



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. EDS 01965-23

AGENCY DKT. NO. 2023-35119

G.W. AND K.W. ON BEHALF OF M.W.,

Petitioners,

v.

**LAKELAND REGIONAL BOARD OF
EDUCATION,**

Respondent.

G.W. and K.W. on behalf of **M.W.**, petitioners, pro se

Jessika Kleen, Esq., for respondent (Machado Law Group, attorneys)

Record Closed: February 29, 2024

Decided: March 18, 2024

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

STATEMENT OF THE CASE

Petitioners G.W. and K.W. (petitioners) allege that the respondent, Lakeland Regional Board of Education (“district,” LBOE, or respondent), failed to appropriately implement the “stay-put” individualized education program (IEP) for their minor child M.W. The district contends that the stay-put IEP was appropriately implemented, and that the two IEP’s, i.e., the “stay-put IEP” and the “proposed IEP,” are substantially and materially

the same, so that if the proposed IEP were implemented for a brief period, there would be no detriment to M.W.

PROCEDURAL HISTORY

Petitioners filed a due-process petition with the Office of Special Education Programs (OSEP) on November 2, 2022. On March 6, 2023, OSEP transmitted the petition to the Office of Administrative Law, where it was filed on March 7, 2023, under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15, and the act establishing the OAL, N.J.S.A. 52:14F-1 to -23, for a hearing under the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6, and the Special Education Program, N.J.A.C. 1:6A-1.1 to -18.4. The matter was assigned to the undersigned on April 21, 2023. The hearing was held on November 15, 2023. Final submissions were received by the undersigned on February 29, 2024, at which time the record was closed. It should be noted that the final submissions received by petitioner in this matter take the form of a motion and proposed order. This motion and the District's response to same is addressed herein.

ISSUES

Did the district fail to appropriately implement the stay-put IEP for M.W.?

If so, was there any compensatory education for the time M.W. did not receive the services outlined in the stay-put IEP?

FACTUAL DISCUSSION

M.W. is a minor child who resides with his parents, G.W. and K.W., in Ringwood, Passaic County, New Jersey. The district is a public school system in Passaic County, New Jersey, and is the local educational agency (LEA) responsible for providing M.W. with his high school education covering grades nine through twelve. See 20 U.S.C. § 1401(19) and 34 C.F.R. § 300.28 (2023).

M.W. is diagnosed with static encephalopathy and other secondary diagnoses, including attention deficit disorder with hyperactivity. As such, M.W. is eligible for special education and related services under the Individuals with Disabilities Education Act (IDEA).

Petitioners contacted Audrey Poggioli (Poggioli), respondent's director of Special Services, in August 2022 regarding their intent to enroll M.W. in the district. On September 6, 2022, petitioners enrolled M.W. with the LBOE. M.W. had previously been enrolled in the Ringwood School District (Ringwood). Petitioners consented to respondent receiving the October 23, 2020, IEP (the "stay-put IEP") and transcripts from Ringwood. See R-1; R-7. The respondent was, thus, provided with M.W.'s 2020 stay-put IEP from Ringwood. R-1.

The district held a transfer IEP meeting on October 15, 2022. Petitioners communicated with the district, providing comments and feedback regarding the proposed IEP to case manager Peter Squire. See R-3 e-mail communication. The district sent petitioners a finalized proposed IEP on October 18, 2022 (the October 18, 2022, IEP or "proposed IEP," R-2) and implemented same.

Upon implementation of the proposed IEP, on or about October 18, 2022, petitioners filed for emergency relief to assert their stay-put rights. See R-6 e-mail regarding the emergent petition. On October 18, 2022, the LBOE advised staff to implement the stay-put IEP. See R-8. On October 20, 2022, the LBOE continued to advise staff to follow the stay-put IEP and provided guidance on how to do so. See R-9.

On or about May 11, 2023, the proposed IEP was once again implemented by the district. This was done because the district believed, through communications with petitioners, that the petitioners were not seeking to challenge the proposed IEP. Notwithstanding this belief, on or about May 31, 2023, the New Jersey Department of Education ordered the LBOE to implement the stay-put IEP, and the district complied. The proposed IEP was in effect for approximately two weeks, and no more than ten school days. Poggioli testified, and I hereby **FIND**, that the proposed IEP and the stay-put IEP have the same placement, programming, and related services.

Poggioli further testified, and I hereby **FIND**, that the differences between the proposed IEP and the stay-put IEP are as follows:

- a. The proposed IEP reflects that high school core classes are eighty minutes, whereas the stay-put IEP, which was at the elementary level, reflects that classes were forty minutes.
- b. The proposed IEP required M.W. to take his own notes, supplemented by staff notes, while the stay-put IEP called for all notes to be taken for him.
- c. The proposed IEP also required M.W. to keep track of his own assignments and draft e-mails to his parents, and it granted his parents access to Google Classroom, whereas the stay-put IEP only required that teachers email the parents with weekly assignments.
- d. The proposed IEP also added a forty-minute study period for M.W., whereas the stay-put IEP did not have a study period or study-skills class.
- e. Modifications and accommodations were updated to allow for more independence and to align with the high school setting.

Poggioli further testified, and I hereby **FIND**, that at all times relevant M.W. made appropriate progress.

The petitioners presented no expert testimony to rebut that of respondent.

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.” Andrew 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.

The IDEA requires that “during the pendency of any proceedings” a classified student “shall remain in the then-current educational placement” unless the local educational agency and parents agree otherwise. 20 U.S.C. § 1415(j). This is colloquially known as the “stay-put” rule. D.M. v. N.J. Dep’t of Educ., 801 F.3d 205, 209 (3d Cir. 2015). The IDEA does not provide a definition for “educational placement.” J.R. v. Mars Area Sch. Dist. (In re Educ. Assignment of Joseph R.), 318 Fed. Appx. 113, 119 (3d Cir. 2009) (quoting Bd. of Educ. of Cmty. High Sch. Dist. No. 218 v. Ill. State Bd. of Educ., 103 F.3d 545, 548 (7th Cir. 1996)). Determining whether an educational placement has changed is therefore “something of an inexact science.” Ibid. (quoting Bd. of Educ. of Cmty. High Sch. Dist. No. 218, 103 F.3d at 548). “[W]hat constitutes a change in educational placement is, necessarily, fact specific’ and thus, ‘in determining whether a given modification in a child’s school day should be considered a change in educational placement,’ the ‘touchstone’ is whether the modification ‘is likely to affect in some

significant way the child's learning experience." Ibid. (quoting DeLeon v. Susquehanna Cmty. Sch. Dist., 747 F.2d 149, 153 (3d Cir. 1984)). Accordingly, "only matters that will significantly impact the child's learning should be considered a change in educational placement for the purposes of the IDEA." J.S. v. Lenape Reg'l High Sch. Dist. Bd. of Educ., 102 F. Supp. 2d 540, 544 (D.N.J. 2000).

Based on the foregoing, the district argues that it did not violate the "stay-put" rule because its implementation of the proposed IEP was too brief, and the two competing IEP's too similar, to result in any sort of a change in placement. I agree. As the district points out in its closing submission, the seminal case in the Third Circuit for determining whether a change in educational placement has occurred is DeLeon v. Susquehanna Community School District, 747 F.2d 149 (3d Cir. 1984). There, the parents of a disabled student were compensated for providing daily transportation to and from school, which was included as a related service in the child's IEP. Id. at 151. The student's private school moved, resulting in additional travel time. Ibid. The school district therefore proposed placement at a closer private school, which the parents agreed to on the condition that they continue to provide daily transportation. Ibid. The following school year, the school district placed the student on a cheaper, combined bus route with other students, which resulted in additional travel time as compared to the ride with his parents. Ibid. Thus, the parents filed for due process opposing the change to the mode of transportation, arguing that the additional travel time will "exacerbate [Lorin's tendency to become agitated while traveling] and have a debilitating effect on his ability to benefit from his education." Id. at 152.

The Third Circuit ultimately found that "[t]he touchstone in interpreting section 1415 has to be whether the decision is likely to affect in some significant way the child's learning experience." Id. at 153. The court acknowledged that "transportation may have a significant effect on a child's learning experience," but concluded that "[m]inor changes in the daily transportation routine . . . will not generally have such an impact on the child's learning experience, even when the child is severely handicapped." Id. at 154.

In the case at bar, the district's witness testified that the only differences between the stay-put IEP and the proposed IEP were the instructional modifications and the

accommodations. I agree. Likewise, as in DeLeon, the minor differences between the IEP's were not "likely to affect in some significant way the child's learning experience." Id. at 153. Rather, as testified to by the district's witness, both IEP's sought to prepare M.W. for tests and quizzes, provide opportunities to make up and/or retake assignments, and ensure communication with petitioners. The only differences between the modifications and accommodations in the IEP's were, as the district stated, minor variations in how those goals were accomplished. See R-10 and R-17 (emails updating parents).

Further, as the proposed IEP was only implemented for approximately ten days, I **CONCLUDE** that said implementation did not effectively change M.W.'s placement or programming. As there was no change in physical placement (i.e., school building/location of instruction), I **CONCLUDE** that the district did not violate the "stay-put" rule.

I further **CONCLUDE** that no compensatory education is warranted, as any deviation from the stay-put IEP was de minimis. A party challenging the "implementation of an IEP must show more than a de minimis failure to implement all elements of that IEP, and, instead, must demonstrate that the school board or other authorities failed to implement substantial or significant provisions of the IEP." Fisher v. Stafford Twp. Bd. of Educ., 289 F. App'x 520, 524 (3d Cir. 2008) (quoting Houston Indep. Sch. Dist. v. Bobby R., 200 F.3d 341, 349 (5th Cir. 2000)). "This approach affords local agencies some flexibility in implementing IEP's, but it still holds those agencies accountable for material failures and for providing the disabled child a meaningful educational benefit." Houston Indep. Sch. Dist., 200 F. 3d at 349.

MOTION FOR SUMMARY DISPOSITION

In the case at bar, the final submissions received by petitioner take the form of a motion and proposed order. The motion, entitled "Mistrial Motion" essentially requests that the undersigned negate or otherwise set aside the November 15, 2023, proceedings, and schedule a new hearing. Petitioner's rational for the motion is that portions of the record are unclear. Petitioner cites various portions of the transcript (attached hereto)

wherein the transcriber is apparently unable to clearly discern what is being said, and so the transcriber denotes those portions of the transcript as "out of microphone range." Respondent district opposes the motion. I **CONCLUDE** that the omitted portions are not material enough to affect the ultimate outcome of this matter. The motion is, therefore, **DISMISSED**.

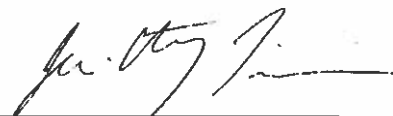
ORDER

Given my findings of fact and conclusions of law, I **ORDER** that the due-process petition is **DENIED** in its entirety, as the stay-put IEP was substantially implemented at all times relevant to this case, and any deviations from the stay-put IEP were so minor as to not result in a denial of FAPE.

This decision is final pursuant to 20 U.S.C. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2023) 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 (2023). If the parent or adult student feels that this decision is not being fully implemented with respect to the program or services, this concern should be communicated in writing to the Director, Office of Special Education.

March 18, 2024

DATE



JUDE-ANTHONY TISCORNIA, ALJ

Date Received at Agency

3/18/24

Date Mailed to Parties:

3/18/24

id

APPENDIX

LIST OF WITNESSES

For Petitioners:

G.W.

For Respondent:

Audrey Poggioli, Director of Special Services

EXHIBITS IN EVIDENCE

For Petitioners:

None

For Respondent:

- R-1 10/23/2020 Ringwood IEP
- R-2 09/15/2022 Lakeland IEP
- R-3 Various email correspondence between parents and case manager
- R-4 10/24/2022 Record of Meeting
- R-5 10/27/2022 Email from A. Poggioli
- R-6 10/27/2022 Email from Parents
- R-7 10/23/2022 Email from Parents to N. Bernice
- R-8 10/18/2022 Email from A. Poggioli to Staff
- R-9 10/20/2022 Email from A. Poggioli to Staff
- R-10 10/19/2022 Email from C. Vauter
- R-11 09/06/2022 Email from A. Poggioli

R-12 2022-2023 MP1 Schedule

R-13 2022-2023 School Calendar

R-14 09/07/2022 to 06/22/2023 Attendance Report

R-15 09/15/2022 IEP

R-16 09/30/2022 Email from P. Squire

R-17 11/04/2022 Email from L. Lynch

R-18 10/20/2022 Email from Parents

R-19 10/18/2022 Email from P. Squire

R-20 11/02/2022 Email from P. Herzig

R-21 12/01/2022 Email from Parents

R-22 02/02/2023 Letter to Parents enclosing Progress Report Qtr. 1

R-23 03/08/2023 Email from Parents

R-24 06/03/2023 Email from Parents

R-25 06/08/2023 Memorandum

R-26 Goals and Objectives Qtr.1 to Qtr.4

****November 15, 2023 Transcript of proceedings attached hereto for reference

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and KW obo M...

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[Jessika Kleen \(jkleen@machadolawgroup.com\)](mailto:jkleen@machadolawgroup.com)

[garry.wright@me.com \(garry.wright@me.com\)](mailto:garry.wright@me.com)

Subject: Final Decision GW and KW obo MW v. Lakeland Regional BOE EDS 01965-23 (Judge Tiscornia)



Final Decision GW
and KW obo M...