State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

ORDER ON MOTION FOR SUMMARY DECISION

L.R. ON BEHALF OF J.R.,
Petitioner,
v.
CAMDEN CITY BOARD OF EDUCATION,
Respondent.

OAL DKT. NO. EDS 09727-14
AGENCY DKT. NO. 2015 21442

Jamie Epstein, Esq., appearing for L.R.

Lester E. Taylor III, Esq., appearing for Camden City Board of Education (Florio, Perrucci, Steinhardt and Fader, LLC, attorneys)

BEFORE **SUSAN M. SCAROLA**, ALJ:

STATEMENT OF THE CASE

The petitioner, L.R. on behalf of her child J.R., seeks summary decision that the respondent Camden City Board of Education (District) be ordered to turn over J.R.'s student records to her attorney and a finding that the District committed both procedural and substantive violations of the Individuals with Disabilities Education Act (IDEA) and New Jersey Special Education Laws. The respondent moves to dismiss the complaint. The petitioner contends that she submitted written consent to the District for her attorney, Jamie Epstein, Esq., to have access to J.R.'s records. The District contends that the petitioner's self-drafted "FERPA Waiver" does not satisfy the requirements of

the Family Educational Rights and Privacy Act (FERPA), N.J.A.C. 6A:14-1.3 "consent" and N.J.A.C. 6A:32-7.5(e)(13), because, although the parent L.R. gave written consent for the release of the records, she did not use the District's pre-printed form which contains a clause releasing the District from liability in releasing the records.

PROCEDURAL HISTORY

On July 1, 2014, after the District refused to provide the petitioner's attorney with J.R.'s records, the petitioner requested a due-process hearing. On July 8, 2014, the petitioner's due-process request was acknowledged. The Office of Special Education Programs (OSEP) transmitted petitioner's claim to the Office of Administrative Law, where it was filed on July 28, 2014.

On July 21, 2014, the respondent filed a motion to dismiss, and on July 22, 2014, the District filed a sufficiency challenge to the due-process petition. On July 25, 2014, the petitioner opposed the challenge. On July 31, 2014, Administrative Law Assignment Judge Lisa James-Beavers ordered that petitioner's complaint was deemed sufficient for a due-process hearing. On August 7, 2014, and August 18, 2014, settlement conferences were held before Administrative Law Judge John Russo, Jr., but the parties were unable to come to an agreement.

On September 2, 2014, the respondent filed a motion to dismiss, and responded to petitioner's discovery request. Following a telephone conference, a Letter Order was issued on September 3, 2014, that ordered the respondent to produce discovery, and set a briefing schedule.

On October 22, 2014, the petitioner filed a motion for summary decision, with attached Statement of Material Facts, and exhibits P1 through P44. On November 4, 2014, the respondent cross-moved for summary decision, incorporating a Statement of Undisputed Facts, and attaching a Certification of Jason W. Isom, Esq., and exhibits A through D. A hearing on the motions was scheduled for December 10, 2014, but was waived by the parties. (See Sept. 3, 2014, Letter Order.)

FACTUAL DISCUSSION[1]

Respondent operates a kindergarten-through-twelfth-grade school district for the residents of the City of Camden. (Resp't's Statement of Undisputed Facts ("Resp. Facts"), ¶ 1.) Petitioner, L.R., is the parent of J.R., a fourth-grade student who is enrolled in the District. (Id., ¶ 2.) Jamie Epstein is the attorney for petitioner, and has represented L.R. on behalf of J.R. in numerous legal proceedings against the District. (Pet'r's Statement of Material Facts ("Pet. Facts"), ¶ 2.) Between 2010 and the present, the District has provided Jamie Epstein with access to J.R.'s school records. (Id., ¶ 3.)

On May 16, 2014, Mr. Epstein submitted a letter to the District requesting access to J.R.'s student records. (Resp. Facts, ¶ 4.) The letter states:

> Dear Director Ogbonna,
>
> As you know I represent the above referenced student. Please arrange for me to access her school records; including, but not limited to, her special education, health, administrative, academic and disciplinary records . . . .
>
> [Resp't's Ex. A; Pet. Facts, ¶ 10.]

On May 23, 2014, Dr. Ogbonna responded, informing Mr. Epstein that he was unable to produce records responsive to his request unless a valid written legal consent was obtained from the petitioner. (Resp't's Isom Cert., Ex. B.) Dr. Ogbonna attached the District's Student Records Authorization and Consent Form, and asked Mr. Epstein to have the petitioner sign it and return it to the District. (Ibid.) This form included a space for the parent's name, the student's name, acknowledgment of consent to release "student records/health records (*circle one or both*)," and a clause stating that the parent "hereby release[s] the Camden City School District, and its employees and agents, from any liability or responsibility in connection with producing the aforesaid records in connection with this request." (Pet'r's Ex. 3; Resp't's Isom Cert. Ex. B.)

[1] The parties have agreed that the underlying facts in this matter are not in dispute, and that the matter can be resolved on the papers.

On May 30, 2014, Mr. Epstein e-mailed the respondent, attaching a self-drafted "FERPA Waiver" form. (Resp't's Isom Cert. Ex. C.) The form states, "I, [L.R.], as parent and legal guardian of [J.R.], I hereby extend my 20 U.S.C.[A.] § 1232g, Family Educational and Privacy Act rights to my attorney, Jamie Epstein." (Ibid.) The form is signed and dated May 27, 2014, by petitioner. (Ibid.) On June 5, 2014, the District responded by advising Mr. Epstein that his request was denied because the District's recently revised school-record-access-authorization form was not used. (Resp't's Isom Cert., Ex. D.) According to the District's response, the FERPA Waiver did not constitute valid legal consent pursuant to FERPA, 20 U.S.C.A. § 1232g, 34 C.F.R. Part 99, and N.J.A.C. 6A:32-7.5(a). According to Mr. Epstein, "FERPA Waivers" had been used by him previously in obtaining access to J.R.'s records and had never before been an issue. (Pet. Facts, ¶ 22.)

On June 17, 2014, Mr. Epstein submitted an Open Public Records Act (OPRA) request to the District, requesting all parental record requests from January 1, 2013, to present, as well as the District's responses. (Pet'r's Ex. 8.) In response, on June 25, 2014, the District claimed it had no responsive records. (Pet'r's Ex. 9.) On July 1, 2014, the petitioner filed the instant due-process petition.

On September 2, 2014, respondent responded to petitioner's discovery request, including a different "Student Records Request" form than that originally provided to petitioner. (Pet'r's Ex. 33.) This second form contained more information regarding parental consent and FERPA. (Ibid.)

LEGAL ANALYSIS AND CONCLUSIONS

I. Summary Decision Standard

Summary decision may be granted only "if the papers and discovery which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law." N.J.A.C. 1:1-12.5(b). These provisions mirror the summary-judgment language

of R. 4:46-2(c) of the New Jersey Court Rules. See Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520 (1995).

In making a determination on a motion for summary judgment, the judge should consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational fact-finder to resolve the alleged disputed issue in favor of the non-moving party. Brill, supra, 142 N.J. at 523. The inquiry essentially is "'whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.'" Id. at 536 (quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 251–52, 106 S. Ct. 2505, 2512, 91 L. Ed. 2d 202, 214 (1986)).

If the non-moving party's evidence is merely colorable, or is not significantly probative, summary judgment should not be denied. See Bowles v. City of Camden, 993 F. Supp. 255, 261 (D.N.J. 1998). An evidentiary hearing is not required if there is no genuine issue of material fact. Contini v. Bd. of Educ., 286 N.J. Super. 106, 121 (App. Div. 1995), certif. denied, 145 N.J. 372 (1996). As the parties in this matter are in accord as to the material facts surrounding the application, and there appears to be no genuine issue as to any of them, no hearing is necessary, and the matter is ripe for summary decision as a matter of law.

II. Jurisdictional Issues

Petitioner has filed this action pursuant to the IDEA, since the petition alleges that the withholding of records resulted in a denial of a free appropriate public education (FAPE). However, New Jersey's corollary education laws provide an alternate avenue to appeal the denial of access to student records, over which OSEP does not retain jurisdiction. A threshold issue is whether OSEP has jurisdiction here.

The IDEA, New Jersey statutes, and their respective implementing regulations require local boards of education to identify and classify children with disabilities and provide them with FAPE designed to meet their unique needs. See 20 U.S.C.A. § 1412; N.J. Const. art. VIII, § IV, ¶ 1; N.J.S.A. 18A:46-8, -9; N.J.A.C. 6A:14-1.1 et seq.

A school district satisfies its requirement to provide FAPE to a disabled child "by providing personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction." Hendrick Hudson Dist. Bd. of Educ. v. Rowley, 458 U.S. 176, 203, 102 S. Ct. 3034, 3049, 73 L. Ed. 2d 690, 710 (1982). The IDEA does not require a school district to maximize a student's potential or provide the best possible education at public expense. The appropriate standard is whether the IEP offers the opportunity for "significant learning" and "meaningful educational benefit." Ridgewood Bd. of Educ. v. N.E., 172 F.3d 238 (3d. Cir. 1999); see also T.R. v. Kingwood Tp. Bd. of Educ., 205 F.3d 572, 577 (3d Cir. 2000), wherein the Third Circuit reaffirmed the meaningful-educational-benefit standard. Therefore, the ultimate inquiry in a matter such as this is whether a school district has offered to a student an education designed to allow him to obtain meaningful educational benefit with significant learning, individualized to meet his specific needs. This must be an essential focus in every case.

The education of a child with a disability must be tailored to the unique needs of the child through an IEP, and the provisions of the IEP must be reviewed and, if appropriate, revised periodically, but not less than annually. 20 U.S.C.A. § 1414(d)(4)(A). An IEP should be developed with the participation of parents and members of a district board of education's child study team who have participated in the evaluation of the child's eligibility for special education and related services. N.J.A.C. 6A:14-3.7(b). The IEP team should consider the strengths of the student and the concerns of the parents for enhancing the education of their child; the results of the initial or most recent evaluations of the student; the student's language and communications needs; and the student's need for assistive technology devices and services. The IEP establishes the rationale for the pupil's educational placement, serves as the basis for program implementation, and complies with the mandates set forth in N.J.A.C. 6A:14-1.1 to -10.2. Parents who are dissatisfied with an IEP may seek an administrative due-process hearing. 20 U.S.C.A. § 1415(f). The burden of proof is placed on the school district. N.J.S.A. 18A:46-1.1.

Pursuant to the IDEA, a due-process petition may be filed "with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child." 20 U.S.C.A. § 1415(b)(6) (emphasis added); 20 U.S.C.A. § 1415(f) (allowing for a due-process hearing when a complaint has been received under section (b)(6)). Similarly, N.J.A.C. 6A:14-2.7 permits a party to request a due-process hearing whenever "there is a disagreement regarding identification, evaluation, reevaluation, classification, educational placement, the provision of a free, appropriate public education, or disciplinary action." (Emphasis added.) The District argues that as a challenge to the denial of a records request, the instant petition does not fall under any of these enumerated categories. However, because the petition asserts that the failure to release J.R.'s records amounted to a denial of a FAPE, the petition has been appropriately filed.

The petitioners have no private right of action under FERPA. See Gonzaga Univ. v. Doe, 536 U.S. 273, 122 S. Ct. 2268, 153 L. Ed. 2d 309 (2002). FERPA prohibits the federal funding of educational institutions that have a policy or practice of releasing education records to unauthorized persons. 20 U.S.C.A. § 1232g(a)(1)(A). Federal funding will not be provided to educational agencies with a policy of providing records without requiring "written consent from the student's parents specifying records to be released, the reasons for such release, and to whom." 20 U.S.C.A. § 1232g(b)(2)(A). "In legislation enacted pursuant to the spending power, the typical remedy for state noncompliance with federally imposed conditions is not a private cause of action for noncompliance but rather action by the Federal Government to terminate funds to the State." Gonzaga Univ., supra, 536 U.S. at 280, 122 S. Ct. at 2273, 153 L. Ed. 2d at 318.

The State's education laws provide that the commissioner of the Department of Education has jurisdiction over matters arising under the school laws. N.J.S.A. 18A:6-9. New Jersey education law governing "rights of appeal" provides that "[s]tudent records are subject to challenge by parents and adult students on grounds of inaccuracy, irrelevancy, impermissive disclosure, inclusion of improper information or denial of access to organizations, agencies and persons." N.J.A.C. 6A:32-7.7(a) (emphasis

added). This rule goes on to limit the right of appeal to situations where a parent seeks to: "(1) Expunge inaccurate, irrelevant or otherwise improper information from the student record; (2) Insert additional data as well as reasonable comments as to the meaning and/or accuracy of the records; and/or (3) Request an immediate stay of disclosure pending final determination of the challenge procedure as described in [N.J.A.C. 6A:32-7.7]." Ibid. It is not clear on the face of the regulation whether this list is exhaustive or not. However, the rule sets forth the procedure to be followed by a parent who requests a "change in the record or . . . a stay of disclosure. N.J.A.C. 6A:32-7.7(b). A parent

> shall notify in writing the chief school administrator of the specific issues relating to the student record. Within 10 days of notification, the chief school administrator or his or her designee shall notify the parent or adult student of the school district's decision. If the school district disagrees with the request, the chief school administrator or his or her designee shall meet with the parent or adult student to revise the issues set forth in the appeal. If the matter is not satisfactorily resolved, the parent or adult student has 10 days to appeal this decision either to the district board of education or the Commissioner.
>
> [Ibid.]

Here, petitioner is appealing a denial of access of records to a person, namely, her attorney, Mr. Epstein. However, the petitioner is not seeking any of the relief enumerated under the school laws (e.g., expunging inaccurate information, or requesting a stay of disclosure). Although it is not clear whether the list is exhaustive, clearly, petitioner is not requesting a "change in the record or . . . a stay of disclosure" so as to trigger the procedural guidelines for appealing to the Commissioner.

Rather, petitioner is seeking to access student records. Pursuant to the IDEA, parents are guaranteed the right to "examine all records relating to [their] child and to participate in meetings with respect to . . . the provision of [FAPE] to such child." 20 U.S.C.A. § 1415(b)(1). Additionally, the State's special education regulations provide that "[t]he parent, adult student or their designated representative shall be permitted to inspect and review the contents of the student's records maintained by the district board

of education under N.J.A.C. 6A:32 without any unnecessary delay and before any meeting regarding the IEP." N.J.A.C. 6A:14-2.9 (emphasis added). New Jersey's Special Education Laws require "consent" prior to a release of records, as that term is defined by N.J.A.C. 6A:14-1.3. N.J.A.C. 6A:14-2.3(a); N.J.A.C. 6A:14-2.9(c). There is no question here that the parent consented to the release of records to her attorney. Without ruling on the propriety of the District's form, an Order that the District must turn over the records may be entered on the narrow grounds that the parent has consented to release J.R.'s records to Mr. Epstein. As discussed below, this consent is sufficient under the IDEA and New Jersey's special education regulations.

III. By failing to release J.R.'s records, the District committed a procedural violation of the IDEA.

This action is predicated on the IDEA. 20 U.S.C.A. §§ 1400 to 1482. Subject to certain limitations, the IDEA requires that participating states implement policies and procedures to ensure that students between the ages of three and twenty-one who have a disability will receive FAPE. 20 U.S.C.A. § 1412(a)(1). Among the IDEA's procedural guarantees is the parent's right to access their child's educational and health records. 20 U.S.C.A. § 1415(b)(1). The improper denial of student records constitutes a procedural violation of the IDEA. See 20 U.S.C.A. § 1415(b)(1)(A) (requiring opportunity to examine records as a procedural safeguard); M.M. v. Lafayette Sch. Dist., 767 F.3d 842, 855 (9th Cir. 2014) (reversed in part on other grounds). In order for procedural violations of the IDEA to be actionable, the violations must amount to a substantive deprivation of a free appropriate public education. 20 U.S.C.A. § 1415(f)(3)(E)(i) (stating that decisions of hearing officers must be made on substantive grounds based on a determination of whether a child received FAPE).[2] Thus, the overarching issue is, if the District improperly denied Mr. Epstein access to J.R.'s records, whether that resulted in a denial of FAPE to J.R.

When a procedural violation has been alleged, an ALJ may find that a child did not receive FAPE only if the procedural inadequacies: (1) impeded the child's right to

[2] Under New Jersey law, a "hearing officer" is an administrative law judge (ALJ). J.M. ex rel. J.M. v. Deptford Twp. Bd. of Educ., EDS 2998-99 & EDS 4308-99 (consolidated), Final Decision (July 23, 1999), <http://njlaw.rutgers.edu/collections/oal/>.

FAPE; (2) significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of FAPE to the child; or (3) caused a deprivation of educational benefits. 20 U.S.C.A. § 1415(f)(3)(E)(ii); 34 C.F.R. § 300.513(a)(2) (2014); N.J.A.C. 6A:14-2.7(k). In conducting this analysis, "the [c]ourt must consider the impact of the procedural defect, and not merely the defect per se." Weiss ex rel. Weiss v. Sch. Bd. of Hillsborough Cnty., 141 F.3d 990, 995 (11th Cir. 1998). "[A]lthough it is important that a school district comply with the IDEA's procedural requirements, compliance is not a goal in itself; rather, compliance with such procedural requirements is important because of the 'requirements' impact on students' and parents' substantive rights.'" Ridley Sch. Dist. v. M.R., 680 F.3d 260, 274 (3d Cir. 2012) (citation omitted).

The District must provide Mr. Epstein with J.R.'s records because the parents have provided sufficient consent. The regulations enacted pursuant to FERPA provide that the written consent must "(1) [s]pecify the records that may be disclosed; (2) [s]tate the purpose of the disclosure; and (3) [i]dentify the party or class of parties to whom the disclosure may be made." 34 C.F.R. § 99.30 (2014). The IDEA does not impose any additional specific conditions on the nature of the requisite written parental consent.

New Jersey's special education regulations provide that consent must be obtained prior to the release of student records. N.J.A.C. 6A:14-2.3(a). Parents, adult students, "or their designated representative" shall be permitted to inspect and review the contents of student records. N.J.A.C. 6A:14-2.9(b). "Any consent required for students with disabilities under N.J.A.C. 6A:32 shall be obtained according to N.J.A.C. 6A:14-1.3 'consent' and 2.3(a) and (b)." N.J.A.C. 6A:14-2.9(c). "Consent" means agreement in writing that is required by New Jersey's special education laws. N.J.A.C. 6A:14-1.3.

> Consent shall be obtained from the parent having legal responsibility for educational decision making. The district board of education shall ensure that the parent:
>
> 1. Has been fully informed of all information relevant to the activity for which consent is being sought, in his or her native language or other mode of communication;

> 2. Understands and agrees in writing to the implementation of the activity for which consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom;
>
> 3. Understands that the granting of consent is voluntary and may be revoked at any time; and
>
> 4. If the parent revokes consent, that revocation is not retroactive (that is, it does not negate an action that has occurred after the consent was given and before the consent was revoked).
>
> [N.J.A.C. 6A:14-1.3 "consent."]

These regulations require consent to be "fully informed," such that the parent "[u]nderstands and agrees in writing to the implementation of the activity for which consent is sought." Ibid. The District is essentially arguing that the clause that absolves the District of liability[3] is necessary in order for the consent to be truly "informed." Although N.J.A.C. 6A:14-1.3 requires "informed consent," it does not require that notice be provided contemporaneously with the parent's written consent. Educational agencies are required to provide notice to parents as to their rights annually. 34 C.F.R. § 99.7(a)(1) (2014). This annual notice must inform parents of their right to:

> (i) Inspect and review the student's education records;
>
> (ii) Seek amendment of the student's education records that the parent or eligible student believes to be inaccurate, misleading, or otherwise in violation of the student's privacy rights;
>
> (iii) Consent to disclosures of personally identifiable information contained in the student's education records, except to the extent that the Act and § 99.31 authorize disclosure without consent; and
>
> (iv) File with the Department a complaint under §§ 99.63 and 99.64 concerning alleged failures by the educational

[3] The clause states: "I hereby release the Camden City School District, and its employees and agents, from any liability or responsibility in connection with producing the aforesaid records in connection with this request." (Resp't's Isom Cert., Ex. B.)

> agency or institution to comply with the requirements of the Act and this part.
>
> [34 C.F.R. § 99.7(a)(2) (2014).]

Any additional information the District feels must be provided to the parents in order to obtain "informed consent" could be included in the annual notice.

In this matter, the petitioner's request for records was sufficient under the IDEA, FERPA, and the State special education regulations. The District asserts that the FERPA Waiver was vague, insofar as it failed to specify the records to be released as required by 34 C.F.R. § 99.30 (2014). The FERPA Waiver itself, dated May 27, 2014, merely extends the parent's FERPA privacy rights to her attorney, Mr. Epstein. Taken in conjunction with the May 16, 2014, letter to Director Ogbonna, which specified a request for "school records; including, but not limited to, [J.R.'s] special education, health, administrative, academic and disciplinary records," the identification is sufficient. In fact, it is even more descriptive than the District's own form, which merely allows parents to circle "student records," "health records" or "both" and does not even leave a blank wherein a requester could indicate the specific records being requested. A chain of communication links these documents, so that it is clear that they were to be considered together. First, Mr. Epstein mailed the records request, and then the District informed him it was not sufficient because it did not include parental consent. Mr. Epstein then forwarded the FERPA Waiver to correct that deficiency.

By withholding J.R.'s records after the parents gave written consent, the District committed a procedural violation of the IDEA. The District must provide J.R.'s records to Mr. Epstein.

IV. The District's withholding of J.R.'s records does not rise to the level of a substantive violation, because petitioner has not alleged any resulting harm.

As indicated above, a procedural violation of the IDEA does not amount to a denial of FAPE unless it: (1) impeded the child's right to FAPE; (2) significantly impeded the parents' opportunity to participate in the decision-making process

regarding the provision of FAPE to the child; or (3) caused a deprivation of educational benefits. 20 U.S.C.A. § 1415(f)(3)(E)(ii); 34 C.F.R. § 300.513(a)(2) (2014); N.J.A.C. 6A:14-2.7(k).

For example, in Amanda J. v. Clark County School District, 267 F.3d 877 (9th Cir. 2001), the student argued that the school district failed to allow her parents to examine all of the records used in identifying and addressing her disability of autism. The Nevada District Court ruled that the student received FAPE. The appellate court reversed. The appellate court held that by withholding records, the district prevented Amanda's parents from fully and effectively participating in the creation of an individualized education program (IEP) for her, making it impossible to design an IEP that addressed her unique needs as an autistic child, thereby denying Amanda a FAPE. Amanda J., supra, 267 F.3d at 881. The court stated that "[w]ithout early identification and diagnosis, children suffering from autism will not be equipped with the skills necessary to benefit from educational services." Id. at 883. By failing to disclose evaluations indicating possible autism and suggesting that further psychiatric evaluation was needed, Amanda suffered an educational harm. The court elaborated, "[n]o one will ever know the extent to which this failure to act upon early detection of the possibility of autism has seriously impaired Amanda's ability to fully develop the skills to receive education and to fully participate as a member of the community." Id. at 893–94.

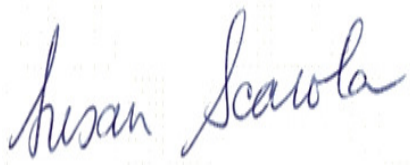
Here, unlike the situation in Amanda J., the petitioner has not set forth a detailed allegation as to how the inability to access J.R.'s records either impeded her right to FAPE, "significantly impeded" her parents' opportunity to participate in the decision-making process, or caused her a deprivation of educational benefits. Petitioner states generically that without access to J.R.'s records, she could not participate in the IEP process. The petitioner has not mentioned any specific date that an IEP meeting was scheduled, or whether she attended the IEP meeting. Not enough facts were presented to determine whether the parent even desired to cooperate with the District in developing an IEP for J.R. Certainly there has been no allegation that the denial of records has harmed J.R. in any specific way, as was the case in Amanda J.

The petitioner has not set forth a genuine issue of fact necessitating a hearing on the issue of whether the withholding of records amounted to a substantive, not procedural, violation of the IDEA. Pursuant to Brill, this entitles the District to summary decision on this issue.

I therefore **CONCLUDE** that the petitioner's motion for summary decision should be granted in part, insofar as the District did commit a procedural violation of the IDEA. The District must produce J.R.'s records to counsel. I also **CONCLUDE** that the respondent's motion should be granted in part, insofar as it has not been demonstrated, based on the documents supporting the motions, that the procedural violation resulted in a denial of FAPE to J.R.

ORDER

I hereby **ORDER** that the petitioner's motion for summary decision is **GRANTED** in part, insofar as the District did commit a procedural violation of the IDEA. The District must produce J.R.'s records to counsel forthwith, and in any case, no later than February 13, 2015. The respondent's motion for summary decision is **GRANTED** in part, insofar as no procedural violation has been proven that resulted in a denial of a free and appropriate public education to J.R.



February 5, 2015
DATE

SUSAN M. SCAROLA, ALJ

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