



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. EDS 04674-23

AGENCY DKT. NO. 2023-35890

M.O. AND T.O. ON BEHALF OF S.O.,

Petitioners,

v.

NORTH BRUNSWICK TOWNSHIP

BOARD OF EDUCATION,

Respondent.

George M. Holland, Esq., for petitioners

Eric L. Harrison, Esq., for respondent (Methfessel and Werbel, P.C., attorneys)

Record Closed: February 13, 2024

Decided: March 3, 2025

BEFORE **DEAN J. BUONO, ALJ:**

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

In accordance with the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1415, petitioners M.O. and T.O. on behalf of S.O. requested a due-process hearing seeking compensatory education for failure by respondent, the North Brunswick Board of Education (the Board, or the District), to provide a free appropriate public education

(FAPE). The Board asserts that they have a comparable program and did in fact provide FAPE.

Petitioners filed a due-process petition dated May 15, 2023, with the Office of Special Education Policy and Dispute Resolution in the Department of Education. The matter was transmitted to the Office of Administrative Law (OAL), where it was filed as a contested matter on May 30, 2023.

Pursuant to N.J.A.C. 1:1-13.1 et seq., a telephone prehearing conference was held in the above-entitled matter and a Prehearing Order was issued. Hearings were held on March 6, 2024, May 29, 2024, July 1, 2024, and September 23, 2024.

The record remained open to permit the parties to submit closing briefs.

FACTUAL DISCUSSION AND FINDINGS OF FACT

Based on the testimony the parties provided, and my assessment of its credibility, together with the documents the parties submitted, and my assessment of their sufficiency, **I FIND** the following as **FACT**:

SUMMARY OF RELEVANT TESTIMONY

Respondent

Barbara Barr (Barr), testified as an expert witness in special education with a specialization in transitional services. She has been the Case Manager and Social worker at North Brunswick for eight years and manages the transition of students from the 18–21 Possibilities Plus Transition Program (18–21 Program) to the Division of Developmental Disabilities (DDD). She explained that she manages students in the high school's language and learning possibilities class (Transitions class) which is a self-contained program for students with language and learning disabilities. The class is a conglomeration of educational and life skill programming which enhances each other. Managing the multiply disabled programming and 18–21 Transition Programming which

is a program rooted in community-based instruction. Barr explained that she relied on her team and their combined expertise to ensure that the Individual Education Programs (IEP)'s are appropriate and executed.

She became S.O.'s case manager near the end of her freshman year. S.O. has a diagnosis of autism and is classified as M.D. (Multiply Disabled). Originally, S.O. was at an out of district placement, (Montgomery Academy) and the parents contacted Barr because they felt that S.O. was struggling. Barr contacted Montgomery Academy and set up a meeting between the parents and herself to facilitate a plan. The family reached out to Barr and indicated that they wanted S.O. to return to the District. Barr believed that the programming offered by the district was appropriate. In fact, she explained in detail the qualities.

Barr testified about the qualities of the 18–21 Possibilities Plus Program because many of the students in the district's self-contained program are not going to go to college. The population of students that this program serves struggle to find meaningful employment after graduation without support and require further life skills and vocational training to be independent to the best of their ability. This program was developed in-house rather than sending students out of district. The 18–21 program also exists because students are not eligible for DDD services until they are 21 years old. She believes in the importance of having DDD "locked in" and ready for an eligible student before that student leaves the District so they are ready to take advantage of its services. Based on that, S.O. did not need another year at the Center School after the 2022–2023 school year when she turned twenty-one, and that there was nothing that the Center School had to offer to S.O. that would not have been available to her from DDD. In fact, DDD could offer S.O. additional supports that the Center School could not, including paid employment through DDD, budget support for her leisure activities and budget support for counseling or coping skills. The Center School was limited for S.O. in the sense that it could not "move her into the adult world," and that "they're not going to support her when she's 25 or 30 the way DDD will."

The North Brunswick High School IEP offering the 18–21 Possibilities Plus Transitions Program was appropriate for S.O. Transition services were offered to S.O.

through the District's programming and were not only school-based services through University Behavioral Health Care (UBHC), but also participation in community-based instruction and structured learning experiences based on areas of interest.

S.O.'s progress demonstrated that her goals were progressing satisfactorily or gradually. S.O. made meaningful progress based on her capabilities during her twelfth-grade year and that the 18–21 Possibilities Plus program was appropriate for S.O. Leading up to graduation, S.O. had issues connected to “constant change, virtual, in person, mask mandates.” By June 2021, the District put a 1:1 aide with S.O. for safety. In fact, the prom was so very important to S.O. and her that Barr escorted her to the prom. The District wanted her to have mental health counseling with UBHC. The focus was to stabilize S.O.'s mental health because she was really struggling with the mask mandate. The District provided unlimited breaks throughout the prior school year. However, the family requested a mask exemption, which was denied. S.O. refused to come to school and did not enter the building in the fall of 2021. S.O. emailed Barr to inform her that she refused to attend school.

Barr emailed S.O.'s father on October 1, 2021, informing the family that S.O. had “missed 19 days of transition and community-based instruction based on her refusal to return. We are ready and able to instruct her if she decides to return. I'm hoping we can come to resolution soon on this.” However, there was no resolution, and that there was no more communication with the family.

The district mailed S.O.'s diploma, a DDD application, and a psychological evaluation. Receipt of the diploma was acknowledged through emails S.O. sent to friends and Instagram posts but never from S.O.'s parents. Then in March of that same year, S.O.'s father contacted Director of Special Services Chris Harry's office to inquire about the lifting of the mask mandate and S.O. returning to school. At that point, S.O. was a graduate of the District and was issued her diploma. S.O.'s father denied receiving the diploma and brought up compensatory services.

Barr testified that she emailed the Center School and sent S.O.'s records with her father's permission after he expressed that the District programming was no longer

appropriate for S.O. because she had “so much animosity towards the school and our program.” Barr explained that S.O. felt that she was “kicked out,” and “actually staged a protest in front of our building.” She testified that the District did not want to put S.O. “in the situation of feeling badly and having animosity and resentment, so we thought it would be best if we were going to do this compensatory services agreement to explore out of district . . .”

Barr was in support of S.O. receiving compensatory services at the Center School and in fact developed a compensatory services plan for S.O. to receive services at the Center School from May 2, 2022, through June 16, 2023. She emailed the parents but received no response from the family. There was some testimony that Barr kept a copy of correspondence that a student had with S.O. Apparently S.O. articulated that her diploma was “taken away by a counselor from the state . . .”

S.O. received a Free, Appropriate Public Education during her time educated within North Brunswick Schools. The compensatory services plan of May 2022 through June 2023 was also appropriate.

On cross examination, Barr testified that S.O. met her graduation requirements and the District typically does not hold a “graduation meeting” for special education students prior to graduation. Graduation is addressed during the annual IEP review meeting. S.O.’s meeting would have occurred in November 2021, but S.O. graduated and was issued her diploma in October.

There was testimony that S.O.’s father wanted to know about the “pot of money” allocated to S.O. but then “ghosted” the district and disenrolled S.O. Barr testified that the family was welcome to come back to the District and the District was “willing to entertain any options” of the parents. However, S.O. and her parents refused to have any discussion, and it was described as very frustrating because she missed school during the pandemic and was tired of the virtual classrooms. She was accepted at the Center School but no document was signed indicating they were going. Development goals and objectives the District’s use exhibit R-11 was understood that her functional goals changed. Also, there was not a life skills component nor vocational goals. The life

skills and daily living skills were very critical, more so than reading or writing because S.O. could functionally read and write but not at grade level. However, her “present levels were very robust.”

The compensatory services offered to S.O. were agreed upon; or the Center School would not have accepted her. Goals for S.O. were developed by the Center School, her parents, and the District. In fact, S.O.’s compensatory services plan was reviewed on July 7, 2022, to ensure she was adjusting well at the Center School and the goals were appropriate. At no time did the District observe S.O. at the Center School. All updates came from S.O.’s case manager. If the parents contacted the District in February 2022, the District would not have offered S.O. more programming because she graduated. Barr would not concede that S.O. was “terminated,” and she reiterated her prior testimony that S.O. was dropped from the rolls and the family did not respond to numerous communications from the District. She would also would not concede that S.O. was “entitled” to a compensatory services plan, but that out of “graciousness and being in the business of special ed we offered a compensatory services plan” as S.O. was not yet twenty-one and eligible for DDD services. When asked why an IEP was not prepared for S.O., Barr reiterated her testimony that S.O. was no longer a student in the District because she graduated. S.O. was making progress to the best of her ability at the Center School, and that her goals would be lifelong. She also stated that S.O. would not have benefited from another year at the Center School.

Christopher Harry testified as an expert witness in educational supervisory roles because he is the Director of Pupil and Personal. He is the director of the school personnel including special education. At no time was he part of S.O.’s IEP team and had nothing to do with her compensatory services or programming.

In 2020 the school closed, and the online program began because of Covid. As far as the mask mandate, he was unaware who mandated the masks but heard that the parents wanted a face shield. He agreed that if a student is graduated then they do not need an IEP. Also, “S.O. stopped attending school on her own and then got a diploma . . . she was no longer the purview of North Brunswick.”

Petitioners

T.O. is the father of S.O. and testified that while his daughter was going to Montgomery Academy she excelled. Despite it not being a very academic setting, they decided to send her to North Brunswick high school. The “school was a source of her being.” S.O. enjoyed school very much. He recalled one day she woke up on a snow day and shoveled the path to school despite the school being closed. She really loved North Brunswick high school. She couldn’t wait to get back to school after development however, she suffered from a seizure disorder that was affected by wearing a mask. When she was recalled back to school it was still virtual but with an in-school setting. She still struggled. She had health issues that made wearing a mask difficult for her learning. In fact, on one occasion she was taken to the hospital after having a seizure. The mask mandate was a problem and when it was lifted, “it was a gift from heaven.” It was at this point that they wrote a letter to the school requesting for her to wear a face shield. “I felt like I was ghosted . . . it was not us ghosting them.” Nevertheless, the parents wanted her to return to school for the 18–21-year-old program.

On cross examination, T.O. denied that exhibit R-20 is representative of the diploma that was mailed to the house. Currently, S.O. is in a “pause mode.” He believes that she needs services but is unable to articulate those services.

Dr. Michelle Havens, was qualified as an expert in special education and as a board-certified behavior analyst (BCBA). She explained that the January 18, 2024, neurology report shows S.O. having a diagnosis of a recurring divergence disorder including psychogenic non-epileptic seizure disorder. She opined that daily living, behavior, socialization and communication goals were “missing” from S.O.’s progress reports from the District and they “seemed like” areas that “would be most important based on her profile.” S.O.’s IQ was low (25–50). Testing revealed that she had difficulty because of hyperactivity and somatization. There were no communication goals or reports for grades 11 and 12. Daily living skills and socialization should also be included in her programming to increase productivity. The program proffered by North Brunswick was not appropriate to meet her needs. “There was minimal progress.” However, she also opined that S.O.’s progress report from the Center School indicated that progress

was “happening a little bit” through the goals she was working on, including “daily living, coping, career development, work readiness . . .” However, she noted that S.O. still had “many moments when she’s emotionally unavailable or withdrawn.”

On cross examination, Dr. Havens admitted that she had not spoken with anyone at the Division of Developmental Disabilities or S.O.’s case manager regarding S.O., but that it would have been helpful to do so. Also, she admitted that she only met the family once and was referred through the attorney. Her report and opinion almost entirely relied on documents provided by the lawyer. She assumed that the family was in litigation with the District when they made contact with her. She testified that she is an “independent consultant,” and that it is her expert opinion that the District failed S.O.

In fact, Dr. Havens admitted that she did not reach out to the District and that “to some degree,” to form a fully informed objective opinion it would have been beneficial to speak with S.O.’s case manager. It would have been beneficial to observe the Possibilities Plus Program to determine if it would have met S.O.’s needs at the time it was offered.

Respondent’s Case

Respondent argues that it provided S.O. a free appropriate public education in the least restrictive environment including compensatory services in the Center School. The District maintains that S.O.’s classification and programming was appropriate. It maintains that the proposed IEP was reasonably calculated to afford her an educational benefit.

Petitioners’ Case

Petitioners seek a determination that respondent denied S.O. a free appropriate public education and compensatory education.

FINDINGS OF FACT

Based on the evidence presented at the hearing as well as on the opportunity to observe the witnesses and assess their credibility, **I FIND** that for testimony to be believed, it must not only come from the mouth of a credible witness, but it also has to be credible in itself. It must elicit evidence that is from such common experience and observation that it can be approved as proper under the circumstances. See Spagnuolo v. Bonnet, 16 N.J. 546 (1954); Gallo v. Gallo, 66 N.J. Super. 1 (App. Div. 1961). A credibility determination requires an overall assessment of the witness's story in light of its rationality, internal consistency, and the manner in which it "hangs together" with the other evidence. Carbo v. United States, 314 F.2d 718, 749 (9th Cir. 1963). Also, "[t]he interest, motive, bias, or prejudice of a witness may affect his credibility and justify the [trier of fact], whose province it is to pass upon the credibility of an interested witness, in disbelieving his testimony." State v. Salimone, 19 N.J. Super. 600, 608 (App. Div.), certif. denied, 10 N.J. 316 (1952) (citation omitted).

In determining credibility, I do not believe that District employees would want to deprive S.O. of any educational opportunities but they must also work within the parameters of the law, regulations and facts as presented not merely within the unsupported thoughts or desires of a party. I am also aware that the parents want the best educational opportunity for S.O. However, Dr. Havens opinion was admittedly based on facts acquired from the lawyer. She had not spoken with anyone at the Division of Developmental Disabilities or with S.O.'s case manager regarding S.O., but it would have been helpful to do so. Also, she admitted that she only met the family once and was referred through the attorney. Her report and opinion almost entirely relied on documents provided by the lawyer. The compensatory services provided at the Center School funded by the District furthered their obligation to provide FAPE.

In this case, therefore, I do not find that there is an issue of credibility as much as an issue of experience and knowledge. Therefore, I accept the information set out by the District as **FACT**. **I FIND** as **FACT** the testimony of the District's witnesses were credible to the extent of implementing FAPE. **I FURTHER FIND** as **FACT** that the services provided by North Brunswick clearly provide more than a "trivial" or "de minimis" educational benefit and that S.O.'s education plan was reasonably calculated to provide a meaningful educational benefit to her. **I FURTHER FIND** as **FACT** that the IEP provided

by the District contained specific statements of the student's current performance levels, the student's short-term and long-term goals, the proposed educational services, and criteria for evaluating the student's progress. **I FURTHER FIND as FACT** that the IEP contained both academic and functional goals related to the Core Curriculum Content Standards of the general education curriculum and was "measurable" so both parents and educational personnel were apprised of "the expected level of achievement attendant to each goal." **I FURTHER FIND as FACT** that the District provided "an educational program reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances" and provided FAPE.

LEGAL ANALYSIS AND CONCLUSION

Federal funding of state special education programs is contingent upon the states providing a "free and appropriate education" (FAPE) to all disabled children. 20 U.S.C. § 1412. The Individuals with Disabilities Act (IDEA) is the vehicle Congress has chosen to ensure that states follow this mandate. 20 U.S.C. §§ 1400 et seq. "[T]he IDEA specifies that the education the states provide to these children 'specially [be] designed to meet the unique needs of the handicapped child, supported by such services as are necessary to permit the child to benefit from the instruction.'" D.S. v. Bayonne Bd. of Educ., 602 F.3d 553, 556 (3d Cir. 2010) (citations omitted). The responsibility to provide a FAPE rests with the local public school district. 20 U.S.C. § 1401(9); N.J.A.C. 6A:14-1.1(d). Subject to certain limitations, FAPE is available to all children with disabilities residing in the State between the ages of three and twenty-one, inclusive. 20 U.S.C. § 1412(a)(1)(A), (B). The District bears the burden of proving that a FAPE has been offered. N.J.S.A. 18A:46-1.1.

New Jersey follows the federal standard that the education offered "must be 'sufficient to confer some educational benefit' upon the child." Lascari v. Bd. of Educ. of Ramapo Indian Hills Reg'l High Sch. Dist., 116 N.J. 30, 47 (1989) (citations omitted). The IDEA does not require that a school district "maximize the potential" of the student but requires a school district to provide a "basic floor of opportunity." Hendrick Hudson Cent. Sch. Dist. Bd. of Educ. v. Rowley, 458 U.S. 176, 200, 102 S. Ct. 3034, 3047, 73 L. Ed. 2d 690, 708 (1982). In addressing the quantum of educational benefit required, the Third Circuit has made clear that more than a "trivial" or "de minimis" educational benefit is

required, and the appropriate standard is whether the child's education plan provides for "significant learning" and confers "meaningful benefit" to the child. T.R. v. Kingwood Twp. Bd. of Educ., 205 F.3d 572, 577 (3d Cir. 2000) (internal citations omitted).

As noted in D.S., an individual education plan (IEP) is the primary vehicle for providing students with the required FAPE. D.S., 602 F.3d at 557. An IEP is a written statement developed for each child that explains how FAPE will be provided to the child. 20 U.S.C. § 1414(d)(1)(A)(i). The IEP must contain such information as a specific statement of the student's current performance levels, the student's short-term and long-term goals, the proposed educational services, and criteria for evaluating the student's progress. See 20 U.S.C. § 1414(d)(1)(A)(i)(I)-(VII). It must contain both academic and functional goals that are, as appropriate, related to the Core Curriculum Content Standards of the general education curriculum and "be measurable" so both parents and educational personnel can be apprised of "the expected level of achievement attendant to each goal." N.J.A.C. 6A:14-3.7(e)(2). Further, such "measurable annual goals shall include benchmarks or short-term objectives" related to meeting the student's needs. N.J.A.C. 6A:14-3.7(e)(3). The school district must then review the IEP on an annual basis to make necessary adjustments and revisions. 20 U.S.C. § 1414(d)(4)(A)(i).

A due process challenge can allege substantive and/or procedural violations of the IDEA. If a party files a petition on substantive grounds, the Administrative Law Judge (ALJ) must determine whether the student received a FAPE. N.J.A.C. 6A:14-2.7(k). If a party alleges a procedural violation, an ALJ may decide that a student did not receive a FAPE only if the procedural inadequacies: (1) impeded the child's right to a 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. Ibid. In the instant matter petitioners allege substantive violations of the IDEA. This tribunal must determine if the IEPs afforded FAPE to D.M. in the least restrictive environment. 20 U.S.C. § 1412(a)(1). J.T. v. Dumont Public Schools, 438 N.J. Super. 241, 257 (App. Div. 2014) (citing Lascari, at 33).

In Endrew F. v. Douglas County School District RE-1, 137 S. Ct. 988, 1001 (2017), the United States Supreme Court construed the FAPE mandate to require school districts

to provide “an educational program reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” The Court’s holding in Endrew F. largely mirrored the Third Circuit’s long-established FAPE standard, which requires that school districts provide an educational program that is “reasonably calculated to enable the child to receive meaningful educational benefits in light of the student’s intellectual potential and individual abilities.” Dunn v. Downingtown Area Sch. Dist. (In re K.D.), 904 F.3d 248, 254 (3rd Cir. 2018) (quoting Ridley Sch. Dist. v. M.R., 680 F.3d 260, 269 (3rd Cir. 2012)). In addressing the quantum of educational benefit, the Third Circuit has made clear that more than a “trivial” or “de minimis” educational benefit is required, and the appropriate standard is whether the IEP provides for “significant learning” and confers “meaningful benefit” to the child. Endrew F., 137 S. Ct. at 1000–01; T.R. v. Kingwood Twp. Bd. of Educ., 205 F.3d 572, 577 (3d Cir. 2000); Ridgewood Bd. of Educ. v. N.E. ex rel. M.E., 172 F.3d 238, 247 (3d Cir. 1999), superseded by statute on other grounds as recognized by P.P. v. W. Chester Area Sch. Dist., 585 F.3d 727 (3d Cir. 2009); Polk v. Cent. Susquehanna Intermediate Unit 16, 853 F.2d 171, 180, 182–84 (3d Cir. 1988). Hence, an appropriate educational program will likely “produce progress, not regression or trivial educational advancement.” Dunn, 904 F.3d at 254 (quoting Ridley, 680 F.3d at 269).

The IDEA’s FAPE requirement also includes a mainstreaming component, requiring education in the least restrictive environment. S.H. v. State-Operated Sch. Dist., 336 F.3d 260, 265 (3d Cir. 2003); 20 U.S.C. §1412(a)(5)(A). “The least restrictive environment is the one that, to the greatest extent possible, satisfactorily educates disabled children together with children who are not disabled, in the same school the disabled child would attend if the child were not disabled.” S.H., 336 F.3d at 265 (quoting Carlisle Area Sch. V. Scott P., 62 F.3d at 535). The school district bears the burden to establish that the district offered a FAPE in the least restrictive environment. N.J.S.A. 18A:46-1.1.

The District met its burden of proof and burden of production in the instant matter. The competent, credible, and relevant evidence in this case abundantly demonstrates that S.O. made meaningful progress based on her capabilities while attending North Brunswick. Also, the District’s 18–21 Possibilities Plus Transition program was

appropriate for S.O. and the district is correct that had S.O. attended the programming planned in her last IEP, there would have been an IEP meeting in the fall of 2021 to update her goals. The additional educational services, offered gratuitously through the compensatory service plan at Center School through June 2023, was also appropriate. Petitioners offered no credible evidence to dispute that S.O. was not offered FAPE at either North Brunswick schools or at the Center School. In fact, the opinion of Dr. Havens was based solely on documents provided by the attorney and only one meeting with the family. The District is also correct that they satisfied its burden of proof that S.O. was offered FAPE while a student in the North Brunswick School System and through the fourteen months of gratuitous compensatory services it provided at the Center School before she turned twenty-one and became eligible for DDD services. Accordingly, I **CONCLUDE** that contrary to the petitioners, the District provided FAPE and compensatory education.

Also, petitioners contend that the District violated S.O.'s IDEA rights by failing to hold a meeting to discuss her graduation prior to the issuance of a diploma. Respondent is correct that while the non-occurrence of such a meeting may be explained by her failure to attend the post-graduate 18–21 Program that was set forth in her last IEP and her parents' failure to respond to the communications of her case manager, even if failing to hold another meeting prior to her graduation were a procedural violation of the IDEA, it would be non-actionable because it did not result in the deprivation of FAPE or a denial of meaningful parental participation in educational planning.

A procedural violation is actionable under the IDEA only if it results in a loss of educational opportunity for the student, seriously deprives parents of their participation rights, or causes a deprivation of educational benefits. Winkelman v. Parma City Sch. Dist., 550 U.S. 516, 525–26 (2007) (citing 20 U.S.C. § 1415(f)(3)(E)); J.L. v. Mercer Island Sch. Dist., 592 F.3d 938, 953 (9th Cir.2010).

Petitioners' argument that a special education student cannot graduate until an IEP meeting is held to discuss a change in placement is nonactionable. The credible evidence demonstrates that S.O. received FAPE and that the petitioners had meaningful participation in her educational process.

The District correctly points out that Barr testified that while there is no specific “graduation meeting,” graduation is usually discussed at a student’s annual IEP review meeting. Barr further testified that at S.O.’s 2020 IEP meeting for her twelfth grade year, the post-graduation plan was for her to attend the 18–21 program. She further testified that she had no reason to believe S.O. would not attend the program. S.O.’s annual IEP review meeting was due in November 2021; however, she refused to attend the Transitions Program and therefore was disenrolled. Her parents did not respond to Barr after receiving the news about S.O.’s self-directed change in placement; nor did they acknowledge the receipt of her diploma and DDD application.

As such, she was disenrolled from North Brunswick, because she earned all necessary credits according to the New Jersey Department of Education and was effectively a graduate of the District. Respondent is correct that the parents chose not to respond. In fact, when they communicated with the District the following Spring to seek educational services following the lifting of the mask mandate, they were invited to a meeting, attended and collaborated in the creation of a compensatory services plan at a private school. Their participation in S.O.’s education, when they chose to communicate with the District, was meaningful throughout her high school and post-high school education.

Furthermore, expert testimony established that S.O. received FAPE during her years attending North Brunswick schools and her additional year of compensatory services at Center School, the nonoccurrence of a meeting to discuss explicitly her graduation as a “change in placement” had no impact on her receipt of FAPE. As such, it is a non-actionable alleged procedural IDEA violation

The parties are also at odds regarding the issuance of a diploma and graduation in October 2021. The seminal case of M.N. v. Sparta (D.N.J. Apr. 12, 2022), provides

that receipt of a regular diploma terminates a student's right to further educational services:

Individuals with disabilities do not have an interminable entitlement to a FAPE. Rather, in addition to aging out of eligibility, 20 U.S.C. § 1412(a)(1)(A); see *also id.* § 1412(a)(1)(B), federal regulations provide that, “[t]he obligation to make FAPE available to all children with disabilities does not apply with respect to the following: ... Children with disabilities who have graduated from high school *with a regular high school diploma.*”

Id.

The phrase a “regular high school diploma . . . means the standard high school diploma awarded to the preponderance of students in the State that *is fully aligned with State standards.*” Id. at 5.

Here, S.O. received her high school diploma through the mail from the district. I do not believe that the diploma was not received by petitioners. After completing all state requirements for graduation S.O. was dropped from the rolls after refusing to attend the Possibilities Plus Transition Program. The fact that T.O. denied receipt of the diploma is suspicious. Receipt of the diploma by regular mail and through hand delivery after her refusal to attend the programming satisfies the undersigned. I agree that when S.O. was dropped from North Brunswick’s enrollment for refusal to attend its programming, the District no longer had any obligation to provide her with FAPE because she was no longer a student but a graduate.

Based on the preceding, **I CONCLUDE** that respondent provided FAPE and the petitioners’ due process petition should be **DENIED**. **I FURTHER CONCLUDE** that petitioners’ claim for compensatory education be likewise **DENIED**.

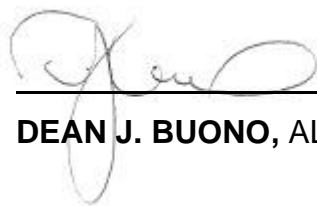
ORDER

It is hereby **ORDERED** that petitioners' due process petition is **DENIED** and **DISMISSED**.

This decision is final pursuant to 20 U.S.C. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2025) and is appealable by filing a complaint and bringing a civil action either in the Law Division of the Superior Court of New Jersey or in a district court of the United States. 20 U.S.C. § 1415(i)(2); 34 C.F.R. § 300.516 (2024). If the parent or adult student feels that this decision is not being fully implemented with respect to program or services, this concern should be communicated in writing to the Director, Office of Special Education.

March 3, 2025

DATE



DEAN J. BUONO, ALJ

Date Received at Agency:

Date Mailed to Parties:

DJB/oni

APPENDIX

Witnesses

For petitioners

T.O.

Dr. Michelle Havens

For respondent

Barbara Barr

Christopher Harry

Exhibits

Joint

- J-1 IEP Dated October 12, 2018
- J-2 Speech and Language Evaluation dated February 11, 2019
- J-3 Education Evaluation dated February 26, 2019
- J-4 Psychological Evaluation dated March 6, 2019
- J-5 IEP dated March 19, 2019
- J-6 IEP dated November 19, 2019
- J-7 Progress Report for 2019-2020 school year
- J-8 IEP dated November 19, 2020
- J-9 Progress Report for 2020-2021
- J-10 Email from Case Manager dated June 21, 2021
- J-11 High school transcript
- J-12 Email from Barbara Barr, Case Manager dated October 1, 2021
- J-13 Letter from Barbara Barr, Case Manager dated October 18, 2021
- J-14 Email from Barbara Barr, Case Manager dated March 18, 2022
- J-15 Present Levels and Goals of Compensatory Services dated June 1, 2022
- J-16 Compensatory Services Plan dated July 7, 2022
- J-17 Email from Barbara Barr, Case Manager dated October 25, 2022
- J-18 Email from Barbara Barr, Case Manager dated April 6, 2023
- J-19 Email from S.O. undated

- J-20 Compensatory Services Plan dated December 15, 2022
- J-21 Compensatory Services Plan dated December 22, 2022
- J-22 Letter from Barbara Barr, Case Manager dated January 18, 2023
- J-23 C.V. for Barbara Barr, Case Manager
- J-24 Letters of Guardianship for S.O.
- J-25 Email from Barbara Barr, Case Manager dated January 11, 2021
- J-26 Email from Barbara Barr, Case Manager dated January 20, 2021
- J-27 Letter from Karina F. Campos, Nurse Practitioner from Princeton and Rutgers Neurology, P.A. dated May 10, 2021
- J-28 Email from Barbara Barr, Case Manager dated May 20, 2021
- J-29 Email from Barbara Barr, Case Manager dated May 25, 2021
- J-30 Graduation Certificate dated June 17, 2021
- J-31 Email from Barbara Barr, Case Manager dated June 25, 2021
- J-32 Form from Karina F. Campos, Nurse Practitioner from Princeton & Rutgers Neurology, P.A. dated August 31, 2021
- J-33 Email from Barbara Barr, Case Manager dated September 21, 2021
- J-34 Letter from Suzan Ezdini-Palazzo, Assistant Principal dated October 11, 2021
- J-35 Letter from Kerri Spotts, Intake Coordinator for the Center School dated April 8, 2022
- J-36 Fax from Chris Harry, Director of Public Services dated April 11, 2022
- J-37 Email from Barbara Barr, Case Manager dated December 12, 2023
- J-38 Letter from Barbara Barr, Case Manager dated January 18, 2023
- J-39 Letter from George M. Holland, Esq. dated April 5, 2023
- J-40 Mandated Tuition Contract for Approved Private Schools for Students with Disabilities for 2021-2022 school year
- J-41 Mandated Tuition Contract for Approved Private Schools for Students with Disabilities for 2022-2023 school year
- J-42 Request for Coordinated Special Education O.O.D. Transportation for 2021-2022 school year
- J-43 Request for Coordinated Special Education O.O.D. Transportation for 2022-2023 school year
- J-44 Progress Report from the Center School for 2022-2023 school year

- J-45 Report Card from the Center School for 2022-2023 school year
- J-46 C.V. from Michele Havens, Ed.D., BCBA
- J-47 Hospital records from RWJUH dated March 25, 2021
- J-48 Hospital records from RWJUH dated May 14, 2021
- J-49 Email from OPRA Custodian for the NJDOE dated October 27, 2023
- J-50 Email from OPRA Custodian for the NJDOE dated November 3, 2023
- J-51 Email from OPRA Custodian for the NJDOE dated November 28, 2023
- J-52 Email from Barbara Barr, Case Manager dated December 23, 2020
- J-53 Report from Michele Havens, Ed.D., BCBA dated February 4, 2024
- J-54 Certification from Barbara Barr, Case Manager dated February 20, 2024

For petitioners

- P-5 Report / Psychological
- P-9 Progress Report #1 / District
- P-15 Certificate for 18-21 Program
- P-16 Email to Attend Program
- P-17 Email / CBI
- P-18 Face Sheild Recommendation
- P-32 Summary of Goals / Center School
- P-44 Report Card / Center School
- P-48 Report / Neurological
- P-49 Curriculum Vitae / M.H.
- P-57 Blank Document / State
- P-60 Report / M.H.

For respondent

- R-4 Evaluation / Speech
- R-6 Assessment / Psychological
- R-8 IEP
- R-10 Progress Report
- R-11 Progress Report #2
- R-19 Full Day Program / Center School
- R-20 Emails / District

R-21 Compensatory Plan #2