



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. EDS 04008-24

AGENCY DKT. NO. 2024-36962

J.R. AND F.R. ON BEHALF OF L.R.,

Petitioner,

v.

ENGLEWOOD CITY

BOARD OF EDUCATION,

Respondent.

Michael I. Inzelbuch, Esq., for petitioners

Jaclyn D'Arminio, Esq., for respondents (Cleary , Giacobbe, Alfieri Jacobs, LLC,
attorneys)

Record Closed: February 28, 2025

Decided: March 12, 2025

BEFORE **THOMAS R. BETANCOURT**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner filed a due process petition dated January 19, 2024, with the Office of Special Education in the Department of Education.

The matter was transferred to the Office of Administrative Law (OAL) as a contested matter on March 3, 2024.

Pursuant to N.J.A.C. 1:1-13.1 et seq., a telephone prehearing conference was held in the above-entitled matters on June 25, 2024, and a prehearing Order was issued the same date.

The hearing was held on December 4, 10 and 11, 2024.

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

Said briefs were submitted on February 28, 2025, whereupon the record closed.

ISSUE

Does the IEP of January 4, 2024 offer FAPE in the LRE.

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** the following **FACTS**:

L.R. is an eleven year old fifth grade student attending the Shefa School. He is classified under the category "Multiple Disabilities" and is eligible to receive special education and related services. (J-26) The placement at the Shefa School is pursuant to a settlement between petitioners and the District.

The District is the local education agency responsible for providing L.R. with FAPE.

L.R. has never attended public school within the District. He has always been placed at the Shefa School at District expense pursuant to several settlement agreements between petitioners and the District.

On January 8, 2024, petitioners and the District met for an eligibility and IEP meeting. The IEP offered at said meeting was rejected by petitioners on January 17, 2024. (J-33) Petitioners thereafter filed a request for due process, which is the subject matter of the instant case. (J-1)

No special education teacher or general education teacher were in attendance at the IEP meeting. Susan Caplan and petitioner were present. The IEP meeting was virtual.

The IEP team thought L.R. was ready for an inclusive, general education classroom. They based this on progress reports provided by the Shefa School. The size of the classes proposed were substantially larger than that at the Shefa School.

L.R. is in need of an explicit multi-sensory approach to reading, writing and math. (T. 12/11/24 at 14:15-23, Caplan and T.12/10/24 at 91:14-23, Gadsden). Nowhere in the IEP is this need addressed.

Ms. Greene, L.R.'s case manager left the employ of the District on August 31, 2024. Pamela Humphrey assumed this role. This information was not provided to petitioners, who learned of the new case manager during the course of the hearing. Ms. Humphrey's testimony was withdrawn by the District and the undersigned struck her testimony from the record. Ms. Greene, the prior case manager, did not adequately explain how the proposed IEP met L.R.'s needs.

It was obvious to the undersigned that the IEP was not intended to address the specific needs of L.R. It did not take into account any of the petitioners' concerns. It did not address Ms. Caplan's concerns. It seemed to be rather generic in nature.

The Shefa School is the appropriate placement at present for L.R. It is addressing his specific needs in the LRE. (See totality of Caplan testimony)

LEGAL ANALYSIS AND CONCLUSION

Individual With Disabilities Act

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.A. § 1412. The Individuals with Disabilities Act (IDEA) is the vehicle Congress has chosen to ensure that states follow this mandate. 20 U.S.C.A. §§ 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.A. § 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.A. § 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., *supra*, 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.A. § 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.A. § 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.A. § 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 January 4, 2024 IEP afforded FAPE to L.R. in the least restrictive environment (LRE). 20 U.S.C.A. § 1412(a)(1). J.T. v. Dumont Public Schools, 438 N.J. Super. 241, 257 (App. Div. 2014)(citing Lascari, supra, 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 (3rd 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, 62 F.3d at 535).

The District has failed to carry its burden of proof and burden of production in the instant matter. The competent, credible and relevant evidence in the instant matter abundantly demonstrates that the proposed IEP does not address the many and complex needs of L.R. The District’s approach was clearly “we will address it as we go along”. The District did not do its own evaluations. Rather they relied upon previous evaluations provided by petitioners. Accordingly, the District failed to offer FAPE in the proposed IEP.

The most compelling evidence presented in the instant matter was by Susan Caplan. Ms. Caplan was qualified as an expert, without objection, in the areas of special education, case management, LDTC, testing and interpretation of testing, and writing

IEPs. Through the course of her testimony, Ms. Caplan made clear that the District did not come close to addressing the specific needs of L.R.

The New Jersey Supreme Court stated the following in Liscari v. Board of Education, supra at 46: “We also conclude that in determining whether an IEP was appropriate, the focus should be on the IEP actually offered and not on one that the school board could have provided if it had been so inclined.”

As the Supreme Court stated in Endrew F., supra at 12: “an IEP is not a form document. It is constructed only after consideration of a child’s present levels of achievement, disability, and potential for growth.”

The District failed to meet this standard. The District did not address the petitioners’ concerns that were raised after the IEP meeting. L.R.’s specific needs are not addressed in the IEP. It is clear to the undersigned that the IEP was not designed to meet his needs. It seems that the IEP is a cut and paste to some extent of the previous IEP.

The appropriate placement for L.R. presently would be continued placement at the Shefa School. This was eloquently and convincingly stated in the testimony of Susan Caplan.

Based upon the foregoing, I **CONCLUDE** that Petitioners’ due process petition should be **GRANTED** and that L.R. continue to be placed at the Shefa School at the expense of the District.

ORDER

It is hereby **ORDERED** that Petitioners’ due process petition is **GRANTED**, as follows:

1. Respondent failed to offer FAPE in the LRE;
2. L.R. shall continue to be placed at the Shefa School;

3. Respondent shall pay the non-sectarian portion of the tuition for the Shefa School; and
4. The District shall amend the IEP to provide for placement at Shefa School and to provide for transportation to and from the same.

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 12, 2025

DATE

THOMAS R. BETANCOURT, ALJ

Date Received at Agency:

Date Mailed to Parties:

db

APPENDIX

List of Witnesses

For Petitioners:

Masika Greene, Case Manager

Kelvin Ortiz, Englewood Public Schools Director of Special Services

F.R., petitioner

Susan Caplan, Educational Consultant

For Respondent:

Christine Rodriguez, PTC and Case Manager

Pamela Humphrey, Witness withdrawn by respondent and testimony was stricken

Valerie Gadsden, Speech Language Specialist

List of Exhibits

For Petitioners:

P-12 Susan Caplan report

For Respondent:

None

Joint Exhibits:

J-1 Due Process Petition

J-2 Answer to Due Process Petition

J-3 Prehearing Order

J-4 Letter to ALJ from Inzelbuch – 9/13/24

J-5 Document Demand – 1/19/24

J-6 Medical Records and Bio, Aviva R. Ramras

J-7 Medical Records and Bio Stephanie Garcia

J-8 Medical Records and Bio Denise P. Casio

J-9 Medical Records and Bio Dr. Phil Schnieder

J-10 Medical Records and Bio Dr. Steven Becker

J-11 Petitioner document demand 11/18/24

- J-12 3/10/22 Consent for additional assessment
- J-13 5/3/21 District Initial Social Assessment
- J-14 4/16/21 Occupational Therapy Evaluation
- J-15 5/14/21 District Psychological Evaluation
- J-16 4/28/23 District Psychological report of Dr. Carlisle
- J-17 Undated District Speech & Language evaluation
- J-18 4/13/22 District Neurodevelopmental assessment
- J-19 3/17/22 District Educational Evaluation
- J-20 1/26/23 District Virtual Observation Report-Pamela Humphrey
- J-21 1/26/23 District Virtual Observation Report-Valerie Gadsden
- J-22 1/26/23 District Virtual Classroom Observation-Valerie Gadsden
- J-23 4/6/22 District Notes of Valerie Gadsden, observation as Shefa
- J-24 11/3/22 District Virtual Classroom Observation report-Valerie Gadsden
- J-25 5/10/22 Draft IEP
- J-26 1/4/24 Draft IEP
- J-27 Shefa Records
- J-28 5/24/21 – 1/2/24 Shefa Englewood emails
- J-29 Oct. '23 – Dec. '23 emails Christine Rodriguez
- J-30 Nov. '23 – Dec. '23 emails Willola Ashley
- J-31 Nov. '23 – Dec. '23 emails Dr. Edward Wilson
- J-32 Nov. '23 – Jan. '24 emails Masika Greene-Robinson
- J-33 Miscellaneous Parent – District communications