State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION
OAL DKT. NO. EDS 1035-14
AGENCY DKT. NO. 2014 20574

J.H. AND R.H. ON BEHALF OF H.H.,
Petitioners,
v.
MILLBURN TOWNSHIP
BOARD OF EDUCATION,
Respondent.

Lori M. Gaines, Esq., for petitioners (Barger and Gaines, attorneys)

Paul Griggs, Esq., for respondent (Lindabury, McCormick and Estabrook, attorneys)

Record Closed: November 4, 2014 Decided: March 23, 2015

BEFORE **TIFFANY M. WILLIAMS**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioners, J.H. and R.H. o/b/o H.H., brought this action against the Millburn Township Board of Education (Board) seeking an out-of-board placement for their daughter, H.H., for the 2012-2013 school year, in addition to reimbursement for costs associated with the out-of-Board placement. The matter was transmitted to the Office of

Administrative Law (OAL), where it was filed as a contested case on January 27, 2014. The matter was heard on July 29, 2014, August 18, 2014, August 19, 2014, August 20, 2014, and September 23, 2014. Post-hearing briefs were submitted and the record closed on November 4, 2014.

FINDINGS OF FACT

Based on the testimony of the witnesses and examination of the documentary evidence, I **FIND** the following **FACTS** are undisputed:

H.H. is a seventeen-year-old female student from Short Hills, New Jersey. Until recently, H.H. resided full-time with her parents and attended the Millburn Township High School. In ninth grade, R.H. noticed that H.H.'s grades declined and that she had begun to exhibit irrational behavior, anger, impulsiveness, and an inability to maintain relationships. Specifically, H.H. had began to self-mutilate, act out in defiance, and was prone to outbursts indicating that she hated her parents and wanted to be given up for adoption. In response, R.H. placed H.H. in the High Focus after-school program. R.H. did not believe that H.H. was progressing in the High Focus program and she began to suspect that H.H. used marijuana. R.H. also notified one of the Millburn High School guidance counselors, Linda Hildebrant, that H.H. had been self-mutilating. Ms. Hildebrandt's response was that H.H.'s emotional issues could be hormonal and that once her menstrual cycle regularized, her behavior would straighten out. R.H. took H.H. to a psychiatrist but did not continue with regular treatments after a first visit.

In her tenth grade year, R.H. observed that H.H.'s behavior accelerated into reckless behavior. H.H. did not attend school regularly and would often cut class. Her academic progress began to decline as she would refuse to study and complete homework and began failing some classes. Most alarmingly, H.H. attempted suicide on four separate occasions, on one occasion trying to drown herself in the bathroom. In connection with her suicide attempts, H.H. was admitted to the emergency room on three separate occasions. During this time, H.H. continued self-mutilating and escalated to threatening to harm her parents. On one occasion she threw a large serving dish and hit her mother in the head. On another occasion, while on route to the emergency room after

a suicide attempt, H.H. grabbed the steering wheel as her mother drove, causing the car to temporarily lose control in oncoming traffic. R.H. took H.H. for psychiatric evaluation and she subsequently continued regular sessions with Dr. Beth Dorogusker, who also prescribed medication for anti-anxiety, anti-depression, and mood stabilization. R.H. advised Millburn High School personnel—the school nurse—of the medications that were to be administered to H.H.

In March 2013, while still in her tenth grade year, H.H. returned to the High Focus program over the course of three months until she tried to commit suicide at the program. (J-2.) As a result, she was transported to Silver Hill Hospital, an in-patient facility in New Canaan, Connecticut, which specialized in stabilizing acute suicidal teenagers. H.H. did not return back to Millburn High School after being admitted to Silver Hill. R.H. personally collected H.H.'s school work from guidance counselors while H.H. was admitted to Silver Hill and attempted to keep H.H. academically up to speed.

In June 2013, R.H. requested that the Board's child study team (CST) evaluate H.H. as she had missed school for the past two months due to severe emotional and psychiatric challenges. (J-3.) In response, the Board responded to R.H. and set up a meeting to discuss her concerns. (J-4; J-5.) At the initial meeting on June 19, 2013, R.H. was present, along with Suzanne Zimmerman, the Board's school psychologist and case manager, the Board's learning consultant, social worker, and one of the Board's teachers. (J-9.) As a result of the meeting, it was decided that H.H. would undergo evaluations, including social, psychological, psychiatric, and educational. (J-9.) R.H. also provided a release of information to the Board in order for them to receive records from H.H.'s treating physician, Dr. Dorogusker, as well as from High Focus and Silver Hill. (J-12.) R.H. subsequently forwarded a report from Dr. Dorogusker recommending that H.H. be placed in a "highly structured therapeutic academic setting where she can be closely monitored and receive the academic and therapeutic support she needs." (J-18.)

The Board's child study team evaluations included input from H.H.'s English, math, biology, and history teachers in the form of emails sent to Suzanne Zimmerman. (J-6; J-7; J-8.) An educational assessment was conducted by the Board's employee, Kelly Bertrand, a learning disabilities teacher consultant, which incorporated teacher input,

H.H.'s high school grades and the Woodcock-Johnson achievement test. (J-15). The report noted H.H.'s ninth-grade academic performance as including one A, one A-minus (A-), three B-minuses (B-), one C-plus (C+), and one C.[1] H.H.'s tenth-grade year grades were reported as including one A, two C-pluses (C+), two C's, one D, one D-minus (D-), and an F in physical education for the third quarter. (J-15.) The report found that H.H.'s oral language skills were average as well as her ability to apply academic skills. Her assessments in the remaining categories were within the average range and no significant strengths or weaknesses were identified in H.H.'s achievement areas. (J-15.) The report noted that recommendations would be made at the upcoming eligibility meeting. (J-15.) Bertrand testified at the hearing and noted that H.H.'s results from the Woodcock Johnson test revealed that H.H. fell within the low-average range in decoding and exhibited weaknesses in understanding directions, applied problems, and word-test skills. Bertrand noted in her testimony that she had administered the Form A of the Woodcock Johnson test.

A psychological evaluation was performed by the Board's employee, Dawn Novack,[2] which included the BASC and Wechsler Adult Intelligence evaluations. (J-13.) The evaluation remarked on H.H.'s significant mental health history, present level of acute distress, extremely negative responses, and H.H.'s significant feelings of depression, anxiety, and social stress. (J-13.) The report's conclusion indicated that recommendations would be made in collaboration with the CST. (J-13.) Additionally, the Board was aware, according to Suzanne Zimmerman, that H.H. had attended the High Focus program for her abuse of substances, behavioral issues, angry outbursts, suicide ideation and self-harm, and that she had been admitted to the Silver Hill Hospital on an in-patient basis. The Board also conducted a social history report based on information gathered from R.H. regarding H.H.'s social history, by the Board's employee/social worker, Lisa Fabrizio.[3] (J-14.)

On July 21, 2013, H.H.'s treating therapist, Dr. Beth Dorogusker, sent a letter to the CST outlining her assessment and recommendations. In her letter Dr. Dorogusker

[1] The report also noted separate marking period grades from physical education but no final grade. (J-13.)
[2] Dawn Novack did not testify at the hearing and her report was jointly stipulated into the record.
[3] Lisa Fabrizio did not testify at the hearing and her report was jointly stipulated into the record.

described H.H. as an exceptionally intelligent, creative, and dynamic young woman that she has been treating since May 2012 in individual counseling sessions twice a week for forty-five minutes. She described that H.H. used alcohol and drugs regularly, engaged in cutting and was diagnosed with depression and borderline personality disorder. Dr. Dorogusker described that H.H.'s interventions included out-patient psychotherapy, partial care, in-patient hospitalization, and medication. In her letter, Dr. Dorogusker opined that these factors rendered H.H. a high risk for acting out with destructive behaviors at home and school. Accordingly, she recommended that H.H. be placed in a "highly structured academic setting where she can be closely monitored and receive the academic and therapeutic support she needs." (J-18.)

Dr. Dorogusker offered expert testimony at the hearing in the area of psychology and psychotherapy and expounded upon the conclusions in her letter. She maintains a private practice and formerly served as the director of a twenty-eight-day crisis unit. Her specialty focused on children and adolescents. At the hearing, Dr. Dorogusker described H.H. as exhibiting anxiety, anger, suicidal ideation, paranoia, and depression. She was aware of H.H.'s high risk behaviors and found her judgment to be off-center, as evidenced by cutting and self-mutilation, mixing prescription drugs with alcohol, suicide attempts, and paranoid thoughts. Dr. Dorogusker testified that H.H. also exhibited concerning behaviors at home, including abusing her parents and sibling and threatening violence. She was also aware that H.H.'s academic performance had declined, and H.H. had expressed negative thoughts about school. Generally, Dr. Dorogusker expressed a concern that H.H. maintain the ability to remain safe while obtaining her education. She recommended a residential placement because she believed that H.H. was too high risk for a therapeutic day school. In her opinion, H.H. needed reinforcement after school, even during meals and social events. She described that H.H. would benefit from a therapeutic environment where H.H. would be closely monitored in the evenings and weekends therapeutic skills were constantly being reinforced as a lifestyle, particularly since weekends presented greater risks given the amount of down time potential. Dr. Dorogusker also believed that H.H. needed work on her coping strategies and tolerating her feelings.

Dr. Dorogusker testified that she had recommended to R.H. that she meet with a residential treatment facility because R.H. and J.H. could not provide the level of reinforcement after-hours that H.H. required. Dr. Dorogusker acknowledged that she did not use the word "residential placement" in her letter to the CST, but testified that her recommendation was meant to include a residential program and exclude a day program. She confirmed that all of her conversations with R.H. and J.H. were reinforcing the need for a residential placement. Dr. Dorogusker also testified that she did not believe that a hotline approach in the evenings and weekends was sufficient to deliver the monitoring, modeling, or reinforcement that H.H. required.

On September 4, 2013, H.H. was evaluated by the Board's psychiatrist, Dr. Mark Farber. Dr. Farber is a private practitioner who contracts with the Board and performs 200-300 evaluations annually to assist child study teams in determining student placements. Dr. Farber presented expert testimony at the hearing concerning his evaluation and findings after evaluating H.H. Prior to evaluating H.H., he did not consult with any other treating clinician or records from High Focus or Silver Hill. He was aware that she had received out-patient therapy and in-patient treatment but did not know the location or extent of treatment.

As an initial matter, Dr. Farber determined that H.H. exhibited anxiety, personality disorder, substance use disorder, and bi-polar disorder, as evidenced by H.H.'s euphoria, racing thoughts, rapid speech, mood instability, hypersexuality and depressive episodes. In his recommendations, Dr. Farber noted that H.H.'s "poor mental health history and current mental health concerns . . . impact on her level of functioning in the school setting." (J-17.) Dr. Farber testified that ongoing cognitive restructuring and dialectical behavior therapy would benefit H.H., particularly in addressing her urges to self-injure as well as in treating her thought disorders. Given her conflict with her parents, Dr. Farber opined that H.H.'s family would benefit from support and should be involved in H.H.'s evaluations and therapeutic treatment on a weekly basis. Dr. Farber also testified that in the event that H.H.'s symptoms warranted more severe treatment, a "spectrum of care" approach would be required, ranging from intensive out-patient treatment to hospitalization. Dr. Farber opined that the spectrum of care could include local treatment or a residential facility. In his testimony, Dr. Farber clarified that his opinion regarding a spectrum of care approach

also applied to meeting H.H.'s educational needs, taking into account her current psychosis, and offering appropriate educational supports.

While Dr. Farber's report noted that H.H. would benefit from "appropriate structure and support," his report did not make a recommendation as to what that structure and support should entail. (J-17.) Dr. Farber testified that he was highly deferential to the Board and parents to determine together the best options to meet H.H.'s needs. Dr. Farber was also not aware of the extent of H.H.'s suicide attempts or treatment at Silver Hill but noted in his testimony that he would not have changed his report or opinions notwithstanding.

On September 5, 2013, R.H. also requested that H.H. undergo a neuropsychological evaluation by Dr. Joel Morgan and Dr. Lisa Hahn. The resulting report of Dr. Morgan and Dr. Hahn recommended a residential program for H.H. that incorporated "academics and therapy, both individual and group treatment for teens with severe psychopathology." (J-20.) The report noted a concern with the potential for H.H. to decompensate in the current environment as well as concerns for her physical safety given "poor decision-making and impaired impulse control," and that she "cannot engage in appropriate decision-making in her current psychiatric state." (J-20.) Therefore, Dr. Morgan and Dr. Hahn recommended that H.H. be placed in a "controlled environment where not only her psychiatric well-being but physical safety and academic needs are met." (J-20.)

Dr. Morgan also offered expert testimony at the hearing and further explained his findings from his report. He is a board certified clinical neuropsychologist with a sub-specialty in pediatric neuropsychology. He describes his approach to evaluations as a comprehensive examination of the client's abilities, behaviors, and functioning, including their cognitive functions, mood, behavior, personality adjustment, and adaptive behaviors. He conducts approximately 150 evaluations annually. In preparation for his evaluations, he typically interviews parents and child patients and reviews school records, history forms, and formal assessments of a child. After conducting an evaluation, he gives the parents an overview of his brief feedback and follows up with a comprehensive

report and feedback session. Dr. Morgan works in conjunction with Dr. Lisa Hahn and they typically co-author reports based on the evaluation findings.

Dr. Morgan was contacted by Dr. Beth Dorogusker requesting an evaluation of H.H. Dr. Hahn assisted in the evaluation, along with Melissa Delucia, the neuropsychometric technician who was trained to assist in administering testing. Dr. Morgan was aware that H.H. was having problems with academic decline in school, self-mutilating, abusing substances, and sneaking out of the house. Dr. Morgan had also been apprised of H.H.'s participation in High Focus and admission to Silver Hill.

Dr. Morgan interviewed H.H. and administered a battery of tests, including a BASC and an intelligence test, which he testified demonstrated low-average to average intelligence on non-verbal skills and an average memory. At the hearing, Dr. Morgan described having become aware that H.H. had been given the same test a week prior and disavowed the notion that his test results would have been substantially skewed by the so-called "practice effect." He also noted that the core of her issues were rooted in her social and emotional issues. In the psychological evaluations, H.H. revealed a high score on the hysteria and paranoia scales. She exhibited signs of psychosis, which Dr. Morgan described as the most severe form of mental illness. He also observed mania as symptomatic of bipolar disorder, including euphoric mood, risky behaviors, racing thoughts, and inability to keep thoughts organized. In assessing H.H.'s perception of reality and thought processes, Dr. Morgan detected abnormal responses that were reflective of depressive and morbid themes and evidence of symbolic logic.

Dr. Morgan also diagnosed H.H. with Bipolar 1 Disorder. He characterized the disorder as evidenced by dramatic and acute unexpected emotional reactions, which can be extremely difficult for managing by family and friends. Overall, Dr. Morgan concluded that H.H. was a bright young woman but had "wildly abnormal test results." Dr. Morgan also described H.H. as a "very sick girl . . . suffering from psychosis . . . [with] difficulty controlling her emotions," and as "extremely disturbed." Dr. Morgan ultimately concluded that without the right treatment, H.H. would require acute hospitalization because her issue were so pervasive that they affect every aspect of her life. He also described that after seeing her, he feared the potential for a psychotic break.

Dr. Morgan concluded that H.H. was so impaired that a therapeutic day school would not meet her needs because she requires 24-7 social and emotional teaching and modeling that does not take place in the classroom. He also recommended role modeling and supportive services after the school day because her needs did not cease at the end of the school day. Dr. Morgan testified that because she is so socially and emotionally impaired, H.H.'s companion educational needs required social skills training, the ability to get along with peers, ability to resolve conflict and the ability to assert herself normally rather than destructively. He recommended that treatment also be conducted in individual and group therapy settings, preferably in a residential environment.

In September 2013, after the last of H.H.'s evaluations were completed, the Board deemed H.H. eligible for special education and related services as meeting the criteria of emotionally disturbed (ED). (J-21; J-24.) At a September 20, 2013, Individualized Education Plan (IEP) team meeting, the Board proposed an out-of-Board placement in a therapeutic day program to address H.H.'s emotional issues and provide her with a college preparatory curriculum. The present level analysis of the IEP, noted H.H.'s tenth-grade academic performance as including a D-minus (D-), a D, two C-pluses (C+), three C's, and one A. (J-24.) In the rationale for removal from general education, the IEP noted the following:

> Currently, [H.H.] is not receiving the benefit from her regular education classes due to her psychiatric issues that prevent her from attending regularly and accessing the curriculum. Primary consideration has been given to providing an academic program that addresses [H.H.'s] cognitive needs while providing clinical interventions, in individual, family and group counseling, to address the psychiatric illness and behavioral responses which interfered with [H.H.'s] regular attendance at school and her ability to access the educational program.
>
> (J-24.)

Specifically, the Board proposed placements in the Sage program[4] or the Cornerstone School, both which provided day school programs. (J-24.) R.H. rejected the IEP and expressed that she preferred placement in a residential program, based on the recommendation of H.H.'s treating physicians and in light of concerns with being able to keep H.H. safe. After visiting the Cornerstone School with H.H., R.H. remained opposed to the Cornerstone placement based on several concerns. First, she was concerned that H.H. was lumped in with adolescents with wide-ranging emotional issues and feared that H.H. would not receive specialized support for her borderline personality disorder. Additionally, R.H. was concerned that after the school day ended at 3 p.m., that she would not have resources and support to assist in dealing with H.H.'s nor keeping her safe. Further, R.H. described Cornerstone as a prison-like environment and indicated that H.H. had a very negative reaction to the school and its director, Dr. Blau.

As a result, R.H. requested that the Board further consider alternative residential placements. Having retained an educational consultant, R.H. proposed the recommendation of a residential placement the New Haven School in Utah to the IEP team, which was ultimately rejected by the Board. (J-30; J-31.) Specifically, R.H. sent communications to the Board on October 6, 2013, and October 16, 2013, requesting consideration of residential placements and specifically identifying New Haven in the October 16, 2013, letter. (J-30; J-31.) In the interim, R.H. conducted a site visit to New Haven and permitted them to assess H.H. to see if they could meet her needs. R.H. did not apply for admission nor admit H.H. at the time of her site visit.

On October 23, 2013, another IEP meeting was conducted and R.H. requested that the CST consider placing H.H. at the New Haven School and indicated that she definitively intended to place H.H. unilaterally at New Haven. In an effort to gain the Board's cooperation, R.H. provided a release to allow the Board's personnel to speak with the staff at the New Haven School about the program. (J-33.) R.H. testified that, at the IEP meeting, she refused the Board's preference to try Cornerstone first because she was concerned about H.H.'s safety and trusted the recommendation of the therapists and

[4] The Board later removed the Sage program recommendation after learning that they did not have the necessary structure needed for H.H.'s support. Specifically, Sage had no psychiatrist on call nor a structure for dealing with substance abuse issues.

professionals that had evaluated H.H. and recommended a residential placement. R.H. further testified that she believed H.H. was in imminent physical danger of committing suicide and she felt compelled to follow the clinical recommendations that she had been given. R.H. further advised the CST that she had considered other residential facilities but the best fit appeared to New Haven, which could also accommodate H.H. quickly because they had one spot remaining. R.H. conveyed that New Haven staff had sent information on the program to the Board, which she personally hand delivered on a second occasion after the Board indicated that they had never received it the first time.

On October 25, 2013, R.H., through her attorney, notified the Board of her intent to enroll H.H. at New Haven and made another request that the placement be considered by the Board, who had not reached out to New Haven at that point. (J-34.) According to H.H.'s Master Treatment Plan, she enrolled at New Haven on October 26, 2013. Her course schedule included algebra II, physical education, pre-calculus, chemistry, British literature, U.S. history, and art. (J-39.) Her treatment plan included individual, family, group, and recreational therapy, along with interventions and assignments from the treatment team. (J-38.)

At the hearing, Suzanne Zimmerman testified regarding the basis for the IEP's conclusions and recommended placement. Zimmerman is the school psychologist and the case manager for approximately sixty students. In this role, she is typically involved in developing forty to seventy IEP's annually. She has served in this role for the past ten years and holds a master's degree from New York University. She is currently working towards her doctorate degree. She testified that although the IEP team received the reports from H.H.'s treating therapist, they did not interpret the recommendation of the therapist to require a residential placement. Accordingly, the Cornerstone School in Mountainside, NJ, was recommended because it met the criteria of a highly structured program that included intensive individual, group, and family therapy alongside a college preparatory academic curriculum in a small classroom setting of five to eight students. Zimmerman testified that the IEP team was aware that Cornerstone maintained a psychiatric on staff and 24-hour hotline support. Zimmerman also noted that Cornerstone utilized a positive reinforcement system that included the progressive earning of privileges based on behavior, which she thought would be beneficial to H.H.

Zimmerman testified that she had reviewed the reports of H.H.'s neuropsychological exam performed by Dr. Morgan and Dr. Hahn. She believed that the Cornerstone recommendation comported with the recommendations, including that H.H. be "placed in a controlled environment where not only her psychiatric well-being but physical safety and academic needs are met." (J-20.) Zimmerman acknowledged that the report also specifically recommended a residential placement but disagreed that it was necessary because she believed that H.H.'s needs were met in the Cornerstone placement, minus the boarding. Zimmerman testified that she viewed the boarding element to remove conflict with H.H.'s parents, but still recommended Cornerstone because it would have dealt with the family issues on an ongoing basis. Otherwise, Zimmerman believed that therapeutically, a day program and residential program could equally provide for H.H.'s needs as identified in the IEP.

Zimmerman also acknowledged in her testimony, having received a copy of a September 18, 2013, letter by Dr. Kearney, recommending that H.H. be placed in a residential placement or therapeutic boarding school. Although she noted that Dr. Kearney's diagnosis was consistent with the other reports, Zimmerman believed that H.H. would receive a sufficient treatment at Cornerstone. Prior to making a recommendation on placement, Zimmerman had not spoken with or contacted Dr. Kearney, Dr. Hahn, Dr. Dorogusker, nor anyone at Silver Hill Hospital.[5] Zimmerman did not visit nor reach out to anyone at the New Haven School in Utah upon R.H.'s request, but rejected it as an appropriate placement over Cornerstone because she believed Cornerstone met H.H.'s individualized educational needs.

Juliana Kusz, the Board's Director of Special Education Services, also testified as to the basis for the IEP team's conclusions. She has been employed as an educator for twenty years and as the Director of Special Education for over fourteen years. She also supported the recommendation of placement in the Cornerstone School and had been familiar with it over the course of fifteen years of placing students there. She had visited

[5] Zimmerman also acknowledged that she had been unaware of H.H.'s suspected disability from guidance counselors or the school nurse, both of whom R.H. had previous contact regarding H.H.'s administration of medications and absence from school during her admission to Silver Hill Hospital.

the school and monitored the progress of prior students. She was aware that it was a twelve-month program that also provided 24-hour hotline support after-hours where students and parents could speak to clinicians during crisis. Kusz also noted that Cornerstone staff would come to the family home in the event that a student encountered the crisis of not wanting to attend school. Kusz was familiar with the recommendations of Dr. Dorogusker, Dr. Kearny, Dr. Hahn and the discharge summary from Silver Hill Hospital and believed that the Cornerstone School met the identified recommendations. She disagreed with the recommendation for a boarding school by Dr. Kearney and discounted her opinion because it merely cited symptoms and failed to offer support. Kusz also supported the Cornerstone recommendation because it would allow Dr. Dorogusker to still treat H.H. while she attended. Kusz testified that she became aware that R.H. rejected the Cornerstone placement in the October 25, 2013, letter from R.H.'s counsel.[6]

At the hearing, the founder of the Cornerstone School, Dr. Allan Blau, gave an overview of the school's philosophy and core components. Cornerstone was founded as a licensed out-patient mental health facility by the New Jersey Department of Health and Human Services and was nationally and internationally accredited. Cornerstone follows the core curriculum academic standards and routinely implements IEP's. Cornerstone is not recognized by the New Jersey Department of Education but is known as a so-called "Naples" school. Cornerstone's school day operates from 7:45 a.m. to 3:05 p.m., Monday through Friday, 220 days of the year. It is not a residential facility and does not conduct therapeutic or instructional programming on the weekends or in the evenings, with the exception of a 24-hour hotline that is offered for family support. Cornerstone maintains a student body of approximately seventy-eight students and forty-eight staff members. Typical class sizes are eight to nine students, but typically are even smaller. Instructors are special education certified and two psychologists are on staff as well. Generally, Cornerstone provides multi-sensory instruction with positive reinforcements but negative

[6] She also confirmed that the initial IEP meeting requested by R.H. was the first referral that she was aware of concerning H.H. She had not been aware previously that the school nurse administered medication to H.H. or that she had been taken away from the school by ambulance based on suicide threats. Kusz was aware of H.H.'s declining grades and that her absences for treatment at Silver Hill had affected her academic program.

consequences can result as well in the form of the denial of lunch, breaks, and other privileges.

In sum, Dr. Blau described that H.H.'s program would consist of traditional group therapy for fifty-five minutes daily, Monday through Friday, along with Dialectical Behavior Therapy (DBT) daily for fifty minutes, Monday through Friday. Family therapy would also be required on a weekly basis and would include sessions with parents only or sessions that would also included H.H. Dr. Blau described a 24-hour support hotline that was offered to parents, where therapy and intervention could also be performed over the phone. Academically, Dr. Blau described that H.H. would participate in a program that incorporated fine and visual arts, in which he was aware that H.H. had a keen interest. H.H. would also have access to sports teams and activities. To support concerns with substance abuse, Dr. Blau described Cornerstone's offering of weekly recovery groups and drug education programs.

Similarly, the Director of New Haven, Karolee Koller, testified as to the proposed program for H.H. New Haven is an accredited long-term treatment residential facility for girls struggling with emotional issues including suicide, eating disorders, and trauma. New Haven bases its approach on a relationship-based model as opposed to a behavioral-based model. It places a high priority of safety, exploration, insight, integrity, and interdependence—representing the phases of the residents' program. Residents must complete chores, meet hygiene standards, set goals in community meetings, discuss community issues, model appropriate behavior, and achieve academic success. New Haven's values include love and service—emphasizing that each resident is cared for and loved, teaching them how to care for and love others through community service. Individual, group, and family therapy is incorporated, with intensive recreational therapy on the weekends. Intensive family therapy occurs ninety minutes weekly, primarily Thursday through Saturday, including required homework assignments for family members. Residents maintain access to 24-hour therapeutic support, seven days per week.

The academic program follows the core curriculum course in Utah and is college preparatory, including some advanced placement courses. Ninety-two percent of

residents advance to college. Instructors are all certified teachers, including certified special education teachers experienced in following and implementing IEP's. The curriculum integrates the teaching staff coordinating with the clinical staff weekly to discuss student progress and goals. New Haven maintains a psychiatrist on staff and a physician's assistant/nurse practitioner to work with the psychiatrist, all available twenty-four hours a day, seven days per week. Staff therapists are educated on a master's or doctorate level. Individual therapy sessions occur for ninety minutes and group sessions occur twice daily, totaling ten weekly.

The residential aspect of the program incorporates an educational component of learning and modeling life skills to assist with independence and academic success. New Haven assigns a residential director over each house and a primary therapist is assigned to the girls within each residential community—typically six to seven girls. Safety is also emphasized in the residential community as girls are not authorized to leave unilaterally and staff is trained in intervention in case of attempted flight. Koller is a licensed social worker and was assigned as the primary therapist for H.H. In evaluating H.H., she clinically determined that H.H. demonstrated behaviors of a manipulator who wanted to be liked. She also saw borderline personality disorders and was aware of her prior history of attempted suicide. Koller also reviewed the therapist reports that R.H. had previously sent to her attention prior to H.H.'s admission.

Based on her evaluation and the other information that she received, Koller developed H.H. proposed master treatment plan. (J-38.) The plan proposed the following schedule:

7:15 a.m.	Breakfast/hygiene/chores and twenty-minute community meeting
8:00 a.m.	Four class periods of core curriculum
1:00 p.m. – 5:15 p.m.	Individual therapy pull-outs weekly for ninety minutes in time slots within this period

In the evenings after individual therapy session, H.H. would be required to eat dinner, attend to chores, complete value-based or reward-based tasks, complete homework, and participate in family therapy once weekly.

H.H.'s treatment plan identified three problem areas and outlined objectives and a proposed intervention strategy to address each problem. (J-38.) Her problem areas included: 1) emotional regulation, impulsivity, and defiance; 2) relationships with family and peers; and 3) life purpose and vision. (J-38.) Overall, H.H.'s intervention strategy, in addition to the required school attendance, individual, group, and family counseling, included: 1) meeting with a psychiatrist monthly to evaluate her mood and medications; 2) participation in treatment team interventions; 3) participation in group recreational therapy four times per week; 4) use of positive coping mechanism in school setting; 5) completion of homework assignments 80% of time; 6) management of school work load and maintain a C or better in each class; 7) completion of women's health class with school nurses; 8) attendance at family therapy, including bi-monthly family weekends, weekly family phone calls and participation in community programming to create relationship values; and 9) submission to substance abuse screening. (J-38.) Throughout the day, both academically and therapeutically, each student's goals and objectives are emphasized and reinforced, including in the residential community activities. At the conclusion of the New Haven program, alumni participate in weekly support calls for three months and receive after-care home visits. Koller did not speak with nor receive an outreach from Board personnel in connection with H.H.'s admission.

LEGAL ANALYSIS AND CONCLUSIONS OF LAW

The Individuals with Disabilities Act is a joint federal-state program, which provides states with federal funds to ensure students with disabilities receive a free, appropriate, public education (FAPE). 20 U.S.C.A. § 1412(a)(1). Federal regulations provide that "[i]f placement in a public or private residential program is necessary to provide special education and related services to a child with a disability, the program, including non-medical care and room and board, must be at no cost to the parents of the child." 34 C.F.R. § 300.104. Similarly, New Jersey regulations provide that

> [w]hen a Board board of education places a student with a disability in an approved residential private school in order to provide the student a free, appropriate public education, such

> placement shall be at no cost to the parent. The Board board of education shall be responsible for special education costs, room and board.
>
> [N.J.A.C. 6A:14-7.5(b)(3).]

To determine whether a residential placement is necessary to provide a FAPE, the fact finder must determine "whether full-time placement may be considered necessary for educational purposes, or whether the residential placement is a response to medical, social or emotional problems that are segregable from the learning process." Kruelle v. New Castle County School Dist., 642 F.2d 687, 693 (3d Cir. 1981). In turn, to determine whether such problems are "segregable" from a student's education, the fact finder must consider "whether the 'social, emotional, medical and educational problems . . . [are] so intertwined that realistically it is not possible for the court to perform the Solomon-like task of separating them.'" Mary Courtney T. v. Sch. Dist. of Philadelphia, 575 F.3d 235, 244 (3d Cir. 2009) (quoting Kruelle, supra, 642 F.2d. at 694). Certainly, "[a] wide variety of facilities--treating a range of issues from substance abuse to mental health and from aging services to spinal cord injuries--can claim to be 'residential programs.'" Ibid. However, "[o]nly those residential facilities that provide special education, however, qualify for reimbursement under Kruelle and IDEA." Ibid. Moreover, "not all services that can be broadly construed as educational are cognizable under IDEA. This is because 'ultimately any life support system or medical aid can be construed as related to a child's ability to learn.'" Ibid.

For example, in Mary Courtney T., a student was unilaterally placed in "a long-term psychiatric residential treatment center . . . licensed by the New York State Office of Mental Health and . . . accredited with a national organization for the accreditation of rehabilitation facilities." Id. at 239. However, the program was not educationally accredited, had no school, special education teachers, and was not affiliated with any school Board. Ibid. The student

> received twenty-four hour care provided on a one-to-one, staff to patient ratio. [She] did not receive educational services during this period; most of her days were spent in intensive individual and group psychotherapy. The School Board sought to conduct a neuropsychological evaluation in June

> 2005, but was unable to do so because [the students'] parents advised that she was not sufficiently stable at the time. Also, according to the School Board, [her] parents stated that her educational plan from [a previous unilateral placement] could not be implemented at SLS because of [the students'] emotional state. In fact, nearly every person to have evaluated [the student] appears to agree that her safety and emotional wellbeing were the predominate concerns for at least the first five months she was at [the residential facility.]
>
> [Ibid.]

The Third Circuit acknowledged some of the services provided by the residential facility "may have provided an educational benefit. They [were] not, however, the sort of educational services that are cognizable under Kruelle." Id. at 245. While the residential facility employed strategies common in educational settings, such as the use of a "token economy program" to reward positive behaviors, the goal of such strategies was not educational. Ibid. Rather, the record demonstrated that the residential facility's "programs and skills were predominately designed to make her aware of her medical condition and how to respond to it." Ibid.

Similarly, and more recently, the Third Circuit held that a student unilaterally placed in a residential treatment facility after multiple suicide attempts was not entitled to reimbursement. Munir v. Pottsville Area Sch. Dist., 723 F.3d 423, 432 (3d Cir. 2013). The court emphasized that a school Board is not "financially responsible for the placement of students who need twenty-four-hour supervision for medical, social, or emotional reasons, and receive only an incidental educational benefit from that placement." Ibid. There, parents placed their child in two residential educational facilities after their teenage son attempted suicide on multiple occasions. Id. at 427. Despite the student's suicide attempts, the student functioned well at school, except for a few visits to his guidance counselor. Ibid. Moreover, unlike the student in Mary Courtney T., the student in Munir "was placed at a facility that did offer an educational component . . . [which] included a full school day, with a curriculum that met New Hampshire's educational standards." Id. at 433. The court acknowledged that the student received an education benefit from the program. Ibid. Nevertheless, the court held that relevant inquiry was "whether [the student] had to attend a residential facility because of his educational needs—because,

for example, he would have been incapable of learning in a less structured environment—or rather, if he required residential placement to treat medical or mental health needs segregable from his educational needs." Ibid. The Third Circuit noted that "[t]he fact that a particular residential facility does not even offer educational programs may be strong evidence that the child was placed there to meet his medical or emotional needs." Ibid.

Several factors have been recognized in determining whether a unilateral placement in a residential facility is reimbursable. See D.B.v. Ocean Twp. Bd. of Educ., 985 F. Supp. 457, 503 (D.N.J. 1997), aff'd, 159 F.3d 1350 (3d Cir. 1998) (citing Oberti v. Board of Educ. of the Clementon Sch. Dist., 995 F.2d 1204, 1215 (3d Cir. 1993), abrogated on other grounds by, T.R. v. Kingwood Twp. Bd. of Educ., 205 F.3d 572, 577 (3d Cir. 2000).) The D.B. court noted

> the focus of the inquiry generally will include consideration of at least these three factors, however articulated:
>
> First: Consider the steps the school Board 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.
>
> [D.B., supra, 985 F. Supp. at 488-89.]

The Board of New Jersey added six additional factors, which other courts have considered. Id. at 493. The D.B. court noted that applicable factors may vary from case to case. Id. at 492. The additional factors are

> 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.
>
> Ninth: Was the demand for residential placement primarily to address educational needs.
>
> [Id. at 493.]

FAPE Analysis

Based on the preponderance of the credible evidence, I **CONCLUDE** that the Board failed to offer H.H. a FAPE. By all reports, it is clear that H.H. is a gifted young woman with boundless potential of achieving the highest levels of success throughout her life. Her academic record demonstrates that she was enrolled in college preparatory courses while at Millburn High School and her educational assessments demonstrate that she has the intellectual capacity and IQ to support the achievement of any vocational aspiration to which she aspires. H.H.'s history and social, psychological, and psychiatric evaluations indicate that H.H. has encountered significant roadblocks in her mental and emotional development, which has eroded her ability to succeed educationally.

The undisputed credible evidence demonstrates that H.H.'s severe emotional and psychological barriers are inextricably tied to her educational progress and cannot be separated. Suicidal ideations, multiple suicide attempts, self-mutilation, violent outbursts, leaving her home without authorization, a bipolar and borderline personality disorder diagnosis, and substance abuse have consistently interfered with H.H.'s ability to

physically attend school and/or manifest her academic capabilities while there. The teacher-input emails to Zimmerman consistently noted a pattern of mental disconnect in the classroom as well as underperformance, with the sole exception of art class, which she identified as her passion and in which she consistently performed at a high level.

The persuasive evaluating clinical professionals who testified as experts at the hearing consistently noted the severity of H.H.'s mental health issues and her corresponding need for a therapeutic residential program. Dr. Morgan described H.H. as a "very sick girl suffering from psychosis," with "wildly abnormal test results," who would require acute hospitalization without the right treatment. Dr. Morgan's demeanor in delivering his opinion was extremely passionate and expressed sincere yet grave concern for what he perceived as the correct course of action for H.H.'s educational setting, which he concluded could only be served in a comprehensive residential program where the after-hours reinforcement by trained staff would assist her in solving conflicts, reacting emotionally, developing mental discipline and learning to behave normally. He specifically disaffirmed that she could function with supports at home, but rather he very conclusively and persuasively stated that she was so impaired in her social and emotional functions that she needs extra supportive services after school hours, outside of the classroom, in the form of consistent role modeling from trained staff.

Similarly, Dr. Dorogusker persuasively and conclusively testified that H.H.'s severe condition impacted her ability to perform academically. Dr. Dorogusker acknowledged credibly during her testimony that while she did not say the words "residential program" in her report, that her analysis and description of the appropriate program for H.H. was meant to convey a residential program versus a day program and she acknowledged having shared that sentiment with H.H.'s parents.

There is no evidence that the Board ever properly took into account the intertwined nature of H.H.'s emotional, psychological and educational needs. The credible evidence demonstrates that the Board took the position that H.H.'s emotional needs were segregable and recommended a placement based on that view. However, the Board's view was unsupported and not rationally related to the evaluations of competent, highly trained therapeutic experts. Specifically, both Kusz and Zimmerman discounted and

disavowed the clinical recommendations for a residential placement without any evidence of a competing clinical view. No expert testimony was presented on this issue.

Moreover, the Board's failure to consider the intertwined nature of H.H.'s emotional and educational needs appeared somewhat unreasonable. As an initial matter, the evidence demonstrated that despite the Board's responsibility to evaluate on its own accord students who may be eligible for special education under the Child Find obligation, an evaluation of H.H. was not performed until her parents requested it. Her parents' request for evaluation came after the Board was already aware that H.H. had numerous suicide attempts, was being administered medication from the school nurse, was participating in the High Focus program, had engaged in self-mutilation and had been hospitalized in an in-patient program. Kusz testified that she rejected expert recommendations regarding H.H.'s need for a therapeutic residential placement because she found it to be inconsistent and unsupported. However, Kusz is neither a psychologist herself nor did she rely on the expert evaluation of a professional in reaching the conclusion that a day school placement would meet H.H.'s needs. Additionally, the undisputed record is clear that the Board failed to consider or evaluate the efficacy of any residential placements and their sole focus was placement in one of two day schools—Sage or Cornerstone—despite the requests of H.H.'s parents, at the suggestion of the experts who had evaluated H.H.

H.H.'s emotional issues are not segregable from her educational progress and are so intertwined that it is not reasonably possible for her to succeed educationally without fully addressing her emotional and psychological issues. Accordingly, I **CONCLUDE** that Cornerstone was not an appropriate placement for H.H. because it does not meet her minimal needs, which would be served at a residential placement. It cannot be ignored that the Board did not offer any expert testimony regarding the appropriateness of a therapeutic day school for H.H., as opposed to the residential placement recommendation of her treating physicians. While the Board presented a witness that comprehensively explained the components of the day school program, no expert on the Board's behalf corroborated a basis for the Board's determination that a day school comported with H.H.'s needs versus a residential placement.

The credible evidence demonstrates that the Board was aware of the clinical recommendations of Dr. Dorogusker, Dr. Kearney, Dr. Morgan, and Dr. Hahn, prior to making its own recommended placement of a therapeutic day school. Based on the description given of the day school environment, a significant gap still existed in providing a structured environment for H.H. during critical after-school hours. Upon leaving school and going back home, H.H. would receive minimal support from the day school. There would be no reinforcement and structure that mirrored her experience during the day. While the 24-hour hotline offered by Cornerstone provided a limited form of potential support to H.H.'s parents, it was not sufficient to constitute the structure and reinforcement to further H.H.'s emotional and educational goals, as recommended by credible evaluating experts. Based on the preponderance of the competent expert testimony of the practitioners that evaluated H.H., her minimum educational needs required residential placement in a highly structured program that would reinforce positive-treatment alternatives, which included a residential school, but did not include a therapeutic day school.

Unilateral Placement Analysis

Since the undisputed credible evidence demonstrates that the Board failed to offer any residential placements to H.H., it is necessary to determine whether the New Haven Residential Treatment Center (New Haven) is an appropriate placement in light of H.H.'s emotional and educational needs. I **CONCLUDE** that the preponderance of the credible evidence established that New Haven is an appropriate residential placement to meet H.H.'s needs under her IEP. It is undisputed that New Haven's extensive therapeutic program meets H.H.'s emotional needs, as New Haven provides group sessions, individual sessions, recreational therapy, family therapy, and safety for high risk suicidal teen girls or those with a high risk of running to meet up with strangers. The central issue is whether the educational component of the program is merely incidental to the therapeutic component. H.H. is receiving more than an incidental educational benefit from her unilateral placement at New Haven, notwithstanding its focus on the emotional and mental health of the residents. The comprehensive testimony of Koller established that New Haven had the capacity to meet H.H.'s educational needs by providing a college preparatory and AP type classes within a core curriculum that met Utah's standards,

utilizing certified instructors in general and special education. New Haven's record of advancing 92% of its student body to college demonstrated that the therapeutic focus was appropriately balanced with an academic focus. H.H.'s schedule included classes like algebra II, chemistry, pre-calculus, U.S. history, art and British literature—courses which appear to be commensurate with the college preparatory courses of a student at H.H.'s high school equivalency level. (J-40.) Moreover, the Board presented no evidence to suggest that these course were inadequate or inappropriate in any manner.

Additionally, the inter-dynamics between the educational staff and the clinical staff was incorporated into the fabric of the school's operations and therefore into the overall educational experience of each student. Koller also described the educational component that continued after hours in the students' residential houses as they learned to model life skills that were necessary to continue their emotional advancement and independence as well as reinforce therapies that would enhance their educational progress. The assignment of clinical directors, therapists and trained staff for each residential house underscored the full integration of ongoing learning and therapy intertwined to offer full-service support to residents, like H.H. New Haven's components appeared to exceed the requirements recommended by the experts and evaluators that made recommendations and contributions to the development of H.H.'s IEP. New Haven is a highly structured environment that is capable of meeting H.H.'s educational and emotional needs.

Finally, the Board raises a concern with the timing and motivation of R.H.'s notice of the unilateral placement. I **CONCLUDE** that the preponderance of the credible evidence demonstrates that R.H. was very clear at each IEP meeting that she desired to follow the recommendation of the experts that had recommended residential placements. Throughout the process, R.H. was forthright and prompt in bringing these recommendations to the CST in writing and in oral conversations at the IEP meetings. I find her credible and forthright in testifying about these oral conversations, as it corroborated by and consistent with the documentary evidence. It is equally clear that the Board was not precluded from an opportunity to respond prior to the unilateral placement. The Board made it abundantly clear throughout the course of the process that it had no intention of considering any residential placement. The undisputed

evidence demonstrates that they made no attempts to identify a potential residential placement of their own choosing, nor did they make any attempt to evaluate and consider residential proposals brought to their attention by R.H. As a result, R.H. was reasonable in the course of action that she took, including, but not limited to, giving written notice to the Board, prior to making the placement.

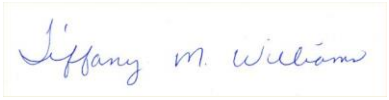
Accordingly, I **CONCLUDE** that New Haven was an appropriate unilateral placement and the Board should reimburse the petitioner's for H.H.'s educational expenses related to her 2013-2014 school year placement.

ORDER

Based on the foregoing, I **ORDER** that the relief requested in the petitioners' petition be and is hereby **GRANTED**.

This decision is final pursuant to 20 U.S.C.A. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2012) 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 Board court of the United States. 20 U.S.C.A. § 1415(i)(2); 34 C.F.R. § 300.516 (2012). If the parent or adult student feels that this decision is not being fully implemented with respect to program or services, this concern should be communicated in writing to the Director, Office of Special Education.

March 23, 2015



DATE

TIFFANY M. WILLIAMS, ALJ

Date Received at Agency

Date Mailed to Parties:

APPENDIX

Witnesses

For Petitioners:

R.H.
Karolee Koller
Dr. Beth Dorogusker
Dr. Joel E. Morgan

For Respondent:

Suzanne Zimmerman
Kelly Ann Bertrand
Julianna Kusz
Dr. Allan Blau
Dr. Mark Faber

Exhibits

Joint:

J-1 Petition for Due Process dated 12/06/13
J-2 High Focus Documents dated 04/2013
J-3 Letter from R.H. dated 06/10/13
J-4 Letter from J. Kusz dated 06/12/13
J-5 Request for Parental Participation in a Meeting dated 06/12/13
J-6 Email from J. Landis dated 06/18/13
J-7 Email from J. Mahon dated 06/18/13
J-8 Email from C. Schlip dated 06/19/14
J-9 Initial Review Meeting Documents dated 06/19/13
J-10 Notes dated 06/19/13
J-11 Notes dated 06/19/13
J-12 Release Information dated 06/19/13
J-13 Psychological Evaluation dated 07/30/13

J-14 Social History Report dated 08/16/04
J-15 Educational Assessment dated 08/23/13
J-16 Letter from Special Services Department dated 08/27/13
J-17 Psychiatric Evaluation dated 09/14/13
J-18 Email from R.H. with B. Dorogusker Report dated 09/04/13
J-19 Letter from S. Zimmerman dated 09/10/13
J-20 Email from R.H. with Neuropsychology Report dated 09/10/13
J-21 Request for Parental Participation in a meeting dated 09/13/13
J-22 Silver Hill Documents date 04/2013 – 06/2013
J-23 Letter from Kearney dated 09/18/13
J-24 IEP dated 09/20/13
J-25 Release of Information dated 09/20/13
J-26 Initial Eligibility dated 09/24/13
J-27 Letter from S. Zimmerman dated 09/25/13
J-28 Letter from S. Zimmerman dated 09/25/13
J-29 Letter from S. Zimmerman dated 09/25/13
J-30 Email from P. Barger dated 10/06/13
J-31 Email from P. Barger dated 10/16/13
J-32 Written Notice date 10/23/13
J-33 Release of Information dated 10/23/13
J-34 Email from P. Barger dated 10/25/13
J-35 Letter from S. Zimmerman dated 11/01/13
J-36 Psychological Evaluation
J-37 Psychiatric Evaluation dated 10/31/13
J-38 Master Treatment Plan dated 11/14/13
J-39 Class Schedule dated 01/31/14
J-40 New Haven Outlines
J-41 Zimmerman CV
J-42 Corlett CV
J-43 Betran CV (Lang)
J-44 Kusz CV
J-45 Cornerstone Website Program Description
J-46 Cornerstone Typical High School Day

J-47 Farber CV

J-48 Nowak CV

J-49 New Haven Application for Enrollment

J-50 New Haven Tuition Financial Agreement

J-51 Blau CV

J-52 Koller CV

J-53 Morgan CV

J-54 Dorogusker CV

J-55 Kearney CV