State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. EDS 11043-14

AGENCY DKT. NO. 2013 18972

J.F. and J.F. on behalf of J.F.,

Petitioners,

v.

BYRAM TOWNSHIP BOARD OF EDUCATION,

Respondent.

George M. Holland, Esq., for petitioners (Wanderpolo & Siegel, attorneys)

Robin S. Ballard, Esq., for respondent (Schenck, Price, Smith & King, attorneys)

Record Closed: August 10, 2015 Decided: September 22, 2015

BEFORE **MICHAEL ANTONIEWICZ**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioners, J.F. (father, Mr. F.) and J.F., are the parents of the thirteen-year-old J.F. They are current residents of the Township of Byram, New Jersey. J.F. was determined to be eligible for special education and related services based on a diagnosis of Dyslexia and Attention Deficit Hyperactivity Disorder (ADHD) and thus classified with a Specific Learning Disability by the Westwood Regional School District (Westwood) prior to moving to Byram at the end of June 2014. Following a dispute between the parents and Westwood, an IEP was prepared by Westwood agreeing to

place J.F. at the Craig School for the 2013-2014 school year. On May 5, 2014, Westwood prepared an IEP for J.F. for the 2014-2015 school year which provided for J.F.'s continued placement at the Craig School.

On July 11, 2014, petitioners requested mediation, which was then converted into a request for a due process hearing on July 31, 2014, in accordance with the provisions of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C.A. § 1415, contending that the District failed to provide J.F. a free and appropriate public education (FAPE) for the 2014-2015 school year. Petitioners requested emergency relief on July 30, 2014, seeking an order designating the Craig School as J.F.'s stay-put placement. Administrative Law Judge Irene Jones denied the petitioners' request, by Order dated August 15, 2014, finding that J.F.'s "IEP entitles him to a specific educational program, not a specific private school." Petitioners appealed that decision to the United States District Court and the Honorable Faith A. Hochberg, U.S.D.J. upheld Judge Jones's decision on November 7, 2014. The parents then appealed the decision to the Third Circuit and the parties are awaiting a decision on that appeal.

The parties participated in a resolution session on August 11, 2014, which did not resolve the outstanding issues and the matter was transmitted to the Office of Administrative Law where it was filed on September 3, 2014. A hearing was held on the following dates: February 23, March 6, and May 12, 2015. Post-hearing submissions were filed by August 10, 2015, after an extension of time to file same. After careful review of those submissions, this decision was written.

Petitioners state that they are entitled to full reimbursement for the costs of their unilateral placement of their son at the Craig School. The petitioners allege that they are entitled to reimbursement, including transportation from the beginning of the 2014-2015 school year, as of July 3, 2014 – the date of the initial meeting with the Byram School District, due to the alleged failure of Byram to conduct a formal IEP meeting and produce an IEP outlining the program and placement offered to J.F. because the parents allege that Byram was required to do so.

FINDINGS OF FACT

Based upon a consideration of the testimonial and documentary evidence presented at the hearing and having had the opportunity to observe the demeanor of the witnesses and assess their credibility, I **FIND** the following **FACTS**:

J.F. is a thirteen-year-old boy eligible for special education and related services based on a diagnosis of Dyslexia and ADHD. A dispute arose between J.F.'s parents and the Westwood School District, which ended in a settlement through which an IEP was prepared by Westwood whereby J.F. was placed at the Craig School for the 2013-2014 school year. In addition, Westwood prepared an IEP on May 5, 2014, which provided for the continued placement of J.F. at the Craig School for the 2014-2015 school year.

Toward the end of June 2014, J.F. and his family moved to Byram from Westwood and on June 19, 2014, the petitioners sent an e-mail to Corinne DeGennaro, an employee in Byram School District, with registration materials and an authorization to obtain J.F.'s school records from Westwood. Petitioners also asked about who would be reviewing their son's IEP and how it would affect his learning program in the fall of 2014.

Relying upon numerous previous assessments as accepted by the Supervisor of Special Education in Byram, Bettyann Monteleone (Monteleone) made an eligibility determination and classified J.F. as "Specific Learning Disabled". Monteleone then invited the petitioners to an in-district meeting in order to discuss services for their son. This meeting was held on July 2, 2014, where the petitioners were advised that Byram had comparable programming in-district to what was provided to J.F. at the Craig School and that Byram was willing to provide such services. At this meeting the petitioners advised Monteleone that they expected J.F. to attend the Craig School during the extended school year (ESY). Addressing the petitioners, Monteleone reviewed what services could be offered to J.F. in the Byram program during the ESY, which was scheduled to start in a very short time frame from the date of this meeting.

From the time that the petitioners moved to Byram and throughout the 2014-2015 school year and for the 2015-2016 school year, Byram has not prepared an IEP for J.F.

Monteleone advised the petitioners that the ESY programming, which could be provided by Byram, would be able to address any possible regression in reading and writing of the summer in a four-hour-a-day program meeting daily beginning July 7, 2014. This program was conducted by Lori Harrington (Harrington), a reading specialist, as well as special education teachers attending the reading specialist program at Centenary College. At this meeting Monteleone further advised the petitioners how J.F.'s IEP from Westwood could be implemented through in-district programming available in Byram. Westwood's IEP provided for J.F. to receive all of his academic instruction in special education classes and offered no related services. Much like the classes at the Craig School, Byram's programming offered J.F. a self-contained class and instruction through multi-sensory methodologies; a program equipped proactively and reactively in order to address J.F.'s learning needs; a program using assistive technology to assist J.F.; and offering direct reading instruction to J.F. using research-based methodology incorporated throughout other subject areas. Monteleone further advised petitioners that Byram offered J.F. programming in order to address all of J.F.'s goals and objectives, provide the modifications and accommodations for standardized testing and in the classroom and offer comparable assistive technology as to what was set forth in J.F.'s IEP from Westwood.

On July 3, 2014, Monteleone received a letter from the petitioners' attorney where he alleged violations of J.F.'s rights and placed Byram on notice that he would file a legal action with the Office of Special Education of the New Jersey Department of Education.

Despite Byram's assurances that its program would provide a comparable education to that offered at the Craig School and the offer to the petitioners to have J.F. to attend Byram in-district on the first day of the ESY, J.F. did not arrive and participate in the Byram School, and without formal written notice to Byram from the petitioners. In addition, the petitioners did not observe the ESY program in Byram and did not meet with <u>any</u> of the Byram staff members and special education teachers. Further, the petitioners did not meet with the Byram reading specialist who would have worked with J.F. had he attended the Byram ESY. Lastly, Byram invited the petitioners (and J.F.) to

visit the Byram School, meet the students, and become familiar with the Byram School. Petitioners and J.F. refused to cooperate with that invitation.

Petitioners, instead, continued to place J.F. at the Craig School for the ESY of 2014, without advising Byram that they would seek reimbursement from the Byram School. After the petitioners' emergent application was denied and it was determined that the stay-put placement would be in the Byram School District, a schedule of J.F.'s classes for the 2014-2015 school year was created for Byram and sent to the petitioners, along with an invitation to come to the Byram Intermediate School to become acquainted with the schedule and become familiar with the school and the staff. Petitioners did not accept that invitation as well and, instead, sent a letter on August 25, 2014, by which they stated that they sought reimbursement for the costs of J.F.'s placement at the Craig School from July 1, 2014, going forward. In response, Monteleone advised the petitioners that the Byram School District would not reimburse them for the costs of the Craig School as they were able and willing to provide a comparable program to that set forth in the Westwood IEP. On September 21, 2014, petitioners sent another letter to Byram reiterating that they intended to seek reimbursement for the costs of J.F. enrolled and attending the Craig School. On October 8, 2014, Monteleone once again responded by informing the petitioners that their letter failed to provide proper notice of their intent to unilaterally place J.F. at the Craig School in order to preserve their right to obtain reimbursement. Monteleone also reinforced the fact that Byram was ready and able to implement the IEP that was drafted in Westwood and advised the petitioners to contact her if they wished to send J.F. to Byram. Petitioners failed to contact Monteleone for that purpose.

Toward the end of September 2014, the petitioners asked Monteleone if they could have a consultant, Laurie Leifer (Leifer), observe Byram's in-district program on behalf of J.F. Leifer advised Monteleone on October 13, 2014, that she was going to have to place her observation on hold. On December 6, 2014, petitioners wrote a letter to Monteleone asking for Liefer to observe Byram's program on December 17, 2014. Monteleone approved such an observation; however, benchmark assessments were being administered so the observation would not be fully representative of Byram's program. Accordingly, Leifer decided not to conduct her observation on that date.

Instead, Leifer did observe the Byram program in January 2015 with Monteleone for a period of one day and spoke with Byram's reading specialist. Thereafter, Leifer issued a report with reference to the observation of the Byram's program and J.F. at the Craig School.

LEGAL ANALYSIS AND CONCLUSIONS OF LAW

As a recipient of federal funds under the Individuals with Disabilities Education Act, 20 U.S.C.A. § 1400 et seq., the State of New Jersey must have a policy that assures all children with disabilities the right to a free appropriate public education. 20 U.S.C.A. § 1412. The IDEA defines FAPE as special education and related services that are provided at public expense, under public supervision and direction, and without charge; that meet the standards of the state educational agency; that include an appropriate preschool, elementary school, or secondary school education in the state involved; and that are provided in conformity with an IEP. 34 C.F.R. § 300.17 (2015); 20 U.S.C.A. § 1401(9); N.J.A.C. 6A:14-1.1 et seq.

The responsibility to provide a free appropriate public education rests with the local public school district. N.J.A.C. 6A:14-1.1(d). The local district satisfies the requirement that a child with disabilities receive a free appropriate public education by providing personalized instruction with sufficient support services to permit that child to benefit educationally from instruction. Hendrick Hudson Cent. Sch. Dist. Bd. of Educ. v. Rowley, 458 U.S. 176, 203, 102 S. Ct. 3034, 3049, 73 L. Ed. 2d 690, 710 (1982). Only after the program offered by the District is found to not provide a FAPE can an appropriate alternative program selected by the parents be evaluated and reimbursement ordered. See Forest Grove v. Sch. Dist. v. T.A., 557 U.S. 230, 246, 129 S. Ct. 2484, 2496, 174 L. Ed. 2d 168, 183 (2009).

In New Jersey, state regulations track the requirement that a local school district provide "a free, appropriate public education" (FAPE) as that standard is set under the IDEA. N.J.A.C. 6A:14-1.1. New Jersey follows the federal standard requiring such entitlement to be "sufficient to confer some educational benefit," although the state is

not required "to maximize the maximum potential of handicapped children." Lascari v. Ramapo Indian Hills Reg. Sch. Dist., 116 N.J. 30 (1989).

In determining where to deliver that instruction, it is clear that the district must be guided by the strong statutory preference for educating children in the "least restrictive environment." 20 U.S.C.A. § 1412(a)(5) mandates that

> [t]o the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilitates, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

The law describes a continuum of placement options, ranging from mainstreaming in a regular public school as least restrictive to enrollment in a non-approved residential private school as most restrictive. 34 C.F.R. § 300.115 (2015); N.J.A.C. 6A:14-4.3. Federal regulations further require that placement must be "as close as possible to the child's home." 34 C.F.R. § 300.116(b)(3) (2015); see also N.J.A.C. 6A:14-4.2.

Despite the argument by the petitioners' attorney to the contrary, it is clear that when a student transfers from one New Jersey school district to another, the district into which the student enrolls, in this case Byram School District, is only required to "provide a program comparable to that set forth in the student's current IEP." N.J.A.C. 6A:14-4.1(g). "Comparable" services is defined as services that are 'similar' or 'equivalent' to those that were described in the child's IEP from the previous public agency, as determined by the child's newly designated IEP Team in the new public agency." 71 Fed. Reg. 46540, 46681 (August 14, 2006). It is clear from the facts of this case that this threshold has been met by the respondent as it, through Monteleone held a meeting with the parents on July 2, 2014, at which time Westwood's IEP was reviewed and Byram determined that it could implement that IEP as written according to N.J.A.C. 6A:14-4.1(g)(1) through Byram's own in-district programming.

The evidence supporting this position includes the testimony of Monteleone, which I found to be highly credible. Monteleone stated that Byram's in-district program offered to J.F. included a placement in all special classes for his academic subjects. In addition, Byram provided instruction through multi-sensory methodologies and incorporated throughout all subjects, much like instruction offered at the Craig School. In addition, the Craig School and Byram used assistive technology to help their students and offered J.F. direct reading instruction using research-based methodology, incorporated throughout other subject areas. Monteleone further stated that Byram could offer J.F. programming to address all of J.F.'s goals and objectives, provide the modifications and accommodations in the classroom and for standardized testing and offer comparable assistive technology to what was set forth in the Westwood IEP for J.F.

Monteleone testified that during the meeting on July 3, 2014, the bulk of that meeting incorporated a discussion of the comparable program that would be offered to J.F. In addition, there was a further discussion regarding J.F.'s program and placement for the 2014-2015 school year. Monteleone testified that she provided the petitioners with a general overview of the program for the fall of 2014 school year and a review of the ESY program for J.F. in Byram. Even though Mr. F. stated that the July 3, 2014, meeting was "nothing like any IEP Meeting," an IEP was not required as it was only necessary to explain that Byram was supplying comparable programming to that contained in the Westwood IEP, which was done by Monteleone at this meeting.

Petitioners also argue that Byram never explained to them why it would not continue J.F. at the Craig School. This is not accurate because I **FIND** that Byram explained, at least, three main points: 1) that they accepted Westwood's IEP and evaluations; 2) that Byram's obligation was to provide comparable programming to that set forth in Westwood's IEP and 3) that the program provided at Byram in the 2014-2015 school year and in the ESY in the summer of 2014 was comparable to that provided in Westwood's IEP. The parents rejected this comparable programming verbally in July 2014 and in writing on August 25, 2014, when they advised the Byram

School District that they intended to unilaterally place J.F. at the Craig School and then seek reimbursement for any and all costs associated with that placement.

With reference to the ESY, Monteleone explained how the programming offered by Byram to J.F. was comparable to what J.F. received through the IEP from Westwood. The purpose of the ESY services provided through Westwood's IEP was to prevent regression in reading and writing through the summer and that Byram's program over the ESY would be comparable in a four-hour-per-day program that was held on a daily basis beginning July 7, 2014. There was sufficient evidence presented by the respondent that Byram's reading specialist, Harrington, as well as other special education teachers would provide comparable services as set forth in the Westwood IEP.

I **FIND** the arguments of the petitioners that because Westwood's IEP provided J.F. attend the Craig School, Byram could not provide such services in-district to be without merit. There is sufficient case law which affirms the fact that when a student who transfers from one school district to another school district it does not constitute a change in educational placement. Tilton v. Jefferson County Bd. of Educ., 705 F.2d 800, 804 (6th Cir. 1983), cert. denied, 465 U.S. 1006, 104 S. Ct. 998, 79 L. Ed. 2d 231 (1984). See also Spilsbury v. District of Columbia, 307 F. Supp. 2d 22, 26-27 (D.D.C. 2004), which held that the education placement of a student pursuant to the IDEA encompasses services for a student and not the physical location of the building to be attended. In addition, "[e]ducational placement, as used in the IDEA, means educational program – not the particular institution where that program is implemented." P.V. and S.F. o/b/o K.F. v. Watchung Hills Reg'l Bd. of Educ., OAL Dkt. No. 00985-15 (2015).

In addition, the petitioners argue that J.F. was not making progress when he attended the last public school prior to being placed at the Craig School by the Westwood District. I am somewhat confused by the relevancy of this position. It is unclear as to what this has to do with Byram providing FAPE to J.F. and Byram's ability to provide comparable services to that set forth in the Westwood's IEP.

Petitioners also make an argument that J.F. made progress at the Craig School. This argument also fails to directly address the crux of this case, i.e., the ability of the Byram District to provide FAPE and comparable programming as set forth in the Westwood IEP. In addition, any argument set forth by the petitioners as to the fact that J.F. is a classified student with a learning disability is not in dispute as Monteleone, a witness for Byram, conceded that the Byram School District had no reason to doubt that J.F. had been properly classified by Westwood and believed that J.F. was eligible for special education and related services and that Byram was able to provide comparable services to that in J.F.'s current IEP.

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).

In this particular matter, as in most, the credibility and persuasiveness of the testimony is of paramount concern. I **FIND** Monteleone to be very credible and thus I was very persuaded by Monteleone's testimony. Monteleone's testimony was clear, precise, and consistent. I did not detect any bias or a hidden agenda. She had nothing to gain or lose by testifying truthfully about their observations and seemed to have J.F.'s best interests at heart. I, therefore, **FIND** Monteleone more credible and factually persuasive than the petitioner (Mr. F.) and the petitioners' expert, Leifer.

The evidence presented in support of the petitioners' position lacked depth and credibility. Petitioners presented the testimony of Mr. F. and Leifer. Mr. F failed to observe the program at Byram and failed to speak to any of the Byram teachers and reading specialists who would be educating his son. Leifer, on the other hand, had limited exposure to the Byram program. Leifer observed the Byram program on a single

day and spoke with the reading specialist. With such a lack of depth of firsthand knowledge, one must question the credibility of her conclusions.

Leifer's opinion as to whether Byram's math class was appropriate for J.F. was due to the fact that it used a spiraling curriculum, which she believed would be difficult for J.F., who has ADHD, because it provided too much time to work independently. Leifer stated that J.F. was working on grade level in math, but Leifer admitted that she was unaware that J.F.'s IEP provided for him to receive all academic instruction in special classes. Leifer also testified that the pace of a general education class would not matter if a student was in all special classes and further admitted that the math teacher in Byram informed her that he could spiral with the program, rather than telling her that he used a spiraling curriculum. Leifer stated that she was not trained in spiraling instruction, yet claimed to be able to recognize from a worksheet that it was being used.

Leifer further testified that she did not feel that the language arts class in Byram was appropriate for J.F. as she found the packet used for essay writing to be at a higher reading level than J.F. was at, even though this was absent from her report. On the other hand, Monteleone confirmed that the Byram students in the language arts class were not all working at the same level and had material adjusted through their individual IEPs. Leifer's position fails to address this issue.

Throughout the evidence presented, it was confirmed that Leifer is not a reading specialist, but confirmed that Byram had a reading specialist who would work with J.F. and provided supports in the language arts class. Leifer admitted that this would be beneficial to J.F. Leifer further admitted that Byram used an Orton-Gillingham based approach in working on language which she recommended for J.F. With regard to the Byram science class, Leifer stated that the students in that class were at a lower cognitive level than J.F. Leifer later admitted that she was not trained in estimating a student's cognitive functioning by sight on her one day of observation. Monteleone, in her testimony, stated that students in the science class were working on seventh-grade materials, as differentiated by the goals and objectives in their IEPs.

Leifer admitted that she was not an expert in technology, but stated that there was a problem that Byram did not have an FM system for J.F. and later conceded that no expert recommended the use of an FM system for J.F.

There is a consistent internal conflict with Leifer's testimony or she is presenting opinions outside her areas of expertise. Furthermore, many of the opinions that Leifer held about Byram's programming offered to J.F. were not based upon observations of J.F. in that setting but rather were based on instruction and services provided to other students in the program. Frankly, Leifer admitted that she could not know how a program would work for a child until the student was actually in that program. Leifer also admitted that the program material in Byram could be individualized for each student, including J.F. Monteleone further testified that all material provided to students in Byram was individualized based on the student's needs.

Mr. F.'s testimony lacks credibility as well. Although it is clear that Mr. F. is a good father who loves his son and wants what he considers to be the best for his son, he had no factual foundation as to his opinion regarding Byram's programming. Mr. F. leapt to the conclusion that J.F. would not receive an appropriate education at Byram but was better suited to attend the Craig School. Mr. F. made little to no effort to fully explore the programming at Byram and appears to have made up his mind to send his son to Craig without regard to Byram's programming. Mr. F. was unable to testify to the fact that the Westwood IEP was being followed at Craig and would be unable to be followed at the Byram School District. These issues, in fact, are the very crux of the case presented here. Little weight can be given to Mr. F.'s testimony under these circumstances.

Harm to J.F. as a Result of the Alleged Procedural Violations

For relief to be granted for any procedural violation on the part of the District, the violation must amount to depriving J.F. of a free appropriate public education. There are certain procedural violations which can amount to a substantive deprivation of FAPE. Pursuant to 20 U.S.C.A. § 1415 (f)(3)(E)(ii):

> In matters alleging a procedural violation, a hearing officer may find that a child did not receive a free appropriate public education only if the procedural inadequacies-
>
> (I) impeded the child's right to a free appropriate public education;
> (II) significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a free appropriate public education to the parents' child; or
> (III) caused a deprivation of educational benefits.

A procedural violation alone, which does not meet one of the three specific, enumerated requirements, does not result in a denial of a free appropriate public education. See J.N. v. Pittsburgh City Sch. Dist., 536 F. Supp. 2d 564 (W. Dist. Pa. 2008).

Petitioners argue that Byram was obligated to develop an IEP for J.F. and to evaluate him when it declined to continue his placement at the Craig School. However, when a student transfer into a district with an IEP developed by another New Jersey Board of Education, the District may simply implement the IEP as written. A Board of Education is only obligated to develop a new IEP for the student and conduct an evaluation when the school district does not agree to implement the current IEP. N.J.A.C. 6A:14-4.1(g)(1).

In this case, the Byram Board of Education agreed to implement the May 5, 2014, IEP developed by Westwood, the former place of residence, when J.F. and family moved to Byram. Accordingly, J.F. had an IEP in place on the first day of the 2014-2015 school year and thus Byram did not commit any procedural violation based on a failure to create a new IEP. It was admitted that there was an IEP developed in Westwood when the family moved to Byram and that the Westwood IEP was developed about six weeks earlier. It is not an issue as to whether the parents prevented Byram from conducting an IEP Meeting and failed to create an IEP for J.F. because a new IEP was not necessary under the facts of this case.

There was no need for Byram to conduct an evaluation of J.F. once they moved into that District. It was conceded by the petitioners that J.F. was not due for a triennial reevaluation when they entered Byram and that the petitioners had not asked Byram to evaluate J.F. The only other reason that Byram would need to reevaluate J.F. was if Byram disagreed with the IEP developed in Westwood. See N.J.A.C. 6A:14-4.1. Since Byram agreed to implement Westwood's IEP, there was no reason for a reevaluation of J.F.

Lastly, Byram quickly scheduled a meeting with J.F.'s parents in order to review the transfer IEP. Furthermore Byram permitted the expert retained by the petitioners to observe Byram's in-district program.

Therefore, I **FIND** that there were no procedural errors committed by Byram, and even if there was any procedural error, I further **FIND** that it did not amount to a substantive deprivation of FAPE to J.F.

In this case, despite the fact that the parents did not sign any IEP presented to them by the District, as none was created by Byram, it is found as fact that the parents were offered an educational program in-district which was comparable to J.F.'s standing IEP created in Westwood. It is undisputed that the parents and the Westwood School District actively participated in the IEP process prior to J.F.'s move to Byram and reached a mutually agreeable resolution placing J.F. at the Craig School. The District offered testimony from a professional employed by the Byram School District, as to how J.F.'s program for the 2014-2015 school year was individually tailored to J.F.'s unique needs. The evidence presented by the respondent was not contradicted by any evidence presented by J.F.'s parents.

Accordingly, I **CONCLUDE** that the District's program for the ESY in beginning July 2014 and the 2014-2015 and 2015-2016 school years affords J.F. a FAPE as that term is defined by law and constitutes the appropriate placement in the least restrictive environment. The in-district program offered by Byram is comparable to J.F.'s IEP created in Westwood. Accordingly, the petitioners are not entitled to reimbursement for unilaterally placing J.F. in the Craig School. If a District provides FAPE to a resident

student, the District is not required to reimburse the parents of that student if those parents decide to enroll that student outside that District. N.J.A.C. 6A:14-2.10(a). As reimbursement is an equitable remedy, courts require parents to first engage in a collaborative process with the school district in order to develop a program for the student. A.H. v. Clinton Twp. Bd. of Educ., 2005 N.J. Agen. LEXIS 288 (2005), (citing Rowley, supra, 458 U.S. 176, 102 S. Ct. 3034, 73 L. Ed. 2d 690); J.P. v. Bernards Twp. Sch. Dist., EDS 6476-03, Initial Decision (March 12, 2004), http://njlaw.rugters.edu/collections/oal/. None of the criteria for reimbursement have been met by the petitioners in this case and as such should be denied.

Having determined that the District provided and offered J.F. a FAPE, and comparable services to those set forth in the IEP, I need not reach the issue of whether the privately obtained educational services as provided at the Craig School were appropriate.

ORDER

It is hereby **ORDERED** that the relief requested by petitioners be **DENIED** and their petition be **DISMISSED**.

This decision is final pursuant to 20 U.S.C.A. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2014) 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.A. § 1415(i)(2); 34 C.F.R. § 300.516 (2014). 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.

September 22, 2015

DATE

MICHAEL ANTONIEWICZ., ALJ

Date Received at Agency: September 22, 2015

Date Mailed to Parties: September 22, 2015

jb

APPENDIX

LIST OF WITNESSES

For Petitioners:

Laurie Leifer

Mr. J.F.

For Respondent:

Bettyann Monteleone

LIST OF EXHIBITS IN EVIDENCE

For Petitioners:

P-1 Petitioners' Letter to Child Study Team dated June 17, 2014

P-2 Byram Records Request for Transfer of Student records dated June 18, 2014

P-3 Petitioners' e-mail to DeGennaro dated June 19, 2014

P-4 E-mail from DeGennaro to petitioners dated June 20, 2014

P-5 Petitioners' e-mail to Monteleone dated June 24, 2014

P-6 E-mail from Monteleone to petitioners dated June 24, 2014

P-9 Signed receipt of letter from Westwood Regional School District to Monteleone dated July 8, 2014

P-10 Letter from Robin Ballard, Esq., to George Holland, Esq., dated July 10, 2014

P-11 Signed Receipt of Craig School letter to Byram Township Schools dated August 1, 2014

P-12 Invitation for a Resolution Meeting from Byram Township School District to petitioners dated August 11, 2014

P-15 Petitioners' Letter to Byram Board of Education dated August 25, 2014, with Craig School Student's Schedule for Grade 6 and Petitioners' Letter from Robert Franz to the Byram Township School dated August 25, 2014

P-16 E-mail from Monteleone to petitioners dated August 28, 2014 with e-mail from petitioners dated August 26, 2014, and attachment of Student Schedule for Byram Intermediate School for petitioners' child for 2014-2015 school year

P-18 Letter from J.F. to Monteleone dated September 5, 2014

P-19 Letter from J.F. to Monteleone dated September 21, 2014

P-22 Letter from petitioners to Monteleone dated November 3, 2014

P-30 Leifer Curriculum Vitae

P-31 Leifer Evaluation dated October 2014

P-32 Leifer Reevaluation dated January 2015

P-33 IEP for petitioner dated October 2013

P-35 OAL Decision of Gail M. Cookson, ALJ, dated September 5, 2013, with Settlement Agreement

For Respondent:

R-1 Annual Review IEP prepared by Westwood dated May 5, 2014

R-2 Invitation for Immediate Review for a Transfer Student dated June 30, 2014

R-3 Letter from petitioners' counsel to Monteleone, Supervisor of Special Services, dated July 3, 2014

R-4 E-mail from Monteleone to petitioners with schedule dated August 25, 2014

R-5 Letter from Monteleone to petitioners dated September 3, 2014

R-6 E-mail from Monteleone to petitioners dated October 3, 2014

R-7 Letter from Monteleone to petitioners dated October 8, 2014

R-8 E-mail correspondence between Monteleone and Leifer, LDTC between October 8, 2014, and October 13, 2014

R-9 Letter from petitioners to Monteleone dated December 6, 2014

R-10 Letter from Monteleone to petitioners dated December 10, 2014

R-11 Resume of Bettyann Monteleone

R-12 E-mails from Leifer to and from Janet Cozine dated January 18, 27, 28, and 29, 2015