes a student's workload if a student is having difficulty.

A.S. was doing well at Sage prior to her second hospitalization in April 2014. Her grades were A's and B's. She had a difficult time with gender studies class, which dealt with women's issues, birth control, as well as lesbian and gay issues. The class had arguments and debates among the students. She was in a lower-level algebra II class. Sage was aware that A.S. had nightmares. A.S. never mentioned any fear of using the bathrooms at school. Bertelli does not remember if A.S. had difficulty coming to school on Mondays. A.S. did not have a pattern of absences. Bertelli did not know that A.S. could no longer take the bus to school in February 2014. Power School Gradebook (power school) is a website where parents can log-in to the teachers log to see the students' grades. Power School changes every day due to input from the teachers.

A.S. made quick attachments with people and then became anxious. She was popular in school. She was generally happy at Sage and had an excellent attitude until March 2014. She did well in group therapy. A.S. did not have any absences in November 2013 and December 2013. She had two absences in January 2014 and four in February 2014. She had three absences in March 2014 in addition to being hospitalized for five days. In April she had one absence in addition to a five-day hospitalization.

On March 12, 2014, A.S. stated that she wanted to leave school and go home. A.S. became frustrated and left. Stone followed her down the stairs. A.S. turned and made gestures with a knife like she was cutting herself. A.S. was brought to the office. Her mother was called and told that A.S. would have to have a psychological evaluation before she could return to school. Bertelli was not aware that Dr. Messing called Stone the day after this incident. A.S.'s deterioration started in March 2014. In April 2014 and May 2014, A.S. was lethargic, not connected, and not outgoing. Bertelli never spoke to A.S.'s private therapist or psychologist, but she believes that Stone did.

Bertelli was aware that A.S. was hospitalized in April 2014. She knows because Sage received a call from the hospital requesting school work for A.S. There was a family re-entry meeting on May 1, 2014. A.S.'s parents were asked to be more compliant with family counseling. They agreed, although they did not mention that they were seeking a residential placement for A.S. A.S. went to Sage three days in May 2014. She appeared to be heavily medicated. After the April 2014 hospitalization Bertelli could not engage A.S. On May 6, 2014, A.S. stated that she would be going away to school. New Haven contacted Sage for A.S.'s records. Sage referred New Haven to Teaneck because Sage no longer had the records. Sage was not contacted regarding a residential placement for A.S. She cannot say whether A.S. needs a residential placement for education. There was no talk between Sage and Teaneck regarding placing A.S. in a residential therapeutic day school or a more restrictive therapeutic day school.

The discharge summary for A.S. was written by Stone. Bertelli signed off on the discharge summary. The discharge summary stated "A.S.'s mood and behavior

deteriorated at school. She could not function academically after the April 2014 hospitalization.”

Marc Tanis

Tanis is an English teacher and assistant teacher at Sage. He has certifications in elementary and secondary school English. He is not a certified special education teacher. The students give written and oral presentations. A.S. was in his junior year English class. He was aware that she experienced a trauma, but is unaware as to the nature of the trauma. On her good days she was helpful with class discussion and confident. Other days she would be withdrawn and quiet. A.S. was an avid reader. She was never disrespectful or defiant in class. She was initially an A- student in his class. At the time she left Sage she was a B+ student in his class. Her grade dropped due to missed assignments. She had friends in class. He became aware that at one point she was not attending school. When she returned to class after her hospitalization, she did not have a problem catching up on the work she missed. Toward the end of her time at Sage, she was less consistent.

Dr. Quenton Harvey

Dr. Harvey has a Ph.D. in clinical psychology with a concentration in adolescent and young-adult treatment and therapy. He worked in the Jordan School district in Utah from 2003-2007 as a school psychologist. However he later testified that he was a psychological interventionist and worked under a psychological supervisor. He received his license in psychology on December 12, 2007. His school psychologist certification has lapsed. He has supervised IEP's and made sure that targets were met and interventions were applied. He worked with approximately seventy students yearly. He presently runs Harvey Psychological Services. He does psychological assessments. As part of his evaluations he issues recommendations including educational recommendations. He is an expert in clinical psychology and psychological assessments.

He observed A.S. at New Haven on December 23, 2014, and January 7, 2015. For the evaluation Harvey spoke to A.S. for three to four hours each day. In addition he spoke to her mother over the phone for over one hour. He observed A.S. in class for one hour. Her parents requested the evaluation for her response to treatment and current social and emotional functioning. They gave him background information about her trauma, suicide attempts, behavior decline, and social interactions. He was also informed that she had PTSD and major depression. The cause of her trauma was that A.S. had been kicked, punched, hit, and sexually abused repeatedly while in middle school. These acts occurred in the bathrooms, stairwells, and empty classrooms. The abuse ended when she graduated from middle school. Certain stimuli can trigger a flashback for A.S. She stated that class, academic settings, schools, bathrooms, hallways, and being around other students were triggers of her trauma. A.S. told Harvey that she did not feel safe using public bathrooms because of her trauma. A.S. did well in the ninth grade. In the eleventh grade her mood and behavior deteriorated.

A.S. stated that prior to attending New Haven; she had difficulty focusing on her work and experienced flashbacks. A.S. had panic attacks while at Sage. At New Haven initially she had difficulty going to class. The teachers helped to get to class and once in class she started being able to function. At the time of her evaluation A.S. was not having nightmares or flashbacks. She now feels that she can be in class and focus.

A.S. was involved in the class discussion during Harvey's visit to New Haven. She was focused when called on. She showed initial anxiety that reduced quickly. The observation took place in English class, which is A.S.'s favorite subject. She was functioning at New Haven at the time of the evaluation. The difference between New Haven and the other school A.S. attended is that A.S. has a greater sense of trust at New Haven and is able to take steps to overcome the trauma. Her flashbacks in the classroom have declined since she has been at New Haven. A.S. needs to be in a therapeutic residential placement based on how she is functioning at New Haven.

The Beck Depression inventory II test measures the current functioning and depression. A.S. had minimal current distress related to depression. The Symptom Checklist 90 Revised (SCL-90-R) is a measure of behavioral issues. The percent is

compared to students of the same age and gender. Lower percents are preferable. A.S. scored high on psychoticism, phobic anxiety, and interpersonal sensitivity. Psychoticism is a measure for interpersonal detachment and perceptual disorder. Phobic anxiety is irrational or magnified beliefs about a threat or concern. Interpersonal sensitivity is feeling inadequate or insecure. A.S.'s emotional state did not likely interfere with her ability to participate in the evaluation.

A.S. feels she is strong now because she can manage her PTSD, nightmares, and flashbacks. A.S. working on PTSD is critical to helping her with her education. A.S. being traumatized and having flashbacks affected her education. The trauma led to her inability to obtain an educational benefit from school. It interfered with her ability to participate in her education. At the time of the evaluation A.S. wanted to do well in school and go to college. Prior to coming to New Haven she struggled to improve academically. She has improved at New Haven. Her success would be derailed if she was not at New Haven. New Haven comprehensively addresses her PTSD and provided therapeutic intervention when necessary. A.S. having help before the school day is important in managing PTSD.

Dr. Harvey wrote a report based on his evaluation of A.S. Sage is not mentioned in his report. No teacher of A.S. is listed in his report. The report does not mention the attendance records for A.S. at Sage. Dr. Harvey did review the Sage discharge summary which stated that A.S.'s mood and behavior were deteriorating at home and school. In May 2014, A.S. only attended Sage for two days due to nightmares. He did not speak to anyone from Teaneck or Sage in regard to A.S.

He reviewed A.S.'s attendance record for a three month period at New Haven which showed solid attendance. He did not reference The New Haven attendance report for A.S. in his report.

Dr. Harvey does not know what grades A.S. received while in school at Sage. He would be surprised to know that A.S. received A's and B's at Sage. He is not aware of any therapeutic day schools in New Jersey. The statement that A.S. struggled in

previous academic settings because of traumatic flashbacks was told to Dr. Harvey by A.S.

Dr. Harvey states that A.S. was not progressing at Sage based on the Sage discharge summary. He does not know if Sage is a traditional school setting. He does not know if Sage is a therapeutic day school. Dr. Harvey does not know about A.S.'s grades and attendance at Sage. He does not know if collaboration occurs at Sage.

A.S. needed a residential therapeutic placement because of her symptoms. Twenty-four-hour staff was necessary to get her to school. A 9:00 a.m. to 3:00 p.m. school setting would not be appropriate for A.S. because of her symptoms.

Dr. Maggee Messing

Dr. Messing has a Doctoral degree in clinical psychology. She has a Master's degree in educational psychology and school psychology. She worked as a school psychologist in Weehawken 2002-2006. Her duties include creating IEP's, counseling, and doing assessments. She case managed forty-five students each year at Weehawken and was on the IEP team of ninety students per year. She is presently in private practice. She works primarily with children and adolescents who have PTSD and anxiety. PTSD results from having a traumatic experience that is life-threatening or extreme experience. It can result in flashbacks. She does not do educational assessments in her private practice.

The parents of A.S. contacted her to treat A.S. She sent a letter to the district dated October 22, 2013, stating that it was unsafe for A.S. to attend a mainstream school. At that time A.S. was not functioning in a school setting or attending school. Dr. Messing recommended that A.S. go to a therapeutic day school. A.S. has severe PTSD, which impedes her ability to function in a school setting. A.S. could not get out of bed. She was having flashbacks of the trauma she experienced. Sage was consistent with her recommendation in the October 22, 2013, letter. Dr. Messing did not do any educational or psychological testing for the October 22, 2013, letter.

A.S. deteriorated while at Sage. She was unable to go to school and when she went to school, she could not complete a full day of school. A.S. was hospitalized four times between 2013 and 2014. In each case the hospitalization was due to A.S. feeling suicidal. At Sage A.S. had flashbacks of the trauma she experienced. She was always in fear that she would be harmed. She was fearful of the school setting because the trauma she experienced occurred in a school. A.S. could not function at Sage. She was not mentally engaged while at Sage. She was not able to get any academic benefit at Sage. A.S. needed a residential therapeutic setting where she could have immediate services to assist her with nightmares and flashbacks.

Messing does not know the date it was determined that A.S. would go to a residential school. She did not attend any of A.S.'s IEP's. Messing's letter of October 22, 2013, and May 12, 2014, does not mention A.S.'s grades or attendance. A.S. was not suicidal when Messing wrote the May 12, 2014 letter.

V.S.

V.S. is the mother of A.S. A.S. went to private school in New Jersey until the first grade. At that time she was diagnosed with a severe learning disability in math. The school wanted A.S. in an inclusion program where she would be in a segregated class. Her parents did not want A.S. in a segregated class. She was sent to Brevier school in the second grade. Her workload was modified at Brevier but she was not provided with special education services from the district at that time.

During the 2007-2008 school year, when A.S. was in the fifth grade, she was bullied by a girl, Jennifer, in the school. The bullying was brought to the administrator, who stated that he would take care of it. A.S. saw a school psychologist while in middle school. When A.S. was in the sixth grade, Jennifer and another girl continued to bully her. In addition to bullying A.S. the girls beat her, bashed her head, and sexually assaulted her. The girls had knives, threatened to kill A.S., and threatened to kill A.S.'s younger sister.

When A.S. was in the ninth grade, her parents discovered that she was looking at inappropriate websites. When she was confronted A.S. said “they hurt me.” A.S. was put into weekly therapy at that time. When she was in the tenth grade A.S. deteriorated emotionally. She was anxious and depressed. V.S. meet with the school psychologist who stated that A.S. was binge drinking. One week later A.S. was found on the floor with her wrists cut. She was taken to a nurse practitioner that day and revealed that she had been physically and sexually assaulted in middle school. A.S. subsequently began treating with Dr. Messing. She was also treating with a psychiatrist, Dr. Yeung, and hypnotherapist.

In July 2013, A.S. was hospitalized because she was having suicidal thoughts. She had intensive treatment at High Focus. In September 2013, A.S. returned to private school. She continued to have nightmares and flashbacks. She could not use the bathroom at school because she was afraid that she would be attacked. A.S. could not get out of bed to go to school. Dr. Messing recommended that A.S. be placed in a therapeutic day school. V.S. contacted Teaneck to begin the process for A.S. to be enrolled in the district. An IEP was done for A.S. and it was agreed that she be placed in a therapeutic day school. A.S. was eligible for services under the multiple disability classification because she had depression, PTSD, and low functioning in math. The depression and PTSD impacted her academic performance. A.S. had difficulty sleeping, nightmares, flashbacks, and panic attacks. She could not be touched.

Once A.S. was in Sage, lockers and sitting in class would remind her of the trauma she experienced. She would not use the bathroom at school. V.S. would have to pick her up at school and take her home to use the bathroom. A.S.’s prescription medication was kept in the office at Sage. A.S. continued having nightmares. She slept one to two hours a night. She continued to have flashbacks. Initially she rode the bus to Sage, but that became a struggle. At one point she could no longer take the bus to school. A.S. was taking thirteen different medications. A.S. received therapy at Sage. Stone was the counselor assigned to her. A.S. would have panic attacks in class and have to go to the office to get her medicine. V.S. often had to pick A.S. up from school because of panic attacks. V.S. did not believe that Stone was qualified to handle A.S.’s serious issues.

V.S. followed A.S.'s grades on power school. (J-11.) She was concerned that A.S. had F's. Her history grade dropped from a B in the second quarter to an F. Her gender studies grade also dropped to an F. V.S. contacted Stone about the grades. V.S. was told that they would suspend homework for A.S. and change her grades. In addition to suspending homework for A.S. her class work and tests were suspended. This did not help because everything at school reminded her of her trauma. Exhibit J-13, A.S.'s report card, has her grades in history and gender studies in the third quarter as B's. The principal arranged for A.S.'s grades to be changed to not reflect how poorly she was doing.

V.S. had to drive A.S. to school every day beginning in February 2014. In February 2014, A.S. was absent from school four times and late once. The attendance records do not show the times when A.S. left school early due to panic attacks. On March 11, 2014, A.S. was hospitalized because she swallowed a bottle of pills and had a knife. She was put on suicide watch in the hospital. She returned to school on March 12, 2014; on that day A.S. had a panic attack at school. She told her therapist that she needed to call home. She was told to wait ninety minutes. A.S. went to the kitchen in the school and began to cut herself. Stone followed her and called V.S. to pick up A.S. A.S. was hospitalized in March 2014 at Silver Hill. V.S. does not believe that A.S. has an alcohol or drug addiction.

On March 20, 2014, A.S. was scheduled to speak to the investigators regarding her being assaulted while in middle school which caused A.S. to have flashbacks. Her parents tried to encourage A.S. to pursue charges against the girls who molested her. A.S. decided that she was not strong enough to pursue the charges.

In April 2014, A.S. was again hospitalized at Silver Hill for a week. V.S. contacted Stone to inform her of the hospitalization. V.S. does not recall stating that A.S.'s problems were due to fiber. V.S. does not believe that A.S. is anorexic. A.S. returned to Sage. Her PTSD manifestations did not improve. V.S. was concerned that A.S. had three hospitalizations while at Sage. Dr. Albrecht, a doctor at Silver Hill, recommended that A.S. be placed in a residential therapeutic school, New Haven, to

address her PTSD. V.S. told Pressley, A.S.'s case manager at Sage, about New Haven. A.S. could not make meaningful progress until her PTSD was addressed. Dr. Messing and Dr. Yeung concurred that A.S. needed a residential therapeutic school.

After the April 2014 hospitalization, A.S. returned to Sage school for three days. In May 2014, A.S. could not return to school due to nightmares, flashbacks, and panic attacks. Her parents daily begged A.S. to go to school but she refused. A.S.'s stayed in bed. While awaiting a residential placement A.S. could not function. She was having panic attacks and nightmares. She lacked sleep. She could not function at school while she was attending.

On May 5, 2014, V.S., through her attorney, sent a letter to Teaneck requesting that A.S. be placed in New Haven's residential therapeutic schools, because of A.S.'s difficulties have continued and Sage is no longer an appropriate placement for her. The doctors at Silver Hill recommended a therapeutic residential school for A.S. V.S. asked the district to contact New Haven. Prior to this letter V. S. spoke to Pressley, who told her to put everything in writing. She also spoke to Stone prior the May 5, 2014 letter. The letter also stated that if Teaneck did not agree with the placement that A.S. would be unilaterally placed at New Haven effective May 23, 2014. V.S. did not receive a response to this letter.

On May 12, 2014, V.S., through her attorney, again sent a letter to Teaneck requesting that A.S. be placed in New Haven residential therapeutic program. V.S. did not receive a response from Teaneck to this letter. On May 19, 2014, V.S. through her attorney sent a letter to Teaneck's attorney attaching a letter from Dr. Messing and again requesting that A.S. be placed at New Haven. V.S. did not receive a response to this letter. On May 20, 2014, V.S.'s attorney again sent a letter to Teaneck's attorney including a letter from Dr. Yeung and again requesting that A.S. be placed at New Haven. On May 21, 2014, V.S.'s attorney again sent a letter to Teaneck's attorney requesting that A.S. be placed in a residential therapeutic placement New Haven. V.S. was in contact with Pressley prior to and while when she was sending the letters to Teaneck requesting A.S. be placed at New Haven. Although V.S. did not receive a direct response from the Teaneck, her attorney received correspondence from Teaneck's

attorney during this time. Teaneck did not contact V.S. regarding scheduling evaluations or an IEP in response to her letters.

During this time A.S. continued to have flashbacks of the trauma. The flashbacks made her physically ill. In addition A.S. continued to have panic attacks. A.S. only felt safe in her room at home. She told V.S. that she was not absorbing anything at school.

A.S. was unilaterally placed at New Haven on May 27, 2014. V.S. is not sure of the exact timeline of when she first contacted New Haven and decided to send A.S. to New Haven. Dr. Albrecht recommended New Haven to V.S. on April 24, 2014. V.S. sent New Haven A.S.'s records from Sage and her prior school including her grades and transcripts. V.S. met with the staff at New Haven and she informed them of the trauma A.S. experienced and her deterioration. She told the staff that A.S. wanted to isolate and avoid school. They had to wait for a space to open at New Haven. Finch was A.S.'s therapist at New Haven. A.S. needed the support that New Haven offers. The MTP came from conversations with V.S. as well as the records of A.S. that were sent to New Haven. A.S. was placed at New Haven by her parents because PTSD and depression were affecting her to the point that she could not attend Sage. Things in school such as lockers, classrooms, bathrooms, and people walking past triggered her PTSD. When A.S. entered New Haven, V.S. did not believe that A.S. was suicidal.

A.S. has progressed at New Haven. Prior to New Haven, A.S. could not use a public bathroom. When she was home would lock the bathroom door and have her sister guard the door when she used the bathroom. Now she can use a school and public bathroom. She attends classes and does her homework. Her PTSD is much better. She no longer has nightmares and her medication has decreased. Her grades have improved. The flashbacks have lessened. She is optimistic about school. A.S. is scheduled to transition from New Haven to her Home in May 2015. She will have her high school degree.

Medical insurance would not pay for New Haven for A.S. stating there was no medical necessity. V.S. does not believe that she and her husband have issues trusting

people. In addition, A.S. was not happy at Sage or doing well at Sage. A.S. was not stable as of April 24, 2014.

Dr. Wilbert Yeung

Dr. Yeung is board certified in child and adolescent psychiatry. His practice is two-thirds children and adolescents and one-third adults. He began treating A.S. in November 2013. She was treated for anxiety, depression, and PTSD. A.S. had a series of traumatic events from the sixth to eight grade which caused her to have nightmares flashbacks and intrusive memories. She avoided school because of the trauma she experienced. From November 2013 to March 2014 he saw A.S. four or five times. He diagnosed A.S. with PTSD, depression, borderline personality disorder, and a sleeping disorder. Borderline personality disorder is characterized by an intense fear of abandonment and rejection, seeing everything in black and white. A person with borderline personality can become suicidal and self-injurious. His diagnosis was based on information from A.S. her parents and Dr. Messing. Her family had a concern as to whether A.S. problems were due to the medication that she took. A.S. was also seeing a hypnotherapist and Dr. Messing. A.S. was taking three anti-depressants, sleep medication, an medication for nightmares.

A.S. reported that she was having problems at school in January 2014. She became upset when a teacher reprimanded her for fooling around in gym class. When a teacher reprimanded her for using a hot water urn while preparing her lunch, A.S. cut herself at school. School was a trigger for her because her trauma occurred in a school. Many times she could not go to school. A.S. had PTSD symptoms while at Sage including flashbacks, nightmares, and being hyper vigilant. A.S.'s mood, academic performance, and attendance declined while she was at Sage. Dr. Yeung never observed at Sage or New Haven.

A.S. was hospitalized in March 2014. Approximately one week prior to that hospitalization she overdosed on Prozac. She could not go to school and locked herself in the bathroom, prior to going to the hospital. After she was discharged, for the next week to ten days she was suicidal and self-injurious.

A.S. was hospitalized in April 2014 straight from a session with Dr. Messing. She was actively disassociating. A.S.'s needs surpass what Sage could offer. A.S. could not consistently get to school. At times when she went to school, she had to leave. He received information as to how A.S. was doing at Sage from A.S. her parents and Dr. Messing. He advocated for A.S. to receive a residential placement. A residential placement is appropriate for A.S. because in a residential placement the school is home and the home is school, A.S. would be followed in all environments.

Dr. Yeung spoke to Dr. Albrecht of Silver Hill regarding A.S. at least once during each of March 2014 and April 2014 hospitalizations. In a March 2014 conversation he told Dr. Albrecht his diagnosis of A.S. as well as her medication history and treatment. He told her of the trauma that A.S. had while she was in school. He also told Dr. Albrecht about stressors for A.S. including a call that she would be receiving from law enforcement regarding filing charges against the girls who molested her. Other stressors for A.S. were difficulty going to school and sexual relationships. Exhibit J-21 page 100 reflects the themes of his conversation with Dr. Albrecht in March 2014. During a conversation with Dr. Albrecht after A.S.'s April 2014 hospitalization he reviewed what had happened between admissions. In his April 2014 conversation with Dr. Albrecht, New Haven was named a possible residential placement for A.S.

Dr. Yeung found out that A.S. would be going to New Haven in May 2014, which was recommended by Dr. Albrecht. He agreed with this placement because after speaking with A.S. and Dr. Messing he realized that A.S.'s needs were not being met at Sage. He is familiar with an IEP but has never been part of a child study team. When A.S. was discharged from the hospital in April 2014, the discharge plan was for her to return to Sage. He saw A.S. one week after that and she was having significant issues at Sage. In May 2014, Sage was no longer the appropriate school for A.S.

Dr. Yeung did not review any of Teaneck's records regarding A.S. He wrote a letter (J-31) at the request of the family. The purpose of the letter was for the insurance company to provide coverage for A.S. It does not address A.S.'s educational needs because Dr. Yeung believed if he addressed her educational needs the insurance

company would not provide coverage for A.S. Sage is one of the better therapeutic day schools.

In light of the contradictory testimony presented by respondent's witnesses and appellant's witnesses, the resolution of this matter requires that I make credibility determinations with regard to the critical facts. The choice of accepting or rejecting the witness's testimony or credibility rests with the finder of facts. Freud v. Davis, 64 N.J. Super. 242, 246 (App. Div. 1960). In addition, for testimony to be believed, it must not only come from the mouth of a credible witness, but it also has to be credible in itself. It must elicit evidence that is from such common experience and observation that it can be approved as proper under the circumstances. See Spagnuolo v. Bonnet, 60 N.J. 546 (1974); Gallo v. Gallo, 66 N.J. Super. 1 (App. Div. 1961). A credibility determination requires an overall assessment of the witness's story in light of its rationality, internal consistency and the manner in which it "hangs together" with the other evidence. Carbo v. United States, 314 F.2d 718, 749 (9th Cir. 1963). A fact finder "is free to weigh the evidence and to reject the testimony of a witness even though not contradicted when it is contrary to circumstances given in evidence or contains inherent improbabilities or contradictions which alone or in connection with other circumstances in evidence excite suspicion as to its truth." In re Perrone, 5 N.J. 514, 521-522 (1950); see D'Amato by McPherson v. D'Amato, 305 N.J. Super. 109, 115 (App. Div. 1997). In order to assess credibility, inferences may be drawn concerning the witness' expression, tone of voice and demeanor. MacDonald v. Hudson Bus Transp. Co., 100 N.J. Super. 103 (App. Div. 1968).

I **FIND** the testimony of the Dr. Tuite with regard to whether Sage continued to be an appropriate placement for A.S. to lack credibility. Dr. Tuite never met A.S. and never spoke to the doctors of A.S. I **FIND** the testimony of Finch to be credible. He testified to the initial problems that A.S. at New Haven and the therapy she received at New Haven. He was detailed in his testimony regarding the nightmares, flashbacks and anxiety A.S. experienced. He acknowledged that he did not know what A.S. grades were when she went to Sage. I **FIND** Bertelli to be credible; however, her testimony as to when A.S. began to deteriorate conflicted. She stated that A.S. deteriorated beginning in April 2014, and then she stated that A.S. began deteriorating in March

2014. She acknowledged that she did not know if A.S. needed a residential placement and that A.S. could not function academically at school after April 2014. I **FIND** Tanis to be credible. He was clear and concise regarding A.S. when she was a student in his class. I **FIND** Dr. Harvey's testimony regarding his examinations of A.S. to be credible. He did not review her grades at Sage. He has previously supervised IEP's. He observed and tested A.S. then gave a clear assessment as to why she needed a residential therapeutic school. I **FIND** Dr. Messing and Dr. Yeung to be credible. Each of them had a history of treating A.S. prior to her placement at New Haven and each was clear as to their treatment of A.S. and how PTSD affected her. I **FIND** V.S. to be credible. She was very concerned about her daughter. She sent A.S. to various mental health professionals to help her. She was in contact with Stone when A.S. was at Sage. She was concerned about A.S. to go to New Haven because it is in Utah but believed it was best for A.S. V.S. testified convincingly about the nightmares that A.S. experienced and the fact that on numerous occasions she had to get A.S. from Sage or A.S. would refuse to go to Sage.

In addition, I **FIND** the following to be **FACT**:

A.S. was repeatedly physically, verbally, and sexually assaulted while she was in a private middle school from the time she was in the sixth grade until she completed the eighth grade. As a result of the assaults she suffers from PTSD and depression. A.S. did not tell anyone about the assaults until she was in the 10th grade.

On December 12, 2013, A.S., while at Sage she had a panic attack between classes. A.S. had other panic attacks while she was at Sage. On March 11, 2014, A.S. was hospitalized because she swallowed a bottle of pills. On March 12, 2014, while at Sage, A.S. stated that she wanted to go home. She became frustrated and went down the stairs. Stone followed her and saw A.S. with a knife making a gesture as if she was going to cut herself. V.S. was called after this incident.

A.S. would not use the bathroom at Sage. V.S. would pick her up at Sage and bring her home to use the bathroom. A.S. was having nightmares at this time. She also had flashbacks at Sage to the trauma that she had previously experienced. She was

fearful of the school setting. School was a trigger for A.S.'s PTSD because she was assaulted repeatedly in a school. A.S.'s attendance records for Sage shows that she had no absences in November or December 2013. She had two absences in January 2014, four absences in February 2014, three absences in addition to the hospitalization in March 2014 and one absence in addition to the hospitalization in April 2014. A.S. went to Sage for three days in May 2014. The attendance record does not reflect the times that A.S. left school early.

A.S.'s grades were in the A to B range while she was at Sage according to report cards. V.S. followed A.S. grades on the Power School website. Her grade in U.S. History 2 went from a B to an F in the second semester and her grade in gender studies went from a B to an F in the second semester. V.S. was concerned because A.S. had F's reflected on Power School in the second quarter. V.S. contacted Stone regarding her concerns. Sage suspended homework, tests, and class work for A.S. Sage also changed her grades so they did not reflect how poorly she was doing. Sage minimizes a student's workload if the student is having difficulties.

When A.S. began at Sage she took the bus to school. Beginning in February 2014, A.S. would not ride the bus. V.S. had to drive her to school every day. On March 20, 2014, A.S. was scheduled to speak with investigators regarding her assault. A.S. decided not to pursue charges against the girls who assaulted her. In A.S.'s quarterly treatment plan for the third quarter at Sage, Stone stated that A.S.'s school performance and attendance had been without issue until recently. In addition she states that A.S.'s moods and behaviors had deteriorated at home and at school. A.S. was binge drinking and doing drugs.

Dr. Albrecht, after A.S.'s April 2014 hospitalization, recommended a residential therapeutic placement for A.S. to address her PTSD. One of the places she mentioned was New Haven. Dr. Yeung and Dr. Messing concurred with Dr. Albrecht that A.S. needed a residential therapeutic placement. After her April 2014 hospitalization, Bertelli could not engage A.S. on the three days that she that she went to Sage. Bertelli also stated that A.S.'s moods, behavior, attendance, and ability to participate in class deteriorated over time while she was at Sage. A.S. deteriorated at Sage. She could not

function. She was having nightmares, flashbacks, and panic attacks. She was refusing to go to school. In the discharge summary, Stone states that A.S. has continued to deteriorate both at home and at school. When A.S. returned to Sage after the April 2014 hospitalization, she only attended Sage for three days due to panic attacks and sleeplessness. When she did attend, she was unable to function.

V.S. spoke to Pressley about A.S.'s need for a residential placement. He told her to write to the district, which she did. On May 5, 2014, V.S. sent a letter to Teaneck through her attorney requesting that A.S. be placed in a residential placement at New Haven because Sage was no longer an appropriate placement for A.S. It stated that Silver Hill, Dr. Messing and Dr. Yeung agreed that A.S. needed a residential therapeutic placement. It also stated that if Teaneck did not agree that A.S. would be unilaterally placed at New Haven. V.S. sent additional letters requesting A.S. placement in New Haven to Teaneck on May 12, 2014, May 19, 2014, May 20, 2014, and May 21, 2014. Although Teaneck did request reports from A.S.'s doctors it did not schedule a new IEP, contact New Haven or respond directly to V.S. request that A.S. be placed in a residential placement. V.S. researched residential placements for A.S. other than New Haven. She does not remember when she specifically decided that New Haven was the residential placement that she chose for A.S. A.S. was not suicidal when she was placed at New Haven.

Finch created a MTP for A.S. at New Haven. He did a psychological assessment of A.S. for the MTP on the day that she arrived. The MTP does not state that school is a trigger for A.S. or explicitly states that her PTSD impeded her education. The discharge criterion does not explicitly list any academic goals for A.S. Finch was the therapist for A.S. at New Haven. He initially saw her four to five times a week for approximately twenty minute sessions.

When A.S. began at New Haven, she resisted going to school. She had flashbacks in school and had to leave. She attempted to run away from New Haven on four occasions. She struggled to go to class, had nightmares, flashbacks, and had anxiety about the school bathrooms. The MTP at New Haven listed trauma as A.S.'s primary problem. It relied on 2012 evaluations of A.S. It does not explicitly state that the

trauma impedes A.S. in educational areas. A.S. ability to manage her PTSD increased while she was at New Haven. A.S attendance increased seventy-five percent while she was at New Haven. Her ability to control her PTSD allowed her to be able go to classes without triggering flashbacks and focus on her education.

Academically A.S. had algebra class at New Haven. She also had a calculus class as reflected in the progress notes of September 2014 at New Haven. A.S had unexcused absences in October 2014 and November 2014.

A.S.'s PTSD interfered with her education at Sage and initially at New Haven. A.S. was assaulted in a school, in particular in the bathroom and empty classrooms throughout her time in middle school. School, therefore, was a trigger for A.S.'s PTSD.

LEGAL ANALYSIS AND CONCLUSIONS

The IDEA provides federal funds to assist participating states in educating disabled children. Hendrick Hudson Cent. Sch. Dist. Bd. of Educ. v. Rowley, 458 U.S. 176, 179, 102 S. Ct. 3034, 3037, 73 L. Ed. 2d 690, 695 (1982). One of purposes of the IDEA is “to ensure that all children with disabilities have available to them a [FAPE] that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living.” 20 U.S.C.A. § 1400(d)(1)(A). In order to qualify for this financial assistance, New Jersey must effectuate procedures that ensure that all children with disabilities residing in the state have available to them a FAPE consisting of special education and related services provided in conformity with an IEP. 20 U.S.C.A. §§ 1401(9), 1412(a)(1). The responsibility to provide a FAPE rests with the local public school district. 20 U.S.C.A. § 1401(9); N.J.A.C. 6A:14-1.1(d). The district bears the burden of proving that a FAPE has been offered. N.J.S.A. 18A:46-1.1.

The United States Supreme Court has construed the FAPE mandate to require the provision of “personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction.” Rowley, supra, 458 U.S. at 203, 102 S. Ct. at 3049, 73 L. Ed. 2d at 710. New Jersey follows the federal standard that the

education offered “must be ‘sufficient to confer some educational benefit’ upon the child.” Lascari v. Bd. of Educ. of Ramapo Indian Hills Reg’l High Sch. Dist., 116 N.J. 30, 47 (1989) (citing Rowley, supra, 458 U.S. at 200, 102 S. Ct. at 3048, 73 L. Ed. 2d at 708). The IDEA does not require that a school district “maximize the potential” of the student, Rowley, supra, 458 U.S. at 200, 102 S. Ct. at 3048, 73 L. Ed. 2d at 708, but requires a school district to provide a basic floor of opportunity. Carlisle Area Sch. v. Scott P., 62 F.3d 520, 533–34 (3d Cir. 1995). In addressing the quantum of educational benefit required, the Third Circuit has made clear that more than a “trivial” or “de minimis” educational benefit is required, and the appropriate standard is whether the IEP provides for “significant learning” and confers “meaningful benefit” to the child. T.R. v. Kingwood Twp. Bd. of Educ., 205 F.3d 572, 577 (3d Cir. 2000); Ridgewood Bd. of Educ. v. N.E., 172 F.3d 238, 247 (3d Cir. 1999); Polk v. Cent. Susquehanna Intermediate Unit 16, 853 F.2d 171, 180, 182-84 (3d Cir. 1988), cert. den. sub. nom. Cent. Columbia Sch. Dist. v. Polk, 488 U.S. 1030, 109 S. Ct. 838, 102 L. Ed. 2d 970 (1989). In other words, the school district must show that the IEP will provide the student with “a meaningful educational benefit.” S.H. v. State-Operated Sch. Dist. of Newark, 336 F.3d 260, 271 (3d Cir. 2003). This determination must be assessed in light of the individual potential and educational needs of the student. T.R., supra, 205 F.3d at 578; Ridgewood, supra, 172 F.3d at 247-48. The appropriateness of an IEP is not determined by a comparison of the private school and the program proposed by the district. S.H., supra, 336 F.3d at 271. Rather, the pertinent inquiry is whether the IEP offered a FAPE and the opportunity for significant learning and meaningful educational benefit within the least restrictive environment.

Toward this end, an IEP must be in effect at the beginning of each school year and be reviewed at least annually. 20 U.S.C.A. § 1414 (d)(2) and (4); N.J.A.C. 6A:14-3.7. A complete IEP must contain a detailed statement of annual goals and objectives. N.J.A.C. 6A:14-3.7(e)(2). It must contain both academic and functional goals that are, as appropriate, related to the Core Curriculum Content Standards of the general education curriculum and “be measurable” so both parents and educational personnel can be apprised of “the expected level of achievement attendant to each goal.” Ibid. Further, such “measurable annual goals shall include benchmarks or short-term objectives” related to meeting the student’s needs. N.J.A.C. 6A:14-3.7(e)(3). The New

Jersey Supreme Court has recognized that “[w]ithout an adequately drafted IEP, it would be difficult, if not impossible, to measure a child’s progress, a measurement that is necessary to determine changes to be made in the next IEP.” Lascari, supra, 116 N.J. at 48.

Parents who withdraw their child from public school and unilaterally place the child in a private placement while challenging the IEP may be entitled to reimbursement if the administrative law judge (ALJ) finds that the school district’s proposed IEP was inappropriate and that the parents’ unilateral placement was proper. Florence County Sch. Dist. Four v. Carter, 510 U.S. 7, 12, 114 S. Ct. 361, 365, 126 L. Ed. 2d 284, 292 (1993); School Comm. of Burlington v. Mass. Dep’t of Educ., 471 U.S. 359, 370, 105 S. Ct. 1996, 2002-03, 85 L. Ed. 2d 385, 395 (1985.) More particularly, an ALJ may require the district to reimburse the parents for the cost of that enrollment if “the district had not made a free, appropriate public education available to that student in a timely manner prior to that enrollment and . . . the private placement is appropriate.” N.J.A.C. 6A:14-2.10(b); see 20 U.S.C.A. § 1412(a)(10)(C)(ii). However, parents who unilaterally withdraw their child from public school and place the child in a private school without consent from the school district “do so at their own financial risk.” Burlington, supra, 471 U.S. at 374, 105 S. Ct. at 2004, 85 L. Ed. 2d at 397. If it is ultimately determined that the program proposed by the district affords the child with a FAPE, then the parents are barred from recovering reimbursement of tuition and related expenses. Ibid. A court may reduce or deny reimbursement costs based on the parents’ unreasonable behavior during the IEP process. 20 U.S.C.A. § 1412(a)(10)(C)(iii). In this regard, the cost of reimbursement “may be reduced or denied” if, at the most recent IEP meeting the parents attended prior to the removal of the student from the public school, the parents did not inform the IEP team that they were rejecting the IEP proposed by the district; if the parents did not give written notice to the district of their concerns or intent to enroll their child in a nonpublic school at least ten business days prior to the removal of the student from the public school; or upon a judicial finding of unreasonableness with respect to actions taken by the parents. N.J.A.C. 6A:14-2.10(c)(1), (2), (4).

The issue in this matter is the unilateral placement of A.S. at New Haven. The

first issue in this analysis is whether Teaneck provided A.S. with a free appropriate public education (FAPE). The IEP determined that A.S. was multiply disabled with major depression, PTSD, a severe learning disability in math, and processing disability requiring a therapeutic day school. It is clear that the parties agreed that the PTSD and depression were impeding A.S. ability to achieve meaningful educational benefit and therefore it was agreed that she be placed in a therapeutic day school. A.S. began to regress at Sage in March 2014. Her grades were declining. Teaneck suspended homework, class work, and tests for A.S. and altered her grades. Her grades, mood, and behavior deteriorated in or around March 2014. A.S. attendance deteriorated around this time. She had difficulty physically going to school because of nightmares and flashbacks at this time. Stone noted that A.S.'s regression beginning after her March 2014 hospitalizations. A.S. regressed from March 2014 until she left Sage. In May 2014 A.S. could no longer function at Sage. This was noted by Stone in the discharge summary. A.S.'s PTSD was inextricably related to her inability to receive educational benefit. Her regression and inability to function at Sage was due to her PTSD. Teaneck was informed by V.S. that a residential placement at New Haven was recommended and that she was requesting a residential placement for A.S. on May 5, 2014. V.S. made five requests from May 5, 2014, through May 21, 2014. Teaneck requested documents through petitioner's attorney regarding A.S. but did not schedule a new IEP or contact V.S. regarding a change to a residential placement for A.S. I **CONCLUDE** that Teaneck did not provide FAPE to A.S. She regressed at Sage beginning in March 2014. After her April 2014 hospitalization she only went to Sage three times and she could not function while there. Since March 2014 A.S. was not receiving a meaningful educational benefit at Sage due to her PTSD.

The next issue is whether New Haven was an appropriate placement for A.S. implicit in that issue is whether A.S. required a residential placement. The Court in D.B. ex rel. R.H. v Ocean Township Board of Education, 985 F. Supp. 457 (D.N.J. 1997), aff'd, 159 F.3d 1350 (3d Cir. 1998), listed the following nine areas of inquiry in determining if residential placement is appropriate:

First: Consider the steps the school district has taken to try to include the child in a special class within a regular or local community-based school setting ("a local placement"),

including curriculum, supplementary services, and mainstream opportunities.

Second: Compare the educational benefits the child will receive in the local placement (with supplementary aids and services) to the educational benefits the child will receive in the more segregated setting of residential placement.

Third: Consider the possible effects the child's inclusion may have on the education of the other students in the local placement class and in the school.

Fourth: Was the child experiencing physical or emotional conditions which fundamentally interfered with the child's ability to learn in a local placement.

Fifth: Was the child's behavior so inadequate, or was regression occurring to such a degree, as to fundamentally interfere with the child's ability to learn in a local placement.

Sixth: Before the dispute arose, did any health or educational professionals actually working with the child conclude that the child needed residential placement for educational purposes.

Seventh: Did the child have significant unrealized potential that could only be developed in residential placement.

Eighth: Did past experience indicate a need for residential placement. Id. at 493.

Ninth: Was the demand for residential placement primarily to address educational needs.

A.S. was originally in Sage which is a therapeutic day school. At a residential placement, A.S. can get round the clock assistance with PTSD. Managing the PTSD will allow A.S. to receive educational benefit. While she was at Sage from March 2014 through May 2014, A.S. regressed to the point of not being able to function at Sage due to the PTSD. While she was at Sage a classroom had to be cleared due to A.S. experiencing a panic attack. Her PTSD caused her to regress while at Sage beginning in March 2014, which affected interfered with her ability to learn in Sage. She regressed to the point of refusing to go to school in May 2014. Dr. Albrecht concluded that A.S. needed a residential placement during her April 2014 hospitalization. Dr Messing and Dr. Yeung concurred with this assessment. A.S.'s assaults occurring at a

school is the root of her PTSD. She had nightmares and flashbacks due to the trauma. Her inability to manage the PTSD led to her refusal to go to school because being in classrooms or school bathrooms could cause flashbacks. A.S. did not have suicidal ideations at the time she enrolled in New Haven, or once she was released from the hospital in April 2014. A residential placement was appropriate for A.S. She was in a therapeutic day school; her grades began to drop to the point that V.S. became concerned about it and Sage changed her grades and excused her from tests and homework. I **CONCLUDE** that a residential therapeutic placement is appropriate for A.S.

The next issue is whether New Haven was an appropriate placement. New Haven is an accredited school. Classes are from 8:15 a.m. to 2:00 pm. There are several students with IEP's which New Haven follows. The MTP for A.S. addresses the trauma A.S. experiences. It implements interventions to deal with her trauma. These interventions were implemented in school, on weekends, and at the residence at New Haven. A.S. initially had difficulty at New Haven but her attendance improved seventy-five percent from the time she arrived at New Haven until the present.

A.S. had access to therapists after school at nights and weekends. A.S. being able to manage her PTSD allowed her to access her education and improve academically. The lessening of her flashbacks and nightmares, a function of her PTSD allowed her to function in an academic setting. New Haven was an appropriate placement for A.S.

Both parties reference the case of Munir v. Pottsville Area School District, 723 F.3d 423 (2013). In that case the student O.M. had mental health problems. The district initially created a Rehabilitation Act Plan for O.M. Subsequently he attempted suicide and was placed by his parents in a residential therapeutic treatment center. The residential therapeutic treatment center had a full school day which met the state's educational standards. The parents of O.M. filed a due process hearing requesting among other things tuition reimbursement. The facts in Munir can be distinguished from the facts in this matter. O.M. prior to going to the residential therapeutic placement center generally attended and participated in his classes. He was attending the local

high school. His grades improved after he dropped an honors math class and took regular math. In contrast, A.S. had difficulty attending school. She was attending a therapeutic day school. Her mother had to pick her up from school on several occasions. Her grades dropped causing Sage to change her grades and excuse her from doing homework, class work, and taking tests. After the second hospitalization in April 2014, she only attended Sage for three days.

Munir was sent to the residential therapeutic placement primarily for mental health treatment to keep him safe from the effects of his depression which lead to suicidal threats. Id. at 429. A.S.'s PTSD was inextricably intertwined with her not being able to receive educational benefit at Sage. School is a trigger for A.S. because her trauma occurred in a school. Sage stated that she deteriorated and that she could not function at the time of her discharge. A.S.'s had to be able to manage her PTSD in order to receive an educational benefit. A.S. was not suicidal when she was placed at New Haven.

The next issue is the notice V.S. gave to Teaneck regarding the unilateral placement of A.S. N.J.A.C. 6A: 14-2.10(c)(2) provides:

The parents must provide notice to the district board of education of their concerns and their intent to enroll their child in a nonpublic school at public expense. The cost of reimbursement described in (b) above may be reduced or denied:

2. At least 10 business days (including any holidays that occur on a business day) prior to the removal of the student from the public school, the parents did not give written notice to the district board of education of their concerns or intent to enroll their child in a nonpublic school

In this case V.S. through her attorney sent a letter to Teaneck on May 5, 2014, informing the school that it was requesting a residential placement of A.S. at New Haven and that if this was not provided by Teaneck, that she would unilaterally place A.S. effective May 23, 2014. V.S. through her attorney sent Teaneck four follow up letters. A.S. last day at Sage according to the attendance log was May 14, 2014. She was not removed at that time, she refused to attend school. She was placed at New

Haven on May 27, 2015. I **CONCLUDE** Petitioners provided Teaneck with more than ten business days' notice that they would unilaterally place A.S.

ORDER

It is hereby **ORDERED** that the relief requested by petitioners be **GRANTED**.

This decision is final pursuant to 20 U.S.C.A. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2010) and is appealable by filing a complaint and bringing a civil action either in the Law Division of the Superior Court of New Jersey or in a district court of the United States. 20 U.S.C.A. § 1415(i)(2); 34 C.F.R. § 300.516 (2010). If the parent or adult student feels that this decision is not being fully implemented with respect to program or services, this concern should be communicated in writing to the Director, Office of Special Education.

August 24, 2015

DATE

ljb

KIMBERLY A. MOSS, ALJ

APPENDIX

WITNESSES

For Petitioners:

Jeffrey Finch
Dr. Quenton Harvey
Dr. Maggee Messing
Dr. Wilbert Yeung
V.S.

For Responder:

Dr. Maura Tuite
Janet Bertelli
Marc Tanis

EXHIBITS

Joint Exhibits

- J-1 IEP dated April 5, 2013
- J-2 IEP Dated November 19, 2013
- J-3 Request for Due Process Hearing Dated June 9, 2014
- J-4 Answer to Due Process Claim Dated June 20, 2014
- J-5 Psychological Report Dated November 6, 2013
- J-6 Social Assessment Dated October 28, 2013
- J-7 Letter from Dr. Messing Dated October 22, 2013
- J-8 Educational Evaluation Dated March 21, 2012
- J-9 Report Card of Teaneck Public Schools Dated November 21, 2013
- J-10 Sage Initial Contact and Intake Form
- J-11 SAGE Power School grades and attendance
- J-12 Sage attendance records from November 2013 to May 2014
- J-13 Sage report cards from November 2013 to May 2014

- J-14 Sage Discharge Summary
- J-15 Sage Quarterly Treatment Plan Summaries
- J-16 Sage log entries
- J-17 Bruirah High School transcript
- J-18 Manhattan High School for Girls recommendation of elementary school principal
- J-19 Initial referral to Special Education Committee
- J-20 Yeshiva Cumulative Record
- J-21 Silver Hill Medical Records from March 19, 2014, to March 25, 2014
- J-22 Silver Hill Discharge Summary from March 19, 2014, to March 25, 2014
- J-23 Silver Hill Medical Records from April 24, 2014, to April 30, 2014
- J-24 Silver Hill Medical Discharge Summary from April 24, 2014, to April 30, 2014
- J-25 New Haven Master Treatment Plan Dated May 27, 2014
- J-26 New Haven Psychiatric Evaluation Dated June 5, 2014
- J-27 New Haven Psychological Assessment Dated May 27, 2014
- J-28 Janet Bertelli, R.N. Curriculum Vitae
- J-29 Dr. Nagy Report Dated November 6, 2013
- J-30 Letter from Lori Gaines to Maureen Edwards Dated May 5, 2014
- J-31 Letter from Wilbert Yeung Dated May 10, 2014
- J-32 Letter from Lori Gaines to Isabel Machado Dated May 12, 2014
- J-33 Letter from Dr. Maggee Messing Dated May 12, 2014
- J-34 Letter from Lori Gaines to Isabel Machado Dated May 19, 2014
- J-35 Letter from Lori Gaines to Isabel Machado Dated May 20, 2014
- J-36 Letter from Lori Gaines to Isabel Machado Dated May 21, 2014
- J-37 Letter from Dr. Ava Albrecht Dated May 23, 2014
- J-38 New Haven Enrollment Agreement Dated May 27, 2014
- J-39 Letter from Lori Gaines to Isabel Machado Dated June 2, 2014
- J-40 New Haven Letter Dated September 18, 2014
- J-41 Letter from Lori Gaines to Isabel Machado Dated September 19, 2014
- J-42 Dr. Maggee Messing Curriculum Vitae
- J-43 Dr. Wilbert Yeung Curriculum Vitae
- J-44 Jeffrey Finch Curriculum Vitae
- J-45 Dr. Quenton Harvey Curriculum Vitae
- J-46 Report of Dr. Quenton Harvey

- J-47 Dr. Maura Tuite Curriculum Vitae
- J-48 New Haven Records Pages 1-1299
- J-49 New Haven Website