



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

(CONSOLIDATED)

OAL DKT. NO. EDS 02232-24

AGENCY DKT. NO. 2024-36496

P.F. ON BEHALF OF D.F.,

Petitioner,

v.

HIGH POINT REGIONAL BOARD

OF EDUCATION,

Respondent.

P.F. ON BEHALF OF R.F.,

Petitioner,

v.

HIGH POINT REGIONAL BOARD

OF EDUCATION,

Respondent.

OAL DKT. NO. EDS 02233-24

AGENCY DKT.NO. 2024-36497

Kat G. McKay, Esq., for petitioner (Brain Injury Rights Group, attorneys)

Jared S. Schure, Esq., for respondent (Methfessel and Werbel, attorneys)

Record Closed: August 12, 2024

Decided: August 26, 2024

BEFORE **JUDE-ANTHONY TISCORNIA**, ALJ:

STATEMENT OF THE CASE

This appeal involves two consolidated matters brought by P.F. (P.F. or petitioner), parent of D.F. and R.F., who, at all relevant times, were enrolled in High Point Regional High School and were both eligible for special education and related services. On September 1, 2023, P.F. filed, through counsel, two separate Petitions for Due Process, each asserting essentially the same allegation for both D.F. and R.F.; that respondent, the High Point Regional Board of Education (respondent or district), failed to implement D.F. and R.F.'s respective IEPs by placing them on home instruction and deprived them of a free, appropriate, public education (FAPE), and that the only resolution is for D.F. and R.F. to be placed out-of-district.

It should be noted that only the Due Process Petition on behalf of R.F. challenges the appropriateness of the IEP itself, while the Due Process Petition on behalf of D.F. only challenges the implementation of the IEP. It should be further noted that no expert report was produced, and no expert testimony was presented by petitioner at the hearing.

PROCEDURAL HISTORY

On September 1, 2023, the petitioner filed two Petitions for Due Process, one on behalf of D.F. and one on behalf of R.F., with the Office of Special Education Programs (OSEP). On February 20, 2024, the New Jersey State Department of Education transmitted the above matters to the Office of Administrative Law (OAL) for determination as contested cases for hearing. On April 3, 2024, the counsel for both parties jointly requested (via e-mail) to consolidate the above matters into a single proceeding. On April 4, 2024, the matters were consolidated by order of the undersigned as per N.J.A.C. 1:1-17.3.

The matter was set down for an in-person hearing at the OAL, 33 Washington Street, Newark, New Jersey, on May 20, 2024. Prior to the hearing, the parties informed the undersigned that the matter was essentially settled, but the petitioner refused to sign the agreement due to her disapproval of the boiler plate language regarding district

liability going forward. Thus, the matter was heard on May 20, 2024, with final submissions being received on August 12, 2024, at which point the record was closed.

ISSUES

Did the district fail to appropriately design or implement either of the two disputed IEPs? If so, is an out-of-district placement warranted for either student? No. Petitioner failed to present any competent evidence to show that the respective IEPs were improperly designed or implemented.

FACTUAL DISCUSSION

The district presented on their behalf the testimony of Courtney Delaney (Delaney). She is employed by the High Point Regional Board of Education as Director of Child Study Teams, Special Education, and Guidance. Among her duties are supervising the district's Child Study Team and supervising special education teachers in the delivery of educational support and services for students. Delaney was qualified by the undersigned as an expert in special education. Delaney is personally familiar with both D.F. and R.F. I **FIND** the above witness to have testified credibly.

The petitioner, P.F., who is D.F. and R.F.'s mother, presented her own testimony. She was not qualified by the undersigned as an expert witness in any field. She did not provide any testimony addressing the allegations in the Due Process Petition. I **FIND** the witness, P.F.'s, entire testimony to be anecdotal in nature and based on her personal impression and opinion.

Based on the forgoing credibility determinations, and weighing the testimony and evidence presented by the parties, I **FIND** the following **FACTS**:

R.F.'s November 15, 2022, IEP, which remains the only IEP challenged via the Petition for Due Process at the foregoing hearing, was implemented as written from November 15, 2022, through the end of the 2022–2023 school year. I **FURTHER FIND** that the November 15, 2022, IEP provided R.F. with FAPE, and that R.F. made

meaningful academic progress through the implementation of the November 15, 2022, IEP.

I **FURTHER FIND** that a small number of peer conflicts which occurred within the 2022–2023 school year did not prevent R.F. from receiving FAPE from November 15, 2022, until the end of the 2022–2023 school year, and petitioner never provided the district with any sort of report opining that R.F. did not receive FAPE from November 15, 2022, through the end of the 2022–2023 school year, or that she should have been placed in an out-of-district placement at some point from November 15, 2022, until the end of the 2022–2023 school year.

Regarding the Due Process Petition filed on behalf of D.F., I **FIND** that D.F. had an IEP that was in effect from November 30, 2021, through November 29, 2022. When D.F. was due for an annual review IEP meeting prior to the expiration of the aforementioned IEP, the IEP team reached out to P.F. and invited her to participate in the annual review IEP meeting scheduled for November 21, 2022. In response to this invitation, on November 19, 2022, P.F. emailed Delaney to say that she was cancelling the meeting so that she could take her daughter to the doctor. Ultimately, the November 21, 2022, IEP meeting was never held because P.F. declined to attend it.

Delaney emailed P.F., encouraging her to cooperate in rescheduling the IEP annual review meeting and imploring P.F. to call her and provide an update on D.F.'s situation. P.F. never called. On November 25, 2022, P.F. emailed Delaney a five-sentence note from a general pediatrician opining that D.F. would benefit from home instruction until the "behavioral situation resolved." The pediatrician referenced an attached "evaluation and treatment plan," which P.F. never received.

Based on the above referenced interaction, the district placed D.F. on home instruction as requested, from November 28, 2022, through June 16, 2023. Delaney subsequently held the IEP meeting on December 21, 2023, despite P.F.'s continued refusal to attend or to work collaboratively with the district, without P.F. being present, and, as a result of the meeting, proposed an IEP for D.F. After the meeting, Delaney emailed P.F. a copy of the IEP.

The December 21, 2022, annual review IEP provided D.F. with ten hours per week of instruction in the major academic subjects, as well as individual counseling once per week for thirty minutes and individual speech-language therapy once per week for thirty minutes. Progress under this IEP was to be measured through goals and objectives written in the IEP. The IEP went into effect fifteen days after the district proposed it because P.F. did not file for mediation or due process to block its implementation.

I **FIND** that the district did not deprive D.F. of a FAPE by placing her on home instruction because D.F.'s pediatrician authored a note stating that D.F. had to be on home instruction until unspecified "behavioral issues" subsided. Further, the district never received any information whatsoever from P.F. indicating that any other placement was appropriate, and P.F. refused to participate in IEP meetings where she could have conceivably shared outside information about D.F. Moreover, D.F. made progress towards the goals and objectives in the IEP, earned high grades on her report card, and made high honor roll for the 2022–2023 school year.

I **FURTHER DISAGREE** with P.F.'s allegation that the district did not implement the December 21, 2022, IEP, as home instruction in D.F.'s major academic subjects was specifically provided for in the IEP.

LEGAL DISCUSSION

The primary purpose of the IDEA is "to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education, and related services designed to meet their unique needs and prepare them for further education, employment, and independent living." 20 U.S.C. § 1400(d)(1)(A). A free appropriate public education (FAPE) consists of "special education and related services" that "meet the standards of the State educational agency" and are provided in conformity with the "individualized education program" required under 20 U.S.C. § 1414(d). 20 U.S.C. § 1401(9).

The IEP is “the centerpiece of the statute’s education delivery system for disabled children.” Honig v. Doe, 484 U.S. 305, 311 (1988). It is a “comprehensive plan” prepared by a child’s “IEP Team” which “must be drafted in compliance with a detailed set of procedures.” Endrew F. v. Douglas Cnty. Sch. Dist. RE-1, 580 U.S. 386, 391 (2017) (citing 20 U.S.C. § 1414(d)(1)(B)). “These procedures emphasize collaboration among parents and educators and require careful consideration of the child’s individual circumstances.” Ibid. (citing 20 U.S.C. § 1414). “The IEP is the means by which special education and related services are ‘tailored to the unique needs’ of a particular child.” Ibid. (quoting Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley, 458 U.S. 176, 181 (1982)). “To meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” Id. at 399. “The adequacy of a given IEP turns on the unique circumstances of the child for whom it was created.” Id. at 404.

Based on the foregoing, I **CONCLUDE** that R.F.’s November 15, 2022, IEP provided R.F. with FAPE and that R.F. made meaningful academic progress through the implementation of the November 15, 2022, IEP. I **FURTHER CONCLUDE** that both R.F. and D.F.’s IEPs were implemented properly.

ORDER

Given my findings of fact and conclusions of law, I **ORDER** that the consolidated due-process petitions in the foregoing matter are **DENIED** in their entirety, as no competent evidence was presented to rebut the district’s position that both IEPs provided FAPE and that both were properly implemented.

This decision is final pursuant to 20 U.S.C. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2024) 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 (2024). 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.

August 26, 2024

DATE



JUDE-ANTHONY TISCORNIA, ALJ

Date Received at Agency

8/26/24

Date Mailed to Parties:

8/26/24

id

APPENDIX

LIST OF WITNESSES

For Petitioners:

P.F.

For Respondent:

Courtney Delaney

****LIST OF EXHIBITS IN EVIDENCE**

For Petitioners:

P-F HIB Reporting/Investigation Form 1-3, dated March 21, 2023
P-G HIB Reporting/Investigation Form 3 dated, May 10, 2022
P-H HIB Reporting/Investigation Form 4 dated, October 28, 2022
P-I HIB Reporting/Investigation Form 5 dated November 18, 2022
P-J HIB Reporting/Investigation Form 6 dated, November 21, 2022
P-K HIB Reporting/Investigation Form 7 dated November 28, 2022
P-L HIB Reporting/Investigation Form 9 dated February 21, 2023
P-M HIB Reporting/Investigation Form 15 dated April 26, 2023
P-N HIB Reporting/Investigation Form 15 (Additional Documents) March 3, 2023

For Respondent:

D.F.'s EXHIBITS

R-3 IEP, dated, November 19, 2022.
R-9 IEP meeting invitation, dated, November 21, 2022
R-10 P.F. email, dated November 19, 2022
R-13 Delaney email to P.F.
R-14 Dr. Meskin's Letter
R-18 Email chain
R-19 Email chain

- R-20 IEP meeting invitation
- R-21 Updated invitation and various emails
- R-22 IEP meeting follow-up emails
- R-23 IEP, dated, December 21, 2022
- R-24 P.F. email to District regarding IEP and mental health surveys,
- R-25 Meeting invite
- R-29 Delaney and P.F. emails
- R-30 Delaney and P.F. emails regarding IEP
- R-33 P.F. and Delaney emails regarding "school safety plan"
- R-34 P.F. and Tallamy emails regarding meeting
- R-36 Tallamy follow-up email on meeting
- R-37 Home instruction IEP
- R-39 Home instruction hours
- R-40 Attendance record
- R-41 Report card
- R-42 Progress report
- R-43 Board's demand for documents

R.F.'s EXHIBITS

- R-6 IEP, dated, November 15, 2022
- R-16 2022-2023 report card
- R-17 2022-2023 progress report
- R-20 Courtney Delaney resume

** The nonsequential numbering of exhibits reflects the fact that other pre-marked exhibits were not identified or not entered into evidence.