



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

AMENDED FINAL DECISION -
DISMISSAL
CONSOLIDATED

C.P. AND A.P. ON BEHALF OF S.P.,

Petitioners,

v.

**POINT PLEASANT BEACH BOROUGH
BOARD OF EDUCATION,**

Respondent,

And

**POINT PLEASANT BEACH BOROUGH
BOARD OF EDUCATION,**

Petitioner,

v.

C.P AND A.P. ON BEHALF OF S.P.,

Respondents.

OAL DKT. NO. EDS 02051-24

AGENCY DKT. NO. 2024-36890

OAL DKT. NO. EDS 02047-24

AGENCY DKT. NO. 2024-36918

C.P and A.P on behalf of S.P., petitioners/respondents, pro se

Geoffrey N. Stark, Esq., for respondent/petitioner (Capehart Scatchard)

Record closed: July 18, 2024

Decided: August 26, 2024

BEFORE **NICOLE T. MINUTOLI, ALJ:**

STATEMENT OF CASE

S.P.'s parents and the Point Pleasant Beach Borough Board of Education (Point Pleasant) filed cross-petitions in a special education matter. Point Pleasant conceded to the parents' requested relief, including out-of-district placement, support services, and an extended school year. Should the cases be dismissed as moot? Yes. For the reasons set forth more fully below, C.P. and A.P. and Point Pleasant, have obtained the relief requested in their petitions for due process, making this matter moot.

PROCEDURAL HISTORY

On December 28, 2023, C.P. and A.P. (the parents), parents of S.P., filed a due process petition and request for emergent relief under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§ 1400 to -1482, and the New Jersey special education regulations, N.J.A.C. 1:6A-1.1 to -18.4. The parents' petition alleges the denial of a free, appropriate public education (FAPE) and seeks an out-of-district placement for the 2023–2024 school year, along with supporting services, and an extended school year. On January 8, 2024, Point Pleasant filed an opposition to the parents' request for emergent relief and a cross-petition for due process.

On January 8, 2024, I held a pre-hearing conference, and I held an in-person hearing on the request for emergent relief on January 10, 2024. The parents failed to appear for both the pre-hearing conference and the in-person hearing. On January 11, 2024, I dismissed the parents' request for emergent relief by written decision.

On January 12, 2024, Point Pleasant filed an answer and affirmative defenses to the petition for due process. Point Pleasant's cross-petition claims that S.P. is receiving FAPE under his 2023–2024 Individualized Education Program (IEP), which contains an out-of-district special education school placement for the 2023–2024 school year.

On February 9, 2024, and February 13, 2024, the Office of Special Education (OSE) transmitted the cases to the Office of Administrative Law (OAL), where they were

filed as contested cases under N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13. By order dated July 25, 2024, the two matters were consolidated.

FINDINGS OF FACT

The parties have raised no dispute as to the following **FACTS**, and therefore, I **FIND**:

S.P. is a seven-year-old child classified as eligible for special education and related services under the category of Autism. In October 2023, S.P. transferred from Evesham Township School District, and his parents enrolled him in the Point Pleasant School District. At Evesham, S.P.'s IEP "consisted of placement in a Special Class Autism setting for all instruction, along with the support of a 2:1 aide, behavior intervention consultation, and the related services of Physical Therapy, Speech-Language therapy, and Occupational Therapy." (Point Pleasant's Br. in support of motion for summary decision, (June 21, 2023), Ex. B.)

Upon his transfer, Point Pleasant reviewed his educational records, including evaluations and his IEP from Evesham. Because Point Pleasant did not have an in-district program for S.P., Point Pleasant accommodated the parents' request for an IEP by placing S.P. on home instruction while his child study team searched for an out-of-district placement with which the parents would agree. Ibid.

On December 11, 2023, S.P.'s child study team convened an IEP meeting at which Point Pleasant proposed an IEP placing S.P. at Regional Day School with a 1:1 paraprofessional aide and numerous services, including occupational therapy, physical therapy, speech-language therapy, and extended school year services.¹ Ibid.

¹ The Regional Day School, located in Jackson, is a special education school "supported through tuition payments from local districts." Regional Day School, www.manchestertwp.org/o/rds/page/about.

According to the child study team's IEP notes:

We initially toured the Shore Center for Students with Autism and Hawkswood School. Parents were not ready to commit to either of these programs and asked to explore other options. The district reached out to several other programs, both public and private, all of which either did not have an appropriate program for [S.P.] or did not have availability to accept another student at this time. We toured Regional Day School on 11/27/2023 and subsequently received an acceptance letter from them. Regional Day has an appropriate placement for [S.P.] and is able to fulfill his IEP with placement available immediately. The district is proposing placement at Regional Day School at this time. A 1:1 paraprofessional is recommended at Regional Day, along with the related services of OT, PT, and speech-language therapy. An Extended School Year program in the summer is also recommended.

[Point Pleasant's Br. in support of motion for summary decision, Ex. C at 6.]

The IEP notes that S.P. "exhibits behaviors such as flopping, crying and eloping" and that "[a] Behavior Intervention Plan has been developed to address these behaviors." (Point Pleasant's Br. in support of motion for summary decision, Ex. C at 10.)

The parents did not consent to the IEP and instead filed a due process petition to challenge S.P.'s proposed placement at Regional Day School. In the petition, the parents alleged that the proposed placement would deny S.P. a FAPE and cause regression, aggression, undue stress, and anxiety in S.P. The parents also noted that they were still planning on attending and visiting the Children's Center of Monmouth County.

In response, Point Pleasant filed its due process petition seeking to implement the December 2023 IEP. In the petition, Point Pleasant noted that S.P. had several educational deficits and needs, including "significant global delays, behavior, high activity level, modifications to the pace of instruction, frequent prompting and guidance from teachers," and issues with fine and gross motor skills, hygiene and self-care, and grasping basic concepts such as colors and shapes. Based on these needs, Point Pleasant determined that the IEP placing S.P. at Regional Day School was designed to provide

S.P. with a FAPE. (Point Pleasant's Br. in support of motion for summary decision, Ex. B.)

On February 10, 2024, Point Pleasant filed a motion for summary decision seeking to dismiss the parents' due process petition and grant the school district's due process petition. While that motion was pending, Point Pleasant continued to work with the parents, and together they visited the Children's Center, which had a spot available for S.P. On February 23, 2024, Point Pleasant offered S.P. a revised IEP placing him either at Regional Day School or the Children's Center.² (Point Pleasant's Br. in support of motion for summary decision, Ex. I.) Point Pleasant informed the parents that "if we receive your consent to this IEP, we could start his placement at Children's Center on or about March 4, 2024, or Regional Day as soon as possible." Ibid.

In a February 24, 2024, email, the parents notified Point Pleasant that they consented to S.P. starting school at the Children's Center.³ (Point Pleasant's Br. in support of the motion for summary decision, Ex. J.) In spring 2024, S.P. began attending the Children's Center. (Point Pleasant's Br. in support of the motion for summary decision, Ex. J.)

Since S.P. was attending the school requested by the parents, on March 26, 2024, the parties entered settlement discussions. These discussions were initially successful, and the terms of the agreement were entered on the record along with a colloquy between the parents and me. The unrepresented parents were questioned extensively by me under oath. The parties agreed to certain terms, including an IEP placing S.P. at the Children's Center, seventy-three hours of makeup home instruction, and the withdrawal of their special education complaints against each other.

However, one other settlement term—a provision by which the parents release and waive all claims against Point Pleasant related to S.P. through the date of this

² The revised IEP is dated January 16, 2024, but Point Pleasant "updated" the IEP in February 2024 to offer placement at the Children's Center and presented the IEP to the parents on February 23, 2024. As such, the updated IEP shall be referred to as the "revised IEP" or the "February 23, 2024, IEP."

³ According to Point Pleasant, S.P.'s attendance at the Children's Center for the remainder of the 2023–2024 school year was sporadic. It is not clear whether or to what extent S.P. attended the extended school year at the Children's Center.

Agreement—is at the heart of Point Pleasant’s motion to enforce the settlement agreement that the school district maintains the parties entered even though the parents refused to sign the document. (Point Pleasant’s Br. in support of motion to enforce the settlement agreement, Ex. E and F.)

Point Pleasant’s Motion to Enforce a Settlement Agreement.

On March 26, 2024, the parties appeared before me to place the settlement terms on the record. The parents acknowledged that the parties agreed to three settlement terms, including the withdrawal of the complaints, placement at the Children’s Center, and the provision of makeup home instruction. (Point Pleasant’s Br. in support of motion to enforce the settlement agreement, Ex. E at 8–11.) The parents, however, hesitated at the settlement agreement provision by which they would release and waive all claims against Point Pleasant. (Point Pleasant’s Br. in support of motion to enforce the settlement agreement, Ex. E at 12.)

The parents—pro se litigants—expressed how they were upset by their perceived mistreatment by Point Pleasant while the family was going through a difficult time with their housing situation. The mother stated that “if we’re going to the bottom line, yes, [the settlement] does resolve everything,” but continued that “getting to this resolution is something that’s a little different, and I think that’s something I need to circle back with different people[.]” Point Pleasant’s counsel replied by telling the parents “you’re entitled to talk to who you want to talk to but that does not necessarily inhibit you from entering into this settlement today, correct?” In response, both parents said, “Yes.” (Point Pleasant’s Br. in support of motion to enforce the settlement agreement, Ex. E at 15–18.)

The terms were placed on the record, and the parents provided sworn testimony in a discussion regarding their understanding, the voluntariness with which they agreed to the terms, and the absence of threat or coercion. Following my finding that the terms of the agreement were entered into knowingly, intelligently, and voluntarily, Point Pleasant was directed to reduce the terms of the agreement into writing and provide a copy to the parents for execution. (Point Pleasant’s Br. in support of motion to enforce the settlement agreement, Ex. E at 20–24.)

Although Point Pleasant provided a written settlement agreement for the parents to sign on March 27, 2024, the parents informed Point Pleasant on April 8, 2024, that they objected to a provision and would not sign the agreement. (Point Pleasant's Br. in support of motion to enforce the settlement agreement, Certification of Sanmathi Dev, Esq. (Dev Cert.) at ¶¶ 31–35.)

On April 23, 2024, the parties appeared before me to discuss the status of the settlement. During the conference, the parents explained why they are refusing to sign the settlement document, stating that “there are other things pending that we are looking to pursue or not pursue, that depends on us. But we’re not going to sign a blanket statement just saying, ‘Everything’s been resolved.’” (Point Pleasant's Br. in support of motion to enforce the settlement agreement, Ex. F at 7–8.)

According to the parents, “[t]he three things that we discussed in this courtroom, that’s the only thing that I’m willing to sign. Anything outside of that that says, ‘Let’s wipe the slate clean, let’s forget it ever happened,’ I cannot do that.” Ibid.

Around May 28, 2024, Point Pleasant filed a motion to enforce the settlement agreement, arguing that the parents orally agreed to the settlement terms and that they should be bound by those terms despite declining to sign the written settlement agreement. On July 18, 2024, the parents opposed the motion to enforce the settlement, arguing that Point Pleasant acted in bad faith. (July 18, 2024, letter from C.P. and A.P.)

Point Pleasant's Renewed Motion for Summary Decision

While that motion to enforce was pending, Point Pleasant renewed its motion for summary decision, arguing that on February 23, 2024, the school district offered S.P. a FAPE through a revised IEP placing him at either Regional Day School or the Children's Center, but that the parents “refused to sign [the revised] IEP for the placement at the Children's Center, although S.P. is enrolled at that school, and it was [the parents'] preferred placement.” As such, Point Pleasant seeks an order granting the motion for summary decision, dismissing the parents' due process complaint, and granting the

school district's due process petition by implementing the revised IEP placing S.P. at the Children's Center.

In its motion brief, Point Pleasant argues that "[i]n developing the December 11, 2023, IEP, and its successor IEP dated February 23, 2024, the District was able to review an extensive record of evaluations from a previous IEP from Evesham" and "these data provided the District with a clear picture of S.P.'s needs, and the type of program from which he would benefit." The parents' opposition did not address the motion for summary decision.

LEGAL ANALYSIS AND CONCLUSION

I. The IDEA and state special education law

The IDEA is designed to assure that disabled children may access a FAPE that is tailored to their specific needs. 20 U.S.C. § 1400(c). Under the New Jersey laws implementing the IDEA, each district board of education is responsible for "the location, identification, evaluation, determination of eligibility, development of an IEP and the provision of a [FAPE] to students with disabilities" who reside in the district.⁴ N.J.A.C. 6A:14-1.1; N.J.A.C. 6A:14-1.3.

Importantly, "[t]he core of the IDEA is the collaborative process that it establishes between parents and schools," and "[t]he IEP is the 'central vehicle' for this collaboration, and the 'primary mechanism' for delivering a FAPE." Ridley Sch. Dist. v. M.R., 680 F.3d 260, 269 (3d Cir. 2012) (citing and quoting Schaffer v. Weast, 546 U.S. 49, 53 (2005); W.B. v. Matula, 67 F.3d 484, 492 (3d Cir. 1995)). Thus, "[u]nder the IDEA, school districts

⁴ An IEP is a written statement that explains how a FAPE will be provided to the child. 20 U.S.C. § 1414(d)(1)(A)(i). The IEP must contain such information as a specific statement of the student's current performance levels, the student's short-term and long-term goals, the proposed educational services, and criteria for evaluating the student's progress. 20 U.S.C. § 1414(d)(1)(A)(i)(I)–(VII). In developing an IEP, the IEP or child study team, which includes district staff members and the child's parents, shall consider such factors as "the strengths of the student and the concerns of the parents for enhancing the education of their child," "the academic, developmental and functional needs of the student," "the results of the initial evaluation or most recent evaluation of the student." N.J.A.C. 6A:14-3.7(c).

must work with parents to design an IEP, which is a program of individualized instruction for each special education student.” Ibid. (citing 20 U.S.C. §§ 1412(a)(4), 1414(d)).

While “an IEP need not maximize the potential of a disabled student, it must provide ‘meaningful’ access to education and confer ‘some educational benefit’ upon the child for whom it is designed.” Ridgewood Bd. of Educ. v. N.E., 172 F.3d 238, 247 (3d Cir. 1999) (citing Hendrick Hudson Cent. Sch. Dist. v. Rowley, 458 U.S. 176, 192, 200 (1982)). In other words, “[t]o meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” Endrew F. v. Douglas Cnty. Sch. Dist. RE-1, 580 U.S. 386, 399 (2017).

Of course, parents may request a due process hearing before an Administrative Law Judge (ALJ) if they believe a school district has denied their child a FAPE. N.J.A.C. 6A:14-2.7(a). Likewise, a school district may file a due process petition regarding the provision of FAPE to a disabled child. Ibid. The burden of proof in any due process hearing lies with the school district. N.J.S.A. 18A:46-1.1.

II. The administrative rules for settlements and summary decision

In New Jersey, special education matters are generally governed by special hearing rules, N.J.A.C. 1:6A-1.1 to -18.4. However, “[a]ny aspect of notice and hearing not covered by these special hearing rules shall be governed by the Uniform Administrative Procedure Rules” (UAPR), N.J.A.C. 1:1-1.1 to -21.6. N.J.A.C. 1:6A-1.1(a).

The special hearing rules do not specifically address the standards for settlements or summary decisions. The UAPR, on the other hand, includes a settlement rule, N.J.A.C. 1:1-19.1, and a summary decision rule, N.J.A.C. 1:1-12.5, and thus governs settlements and summary decisions in due process hearings. As part of the UAPR, the settlement and summary decision rules “shall be construed to achieve just results, simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay.” N.J.A.C. 1:1-1.3(a).

III. Point Pleasant's motion to enforce the settlement agreement.

The parents—pro se litigants—expressed concern about their perceived mistreatment by Point Pleasant in dealing with the family's homelessness problem and brought up the possibility of seeking some form of legal redress. While they had difficulty fully articulating their legal position, they let it be known that they had reservations about waiving all claims against Point Pleasant, suggesting that they may want to pursue a separate action against Point Pleasant for alleged wrongdoing when addressing the family's homelessness and Point Pleasant's further responsibility, or lack thereof, for educating S.P.

Ultimately, the parents orally confirmed that they agreed to the settlement terms, including the waiver provision, but when presented with the settlement agreement in writing and given the chance to review the terms on paper, the parents again took issue with the waiver provision and declined to formalize the settlement with their signatures. Indeed, at the March 26, 2024, proceeding they were informed that the settlement agreement would be reduced to writing and that the settlement would be approved once the parties signed the document.

N.J.A.C. 1:1-19.1 recognizes that a settlement may be reached orally or by written stipulation. And in special education cases, "if the judge determines from the written order/stipulation or from the parties' testimony under oath that the settlement is voluntary, consistent with the law and fully dispositive of all issues in controversy, the judge shall issue a [final] decision incorporating the full terms and approving the settlement." N.J.A.C. 1:1-19.1(b). Although the oral testimony from the March 26, 2024, proceeding indicates that the parents accepted some of the settlement terms, the transcript of that proceeding makes clear that the parents were not comfortable with the waiver provision, and due to that discomfort, the parents refused to sign the written settlement agreement. The parents clarified their objection to the waiver provision at the April 23, 2024, conference.

Even if the settlement could arguably be enforced due to the parents' oral testimony on March 26, 2024, based on the totality of circumstances, including the

parents' capacity as pro se litigants, the opposition they raised to the waiver provision shortly after voir dire was completed, and their refusal to sign the document when given the chance to review it in writing, enforcement would not achieve just results or fairness in administration because it is clear that the settlement would not be voluntary on the parents' part. In other words, Point Pleasant has failed to meet its burden of showing that the parties settled.

Accordingly, I **CONCLUDE** that Point Pleasant's motion to enforce the settlement should be **DENIED** because it would be unfair to the parents—pro se litigants—to force them to settle when they expressed their concerns about the waiver provision.

IV. Point Pleasant's motion for summary decision.

Summary decision is a well-recognized procedure for resolving cases in which the facts that are crucial to the determination of the matters at issue are not actually in dispute. By applying the applicable law and standard of proof to the undisputed facts, a decision may be reached in a case without the necessity of a hearing at which evidence is presented and testimony taken. The procedure is equally applicable in judicial- as well as executive-branch administrative proceedings. N.J.A.C. 1:1-12.5.

The regulations provide that the decision sought by the movant “may 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.” N.J.A.C. 1:1-12.5(b). The standards for determining motions for summary judgment are found in Judson v. Peoples Bank & Trust Co., 17 N.J. 67 (1954), and later in Brill v. Guardian Life Insurance Co. of Am., 142 N.J. 520 (1995). A motion for summary decision may only be granted where the moving party sustains the burden of proving “the absence of a genuine issue of material fact,” and all inferences of doubt are drawn against the movant. Judson, 17 N.J. at 74–75.

A summary decision is typically inappropriate in due process matters involving questions of FAPE. Here, Point Pleasant diligently tried to find an appropriate out-of-district placement and accommodated the parents' request to provide S.P. with home

instruction pending his placement in an out-of-district school. After S.P. enrolled in the Point Pleasant school system, the school district reviewed his educational records, determined that he could not be adequately educated by Point Pleasant, and offered him an out-of-district placement at Regional Day School, a special education school, with all of the services and supports he received through his previous IEP at Evesham, with perhaps the exception of a 1:1 aide instead of 2:1 aides. Then, after the parents rejected that placement and filed for due process, Point Pleasant continued to work with the family and revised the IEP to offer the Children's Center as an alternative placement. The parents consented to that placement, and S.P. attended the Children's Center for the remainder of the 2023–2024 school year, thus rendering the petitions moot.

An action is moot when the decision sought “can have no practical effect on the existing controversy.” Redd v. Bowman, 223 N.J. 87, 104 (2015). For reasons of judicial economy and restraint, it is appropriate to refrain from decision-making when an issue presented is hypothetical, judgment cannot grant effective relief, or the parties do not have a concrete adversity of interest. Anderson v. Sills, 143 N.J. Super. 432, 437 (Ch. Div. 1976); Fox v. Twp. of E. Brunswick Bd. of Educ., 1999 N.J. AGEN LEXIS 140, Initial Decision (March 19, 1999), aff'd, Comm'r 1999 N.J. AGEN LEXIS 1320 (May 3, 1999); J.L. and K.D. ex rel. J.L. v. Harrison Twp. Bd. of Educ., 2014 N.J. AGEN LEXIS 60, Final Decision (January 28, 2014).

In P.S. ex rel. I.S. v. Edgewater Park Twp. Bd. of Educ., EDS 10418-04, Final Decision (October 31, 2005), <http://njlaw.rutgers.edu/collections/oal/>, a parent filed for due process due to a disagreement over a district's proposed placement of her child and requested a different, approved private school. The district had agreed to the parent's placement request and moved to dismiss the petition as moot. The parent wanted to continue the hearing to resolve other related disagreements, but the ALJ concluded that the relief sought by the parent had already been granted by the district through their agreement to place the child at her requested school. The ALJ dismissed the petition as moot and reasoned that the parents had the right to file a new due process petition regarding other issues with the district.

A review of the parents' claim, challenging the placement of S.P. at the Regional Day School, an out-of-district special education school, for the 2023-2024 school year, and the relief sought by the parents, that S.P. would be educated at the Children's Center, leads to the conclusion that no issue remains as to which judgment can grant effective relief. Point Pleasant presented the February 23, 2024, IEP offering S.P. a placement at the Children's Center, a placement to which the parents consented and which S.P. attended for the remainder of the 2023-2024 school year. While the parents have made it clear that they maintain a grievance with District personnel, the issue transmitted to the OAL by the Office of Special Education—determination of the appropriate placement for S.P. for the 2023–2024 school year—has been resolved.

Similarly, a review of Point Pleasant's petition seeking enforcement of the December 11, 2023, IEP is moot as Point Pleasant offered, and the parents accepted, the revised IEP.

The parties agreed to the placement and completed performance following the agreement, therefore, I **CONCLUDE** that both matters should be dismissed because the issues raised by the parties are now moot.

ORDER

For the reasons set forth above, I **ORDER** that the issue raised by the petition of C.P. and A.P. on behalf of S.P. and the cross-petition of Point Pleasant Beach Borough are moot; therefore, both are hereby **DISMISSED**.

This decision is final pursuant to 20 U.S.C. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2024) 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 (2024). 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.

August 26, 2024

DATE



NICOLE T. MINUTOLI, ALJ

Date Received at Agency:

Date Mailed to Parties:

NTM/dw

APPENDIX

Witnesses

For Point Pleasant:

None

For parents:

None

Exhibits

For Point Pleasant:

Brief and attachments

For parents:

July 18, 2024, letter emailed to OAL