United States Court of Appeals
For the First Circuit

Nos. 21-1882, 21-1887

FALMOUTH SCHOOL DEPARTMENT,

Plaintiff, Counter-Defendant, Appellant, Cross-Appellee,

v.

MR. AND MRS. DOE, on their own behalf and on behalf of their minor son, JOHN DOE,

Defendants, Counter-Plaintiffs, Appellees, Cross-Appellants,

GENE KUCINKAS,

Counter-Defendant, Cross-Appellee.

APPEALS FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE

[Hon. George Z. Singal, U.S. District Judge]

Before

Barron, Chief Judge,
Lynch and Gelpí, Circuit Judges.

Eric R. Herlan, with whom Drummond Woodsum & MacMahon was on brief, for appellant and cross-appellees.
Richard L. O'Meara, with whom Murray, Plumb & Murray was on brief, for appellees.

August 9, 2022

BARRON, Chief Judge. The Falmouth School Department ("Falmouth") appeals from an order of the United States District Court for the District of Maine that concerns the Individuals with Disabilities Education Act (the "IDEA"). The order rejects a challenge to a ruling by a Maine Department of Education due process hearing officer (the "hearing officer") that Falmouth violated the IDEA and that Falmouth was therefore required to reimburse Mr. and Mrs. Doe (the "Does"), the appellees here, for the cost of their son John's tuition at a private school in which they had placed him. Separately, the Does bring a cross-appeal that challenges the District Court's order that dismisses their counterclaims in Falmouth's IDEA action, which the Does bring against Falmouth under the Americans with Disabilities Act (the "ADA") and Section 504 of the Rehabilitation Act (the "RHA"), and against Gene Kucinkas, Falmouth's Director of Special Education, under 42 U.S.C. § 1983. We affirm.

I.

A.

To receive federal funds under the IDEA, states are generally required to make a "free appropriate public education" (a "FAPE") "available to all children with disabilities residing in the State." 20 U.S.C. § 1412(a)(1)(A). Maine has accepted funds under the IDEA and required local educational agencies such

as Falmouth to provide a FAPE to eligible children within their jurisdictions. Me. Stat. tit. 20A, §§ 7006, 7202.

"[T]he centerpiece of the [IDEA's] education delivery system for disabled children" is the Individualized Education Program ("IEP"). Endrew F. ex rel. Joseph F. v. Douglas Cnty. Sch. Dist. RE-1, 137 S. Ct. 988, 994 (2017) (quoting Honig v. Doe, 484 U.S. 305, 311 (1988)). The child's "IEP team" develops the IEP, which is "a written statement for each child with a disability" that must, among other requirements, detail the child's academic achievement and functional performance, provide measurable annual goals for the child, describe how the child's progress towards those goals will be measured, and describe what services the child will receive. 20 U.S.C. § 1414(d)(1)(A). The "IEP team" that develops the IEP must include the child's parents, their regular and special education teachers, and a "representative of the local education agency." Id. § 1414(d)(1)(B), (d)(3), (d)(4).

An IEP must be "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." Endrew F., 137 S. Ct. at 999. An IEP must also ensure that the child is educated "in the '[l]east restrictive environment' appropriate for" that child. C.D. ex rel. M.D. v. Natick Pub. Sch. Dist., 924 F.3d 621, 625 (1st Cir. 2019) (alteration in original) (quoting 20 U.S.C. § 1412(a)(5)).

The "least restrictive environment" ("LRE") requirement "embod[ies] a 'preference' for 'mainstreaming' students with disabilities in 'the regular classrooms of a public school system.'" Id. (quoting Bd. of Educ. v. Rowley, 458 U.S. 176, 202-03 (1982)). The IEP team, in designing an IEP to ensure that the child receives a FAPE, must "choos[e] a placement" in which the child will receive educational instruction "that strikes an appropriate balance between the restrictiveness of the placement and educational progress." Id. at 631. Under our precedent, we "'weigh[]' this preference for mainstreaming 'in concert with the' FAPE mandate." Id. (quoting Roland M. v. Concord Sch. Comm., 910 F.2d 983, 992-93 (1st Cir. 1990)).

If the parents of a child who is eligible to receive services under the IDEA believe that the child has been denied a FAPE, then they may bring a complaint to a state or local educational agency, as determined by the law of the relevant state. 20 U.S.C. § 1415(f)(1)(A); see also G.D. ex rel. Jeffrey D. v. Swampscott Pub. Schs., 27 F.4th 1, 5 (1st Cir. 2022). If the complaint is not resolved informally, the parents are entitled to a "due process hearing" in front of that agency at which their complaint can be adjudicated. 20 U.S.C. § 1415(f)(1)(B). Maine provides that such due process hearings occur in front of a hearing

officer appointed by the Maine Commissioner of Education. Me. Stat. tit. 20-A, § 7207-B(2)(A); see also id. § 1(4).

Under the IDEA, "[a]ny party aggrieved by the findings and decision made" in the administrative proceeding before the state or local educational agency may bring a civil action in state or federal court. 20 U.S.C. § 1415(i)(2)(A). A District Court that entertains such a civil action must undertake what we have called "'involved oversight' of the agency's factual findings and conclusions." G.D., 27 F.4th at 6 (quoting S. Kingstown Sch. Comm. v. Joanna S., 773 F.3d 344, 349 (1st Cir. 2014)). A District Court that conducts this oversight must review the administrative record and, at the request of a party to the action, additional evidence, while "accord[ing] 'due weight' to the agency's administrative proceedings." Id. (quoting Lenn v. Portland Sch. Comm., 998 F.2d 1083, 1087 (1st Cir. 1993)); see also 20 U.S.C. § 1415(i)(2)(C).

The District Court must base its decision on "the preponderance of the evidence" and "grant such relief as [it] determines is appropriate." 20 U.S.C. § 1415(i)(2)(C)(iii). That relief may, in some circumstances, include a requirement to reimburse parents who "unilaterally change their child's placement during the pendency of review proceedings" to a private placement for the costs that the parents incur for that placement. Florence Cnty. Sch. Dist. Four v. Carter ex rel. Carter, 510 U.S. 7, 15 (1993).

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