State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. EDS 17825-16

AGENCY DKT. NO. 2017 25310

C.C. ON BEHALF OF D.C.,

Petitioner,

v.

HOPE TOWNSHIP BOARD OF EDUCATION,

Respondent.

Bradley Flynn, Esq., for petitioner (Montgomery Law, attorneys)

John Comegno, Esq., and **Nikita Desai**, Esq. for respondent (Comegno Law Group, attorneys)

Record Closed: December 18, 2017 Decided: December 21, 2017

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

STATEMENT OF THE CASE

In accordance with the provisions of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C.A. § 1415, C.C. has requested a due-process hearing on behalf of her son, D.C., who is classified as eligible for special education and related services. In early October 2016, D.C. was placed on homebound instruction after he engaged in disruptive and non-compliant behaviors. His mother alleges that this was a change in placement that violated his rights, and denied him a Free and Appropriate Public Education (FAPE). The school district denies the allegations of the petition, and replies

that C.C. was not forthright about her child's needs, and that this lack of candor caused any disruption to his educational program.

PROCEDURAL HISTORY

C.C.'s undated request for a due-process hearing was marked received by the Office of Special Education Programs on November 14, 2016. An answer and third-party complaint against the Belvidere Board of Education (Belvidere) was filed on November 23, 2016. The contested case was transmitted to the Office of Administrative Law (OAL) on November 25, 2016. [1]

A pre-hearing conference was conducted on January 19, 2017; counsel for Belvidere participated in that conference. I alerted the parties that I was concerned that Belvidere's participation in the case was inappropriate, since the local educational agency (LEA) was Hope. Thereafter, on or about February 3, 2017, Belvidere filed a Motion to Intervene and to dismiss the third-party complaint. Via letter dated March 29, 2017, Hope withdrew its third-party complaint. Via order dated March 30, 2017, the Motion to Intervene was denied.[2]

Hearings were conducted on June 5, 2017, June 12, 2017, and October 16, 2017. Post-hearing submissions were filed on a remaining hearing date scheduled for December 18, 2017, at which time the record closed.

[1] Prior to his removal, D.C. received his education in a self-contained classroom in Belvidere, a neighboring district. An application for emergent relief had been filed by petitioner on November 11, 2016, seeking a ruling that the Belvidere program was D.C.'s "stay put" placement. That application was withdrawn on November 21, 2016.

[2] Counsel for Belvidere was present throughout the hearing to represent witnesses from that school district.

ISSUE PRESENTED

A dispute regarding the scope of the hearing was addressed prior to the presentation of testimony. It is uncontroverted and I **FIND** that D.C. enrolled in the Hope Schools in September 2016, and was placed in a self-contained classroom in Belvidere via an Individualized Education Program (IEP) agreed upon by both the Hope Child Study Team (CST) and his mother. He was removed from his placement effective October 7, 2016; homebound instruction commenced on November 1, 2016. By November 17, 2016, D.C. had been invited to return to Belvidere, but he did not do so until December 20, 2016. In March 2017, the parties agreed to change D.C.'s placement to a program operated by the Warren County Special Services Department. By the time the hearing commenced, D.C. was not attending the Warren County program, but had been placed by the State of New Jersey residentially at KidsPeace in Pennsylvania, in the aftermath of a juvenile criminal matter addressed in the Superior Court.[3]

Counsel for Hope argued that the petition has been rendered moot by these changes in D.C.'s status, and sought its dismissal. A review of the petition confirms that in many respects, counsel is correct. The petition seeks compensatory education for the time that D.C. allegedly was denied FAPE; an interim finding that Belvidere is the "stay put" placement; a one-to-one aide in the Belvidere placement; a functional behavioral assessment (FBA); independent evaluations; and an IEP meeting to address the results of those evaluations. I was advised that the independent evaluations have been conducted. The changes in D.C.'s status have rendered the remaining relief irrelevant, except for the demand for compensatory education. But as this remains a viable claim, I denied the Motion to Dismiss.

The petition for due process was filed on October 21, 2016. Counsel for Hope thus contended that the scope of the inquiry before me is whether D.C. received FAPE from the start of school in September 2016 until October 21, 2016. Counsel for D.C.

[3] At the hearing on October 16, 2017, I received a further update; D.C. has now been placed residentially at the Bonnie Brae School. This placement again was under the auspices of the State of New Jersey.

replied that his petition is essentially an ongoing claim for relief that extends until the date of the hearing. He appeared not to know himself whether he meant the first day of hearing or the last, but grounded his argument in the notion that children constantly change and evolve. Petitioner's argument is unavailing. A petition for due process, like any other legal complaint, can allege only facts that have already occurred. The drafter of a petition is not prescient; he cannot predict future wrongs. Thus, petitioner's argument can be rejected on the basis that it runs counter to simple common sense.

But this is one of those times when the law mirrors common sense. Pursuant to N.J.A.C. 6A:14-2.7, a due process petition must be filed within "two years of the date the party knew or should have known about the alleged action that forms the basis for the due process petition." Petitioner could not know about events that post-date the filing of her claim for relief. And the regulations provide that "[a] request for due process hearing . . . serves as notice to the respondent of the issues in the due process complaint." N.J.A.C. 6A:14-2.7(f). Query how a petition whose scope is open ended could possibly supply the requisite clarity regarding the issues in contention, as demanded by the regulation? This clarity becomes even more important where, as in New Jersey, a respondent school district has the burden of proof and the burden of moving forward. See: N.J.S.A. 18A: 46-1.1.

Pursuant to N.J.A.C. 6A:14-2.7(i), a petition of appeal can be amended with consent of the Board, or via application to the Administrative Law Judge. This provision readily responds to petitioner's allegation that her son, like all children, changes over time. But petitioner has never filed an application to amend her petition. Accordingly, I **CONCLUDE** that the issue in this case is limited to a determination of whether the Board provided FAPE to D.C. during the period from his enrollment in school, until the date of the filing of his petition for due process, October 21, 2016.[4]

[4] In his post-hearing summation, counsel for petitioner alleges that I somehow impeded his ability to interlocutorily appeal my ruling regarding the scope of the hearing. The scope of the hearing obviously was a threshold matter, and was addressed on June 5, 2017. Counsel did not express an intent to appeal that day. On June 12, 2017, counsel for the first time sought to stay this proceeding so that he could appeal my ruling. I declined to grant a stay, for the reasons expressed on the record. My decision did not prevent counsel from appealing, however. And indeed, due to scheduling issues, the hearing did not continue again until October 16, 2017. The record did not close until December 18, 2017. But no appeal has been filed to date, notwithstanding that counsel had some six months to do so before the record closed. Judicial review of my denial of the requested stay could have been part of any such appeal.

An action is moot when it no longer presents a justiciable controversy because the issues raised have become academic. For reasons of judicial economy and restraint it is appropriate to refrain from decision-making when an issue presented is hypothetical, judgment cannot grant effective relief, or the parties do not have a concrete adversity of interest. Anderson v. Sills, 143 N.J. Super. 432, 437 (Ch. Div. 1976). I further **CONCLUDE** that the remaining claims in the petition; to include, a request for a return to Belvidere; for a one-to-one aide at D.C.'s placement there; and for independent evaluations, are **DISMISSED** as moot, insofar as interventions by the Superior Court have resulted in D.C.'s residential placement, and the independent evaluations have been supplied. [5]

FACTUAL DISCUSSION AND FINDINGS OF FACT

This case presents the heartbreaking story of a parent who has moved from school district to school district; apparently in the hope that with each move she could leave her troubled son's problems behind them. The last of such moves was in or about July 2016, to, aptly enough, Hope Township, a tiny school district that delivers educational services to about 154 children in one schoolhouse in grades kindergarten through eight. After eighth grade, Hope students attend Belvidere High School via a sending-receiving agreement between the districts.

Due to its size, Hope is often unable to offer specialized programming in-district; it turns to Belvidere to assist by receiving students with special needs. Mary Henry is the Child Study Team Coordinator, and a Certificated School Psychologist. She generally described the process via which children are classified as eligible for special education placement. When Henry learned that D.C. and his family had relocated to Hope, she spoke with D.C.'s mother, and asked for the most recent Individualized Education Program (IEP) and any pertinent records. She received an IEP from the

[5] A motion was made by Hope at the start of the hearing to exclude testimony by petitioner's experts because their reports had not been provided prior to hearing, in accordance with the five-day-rule. N.J.A.C. 1:6A-10.1(c). Counsel for petitioner could offer no valid excuse for his failure to supply these reports, notwithstanding the clear requirements of the rule, which had been emphasized in a Pre-hearing Order issued on January 19, 2017, close to six months prior to the hearing date. The motion was granted. Counsel for petitioner urged in his post-hearing submission that he wished to appeal this ruling interlocutorily as well, but again, inexplicably, has never done so, to date.

Clifton School District dated December 22, 2015, in late July. An educational evaluation dated October 16, 2015, and a psychological evaluation dated October 22, 2015, arrived a bit later. These had both been completed by yet another school district, Hasbrouck Heights.

When Henry receives a transfer student like D.C. she is obliged to initially offer the program described in the child's existing IEP. After thirty days, the IEP Team meets to review the transition and discuss any needed changes to the child's program. Per the Clifton IEP, D.C. was eligible for special education services under the category Other Health Impaired (OHI). That IEP reflected placement in a self-contained classroom for Learning and Language Disabled students (LLD), and it offered no related services. The IEP stated that D.C. could exaggerate and embellish stories, but this was not atypical for middle school aged boys. Indeed, the IEP contained no social or emotional goals, and these were not recommended by the evaluations completed by prior districts.

While the IEP modifications/accommodations page listed several recommendations for facilitating appropriate behavior, the document contained no behavioral plan, nor any behavioral goals. D.C. received no counseling or other therapeutic interventions under the Clifton IEP. No mental health concerns are noted, although the IEP did state that D.C. at times could be disruptive, immature, and model inappropriate peer behavior. Henry stressed that these concerns likewise were rather typical for middle school age boys, and thus did not flag D.C. as a behaviorally involved student. Indeed, the evaluations made available to Hope gave no inkling that D.C. presented with maladaptive behaviors; just the opposite, for example one evaluator related that, "[D.C.] was a polite social boy who engaged in testing to the best of his ability." Likewise, cognitive and educational testing supported placement in a multiply disabled classroom like that in Belvidere.

It would later be revealed to school officials that D.C. had a significant psychiatric history. But C.C. testified and I **FIND** that she initially supplied no information to school officials about her son's prior behavioral difficulties, or about his psychiatric history.

When asked why she did not do so, C.C. testified that she did not see the relevance; that she thought such information was "personal." School personnel from both Hope and Belvidere confirmed that C.C. was not forthcoming about her son's very significant emotional problems, which Henry would later learn included a prior psychiatric hospitalization, and suicidal ideation.

C.C. testified that she has a very limited understanding of Special Education rules, placements or procedures. She claimed she could not understand an IEP, notwithstanding the fact that she has post-secondary training as a secretary, and is employed as a customer service representative for a company. Our courts have held that "credibility findings . . . are often influenced by matters such as observations of the character and demeanor of witnesses . . . that are not transmitted by the record." State v. Locurto, 157 N.J. 463, 474 (1999). A credibility determination requires an overall assessment of the witness' story in light of its rationality, internal consistency and the manner in which it "hangs together" with the other evidence. Carbo v. United States, 314 F.2d 718, 749 (9th Cir. 1963).

C.C. was a less than credible witness. Notwithstanding her purported ignorance about Special Education, when asked a question that referenced terms of art, she would answer without hesitation. For example, she was asked if Hope provided a BIP (Behavioral Intervention Plan) for D.C., and C.C. immediately replied that it did not. Since C.C. claimed to understand nothing about special education, I asked if she knew what a BIP was; she replied that she did not. This happened more than once. I thus questioned how many other questions were answered rotely by C.C., based upon what she thought she should answer or was coached to answer, as opposed to responding with a clear understanding of the inquiry. Moreover, for someone who claimed to know nothing about Special Education, C.C. knew well enough to work with the CST to explore several alternative placements for D.C. after the incident that led to his removal from Belvidere, to reject certain placements, and to press for additional options. C.C.'s claims that she thought that D.C. was in a "Special Education class" in his prior districts, but knew nothing more concrete about his academic placement simply did not ring true.

Upon D.C.'s enrollment in Hope, Henry followed up with his mother and sought to obtain additional reports or other documents, but none were supplied. C.C.'s contention that she was not asked for complete information again rang false; as indeed, Henry spoke with both D.C.'s pediatrician and the building principal at D.C.'s prior school in Clifton, both at C.C.'s suggestion. The principal confirmed that D.C. had been enrolled in an LLD class, and in their brief conversation shared no other concerns. He indicated that he viewed the LLD class as appropriate to D.C.'s needs, and shared that he felt that D.C. had progressed in this program. The pediatrician likewise shared no significant concerns about D.C. or his emotional functionality.

But records ultimately obtained by Hope would reveal that in June 2013, the family had been living in Elmwood Park when a classroom incident was brought to the attention of the police. Records revealed that C.C. had complained that a teacher improperly restrained D.C. and injured him; the teacher asserted that he was teasing a classmate and refused to stop. When the teacher asked him to leave the classroom, D.C. again refused. He allegedly pushed his teacher and during the struggle "[his teacher] stated that [D.C] pulled down her shirt exposing her breasts and bra."

By October 2015, the family had relocated to Hasbrouck Heights, where D.C. was receiving special services under the classification Communication Impaired. A reevaluation was conducted, but the family moved to Clifton soon thereafter, where the December 2015 IEP indicates that he was placed in LLD class under an OHI classification. But that placement apparently was short-lived, and the IEP supplied to Hope did not tell the true story. An email dated January 10, 2017, from Clifton Case Manager, Tara McGarrity, confirms that notwithstanding the information in the December 2015 IEP, D.C. was in fact enrolled in a Behavioral Disabilities class in Clifton from January through June 2016.

Henry knew none of this history when she accompanied C.C., D.C., and his siblings to see the proposed self-contained classroom in Belvidere. Although the class was not yet in session, it afforded the family a chance to see D.C.'s new school setting and it was a very positive visit. D.C. met his teacher, Dawn Schnezler, and was

"animated and talkative, there wasn't an issue." D.C. was excited about his new school. Danielle Rambo, the Special Services Representative from Belvidere confirmed Henry's impression of D.C. and his family.

But as early as September 15, 2016, Henry received an email that alerted her that something was amiss. Schnezler shared that D.C. initially had a smooth start to the school year, but that she was already seeing major changes. Schnezler had conferred with the family doctor and a counselor from his prior school "who painted a different picture of [D.C.]." And, D.C. himself had related that he is inconsistent in taking his medication; has feelings of anger; and has thoughts of harming himself and others. Schnezler observed that D.C.'s moods fluctuated.

The parties met for a thirty-day IEP review on September 30, 2016. C.C. now shared that there had been some involvement with the family by Child Protective Services. She was not specific, but alluded to charges against D.C.'s father. C.C. revealed that D.C. takes medication, Ambilify, to calm him. But the Team's takeaway was that this medication was somehow related to Attention Deficit Disorder with Hyperactivity (ADHD). C.C. did not indicate that maladaptive behaviors had been an issue at D.C.'s previous schools; indeed, D.C. told Schnezler that any aberrant behaviors were new, and possibly attributable to the adjustment to D.C.'s new school placement. The IEP prepared by Hope did include some references to social/emotional functioning, as Henry noted that social skills and emotional health are part of the self-contained class curriculum for all participants. At the meeting, no request was made by the parent for any behavioral or therapeutic interventions or services.

On September 28, 2016, a school incident exacerbated Hope's concerns about D.C. and resulted in an afterschool detention. In an email to her principal, Chris Karabinus, Schnezler related that she had been having difficulty managing D.C., and that he often lies. She had shared her concerns with C.C., who directed her to D.C.'s doctor. Schnezler wrote, "[t]he doctor's words to me were, 'He is a pathological liar, what do you expect. If he isn't hurting himself or someone else, you are good.'" It appeared that D.C. had told two female classmates that Schnezler had stolen money

from him and cursed at him, and that Schnezler and Karabinus were "horny and are going to have sex." The incident was shared with Henry via email, who replied that normal disciplinary procedures were appropriate, since D.C.'s IEP did not exempt him from discipline.

On October 6, 2016, an incident took place that resulted in D.C.'s removal from school. The accounts offered by Schnezler and Belvidere Child Study Team Supervisor, Danielle Rambo, were uncontroverted, and I **FIND** that the day began with D.C. hiding in the bathroom, and offering to pay fellow students to watch out for staff. Once he was returned to the classroom, D.C. refused to work, and simply stared at his teacher. When informed that this behavior was making school staff uncomfortable, D.C. ran from the classroom, screaming "this is bullshit." Schnezler and the building principal tried to calm D.C., who reported to them that in his prior school he had assaulted his teacher and had given her a black eye. C.C. was called and D.C. was brought to the lobby; he tried to leave the school several times. When C.C. arrived, her son's behavior escalated, and he began to yell. School staff feared for his mother's safety; the police were summoned. It was necessary to advise members of the school community that students be kept in their classrooms on "lockdown" and not be permitted in the hallways until further notice. C.C. finally admitted to the Belvidere staff that D.C. had been "institutionalized before."

Rambo promptly updated Henry via email. She indicated that "I don't believe we completely understand the complexity of [D.C.'s] disorders or needs. It seems no one has the total picture." She expressed concern that his current placement was inappropriate. By letter dated October 7, 2016, Henry advised C.C. that it did not appear that D.C.'s educational needs could be met in his placement at Belvidere Middle School. She advised that he would be placed on Home Instruction until a Psychiatric Evaluation could be conducted and an alternative educational program secured. A consent form for the evaluation was enclosed. It was returned, signed by C.C., on October 11, 2016. C.C. indicated that the evaluation did not take place for several weeks. I **FIND** that Hope ordered this additional testing once it realized that it needed more accurate information about D.C. and his needs.

Both Belvidere and Hope promptly began to take the steps needed to ensure that D.C.'s education continued uninterrupted. On Friday, October 7, 2016, Rambo sent an email to faculty members district-wide, indicating that she needed a Homebound Instructor for an eighth-grade student. On Monday, October 10, 2016, Rambo updated Henry, and shared that there had been "no bites on homebound." She suspected that D.C.'s behaviors were the cause of her faculty's reluctance to accept the position. By October 11, 2016, Henry had contacted her Superintendent of Schools, Michael Slattery, for help in exploring next steps. Henry also began the process of aggressively looking for an alternative school placement for D.C.; she urged that while she wanted to arrange homebound quickly, her primary focus was getting D.C. enrolled in the right school.

As early as October 13, 2016, Henry had communicated with C.C. and advised that visitations to two potential placements were scheduled for October 17, 2016; to include the Warren County Special Services School District Behavioral Disabilities Class, and the Stepping Stone School. But after visiting these placements, C.C. expressed concern about their appropriateness, both as to location and class composition. She asked to look at additional placement options, and an appointment was scheduled for October 21, 2016, at the Lakeland Andover School, and at the Mount Olive Middle School Behavioral Disabilities program on October 26, 2016. In a letter dated October 24, 2016, Henry indicated that these would be the final school visitations.

Via letter dated October 27, 2016, Henry outlined the history of her efforts to secure a placement. She indicated that Hope would be willing to consider other schools that C.C. may have independently researched, but Henry noted that C.C. simply wanted D.C. returned to Belvidere, and had not identified any specific schools on her own. Urging that "it [was] essential that we place [D.C.] in school as soon as possible," Henry stated that she recommended placement in the Warren County program. At the same time, Henry had been working with the Warren County Special Services District to secure a Homebound Instructor. Warren County had no tutors

available, but referred Henry to an available private provider. Homebound Instruction began on November 1, 2016.

At the hearing, C.C. shared the history of D.C.'s emotional difficulties. She indicated that he suffers from depression, and two years ago was admitted to an Inpatient Psychiatric Hospitalization after threatening suicide. C.C. testified that in her view, D.C.'s emotional difficulties interfere with his ability to learn, rendering completely inexplicable her contention that she felt that she had no need to share these difficulties with Hope or Belvidere. C.C. discussed D.C.'s lack of success in Belvidere, and her upset about the period in October with no instruction. Per C.C., it was a difficult time for both her and D.C. She felt school personnel could have done better for D.C. She confirmed and I **FIND** that D.C. received no instruction from October 7, 2016, until November 1, 2016 – a period that totaled seventeen school days.

LEGAL ANALYSIS AND CONCLUSIONS OF LAW

As a recipient of Federal funds under the Individuals with Disabilities Education Act, 20 U.S.C.A. §1400 et seq., the State of New Jersey must have a policy that assures all children with disabilities the right to FAPE. 20 U.S.C.A. §1412. FAPE includes Special Education and Related Services. 20 U.S.C.A. §1401(9); N.J.A.C. 6A:14-1.1 et seq. The responsibility to deliver these services rests with the local public-school district. N.J.A.C. 6A:14-1.1(d). To meets its obligation to deliver FAPE, a school district must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. Endrew F. v. Douglas Cnty. Sch. Dist., 580 U.S. ___ (2017);137 S.Ct. 988; 197 LEd 2d 335.[6]

In considering the appropriateness of an IEP, our case law instructs that actions of the school district cannot be judged exclusively in hindsight. An IEP is a "snapshot, not a retrospective." Fuhrmann v East Hanover Bd. of Educ., 993 F.2d 1031, 1041 (3rd Cir. 1991), citing Roland M. v Concord School Committee, 910 F.2d 983,992 (1st Cir.

[6] Counsel's post-hearing submission asserts a violation of §504 of the Rehabilitation Act of 1973, 29 U.S.C. §794(a). His arguments warrant no discussion as the petition nowhere alleges a violation of §504 and neither the school district nor this forum were put on notice that he was raising a §504 claim.

1991). Thus, "in striving for 'appropriateness', an IEP must take into account what was, and was not, objectively reasonable when the snapshot was taken, that is, at the time the IEP was drafted." Ibid. Our courts have confirmed that "neither the statute nor reason countenance 'Monday morning quarterbacking' in evaluating a child's placement." Susan N. v. Wilson Sch. Dist., 70 F.3d 751, 762 (3rd Cir. 1995), citing Fuhrmann, supra., 993 F.2d at 1040.

This case law is particularly pertinent where, as here, a classified child transfers into a new school district, and no one, not parent nor prior school district, is candid about the complexity of the child's needs. This precedent is even more pertinent when the parent enrolls that child after moving from district to district repeatedly, leaving an incomplete academic and disciplinary history in the wake of these many transfers. Indeed, by her own admission, C.C. withheld vital background information about her son. Hope did the best it could under the circumstances, and delivered an IEP for D.C. at its thirty-day review that expressed its best understanding of his needs. Knowing what we all know now about D.C., it is obvious that he needed a more therapeutic environment. But Hope did not and could not know the breadth of D.C.'s complex needs when it offered programming to him upon his enrollment in its schools.

Moreover, upon receiving D.C. into its district, Hope did precisely what the regulations required it to do; it attempted to replicate his then current IEP from Clifton. N.J.A.C. 6A:14-4.1(g) requires that

> [w]hen a student with a disability transfers from one New Jersey school district to another or from an out-of-State school district, the child study team of the district into which the student has transferred shall conduct an immediate review of the evaluation information and the IEP and, without delay, in consultation with the student's parents, provide a program comparable to that set forth the student's current IEP until a new IEP is implemented…

D.C. transferred seamlessly into his new district on the first day of school. The regulation goes on to contemplate a thirty-day review of the IEP. See: N.J.A.C. 6A:14-4.1(g)(1). Hope convened an IEP meeting within thirty days, and reviewed the prior IEP; but as the record reveals, it was again supplied with no information that would

indicate that D.C.'s needs were psychiatric, or that anything other than learning differences necessitated his enrollment in Special Education programming. I **CONCLUDE** that, from the date of D.C.'s enrollment in the district, until October 6, 2016, he received FAPE.

What transpired after October 6, 2016, must be examined through the lens of C.C.'s clear lack of candor with school district personnel. Petitioner urges that she is entitled to Compensatory Education because Hope improperly excluded her son from his Belvidere placement, and fail to offer him an appropriate educational alternative. Our courts have recognized Compensatory Education as a remedy for a denial of FAPE. See: Lester H. v. Gilhool, 916 F.2d 865 (3rd Cir. 1990). And it is uncontroverted that for seventeen days in October 2016, D.C. received no educational services at all.

But the IDEA's goal of ensuring that children with special needs receive FAPE is grounded in the concept of collaboration. The IEP Team brings together the educational expertise of school personnel, and the passion and in-depth knowledge of parents, to achieve a full understanding of a child's needs. Frankness and cooperation are key components of the IEP process. Indeed, our courts "look harshly upon any party's failure to reasonably cooperate with another's diligent execution of their rights and obligations under IDEA." W.D. v. Watchung Hills Reg'l High Sch. Bd. of Educ., 602 F. Appx. 563, 568 (3rd. Cir. 2015), citing Patricia P. v Bd. of Educ. of Oak Park, 203 F.3d 462, 469 (7th Cir. 2000).

When D.C. unraveled that October day, he left Hope scrambling to make other arrangements for his education. The efforts of Hope personnel, and the assistance supplied by Belvidere staff, all evidence good faith attempts to find a school that would better meet D.C.'s needs, and diligent efforts to provide Homebound Instruction in the interim. These efforts, unfortunately, were not entirely compliant with code requirements. Henry did communicate with C.C. and fully explained D.C.'s status, and the needed next steps. But to effectuate an immediate change in placement, the district was obliged to request an expedited due process hearing, absent parental

consent. See, N.J.A.C. 6A:14-2.7(n).[7] While C.C. consented to the proposed Psychiatric Evaluation, the record reveals no consent to the change to Homebound Instruction. The failure by Hope to file an application for emergent relief must be analyzed with reference to N.J.A.C. 6A:14-2.7(k), which provides that procedural violations may lead to a finding that FAPE was denied only if the violations impeded the child's right to an appropriate education; impeded the parents' opportunity to participate in the decision-making process; or caused a deprivation of educational benefits.

Here, Hope's procedural error is not what deprived D.C. of seventeen days of educational opportunity. The blame for the disruption to D.C.'s education falls squarely at his mother's feet. Her lack of honesty prevented Hope from properly planning for her son's education, and occasioned his lack of success in the Belvidere program. It is well-established that "[t]he conduct of parents should not be permitted to defeat the purpose of the Act, and the remedial power of the court should not be interpreted to further such an end." Warren G. by and through Tom G. v. Cumberland Cnty. Sch. Dist., 190 F.3d 80, 85 (3rd Cir. 1999). I **CONCLUDE** that D.C.'s break in educational services was not caused by a denial of FAPE by Hope, and that this petitioner has not demonstrated an entitlement to Compensatory Education.

ORDER

Based on the foregoing, the petition of appeal is **DISMISSED** with prejudice.

[7] Alternatively, the district could have formalized the change in placement via a formal notice that meets the requirements of N.J.A.C. 6A:14-2.3(g), but this would have required it to wait fifteen days before implementing the change.

This decision is final pursuant to 20 U.S.C.A. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2015) and is appealable by filing a complaint and bringing a civil action either in the Law Division of the Superior Court of New Jersey or in a district court of the United States. 20 U.S.C.A. § 1415(i)(2); 34 C.F.R. § 300.516 (2015). If the parent or adult student feels that this decision is not being fully implemented with respect to program or services, this concern should be communicated in writing to the Director, Office of Special Education.

December 21, 2017

DATE

ELLEN S. BASS, ALJ

Date Received at Agency December 21, 2017

Date Mailed to Parties:

sej

APPENDIX

Witnesses

For Petitioner:

Mary Henry
Dawn Schnezler
Danielle Rambo

For Respondent:

C.C.

Exhibits

For Petitioners:

P-1 through P-26 (Not Admitted
P-27 Correspondence
P-28 Emails

For Respondent:

R-1 Petition for due process
R-2 Answer
R-3 7th grade IEP
R-4 8th grade IEP
R-5 Incident report
R-6 Educational evaluation
R-7 Psychological evaluation
R-8 Correspondence
R-9 Incident summary report
R-10 Incident summary report
R-11 Correspondence

R-12 Correspondence

R-13 St. Luke's Medical Report

R-14 Correspondence, notice and consent

R-15 Correspondence

R-16 Correspondence