



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

SUMMARY DECISION

OAL DKT. NO. EDS 08512-23

AGENCY DKT. NO. 2023-35984

G.P. AND R.W. ON BEHALF OF R.W.,

Petitioners,

v.

GLOUCESTER COUNTY VOCATIONAL

BOARD OF EDUCATION,

Respondent.

Jeff Cox, Parent Advocate, appearing pursuant to N.J.A.C. 1:1-5.4(a)(7), for petitioner (Beautiful Minds)

Caitlin Pletcher, Esq., for respondent (Florio, Perrucci, Steinhardt, Cappelli, Tipton & Taylor, LLC, attorneys)

Record Closed: November 27, 2023

Decided: December 1, 2023

BEFORE CATHERINE A. TUOHY, ALJ:

STATEMENT OF THE CASE

In accordance with the provisions of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1415, G.P. and R.W. have requested a due process hearing on behalf of their son, R.W., seeking reimbursement for the costs of Fusion Academy.

PROCEDURAL HISTORY

On or about June 5, 2023, petitioners filed a due process petition with the Office of Special Education (OSE) seeking reimbursement for the cost of Fusion Academy. Petitioners also requested emergent relief, but OSE determined the relief requested did not meet the substantive requirements for emergency relief pursuant to N.J.A.C. 6A:14. By letter brief and supporting certification of counsel, dated July 5, 2023, respondent filed a motion to dismiss with OSE stating the due process petition filed against it fails as a matter of law as the respondent is not the local educational agency responsible for the student. The matter was transmitted to the Office of Administrative Law (OAL) where it was filed as a contested case on September 1, 2023, pursuant to N.J.S.A. 52:14B-1 to 15; N.J.S.A. 52:14F-1 to 13. A prehearing telephone conference was conducted on October 13, 2023, and a briefing schedule was established. Petitioners opposed respondent's motion to dismiss by letter brief, dated October 26, 2023, but not served on respondent until November 6, 2023. Respondent filed its reply by letter brief dated November 27, 2023, and the motion record closed.

FACTUAL DISCUSSIONS AND FINDINGS

Pursuant to the July 5, 2023, certification of counsel with attached exhibits submitted by respondent in support of its motion for summary decision, and unopposed by petitioners, the following facts are not in dispute and thus are **FOUND** as **FACT**:

The Gloucester County Vocational-Technical School District (GCVTD) is a county vocational school district pursuant to N.J.S.A. 18A:54-12.

R.W. is a fifteen-year-old student who is eligible for special education and related services under the classification "Other Health Impaired."

R.W.'s district of residence is the Washington Township School District.

On January 20, 2023, petitioner G.P. signed the Gloucester County Vocational-Technical "Student Withdrawal Form" on January 20, 2023, with an effective withdrawal

date of January 27, 2023, indicating that R.W. was withdrawing from GCVTD and transferring to Fusion Academy. The form lists the current resident district as Washington Township.

LEGAL DISCUSSION AND ANALYSIS

N.J.A.C. 1:1-12.5(b) 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 “[t]he judgment or order sought shall be rendered forthwith 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.”

In Brill v. Guardian Life Insurance Co., 142 N.J. 520 (1995), the New Jersey Supreme Court addressed the appropriate test to be employed in determining the motion:

[A] determination whether there exists a “genuine issue” of material fact that precludes summary judgment requires the motion 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 alleged disputed issue in favor of the non-moving party. The “judge’s function is not . . . to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial.”

[Brill, 142 N.J. at 540 (citations omitted).]

I **CONCLUDE** that this matter is ripe for summary decision since there are no issues of material fact in dispute and that respondent is entitled to summary decision as a matter of law as set forth below.

This case arises under the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400 to 1482. One purpose of the Act is to ensure that all children with disabilities have available to them a “free appropriate public education that emphasizes special

education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living.” 20 U.S.C. § 1400(d)(1)(A). This “free appropriate public education” is known as FAPE. In short, the Act defines FAPE as special education and related services provided in conformity with the IEP. See 20 U.S.C. § 1401(9). A FAPE and related services must be provided to all students with disabilities from age three through twenty-one. N.J.A.C. 6A:14-1.1(d). A FAPE means special education and related services that: a) have been provided at public expense, under public supervision and direction, and without charge; b) meet the standards of the State educational agency; c) include an appropriate preschool, elementary, or secondary school education in the state involved; and d) are provided in conformity with the individualized education program (IEP) required under § 614(d). 20 U.S.C. § 1401(9); N.J.A.C. 6A:14-1.1 et seq. The responsibility to deliver these services rests with the local public school district. N.J.A.C. 6A:14-1.1(d).

Each school district board of education in New Jersey is therefore required to provide FAPE and related services for disabled students in the least restrictive environment. N.J.A.C. 6A:14-1.1(d); N.J.A.C. 6A:14-4.2.

A “District Board of Education” is defined as:

“the school district of residence, the board of trustees of a charter school, the State agency or other public education agency which acts as the district of residence for the location, identification, evaluation, determination of eligibility, development of an individualized education program and the provision of a free appropriate, public education to students with disabilities except as defined otherwise.”

[N.J.A.C. 6A:14-1.3.]

In this case, it is undisputed that R.W. is a resident of Washington Township. As such, Washington Township is the school district of residence and accordingly, the Washington Township Board of Education (BOE), and not respondent, is responsible for the placement, expense, and assurance that the provision of FAPE to R.W. is met. In the event FAPE cannot be provided in-district to R.W., then it is the Washinton Township

BOE’s responsibility to place R.W. in an out-of-district placement in accordance with N.J.A.C. 6A:14-4.3.

The issues for disposition are limited to the claims set forth in the due process petition. 20 U.S.C. § 1415(f)(3)(B); See, N.J.A.C. 6A:14-2.7(c) (the request for due process must “state the specific issues in dispute, relevant facts and the relief sought”.) Petitioners’ due process petition against respondent seeks reimbursement for the costs of their unilateral placement of R.W. at the Fusion Academy. Respondent is not the district of residence of R.W.; Washington Township is the district of residence and therefore, this due process petition should have been brought against the Washington Township BOE. Therefore, I **CONCLUDE** that respondent is entitled to summary decision dismissing petitioners’ due process complaint.

ORDER

It is hereby **ORDERED** that respondent’s motion for summary decision is **GRANTED**. Petitioners’ due process petition is **DISMISSED**.

This decision is final pursuant to 20 U.S.C. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2022) 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 (2022). 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.



December 1, 2023

DATE

CATHERINE A. TUOHY, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

CAT/gd/lam

APPENDIX

EXHIBITS

For petitioner

- Letter Brief in Opposition with attached Exhibits E, F and G, dated October 26, 2023

For respondent

- Letter Brief and Certification of Counsel with attached Exhibits A through D in support of Respondent's Motion to Dismiss, dated July 5, 2023
- Reply Letter Brief, dated November 27, 2023