



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO EDS 05384-21

AGENCY DKT. NO. 2021-32852

M.N. ON BEHALF OF A.D.,

Petitioner,

v.

**SPARTA TOWNSHIP BOARD OF
EDUCATION,**

Respondent.

M.N., petitioner, pro se

Katherine A. Gilfillan, Esq., for petitioner (Schenck, Price, Smith & King,
attorneys)

Record Closed: August 24, 2021

Decided: August 25, 2021

BEFORE THOMAS R. BETANCOURT, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner filed a due process petition dated May 10, 2021, with the Office of Special Education Policy and Dispute Resolution in the Department of Education.

The matter was transferred to the Office of Administrative Law (OAL) as a contested matter on June 6, 2021.

Pursuant to N.J.A.C. 1:1-13.1 et seq., a telephone prehearing conference was held in the above-entitled matter on July 13, 2021, and a Prehearing Order was entered the same date. A hearing was held on August 24, 2021, whereupon the record closed.

SUMMARY OF RELEVANT TESTIMONY

Susan Lorentz testified as an expert as a school psychologist and in special education programming, as follows:

Dr. Lorentz has a Ph.D. in School Psychology from Fordham University. (R-16) She is the School Psychologist in the Sparta School District, and has been since 2005. She is also A.D.'s Case Manager.

A.D. transferred into the Sparta School District from Indian Hills at the start of his sophomore year. The Indian Hills District had prepared an IEP for A.D. which covered his sophomore year. After reviewing this IEP Sparta accepted it.

Dr. Lorentz met with A.D.'s parents. She spoke to his prior Case Manager. Petitioner did not express concerns with the IEP's program. A.D. seemed to do well in transition from Indian Hills to Sparta.

A.D. had to be monitored to ensure homework was done, and turned in. He also had to be monitored regarding computer usage.

In about January 2019 A.D. was absent more. He missed assignments. His mother was concerned with his vaping. She thought he was addicted to it. His parents considered withdrawing A.D. from school due to his vaping. Alternatives to this were discussed with parents. A.D. was withdrawn on March 22, 2019.

A.D. re-enrolled in May 2019. At this time he had received his GED. An IEP was prepared for A.D., dated June 13, 2019. A.D. attended school in-person from September 2019 until March 2020, when the school went to remote learning due to the COVID-19 pandemic. Attendance when in-person was good. Attendance fell off during remote learning.

Evaluations were done, which included a Social History, Psychological Evaluation and an Educational Evaluation. Based upon these evaluations a new IEP was proposed.

A.D. was again withdrawn from school on June 8, 2020. Dr. Lorentz understood that A.D. may enter the military or the workforce.

Dr. Lorentz opined that the IEPs offered A.D. to make meaningful educational progress, and that A.D. did make meaningful educational progress when in school.

The IEP of May 27, 2020 does not mention a GED as fulfilling the goal of high school graduation. A.D. did not attend school during the timeframe this IEP covered.

M.N., petitioner, testified as follows:

She is the mother of A.D. A.D. can be either hyper focused, or not focused at all. He is easily re-directed. Indian Hills was helpful in addressing A.D.'s issues.

A.D. can do an assignment and then forget to turn it in.

A.D. began vaping in January 2019. She spoke with the Vice Principal about it. The school sent A.D. for drug testing. A.D. was getting the vaping device in school. M.N. was concerned about this and wanted to prevent it. She decided to withdraw A.D. from school.

The school advised her that, in order to provide home instruction, it would need something from a doctor. That would take a few weeks. They did not want to wait and decided to withdraw A.D.

A.D. started a GED program. M.N. stayed with him up to seven hours per day so he was able to focus. A State issued high school diploma was received in the mail. M.N. stated "maybe we panicked."

A.D. wanted to re-enroll again. A letter was received that he was not permitted to re-enroll.

FINDINGS OF FACT

Based on the evidence presented at the hearing as well as on the opportunity to observe the witnesses and assess their credibility, I **FIND** the following:

1. A.D. transferred from the Ramapo Indian Hills Regional High School District (Indian Hills) on August 8, 2028. (R-18.)
2. A.D. was classified to receive special education and related services while enrolled at Indian Hills (R-19), and had several IEPs while there. (R-20, R-21 and R-22.)
3. Sparta accepted the IEP dated April 18, 2018 as the IEP for A.D.'s sophomore year in Sparta. (R-22.)
4. A.D. attended Sparta during his sophomore year, the 2018/2019 school year. (R-10.)
5. A.D. withdrew from school on March 19, 2019. (R-13.)
6. A.D. earned a GED after withdrawing from school.

7. A.D. re-enrolled in Sparta in May 2019.
8. An IEP was developed for A.D. (R-23.)
9. The school did a Social Assessment (R-1), an Educational Assessment (R-2) and a Psychological Assessment (R-3).
10. A new IEP was developed based upon these. (R-24.)
11. A.D. attended Sparta during his junior year, the 2019/2020 school year. (R-11.)
12. During the 2019/2020 school year, A.D. attended in-person from September 2019 to March 2020, when learning became remote due to the COVID-19 pandemic.
13. A.D. attended Sparta during his junior year, the 2019/2020 school year. (R-11.)
14. The 2019/2020 school year was in-person from September 2019 to March 2020, when learning became remote due to the COVID-19 pandemic.
15. A.D. again withdrew from school on June 8, 2020. (R-12.)
16. Sparta prepared an IEP for A.D., dated May 27, 2020 for the 2020/2021 school year. (R-5.)
17. That IEP was never implemented as A.D. had withdrawn from school.
18. A.D. sought to re-enroll in school again in April 2021. Sparta declined to enroll A.D., citing his receipt of a State issued high school diploma.

LEGAL ANALYSIS AND CONCLUSION

Federal funding of state special education programs is contingent upon the states providing a “free and appropriate education” (FAPE) to all disabled children. 20 U.S.C. § 1412. The Individuals with Disabilities Act (IDEA) is the vehicle Congress has chosen to ensure that states follow this mandate. 20 U.S.C §§ 1400 et seq. “[T]he IDEA specifies that the education the states provide to these children ‘specially [be] designed to meet the unique needs of the handicapped child, supported by such services as are necessary to permit the child to benefit from the instruction.’” D.S. v. Bayonne Bd. of Educ., 602 F.3d 553, 556 (3d Cir. 2010) (citations omitted). 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). Subject to certain limitations, FAPE is available to all children with disabilities residing in the State between the ages of three and twenty-one, inclusive. 20 U.S.C. § 1412(a)(1)(A), (B). The district bears the burden of proving that a FAPE has been offered. N.J.S.A. 18A:46-1.1.

New Jersey follows the federal standard that the education offered “must be ‘sufficient to confer some educational benefit’ upon the child.” Lascari v. Bd. of Educ. of Ramapo Indian Hills Reg’l High Sch. Dist., 116 N.J. 30, 47 (1989) (citations omitted). The IDEA does not require that a school district “maximize the potential” of the student but requires a school district to provide a “basic floor of opportunity.” Hendrick Hudson Cent. Sch. Dist. Bd. of Educ. v. Rowley, 458 U.S. 176, 200, 102 S. Ct. 3034, 3047, 73 L. Ed. 2d 690, 708 (1982). In addressing the quantum of educational benefit required, the Third Circuit has made clear that more than a “trivial” or “de minimis” educational benefit is required, and the appropriate standard is whether the child’s education plan 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) (internal citations omitted).

As noted in D.S., an individual education plan (IEP) is the primary vehicle for providing students with the required FAPE. D.S., 602 F.3d at 557. An IEP is a written statement developed for each child that explains how FAPE will be provided to the child. 20 U.S.C. § 1414(d)(1)(A)(i). The IEP must contain such information as a specific statement of the student’s current performance levels, the student’s short-term and

long-term goals, the proposed educational services, and criteria for evaluating the student's progress. See 20 U.S.C. § 1414(d)(1)(A)(i)(I)-(VII). It must contain both academic and functional goals that are, as appropriate, related to the Core Curriculum Content Standards of the general education curriculum and "be measurable" so both parents and educational personnel can be apprised of "the expected level of achievement attendant to each goal." N.J.A.C. 6A:14-3.7(e)(2). Further, such "measurable annual goals shall include benchmarks or short-term objectives" related to meeting the student's needs. N.J.A.C. 6A:14-3.7(e)(3). The school district must then review the IEP on an annual basis to make necessary adjustments and revisions. 20 U.S.C. § 1414(d)(4)(A)(i).

A due process challenge can allege substantive and/or procedural violations of the IDEA. If a party files a petition on substantive grounds, the Administrative Law Judge (ALJ) must determine whether the student received a FAPE. N.J.A.C. 6A:14-2.7(k). If a party alleges a procedural violation, an ALJ may decide that a student did not receive a FAPE only if the procedural inadequacies: (1) impeded the child's right to a FAPE; (2) significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of FAPE to the child; or (3) caused a deprivation of educational benefits. Ibid.

There is no issue that the District did provide FAPE during the time A.D. was enrolled. In the instant matter, petitioner seeks to have A.D. re-enrolled in high school after he withdrew twice from school, and obtained a GED and State issued high school diploma.

In Board of Education of Sparta v. M.N. o/b/o A.D., EDU 05866-21, Decided August 16, 2021, the undersigned determined that A.D. was not entitled to re-enroll as a matter of law, and granted summary decision in favor of Sparta. The issue herein is the same issue in this companion case filed by the Board. The Initial Decision is currently before the Commissioner of the Department of Education awaiting a Final Decision.

Based upon the foregoing, I **CONCLUDE** that petitioner's Due Process Petition be **DISMISSED**.

ORDER

It is hereby **ORDERED** that petitioner's Due Process Petition is **DISMISSED**, with prejudice.

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.

August 25, 2021
DATE


THOMAS R. BETANCOURT, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

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APPENDIX

Witnesses

For Petitioner:

M.N.

For Respondent:

Susan Lorentz, Ph.D.

Exhibits

- R-1 Social History
- R-2 Educational Evaluation
- R-3 Psychological Evaluation
- R-4 Psychiatric Evaluation dated March 7, 2017
- R-5 IEP dated May 27, 2020
- R-6 Transcript
- R-7 Progress Reports, 2018–2019
- R-8 Progress Reports, 2019–2020
- R-10 Attendance Record, 2018–2019
- R-11 Attendance Record, 2019–2020
- R-12 Withdrawal form dated June 8, 2020
- R-13 Withdrawal form dated March 22, 2019
- R-14 Guidance letter dated February 2020
- R-15 Notes March 2019, May 2019
- R-16 Resume of Dr. Susan Lorentz
- R-17 Report Cards
- R-18 Registration Paperwork
- R-19 Eligibility Conference Report dated February 8, 2017
- R-20 IEP dated February 8, 2017
- R-21 IEP dated April 25, 2017
- R-22 IEP dated April 18, 2018

R-23 IEP dated June 13, 2019

R-24 IEP dated October 17, 2019