



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. EDS 12502-24

AGENCY DKT. NO. 2025-38013

L.V. AND C.V. ON BEHALF OF A.V.,

Petitioners,

v.

SOMERSET HILLS REGIONAL

BOARD OF EDUCATION,

Respondent.

L.V. and C.V., pro se

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

Record Closed: February 4, 2025

Decided: March 4, 2025

BEFORE **MARY ANN BOGAN, ALJ:**

STATEMENT OF THE CASE

A.V. is a fourteen-year-old student with a specific learning disability based on a diagnosis of Down Syndrome. His parents, L.V. and C.V., seek a change to his

individualized education program (IEP) from a shared paraprofessional to a 1:1 paraprofessional for the 2024–2025 school year, including weekly updates.¹

PROCEDURAL HISTORY

Petitioners filed a due-process petition on behalf of their son A.V. on April 22, 2024. The matter was transmitted by the Department of Education, Office of Special Education, to the Office of Administrative Law, where it was filed on September 6, 2024, as a contested case. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -23. A settlement conference was conducted on September 11, 2024, and did not settle. After the case was assigned, the hearing was scheduled for November 14, 2024. Prior to the hearing, the petitioners requested an adjournment of the hearing to obtain legal counsel. In order to provide the petitioners with sufficient time to obtain legal counsel, the hearing was adjourned until January 25, 2025.

The hearing was conducted on January 25, 2025. The petitioners agreed to move forward with the case without legal counsel. A telephone conference was conducted on February 4, 2025, and the record closed.²

FACTUAL DISCUSSION AND FINDINGS

The following, taken from testimony and documentary evidence in the record, is undisputed. I therefore **FIND** the following as **FACT**.³

A.V. is a fourteen-year-old boy who is eligible for special education and related services pursuant to the Individuals with Disabilities Education Act (IDEA) under “moderate intellectual disability” and has been classified since just before his third birthday.

¹ This decision is limited to the issue framed in this statement.

² The petitioners utilized an approved Spanish interpreter.

³ The following is not a verbatim recitation of the testimony but a summary of the testimonial and documentary evidence that I found relevant to the issues presented.

A.V. has difficulty communicating and uses an augmentative assistive device “to facilitate communication during daily routines and to address communication breakdowns.” A.V. also wears a back brace every day. A.V. is able to remove the brace when he uses the bathroom, and he requires assistance from the school nurse to put his back brace on after utilizing the bathroom. A.V. attended Bernardsville Middle School in the Somerset Hills School District (District) and was placed in a “Multiply Disabled” (MD) class for all of his academic subjects. He also received related services such as physical, occupational, and speech and language therapy. He has been assisted during the school day with a shared paraprofessional and participates in the extended school year. For the 2024–2025 school year, the District proposed an IEP dated April 10, 2024, that placed A.V. at Bernards High School in the MD class. The IEP also provides for the assistance of a shared paraprofessional.

Petitioners L.V. and C.V. rejected the proposed IEP that requires A.V. to share a paraprofessional with two other students in the MD class and filed this due-process petition requesting that A.V. be provided with a 1:1 paraprofessional.

Testimony

Cassandra Incledon⁴ is the case manager and school social worker. Ms. Incledon is also a member of the child study team. She testified on behalf of the District. She specifically works with eighth- and ninth-grade students and helps them with their transition from one building to another.

Ms. Incledon earned her master’s in social work at Columbia University. She is a licensed social worker and is under supervision to earn her clinical social worker license.

As a member of the child study team, she collaborates with the school psychologist, the learning consultant, and the general education and special education teachers to write IEPs. She has worked in this capacity for four years.

⁴ The District’s motion to qualify its witness as an expert was denied, as the witness is a fact witness in her capacity as an employee of the District.

A.V. shared a paraprofessional with another student in the middle school until the student moved out of state. His paraprofessional support included support for electives, including art, physical education, and pull-out related services such as occupational services and physical therapy. A.V. completed the school year in the class by himself with a 1:1 aide. (R-3.)

Ms. Inledon explained that since A.V. was the only person in a class, the child study team felt it would be appropriate for A.V. to be educated in an MD program with two other students who were in the same age range with continuation of a shared paraprofessional in the same MD program, located in the high school. (R-4.)

Ms. Inledon stated that since A.V. is always under direct supervision, there are no apparent risks to A.V.'s safety while in the high school with other students.

With respect to a bathroom incident raised by the petitioners, previously, Ms. Inledon responded that A.V. is offered the bathroom after each class and has a bathroom icon on his iPad. Ms. Inledon recalled one time when A.V. had an accident and the paraprofessional took him to the nurse, which is consistent with protocol. There have been no other incidents.

At one point, the petitioners felt a need for more communication between the school and home. Ms. Inledon has not received any further reported concerns from the parents that the school does not communicate sufficiently with them.

She pointed out that A.V. has the same teacher as last school year, including the same occupational therapy and physical therapy staff member. The only change in personnel is the shared aide.

Petitioners⁵ state that the District's proposal for A.V., a middle schooler, to share a paraprofessional with two high school students at the high school location does not provide A.V. with the appropriate measure of support. The petitioners are concerned about his safety, especially since he attends school in a high school setting which could create a safety risk. For instance, A.V. "moves very slowly and will sometimes not move at all." This is "extremely difficult for a shared paraprofessional to handle, especially with others in the classroom who move at a faster pace." Even before A.V. was placed at the high school, the school called the parents and reported that A.V. did not want to go to his class or that he was slow to transition to the next class. Also, at lunch, A.V. does not eat regular food and cannot communicate his needs because he does not speak in complete sentences. A.V. also wears a back brace throughout the school day.

The petitioners also testified that every day it has been a struggle to get A.V. to school because he wants to be with his former aide and his former classmates. The parents would like A.V. to be supervised at all times when he is outside of the special education classroom in the form of a 1:1 aide. The petitioners pointed out, for example, if there is an emergency, A.V. cannot follow directions.

When the petitioners attempt to speak with the school about their requests, the school does not seem interested and will "brush it off."

ADDITIONAL FACTUAL FINDINGS

A fact finder must weigh the credibility of witnesses in disputed matters. I am aware that the District employee, who testified as a fact witness, would want to support the program developed for A.V. and would believe that the District's program would provide him with free appropriate public education (FAPE). I am also aware that petitioners believe that what they seek is in the best interest of A.V. "Testimony to be believed must not only proceed from the mouth of a credible witness but must be credible in itself. It must be such as the common experience and observation of mankind can approve as

⁵ The court and counsel for the District provided petitioners' adult daughter with the opportunity to assist petitioners with case presentation.

probable in the circumstances.” In re Estate of Perrone, 5 N.J. 514, 522 (1950). The fact finder should consider the witness’ interest in the outcome, their motive, and any bias, when assessing the credibility of a witness. Credibility findings are “often influenced by matters such as observations of the character and demeanor of witnesses and common human experience that are not transmitted by the record.” State v. Locurto, 157 N.J. 463, 474 (1999). “A trier of fact may reject testimony because it is inherently incredible, or because it is inconsistent with other testimony or with common experience, or because it is overborne by other testimony.” Congleton v. Pura-Tex Stone Corp., 53 N.J. Super. 282, 287 (App. Div. 1958).

The District’s witness testified in a professional and direct manner. The witness responded to questions without hesitation, referenced her firsthand knowledge of A.V., and was able to cite observations of him while at the District school. I find her testimony to be reliable.

Petitioners L.V. and C.V. testified in a direct manner. It is abundantly clear that they are concerned that A.V. requires a 1:1 paraprofessional to assist him during the day.

I **FIND** the testimony of the witnesses credible. As it relates to the issue of whether A.V. requires a 1:1 paraprofessional, according to the testimony and evidence presented, I **FIND** as **FACT** that A.V. has not experienced unsafe conditions while attending the MD class at the high school location

LEGAL ANALYSIS AND CONCLUSION

This case arises under the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400 to 1482. One purpose of the Act is to ensure that all children with disabilities have available to them a “free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living.” 20 U.S.C. § 1400(d)(1)(A). This “free appropriate public education” is known as FAPE.

A state is eligible for assistance if the state has in effect policies and procedures to ensure that it will meet the requirements of the Act. 20 U.S.C. § 1412(a). In New Jersey, such policies and procedures are set forth in the state statute, Special Schools, Classes, and Facilities for handicapped children, N.J.S.A. 18A:46-1 to N.J.S.A. 18A:46-54G-7, and the implementing regulations, N.J.A.C. 6A:14-1.1 to N.J.A.C. 6A:14-10.2. See Lascari v. Bd. of Educ. of the Ramapo Indian Hills Reg'l High Sch. Dist., 116 N.J. 30, 34 (1989).

The IDEA is designed to ensure that children with disabilities may access a FAPE that is tailored to their specific needs. 20 U.S.C. § 1400(c). To further this goal, the state regulations implementing the IDEA, N.J.A.C. 6A:14-1.1 to -10.2, make local school districts responsible for “the location, identification, evaluation, determination of eligibility, development of an IEP and the provision of a [FAPE] to students with disabilities.” N.J.A.C. 6A:14-1.3.

Here, the respondent has the burden of demonstrating that providing A.V. with a shared paraprofessional is an appropriate supplementary service.

N.J.A.C. 6A:14-4.1 provides:

- (a) Each district board of education shall provide educational programs and related services for students with disabilities required by the IEPs of students for whom the district board of education is responsible.

.....

- (e) If a classroom aide is employed, he or she shall work under the direction of a principal, special education teacher, general education teacher, or other appropriately certified personnel in a special education program. The job description of a classroom aide shall be approved by the Department of Education through the county office of education.

In addition, N.J.A.C. 6A:14-4.3 states in part:

(a) All students shall be considered for placement in the general education class with supplementary aids and services including, but not limited to, the following:

1. Curricular or instructional modifications or specialized instructional strategies;
2. Assistive technology devices and services as defined in N.J.A.C. 6A:14-1.3;
3. Teacher aides;
4. Related services;
5. Integrated therapies;
6. Consultation services; and
7. In-class resource programs.

(b) If it is determined that a student with a disability cannot remain in the general education setting with supplementary aids and services for all or a portion of the school day, a full continuum of alternative placements as set forth in this subsection shall be available to meet the needs of the student. Alternative educational program options include placement in the following:

1. Single-subject resource programs outside the general education class;
2. A special class program in the student's school district

The related service in A.V.'s proposed April 10, 2024, IEP is a shared paraprofessional. N.J.A.C. 6A:14-3.9; N.J.A.C. 6A:14-4.5. N.J.A.C. 6A:9-2.1 defines a "Paraprofessional" as a school aide or classroom aide who assists appropriately certified personnel with the supervision of pupil activities.

Pursuant to N.J.A.C. 6A:14-4.5(b), a teacher aide may:

(b) provide supplementary support to a student(s) with disabilities when the IEP team has determined that the student requires assistance in areas including, but not limited to, the following:

1. Prompting, cueing and redirecting student participation;
2. Reinforcing of personal, social, behavioral, and academic learning goals;
3. Organizing and managing materials and activities; and
4. Implementation of teacher-designed follow-up and practice activities.

(c) Supplementary services as described in (b) above shall be provided individually or in groups according to the numbers for in-class resource programs.

Here, the respondent has demonstrated, by a preponderance of credible evidence, that A.V. is under direct supervision, has been safe in the school environment, and moves throughout the day with the support of the shared paraprofessional in an appropriate manner. Therefore, the shared paraprofessional is an appropriate supplementary service.

I **CONCLUDE** that the District provided A.V. with an appropriate related service when it provided A.V. with a shared aide. Petitioners are, therefore, not entitled to the relief they seek, a 1:1 aide.

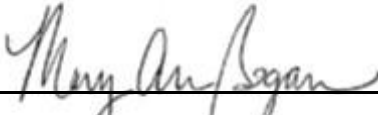
ORDER

It is hereby **ORDERED** that L.V. and C.V.'s petition seeking a 1:1 paraprofessional aide shall be **DENIED**.

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 (2025). 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 4, 2025

DATE



MARY ANN BOGAN, ALJ

Date Received at Agency:

Date Mailed to Parties:

MAB/nn

APPENDIX

Witnesses

For petitioners

C.V.

L.V.

A.V. (1) petitioners' adult daughter

For respondent

Cassandra Incledon

Exhibits

For petitioners

P-1 Petitioner's packet including Profile 2022–2023, dated July 17, 2023

For respondent

R-1 Not admitted into evidence

R-2 Not admitted into evidence

R-3 2023–2024 IEP

R-4 Proposed IEP

R-5 MP1 Progress Reports 2024–2025

R-6 Not admitted into evidence

R-7 Not admitted into evidence