State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. EDS 14726-16

AGENCY DKT. NO. 2017 25205

D.M. ON BEHALF OF L.M.,

Petitioner,

v.

RIDGEWOOD VILLAGE BOARD OF EDUCATION,

Respondent.

_____

D.M., pro se

David Rubin, Esq., for respondent

Record Closed: January 31, 2017 Decided: February 23, 2017

BEFORE **ELLEN S. BASS**, ALJ:

STATEMENT OF THE CASE

In accordance with the provisions of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C.A. § 1415, D.M. has requested a due-process hearing on behalf of his daughter, L.M., who is classified as eligible for special education and related services. The issue presented in this case is narrow. The parties agree that the least restrictive environment in which L.M., a seventeen-year-old student who is classified as emotionally disturbed (ED), can receive a free appropriate public education (FAPE) is an out-of-district therapeutic day school. There is agreement that L.M. has significant psychiatric needs. The parties only disagree as to where those needs should be met.

The Ridgewood Board of Education (the Board), through its Child Study Team (CST), has proposed placement at the Cornerstone Day School in Mountainside, N.J. D.M. has unilaterally placed his daughter at the Robert Louis Stevenson School (RLS) in New York City, and asserts that the law requires that she remain there at Board expense.

PROCEDURAL HISTORY

D.M.'s request for a due-process hearing was received by the Office of Special Education Programs on September 12, 2016. The contested case was transmitted to the Office of Administrative Law (OAL), where it was filed on September 30, 2016. A pre-hearing conference was conducted on October 11, 2016, and a pre-hearing order that detailed the procedures to be followed in preparing for the hearing was sent to the parties. At that time, D.M. indicated that he would be representing his daughter pro se.

Hearings were conducted on November 16 and 28, 2016, and on December 7, 2016. On the first day of hearing, counsel for the Board indicated that he had not received the discovery required by the "five-day rule." N.J.A.C. 1:6A-10.1. As the rule provides that "upon application of a party, the judge shall exclude any evidence at hearing that has not been disclosed to that party at least five business days before the hearing," counsel asked that I bar D.M. from presenting his case.

D.M. offered a variety of excuses for his noncompliance, to include ignorance of the rule, notwithstanding that it was cited in my prehearing order. D.M. advised that he had not received a copy of my order. In view of his pro se status, and in the spirit of ensuring that I based my decision on a fully developed record, I denied counsel's request and set up a timeline for production of expert reports and witness summaries that would allow counsel to receive that information prior to the second day of hearing. I also handed an additional copy of the prehearing order to petitioner. The Board presented its witnesses on November 16, 2016. Petitioner forwarded limited discovery to Board counsel on or about November 21, 2016, via email, but included no expert

reports. Nonetheless, I allowed him to proceed in presenting his case on November 28, 2016.

The Board asked for leave to present one rebuttal witness, which I granted, and it was agreed that this witness would testify on December 7, 2016. At no time prior to the week of December 5, 2016, did petitioner indicate that he wished to secure counsel. On December 5, 2016, at 3:23 p.m., I received a letter from Michael Inzelbuch, Esq., in which he purported to enter an appearance in the case. Mr. Inzelbuch asked for an adjournment, so that he could "obtain records/documents and assess the matter fully prior to the hearing commencing." I wrote to him and Mr. Rubin, counsel for the Board, via email on December 6, 2016. I advised that the hearing was nearly complete but for one brief rebuttal witness, and that I would not reopen the record or adjourn the scheduled hearing date. With those provisos in mind, I stated I would permit Mr. Inzelbuch to participate in the December 7, 2016, proceeding.

Mr. Inzelbuch called and emailed several times on December 6, 2016, expressing that he was ill and unable to come to the hearing the next day. He asked that the matter be rescheduled for a later, but previously agreed upon, hearing date. Mr. Rubin expressed concern about witness availability; accordingly, I directed that the matter proceed on December 7, 2016, as planned. My assistant alerted me that Mr. Inzelbuch sought to confer with me via telephone, but I was on the bench hearing an unrelated matter, and could not accommodate his request.

On the morning of December 7, 2016, petitioner appeared without counsel, and asked if I could conduct a telephone conference with Mr. Rubin and Mr. Inzelbuch. I declined to do so, reiterating on the record that Mr. Inzelbuch's late entry in the case was quite irregular. I pointed out that my prehearing order made it clear that substitutions of attorney would not be permitted if they caused postponements of the proceeding. Since I had no intention of adjourning the hearing, I advised that I saw no need for a telephone conference.

The hearing proceeded as planned, with D.M. continuing to represent his daughter pro se. An additional hearing date of January 31, 2017, was scheduled, and was adjourned upon receipt of written summations, at which time the record closed.[1]

FACTUAL DISCUSSION

Background

It is uncontroverted and I **FIND** that the parties had previously disagreed about how best to address L.M.'s educational needs. A prior due-process petition, filed on L.M.'s behalf by counsel, was amicably resolved on January 4, 2016. That earlier petition sought placement at RLS for the 2015–2016 school year at Board expense. In a comprehensive settlement document, it was agreed that the Board would provide partial reimbursement in the sum of $47,000 for the parents' unilateral placement at RLS. In so agreeing, the Board stipulated that L.M. had been withdrawn from the Ridgewood Public School System; that her parents accepted full responsibility for their daughter's educational decision-making; and that "the Board's child study team [had] no responsibility to supervise, evaluate, case manage or otherwise involve themselves with . . . [L.M.'s] education during the 2015–2016 school year, or at any time in the future until [the] parents elect to re-enroll [L.M.] in the district."

The agreement also stipulated that if her parents wished to reenroll L.M. for the 2016–2017 school year, they would so advise the Board, through its CST, no later than December 31, 2015, and that the CST would conduct any needed testing no later than March 31, 2016. The obvious intent of this provision was to ensure adequate time to make informed educational decisions for L.M. for the 2016–2017 school year. The agreement stated that L.M.'s parents had been afforded ample opportunity to consult with their attorney, and that they fully understood the terms of the settlement document.

[1] In or about late December 2016, I was informed by counsel for the Board that Mr. Inzelbuch was no longer representing the petitioner. A letter to Mr. Inzelbuch seeking confirmation of that fact went unanswered. By letter dated January 4, 2017, Beth Manes, Esq., advised that she had been retained by petitioner to assist in the drafting of a post-hearing brief. I replied via letter dated January 5, 2017, that while I would review any brief submitted, including one she assisted in drafting, I would not amend my file to reflect that she was counsel of record at this late date in the proceeding.

But neither D.M. nor his wife, E.M., timely communicated with school personnel. Rather, via a letter from their attorney dated March 11, 2016, counsel for the Board was advised that the parents were now seeking an extended-school-year program at RLS for the summer of 2016, and placement at RLS for the 2016–2017 school year. The district became aware that the family wished to reenroll L.M. several days later, and a March 22, 2016, email from the guidance department confirmed receipt of registration materials, but expressed confusion as to when the family wished that registration to be effective. E.M. responded that she thought her daughter was already enrolled in the public schools. But E.M. then went on to admit that she had failed to reenroll her daughter by December as she was obliged to do, and she asked the guidance secretary to back-date the registration, ostensibly in an effort to rectify her error. But at the hearing, E.M. testified that she had never read the settlement agreement but had simply signed it on her lawyer's advice. She thus claimed to be unaware that she was obliged to reenroll her daughter by December 2015 if she desired educational services at public expense for any time period subsequent to the 2015–2016 school year.

Notwithstanding her parents' lateness in reenrolling her, the CST proceeded to assess L.M.'s status and plan for her educational future. A social assessment was conducted in May and June 2016; a psychological assessment in May 2016; and an educational evaluation in May 2016. At a June 14, 2016, Individualized Education Program (IEP) meeting, it was agreed that L.M. remained eligible for classification under the ED category, and that her needs necessitated an out-of-district placement in a therapeutic setting. Her parents made it clear that they wanted L.M. to continue at RLS, and a recording of the ensuing discussion confirms that D.M. perceived that the CST was not open to this option. But no specific placement was agreed upon.

In early August 2016, the family alerted the district that they were no longer represented by counsel. An IEP meeting took place on August 24, 2016, and a proposed IEP was forwarded to the parents via letter dated August 26, 2016. That IEP confirmed that L.M. continued to require placement in a therapeutic day school. The IEP proposed placement in the Cornerstone Day School. A September 8, 2016, letter from D.M. expressed dissatisfaction with the CST recommendation and stated that he

and his wife "would like [L.] to remain at the Robert Louis Stevenson School in NYC for the 2016–2017 school year." Thus, school personnel were clearly aware of the family's dissatisfaction with the proposed IEP, and, indeed, had known as early as March 2016 that their preference was to have L.M. continue at RLS. But I **FIND** that at no time after receiving the August 2016 IEP did the family send a letter to the district specifically indicating that they intended to unilaterally place their child at RLS and pursue reimbursement at public expense, as required by N.J.A.C. 6A:14-2.10(c)(2).

L.M.'s Educational and Psychiatric History

E.M. shared the history of her daughter's significant emotional difficulties. I **FIND** that these first became evident at seven years of age; a psychiatrist suspected bipolar disorder and prescribed medication. In 2010 the family relocated from New York City to Ridgewood; L.M. was then in fifth grade. It was a difficult adjustment, and L.M. was socially isolated.

At the end of sixth grade, L.M. told her mother that she heard voices telling her to hurt herself because she was fat and ugly. She attended public school in seventh grade, but began to engage in school-avoidant behaviors. A therapeutic out-of-district placement at Sage Day School was recommended by the CST, but the family was uncomfortable with the program there. For the 2013–2014 school year, E.M. and D.M. withdrew their daughter from the public schools and enrolled her at a parochial school, Academy of Our Lady. E.M. is a physician, and also in 2013 she closed her New York practice so that she could better focus on her daughter's needs.

The parochial-school placement was not successful. L.M. was not thriving; she would often refuse to attend, and when pushed to go to school would tantrum. She remained at Academy of Our Lady until Thanksgiving; her parents withdrew her; and she attended High Focus, an outpatient psychiatric placement. Upon her discharge, L.M. was placed on homebound instruction, and ultimately in an out-of-district program, New Alliance Academy, for the remainder of her eighth-grade year. But this too proved to be an unsuccessful placement. Although the school offered what E.M. described as

"a lot of therapy," her daughter found the school to be a "scary place," and she begged not to return. In desperation, and at L.M.'s urging, it was agreed that the family would give Ridgewood High School a try for L.M.'s ninth-grade year.

L.M. attended Ridgewood High School until in or about March 2015. It is a large, busy school, and although she was supported with in-school counseling, L.M. felt ostracized by her peers. Her school-avoidant behaviors escalated; L.M. began to experience panic attacks; and she had to be coaxed into the school. When she called her mother and threatened suicide, E.M. pulled her out of school, and after a hospital evaluation L.M. was placed on homebound instruction while her parents and the CST explored next steps. E.M. felt pressured to find a school quickly, and the schools recommended by the CST felt wrong for her daughter.[2]

E.M. and her husband consulted Dr. David Salsberg, a neuropsychologist, who recommended RLS. The family placed L.M. there in the spring of 2015. E.M. urged unpersuasively that she did not realize that this was a unilateral placement; she said that she thought she was supposed to find a school, present it to the school district, and the district then would simply pay for it. It was pointed out to her that her attorney's due-process request described RLS as a "unilateral placement." Echoing her testimony about the settlement document, E.M. replied that she had never read this significant legal document that had been filed on her daughter's behalf.

The Cornerstone School

Dr. Tara Donnelly has been employed by the Ridgewood schools for nineteen years, and holds a Ph.D. in psychology. She serves as L.M.'s case manager this year, and Donnelly tested L.M. in the spring of 2016. She found L.M. to be of high-average intelligence, but to be functioning poorly psychiatrically. She described L.M. as a child with significant school-avoidance issues who was psychologically fragile. Donnelly is familiar with the Cornerstone School, the placement recommended by the CST. She

[2] The parents stressed several times at the hearing that Cornerstone was not offered to them as an option in 2015. School personnel replied that this could have been for any number of reasons, to include the unavailability of space at the school at the time.

noted that at the high-school level, some ten Ridgewood students have been placed there in recent years.

Donnelly felt enthusiastic about Cornerstone as a placement for L.M. She shared that the school required therapy for both the student and family, and had psychological support available twenty-four hours a day. It is the only school in New Jersey that is both accredited academically and licensed to provide mental-health services. The school's brochure indicates that "both the academic and clinical programs at the school have been independently evaluated and approved, reflecting our commitment that both our academic and clinical services are of the highest quality." Donnelly agreed that the school cares for its students therapeutically without sacrificing academics, making Cornerstone a good fit for an academically able student like L.M.

An added plus is that Cornerstone operates a comprehensive school-avoidance program to assist students who, like L.M., allow anxiety to interfere with their ability to come to school regularly. Cornerstone personnel develop a highly individualized therapeutic plan that includes home visits to encourage the child's efforts to leave the house and come to school. Cornerstone has the flexibility to adjust the school day if this is therapeutically appropriate. Likewise, if a student is initially reluctant to engage in therapy, the school is able to develop a plan that recognizes that hesitancy, and gradually integrates the student into the school's therapeutic requirements. The clinical services offered at Cornerstone are impressive, and include weekly individual and family therapy, daily process group, daily dialectical behavior therapy (DBT) informed psycho-educational group, and regular sessions with a board-certified psychiatrist. Donnelly stressed that Cornerstone offers evidence-based treatment and strongly urged that L.M. is a student who requires the therapeutic interventions offered at a school like Cornerstone.

Academically, the school prepares its students to transition to college or the workforce, as appropriate to their capabilities and interests. Most students who graduate from Cornerstone do attend college, and have the opportunity to participate in the "early college" program, which allows seniors to take courses at a local community

college during the regular school day. Students both receive college credit and begin to experience the demands and stressors of college-level work, while at the same time adjusting to these stressors with support via their ongoing therapy.

Donnelly dismissed the concerns about Cornerstone that were raised by the family, and remained steadfast in her view that this was an appropriate placement for L.M. Donnelly was told the school was too restrictive, because students could not keep their cell phones during the day or leave the campus for lunch. But Donnelly responded that these were sensible protocols for emotionally involved students. Social media, which is easily accessed via cell phone, can be a stressor. Off-campus lunch is not a sensible proposition for a student who is looking to avoid attending school.

I heard no convincing evidence that Cornerstone was not an appropriate placement for L.M. Salsberg was admitted as an expert in neuropsychology, and it was noted that in his practice he is called upon to use that expertise in making decisions about special-education placements. He evaluated L.M. in 2015. Salsberg opined that the in-school therapeutic approach used at Cornerstone was ill-suited to her needs, but he also admitted to only limited and second-hand knowledge about the program there. Salsberg's lack of knowledge about Cornerstone was compounded by his lack of knowledge about L.M. and her present levels of functioning. Indeed, he had not seen L.M. or spoken directly to her in a "year or so."

E.M. likewise testified that she did not see Cornerstone as the right setting for her daughter, but her rationale was unpersuasive. E.M. echoed Salsberg's view that providing L.M. with therapeutic interventions to alleviate her school-avoidant behaviors historically made her more school avoidant. This seemed like an unduly pessimistic attitude, and one that did not take into account the fact that Cornerstone, unlike prior placements L.M. had tried, offers a program specifically designed to assist school-avoidant students. In like vein, although all agreed that L.M. is a very psychiatrically involved young woman, her mother urged, again unpersuasively, that she progresses better when her needs are not addressed via therapy during the school day.

Finally, E.M. strenuously asserted that a change from RLS would be detrimental for her daughter. Donnelly agreed that change is always a challenge, but not an insurmountable one. And Salsberg initially testified that a change in placement would put L.M. at risk. But when pressed, Salsberg clarified that he did not mean that L.M. could not change her school, only that a change, if necessary, would have to be thoughtfully made, and to a setting that would replicate the successes her family reported she was experiencing at RLS.

Although Cornerstone is not an approved placement, Donnelly shared that the Department of Education has approved the placement of children from Ridgewood there in the past, under the provisions of the Naples Law. See N.J.S.A. 18A:46-14. I **FIND** that Cornerstone is an appropriate educational program for L.M.

The RLS School

Salsberg has referred students to RLS in the past, and he shared his impressions of the program there. He opined that RLS is the appropriate program for L.M. and that she is doing well there. But as noted earlier, he has not spoken to L.M. in over a year, and he based his opinion on information obtained from school personnel and L.M.'s parents. Two reports completed by Salsberg were admitted into evidence, but these too were over a year old. And the second report, an addendum dated October 2015, contains no indication that he met with his patient, but rather, once again, Salsberg relied exclusively on input from the parents and from RLS personnel in reaching his opinion that RLS remained the appropriate school for L.M.

When Dr. Salsberg initially assessed L.M. in April 2015, he opined that "[L.M.] is presenting with a profile that includes depressed mood and anxiety. Continued close monitoring of her emotional state with a cognitive behavioral therapeutic environment in combination with continued psychopharmacological medication management is warranted." But when he testified before me, Salsberg opined that RLS was a good fit for L.M. precisely because there was no therapy during the school day required, and, instead, students were required to use an outside therapist, and could "drop in" at the

office during the school day as needed. Salsberg noted that the RLS day is informed by DBT concepts, and thus in his view is therapeutic. Although L.M. has to navigate public transportation at rush hour to get to school, and is frequently late or absent, Salsberg indicated that commuting increased her self-esteem and feelings of independence. Salsberg stated that L.M.'s attendance has improved, but, again, he so opined without any first-hand knowledge.

Salsberg's expertise qualified him to reach conclusions that a non-expert, with the same data, could not reach. Bowen v. Bowen, 96 N.J. 36, 50 (1984). But an expert's opinion must be grounded in a solid factual foundation. Salsberg simply did not have appropriate up-to-date first-hand information about L.M. and her educational and psychological status, and, as a result, his opinion was of little value in understanding L.M. and her needs. For the same reason, while Salsberg is undoubtedly familiar with RLS and its program, he was unable to persuade me that L.M. belongs there.

Dr. Lana Farina is a licensed psychologist and the clinical director at RLS. Farina and E.M. agreed that L.M. is making wonderful progress at RLS; that it has been transformative for her; and that she is very happy there. Farina based her view on informal information about L.M.'s progress, having never formally assessed her. During the 2015–2016 school year her grades ranged from "A's" to "C's," but this school year L.M. is earning all "A" and "B" grades. Farina indicated that she felt that student grades accurately reflect performance. She stressed, like Salsberg did, that a DBT approach is woven through the school day, and Farina explained that a "chain analysis" is used to help identify a counterproductive behavior; assess why the behavior is occurring; and determine what changes could better meet the student's goals. She felt that L.M. was more in touch with her feelings, has developed better insight, and visits the office less often. Ongoing support remains available to her, as needed. Additionally, L.M. and all students engage in daily advising sessions, which allow a staff member to assess a student's academic progress, and emotional status and progress.

E.M. urged that RLS has changed L.M. and her outlook dramatically. She happily attends school and is a productive member of a school community for the first time in years. But Ridgewood personnel reply that the facts tell a different story. L.M. continues to have poor attendance, notwithstanding the excuses offered for her chronic absences and tardiness or the fact that Farina, Salsberg, and her parents asserted that although still imperfect, her attendance has improved.[3] Donnelly testified convincingly that a long and difficult commute on public transportation is counterproductive for a student who already has difficulty motivating herself to adopt an efficient morning routine. And she was troubled to learn, when she interviewed staff at RLS, that on occasion, L.M. does make it to New York City in a timely fashion, only still to be late for school because she made a detour to the local Starbucks.

It was clear from E.M.'s testimony, and from the questions asked by her husband, that they perceive that RLS will offer L.M. entrée into an elite college, and that Cornerstone will not. In that vein, D.M. listed the colleges where recent Cornerstone graduates have matriculated, and asked Donnelly, in a rather disparaging tone, whether she thought that these were "good" colleges. They were all four-year colleges whose names were readily recognizable; clearly, the prestige of each school would be in the eye of the beholder. And, in any event, all children should pursue the post-secondary path that is right for them, emotionally, academically and otherwise. I heard no testimony that would lead me to find that Cornerstone would limit L.M.'s opportunities for post-secondary success, or, conversely, that RLS would enhance those opportunities.

It is uncontroverted and I **FIND** that L.M. is happy at RLS, and for her parents that happiness is understandably a relief. But as Donnelly aptly pointed out, just because a teenager is happy in a setting does not make it the right setting for her. Indeed, it is up to the adults to determine what services will help a child achieve lasting happiness and success. I remain troubled by much of what I learned about this school. I do not doubt that it is a fine school for the right child, but L.M. is a student with complex psychiatric difficulties that have long interfered with her academic

[3] These excuses include a contention that she misses nothing substantive when late.

achievement. I agree with Ridgewood that L.M. needs a truly therapeutic environment, geared to addressing her inability to regularly attend school.

RLS is not approved by the State of New Jersey for the delivery of special-education services to disabled children. It is noteworthy that Farina knew of no New Jersey children who had been placed in her school under the provisions of the Naples Act.

LEGAL ANALYSIS AND CONCLUSIONS OF LAW

As a recipient of federal funds under the Individuals with Disabilities Education Act, 20 U.S.C.A. § 1400 et seq., the State of New Jersey must have a policy that assures all children with disabilities the right to a free appropriate public education (FAPE). 20 U.S.C.A. § 1412. FAPE includes special education and related services. 20 U.S.C.A. § 1401(9); N.J.A.C. 6A:14-1.1 et seq. The responsibility to deliver these services rests with the local public school district. N.J.A.C. 6A:14-1.1(d).

The Board will satisfy the requirement that a child with disabilities receive FAPE by providing personalized instruction with sufficient support services to permit that child to benefit from instruction. Hendrick Hudson Cent. Sch. Dist. Bd. of Educ. v. Rowley, 458 U.S. 176, 203, 102 S. Ct. 3034, 3049, 73 L. Ed. 2d 690, 710 (1982). Case law recognizes that "[w]hat the [IDEA] guarantees is an 'appropriate' education, 'not one that provides everything that might be thought desirable by loving parents.'" Walczak v. Florida Union Free Sch. Dist., 142 F.3d 119, 132 (2d Cir. 1998) (citation omitted). Indeed, "meaningful participation does not require deferral to parent choice." S.K. ex rel. N.K. v. Parsippany-Troy Hills Bd. of Educ., 2008 U.S. Dist. LEXIS 80616, at *34–35 (D.N.J. October 9, 2008) (citation omitted). I **CONCLUDE** that the District's placement of L.M. at Cornerstone meets the requirements of the IDEA and affords L.M. FAPE as that term is defined by law. The unrefuted evidence reveals that Cornerstone is a therapeutic environment that can meet the needs of an academically able student like L.M. Its school-avoidance program makes a particularly suitable placement for L.M.

In his post-hearing submission petitioner urges that the Board did not demonstrate that Cornerstone was appropriate because the CST did not obtain a psychiatric evaluation or conduct a functional behavioral analysis during its most recent reevaluation. This argument is unavailing. N.J.A.C. 6A:14-3.8 affords the CST a good deal of discretion in determining the nature and scope of testing on a reevaluation. And the parties here narrowly circumscribed the issue for hearing precisely because all agreed that M.L.'s disability necessitated her placement in a therapeutic out-of-district placement. Indeed, petitioner concedes this point, stating in the conclusion of his brief that "[t]here is no dispute that L.M. is in need of an out of district therapeutic placement." I thus **CONCLUDE** that the Board met its burden of demonstrating that Cornerstone is an appropriate placement, and that the testing that it conducted after L.M.'s parents gave late notice of her reenrollment was appropriate and compliant with the applicable regulation. N.J.A.C. 6A:14-3.8.

Likewise, I am unpersuaded that the IEP document inadequately described the nature of L.M.'s disability. Again, while conceding that what was needed was a therapeutic school that would address her emotional challenges, petitioner now seeks to resurrect earlier concerns about a learning disability. Importantly, the issue of the correctness of L.M.'s classification or the need to address other educationally disabling conditions is nowhere mentioned in the due-process petition, nor was this issue raised at hearing.[4] And this argument is a red herring; again, all concur that it is L.M.'s emotional issues that primarily interfere with her academic success, and that she requires a placement that addresses those emotional issues.

Parents who unilaterally withdraw their child from public school and place her in a private school without consent from the school district "do so at their own financial risk." School Comm. of Burlington v. Mass. Dep't of Educ., 471 U.S. 359, 374, 105 S. Ct. 1996, 2004, 85 L. Ed. 2d 385, 397 (1985). They may be entitled to reimbursement for the costs of their unilateral private placement only if a court finds that the proposed IEP was inappropriate and that the private placement was appropriate

[4] While the post-hearing submission states that L.M.'s prior classification was specific learning disability, the documentary evidence reveals that her classification was changed in 2015 from other health impaired to ED.

under the IDEA. 20 U.S.C.A. § 1412(a)(10)(C)(ii); N.J.A.C. 6A:14-2.10(b). It is well established that the appropriateness of an IEP is not determined by a comparison of the private school and the program proposed by the district. S.H. v. State-Operated Sch. Dist. of Newark, 336 F.3d 260, 271 (3d Cir. 2003). Rather, the pertinent inquiry is whether the district's IEP offered FAPE and the opportunity for meaningful educational benefit within the least-restrictive environment. Having found that here the district did offer FAPE via its proposed placement at Cornerstone, I need not address whether the RLS placement was appropriate under the IDEA and the relevant case law.

Likewise, having found that L.M. has no entitlement to placement at RLS at public expense, it is not necessary that I address the Board's contention that the parents conducted themselves in an unreasonable fashion, and/or failed to give proper notice of their unilateral placement, thus limiting their right to relief. See 20 U.S.C.A. § 1412(a)(10)(C)(iii); N.J.A.C. 6A:14-2.10(c)(1), (2).

Finally, petitioner asserts that the decision of the CST to place L.M. at Cornerstone was "predetermined," and that the team deprived her parents of an opportunity for meaningful input. See, e.g., D.B. v. Gloucester Twp. Sch. Dist., 751 F. Supp. 2d 764, 771 (D.N.J. 2010). I cannot agree; just the opposite is true. Indeed, it was the parents who predetermined where they wanted L.M. to attend school for the 2016–2017 year, and asked for RLS even before they reenrolled L.M. or gave the district any opportunity to assess her status and offer an IEP. After she spent what they viewed as a highly successful year there, it would be unreasonable to expect otherwise. They have now twice pressed for RLS via due-process proceedings, and clearly genuinely believe that RLS is the only school for their child.

And this due-process proceeding must be reviewed against the backdrop of a prior settlement agreement that placed L.M. at RLS over the CST's objections and notwithstanding its reservations about its appropriateness for L.M. The Board sought to amicably resolve the due-process petition to avoid protracted litigation, and not because its personnel embraced the RLS placement for L.M. Petitioner simply wants to extend a settlement agreement that has expired, and that by its terms did not obligate the

Board to fund RLS any further. Extending the settlement agreement under the facts here, where the Board has presented an IEP that offers FAPE, could jeopardize the willingness of future litigants to amicably resolve special-education disputes. Public policy favors the settlement of all litigation, but settlement is particularly preferred in special-education disputes, which center on the educational well-being of a child. See, e.g., D.R. v. E. Brunswick Bd. of Educ., 93 N.J.A.R.2d (EDS) 31.

ORDER

Based on the foregoing, the due-process petition is **DISMISSED**.

This decision is final pursuant to 20 U.S.C.A. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2015) 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 (2015). 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.

February 23, 2017

DATE

ELLEN S. BASS, ALJ

Date Received at Agency

Date Mailed to Parties:

APPENDIX

Witnesses

For Petitioners:

Dr. David Salsberg
Dr. Lana Farina
E.M.

For Respondent:

Dr. Kim Buxenbaum
Dr. Tara Donnelly
Lorraine Zak

Exhibits

For Petitioners:

P-1 Salsberg evaluation
P-2 2014–2015 attendance record
P-3 2015–2016 attendance record
P-4 NJ Ask results
P-5 2015 final grades
P-6 Salsberg addendum
P-7 Letter dated September 8, 2016
P-8 Excerpt of IEP meeting
P-9 2016–2017 attendance record
P-10 Link to cloud file
P-11 Grades and awards

For Respondent:

R-1 Due-process request
R-2 ALJ Decision
R-3 Letter dated March 11, 2016
R-4 Emails
R-5 Social Assessment
R-6 Psychological Assessment
R-7 Addendum to Psychological Assessment
R-8 Educational Assessment
R-9 Letter dated August 15, 2016
R-10 Emails
R-11 Zak notes
R-12 Letter dated August 26, 2016
R-13 IEP
R-14 Due-process request
R-15 Meeting sign-in sheet
R-16 Emails
R-17 RLS attendance data
R-18 Not admitted
R-19 OPRA request information
R-20 Cornerstone brochure