



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. EDS 05613-23

AGENCY DKT. NO. 2023-35792

L.C. AND F.C. ON BEHALF OF L.C.,

Petitioners,

v.

**WATCHUNG HILLS REGIONAL BOARD
OF EDUCATION,**

Respondent.

Tina M. James, Esq., for petitioners (The Law Offices of Tina M. James, attorneys)

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

Record Closed: October 11, 2023

Decided: November 9, 2023

BEFORE **KIMBERLEY M. WILSON**, ALJ:

STATEMENT OF THE CASE

L.C. and F.C., on behalf of their son, D.C.,¹ an adult hearing-impaired student who resides in respondent school district, the Watchung Hills Regional School District (District), and who attends the Lake Drive Program (Lake Drive), a specialized program

¹ The student L.C., who will be referred to as D.C. throughout the Final Decision for clarity, has given L.C. and F.C. the authority to act on his behalf for educational and other issues pursuant to a General Durable Power of Attorney dated April 28, 2023.

for deaf and hard-of-hearing students at Mountain Lakes High School in Mountain Lakes, filed a request for a due process hearing disputing the District's April 20, 2023 proposal that D.C. graduate from Lake Drive. The sole issue is whether the District correctly proposed D.C.'s graduation in April 2023, or whether, pursuant to stay-put provisions in the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400, et seq,² D.C. is entitled to continue his education at Lake Drive.³

PROCEDURAL HISTORY

On or around April 28, 2023, L.C. and F.C. on behalf of D.C. filed a Petition for Due Process Hearing with the Office of Special Education Programs. The matter was transmitted to the Office of Administrative Law (OAL), where it was filed as a contested case on June 26, 2023. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -23.

An initial status conference was scheduled for July 7, 2023, and the Honorable Barry E. Moscovitz, ALJ held a settlement conference on July 27, 2023. After the parties were not able to resolve the matter, hearing dates were scheduled for August 30, 2023, and September 27, 2023. A final status conference was held on August 18, 2023.

Hearings were held on August 30, 2023 and October 2, 2023.⁴ The parties submitted post-hearing summation briefs on October 11, 2023, and the record closed that day.

FACTUAL DISCUSSION AND FINDINGS

The following **FACTS** are not in dispute, and so I **FIND**:

1. D.C.'s educational placement at Lake Drive is an out-of-district placement.

² “[D]uring the pendency of any proceedings conducted pursuant to this section, unless the State or local educational agency and the parents otherwise agree, the child shall remain in the then-current educational placement of the child.” 20 U.S.C. § 1415(j); see also N.J.A.C. 6A:14-2.7.

³ The Petition for Due Process Hearing contains two counts, one for D.C.'s proposed change in placement, namely his graduation, and a breach of a prior settlement agreement. Because the alleged breach of a prior settlement agreement is not within the scope of matters to be resolved in a due process hearing pursuant to N.J.A.C. 6A:14-2.7(a) and the same regulation includes a provision for the resolution of alleged breach of a settlement agreement, that issue was not addressed during the due process hearing, and counsel was given prior notice of this decision.

⁴ The September 27, 2023 hearing date was adjourned to accommodate respondent's counsel's oral argument on an unrelated matter before the U.S. Court of Appeals, Third Circuit that day.

2. D.C.'s May 12, 2022 Individual Education Program (the May 12, 2022 IEP) included D.C.'s requirements to graduate (J-9.) D.C. was not exempt from the State attendance and credit hour requirements. (Id. at 13.) D.C. was exempted from the statewide assessment requirement, as his below average reading, writing and math skills negatively impacted his ability to pass the assessments. (Id.) In order to graduate, D.C. would have to successfully complete the May 12, 2022 IEP goals and objectives. (Id. at 14.)
3. The May 12, 2022 IEP did not include any annual or measurable academic or functional goals. (Id. at 9.) The page in the May 12, 2022 IEP where that information would be found includes a text box that states, "Replace this page with ANNUAL MEASURABLE ACADEMIC AND/OR FUNCTIONAL GOALS." (Ibid.)
4. On or around August 18, 2021, Jeanne Romeo, Psy.D. of Assessments Counseling and Educational Services (ACES) conducted a psychological evaluation of D.C. (Romeo evaluation). (J-4.) In the Romeo evaluation, D.C. indicated that he wanted to go to college to study architecture. (J-4 at 10.)
5. Dr. Romeo assessed D.C.'s adaptive functioning using the Adaptive Behavior Assessment System-Third Edition. (Id. at 8.) This behavior rating scale measures daily living skills, such as what people can do without others' assistance. (Ibid.) From this assessment, Dr. Romeo noted that D.C.'s parents believed that D.C.'s overall adaptive functioning skills were above average, when the teacher form that D.C.'s special education teacher completed revealed that D.C. had below average to low skills. (Id. at 11.)
6. Romeo concluded that D.C.'s full-scale IQ is 92, which is within the average range for overall cognitive functioning for all students. (Id. at 11.)

7. On or around August 18, 2021, Kimberly Mooney, LDTC, Ph.D. of ACES conducted a learning evaluation of D.C. (J-5.) Dr. Mooney found that D.C.'s reading scores ranged among the low category for basic reading, letter-word identification and passage comprehension. (J-5 at 7.) For broad reading, and word attack, D.C.'s reading scores were in the low average category, and he was average for sentence reading fluency. (Ibid.)
8. D.C.'s grade equivalency for written language was 3.1. (Ibid.)
9. Pursuant to D.C.'s 2022-2023 report card, D.C. received a B+ in Precalculus and an A or A+ in the remainder of his courses for which grades on an A to F scale were given. (J-19.)
10. For D.C.'s high school classes from 2019 to 2023, D.C. received all As and Bs in his classes for which grades were given on an A to F scale. (J-20.)
11. In a draft IEP dated April 20, 2023 (draft April 20, 2023 IEP), a noted concern is that F.C. did not believe that D.C. was ready to graduate in June 2023. (J-15.) The draft April 20, 2023 IEP indicated that D.C.'s graduation requirements were attendance and credit hours, along with an alternate requirement of successful completion of IEP goals and objectives. (Id. at 14.)
12. The draft April 20, 2023 IEP did not include any annual or measurable academic or functional goals. (Id. at 9.) The page of the draft April 20, 2023 IEP where that information would be found includes a text box that states, "Replace this page with ANNUAL MEASURABLE ACADEMIC AND/OR FUNCTIONAL GOALS. (Ibid.)

TESTIMONY

The following discussion is not a summary of all testimony, but an encapsulation of the testimony relevant to a determination of whether the District's proposal that D.C. graduate from Lake Drive is correct both procedurally and substantively.

For respondent

Patrick O'Halloran, Ed.D., School Psychologist for the District, is a case manager who oversees certain special education students and the implementation of their respective IEP. When one of the students he manages is placed out of the District, O'Halloran relies on the experts in the program where the student is placed and members of the student's child study team to prepare an appropriate IEP. He works with teachers, parents and school staff to implement the IEP. O'Halloran testified that he is not an expert in working with deaf students, which is another reason he would rely upon those professionals to prepare an appropriate IEP.

D.C. began attending Lake Drive in September 2019 as a high school freshman,⁵ where he took four self-contained courses for math, history, science and English. During D.C.'s sophomore year, he was moved into a general education science course with three other self-contained courses, and by the end of his junior year, D.C. was in a self-contained course for English and two electives, a communications class and financial literacy course.

O'Halloran used the Romeo evaluation to create an IEP with other educational planning for D.C. (J-4.) O'Halloran believed administering non-verbal tests, such as the Wechsler Nonverbal Scale of Ability, was appropriate for D.C. because his hearing impairment impacted his language development.

O'Halloran used the results of D.C.'s August 2021 learning evaluation to work with Lake Drive staff to create a curriculum for D.C., because the learning evaluation showed

⁵ With this timeline, D.C.'s high school years and grade are as follows: (i) 2019-2020, freshman year; (ii) 2020-2021, sophomore year; (iii) 2021-2022, junior year; and (iv) 2022-2023, senior year. The appropriate school years will be noted as appropriate.

that D.C. needed additional academic supports. (J-5.) The range of D.C.'s scores on writing and the grade equivalents indicated to O'Halloran that D.C. required additional academic supports in a special education classroom. (Id. at 7-9.) D.C.'s teacher has indicated to O'Halloran that D.C.'s reading skills were improving in the self-contained classroom and his writing skills were emerging. A formal evaluation of D.C. on those skills has not been done since then.

The fact that D.C. planned to attend college was significant, as the District was required to develop a transition plan for him based on his stated post-secondary goal. The District then began creating a program to help D.C. achieve this goal. D.C. took a transition course to talk about the college application process and received modifications tailored to students with auditory impairments.

On or around January 30, 2023, during D.C.'s senior year, a Mountain Lakes High School college counselor met with D.C. and F.C. to discuss college options. (J-12.)

Julie Lazeration, principal at Lake Drive, and Margo Cottone, D.C.'s case manager at Lake Drive, recommended that D.C. graduate from high school, and O'Halloran did not disagree with that recommendation. O'Halloran had observed D.C. in a history class previously and in an English class in early spring 2023.

According to O'Halloran, the factors to determine whether D.C. was ready to graduate included meeting the goals and objectives in his IEP, the graduation credits, requirements completed in his educational program and recommendations from teachers. From his review of the IEP, O'Halloran testified that D.C. was making progress in the majority of his goals and objectives.

O'Halloran recommended graduating D.C., despite the fact that D.C. reads at a fifth grade level and writes at a third grade level, because he had met all of Lake Drive's graduation requirements. O'Halloran did not recommend additional instruction for D.C. because the Lake Drive teachers did not believe that additional instruction would create the reading and writing skills that L.C. and F.C. wanted D.C. to achieve. The Lake Drive teachers believed that D.C. had maximized his goals for achieving significant reading and writing gains.

Another factor that O'Halloran considered regarding his recommendation that D.C. graduate is that D.C. received all As and Bs in his courses graded on an A to F scale throughout high school. (J-19, J-20.) If the Lake Drive teachers had recommended that D.C. stay at Lake Drive another year, O'Halloran would have accepted that recommendation because he relied heavily on their professional opinion. While O'Halloran took L.C. and F.C.'s concerns into consideration, he admitted that he has consistently "taken the side" of the Lake Drive teachers, who work with D.C. daily, to place him in appropriate programs.

O'Halloran first learned that L.C. and F.C. wanted a fifth year of high school for D.C. as early as D.C.'s junior year. O'Halloran's recommendation about a fifth year of high school was to wait until closer until D.C.'s senior year, because O'Halloran thought the closer they were to graduation, they all would have more information to make that decision.

O'Halloran met with F.C., L.C., D.C. and D.C.'s child study team on April 20, 2023, at the end of D.C.'s senior year. (J-15.) During this meeting, O'Halloran reviewed the teachers' information, and O'Halloran asked D.C. what he wished to do after June 2023. D.C. did not wish to graduate. D.C. gave O'Halloran a list of courses that he wanted to take, including Latin, American Sign Language, public speaking and an art elective. D.C. expressed interest in visiting Italy and participating in Toastmasters. O'Halloran and the Lake Drive staff did not feel this type of programming would be helpful for D.C. to make meaningful educational progress.

O'Halloran presented a draft April 20, 2023 IEP during the meeting to L.C., F.C. and D.C. (ibid.) The draft April 20, 2023 IEP was proposed as appropriate for D.C. According to O'Halloran, the draft April 20, 2023 IEP was not finalized because L.C. and F.C. rejected the proposal to graduate D.C. and filed the petition for due process.

O'Halloran testified that D.C. could make additional grade-level progress in reading and writing in an appropriate setting. Based on D.C.'s auditory impairment and his cognitive abilities, O'Halloran did not believe that with additional reading and writing instruction D.C. would improve an additional grade level in reading and writing. He did

not believe that D.C. needed additional instruction to be ready for college, understanding that D.C. would receive accommodations for his auditory impairment in college.

Julie Lazeration has worked for the Lake Drive Program for twenty-nine years, including working as a teacher for the deaf for nineteen years. In June 2012, she became Principal at Lake Drive. She was qualified as an expert in special education and deaf education.

Lake Drive is a special education program within the Mountain Lakes public setting that educates children who are deaf and hard of hearing from preschool through high school. The Lake Drive program includes self-contained classrooms with small group instruction and employs qualified teachers for the deaf. Opportunities are also presented for children to participate in general education courses.

Lazeration has known D.C. for the past twelve years and was aware that L.C. and F.C. wanted D.C. to attend the Lake Drive program for five years. According to Lazeration, if parents requested a fifth year of high school for a Lake Drive student, Lake Drive staff would collaborate with the parents, student and the respective school district to determine what courses would be needed for a fifth year.

Lazeration testified that the decision to graduate D.C. was an IEP decision and that she did not have the authority to decide that D.C. would have a fifth year at Lake Drive. She did not have a professional opinion at the beginning of D.C.'s senior year about whether he should graduate. Lazeration said that there would have needed to be a valid reason and goal to determine that D.C. needed a fifth year of high school. The goal is what skills the student needs to transition to the next stage. She said that D.C.'s family did not trust Lake Drive regarding college placement; F.C. and L.C. did not want their counsellors working with D.C., and the parents asked to be involved in any college planning discussions with D.C.

Lazeration was involved in the discussion about graduating D.C. Lake Drive believed that D.C. had satisfied all State requirements for graduation. The programming for a fifth year would not assist him for a transition out of high school. She said that the

social and emotional implications would need to be considered when determining whether a fifth year of high school was appropriate. If Lake Drive was not able to show that they could improve D.C. reading level in one year, then she questioned why an additional year would be helpful. According to Lazeration, the national reading level average for deaf children graduating from high school is fifth grade. From her perspective, D.C. was at the national average in his reading level, and she was not sure that Lake Drive could raise his reading level.

Lazeration attended the April 20, 2023 IEP meeting (J-15.) She believed that it was appropriate for D.C. to graduate because when she reviewed Lake Drive staff documents, D.C. had made gains and progress.

After the April 20, 2023 IEP meeting, F.C. and L.C. sent an email to Lazeration, insisting upon on a fifth year program with certain classes for D.C., and requesting certain placements for D.C.'s extended school year program.

For petitioner

F.C. is D.C.'s mother. She described D.C. as a smart student when the appropriate accommodations are provided to him. F.C. began talking to D.C.'s IEP team about a fifth year of high school for D.C. during his sophomore year, but discussions on the subject were always delayed until the next IEP meeting. There were no discussions with D.C.'s IEP team about what standards would be considered to determine whether D.C. would graduate; she did not have any idea what goals and objectives D.C. would have to meet to graduate. This put D.C.'s college planning on hold although F.C. and D.C. did undertake some college planning on their own.

D.C. took Communications 12 during his senior year, a course designed to assist students with post-high school planning. The Communications 12 teacher knew that D.C. wanted to go to college, because F.C. and D.C. filled out a form discussing D.C.'s future goals and requesting certain courses so that D.C. could raise his reading and writing skills so that he would be more college ready. According to F.C., D.C. did not receive any assistance with college planning; D.C. worked on a resume and a college essay, which

he started but did not complete. The Communications 12 teacher did not assist D.C. with college planning.

D.C. is currently taking Communication 12 again. He just obtained access to Naviance, a program that assists students in college planning and college applications. D.C. is taking all of the same classes that he took during the last school year, which she attributed to the stay-put provisions of the IDEA.

During his senior year, F.C. and L.C. took D.C. on numerous college visits to New York, New Jersey, Massachusetts and Pennsylvania schools with an architecture program. Representatives from some of those colleges have advised them that they want their students to take pre-calculus and calculus, science including physics, and debate or public speaking courses. F.C. and L.C. did not have D.C. apply for colleges last year because they did not believe D.C. was ready for college. They were also waiting for D.C.'s April 2023 IEP and meeting.

According to D.C., the deadlines for D.C. to apply to college in his senior year varied and could have been between December 2022 and January 2023.

The only test or assessment that D.C. took during his senior year at Lake Drive was the ACT. D.C. also took the ACT during his junior year, and according to F.C., his scores were not indicative of an A student with an occasional B+.

During the April 2023 IEP meeting, the child study team told F.C. that D.C. met the classes needed to graduate and that the District believed that D.C. was ready to graduate. She disagreed with the District's conclusions, because of D.C.'s reading and writing levels. She does not see what the District had done to raise D.C.'s reading and writing levels. She sees generally that D.C. has improved his reading and writing since his freshman year in high school.

F.C. said that some teachers were trying to convince D.C. to graduate at the end of the last school year.

D.C. testified that he wants to study architecture after he graduates from high school. He believes that a fifth year of high school would be helpful for his transition to college.

Jeanne Romeo, Psy.D., is a certified school psychologist currently working for the New York Department of Education. Dr. Romeo is also a consultant for ACES, a company that evaluates students for parents and school districts located in Parsippany. She was qualified as an expert in the field of school psychology.⁶

Dr. Romeo evaluated D.C. on or around August 18, 2021, at the beginning of his junior year. (J-4.) From her review of D.C.'s records, Dr. Romeo found that D.C. had to take state assessments but was exempt from passing them as a graduation requirement. (Id. at 2.) D.C.'s alternative requirement is the successful completion of his IEP goals and objectives. (Ibid.) According to Dr. Romeo, those IEP goals and objectives would be whatever the District included in D.C.'s IEP.

Dr. Romeo gave D.C. the Weschler Nonverbal test to find D.C.'s cognitive function. From the test results, Dr. Romeo concluded that D.C.'s skills were within the average range. With an average IQ, D.C.'s academics should be in line with that finding. Dr. Romeo believes that D.C. has a learning difference because of his hearing.

On cross-examination, Dr. Romeo stated that it is common for students with an IEP to be exempted from state testing requirements as a condition for graduation. She admitted that she did not have a basis to determine whether D.C. has satisfied his goals and objectives and would be ready for graduation.

⁶ Counsel for L.C. and F.C. wished to qualify Dr. Romeo as an expert in evaluating students who are deaf and hard of hearing, and counsel for the District objected. Upon a review of Dr. Romeo's resume and her qualifications, I sustained the District's objection and did not qualify Dr. Romeo as an expert in evaluating students who are deaf and hard of hearing.

ADDITIONAL FINDINGS

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). To assess credibility, the fact finder should consider the witness' interest in the outcome, motive, or bias. "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).

Having had the opportunity to hear and view all of the witnesses during their testimony and review the joint exhibits, I accept the testimony from F.C., L.C., D.C., and Dr. Romeo as credible. Each of these witnesses testified consistently and forthrightly about D.C.'s education and his or her respective attempts to make sure that D.C.'s auditory impairment did not prevent him from receiving an appropriate education.

Generally, I do accept the testimony from O'Halloran and Lazeration as credible for the same reasons, except for their respective testimony that D.C. was making academic progress. O'Halloran testified that D.C. was making progress in the majority of his IEP goals and objectives; Lazeration testified that D.C. made gains and progress based on Lake Drive staff documents she reviewed. From the lack of measurable academic and functional goals in D.C.'s May 12, 2022 IEP, I cannot accept either portion of their respective testimony on this issue as credible.

Accordingly, I **FIND** the following additional **FACTS**:

1. O'Halloran's recommendation about a fifth year of high school was to wait until closer until D.C.'s senior year, because O'Halloran thought the closer

they were to graduation, they would have more information to make that decision.

2. O'Halloran took L.C. and F.C.'s concerns about D.C.'s education into consideration, but he consistently took "the side" of the Lake Drive teachers, who worked with D.C. daily, to place him in appropriate programs.
3. The April 20, 2023 IEP was not finalized because L.C. and F.C. rejected the proposal to graduate D.C.
4. No other formal psychological or learning evaluations of D.C. have been conducted since the Romeo evaluation dated August 18, 2021, and the August 18, 2021 learning evaluation at the beginning of D.C.'s junior year.
5. The only test or assessment that D.C. took during his senior year at Lake Drive was the ACT. D.C. also took the ACT during his junior year, and according to F.C., his scores were not indicative of an A student with an occasional B+.
6. D.C. took Communications 12 during his senior year, working on a resume and a college essay, which he started but did not complete. The Communications 12 teacher did not assist D.C. with college planning.
7. D.C. is currently taking Communication 12 again. He just obtained access to Naviance, a program that assists students in college planning and college applications. D.C. is taking all of the same classes that he took during the last school year.
8. On or around January 30, 2023, during D.C.'s senior year, a Mountain Lakes High School college counselor met with D.C. and F.C. to discuss college options. The deadlines for D.C. to apply to college in his senior year varied and could have been between December 2022 and January 2023.

9. F.C. did not have any discussions with D.C.'s IEP team about what standards would be considered to determine whether D.C. would graduate; she did not have any idea what goals and objectives D.C. would have to meet to graduate. This put D.C.'s college planning on hold.

LEGAL ANALYSIS AND CONCLUSIONS OF LAW

Under the IDEA, federal funds are made available to assist states in providing an education for children with disabilities. Receipt of those funds is contingent upon a state's compliance with the goals and requirements of the IDEA. Lascari v. Bd. of Educ. of Ramapo Indian Hills Reg. High Sch. Dist., 116 N.J. 30, 34 (1989). As a recipient of federal funds under the IDEA, the State must have a policy that assures that all children with disabilities will receive a free appropriate public education (FAPE). See 20 U.S.C. §1412. FAPE includes special education and related services. See 20 U.S.C. §1401(9); N.J.A.C. 6A:14-1.1.

The responsibility to deliver special education and related services rests with the local public school district. See N.J.A.C. 6A:14-1.1(d). To meet its obligation to deliver FAPE, the school district must offer D.C. "an educational program reasonably calculated to enable [him] to make progress appropriate in light of [his] circumstances." Endrew F. v. Douglas Cnty. Sch. Dist., 580 U.S. 386, 403 (2017).

For a school district to provide FAPE to a disabled child under the IDEA they must develop and implement an IEP — a "comprehensive statement of the educational needs of a handicapped child and the specially designed instruction and related services to be employed to meet those needs." Sch. Comm. of Burlington v. Dep't of Educ. of Mass., 471 U.S. 359, 368 (1985). An IEP is to be developed by a district's child study team in conjunction with the parents of the child. See N.J.A.C. 6A:14-2.3; N.J.A.C. 6A:14-3.7(b).

An IEP must contain "a statement of detailed measurable annual academic and functional goals that shall be related, as appropriate, to the New Jersey Student Learning Standards through the general education curriculum unless otherwise required according to the student's educational needs, or appropriate, student-specific functional needs. For

all students, the annual academic and functional goals shall be measurable and apprise parents and educational personnel providing special education and related services to the student of the expected level of achievement attendant to each goal.” N.J.A.C. 6A:14-3.7(e)(2).

When the student turns fourteen, the IEP also must include the State and local requirements a student must meet to graduate. N.J.A.C. 6A:14-3.7(e)(9). If a student is exempted from a graduation requirement or the requirement is modified, a rationale must be given with a description of alternate proficiencies that the student must achieve. N.J.A.C. 6A:14-3.7(e)(9)(i), (ii).

Here, the District seeks to graduate D.C. The board of education must provide written notice to a parent when it seeks to change the student’s educational placement or the provision of FAPE. N.J.A.C. 6A:14-2.3(f)(1). Graduation is a "change of placement" within the meaning of the procedural protection of the parents' right to be consulted about their children's education. Stock v. Massachusetts Hosp. Sch., 392 Mass. 205, 467 N.E.2d 448 (1984), cert. denied 474 U.S. 844 (1985). As the court stated, "no change in placement seems quite so serious nor as worthy of parental involvement and procedural protections as the termination of placement in special education programs." Id. at 211, 454.

No evidence was presented that the District provided L.C. and F.C. with written notice that it proposed to change D.C.’s classification, namely his graduation from the Lake Drive program, in violation of N.J.A.C. 6A:14:2.3(f)(1), prior to the April 20, 2023 IEP meeting. The only evidence presented is the draft April 20, 2023 IEP, which L.C. and F.C. rejected along with the proposal to graduate D.C.

This District failure raise a procedural FAPE question. When a procedural violation is alleged, “an administrative law judge may decide that the child did not receive a FAPE only if the procedural inadequacies: (1) [i]mpeded the child’s right to a FAPE, (2) [s]ignificantly impeded the parent’s opportunity to participate in the decision-making process regarding the provision of FAPE to the child; or (3) [c]aused a deprivation of the educational benefit.” N.J.A.C. 6A:14-2.7(k).

It is impossible to determine whether the District provided D.C. a FAPE without express academic and functional goals and objectives in an IEP. District witnesses noted several factors they considered when determining that D.C. should graduate, including his exemplary grades, graduation credits, requirements completed in their educational program, and teacher recommendations. None of these factors, other than the graduation credits, were specifically set forth in the May 12, 2022 IEP. Although O'Halloran, D.C.'s case manager, testified that D.C. was making progress in the majority of his goals and objectives, with no tangible academic and functional goals and objectives in the May 12, 2022 IEP, those words ring hollow. Simply, there was no definitive standards in the May 12, 2022 IEP to determine whether D.C. should graduate.

In addition, the last agreed-upon IEP, which was dated May 12, 2022, listed D.C.'s requirements for graduation. He was not exempt from the State attendance and credit hour requirements, but was exempted from the statewide assessment requirement, as his below average reading, writing and math skills negatively impacted his ability to pass the assessments. The only other standard included in this IEP was that D.C. would have to successfully complete his IEP goals and objectives. However, this IEP does not include any annual or measurable academic or functional goals. That page in the May 12, 2022 IEP was left blank, with the words "Replace this page with ANNUAL MEASURABLE ACADEMIC AND/OR FUNCTIONAL GOALS."

On the issue of graduation, significant testimony was presented regarding the steps that the District and L.C. and F.C. took during D.C.'s senior year to prepare him for the college admissions process. D.C. took Communications 12 during his senior year, a course designed to assist students with this process; however, Lake Drive, and de facto, the District, did not provide him with timely assistance with college planning. D.C. worked on a resume and a college essay, which he started but did not complete, in Communications 12. The Communications 12 teacher did not assist D.C. with college planning.

A Mountain Lakes High School college counselor met with D.C. and F.C. in January 2023, but deadlines for D.C. to apply to college in his senior year varied and

could have been between December 2022 and January 2023. In light of impending college application deadlines, meeting with D.C. in January 2023 to discuss his college options was not a meaningful exercise. Most importantly, Lake Drive did not provide D.C. with access to Naviance, the computer program that assists students with college planning and college applications until the present school year, not during his senior year. D.C. was not given all of the tools to successfully transition to college, regardless of whether his proposed graduation was appropriate.

Both of these failures, whether from the District or Lake Drive, have impeded D.C.'s right to a FAPE. Therefore, I **CONCLUDE** that the District and Lake Drive have failed to provide D.C. with a FAPE. The next question is the appropriate remedy. For a due process petition brought under the IDEA, relief can be granted as is determined to be appropriate. See 20 U.S.C. § 1415(i)(1)(C)(iii).

Compensatory education for D.C. is not an appropriate remedy at this point, as there is no evidence that the District failed to provide D.C. with appropriate educational services when he was entitled to a FAPE. See G.L. v. Ligonier Valley Sch. Dist. Auth., 802 F.3d 601, 608 (3d Cir. 2015). The District, through Lake Drive, provided D.C. with educational services; the question here is whether those educational services provided to D.C. were a FAPE.

The District did not provide D.C. with an IEP that included measurable academic or functional goals. An updated IEP is necessary for the District, Lake Drive, L.C., F.C. and D.C. to determine whether D.C. is ready to graduate from Lake Drive. Accordingly, I **CONCLUDE** that from the date of this Final Decision, the District shall: (i) conduct an updated learning evaluation for D.C. within forty-five days; (ii) prepare an updated IEP for D.C. with measurable academic and functional goals within sixty days; and (iii) conduct a meeting with L.C., F.C., D.C. and D.C.'s child study team within seventy-five days. I further **CONCLUDE** that the District must provide L.C., F.C. and D.C. with the requisite written notice pursuant to N.J.A.C. 6A:14-2.3(f)(1) if it wishes for D.C. to graduate in June 2024

While the District is conducting these evaluations to prepare an updated IEP for D.C. and conduct a child study team meeting, forcing D.C. to repeat courses this current school year that he took and appears to have mastered, based on his grades, during his senior year is not equitable. D.C.'s educational interests are not advanced by repeating courses. The District did not present any evidence indicating that D.C. would be negatively impacted if D.C. were to remain a student at Lake Drive. Accordingly, I further **CONCLUDE** that the stay-put provisions in 20 U.S.C. § 1415(j) and N.J.A.C. 6A:14-2.7(u) are lifted; D.C. remains a student at Lake Drive and the District should ensure that D.C. is placed in courses at Lake Drive that further his post-graduation goal of attending college for architecture.

ORDER


I hereby **ORDER** that from the date of this Final Decision, the District shall: (i) conduct an updated learning evaluation for D.C. within forty-five days; (ii) prepare an updated IEP for D.C. with measurable academic and functional goals within sixty days; and (iii) conduct a meeting with L.C., F.C., D.C. and D.C.'s child study team within seventy-five days.

Additionally, it is **ORDERED** that the District must provide L.C., F.C. and D.C. with the requisite written notice pursuant to N.J.A.C. 6A:14-2.3(f)(1) if it wishes for D.C. to graduate in June 2024. It is also **ORDERED** that the stay-put provisions in 20 U.S.C. § 1415(j) and N.J.A.C. 6A:14-2.7(u) are lifted; D.C. remains a student at Lake Drive and the District should ensure that D.C. is placed in courses at Lake Drive that further his post-graduation goal of attending college for architecture.

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.

November 9, 2023 _____

DATE



KIMBERLEY M. WILSON , ALJ

Date Received at Agency _____

Date Mailed to Parties: _____

KMW/am/lam

APPENDIX

WITNESSES

For petitioner

F.C.

L.C.

D.C.

Jeanne Romeo, Psy.D.

For respondent

Patrick O'Halloran, Ed.D., School Psychologist

Julie Lazeration, Lake Drive School principal

EXHIBITS

Joint exhibits

- J-1 Petition for Due Process Hearing dated April 28, 2023
- J-2 Answer dated May 4, 2023
- J-3 Settlement Agreement and Release dated July 29, 2021
- J-4 Psychological Evaluation prepared by Jeanne Romeo, Psy.D. dated August 20, 2021
- J-5 Learning Evaluation prepared by Kimberly Mooney, LDTC, PhD dated August 18, 2021
- J-6 Speech and Language Evaluation prepared by Stephanie Elsherif M.S., CCC-SLP dated September 8, 2021
- J-7 Summary of Classroom Performance 2021-2022
- J-8 F.C. and L.C. on behalf of L.C. v. Watchung Hills Regional Board of Education, OAL DKT. NO. EDS 05394-21 (February 9, 2022).
- J-9 5/12/2022 IEP

- J-10 Decision Approving Settlement for L.C. and F.C. on behalf of L.C. v. Watching Hills Regional Board of Education, as consolidated, OAL DKT. NO. EDS 05596-22 and EDS 09551-22 (August 25, 2022).
- J-11 Audiological Evaluation conducted by Jobi M. Schwartz, Au.D., CCC-A dated March 3, 2023
- J-12 Note dated April 4, 2023 regarding January 30, 2023, career planning session with D.C. and F.C.
- J-13 2022-2023 Student Schedule Form for D.C.
- J-14 Speech and Language report conducted by Samantha Kaplan, M.C., CCC-SLP dated April 2023
- J-15 4/20/2023 IEP, Summary of Classroom Performance, Kaplan Speech and Language report
- J-16 Intentionally left blank
- J-17 2022-2023 work sample
- J-18 2022-2023 Summary of Classroom Performance
- J-19 2022-2023 Mountain Lakes High School Report Card
- J-20 Mountain Lakes High School Official Transcript for D.C. (2019-2023)
- J-21 New Jersey Communication Plan for Students who are Deaf, Hard of Hearing or DeafBlind
- J-22 Curriculum vitae for Lorraine de Ricco Boylan, Ph.D.
- J-23 Resume for Margo Maria Cottone
- J-24 Resume for Michele L. Deremer
- J-25 Resume for Samantha B. Kaplan
- J-26 Resume for Julie A. Lazeration
- J-27 Resume for Jeannette Mackey
- J-28 Resume for Patrick O'Halloran, Ed.D.
- J-29 Resume for Jeanne Romeo, Psy.D.
- J-30 2022-2023 Mountain Lakes High School Progress Reports