

LOVING CARE AGENCY, INC. AND :
K.S. and K.A., ON BEHALF OF MINOR :
CHILD, A.A., :

PETITIONERS, :

V. : COMMISSIONER OF EDUCATION

BOARD OF EDUCATION OF THE CITY : DECISION
OF TRENTON, MERCER COUNTY, :

RESPONDENT. :
_____ :

SYNOPSIS

Petitioners sought to compel the respondent Board to allow Loving Care Agency (LCA) to continue to provide the medically necessary clinical nursing services required by A.A. while she attends school in the Trenton school district, pursuant to the Parent Choice Act, *N.J.S.A.* 18A:40-3.3(b). The respondent Board contends that K.S. and K.A. are required to use the home nursing service that the school district is now contracted with to provide services to students during school hours. LCA has agreed to provide the services to A.A. at the same rate the Board has agreed to pay the other agency, regardless of how that rate is calculated. Both parties filed motions for summary decision.

The ALJ found, *inter alia*, that: there are no material facts at issue here, and the matter is ripe for summary decision; the Parent Choice Act, *N.J.S.A.* 18A:40-3.3(b), governs the employment of nursing personnel for medically fragile students, and provides that the parents or legal guardian shall have the option to choose a provider to render clinical nursing services so long as the cost to the school district remains neutral; under the circumstances in this matter, the District's cost for LCA's services would be the same as its contracted rate with the other agency; and the Board's contention that the parents' chosen service provider must bid for the entire district runs counter to the purpose of the Parent Choice Act, which serves to protect parents from having a winning bidder forced upon them. The ALJ granted the petitioners' motion for summary decision, denied the Board's motion for summary decision, and ordered that the parents of AA be allowed to choose LCA as the provider of medically necessary clinical nursing services for their daughter.

Upon a full and independent review of the record, the Commissioner adopted the Initial Decision of the OAL as the final decision in this matter, for the reasons expressed therein.

This synopsis is not part of the Commissioner's decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.

April 7, 2014

OAL DKT. NO. EDU 7261-13
AGENCY DKT. NO. 103-5/13

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The Commissioner has reviewed the record of this matter and the Initial Decision of the Office of Administrative Law (OAL) on the parties' cross-motions for summary decision. The parties did not file exceptions to the Initial Decision.

Upon such review, the Commissioner concurs with the Administrative Law Judge's (ALJ) conclusion that Petitioners are entitled to summary decision in this matter. Pursuant to the Parent Choice Act, *N.J.S.A.* 18A:40-3.3(b), parents of a "medically fragile student" are entitled to choose the service provider that will supply clinical nursing services to their child, so long as their choice is cost-neutral to the district. It is undisputed that A.A. is a medically fragile student within the meaning of the Act, and that K.S. and K.A. are her parents and legal guardians. The ALJ correctly concluded that, in this instance, the parents' choice to use Loving Care Agency, Inc. (LCA) is cost-neutral to respondent. In that regard, it is undisputed that LCA has agreed to provide clinical nursing services to A.A. during school hours at the same rate respondent agreed to remit to its current contracted service provider for the same services.

Furthermore, the Commissioner agrees with the ALJ's conclusion that the parents' choice must be honored notwithstanding the fact that the district has contracted with a different service provider through the public bidding process outlined in the Public School Contract Law, *N.J.S.A. 18A:18A-1 to -59*. A contrary holding would render the Parent Choice Act nugatory.

Accordingly, the recommended decision of the OAL is adopted as the final decision in this matter for the reasons stated therein; the petitioners' motion for summary decision is hereby granted; and the respondent's motion for summary decision is hereby denied. A.A. shall receive required clinical nursing services through Loving Care Agency, Inc., while she attends school in respondent's district, so long as the cost of those services remains the same as, or less than, the cost of those services by respondent's contracted service provider.

IT IS SO ORDERED.¹

ACTING COMMISSIONER OF EDUCATION

Date of Decision: April 7, 2014

Date of Mailing: April 8, 2014

¹ This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L. 2008, c. 36* (*N.J.S.A. 18A:6-9.1*).