



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. EDS 08987-21

AGENCY DKT. NO. 2022-33443

D.M. AND H.M. ON BEHALF OF D.M.,

Petitioners,

v.

WATCHUNG HILLS REGIONAL

BOARD OF EDUCATION,

Respondent.

David R. Giles, Esq., for petitioners

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

Record Closed: September 14, 2022

Decided: September 27, 2022

BEFORE **DEAN J. BUONO**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

In accordance with the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §1415, D.M. and H.M. on behalf of D.M. requested a due process hearing seeking reimbursement for unilateral placement at The College of New Jersey's CCS program with continued placement. The Watchung Hills Regional Board of Education (the Board, or the District) asserts that they have a comparable program and are in fact providing a

free appropriate public education (FAPE) and as a result are not responsible for the unilateral placement.

Petitioners filed a due process petition dated 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 October 28, 2021.

Pursuant to N.J.A.C. 1:1-13.1 et seq., a telephone prehearing conference was held in the above-entitled matter and a Prehearing Order was issued. Due to Covid-19 protocols, hearings were held on May 23, 2022 and May 25, 2022 via Zoom teleconferencing.

The record remained open to permit the parties to submit closing briefs on August 19, 2022. The matter was scheduled for a follow-up conference on September 14, 2022; however, it was adjourned at the parties' request, and the record closed on that date.

FACTUAL DISCUSSION AND FINDINGS OF FACT

Based on the testimony the parties provided, and my assessment of its credibility, together with the documents the parties submitted, and my assessment of their sufficiency, I **FIND** the following as **FACT**:

SUMMARY OF RELEVANT TESTIMONY

Respondent

Linda Zawisha, LDC, testified as an expert witness in special education and special education programming.

She was case manager since D.M. started high school in Watchung. He is a friendly warm student with good social skills. "An all-around very nice young man." He has a mild intellectual disability which means "approximately two standard deviations from

a standardized test.” He lacks the ability to comprehend critical thinking information in reading comprehension or language. He had several electives and was integrated in general education so according to the IEP the teachers taught to goals and objectives in the IEP. As here, the Learning Disability Consultant (LDC) typically relies on the evaluations from all members of the IEP team to meet the goals and objectives of the students structured learning experience.

The District has a structured learning experience which includes real world applications in working businesses. In the IEP of December 2020, D.M. stated that he already applied for the Career and Community Studies Program at The College of New Jersey (TCNJ). (R-7.) The plan was for the District to prepare him to participate with that program, but a letter came from the parents that indicated that he is being unilaterally placed at the College of New Jersey. (R-9.) “Students can choose what they want to choose so he chose the TCNJ program . . . But looking at the IEP goals and objectives . . . they were clearly met.” (R-7.) The IEP shows content-related services and ESY for continuity of education. There is no gap in his education. This is critical for a student similar to D.M. with his standardized testing scores.

The parents retained speech-language pathologist, Jeanne Tighe, to observe the Career academics program. The report generated as a result of the observation indicated that there was no FAPE, however, this is not true because there were no “parallels” in the evaluation. She did not observe a class with D.M. in it nor D.M.’s related peers. She simply examined a class with some students in it who were not at the level of D.M. nor did they receive the same programming as D.M. It is essentially like comparing apples to oranges.

D.M. was progressing gradually and incrementally. The progress was reported accurately and represented his achievements. (R-12.) Even small progress represents achievement. The IEP in this case was appropriate because it would allow him to be in a field of his choosing and have a job coupled with positive reinforcement through achievement. The Career Academics Class was being offered three to four days a week for fifty-six minutes each. (R-7 bottom of pg. 12.) Also, the Social Skills Group, Speech–Language groups and ESY were also continued.

On cross-examination, Zawisha admitted that the IEP does not have a description of the structured learning class. In fact, there is no description of much of the programming because you simply cannot include all of the information and explanation in the IEP. Here, the career academics class is clearly offered as programming. (R-7 at 12.) It would address transitional skills into the work world. Career academics followed the goals of D.M.'s IEP. The parents would certainly be able to get an explanation of the goals of programming from any of the staff members. It was offered because D.M. expressed a desire to attend a four-year College and no staff member would hold him back. He always expressed an interest in sports, and no one would discourage a student from any positive pursuit. "Employment goals evolve and change" but there always is a continued discussion with staff members. All the services provided would allow him to bridge the gap to adult goals. Transition services are offered to him to meet his goals. However, when questioned by the undersigned Zawisha agreed that "you can't push a student and allow him to fail." You have to encourage "honest discussion" and set out "realistic goals" as well as the steps to get there. "We had extensive community services and had services to support its curriculum."

Dr. Patrick O'Halloran testified as an expert witness in child psychology and special education. He testified that he never evaluated D.M. but did meet him and found him to be appropriate for programming that would confer upon him an educational benefit, most specifically the structured learning experience (SLE) career academics programming.

The SLE program at Watchung Hills is described as an in- and out-of-school program. The SLE program is a series of programming that begins by exploring employment opportunities and building skills that facilitate positive work experience. It begins by teaching resume preparation, network building, addressing issues with agencies to help, dressing for interviews, the interview process and different types of jobs. Watchung Hills's partners with four local business establishments including the Warren Township hardware store, Walgreens, Shop Rite, and the Warren Township library. Students after completing the classroom portion participate in real-world work experience at the four local businesses. The school does take the students' input on where they

would like to be placed in what type of skills, where they are more adept and skilled, but each student participates in the four-work experiences throughout the year.

Dr. O'Halloran was critical of the opinion offered by Jean Tighne which stated that D.M. had higher functioning learning and skills wherein the SLE program was lower functioning and significantly mismatched with D.M.'s abilities. Dr. O'Halloran testified in particular that the class is tailored to the students' needs. It is not a one-size-fits-all. It's differentiated for each student. And contrary to Jean Tighne, "yes, there are textbooks."

On cross-examination, Dr. O'Halloran testified that he did not know what D.M.'s goals were and did not know specifically other than what is in the IEP. He was critical when confronted with the question that D.M. would be communicating with his peers in high school when he is twenty years old. So essentially, he would be communicating with ninth through twelfth graders. However, he agreed that many ninth graders have a maturity level that is far greater than many twenty-year-olds. Also, he testified that although standardized testing scores are not the end-all be-all in evaluations, D.M.'s testing scores were at the one percentile which provides ample proof that the programming proffered by Watchung Hills addresses his academic and social challenges and clearly provides FAPE. (R-7 at 4-5.)

Petitioners

H.M. is the mother of D.M. She described D.M. as a very personable and determined individual. He wanted to be in college and would many times comment "mommy thank you for sending me to a good college." He always had dreams of a bachelor's degree.

His high school transcript showed that he did well and had a well-rounded curriculum. (P-13.) He had ADL (activities of daily living) classes that allowed him to deal with kids and he enjoyed it. He had aspirations of coupling his love for sports with education either as a gym teacher or in some type of sports management. D.M. tried out for the basketball team but did not make the team. However, he was so involved that he became the team manager. He also played on the football team all four years of high

school. Also, during his high school career he had jobs at Burger King and Stop & Shop. He was also a member of the youth ministry at church.

Regarding the December 8, 2020, IEP, (P-4 and R-7), H.M. spoke with members of the school about programs for D.M. when he was in tenth or eleventh grade regarding his twelfth-grade year and beyond. She indicated that the academic component seemed to reduce over the years and more of the focus was on-the-job training in the SLE program. H.M. did not believe that Ms. Zawisha was focusing on academics enough. At that point she saw the CCS program at the College of New Jersey, and it was recommended by Joseph Toye, a teacher at Watchung Hills. After the family looked into the CCS program, they liked its focus on writing as opposed to going out into the community and interacting in the job market. This was simply because D.M. already participated in those activities and already possessed those skills. H.M. told Ms. Zawisha about the CCS program and there appeared to be no adjustment in D.M.'s curriculum. There was no adjustment made to any academic portion. In fact, Ms. Zawisha only told H.M. to "give it time and see what happens with the program, there are different things they can modify as they go along" for D.M., but that didn't "make sense."

The parents wanted D.M. to develop and continue growing. H.M. was quite clear that she "did not care if it came from TCNJ or Watchung Hills." The deadline for application was approaching and talking about it "felt like nothing was going to change" so they proceeded with the application to the CCS program at TCNJ.

The application process went well and D.M. was accepted. "Ms. Zawisha even wrote him a letter of recommendation." But thereafter when they asked for contribution from Watchung Hills toward the tuition the answer was no.

On cross-examination, H.M. testified that the goals and objectives in the IEP were sufficient but D.M. needed more. "Individual goals were adequate" it was the format of the program that was the problem. The SLE program had a big bulk of hands-on experience, but the academic portion was limited. H.M. also testified that there was no option to modify the SLE program. However, this was contrary to her testimony on direct

examination when she testified that Ms. Zawisha told H.M. to “give it time and it could be modified for D.M.”

Jeanne Tighe, M.A. was qualified as an expert and speech language pathology. She was a couple weeks away from her doctorate but semantics aside, the undersigned referred to her as Dr. She authored an evaluation report of D.M. after viewing him in his program. She explained her process that began with reviewing a history with the parents and records as well as an office visit and testing. In the comprehension section, she noted that D.M. does not process spoken language as quickly as others but had average scores. He was certainly below average for eighteen-year-olds in the areas of expression.

She had the opportunity to observe the SLE class. Her understanding of the SLE program at Watchung Hills was mostly entailed work experience and limited academic components. This was confirmed by the school. During her observation of the class which was approximately fifty-six minutes, “all the students had very low expressive language skills” much lower than D.M. The teacher did very well in commanding the class which was involved in finding the prices on items. The class was comprised of two adults and five students. She does not believe that the class would meet D.M.’s needs because he had needs above the level of that particular class. If a teacher could differentiate in class, it still “wouldn’t be able to meet D.M.’s needs” because it worked as a group, and he was well above the level of that particular group. “The class wasn’t calibrated to him.” However, the CCS program at TCNJ was specifically calibrated to the individual student and the program could meet his needs.

Amy Schuler is the Assistant Director of Career and Community Studies Program at the College of New Jersey. It is a program that is sixteen years old and the “first of its kind in the country.” The program has several components including academics, student life and real-world applications. There are approximately ten to twelve students selected for the program per year. After graduation they obtain a certificate of career studies. The program entails taking forty-five classes both in the CCS program as well as general education at the College of New Jersey. The program is based on a peer mentorship foundation model. In other words, other TCNJ students mentor program students.

During their senior year they are set up in internships all over the area. Current examples of internships include at Johnson & Johnson, Bristol-Myers Squibb, a local daycare facility, Mercer County Superior Court, and McCarter Theatre group. She is intermittently familiar with D.M. and he is doing “terrific” both in class as an “A-student” and socially he is a well-liked young man.

Respondent’s Case

Respondent argues that they provided D.M. a free appropriate public education and are not responsible for the parents’ unilateral placement. The District maintains that D.M.’s classification and SLE programming is appropriate. It maintains that the proposed IEP was reasonably calculated to afford D.M. an educational benefit. Respondent argues that the IEP provided goals that specifically address D.M.’s weaknesses through programming, support and the SLE. The District maintains that they proposed special education services in the least restrictive environment that could be tailored for D.M. Respondent argued that petitioners have not demonstrated that the unilateral placement was more appropriate than what was offered.

Petitioners’ Case

Petitioners seek a determination that respondent denied D.M. a free appropriate public education. They argue that the classification, although appropriate, fails to implement the goals and objectives contained in the IEP and is not specific or capable of meaningful review, and the proposed programming from the District does not adequately address D.M.’s weaknesses. Petitioners argue that D.M. requires individualized programming, which they maintain is not articulated in the IEP. They are seeking a placement at the Career and Community Studies Program at The College of New Jersey, where D.M. was unilaterally placed in March 2021. Petitioners further argue that they are entitled to compensatory education for the placement.

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** that 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 D.M. of any programming to augment his educational opportunities but they must also work within the parameters of the law, regulations and facts as presented. Not merely thoughts or desires of a party that are unsupported in fact. I am also aware that the parents want the best educational opportunity for D.M., and they are providing it for him at the Career and Community Studies Program at The College of New Jersey. However, the District is not responsible to fund it.

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 as **FACT**. **I FIND** as **FACT** the testimony of the District's witnesses were credible to the extent of implementing the proposed IEP and programming with the SLE. **I FURTHER FIND** as **FACT** that the services provided by Watchung Hills clearly provide more than a "trivial" or "de minimis" educational benefit and D.M.'s education plan provides for "significant learning" and confers "meaningful benefit" to him. **I FURTHER FIND** as **FACT** that the IEP provided by the District contained specific statements 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. **I FURTHER FIND as FACT** that the IEP contained both academic and functional goals related to the Core Curriculum Content Standards of the general education curriculum and "be measurable" so both parents and educational personnel were apprised of "the expected level of achievement attendant to each goal." **I FURTHER FIND as FACT** that the District provided "an educational program reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances" and provided FAPE. **I FURTHER FIND as FACT** that the District could modify the program to accommodate the needs and desires of D.M.

LEGAL ANALYSIS AND CONCLUSION

Individual With Disabilities Act

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. In the instant matter petitioners allege substantive violations of the IDEA. This tribunal must determine if the IEPs afforded FAPE to D.M. in the least restrictive environment. 20 U.S.C. § 1412(a)(1). J.T. v. Dumont Public Schools, 438 N.J. Super. 241, 257 (App. Div. 2014) (citing Lascari, at 33).

In Endrew F. v. Douglas County School District RE-1, 137 S. Ct. 988, 1001 (2017), the United States Supreme Court construed the FAPE mandate to require school districts to provide “an educational program reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” The Court’s holding in Endrew F. largely mirrored the Third Circuit’s long-established FAPE standard, which requires that school districts provide an educational program that is “reasonably calculated to enable the child to receive meaningful educational benefits in light of the student’s intellectual potential and individual abilities.” Dunn v. Downingtown Area Sch. Dist. (In re K.D.), 904 F.3d 248, 254 (3rd Cir. 2018) (quoting Ridley Sch. Dist. v. M.R., 680 F.3d 260, 269 (3rd Cir. 2012)). In addressing the quantum of educational benefit, 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 IEP provides for “significant learning” and confers “meaningful benefit” to the child. Endrew F., 137 S. Ct. at 1000–01; T.R. v. Kingwood Twp. Bd. of Educ., 205 F.3d 572, 577 (3d Cir. 2000); Ridgewood Bd. of Educ. v. N.E. ex rel. M.E., 172 F.3d 238, 247 (3d Cir. 1999), superseded by statute on other grounds as recognized by P.P. v. W. Chester Area Sch. Dist., 585 F.3d 727 (3d Cir. 2009); Polk v. Cent. Susquehanna Intermediate Unit 16, 853 F.2d 171, 180, 182–84 (3d Cir. 1988). Hence, an appropriate educational program will likely “produce progress, not regression or trivial educational advancement.” Dunn, 904 F.3d at 254 (quoting Ridley, 680 F.3d at 269).

The IDEA’s FAPE requirement also includes a mainstreaming component, requiring education in the least restrictive environment. S.H. v. State-Operated Sch. Dist., 336 F.3d 260, 265 (3d Cir. 2003); 20 U.S.C. §1412(a)(5)(A). “The least restrictive environment is the one that, to the greatest extent possible, satisfactorily educates disabled children together with children who are not disabled, in the same school the disabled child would attend if the child were not disabled.” S.H., 336 F.3d at 265 (quoting Carlisle, 62 F.3d at 535). The school district bears the burden to establish that the district offered a FAPE in the least restrictive environment. N.J.S.A. 18A:46-1.1.

The District met its burden of proof and burden of production in the instant matter. The competent, credible, and relevant evidence in this case abundantly demonstrates that the proposed IEP and programming including the SLE addresses the many

complexes of D.M. Accordingly, the District offered FAPE in the proposed IEP and programming.

The New Jersey Supreme Court stated the following in Liscari v. Board of Education, at 46: “We also conclude that in determining whether an IEP was appropriate, the focus should be on the IEP actually offered and not on one that the school board could have provided if it had been so inclined.” The IEP offered by the District here addressed D.M.’s individualized needs and created an appropriate system of goals and objectives to measure his progress in both short- and long-term goals. The IEP included specific, measurable goals pertaining to specific skills and reading and language programming. The inclusion of generalized instructional techniques—such as added time as needed, eliminate visual distractors, and general in-class support—is alone not enough to carry the District’s burden of proof that FAPE was offered. See D.S. v. Bayonne Bd. of Educ., 602 F.3d 553, 567 (3d Cir. 2010). However, this is not a generic IEP and is specifically designed to meet D.M.’s individualized needs and confer upon him a meaningful educational benefit in the least restrictive environment. This coupled with the fact that the SLE program could be specifically modified and differentiated for D.M. further supports my conclusion. Although the SLE program at Watchung Hills may not be to the level or have the resources available as the CCS program at TCNJ, as admitted by H.M. during her testimony, the SLE program could have been modified to suit the needs of D.M. Unfortunately, that’s not acceptable by the petitioners. Also, unfortunate is the fact that the District is not responsible to fund the unilateral placement. **I CONCLUDE** that contrary to the petitioners, the District through its IEP and extensive programming provided FAPE to D.M.

Petitioners further argue they should be awarded compensatory education relief. Compensatory education is a judicially created remedy that may be awarded to account for the period in which a disabled student was deprived of their right to FAPE. Sch. Comm. Of Burlington v. Dep’t of Educ., 471 U.S. 359, 369, 105 S. Ct. 1996, 85 L. Ed. 2d 385 (1985) (finding that tuition reimbursement was an appropriate remedy under the Education of the Handicapped Act, predecessor to the IDEA); Coleman v. Pottstown Sch. Dist., 983 F. Supp. 2d 543, 566 (3d. Cir. 2013).

Compensatory education may be awarded if it is determined that a school district failed to provide FAPE to a disabled student and the district knew or should have known that FAPE was not provided. M.C. ex rel. J.C. v. Central Regional Sch. Dist., 81 F.3d 389, 396 (3d Cir. 1996). A finding for compensatory education does not require bad faith or egregious circumstances, it only requires a finding that a disabled child was receiving less than a “de minimis” education. Id. at 397.

A finding of compensatory education does not require that there be an IEP first; a disabled child’s right to compensatory education “accrues when the school knows or should have known that the child is receiving an inappropriate education.” Ridgewood, 172 F.3d at 249. The appropriate calculation for compensatory education relief should be the period of deprivation, minus the time reasonably required for the district to correct the problem. Mary Courtney T. v. Sch. Dist., 575 F.3d 235, 249 (3d Cir. 2009). Compensatory education relief is appropriate if it furthers the purposes of the IDEA. Ferren C. v. Sch. Dist. of Philadelphia, 612 F.3d 712, 719 (3d Cir. 2010) (citing Burlington, 471 U.S. at 369). However, the Supreme Court has declined to limit a court’s discretion in granting equitable relief under the IDEA. See Burlington, 471 U.S. at 369; see also Forest Grove School District v. T.A., 557 U.S. 230 (2009). Based on the recitation concluding that the District provided FAPE, **I FURTHER CONCLUDE** that the petitioners’ claim for compensatory education is moot.

Based upon the foregoing, **I CONCLUDE** that respondent provided FAPE and the petitioners’ due process petition should be **DENIED**. **I FURTHER CONCLUDE** that petitioners’ claim for compensatory education be likewise **DENIED**.

ORDER

It is hereby **ORDERED** that petitioners’ due process petition is **DENIED** and **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.



September 27, 2022

DATE

DEAN J. BUONO, ALJ

Date Received at Agency:

Date Mailed to Parties:

DJB/cb

APPENDIX

WITNESSES

For petitioners

H.M.

Jeanne Tighe, M.A.

For respondent

Linda Zawisha, LDT-C

Dr. Patrick O'Halloran

EXHIBITS

For petitioners

- P-1 CST psychological evaluation, November 5, 2019
- P-2 CST educational evaluation, November 12, 2019
- P-3 CST speech – language of evaluation, December 5, 2019
- P-4 IEP, December 8, 2020
- P-5 IEP, September 14, 2017
- P-6 IEP, December 20, 2018
- P-7 IEP, December 20, 2019
- P-8 Progress Report 2017-2018
- P-9 Progress Report 2018-2019
- P-10 Progress Report 2019-2020
- P-11 Progress Report 2020-2021
- P-12 Report Cards Grades 9 through 12
- P-13 High School Transcript
- P-14 Application to TCNJ
- P-15 Application Essay
- P-16 Letters of Recommendation
- P-17 TCNJ student signoff form

- P-18 TCNJ CCS acceptance form
- P-19 D.M.'s schedule
- P-20 Course Descriptions
- P-21 D.M.'s CCS fall grades
- P-22 Emails between H.M. and Joseph Toye
- P-23 Letter, dated March 18, 2021
- P-24 Letter, dated March 31, 2021
- P-25 Tuition and Fees payment
- P-26 Jeanne Tighe, M.A. CV
- P-27 Comprehensive Oral and Written Language Eval, dated May 14, 2021
- P-28 Program Observation, dated April 8, 2022
- P-29 CCS Fall 2021 Final Grade, Computer Literacy
- P-30 CCS Fall 2021 Final Grade, Collaborative Community Living
- P-31 CCS Fall 2021 Final Grade, Writing Techniques
- P-32 CCS Fall 2021 Final Grade, FSP
- P-33 CCS Fall 2021 Final Grade, Academic Support
- P-34 WHRHS Elmer Bieler Award

For respondent

- R-1 Petition for Due Process
- R-2 Answer
- R-3 IEP, December 10, 2019
- R-4 Not In Evidence
- R-5 IEP, September 17, 2020
- R-6 Progress Report, October 2020
- R-7 IEP, December 8, 2020
- R-8 Progress Report, December 2020
- R-9 Unilateral Placement Letter
- R-10 District Response to Unilateral Placement Letter
- R-11 Progress Report, March 2021
- R-12 Progress Report, May 2021
- R-13 Report Cards 2020-2021
- R-14 CV Michele Deremer, DSS

R-15 CV Dr. Patrick O'Halloran

R-16 CV Linda Zawisha, LDT-C