



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. EDS 04098-22

AGENCY DKT. NO. 2022-34200

F.L. ON BEHALF OF Y.L.,

Petitioner,

v.

HACKETTSTOWN BOARD OF EDUCATION,

Respondent.

F.L., petitioner, pro se

Marc Mucciolo, Esq., for respondent (Methfessel & Werbel, P.C., attorneys)

Record Closed: February 3, 2023

Decided: February 14, 2023

BEFORE **SUSAN L. OLGIATI**, ALJ:

STATEMENT OF THE CASE

Petitioner, F.L., seeks placement of her daughter, Y.L., in Hackettstown High School (Hackettstown) for the 2022-2023 school year (SY).

The respondent, Hackettstown Board of Education (hereinafter referred to as the District), contends Y.L.'s appropriate placement is an out-of-district placement that provides her with higher level of supports than it can provide.

PROCEDURAL HISTORY

On or about April 25, 2022, petitioner filed a due process petition disputing Y.L.'s then proposed Individualized Education Program (IEP) placing her in an out-of-district placement in the Mt. Olive School District (Mt. Olive). The matter was transmitted by the Department of Education, Office of Special Education (OSE), to the Office of Administrative Law (OAL), where it was filed on May 20, 2022, as a contested case. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -23. Numerous prehearing and status conferences were held in this matter. Petitioner was briefly represented by counsel, Johanna G. Burke, Esq. By letter dated August 26, 2022, Ms. Burke advised of her intent to withdraw as petitioner's counsel. Ms. Burke's unopposed request to be relieved as counsel was granted by Order dated September 16, 2022. At petitioner's request, the hearing date scheduled for September 12, 2022, was adjourned. New hearing dates were scheduled for January 13, 2023, and February 3, 2023. At a January 3, 2023, case conference, the parties advised that Mt. Olive terminated Y.L.'s placement. At the parties' request, the January 13, 2023, hearing date was converted to a case conference while they explored possible alternative out-of-district placements. Thereafter, the hearing was conducted on February 3, 2023, via Zoom and the record closed. At hearing, F.L. confirmed she was no longer disputing the appropriateness of Y.L.'s prior out-of-district placement at Mt. Olive.

FACTUAL DISCUSSION AND FINDINGS

Based on a review of the record before me, the following is not disputed and/or is otherwise found by me as **FACT**:

Y.L. is fifteen years old. (D.O.B. May 2008). She is in the ninth grade.

Y.L. transferred into the District in or about February 2019. The District is Y.L.'s district of residence.

Following evaluations performed by the District, Y.L. was deemed eligible for special education and related services under the category of Other Health Impaired (OHI) based on a diagnosis of Attention Deficit Hyperactivity Disorder (ADHD).

In April 2021, when Y.L. was in the seventh grade, she was placed at Great Meadows Middle School, an out-of-district public school. See R-6, April 2021 IEP.

Pursuant to an IEP amendment, it was determined that Y.L. would return to the District in the 2021-2022 SY for the eighth grade. See R-7, at HBOE 075. Then, on or about November 17, 2021, it was determined that Y.L. would be attending the Mt. Olive school district for the remainder of the 2021-2022 SY. Id. At HBOE 076.

Pursuant to the April 2022 IEP, Y.L. was placed at Mt. Olive High School during the 2022-2023 SY (ninth grade). (R-8.) Under the IEP, Y.L. received pull out replacement for math and English and in-class resource support for science and world history. She also received two, fifteen-minute counselings, twice a week. Id. at HBOE at 080. The supportive counseling was provided by a combined effort of the student counselor and the case manager. Id. at HBOE at 088.

The April 2022 IEP contained a behavior plan. (R-8.)

In or about November 2022, Mt. Olive advised it was terminating Y.L.'s placement effective on or about December 23, 2022.

Following the termination of Y.L.'s placement at Mt. Olive, the parties explored possible alternative out-of-district placements.

On or about January 9, 2023, the District deemed Y.L. eligible for home instruction and, effective January 13, 2023, began providing Y.L. with ten hours of home instruction per week. The home instruction is provided by the District's teaching staff after school day hours.

Testimony

The following is a summary of the relevant and material hearing testimony.

For respondent:

Valerie Vazquez, is and has been the learning disability teaching consultant (LDTC) and case manager for the District since 2017. She testified that she was assigned as Y.L.'s case manager upon Y.L.'s 2019 transfer into the District. Thereafter, Y.L. was placed at Great Meadows and attended there for approximately one and one-half years. While at Great Meadows, Y.L. did "ok" academically but she struggled with virtual instruction. While there, she also experienced social and emotional issues.

As a result, it was determined that Y.L. would return to the District in September 2021 for eighth grade. In or about October 2021, F.L. advised the District of an incident that occurred during the summer between Y.L. and another student. After learning of the incident, the District changed Y.L.'s class to separate her from the other student. Thereafter, in November 2021, Y.L. was placed in the Mt. Olive school district based on F.L.'s request and her interest in Y.L.'s safety.

While Y.L. was at Mt. Olive, Vazquez remained her case manager. Vazquez observed Y.L. at Mt. Olive only once because F.L. did not want Mt. Olive to communicate with the District. Academically, Y.L. did "fairly well" there as demonstrated by her report cards. However, she would leave the classroom a lot. But there was "nothing of big concern."

The information in Y.L.'s April 2022 IEP, including that in the Areas of Concern section, was provided by Mt. Olive. Counseling services were provided to Y.L. at Mt. Olive. Mt. Olive had a behaviorist. The District did not. Y.L. did not seem to "unite" with the counselor there but she met often with her guidance counselor.

In or about April 11, 2022, the District held an IEP meeting for Y.L. The District was not able to complete the April 2022 IEP because F.L. was upset and left the meeting.

F.L. was not in agreement with Y.L.'s proposed placement at Mt. Olive for the eighth and ninth grades. Mt. Olive and the District believed that Y.L.'s placement at Mt. Olive was appropriate. Vazquez agreed with the placement because Mt. Olive had a behaviorist and Y.L. left the classroom a lot. Despite the District's prior efforts, Y.L.'s placement in District did not work. A Functional Behavioral Assessment (FBA) was requested of Y.L. Mt. Olive's behaviorist conducted an informal observation, but F.L. refused the FBA. In or about November 2022, Mt. Olive decided to end Y.L.'s placement due to behavioral issues.

There was a bathroom incident at Mt. Olive that resulted in Y.L.'s suspension.¹

F.L. later agreed to the FBA but Y.L. was out sick. Thereafter, Mt. Olive terminated Y.L.'s placement and advised that the FBA would not be necessary. Vazquez acknowledged that the District would be able to conduct an FBA of Y.L. but they would want to do so when Y.L. could be observed in a school setting.

Since the termination of Y.L.'s out-of-district placement, the District has explored alternative out-of-district placements at two other public schools, but they have not yet been successful. An intake meeting was scheduled at Lenape High School however, after approximately thirty minutes, F.L. walked out of the meeting. The District also explored possible placement at another public school but has not yet received a response. Y.L. was refused placement at a Christian school that F.L. looked at but they may not have had the program. No other schools were looked at because F.L. has refused to consider them.

The District determined that Y.L. was eligible for home instruction effective January 9, 2023. She began receiving home instruction on or about January 13, 2023. She initially received two hours of instruction per day. On or about January 26, 2023, F.L. requested that Y.L. be provided home instruction for her electives. As a result, the District added three additional hours of home instruction per week.

¹ There is no documentary evidence in the record regarding the date or nature of the disciplinary incident, or of the length of the suspension served.

Vazquez confirmed that F.L. advised the District that Y.L. had anxiety issues.

For petitioner

F.L. testified she does not understand why Y.L. cannot return to school in the District. The District has not explained what her needs are and why they cannot be addressed/accommodated by the District. The only reason the District has not returned Y.L. to school is that they don't like F.L. and do not want to deal with her. Y.L.'s only issue is anxiety. Y.L. has since started taking medication and is receiving counseling twice a week. She is able to pay attention and participate in the home instruction provided by the District. Home instruction is not sufficient for Y.L. No other schools will take Y.L. due to the information in her IEP. F.L. explained that she left the Lenape intake meeting because the representative did not treat them appropriately.

F.L. became frustrated during the hearing and threatened to leave the proceeding. She stated she was "done" and that she was going to sell her house and move out of district.

Y.L. testified that she wants to return to school. Home instruction is not enough. She is not able to be with her friends. They are in school during the day while she is at home, and they are out of school when she is in home instruction. The District is refusing to take her because they do not like her mother. Y.L. disputed the Mt. Olive disciplinary incident. She claimed that she was "ganged up on" in the bathroom and that her father had a video of the incident which he showed the District. At a prior IEP meeting, she was told she would be able to return to the District, but they just "played" with her. She wants to know why she can't return. The District has not explained what her needs are.

Credibility

It is the obligation of the fact finder to weigh the credibility of the witnesses before making a decision. Credibility is the value that a fact finder gives to a witness' testimony. Credibility is best described as that quality of testimony or evidence that makes it worthy

of belief. “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 probable in the circumstances.” In re Estate of Perrone, 5 N.J. 514, 522 (1950).

Valerie Vazquez provided a reasonable and straight forward explanation of Y.L.’s history in the District and her out-of-district placements, her IEPs including the special education and related services provided at Mt. Olive, the District’s efforts to identify an alternative out-of-district placement upon the termination of Y.L.’s placement at Mt. Olive, and the home instruction provided by the District. Thus, I accept her testimony on these issues to be credible and reliable.

F.L. was often disruptive, argumentative, and discourteous during the hearing. Despite her conduct, I accept that she is a concerned mother interested in ensuring that her child receives an appropriate education. Her testimony that she believes home instruction is not appropriate or sufficient for Y.L. and that she should be returned to school was sincere, therefore I accept this portion of her testimony as credible. However, her testimony that anxiety is Y.L.’s only issue is contradicted by the record which reflects that Y.L. also has some behavioral issues. Thus, I do not accept this portion of her testimony as reliable or credible.

Y.L. was attentive during the hearing and asked several questions. Her testimony that she wants to return to school and be with her peers was sincere and understandable. Thus, I accept this portion of her testimony as credible.

Having considered the testimony and documentary evidence and having had an opportunity to observe the witnesses and to assess their credibility, I additionally **FIND** the following as **FACT**:

The April 2022 IEP included “Areas of Concern” communicated by Mt. Olive, noting the following behaviors: Defiance—including refusal to comply with the Vice Principal regarding use of phone in school and refusal to comply with repeated requests to remove air pods; Inattentiveness/Distractibility; Oppositional Behavior—including Y.L.’s

insistence that she should be able to use phone to text, FaceTime, and TikTok; Peer Relationships including seeking out students who are easily escalated into inappropriate behavior resulting in teacher intervention; and Disruptive Behavior— including disrupting the flow of the classroom, affecting the learning of other students. (R-8 at HBOE 088-089.)

Following the termination of Y.L.’s placement at Mt. Olive, the parties attempted to find an alternative out-of-district placement. F.L. left the intake meeting with Lenape High School prior to the completion of the meeting.

The parties have not yet found an alternative out-of-district placement for Y.L.

LEGAL ANALYSIS AND CONCLUSIONS OF LAW

The remaining issue to be resolved from petitioner’s due process petition is whether Y.L. should be returned to school in District for the 2022-2023 SY.

The Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§ 1400-1482, is designed to assure that disabled children may access a free, appropriate public education (FAPE) that is tailored to their specific needs. 20 U.S.C. § 1400(c). To further this goal, the New Jersey 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 individualized education program and the provision of a [FAPE] to students with disabilities.” N.J.A.C. 6A:14-1.3.

A school district satisfies the FAPE requirement when the district provides an IEP that is “reasonably calculated to enable the child to receive educational benefits.” Hendrick Hudson Cent. Sch. Dist. V. Rowley, 458 U.S. 176, 206-207 (1982). While “an IEP need not maximize the potential of a disabled student, it must provide ‘meaningful’ access to education and confer ‘some educational benefit’ upon the child for whom it is designed.” Ridgewood Bd. Of Educ. V. N.E., 172 F.3d 238, 247 (3d Cir.1999) (citing Rowley, 458 U.S. at 192, 200). In other words, “[t]o meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a

child to make progress appropriate in light of the child's circumstances." Andrew F. v. Douglas Cnty. Sch. Dist. RE-1, 580 U.S. 386, 399 (2017).

A school district must also educate disabled students in the "least restrictive environment," or LRE. N.J.A.C. 6A:14-4.2. The LRE "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." Carlisle Area Sch. v. Scott P., 62 F.3d 520, 535 (3d Cir. 1995).

In New Jersey, a disabled student may only have her "IEP implemented through one-to-one instruction at home or in another appropriate setting when it can be documented that all other less restrictive program options have been considered and have been determined inappropriate." N.J.A.C. 6A:14-4.8(a).

Here, there is no dispute that it is the District's responsibility to provide Y.L. with FAPE in the least restrictive environment. Although petitioner no longer disputes the appropriateness of Y.L.'s now former placement at Mt. Olive, the District has not provided sufficient justification as to why Y.L. cannot return to school in the District for the 2022-2023 SY pending her acceptance and placement in an alternative out-of-district program.² Nor has it demonstrated why home instruction is necessary or why it is the least restrictive environment for Y.L. pending her placement in an alternative out-of-district program. Similarly, the District has not demonstrated that all other less restrictive program options have been considered and been determined to be inappropriate.

Accordingly, I **CONCLUDE**, the District has not demonstrated that Y.L.'s placement in home instruction pending placement in an alternative out-of-district program and placement, constitutes FAPE in the least restrictive environment.

I further **CONCLUDE** that Y.L., should immediately be removed from home instruction and returned to school in the District for the 2022-2023 SY pending placement

² While the District contends it does not have a behaviorist, the record demonstrates that the supportive counseling provided to Y.L. at Mt. Olive, under the 2022 IEP, was performed through a "combined effort of the school counselor and the case manager."

in an appropriate out-of-district program and placement. I also **CONCLUDE** that Y.L.'s program and placement within the District should, to the greatest extent possible, be consistent with the program and placement identified in her April 2022 IEP. I additionally **CONCLUDE** that the District should continue to explore an appropriate alternative out-of-district placement for Y.L. and that petitioner should comply and cooperate with the District's efforts in same. Finally, I **CONCLUDE** that as soon as practicable, the District should convene a meeting to revise Y.L.'s IEP as appropriate and consider whether an FBA is necessary to determine and/or meet Y.L.'s needs.

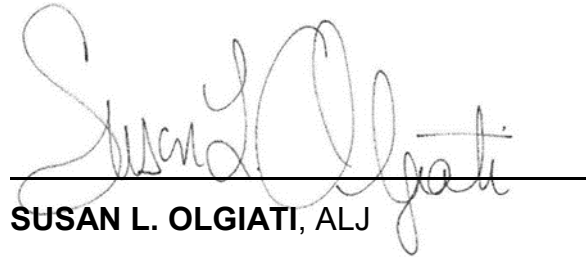
ORDER

I hereby **ORDER** that Y.L. shall immediately be removed from home instruction and returned to school in the District for the 2022-2023 SY pending placement in an appropriate out-of-district program and placement. I further **ORDER** that Y.L.'s program and placement within the District shall, to the greatest extent possible, be consistent with the program and placement identified within her April 2022 IEP. I additionally **ORDER** that the District shall continue to explore an appropriate out-of-district placement for Y.L. and that petitioner shall comply and cooperate with the District's efforts in same. Finally, I **ORDER** that as soon as practicable, the District shall convene a meeting to revise Y.L.'s IEP as appropriate and consider whether an FBA is necessary to determine and/or meet Y.L.'s needs.

This decision is final pursuant to 20 U.S.C. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2022) 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 (2022). 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.

February 14, 2023

DATE



SUSAN L. OLGATI, ALJ

Date Received at Agency:

February 14, 2023

Date Mailed to Parties:

February 14, 2023

SLO/dw

APPENDIX
WITNESSES

For petitioner

F.L.

Y.L.

For respondent

Valerie Vazquez

EXHIBITS

For petitioner

None

For respondent

- R-1 Request for Re-evaluation, February 12, 2021
- R-2 Education Evaluation, March 12, 2021
- R-3 Education Evaluation Summary, March 17, 2021
- R-4 Neuropsychology Evaluation, March 2021
- R-5 Psychology Evaluation, May 5, 2021
- R-6 April 2021 IEP
- R-7 IEP Amendment November 2021
- R-8 April 2022 IEP
- R-9 2021-2022 Report Card
- R-10 2022-2023 Report Card
- R-11 C.V. of Valerie Vazquez