



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

EMERGENT RELIEF

OAL DKT. NO. EDS 06258-24

AGENCY DKT. NO. 2024-37496

ELIZABETH CITY BOARD OF EDUCATION,

Petitioner,

v.

D.F. ON BEHALF OF N.F.,

Respondent.

Basmah Raja, Esq., for petitioner (DiFrancesco, Bateman, Kunzman, Davis,
Lehrer & Flaum, P.C., attorneys)

D.F. on behalf of N.F., no appearance

Record Closed: May 15, 2024

Decided: May 16, 2024

BEFORE **MATTHEW G. MILLER**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner, the Elizabeth City Board of Education (the District), has filed a Verified Petition for Due Process and Request for Emergent Relief seeking an Order to:

1. Compel D.F.¹ to consent and cooperate with the District in determining an out-of-district placement for N.F., including D.F.'s consent for the release of any necessary records, and;
2. Compel D.F. to fully cooperate with the immediate placement of N.F. at an out-of-district placement pursuant to N.F.'s IEP upon acceptance of his application at an appropriate placement.

The petition was filed with the Office of Special Education Programs of the New Jersey Department of Education (OSEP) on May 8, 2024. The Emergent Relief claim, as well as the underlying Due Process claim, sought to compel D.F. to cooperate with the District in determining and implementing the immediate and appropriate out-of-district placement of the minor student (N.F.) pursuant to the current Individualized Education Program (IEP) dated March 8, 2024.

Both matters were transmitted by OSEP to the Office of Administrative Law, (OAL) where they were filed on May 10, 2024, as a contested case. N.J.S.A. 52:14B-1 to B-15; N.J.S.A. 52:14F-1 to F-13. The parties were notified by the OAL that a hearing on the would be held on May 14, 2024 at 1:30 p.m. at the offices of the OAL located at 33 Washington Street, 7th Floor, Newark, New Jersey. Petitioner's counsel appeared, but there was no appearance by respondent. The record was kept open for one business day to see if respondent would communicate with the Court. With no contact being made, the record closed on May 15, 2024.

PRIOR LITIGATION HISTORY AND FACTUAL DISCUSSION

For purposes of deciding this application for emergent relief, the following is a summary of the relevant facts derived from the contents of the petition and oral argument. Based on same, I **FIND** the following as **FACTS**:

¹ N.F.'s father and sole legal guardian.

Petitioner operates a public school system, grades Pre-K through 12, established pursuant to the New Jersey education laws, and provides programs and services for students with disabilities pursuant to the Individuals with Disabilities in Education Act (“IDEA”). Respondent D.F. is the father of N.F., who is a seventh-grade special education student. N.F. is eligible for special education and related services under the classification of Other Health Impairment and has been attending the Developmental Learning Center – Warren Campus (DLC) since January, 2023.

There is a rather short, but very eventful history in the OAL with this parent-child combination. On February 17, 2022, the District filed its first due process petition for emergent relief seeking, among other things, D.F.’s cooperation with the District’s three-year re-evaluation as mandated by the IDEA and an interim alternative placement of home instruction for N.F. pending the re-evaluations for an appropriate placement, as N.F.’s behavior posed a danger to himself, staff and other students. There had been multiple incidents where N.F. was physically aggressive towards District staff, engaged in classroom elopement, and exhibited self-injurious and suicidal behavior. In one reported instance, he strangled his special education teacher and stated, “I want to kill you and slit your throat.”

As a result of that application, on February 24, 2022, the Hon. Thomas R. Betancourt, A.L.J., entered a Final Decision in Elizabeth City Board of Education v. D.F. o/b/o N.F., OAL Dkt. No. EDS 01330-22, Agency Ref. No. 2022/33913, granting the District’s application and ordering in relevant part the following:

- (1) [N.F.] is to continue on home instruction. D.F. shall cooperate with the implementation of home instruction;
- (2) [District] is to commence the triennial re-evaluation process as soon as is practicable, but in no event later than forty-five days from the date hereof;
- (3) Evaluations done by the District shall consist of a Psychological Evaluation, an Educational and Social Evaluation, and a Psychiatric Evaluation;
- (4) Respondent is to fully cooperate with Petitioner concerning the triennial reevaluations; and

- (5) All re-evaluations are to be completed no later than ninety days from the date hereof.

(P-13.)

On March 2, 2022, the parties appeared for a settlement conference on another matter between the parties, Elizabeth City Board of Education v. D.F. o/b/o N.F., OAL Dkt. No. EDS 00844-22, Agency Ref. No. 2022-33758, and set forth a Settlement Agreement on the record before Barry E. Moscovitz, A.L.J. wherein the parties agreed to conduct certain evaluations. (P-14.)

Thereafter, the District began communicating with D.F. to try to schedule the evaluations. However, the District was met with resistance from D.F. and was forced to file an enforcement action in Superior Court on April 5, 2022.² (P-15.) The re-evaluations of N.F. were then completed and on June 24, 2022, an IEP meeting was convened with D.F.

Upon reviewing the result of the evaluations, the CST determined that N.F. could not return to his prior placement at School 22 in Elizabeth because it could not meet his academic and behavioral needs; rather, he required placement in an out-of-district self-contained class with supports appropriate to his needs. Based upon those results, the CST recommended N.F. be placed out-of-district and recommended (3) possible placements.

During this IEP meeting, D.F. objected to the CST's recommendation to place N.F. out-of-district. The proposed IEP was provided to D.F. on June 28, 2022. D.F. did not sign the IEP and refused to give the District consent to submit N.F.'s records to possible out-of-district placements, which are needed for placement applications.

Although D.F. verbally objected to the IEP, he did not file for due process or request mediation within fifteen (15) days of receiving the IEP, nor did he provide any written objection to the IEP pursuant to N.J.A.C. 6A:14-2.3(h)(3)(i)(ii). Therefore, on July 14,

² Elizabeth City Board of Education v. D.F. o/b/o M.F. (UNN-C-000037-22).

2022, the District implemented the June 24, 2022 IEP as required by the IDEA and its implementing regulations.

On July 27, 2022, the District filed a Due Process Petition seeking emergent relief for an order compelling D.F. to consent and cooperate with the District in determining an out-of-district placement for N.F., including D.F.'s consent for the release of any necessary records. (P-19.) On August 2, 2022, the parties conferenced with the Hon. Susana E. Guerrero, A.L.J. and reached an agreement on the then-pending Due Process Petition. The agreement was placed on the record and D.F. explicitly agreed to abide by the terms as follows:

Sign releases for the release of school records of N.F. to six potential out of district placements. Three from the district and three requested by the parent . . . Westbridge Academy, Newmark School in Scotch Plains, NuView School in Piscataway, North Hudson Academy in North Bergen, Greenbrook Academy and DLC in Warren. These releases will be emailed to Mr. F. today and he will sign off on these releases, they can be signed electronically by tomorrow so that the records can be released to these schools.

. . .

There will be an in-take process and once you hear back from all of these schools the district and the parent will hold a meeting to discuss placement at that time.

(P-20.)

On August 2, 2022, following the parties' settlement agreement, the District emailed D.F. the six consent forms for the release of N.F.'s school records to each applicable school. D.F. did not provide the releases, nor did he respond to the District's email. On August 8, 2022, the District sent a follow-up email to D.F., who did not respond. The District's attorney also wrote to Judge Guerrero apprising her of D.F.'s noncompliance with the parties' settlement agreement.

Thereafter, Judge Guerrero scheduled a phone conference with the parties on August 29, 2022 for which D.F. failed to appear.

Thereafter, on September 23, 2022, the District filed an Order to Show Cause³ to enforce the settlement agreement. The Hon. Robert J. Mega, P.J. Ch. heard arguments on October 21, 2022, and ordered the following (in relevant part):

ORDERED that Plaintiff shall provide Defendant with six meeting times for intake interviews—one for each of the six schools Plaintiff provided applications for—to take place between Monday, October 24, 2022 and Monday, November 14, 2022. These meetings shall be scheduled to take place after 12:00pm, Monday through Friday; and it is

ORDERED that Defendant shall comply with the meeting times provided by Plaintiff in accordance with the aforementioned restrictions; and it is

ORDERED that Defendant shall otherwise comply with the terms of the Settlement Agreement set forth on the record on August 2, 2022, in the matter of Elizabeth City Board of Education v. D.F. o/b/o N.F., OAL Dkt. No. EDS 06228-22, Agency Docket No. 2023-34747.

(P-21.)

Despite the settlement agreement and Order enforcing same, D.F. continued to be uncooperative and obstruct the intake meetings and out-of-district placement process.

District staff ultimately coordinated the application process with D.F. at five of the six agreed upon out-of-district placements during the Fall of 2022.

Greenbrook Academy informed the District that it was unable to accommodate a placement for N.F. The Newmark School informed the District that it was at full enrollment for the 2022-2023 school year. After intake meetings, NuView Academy and North Hudson Academy did not accept N.F. to their programs.

Westbridge Academy, a school chosen by D.F., accepted N.F. and notified D.F. of the same at the intake meeting on November 3, 2022.

³ Elizabeth City Board of Education v. D.F. o/b/o M.F. (UNN-C-000107-2022)

Thereafter notwithstanding multiple requests from the District, D.F. failed to advise the District whether he was accepting the placement and instead, D.F. insisted that N.F. attend the intake meeting at DLC, as well as other placement options not agreed to by the parties.

D.F. attended the intake meeting at the DLC on December 12, 2022. On December 21, 2022, the District's Director of Special Services informed D.F. that N.F. had been accepted to the DLC and as well as by the Westbridge Academy. She requested that he provide the District with his placement decision by noon on December 23. She also advised him that if the District did not hear from him by the requested date and time, the District would make a unilateral decision on school placement.

On December 22, 2022, D.F. responded by accusing Dr. Pinto-Gomez "or the District" of having deliberately delayed, restricted, and obstructed the out-of-district process. He then requested the acceptance letter from DLC stating it was purposefully withheld. Dr. Pinto-Gomez responded and informed him that DLC's principal had sent an email and not a letter and reiterated that a choice of school needed to be made by D.F.; and that the District would choose a school by Friday at noon if he had not chosen one. At no point did D.F. provide the District with his choice of school.

On December 23, 2022, Dr. Pinto-Gomez received the formal acceptance letter from the DLC, which she had requested. She immediately forwarded the letter to D.F. and informed him that the District selected DLC as the out-of-district placement for N.F. since he had not informed the District of his choice of school by the requested date and time. She also advised him that the District would be setting up transportation and letting him know N.F.'s start date.

D.F. responded at 10:57 p.m. on December 23, 2022, again accusing the District of obstructing the out-of-district placement process, restricting N.F.'s educational rights, and fabricating events involving N.F. He also accused the OAL and Superior Court Judges of "biased judgment and abuse of judicial authority or judicial misconduct".

The District enrolled N.F. at DLC and on January 4, 2023 informed D.F. that he would officially start school at DLC the following day and that home instruction would be terminated. D.F. responded, stating among other things, that he did not agree with the placement at the DLC and instead wanted N.F. to attend Westbridge Academy.⁴

D.F. had known about N.F.'s acceptance to Westbridge since November 3, 2022, but despite the District's repeated requests, he continuously failed to communicate with the District on whether or not he was accepting this placement until the day before N.F. was to start at the DLC. This was almost two months from the date of N.F.'s acceptance to Westbridge and a week and a half after he was notified that the District enrolled N.F. at DLC.

Dr. Pinto-Gomez replied to D.F.'s email informing him to have N.F. ready for school at DLC on January 5 as DLC had been contracted to instruct N.F. since D.F. had failed to inform the District of his choice of school. On January 5, 2023, transportation arrived at D.F.'s residence to transport N.F. to school and D.F. refused to place N.F. on the bus.

Due to D.F.'s actions, N.F. was not receiving any educational instruction and the break in the delivery of required services led the Elizabeth BOE to file yet another petition for Emergent Relief and Due Process on January 6, 2023 seeking to compel N.F.'s immediate placement at DLC pursuant to the June 24, 2022 IEP. D.F. voiced objection to an out-of-district placement at the IEP meeting, but never filed a written objection to the placement and did not request mediation or file for due process within fifteen (15) days of receiving the IEP pursuant to N.J.A.C. 6A:14-2.3(h)(3)(i) and (ii). Thus, on July 14, 2022, the June 24, 2022 IEP went into effect as mandated by the IDEA and its implementing regulations. The District argued that N.F. should be compelled to attend DLC to ensure that he receives FAPE and the services he needs, which were not being provided with home instruction.

While D.F. vocalized his objection to an out-of-district placement, he did not file a written objection or request for a due process hearing. In an Order dated January 18,

⁴ Westbridge Academy was no longer able to accommodate a placement for N.F. due to the passage of time.

2023, the Hon. Leslie V. Celentano, A.L.J. granted the District's emergent and due process petitions and ordered that N.F. begin attending DLC. (P-23.)

Since then, N.F. has been attending DLC in their Emotional Regulation Impairment (ERI) program. However, in January, 2024, DLC advised both the District and D.F. that it was discontinuing its ERI program effective June 11, 2024 (the last day of the school year at DLC). Since then, the District attempted to communicate with D.F. on multiple occasions in order to garner his participation in the formulation of N.F.'s new IEP as well as to determine his new out-of-district placement.

Unfortunately, despite a multitude of emails, D.F. has not responded to the District and in four weeks, N.F. will be without an academic provider, either for the Extended School Year (ESY) for which he is eligible, or for the 2024-25 academic year.

Looking back, beginning in July, 2023, there was substantial email communication between D.F. and various District employees concerning the scheduling of an IEP meeting. However, D.F. stopped responding to the District's communications following an October 17, 2023 after-hours voicemail.

As noted above, since that time, the District has attempted to communicate with D.F. without success. A timeline of relevant events reflects the following:

11/14/23 – Email, regular mail and certified mail from Chistine Ribaud (school psychologist and case manager) requesting his pre-December 15 availability to re-schedule N.F.'s re-evaluation meeting.

12/15/23 – Voicemail, regular mail and certified mail from Ribaud scheduling the meeting for January 4.

01/03/24 – Voicemail and email reminding D.F. of the meeting and asking whether he would be attending virtually or in-person.

01/04/24 – D.F. did not appear for the meeting, which proceeded without him. Email sent with the results, to return a consent form and a request that he review it and contact Ms. Ribaud to discuss it.

01/11/24 – Re-evaluation planning notice sent to D.F. by certified and regular mail.

01/12/24 – D.F. notified telephonically by DLC that effective at the end of the 2023-24 school year, it would no longer be offering the ERI program. D.F. emailed the DLC principal acknowledging the call.

02/16/24 – District social worker emailed D.F. requesting that he respond by February 23 to conduct an updated social assessment as per the January 4 re-evaluation. D.F. did not respond.

02/27/24 – Email and regular mail to D.F. from Ms. Ribauda requesting dates to meet and attaching/enclosing the updated psychological and educational evaluation reports and proposing March 8 for the meeting.

03/07/24 – Reminder email sent for the March 8 meeting.

03/08/24 – D.F. did not appear for the March 8 meeting.

03/15/24 – Email and certified mail sent to D.F. with the new IEP and a consent to release information forms.

03/22/24 – “Green card” received back by the District from the March 15 mailing.

Since the implementation of the March 8, 2024 IEP, D.F. has not communicated with the District and did not object to or file for due process concerning it.

LEGAL ANALYSIS AND CONCLUSION

N.J.A.C. 1:6A-12.1(a) provides that the affected parent(s), guardian, board or public agency may apply in writing for emergency relief. An applicant for emergency relief must set forth in their application the specific relief sought and the specific circumstances they contend justify the relief sought. N.J.A.C. 1:6A-12.1(a).

Emergent relief shall only be requested for the following issues pursuant to N.J.A.C. 6A:14-2.7(r):

- i. Issues involving a break in the delivery of services;

- ii. Issues involving disciplinary action, including manifestation determinations and determinations of interim alternate educational settings;
- iii. Issues concerning placement pending the outcome of due process proceedings; and
- iv. Issues involving graduation or participation in graduation ceremonies.

As of today, there are less than four weeks remaining in the academic year and there is no plan in place which would enable the District to provide N.F. FAPE per his current IEP. Despite a multitude of efforts, D.F. remains resistant to cooperating with the District in assisting it to place N.F. in an appropriate academic setting where he would also receive recommended therapeutic/counseling services. The District asserts this continued non-cooperation will cause a break in services, since, given the change in the educational program at N.F.'s current placement, he would not be receiving services required by his current IEP and, consequently, would not be receiving FAPE. Based on the above, I **CONCLUDE** that this matter involves the issue of a break in services, which could require emergent relief pursuant to N.J.A.C. 6A:14-2.7(r)1.

Emergent relief may be granted pursuant to N.J.A.C. 1:6A-12.1(e) and N.J.A.C. 6A:14-2.7(s)(1), if the judge determines from the proofs that the following conditions have been established:

- i. The petitioner will suffer irreparable harm if the requested relief is not granted;
- ii. The legal right underlying the petitioner's claim is settled;
- iii. The petitioner has a likelihood of prevailing on the merits of the underlying claim; and
- iv. When the equities and interests of the parties are balanced, the petitioner will suffer greater harm than the respondent will suffer if the requested relief is not granted.

N.J.S.A. 6A:14-2.7(s). See also, Crowe v. DeGioia, 90 N.J. 126 (1982), codified at N.J.A.C. 6A:3-1.6(b).

The petitioner bears the burden of satisfying all four prongs of this test. Crowe, 90 N.J. at 132-34. First, the petitioner must demonstrate irreparable harm will occur if D.F. does not assist in and cooperate with the placement of N.F. in an educational program that is able to provide him with FAPE. Harm is irreparable when there can be no adequate after-the-fact remedy in law or in equity; or where monetary damages cannot adequately restore a lost experience. Crowe, 90 N.J. at 132-133; Nabel v Bd. of Educ. of Hazlet, 2009 N.J. Agen. LEXIS 1172 (June 24, 2009).

Here, I **FIND** the (in)actions of D.F. will cause N.F. irreparable harm because without his assistance and cooperation, N.F. will, without question, not receive the educational services that his IEP has found to be necessary for the District to meet its requirement under the IDEA to provide him FAPE. 34 CFR § 300.17. Without D.F.'s cooperation, N.F. will lose the benefit of the IEP-required ESY program completely and will likely be compelled to resume home instruction for the 2024-25 school year; an outcome that is simply unacceptable given the circumstances. There is no other remedy in law or equity, or monetary damages, to compensate either the student or the District.

As noted in Pemberton Township Bd. of Educ. v. C.M. and J.M. obo B.M., 2019 N.J. Agen. LEXIS 200 (April 11, 2019), "(t)he impasse...places the District in the untenable (position) of being prevented from meeting its clear obligations under State and Federal law to provide...FAPE." Id. at *11. See also, Haddonfield Borough Bd. of Educ. v. S.J.B. obo J.B., 2004 N.J. Agen. LEXIS 645 (May 20, 2004). I therefore **CONCLUDE** that irreparable harm will occur if D.F. is not compelled to cooperate with the District in the determination and implementation of N.F.'s out-of-district placement.

Second, the District must demonstrate that it has a settled legal right to the relief requested. Very simply, the District has every right to implement an IEP, particularly one that is legally unopposed, it shall provide written notice to the parent at least fifteen calendar days prior to the implementation of the proposed action, to allow the parent to consider the proposal. N.J.A.C. 6A:14-2.3(h)2. Respondent had the legal right to reject the March 8, 2024, IEP within fifteen days of the notice of the change. N.J.A.C. 6A:14-

2.3(h)(3)(i)(ii). The respondent did not submit a written objection or otherwise file for a due process hearing. The District is mandated to implement the proposed action after the opportunity for the parent to contemplate same has expired unless the parent disagrees with the proposed action and the district attempts to resolve the disagreement; or the parent requests mediation or a due process hearing prior to the expiration of the fifteenth calendar day. N.J.A.C. 6A:14-2.3(h)(3)(i)(ii).

It should further be noted that D.F. has been aware of the need for a change in placement well before the implementation of the March 8, 2024 IEP. In fact, he was aware of the cessation of DLC's ERI program on January 12, 2024 and has literally done nothing, per the evidence, to assist the District in finding an appropriate placement both for the rapidly approaching ESY program, but also for the 2024-25 school year.

The District asserts that the regulations require a parent to file a written objection to the IEP and he has not done so. The failure to sign the IEP does not constitute an objection to it. N.J.A.C. 6A:14-2.3(h)(3)(i)(ii). Further, the District is obligated per N.J.A.C. 6A:14-4.3(a) to obtain "full continuum of alternative placements" to ensure that a student receives FAPE and it is certainly not unknown for districts to move to compel the cooperation of parents in situations such as this. See e.g., Berlin Tp. Bd. of Educ. v. M.P. and C.P. obo S.P., 2006 N.J. Agen. LEXIS 5 (January 3, 2006). See also, Lawrence Tp. Bd. of Educ. v. M.E. and L.E. obo P.E., 2003 N.J. Agen. LEXIS (January 15, 2003).

I **CONCLUDE** that the March 8, 2024, IEP is the controlling IEP for placement and that the District is mandated to implement it to the best of its ability. Therefore, I **CONCLUDE** the District has a settled legal right to compel D.F. to cooperate with N.F.'s placement.

To satisfy the third prong of the Crowe test, the District must prove that it is likely to prevail on the merits of the underlying claim. Since the underlying relief sought by the District is merely to compel D.F. to cooperate in the search for and ultimate placement of N.F. in a learning environment that allows petitioner to deliver FAPE (and not to unilaterally place the student at a specific school), there is no need for a detailed discussion of this prong.

This is particularly true given that there has been no challenge to the applicability of the IEP, the continuation of N.F.'s current placement is impossible and no decision has been made as to his specific placement for either the summer ESY or the 2024-25 academic year. The request is merely that D.F. cooperate in assisting to find a placement that would allow his son to receive FAPE.

Given the above, I **FIND** that the District's request to compel D.F. to provide the required assistance and cooperate with it is appropriate and I **CONCLUDE** that the District will prevail on the underlying due process claim, which satisfies its requirement to demonstrate a likelihood of prevailing on the merits.

The fourth and final prong of the test the District must satisfy to be entitled to the emergent relief sought is to demonstrate it will suffer greater harm than the respondent student if the relief is not granted. This is shown by a balancing of the equities and interests of the parties. This is, frankly, not realistically in question. Simply, there are no negatives to granting the District's petition. In fact, not granting it would cause both N.F. and the District irreparable harm, with next to no upside for anyone if the emergent relief was not granted. D.F. does not "benefit" if the relief is not granted and, as noted, the impact on his son would be irreparable and potentially catastrophic if he continues his obstructive behaviors. This is a particularly pivotal year as N.F. prepares to transition not only from middle school to high school, but from childhood to his teen years. His father's non-cooperation and obstructionism not only fails to benefit him personally, but also actively impedes his son's future.

While I can empathize with D.F.'s long-standing frustration given his impression that his child has been ill-served by the District, his continual course of non-cooperation has been nothing but deleterious.

The bottom line is that we have a special education student approaching thirteen years of age entering his eighth grade year with nowhere to go. That is unacceptable.

Given the above, I **CONCLUDE** that the petitioner has demonstrated it will suffer greater harm than the respondent if the emergent relief is not granted.

I **FIND** that the District has demonstrated all four conditions set forth in Crowe and as codified in N.J.A.C. 6A:3-1.6(b). The District is making every effort to educate N.F. and is being prevented from doing so by D.F.'s failure to cooperate with those efforts. I therefore **CONCLUDE** that the petitioner is entitled to the emergent relief as requested.

Finally, I would also note that N.J.A.C. 6A:14-2.3(c) provides a district protection against claims that it has denied a student FAPE in situations such as this. This is particularly notable here, where there is a history of non-compliance with the directives of this Court by the respondent. While it is premature to address this issue in light of the hope that D.F. will comply with this Order, it is certainly a scenario that must be kept in mind if a future action is filed by respondent.

ORDER

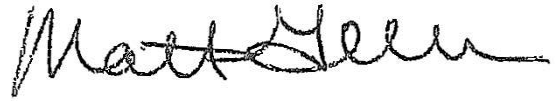
It is **ORDERED** that the Emergent Relief requested by the District to compel compliance with the IEP and to compel D.F. to consent and cooperate with the District in determining an out-of-district placement for N.F. be and is hereby **GRANTED**.

It is further **ORDERED** that as part of this cooperation, D.F. shall execute and immediately return to the District any consents for the release of necessary records and shall further consent to cooperate with the District in the placement of N.F. following his acceptance into an appropriate placement.

Since this decision on the application for Emergent Relief resolves all of the issues raised in the due process complaint, no further proceedings in this matter are necessary.

This decision is final pursuant to 20 U.S.C. § 1415(i)(1)(A) 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). 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 16, 2024

DATE

MATTHEW G. MILLER, ALJ

Date Received at Agency

May 16, 2024

Date Mailed to Parties:

May 16, 2024

sej

APPENDIX

LIST OF EXHIBITS IN EVIDENCE

For Petitioner:⁵

- P-1 Pages 26-29 - Certification of Maria Garcia (May 8, 2024)
- P-2 through P-7 omitted
- P-8 Pages 30-34 - July 24, 2023 – July 31, 2023 email exchange
- P-9 Pages 35-38 - September 19, 2023 – September 20, 2023 email exchange
- P-10 Pages 39-42 - October 17, 2023 – October 19, 2023 email exchange
- P-11 Pages 43-47 - Certification of Christine Ribaudó (April 26, 2024)
- Pages 48-49 - Letter from Ribaudó to D.F. (September 13, 2023)
- Pages 50-56 - Ribaudó CST/IEP case notes
- Pages 57-67 - Educational re-evaluation report (February 12, 2024)
- Pages 68-77 - Cognitive Assessment re-evaluation report (February 26, 2024)
- Pages 78-100 - Current IEP (March 8, 2024)
- Pages 101-103 - Release of records forms
- Pages 104-105 - Email from petitioner to respondent
- P-12 Pages 107-112 - Certification of Richard P. Flaum, Esq.
- Pages 113-190 - Emergent and due process petitions with exhibits [Elizabeth City Board of Education v. D.F. obo M.F (EDS 01330-22)]

⁵ The exhibits attached to petitioner's brief were curiously numbered. The initial referral was 409 pages and for ease of reference, I will follow, to the extent possible, petitioner's numbering system, but will also include the page numbers for the "package".

- P-13 Pages 191-200 - Elizabeth City Board of Education v. D.F. obo N.F (EDS 01330-22) (Final Decision, February 24, 2022)
- P-14 Pages 201-205 - Transcript of settlement agreement in Elizabeth City Board of Education v. D.F. obo M.F. (EDS 01330-22) (March 2, 2022)
- P-15 Pages 206-217 - Verified Complaint in Elizabeth City Board of Education v. D.F. obo M.F (UNN-C-000037-22) (April 5, 2022)
- P-16 Pages 218-268 - Emergent and due process petitions in Elizabeth City Board of Education v. D.F. obo N.F (EDS 000218-23)
- P-17 Pages 269-270 - Elizabeth City Board of Education v. D.F. obo M.F. (EDS 01330-22) (Final Decision Approving Settlement, April 4, 2022)
- Pages 271-280 - Transcript of settlement agreement in Elizabeth City Board of Education v. D.F. obo M.F. (EDS 01330-22) (March 2, 2022)
- P-18 Pages 281-292 - Verified Complaint in Elizabeth City Board of Education v. D.F. obo M.F (UNN-C-000037) (April 5, 2022)
- P-19 Pages 293-295 - Acknowledgement of emergent and due process petitions in Elizabeth City Board of Education v. D.F. obo M.F. (EDS 06228-22)
- P-20 Pages 296-307 - Transcript of settlement agreement in Elizabeth City Board of Education v. D.F. obo M.F. (EDS 06228-22) (August 2, 2022)
- P-21 Pages 308-319 - Verified Complaint in Elizabeth City Board of Education v. D.F. obo M.F (UNN-C-000107-22) (September 23, 2022)
- Pages 321-322 Order in Elizabeth City Board of Education v. D.F. obo M.F (UNN-C-000107-22) (October 21, 2022)
- P-22 Pages 323-328 - Certification of Diana Pinto-Gomez (January 6, 2023)
- Pages 329-332 - Email chain between petitioner and respondent (November 19, 2022 through December 5, 2022)

Pages 333-343 - Message chain between petitioner and respondent (December 21, 2022 through December 23, 2022)

Pages 344-347 - Email chain between petitioner and respondent (December 23, 2022)

Pages 348-351 - Email chain between petitioner and respondent (January 4, 2023)

P-23 Pages 353-366 - Elizabeth City Board of Education v. D.F. obo N.F. (EDS 00218-23) (Final Decision, Emergent Relief – January 18, 2023)

P-24 Pages 367-392 - N.F.IEP (February 24, 2023)

P-25 Pages 393-394 - Respondent counsel email to D.F. in reply to his January 12, 2024 email to DLC (January 18, 2024)

For Respondent:

None