

**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

**FINAL DECISION**

OAL DKT. NO. EDS 3121-17

AGENCY DKT. NO. 2017 25686

**N.P. and S.P. on behalf of S.P.,**

Petitioners,

v.

**GLOUCESTER TOWNSHIP**

**BOARD OF EDUCATION,**

Respondent.

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**Jamie Epstein, Esq.,** for petitioners

**Brett Gorman, Esq.,** for respondent (Parker McCay, attorneys)

Record Closed: December 12, 2018

Decided: December 20, 2018

BEFORE **SOLOMON A. METZGER**, ALJ (Ret., on recall):

This matter arises under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§1400 et seq.; N.J.S.A. 18A:46-1 et seq. It was transmitted to the Office of Administrative Law by the Department of Education and a hearing was conducted on September 25 and 27, 2017, October 16, 2017, and February 7, 2018.<sup>1</sup>

The question presented is whether the Gloucester Township Board of Education provided S.P. with a free appropriate public education (FAPE) looking back two years

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<sup>1</sup> The case was heard before Joseph Ascione, ALJ, who fell ill and was unable to prepare an opinion. The parties agreed that the matter could be reassigned without rehearing, and I was asked to review the record and complete the OAL's work in the case.

from the filing of the February 2017 petition, which here mainly encompasses seventh and eighth grade.

The central facts are undisputed. S.P. was born on November 28, 2002. She resides within the respondent district and is eligible for special education. Respondent serves students from grades K through 8. S.P. was first classified in third grade as “other health impaired” and she retained that classification through eighth grade. S.P. suffers from a seizure disorder, autism spectrum disorder, a cognitive processing disorder, anxiety, and panic attacks. Nonetheless, these conditions did not appreciably impact her school performance. S.P. was in mainstream classes for the most part and was a good student. In seventh and eighth grade she was inducted into the National Junior Honor Society. Gina Crescenzi, respondent’s case manager, testified without contradiction that this honor is only bestowed on a small percentage of the student population.

S.P. required supports throughout her years in the District, which included, at various points, speech and language therapy, occupational therapy, a shared aide, extended time on tests and assignments, and staff education regarding seizure disorder. The aide was meant to help with organization and anxiety control, and to be alert for any signs of seizure.

For high school, the District changed S.P.’s classification to multiply disabled and, with the assent of the Black Horse Regional High School District, placed her into Y.A.L.E. School, located in Cherry Hill, New Jersey. This is the out-of-district placement her family sought. The request was supported by the reports of Dr. Barbara Leach, a neuropsychologist, and Josephine Elia, M.D., S.P.’s psychiatrist. This school provides small-group settings and supports that the parties agree were needed as she entered high school. S.P. would otherwise have attended the regional high school, which serves a large student body.

In January 2016, while in seventh grade, S.P. experienced a bout of seizures and hallucinations that occurred off and on for a few months. Prior to this period she

had been seizure free for a few years. These events also required some hospitalization. While S.P. was unable to attend school, home instruction was provided. Upon her return to school S.P. used a wheelchair to avoid falling during an episode.

In eighth grade S.P.'s anxiety was triggered in the lunchroom and on the school bus, as these can be rowdy environments. Her shared aide was subsequently assigned to accompany her during these times. During the school year petitioners felt that S.P.'s anxiety was also being triggered in the regular-education classroom, and at their request she was placed into a smaller resource room. After a short while petitioners asked for a transfer back to regular education because this setting was insufficiently challenging. The District complied. This is the substance of the record.

The burden of proof rests with the District, N.J.S.A. 18A:46-1.1. It must establish that it offered S.P. a program reasonably calculated to facilitate progress given her circumstances, Andrew F. et al. v. Douglass Cty. Sch. Dist., 137 S.Ct. 988 (2017); Ridgewood Bd. of Educ. v. N.E. for M.E., 172 F.3d 238 (3d Cir. 1999). The District maintains that S.P.'s success as a student largely speaks for itself. I agree. It is hard to argue with stellar academic performance. S.P.'s disabilities certainly weighed on her, but her successful advancement through the curriculum, particularly as pertains to seventh and eighth grade, makes it difficult to see a deprivation of FAPE meriting compensatory education.

Petitioners suggest that the District merely did as they asked and did not assume its lead role in assessing S.P.'s needs. It is true that a district cannot defend deficient programming by claiming that parents, often untutored in such matters, failed to seek more, M.C. v. Cent. Reg'l Sch. Dist., 81 F.3d 389 (3d Cir. 1996). Here the argument is inapposite. It appears that smaller classes in a quiet intellectually stimulating environment would better fit the constellation of fragilities presented by S.P. Yet, this is not the test. Placements need not be seamless to confer a meaningful opportunity to learn. The larger picture remains that S.P. outpaced the majority of her classmates during seventh and eighth grade. Academic performance is often the chief fact

question in placement disputes. Petitioners steer entirely clear of this topic. We must tally in as well the IDEA preference for education in the least-restrictive environment, 20 U.S.C. § 1412(a)(5).

In seventh and eighth grade the regular school environment could be a source of agitation for S.P., particularly on the school bus and in the cafeteria. The District ultimately assigned the shared aide to accompany her during these transitions. Petitioners focus on what they believe was a lethargic reaction to these stressors. Petitioners also characterize some of the incidents as bullying. On this latter point the record is sparse. There is no eyewitness testimony, or firm investigative file supporting a finding to this effect. A focused inquiry would have sought to distinguish between prohibited conduct and the jostling and horseplay that typify school lunchrooms and bus rides. Petitioners' closing brief discerns a likeness to our facts in Shore Regional High School Board of Education v. P.S., 381 F.3d 194 (3d Cir. 2004). The comparison is tenuous. The court in Shore Regional deferred to an OAL opinion that found a denial of FAPE where a student was subjected to severe and prolonged harassment for perceived effeminacy. This extended through his K–8 years, and he was about to enter high school with the same grouping of classmates. This student's grades and emotional health had suffered, and the administrative law judge concluded that the harassment was likely to continue. Thus, reimbursement was ordered to his parents for the costs of attendance at another high school. There are key distinctions between the instant matter and Shore Regional; the latter record manifestly presented long-term harassment, and in sum the conduct repressed educational progress.

In any case, it appears that the staff in our matter heard petitioners' complaints and moved to a resolution by assigning the aide during lunch and the bus ride home. (P-2; R-54.) This quieted the issue. Even assuming, arguendo, that the reaction was slow, this is insufficient to undermine the placement.

Neither may petitioners argue back from the District's decision to place S.P. at Y.A.L.E. School for high school, that the seventh- and eighth-grade placements were inadequate. The parties agree that the number of students at the regional high school

intensified concerns for S.P.'s ability to cope. The parties began discussing a placement at Y.A.L.E. for high school at the outset of the 2016–17 school year. The recommendations from S.P.'s mental-health professionals for Y.A.L.E. were prepared in the spring of 2017 as S.P. was completing eighth grade and decisions about high school were impending. (R-59 to R-62.) By June 2017, the District had developed an individualized education program (IEP) placing S.P. at Y.A.L.E. Though S.P. was examined by multiple experts over the years, no report predating this period counseled for an out-of-district placement.

Based on the foregoing, petitioners' application for compensatory education is **DENIED** and the matter is **DISMISSED**. So ordered.

This decision is final pursuant to 20 U.S.C. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2018) 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. § 1415(i)(2); 34 C.F.R. § 300.516 (2018). 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.

December 20, 2018  
DATE

SOLOMON A. METZGER, ALJ (Ret.,  
on recall)

Date Received at Agency

December 20, 2018

Date Mailed to Parties:

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**WITNESSES**

**For petitioners:**

S.P.

N.P.

**For respondent:**

Gina Crescenzi

**EXHIBITS**

**For petitioners:**

P-2 2016 e-mails

P-21 S.P. bills and receipts

**For respondent:**

R-1 Due Process Petition, February 2, 2017

R-2 Answer to Petition, February 15, 2017

R-3 Request for Complaint Investigation with OSEPP, March 13, 2017

R-4 Supplement to Request for Complaint Investigation, March 14, 2017

R-5 Correspondence from OSEPP Regarding Complaint Investigation, March 17, 2017

R-6 Written Response to Complaint Investigation, March 30, 2017

R-7 Prehearing Order, Hon. Joseph A. Ascione, April 6, 2017

R-8 Parental request for 504 meeting

R-9 Memorandum to staff regarding epilepsy from Lois Maunz, R.N., September 7, 2010

R-10 Letters from Nemours Children's Clinic regarding diagnosis

R-11 504 Referral Form from District

R-12 Parental letter requesting evaluation for IEP

- R-13 Nemours Children's Clinic, Order/Referral to Speech/Feeding Spec., June 10, 2011
- R-14 Nemours Children's Clinic, Order/Referral to Physical Therapy, June 10, 2011
- R-15 Comprehensive Neuropsychological Evaluation
- R-16 Occupational Therapy Initial Evaluation
- R-17 Initial Evaluation, Lea Soldevilla, MA, CCC-SLP, WCRC at Washington Twp., August 9, 2011
- R-18 Request for Child Study Team Review, September 1, 2011
- R-19 Written Notice of Evaluation/Consent to Evaluate, September 16, 2011
- R-20 Learning Assessment, October 13, 2011
- R-21 Occupational Therapy Evaluation, September 19, 2011
- R-22 Speech and Language Initial Evaluation, October 7, 2011
- R-23 Social Service Evaluation, September 20, 2011
- R-24 Physical Therapy Evaluation, October 3, 2011
- R-25 Eligibility Conference Report, October 26, 2011
- R-26 IEP, October 26, 2011
- R-27 Progress Reports, June 7, 2012
- R-28 IEP, April 3, 2012
- R-29 Progress Reports, May 14, 2013
- R-30 IEP, April 10, 2013
- R-31 IEP, Amendment, April 10, 2013
- R-32 Initial Neurodevelopment Evaluation, John T, Delgiorno, M.D., January 2, 2014
- R-33 IEP, April 10, 2014
- R-34 Speech and Language Progress Report, June 2014
- R-35 Triennial Reevaluation Planning Meeting, June 4, 2014
- R-36 Speech and Language Evaluation, July 2, 2014
- R-37 Confidential Learning Evaluation, June 30, 2014
- R-38 Eligibility Conference Report—Re-Evaluation, July 24, 2014
- R-39 IEP, Revision/Correction, July 24, 2014
- R-40 Progress Reports, June 15, 2015

- R-41 IEP, May 11, 2015
- R-42 Progress Reports, June 8, 2016
- R-43 Kathryn Simcox's Notes, 2015–2016 School Year
- R-44 IEP, May 9, 2016
- R-45 Parent Meeting Documentation Form, October 14, 2016
- R-46 Consent to Amend IEP Without a Meeting, October 6, 2016
- R-47 Consent to Amend IEP Without a Meeting, November 16, 2016
- R-48 Epilepsy Training
- R-49 Seizure Action Plan
- R-50 Letter from Gina Crescenzi, Case Manager, Enclosing Authorization for Release of Records, December 22, 2016
- R-51 Consent to Amend IEP Without a Meeting, January 18, 2017
- R-52 Payroll Record regarding bus aide
- R-53 Student Case Notes, February 3, 2017
- R-54 Progress Reports, February 1, 2017
- R-55 Star Assessment, March 30, 2017
- R-56 Star Assessment, February 24, 2017
- R-57 Letter from Jamie Epstein, Esq., regarding request to be placed at Y.A.L.E., May 22, 2017
- R-58 Observation Report for Y.A.L.E. School in Cherry Hill, May 30, 2017
- R-59 Letter from Josephine Elia, M.D., Nemours duPont Pediatrics, regarding placement for 2017–2018 school year
- R-60 Comprehensive Neuropsychological Re-Evaluation, April 21, 2017
- R-61 Addendum to Neuropsychological Report, May 15, 2017
- R-62 IEP, June 13, 2017
- R-63 National Junior Honor Society Program information
- R-64 Dr. Violet Martin's resume
- R-65 Gina Crescenzi's resume
- R-66 Maryann F. Molis' resume
- R-67 Tom Cotters' resume
- R-68 Lori Johnson's resume
- R-69 Maria Naugle's resume