



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. EDS 16458-24

AGENCY DKT. NO. 2025-38333

K.F. ON BEHALF OF S.P.,

Petitioner,

v.

MORRIS HILLS REGIONAL

BOARD OF EDUCATION,

Respondent.

K.F., petitioner, pro se

Nathanya G. Simon, Esq., for respondent (Scarinci Hollenbeck, LLC, attorneys)

Record Closed: December 9, 2024

Decided: December 17, 2024

BEFORE **THOMAS R. BETANCOURT**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner filed a request for an expedited due process hearing and emergent relief on November 6, 2024, with the Office of Special Education (OSE), New Jersey Department of Education (NJDOE), which was filed with the Office of Administrative Law (OAL) on November 22, 2024. In both the due process petition and the request for

emergent relief petitioner sought the return of S.P. to in school instruction after being placed on home instruction.

The emergent relief application was heard by the Honorable Andrea Perry Villani on November 13, 2024, and decided on November 14, 2024. In Judge Perry Villani's Final Decision dated November 14, 2024, petitioner's request for emergent relief was denied.

The hearing on the expedited due process petition was held on December 9, 2024, whereupon the record was closed.

ISSUE

The issue presented is whether S.P. should return to school and be instructed pursuant to the Individual Educational Program (IEP) dated September 30, 2024, or remain on home instruction pending receipt of a psychiatric evaluation.

CREDIBILITY

When witnesses present conflicting testimonies, it is the duty of the trier of fact to weigh each witness's credibility and make a factual finding. In other words, credibility is the value a fact finder assigns to the testimony of a witness, and it incorporates the overall assessment of the witness's story in light of its rationality, consistency, and how it comports with other evidence. Carbo v. United States, 314 F.2d 718 (9th Cir. 1963); see Polk, supra, 90 N.J. 550. Credibility findings "are often influenced by matters such as observations of the character and demeanor of witnesses and common human experience that are not transmitted by the record." State v. Locurto, 157 N.J. 463 (1999). A fact finder is expected to base decisions of credibility on his or her common sense, intuition or experience. Barnes v. United States, 412 U.S. 837, 93 S. Ct. 2357, 37 L. Ed. 2d 380 (1973).

The finder of fact is not bound to believe the testimony of any witness, and credibility does not automatically rest astride the party with more witnesses. In re Perrone, 5 N.J. 514 (1950). Testimony may be disbelieved, but may not be disregarded at an administrative proceeding. Middletown Twp. v. Murdoch, 73 N.J. Super. 511 (App. Div. 1962). Credible testimony must not only proceed from the mouth of credible witnesses but must be credible in itself. Spagnuolo v. Bonnet, 16 N.J. 546 (1954).

When facts are contested, the trier of fact must assess and weigh the credibility of the witnesses for purposes of making factual findings. Credibility is the value that a finder of fact gives to a witness's testimony. It requires an overall assessment of the witness's story in light of its rationality, its internal consistency, and the manner in which it "hangs together" with the other evidence. Carbo v. United States, 314 F.2d 718, 749 (8th Cir. 1963).

The following individuals testified during the presentation of Respondent's case: Ryan MacNaughton, Principal at Morris Knolls; Jovana Ossa, District Social Worker and Case Manager for S.P.; Shari Russo, District School Counselor; and Sonya Boyer, Director of Special Services.

All four of the District's witnesses testified in a straightforward, professional and direct manner. Nothing about their demeanor or comportment suggested anything but truthful responses to the questions posed. I find all credible.

The following individuals testified during the presentation of the Petitioner's case: K.W., a friend and classmate of S.P. While I believe he was truthful in his testimony, he was not a witness to the events material to the instant matter. His testimony was therefore of little use in reaching a decision; K.F., Petitioner was not credible. Before being sworn in, indeed, before anyone was sworn in, she objected to a witness offered by the District, stating that she was never notified as to this witness. This was blatantly and demonstrably false. Said witness was listed on the witness list provided by District counsel to Petitioner and to the undersigned. Further, during her testimony she did not appear to be

forthcoming. Her answers were often argumentative and an attempt to skew information. I understand that K.F. is concerned about her daughter. The District and the undersigned are also concerned about S.P. However, I could not find her credible. S.P. testified as well. She did not appear to be untruthful. However, she also did not provide much information regarding the incident of November 1, 2024, which led to the instant matter being filed.

FINDINGS OF FACT

Based upon the testimony and documents presented, I **FIND** the following **FACTS**:

S.P. is a student in the Morris Hills Regional Board of Education District and is enrolled at the Morris Knolls High School. She was enrolled as a new student on April 29, 2024. She is fifteen years old and in the tenth grade. S.P. is eligible for special education and related services, having diagnoses of unspecified depressive reaction, selective mutism, obsessive compulsive disorder, mixed obsessional thoughts and acts, major depressive disorder, anxiety, trichotillomania, and avoidant restrict food intake disorder (R-1). She is classified as Emotional Regulation Impairment (P-1).

S.P. has also exhibited suicidal ideation, suicide attempts and self-harm.

S.P. was initially placed in the FLEX program, which provides for small group instruction, behavior modification and a high ration of staff to students with emotional and behavioral disabilities. The last IEP agreed upon placed S.P. in the LLD program for ELA, Math, Science and Social Studies. That IEP is dated September 30, 2024 (P-1). This is the IEP that Petitioner maintains is the stay put.

S.P., during her tenure at Morris Knolls High School, has exhibited some troubling behavior. She has a history of missing classes. She has a history of using foul language with staff. She has a history of spending an inordinate amount of time in the bathroom, which she does frequently and often without the appropriate pass (R-1 and R-8). S.P.

also has a history of putting her head down in class and not producing much in the way of class work (R-1 and R-8).

The history of S.P.'s rather short tenure at Morris Knolls exhibits an inability to control her behavior. Indeed, during the course of the hearing in this matter, during the testimony of K.W., S.P. rose from her seat, stormed out of the hearing room, slammed the door, and then banged on the wall in the hallway.

On September 27, 2024, S.P. went to the Nurse's office complaining of feeling faint. At some point she left the office and left the building. She was in the parking area with incoming traffic. S.P. would not heed staff instructions (MacNaughton testimony and R-1). On September 30, 2024, S.P. was hospitalized at Children's Hospital of Philadelphia due to her eating disorder (R-1).

The school held a re-entry meeting on October 7, 2024 (R-1). S.P. was provided with an escort based upon the recommendation of Dr. Natalie Duroseau of CHOP dated August 23, 2024 (R-4). S.P. threatened to punch the staff and ran down the hall (R-1).

S.P. was suspended for being disrespectful to staff on October 17, 2024 (R-1).

Petitioner submitted a psychiatric clearance for S.P. from Saint Clare's Behavioral Health, dated October 23, 2024 (R-15).

A Manifestation Determination meeting took place on October 23, 2024, where it was determined that S.P.'s behavior is a manifestation of her disability (R-1 and R-13). Thereafter there was a reinstatement meeting on October 24, 2024, setting forth conditions for S.P., which included restricted hall pass, use of nurse's bathroom, one to one aid if not in compliance, possible disciplinary action, among others.

On November 1, 2024, a rather troubling incident occurred. S.P. had locked herself in an all-gender bathroom and would not come out. Staff attempted to use a key

to enter. S.P. prevented this. K.F. was called by Principal MacNaughton. S.P. then came out, cursed at staff and wandered through the building. She had an altercation with a teacher. She left the building and could not be located for some time. S.P. was eventually located. K.F. arrived and was verbally abusive to staff. Police were called for this matter (R-1, R-17, MacNaughton testimony, Ossa testimony).

S.P. was then placed on home instruction pending a risk assessment from Saint Clare's or Morristown Memorial Hospital. Petitioner was also advised she was not allowed on school grounds without prior approval due to her behavior, and that S.P. will be scheduled for a psychiatric evaluation to be paid by the school (R-17, R-18, R-19).

Petitioner submitted a one paragraph letter from Nixon Oloo, a Psychiatric Mental Health Nurse Practitioner, dated November 1, 2024, from Person Centered Healthcare Services, where they are the Owner and CEO (R-21). I do not find this letter constitutes psychiatric clearance. Respondent was requiring a psychiatric evaluation with recommendations for S.P. (R-20). The submission from Oloo was merely a reference to what K.F. and S.P. said and contained nothing more.

Respondent also submitted a letter from Cooperman Barnabas Medical Center recommending return to school on November 5, 2024. It is a form letter with sections to be filled in. It is most certainly not a psychiatric evaluation (P-2).

The District provided home instruction to S.P. remotely via APEX, an online remote learning tool utilized for make-up credits and virtual home instruction. S.P. is inconsistent with APEX. She does not turn on the camera. She does not log in. Google Classrooms is another online learning tool. It is used as a supplement for in class instruction and not for home instruction (Ossa testimony, Boyer testimony).

The Respondent was correct in placing S.P. on home instruction. S.P., and K.F., determined that Google Classrooms was easier and decided to use that. (S.P. and K.F.

testimony). I find that Respondent is offering educational services to S.P. These services are simply not being utilized by S.P.

I further find that S.P. poses a substantial danger to herself and other students and staff. This from the myriad of incidents that have occurred during her time at Morris Knolls High School. She has suicidal ideations and has attempted suicide. She has struck a teacher. It is entirely reasonable for the District to insist on a psychiatric evaluation at this point.

Further, I agree with each witness proffered by the District that S.P. cannot be adequately educated at Morris Knolls High School and that an out of district placement with a therapeutic setting is proper in order to provide FAPE. K.F. insists on the IEP of September 30, 2024, notwithstanding the District's advice to the contrary.

I find further that the delay in getting a psychiatric evaluation falls upon K.F. She obtained her own letters and did not utilize the ones recommended by the District (R-21 and P-2). I found above that these are not psychiatric evaluations.

LEGAL ANALYSIS AND CONCLUSION

Individual With Disabilities Act

Federal funding of state special education programs is contingent upon the states providing a "free and appropriate education" (FAPE) to all disabled children. 20 U.S.C.A. § 1412. The Individuals with Disabilities Act (IDEA) is the vehicle Congress has chosen to ensure that states follow this mandate. 20 U.S.C.A. §§ 1400 et seq. "[T]he IDEA specifies that the education the states provide to these children 'specially [be] designed to meet the unique needs of the handicapped child, supported by such services as are necessary to permit the child to benefit from the instruction.'" D.S. v. Bayonne Bd. of Educ., 602 F.3d 553, 556 (3d Cir. 2010) (citations omitted). The responsibility to provide a FAPE rests with the local public school district. 20 U.S.C.A. § 1401(9); N.J.A.C. 6A:14-1.1(d). Subject to certain limitations, FAPE is available to all

children with disabilities residing in the State between the ages of three and twenty-one, inclusive. 20 U.S.C.A. § 1412(a)(1)(A), (B). The district bears the burden of proving that a FAPE has been offered. N.J.S.A. 18A:46-1.1.

New Jersey follows the federal standard that the education offered “must be ‘sufficient to confer some educational benefit’ upon the child.” Lascari v. Bd. of Educ. of Ramapo Indian Hills Reg’l High Sch. Dist., 116 N.J. 30, 47 (1989) (citations omitted). The IDEA does not require that a school district “maximize the potential” of the student but requires a school district to provide a “basic floor of opportunity”. Hendrick Hudson Cent. Sch. Dist. Bd. of Educ. v. Rowley, 458 U.S. 176, 200, 102 S. Ct. 3034, 3047, 73 L. Ed. 2d 690, 708 (1982). In addressing the quantum of educational benefit required, the Third Circuit has made clear that more than a “trivial” or “de minimis” educational benefit is required, and the appropriate standard is whether the child’s education plan provides for “significant learning” and confers “meaningful benefit” to the child. T.R. v. Kingwood Twp. Bd. of Educ., 205 F.3d 572, 577 (3d Cir. 2000) (internal citations omitted).

As noted in D.S., an individual education plan (IEP) is the primary vehicle for providing students with the required FAPE. D.S., supra, 602 F.3d at 557. An IEP is a written statement developed for each child that explains how FAPE will be provided to the child. 20 U.S.C.A. § 1414(d)(1)(A)(i). The IEP must contain such information as a specific statement of the student’s current performance levels, the student’s short-term and long-term goals, the proposed educational services, and criteria for evaluating the student’s progress. See 20 U.S.C.A. § 1414(d)(1)(A)(i)(I)-(VII). It must contain both academic and functional goals that are, as appropriate, related to the Core Curriculum Content Standards of the general education curriculum and “be measurable” so both parents and educational personnel can be apprised of “the expected level of achievement attendant to each goal.” N.J.A.C. 6A:14-3.7(e)(2). Further, such “measurable annual goals shall include benchmarks or short-term objectives” related to meeting the student’s needs. N.J.A.C. 6A:14-3.7(e)(3). The school district must then review the IEP on an annual basis to make necessary adjustments and revisions. 20 U.S.C.A. § 1414(d)(4)(A)(i).

A due process challenge can allege substantive and/or procedural violations of the IDEA. If a party files a petition on substantive grounds, the Administrative Law Judge (ALJ) must determine whether the student received a FAPE. N.J.A.C. 6A:14-2.7(k). If a party alleges a procedural violation, an ALJ may decide that a student did not receive a FAPE only if the procedural inadequacies: (1) impeded the child's right to a FAPE; (2) significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of FAPE to the child; or (3) caused a deprivation of educational benefits. Ibid.

In the instant matter, Petitioner alleges the District violated 20 U.S.C. § 1415(k), which states in pertinent part:

(k) Placement in alternative educational setting.

(1) Authority of school personnel.

(A) Case-by-case determination. School personnel may consider any unique circumstances on a case-by-case basis when determining whether to order a change in placement for a child with a disability who violates a code of student conduct.

(B) Authority. School personnel under this subsection may remove a child with a disability who violates a code of student conduct from their current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 school days (to the extent such alternatives are applied to children without disabilities).

(C) Additional authority. If school personnel seek to order a change in placement that would exceed 10 school days and the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability pursuant to subparagraph (E), the relevant disciplinary procedures applicable to children without disabilities may be applied to the child in the same manner and for the same duration in which the procedures would be applied to children without disabilities, except as provided in section 612(a)(1) [\[20 USCS § 1412\(a\)\(1\)\]](#) although it may be provided in an interim alternative educational setting.

(D) Services. A child with a disability who is removed from the child's current placement under subparagraph (G) (irrespective of whether the behavior is determined to be a manifestation of the child's disability) or subparagraph (C) shall—

(i) continue to receive educational services, as provided in section 612(a)(1) [[20 USCS § 1412\(a\)\(1\)](#)], so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; and

(ii) receive, as appropriate, a functional behavioral assessment, behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.

(E) Manifestation determination.

(i) In general. Except as provided in subparagraph (B), within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the local educational agency, the parent, and relevant members of the IEP Team (as determined by the parent and the local educational agency) shall review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine—

(I) if the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or

(II) if the conduct in question was the direct result of the local educational agency's failure to implement the IEP.

(ii) Manifestation. If the local educational agency, the parent, and relevant members of the IEP Team determine that either subclause (I) or (II) of clause (i) is applicable for the child, the conduct shall be determined to be a manifestation of the child's disability.

(F) Determination that behavior was a manifestation. If the local educational agency, the parent, and relevant members of the IEP Team make the determination that the conduct was a manifestation of the child's disability, the IEP Team shall—

(i) conduct a functional behavioral assessment, and implement a behavioral intervention plan for such child, provided that the local educational agency had not conducted such assessment prior to such determination before the behavior that resulted in a change in placement described in subparagraph (C) or (G);

(ii) in the situation where a behavioral intervention plan has been developed, review the behavioral intervention plan if the child already has such a behavioral intervention plan, and modify it, as necessary, to address the behavior; and

(iii) except as provided in subparagraph (G), return the child to the placement from which the child was removed, unless the parent and the local educational agency agree to a change of placement as part of the modification of the behavioral intervention plan.

(G) Special circumstances. School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, in cases where a child—

(i) carries or possesses a weapon to or at school, on school premises, or to or at a school function under the jurisdiction of a State or local educational agency;

(ii) knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of a State or local educational agency; or

(iii) has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of a State or local educational agency.

(H) Notification. Not later than the date on which the decision to take disciplinary action is made, the local educational agency shall notify the parents of that decision, and of all procedural safeguards accorded under this section.

(2) Determination of setting. The interim alternative educational setting in subparagraphs (C) and (G) of paragraph (1) shall be determined by the IEP Team.

(3) Appeal.

(A) In general. The parent of a child with a disability who disagrees with any decision regarding placement, or the manifestation determination under this subsection, or a local educational agency that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or to others, may request a hearing.

I disagree that the instant matter involves a violation of 20 U.S.C. § 1415(k). The instant matter revolves around whether S.P. is a danger to herself and others. I have found as fact that she does. This is a school safety issue regarding the health and safety of S.P., the other students and the staff.

Based upon the above, I find that continuing S.P. in an in school setting is inappropriate at the present time. The Interim Alternative Educational Setting (IAES) shall remain home instruction via the APEX virtual system.

ORDER

It is hereby **ORDERED** that the IAES for S.P. shall be the APEX virtual remote learning program; and

It is further **ORDERED** that K.F. and S.P. actively engage with said system; and

It is further **ORDERED** that K.F. immediately sign the consent form for S.P. to undergo a psychiatric evaluation and otherwise cooperate with the same; and

It is further **ORDERED** that this Order shall remain in effect for a period of 45 days from the date hereof; and,

It is further **ORDERED** that the District shall be required to file for an expedited due process petition to continue home instruction beyond 45 days of this Order; and

It is further **ORDERED** that upon receipt of the psychiatric evaluation report an IEP meeting be convened to determine what the appropriate placement for S.P. shall be to deliver FAPE in the LRE.

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.



December 17, 2024

DATE

THOMAS R. BETANCOURT, ALJ

Date Received at Agency

Date Mailed to Parties:
db

APPENDIX

List of Witnesses

For Petitioner:

K.F., Petitioner

S.P., Student

K.W., Friend

For Respondent:

Ryan MacNaughton, Principal

Jovana Ossa, District Social Worker and Case Manager for S.P.

Shari Russo, District School Counselor

Sonya Boyer, Director of Special Services

List of Exhibits

For Petitioner:

P-1 September 30, 2024 IEP for S.P.

P-2 Medical information for S.P.

P-3 Various texts, emails, photos

For Respondent:

R-1 Case Manager's notes re: S.P. from April 2024 through present

R-2 IEP dated May 29, 2024

R-3 S.P.'s attendance log for 2023-2024 school year

R-4 letter from Dr. Nathalie Duroseau of Children's Hospital of Philadelphia, 8/23/24

R-5 referral for examination related to substance abuse, 9/4/24

R-6 note from Dr. Nermine Doss of Optum, dated 9/4/24

R-7 LabCorp testing results for S.P., dated 9/4/24

- R-8 Case Manager's Behavior Log for S.P. for 2024-2025 school year
- R-9 email between District and Parent, 9/25, 24
- R-10 letter from Carrie Snyder, MSN, of Children's Hospital of Philadelphia, dated 10/1/24
- R-11 Altered letter from Dr. Nathalie Duroseau of Children's Hospital of Philadelphia, dated 10/21/24
- R-12 letter from Mashenda Green of Optum, dated 10/10/24
- R-13 Manifestation Determination Meeting Record, dated 10/21/24
- R-14 IEP, dated 10/23/24
- R-15 Psychiatric clearance from Saint Clare's Behavioral Health, dated 10/23/24
- R-16 S.P.'s Reinstatement Meeting, dated 10/24/24
- R-17 Memo of Record concerning S.P., dated 11/1/24
- R-18 Letter from District to Parent regarding S.P.'s aggressive behavior, dated 11/1/24
- R-19 Letter from District to Parent regarding S.P.'s risk assessment, dated 11/1/24
- R-20 Evaluation of S.P. completed by Nixon Oloo of Person Centered Healthcare Services, undated
- R-21 Letter from Nixon Oloo of Person Centered Healthcare Services, dated 11/1/24
- R-22 Resolution Meeting IEP Draft, dated 11/20/24
- R-23 Dr. Jovanna Ossa' Resume
- R-24 Sonya Boyer's Resume
- R-25 Shari Russo's Resume
- R-26 Ryan MacNaughton's Resume
- R-27 IEP prepared by Roxbury Township School District, dated 3/4/24
- R-28 IEP Amendment, dated 9/6/24
- R-29 IEP Amendment, dated 9/30/24