



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

ON SUMMARY DECISION

OAL DKT. NOS. EDS 08832-19 AND
EDS 09276-19 AND EDS 03085-21 AND
EDS 03086-21
AGENCY DKT. NOS. 2019-30015 AND
2019-30082 AND 2021-32564 AND
2021-32619

(CONSOLIDATED)

**W. WINDSOR-PLAINSBORO
REGIONAL BOARD OF EDUCATION,**

Petitioner,

v.

M.A. ON BEHALF OF K.A.,

Respondent,

And

M.A. ON BEHALF OF K.A.,

Petitioner,

v.

**W. WINDSOR-PLAINSBORO
REGIONAL BOARD OF EDUCATION,**

Respondent.

Eric L. Harrison, Esq. for W. Windsor-Plainsboro Board of Education (Methfessel
& Werbel, PC, attorneys)

M.A., pro se, on behalf of K.A.

Record Closed: July 22, 2022

Decided: August 5, 2022

BEFORE **JEFFREY R. WILSON**, ALJ:

PROCEDURAL HISTORY AND STATEMENT OF THE CASE

West Windsor-Plainsboro Board of Education, (Board or District) filed a due process petition with the New Jersey Department of Education, Office of Special Education Programs (OSEP), on May 30, 2019. Through this petition, the Board sought an order to compel parent (M.A.) of student (K.A.) to consent to re-evaluations in order to develop appropriate Individualized Educational Plan (IEP) for 2019-2020 school year in order to provide Free and Appropriate Public Education (FAPE). The matter was transmitted to the Office of Administrative Law (OAL) as a contested case pursuant to N.J.S.A. 52:14B-1 to 15 and N.J.S.A. 52:14f-1 to 13, where it was filed on July 1, 2019, under Docket No. EDS 08832-19.

M.A. on behalf of her son, K.A., filed a due process petition with OSEP, on June 11, 2019. Through this petition, M.A. sought placement for K.A. at the Lewis School or an equivalent private school and independent evaluations.

The matter was transmitted to the OAL as a contested case pursuant to N.J.S.A. 52:14B-1 to 15 and N.J.S.A. 52:14f-1 to 13, where it was filed on July 10, 2019, under Docket No. EDS 09276-19. At that time, M.A. was represented by counsel.

Docket No. 08832-19 and Docket No, 09276-19 were consolidated by order, dated October 24, 2019, and scheduled to be heard on January 6, 7, and 8, 2020. In December 2019, a new attorney entered her appearance on behalf of M.A. and the January 2020 hearing dates were adjourned by joint request.

Thereafter, several hearing dates were scheduled and adjourned by joint request as the parties continued to work towards a global resolution and a hearing date was scheduled for August 12, 2020. On August 10, 2020, counsel for M.A. reported she was

no longer representing her. M.A. indicated she would proceed as pro se until she secured alternate representation.

Thereafter, several hearing dates were scheduled and adjourned by joint request as the parties continued in their efforts towards a global resolution and a hearing was scheduled for January 8, 2021. M.A. was to file an amended petition no later than November 20, 2020, however she failed to do so in a timely manner. On December 4, 2020, the Board filed a motion for summary decision, relative to Docket No. 08832-19 and Docket No, 09276-19.

On February 11, 2021, oral argument on the Board's motion for summary decision was heard virtually. During oral argument, it was determined that a Child Study Team (CST) would be ordered. The resulting order, issued February 22, 2021, provided in pertinent part:

During oral argument, on February 11, 2021, it was determined that K.A. will benefit from the convening of the Child Study Team at the West Windsor-Plainsboro Regional School District to identify K.A.'s current educational needs and to develop an individualized educational program (IEP).

Therefore, it is **ORDERED** that M.A. and the West Windsor-Plainsboro Regional School District Child Study Team shall convene within thirty (30) days of the entry of this Order. The process shall include, but not be limited to, the execution of any and all releases to facilitate the review of any and all relevant data as well as the individual administration of any and all tests, assessments and observations of K.A.

It is further **ORDERED** that M.A. shall fully cooperate with all efforts, requests and requirements in developing the aforementioned IEP to ensure that K.A.'s current educational needs are appropriately assessed.

It is further **ORDERED** that counsel for the West Windsor-Plainsboro Regional School District shall inform this Administrative Law Judge when the Child Study Team is to meet.

A telephone conference in this matter is scheduled **March 11, 2021 at 11:00 am.** (emphasis included)

On March 5, 2021, M.A. on behalf of her son, K.A., filed a second due process petition with OSEP. Through this petition, M.A. sought reimbursement for unilateral placement at ATG Learning Academy for 2019-2020 and 2020-2021 school years, along with continued placement, ESY and transportation, reimbursement for all costs and compensatory education. The matter was transmitted to the OAL as a contested case pursuant to N.J.S.A. 52:14B-1 to 15 and N.J.S.A. 52:14f-1 to 13, where it was filed on April 5, 2021, under Docket No. EDS 03085-21. M.A. continued to appear pro se.

During the March 11, 2021, telephone conference, it was reported that the parties met for a re-evaluation CST planning meeting on March 9, 2021. The Board was providing M.A. with the releases and authorizations required to schedule and complete all evaluations. M.A. reported she would provide the releases and authorizations and was in the process of gathering the independent evaluation reports to provide to the Board.

On March 23, 2021, the Board filed another due process petition with OSEP. Through this petition, the Board sought an order compelling M.A. to consent to the proposed evaluations of K.A. The matter was transmitted to the OAL as a contested case pursuant to N.J.S.A. 52:14B-1 to 15 and N.J.S.A. 52:14f-1 to 13, where it was filed on April 5, 2021, under Docket No. EDS 03086-21.

On April 23, 2021, the Board filed a motion for summary decision, relative to Docket No. EDS 03086-21. Thereafter, the parties continued in their efforts to reach a global resolution. During the telephone conference, June 1, 2022, M.A. represented that K.A. remains in a "home placement" and is progressing academically. The Board confirmed they received "some" documentation relative to K.A.'s home schooling. M.A. rejected the last IEP offered by the district. M.A. further represented that K.A. completed a full year at ATG and progressed academically, however she is unable to provide any records to evidence his matriculation there. The parties agreed to another CST meeting after the end of the school 2021-2022 school year with a joint request for another phone

conference/hearing in July 2022. If these matters were not resolved by that time, there was a joint request that all pending motions, held in reserve, be decided. A telephone conference was scheduled for July 20, 2022.

On July 13, 2022, by correspondence, the Board reported:

When we last spoke with Your Honor and the petitioner on June 1 the parties agreed to meet in an effort to resolve their differences and to work collaboratively on an educational plan for K.A. in the 2022-2023 school year. Thereafter the parties met on June 29th, at which time the District proposed additional evaluations and requested information and documentation regarding what if any educational services K.A. had received during the 2021-2022 school year. As of this date M.A. has declined to consent to the additional proposed evaluations and has not provided any documentation regarding K.A.'s education over the past school year. As it is clear that she is also unwilling to withdraw either of her above-captioned petitions, we ask that the Court render decisions on the motions for summary decision that we filed in December 2020 and 2021.

During the July 20, 2022, telephone conference, the parties were given until close of business, July 22, 2022, to submit any supplemental filings relative to the pending motions for summary decision. By order, dated August 4, 2022, all four matters were consolidated.

FINDINGS OF FACT

Based on the papers submitted and arguments of the parties therein, I make the following findings of **FACT**.

1. This litigation began with the filing of a petition for due process by M.A. on behalf of K.A. in June 2019.
2. The District, concerned with K.A.'s non-attendance, filed a cross-petition shortly upon receipt of the original petition.

3. M.A., through counsel, filed an answer to the District's due process petition.
4. Since the filing of the petition and cross-petition in June 2019, it has been unclear precisely where the M.A. and K.A. live. Social media searches have suggested that they have resided in Newark. K.A. has been dropped from the rolls of the District following prolonged absence and the failure of M.A. to demonstrate that K.A. continued to be domiciled within the West Windsor-Plainsboro School District.
5. In the Fall of 2019, M.A. requested home instruction of K.A. On November 7, 2019, the District responded with a letter from counsel to M.A. indicating that the District physician had not approved this request, based on insufficient evidence of medical need.
6. On November 18, 2019, M.A. wrote the District to advise that K.A. would be placed unilaterally at "ATG," a private school which a web search suggests is "ATG Learning Academy," located at 3400 Pickertown Road in Chalfont, Pennsylvania, which is more than 40 miles from Plainsboro, New Jersey.
7. The District has never received sufficient documentation to verify if K.A. ever attended ATG Learning Academy.
8. The District responded, through counsel, to M.A.'s unilateral placement letter by correspondence, dated December 3, 2019, inviting the petitioner to attend a resolution session to discuss her concerns with the program offered by the District.
9. The original petition filed by M.A. contained graphic and disturbing allegations that K.A. was sexually assaulted and traumatized by a fellow student. Immediately upon receipt of that petition, the District reported these allegations to the Department of Children and Families Institutional Abuse Investigation Unit (IAIU). Following the its investigation, IAIU issued a letter on October 30, 2019, determining that the allegation of neglect/inadequate supervision was unfounded.

10. On August 21, 2020 (approximately ten months after the petitioner indicated that K.A. had been enrolled at the ATG Learning Academy) M.A. e-mailed a copy of a contract for K.A.'s placement at ATG for the 2019-2020 school year, as well as a handwritten deposit receipt indicating that M.A. had made a cash payment of \$3,500.00 to ATG Learning Academy on December 19, 2019.
11. The District still has yet to receive proof that K.A. is domiciled with the West Windsor-Plainsboro School District.
12. Since the filing of the initial petition, M.A. has been represented successively by two separate attorneys. Both of those attorneys have withdrawn from representation. As such, the OAL has extended deadlines on numerous occasions to afford the M.A. the opportunity to secure alternate counsel or alternatively to prepare the case for a hearing.

LEGAL DISCUSSION AND CONCLUSIONS

N.J.A.C. 1:1-12.5 provides that summary decision should be rendered "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." Our regulation mirrors R. 4:46-2(c), which provides that:

the judgment or order sought shall be rendered if the pleadings, depositions, answers to interrogatories and admissions on file, 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 a judgment or order as a matter of law.

A determination whether a genuine issue of material fact exists that precludes summary decision requires the judge to 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 allegedly disputed issue in favor of the non-moving party. Our courts have long held that "if the opposing party offers . . . only facts which are immaterial or of an insubstantial nature, a mere scintilla, 'fanciful frivolous, gauzy or merely suspicious,' he will not be heard to complain if the court grants

summary judgment.” Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520 (1995) (citing Judson v. Peoples Bank and Trust Co., 17 N.J. 67, 75 (1954)).

The “judge’s function is not himself [or herself] to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial.” Brill at 540 (citing Anderson v. Liberty Lobby, 477 U.S. 242, 249, 106 S. Ct. 2505, 2511, 91 L. Ed.2d 202, 212 (1986)). When the evidence “is so one-sided that one party must prevail as a matter of law,” the trial court should not hesitate to grant summary judgment. Liberty Lobby at 252, 106 S. Ct. at 2512, 91 L. Ed.2d at 214.

Based upon the facts in the present matter as more fully set forth above, I **CONCLUDE** that this matter is ripe for summary decision.

M.A.’s initial petition, filed in June 2019, alleges that the educational programming offered by the District to K.A. deprived him of FAPE in the least restrictive environment appropriate to his needs. The cross-petition filed by the District that rebutted those allegations and attached self-authenticating exhibits to demonstrate the appropriateness of the programs that have been offered to K.A. through the conclusion of the 2018-2019 school year.

M.A. second petition, file in March 2021, seeks reimbursement for a unilateral placement at ATG Learning Academy and ESY, however, she has not provided verifiable proof that K.A. ever matriculated there. As of the June 1, 2022, telephone conference, M.A. reported that K.A. continues with virtual home schooling.

Based upon the foregoing, I **CONCLUDE** that the competent evidence of record demonstrates that M.A.’s contentions of FAPE denial are without merit and that the cross-petition, which requests a determination that the District has offered K.A. a free, appropriate public education in the least restrictive environment appropriate to his needs, is supported by a preponderance of the evidence and unrebutted by any competent evidence. Furthermore, I **CONCLUDE** that the competent evidence of record fails to support M.A.s contention that K.A. ever matriculated at the ATG Learning Academy.

Finally, I **CONCLUDE** that granting of the Board's applications for summary decision in these consolidated matters is appropriate

ORDER

I hereby **ORDER** that the Board's motions for summary decision are **GRANTED** and that both of the parent's petitions be and is hereby **DISMISSED**.

This decision is final pursuant to 20 U.S.C. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2019) 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 (2019). 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 Programs.



August 5, 2022
DATE

JEFFREY R. WILSON, ALJ

Date Received at Agency

Date Mailed to Parties:

JRW/tat