



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. EDS 03637-22

AGENCY DKT. NO. 2022-34133

A.V. AND R.C. ON BEHALF OF A.V.,

Petitioners,

v.

PRINCETON PUBLIC SCHOOLS,

BOARD OF EDUCATION,

Respondent,

AND

A.V. AND R.C. ON BEHALF OF D.V.,

Petitioners,

v.

PRINCETON PUBLIC SCHOOLS,

BOARD OF EDUCATION,

Respondent.

OAL DKT. NO. EDS 03638-22

AGENCY DKT. NO. 2022-34128

(CONSOLIDATED)

A.V., pro se, and **R.C.**,¹ petitioners on behalf of A.V. and D.V., minor children

Brett E.J. Gorman, Esq. for respondent Princeton Public Schools Board of Education (Gorman, D'Anella & Morlock, LLC, attorneys)

Record Closed: November 20, 2024

Decided: February 20, 2025

BEFORE **CARL V. BUCK III**, ALJ

¹ Father had not been an active participant in the proceeding.

STATEMENT OF THE CASE

In accordance with the provisions of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §1415, A.V. (mother or petitioner) and R.C. (father)² have requested a due process hearing on behalf of their son D.V. (D.V.C. or son or student 1) and daughter A.V. (A.V.C. or daughter or student 2) (students). On October 2021 petitioner and respondent entered into a settlement agreement(s) which stipulated that, paraphrasing, the parties would continue to search for and appropriate out-of-district placement for each student.

Petitioner contends the Princeton Public Schools Board of Education (Princeton or Board or District) failed to comply with the terms of the prior agreement to place her students at an appropriate out-of-district placement (placement) that would offer them an appropriate Free and Appropriate Public Education (FAPE). Petitioner sought enforcement of the prior agreement(s) and placement of students at an out-of-district placement.

PROCEDURAL HISTORY

PREFACE

On October 20, 2021, two Settlement Agreements (Agreements), one for each child, were approved by the parties to resolve disputes that had arisen based on the provision of Special Education. As a term of the Agreements, the District agreed to look for appropriate out-of-district placements for A.V.C. and D.V.C. The District's compliance with the Agreements is not at issue in this case as the issue was dismissed through a February 13, 2024, order on the motion to dismiss which refused petitioner's request for enforcement of the Agreements and the Office of Special Education Programs (OSEP) refused petitioner's attempt to enforce the settlement. Notwithstanding, the District has sent educational records for both students to every state approved special education school and other school(s) requested by petitioner. During those proceedings, petitioner was represented by Richard Kaplow, Esq. (Kaplow). Kaplow did not represent petitioner

² Father had not been an active participant in the proceeding.

by the time the hearing occurred as he was dismissed by petitioner on the Saturday before the Monday on which the case began. The hearing had been the subject of numerous delays caused by actions or requests of petitioner and petitioner (and then counsel Kaplow) had been cautioned numerous times that the scheduled date would proceed.

In a parallel case, Princeton Public School District v. A.V. and R.C. o/b/o/ A.V.C. and D.V.C., OAL Dkt. No. EDU 03265-23, 8-9 (N.J. Adm. Sept. 2, 2024) the Board brought an action asserting that the D.V.C. and AVC were not residents of an area which could send students to a district school for the period September 2021 through December 2022. That case has been remanded to me for rehearing.

PRESENT MATTER

On or about April 18, 2022, petitioners, through then counsel Staci Greenwald, Esq, filed an amended petition for due process seeking the following judicial interventions:

- (1) a finding that the District has deprived DC of a free, appropriate public education for a period of at least two years;
- (2) a determination that DC requires a program that can address her (sic) learning needs throughout the school day;
- (3) a finding that The Newgrange School is not an appropriate placement to meet DC's educational needs;
- (4) an Order directing the District to send DC's records to appropriate out of district programs, such as The Lewis School, The Cambridge School, Princeton Friends, or a similar specialized program;
- (5) an order directing the District to develop DC's IEP placing him in an appropriate out of district program and continuing for so long as same remains appropriate; and
- (6) any other relief this court deems appropriate and just.

Petitioner filed an amended petition on March 11, 2024, seeking the following:

- A. A determination that the District's programs offered/provided during the 21-22 and 22-23 school year were and/or are not reasonably calculated to confer a FAPE, pursuant to U.S.C.A. 794, N.J.A.C. 6A:14-l et seq.
- B. An order requiring the respondent District to provide D.V. and A.V. with a FAPE, and to update and modify D.V.'s and A.V.'s Programs, Placements and IEPs consistent with the findings and/or recommendations of the most current Child Study Team and Independent Recommendations, including but not limited to consideration of an appropriate out-of-district placement for both D.V. and A.V.;
- C. An order requiring respondent to provide D.V. and A.V. with all necessary and appropriate 1:1 individualized counseling and social skills therapy; and with all necessary speech therapy;
- D. An order requiring the District to provide D.V. with advanced math during the summer and providing compensatory Spanish instruction after school for both D.V. and A.C.; and
- E. An order for all such other and further relief that becomes appropriate at any time prior to the final resolution of this matter.

On April 8, 2022, the matter was transmitted to the Office of Administrative Law (OAL) where it was received on May 8, 2022, and filed as a contested case pursuant to N.J.S.A. 52:14B-1 to 15; N.J.S.A. 52:14F-1 to 13 under Docket Number EDS 00311-20. On April 18, 2022, petitioner filed a second petition for due process dealing with petitioner's daughter A.V.C. The two matters were consolidated under OAL Docket Number EDS 03638-2022 on February 6, 2024. The matter was originally assigned to The Honorable Jeffrey Wilson, ALJ. On Judge Wilson's appointment with the Superior Court the matter was reassigned to The Honorable Kim Belin, ALJ. Judge Belin asked

me to conduct a settlement conference on the matter which evolved into several settlement conferences. The parties then requested that the matter be reassigned to me.

Petitioner's counsel requested a number of continuances for scheduling the hearing. These requests were granted despite the objection of respondent. The matter was heard via Zoom platform on July 29, 2024, and September 24, 2024. Closings were submitted by respondent on November 15, 2024, by petitioner on November 16, 2024, and a supplemental submission was made by respondent on November 20, 2024.

FACTUAL DISCUSSION AND FINDINGS OF FACT

Testimony

Jessica Fiorentino (Fiorentino), A.V.C.'s current case manager and D.V.C.'s former case manager, testified on behalf of the District. She has been A.V.C.'s case manager since 2019 when she was in first grade and was D.V.C.'s case manager for his fourth and fifth grade school years, 2021-2022 and 2022-2023. Fiorentino is a case manager and school social worker at Community Park Elementary School and Johnson Park Elementary School in the Princeton Public School District. She provides counseling to students and works with students and parents to obtain evaluations as necessary, including performing social history evaluations. She oversees the education plan and implementation for individual students which involves interpreting their evaluations and coordinating the different services into a single cohesive plan for each student that she case manages. She has performed these duties for twenty years and has participated in hundreds of Individualized Education Program (IEP) meetings as a case manager and hundreds in her role as social worker. Based on this, she was certified as an expert in school social work and case management of disabled children.

The students' education has been going through different stages of litigation for four or five years, since the students, who are both in middle school as of 2024-2025, were in first and second grade. The Child Study Team (CST) continued to hold yearly IEP meetings, updating the parents on the students' present levels of performance and creating new draft IEPs for the students. The parents did not sign these IEPs. The CST created yearly drafts of the students' Present Levels of Academic Achievement and

Functional Performance (PLAAFP) and kept track of the students' progress through their report card grades as both students have always been educated in the general education classroom.

On October 20, 2021, the District and petitioners signed two nearly identical Agreements, one pertaining to the education of A.V.C. and one pertaining to the education of D.V.C. (R-1.) The parties agreed that the students would attend their in-District programs while the District sought placement in three named out-of-district placements, the Newgrange School, Bridge Academy, and the Center School. If none of those placements were effectuated for the students, the District agreed to continue to seek an appropriate out-of-district placement for the students. Both students were accepted at the Newgrange School and A.V.C. was offered a follow-up visit at the Center School, the parents rejected these offers. Neither student was accepted at the Bridge School. Petitioners discussed potential placement for the students in several private preparatory schools such as Princeton Academy of the Sacred Heart, the Hun School, Chapin, and Princeton Day School; however, none of which were approved by the State to provide special education services and none of which were appropriate for the students. Although the students' CSTs were pleased with the students' in-District progress and consistently found that their in-District placements were appropriate, the District sent the students' records and looked at approximately fifteen different state-approved special education placements in accordance with the Agreements. Any school that accepted one or both of the students was rejected by petitioners because in those schools there were students "with motivation challenges, school avoidance, autism, struggle with conversations, emotional support, cursing, depression, behavioral issues." Petitioners rejected any school that was educating students with special needs, even when many of the students with needs they objected to were dealing with the same issues A.V.C. and D.V.C. were facing. Throughout this search process, A.V.C. and D.V.C. continued to make consistent progress in the District.

Fiorentino testified that A.V.C. is an intelligent child with mild learning needs who is most appropriately educated in a general education classroom. As part of the initial litigation that led to the Agreements, the District performed re-evaluations on the Students in June of 2021. In June of 2021, both students had been on remote learning for about one and a half years. Although the District re-opened for the 2020-2021 school year,

petitioners made the personal decision to keep A.V.C. and D.V.C. remote. The remote learning model was not ideal for most students and was particularly hard on students with special learning needs as the accommodations and modifications that can be used in the classroom don't always translate as effectively for remote learning. The District worked with A.V.C. to remediate the impact of the time she spent learning remotely and A.V.C. has made continuous and significant progress in-District.

A.V.C.'s records demonstrate consistent progress both academically and on her social and emotional goals for the duration of the disputed IEPs. A.V.C.'s fourth grade IEP for the period February 2022 to February 2023 shows her placed in the general education classroom with a special education teacher providing in-class support, a shared paraprofessional providing additional support and counseling services twice a month. Her PLAAFP, written in February 2022 of her third-grade year shows her reading assessment upon returning to in-class instruction in October of 2021 had her at a DRA eighteen or a first-grade level, but by February of 2022, A.V.C. tested at a DRA twenty-eight which Fiorentino testified is, "where she should be for her grade level." A.V.C.'s math teachers noted that A.V.C. "demonstrates numerous grade appropriate strategies for addition, subtraction and multiplication." By the end of her third-grade year, A.V.C. was working at grade level and "consistently producing stronger work, showing greater confidence and gaining more experience."

The PLAAFP for the IEP draft written on March 10, 2023, demonstrated A.V.C.'s progress over the 2022-2023 school year, when she was in fourth grade. A.V.C.'s in-class support was being provided in all academic subjects and her counseling continued. Modifications to help A.V.C. address her anxiety and self-regulation include frequent checks for understanding, breaking down tasks into manageable units, desensitizing to anxiety causing events, private work areas to avoid comparison with other students, and reassurance. A.V.C.'s DRA score went from a twenty-eight the year before to a forty in March of 2023, over a year worth of progress. In math, A.V.C. increased her iReady score from a 433 to 449, increasing sixteen points from January to March. In March of this year, the District performed a speech and language evaluation of A.V.C. at petitioners' request and added speech and language services to her IEP, but because petitioners did not sign the IEP, those services were not able to be implemented. By the

end of her fourth grade, A.V.C. had all P's (progressing) and M's (meeting), progressing and meeting grade level standards on her report card and the teacher's comments reflect nice progress academically and with her confidence in contributing to class discussions.

The PLAAFP for A.V.C.'s 2024-2025 IEP shows continued progress with A.V.C. in fifth grade, performing on par with her peers in her general education classroom. Her IEP continues to provide in-class support for all academic subjects and counseling services. In two years, she has gone from a DRA score of eighteen, first grade level, to a DRA score of fifty, a fifth-grade level. Fiorentino testified that "It's very strong [progress], yes, even if you take into consideration – so, 18 or even the 28, to go up to a 50 to be at grade level, yes, is great progress. It's what we hope for for our students." In Math, A.V.C.'s scores also continued to go up from 430 to 462.

Fiorentino, as A.V.C.'s counselor as well as her case manager discussed A.V.C.'s social emotional progress. She explained that A.V.C. was developing communication strategies to be able to let her teachers know when she is feeling anxious or frustrated and coping strategies for deescalating negative feelings. She presents herself as happy in school and was making continuous progress in being reflective in handling any frustration or anxiety she experienced at school.

Ms. Fiorentino, in her capacity as an expert, as a case manager for students with disabilities testified that A.V.C. was making progress in the District and that her IEPs have consistently been providing a free and appropriate education. When asked if A.V.C. should be placed in a more restrictive out-of-district program, Ms. Fiorentino answered, no, that A.V.C. should not.

Fiorentino testified that D.V.C. has a particularly high I.Q., consistently performing at or above grade level. The supports that D.V.C. needs to be making the significant progress he has been making is focused on his social and coping skills related to his autism diagnosis, D.V.C. has been consistently placed in the general education classroom with support in the form of additional staff in the classroom and weekly counseling sessions. Modifications include functional communication training to teach D.V.C. to properly communicate his feelings during stressful situations such as the use

of feeling words, discussion, problem-solving; ensuring the expectations are clear to D.V.C. regarding the transition to activities, new tasks, demands, and expectations regarding desired behavior, social skills, and academic performance; planned movement breaks; reflecting and validating D.V.C.'s feelings, and a three-step procedure for when D.V.C. engages in disruptive behaviors: (1) clear reminders of expectations and strategies; (2) encouragement to use strategies; and (3) reflect and plan an alternative response. Similar to A.V.C., D.V.C. was on remote instruction until October of 2021.

Upon returning to in person instruction in 2021, as a fourth grader, D.V.C. continued to "soak[] up new information quickly" with a particular strength in math. D.V.C.'s transition back to in person learning was relatively smooth with his IEP accommodations. His teacher reported that:

D.V.C. has had a great start to the year. He was able to jump in right away when he entered our class. He is motivated and excited to be in school. In terms of social skills, he has fit right into our classroom community. He has friends and has worked on his ability to connect with others. There are times that he gets swept up in his emotions and wants his questions answered immediately. The structures we have put in place have really helped him grow in this area.

In March of his fifth-grade year, D.V.C.'s IEP team held an IEP meeting and reported on his progress for the PLAAFP. At that time, D.V.C. was performing at the fifth-grade level for math as reported by the iReady scores and was reading above grade level according to his DRA scores. In counseling, D.V.C. was learning and implementing emotional vocabulary, perspective taking, and social problem-solving skills. D.V.C. was able to generalize skills successfully in the classroom with some reminders. On his fifth-grade end-of-year report card, D.V.C. was meeting or exceeding grade level standards in all areas. His teachers reported that he was also progressing on his social and emotional goals, with demonstrable progress advocating for his needs in class and when he needs help deescalating his emotions.

During the IEP meeting in March of 2024, towards the end of D.V.C.'s sixth grade year, the PLAAFP again reflected significant social and emotional progress. (R-14.) From September to March of his first year of middle school, D.V.C. made a successful

transition and showed “marked growth in his perspective taking and problem solving skills”. He received straight A’s in his classes for the first three marking periods, which were the grades that were available at that time. (R-15.) Again, for D.V.C., his progress is evident as documented in his records and when asked whether his placements were appropriate and whether D.V.C. was excelling in his in-District placement, Ms. Fiorentino, as an expert in case management for students with disabilities, stated they were.

Fiorentino also testified as to Petitioner’s request that A.V.C. and D.V.C. receive transportation services when they attend the middle school. Transportation was never included in either students’ IEP when they attended Johnson Park Elementary but was provided by the District to all students who lived beyond two miles from their elementary school in compliance with N.J.S.A. 18A:39-1. This transportation is provided to all students and is unrelated to special education services. The IEP does not include transportation services because neither A.V.C. nor D.V.C. has mobility issues or severe cognitive deficits that would preclude them from walking to and from school. The students are able to navigate safely around the school and there are no disabilities that would prevent them from safely walking to or from school. Ms. Fiorentino testified that she has made hundreds of transportation determinations, that the entire Child Study Team agreed that neither A.V.C. nor D.V.C. would need to qualify for special transportation.

A.V. testified on behalf of her children. She testified that she felt that she and D.V.C. had been treated unfairly by the District, but did not address the progress that A.V.C. and D.V.C. have been experiencing in their in-District placement. A significant amount of her testimony was expressing frustration about the fact that the school the students attended after the Community Park school did not have a dual language immersion program. She also expressed continuing frustration regarding the District’s failure to comply with the Settlements detailed previously. She testified to D.V.C.’s “twice-exceptionality” situation and how D.V.C. was not challenged in the District, thereby warranting an out-of-district placement to address his individual needs.

On cross examination, A.V. was asked to review the Agreements because she was claiming that the District deprived A.V.C. and D.V.C. of the dual immersion language program at the Community Park School. On the Agreements, next to the provision that

states that “[t]he parties agree that [A.V.C. and] D.V.C. will continue to attend [their] in-district program...until an out-of-district placement ...is finalized.” A.V. was shown her initials next to the asterisk at the bottom of the page which says, “at Riverside or Johnson Park with transportation”. When asked if it was her initial, A.V. first stated that “it must be” and when shown her signature at the bottom of the Agreements she stated that she thought that someone signed for her, then she claimed that it was not her signature. I asked A.V. for specificity on that issue as follows:

The Court: Everybody stop. Ms. V., either you signed or you didn't sign the documents. Did you sign the document or did you not sign the document?

A.V.: I signed it.

The Court: Is your signature on the document?

A.V.: Yes.

The Court: Is that your signature on the other document?

A.V.: Yes.

T: 182:24-T:183:1-6.

The petitioners' then attorney, Michael Inzelbuch, Esq. had written in the Agreement that the students would not return to Community Park School which, A.V. was aware, was the only elementary school that had the dual language immersion program in the District.

At the end of the hearing A.V. stated that she wasn't sure about where she wanted A.V.C. to go to school and that her “son is the main issue here” and she wants him to attend Sacred Heart School. In her summation A.V. provided a list of preferred schools for D.V.C. as follows (with original notes):

- Sacred Heart School
- Princeton Day School (D. passed their screening but was waiting on school District teacher recommendations, which were denied by Micki Crisafulli, director of special services)

- Waldorf School (teacher recommendation letters requested were denied by Micki Crisafulli, director of special services)
- Pennington School (teacher recommendation letters requested were denied by Micki Crisafulli, director of special services)
- Princeton Montessori School
- Princeton Fusion Academy: According to the Director of Student Services, Princeton Public Schools has placed 5 students via the NAPLES Act.

And A.V. conceded that A.V.C. could remain in District with the following provisions:

- Math tutoring for A. in Princeton Schools or at Fusion Academy
- Transportation
- Spanish immersion

Given Fiorentino's position as a case manager who had dealt with both children (and hundreds of other children) and as a school social worker, and the certainty of her testimony and the experience and documentation used as a foundation therefore, **I FIND** her testimony to be credible and comprehensive in stating the position that the students are progressing and indeed excelling in their in-District placement.

I FURTHER FIND that A.V., notwithstanding her desire to advocate for the best for the students, fails to note their progress and gains within the District. It is admirable to want foreign language immersion, out-of-district placement for excellence and other benefits – but those benefits are not a right. The right is to a FAPE which **I FIND** the students are receiving.

LEGAL ANALYSIS AND CONCLUSIONS OF LAW

This case arises under the Individuals with Disabilities Education Act, 20 U.S.C.A. §§ 1400 to 1482 (the Act). One purpose of the Act, among others, is to ensure that all children with disabilities have available to them a “free appropriate public education that

emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living.” 20 U.S.C.A. § 1400(d)(1)(A). This “free appropriate public education” is known as FAPE.

The Act defines FAPE as special education and related services provided in conformity with the IEP. See 20 U.S.C.A. § 1401(9). A FAPE and related services must be provided to all students with disabilities from age three through twenty-one. N.J.A.C. 6A:14-1.1(d). A FAPE means special education and related services that: a) have been provided at public expense, under public supervision and direction, and without charge; b) meet the standards of the State educational agency; c) include an appropriate preschool, elementary, or secondary school education in the State involved; and d) are provided in conformity with the individualized education program (IEP) required under sec. 614(d). 20 U.S.C.A. § 1401(9); N.J.A.C. 6A:14-1.1 et seq. The responsibility to deliver these services rests with the local public school district. N.J.A.C. 6A:14-1.1(d).

In order to provide a FAPE, a school district must develop and implement an IEP. N.J.A.C. 6A:14-3.7. An IEP is “a comprehensive statement of the educational needs of a handicapped child and the specially designed instruction and related services to be employed to meet those needs.” Sch. Comm. of Burlington v. Dep’t of Educ. of Mass., 471 U.S. 359, 368, 105 S. Ct. 1996, 2002, 85 L. Ed. 2d 385, 394 (1985). An IEP should be developed with the participation of parents and members of a district board of education’s CST who have participated in the evaluation of the child’s eligibility for special education and related services. N.J.A.C. 6A:14-3.7(b). The IEP team should consider the strengths of the student and the concerns of the parents for enhancing the education of their child; the results of the initial or most recent evaluations of the student; the student’s language and communications needs; and the student’s need for assistive technology devices and services. The IEP establishes the rationale for the pupil’s educational placement, serves as the basis for program implementation, and complies with the mandates set forth in N.J.A.C. 6A:14-1.1 to -10.2.

The Act, however, leaves the interpretation of FAPE to the courts. See Ridgewood Bd. of Educ. v. N.E., 172 F.3d 238, 247 (3d Cir. 1999). In Board of Education of the

Hendrick Hudson Central School District v. Rowley, 458 U.S. 176, 203, 102 S. Ct. 3034, 3049, 73 L. Ed. 2d 690, 710 (1982), the United States Supreme Court held that a state provides a child with FAPE if it provides personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction. The Court reasoned that the Act was intended to bring previously excluded children into the public education systems of the states and to require the states to adopt procedures that would result in individualized consideration of and instruction for each child. Rowley, 458 U.S. at 189, 102 S. Ct. at 3042, 73 L. Ed. 2d at 701. The Act did not, however, impose upon the states any greater substantive educational standard than would be necessary to make such access to public education meaningful. Rowley, 458 U.S. at 192.

In addition, the Court noted that available funds need only be expended “equitably” so that no child is entirely excluded. Rowley, 458 U.S. at 193, n.15. Indeed, the Court commented that “the furnishing of every special service necessary to maximize each handicapped child’s potential is . . . further than Congress intended to go.” Rowley, 458 U.S. at 199. Therefore, the inquiry is whether the IEP is “reasonably calculated” to enable the child to receive educational benefits. Rowley, 458 U.S. at 206–07.

The Board will have satisfied the requirements of law by providing the child with personalized instruction and sufficient support services “as are necessary to permit [him] ‘to benefit’ from the instruction.” G.B. v. Bridgewater-Raritan Reg’l Bd. of Educ., 2009 U.S. Dist. LEXIS 15671 (D.N.J. Feb. 27, 2009) (citing Rowley, 458 U.S. at 189). The IDEA requires a school district to provide a basic floor of opportunity. Carlisle Area Sch. v. Scott P., 62 F.3d 520, 533–34 (3d Cir. 1995). But an IEP must provide meaningful access to education and confer some educational benefit upon the child. Rowley, 458 U.S. at 192. To meet its obligation to deliver FAPE, a school district must offer an IEP that is reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances. Endrew F. v. Douglas Cnty. Sch. Dist., 580 U.S. 386 (2017).

In sum, “[t]he educational opportunities provided by our public-school systems undoubtedly differ from student to student, depending upon a myriad of factors that might affect a particular student’s ability to assimilate information presented in the classroom.” Rowley, 458 U.S. at 198. The Rowley Court recognized that measuring educational benefit is a fact-sensitive, highly individualized inquiry, and that “[i]t is clear that the

benefits obtainable by children at one end of the spectrum will differ dramatically from those obtainable by children at the other end, with infinite variation in between.” Rowley, 458 U.S. at 202.

Based upon the testimony and documentary evidence presented in this matter, the District provided the students with FAPE during their education at the District. Based on the documentation provided, the District included the parents in the IEP process and in their educational placement and services. When a concern arose, the District responded accordingly. There was communication with District personnel, to the level that I had to admonish petitioner from incessant contact with the District about issues not pertaining to this case.

From A.V.C.’s testimony specifically, it appears that the main issues for the student were in enforcement of the 2021 agreements – which I have said, and caselaw and statute bolsters, that it is not within my power to enforce. Notwithstanding, the District had made good faith efforts to locate out-of-district placements for the students; a number of which were inappropriate for the students; did not offer an interview or consideration of the students; or which were refused by A.V.C.

A.V.C. offered potential placements which were inappropriate as not being schools which address special education needs and are not State-certified or were not thought by the District to be appropriate. Petitioner’s then counsel, had discussed requested me to conduct a “Naples hearing” which never came to fruition.

It is clear throughout the testimony and data provided that the students continue to demonstrate academic and social growth at the District and have done so since their return to “in class” setting after COVID. During his time at the District, and that the District was attentive to W.W.’s needs and educational plan. Fiorentino, as a case worker and as a social worker, testified to the CST’s efforts in ensuring the students’ progress. The students showed improvement in their classroom settings and in standardized testing with particular note of D.V.C.’s grades.

The students' parents, and particular petitioner, were involved in the IEP process. When the CST thought the IEP offered additional benefits or services for the students – the parents refused to authorize such services.

Petitioner argues FAPE was not provided due to the lack of dual language immersion classes and challenging curricula, particularly for D.V.C. She also states that appropriate supports were not given for the students, particularly for alleged bullying of D.V.C. However, no proofs were introduced on those issues and the issues were not initially part of the pleadings.

Based upon the testimonial and documentary evidence presented in this case, I **CONCLUDE** that the Board has proven by a preponderance of the competent and credible evidence that the IEPs offered by the District provided D.V.C. and A.V.C. with FAPE with the opportunity for meaningful educational and social benefit appropriate in light of D.V.C.'s and A.V.C.'s circumstances, within the least restrictive environment and that the petition seeking out-of-district placement and other requests fails.

For further clarification I **CONCLUDE** that as the students are receiving FAPE, the Agreements of 2021 dealing with out-of-district placements are no longer in force or effect and that any action moving forward seeking an out-of-district placement by petitioner will have to be accomplished with a de novo application for such benefit.

ORDER

Based upon the foregoing, it is hereby **ORDERED** that the petition for compensatory education be and is hereby **DISMISSED**.

This decision is final pursuant to 20 U.S.C. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2025) 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.



February 20, 2025

DATE

CARL BUCK III, ALJ

Date Received at Agency

Date Mailed to Parties:

CVB/tat

APPENDIX

WITNESSES

Petitioner:

Jessica Fiorentino

Respondent:

A.V.

EXHIBITS

Petitioner:

- Exhibit A: Emails referencing D.V.C. "meltdowns," inability to self-regulate, not wanting to enter middle school due to feeling overwhelming anxiety, thus having to stay home. High absence email from principal.
- Exhibit B: D.V.C. Page Dosey Davidson Letter (enclosed), explaining high ability/gifted children <https://www.davidsongifted.org/about-us/>
- Exhibit C: Twice Exceptional Data <https://www.davidsongifted.org/gifted-blog/twice-exceptional-definition-characteristics-identification/>
- Exhibits D: All Schools Spreadsheet: Naples Act: Children are sent to out-of-district schools that are not on the state-approved list, for example, flex school <https://www.flexschool.net/naples-act> headmaster video and acceptance letter congratulating D.V.C. on acceptance Princeton Academy of the Sacred Heart <https://www.princetonacademy.org/test-post/default-post-test/~board/head-of-school-blog/post/a-friday-thank-you-to-amanda-gorman>
- Exhibits E: Data Email from attorney/expert about 2e children slipping through the cracks
- Exhibits F: Emails from Drs. Cochrane and Kosek indicating differentiation of instruction would be provided for D.V.C., especially for math
- Exhibits G: Emails indicating a gap in dual language program (Spanish) refusal to accommodate remediating and opportunity to catch up

Exhibits H: Emails about bussing

Exhibits I: Dr. Dykeman psychiatric reports, autism diagnoses for both A.V.C. and D.V.C., including bullying disclosure

Exhibits J: Several videos indicating the children's abilities (Periodic Table at age 3; reading at 18 months, etc.) and D.V.C. and A.V.C. video testimonies

Respondent:

A. Binder 1 (AVC):

1. October 20, 2021, Settlement Agreements* (R001-R021)
2. March 20, 2023, Letter Regarding Odd Placements* (R022-R024)
3. Communications Regarding OOD Placements* (R025-R031)
4. October 7, 2019, Evaluation Planning (R032-R035)
5. January 17, 2020, ADHD Diagnosis (R036-R038)
6. January 23, 2020, Social History (R039-R042)
7. December 12, 2019, Psychological Evaluation (R043-R057)
8. December 11, 2019, Educational Evaluation (R058-R069)
9. February 11, 2020, IEP (R070-R087)
10. December 7, 2020, IEP Progress Report (R088-R092)
11. April 19, 2021, IEP Progress Report (R093-R098)
12. April 15, 2021, Speech And Language Evaluation (R099-R109)
13. March 20-April 20, 2021, Independent Educational Evaluation (R110-R130)
14. May 5, 2021, Occupational Therapy Eval (R131-R138)
15. June 16, 2021, IEP (R139-R160)
16. June 26, 2021, Progress Report (R161-R165)
17. February 11, 2022, IEP (R166-R190)
18. Signed Amended IEP Without Meeting (R191-R194)
19. June 16, 2022, Progress Report (R195-R199)
20. March 10, 2023, IEP (R200-R223)
21. June 20, 2023, Progress Report (R224-R228)
22. March 1, 2024, IEP (R229-R254)
23. May 23, 2024, Progress Report (R255-R262)
24. Emails Regarding Transportation (R263-R268)

25. Miscellaneous Emails (R269-R311)

26. Resume Of Jessica Fiorentino, School Social Worker (R312-R314)

B. Binder 2 (D.V.C.):

1. October 20, 2021, Settlement Agreement* (R001-R021)

2. March 20, 2023, Letter Regarding Odd Placements* (R022-R024)

3. Communications Regarding OOD Placements* (R025-R030)

4. May 9, 2019, IEP With Follow-Up Meeting Notes (R031-R047)

5. June 18, 2019, Re-eval Planning (R048-R053)

6. September 23, 2020, Remote Learning Email (R054-R057)

7. February 18, 2021, Psychiatric Evaluation (R058-R063)

8. March 12, 2021, Emails Offering Home Services (R064-R068)

9. February 11, 2022, IEP (R069-R092)

10. March 24, 2022, Signed Iep Amendment (R093-R096)

11. June 16, 2022, Progress Report (R097-R101)

12. March 3, 2023, IEP (R102-R121)

13. June 2023 Progress Report (R122-R126)

14. March 1, 2024, IEP (R127-R145)

15. June 2024 Grade 6 Report Card (R146-R148)

16. Emails Regarding Related Services (R149-R155)

17. Emails And Assessments Regarding Math Placement (R156-R213)

18. Emails Regarding Transportation (R214-R217)

19. Miscellaneous Emails (R218-R245)

20. Resume Of Jessica Fiorentino, School Social Worker (R246-R248)

21. Resume Of Elizabeth Murrin, Supervisor of Special Education (R249-R253)

22. May 5, 2020, IEP (R255-R274)

23. June 16, 2021, IEP (R275-R296)

* Exhibits are the same in both students' binders