



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

(CONSOLIDATED)

OAL DKT. NOS. EDS 10175-21

and EDS 10176-21

AGENCY DKT. NOS. 2020-30771

and 2020-30814

(Consolidated EDS 15882-19 and
EDS 15886-19 on Remand)

M.G. ON BEHALF OF E.K.,

Petitioner,

v.

ELIZABETH CITY BOARD OF EDUCATION,

Respondent.

ELIZABETH CITY BOARD OF EDUCATION,

Petitioner,

v.

M.G. ON BEHALF OF E.K,

Respondent.

Philip Taylor, Esq., for M.G. on behalf of E.K. (P. Taylor Legal, attorneys)

Richard Flaum, Esq., for Elizabeth City Board of Education (DiFrancesco,
Kunzman, Davis, Lehrer & Flaum, attorneys)

Record Closed: December 27, 2021

Decided: February 7, 2022

BEFORE **SUSANA E. GUERRERO**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

M.G. filed a due process petition on behalf of her child, E.K., on or around October 10, 2019, seeking a determination that E.K. is eligible for special education and related services, and that the Elizabeth City Board of Education (the Board, or the District) failed to offer E.K. FAPE for the 2017–2018, 2018–2019 and 2019–2020 school years. The parent sought an out-of-district placement, compensatory education, and other related relief. The District filed a cross-petition seeking a determination that its evaluations of E.K. were appropriate, and that the parent’s request for independent evaluations should be denied.

The parent’s petition was transmitted to the Office of Administrative Law (OAL), where it was filed on November 8, 2019 under OAL Dkt. No. EDS 15882-19. The Board’s petition was filed on or around October 22, 2019, and transmitted to the OAL, where it was filed on November 8, 2019 under OAL Dkt. No. EDS 15886-19. By order dated January 22, 2020, OAL Dkt. Nos. EDS 15882-19 and EDS 15886-19 were consolidated.

A hearing took place via Zoom over the course of four days: October 9, 16, 24 and December 7, 2020. The parties filed post-hearing briefs on April 22, 2021 and a Final Decision was issued on June 7, 2021.

In the Final Decision, I concluded that the District offered E.K. a FAPE during the 2017–2018 school year and the early part of the 2018–2019 school year; but that FAPE was denied when the District denied E.K. eligibility for special education and related services in March 2019, and that the denial of FAPE continued into the 2019–2020 school year. I also concluded that E.K. should be deemed eligible for special education and related services under the category of Emotional Regulation Impairment. The Final

Decision orders in part that: E.K. be classified as eligible for special education; the District develop an IEP for the 2021–2022 school year; and that E.K. be placed in an out-of-district placement. All other relief requested by the parent was denied.

By letter dated November 30, 2021, the OAL was informed by counsel for the parent that the District had appealed the Final Decision; the parent subsequently moved for partial dismissal of the District’s appeal; and that the matter was remanded to the OAL for clarification as to the Final Decision. Specifically, the Honorable Susan D. Wigenton, U.S.D.J. remanded Elizabeth City Board of Education v. M.G. o/b/o E.K., Dkt. No. 2:21-cv-12891 (D.N.J. Nov. 22, 2021) to the OAL “for clarification as to whether ALJ Guerrero’s ruling included the 2020–2021 school year.” (C-1.)

The remanded file was returned to the OAL in December 2021, and the petitions were issued new docket numbers (EDS 10175-21 and EDS 10176-21).¹ On or around December 20, 2021, I held a telephone conference with Philip Taylor, Esq. and Richard Flaum, Esq. Counsel agreed that additional testimony was not needed, and that the issue to be addressed in the remand did not necessitate briefing.

DISCUSSION

The Honorable Susan D. Wigenton, U.S.D.J. noted in her Letter Opinion that the Court must determine whether the issue of FAPE in the 2020–2021 school year was considered in the Final Decision, and she seeks clarification as to the scope of my ruling. In response to Judge Wigenton’s Order, I hereby clarify that the Final Decision does not include any ruling with respect to the 2020–2021 school year. The due process petitions were filed in 2019, and the Prehearing Order limited the issues to be resolved, in part, to “whether the District provided FAPE for the 2017–2018, 2018–2019 and 2019–2020 school years.” While testimony was offered at the hearing regarding the start of the 2020–2021 school year, and while the parent may have asserted in her post-hearing brief that E.K. was denied a FAPE during the 2020–2021 school year, I did not consider or address the issue of FAPE for the 2020–2021 school year. I, therefore,

¹ This Final Decision concludes both remanded matters. I, therefore, **ORDER** that the matters be and hereby are consolidated.

CONCLUDE that the scope of the Final Decision does not include a determination as to whether a FAPE was offered or provided to E.K. by the District during the 2020–2021 school year.

This decision is final pursuant to 20 U.S.C. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2021) 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 (2021). 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 Policy and Dispute Resolution.

February 7, 2022
DATE


SUSANA E. GUERRERO, ALJ

Date Received at Agency _____

Date Mailed to Parties: _____

jb

APPENDIX

LIST OF WITNESSES

For Parent:

None

For Board:

None

LIST OF EXHIBITS IN EVIDENCE

For Court:

C-1 November 30, 2021 letter to the OAL from Philip T. Taylor, Esq.; with November 22, 2021 Letter Opinion and Order by The Honorable Susan D. Wigenton, U.S.D.J.