

EDU #5343-03
C # 409-04
SB # 50-04

C.G., on behalf of minor child, T.G., :
PETITIONER-APPELLANT, :
V. : STATE BOARD OF EDUCATION
BOARD OF EDUCATION OF THE : DECISION
CITY OF EAST ORANGE, ESSEX :
COUNTY, :
RESPONDENT-RESPONDENT. :

Decision on motion by the Commissioner of Education, March 10, 2004

Decided by the Commissioner of Education, October 18, 2004

Decision on motion by the State Board of Education, May 4, 2005

For the Petitioner-Appellant, David R. Giles, Esq.

For the Respondent-Respondent, Love & Randall (Marvin L.
Comick, Esq., of Counsel)

C.G. (hereinafter "appellant") filed a petition of appeal with the Commissioner of Education, contending that the Board of Education of the City of East Orange (hereinafter "Board" or "East Orange Board") had denied her 16-year-old daughter T.G. admission to the district's public school system in the 2002-03 school year without affording her procedural due process and that such exclusion violated state law and the thorough and efficient clause of the New Jersey constitution. The appellant sought a finding that her daughter's rights had been violated, as well as a remedial education plan for T.G.

In January 2004, the appellant filed a petition for emergent relief pending a decision on the merits of her petition. The appellant sought an order directing the Board to develop “an ‘Emergency Intervention Plan’ designed to provide T.G. a reasonable opportunity to avoid failing her academic classes and losing any realistic opportunity of obtaining effective relief before a hearing can be held and decision issued in this matter.” Motion for Emergent Relief, at 1. On March 10, 2004, the Commissioner approved the terms of a Consent Order dated January 20, 2004, in which, inter alia, the Board agreed to develop an “Intervention Plan” for T.G.

On August 24, 2004, following a hearing, an administrative law judge (“ALJ”) recommended dismissing the appellant’s petition. Explaining that she was persuaded more by the evidence presented by the Board than by that presented by the appellant, the ALJ rejected the appellant’s arguments that the Board had excluded T.G. from its schools. The ALJ found that the Board had recommended that T.G. enroll in the Bernie L. Edmonson Community Education Center (“Edmonson”), an adult school in the district, for the 2002-03 school year. The ALJ found that the credible evidence reflected the Board’s efforts to assist T.G. in achieving success, and she agreed with the Board’s contention that there was nothing in the record to suggest that the recommendation for T.G. to attend Edmonson was made in bad faith. The Superintendent of Schools believed that the adult school was T.G.’s best option to continue her education. The ALJ further concluded that the education program requested by the appellant appeared equivalent to an individualized education program (“IEP”) and that there was no authority requiring the district to comply with the appellant’s demands to create an IEP for T.G.

On October 18, 2004, the Commissioner dismissed the petition, adopting the ALJ's conclusions that 1) the appellant had failed to prove that she was denied admission to the district's schools, 2) the appellant had not demonstrated a due process violation, and 3) the education program requested by the appellant appeared equivalent to an IEP and there was no authority requiring the district to comply with the appellant's demands to create an IEP for T.G. in the absence of a special education classification.

The appellant filed the instant appeal to the State Board of Education. The appellant renews her argument that her daughter was improperly excluded from the East Orange public school system in violation of her constitutional and statutory rights. In addition, she maintains that T.G.'s improper exclusion impacted her ability to progress and develop educationally and that the East Orange Board failed to address T.G.'s educational needs in good faith. She urges the State Board to direct the Commissioner to fashion a remedial plan to be implemented by the East Orange Board.

On February 7, 2005, the appellant filed a motion with the State Board to compel production of documents and to supplement the record on appeal with "up-to-date evidence related to T.G. and her education." On May 4, 2005, the State Board denied the appellant's motion, concluding that the proposed exhibits were not material to the issues on appeal.

After a thorough review of the record, including the transcripts from the hearing held in the Office of Administrative Law, we reverse the Commissioner's determination that the appellant failed to demonstrate that the East Orange Board had denied her daughter admission to the district's public school system in September 2002. We conclude that the appellant has shown by a preponderance of the credible evidence that, for the period from September 2002 through late January 2003, the Board

effectively denied her daughter the educational opportunities mandated by the New Jersey constitution and the education laws implementing the constitutional mandate.

The appellant testified without contradiction as follows: She had received a letter from the district notifying her that T.G. would not be able to attend school in the district during the 2002-03 school year since she was 16 and had no high school credits, tr. 3/30/04, at 98;¹ she was informed that T.G. could not attend the district's Cicely Tyson School of Performing and Fine Arts since it was full, id. at 102-03; she was told by Ira Isajeuw, the assistant principal of Clifford J. Scott High School, that T.G. could not attend that school, which was the high school in the district serving ninth graders, since she was 16 and had not received any credit for ninth grade, id. at 105-07, tr. 3/31/04, at 29-30; Mr. Isajeuw suggested the Edmonson adult school and when the appellant insisted that she wanted her daughter to remain in the school system, Isajeuw told her that there was nothing he could do since T.G. was 16 and had no high school credits, tr. 3/30/04, at 107; and the Superintendent of Schools had told her that there was nothing he could do to get T.G. into any public school program, id. at 108-09.²

The appellant testified that she felt like she had no choice but to enroll T.G. at Edmonson in September 2002 since even the Superintendent had told her there was nothing he could do to keep her in the school system. Id. at 110, tr. 3/31/04, at 31. She related that "at that point I was totally confused. I didn't know what to do with her. I didn't want her to be at home doing nothing." Tr. 3/30/04, at 109. Only after the Education Law Center became involved on the appellant's behalf did the Board agree to allow T.G. to enroll at Cicely Tyson in late January 2003.

¹ T.G. had attended East Orange High School for 9th grade during the 2001-02 school year, but had received failing grades in all her courses and earned no credit as a result of her poor attendance.

² We note that there was no finding by the ALJ that the appellant was not a credible witness.

The only witness to testify on behalf of the East Orange Board with regard to the appellant's claim that the Board had excluded her daughter from its public schools was Dr. Howard Walker, who was the director of secondary education during the period at issue. Dr. Walker testified in general terms that, to his knowledge, the district did not compel 16-year-old students who did not have high school credit to attend Edmonson, tr. 3/31/04, at 60, and that, to his knowledge, a 16-year-old student who was recommended for Edmonson but did not want to go there would be enrolled in a regular high school, *id.* at 61. Although the ALJ indicated that she was persuaded by Dr. Walker's testimony, Walker did not provide any specific information with regard to what had occurred in T.G.'s case. Nor did he contradict or otherwise rebut the appellant's testimony regarding the particular events that had transpired.

The New Jersey constitution mandates a thorough and efficient system of free public schools for the instruction of all children in the State between the ages of 5 and 18, N.J. Const., Art. VIII, Sec. IV, Para. 1, and N.J.S.A. 18A:38-1 is clear in requiring that public school shall be free to persons domiciled in the district who are over five and under 20 years of age. Given these explicit mandates, T.G.'s failure to attend class on a regular basis during the 2001-02 school year and her resultant failure to receive any credits for that year did not relieve the East Orange Board of its obligation to continue to provide her with the educational opportunities guaranteed by our State constitution. See P.H. and P.H., on behalf of minor child, M.C. v. Board of Education of the Borough of Bergenfield, decided by the State Board of Education, July 2, 2002, remanded, Docket #A-6566-01T3 (App. Div. 2003), decision on remand by the State Board of Education, December 3, 2003, dismissed as moot, Docket #A-6566-01T3 (App. Div. 2005). Similarly, the appellant's purported failure to assure her daughter's attendance

during the 2001-02 school year, even if true, would not excuse the Board from fulfilling its obligation.

However, the record does not support a conclusion that the East Orange Board acted in bad faith. In that respect, we agree with the ALJ's findings, which were adopted by the Commissioner, that the Superintendent believed that Edmonson was T.G.'s best option to continue her education in 2002-03 and that there is no evidence that the recommendation made by district administrators for T.G. to attend Edmonson was made in bad faith. Nonetheless, the record amply supports the appellant's contention that she was led to believe by district administrators, including the Superintendent of Schools, that she had no choice but to enroll her daughter in the adult school.

Although it appears that the ALJ and the Commissioner considered the Board to be in compliance with its obligation by permitting T.G. to attend an adult school in the district, it is manifest from the statutory and regulatory scheme that, while a district board may establish and maintain a program of adult education, N.J.S.A. 18A:50-1 et seq., an adult school does not fulfill a district's obligation to provide its students with the educational opportunities guaranteed by N.J.S.A. 18A:38-1 and the State constitution. N.J.S.A. 18A:50-12 permits district boards to establish and operate an education program "for adults and out-of-school young adults designed to provide such persons with the equivalent of a high school education" and to provide them with the "opportunity to attain a level of educational achievement comparable to high school graduation and to prepare [them] to secure the high school equivalency certificate...." (Emphasis added.) The statutory "out-of-school" requirement for young adults is codified in N.J.A.C. 6:30-1.2, which provides that, in order to participate in an adult education

program, including an adult high school, N.J.A.C. 6:30-3.1 et seq., “a person must be at least 16 years of age and no longer enrolled in school.” (Emphasis added.) See also N.J.A.C. 6:30-3.4(a)2. As a result, the appellant herein was required to submit a Certification of Non-Enrollment in School signed by a district administrator certifying that her daughter was not on any school rolls in the East Orange school district before she could enroll her at the Edmonson adult school. Exhibit P-34, in evidence.

In contrast to the system of free public schools which a district is required to provide to its resident students, N.J.S.A. 18A:38-1; N.J. Const., Art. VIII, Sec. IV, Para. 1, the education laws authorize a district board to charge its resident students tuition for attending an adult education program. N.J.S.A. 18A:50-2. A district is required to apply all income derived from an adult education program exclusively towards that program, N.J.S.A. 18A:50-4, keep such income in a separate account, N.J.S.A. 18A:50-5, and keep any surplus arising from the operation of an adult education program in a separate account to be utilized exclusively for carrying out such a program during the next ensuing school year, N.J.S.A. 18A:50-6.

Again, while we cannot ignore the fact that T.G. played a role in her educational failure, her attendance problems and her resultant failure to receive any credit for the 2001-02 school year did not relieve the Board of its obligation to continue to provide her with the opportunities guaranteed by our State constitution and the laws implementing that mandate. See P.H., supra. While it is true that a student who is 16 years of age may disenroll from a district’s free public school system and enroll in an adult school with the consent of a parent or guardian, N.J.A.C. 6:30-1.2, the appellant in this instance took steps to remove her daughter from the East Orange public school system only after her efforts to keep T.G. in that system were thwarted by the district and she

was led to believe by district administrators that the Edmonson adult school was the only option available to T.G. in the 2002-03 school year. Under these circumstances, we conclude that the East Orange Board effectively denied T.G. the educational opportunities to which she was entitled during the period from September 2002 through late January 2003. We remind the Board in this respect that an adult school may not be utilized as a vehicle for providing an alternative educational plan for students who, by virtue of their age, still have an entitlement to the educational opportunities guaranteed by the New Jersey constitution and the laws implementing that mandate.³

Although the violation we have found herein needs to be remedied, T.G.'s academic failings cannot be blamed solely on her placement in an adult school for part of the 2002-03 school year. T.G.'s attendance problems are well documented. Moreover, the Board, at the appellant's request, permitted T.G. to enroll at the Cicely Tyson School of Performing and Fine Arts in late January 2003, and the Commissioner subsequently approved the terms of a Consent Order between the parties in which the Board agreed to provide support to T.G. to enable her to pass her classes. We stress in that regard that the education clause of our State constitution is not a guarantee of educational success. Rather, it guarantees that every student will be provided with the mandated educational opportunities. The remedy that can be afforded in this forum is a vindication of that mandate. Given the circumstances presented by this matter, and since the factual record does not permit a determination of whether the East Orange

³ Our conclusion with respect to adult schools is reinforced by the particular circumstances of this case. The record reveals that T.G. was placed in Beginning Basic Education classes at Edmonson as a result of her score on the Test of Adult Basic Education administered by the school, exhibit P-5, in evidence, and that she was not eligible to receive any credit for those classes. Id.; tr. 3/30/04, at 67-68. Moreover, although the classes were taught by teachers possessing instructional certification, the instructors were not required to hold certification in the particular subject matter taught, and the courses were not designed to meet the Core Curriculum Content Standards. Tr. 3/30/04, at 65-68.

Board afforded the mandated opportunities to T.G. subsequent to her return to the district's public school system in January 2003, we remand this matter to the Commissioner for such proceedings as are necessary on an expedited basis for the purpose of fashioning an appropriate remedy.

Ronald Butcher and Edithe Fulton abstained.

April 4, 2007

Date of mailing _____