



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. EDS 00496-24

AGENCY DKT. NO. 2024-36886

K.P. ON BEHALF OF I.M.,

Petitioner,

v.

PASCACK VALLEY REGIONAL

BOARD OF EDUCATION AND

SADDLE BROOK TOWNSHIP,¹

Respondent.

K.P., petitioner, pro se

Rodney T. Hara, Esq., for respondent Pascack Valley Regional High School
District Board of Education (Fogarty & Hara, attorneys)

Mark A. Wenczel, Esq., for respondent Saddle Brook Township Board of
Education (Cleary Giacobbe Alfieri Jacobs, LLC, attorneys)

Record Closed: July 16, 2024

Decided: August 8, 2024

BEFORE **KELLY J. KIRK**, ALJ:

¹ Pascack Valley Regional High School District Board of Education and Saddle Brook Township Board of Education.

STATEMENT OF THE CASE

Petitioner, K.P. (Mom) on behalf of I.M., filed for due process against the Pascack Valley Regional High School District Board of Education (Pascack Regional BOE) and against the Saddle Brook Township Board of Education (Saddle Brook BOE), seeking a 504 plan for I.M.

PROCEDURAL HISTORY

On or about November 30, 2023, Mom filed a Request for Due Process against Pascack Regional BOE (Pascack Petition) and a Request for Due Process against Saddle Brook BOE (Saddle Brook Petition). The Pascack Petition and Saddle Brook Petition each allege that I.M. was not provided with a finalized 504 plan, and each seeks a finalized 504 plan and \$100,000.²

The matter was transmitted by the New Jersey Department of Education (Department), Office of Special Education (OSE), to the Office of Administrative Law, where it was filed on January 9, 2024. The hearing was scheduled for March 6, 2024, March 18, 2024, and March 19, 2024. Said hearing dates were adjourned with consent, in part at the request of petitioner and in part at the request of Pascack Regional BOE due to scheduling conflicts. The hearing was rescheduled and held on April 17, 2024, April 19, 2024, and April 30, 2024, and on July 16, 2024—to allow petitioner to obtain transcripts in advance of the final hearing date.

FACTUAL DISCUSSION

K.P. testified on behalf of petitioner. Erica Franceski, Pascack Hills High School (PHHS or Pascack Hills) 504 Coordinator, Sarah Bilotti, Pascack Valley Regional High School District (Pascack Regional District) Superintendent, Tara Flannery (Pascack Regional District Supervisor of Special Services), and Marin Donnelly (Pascack Regional

² Per the transmittal, “The request for monetary damages in the due process filing has not been accepted by OSE.”

District school counselor) testified on behalf of respondent Pascack Regional BOE. Steve Konigsberg (Saddle Brook District school psychologist), Kimberly Gerken (Saddle Brook High School guidance counselor), Jillian Cawley (Saddle Brook District Director of Special Services) and Toni Violetti (Saddle Brook District Superintendent of Schools) testified on behalf of respondent Saddle Brook BOE.

Findings of Fact

A Global Settlement Agreement, dated December 2020, relative to Saddle Brook resident I.M. reflects that Mom and Saddle Brook BOE agreed, in pertinent part, as follows:

1. For the purposes of settlement only, I.M. will be considered classified under the IDEA as other health impaired;
2. I.M. will be placed through an IEP at Pascack Valley High School³;
3. Parent will transport I.M. when necessary and receive the aide in lieu of reimbursement in the amount as set forth by the State until I.M. graduates high school;
4. The parties agree to convene an IEP meeting within 30 days of I.M. beginning school Pascack Valley High School. The IEP team will include the teachers Pascack Valley High School and staff and a District representative. The team will discuss IM's progress and whether any accommodations or modifications need to be added or changed in her IEP.
5. The District will make its best efforts to ensure I.M. begins at Pascack Valley High School within twenty one (21) days of execution of this agreement.
6. I.M. will remain at Pascack Valley High School for so long as Pascack Valley High School allows it. Should they terminate I.M.'s placement for any reason other than non-payment, including but not limited to, occupancy limitations imposed due to the Covid-19 public health crisis, subject to Paragraph 10, the District will apply for a new school on I.M.'s behalf and have 60 days to re-evaluate I.M. and determine continuing eligibility under the IDEA. I.M. will be provided home instruction during this time period. Eligibility under the IDEA will not be considered "stay put" or the pendent position.

³ The Global Settlement Agreement references "Pascack Valley High School" throughout. To avoid confusion, it is noted that the Pascack Regional District consists of Pascack Valley High School in Hillsdale, New Jersey and Pascack Hills High School in Montvale, New Jersey. I.M. was placed at Pascack Hills High School.

The decision of the District's IEP team regarding eligibility and programming will be considered "stay put."

7. The District will ask Pascack Valley High School the reason(s) for termination and will advise the Parent of Pascack Valley High School's response, should I.M.'s placement there be terminated.

8. Pascack Valley High School is required by rule to provide the District with 10 days' notice of termination of placement. The District agrees to advise the Parent promptly upon receipt of such notice.

9. The District will not be responsible for the services or programming offered by Pascack Valley High School and/or for the conduct of Pascack Valley High School regarding I.M. or K.P.

10. I.M. will not be declassified while she attends Pascack Valley High School. If Pascack Valley High School terminates I.M.'s placement, she will not be declassified while the District applies to other public schools on her behalf. She will remain classified if placed in another public out-of-district school. If no other public school is willing to accept her, then further discussions regarding eligibility and placement will take place, including an eligibility and IEP meeting, if necessary.

[RS-10.]

I.M. attended PHHS for the remainder of the 2020–2021 school year, for the 2021–2022 school year, and the 2022–2023 school year. On April 21, 2023, an annual review meeting was held and I.M.'s April 21, 2023, Individualized Education Program (IEP) reflects that I.M. was a resident of Saddle Brook, New Jersey, but was attending eleventh grade at PHHS in Montvale, New Jersey. (RS-1.) At that time, I.M.'s program was: Special Class Emotional Regulation Impairment: English III RISE; In-class Resource (support): Algebra II/Trig; In-class Resource (support): Physics; In-class Resource (support): Spanish II; In-class Resource (support): US History II; and Counseling Services: Individual. (RS-1.) The IEP reflects that it would be in effect from April 21, 2023, through June 15, 2023. (RS-1.) The IEP reflects the concerns of parent as follows:

[Mom] reports that she and [I.M.] are very happy with Pascack Hills. Although there have been some frustrating things that have occurred, overall the experience and education have been positive. [Mom] is happy to hear that [I.M.] continues to progress academically and socially. However, she remains concerned with [I.M.'s] anxiety, insecurity, and lack of

willingness to open up to counselors about her feelings. [Mom] reports [I.M.] is guarded and struggles to open up to counselors and therapists about her feelings. [Mom] also expressed concern about [I.M.] being at a similar academic skill level to her peers; specifically with reading and writing skills.

[Mom] would like for [I.M.'s] IEP to be discontinued at the conclusion of this school year, June 15th 2023 and for [I.M.] to receive supports during her final year of high school (2023–2024) via a 504 Plan.

[RS-1.]

According to the IEP, I.M.'s disability affects her involvement and progress in the general education curriculum as follows:

[I.M.] was recently diagnosed with Generalized Anxiety Disorder with significant performance anxiety. [I.M.'s] symptoms of anxiety may impact her academic performance across all areas of the curriculum. Dr. Ladak recommended outpatient psychiatric consultation and private outpatient therapy services for [I.M.]. Her recent reevaluations indicated that she no longer presented with a specific learning disability therefore her classification changed to other health impairment due to her symptoms of anxiety. In addition, an independent neurological evaluation conducted on 8/30/18 by Kathleen Fadden, MD revealed a diagnosis of ADHD, predominately inattentive presentation to a mild degree, further validating a classification of other health impairment. [I.M.] also hold [sic] a diagnosis of Auditory Processing Disorder (independent evaluation conducted by Annalisa Cantatore, MA on 9/24/18). These issue [sic] may indicate the need for extra assistance, however, [I.M.] is in mainstream classes with exception of English (RISE) and continues to do well in all her classes.

[RS-1.]

With respect to counseling, the IEP reflects the following:

Counseling
1/13/23

As per the IEP, [I.M.] has access to school based counseling on a weekly basis for 30 minutes. As discussed in the annual IEP meeting on 5/4/22, [I.M.] rarely accesses counseling on that level of frequency. During the 21–22 school year, as I was new to working with [I.M.], we worked on developing rapport, reviewing her course load, and identifying people of support at school (i.e. CST, Guidance) if needed.

This school year, the writers [sic] has reached out to [I.M.] via email and in person to discuss counseling as she has a very busy schedule. The writers [sic] is available every Monday, period 8 during [I.M.'s] PE class for counseling sessions. As [I.M.] has not accessed counseling during this time on a consistent basis, the writer will frequently push into the RISE English III class and collaborate with the special education teacher.

Reports from [I.M.], as well as feedback from her teachers, indicate [I.M.] is having a successful junior year both academically and socially. [I.M.] continues to maintain consistent attendance, satisfactory or above grades, and positive relationships with peers and school staff. At this time, [I.M.] denies any areas of concern or need for additional support.

The IEP team recommends decreasing the frequency of counseling related services to one time monthly 30 minute counseling consultation support. Additionally, the writer will continue to push into the classroom to offer more subtle support as this seems to be of preference to [I.M.].

4/21/23 – Update

Over the past several months, [I.M.] remains demonstrating both academic and social/emotional success at PHHS. [I.M.] continues to achieve satisfactory or above grades and demonstrates the ability to independently seek support from teachers when needed. Additionally, [I.M.] continues to participate in several extracurricular activities. [I.M.'s] participation in weekly counseling sessions remains inconsistent, which both [I.M.] and the writer attribute to a lack of needing such a high level of support. The IEP team continues to recommend a decrease in counseling services to 1x/monthly consultation.

Brittany Gallagher, LCSW
School Social Worker/RISE Case Manager

[RS-1.]

The IEP reflects that the following accommodations and modifications are beneficial to I.M.: provision of a calculator; provision of extended time on assessments; provision of refocusing and redirection; provision of structure and routine; mnemonic devices and creative ways to recall steps/information; modify assessments by providing: (1) a prompting question(s) that follows the original question to activate thinking in the right direction, and (2) formulas and reminders about mnemonic devices; provision of review and repetition; visual modalities to support auditory presentation; visual organizers and charts; color coding to emphasize visual/spatial understanding; check for understanding by having her explain (if she can talk/teach it, then she understands it); and provision of positive reinforcement and constructive criticism. (RS-1.)

A letter from Saddle Brook District Department of Special Services to Mom, dated April 21, 2023, states:

As we discussed at [I.M.'s] IEP Annual Review meeting at Pascack Hills High School on 04/21/2023, you are requesting that at the end of this school year (June 15, 2023), [I.M.'s] IEP will be discontinued and for [I.M.] to receive supports during her final year of high school (2023–2024) with a 504 Plan. The intention is for [I.M.] to continue at Pascack Hills High School for the 2023–2024 school year with the assistance of a 504 Plan.

By providing your signature, Saddle Brook is accepting your request and consent to end special education and related services.

After June 15, 2023 [I.M.'s] IEP will be discontinued and she will become a general education student at Pascack Hills High School.

I request and consent that [I.M.'s] IEP be discontinued after June 15, 2023 and she will no longer receive special education and related services.

[RS-2.]

On April 24, 2023, Dr. Lauren Reisenauer, Saddle Brook District Director of Special Services, asked Saddle Brook District school psychologist Steve Konigsberg to work with

I.M.'s Saddle Brook guidance counselor to develop the 504 plan. (RS-3.) Konigsberg was I.M.'s Saddle Brook District case manager for three years—freshman through junior year. Mom signed the April 21, 2023, letter on April 27, 2023. (RS-2.)

On May 10, 2023, at 9:07 a.m., Kimberly Gerken, Saddle Brook High School guidance counselor/school counselor, emailed Erica Franceski, the PHHS 504 coordinator and student and family resource liaison, stating that it was her understanding that a 504 plan needs to be developed for I.M. and to let her know when they could speak to develop the plan. (R-1.) Franceski replied at 2:20 p.m., stating that she spoke briefly to Tara Flannery (Pascack Regional District Supervisor of Special Services) regarding a 504 plan for I.M. and that Franceski would gather what she could about recommendations for accommodations from the staff and get back to Gerken as soon as possible. (R-1.)

On May 19, 2023, at 8:13 a.m., Gerken emailed Franceski regarding I.M.'s 504 plan and asked Franceski to reach out when she was ready. (R-1.) Franceski replied at 2:22 p.m., stating that, based on I.M.'s IEP and the most current teacher feedback, she had drafted a 504 plan for I.M., and asked Gerken to review the attached 504 plan and to let her know if she had any questions or concerns. (R-1.) The attached Pascack Regional District Individual Accommodation Plan Section 504—Rehabilitation Act (Pascack 504 Plan), document file name “[M,L].doc,” reflects, in pertinent part, an implementation date of “05/11/2023” and the following:

I. Describe the nature of the concern:

[I.M.] is a sensitive and caring student who wants to be successful at school. She is a hard worker and takes her school responsibilities seriously. She can be easily distracted and tends to drift towards off-task activities.

II. Physical/Medical Documentation provided by:

[I.M.] was diagnosed with Generalized Anxiety Disorder and significant performance anxiety. Dr. Ladak, 2018. [I.M.] is also diagnosed with ADHD, Dr. Kathleen Fadden.

III. Describe how the handicap affects a major life activity:

Learning is the major life activity impacted by [I.M.'s] diagnoses of anxiety and ADHD.

IV. Disability determined: X Yes No

V. Describe the reasonable accommodations that are necessary:

- Allow 50% extended time on assessments*
- Preferential seating near the teacher
- Provide [I.M.] with a copy of class notes
- Provide refocusing and redirection when [I.M.] is off task
- Allow use of a calculator in math
- [I.M.] is allowed to access a counselor in the guidance office, if she requests

VI. I have participated in the development of this plan and agree with its implementation. Also, I understand the plan will be reviewed within one year of its implementation.

[R-2.]

On May 23, 2023, at 11:26 a.m., Gerken replied, stating that she would work with the team at Saddle Brook High School to complete the next steps. (R-1.) At 2:09 p.m., Gerken replied and asked Franceski to send the Pascack 504 Plan via 504 Direct, and stated that if Franceski does not use 504 Direct, she would enter the Pascack 504 Plan into 504 Direct manually. Franceski replied that PHHS does not use 504 Direct. (R-1.)

On June 13, 2023, Gerken emailed a 504 plan, document file name “L[M]Final.pdf,” to Franceski. (R-1.) Attached as “L[M]Final.pdf” was a Saddle Brook District Section 504 Plan 2022–2023 (Final 504 Plan), which reflects, in pertinent part, the following: school years 2022–2023 and 2023–2024; a plan start date of “05/11/2023”; a plan end date of “06/28/2024,” a meeting date of “05/09/2023” and participants “[I.M.], Student; [K.P.], Parent/Guardian; Kimberly Gerken, Case Manager”; and the initial or most recent evaluations/reports as “05/11/2023 Educational Evaluation Pascack Hills 504 Coordinator.” (R-3.) Additionally, the Final 504 Plan states that it has been determined that the student has a physical or mental impairment that substantially limits a major life activity and identifies the physical or mental impairments as generalized anxiety disorder, performance anxiety, and “ADHD.” (R-3.) It identifies the major life activity affected by the impairments as “learning,” and describes how the impairments substantially limit a major life activity as “attention” and “distracted easily.” (R-3.) The Final 504 Plan reflects

the following accommodations (and comments): provide copy of class notes; additional time to complete classroom tests/quizzes (50% extended time); preferential seating (near the teacher); provide short breaks when refocusing is needed; allow use of calculator in math; and access to a counselor in the guidance office if requested by student. (R-3.) The Final 504 Plan also reflects the following testing modifications/accommodations needed for districtwide, statewide, and classroom assessments:

Testing Modifications/Accommodations Needed for Districtwide, Statewide and Classroom Assessments

Setting Accommodations

Seating the student in the front of the room near the examiner or proctor

NJSLA - Accessibility Features for All Students

Redirect Student to the Test (by test administrator), NJSLA
Test Type: ELA, Math, Science

NJSLA - Response Accommodations

Calculation Device and Mathematics Tools (on Non-Calculator Sections of Mathematics Assessments), Test
Type: Math, Criteria: Calculator, Devices and Materials:

NJSLA - Timing and Scheduling Accommodations

Extended time, Test Type: ELA, Math Science

[R-3.]

On June 16, 2023, at 11:11 a.m., Mom emailed Konigsberg as follows:

I know that is not you for 504 but you why don't forward me their contact info in order me to contact the lazy people of Saddle Brook

It is summer now and I am not an American origin which means I have to live country in summer and makes harder for me not being here to respond or have any communication with anyone but in the other hand has been a while and makes simple sense to had 504 already in place

Please forward again to those lazy people that unjustly their Paychex received from saddle Brook

I know they are not making miracles just coping and paste 504 and putting [I.M.'s] name on it

Please who is the superintendent of SB and please give me the email cause maybe if I send to superintendent maybe those people will wake up

[RS-5.]

At 11:30 a.m., Konigsberg replied as follows:

I will send this to the new Director, Jillian Cawley. Lauren will be retiring at the end of this school year. Again, sorry for the frustration. I hope you enjoy your time over the summer.

[RS-5.]

On June 17, 2023, Mom emailed Konigsberg, Reisenauer, Toni Violetti (Saddle Brook District Superintendent of Schools) and Cawley (Saddle Brook District Director of Special Services) as follows:

Has been on or about 2 months that Saddle Brook district has to prepare my daughters 504 plan

So far not only has been prepared nothing but I have no clue who will prepare the plan while no one cared enough to send me an email

I know Saddle Brook has mire bigger things to do by making this town the worst in Bergen County but I care less about.

Please inform the lazy people that suppose to prepare by law and let me know which who I have to deal with for the last year. Seems that already have to deal with a very hard working person

My daughters name [I.M.]

[RS-5.]

On June 19, 2023, at 10:28 a.m., Cawley emailed Mom as follows:

Thank you for reaching out. Ms. Gerken has been assigned as the 504 case manager. I have included her in this response so you have her email address as well. She has

already received some input from the current school and will be reaching out to you to get your input on the document as well prior to finalizing. We look forward to your partnership in helping us create a plan that best supports [I.M.].

I hope you have a wonderful day.

[R-4.]

On June 19, 2023, at 12:25 p.m. Gerken emailed Mom, attaching document file name “[LM]Draft.pdf,” as follows:

Good morning! I have attached the draft of the 504 plan based on the information received from [I.M.’s] current school. Please review and let me know if you have any questions.

[R-4.]

Attached as “[LM]Draft.pdf” was Saddle Brook District Section 504 Plan 2022–2023 DRAFT (Draft 504 Plan), which reflects, in pertinent part, the following: school years 2022–2023 and 2023–2024; a plan start date of “05/10/2023”; a plan end date of “06/28/2024,” a meeting date of “05/09/2023” and participants “[I.M.], Student; [K.P.], Parent/Guardian; Kimberly Gerken, Case Manager”; and the initial or most recent evaluations/reports as “05/11/2023 Educational Evaluation Pascack Hills 504 Coordinator.” (RS-4.) Additionally, the Draft 504 Plan states that it has been determined that the student has a physical or mental impairment that substantially limits a major life activity and identifies the physical or mental impairments as generalized anxiety disorder, performance anxiety, and “ADHD.” (RS-4.) It identifies the major life activity affected by the impairments as “learning,” and describes how the impairments substantially limit a major life activity as “attention” and “distracted easily.” (RS-4.) The Draft 504 Plan reflects the following accommodations (and comments): provide copy of class notes; additional time to complete classroom tests/quizzes (50% extended time); preferential seating (near the teacher); provide short breaks when refocusing is needed; allow use of calculator in math; and access to a counselor in the guidance office if requested by student. (RS-4.) The Draft 504 Plan also reflects the following testing

modifications/accommodations needed for districtwide, statewide and classroom assessments:

Testing Modifications/Accommodations Needed for Districtwide, Statewide and Classroom Assessments

Setting Accommodations

Seating the student in the front of the room near the examiner or proctor

NJSLA - Accessibility Features for All Students

Redirect Student to the Test (by test administrator), NJSLA

Test Type: ELA, Math, Science

NJSLA - Response Accommodations

Calculation Device and Mathematics Tools (on Non-Calculator Sections of Mathematics Assessments), Test

Type: Math, Criteria: Calculator, Devices and Materials:

NJSLA - Timing and Scheduling Accommodations

Extended time, Test Type: ELA, Math Science

[RS-4.]

Other than the Draft 504 Plan reflecting “DRAFT” and “Plan Start: 05/10/23” on page 1 and “DRAFT” on page 2, and the Final 504 Plan reflecting “2022–2023” and “Plan Start: 05/11/23” on page 1, the Draft 504 Plan and Final 504 Plan are identical. (RS-4; R-3.)

On June 21, 2023, at 1:52 p.m. Mom replied, “Seems ok but can I have some examples of other cases where I can see what to add please.” Gerken forwarded Mom’s reply to Cawley, asking her to “Please advise.” (R-4.)

On July 5, 2023, Gerken emailed Franceski and asked if she could get an updated copy of I.M.’s grades/transcript to include junior year because Saddle Brook District was working on creating I.M.’s high school transcript and needed her junior year grades. (R-1.) On July 6, 2023, Franceski forwarded the request to Monika Codner at Pascack Regional District asking if an updated transcript was something that could be sent to Saddle Brook District. (R-1.)

A July 27, 2023, letter from Pascack Regional District to Saddle Brook BOE relative to the tuition contract for I.M. states, in part, that Pascack Regional BOE “carefully

considered and denied the Saddle Brook Board of Education's request to enter into a tuition contract agreement to continue I.M.'s placement at Pascack Hills High School for the 2023–2024 school year” and “[o]nce you have an opportunity to meet with the family and agree upon the student’s placement for the 2023–2024 school year, please contact the administration if there is anything they can do to facilitate the student's transfer.” (R-6.) An August 4, 2023, letter from Pascack Regional District to Mom relative to the tuition contract attaches the July 27, 2023, letter, and states, in part, that Pascack Regional BOE denied the Saddle Brook BOE’s request to enter into a tuition contract agreement to continue I.M.’s placement at PHHS for the 2023–2024 school year and advised Mom to contact Saddle Brook regarding her placement for the next school year. (R-6.) The August 4, 2023, letter also advised Mom that I.M. could continue with the dance team until August 3, 2023, but only PHHS students could participate in the late August practices. (R-6.)

A letter dated August 7, 2023, from Pascack Regional District to Mom, ostensibly noted to be “via email,” states as follows:

As you are aware, the Pascack Valley Regional High School District Board of Education (“Board”) denied your and the Saddle Brook Board of Education’s request to continue the enrollment of your daughter at Pascack Hills High School as a non-resident tuition student for the 2023–2024 school year. In response, you have requested a statement of the reasons for the Board's decision.

It is within the exclusive discretion of the Board to decide whether to accept your daughter as a non-resident tuition student. N.J.S.A. 18A:38-1; N.J.A.C. 6A:22-3.2; Board Policy and Regulation 5111. Acceptance by the Board for the 2022–2023 school year did not guarantee that your daughter would be accepted for continued enrollment to attend Pascack Hills High School for the 2023–2024 school year. An application must be submitted every school year and a determination is made by the Board on whether it is in the best interests of the Board to grant the application after considering the services for your daughter and the impact it has on the Pascack Valley Regional High School District (“District”). Although your daughter received satisfactory grades for the 2022–2023 school year, your conduct interfered with the operations of the District and caused unnecessary disruption to the District

which is unacceptable and cannot be tolerated for another school year.

Beginning in Fall 2023, your lack of civility towards the staff and the dance team coaches rose to a level that you were restrained from speaking with anyone other than Tara Flannery. This action was reluctantly taken only after repeated warnings were ignored and you exhibited increased vitriol towards Board employees. Unfortunately, this did not deter your conduct and you continued to engage in a pattern of abusive, insulting and demeaning behavior that included threats to file legal proceedings regardless of the validity or substance of the allegations. The dance coaches have indicated that your conduct has negatively affected them to the point that they would rather resign than be subjected to your continued attacks and criticism when you are not satisfied with any decision that impacts your daughter.

Whenever requests are made and are denied, you engage in attacks alleging discrimination and accusing staff members of hurting your daughter. Staff members are afraid to communicate with you for fear that they will be subject to false allegations and claims of discrimination if you do not obtain the result you demand. As a result, guidance counselors have refused to deal with you which makes it difficult to address your daughter's issues. Guidance counselors have voiced their concerns that your actions adversely impact their ability to provide services to your daughter, especially since you have prohibited the District from discussing the impact of the concerns that you have raised with her.

Since the measures undertaken by the administration have not deterred your conduct and staff members do not want to be subject to another year of your constant complaints when you are not satisfied with the manner in which the District provides services to your daughter, the Board determined that the request for continued admission as a non-resident tuition student should be denied. The desire to have your daughter attend Pascack Hills High School for her senior year does not outweigh the adverse impact her continued enrollment would have on administrators and staff who have spent a disproportionate amount of time to address the issues you have raised, regardless of the lack of a basis in law or board policy for such claims, and have been subject to your vituperous attacks if your multiple requests for the same claim are not granted.

Board Policy 9202 requires all parents to act in a civil manner with staff and not engage in threatening or harassing

behavior. If your daughter is allowed to attend Pascack Hills High School for the 2023–2024 school year, the amount of time staff members would have to devote to your complaints would continue to be at the expense of other students and will result in the resignation of the dance coaches which adversely impacts the members of the dance team. Since the admission of non-resident tuition students is discretionary, the Board concluded that the best interests of the District, staff and students required the denial of the application for continued enrollment as a non-resident tuition paying student for the 2023–2024 school year.

[RS-7.]

On August 8, 2023, Mom completed a Student Registration Form for I.M. to register her at PHHS. (R-7.) The form reflects Mom’s address as Montvale, New Jersey. (R-7.) On August 9, 2023, at 11:04 a.m., Mom emailed Saddle Brook District, “Please see attached and send PHHS the proper papers,” and at 11:06, “Please send it by email and attach me as well.” (RS-8.) At 11:46 a.m., Violetti replied as follows:

I know we just spoke on the phone, and I have reached out to our attorney to see what I am able to do. As far as I am aware, we have not received any records from Pascack Hills to date on [I.M.]. I have requested a transcript, but have not received it yet. I have been advised that because Pascack Hills denied the application at this time, that I am not in the right to send any records to them. I can send you, as the parent, what I currently have—which is a copy of her IEP, draft of her 504 plan, and mediation records.

I will also have our guidance department request [I.M.’s] entire student record file from Pascack Hills. Once I receive these, I will be able to share her entire file with you at your request. I will forward you also my request for a reason, as I have not heard from them yet. I know you said that you received a reason—if you have the email, will you please forward it to me?

[RS-8.]

At 12:12 p.m., Mom replied as follows:

Please send PHHS by email where I am attached anything you have from middle school/EIP/504 immediately with no delay's please

What you don't have you can say that PHHS has it and you have not received it from them attacking your email request or anything that proves your requests

Please asap

[RS-8.]

At 12:22 p.m., Violetti replied as follows:

As I shared, our attorney advised me that we are not able to share student records with Pascack Hills as they have denied her application to attend there. If you have received notification of them reconsidering their decision, please send this to me. I will then be able to reach out to them and process your request.

Our MSHS office has been requested by me to request [I.M.'s] student records from Pascack Hills and to inform me upon our receipt of said records.

[RS-8.]

At 12:41 p.m., Mom replied as follows:

I am withdrawing [I.M.] from SB
I am asking to to send all [I.M.'s] info to them today
Any of your delays will not be tolerated.

I am asking you to do so

[RS-8.]

At 1:24 p.m. Violetti replied as follows:

As you are not a resident of the Pascack Hills High School District and Pascack Hills has denied the application to admit

[I.M.] as a non-resident student for the 2023–2024 school year, we are unable to send her student records to Pascack Hills. To send [I.M.'s] records to Pascack Hills, we are required to have a send-receive relationship with Pascack Hills for [I.M.'s] placement at Pascack Hills. We currently do not have such a relationship. We have requested a copy of [I.M.'s] student records from Pascack Hills and will advise you upon receipt of the records so that you may obtain a copy of the records.

[RS-8.]

At 1:53 p.m. Mom replied:

Please you have lied to me before
If I am a resident of PHHS or not let someone else decide

I am withdrawing [I.M.] from SB district and register to PHHS

I am urging you to do so and forward my daughters papers that have requested on my attached to send to the address on paper

If you don't do what gave asked and try to delay purpose my daughter's education in the other school u will be in violation

I am very sick and Dont make it worse
Please . . . do what have requested

[RS-8.]

On August 10, 2023, at 8:52 a.m., Mom emailed Saddle Brook District as follows:

After our conversation today at 8:45 am asked you to proceed immediately without any delays my daughters transfers to PHHS

Any purpose delays including all continue effects of our health will be counted

Have a happy rest of summer

[RS-8.]

On August 10, 2023, at 5:01 p.m., Mom emailed Saddle Brook District, "Please send me my daughters [sic] entire file that you have in your position." (RS-8.) On August 11, 2023, at 10:01 a.m., Violetti emailed Mom, attaching "[I.M.] transfer card.pdf; I.M. Records from Pascack Hills.pdf; I.M. Transcript.pdf; I.M._IEP_08.07.23.pdf; [I.M.]Draft504.pdf; IM Pascack Settlement.pdf; [I.M.] IEP Consent to Discontinue IEP after June 15 2023-signed 04.27.2023.pdf," as follows:

I am not in my office today, however, these are the records I currently have in my possession. I have reached out to Pascack Hills to request [I.M.'s] health and attendance records as well. I will send those once I receive them.

[RS-8.]

A letter from Sarah Bilotti, Pascack Regional District Superintendent, to Mom, dated August 22, 2023, acknowledged receipt of the registration form and stated, in part, as follows:

I am sending this letter to you as a follow up to the email that I sent to you on August 11, 2023 which indicated that the District was in the process of reviewing the additional documents that you provided in support of the registration of your daughter. Based on a review of all appropriate factors, including the documentation that you submitted, there are questions about whether you are domiciled and residing at [address], Montvale, New Jersey.

These questions are raised for a number of reasons, including without limit your apparent ownership of property located at [address], Saddle Brook, and your domicile in the Saddle Brook School District. Further, the timing of your alleged "residency" in Montvale, being represented only three days after notification of the termination of the prior tuition contract relationship with the Saddle Brook School District raises significant questions regarding the validity of your purported "residency."

In addition, the residency document that you provided does not contain a complete utility bill which reflects the name of the account holder, date, and utility usage for the premises. It also lacks a recent proof of residency, including but not limited to the following documents issued within the last three years;

property tax bills; deeds; contracts of sale; leases; mortgages; signed letters from landlords; and other evidence of property ownership, tenancy, or residency.

For these and other valid and appropriate reasons, your efforts to obtain new, “resident” enrollment of your daughter in the District to enable her to attend Pascack Hills High School for her senior year, based on purported temporary residency at [address], Montvale, New Jersey, fails to entitle you to a tuition-free education in the District. As a result, notice of ineligibility under the provisions of N.J.S.A. 18A:38-1(a) and (d) is hereby provided to you in accordance with the provisions of N.J.A.C. 6A:22-4.2.

[R-7.]

On September 8, 2023, at 2:00 p.m., Franceski emailed all teaching faculty at PHHS, as follows:

Just a reminder, please download and review all of your student 504 accommodation plans by September 21st. For new staff, 504 plans can be found in genesis by clicking on the blue pin icon to the right of the student's name. Thank you!

[R-8.]

I.M.’s Genesis printout reflects a “blue pin icon” to the right of I.M.’s name. (R-8.)

A Notice of Final Ineligibility, dated September 12, 2023, advised Mom that after the Pascack Regional BOE considered the information she presented at the residency hearing and the circumstances pertaining to her prior attempts to enroll I.M., the Pascack Regional BOE concluded that Mom was domiciled in Saddle Brook, not Montvale, and a resolution was passed that I.M. was not eligible for a tuition-free education in the Pascack Regional District. (R-7.) Mom filed a residency appeal with the Department of Education.

On November 6, 2023, at 10:03 p.m., Mom emailed Gerken, “I have not received any updates from you since June 21, 2023 please advise.” (R-4.) On November 7, 2023, at 8:02 a.m., Gerken replied to Mom as follows:

I sent the draft for your review and approval back in June 2023. You replied “seems ok”. I have attached the plan that was recommended by Pascack Hills based on the IEP previously in place. Please let me know if you have any questions.

[R-4.]

Gerken attached the Final 504 Plan, document file name “L[M]Final.pdf,” to the email. (R-4.) Mom replied to Gerken at 8:10 a.m., copying Cawley, as follows:

That's what I say

“Seems ok but can I have some examples of other cases where I can see what to add please”

Since than [sic] you never send what I asked you and not only never asked me again

Please send me what have asked for

[R-4.]

At 10:44 a.m., Gerken emailed Cawley asking her to “please advise.” (R-4.) Cawley responded at 12:42 p.m. that Gerken did not need to respond to Mom’s email because I.M. was not currently a Saddle Brook District student, and advised Gerken that if she received any further communication, she could forward it to Cawley. (RS-6.) At 12:51 p.m. Gerken replied, “Will do.” (RS-6.)

On November 8, 2023, at 11:13 a.m., Mom emailed Gerken, and copied Cawley, stating, “Please apply by law what should be done or what should had be done a while ago.” (RS-6.) Gerken replied at 12:29 p.m., copying Cawley, that Cawley would be taking care of Mom’s 504 Plan concerns at this time. (RS-6.) Cawley emailed Mom, copying Gerken, at 12:32 p.m. as follows:

On August 10, 2023, you withdrew [I.M.] from the Saddle Brook Public Schools and requested the transfer of her student records to Pascack Valley High School District. Any questions you have regarding [I.M.’s] 504 plan should be

directed to the staff at Pascack Valley who have been responsible for [I.M.'s] educational program and 504 plan since September.

[RS-6.]

On November 8, 2023, at 12:34 p.m. Mom emailed Cawley, copying Gerken, as follows:

You supposed to have 504 done since April, 2023

Since than to august you did nothing

Can you explain why?

[RS-6.]

Thereafter, at 12:36 p.m., Mom emailed Pascack Regional District "Administration" as follows: "Please let me know who is responsible for my daughters 504 to make up a plan, prepare what should be, inform me and what should be done by law." (RS-9.) Bilotti opened the email and did not respond, but she verified that Mom had access to Genesis for the name of I.M.'s counselor.

On January 30, 2024, at 5:42 p.m., Mom emailed a judicial assistant at the Office of Administrative Law attachments titled "Special Hearing - 2023-09-11..." and "EXHIBITS" relative to "K.P. v. BOE Pascack Valley (EDU 09166-23)." (R-5.) The judicial assistant thereafter forwarded Mom's email to Mom and to the other party. (R-5.) Included in the attachments from Mom was a copy of the Final 504 Plan. (R-5.)

As of April 8, 2024, I.M.'s grades were as follows: Internship, MTWRF, Per. 5,6,7,8 (FY) A+; Physical Education: Unified, MTWR, Per. 1 (FY) A+; Introduction to Anatomy & Physiology, MWRF, Per. 4 (FY) B+; English IV: World Literature & Culture, MTWF, Per. 2 (FY) B; and Statistics 1, MTRF, Per. 3 (S1) C-. (R-9.)

I.M.'s "Turnstile" records reflect guidance office check-ins on September 1, 2023 (7:55 a.m.–8:12 a.m.), October 3, 2023 (7:57 a.m.–8:13 a.m.), October 11, 2023 (10:20

a.m.–10:36 a.m.), November 14, 2023 (7:59 a.m.–8:10 a.m.), November 21, 2023 (8:00 a.m.–8:14 a.m.), January 3, 2024 (10:58 a.m.–11:02 a.m.), January 5, 2024 (10:09 a.m.–10:17 a.m.), February 1, 2024 (10:13 a.m.–10:47 a.m.), March 4, 2024 (8:29 a.m.–8:37 a.m.). (R-10.) I.M.’s Turnstile records also reflect check-ins at the nurse’s office on December 13, 2023, and December 19, 2023, and lunch make-up testing room on November 6, 2023, and January 22, 2024. (R-10.) Marin Donnelly was I.M.’s school counselor for the 2022–2023 and 2023–2024 school years. Donnelly’s communication/meeting log reflects the following: the September 1, 2023, meeting was to discuss college application questions; the October 3, 2023, meeting was to review I.M.’s questions “re: common app and Scoir”; the October 11, 2023, meeting was to discuss “unified PE”; the November 14, 2023, meeting was to review college applications; the February 1, 2024, meeting was to present semester 2 math options, to review I.M.’s admissions portals and assist with questions, and to call the help desk at college to assist I.M. with accessing one of her application portals; and the March 4, 2024, meeting was to discuss college plans/enrollment. (R-11.)

Testimony

Erica Franceski

May 11, 2023, the date on the Pascack 504 Plan, is the date she drafted the Pascack 504 Plan—she expected that Saddle Brook District would update it with the date of the meeting with the parent and student. Her understanding from Gerken was that there was a Zoom meeting with the parent and student regarding the 504 plan in May 2023, and that is reflected on the Final 504 Plan. She did not pay attention to the meeting date. Flannery gave her the recommendations for the 504 plan based upon the data and teacher feedback and what was discussed at the IEP meeting. She sent the Pascack 504 Plan to Saddle Brook District and assumed Saddle Brook District would get back to her once it was finalized. Upon her receipt of the Final 504 Plan from Gerken, she uploaded the Final 504 Plan to Genesis. It was uploaded prior to the start of the 2023–2024 school year. The accommodations referenced in the Pascack 504 Plan and Final 504 Plan are essentially the same, just worded slightly differently. A 504 plan is noted to be present in Genesis by a blue pin icon to the right of I.M.’s name on the Genesis printout.

The blue pin icon generally indicates that a student has additional information available. A parent signature is not required for a 504 plan to be implemented. The only 504 plan she uploaded for I.M. was for the 2023–2024 school year. Genesis does not show an IEP for I.M. for the 2023–2024 school year. At the staff meeting during the first week of the 2023–2024 school year, the principal announced that all 504 plans needed to be downloaded and read prior to September 21, 2023. PHHS had the data to support what recommendations were useful in the classroom. Her understanding was that the accommodations in the Final 504 Plan were followed and implemented with no issues.

Sarah Bilotti

I.M. was a Saddle Brook District student. Saddle Brook District was responsible for developing a 504 plan, and Pascack Regional District provided information and recommendations for the 504 plan because I.M. had been at PHHS for the prior three years. I.M.'s counselor confirmed with all staff members that I.M.'s 504 plan had been accessed and there were no questions about it. I.M.'s placement as a tuition student at PHHS ended June 30, 2023, because I.M.'s non-resident tuition-contract application to PHHS was denied, and her resident application was also denied. Thus, I.M. remained a Saddle Brook District student. There were brief (a few hours) times when Mom was unable to access Genesis due to nonpayment, but it was the Pascack Regional District's position not to engage with Mom, so access was always restored when Mom contacted PHHS. When Mom contacted Pascack Regional District in November 2023, it appeared that her access to Genesis had been temporarily disabled for a short period. She made sure Mom's access was restored—which she believed resolved Mom's issue, but then Mom filed the Pascack Petition. After the Pascack Petition was filed, she asked counselors to check with the teachers about any issues. There were no 504 implementation issues, no academic issues, and no issues with I.M. accessing any services. In December, she requested a log of how many times Mom had accessed the Final 504 Plan in Genesis since June 2023. However, as a result, Pascack Regional District realized that for the past two years, only staff, and not parents, were able to access 504 plans from Genesis—so parent access was then re-enabled district-wide. Mom had been accessing Genesis since the start of the 2023–2024 school year, and the name of I.M.'s counselor was in Genesis and there were multiple emails between Mom and

Donnelly, so Mom knew who I.M.'s counselor was. All staff was directed to download and review student 504 plans at the start of the school year. I.M. had a 504 plan for 2023–2024 and IEPs for the prior school years. She did not respond via email to Mom's November 8, 2023, email, because she is careful how she responds to Mom and tries to limit responses because they are met with acrimony.

Tara Flannery

Flannery facilitated I.M.'s intake into RISE in January 2021, and she attended and contributed at IEP meetings. She reviewed the IEP and shared with Franceski the accommodations and modifications in the IEP to develop the 504 plan. I.M.'s IEP was continued through the end of the 2022–2023 school year, and I.M. had a 504 plan for the 2023–2024 school year. I.M. had regularly scheduled counseling appointments in her IEP, but I.M. did not regularly attend, so I.M.'s counselor would push into a classroom or remind I.M. of her appointments. The language changed to allowing I.M. to access counseling when she requested it, because she was maintaining her grades and attendance. Brittany Gallagher, LCSW was the counselor in I.M.'s IEP. Mom objected to Gallagher for counseling but her request for someone else was denied. Mom requested that no one speak to I.M. during the 2022–2023 school year. Mom would contact the Pascack Regional District after any situation arose and request that no one speak to I.M. She is not aware of any issues relative to the implementation of I.M.'s 504 plan. I.M. started at PHHS with two RISE courses and gradually transitioned to less restrictive courses. No further accommodation was necessary or warranted for I.M. I.M. and Mom opted to drop the RISE program.

Marin Donnelly

Donnelly was not involved in the development of the 504 plan, but she knew that I.M. transitioned from an IEP to a 504 plan for the 2023–2024 school year. Genesis reflects that I.M.'s Final 504 Plan was added to Genesis on June 14, 2023. Teachers were mandated to read 504 plans and bring any questions to the attention of Franceski or the appropriate school counselor. Bilotti sent her an email with parental concerns on August 30, 2023, and asked her to touch base with I.M. to make sure she would feel

comfortable accessing her teachers and to let her know that, per the 504 plan, she was there to support I.M. I.M. also emailed her asking for a meeting about college applications. So, on September 1, 2023, she met with I.M. about the parental concerns, encouraged her to access the supports in her 504, and let her know she had access to teachers for extra help and that she could come to her for any support. The remainder of the meeting was about college applications. She was aware of the September 8, 2023, email, and she attended the staff meeting at the beginning of the year, where 504 plans were discussed, and the principal advised staff to review student 504 plans.

She was available to I.M., at I.M.'s request, for any academic, personal, social, or emotional concerns. I.M. reached out to her several times during the 2023–2024 school year for various reasons—many being college-related because it was her senior year, but also regarding other concerns like her math course and her internship. In early December 2023, I.M. expressed concerns about difficulties in math class. She encouraged I.M. to speak with her teacher and make use of the extra-help hours with the teacher and at the math center, which is available three days per week. Given I.M.'s anxiety and performance anxiety, she also conveyed I.M.'s concerns to her math teacher so that the teacher could support and encourage I.M. There was some discussion earlier in the year about possibly dropping math, but since I.M. was interested in pursuing nursing, they also discussed the importance of math for a nursing major, the math admissions requirements, and I.M.'s transcript. To determine whether I.M. should drop math for the second semester, she told I.M. to identify her top-priority colleges. I.M. had applied to a number of colleges, so she contacted each of I.M.'s top six schools to inquire about the implications of I.M. dropping second-semester math. She determined that because I.M. had completed first semester math and previous math courses, including algebra, geometry, algebra II, and computer science, I.M. would meet the minimum requirements and dropping the second semester of math would not affect her offer of admission at one of the schools or the review of her application at the others. She shared this information with Mom via email. Mom asked if it would impact I.M.'s graduation status, and she advised that it would not and that I.M. would meet all district and State graduation requirements. I.M. had a very busy schedule and fitting in extra help seemed to be a stressor, so it appeared that dropping second-semester math would provide some relief

to I.M., and I.M. did withdraw. Additionally, she assisted I.M. in resolving an internship issue by contacting the internship coordinator.

I.M. would bring any issues causing her anxiety academically to her attention and she would assist I.M. in addressing those issues. In May 2023, I.M. asked if she could drop computer science. She denied I.M.'s request because it was past the January 18, 2023, withdrawal deadline and I.M. had a passing grade, a "C," and the opportunity to improve her grade. She encouraged I.M. to speak with the computer science teacher, believing that would make I.M. feel better about her ability to improve her grade. However, neither I.M. nor Mom was happy with the denial, and they challenged it, but it was not overturned by the superintendent. Mom told her not to speak with I.M. regarding the matter and not to intimidate I.M. I.M. ultimately completed computer science with a B+, and computer science gave I.M. additional math credits as part of the admissions review. Without computer science, she would not have had the credit.

In January 2024, she was asked by Bilotti to provide a log of her communications with I.M. She did not know the reason. She created the log based on emails with I.M., and sometimes she wrote a note to jog her memory if there was follow-up needed. She only reviewed the emails between her and I.M.—not emails from others. Some were initiated by her, but most were initiated by I.M. The log does not reflect her September 1, 2023, discussion with I.M. about her 504 plan, because the log was created based only on her emails with I.M. and it was not until recently, in preparing for the hearing, that she located the August 30, 2023, email from Bilotti, which refreshed her recollection. After the September 1, 2023, meeting, she had no further discussion with I.M. about her 504 plan until I.M. emailed her in January 2024, asking if a 504 plan would be sent to her colleges. She had a conversation about the Final 504 Plan with I.M., not with Mom. There were no complaints about the Final 504 Plan or that it was not implemented. There were no complaints about I.M.'s access to a counselor in the guidance office if requested. They are able to monitor in Genesis if a student is not doing well academically, and I.M. was not on that roster. I.M. was accepted to ten colleges.

She addressed any concerns of I.M. or Mom that were brought to her attention. In January 2024, she confirmed with I.M.'s teachers that the 504 plan was implemented.

I.M.'s math teacher advised that all students get a copy of the class notes and that I.M. had preferential seating near the teacher. Although the students chose their own seats at the start of the school year, the teacher encouraged I.M. to move her seat when she started to exhibit difficulties. I.M. did not want to move her seat to the front. When a student has anxiety, they do not want to single the student out, so the teacher was mindful of I.M.'s anxiety and did not want to make her uncomfortable, but as time progressed and I.M. continued to exhibit difficulties, the teacher required I.M. to change her seat. I.M. was allowed fifty percent extended time for exams but had not utilized it. I.M. was also allowed short breaks when refocusing was needed. I.M. was allowed access to a guidance counselor upon request. I.M.'s anatomy teacher advised that all students may access full copies of the class notes and diagrams in Canvas. Quizzes were short, but I.M. would be allowed as much time as she needed. She never requested additional time and generally submitted her papers in the middle (not first, not last). Breaks and refocusing were generally built into the class because the students were up and moving around frequently. I.M. had not requested to leave class and appeared to the anatomy teacher to be very engaged, focused, and interested in the course material and content. She was doing well in that class, with a B+ at that time. The English teacher advised that I.M. was allowed extra time, but she had not needed it. The teacher does not give a lot of traditional tests, and the class is based more on essays and projects. I.M. sat in the front of the class, appeared focused, and had not requested breaks. Her grade was a B at that time.

Steve Konigsberg

As an IEP student at PHHS, I.M. was in the RISE program. He generated the IEP following the April 21, 2023, in-person IEP meeting at PHHS. The 2022–2023 IEP reflects all parental concerns. Mom wanted to transition I.M. from an IEP to a 504 plan. It was determined that I.M. did not need the special education and related services in the IEP, but some extra support would be beneficial. He was not involved in the development of the 504 plan. The IEP was to end on June 15, 2023, and the 504 plan was to start for the 2023–2024 school year.

Kimberly Gerken

It was not common to draft a 504 plan for a student in another school. I.M. was her first out-of-district 504 plan student. She took the recommendations from Franceski and entered them into a 504 plan. She did not enter the meeting date in the 504 plan. Cawley created the 504 plan document for her to complete, and Cawley had entered the meeting date and participants information. 504 plans can be updated and amended by request. Typically, 504 plan requests are based upon a list of accommodations from a doctor. The request to provide other examples was unusual, and Cawley advised that she did not have to provide examples. Mom withdrew I.M. from Saddle Brook District in August 2023, so I.M. was no longer a Saddle Brook District student thereafter. After the June 21, 2023, email, she did not hear from Mom again until November 6, 2023. She never had any verbal communication with Mom about the 504 plan.

Jillian Cawley

Cawley has been the Saddle Brook District Director of Special Services since July 2023, and prior thereto was the Supervisor of Special Services. Jane Ellen Jenkins was the Saddle Brook District 504 coordinator, but she was asked to step in for Jenkins because of a negative history between Mom and Jenkins. Pascack Regional District did not use 504 Direct, and she had the administrative rights to open and create the 504 plan document for Gerken to complete. However, for a 504 plan document to open and fully populate, she had to enter a date and meeting participants—which could later be changed. There was nothing significant about the date she entered, and she just clicked the top three participants to populate/open the document to get past the main screen. I.M.'s 504 plan was not set to begin until September. There is a history of alleged threats and legal proceedings. Saddle Brook District does not provide sample 504 plans—the accommodations are student-specific and I.M.'s were based upon Pascack Regional District's knowledge of I.M. and what was appropriate for her. If Mom believed additional accommodations were required, she would have provided that information.

Toni Violetti

In Summer 2023, she became involved with I.M.'s residency dispute. Pascack Regional District denied I.M. as a tuition student. Cawley left Mom a voicemail message on August 4, 2024, about the notification from Pascack Regional District, and Mom later showed up at the school. She, Cawley, and Mom discussed the notification, and Mom advised that there was no way I.M. was returning to Saddle Brook District. Cawley said that she would reach out to other districts to find a good placement, perhaps with dance, and would communicate with Mom. Mom later advised Saddle Brook District that I.M. was withdrawn from Saddle Brook District. Since I.M. had withdrawn, and Pascack Regional District had denied the tuition-student application, Saddle Brook District could not send records directly to Pascack Regional District.

K.P.

I.M. was bullied in Saddle Brook District, resulting in anxiety and school refusal. She was on home instruction for approximately a year and a half. Mom fought with Saddle Brook District for an IEP and counseling. Mom requested that I.M. attend PHHS. I.M.'s English RISE class did not benefit her enough, and counseling was the most important, so she asked about a 504 plan and was advised that the 504 plan would include counseling. She advised Konigsberg to make it clear in the IEP that I.M. would continue school at PHHS. In June 2023, she reached out to Saddle Brook District about the 504 plan, and at that time she received a draft 504 plan, not a final 504 plan. Her request for examples of 504 plans was ignored. If she had received a response that the school district does not provide examples, she would have used Google to see what could be added to the 504 plan to help her daughter.

She is a single parent with financial issues, and she has one child in college and another child in high school. She had a tumor removed in 2022 and a heart catheterization in 2023, as well as other procedures. She was trying to stay on top of I.M.'s education and was waiting for the 504 plan. She moved to Montvale in August 2023 because of her health and family crisis. She had depression, anxiety, and health issues, and she was on medications. She contacted a pro bono attorney and told the

attorney she had a draft 504 plan. The attorney told her to email both districts about formulating and implementing a 504 plan. She never received a final 504 plan. There was no 504 plan in Genesis, and she contacted the school districts on November 8, 2023. Neither school district responded to advise that the 504 plan was in Genesis. It is not possible that I.M. had a 504 plan in Genesis before November 8, 2023, when she contacted the school districts. She did not send any follow-up emails about the 504 plan because the attorney told her to wait twenty days and then file a due process petition if the school districts did not respond.

There was no 504 plan meeting. None of the districts' witnesses had knowledge of I.M., except Flannery. The 504 plan was drafted by people with no knowledge of I.M. and it was formulated without parental input. People with no knowledge of I.M. cannot prepare a 504 plan without parental input. None of I.M.'s teachers testified, and there is no written documentation of implementation. Neither school proved that it worked with the parent.

She and I.M. have been subjected to corruption, retaliation, and discrimination on the basis of ethnicity—she is European and English is not her first language—religion, socioeconomics, and health issues. She has various recordings of district staff that she will use in federal court. She never told anyone not to speak to I.M. about education—it was not to speak to her about bullying.

Someone from PHHS hurt themselves, and I.M. came and cried to her. If she knew her daughter had a 504 plan, she would have approached someone. She did not know how to help I.M. when her co-student passed away. I.M. was crying to her remembering that student, and she did not know how to help her. She wants some accommodations in I.M.'s 504 plan, and she has asked since June 2023, but the school has ignored her requests. Specifically,

I want to add things that says structured classroom activities and small group so anxious students are not left out. Allow student I.M. to select her own partners for group-based assignments. Assign a classroom buddy to provide support. Let I.M. know in advance if possible that she will be asked a

question in class. Encourage I.M. to participate to the extent that she's able. Be patient and positive to I.M. learn ways to cope. Make relaxation skill part of classroom room. This can be as simple as inviting student to take a few calm slow breath. Encourage anxious I.M. to try to speak for herself when they can rather than speaking for them while she is allowed. If she is not allowing, then allow a parent to speak for her. Identify a quiet place when you see that she is overwhelmed. Encourage her to get a shorten school days and modify classes as possible. Meet regularly with parents, counselors; school staff to discuss what should be number one of the student's progress and ways to help them. Offer an alternative space to live, eat lunch if necessary. . . Consult parent for anything and allow parent to be present. Allow when a student refuse, when a student refuse to speak, give her time and still allow parents to participate. Be anxious while she has anxiety and ADHD, that I.M. denies to speak, give her time and involve a parent, that way she can be comfortable and able to speak in front of the parent. Those are things that I need to be add based on her anxiety and ADHD on 504.

Discussion and Additional Findings of Fact

A credibility determination requires an overall evaluation of the testimony in light of its rationality or internal consistency and the manner in which it “hangs together” with 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. Spagnuolo v. Bonnet, 16 N.J. 546, 554–55 (1954). It must be such as the common experience and observation of mankind can approve as probable in the circumstances. Gallo v. Gallo, 66 N.J. Super. 1, 5 (App. Div. 1961). “The 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.) (citation omitted), certif. denied, 10 N.J. 316 (1952). The testimony of the Pascack Regional District witnesses and Saddle Brook District witnesses was consistent with the evidence and other testimony and credible under the circumstances. Conversely, the testimony of petitioner was not consistent with the evidence, as noted below.

Mom testified that she never received the Final 504 Plan until it was provided in April 2023 as discovery in this matter. Specifically, Mom testified “I had no knowledge of 504 at all until I received papers after process due” and “I had no knowledge of 504 was in place or implemented in any time until after I received the discovery from papers back and forth from the—for the case.” Additionally, relative to Gerken’s November 7, 2023, 8:02 a.m. email—which stated, “I have attached the plan that was recommended by Pascack Hills based on the IEP previously in place” and attached Final 504 Plan—Mom testified “I have received the email, but I didn’t—I just now saw the pdf, but the pdf doesn’t clarify, maybe I haven’t opened, I don’t know.” Mom denied seeing or reading the attachment and testified that when going through emails on a cell phone she does not see everything, and that the attachment name did not include “504;” it only included “Final,” and does not reflect final of what. Under the circumstances, it is not plausible that Mom did not previously see the attachment and/or had not opened the attachment, because there was no follow-up email from Mom stating that she had not received the stated attachment or that she was unable to open the attachment. Thus, contrary to Mom’s testimony and the due process petitions, the Final 504 Plan was provided to her on November 7, 2023, and the record reflects that she did have the Final 504 Plan in her possession because she emailed a copy of the Final 504 Plan on January 30, 2024, in connection with her residency appeal. Additionally, other than on August 9, 2023, when Mom asked Saddle Brook District to “send PHHS by email . . . anything you have from middle school/EIP/504 immediately”—which notably also indicates Mom’s knowledge of the existence of a 504 plan—Mom never contacted either school district relative to the 504 plan after June 21, 2023, until November 6, 2023. Under the circumstances, and based upon Mom’s history with the school districts, it is not plausible that Mom would not have contacted the school districts had she believed that there was no 504 plan or if she had any concerns or questions about the 504 plan. She repeatedly emailed about the 504 plan in June 2023 but stopped after receipt of the Draft 504 Plan, and never emailed any concerns or complaints about the 504 plan, including after I.M. had started school. While Mom suggested that her lack of communication about the 504 plan was due to medical conditions and the move, Mom otherwise had communications with the school districts relative to registration over the summer, and relative to several other matters during the school year.

Having had an opportunity to consider the evidence and to observe the witnesses and make credibility determinations based on the witnesses' testimony, I **FIND** the following additional **FACTS** in this case:

I.M.'s Final 504 Plan was uploaded to Genesis prior to the start of the 2023–2024 school year. The principal of PHHS held a staff meeting during the first week of school, during which all staff was instructed to download and review students' 504 plans. The Final 504 Plan was in Genesis, reflected by the blue pin icon. The Final 504 Plan was accessible to and was accessed by staff at the start of the 2023–2023 school year. Mom received the Draft 504 Plan on June 19, 2023, and the Final 504 Plan on November 7, 2023. The Draft 504 Plan and Final 504 Plan are identical except for the “meeting date” (May 10, 2023/May 11, 2023) and “DRAFT” designation. Mom was in possession of the Final 504 Plan before she filed the Pascack Petition and Saddle Brook Petition. Donnelly met with I.M. on September 1, 2023, and discussed the Final 504 Plan. Mom did not contact anyone at Pascack Regional District with any questions or complaints about the Final 504 Plan or its implementation during the 2023–2024 school year until November 8, 2024, when she emailed administration.

LEGAL ANALYSIS AND CONCLUSIONS

The Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§ 1400–1482, ensures that all children with disabilities have available to them a free appropriate public education (FAPE) that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living, and ensures that the rights of children with disabilities and parents of such children are protected. 20 U.S.C. § 1400(d)(1)(A), (B); N.J.A.C. 6A:14-1.1. States qualifying for federal funds under the IDEA must assure all children with disabilities the right to a free “appropriate public education.” 20 U.S.C. § 1412(a)(1); Hendrick Hudson Cent. Sch. Dist. Bd. of Educ. v. Rowley, 458 U.S. 176 (1982). Each district board of education is responsible for providing a system of FAPE. 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-school, or secondary-school education in the state involved; and (D) are provided in conformity with the individualized education program required under 20 U.S.C. § 1414(d). 20 U.S.C. § 1401(9); Rowley, 458 U.S. 176.

An IEP is a written statement for each child with a disability that is developed, reviewed, and revised in accordance with 20 U.S.C. § 1414(d), 20 U.S.C. § 1401(14), and 20 U.S.C. § 1412(a)(4). When a student is determined to be eligible for special education, an IEP must be developed to establish the rationale for the student's educational placement and to serve as a basis for program implementation. N.J.A.C. 6A:14-1.3, -3.7. FAPE requires that the education offered to the child must be sufficient to “confer some educational benefit upon the handicapped child,” but it does not require that the school district maximize the potential of disabled students commensurate with the opportunity provided to non-disabled students. Rowley, 458 U.S. at 200. Hence, a satisfactory IEP must provide “significant learning” and confer “meaningful benefit.” T.R. v. Kingwood Twp. Bd. of Educ., 205 F.3d 572, 577–78 (3d Cir. 2000).

The Supreme Court discussed Rowley in Endrew F. v. Douglas County School District RE-1, 580 U.S. 386 (2017), noting that Rowley did not “establish any one test for determining the adequacy of educational benefits,” and concluding that the “adequacy of a given IEP turns on the unique circumstances of the child for whom it was created.” Id. at 394, 404. Endrew F. warns against courts substituting their own notions of sound education policy for those of school authorities, and notes that deference is based upon application of expertise and the exercise of judgment by those authorities. Id. at 404. However, the school authorities are expected to offer “a cogent and responsive explanation for their decisions that shows the IEP is reasonably calculated to enable the child to make progress appropriate in light of his circumstances.” Ibid.

Although Mom argues that Genesis reflects an IEP for the 2023—2024 school year, it is evident that Mom requested that the IEP be discontinued and that I.M. transition to a 504 plan. Thus, although I.M. had previously been receiving special education and related services, pursuant to I.M.'s April 2023 IEP, I.M. no longer required special education and related services, and she instead would receive accommodations and

supports due to her generalized anxiety disorder, performance anxiety, and ADHD via a 504 plan for the 2023–2024 school year.

Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794 (Section 504), provides, “No otherwise qualified individual with a disability in the United States . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance” 29 U.S.C. § 794(a). Such program or activity includes the operations of a local educational agency. 29 U.S.C. § 794(b)(2)(B). See also 34 C.F.R. § 104.3 (2024). 34 C.F.R. Part 104 effectuates Section 504. C.F.R. § 104.1 (2024). An “individual with a disability” is defined under the Rehabilitation Act as any person who has “a physical or mental impairment that substantially limits one or more major life activities of such individual,” has “a record of such an impairment,” or is “regarded as having such an impairment.” 29 U.S.C. § 705(20)(B); 42 U.S.C. § 12102(1). The school district must provide a FAPE to each qualified individual with a disability within its jurisdiction, regardless of the nature or severity of the person’s disability. 34 C.F.R § 104.33.

To establish a violation of Section 504 of the Rehabilitation Act, it must be established that (1) I.M. has a disability; (2) I.M. was “otherwise qualified” to participate in school programs or activities; (3) the District received federal financial assistance; and (4) I.M. was excluded from participation in, denied the benefits of, or subjected to discrimination under any school programs or activities. Ridley Sch. Dist. v. M.R., 680 F.3d 260, 280 (3d Cir. 2012). Section 504's "negative prohibition" is similar to the IDEA's "affirmative duty" and requires schools to provide a FAPE to each qualified individual with a disability. Ibid. To offer a FAPE, “a school district must reasonably accommodate the needs of the handicapped child so as to ensure meaningful participation in educational activities and meaningful access to educational benefits.” Ibid.

While Gerken did not email Mom the Draft 504 Plan for input until after she had already emailed the Final 504 Plan to Franceski, Mom was nevertheless provided an opportunity for input into the 504 plan in June 2023, which was more than sufficient time for the Final 504 Plan to have been amended before the 2023–2024 school year started.

However, Mom provided no input and made no requests for specific accommodations or supports that she believed should have been included in the 504 plan but had not already been included. Mom argues that although she replied to Gerken, “seems ok,” she also requested examples of other 504 plans, but she received no response and was not provided with examples. However, a 504 plan is student-specific, and there is no legal obligation for a school district to provide examples of other 504 plans, nor would it be appropriate. Rather, recommendations come from the student’s medical and educational professionals, the student’s parent, and the student’s IEP team—based upon their evaluations and knowledge of what the student requires and not based upon other students’ 504 plans.

Mom argues that the 504 plan was developed by individuals with no personal knowledge of I.M., but the record reflects that the 504 plan was developed based upon I.M.’s April 21, 2023, IEP, which reflects recent evaluations, and current teacher feedback and parent concerns. A separate 504 meeting was not required, and Mom did not request a 504 meeting. Mom also argues that if Gerken had responded and advised that 504 plan examples would not be provided, she would have Googled examples herself. However, Mom was not prevented from doing so at any point, and yet she did not request any other accommodations, supports, or modifications at any time until her testimony on April 30, 2024. Moreover, there is no evidence to support that I.M. required such accommodations, supports, and modifications.

Bilotti testified that unbeknownst to the Pascack Regional District until December 2023, PHHS parents were unable to access 504 plans via Genesis. However, Mom received the Draft 504 Plan on June 19, 2023, and the Final 504 Plan on November 7, 2023. Further, the Draft 504 Plan and Final 504 Plan are identical except for the meeting date and inclusion of “DRAFT.” As such, Mom was aware of all the accommodations and supports and testing modifications/accommodations that the 504 Plan would include since June 2023. Further, those accommodations, supports, and modifications were consistent with I.M.’s IEP, for which there had been a meeting and discussion amongst the meeting participants, including Mom. There was no follow-up request from Mom for any in-school therapy services or counseling, no input or specific requests from Mom for any other accommodations or supports and testing modifications/accommodations, and

no assertion of any deficiencies. While the April 21, 2023, IEP reflects that Dr. Ladak recommended outpatient psychiatric consultation and private outpatient therapy services for I.M., and Mom testified that counseling was her primary concern, there does not appear to have been any recommendation made relative to in-school therapy, and I.M. had not accessed the once-weekly counseling in her IEP.

Although Mom argues that none of I.M.'s teachers testified, multiple Pascack Regional District witnesses credibly testified that the Final 504 Plan was uploaded to Genesis prior to the start of the 2023–2024 school year, that there was an email to staff and a staff meeting instructing staff to review student 504 plans, and that it had been reviewed by staff and was being utilized and implemented throughout the 2023–2024 school year. Although Mom has alleged that Genesis reflects IEPs for years in which no IEP was in effect and that the 504 plan reflects that it was in effect when it was not in effect, there is no doubt that staff was aware that I.M. no longer had an IEP, no doubt that the IEP ended at the conclusion of the 2022–2023 school year, and no doubt that the Final 504 Plan was in effect for the entirety of the 2023–2024 school year. Further, although the due process petitions allege that there was no 504 plan in effect—which is contrary to the weight of the credible evidence—the due process petitions do not allege any specific damage or detrimental effect therefrom.

A FAPE requires that the education offered be sufficient to “provide significant learning,” confer “meaningful benefit,” and be “reasonably calculated to enable the child to make progress appropriate in light of his circumstances. There is no evidence that I.M. was denied significant learning or meaningful benefit, or that she did not make progress. To the contrary, I.M. was not denied any of the accommodations, supports, or modifications in the Final 504 Plan; she performed well in school, participated in extracurricular activities, accessed her counselor when needed, and was accepted at ten colleges. As such, I **CONCLUDE** that the evidence reflects that she was provided a FAPE.

With respect to her 504 plan, there was no dispute that I.M. was diagnosed with generalized anxiety disorder, performance anxiety, and ADHD, or that she was otherwise qualified to participate in school programs or activities, or that the school districts receive

federal financial assistance. Accordingly, the only remaining factor is whether I.M. was excluded from participation in, denied the benefits of, or subjected to discrimination under any school programs or activities. That said, the evidence reflects that I.M. was not excluded from participation in any school programs or activities, that I.M. was not denied the benefits of any school programs or activities, and that I.M. was not subjected to discrimination under any school programs or activities. I.M. was also not denied any of the accommodations, supports or modifications in the Final 504 Plan. Further, although Mom testified that she and I.M. have been subject to corruption, retaliation, and discrimination for various reasons, there is no evidence to support these allegations. Accordingly, I **CONCLUDE** that there was no violation of Section 504 of the Rehabilitation Act.

As to any alleged procedural or other deficiencies, it is noted that the Draft 504 Plan and Final 504 Plan do reflect a meeting date when there is no dispute that there was no 504 plan meeting—but a meeting is not required, and the parties had a meeting on April 21, 2023. Additionally, while the 504 plans may reflect school years 2022–2023 and 2023–2024 and plan start dates of May 2023, the record reflects that the IEP was in effect through the end of the 2022–2023 school year, and that the Final 504 Plan was in effect for the 2023–2024 school year. Accordingly, I **CONCLUDE** that any inaccuracies in the dates did not deny I.M. a FAPE, nor did it deny K.P. the opportunity to participate and provide input into the 504 plan, and it did not result in I.M. being excluded from participation in, denied the benefits of, or subjected to discrimination under any school programs or activities.

In sum, I **CONCLUDE** that I.M. was provided a FAPE and there was no violation of Section 504 of the Rehabilitation Act—thus any dispute relative to which school district was responsible for I.M. given the denial of both the tuition-contract and residency applications is moot.

ORDER

It is hereby **ORDERED** that the relief sought by petitioner is **DENIED** and the Pascack Petition and Saddle Brook Petition are **DISMISSED**.

This decision is final pursuant to 20 U.S.C. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2024) and is appealable by filing a complaint and bringing a civil action either in the Law Division of the Superior Court of New Jersey or in a district court of the United States. 20 U.S.C. § 1415(i)(2); 34 C.F.R. § 300.516 (2024). If the parent or adult student feels that this decision is not being fully implemented with respect to program or services, this concern should be communicated in writing to the Director, Office of Special Education.



August 8, 2024

Date

KELLY J. KIRK, ALJ

Date Received at Agency

Date Mailed to Parties:
am

APPENDIX

List of Witnesses

For Petitioner:

K.P.

For Respondent (Pascack Regional BOE):

Erica Franceski

Sarah Bilotti

Tara Flannery

Marin Donnelly

For Respondent (Saddle Brook BOE):

Steve Konigsberg

Kimberly Gerken

Jillian Cawley

Toni Violetti

List of Exhibits

For Petitioner:

None

For Respondent (Pascack Regional BOE):

R-1 Emails (Pascack)

R-2 Pascack 504 Plan

R-3 Final 504 Plan

R-4 Emails (Saddle Brook)

R-5 January 31, 2024, Email and Section 504 Accommodation Plan

- R-6 July 27, 2023, Letter (Pascack to Saddle Brook) & August 4, 2023, Letter (Pascack to Mom)
- R-7 Student Registration Form & August 22, 2023, Letter (Pascack to Mom) & September 12, 2023, Notice of Final Ineligibility
- R-8 September 8, 2023, Email (Franceski to PHHS Teaching Staff) & Genesis Printout
- R-9 Current Grades as of April 8, 2024
- R-10 Turnstile Records
- R-11 Communication/Meeting Log

For Respondent (Saddle Brook BOE):

- RS-1 April 21, 2023, IEP
- RS-2 April 21, 2023, Consent to Discontinue IEP
- RS-3 April 2023 Emails
- RS-4 Draft 504 Plan
- RS-5 June 2023 Emails
- RS-6 November 2023 Emails
- RS-7 August 9, 2023, Emails & August 7, 2023, Letter (Pascack to Mom)
- RS-8 August 2023 Emails
- RS-9 (Not in Evidence)
- RS-10 Global Stipulation of Settlement