



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. EDS 05394-21

AGENCY DKT. NO. 2021-32869

F.C. and L.C. on behalf of L.C.,

Petitioners,

v.

WATCHUNG HILLS REGIONAL

BOARD OF EDUCATION,

Respondent.

Tina M. James, Esq., for petitioners (Law Office of Tina M. James, attorneys)

Eric L. Harrison, Esq., for respondent (Methfessel & Werbel, P.C., attorneys)

Record Closed: February 2, 2022

Decided: February 9, 2022

BEFORE **SARAH G. CROWLEY**, ALJ:

STATEMENT OF THE CASE

L.C. is a seventeen-year-old hearing-impaired student residing in the Watchung Hills Regional School District. He has been classified as eligible for special education services and has been placed in an out-of-district placement in the Mountain Lakes School District since kindergarten. The petitioner seeks to have L.C. placed in a general education math class and argues that his current placement has denied him a Free and Appropriate Education (FAPE) in the least restrictive environment (LRE). In addition, L.C. seeks to have the District provide transportation home after L.C.'s participation in

extracurricular activities in the out-of-district placement. Finally, the petitioners argue that they were denied meaningful participation in the IEP process.

PROCEDURAL HISTORY

Petitioners, L.C. and F.C. on behalf of L.C., filed a due process petition on May 27, 2021. The matter was assigned to the undersigned. After discovery and several conferences with the parties, the matter was scheduled for a hearing on December 6, 2021, and December 15, 2021. The matter was heard via ZOOM on December 6, 2021, and the record closed after written submissions by the parties on February 3, 2022.

TESTIMONY

Dr. Patrick O'Halloran is the school psychologist and testified for the Board. He was qualified as and accepted as an expert in the field of school psychology and special education. He is familiar with L.C., who was placed at Lake Drive Program at the Mountain Lakes High School. He is a seventeen-year-old junior in an out-of-district placement where he has been since kindergarten. It is a special school for auditory impaired children. At his most recent IEP meeting, the parents requested that he be placed in the general education class for Algebra II. Dr. O'Halloran testified that L.C. struggled with reading and language arts, and that he needed to be in a self-contained class for Algebra. He deferred to his teachers as the experts on this issue, and they assured him that L.C. would not be able to keep up with the fast pace in the general education class. Success in the self-contained setting in other classes is not indicative of his ability to succeed in Algebra II. His teachers felt very strongly that he would not be able to keep up in the general education Algebra II class. He opined that L.C.'s May 13, 2020, IEP was providing the most appropriate education in the least restrictive environment.

Dr. O'Halloran discussed the issue relating to transportation to extracurricular activities for L.C. L.C. was in the chess club and played soccer his freshman year and was provided with a bus home after extracurricular activities. The District was able to do this because he was the only child on that bus, and they were able to arrange for late

pick-up with the bus company. He explained that busing became more difficult after COVID and their attorney advised them that they only had to provide busing home after school. The District offered to bus him to his home district school so he could participate in extracurricular activities there. However, due to the forty-five-minute drive and the different dismissal times for the school, it would be difficult to work it out. They were willing to try to work it out with an early dismissal and would make sure that the home district had all the appropriate accommodations for his participation in activities there. They had reached out to the parents to see if they wanted to try to arrange the transportation to the home district after school rather than home, but they never heard back and never worked anything out. They remained willing to try to get him to the home district for extracurricular activities.

Dr. O'Halloran discussed the parents' involvement in the IEP process as well as the May 6, 2020, IEP meeting. He identified several emails going back and forth and the discussion about L.C. remaining in the self-contained Algebra II class. He also discussed the busing issue with them as it related to extracurricular activities and advised that they would provide any equipment to assist him in the home district. However, the parents did not want him in activities in the home district. He also shared with the parents that L.C.'s teachers felt very strongly about him remaining in a self-contained math class. He testified that the meeting was an hour and a half, and the parents participated in the meeting. L.C.'s parents continued to email him following the IEP meeting about the issue of the transportation home after soccer and the general education math class. He responded again, advised them of the District's position on these issues. He believed that they were very involved in the process, but they just did not agree with the recommendations from the District.

Dr. Lori Boylan works for the District and was on the child study team and discussed L.C. and his IEP. She has a doctorate in clinical psychology and is a school psychologist. She specializes in deaf education. She was qualified as an expert in school psychology and deaf education. She works in the Mountain Lakes School District. She is familiar with L.C. and met the parents when the child was in high school. L.C. had been in the District since kindergarten, but she had not met them until he entered high school.

She reviewed the IEP from May 2020 and opined that the IEP provided L.C. with FAPE in the LRE. She reviewed some of the notes and the progress he was making. She discussed Geometry and how he was doing fine and received a proficient grade, but he would not be able to keep up with the pace in a mainstream math class. His language deficits would affect his ability to keep up in a general education class. Dr. Boylan had her reservations about general education biology, but they were willing to let him try with a paraprofessional and other supports in place. However, she felt very strongly that math was a much different story. She felt that his math abilities were well below his peers, and it would be unethical to put him in mainstream math. The pace was too fast, and it would have been setting him up for failure. Even with the accommodations and a paraprofessional, he would not be able to keep up. There was no modification that could be made to help with a mainstream math class. The drafting and design class as well as the science class were much different than a math class. She agreed that it was important to have him with non-disabled peers when they could, but not if he could not succeed in the setting. She talked with his current math teacher, Samantha Fucarino and she concurred with her decision to keep him in the self-contained Algebra II class.

Samantha Fucarino is a certified teacher of the deaf and has a master's degree in deaf education. She has been at the Mountain Lakes School for three years. She was qualified as an expert in deaf education. She testified that L.C. was in a self-contained classroom for Algebra I and Geometry, and it was her recommendation that he stay in the self-contained setting for Algebra II. She discussed the goals and objectives for Algebra II and stressed that he would not be able to handle mainstream math. She discussed her email exchange with the parents and told them that he could not handle a general education class for Algebra II. The parents felt that because he was doing well in the current math class, he could handle it. However, he was not doing well on tests and quizzes, and they spend a lot of time with him individually. Also, the grades were reflective of the proficiency that he reached in a self-contained class after receiving assistance from aids and the teacher individually. He would not be successful in general education class, and she could not in good conscience recommend it. She felt it would be unethical to allow it as he would not be able to keep up and would not be successful. She also talked about L.C.'s anxiety level with keeping up in class and this coupled with

her belief that the general education class was too fast paced, led her to her conclusion to keep him in the self-contained classroom

Michele Deremer is the Director of Services, and has been in the Watchung School District for one year. She is responsible for overseeing and implementing the IEP's which includes transportation and extracurricular activities at Mountain Lakes. She discussed the busing issue for L.C. and how they had a lot of difficulty finding enough bus drivers after COVID. They did not have a bus to provide transport home after soccer for L.C. She does not know what efforts, if any were made to secure such transportation but she was advised by counsel that they were not required to bus home after activities. They were able to work it out with the bus company before COVID, but they had difficulty getting enough buses after COVID. They reached out to the bus company, and they said they did not have the staff to do a later pick up.

F.C. is L.C.'s mother. He was adopted when he was two years old from the Country of Georgia. They discovered his deafness after a year, and he got hearing aids. At fourteen, his hearing got worse, and the hearing aids did not work anymore. He received hearing implants in 2019 and 2020 and it has made a huge difference in his hearing. However, he hears different than others even with the implants. They reside in Watchung, but he attends school in Mountain Lakes. He has been out-of-district in Mountain Lakes since kindergarten.

She discussed getting him involved in extracurricular activities and how difficult this was especially with him being out-of-district. He was in the chess club but none of these things were very helpful in integrating him with hearing kids. In ninth grade, he started playing soccer in Mountain Lakes and loved it. They provided him with a bus home after practice in ninth grade. However, when COVID hit, there was no soccer his sophomore year. This year (his junior year) they did not provide a bus after practice. The bus picked him up at dismissal from school and she had to pick him up every day after soccer practice. They said they were not required to provide a bus after extracurricular activities. They offered to transport him to his home district school if he wanted to participate in activities there. However, Mountain Lakes dismisses later, and it is a forty-

five-minute drive to home or to the Watchung High School. Also, he does not know any of the kids there as he has been out-of-district since kindergarten. He is the only child on the bus and the bus driver told her that they never asked if the pickup could be later. She felt that his interaction with hearing kids was so important and everyone on the soccer team loves him. He is not a great athlete, but they make him feel like he is part of the team, and he has made some great friends. In addition to the logistical issues, he would never make the soccer team in his home district and Mountain Lakes had a “no cut” policy.

The other issue F.C. had with the District was with the May 2020 IEP. They wanted him in the general education for his Algebra class. He was doing well in math and was doing fine in the general education science class. She did not know why they would not even let him try. He had the supports in the general education class in Biology and got an A in it. She tried to discuss it in the IEP meeting, and they did not want to talk about it. They had some other issues about accommodations and evaluations, but the main issues were the transport after sports and the general education class for math. They told her they were not willing to modify the IEP for general education Algebra or to provide transportation home after extracurricular activities.

L.C. is L.C.’s father and he discussed the issues with his son and the school. He talked about how important extracurricular activities were for him and the importance of some interaction with hearing kids. He discussed how impractical it was to offer him sports in a district where he has not attended school and the school was so much larger. Mountain Lakes had a no-cut-policy and there was no way he would have made the team in Watchung. He also discussed wanting him in a general education math class. He did well in math and was in a general education biology class and doing fine. He was not aware that the self-contained moved at a slower pace and covered less curriculum.

FINDINGS OF FACT

It is the duty of the trier of fact to weigh each witness’s credibility and make a factual finding. Credibility is the value a fact finder assigns to the testimony of a witness, and it contemplates an overall assessment of the witness’s story considering its rationality, consistency, and how it

comports with other evidence. Carbo v. United States, 314 F.2d 718 (9th Cir. 1963); see, In re Polk, 90 N.J. 550 (1982). Credibility findings “are often influenced by matters such as observations of the character and demeanor of witnesses and common human experience that are not transmitted by the record.” State v. Locurto, 157 N.J. 463 (1999). A fact finder is expected to base decisions on credibility on his or her common sense, intuition, or experience. Barnes v. United States, 412 U.S. 837 (1973). A trier of fact may reject testimony because it is inherently incredible, or because it is inconsistent with other testimony or with common experience, or because it is overborne by other testimony. Congleton v. Pura-Tex Stone Corp., 53 N.J. Super 282, 287 (App. Div. 1958).

I have found all the witnesses to be sincere and credible. However, I must defer to the expert testimony from the District witnesses on the appropriate placement of L.C. which was uncontroverted. Moreover, the testimony of all the parties demonstrates that there was a dialogue with the parents regarding L.C.’s math placement as well as the issue regarding transportation, and, although the parents did not like the end result after all the email exchanges and the IEP meeting which the parents participated in, there was meaningful participation by the parents. I therefore FIND their testimony regarding the absence of meaningful participation to be less credible that the Districts testimony.

Having considered the testimonial and documentary evidence presented I **FIND** the following additional **FACTS**:

1. L.C. is a seventeen-year-old hearing-impaired special education student who resides in the Watchung School District.
2. L.C. has been in an out-of-district placement in the Mountain Lakes School District since kindergarten.
3. L.C. is provided transportation to and from school each day.
4. The IEP does not include any extracurricular activities, nor does it provide for transportation following extracurricular activities.

5. An IEP meeting was held for L.C. on May 20, 2020.
6. The parents were provided with a draft IEP, had several email exchanges, and participated in the May 20, 2020, IEP meeting which lasted approximately ninety minutes.
7. The parents were involved in the IEP process and had meaningful participation in the IEP process.
8. The IEP in question provides for math in a self-contained classroom and such placement provides an appropriate education in the least restrictive environment.

LEGAL ANALYSIS AND CONCLUSION

The Individuals with Disabilities Act (IDEA) was enacted to assist states in educating disabled children. It requires states receiving federal funding under the Act, such as New Jersey, to have a policy in place that ensures that local school districts provide disabled students with FAPE designed to meet their unique needs. See, 20 U.S.C. § 1412; N.J. Const. art. VIII, IV, 1; N.J.S.A. 18A:46-8; N.J.A.C. 6A:14-1.1 et seq., Hendrick Hudson Cent. Dist. Bd. of Educ. v. Rowley, 458 U.S. 176, 102 S. Ct. 3034, 73 L. Ed. 2d 690 (1982). State regulations track this requirement that a local school district must provide FAPE as that standard is set under the IDEA. N.J.A.C. 6A:14-1.1. A FAPE and related services must be provided to all students with disabilities from age three through twenty-one. N.J.A.C. 6A:14-1.1(d). A FAPE means special education and related services that: a) have been provided at public expense, under public supervision and direction, and without charge; b) meet the standards of the State educational agency; c) include an appropriate preschool, elementary, or secondary school education in the State involved; and d) are provided in conformity with the Individualized Education Program (IEP) required under sec. 614(d). 20 U.S.C. § 1401(9).

In order to provide a FAPE, a school district must develop and implement an IEP. N.J.A.C. 6A:14-3.7. An IEP is “a comprehensive statement of the educational needs of a handicapped child and the specially designed instruction and related services to be employed to meet those needs.” Sch. Comm. of Burlington v. Dep’t of Educ. of Mass., 471 U.S. 359, 368, 105 S. Ct. 1996, 2002, 85 L. Ed. 2d 385, 394 (1985). When analyzing a FAPE claim, there is a two-part inquiry. A court must first ask whether the state or school district has complied with the procedures of the Act when developing the IEP, and second, whether the IEP developed through the Act’s procedures is “reasonably calculated to enable the child to receive educational benefits.” Rowley, 458 U.S. at 207, 102 S. Ct. at 3051, 73 L. Ed. 2d at 712. While the IDEA does not require a school district to provide an IEP that maximizes “the potential of a disabled student, it must provide ‘meaningful’ access to education and confer ‘some educational benefit’ upon the child for whom it is designed.” Ridgewood Bd. of Educ. v. N.E., 172 F.3d 238, 247 (3d Cir. 1999) (citations omitted).

Generally speaking, children with special needs must be provided an education tailored to their individual needs and that confers meaningful benefit. Ibid. Petitioners relies upon the case of Oberti v. Bd. Of Educ., 995 F.2d 1024(3d Cir. 1993), to support their argument that L.C. should be placed in mainstream math class and the failure to do so has resulted in a denial of FAPE. However, there is no evidence to support the claim of L.C.’s ability to succeed in a mainstream math class. Moreover, the District has provided testimony from two experts familiar with L.C.’s abilities that his placement in a general education setting would be “unethical.” Both witnesses provided credible testimony that was supported by the documentary evidence that although L.C. was doing fine in the self- contained math class, he would be unable to keep up with the pace and the structure of the general education class even with an aide and supports. I **CONCLUDE** that the District has proven by a preponderance of the evidence that L.C. is being provided FAPE in the LRE.

On the issue of the request for transportation home following extracurricular activities, the petitioners cite to the well-settled principle that requires districts to provide students with disabilities with the same programs and services that are available to

nondisabled students. N.J.A.C. 6A:14-4.1(3)(j). However, the extracurricular activities in question are offered and available to L.C. In fact, L.C. does participate in the activities in question. What is not available to L.C. and other non-disabled students is transportation home after extracurricular activities. The District has provided case law supporting its position that transportation services are not required following extracurricular activities. See L.A. and A.A. o/b/o G.A. v. River Vale Board of Educ., OAL Docket No EDS 11237-1010 (April 11, 2011). Absent an agreement to the contrary or inclusion in the IEP, busing home after extracurricular activities is not required.

In this matter, the District was able to accommodate this request during L.C.'s freshman year, as he was the only student on the bus and the bus company was able to accommodate this request. The District has testified that it was unable to provide such an accommodation following COVID with all the difficulty providing basic busing. In addition, the District did try to accommodate L.C. by transporting to the home district for sports and offered to explore the possibility of an earlier dismissal for him. However, the parents chose not to explore this option. The District has offered to make any necessary accommodations available should he decide to participate in activities in-district. Moreover, they have offered to provide transportation from Mountain Lakes on a voluntary basis if it could be arranged with the bus company. However, there is no legal basis to mandate transportation home after extra-curricular activities. I, therefore, **CONCLUDE** that the District is not required to transport L.C. home after extracurricular activities.

To summarize my **CONCLUSIONS** in this matter:

I **CONCLUDE** that the IEP properly placed L.C. in an inclusion Algebra II class, and that the IEP is reasonably calculated to confer significant learning and meaningful benefit in light of L.C.'s needs and potential and provided L.C. with a free and appropriate education in the least-restrictive environment.

I further **CONCLUDE** that the parents had a meaningful opportunity to participate in the IEP process and did in fact participate in the IEP process.

I further **CONCLUDE** that neither the IEP, nor the IDEA mandates transportation for L.C. from extracurricular activities.

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.

February 9, 2022 _____

DATE



SARAH G. CROWLEY, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

SCG/sm

APPENDIX

WITNESSES

For Petitioners:

F.C.

L.C.

For Respondent:

Dr. Patrick O'Halloran

Dr. Lori Boylan

Michele Deremer

Samantha Fucarino

EXHIBITS

For Petitioners:

None

For Respondent:

R-1 Petition for due process, May 27, 2021

R-2 Answer, June 8, 2021

R-3 Petitioners' second petition for due process, November 2, 2021

R-4 Answer, November 15, 2021

R-5 Psychological evaluation, November 17, 2016

R-6 Neuropsychological assessment, April 23, 2018

R-7 IEP, April 27, 2018, with Mountain Lakes present levels and goals

R-8 IEP, September 13, 2018, with Mountain Lakes present-levels and goals.

R-9 Audiological Assessment, February 4, 2019

R-10 IEP (Warren Twp.), April 8, 2019, with Mountain Lakes present-levels statements and progress reports

- R-11 Email chain between petitioners and K. Koellhoffer regarding transportation, May 29-June 14, 2019
- R-12 Report card, 2018-2019
- R-13 Email chain regarding petitioners' request for Saturday transportation, September 6, 2019
- R-14 Email chain regarding late bus, September 27, 2019
- R-15 Email chain regarding petitioner's demand for specific language in IEP, January 31-March 2, 2020
- R-16 Audiological evaluation, February 26, 2020
- R-17 Email chain regarding scheduling of meeting, April 29, 2020
- R-18 IEP, May 13, 2020, with present-levels and goals from Mountain Lakes
- R-19 Email from case manager to petitioners regarding language in IEP, May 13, 2020
- R-20 Progress reports, 2019-2020
- R-21 Summary of classroom performance, 2019-2020
- R-22 Progress reports (Mountain Lakes), 2019-2020
- R-23 Report card 2019-2020
- R-24 Email chain regarding transportation, October 9, 2020
- R-25 Email from M. Deremer to petitioner regarding demand for transportation from extracurricular activities, October 13, 2020
- R-26 Email from case manager to petitioner declining request for IEP meeting, October 29, 2020
- R-27 Email from petitioners requesting IEP meeting, November 2, 2020
- R-28 Second email from request from petitioners requesting IEP meeting, November 4, 2020
- R-29 Email from case manager to petitioner declining request for IEP meeting, November 12, 2020
- R-30 Emails from case manager to petitioner regarding follow-up meeting, November 20, 2020
- R-31 Email from case manager to petitioner declining to provide transportation to golf, February 25, 2021
- R-32 Correspondence from T. James to E. Jewett, March 30, 2021

- R-33 Correspondence from R. Ballard to T. James, April 12, 2021
- R-34 Email chain between R. Ballard and T. James, April 21-May 4, 2021
- R-35 Email from case manager to petitioner responding to parental concerns, May 4, 2021
- R-36 Records from Mountain Lakes High School, May 5, 2021
- R-37 Email from case manager to petitioner regarding follow-up to IEP meeting, May 6, 2021
- R-38 IEP, May 6, 2021, with Mountain Lakes present-levels summaries and goals
- R-39 Email from L. Boylan to petitioner regarding items not covered during IEP meeting, May 6, 2021
- R-40 Email from case manager to petitioner regarding "follow-up IEP meeting", May 17, 2021
- R-41 Email from case manager to petitioner with responses to requests, May 27, 2021
- R-42 Report card, 2020-2021
- R-43 Settlement agreement and release, July 2021
- R-44 Progress report, summer 2021
- R-45 Independent Psychological Evaluation, August 18, 2021
- R-46 Independent Learning Evaluation, August 18, 2021
- R-47 Email chain between E. Harrison and T. James regarding status of independent evaluations, August 22, 2021
- R-48 Email chain between E. Harrison and T. James regarding general education placement, September 7, 2021
- R-49 Independent speech and language evaluation, September 8, 2021
- R-50 Mountain Lakes High School records, October 2021
- R-51 Recordings of October 6, 2021, IEP meeting
- R-52 Draft IEP, October 6, 2021
- R-53 Email from case manager to petitioner memorializing IEP meeting results, October 6, 2021
- R-54 IEP, October 6, 2021, with Mountain Lakes present-levels statements and goals
- R-55 Summary of classroom performance, 2021-2022

- R-56 Curriculum Vitae-Lori Boylan
- R-57 Curriculum Vitae-Lisa Cortese
- R-58 Curriculum Vitae-Margo Cottone
- R-59 Curriculum Vitae-Michele Deremer
- R-60 Curriculum Vitae-Stephanie Elsherif
- R-61 Curriculum Vitae-Samantha Fucarino
- R-62 Curriculum Vitae-Samantha Kaplan
- R-63 Curriculum Vitae-Julie Lazeration
- R-64 Curriculum Vitae-Jannette Mackey
- R-65 Curriculum Vitae-Kimberly Mooney
- R-66 Curriculum Vitae-Patrick O'Halloran
- R-67 Curriculum Vitae-Jeanne Romeo