



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. EDS 04705-24
AGENCY DKT. NO. 2022-33443
(ON REMAND EDS 08987-21)

D.M. AND H.M. ON BEHALF OF D.G.M.,

Petitioners,

v.

WATCHUNG HILLS REGIONAL BOARD

OF EDUCATION,

Respondent.

David R. Giles, Esq., for petitioners

Eric L. Harrison, Esq., for respondent (Methfessel and Werbel, P.C., attorneys)

Record Closed: September 4, 2024

Decided: October 15, 2024

BEFORE **DEAN J. BUONO**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

This matter arises under the Individuals with Disabilities Education Act (IDEA).
This tribunal previously issued a Final Decision in favor of respondent Watchung Hills

Regional Board of Education.¹ Thereafter, petitioners D.M. and H.M. on behalf of their son D.G.M. filed an appeal to U.S. District Court. Hon. Georgette Castner, U.S.D.J.,² denied the petitioners' (D.M. and H.M.) motion for summary judgment, granted in part and denied in part the District's motion for summary judgment, and remanded the case to the Office of Administrative Law (OAL) for the administrative law judge (ALJ) to address the following:

- (1) whether D.G.M.'s proposed individualized education program's (IEP's) omission of goals for the "Post Graduate" program violated petitioners' substantive rights under the Individuals with Disabilities Education Act (IDEA) (District Court Op. at *23–34);
- (2) the ALJ's basis for crediting the District witnesses' testimony about the proposed IEP as implemented, including with respect to the Career Academics class (District Court Op. at *34–37); and
- (3) whether petitioners waived their objection to case manager Zawisha failing to express a clear understanding that D.G.M. was entitled to a free appropriate public education (FAPE) notwithstanding his eligibility for a high school diploma, because it would not be a "regular" high school diploma; and if not, whether this objection "affects the final administrative decision" (District Court Op. at *40–43).

ISSUES ON REMAND AND FINDINGS OF FACT

1. Whether the proposed IEP's omission of goals for the Post Graduate program violated petitioners' substantive rights under the IDEA

Petitioners argue that D.G.M.'s IEP lacked individualized goals related to the proposed Post Graduate program, which consisted of the Career Academics class and Structured Learning Experience (SLE), and was not appropriate. In fact, the IEP

¹ D.M. & H.M. v. Watchung Hills Reg'l Bd. of Educ., 2022 N.J. AGEN LEXIS 779 (Sept. 27, 2022) (ALJ Op.).

² D.M. v. Watchung Hills, Reg'l High Sch. Bd. of Educ., 2024 U.S. Dist. LEXIS 38057 (D.N.J. March 5, 2024) (District Court Op.).

should have included annual goals, including post-secondary goals, that were related to these interests. For example, D.G.M.'s goals should have addressed academic, executive-functioning, communication, and social skills that he would need to pursue employment in his area of interest, as well as other goals related more directly to his career interests. There were no goals at all related to the SLE, let alone related to D.G.M.'s particular individual needs or interests.

However, as artfully argued by the District, it offered the challenged IEP in December 2020, which was more than six months before the conclusion of the child's senior year and commencement of the proposed Post Graduate program. The testimony of Linda Zawisha, a learning disabilities teacher consultant, and Dr. Patrick O'Halloran made it abundantly clear that the absence of goals specific to the Post Graduate program did not deprive D.G.M. of a FAPE.

Zawisha testified as an expert witness in special education and special education programming on behalf of the District. She opined that the goals for Study Skills, Reading, Writing, Mathematics, Speech-Language, and D.G.M.'s social, emotional, and behavioral functioning were all appropriate and individualized for D.G.M. (Tr.1 at 38:17–22.) While Zawisha conceded that the IEP did not have a description of the Career Academics class, she noted that at the annual review meeting the parents would obtain more detailed and specific information, demonstrating that “the Career Academics class is clearly offered as programming.” (ALJ Op. at 4, citing R-7 at 12.) Zawisha noted there are “separate descriptors that are discussed during the Annual Review.” (Tr.1 at 47:13–18.) She also testified that details about the SLE are discussed at the annual review, noting that there is “more information that’s discussed during the meeting.” (Tr.1 at 48:8–14.)

The IEP did in fact contain goals. While petitioners criticized the IEP for having “the same goals in one period as were addressed in four periods before that,” Zawisha explained that the IEP goals were the same because the program “is an extension of his senior year . . . and this is more of a transitional nature”; that goals could “always be reviewed”; and that “an IEP can always be revised if need be.” (Tr.1 at 49:12–22.) Zawisha made clear that “the Career Academics Class was meant to follow the goals

that were developed in the IEP, so of course, there were goals.” (Tr.1 at 50:2–4.) In addressing how the Career Academics class would have helped D.G.M. meet his “college goal,” she opined that the class would have helped “with the retention of basic skills that he was working on.” (Tr.1 at 58:4–8.)

Zawisha testified that the SLE would allow D.G.M. to work as independently as he was able, with the special education teacher communicating with D.G.M.’s employer to monitor progress. Students’ interests are always taken into account when a student is assigned to a business. (Tr.1 at 36:14–37:11.) On direct examination, Zawisha testified that the IEP offered to D.G.M., who plans on pursuing a career in sports management and who has worked in leadership settings that required motivation, was appropriate because it “would allow him to further develop these skills, be out in the community, [and] have successes from exposure in the community to a variety of different jobs,” and “[t]here’s certainly more to learn.” (Tr.1 at 46:4–21.)

On cross-examination, Zawisha testified that Career Academics and SLE, which is out in the community, would have worked on the skills that D.G.M. would need in a college setting, specifically, furthering his organizational skills. (Tr.1 at 67:19–68:2.)

Furthermore, Dr. Patrick O’Halloran testified as an expert witness in child psychology and special education. He opined that the SLE and the Career Academics programming offered in the IEP was appropriate for and would educationally benefit D.G.M. O’Halloran testified that the Career Academics class provides individualized instruction for the students enrolled in it by following a student from the beginning of exploring employment to transitioning out. A student’s strengths, interests, and preferences are discussed with the teacher. Students develop a resume in class. (Tr.1 at 84:8–18.)

It was clear based on the evidence at the hearing that the SLE program begins by exploring employment opportunities and building skills that facilitate positive work experience, presently with one of four local businesses, including the Warren Township hardware store, Walgreens, ShopRite, and the Warren Township library (ALJ Op. at 4–5)—the latter of which, one may reasonably infer, would provide ample opportunity to

implement the academic goals and objectives applicable to D.G.M.'s stated desire to attend college.

Although the IEP did not contain explicit goals for the employment aspects of the Career Academics class, O'Halloran opined that overall, the program was reasonably calculated to enable D.G.M. to make progress appropriate to his needs. (ALJ Op. at 4.)

Specifically, O'Halloran testified that the skills offered by the Career Academics class would benefit a student who plans on attending college, noting "employment soft skills," time management, interacting with others, and problem solving. (Tr.1 at 86:11–21.) O'Halloran explained that students have input into what assignment they have through the SLE program through the teacher speaking with students to understand their areas of interest. (Tr.1 at 88:24–89:10.) A student with higher functioning skills would be moved into a placement situation where those skills could be used. (Tr.1 at 91:16–21.)

Most notably, while the District "had extensive community services and had services to support its curriculum" (ALJ Op. at 4), as of December 2020 when the IEP was offered, D.G.M. was more than six months away from beginning the program. Had the parents not rejected the IEP and filed for due process, the goals could have been discussed and refined at the annual review meeting based on D.G.M.'s preferences and current function level. The petitioners' wholesale rejection of the program six months prior to its commencement removed the possibility of such collaboration.

As the District Court noted, "[t]he proposed IEP, which could be continuously modified or adjusted as needed, is different from the hypothetical IEP that gave the Court pause in [Lascari v. Board of Educ., 116 N.J. 30 (1989)]. And still, that an ALJ recognizes that 'IEPs may be changed in the future depending on [the student's] evolving needs does not mean that the ALJ failed to determine whether [an] IEP at that time provided [the student] with a FAPE.'" (District Court Op. at 43–44, citations omitted.) This is the same here.

Viewed cumulatively, the testimonial and documentary evidence demonstrate that the lack of goals specific to the Post Graduate program in the December 2020 IEP did not violate petitioners' substantive rights under the IDEA.

2. Whether I properly credited the District witnesses' testimony about the proposed IEP as implemented, including with respect to the Career Academics class

Judge Castner explained:

The ALJ did not . . . describe specific testimony or other record evidence concerning the way in which the District would implement the IEP to meet D.G.M.'s needs. Notably missing from the opinion is an explanation as to why the ALJ believed that the services provided by the District would allow D.G.M. to bridge the gap to adult goals and that the classroom portion would be tailored to meet D.G.M.'s needs. That explanation is necessary for the Court to determine whether D.G.M. could pursue his evolving employment goals where the District partners with only four local businesses.

[Citations omitted.]

The evidentiary basis to support this tribunal's crediting Zawisha's and O'Halloran's testimony regarding the IEP as implemented is much the same as the evidentiary basis for the finding that it offered FAPE notwithstanding the absence of goals specific to the Post Graduate program.

Petitioners mention that Dr. Tighe's opinion was given less weight because the judge found that "there were no 'parallels' in the evaluation," (ALJ Op. at 3), and, "[s]he did not observe a class with D.[G.]M. in it nor D.[G.]M.'s related peers" (ALJ Op. at 4). "She simply examined a class with some students in it who were not at the level of D.[G.]M. nor did they receive the same programming as D.[G.]M. It is essentially like comparing apples to oranges." (ALJ Op. at 4.) Remember, Dr. Tighe observed the Career Academics class that was identified by the District as the class that was proposed for D.G.M. (Tr.2 at 108:1–10.) She does not believe that the class would

meet D.G.M.'s needs because he had needs above the level of that particular class. If a teacher could differentiate in class, it still "wouldn't be able to meet D.[G.]M.'s needs" because the class worked as a group, and he was well above the level of that particular group. "The class wasn't calibrated to him." However, the Career and Community Studies program at TCNJ was specifically calibrated to the individual student and the program could meet his needs.

Respondent correctly points out that Zawisha opined that the goals for Study Skills, Reading, Writing, Mathematics, Speech-Language, and D.G.M.'s social, emotional, and behavioral functioning were all appropriate and individualized for D.G.M. (Tr.1 at 38:17–22.) While the IEP did not have a description of the Career Academics class, at the annual review meeting the parents would obtain more detailed and specific information, demonstrating that "the Career Academics class is clearly offered as programming." (ALJ Op. 4, citing R-7 at 12.) Zawisha noted there are "separate descriptors that are discussed during the Annual Review." (Tr.1 at 47:13–18.) She also testified that details about the SLE are discussed at the annual review, noting that there is "more information that's discussed during the meeting." (Tr.1 at 48:8–14.)

Petitioners criticized the IEP for having "the same goals in one period as were addressed in four periods before that." Zawisha logically explained that the IEP goals were the same because the program "is an extension of his senior year . . . and this is more of a transitional nature"; that goals could "always be reviewed"; and that "an IEP can always be revised if need be." (Tr.1 at 49:12–22.) Zawisha made clear that "the Career Academics Class was meant to follow the goals that were developed in the IEP, so of course, there were goals." (Tr.1 at 50:2–4.) In addressing how the Career Academics class would have helped D.G.M. meet his "college goal," she opined that the class would have helped "with the retention of basic skills that he was working on." (Tr.1 at 58:4–8.)

Zawisha further testified that the SLE would allow D.G.M. to work as independently as he was able, with the special education teacher communicating with the employer to monitor progress. Students' interests are always taken into account when a student is assigned to a business. (Tr.1 at 36:14–37:11.) On direct

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Most notably, while the District “had extensive community services and had services to support its curriculum” (ALJ Op. at 4), as of December 2020 when the IEP was offered, D.G.M. was more than six months away from beginning the Post Graduate program. The testimony of O’Halloran and Zawisha, while necessarily general because an annual review meeting to refine the IEP based on D.G.M.’s preferences and current function levels in spring 2021 never occurred, was sufficiently descriptive of the Career Academics class and its integration within the SLE employment experience to demonstrate that the IEP offered FAPE.

3. Whether petitioners waived their argument that Zawisha misunderstood D.G.M.’s entitlement to FAPE notwithstanding his “non-regular” diploma eligibility

The District is correct that the IDEA provides that a failure to raise an issue at the administrative level results in a waiver of the objection. See G.S. v. Cranbury Twp. Bd. of Educ., 2011 U.S. Dist. LEXIS 44933 at *30–31 (D.N.J. April 26, 2011), aff’d, 450 F. App’x 197 (3d Cir. 2011).

Petitioners claim that they did in fact raise the issue of Zawisha’s misunderstanding of D.G.M.’s right to FAPE during his proposed Post Graduate program in their post-hearing brief. Even if the mention in the post-hearing summation is considered that, Zawisha’s purported confusion over the FAPE entitlement of a non-graduated post-twelfth-grade student did not affect her credibility nor my acceptance of it. The combination of O’Halloran’s testimony and the documentary evidence, was proper and founded in the facts presented to me and the relevant law, for me to conclude that the challenged December 2020 IEP offered FAPE in the LRE.

As such, I **CONCLUDE** that D.G.M.’s IEP offered a free appropriate public education in the least restrictive environment appropriate to his needs.

ORDER

Based upon the foregoing, it is **ORDERED** that the petitioners' due-process petition is **DENIED** and **DISMISSED**.

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.

October 15, 2024

DATE



DEAN J. BUONO, ALJ

Date Received at Agency

Date Mailed to Parties:

DJB/ol