



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. EDS 03586-23

AGENCY DKT. NO. 2023-35626

P.I. AND S.I. ON BEHALF OF E.I.,

Petitioners,

v.

HUNTERDON CENTRAL REGIONAL

BOARD OF EDUCATION,

Respondent.

Michelle M. Schott, Esq., for petitioners (Flanagan, Barone & O'Brien, LLC,
attorneys)

Robin S. Ballard, Esq., for respondent (Schenk, Price, Smith and King, LLP,
attorneys)

Record Closed: October 3, 2023

Decided: October 18, 2023

BEFORE **JEFFREY N. RABIN**, ALJ:

STATEMENT OF THE CASE

Petitioners filed a pro se petition for due process in this matter on or about March 16, 2023, challenging the appropriateness of the determination by the Hunterdon Central Regional High School (Hunterdon or District) that E.I. would fulfill graduation criteria by

June 2023, and seeking educational services through the age of twenty-one and removal of the behavior intervention plan from E.I.'s Individualized Educational Program (IEP).

PROCEDURAL HISTORY

The parties participated in mediation on April 17, 2023, but did not reach a resolution. The Office of Special Education (OSE) transmitted petitioners' claim to the Office of Administrative Law, where it was filed on April 28, 2023, as a contested matter. N.J.S.A. 52:14B-1 to N.J.S.A. 52:14B-15; N.J.S.A. 52:14F-1 to N.J.S.A. 52:14F-13.

A settlement conference was conducted on May 2, 2023, by the Honorable Evelyn J. Marose, which did not result in a settlement, and the matter was assigned to me for a due process hearing. On or about May 5, 2023, petitioners obtained legal counsel and filed a Motion to Amend the Petition for Due Process (Motion to Amend), which was denied by this court on June 30, 2023. E.I. reached the age of eighteen on May 3, 2023, and on May 30, 2023, executed a letter authorizing her parents to continue acting on her behalf in the within matter.

A petition for emergent relief was filed but was withdrawn by petitioners on May 31, 2023. A hearing was held on July 18, 2023. Briefs were submitted on September 22, 2023, and the record was closed.

FACTUAL DISCUSSION

Testimony

For respondent

Erica Walker was employed by Hunterdon Central Regional High School. She was a member of Child Study Teams (CST), and was a learning disability teaching consultant, working with social workers and psychologists. She had been a general

education teacher and had a master's degree in special education. She was admitted as an expert in learning and special education.

Walker met E.I. in September 2019 at Hunterdon Central. She was qualified for special education as "ERI" (emotional regulation). For grades nine through twelve, E.I. required a therapeutic school environment, with small classes and counseling, to help navigate her emotions. Walker was E.I.'s case manager. When E.I. was fourteen, she was on course to graduate in four years. E.I. wanted to get a job where she could help people or continue her education through a two- or four-year school. There was an email from Walker to Marianne Myers dated April 24, 2023, regarding E.I.'s wishes. (Exhibit R-13.) That was an attainable goal. E.I.'s freshman IEP contained a transition plan. It included extracurricular activities, such as participating on the track and field team, as well as community participation. E.I. was to sign up for the Division of Vocational Rehabilitation Services (DVRS), a State agency providing services for those with disabilities. DVRS helped with career and college planning, job coaching, work-based learning and training in self-advocacy.

R-17 was an email from Dr. Webb to S.I. clarifying the difference between a vocational assessment and a transitional plan. Webb suggested some helpful organizations and discussed E.I.'s strengths. Walker offered to help with E.I.'s transitional plan but then petitioners stopped participating. R-7 was a PowerPoint presentation regarding DVRS and a copy of an application form. Walker emailed petitioners on February 10, 2023, regarding the DVRS application (Exhibit R-10). Petitioners never completed the DVRS application, and never set up an appointment regarding DVRS.

Petitioners moved E.I. out-of-state, but returned her to New Jersey, and Walker wanted Care Management Organization (CMO) services reinstated, but petitioners failed to have them reinstated.

R-16 was Walker's email to petitioners dated June 5, 2023, summarizing E.I.'s performance.

Supports were available to graduated students through DVRS which would have been available to E.I., such as counseling, college application preparation, employment help, job sampling and "interest inventories" to narrow one's interests. But petitioners failed to avail themselves of these. Petitioners have not accessed any transition services, had never challenged E.I.'s transition plans, and prior to the last school year and through eleventh and twelfth grades, never questioned E.I.'s transition plan.

Petitioner S.I. emailed Walker on August 3, 2022 (Exhibit R-31), looking to figure out E.I.'s plan once she returned from a residential group in South Jersey. S.I. inquired as to whether E.I. was on track to graduate high school, or whether a new school was required. Petitioners wanted E.I. to graduate in June 2023. She also stated that E.I. could not return to East Mountain School because of a sordid media incident. Walker responded that E.I. was on track to graduate high school. Walker then met with Ms. Kelly to ensure that E.I. was on track to graduate. However, at the beginning of 2023, petitioners indicated to Walker that they did not want her to graduate in June 2023, but rather wanted her to stay in high school until she turned twenty-one.

Exhibit R-1 was E.I.'s IEP for the 2022-2023 school year at Hampton Academy, dated June 13, 2022. It included special education classes, counseling services, and a behavioral intervention plan to help monitor E.I.'s progress in light of her emotional issues. Walker opined that E.I. definitely required a behavioral intervention plan. On September 27, 2022, S.I. emailed Walker to ask why a behavioral plan was in the IEP. (R-27.) Walker responded that there had been a behavioral plan in her IEP since 2021.

There had been a CST meeting in October 2022 to review an educational evaluation performed by Walker and a psychological evaluation by the school's psychology team; the school agreed to do reevaluations the following school year so they would be current for colleges, and this was set out in the IEP. S.I. sent her own list of evaluations she wanted performed (R-3) but the CST did not agree that these were

necessary for a student who demonstrated average abilities and was on track for college or work. No vocational assessment was required because that would be for a low-cognitive student (one with cognitive impairments) who would never live independently and would need supports for life (for instance, how to fold laundry), which was not E.I.'s situation.

The most recent psychological evaluation (R-5) indicated E.I. was in the "low average to average range." Walker's educational assessment (R-4) found E.I.'s reading level average to high average, her mathematics skills were low average, and her written language skills were average. While petitioners raised issues regarding dyslexia, Walker administered the Woodcock-Johnson battery of tests and concluded there was no indication of dyslexia.

R-6 was the December 2022 IEP created after the evaluations were completed, which indicated that E.I. remained eligible for special education as "emotionally regulation impairment" (ERI), meaning the student's academic progress was affected by the student's emotional issues. Despite being classified as ERI, E.I. was still on track for college or work. R-6 showed a transition plan and goals, which included pre-employment transition services. Walker opined that the IEPs were appropriate for E.I.

E.I. was in treatment at the Center For Discovery two times and at Gen Psych (for bulimia), and Walker had spoken with Gen Psych regarding E.I. graduating. While at Gen Psych, E.I. continued receiving services from respondent, through Silvergate Prep. While at Gen Psych, both Walker and Silvergate sent weekly progress reports to petitioners. Walker had informal discussions with E.I.'s therapists to help plan E.I.'s transition. On April 24, 2023, Walker emailed Gen Psych regarding E.I.'s post-high school options. (R-13.) Marianne Myers at Gen Psych (E.I.'s primary therapist) recommended that, from a psychological point of view, it would be beneficial for E.I. to graduate in spring 2023. (R-12.) E.I. had achieved the 120 credits required to get a New Jersey high school diploma. E.I. had 139 credits, and met the Five-Year Plan designed for her. (R-20.) A Notice of Graduation was sent to petitioners and E.I. dated June 5, 2023. (P-13.) A Summary of Performance meeting was held for E.I. The resulting report was not signed by petitioners and respondent did not accept petitioners' addendum to the Summary of Performance

Report. That Report found that graduation was appropriate for E.I., no additional education was required for E.I. for her to seek employment, and that respondent had provided a FAPE.

E.I. was interested in a career in psychology. In October 2022 Walker discussed educational requirements with E.I. for a career in psychology. Walker sent E.I. and petitioners information on college entry application programs at the beginning of E.I.'s senior year in high school and again in June 2023. Students typically meet with their guidance counselor to discuss their areas of interest. E.I. was twice invited to meet with her guidance counselor. E.I.'s IQ was 86, low average, and it was a reasonably achievable goal for her to go into the field of psychology. Barbara Peters, a teacher at Hampton Academy, performed tests on E.I. on June 13, 2022, but Walker could not vouch for Peters' tests and did not consider those results when deciding that a career in psychology was a reasonable career goal. The October 26, 2022, IEP (R-6) showed that E.I. had scored average on the majority of the test clusters, but those subtests were not predictive of how a person would perform in school or at a job.

E.I. was prepared to go into the world of employment. E.I. had generalized anxiety and needed coping skills and strategies, such as taking breaks and talking with a counselor, all of which were covered in her IEP. E.I. mastered the recommended coping skills. Such skills and strategies can be transferred to a workplace through a 504 Plan. E.I. currently had no 504 Plan, because she had an IEP, and a person can have either one or the other.

E.I. received 2.5 credits for studying consumer math, which provided financial literacy. E.I. received credits for a career course at Hampton Academy.

Dr. Carol Webb had been the Director of Special Services at Hunterdon Central Regional High School for eight years and had thirteen years' experience in special education. She had a B.A. and M.A. in special education, was a former special education teacher and CST member. She currently oversaw the special education department covering special education and transition programming. She was accepted as an expert in special education, supervision and transition.

Webb had known of E.I. since ninth grade and was familiar with her educational programming. E.I. was average in all categories and had social-emotional needs. E.I. had been at Hampton Academy during the 2022-2023 school year. Hampton offered academic and social/emotional and transitional programming. Transition programming was different for each student. E.I. needed supports to access her academics. E.I.'s classification had changed to ERI due to her social/emotional issues.

E.I.'s goals were a career in psychology or criminal psychology. An average student like E.I. needed therapeutic programming to help them address social/emotional needs. E.I.'s grades in high school were very good; she passed her classes or retaken anything she did not pass the first time. E.I. met the requirements for a New Jersey high school diploma. E.I.'s IEP meetings focused on E.I.'s graduation. E.I.'s graduation requirements were the same as for other students. E.I. would probably need ongoing emotional supports in the future (because mental health was an ongoing process), but she was now ready for the next stage of her life and did not need additional academics. As of December 2022, nobody had questioned E.I.'s ability to graduate in June 2023. Petitioners were the only people who had suggested that E.I. might need to stay in high school longer.

Webb testified that students with disabilities did not often go to school until age twenty-one. Students with IQs of 60 and under would usually require sheltered living and work. Those students that stayed in high school until age twenty-one would go into the community four days per week and learn how to file, shred paper, and use stickers, for example, and then on the fifth day would discuss what they learned in the community.

The issue for any student was whether they met the graduation requirements. E.I. met the qualifications for graduation. There were services available after high school graduation, such as DVRS. Colleges had student support centers, such as mental health centers, whether that person had a 504 Plan or not.

E.I. did not need to remain in school until age twenty-one. She was capable of going to college or into the workforce. She made meaningful educational progress. She

had a normal IQ. E.I. received appropriate transition services, from both respondent and Hampton. E.I. was interested in having a career and had the cognitive abilities to move on with her life.

For home instruction when E.I. was at Center For Discovery, respondent used and oversaw Learning Center or Silvergate programs. The facility assigned a tutor to administer the home instruction. When E.I. was at Hampton, respondent provided the educational materials to be administered by a tutor and Hampton staff.

Respondent offered to have E.I. meet with respondent and E.I.'s teachers but petitioners refused.

At Center For Discovery, respondent focused on graduation requirements, such as English and math. A course in consumer math was completed in E.I.'s first two semesters at Hampton.

A transition program meant for low IQ students was not right for E.I. and would do harm to an average student like E.I. E.I.'s cognitive abilities were too great to benefit from those transition programs, which was why respondent denied petitioners' request for a transition assessment in the fall 2022.

Webb never met with E.I., but therapists and Walker, both told her that E.I. was interested in psychology. The IEPs dated December 6, 2022 (R-6), June 13, 2022 (R-1) and March 22, 2021 (P-8), all indicated that E.I. had an interest in psychology. Hampton reported to Webb that they had structured conversations with E.I. about her needs.

For petitioners

Student **E.I.** testified. She had an interest in a career in criminal psychology and testified that to have that she would need police training or to go to college; she later testified that nobody ever told her she would need a college degree. She discussed psychology at Hampton Academy with Ms. Clark and social worker Ms. Anabel, but neither told her how to have a career in psychology; she later testified that she did discuss

career goals with Ms. Clark. She had a career class with Ms. Clark at Hampton. She left Hampton and then went to Center For Discovery. E.I. testified that Ms. Walker at Hunterdon Central discussed post-high school goals with her.

E.I. would like additional schooling so she can learn how to write a resume and fill out a job application. She then testified that she did not know if she wanted to go to college and that she did not want to get a job. E.I. had been copied on emails where her mother S.I. refused to bring her in for transition services. (R-17.)

She testified that she was never given techniques for dealing with anxiety, although she later testified that when she was anxious, she would go to a sensory room or read a book or take a walk.

S.I., petitioner and mother of E.I., testified. She was not admitted as an expert in education or medicine, but she testified that E.I. had been diagnosed as bipolar, and with generalized anxiety, attention deficit disorder (ADD), bulimia and dyslexia; this contradicted Ms. Walker who told S.I. that E.I. did not have dyslexia. E.I. never physically attended Hunterdon Central, rather she was given an out-of-district placement at Hampton Academy. During her senior year of high school she lived at Peteroso Community House, then in January 2023 she was at Center For Discovery, for a one-month period to deal with her bulimia. While there she was given the Silvergate educational program. Then E.I. went to Gen Psych starting on February 27, 2023, a “stepdown” program for eating disorders (not an educational program). After that E.I. went to Hampton.

Silvergate did not provide direct instruction, although that was available via Zoom. But S.I. declined direct instruction to be supplied by two Hunterdon teachers via Zoom, testifying that Zoom or virtual instruction would not be good for E.I. due to her ADD, fearing she would fall asleep, based on how she did during Covid.

S.I. never received any “IEP Progress Reports” during E.I.’s sophomore, junior or senior years in high school, although she did receive a progress report from Hampton

during E.I.'s senior year. (R-19.) No transition assessments were performed, and she told respondent that she was concerned about that.

DVRS information was sent to petitioners for the first time on February 10, 2023 (P-20), and at that time Ms. Walker gave S.I. a DVRS application and told S.I. all about DVRS and how it covered resume skills, job interview skills, letter writing, and internships; however, S.I. never called the contact number nor filed an application for DVRS.

On page 9 of the March 22, 2021, IEP (P-8), under "Statement of Needed Interagency Linkages and Responsibilities," it was written "N/A." S.I. was present when "N/A" was written and speculated that E.I. had no need of agencies to help her join the workforce or go to college. Despite refusing DVRS, S.I. testified that E.I. received no pre-employment services such as job exploration counseling. Although S.I. was involved with creating E.I.'s IEPs, when discussing the June 13, 2022, IEP (R-1), she stated that this was the first time she ever saw a requirement for "pre-employment services" in one of E.I.'s IEPs.

Further, by email dated June 9, 2023, S.I. refused to have E.I. attend a meeting scheduled for June 15, 2023, which would have provided 1.5 hours of resume help, claiming E.I. did not have the skills to take that class, although the class was the place for her to learn those skills. (R-17.)

E.I. was able to have normal conversations but sometimes cried. Sometimes E.I. would have a "rough week." S.I. would email Hampton or Walker when that happened, and they would provide her with emotional progress reports.

Per the June 13, 2022, IEP (R-1), "Academic Achievement and Function," E.I. still struggled with even the simplest mathematics. S.I. was at this IEP meeting in 2022, and even though it stated that "employment/career issues were to be discussed in the future," S.I. said she objected, feeling like E.I. needed career help at that time. Later, however, S.I. testified that she was not at that IEP meeting, therefore she was wrong to testify that she had raised an objection. Perhaps she mailed in some objections to respondent, but

there were no such exhibits offered, and no documentation was provided to indicate that S.I. ever requested job or transition assessments.

In her opinion, respondent did not prepare E.I. for graduation, employment or college, nor helped her with living skills, and therefore S.I. wanted two more years of high school for E.I.

Although testifying that she was involved with the creation of E.I.'s IEPs, S.I. had issues recalling whether she was present at the March 22, 2021, IEP meeting, stating, "My memory is very bad." She testified that she thought she was at the March 22, 2021, IEP meeting, but P-8, page 0072, indicated that S.I. was not present at that meeting. She reiterated later that her memory was very bad and stated that she was seeing a doctor to help with her memory.

Despite testifying that the March 22, 2021, IEP (P-8) did not call for interagency linkages, she later testified that P-8 did state that E.I. needed a linkage to DVRS.

In S.I.'s opinion, for E.I. to graduate high school she needed to meet the graduation credit requirements, be able to perform simple math, and have career classes. Yet "career classes" were not listed as graduation requirements in the December 8, 2022, IEP (R-6), and there were no documented complaints from S.I. regarding career or transitions until E.I.'s senior year second semester. Conversely, S.I. sent an email to Ms. Walker on August 3, 2022, confirming that E.I. was to graduate in June 2023, (R-31), and on August 14, 2022, stating that graduating in 2023 was important to E.I. (R-30.) It was just after those emails that S.I. began thinking that E.I. might need additional high school, and on September 2, 2022, she sent a letter requesting one additional year of high school, to which Dr. Webb responded that such a request was premature at that time. (R-2.) On January 17, 2023, it was confirmed to S.I. that E.I. would get a cap and gown for graduation in June 2023 (R-26), and on January 23, 2023, S.I. received a Notice of Graduation and Performance Summary. (R-28.) Additionally, Dr. Webb confirmed to S.I. on March 8, 2023, that E.I. was on track for graduating in June 2023, and offered help to pick colleges or perform a career "interest inventory." (R-26.)

E.I. had average scores in mathematics and was “good at applying consumer math concepts.”

Credibility

In evaluating evidence, it is necessary to assess the credibility of the witnesses. Credibility is the value that a finder of the facts gives to a witness’s testimony. It requires an overall assessment of the witness’s story in light of its rationality or internal consistency and the manner in which it “hangs together” with the other evidence. Carbo v. United States, 314 F.2d 718, 749 (9th Cir. 1963). “Testimony to be believed must not only proceed from the mouth of a credible witness but must be credible in itself,” in that “[i]t must be such as the common experience and observation of mankind can approve as probable in the circumstances.” In re Perrone, 5 N.J. 514, 522 (1950).

A fact finder “is free to weigh the evidence and to reject the testimony of a witness . . . when it is contrary to circumstances given in evidence or contains inherent improbabilities or contradictions which alone or in connection with other circumstances in evidence excite suspicion as to its truth.” Id. at 521–22; see D’Amato by McPherson v. D’Amato, 305 N.J. Super. 109, 115 (App. Div. 1997). A trier of fact may also reject testimony as “inherently incredible” when “it is inconsistent with other testimony or with common experience” or “overborne” by the testimony of other witnesses. Congleton v. Pura-Tex Stone Corp., 53 N.J. Super. 282, 287 (App. Div. 1958).

Further, “[t]he interest, motive, bias, or prejudice of a witness may affect his credibility and justify the [trier of fact], whose province it is to pass upon the credibility of an interested witness, in disbelieving his testimony.” State v. Salimone, 19 N.J. Super. 600, 608 (App. Div.), certif. denied, 10 N.J. 316 (1952) (citation omitted). The choice of rejecting the testimony of a witness, in whole or in part, rests with the trier and finder of the facts and must simply be a reasonable one. Renan Realty Corp. v. Dep’t of Cmty. Affairs, 182 N.J. Super. 415, 421 (App. Div. 1981).

For respondent

Erica Walker was admitted as an expert in learning and special education. She testified in a clear, knowledgeable manner. She was well-prepared and appeared to have a great deal of personal knowledge of E.I.'s case. She displayed an excellent recollection and had great familiarity with available services. She was familiar with all the correspondence she was questioned about. She remained calm on cross-examination despite dealing with a series of fairly confusing questions. I found her to be a highly credible witness.

Dr. Carol Webb was accepted as an expert in special education, supervision and transition. She was very experienced in special education and displayed great familiarity with State standards. She appeared well-prepared, despite some of her responses seeming dress-rehearsed. She was more of an administrator than a hands-on academic. She handled cross-examination calmly and remained confident in her opinions. She was a credible witness.

For petitioners

Petitioners opted not to present any expert witnesses, instead relying on the lay testimony of petitioner S.I. and daughter/student E.I.

E.I. had trouble remembering teachers' names and other facts and needed verbal cues from attorney Schott to help her provide answers during direct testimony. Schott herself stated that E.I. as a witness was not high functioning. E.I. often did not understand Schott's questions. She seemed unaware that people at Hunterdon Central were available to help her write a resume or complete a job application, despite being copied on some of the correspondence offering that help. I cannot give much weight to her testimony.

S.I. was student E.I.'s mother. While she had a good recollection of E.I.'s academic history, she was not employed in the field of education, and was not an expert in either education or medicine, despite offering opinions on both fields. For example,

she testified that E.I. had been diagnosed with dyslexia, yet this contradicted Ms. Walker who had tested E.I. and informed S.I. that E.I. did not have dyslexia.

S.I. testified that she never received any “IEP Progress Reports” during E.I.’s sophomore, junior or senior years in high school, despite receiving a progress report from Hampton during E.I.’s senior year (R-19) and receiving emotional progress reports from both Hampton and Ms. Walker. She testified that respondent offered no services regarding post-high school preparation, yet DVRS information was sent to petitioners on February 10, 2023, and she was informed that DVRS addressed resume skills, job interview skills, letter writing, and internships.

S.I. initially testified that she was at the June 13, 2022, IEP meeting and objected to the CST writing into the IEP that employment/career issues were to be discussed in the future, yet S.I. later testified that she was not at that IEP meeting. She then testified that she must have mailed in her objections to respondent, but there was no such exhibit offered.

Although testifying that she was involved with the creation of E.I.’s IEPs, S.I. had problems recalling whether she was present at the March 22, 2021, IEP meeting, stating, “My memory is very bad.” She testified that she thought she was at the March 22, 2021, IEP meeting, but P-8, page 0072, indicated that S.I. was not present at that meeting. She reiterated later that her memory was very bad and stated that she was seeing a doctor to help with her memory. Considering these statements and contradictions, I did not find her lay testimony persuasive.

Accordingly, after carefully considering the testimonial and documentary evidence presented, I **FIND** the following to be the relevant and credible **FACTS**:

Student E.I. was born on May 3, 2005, and was considered a resident of Flemington in the Flemington Public School District; E.I. had been diagnosed with Generalized Anxiety Disorder and Attention Deficit Hyperactivity Disorder (ADHD), and as a result, had been classified through the Individuals with Disabilities Education Act

(IDEA) as eligible for special education and related services by the Flemington Public School District.

Erica Walker was E.I.'s case manager starting in ninth grade; pursuant to her IEPs, E.I. attended out-of-district high schools; for grades nine through twelve, E.I. required a therapeutic school environment, with small classes and counseling, to help navigate her emotions and help her learn; when E.I. was fourteen, she was on course to graduate high school in four years; E.I. wanted to get a job where she could help people, or continue her education through a two- or four-year school, which was an attainable goal; E.I.'s freshman IEP contained a transition plan, which included extracurricular activities, community participation and being on the track and field team; Dr. Webb and Ms. Walker communicated with petitioners regarding transitions plans; Ms. Walker offered to help with E.I.'s transitional plan but then petitioners stopped participating with the school's process; respondent recommended that E.I. apply for the Division of Vocational Rehabilitation Services (DVRS), a State agency which provided career and college planning, job coaching, work-based learning and training in self-advocacy; Walker emailed petitioners on February 10, 2023, regarding the DVRS application, but petitioners never completed the DVRS application, and never set up an appointment regarding DVRS; petitioners had not accessed any transition services, never challenged E.I.'s transition plans, and prior to the last school year and through eleventh and twelfth grades, never questioned E.I.'s transition plan.

On August 3, 2022, petitioner S.I. contacted respondent to make sure that E.I. was on track to graduate high school in June 2023; Walker responded that E.I. was on track to graduate high school in June 2023; however, at the start of the 2022-2023 school year, petitioners told Ms. Walker that they no longer wanted E.I. to graduate in June 2023, but rather they wanted her to remain in high school until she turned twenty-one.

E.I.'s IEP for the 2022-2023 school year at Hampton Academy, dated June 13, 2022, included special education classes, counseling services, and a behavioral intervention plan which was required to help monitor E.I.'s progress in light of her emotional issues; there had been a behavioral plan in E.I.'s IEPs since 2021; there had been a CST meeting in October 2022 to review an educational evaluation performed by

Walker and a psychological evaluation by the school's psychology team; the school agreed to do reevaluations the following school year so they would be current for colleges, and this was set out in the IEP; petitioners subsequently requested that E.I. receive a vocational assessment, but the CST did not agree that this was necessary for a student who demonstrated average abilities and was on track for college or work; vocational assessments were required for low IQ, low-cognitive students who would never live independently and would need supports for the rest of their lives, which was not E.I.'s situation; a transition program meant for low IQ students was not right for E.I. and would do harm to an average student like E.I.; the most recent psychological evaluation (R-5) indicated that E.I. was in the "low average to average range;" E.I.'s reading level was average to high average, her mathematics skills were low average, and her written language skills were average; the Woodcock-Johnson battery of tests indicated that E.I. did not have dyslexia.

The December 2022 IEP created after the evaluations were completed indicated that E.I. remained eligible for special education as "emotionally regulation impairment" (ERI), meaning the student's academic progress was affected by her emotional issues; despite being classified as ERI, E.I. was still on track for college or work; the December 2022 IEP contained a transition plan and goals, which included pre-employment transition services; petitioners subsequently indicated their desire to remove E.I. from her group home and asked respondent to locate another out-of-district placement for her closer to home; the District undertook a search and identified New Dawn Academy as an appropriate placement for E.I., but petitioners disagreed with the proposed placement and filed the within petition.

E.I. was in treatment at the Center For Discovery two times and at Gen Psych (for bulimia); at Gen Psych, E.I. continued receiving services from respondent, through Silvergate Prep; both Walker and Silvergate sent weekly progress reports to petitioners; Marianne Myers at Gen Psych (E.I.'s primary therapist) recommended that, from a psychological point of view, it would be beneficial for E.I. to graduate in spring 2023; E.I. received good grades in high school and had surpassed the 120 credits required to get a New Jersey high school diploma; E.I. earned 161.25 credits, and had a grade point average of 3.24; a Notice of Graduation was sent to petitioners and E.I. dated June 5,

2023; a Summary of Performance Report found that graduation was appropriate for E.I., no additional education was required for E.I. to seek employment, and that respondent had provided a FAPE.

E.I. was interested in a career in psychology or criminal psychology, and in October 2022 Walker discussed educational requirements with E.I. for a career in psychology; Walker sent E.I. and petitioners information on college entry application programs at the beginning of E.I.'s senior year in high school and again in June 2023; students typically meet with their guidance counselor to discuss their areas of interest, and E.I. was twice invited to meet with her guidance counselor, but petitioners declined these opportunities; E.I.'s IQ was 86, which was low average, and it was a reasonably achievable goal for her to go into the field of psychology; E.I. was prepared to go into the world of employment; E.I. had generalized anxiety and needed coping skills and strategies, such as taking breaks and talking with a counselor, all of which were covered in her IEP; E.I. mastered the recommended coping skills; E.I. received 2.5 credits for studying consumer math, which provides financial literacy, and credits for a career course at Hampton Academy.

Students with disabilities do not typically go to school until age twenty-one; students with IQs of 60 and under would require sheltered living and work; those students that remained in high school until twenty-one typically would go into the community four days per week and learn how to file, shred paper, and use stickers, and then on the fifth day discuss what they learned in the community; Dr. Webb opined that E.I. did not need to remain in school until age twenty-one, and was capable of going to college or into the workforce.

LEGAL ANALYSIS

The issue is whether respondent met its burden of proving by a preponderance of the credible evidence that it had provided a free and appropriate public education (FAPE) and had properly determined that E.I. had fulfilled the criteria to graduate in June 2023 and did not need to remain in high school through age twenty-one.

When considering FAPE, the starting point is the Individuals with Disabilities Education Act (IDEA). The IDEA was enacted to assist states in educating disabled children. It requires states receiving federal funding under the Act, such as New Jersey, to have a policy in place that ensures that local school districts provide disabled students with a FAPE designed to meet their unique needs. See 20 U.S.C. § 1412; N.J. Const. art. VIII, IV, 1; N.J.S.A. 18A:46-8; N.J.A.C. 6A:14-1.1 et seq., Hendrick Hudson Cent. Dist. Bd. of Educ. v. Rowley, 458 U.S. 176 (1982). State regulations track this requirement that a local school district must provide a FAPE as that standard is set under the IDEA. N.J.A.C. 6A:14-1.1. 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. § 1401(9).

“Appropriate,” in terms of an appropriate public education, had not been specifically defined by Congress. In the oft-cited case of Endrew F. v. Douglas Cty. Sch. Dist., 137 S.Ct. 988 (2017), the United States Supreme Court interpreted an appropriate public education as one that was “reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” Endrew F., 137 S.Ct. at 1001. Respondent was correct to state that in the Third Circuit, the precedent was that the IDEA required a student to be afforded meaningful educational benefit. Dunn v. Downingtown Area Sch. Dist., 904 F.3d 248, 254 (3rd. Cir 2018). It is noted that under the IDEA, “the obligation to make FAPE available . . . does not apply with respect to . . . [c]hildren with disabilities who have graduated from high school with a regular high school diploma.” 34 C.F.R. § 300.102(a)(3)(i).

As to the “meaningful benefit” standard, an IEP was deemed appropriate when it was designed to provide significant learning and confer a meaningful benefit upon the student, in light of the student’s circumstances and potential, and was provided in the

least restrictive environment (“LRE”). Ridgewood v. N.E., at 248; Forest Grove Sch. Dist. v. T.A., 129 S.Ct. 2484 (2009). “Meaningful” would therefore require one to examine the benefits compared with the child’s potential and specific challenges. The Rowley court looked at a disabled child’s achievement to a “reasonable degree of self-sufficiency” in determining whether an IEP offered an appropriate education. Rowley, 458 U.S. at 201.

In the within case, E.I. received meaningful benefit from the services in her IEPs and from the services provided by respondent. While she had challenges stemming from emotional issues, the IEP behavioral modifications addressed E.I.’s specific challenges and allowed her to maximize her potential and educational opportunities. She was taught coping skills, which she regularly employed, such as taking breaks and talking with a counselor, all of which were covered in her IEP. As a result, she accumulated more than the required number of credits to graduate in June 2023. She completed graduation requirements set forth for all students in the State and mastered all of her IEP goals and objectives. Respondent prepared E.I. for post-high school life: E.I.’s freshman IEP contained a transition plan, and Dr. Webb and Ms. Walker communicated with petitioners regarding transition plans. Respondent set E.I. up for DVRS, which would have provided career and college planning, job coaching, work-based learning and training in self-advocacy, if petitioners had availed themselves of this opportunity. Ms. Walker discussed educational requirements with E.I. for a career in psychology and sent E.I. and petitioners information on college entry application programs at the beginning of E.I.’s senior year in high school and again in June 2023. E.I. was given the opportunity to meet with her guidance counselor to discuss her areas of interest, although petitioners declined those opportunities. E.I. received 2.5 credits for studying consumer math, which provided financial literacy, and credits for a career course at Hampton Academy. As far judging meaningful benefit in terms of E.I.’s levels of success, E.I. had a grade point average of 3.24, her reading level was average to high average, her mathematics skills were low average, and her written language skills were average.

Based on these facts, I **CONCLUDE** that respondent provided an appropriate public education, one that provided E.I. with meaningful educational benefit. Accordingly, I **CONCLUDE** that respondent provided a FAPE to E.I.

Having provided E.I. with a FAPE, and E.I.'s high school career having always been based on her graduating on time and either finding employment or going on to a two- or four-year college, graduation in June 2023 would be the appropriate ending to E.I.'s high school education. E.I. met graduation criteria as of June 2023. E.I. was appropriately educated; she earned 161.25 credits (surpassing the 120-credit requirement), with a grade point average of 3.24. The most recent psychological evaluation indicated that she was in the low average to average range. Again, E.I.'s reading level was average to high average, her mathematics skills were low average, and her written language skills were average. The Woodcock-Johnson battery of tests led to the conclusion that E.I. did not have dyslexia. Additionally, a Summary of Performance Report found that graduation was appropriate for E.I. As indicated herein, E.I. had been provided transition information, although petitioners eschewed such assistance.

The minimum standard set out by the IDEA for adequate transition services is a somewhat low standard, focusing on whether opportunities had been created for a disabled student to pursue independent living and a career, as set forth by the ALJ in K.M. and T.M. o/b/o R.M. v. Keyport Bd. of Educ., OAL Dkt. No. EDS 10269-14 (Dec. 5, 2015). In finding that the district was no longer obligated to provide further educational services to the student, in a case with a fact pattern similar to the within matter, the judge in K.M. noted that the district had provided the student with information on community college, assistance in completing job applications, and was provided access to vocational-inventory websites. The within respondent also provided those same informational services. The student in K.M., like E.I., had also exceeded the State and local graduation requirements.

Petitioners offered no expert testimony and provided no evidence or caselaw support for their conclusion that graduation in June 2023 was inappropriate. In the summer of 2022, petitioners were still anxious for E.I. to graduate on time. While S.I. testified that she had raised objections to proposals from respondent about E.I.'s

transition at IEP meetings, she later acknowledged that she had not attended two of the three meetings at which she purportedly raised objections.

The crux of petitioners' case was that respondent failed to perform any formal transition assessments of E.I. However, respondent was clear that the vocational assessment specifically sought by petitioners was not appropriate for E.I.; such an assessment was not necessary for a student who demonstrated average abilities and was on track for college or work, but rather would be required for low IQ, low-cognitive students who would never live independently and would need supports for life, which was not E.I.'s situation. Instead, the expert testimony was that such an assessment would do harm to an average student like E.I.

Additionally, in contravention to petitioners' unfounded assertions, plans for E.I.'s transition to either post-high school education or employment had been set in motion: E.I.'s freshman IEP contained a transition plan, which included extracurricular activities, community participation and being on the track and field team. Both Dr. Webb and Ms. Walker communicated with petitioners regarding transitions plans for E.I. Ms. Walker offered to help with E.I.'s transitional plan until petitioners chose to stop participating. Further, respondent recommended that E.I. apply for DVRS, which would have provided career and college planning, job coaching, work-based learning and training in self-advocacy. Ms. Walker had emailed petitioners regarding the DVRS application, but petitioners never completed or submitted the DVRS application, and never set up an appointment to meet with DVRS personnel. Petitioners acknowledged that Ms. Walker met with E.I. to have discussions with her about her plans for the future, during an October 2022 evaluation, acknowledging that they had a discussion regarding what education would be required to work in psychology as well as E.I.'s goals for the future. That discussion was in addition to Ms. Walker and E.I. and petitioners all being together in at least one IEP meeting.

I **CONCLUDE** that E.I. met graduation criteria and should have graduated in June 2023, and that respondent is not responsible for providing additional public education to E.I.

ORDER

I hereby **ORDER** that respondent's determination that E.I. had received a FAPE and met graduation criteria and should have graduated in June 2023, is hereby **AFFIRMED**. I **ORDER** that petitioner's due process petition is hereby **DISMISSED**.

This decision is final pursuant to 20 U.S.C. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2022) 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 (2022). 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 18, 2023

DATE



JEFFREY N. RABIN, ALJ

Date Received at Agency

Date Mailed to Parties:

JNR/jm/mpb

APPENDIX
WITNESSES

For petitioners

E.I.

S.I.

For respondent

Erica Walker

Dr. Carol Webb

EXHIBITS

For petitioners

- P-1 Request for Mediation dated March 6, 2023
- P-2 Request for a Due Process Hearing dated March 16, 2023
- P-3 Letter converting March 6, 2023, Mediation Request to Due Process Hearing Request dated March 22, 2023
- P-4 Not admitted
- P-5 Email Webb to S.I. dated June 7, 2023
- P-6 IEP Meeting, May 22, 2019
- P-7 IEP Meeting, March 24, 2020
- P-8 IEP Meeting, March 22, 2021
- P-9 IEP Meeting, June 13, 2022
- P-10 IEP Meeting, December 8, 2022
- P-11 Email Erica Walker to S.I. dated April 4, 2023, and Email from Gen Psych dated February 24, 2023 (except pages 119-123, which were not admitted.)
- P-12 Authorization to Petitioners to Pursue All Due Process Petitions and Other Matters on Behalf of Daughter, dated May 26, 2023
- P-13 HCRHS Summary of Performance Notice with Notice of Graduation – Proposed Action, dated June 6, 2023
- P-14 HCRHS Summary of Performance with Hampton, dated June 5, 2023
- P-15 Letter of Treating Counselor Ingrid Hernandez, dated April 17, 2023

- P-16 District Confidential Educational Report, dated October 11, 2022
- P-17 District Psychological Reports, dated October 17, 21 and 25, 2022
- P-18 Not admitted
- P-19 Carol Webb Email regarding Dr. Mars' Report and Transition Skills, dated April 6, 2023
- P-20 Email from Walker to petitioners forwarding email of February 10, 2023, regarding DVRS Services, dated June 5, 2023
- P-21 Written Request to Walker for Release of Records, dated February 21, 2023, with March 1, 2023, Follow-up Email to Carol Webb
- P-22 Denial of the Request to Amend Petition, dated June 30, 2023
- P-23 Transition Plans for IEP Meeting, dated May 22, 2019
- P-24 Transition Plans for IEP Meeting, dated March 24, 2020
- P-25 Transition Plans for IEP Meeting, dated March 22, 2021
- P-26 Transition Plans for IEP Meeting, dated June 13, 2022
- P-27 Transition Plans for IEP Meeting, dated December 8, 2022
- P-28 Email from Webb to S.I., petitioners' December 10, 2022, Objections to December 8, 2022, IEP and Denial of Request for School Placement, dated June 30, 2023
- P-29 Email from Walker to S.I. Denying Request for Changes to December 8, 2022, IEP, dated January 4, 2023
- P-30 Unofficial Transcript – HCSD, Grades 9–12
- P-31 Report Card 9th Grade – Hunterdon Prep
- P-32 Email from Silvergate to petitioners regarding graduation, dated March 30, 2023

For respondent

- R-1 Individualized Education Plan (IEP) for E.I., dated June 13, 2022
- R-2 E-mail exchange between parent and Dr. Webb, dated September 6-7, 2022
- R-3 Parent agenda for evaluation planning meeting on September 12, 2022
- R-4 Educational Evaluation of E.I., dated October 11, 2022
- R-5 Psychological Evaluation of E.I., dated October 25, 2022
- R-6 Eligibility/IEP, dated December 8, 2022

- R-7 DVRS presentation provided to parents
- R-8 E-mail from Ms. Walker to parents, dated January 26, 2023
- R-9 E-mail from parent to Ms. Walker dated January 28, 2023, and response, dated January 31, 2023
- R-10 E-mail from Ms. Walker to parents, dated February 10, 2023, with DVRS information
- R-11 E-mail from Dr. Webb to parents, dated March 8, 2023
- R-12 E-mail exchange between parent and Marianne Myers, LSW, dated April 17-19, 2023
- R-13 E-mail exchange between Ms. Walker and Ms. Myers, dated April 20-24, 2023
- R-14 E-mail exchange between parent and District, dated May 9-10, 2023
- R-15 Summary of Performance, dated June 5, 2023
- R-16 E-mail from Ms. Walker to parents, dated June 5, 2023
- R-17 E-mail exchange between District and parents, June 6-9, 2023
- R-18 Report card for 2022-2023 school year
- R-19 Progress report for 2022-2023 school year
- R-20 Hunterdon Central Regional High School Four-Year Plan
- R-21 Final transcript
- R-22 E-mail between parent and Alex Ireland, dated February 9, 2022
- R-23 Resume of Dr. Carol A. Webb
- R-24 Resume of Erica Walker
- R-25 E-mail from parent, dated July 5, 2023
- R-26 E-mail from parent to Ms. Walker, dated January 17, 2023
- R-27 E-mail exchange between parent, Dr. Webb and Ms. Walker from September 2022
- R-28 E-mail from parent to Ms. Walker, dated January 23, 2023
- R-29 E-mail from parent to Ms. Walker, dated August 22, 2022
- R-30 E-mail from parent to Ms. Walker, dated August 14, 2022
- R-31 E-mail exchange between parent and Ms. Walker, August 2022