



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO EDS 02249-22

AGENCY DKT. NO. 2022-34032

D.F. ON BEHALF OF M.S.,

Petitioner,

v.

**ELIZABETH CITY BOARD OF
EDUCATION,**

Respondent.

D.F., parent of M.S.,Petitioner, pro se

Richard P. Flaum, Esq., for Respondent, (DiFrancesco, Bateman,
Kunzman, Davis, Lehrer & Flaum, P.C., attorney)

Record Closed: August 29, 2022

Decided: August 29, 2022

BEFORE **THOMAS R. BETANCOURT**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner filed a due process petition dated March 18, 2022, with the Office of Special Education in the Department of Education. Said petition seeks on behalf of the student an additional year of education; compensatory education; and a re-evaluation.

The matter was transferred to the Office of Administrative Law (OAL) as a contested matter on March 24, 2022.

Pursuant to N.J.A.C. 1:1-13.1 et seq., a telephone prehearing conference was held in the above-entitled matter on April 26, 2022, and a Prehearing Order was entered on April 27, 2022.

A hearing was held on August 29, 2022, whereupon the record closed.

SUMMARY OF RELEVANT TESTIMONY

Ronisse Johnson, testified as follows:

She is employed by the Elizabeth Board of Education as a Case Manager. She is the Case Manager for M.S. She has been employed by the Elizabeth Board of Education for since 2021.

The Individualized Education Program (IEP) that was in use for M.S. was dated March 2, 2021. Ms. Johnson did not attend the IEP meeting that produced this IEP. This IEP was the last IEP that was agreed upon.

In March of 2022 another IEP meeting was held. Both D.F. and M.S. were in attendance, as was Ms. Johnson. Prior to this meeting Ms. Johnson attempted to contact D.F. prior to the meeting. He did not respond. At the meeting D.F. stated he did not believe that M.S. had the credits to graduate. During the meeting D.F. kept going over what he believed M.S. did not receive and said what the school did was illegal. D.F. said he did not get certain documents. Much of the meeting was about what was done in the past. At the meeting M.S. said he wanted to graduate.

At this meeting transitional services were discussed. D.F. rejected the programs that were discussed. M.S., after the meeting, was given the application for the Division of Vocational Rehabilitation (DVR) to complete and return. M.S. did not return it for about one month, and it was not filled out, only signed. Ms. Johnson completed the

DVR application, minus the Social Security Number as she does not have it, and forwarded onto DVR. After this is done DVR contacts the parent and/or student to continue the process.

The program set forth in this IEP was continued to be provided to M.S. after the March 2022 IEP meeting, including all accommodations set forth.

Ms. Johnson reviewed the psychological re-evaluation done on March 7, 2020, and the speech/language re-evaluation done on February 18, 2020, and stated both were provided to D.F. prior to the IEP meeting.

Ms. Johnson then reviewed the high school transcript for M.S. and stated he had sufficient credits to graduate. She also reviewed the high school diploma issued to M.S., dated June 2, 2022.

The guidance department handles graduation. She does not know about how graduation happens. She spoke with M.S. numerous times. He said he would like to graduate and become a barber.

Cross Examination:

She did not know what happened to the DVR referral. After she sent it to DVR, she has no further involvement with the process.

There was no compensatory education at any time prior as there was no need for the same. This was first raised by D.F. at the March 2022 IEP meeting.

M.S. signed both the IEP and the DVR application. He was eighteen at the time. She believes he is capable of understanding them and signing them.

M.S. was enrolled in a vocational program for cosmetology/barbering. She believed he was ready to graduate.

Diana Pinto-Gomez testified as follows:

She is the Director of Special Services. She oversees the Child Study Team (CST). Dr. Pinto-Gomez explained the DVR program, as follows: Students at age fourteen required transitional services. In senior year they begin to reach out to DVR, which is a State agency. Services start after school. The application needs to be completed. Social Security Numbers are not on file at the school. DVR contacts the parent. If DVR needs anything from the school the Board will supply it. She did not receive any requests for M.S. from DVR.

Cross Examination

She did not know why transitional services were not supplied at age fourteen.

D.F., Petitioner testified as follows:

His basic complaint is that M.S. graduated inappropriately. He is nineteen years of age. He is not ready for advancement.

M.S. was not provided transitional services at fourteen years of age; only in his senior year. He was not provided with a vocational referral until May 2022.

He reached out to DVR who told him there were no services during the pandemic. He reached out to DVR again who told him that nothing was provided by the school.

The IEP had illegal revisions without his knowledge. The IEP changed several times.

D.F. stated that Ms. Johnson said M.S. did not have the capacity of an eighteen year old.

Documents were not provided.

Compensatory education was not provided.

M.S. did not take the test to become a barber. He only took a pre-test.

The grades seemed to be falsified. He did not believe M.S. earned 151 credits.

M.S. is totally unprepared for graduation.

The District engaged in a cover-up by removing the previous case manager. It was done to cover-up inappropriate actions.

Transitional services were not provided at appropriate ages.

Volunteer work by M.S. was falsified by staff, who admitted this at the IEP meeting.

There was no Cross Examination

M.S., student, testified as follows:

He is currently nineteen years of age. He does not know what transitional services are. He does know what vocational services are. They were not provided by the school.

M.S. believes all services needed were provided.

He did not know about graduation. He received no paperwork. He was not contacted by a guidance counselor. He did not go to a graduation rehearsal. He was not told about it.

He did not take the barber test.

He is not ready for graduation. He does not know what to do after graduation.

At the time he met with Ms. Johnson and received the DVR paperwork he told them wanted to graduate. At that time he felt he was ready.

M.S. could not answer a question from the undersigned about why he thought he needed another year in school.

Cross Examination

M.S. picked up his cap and gown prior to graduation.

Re-Direct

M.S. did not tell D.F. about picking up his cap and gown.

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. M.S. is presently a nineteen year old young adult.
2. M.S. designated D.F. to advocate on his behalf via letter dated March 24, 2022.ⁱ
3. The last agreed upon IEP was dated March 3, 2021 through March 1, 2022. This was the IEP in use from March 2022 through the end of the 2021/2022 school year. (R-1)
4. An IEP meeting was held in March 2022, during which time D.F. brought up the subject that M.S. should continue in school for an additional year.

ⁱ This letter is not in evidence, but was contained in the case file transmitted to the undersigned.

5. While enrolled in school, M.S. was in a vocational program for cosmetology/barbering.
6. M.S. did not take the test to become certified as a barber.
7. Prior to the March 2022 IEP meeting, D.F. was provided with a Psychological Reevaluation and a Speech/Language Reevaluation, both from the year 2020. (R-2 and R-3)
8. During the course of his high school career, M.S. accumulated 151 credits toward graduation, and achieved a Grade Point Average of 2.9103. (R-4)
9. The District awarded M.S. a high school diploma dated June 23, 2022. (R-5)
10. M.S. was aware of his pending graduation, having picked up his cap and gown prior to the same. He did not inform D.F. of the same.
11. M.S. admitted to Ms. Johnson during their meeting after the IEP meeting in March of 2022, and at other times, that it was his intention to graduate.
12. During the hearing M.S. could not answer a direct question as to why he thought he should go to school another year.
13. M.S. stated he did not know what to do after graduation.
14. The District provided FAPE as is demonstrated by the progress M.S. made, and that he more than met the requirements for graduation. (R-4 and R-5)

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.

I do not see where the District failed to provide FAPE to M.S., notwithstanding the very obtuse protestations of D.F. as to alleged cover ups and falsification of records. The record amply reflects that M.S. did well at school. M.S. received good grades. He was enrolled in a vocational program that offered an employable trade. That he did not take the barber test seems to fall at his feet, not that of the District. It seems the transitional services that D.F. complains were lacking also lie at his feet and that of M.S. The District took the DVR application, which was returned late to Ms. Johnson, and was not even completed. Ms. Johnson completed it and sent it on to DVR. Lastly, M.S. achieved good grades through high school, demonstrated by his achieving significantly more credits than required for graduation; and, M.S. did graduate and did so knowing he was to be graduated.

34 CFR §300,102(a)(3)(i) provides that the obligation to provide FAPE does not apply to "children with disabilities who have graduated from high school with a regular high school diploma."

However, 34 CFR §300,102(a)(3)(iv) states: "As used in paragraphs (a)(3)(i) through (iii) of this section, the term regular high school diploma means the standard high school diploma awarded to the preponderance of students in the State that is fully aligned with State standards, or a higher diploma, except that a regular high school diploma shall not be aligned to the alternate academic achievement standards described in section 1111(b)(1)(E) of the ESEA. A regular high school diploma does not

include a recognized equivalent of a diploma, such as a general equivalency diploma, certificate of completion, certificate of attendance, or similar lesser credential.”

The District awarded M.S. a high school diploma that comports with 34 CFR §300,102(a)(3)(iv), and therefore the District is no longer obligated to provide FAPE.

It is extremely important to note that the District carried its burden to demonstrate FAPE. What I see as the essence of the due process is that Petitioner, and to a lesser extent M.S., do not know what M.S. should do after graduation. M.S. admitted as much in his testimony. Not knowing what to do cannot be interpreted to mean M.S. requires an additional year of education.

Lastly, Petitioner is seeking an additional year of school base upon S3434 (P.L.2021, c.109) enacted last year, which states in pertinent part:

C.18A:46-6.3 Provision of education, related services to students with disabilities. 1. a. Notwithstanding the provisions of N.J.S.18A:46-6, N.J.S.18A:46-8, or of any other law, rule, or regulation concerning the age of eligibility for special education and related services to the contrary, a board of education shall, in the 2021-2022 school year, provide special education and related services contained in an individualized education program to a student with disabilities who attains the age of 21 during the 2020-2021 school year, provided that the parent of the student and the individualized education program team determine that the student requires additional or compensatory special education and related services, including transition services, during the 2021-2022 school year. A student receiving special education and related services pursuant to this subsection shall not be eligible to receive such education and services beyond June 30, 2022, unless otherwise provided in a student’s individualized education program or as ordered by a hearing officer, complaint investigation, or court of competent jurisdiction.

The applicable school year herein would be 2021/2022, the year M.S. graduated. M.S. was eighteen at the time he graduated. This law does not apply in the instant matter.

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 29, 2022 _____

DATE

THOMAS R. BETANCOURT, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

jb

APPENDIX

Witnesses

For Petitioner:

D.F., Petitioner

M.S., Student

For Respondent:

Ronisse Johnson, Case Manager for M.S.

Diana Pinto-Gomez, Director of Special Services

Exhibits

For Petitioner:

None

For Respondent:

R-1 M.S. IEP, 3/3/2021 to 3/1/2022

R-2 M.S. Psychological Reevaluation – 2020

R-3 M.S. Speech/Language Reevaluation – 2020

R-4 M.S. School Transcript

R-5 M.S. Certificate of Graduation, Diploma, 6/23/2022