



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

**FINAL DECISION**

OAL DKT. NO. EDS 01083-22

AGENCY DKT. NO. 2022-33844

**M.P. and R.P. on behalf of G.P.,**

Petitioners,

v.

**BERNARDS TOWNSHIP**

**BOARD OF EDUCATION,**

Respondent.

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**M.P. and R.P. on behalf of G.P.,** petitioners, pro se

**Cherie L. Adams, Esq.,** for respondent (Adams, Gutierrez & Lattiboudere, LLC,  
attorneys)

Record Closed: April 7, 2022

Decided: April 12, 2022

BEFORE **CARL V. BUCK III, ALJ:**

**STATEMENT OF CASE AND PROCEDURAL HISTORY**

On January 13, 2022, petitioners filed a due process complaint with the Department of Education, Office of Special Education Programs, alleging that G.P. is

suffering from anxiety and sleeping issues related to the pandemic. Parents are seeking home instruction for G.P.

The Office of Special Education Programs transmitted this case to the Office of Administrative Law, where it was filed on February 10, 2022. Initially the matter was assigned, with two companion cases, to the Hon. Sarah Crowley, ALJ. Subsequently, one of the companion cases was assigned to the undersigned. A telephone conference call was held on March 3, 2022, to discuss the issue on appeal with the parties. The undersigned discussed the request of home instruction and compensatory education raised in the petition. Petitioners advised that G.P. was showing signs of anxiety and sleeping issues related to the pandemic. Parents were requesting “to meet with the district and revise G.’s IEP and I&RS Action Plan, so that he can receive Home Instruction with his supports and related services as per his IEP, and I&RS Action Plan.” Respondent’s position is that petitioners do not challenge the plan(s), they are seeking that the services be delivered “at home” and they advised of their intention to file a Motion to Dismiss in the action.

On March 10, 2022, respondent filed a Motion to Dismiss and associated documents asserting that the complaint is insufficient and does not conform to the substantive requirements contained in N.J.A.C. 6A:14 as there is not a cognizable claim under the IDEA or related State of New Jersey laws. 20 U.S.C. § 1415(c)(2)(A); 34 C.F.R. § 300.508(d)); N.J.A.C. 6A:14-2.7(a). During a Zoom conference held on March 14, 2022, petitioners were advised that if they wished to submit a response to the motion such response must be submitted on or before March 30, 2022. Documents, specifically medical reports, were filed by that date. A Zoom teleconference was held on April 5, 2022, to ascertain if the parties had any additional information to provide regarding their respective cases and were advised to file any additional information by 5.00 p.m. on April 6, 2022. Additional information was submitted by petitioner, and the record closed on April 7, 2022.

## FINDINGS

For testimony to be believed, it must not only come from the mouth of a credible witness, but it also has to be credible in itself. It must elicit evidence that is from such common experience and observation that it can be approved as proper under the circumstances. See Spagnuolo v. Bonnet, 16 N.J. 546 (1954); Gallo v. Gallo, 66 N.J. Super. 1 (App. Div. 1961). A credibility determination requires an overall assessment of the witness's 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). Also, "[t]he interest, motive, bias, or prejudice of a witness may affect his credibility and justify the [trier of fact], whose province it is to pass upon the credibility of an interested witness, in disbelieving his testimony." State v. Salimone, 19 N.J. Super. 600, 608 (App. Div.), certif. denied, 10 N.J. 316 (1952) (citation omitted).

In determining credibility, I do not believe that District employees would want to deprive G.P. of a program to augment his educational opportunities but they must also work within the parameters of the law and regulations. I am also aware that the parents would want the best educational opportunity for their child.

In this case, therefore, I do not find that there is an issue of credibility as much as an issue of experience and knowledge. Therefore, I accept the information set out by the District specifically within the Certification of Jean O'Connell. the testimony of the District's witnesses as credible as to the extent of implementing the proposed IEP. In particular, O'Connell's statement that the district has been attempting to schedule an IEP meeting with the parents since the parents' request of January 2, 2022 without success. Additionally, the fact that G.P. has not attended school for the entire academic year has resulted in a "gap" in provision of the services G.P. is entitled to. But the services are provided in school.

O'Connell's certification states "The school physician reached out for and ultimately spoke with the children's pediatrician after receiving the new medical notes. Based upon this information, the school physician denied approval for medical home

instruction. G.P. has not returned to the school.” The information provided by petitioners as to G.P.’s anxiety does not surmount this position by the District’s doctor. There is also an overlay of a medical condition of G.P.’s father that was alluded to in a number of the documents, but specifics of that condition were not provided.

This information as provided by the District are the overriding factors here and as such I find them as **FACT**.

### **LEGAL ARGUMENT AND CONCLUSION**

Pursuant to N.J.A. C. 6A:14-2.7(a), “a due process may be requested when there is a disagreement regarding identification, evaluation, re-evaluation, classification, educational placement, and the provision of a free appropriate public education or disciplinary action.” The District argues that the petition should be dismissed because the issue is a request from petitioner to provide G.P.’s services “at home” together with general education services to be provided “at home” and not dissatisfaction of the services or request for additional services.

Petitioner provided the following in support of their application:

1. An extremely short (4 lines) note from Janine DeFeo, APN of Children’s Specialized Hospital dated March 2, 2022 stating “Primary concerns Anxiety General”
2. A memorandum dated March 28, 2022 stating:
  - a. We are not seeking a Virtual or Remote schooling option. We are seeking to amend G.’s I&RS Action Plan and Speech IEP, to Home Instruction since the District Physician will not approve Home Instruction.
  - b. According to NJ Law, G. is entitled to a Free Appropriate Public Education. Therefore, his I&RS Action Plan and Speech IEP, need to be revised

with accommodations, modifications, and supports due to his anxiety diagnosis.

- c. We requested from the district numerous times specific reasons from Dr. Speesler for his denial and have yet to receive any documentation.
  - d. We submitted on March 25, 2022 to the District a recent letter requesting Home Instruction after G.'s recent appointment at Children's Specialized Hospital. We have not received a response from the district or any attempts from Dr. Speesler to further discuss.
  - e. The district lacks transparency and is not acting in good faith of G.'s education. We were not aware that we could appeal a medical determination, until just recently.
  - f. We had postponed G.'s IEP meeting, since the district would not work with us during the IEP meetings for our other two children. We also had an appointment scheduled for March 11, 2022 with Children's Specialized Hospital in regards to addressing the anxiety and sleep issues further. We felt it was best to meet after we received the report and plan of action.
  - g. There is documentation from all of Mr. P.'s doctors (Pulmonologist, Allergist, ENT) of his diagnoses.
  - h. The district is aware of C. P.'s severe allergies, as they have been provided documentation from his Allergist.
  - i. Dr. Speesler, the District Physician made no attempt to speak with G. P. in regard to attending in-person school, or to his parents to gather more information before denying Home Instruction.
  - j. G.P. has stated several times to his parents and physicians, he does not feel comfortable going to school in-person due to the Pandemic.
3. A "Developmental and Behavioral Pediatrics Initial Evaluation" dated March 11, 2022 signed by DeFeo stating, among other things, that:
    - a. Parents have a concern that G.P. appears to be deaf.

**b. Impression**

G. is a 11 year-old male who was seen today for an Initial Neurodevelopmental Evaluation. G.'s reported history and exam findings are consistent with the diagnosis of:

**Problem List:**

- (1) Articulation disorder**
- (2) Academic problem**
- (3) Behavior concern**

4. Under (2) Academic Problem it states, "Assessment & Plan: Recommend home instruction provided by the school due to health concerns related to father and Covid 19."

Respondent provides the following information in their Motion:

1. District's physician after consultation with the family's doctor has determined that home instruction is not medically necessary.
2. Although the reasons provided for the request continue to be medical in nature, the due process petition is allegedly seeking a revision of the speech IEP placing G.P. on home or virtual instruction with his educational program, supports and related services provided as per his existing Speech Individualized Education Program ("IEP") and general education I&RS Plan.
3. The allegations do not challenge the services provided to G.P. under the IEP or I&RS Plan.
4. An IEP meeting was not held because parents refused to schedule a meeting in February of 2022, despite the district's efforts to schedule one.
5. Petitioners do not allege that the district's IEP violated the Individuals with Disabilities Act ("IDEA") and state regulations, nor do they allege that the I&RS Plan is inappropriate.
6. Although G.P. is eligible for speech services under the classification of Speech Language Impairment, the allegations do not pertain to an issue that would be covered under the purview of the IDEA.

7. Pursuant to the petitioners request to hold a meeting, the district initially scheduled an IEP meeting for January 31, 2022.
  - a. On January 29, 2022, the parents advised the district that the IEP meeting would need to be rescheduled.
  - b. The district reached out a second time on February 8, 2022, to inquire about the parents' availability for an IEP meeting.
  - c. Parents responded on February 16, 2022, advising that the proposed dates would not work for them, and they wanted to put the meeting on hold due to the outcomes of previous meetings relating to G.P.'s siblings.
  - d. Petitioners' Due Process Petition does not fall within the confines of N.J.A.C. 6A:14- 2.7(a) which sets forth the limited circumstances whereby a due process hearing may be requested in a special education setting.
  - e. Districts in the State of New Jersey were not permitted to offer virtual instruction as an option for the 2021-2022 school year, absent medical justification, as reflected in Governor Murphy's Executive Order #175.

There has been no challenge to G.P.'s IEP or I&RS plan. Their request seeks to change provision of these services to home provided – along with home educational instruction.

I **CONCLUDE** that the relief sought in the petitioners' complaint does not fall within the confines of N.J.A.C. 6A:14-2.7(a) which sets forth the circumstances where a due process hearing may be requested in a special education matter. Petitioners appeal if for home instruction as well as providing his IEP and I&RS benefits in a home setting which has not been approved by the school physician. Sufficient medical information to counter the District's position has not been provided. I further **CONCLUDE** that the claim set out in

this petitioner does not fall under the IDEA and thus authorization to bring such claim is **DENIED.**

I therefore **ORDER** that the due process complaint be **DISMISSED.**

This decision is final pursuant to 20 U.S.C. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2021) 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 (2021). 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.

April 12, 2022  
DATE

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**CARL V. BUCK III, ALJ**

Date Received at Agency:

April 12, 2022

Date Mailed to Parties:

April 12, 2022

CVB/lam