



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. EDS 10460-23

AGENCY DKT. NO. 2024-36504

M.R. ON BEHALF OF D.P.,

Petitioner,

v.

FRANKLIN TOWNSHIP

BOARD OF EDUCATION,

Respondent.

Michelle M. Schott, Esq., for petitioner (Flanagan, Barone and O'Brien, attorneys)

Cameron R. Morgan, Esq., for respondent (Cleary, Giacobbe, Alfieri and Jacobs, LLC, attorneys)

Record Closed: May 14, 2024

Decided: May 28, 2024

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

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

The petitioner, M.R., seeks an out-of-district placement for her son, D.P. She challenges whether respondent, the Franklin Township Board of Education (District), is able to meet D.P.'s medical needs and whether the individualized education program (IEP) proposed by respondent is able to provide D.P. a free and appropriate public

education (FAPE) in the least restrictive environment (LRE). D.P. was placed in the Midland School, a private school for special education students, pursuant to an IEP from the Bridgewater-Raritan School District. The family moved to Franklin Township in June 2023. The District child study team's IEP dated August 1, 2023, placed D.P. in the multiply disabled (MD) program at Franklin High School. A motion for "stay put" filed by the parents was denied, and the due process application proceeded before the undersigned. The parents served a notice of unilateral placement at Midland School, D.P.'s current placement. The matter was transmitted by the Office of Special Education to the Office of Administrative Law, where it was filed on October 6, 2023. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13. Hearings were held on December 20, 2023, December 21, 2023, January 8, 2024, January 17, 2024, and January 31, 2024, and the record closed on May 14, 2024, after briefs were filed by the parties and a conference call was held to reconcile the record.

FACTUAL DISCUSSION

D.P. is sixteen years old and eligible for special education and related services under the classification category of "Multiple Disabled." D.P. is non-verbal and non-ambulatory. He has been diagnosed with Agenesis of the Corpus Callosum and Gene 5 mutation. As a result of the foregoing diagnosis, D.P. suffers from low muscle tone (hypotonia), delays with development of motor learning skills, feeding and swallowing deficits. D.P. is a sixteen-year-old high school junior who attends special education school at the Midland School, where he was placed pursuant to his IEP with the Bridgewater-Raritan School District, where he resided prior to his family's relocation to Franklin Township in June 2023. Franklin Township drafted an IEP dated August 1, 2023, (2023 IEP), which placed D.P. in the "Multiple Disabilities Program" at Franklin High School commencing September 7, 2023.

The IEP from Franklin Township mirrors that of the IEP developed by Bridgewater-Raritan for the 2022–2023 school year (2022 IEP). The Bridgewater IEP provided D.P. with related services in the form of an individual 1:1 aide daily; individual speech/language therapy three times per week for twenty minutes; small group speech/language therapy one time per week for twenty minutes; individual physical therapy (PT) three times per

week for forty minutes; individual occupational therapy (OT) two times per week for forty minutes; specialized transportation to and from school with a wheelchair lift, air conditioning, and a bus aide; assistive technology services; and various other program modifications, accommodations, and supports.

The IEP dated August 1, 2023, developed by Franklin Township's child study team proposed to send D.P. to the District's Multiple Disabilities Program at Franklin High School. D.P. would be in a full day, self-contained special education program designed for students with multiple disabilities and medically fragile students. The program is housed on a separate floor set apart from most of the student population at Franklin High School. In addition to placement in a comparable self-contained Multiple Disabilities program, the 2023 IEP provides D.P. with the same related services and accommodations, modifications, and supports he received under the Bridgewater-Raritan IEP, including but not limited to: an individual 1:1 aide daily; individual speech/language therapy three times per week for twenty minutes; small group speech/language therapy one time per week for twenty minutes; individual physical therapy three times per week for forty minutes; individual occupational therapy two times per week for forty minutes; specialized transportation to and from school with a wheelchair lift, air conditioning, and a bus aide; assistive technology services; and various other program modifications, accommodations, and supports. The petitioner has challenged whether these are indeed comparable services and if they have the ability to safely and adequately meet the medical needs of D.P.

TESTIMONY

For Respondent

Dr. Brenda Sofield is the Director of Pupil Personnel Services in Franklin Township and is responsible for overseeing the special education in the district. She was qualified as an expert in development and implementation of IEPs and special education services. She has worked in the field of special education for over twenty years and has been employed by the District for the past nine years as the director of pupil personnel services. Prior to this role, she worked as a teacher of special education. She has

authored, evaluated, and supervised in the drafting and implementation of individual education plans for children with multiple disabilities, including medically fragile special education students. In her current role, she is involved in the oversight and supervision of nursing programs and staffing for special education services.

Dr. Sofield was familiar with this case and testified that the District received D.P.'s records from Bridgewater-Raritan School District in June 2023. Due to the timing of the transfer of D.P. into the District, they maintained his extended school year (ESY) at Midland and would review at the end of the year for the Franklin Township ESY. However, there was no question that D.P. would qualify for the in-district ESY program.

Dr. Sofield discussed the multiply disabled program at Franklin High School, including the fire safety plan. She discussed the training of all the employees on fire safety and testified that the professionals that would work with D.P. were all trained on proper evacuation procedures. She testified that although the current location for the multiply disabled program on the third floor was not ideal, it was perfectly safe, and evacuation plans were in place should an emergency occur. In addition, the MD program was moving to the first floor the following year, and the evacuation plan would be much easier. She provided a great deal of detail about the training and the evacuation procedures and protocols in place at Franklin High School. Dr. Sofield testified that the IEP for D.P. at Franklin High School dated August 1, 2023, provided FAPE in the LRE. She further opined that the District's programs had appropriate goals and objectives and that the accommodations, supports, adaptive and assistive equipment, and technology were all appropriate. Moreover, the nursing staff, PT and OT staff were trained to meet D.P.'s needs and all the services set forth in the August 1, 2023 IEP.

Eileen Kurtz, is a Doctor of Physical Therapy and is a physical therapist for the District. She is in private practice and is an independent contractor for the District. She was qualified as an expert in physical therapy as well as the assessment and implementation for PT services for special education children. She has been practicing for over thirty years and has worked with the elderly as well as children in several districts. She was familiar with D.P. and testified that she has had experience treating patients with similar diagnoses. She discussed D.P.'s condition and how it relates to his needs in a

physical therapy context. She has treated children with dystonic cerebral palsy and those with ambulation as well as feeding issues.

Dr. Kurtz performed an evaluation of D.P. as well as an observation of him at his current placement. She spoke with the professionals that work with D.P. about his needs and the accommodation that he needs, including his wheelchair and his feeding and toileting needs. She is familiar with all his issues and is able to provide the same amount of care in Franklin Township that they are providing at Midland. She conceded that it was a big district and that she has many students that she treats, but she is available in the District to treat him consistent with the IEP and can be called in at any time; if she is not in the building she is close by in the District at another school.

Dr. Kurtz discussed the lift and the wheelchair that is used for D.P. at Midland. She testified that they were staffed and equipped to address all of his needs in the District. All the adaptive equipment that was available to him and being used at Midland was available to him at the MD program at Franklin Township. She reviewed reports regarding his feeding requirements and testified that she was familiar with the issues and that the staff in the District was able to address and meet all such needs. In addition, D.P. would have a 1:1 aide at all times, and this aide would be trained to provide assistance in the area of feeding, toileting and transferring. She reviewed all of the medical reports as well as the IEP, and in her expert opinion, they were able to meet the medical needs of D.P. in-district, and a FAPE could be provided.

Lorri Mountainland is a special education teacher in Franklin Township and is a member of the child study team. She was qualified as an expert in the administration of special education services and the development and implementation of special education programs. She served as the Learning Disabilities Teacher-Consultant for Franklin Township for twenty-two years. She is a case manager and has served on child study teams. She performed an evaluation of D.P. and prepared a report dated November 20, 2023. She testified as to the details of the report and evaluation she conducted and D.P.'s educational levels. The main issue in this case is the ability of the District to meet the needs of D.P. due to his medical fragility. The respondent was never given an opportunity to implement the IEP from August 2023 in the program at Franklin High School. Dr.

Mountainland is familiar with the disabilities from which D.P. suffers and testified that in her expert opinion, the MD program at Franklin Township High School was equipped to address his educational and medical needs and that the District had the staff, expertise and accommodations to meet his needs. Moreover, the IEP that was drafted could be implemented in-district and provided FAPE in the LRE.

David Goldstein is the transition team coordinator for the Franklin Township School District. He has held this position for thirteen years. He is responsible for transitioning special education students entering the district. He was qualified as an expert in development and implementation of special education programs in the District. He reviewed all of D.P.'s records and discussed his needs with his mother. He discussed the District's special education high school program as well as the post high school program that focuses on life skills and transition programs for special education students. He discussed some of the community-based instruction and taking the students into the community. Dr. Goldstein testified that the District does serve medically fragile children and many wheelchair-bound students. He testified that D.P. would have a 1:1 aide and that the District was able to provide him with the care that he needed from a medical and educational perspective.

For Petitioner

Kristen Massimo is the head of the Midland School where D.P. currently attends school. She was qualified as an expert in the development, supervision, and evaluation of special education programs. She was also a fact witness, having personal experience with D.P. at her school. She has worked at Midland School for seven years. She was familiar with D.P. and his medical and educational needs and progress at Midland. She conceded that the IEP proposed in Franklin Township was identical to the IEP which they were currently implementing at Midland. She had not observed the program at Franklin Township and there had been no current evaluations completed of D.P. at Midland. She testified that proper feeding safeguards were essential for D.P., but staff can be trained in the proper feeding protocols. She discussed the evacuation protocols and testified that the MD program is on the third floor of the building at Franklin High School was concerning.

Ms. Massimo is responsible for overseeing the program and the staff, which includes speech, occupational, and physical therapy staff, nurses, and administrative staff at Midland. There are team meetings at Midland with all the staff on a regular basis to ensure collaboration and the sharing of any concerns which relate to any of the students. She is familiar with D.P.'s diagnosis and his medical needs as a result of his rare condition. They have staff onsite at all times to address his needs in PT, OT, and Speech, and they have the devices that he uses to assist in his day. In addition, he has a 1:1 aide with him at all times at Midland.

She provided some testimony regarding her background as a special education teacher and then as an administrator. She is familiar with D.P. and his medical and other needs. She testified that there are many students at the school who have significant medical needs, whom she would describe as medically fragile, and they were very well equipped at Midland to address all of these needs. She discussed D.P.'s IEP and some of the programs, but she was not qualified as an expert in drafting D.P.'s IEP and did not opine as to the propriety of the Franklin Township IEP. She did discuss some of the special services that he needs as they related to his wheelchair, his toileting and feeding needs, as well as speech, occupational, and physical therapy. She discussed the nursing and therapy staff at Midland, which are available to meet D.P.'s needs on a regular basis.

Liliana Palma is a physical therapist and is employed by Midland. She was accepted as an expert in physical therapy for medically fragile children. She is a doctorate level therapist and licensed in New Jersey. She was offered and accepted as a fact and expert witness. She testified that there are three therapists and one assistant at Midland School. They are not all there every day, but there is always one in the school. She provides physical therapy to D.P. and is familiar with his needs. D.P. receives three sessions of PT for forty minutes each week. She discussed some of his needs, including his transfer from his Rifton chair to manual wheelchair and back, toileting, and safety concerns related to feeding. She discussed his medical conditions and the issues related to head and body control as well as the curvature of his spine. She testified that all staff, including the aide, are trained in transferring and toileting.

Dr. Palma identified the PT assessment that she prepared for D.P., which included goals and objectives for D.P. These are the same goals and objectives in the IEP from Bridgewater and those incorporated into the IEP in Franklin Township. The witness indicated that there have been changes in D.P. and that the goals and objectives from a PT standpoint should have changed. However, at the time that the IEP was drafted, they were identical to those being implemented in Midland.

Juliann Fischer is a speech therapist at Midland School. She evaluates and writes feeding plans and trains staff at Midland. She consults with OT and PT and nursing staff regarding issues with current students relating to feeding. The feeding plans for students are always done in connection with the other disciplines such as OT and PT as well as the nursing staff. She was offered and accepted as an expert in development and implementing feeding plans for medically fragile children. She testified that D.P. had feeding issues and had a feeding plan that she prepared. She indicated that he had medical issues and that feeding was very important and potentially life-threatening to D.P. However, other professionals can and are trained on the feeding issues with D.P. In addition, he has a one-on-one aide with him at all times. The plan could be implemented by the District but someone would have to be available at all times in the event of choking or swallowing issues.

Tara Peterson-Gurak is the school nurse at Midland School and has been there since 2021. D.P. was enrolled in the school when she started. She works from 8:30 a.m. to 3:30 p.m. There are ninety-nine students in the school and sixteen are considered “medically fragile” including D.P. She is at the school all day, and testified that either she or another nurse will check in on D.P. throughout the day. They check him when he arrives at school and do checks throughout the day. He is changed and transferred to another chair when he arrives in the morning. Peterson-Gurak testified that it is not always her, as they are a team and there are a few nurses at the school. Everyone is adequately trained for his care. D.P. wears pullups but does not move his bowels during the school day. They put him on the toilet, but he has never had a bowel movement and infrequently voids. She testified that they ask him if he is comfortable and if he has any issues, and they check his body jacket that he wears. They also do routine skin checks

and ask him about different body parts and how he is feeling. If he has any issues during the day, he is brought down to her or whoever is the nurse on duty at the time.

Suzanne DeGerolamo is an occupational therapist and works at Midland School. She has nineteen students who she provides occupational therapy for. There are several other occupational therapists at the school. She provides two forty-minute sessions with D.P. each week. One is in a group session and the other is individual. DeGerolamo testified that she works collaboratively with speech and physical therapy, and they have weekly meetings to discuss the students. She is not certified by the Department of Education and could not work as an occupational therapist in the public schools. She outlined the goals and objectives for D.P. and testified that she did help develop the goals and objectives for Bridgewater that were mirrored in the Franklin Township IEP. They were in the process of getting evaluations done for D.P. as they had not been done in some time. She testified that the Franklin Township IEP was identical to the prior IEP, with respect to OT services.

Anita Rivera is a speech therapist at Midland School. She has worked there since July 2023 and works full-time. She works with D.P. and discussed his communication and other issues. He is nonverbal and communicates through his Augmentative and Alternative Communication (AAC) device which is mounted on his chair. She works with D.P. once a week for twenty minutes. She meets with other disciplines periodically to discuss D.P. They work on communication skills through his device. She testified that they are always making changes based upon his medical status and his progress. She works with him on how to use his various devices, especially when there is a change in a device. She has only ever worked as a speech therapist at Midland, and she does not prepare IEPs.

FINDINGS OF FACT

Based upon consideration of the testimonial and documentary evidence presented at the hearing and having had an opportunity to observe the witnesses and to assess their credibility, I have found all the witnesses credible. However, the witnesses from Midland could not credibly testify as to the program at Franklin Township as they had not

observed it or D.P. in the program. Moreover, there was no testimony to demonstrate that the IEP from Franklin Township did not provide FAPE in the LRE or provide for the medical needs of D.P. I **FIND** the following as **FACT**:

1. M.R.'s son D.P., age sixteen, is classified as multiply disabled. He is qualified for special education and has attended a private special education school, Midland School, for the past three years, pursuant to the IEP issued from his prior school district.
2. In June 2023, D.P.'s family moved from Bridgewater to Franklin Township. The District convened a child study team meeting and drafted an IEP dated August 1, 2023. Pursuant to that IEP, D.P. was to attend Franklin High School's Special Education program. The services provided in the IEP mirrored the prior IEP and the IEP that dictated the services being provided at Midland. There were no changes in the IEP except for the change of venue to Franklin Township.
3. The IEP provides a 1:1 aide at all times, as well as pull outs for PT, OT and speech. The rate of services for PT, OT, and speech were identical to that at Midland.
4. The only difference between the two IEPs was the ESY program. Franklin Township allowed the ESY to continue during the summer at Midland and was to reevaluate going forward with respect to the IEP program.
5. On September 5, 2023, the parents of D.P. filed a motion for stay put which was denied by the Honorable William Cooper on September 11, 2023. A notice of unilateral placement at Midland was served and a due process proceeding filed.
6. The IEP from Bridgewater was adopted by Franklin Township to be implemented in their high school's special education program.
7. The parties met to discuss the IEP, and the parents toured the proposed placement in Franklin High School.

8. The Franklin Township IEP provides the exact same services as well as identical goals and objectives for D.P.
9. The Franklin Township Multiple Disabled program at Franklin High School has adequate staff to meet the medical and educational needs of D.P.
10. The staffing at Franklin Township is slightly different than Midland in that they have more nurses and physical therapists, but they are not all full-time in one location. However, they have the capacity to address and provide the necessary services to D.P.
11. The safety issues raised by the petitioner were addressed by the respondent district in terms of feeding, transferring, and emergency evacuation protocols. There was no evidence that the district was unable to provide adequate and safe services to the petitioner pursuant to the August 1, 2023 IEP.
12. The Franklin Township IEP offered FAPE to D.P. in a safe environment and in the least restrictive environment. The IEP provided meaningful goals and objectives for D.P.

LEGAL ANALYSIS AND CONCLUSIONS

The Individuals with Disabilities Education Act (IDEA) provides federal funds to assist participating states in educating disabled children. Hendrick Hudson Cent. Sch. Dist. Bd. of Educ. v. Rowley, 458 U.S. 176, 179 (1982). One of the purposes of the IDEA is “to ensure that all children with disabilities have available to them a [FAPE] 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). To qualify for this financial assistance, New Jersey must effectuate procedures that ensure that all children with disabilities residing in the state have available to them a FAPE consisting of special education and related services provided in conformity with an IEP. 20 U.S.C. §§ 1401(9), 1412(a)(1). 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). The district bears the burden of proving that a FAPE has been offered. N.J.S.A. 18A:46-1.1. The United States Supreme Court has construed the FAPE mandate to require the provision of “personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction.” Rowley, 458 U.S. at 203. New Jersey follows the federal standard that the education offered “must be ‘sufficient to confer some educational benefit’ upon the child.”

Parents who unilaterally withdraw their child from public school and place the child in a private school without consent from the school district “do so at their own financial risk.” Sch. Comm. of Burlington v. Mass. Dep’t of Educ., 471 U.S. 359, 374 (1985). If it is ultimately determined that the program proposed by the district affords the child with a FAPE, then the parents are barred from recovering reimbursement of tuition and related expenses. Ibid. A court may reduce or deny reimbursement costs based on the parent’s unreasonable behavior during the IEP process. 20 U.S.C. § 1412(a)(10)(C)(iii). The issue here is whether the Franklin Township Board of Education’s proposed IEP provided D.P. with FAPE in the least restrictive environment. The parents in this case never gave the District an opportunity to provide the services in-district, and the IEP mirrored the services provided in the prior district. The only difference was that the services were to be provided in the Franklin Township Special Education program at Franklin High School. The main concern expressed by the petitioner is whether the medical issues of D.P. could be properly accommodated in-district.

The issue of parents not giving the District an opportunity to implement an IEP has been addressed in several New Jersey cases. In addition, the parents in the matter face the additional problem relating to the fact that the IEP is identical to the existing IEP, which they concede provides FAPE in a different school environment. In Y.B. v. Howell Twp. Bd. Of Educ., 4 F.4th 196, 197 (3d Cir. 2021), a family moved from the Lakewood Township School District into the Howell School District after Lakewood had developed an IEP which placed the student at an out-of-district placement called the School for Children with Hidden Intelligence. The new school district, Howell, convened an IEP meeting and determined that the existing IEP could be implemented in an in-district classroom program. Ibid. In applying the “comparable services” test of the IDEA, the court held that “an IEP focuses on the services needed to provide a student with a FAPE,

not on the brick-and-mortar location where those services are provided.” Id. at 198. More importantly, the Third Circuit in Howell went on to analyze whether the new district had provided the student with a program offering comparable services to those set forth in the prior IEP. The court held in Howell:

On the record before us, we cannot say the services were not comparable. Ample evidence shows Howell intended to provide “services comparable to those described in [S.B.’s] previously held IEP.” 20 U.S.C. § 1414(d)(2)(C)(i)(I). After the Howell IEP Team met S.B. and reviewed his Lakewood IEP, it produced a memorandum listing these services S.B. would receive at Memorial Elementary: “speech therapy three times a week in an individual setting and once a week in a group setting; occupational therapy two times a week in an individual setting and once a week in a group setting; and physical therapy once a week in a group setting.” Y.B. ex rel. S.B. v. Howell Twp. Bd. of Educ., 2020 U.S. Dist. LEXIS 49244, 2020 WL 1320137, at *2 (D.N.J. Mar. 20, 2020). That therapy schedule matches the one S.B. received under his Lakewood IEP. Howell also “arranged for the provision of related services for S.B. consistent with the Lakewood IEP and . . . made arrangements for transportation services for S.B. and his special need for a welcome on the school bus.” Y.B., 2020 U.S. Dist. LEXIS 49244, 2020 WL 1320137, at *2.

Rather than sending S.B. to Howell and then challenging the services as inadequate through a due process hearing—the procedure contemplated by the IDEA—Appellant eschewed the school district’s offer, refused to send S.B. to Howell, and unilaterally continued his placement at SCHI. In doing so, Appellant prevented Howell from implementing its services at all, so there is no evidence the services offered were not “comparable.” Because the record lacks evidence of non-comparable services, Howell did not violate the IDEA.

[Id. at 200-01.]

Similarly, in J.F. v. Byram Twp. Bd. of Educ., 629 F. Appx. 235, 238 n.3 (3d Cir. 2015) (internal citation omitted), the Third Circuit found that “while the new district is required to provide services comparable to those described in the previously held IEP, the IDEA does not compel allowing a student to continue at the student’s current brick-and-mortar placement.” Thus, when a student with an IEP moves to a new school district, that district “meets its obligation” under the IDEA if the district provides the student “a free

and appropriate public education, including services comparable to those described in the previously held IEP, in consultation with the parents.” Id. at 238.

Upon a move to a new school district, parents are not entitled to an alternative placement for their child if they have not “first given the public school a good faith opportunity to meet its obligations.” K.G. v. Cinnaminson Twp. Bd. of Educ., 2018 U.S. Dist. LEXIS 159909, 24 (D.N.J. Sept 19, 2018) (citing C.H. v. Cape Henlopen Sch. Dist., 606 F.3d 59, 72 (3d. Cir. 2010)). Indeed “the core of the [IDEA] is the cooperative process that it establishes between parents and schools.” Schaffer ex. rel. Schaffer v. Weast, 546 U.S. 49, 53 (2005). In K.G. v. Cinnaminson Twp. Bd. of Educ., the District Court affirmed the ALJ’s finding that the plaintiff failed to provide the defendant with a good faith opportunity to comply with the IDEA where the petitioner moved to a new district (Cinnaminson) which proposed an IEP with an in-district placement, and petitioner chose to keep the student in the private placement she attended prior. There, the ALJ found that plaintiff deprived Cinnaminson of the opportunity to demonstrate they could provide FAPE in the LRE to the student.

The ALJ noted “[w]hen a parent does not cooperate in the process, ‘it is not possible to know whether a district can provide FAPE for a student until it has had an opportunity to do so,’ and ‘[d]eterminations regarding whether meaningful educational benefit can be achieved cannot be made without an educational experience with the Cinnaminson [district].” Id. at *24. Here, although the petitioner did not fail to cooperate, the petitioner failed to provide respondent with the opportunity to provide a free and appropriate education. Although I am sympathetic to the petitioner’s desire to keep D.P. in a placement where he feels safe and has been for several years, the IDEA does not mandate school choice; it mandates an IEP that provides the petitioner with a free and appropriate public education in the least restrictive environment. The petitioner did not give the respondent the opportunity to implement the identical IEP or an opportunity to comply with the IDEA. Moreover, the IEP provides the exact same services, and there has been no evidence that respondent is unable to implement the proposed IEP at the Franklin Township High School. Moreover, there was insufficient evidence that the placement would be unsafe or that the District was unable to address the medical needs of D.P.

The petitioner's allegations in this due process proceeding are that the larger school setting is not ideal for D.P. and there is concern that the FAPE cannot be safely provided to D.P. in the District. There is an allegation that due to the medical fragility of D.P., the required services cannot be provided for D.P. The final issue relate to the program being on the third floor of the building and the ability to safely evacuate D.P. in an emergency setting. I have heard the testimony of the professionals at Franklin Township, and I have found their testimony credible and have found as fact that they have adequate professionals to meet the requirements of the IEP and that in an emergency, they can safely and efficiently evacuate D.P. from the building. In addition, the evidence and testimony demonstrated that the District has full-time nursing and adequate PT, OT and Speech staff to meet the needs of D.P. and to implement his IEP, which is identical to the IEP that was implemented at Midland School.

I therefore **CONCLUDE** that the District has demonstrated by a preponderance of the credible evidence that they can provide FAPE to D.P. in the LRE. There was no credible testimony that this IEP would not have been successful, as the parent refused to consider placement within the District. While the parents' reservations about a change of placement are understandable, they have presented an insufficient legal basis upon which to direct the school district to maintain D.P.'s program at Midland. The IEP provides FAPE in the LRE. I therefore **CONCLUDE** that the petitioner is not entitled to an out-of-district placement or reimbursement for unilaterally placing D.P. at Midland.

ORDER

It is hereby **ORDERED** that petitioner's claim for private placement for D.P. at Midland and for reimbursement is **DENIED**.

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.

May 28, 2024

DATE


SARAH G. CROWLEY, ALJ

Date Received at Agency

May 28, 2024

Date Mailed to Parties:

May 28, 2024

SGC/onl

APPENDIX

WITNESSES

For petitioner

Liliana Palma
Juliann Fischer
Tara Peterson-Gurak
Suzanne DeGerolamo
Anita Rivera

For respondent

Brenda Sofield
Eileen Ryan Kurtz
David Goldstein
Lorri Mountainland
Kristen Massimo

EXHIBITS

For petitioner

P-16 Midland Statistical Information
P-19 Feeding evaluation by Juliann Fischer
P-20 DeGerolamo Report
P-27B Liliana Palma Resume
P-27C Juliann Fischer Resume
P-27D Gurak resume
P-27E DeGerolamo Resume
P-32 Liliana Palma report
P-38 Progress report dated August 2023
P-39 Progress report dated June 2023
P-40 2022–2023 progress report
P-41 March 2022 progress report

For respondent

- R-1 Due Process Petition
- R-2 Answer
- R-3 IEP from Bridgewater-Raritan Regional School District dated April 20, 2023
- R-4 IEP from Franklin Township BOE dated August 1, 2023
- R-5 Certification of Sofield
- R-6 Certification of Green
- R-7 Emergent Application
- R-9 Feeding requirement
- R-10 Email dated November 3, 2023
- R-11 Reevaluation dated November 6, 2023
- R-12 Email dated November 7, 2023
- R-13 Response from District
- R-14 Revised reevaluation
- R-15 Functional assessment
- R-16 PT evaluation
- R-17 Transition evaluation
- R-18 Dr. Sofield's CV
- R-20 Dr. Kurtz's CV
- R-22 Mountainland CV
- R-23 Dr. Goldstein's CV
- R-27 NOT ADMITTED