



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. EDS 15441-19

AGENCY DKT. NO. 2020-30718

E.H. ON BEHALF OF A.H.,

Petitioner,

v.

**FRANKLIN LAKES BOARD OF
EDUCATION,**

Respondent.

E.H. on behalf of A.H., pro se

Robin Ballard, Esq., for respondent (Schenck, Price, Smith & King, LLP,
attorneys)

Record Closed: November 20, 2020

Decided: December 16, 2020

BEFORE **JUDE-ANTHONY TISCORNIA**, ALJ:

STATEMENT OF THE CASE

E.H. (petitioner), on behalf of her now thirteen-year-old daughter, A.H., challenges the appropriateness of the individualized education program (IEP) proposed for A.H. by the Franklin Lakes Board of Education (respondent, Board of Education or "District") for

the 2019–2020 school year and seeks additional supports for her in the general-education setting and compensatory education.

ISSUE

Is the IEP in place reasonably calculated to provide significant learning and meaningful educational benefit, in light of A.H.'s individual needs and potential, so as to provide A.H. with a free appropriate public education, or are additional supports needed? Is petitioner entitled to compensatory education?

PROCEDURAL HISTORY

Petitioner initially filed a request for mediation regarding A.H. on or about June 19, 2019. Through that request, petitioner challenged the appropriateness of the IEP proposed for A.H. for the 2019–2020 school year and sought additional supports for her in the general-education setting.

Petitioner converted her request for mediation into a petition for due process on September 26, 2019, and, through counsel, submitted supplemental materials for that petition. The supplemental materials were stated to provide additional information as to the issues in dispute between the parties and raised claims for other relief, including but not limited to compensatory education.

The hearing for this matter was conducted on October 5 and November 4, 2020. Final submissions were received on November 20, 2020, at which point the record was closed.

UNDISPUTED FACTS

The following facts are undisputed, and I therefore **FIND** them to be the **FACTS** of the case.

A.H. is a thirteen-year-old girl, born January 25, 2007. In June 2020 she completed the seventh grade at Franklin Avenue Middle School in the District, where she had been educated as a student classified as eligible for special education and related services since the age of three. As petitioner affirmed on the record on October 5, 2020, A.H. now resides in Delaware and attends school there. Accordingly, the District is no longer the local education agency responsible for A.H.'s education.

By way of background as to A.H.'s educational needs, an independent psychoeducational evaluation was conducted of her in January 2018 by the New York University Langone Medical Center, Institute for Learning and Academic Achievement, when A.H. was in fifth grade. (R-14.) The reason for referral noted in the report from that evaluation referenced that A.H. had been diagnosed with selective mutism. In the background-information section, it was noted that A.H. demonstrated developmental delays from birth and received early-intervention services for those delays prior to starting school at the age of three. (Id. at 1.)

As part of the psychoeducational evaluation, A.H.'s cognitive ability was assessed. On the Wechsler Intelligence Scale for Children, Fifth Edition, A.H.'s full-scale IQ of 73 placed her in the very low range of cognitive functioning and at the fourth percentile of children her age. (R-14 at 5.) A.H. also exhibited significant difficulty with receptive language and delayed academic performance in many areas on testing administered as part of the evaluation. (Id. at 7.) The evaluator concluded that A.H. needed a small class setting for academic instruction with a slower pace of instruction, and specifically recommended an immediate change in placement to a special-education class for math. (Id. at 10–11.)

SUMMARY OF TESTIMONY

Janet Cash

Janet Cash (Cash) is the Director of Special Services and Counseling for the District. Cash was admitted and testified as an expert in special education and programming for students with disabilities. Cash described A.H. as exhibiting global deficits, including an interrupted gait, vision needs, and weaknesses in her memory and ability to take in information. She further stated that A.H. would not speak in school, though she communicated via use of a computer or phone.

On May 8, 2019, the District offered the IEP for seventh grade (2019–2020 school year), over which this dispute was initially filed. (R-1.) The IEP in question proposed placement for A.H. in the resource center for language arts, math and PREP, and in-class resource settings for science and social studies. The IEP also offered her related services of speech, occupational and physical therapies, and counseling. (*Ibid.*) The IEP indicated that the PREP class was “to provide additional support with reviewing/preparing for tests, breaking down and working on long-term social studies and science assignments and projects, and to provide additional Language Arts support.” (*Id.* at 37.)

In that IEP, it was noted that the recommended change in placement for language arts and math was due to her teachers reporting that she had made minimal progress in sixth grade in the general-education setting with in-class resource. (R-1 at 37.) In support of this, the teachers wrote:

[A.H.] has been demonstrating considerable difficulty in the In-Class Support general education setting. She often appears to be frustrated when asked questions regarding the material covered in class, as evidenced by her shrugging of shoulders and becoming slightly emotional. The teachers have substantially modified [A.'s] classwork and homework assignments; however, she does not appear to retain and cannot seem to recall this information after a few days. Classroom observations as well as teacher reports indicate

that [A.] is unable to access the curriculum in order to have a meaningful educational experience.

[Id.] at 38.]

Through her testimony, Ms. Cash offered her expert opinion that the IEP developed for A.H. for the 2019–2020 school year was designed to address her educational needs and offered her a free appropriate public education. Specifically, she commented on the benefits to A.H. of the proposed setting, which included, but were not limited to, repetition of directions, slower pacing of instruction, and a smaller class size. After hearing the testimony and observing the demeanor of the District’s witness, the undersigned finds the witness testified credibly.

Lauren Amoroso

Lauren Amoroso (Amoroso) is currently employed by the District as a special education teacher. She has been employed by the District in this capacity for over fifteen years. Amoroso testified as a fact witness on behalf of the District. She was A.H.’s language arts teacher during the 2019-2020 school year. As such, Amoroso was charged with implementing the IEP put in place for the 2019-2020 school year (stay put IEP) and monitoring A.H.’s progress. Based on her work with and observation of A.H., Amoroso noted that the general education class seemed too fast paced for A.H. and her performance in class demonstrated that she lacked the skills necessary to access the general education curriculum in that setting even with the significant supports provided to her. Amoroso recommended placement for A.H. in the resource center for language arts for eighth grade. After hearing the testimony and observing the demeanor of the District’s witness, the undersigned finds this witness testified credibly.

Dr. Richard Gallagher

Dr. Richard Gallagher is a psychologist. He was admitted as an expert in psychology and mutism. Gallagher testified that he was familiar with A.H. and her mutism

issues. He had evaluated and treated A.H. in the past with regard to these issues. Though familiar with A.H., he testified that he had not examined or evaluated A.H. in preparation for the due-process petition, nor had he formed an opinion or compiled a report in relation to the due-process petition. He further testified that he was not in a position to say whether the IEP in dispute was, in any way, deficient. He did note that any IEP put in place for A.H. should take A.H.'s mutism issues into account. After hearing the testimony and observing the demeanor of the District's witness, the undersigned finds the witness testified credibly.

LEGAL DISCUSSION

While A.H. was a student of the District, the Individuals with Disabilities Education Act (IDEA) required that the Board offer A.H. a free appropriate public education (FAPE), consisting of special education and related services. 20 U.S.C. §1412(a)(1). Related services must be provided when those services are required to assist the student in benefiting from special education. 20 U.S.C. §1401(26)(A). Those services must be listed in the student's IEP. N.J.A.C. 6A:14-3.9(a).

FAPE is satisfied when a district provides an eligible student with personalized instruction that includes "sufficient support services to permit the child to benefit educationally from that instruction." Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley, 458 U.S. 176, 203 (1982). The United States Supreme Court has interpreted "appropriate public education" to mean an education that is "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." Endrew F. v. Douglas Cty. Sch. Dist., 137 S. Ct. 988, 1001 (2017). The IDEA does not require school districts to maximize the potential for students. Rowley, 458 U.S. at 197–201. It is a law of opportunity, not results.

The Act does require a "basic floor" of opportunity which consists of "access to specialized instruction and related services" individually designed for each child. Id. at

201. Accordingly, an appropriate education differs from student to student depending on a myriad of facts affecting the student's ability to assimilate information. Id. at 198.

The Third Circuit has likewise interpreted this "basic floor" to be an education which offers the student an opportunity for meaningful learning, taking into account the child's potential. Ridgewood Board of Educ. v. N.E. ex rel. M.E., 172 F.3d 238, 247 (3d Cir. 1999) (meaningful education must be more than de minimis); see also Polk v. Cent. Susquehanna Intermediate Unit 16, 853 F.2d 171, 185 (3d Cir. 1988) (satisfactory IEP requires "significant learning" and the conferring of "meaningful benefit" and must be gauged in relation to the child's potential); Shore Reg'l High Sch. Bd. of Educ. v. P.S., 381 F.3d 194, 198 (3d Cir. 2004) (IEP should enable the student to meaningfully benefit, determined by taking into account the child's cognitive potential). New Jersey has adopted the standards set forth by the U.S. Supreme Court and the Third Circuit. Lascari v. Bd. of Educ. of Ramapo Indian Hills Reg'l High Sch. Dist., 116 N.J. 30, 47-48 (1989).

In the instant matter, the District presented expert testimony and documentary evidence which tend to show the appropriateness of the IEP in question (dated May 8, 2019). The proofs further demonstrate that A.H. cannot be satisfactorily educated within a general-education classroom with supplementary aids and services for language arts and math, and that a more restrictive placement was necessary to offer A.H. a FAPE.

On the other hand, petitioner's expert, though credible, took no position regarding the appropriateness of the IEP in question and could not form an opinion regarding the appropriateness of same. Therefore, I **CONCLUDE** that the testimony offered by petitioner's sole witness is irrelevant to the issue before this tribunal, that is, whether or not the IEP put in place by the District is reasonably calculated to enable A.H. to make meaningful progress in light of her individual circumstances, so as to provide A.H. a free appropriate public education.

I further **CONCLUDE** that the District has proven by a preponderance of the credible evidence that the District fulfilled its obligations to A.H. under the IDEA, having offered

her a free appropriate public education at all times relevant herein, and that A.H. was not deprived of any educational opportunity to which she was entitled. The District, through the IEP dated May 8, 2019, offered A.H. special education and related services tailored to her needs.

Based on the foregoing, I further **CONCLUDE** that a preponderance of the evidence presented has shown that the IEP in question provided FAPE.


ORDER

It is hereby **ORDERED** that the petitioner's complaint challenging the appropriateness of the IEP and seeking compensatory education, and any other relief, is hereby **DISMISSED**.

This decision is final pursuant to 20 U.S.C. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2019) 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 (2019). 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 Policy and Dispute Resolution.

December 16, 2020

DATE


JUDE-ANTHONY TISCORNIA, ALJ

Date Received at Agency

12/16/20

Date Mailed to Parties:

12/16/20

id

APPENDIX

LIST OF WITNESSES

For Petitioner:

Janet Cash

Lauren Amoroso

For Respondent:

Dr. Richard Gallagher

LIST OF EXHIBITS IN EVIDENCE

For Petitioner:

None

For Respondent:

- R-1 IEP dated May 8, 2019, (2019-2020 school year)
- R-2 October 2019 Math Progress update
- R-3 Link It! Testing results
- R-4 iReady Testing results
- R-5 Language Arts Progress updates September 2019 – February 2020
- R-6 Speech/Language Progress updates October 2019 – March 2020
- R-7 CV Lauren Amoroso
- R-8 AH Progress report
- R-9 IEP dated May 12, 2020
- R-10 AH Report Card, 2019-2020
- R-11 AH 2019-2020 attendance records
- R-12 CV Janet Cash

R-13 November 2019 Math Progress Update

R-14 January 2018 Report from New York University Langone Medical Center,
Institute for Learning and Academic Achievement