



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION GRANTING
PETITIONER'S MOTION FOR
SUMMARY DECISION IN PART

OAL DKT. NO. EDS 02130-2023

AGENCY DKT. NO. 2023-35329

D.P. and M.P. ON BEHALF OF Z.P.,

Petitioners,

v.

ENGLEWOOD CITY BOARD OF EDUCATION,

Respondent.

R. Scott Eveland, Esq. for petitioner (Inglesino, Webster,
Wyciskala & Taylor, LLC)

Micheal I. Inzelbuch, Esq. for respondent (Law Office of
Michael I. Inzelbuch, Esq.)

Record Closed: September 5, 2023

Decided: November 14, 2023

BEFORE: **WILLIAM J. COURTNEY**, ALJ:

STATEMENT OF THE CASE

Prior to his registration in the Englewood Public School District ("District") in July of 2022, Z.P. was a non-public school student receiving services under an Individual Service Plan ("ISP") developed by Bergen County Special Services School District

("BCSSSD"). Petitioners assert the District failed to provide Z.P. with a Free Appropriate Public Education ("FAPE") when it failed to timely provide Z.P. with an Individualized Education Plan ("IEP") at the start of the 2022-2023 school year. The District asserts that petitioners prematurely removed Z.P. without providing the District with a sixty-day window of opportunity to complete the processes set forth in N.J.A.C 6A:14-4.1(m), which dictate the provision of services comparable under the ISP until an IEP could be offered within sixty days of registration within the district.

PROCEDURAL HISTORY

The Petitioners filed their initial Due Process Petition on December 28, 2022, and an Amended Due Process Petition on February 1, 2023. Respondent Englewood City Board of Education ("Board") filed its Answer on January 10, 2023. On May 8, 2023, the Board filed a Motion for Summary Decision. On June 9, 2023, Petitioner cross moved for Summary Decision. Oral Argument was heard on September 5, 2023.

FACTUAL DISCUSSION

Petitioners registered their twelve-year-old son Z.P. with the District on July 15, 2022. Prior to that time, Z.R. had been enrolled in a special education program at the Moriah School in Englewood, New Jersey. According to petitioners, toward the end of the 2021-2022 school year, they were advised by officials at the Moriah School that Z.P. required more services than it could offer. Petitioners completed and submitted the District's registration packet which contained a request for an IEP/504/Evaluation, a copy of the ISP prepared by the BCSSSD, a psychological evaluation dated April 29, 2022, an academic testing report dated February 23, 2022, and a prescription medication record.

The ISP classified Z.P. as "Other Health Impaired" and included the provision of Supplemental Instruction in Study Skills, Reading, Language Arts, and Math once per week for thirty minutes and Supplemental Instruction in a group setting, once per week for thirty minutes. There was no provision in the ISP for an Extended School Year program or for services during the summer.

When petitioners registered Z.P. on July 15, 2022, they included in the registration packet a copy of Z.P.'s Service plan and checked the box on the registration form marked "IEP /504/ Request Evaluation". After hearing nothing from the District for two weeks, petitioner D.P. emailed Dr. Edward Wilson, Director of Special Services, to inquire as to the status of his request for services for his son. He emphasized that Z.P.'s need for special education services was immediate due to his multiple disabilities and that he had provided the District with the "necessary information for the child study team to review his case." He asked if Dr. Wilson could put him in touch with someone from the Special Services Team because he "wanted to be proactive with the school year starting next month."

After confirming Z.P.'s registration date, Dr. Wilson informed D.P. that he would have the District's Child Study Team ("CST") Coordinator follow up with him before the week was over. While it does appear Dr. Wilson did speak with several individuals in the Special Services department and the Registrar's office, after more than a week had passed no one from the District had communicated with petitioners. It was only after a second telephone call from D.A. to Dr. Wilson on August 11, 2022, that the Child Study Team Coordinator, Willola Ashley, emailed D.P. to follow up on his August 1, 2022 inquiry. Attached to Ms. Ashley's email was a document entitled "Parent /Guardian Request for Child Study Team Evaluation Currently Enrolled Student", and she indicated unless that specific document was completed, signed, dated, and returned, the Child Study Team Meeting could not be scheduled. D.P. completed the IEP request form on August 15, 2022, and was assigned a case manager, Masika Greene. A full month had passed from his original request for an evaluation.

On August 17, 2022, Ms. Greene, emailed D.P. an invitation to "a scheduled ID meeting for [his] son" which was to take place on Friday August 19, 2022 at 10:00 AM". She indicated that D.P. should check his email for a meeting link. Nothing else was requested from D.P., and he was provided no further information as to what would take place at the "ID meeting". When D.P. met with the CST on August 19, 2022, he was informed they never received or reviewed the documentation D.P. had provided to the District on two separate occasions. They also informed him he needed to submit the documentation before the CST could proceed with the development of an IEP. D.P. was

told he would be contacted concerning another meeting after the CST had an opportunity to review the documentation.

On August 22, 2022, D.P. emailed the CST all of the documentation he previously provided, with the registration packet and to Dr. Wilson. The documentation included Z.P.'s April 19, 2022 psychological evaluation. That same day, he received an email from Ms. Greene indicating she could not locate the psychological evaluation. D.P. responded to Ms. Greene's email on August 24, 2022 by referring to page twenty of the documents he had just provided and attaching still another copy of the psychological evaluation, which had been previously provided on three separate occasions. D.P. closed his August 24, 2022, email to Ms. Greene stating, "Please let me know if that is sufficient. I am hoping that you can send me a proposed IEP asap."

There was no specific response to D.P.'s email. However, the following day (August 24, 2022), at approximately 4:00 PM, Ms. Greene sent D.P an email advising of a virtual meeting scheduled for the following day. There was no information contained in Ms. Green's email as to the purpose of the meeting, only a meeting ID and password. D.P. responded to Ms. Green's email that same day indicating that he and his wife would be out of the country at a location with poor internet access. D.P asked if they could meet instead on September 2, 2022, the day after their return. Ms. Greene did not respond.

On August 30, 2022, Dr. Toni Foster contacted D.P. to advise him she was now Z.P.'s case manager. Although D.P. had requested earlier dates, he and Dr. Foster the ultimately able to agree to September 8, 2022, as the date for the next meeting. On September 1, 2022, Dr. Foster sent D.P a formal notice for a virtual "Initial Identification and Planning" meeting was to take place at 10:05 AM on September 8, 2022.

D.P. attended the meeting on September 8, 2022, but the IEP he expected was not presented. Instead, he was advised the District did accept Z.P.'s eligibility for special education and related services, and it did not accept the prior evaluations he provided to the District. He was also informed new evaluations and assessments were required, and the District was offering Z.P. a "general education inclusion program" without any type of plan being provided. At the conclusion of the meeting D.P advised the District orally that

he could not take risks with his son's education, and he was going to unilaterally place his son at the Shefa School as of September 9, 2022 and requested reimbursement from the District. D.P. followed up with written notice to Dr. Wilson of his intention to place Z.P. at the Shefa School for the 2022-2023 school year, and he was requesting reimbursement from the District of all costs and expenses.

Although petitioners did place their son at the Shefa School, they continued to cooperate with the District in obtaining the evaluations deemed necessary by the District to determine Z.P.'s eligibility for special education and related services. On September 12, 2022, they executed a release requested by the District so that a social history assessment and psychiatric evaluation could take place. The social assessment was not conducted until September 19, 2022, and the psychiatric evaluation was not completed until October 28, 2022.

The District did not provide petitioners with an IEP until December 22, 2022, five months from when he first registered with the District and requested special education and related services and an IEP. At the IEP meeting, which was ultimately held on January 19, 2023, there was discussion between Susan Caplan, the petitioner's learning consultant, and the CST members concerning Z.P.'s proposed classification as "Other Health Impaired". Ms. Caplan reminded the District that Z.P. was previously classified as "Specific Learning Disabled", and advised the classification category of "Multiple Disabilities" might be more appropriate.

On January 20, 2022, the day after the IEP meeting, D.P. was provided with a revised IEP which delineated Z.P.'s classification as "Multiple Disabilities". The revised IEP offered a different program from the one offered at the January 19, 2022 meeting, which was based on the December 22, 2022 IEP. A "Pull Out Resource Replacement" program was offered instead of an "In Class Resource" program.

LEGAL ANALYSIS

Summary decision may be granted "[i]f the papers in discovery which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any

material fact challenged and that the moving party is entitled to prevail is a matter of law.” N.J.A.C. 1:1-12.5(b).

The summary judgment standard is found in Brill v. Guardian Life Insurance Company of America, 142 N. J. 520 (1995). In Brill, the court considered the precedents establish in Matsushita Electrical Industrial Company v. Zenith Radio Corporation v. Zenith Radio Corporation, 475 U.S. 574 (1986); Anderson v. Liberty Lobby, 477 U.S. 242 (1986) and Celotex Corporation v. Catrett, 477 U.S. 317 (1986) wherein the Supreme Court adopted a standard that “requires the motion judge to engage in an analytical process essentially the same as that necessary to rule on a motion for directed verdict: ‘whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one sided that one party must prevail as a matter of law.’” Brill, supra, 142 N.J. 533 (quoting Liberty Lobby, supra, 477 U.S. at 251-52). The court stated that under the new standard,

a determination whether there exists a “genuine issue” of material fact that precludes summary judgment requires the motion judge to consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party. The “judge’s function is not himself [or herself] to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial.”

[Brill, 142 N.J. at 540 (quoting Liberty Lobby, 477 U.S. at 249).]

The Brill standard contemplates the analysis performed by the trial judge in determining whether to grant summary judgment should comprehend the evidentiary standard to be applied to the case or issue if it went to trial. “To send a case to trial, knowing that a rational jury can reach but one conclusion, is indeed “worthless “and will “serve no useful purpose.” Brill, supra, 142 N.J. at 541.

In addressing whether the real standard has been met in this case, further guidance is found in R. 4:46-2(c):

An issue of fact is genuine only if, considering the burden of persuasion at trial, the evidence submitted by the parties on the motion, together with all legitimate inferences therefrom favoring the non-moving party, would require submission of the issue to the trier of fact.

[Id.]

After considering the pleadings and certifications offered by the parties, **I FIND** that there are no material facts in dispute and that the matter is ripe for summary decision.

The parties agree, and **I FIND**, that the time frame for addressing petitioners' request for an IEP in this case is governed by N.J.A.C. 6A:14-4.1(m) which provides:

When a student with a disability transfer from a nonpublic school with a services plan, appropriate school district staff shall conduct an immediate review of the Service Plan and shall provide comparable services pending completion of any necessary assessments and, as appropriate, the development of an IEP for the student. An IEP for the student shall be in place within 60 calendar days from the date of enrollment in the school.

[Id.]

The uncontroverted facts reveal, and **I FIND**, that the District's review of Z.P.'s Service Plan was far from immediate. The CST did not review the ISP (or any of the other prior evaluations provided by petitioners) when they convened a meeting on August 19, 2022 which took place more than a month after Z.P. registered with the District and the ISP and other relevant documentation were provided twice by petitioners. The first time the ISP was reviewed was the September 8, 2022 meeting, after the ISP and other relevant documents had been supplied by the petitioners to the District on three separate occasions. The District clearly did not conduct an immediate review of Z.P.'s ISP.

Regarding the second requirement of N.J.A.C. 6A:14-4.1(m), that the District provide services comparable to those provided in the ISP, I **FIND** that the District failed to meet this obligation. The District essentially maintains it could not have satisfied its obligation to provide services comparable to those provided in the ISP because Z.P. never attended classes prior to his parents registering him at the Shefa School. Petitioners indicate that they wanted a plan for their son in place before their son started at the district school. The District failed to present any proofs it provided to the petitioners any type of plan or took any action at all to ensure Z.P. would be receiving services comparable to those he received under his ISP, if he had started attending classes on September 1, 2022. In his May 8, 2023 certification, Dr. Wilson acknowledges Z.P.'s had been classified as "Other Health Impaired" in his ISP which included provision for:

- A. Supplemental Instruction in Study Skills, Reading, Language Arts, and Math once per week for thirty minutes;
and
- B. Supplemental instruction in a group setting, once per week for thirty minutes.

Accordingly, there should be some testimony or proofs supplied by the District that action had been taken to ensure Z.P. would be receiving comparable services while the IEP was being prepared. The record, however, is devoid of any indication that Z.P. had received or had even been offered services comparable to those he was receiving under his ISP. Moreover, the District made no attempt to argue he was offered or provided with such services.

The District attempts to justify its failure to provide comparable services by first asserting it had no obligation to provide comparable services between July 15, 2022 and August 31, 2022 because Z.P.'s ISP did not include an extended school year program or educational services during the summer. It is undisputed, and I **FIND**, that the District had no obligation to provide services to Z.P. during the summer because that were no such requirements in the ISP. This does not mean, however, that the District is not obligated during the summer months to take all actions that are necessary to ensure that Z.P. would receive comparable services from September 1, 2022 through September 13, 2022, the school days that fall within the sixty-day period between registration and the deadline for the proposed IEP.

The District then attempts to justify its failure to provide comparable services after September 1, 2022 by asserting its totally undocumented and unsupported belief the petitioners withdrew Z.P. from the District and unilaterally placed him at the Shefa School prior to the commencement of the 2022-2023 school year.¹ The communications from District personnel during that same period, however, call into question the veracity of such a belief. These communications include:

1. An August 30, 2022 email from Toni Foster to D.P. indicating that she had been assigned as Z.P.'s case manager and proposing dates for an initial planning meeting for September 6 or September 7, 2022;
2. A formal Initial Identification and Planning Meeting Notice for September 8, 2022 dated September 1, 2022; and
3. September 2, 2022 email from the District indicating Z.P. was marked absent from school that day.

I **FIND** that the first time the District was advised of petitioner's intent to enroll Z.P. at the Shefa School was orally at the September 8, 2022 Initial Evaluation and Planning Meeting and followed up in writing that same day. Accordingly, I **FIND** that the District could not have reasonably believed Z.P. had withdrawn from the District and placed at the Shefa School prior to the start of the school year, and that services comparable to the services provided in the ISP should have been offered to Z.P. beginning on September 1, 2022.

N.J.A.C. 6A:14-4.1(m) goes on to require the comparable services continue pending completion of any necessary assessments and, as appropriate, the development of an IEP for the student. In the case at bar, the petitioners were advised at the Initial Evaluation and Planning Meeting held on September 8, 2022, that additional assessments and evaluations were needed but there no evidence, in the documents, pleadings or the certification, offered by the District which show the District offered, or even discussed providing, comparable services to Z.P. while the additional assessments and evaluations were being conducted. The District provided no documents indicating what had taken place at the meeting or any certifications from District personnel as to

¹ See May 8, 2023 Certification of Edward Wilson at ¶ 13

what was discussed or offered to petitioners. The only evidence as to what took place at the meeting comes from the uncontested May 31, 2023 Certification of D.P. in which he states:

I met with the child study team, including Dr. Toni Foster, on September 8, 2022. I was not presented with an IEP. I was told the district did not accept Z.P.'s eligibility for special education and related services and the prior evaluations that had been provided to [the District] on July 15th. I was also informed that new evaluations and assessments were required despite the evaluations being recently completed and serving as the basis for eligibility for special education a few months earlier by the Bergen County Commission of Special Education. I attempted to dissuade the CST from this position, albeit unsuccessfully, and consented to the requested District evaluations as I continued to seek an appropriate IEP driven program for my son and was advised that this was the only way to *possibly* receive an IEP. I was further told the district would offer a general education inclusion program without any written Plan being provided despite my again alerting [the District] that my child had significant learning issues as evidenced by the evaluations and documentation I had provided on July 15th, was eligible for special education, and despite receiving special education services at the Gesher program that he had not been successful and needed more than he had been provided. I then asked the CST if they could put in writing what had transpired. This request was rejected by the CST. At the end of the meeting, I explained that I could not take risks with Z.P.'s education. I verbally informed the Child Study Team that I was going to unilaterally place Z.P. at the Shefa School as of September 9th and requested reimbursement from the District. Lastly, unlike what Dr. Wilson and the District stated their Certification and Brief, the Notice that I received from [the District] for the September 8th meeting was not listed as an IEP meeting but merely as an Initial Identification and Evaluation Planning meeting.

[Id at ¶ 17, references to Exhibits and footnotes omitted]

D.P.'s uncontested certified statement as to what was said at the meeting makes it clear Z.P. was not being offered services comparable to those he received under his ISP while attending the Gesher School. Instead, the District offered Z.P. a "general education inclusion program" the terms of which were not defined and not placed into writing.

Indeed, when D.P. requested something in writing to document what had transpired, the District refused. **I FIND** that the District failed to provide, offer, or even attempted to offer Z.P. an educational program that was comparable to that provided under his ISP.

The final requirement in N.J.A.C. 6A:14-4.1(m) is that when an IEP for the student is appropriate, it shall be in place within sixty calendar days from the date of enrollment in the school. It is uncontested that the first time petitioners received a proposed IEP for Z.P. was on December 22, 2022, 160 calendar days from the date of his registration. **I FIND** therefore that the District also failed to meet this requirement.

As a result of the District's failure to comply with the procedural requirements of N.J.A.C. 6A:14-4.1(m) and for the reasons set forth below, **I CONCLUDE** that Z.P. was denied a Free Appropriate Public Education ("FAPE") from September 1, 2022 through at least December 22, 2022, when petitioners were presented with the first IEP from the District. I cannot determine from the current record whether the December IEP or the revised IEPs offered in January of 2023 provided FAPE. The ultimate decision as to whether the District's IEP's offered FAPE to petitioner after December 22, 2022, will have to await the hearing.

The Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. § 1400 et seq., confers on disabled children a substantive right to a free appropriate public education. 20 U.S.C. § 1400(c). That free appropriate education consists of educational instruction specially designed to meet the unique needs of the disabled child, supported by such services as are necessary to permit the child to benefit from the instruction. Under IDEA, a disabled student is entitled to an Individualized Education Plan, a specially tailored educational program detailing the student's present abilities, educational goals, and specific services designed to achieve those goals within a stated time frame. 20 U.S.C. § 1401(a)(20). IDEA places on the states the primary responsibility for satisfying the goals of the statute. The courts in New Jersey have observed the procedural requirements of the IDEA are essential to the fulfillment of its purposes. D.B. and L.B. o/b/o H.B. v. Gloucester Twp. Sch. Dist., 751 F.Supp.2d 746 (D.N.J. 2010).

N.J.A.C. 6A:14-2.7(k) permits an administrative law judge to decide a child did not receive FAPE in matters alleging procedural violations if the procedural inadequacies:

1. Impeded the child's right to FAPE;
2. Significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of FAPE to the child; or
3. Caused a deprivation of educational benefits.

[Id.]

There really is no question Z.P. was entitled to FAPE. His education at the Gesher School was guided by the ISP that recognized Z.P. suffered from a disability and he was eligible for special education and related services. Moreover, when the District finally provided a proposed IEP in December 2022, it recognized Z.P. was eligible for special education and related services. The December 22, 2022 proposed IEP was further revised by the District on January 20, 2023 to include the classification of "Multiple Disabilities" and that the proposed in-class resource program was changed to a pull-out resource program. Having recognized Z.P.'s right to FAPE, we must first determine if the District's procedural violations impacted that right.

As discussed above, N.J.A.C. 6A:14-4.1(m) required the District to "immediately review" Z.P.'s ISP upon his registration in the District. That required review did not occur for more than a month after that registration and only after D.P. provided it to the District on three separate occasions.

After a review of the undisputed facts, I find nothing to indicate that the District's procedural violations of N.J.S.A. 6A :14-4.1(m) significantly impeded the petitioners opportunity to participate in the decision-making process regarding the provision of FAPE to Z.P. If anything, petitioners were, at least at first, the sole participants in the process of determining FAPE because the District did not appear to be actively involved until the September 8, 2022 meeting. **I do** however **FIND** that the District's procedural failures did impede Z.P.'s right to FAPE and resulted in a loss of educational benefits.

After a five-month delay, the District's CST offered an IEP which recognized Z.P.'s disabilities and the resulting right to special education and related services. I do not accept the District's position that any blame for the delay in services should be attributed to petitioners' failure to attend classes at the start of the 2022-2023 school year or his ultimate registration at the Shefa School. The District possessed Z.P.'s ISP, relevant evaluations and petitioner's request for an IEP for forty-eight days prior to the start of the school year and never advised petitioner that it was willing to provide Z.P. with services comparable to those he was receiving under his ISP. From the start of the school year on September 1, 2022 through September 8, 2022, the District failed to communicate with petitioners to advise them of the plan they had in place for Z.P. once school started. Notwithstanding the District's unexplained silence, D.P. attended the September 8, 2022 Identification and Planning meeting with the hope of obtaining a plan for his son's public education. Instead of receiving a plan, D.P. was informed District did not accept Z.P.'s eligibility for special education and related services and new evaluations and assessments were required. The education offered to Z.P. at the September 8, 2022, meeting was a "general education inclusion program", without any written documentation of the program being provided, and no offer of educational services comparable to those set forth in the ISP pending completion of any necessary assessments as required by N.J.S.A. 6A: 14-4.1(m). Faced with the District's refusal to provide comparable services, the District's failure to accept Z.P.'s eligibility for special education and related services, and their refusal to document the services they were willing to offer, petitioners reasonably believed they had no other choice but to enroll Z.P. in a private school that would address special education needs.

I disagree with respondent's argument the petitioners caused any delay in the services to Z.P. To the contrary, **I FIND** that it was petitioners who placed the District on notice on July 15, 2022 that that they were seeking an IEP for their son; that it was petitioners who followed up with an email to Dr. Wilson on August 1, 2022, after two weeks had passed with no response to their original request; and that on August 11, 2022, when two additional weeks were about to pass with no response from the first call to Dr. Wilson, it was the petitioners who again contacted Dr. Wilson to follow up on the status of their request for an IEP.

It was only after their second follow-up call that petitioners were advised they needed to complete a form entitled “Parent /Guardian Request for Child Study Team Initial Evaluation – Currently Enrolled Student” as a condition precedent to the CST meeting to consider Z.P.’s eligibility for services. The District now blames the petitioners’ failure to submit this form as causing delay, but at the same time appears to overlook their obligation under N.J.S.A. 6A: 14-4.1(m) to “conduct an immediate review of the Service Plan and . . . provide comparable services pending completion of any necessary assessments and, as appropriate, the development of an IEP for the student.” **I FIND** that any delay cause by petitioner’s to submit this form was caused by the District’s failure to provide it at the time of Z.P.’s registration when petitioners first requested services for their son and the District’s mistaken belief that their form superseded their obligations under N.J.S.A. 6A: 14-4.1(m).

The CST’s failure to review Z.P.’s ISP, Psychological Evaluation and Education Assessment, which had been submitted on two separate occasions prior to the meeting on August 19, 2022, was the cause of addition delay and resulted in the need to reschedule this initial meeting. The District makes much of the fact petitioners were unavailable to meet when the District attempted to reschedule the meeting for August 26, 2022 and that they cancelled the meeting “the night prior”. The uncontested facts, however, reveal petitioners were out of the country on August 26, 2022, the date unilaterally chosen by the District and that the petitioners could not have canceled the meeting any sooner than the day before because they did not receive notice of the proposed meeting until the August 25, 2022 the day they cancelled. I also note notice of the proposed August 26, 2022 meeting consisted only of an email containing and meeting ID and passcode. The notice provided by the District of this meeting (as well as the and the September 8, 2022 meeting) did not comply with the requirements of N.J.A.C. 6A: 14-2.4(f) and (g).² While I do not find these specific procedural violations of the notice requirements impeded Z.P.’s right to FAPE or an educational benefit, the District is strongly encouraged to remedy such procedural violations to prevent any negative impact they may have on disabled students going forward.

² With regard to the August 26, 2022 meeting, the District failed to delineate who would attend, their positions, and the purpose of the meeting. With regard to the September 8, 2022 meeting, while a Code compliant notice of the meeting was provided, there was no follow-up in writing with a description of the proposed or denied action/ why said action /inaction was taking place options considered, etc.

I also do not find that petitioners' inability to meet for a seven-day period in August 2022 to have caused the District's inability to timely address petitioner's application for services. In addition to petitioner's availability for the forty-one days prior to August 26, 2022, they were willing to meet on September 2, 2022, the day after they returned to the country. They also offered the District other dates prior to September 8, 2022, but were informed the September 8, 2022 was the first the CST could meet.

Petitioner's insistence of having some type of plan in place for their child prior to the start of school is not unreasonable. Z.P. had been found eligible for special education and related services while attending the Gesher School and that eligibility had just been confirmed at the end of the 2021-2022 school year. Petitioners were relentless in their pursuit of having a plan in place for their disabled child prior to the school year, but there was no IEP or comparable services in place for Z.P. for the first eight days of classes and no reason given for the lack of services except for the District's original contention that Z.P. had registered at the Shefa School prior to the start of the school year. Now that we know that Z.P. did not register at Shefa until September 9, 2022, the District has no acceptable reason for its inaction. I therefore **CONCLUDE** that the District's failure to provide comparable services to Z.P. from September 1, 2022 through September 8, 2022 in violation of N.J.A.C. 6A: 14-4.1(m) has impeded Z.P.'s right to FAPE and has caused a deprivation of educational benefits. I further **CONCLUDE** that the District's decision on September 8, 2022 to place Z.P. into a general education inclusion program and to not offer comparable services while assessments and evaluations were conducted also impeded Z.P.'s right to FAPE and caused a deprivation on educational benefits. Z.P. not only had the right to the continuation of these comparable services, but the CST also ultimately found that he was entitled to an IEP and the special education and related services petitioners had been actively pursuing for more than five months.

The District also maintains that it was deprived of the opportunity to provide an IEP within the required sixty-day period (by September 13, 2022) because petitioners unilateral placed Z.P. at the Shefa School on September 9, 2022. While it is uncontradicted petitioners registered Z.P. at the Shefa School four days before the sixty-day period to provide an IEP expired, it cannot be reasonably argued this action impeded

the District's ability to provide FAPE. Petitioners signed all of the requested authorizations permitting the evaluations and assessments sought by the District after the September 8, 2022 meeting. Furthermore, the District does not allege that petitioners delayed or failed in any way to cooperate with the District in their efforts to provide the IEP after Z.P.'s registration at Shefa on September 9, 2022. We also now know for a fact, albeit from the benefit of hindsight, that it took the District 100 days past the sixty-day deadline to provide the first draft of the IEP on December 22, 2022 and 129 days past the deadline to provide the final version on January 20, 2023. Accordingly, even if petitioners waited until September 13, 2022 to enroll Z.P. in Shefa, District would have been unable to provide the IEP³ either within the sixty-day deadline or within that 10-day⁴ period following the written notice the District received on September 8, 2022.

I **CONCLUDE** that the District's procedural violations of their obligations under N.J.A.C. 6A:14-4.1(m) impeded Z.P.'s right to FAPE and caused deprivation of the educational benefits he should have been offered from September 1, 2022 through January 20 2023.

Having found that the District failed to offer FAPE to Z.P., this matter should proceed with the petitioners' case to present proofs Shefa is an appropriate placement for Z.P. in accordance with Florence County School District Four v. Carter, 510 U.S. 7,15 (1993). Indeed, parents who unilaterally withdraw their child from public school and place them in a private institution without the consent of the school district "do so at their own financial risk." School Comm. of Burlington v. Mass. Dept. of Educ., 471 U.S. 359, 374 (1985). The petitioner may be entitled to reimbursement of costs of their unilateral placement only upon a finding the proposed IEP was inappropriate and the private placement was appropriate under the IDEA. 20 USC § 1412(a)(10)(C)(ii); N.J.A.C. 6A:14-2.10(c). Accordingly, my determination of the scope of relief would be premature and will be ripe for adjudication only after the record has been developed at a hearing.

³ The same is so for the district's argument that they were not given ten days after petitioner's notice that they intended to enroll Z.P. in Shefa to permit the District an opportunity to provide FAPE. The 10 additional days still would not have.

⁴ N.J.A.C. 6A:14-2.10(c) provides that reimbursement described may be denied or reduced if at least 10 business days prior to the removal of the student, the parents give written notice to the district board of education of their concerns of intent to enroll their child in a nonpublic school.

ORDER

For the reasons set forth above, **IT IS** on this 14th day of November, 2023,
ORDERED:

Petitioner's request for summary decision on the issue as to whether the District failed to provide FAPE to Z.P. is **GRANTED IN PART**. Z.P. was denied FAPE from September 1, 2022 through January 20, 2023.

The District's request for summary decision is **DENIED**.

A scheduling conference will take place on proceed on November 28, 2023 at 2:00 PM at which time a hearing date will be set for the presentation of petitioner's proofs relative to the appropriateness of Z.P.'s placement at the Shefa School from September 9, 2022 forward and the appropriateness and/or inappropriateness of the IEP offered by the District on January 20, 2023.



November 14, 2023

DATE

WILLIAM COURTNEY, ALJ

Date Received at Agency:

November 14, 2023

Date Mailed to Parties:
am

November 14, 2023