

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. EDS 14815-12

AGENCY DKT. NO. 2013 18972

P.C. AND J.C. o/b/o R.C.,

Petitioner,

v.

**HARRINGTON PARK BOARD OF
EDUCATION,**

Respondent.

P.C. and J.C., petitioners, pro se

David B. Rubin, Esq., for respondent

Record Closed: December 10, 2014

Decided: December 17, 2014

BEFORE **IMRE KARASZEGI, JR.**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioners, P.C. and J.C., are the parents of six-year-old R.C. They are residents of the City of Harrington Park, New Jersey. R.C. was determined to be eligible for special education and related services based on a diagnosis of autistic spectrum disorder.

On June 30, 2011, shortly before her third birthday, R.C. was identified under the preschool disabled category by the Harrington Park District's (District) child study team.

On September 28, 2012, petitioners requested a due process hearing, in accordance with the provisions of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C.A. § 1415, contending that the District failed to provide R.C. a free and appropriate public education (FAPE) for the 2011-2012 school year and that the District failed to offer FAPE for the 2012-2013 school year. Petitioners now seek reimbursement for a unilateral placement at the Goddard School and the JCC Therapeutic Nursery due to the alleged inadequacy of an Individual Education Plan (IEP) proposed by the District child study team at an IEP meeting on July 17, 2012.

The Department of Education, Office of Special Education, transmitted the matter to the Office of Administrative Law (OAL) on November 5, 2012. Hearings were held on January 23, 2013, May 24, 2013, July 22, 2013, July 23, 2013, August 13, 2013, December 13, 2013, January 30, 2014, February 21, 2014, March 24, 2014, May 16, 2014, May 27, 2014, and June 13, 2014.

FINDINGS OF FACT

Based upon a consideration of the testimonial and documentary evidence presented at the hearing and having had the opportunity to observe the demeanor of the witnesses and assess their credibility, I **FIND** the following **FACTS**:

R.C. is a six-year-old child eligible for special education and related services based on a diagnosis of autistic spectrum disorder.

Prior to her third birthday, R.C. and her family moved to Harrington Park from Midland Park, where R.C. had been receiving early intervention services. Relying upon numerous assessments and its own evaluations, the Harrington Park Child Study Team (CST) made an eligibility determination and classified R.C. as preschool disabled on June 30, 2011. At a July 19, 2011, IEP meeting, both the parents and District agreed to continue to provide R.C. with early intervention/home programming services until classes started in September. At the same time, in response to the parents' desires for intensive intervention and opportunities for mainstreaming, the Harrington Park CST proposed a hybrid program for R.C. This program initially consisted of two mornings

per week of Little Tots, a normal preschool class, with the remainder of the week in an autistic class featuring Applied Behavioral Analysis (ABA). The ABA class proposed was operated by the Valley Program of Region III, an administrative unit of the Northern Valley Regional High School District that provided special education services to school districts in Bergen County, including Harrington Park. The program proposed would also offer a home program for R.C.

Also at the July 19, 2011, meeting, the parties agreed to meet in the early fall to continue to develop goals and objectives and finalize R.C.'s IEP after the Valley staff had an opportunity to familiarize themselves with R.C. and assess her specific needs.

In early September 2011, the components of the Little Tots/Valley programs were being finalized in collaboration with the parents and District. On September 27, 2011, a meeting with the CST and the parents produced additional accommodations requested by R.C.'s parents, specifically, R.C.'s Little Tots mainstreaming classes would be increased from two mornings to five mornings per week.

At the IEP meeting of October 14, 2011, all the prior accommodations and changes developed through ongoing communication between the District and parents, as well as assessment of R.C.'s progress and skills in the Little Tots/Valley programs, were largely incorporated in an October 2011 IEP that contained finalized goals and objectives for R.C.

The revised IEP, with finalized goals and objectives, was forwarded to the parents of R.C. on October 26, 2011. No parental consent to implement the IEP was received by the District.

An IEP meeting was held between the parents and District on February 15, 2012, to address the home program. As a result of the parents' request, the home programming coordinator was replaced. By letter dated March 6, 2012, R.C.'s District case manager, Dr. Robert Hertel, memorialized the parents' concerns and the District's responses.

R.C.'s first progress report of October 2011, showed progress in numerous skills assessed during the first two months of the academic year. A second progress report of January 2012 continued to show meaningful progress. Extensive daily data supporting the findings of the progress reports were presented. Behaviors complained of by the parents at home were not observed by the teachers in the school setting.

At a July 17, 2012, IEP meeting, R.C.'s parents indicated that they did not want R.C. attending the Valley classes. R.C.'s parents expressed numerous concerns that they wished to have included in a finalized IEP. Many of the parental concerns were responded to by the District in the finalized IEP. Based on the evidence provided by R.C.'s teachers and service providers, that R.C. was making significant progress, the program that the District proposed in the IEP for the 2012-2013 school year was similar to the 2011-2012 IEP, with the addition of the changes incorporated throughout the year.

Although R.C.'s parents provided no affirmative written consent to R.C.'s special education or related services, R.C. continued to receive those services. R.C.'s parents participated in numerous meetings and e-mail exchanges with the District regarding R.C.'s educational program.

On August 6, 2012, R.C.'s parents sent Dr. Hertel notice rejecting the proposed IEP but seeking continuation of R.C.'s home program. R.C.'s parents advised the District that they intended to withdraw R.C. from the Valley program and Little Tots as of September 1, 2012.

LEGAL ANALYSIS AND CONCLUSIONS OF LAW

As a recipient of federal funds under the Individuals with Disabilities Education Act, 20 U.S.C.A. § 1400 et seq., the State of New Jersey must have a policy that assures all children with disabilities the right to a free appropriate public education. 20 U.S.C.A. § 1412. The IDEA defines FAPE as special education and related services that are provided at public expense, under public supervision and direction, and without charge; that meet the standards of the state educational agency; that include an

appropriate preschool, elementary school, or secondary school education in the state involved; and that are provided in conformity with an IEP. 34 C.F.R. § 300.17; 20 U.S.C.A. § 1401(9); N.J.A.C. 6A:14-1.1 et seq.

The responsibility to provide a free appropriate public education rests with the local public school district. N.J.A.C. 6A:14-1.1(d). The local district satisfies the requirement that a child with disabilities receive a free appropriate public education by providing personalized instruction with sufficient support services to permit that child to benefit educationally from instruction. Hendrick Hudson Cent. Sch. Dist. Bd. of Educ. v. Rowley, 458 U.S. 176, 203, 102 S. Ct. 3034, 3049, 73 L. Ed. 2d 690, 710 (1982). Only after the program offered by the District is found to not provide a FAPE can an appropriate alternative program selected by the parents be evaluated and reimbursement ordered. See Forest Grove v. Sch. Dist. v. T.A., 557 U.S. 230, 246, 129 S. Ct. 2484, 2496, 174 L. Ed. 2d 168, 183 (2009).

In New Jersey, state regulations track the requirement that a local school district provide “a free, appropriate public education” (FAPE) as that standard is set under the IDEA. N.J.A.C. 6A:14-1.1. New Jersey follows the federal standard requiring such entitlement to be “sufficient to confer some educational benefit,” although the state is not required “to maximize the maximum potential of handicapped children.” Las cari v. Ramapo Indian Hills Reg. Sch. Dist., 116 N.J. 30 (1989).

In determining where to deliver that instruction, it is clear that the district must be guided by the strong statutory preference for educating children in the “least restrictive environment.” 20 U.S.C.A. § 1412(a)(5) mandates that

[t]o the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

The law describes a continuum of placement options, ranging from mainstreaming in a regular public school as least restrictive to enrollment in a non-approved residential private school as most restrictive. 34 C.F.R. § 300.115 (2009); N.J.A.C. 6A:14-4.3. Federal regulations further require that placement must be “as close as possible to the child’s home.” 34 C.F.R. § 300.116(b)(3) (2009); see also N.J.A.C. 6A:14-4.2.

In this case, despite the fact that the parents did not sign any IEP presented to them by the District, it is undisputed that the parents and District were regularly engaged in ongoing communications and meetings related to R.C.’s special education and related services in Harrington Park. It is also undisputed that the parents and District actively participated in the IEP process prior to R.C.’s third birthday and then continued to participate in formalizing the IEP thereafter. Numerous instances were presented at hearing where the formalization of the IEP was delayed as a result of changes requested by the parents and responses provided by the District. The District offered testimony from professionals employed by the District and the Valley program, as to how R.C.’s program for the 2011-2012 school year was individually tailored to R.C.’s unique needs and that she was making meaningful educational progress throughout the year. The documentary evidence in the record, the periodic progress reports, and the detailed accounts of R.C.’s progress, referenced in the present levels section of the July 2012 IEP were not contradicted by any evidence presented by R.C.’s parents. Accordingly, I **CONCLUDE** that the District’s program for the 2011-2012 and 2012-2013 school years affords R.C. a FAPE as that term is defined by law and constitutes the appropriate placement in the least restrictive environment.

Having determined that the District provided and offered R.C. a FAPE, I need not reach the issue of whether the privately obtained educational services were appropriate.

ORDER

It is hereby **ORDERED** that the relief requested by petitioners be **DENIED** and their petition be **DISMISSED**.

This decision is final pursuant to 20 U.S.C.A. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2012) 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.A. § 1415(i)(2); 34 C.F.R. § 300.516 (2012). 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, 2014

DATE

IMRE KARASZEGI, JR., ALJ

12/17/14

Date Received at Agency

Date Mailed to Parties:

id

APPENDIX

LIST OF WITNESSES

For Petitioners:

Kathy Vuoncino
Kathryn Welte
Melanie Arnold
J.C.
Carol Fiorile
Lisa Corner
P.C.

For Respondent:

Robert Hertel

LIST OF EXHIBITS IN EVIDENCE

For Petitioner:

P-10 Meeting notice dated June 21, 2011
P-19 Conference verification document
P-33 Parent/Welte e-mails
P-36 Parent/Hertel e-mails
P-38 Parent to Perez e-mail (April 18, 2012)
P-40 Hertel to parent letter dated May 14, 2012
P-60 Invoice of Carol Fiorile (June 19, 2012)
P-62 Speech progress report (January 14, 2013)
P-65 Invoices of Goddard School (September – December 2012)
P-66 Progress report, daily log, work samples (Goddard School)
P-68 Letter of acceptance – Therapeutic Nursery
P-72 Home program progress reports
P-73 Home program report

P-74 Home program report

For Respondent:

- R-1 Eligibility conference report dated June 30, 2011
- R-2 Comprehensive report of R.C.
- R-4 Social history dated May 1, 2011
- R-5 The Child Center developmental status report, dated June 6, 2011
- R-6 Speech/language evaluation of Bosin/Abrams dated June 9, 2011
- R-7 Physical therapy report of Rosenbloom dated May 23, 2011
- R-8 The Child Center progress update/speech and language (May 2011)
- R-9 Batelle developmental inventory
- R-10 HUMC developmental pediatric study, dated June 2, 2010
- R-11 Behavioral consultation report of Taylor dated May 22, 2010
- R-12 Valley progress report dated October 10, 2011
- R-13 IEP dated July 17, 2012
- R-14 IEP dated October 14, 2011
- R-15 IEP dated July 19, 2011
- R-16 Letter from Hertel to parents forwarding A. Holmes consultation report
- R-17 Letter from Hertel to parents dated July 26, 2012
- R-18 Conference participation sheet dated July 17, 2012
- R-19 Conference verification dated July 17, 2012
- R-20 Letter from R. Watson to Hertel dated July 3, 2012
- R-21 Letter from Hertel to parents dated June 13, 2012
- R-22 Letter from Hertel to parents dated June 13, 2012
- R-23 Letter from Hertel to parents dated May 31, 2012
- R-24 Letter from Hertel to parents dated May 25, 2012
- R-25 Letter from R. Watson to Hertel dated May 18, 2012
- R-26 Letter from Hertel to parents dated May 14, 2012
- R-27 Memo from Hertel to M. Wichman dated May 2, 2012
- R-28 Letter from Hertel to parents dated April 16, 2012
- R-29 Conference verification dated March 28, 2012
- R-30 Conference participation sheet dated March 28, 2012
- R-31 Memo from Hertel to M. Welte dated March 28, 2012

- R-32 E-mail from R. Watson to Hertel dated March 27, 2012
- R-33 Letter from Hertel to parents dated March 14, 2012
- R-34 Letter from R. Watson to Hertel dated March 12, 2012
- R-35 Letter from parents to Hertel dated March 12, 2012
- R-36 Letter from Hertel to parents dated March 6, 2012
- R-37 Annual measurable goals/home: behavior
- R-38 Conference verification dated February 15, 2012
- R-39 Conference participation sheet dated February 15, 2012
- R-40 Home programming/parent training memo
- R-41 Valley progress report dated January 2012
- R-42 E-mail from J.C. to Kathy Vuoncino dated July 30, 2012
- R-43 E-mail from J.C. to M. Perez dated June 6, 2012
- R-44 ABLLS-R Protocol
- R-45 Valley program cover sheet 2011-2012
- R-46 Data
- R-47 Valley tracking sheet/zipping
- R-48 Valley mastered programs 2011-2012
- R-49 Play data (5/12-6/12)
- R-50 Valley home consultation report dated September 14, 2011
- R-51 Valley consultation report of S. Gadaletz dated October 21, 2011
- R-52 Data 2011-2012
- R-53 Data 2011-2012
- R-54 Inclusion data
- R-55 Data
- R-56 E-mails regarding speech
- R-57 Daily data
- R-58 M. Arnold e-mails
- R-59 M. Madden-Perez e-mails
- R-60 A. Amy e-mails
- R-61 K. Vuoncino e-mails