

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

DECISION

OAL DKT. NO. EDS 18512-16

AGENCY DKT. NO. 2017 25447

MIDDLETOWN TOWNSHIP

BOARD OF EDUCATION,

Petitioner,

v.

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

Respondents.

Jared S. Schure, Esq., for petitioners (Methfessel & Werbel, P.C., attorneys)

S.T., respondent, pro se, assisted by **A.T.**, her father

Record Closed: May 19, 2017

Decided: May 19, 2017

BEFORE **JOAN BEDRIN MURRAY**, ALJ:

STATEMENT OF THE CASE

Petitioner, Middletown Township Board of Education (the Board), filed a due process petition against A.T. and J.T., the parents of S.T. (Sarah)¹, seeking an order declaring that the Middletown School District (the District) has offered a Free Appropriate Public Education (FAPE) to Sarah, an adult student. Sarah was classified as Emotionally Disturbed (ED) in September 2015. The District asserts that Sarah's Individualized Education Plan (IEP) dated October 26, 2016 (P-50), provides her with a

¹ "Sarah" is a fictional name used to protect S.T.'s privacy.

FAPE in the least restrictive environment (LRE). In short, the IEP places Sarah in a general education setting with in-class supports in her home school, and provides one individual and five group counseling sessions each week. Sarah counters that she would like to complete her high school education, but that due to her significant mental health issues, she requires placement in a therapeutic school that will address both her academic and emotional needs. She further contends that her attendance in either of the District's two high schools will exacerbate her mental health issues. As a result, she has not attended school at all during the 2016-2017 school year, and had limited attendance during the prior school year. In sum, she contends that her needs cannot be met within the confines of the District.

PROCEDURAL HISTORY

The Board's due process petition was filed on December 1, 2016. No answer was filed by Sarah or by her parents, A.T. and J.T., nor was a cross-petition for due process filed. The matter was transmitted to the Office of Administrative Law (OAL), where it was filed as a contested case on December 8, 2016. On December 15, 2016, the parties met with ALJ Leslie Celentano in an attempt to resolve the matter. With no resolution forthcoming, the matter was assigned to the undersigned on February 17, 2017. A pre-hearing telephone conference was held on February 22, 2017, and the matter was heard on April 4, 2017.

FINDINGS OF FACT

At the hearing, the District presented testimony by Amy Pomerantz. Sarah did not testify; nor did she present testimony by expert or fact witnesses. However, her father A.T. read her opening and closing statements into the record. Based on a review of the pertinent testimonial and documentary evidence presented, and my observations of the witness and evaluation of the evidence, I **FIND** the following preliminary **FACTS**:

Sarah is an eighteen-year old student enrolled in the District. She currently is in the eleventh grade. Although she was scheduled to graduate high school in June 2017, she is short approximately sixty credits due to her many absences from school in the

2014-2015 and 2015-2016 school years, and her failure to attend a single day of school during the current school year.

There is no dispute as to Sarah's academic prowess. She was an honor roll student through eighth grade. Her parents divorced at that time, and she and A.T. report that she fell victim to bullying by her peers. Nonetheless, she turned in a solid academic performance in ninth grade, with her lowest grade a "C" in Spanish III and Biology. In addition to her strong academics, Sarah enjoyed multiple extra-curricular activities including basketball, varsity soccer and lacrosse, choir, and playing clarinet in the school band.

Sarah's parents separated in October 2012. She continued living with her father while remaining estranged from her mother, who now resides in South Jersey. In the summer of 2013 before entering ninth grade, Sarah attempted suicide by overdosing on Tylenol. A number of other suicide attempts followed, as well as numerous episodes of cutting and burning herself. Her mental health issues led to her first inpatient stay in October 2014 at the Monmouth Medical Adolescent Psychiatric Unit (Monmouth Medical) for approximately four weeks. She then was transferred to Carrier Clinic for a two-week stay in November 2014, followed by re-admission to Monmouth Medical for the second week of December 2014. She was re-admitted to Monmouth Medical on December 25, 2014, and remained there until January 12, 2015, at which point she was transferred to Bridgeton Behavioral Health Care Hospital (Bridgeton). Sarah remained at Bridgeton until February 19, 2015. Next, she was admitted to Princeton House Behavioral Health (Princeton) on April 7, 2015, where she received medical home instruction. (P-3.) She returned to school on April 24, 2015, and entered an Intensive Outpatient Program (IOP) at (Princeton). Her subsequent hospitalizations are contained in the pertinent testimony by Amy Pomerantz, below.

In January 2017, Sarah chose to move from her father's home into Collier House, a transitional living program for young women. Collier House is not a school, although it is part of a larger system that includes a therapeutic high school. Sarah would like to complete her high school education at Collier School, or at another appropriate therapeutic school. In her opening remarks, Sarah offered that she had no problem with

the therapeutic program provided in Middletown High School North, her home school, but that the venue was problematic. Specifically, she was a victim of bullying at her high school, compounding her anxiety, depression, and bipolar disorder symptoms.

TESTIMONY

Amy Pomerantz

Amy Pomerantz (Pomerantz) is a Learning Disabilities Teacher-Consultant for the District. She is a member of the Child Study Team (CST) and is Sarah's case manager. She did not know if Sarah is currently attending school anywhere, but stated that she has not attended a single day of school in the 2016-2017 school year.

In recounting the genesis of Sarah's involvement with the CST, Pomerantz stated that on May 26, 2015, the District responded to Instagram photos that Sarah had posted showing cuts and burns she inflicted on herself. (P-6.) As a result, the District initiated a threat assessment inquiry, noting that Sarah also posted that on May 28, 2015, she would be making her twelfth suicide attempt. Ibid. Sarah was then hospitalized at Monmouth Medical Center (Monmouth Medical) from May 26, 2015 until June 3, 2015. (P-8.) She was again admitted to Monmouth Medical from June 15, 2015 to July 2, 2015, and again from July 10, 2015, until July 20, 2015.

On June 15, 2015, in the midst of these hospitalizations, the District and A.T., Sarah's father, had an initial identification and evaluation planning meeting. (P-11.) As a result, the District conducted educational (P-16), psychological (P-17), and psychiatric (P-18) evaluations of Sarah, along with a social assessment (P-14), on those days in July when she was not hospitalized. In pertinent part, the psychological report prepared by Erin Herman (Herman), Psy.D. and New Jersey Certified School Psychologist, dated July 22, 2015, revealed Sarah's Full Scale Intelligence Quotient (FSIQ) to be 117, which places her in the high average range of cognitive functioning. (P-17.) Herman noted that Sarah "has the ability to work quickly and accurately on most tasks presented to her" and "excelled with many of the nonverbal tasks . . ." She also noted that Sarah wanted to attend college, play soccer, and study mental health. Further, Sarah "has not

been in school much this past year [referring to tenth grade] because she has been in and out of hospitals and other mental health programs.” Ibid.

The July 31, 2015, pediatric psychiatric evaluation conducted by Dr. Steven Dyckman, M.D. (Dyckman), confirmed an earlier diagnosis of Bipolar II Disorder and Post Traumatic Stress Disorder made by GenPsych PC, an IOP attended by Sarah.² (P-18.) Dyckman noted that Sarah had been in a number of IOPs in addition to GenPsych such as High Focus, Innerspace, and Princeton House in between her many hospitalizations. Also, she had a history of eleven suicide attempts. In addition, she had been prescribed a wide range of psychiatric medications, including Prozac, Lithium, Seroquel and Minipress. He notes that Sarah told him that: “I can handle school. School isn’t the reason for my suicide attempts. Those were from outside stuff.” In his recommendations, Dyckman opined that Sarah should be classified, and that she should continue to see an outpatient psychiatrist and therapist upon her discharge from her current IOP at Stress Care of New Jersey, LLC (Stress Care). Further, “[i]f there are any further incidents at school it is recommended that [Sarah] be placed in a therapeutic school where staff can handle both her emotional and her academic issues.” Dyckman does not explain what he means by the phrase “further incidents at school,” although he begins his report by stating that her peers brought the Instagram photos mentioned above to the guidance office. Ibid.

Sarah was classified as Emotionally Disturbed on September 1, 2015. (P-20.) The initial IEP developed for Sarah for the 2015-2016 school year (eleventh grade) placed her in Effective School Solutions (ESS), an in-district therapeutic and academic program at Middletown High School North. (P-21.) According to Pomerantz, the ESS program would meet Sarah’s academic and emotional needs in the least restrictive environment by providing her with daily contact with a therapist in the group therapy sessions, and weekly individual counseling. The therapists are ESS counselors. Sarah began the requisite intake process and eventually completed one of the assessments, but failed to complete the others. Both Sarah and her father then declined participation in ESS, and she did not participate in the program during the 2015-2016 school year.

² Gen Psych had also diagnosed Sarah with Major Depressive Disorder and Generalized Anxiety Disorder, but these diagnoses are not mentioned by Dyckman.

Pomerantz testified that had Sarah started the program, she would also receive a “wraparound” component that involved family counseling. The only academic support provided in the initial IEP was in-class support for her language arts class. While the District wanted to provide Sarah with in-class support for all four core subjects, she and her father declined. Ibid. The initial IEP revealed a stark contrast between her ninth and tenth grade report cards. While she performed solidly in ninth grade, in tenth grade she received failing grades in Literature, Chemistry, Choir, Sociology, Spanish, Theory of Safe Driving and U.S. History, a favorite of hers, due in large part to her many absences. Ibid.

Sarah was hospitalized again at Carrier Clinic from October 29, 2015, through November 4, 2015, and cleared to return to school without restrictions. (P-24.) She then continued with IOP at Stress Care. Pomerantz stated that Sarah still had not participated in the ESS activities. On November 20, 2015, the District conducted a threat assessment after Sarah reported to Pomerantz’s office in an agitated state, stating that “people are bothering me in school, saying rude things, being inappropriate.” (P-26.) Further, she refused to show the school nurse alleged cuts on her hand.

Another IEP meeting was convened on December 2, 2015, which included the ESS team. (P-27.) A.T. agreed to Sarah having an initial ESS assessment, but Sarah did not want to be in the program.

On December 29, 2015, Sarah was hospitalized at Carrier Clinic and remained there until January 6, 2016. Carrier cleared her to return to school on January 8, 2016. (P-28.) On February 2, 2016, the District’s ESS counselor prepared a Crisis Observation Report noting that Sarah had asked to meet with her. Sarah advised the counselor that she would not participate in ESS, and advised that she was not receiving outside therapy either. Sarah told the counselor: “Wait to see what happens when I don’t have treatment.” (P-29.)

Yet another IEP meeting was convened on March 17, 2016. (P-32.) Sarah’s teachers noted that she is capable but not motivated. Moreover, she had many

absences. The IEP provided for ESS individual counseling once per week for forty-five minutes, and ESS group counseling “on B days” for twenty-six minutes. Ibid.

The next IEP meeting took place on March 24, 2016. (P-33.) Sarah was not attending school, and was placed on home instruction as a result. This instruction was to take place at the Middletown Library. The ESS sessions were also planned for outside the District. Sarah, however, rejected home instruction in the library because she did not want to see anyone from her town.

Sarah was admitted to Gen Psych’s Adolescent Partial Hospitalization Program on April 7, 2016, exhibiting “severe depressive symptoms.” (P-34.) She was medically cleared to return to school on June 2, 2016. (P-37.) At that time, her home instruction ended. After her discharge, the IEP team met, and she resumed school at Middletown High School North on June 10, 2016, on a partial day schedule. (P-38.) Sarah and her father, both present at the meeting, agreed that she would participate in the ESS assessment. Ibid.

On July 6, 2016, Sarah was admitted to Hampton Behavioral Health Center’s inpatient unit. (P-41.) There was no testimony as to the length of this stay.

Another IEP meeting took place on September 20, 2016. (P-45.) Sarah attended this meeting but had not yet attended a single day of school in the current school year. She continued to refuse participation in the ESS program. On September 21, 2016, A.T. forwarded letters to the District from Sarah’s psychiatrists at Stress Care, Drs. Yurchenko and DeSantis. (P-46.) The doctors noted that Sarah had been a patient at Stress Care since July 2015, and was being treated for Major Depressive Disorder and Post Traumatic Stress Disorder. They urged that Sarah needed an alternative therapeutic school and/or home instruction due to her history of hospitalizations, self-harm and suicidality. Ibid. A separate letter from Dr. DeSantis stated that Sarah would benefit from attending Collier School. Ibid.

In response to the psychiatrists’ letters, an IEP meeting was convened on October 26, 2016. (P-50.) Dr. Yurchenko participated by telephone. There was no

appearance by Dr. DeSantis. The IEP does not contain a narrative from Dr. Yurchenko, nor did Pomerantz offer testimony concerning the substance of the doctor's participation in the meeting. However, the District agreed to:

look for another placement contingent upon [Sarah's] participation in the therapeutic/academic program that has been offered. The District additionally offered a therapeutic program with an educational component in another High School within the district in response to [Sarah's] reluctance to attend her home school. This was also rejected by [A.T. and Sarah.]

Ibid.

This current IEP provides Sarah with ESS group counseling services each day for twenty-six minutes, and ESS individual counseling services one day each week for forty-five minutes per session. The IEP also gives Sarah in-class resource for language arts, social studies, and science. According to Pomerantz, the District did consider the Collier School as an alternate placement for Sarah, but maintained that they could meet her needs in the least restrictive environment in the District. The IEP notes:

In an effort to assist [Sarah] completing her high school education the district has continued to offer a therapeutic/academic program to meet her emotional/academic needs. [Sarah] presents as resistant to all efforts afforded to her. [She] is rejecting the program currently being recommended and prefers to stay home and not attend school.

Ibid.

In addition, the CST offered Sarah a therapeutic program in the other high school in the District, but she and A.T. rejected this offer. Although neither A.T. nor Sarah signed the IEP, they filed no objections to it. Pomerantz stated that the current IEP provided Sarah with a FAPE.

On cross-examination, Sarah questioned Pomerantz about Dr. Dyckman's assertion that if there were any further incidents at school, she should be placed in a

therapeutic school. Pomerantz did not have an answer to this question. She then asked Pomerantz if the statement she made to the crisis counselor four months later (“people are bothering me”) constituted such an incident. (P-26.) In addition, Pomerantz could not recall that Sarah’s history included being bullied. However, the record is void of any Harassment, Intimidation, and Bullying (HIB) Reports filed with the District by A.T. or Sarah, or other documentation of this nature. Finally, Sarah asked Pomerantz if Middletown High School North was the same as the Collier School, and Pomerantz responded that she did not understand the question. It was clear that Sarah was asking if the programs offered at the two schools were equivalent. On re-direct examination, Pomerantz testified that Middletown High School North constituted a therapeutic school. Pomerantz also addressed the letters submitted by Drs. Yurchenko and DeSantis. (P-46.) She noted that neither letter mentions the District’s ESS program, or addresses its appropriateness for Sarah. There is nothing in the record to indicate that Sarah’s therapists at Stress Care had any familiarity with the District’s ESS program. In sum, Pomerantz testified that the current IEP addresses Sarah’s emotional issues. On the other hand, it is clear that Sarah is determined to attend the Collier School or some other therapeutic school, to the exclusion of any in-district program offered to her.

CONCLUSIONS OF LAW

The Individuals with Disabilities Act (IDEA or the Act) was enacted to assist states in educating disabled children. It requires states receiving federal funding under the Act, such as New Jersey, to have a policy in place that ensures that local school districts provide disabled students with a FAPE designed to meet their unique needs. See 20 U.S.C.A. § 1412; N.J. Const. art. VIII, IV, 1; N.J.S.A. 18A:46-8; N.J.A.C. 6A:14-1.1 et seq., Hendrick Hudson Cent. Dist. Bd. of Educ. v. Rowley, 458 U.S. 176, 102 S. Ct. 3034, 73 L. Ed. 2d 690 (1982). State regulations track this requirement that a local school district must provide a FAPE as that standard is set under the IDEA. N.J.A.C. 6A:14-1.1. A FAPE and related services must be provided to all students with disabilities from age three through twenty-one. N.J.A.C. 6A:14-1.1(d). A FAPE means special education and related services that: a) have been provided at public expense, under public supervision and direction, and without charge; b) meet the standards of the

State educational agency; c) include an appropriate preschool, elementary, or secondary school education in the State involved; and d) are provided in conformity with the individualized education program (IEP) required under sec. 614(d). 20 U.S.C.A. § 1401(9).

In order to provide a FAPE, a school district must develop and implement an IEP. N.J.A.C. 6A:14-3.7. An IEP is “a comprehensive statement of the educational needs of a handicapped child and the specially designed instruction and related services to be employed to meet those needs.” Sch. Comm. of Burlington v. Dep’t of Educ. of Mass., 471 U.S. 359, 368, 105 S. Ct. 1996, 2002, 85 L. Ed. 2d 385, 394 (1985).

In addition, a court must ask whether the IEP developed through the Act’s procedures is “reasonably calculated to enable the child to receive educational benefits.” Rowley, supra, 458 U.S. at 207, 102 S. Ct. at 3051, 73 L. Ed. 2d at 712. While the IDEA does not require a school district to provide an IEP that maximizes “the potential of a disabled student, it must provide ‘meaningful’ access to education and confer ‘some educational benefit’ upon the child for whom it is designed.” Ridgewood Bd. of Educ. v. N.E., 172 F.3d 238, 247 (3d Cir. 1999) (citations omitted). In “[e]xamining the quantum of benefit necessary for an IEP to satisfy IDEA,” the Third Circuit held “that IDEA ‘calls for more than a trivial educational benefit’ and requires a satisfactory IEP to provide ‘significant learning,’ and confer ‘meaningful benefit.’” Ibid. (citations omitted).

Consequently, a FAPE is defined in broad terms—a limited definition would not encompass the many needs of such a dynamic population—that are consistent with the IDEA’s corresponding mandate that the states provide each disabled child with specifically designed instruction that is tailored to the child’s unique needs and is a “basic floor of opportunity.” Rowley, supra, 458 U.S. 176, 102 S. Ct. 3034, 73 L. Ed. 2d 690.

In most cases, it is the parents who challenge the IEP. The District bears the burden of proof by a preponderance of the competent and credible evidence that it has provided a FAPE to the child in the least restrictive environment. N.J.S.A. 18A:46 -1.1.

In the instant matter, however, it is the District that seeks a declaration that Sarah's IEP dated October 26, 2016, provides her with a FAPE. In this regard, the District remains charged with the burden of proof. Relying on a complete CST evaluation conducted ten months earlier, followed by multiple IEP team meetings with A.T. and development of a number of IEPs, the District formulated an educational and therapeutic plan designed to provide Sarah with a FAPE in the least restrictive environment. The plain goal is for her to complete her high school studies so that she can move on to college. The record reveals that Sarah has rejected the program provided for her in the IEP without attending a single individual or group counseling session in her home school. Instead, she is determined to attend an out-of-district therapeutic school. While her repeated hospitalizations are troubling, and beg for updated psychological and psychiatric evaluations, she has offered no proof that her emotional needs can be met only in such a venue. Furthermore, there is nothing to suggest that the need for hospitalization is triggered by attending school.

Based on the foregoing, I **CONCLUDE** that the District has met its burden and did offer Sarah a FAPE in its October 26, 2016, IEP. When a court examines whether a district has provided a FAPE, the appropriateness of an IEP is not determined by a comparison between the private school chosen by parents, or in this case, the adult student, 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 IEP proposed by the district offered a FAPE with the opportunity for significant learning and meaningful education benefit within the least restrictive environment. G.B. and D.B. ex rel J.B. v. Bridgewater-Raritan Reg'l Bd. of Educ., EDS 4075-06, Final Decision (June 13, 2007), <http://njlaw.rutgers.edu/collections/oal/>. Upon a finding that the district provided FAPE, the appropriateness of the private school program is irrelevant. H.W. and J.W. ex rel A.W. v. Highland Park Bd. of Educ., 108 Fed. Appx. 731, 734 (3d Cir. 2004). I so **CONCLUDE**.

ORDER

It is **ORDERED** that the Middletown Township Board of Education's petition seeking a declaration that it has offered a FAPE to respondent, S.T., be and hereby is **GRANTED**.

This decision is final pursuant to 20 U.S.C.A. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2016) 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 (2016). 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 Programs.

May 19, 2017
DATE

JOAN BEDRIN MURRAY, ALJ

Date Received at Agency

May 19, 2017

Date Mailed to Parties:
dr

May 19, 2017

APPENDIX

For Petitioner:

Amy Pomerantz

For Respondent:

None

EXHIBITS

For Petitioner:

- P-1 District's Due Process Petition – November 2016
- P-2 Not in Evidence
- P-3 Princeton House Home Instruction Request Letter – April 8, 2015
- P-4 Not in Evidence
- P-5 Return to School Letter – April 23, 2015
- P-6 Documents Related to May 26, 2015 Incident
- P-7 Request from Neil Leone for CST Testing—May 29, 2015
- P-8 Return to School Letter—June 3, 2015
- P-9 Not in Evidence
- P-10 Not in Evidence
- P-11 Notice Following Initial Evaluation Planning Meeting—June 14, 2015
- P-12 Not in Evidence
- P-13 Not in Evidence
- P-14 Social Assessment Report—July 8, 2015
- P-15 Not in Evidence
- P-16 Educational Evaluation—July 27, 2015
- P-17 Psychological Evaluation – July 28, 2015
- P-18 Psychiatric Evaluation – July 31, 2015
- P-19 Not in Evidence
- P-20 Initial Eligibility Determination – September 1, 2015
- P-21 IEP – September 1, 2015
- P-22 Email from A. Pomerantz regarding updating IEP – October 16, 2015

- P-23 IEP – October 19, 2015
- P-24 Back-to-school note – October 29, 2015
- P-25 Health questionnaire for basketball – November 8, 2015
- P-26 Documents from November 20, 2015 incident
- P-27 IEP – December 2, 2015
- P-28 Back-to-school note – December 29, 2015
- P-29 Documents relating to February 2, 2016 incident
- P-30 Not in Evidence
- P-31 Not in Evidence
- P-32 IEP – March 17, 2016
- P-33 IEP – March 24, 2016
- P-34 GenPsych report – April 15, 2016
- P-35 Not in Evidence
- P-36 Not in Evidence
- P-37 Fit to return letter – June 2, 2016
- P-38 IEP – June 6, 2016
- P-39 Not in Evidence
- P-40 Not in Evidence
- P-41 Request for bedside instruction from Hampton Behavior Health Center –
July 7, 2016
- P-42 2015-216 Grade Report
- P-43 2015-2016 Report Card
- P-44 2015-2016 Attendance Information
- P-45 IEP – September 20, 2016
- P-46 Correspondence from A.T. to District regarding recommendations from
private therapist and psychiatrist – September 21, 2016
- P-47 Correspondence from A. Pomerantz to A.T. regarding meeting to discuss
educational recommendation – September 27, 2016
- P-48 Not in Evidence
- P-49 Not in Evidence
- P-50 IEP – October 26, 2016
- P-51 Not in Evidence
- P-52 Not in Evidence

P-53 Not in Evidence
P-54 Not in Evidence
P-55 Not in Evidence
P-56 Not in Evidence
P-57 Not in Evidence
P-58 Not in Evidence
P-59 Not in Evidence
P-60 CV – Amy Pomerantz
P-61 Not in Evidence

For Respondent:

None.