

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. EDS 16244-18

AGENCY DKT. NO. 2019-28902

G.P. ON BEHALF OF M.P.,

Petitioner,

v.

MASTERY SCHOOLS OF CAMDEN

BOARD OF EDUCATION,

Respondent.

Terrell A. Ratliff, Esq., appearing for petitioner (Afonso, Archie & Foley, P.C., attorneys)

Lucas J. Repka, Esq., appearing for respondent (O'Donnell Associates, attorneys)

Record Closed: May 7, 2019

Decided: June 10, 2019

BEFORE **MARY ANN BOGAN**, ALJ:

STATEMENT OF THE CASE

Petitioner G.P. on behalf of her son M.P., age fourteen, alleges that M.P. should be removed from the Garfield Park Academy (GPA) and placed into a less restrictive in-district placement at the Mastery Charter East Camden Middle School (Mastery). She contends that M.P. is not getting the best education at GPA, like he was when he attended Mastery, and alleges that M.P. does not feel safe at school. Respondent, Mastery

contends that M.P.'s placement at GPA, as set forth in the May 18, 2018, individualized education program (IEP) prepared by the Camden City School District (District) for the 2018–2019 school year, is appropriate. Mastery contends that M.P., who is classified as emotionally disturbed, requires the level of intensive support offered by GPA and that the placement, although more restrictive, does provide a free and appropriate public education (FAPE) in the least restrictive environment (LRE). Mastery is aware of at least three incidents where M.P. displayed significant behavior that required a specialized response involving restraint but denies that M.P. was ever unsafe. GPA is a State-approved, private, non-profit special-education school that is contracted by the District to implement services to children with disabilities.

PROCEDURAL HISTORY

On or about October 10, 2018, the petitioner filed a petition for a due-process hearing with the Office of Special Education, Bureau of Policy and Planning. The matter was transmitted to the Office of Administrative Law (OAL), where it was filed on or about November 9, 2018. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13. The parties appeared at a settlement conference on or about December 6, 2018, and the matter was not resolved.

Petitioner's request to adjourn the February 26 and February 27, 2019, hearing dates was granted at the hearing on February 26, 2019, to allow petitioner time to retain an attorney. Petitioner's second request for an adjournment was granted at the March 12, 2019, hearing to allow petitioner to meet and retain the attorney she had contacted. The hearing was conducted on the peremptory hearing date of May 7, 2019, after which the record closed.

FACTUAL DISCUSSION

For respondent

Melinda Shorday is the director of special-education services for Mastery and has held this position for six years. She manages and supports school learning program

planning, manages the evaluation process, and ensures supports for special education. Previously she served as Mastery's assistant vice principal in special education. Camden City, the District school, uses a central enrollment process to place students at Mastery. M.P. applied to Mastery in the spring of 2018. After he was accepted, Mastery undertook steps to ensure his appropriate placement. As set forth by the IEP prepared by the District dated May 18, 2018, M.P., who is classified as emotionally disturbed, has significant emotional needs that require intensive support, a 1:1 aide across the school day, and a small-class setting. His classification means that he exhibits severe emotions that are disruptive and include externalized behavior and serious acting-out behaviors that the in-district Camden City school could not program to meet his needs. Accordingly, the IEP team completed an application for a specialized school outside of the District and placed M.P. at GPA. (R-4.) At GPA, M.P. can benefit from full-time supports and services that include a 1:1 aide trained in evidence-based behavior support and de-escalating techniques, a highly predictable and structured environment, school-wide positive-behavior supports, a calming room/sensory room, a therapeutic learning environment, psychiatric services, and applied behavioral analysis therapy to better understand student triggers and motivators. (R-1.) The placement was based upon the parent's selection from particular school options provided to her by the District after a due-process petition had been filed. Ms. Shorday had a few "extensive" conversations with petitioner and explained the respondent's willingness to continue to send M.P. to a tuition placement school, and sent her a letter confirming placement with continuing supports and services. (R-2.) The District also met with petitioner to discuss the placement, and address her concerns about the 1:1 aide. (R-3.) Mastery also reviewed the special-education packet with records and reports provided from the District, which provided a more extensive scope and history of M.P.'s needs, and demonstrated that M.P. did not make progress, even with all of the District supports and services in place to educate him. (R-6.)

These records were consistent with the IEP implemented on May 18, 2018, which confirmed the necessary supports and services to meet M.P.'s needs and ensured appropriate programming. (R-1.) There were no new revisions made to the current IEP, and GPA implemented the Camden City School District IEP of May 18, 2018, as it was appropriate and there was no reason to make any adjustments.

Ms. Shorday executed the appropriate papers to transfer M.P. to GPA. Petitioner did not object to the papers or express any concerns regarding the placement. (R-5.) After that petitioner requested an IEP meeting, claiming that M.P. does not feel safe in school. GPA scheduled the meeting for October 15, 2018, notified petitioner, and provided her with transportation. Petitioner did not attend. Prior to canceling the meeting, attendees placed a call to petitioner, but there was no answer. At the meeting Mastery agreed to change the letterhead on the IEP to Mastery based on a previous request of G.P. because she had a concern about Mastery implementing an IEP created by the Camden City School District. No other changes were made. The IEP was then sent to petitioner and implemented after fifteen days, when petitioner did not respond. (R-10; R-11.)

Petitioner was invited to another meeting, which she attended, on November 9, 2018, to address her concerns. (R-12.) Ms. Shorday was present at this meeting. This was a resolution meeting conducted after petitioner filed for due process. At the meeting, Mastery responded to petitioner's concern that the aide was not appropriate. Mastery reminded petitioner that the current aide was hired by the school to accommodate her prior request for a specific aide. Mastery also accommodated petitioner's request to ensure that the same aide is both on the bus and with M.P. during the school day, even though this is not a normal expectation. Mastery also responded to petitioner's concerns that M.P. does not feel safe at school, and offered to facilitate a meeting at GPA with the social worker and other stakeholders to create a plan to meet any concerns M.P. had. Prior to this meeting, GPA never expressed any concerns for M.P.'s safety and expressed that he was doing well. There was also a discussion about other placements. Mastery decided to provide the petitioner with release forms to send M.P.'s file to other schools, because she wanted to find out if they could accommodate M.P., even though Mastery believed that GPA was the appropriate placement. A week later, petitioner returned three completed releases from the six releases provided. (R-13.)

Ms. Shorday is aware of incidents that M.P. was involved in after he was placed at GPA in which restraint of M.P. was required. The first incident occurred on October 5, 2018, during math class. M.P. used abusive language and was physically aggressive after becoming frustrated with his work. Staff assisted him with his assignment, yet he

continued being frustrated and began throwing objects off of his desk, and his behavior escalated. Staff responded using the de-escalation protocol, which is a verbal protocol, but ultimately M.P. had to be removed from the classroom, and escorted to the cool-down room where he spit and kicked staff, then continued to curse and swing at staff. He was restrained due to his aggressive and self-harming behavior, and after being restrained he urinated on the floor.¹ (R-17.) Ms. Shorday pointed out that it is this type of incident that demonstrates why programing at GPA is appropriate for a student who has a significant skill deficit. GPA's protocols are very appropriate, the program is well designed, and there was no concern "whatsoever" with M.P.'s safety and no evidence of an injury. In addition, de-escalation responses are conducted by staff who are well trained to respond to students with appropriate de-escalation tools to manage escalating behavior. In fact, all staff members are trained in how to respond to a student's physically aggressive behavior. Also, in M.P.'s Daily Zone reports, a self-report of the student's hourly feelings, M.P. frequently reported that he is happy and calm at school. Administrators and staff report that M.P., with the level of support in place that GPA provides, is doing "much, much" better in this placement when he attends school on a regular basis. (R-16.)

Heather D'Antonio is a learning disabilities teacher consultant (LDTC) at Mastery. In this role Ms. D'Antonio is a member of the Mastery child study team, a team that supports district school child study teams by reading IEPs, completing evaluations, and determining programing, goals, and progress monitoring. She has a bachelor's degree in elementary education with K-8 certification, and a master's degree in learning disabilities with an LDTC certification and a supervisor certification. She has been employed in various educational roles for the past seventeen years. She met M.P. during the spring of 2018 enrollment process. As part of the child study team, she reviewed M.P.'s records to determine appropriate programing and placement.

Ms. D'Antonio also received and reviewed the special-education packet with records and reports provided by the District, which provided a more extensive scope and history of M.P.'s needs, and confirmed the proposed placement at GPA. (R-6.) Ms. D'Antonio remains fully supportive of the placement. She also asserts that GPA provides

¹ The District set forth two other incidents that occurred in February and May 2019, after the due-process petition was filed. (R-26.)

the extensive behavioral and emotional supports that M.P. needs that cannot be offered at Mastery or the District school.

Ms. D'Antonio also attended the parent meeting in September 2018, when G.P. did not attend. She recalled that petitioner was offered phone conferences with the school when she did not attend the scheduled meeting. Mastery also attempted to schedule another meeting, but was unable to because of the October 5, 2018 incident. GPA contacted Ms. D'Antonio to report the incident and recommended an in-school suspension. GPA explained everything that happened and how their staff responded. Ms. D'Antonio had no concerns with their response, as the staff is well trained in how to de-escalate. G.P. responded by reaching out to Ms. Howell and asking for a meeting. The meeting took place in November 2018, and petitioner expressed that M.P. felt unsafe. Petitioner kept M.P. out of school until December 18, 2018, when Mastery filed a truancy action. M.P. thereafter attended school regularly until about February 2019, when another incident occurred.

Michelle Howell has been the assistant principal of Specialized Services at East Camden Middle School for eight months. She has been in the education field for seven years and has a master's in special education and elementary education. She oversees IEP's, coordinates all team members, and is a liaison with parents to ensure they are involved in the IEP process. She came to know M.P. in September 2018 as a student at GPA. She was contacted for a meeting pursuant to G.P.'s request, although G.P. did not attend. (R-8.) She also recalled that at the meeting, there were no concerns about M.P.'s placement. In fact, she specifically asked team members how M.P. was doing, and they spoke "glowingly" about him.

Ms. Howell reviewed reports she received from GPA about the October 5, 2018, incident, and there were no concerns about GPA's response. Ms. Howell also supports M.P.'s current placement, and she did not receive any reports regarding M.P.'s program or his safety.

Amanda Rossi is a consultant to the Teaching Family Model (TFM) employed by GPA. She has been at GPA for sixteen years, and she has been certified in TFM for over

twenty-eight years. GPA is a K–12 private school, and the first school to adopt the program and to be accredited in the TFM. The program is designed to work with students with severe behavioral issues.

GPA has a small student-to-faculty ratio. Every student receives instruction in groups consisting of twelve to fourteen students. The class breaks up into small instructional groups depending on the students' academic levels, to meet the students' needs. Each class is comprised of a teacher, a credentialed social worker who works to meet the student's therapeutic needs, an aide, and a facilitator that delivers both academic and therapeutic supports as part of the curriculum. All GPA teachers are certified to teach students with disabilities. GPA teaches social-skills deficits, so the behavioral program is designed to teach "in the moment" when the behavior occurs, so the student understands and is able to plan for future use of the appropriate social skill.

GPA is generally considered by districts for placement options when a district can no longer meet a student's needs, and is known for enrolling students who need a high level of emotional support. An initial review is conducted for all students to ensure that GPA can meet their needs before they attend. GPA offers individual and group counseling, art therapy, biofeedback, speech therapy, equine therapy and programs, and use of effective praise. All staff receive Crisis Prevention Institute training to ensure appropriate responses and use of restraints, when necessary.

When M.P. began school there were no concerns with GPA's ability to implement the May 18, 2018, IEP as drafted. He needed more supports at the time of his enrollment. He has a 1:1 aide assigned to him for school and transportation. The aide rides the bus with him to and from school and works with him in the classroom, as well. She also completes the daily behavior forms. When he first arrived in spring 2018 he was aggressive, with volitional urination. He almost immediately had an incident, and from May to June 2018 he had six incidents while he was acclimating to the change in placement. This was a typical response. (R-17.) The incident form is completed for any behavior that is out of the ordinary, like a restraint. When he returned to school in September 2018, he was doing very well. M.P. had appropriate supports and he was

becoming more familiar with his school and staff. There was a decrease in behaviors from when he first started.

After the October 5, 2018, incident M.P. was seen by the nurse to ensure that he was safe and to check for injuries. M.P. reported that an employee hit his head against the wall. The school nurse did not report any safety concerns, and did not report any injuries. The nurse's report indicates the neurological check to be within normal limits. (R-23.) That afternoon, M.P. was involved in another incident, which occurred on the bus. Staff was able to calm him down.

Normally the day following the restraint incident the student attends a debriefing. At the debriefing, a discussion takes place about the situation, the options, the disadvantages and advantages, and what would have been a good solution. M.P. did not attend the debriefing because he remained absent from school. (R-24.)

Ms. Rossi also communicated with G.P. to attempt to address safety concerns, but G.P. did not respond, and M.P. remained absent until he was returned to school in December 2018.

Ms. Rossi explained that restraints are only used when the student continues behaving aggressively, and is at risk of causing harm to himself or others. GPA teaches students how to maintain self-control, and M.P. was effectively improving his ability to self-regulate because there has been a decrease in incidents from when he first began school. When M.P. was absent from school for ninety-four days for the 2018–2019 school year, following the incident of October 5, 2018, there was no recommendation for a change in programming, because the program is effective when its implementation is consistent and M.P. did well when he attended school consistently.

M.P. has made progress with his plan, a plan developed consistent with his IEP, that sets forth two target skills that M.P. helped develop, relaxation skills, and consequences. He is currently at level two out of the five-level system. (R-19.)

Daily rating sheets collect data to evaluate the effectiveness of the behavioral interventions set forth in M.P.'s IEP. The reports demonstrate that ninety-four percent of his behavior interactions have been positive, and twenty-one percent are in the target skill area. Although ninety-four percent is a great score, he has not advanced to the next level because he has not attended school on a consistent basis and his absences have hindered his ability to adopt the behavior consistently. None of his self-reports indicate a concern for his safety, and no staff member has reported a safety issue. (R-16.) The Daily Zone check-in completed by the student indicates positive feelings every day. There were no self-reports of feeling unsafe or anxious, or other reports of concerns. These reports, which include a narrative from the 1:1 aide, are sent home every day.

M.P. also receives academic supports to meet his academic goals. M.P. is involved in a research-based program and math intervention. M.P.'s progress reports show that academically he is doing well, and is making progress both academically and behaviorally. (R-20.) However, he has not mastered the skills to be placed in a less restrictive environment. Ms. Rossi does not recommend any changes to his IEP at this time, and believes that GPA is an appropriate placement for M.P. because the supports in place will allow him to be successful.

G.P., petitioner, is M.P.'s mother. She remembers that M.P. was about to start at Mastery when the school informed her that he would attend GPA, instead. She was disturbed by this change in placement and could not find information from the school about why this happened. She disagrees with the District's testimony that she did not make herself available for meetings at the school. She was never told about them, and she does not have transportation. When she asked to reschedule a meeting once she learned of it, no one returned her call or contacted her. She is not fully aware of the incidents with M.P. that GPA described, but she knows that M.P. does not feel safe, they have been rough with him, and that he gets bullied at school. In addition, the 1:1 aide is not always present as she is supposed to be. After the restraint, M.P. came home with a bump on his head. Another day, he wanted to call his mother from school and he was not allowed to call. In addition, G.P. does not receive paperwork from school, notices, or homework. M.P. told G.P. that he is doing things right at school.

Findings

It is my obligation and responsibility to weigh the credibility of the witnesses in order to make a determination. Credibility is the value that a fact-finder gives to a witness's testimony. The word contemplates an overall assessment of a witness's story in light of its rationality, internal consistency, and manner in which it "hangs together" with other evidence. Carbo v. United States, 314 F.2d 718, 749 (9th Cir. 1963). Credible testimony has been defined as testimony that must proceed from the mouth of a credible witness, and must be such as common experience, knowledge, and common observation can accept as probable under the circumstances. State v. Taylor, 38 N.J. Super. 6, 24 (App. Div. 1955) (quoting In re Perrone's Estate, 5 N.J. 514, 522 (1950)). In assessing credibility, the interests, motives, or bias of a witness is relevant, and a fact-finder is expected to base decisions of credibility on his or her common sense, intuition, or experience. Barnes v. United States, 412 U.S. 837 (1973). Credibility does not depend on the number of witnesses, and the finder of fact is not bound to believe the testimony of any witness. In re Perrone's Estate, 5 N.J. 514.

The witnesses on behalf of the respondent testified credibly as to their knowledge of the educational plans established for M.P. The respondent provided testimony and evidence to prove that M.P. progressed when he attended GPA and was provided with significant supports in place throughout the day. Respondent witnesses testified in a direct and articulate manner. The respondent also referenced documentary evidence such as the IEP, and the District records to the decision-making process to establish M.P.'s placement in a more restrictive environment, after in-District supports and services were ineffective. Staff and administrators testified credibly that after M.P. began attending GPA, M.P. benefited from the significant supports and services and he began making progress. The data, self-reports prepared by M.P., the incident report, and school nurse report, along with the credible testimony from the respondent's witnesses, demonstrate that GPA responded with appropriate protocols starting with verbal de-escalation techniques and subsequently restrained M.P. after M.P. did not respond to the verbal protocol. There was no evidence of any safety concerns and M.P. was not injured while at school. I accept the respondent's testimony and **FIND** the testimony as fact.

In contrast to the respondent's testimony, the testimony from G.P., M.P.'s mother, was less than direct, and did not specifically address or articulate a basis for her concerns for M.P.'s safety or why the placement is inappropriate. G.P.'s testimony that M.P. felt unsafe was in direct contradiction to the documentary evidence, which included volumes of pages of M.P.'s self-reports about his happiness and calm feeling while at the school. Her allegation that M.P. had a bump on his head is contrary to the testimony of all respondent witnesses who I found to be credible, and the nurse's observations documented in her report made shortly after the restraint. Moreover, G.P. could not credibly demonstrate that the school failed to contact her or schedule meetings to discuss her concerns. Rather, she did not respond to the invitations to meet with school staff, resisted the program, and refrained from sending M.P. to school. Accordingly, I **FIND** that G.P.'s testimony was not credible.

LEGAL ANALYSIS AND CONCLUSION

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

The United States Supreme Court has construed the FAPE mandate to require the provision of "personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction." Rowley, 458 U.S. at 203. The Rowley standard was recently questioned by the United States Supreme Court in Endrew F. v.

Douglas County School District RE-1, 580 U.S. _____, 137 S. Ct. 988 (2017). The Supreme Court determined that to meet its obligation to deliver FAPE, a school district must show a cogent and responsive explanation for its decisions that shows that the IEP is reasonably calculated to enable the child to make progress that is appropriate considering the particular student's circumstances. The Court declined to devise a "bright-line rule" for "what 'appropriate' progress will look like from case to case," because "[t]he adequacy of a given IEP turns on the unique circumstances of the child for whom it was created." Endrew F., 137 S. Ct. at 1001.

In addressing the quantum of educational benefit required, the Third Circuit has always made clear that more than a "trivial" or "de minimis" educational benefit is required, and the appropriate standard is whether the IEP provides for "significant learning" and confers "meaningful benefit" to the child. T.R. v. Kingwood Twp. Bd. of Educ., 205 F.3d 572, 577 (3d Cir. 2000); Ridgewood Bd. of Educ. v. N.E., 172 F.3d 238, 247 (3d Cir. 1999); Polk v. Cent. Susquehanna Intermediate Unit 16, 853 F.2d 171, 180, 182–84 (3d Cir. 1988), cert. den. sub. nom. Cent. Columbia Sch. Dist. v. Polk, 488 U.S. 1030 (1989).

In other words, the school district must show that the IEP will provide the student with "a meaningful educational benefit." S.H. v. State-Operated Sch. Dist. of Newark, 336 F.3d 260, 271 (3d Cir. 2003). This determination must be made in light of the individual potential and educational needs of the student. T.R., 205 F.3d at 578; Ridgewood, 172 F.3d at 247–48. "When students display considerable intellectual potential, IDEA requires 'a great deal more than a negligible [benefit].'" Ridgewood, 172 F.3d at 247 (quoting Polk, 853 F.2d at 182). The pertinent inquiry is whether the IEP offered a FAPE and the opportunity for significant learning and meaningful educational benefit within the least restrictive environment.

The IDEA describes education in the "least restrictive environment" as follows:

[t]o the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational

environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

[20 U.S.C. § 1412(a)(5)(A).]

The law describes a continuum of placement options, ranging from mainstreaming in a regular public school setting as least restrictive, to enrollment in a residential private school as most restrictive. 34 C.F.R. § 300.115 (2018); N.J.A.C. 6A:14-4.3.

Courts in this circuit have interpreted this mainstreaming requirement as mandating education in the least restrictive environment that will provide meaningful educational benefit. “The least restrictive environment is the one that, to the greatest extent possible, satisfactorily educates disabled children together with children who are not disabled, in the same school the disabled child would attend if the child were not disabled.” Carlisle Area Sch. v. Scott P., 62 F.3d 520, 535 (3d Cir. 1995), cert. den. sub. nom. Scott P. v. Carlisle Area Sch. Dist., 517 U.S. 1135 (1996).

The education of a child with a disability must be tailored to the unique needs of the child through an IEP, and the provisions of the IEP must be reviewed and, if appropriate, revised periodically, but not less than annually. 20 U.S.C. § 1414(d)(4)(A). An IEP should be developed with the participation of parents and members of a district board of education’s child study team who have participated in the evaluation of the child’s eligibility for special education and related services. N.J.A.C. 6A:14-3.7(b). The IEP team should consider the strengths of the student and the concerns of the parents for enhancing the education of their child; the results of the initial or most recent evaluations of the student; the student’s language and communication needs; and the student’s need for assistive-technology devices and services. The IEP establishes the rationale for the pupil’s educational placement, serves as the basis for program implementation, and complies with the mandates set forth in N.J.A.C. 6A:14-1.1 to -10.2.

Here, G.P. is dissatisfied with M.P.’s IEP, after its implementation. She appropriately filed for an administrative due-process hearing. 20 U.S.C. § 1415(f). The

burden of proof is on the school district to show that it provided M.P. with a free and appropriate public education in the least restrictive environment. N.J.S.A. 18A:46-1.1.

Mastery provided testimony and evidence to demonstrate that M.P. has made progress while at GPA, and provides that the IEP provides for his unique needs, which are supported by his self-reports, and observations from school professionals. The parent presents contrary testimony without any corroborating evidence; fails to cooperate with the school or attend meetings scheduled and arranged for her benefit to address her concerns that M.P. felt unsafe; and refrains from sending M.P. to school.

The record here is clear. Moving M.P. to a less restrictive environment is not appropriate. M.P. presents with a significant emotional disability that requires the specialized supports and services that GPA provides as a private school specializing in students with severe emotional disabilities. M.P. has made progress, and it is anticipated that he will make even more progress when he attends school on a consistent basis.

Furthermore, the use of physical-restraint techniques where appropriate has not been found to impede M.P.'s education or deny him FAPE.

N.J.S.A. 18A:46-13.5 provides that:

- a. A school district, an educational services commission, or an approved private school for students with disabilities that utilizes physical restraint on students with disabilities shall ensure that:
 - (1) physical restraint is used only in an emergency in which the student is exhibiting behavior that places the student or others in immediate physical danger;
 - (2) a student is not restrained in the prone position, unless the student's primary care physician authorizes, in writing, the use of this restraint technique;
 - (3) staff members who are involved in the restraint of a student receive training in safe techniques for physical restraint from an entity determined by the board of education to be qualified to provide such

training, and that the training is updated at least annually;

(4) the parent or guardian of a student is immediately notified when physical restraint is used on that student, which notification may be by telephone or electronic communication. A full written report of the incident of physical restraint shall be provided to the parent or guardian within 48 hours of the occurrence of the incident;

(5) each incident in which a physical restraint is used is carefully and continuously visually monitored to ensure that it was used in accordance with established procedures set forth in a board policy developed in conjunction with the entity that trains staff in safe techniques for physical restraint, in order to protect the safety of the child and others; and

(6) each incident in which physical restraint is used is documented in writing in sufficient detail to enable the staff to use this information to develop or improve the behavior intervention plan at the next individualized education plan meeting.

b. A school district, an educational services commission, and an approved private school for students with disabilities shall attempt to minimize the use of physical restraints through inclusion of positive behavior supports in the student's behavior intervention plans developed by the individualized education plan team.

Here, G.P.'s conclusion that her son is not safe was not proven and, and the record supports a contrary conclusion.

Accordingly, I **CONCLUDE** the use of physical-restraint techniques did not impede M.P.'s education or deny him FAPE.

I further **CONCLUDE** that the placement offered to M.P. by the District in the May 18, 2018, IEP constituted FAPE as that term is defined by law. All school personnel testified convincingly as to M.P.'s progress at GPA.

Based on the foregoing, I **CONCLUDE**, by a preponderance of the credible evidence, that the May 18, 2018, IEP provides M.P. with a free and appropriate public education reasonably calculated to provide a meaningful educational benefit to him in the least restrictive environment, and that the continued appropriate placement of M.P. is at Garfield Park Academy with the continued current programing, supports, and services.

ORDER

Based on the foregoing, it is hereby **ORDERED** that the petition for due process be **DISMISSED**.

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.

June 10, 2019 _____

DATE

MARY ANN BOGAN, ALJ

Date Received at Agency

Date Mailed to Parties:

MAB/cb

APPENDIX

WITNESSES

For petitioner:

G.P.

For respondent:

Melinda Shorday

Heather D'Antonio

Michelle Howell

Amanda Rossi

EXHIBITS

For petitioner:

None

For respondent:

R-1 IEP, dated May 18, 2018

R-2 Letter from Mastery to Parent re: Garfield Park Academy, dated May 24, 2018

R-3 Mastery/District Minutes of Meeting, dated June 22, 2018

R-4 Placement Process

R-5 Acceptance Letter for Garfield Park Academy, dated August 9, 2018

R-6 Receipt for records and Records, dated August 10, 2018

R-7 Request for Transcript by GPA, dated August 20, 2018

R-8 Mastery/District Minutes of Meeting, dated September 26, 2018

R-9 Invitation to Meeting, dated October 12, 2018

R-10 IEP, dated October 15, 2018

R-11 M. Howell Notes, dated October 15, 2018

R-12 Invitation to Meeting, dated October 29, 2018

R-13 M. Howell Notes w/Releases, dated November 9, 2018

- R-14 M. Howell Notes, dated September 24, 2018
- R-15 District 5 Day Absent Letter, dated November 14, 2018
- R-16 Behavior Summaries
- R-17 Incident Forms
- R-18 Attendance Reports
- R-19 September 2018 Support Plan
- R-20 Goals and Objectives – GPA
- R-21 Incident Report (1:35pm), dated October 5, 2018
- R-22 Incident Report (2:30pm), dated October 5, 2018
- R-23 Health Visit Report, dated October 5, 2018
- R-24 Restraint De-Hearing, dated October 5, 2018
- R-25 Incident Form, dated February 21, 2019
- R-26 Conference Minutes, dated March 11, 2019