State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. EDS 04355-24

AGENCY DKT. NO. 2024-37100

K.H. ON BEHALF OF D.P.,

Petitioner,

v.

SALEM CITY

BOARD OF EDUCATION,

Respondent.

K.H., petitioner, pro se, on behalf of D.P.

Costadinos Georgiou, Esq., for respondent, Salem City Board of Education (Lenox Law Firm, attorneys)

Record Closed: August 5, 2024 Decided: August 20, 2024

BEFORE **ROBERT D. HERMAN**, ALJ:

STATEMENT OF THE CASE

K.H. entered into a settlement with respondent, Salem City Board of Education (the District), for educational services, support services, and transportation reimbursement rates. The settlement was placed on the record with a written agreement to follow. K.H. later refused to sign the written agreement, seeking to double

her transportation reimbursement rate. Is the oral settlement binding? Yes. Under N.J.A.C. 1:1-19.1, a voluntary agreement between the parties coupled with material performance is binding.

PROCEDURAL HISTORY

On February 20, 2024, K.H. filed a petition with the Department of Education, Office of Special Education (OSE) seeking compensatory education, support services, and reimbursement for transporting her son, D.P. On April 1, 2024, the OSE transmitted the matter to the Office of Administrative Law, where it was filed as a contested case pursuant to N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13. A settlement conference was then scheduled for April 2, 2024.

When the settlement conference failed to resolve the dispute, the matter was transferred to me for a hearing. On April 3, 2024, the initial conference was scheduled for April 8, 2024. On April 8, 2024, by agreement of the parties, I conducted a combined initial conference and settlement conference. Because the parties failed to come to a resolution at that time, I scheduled the matter for an in-person hearing, beginning on April 23, 2024.

FINDINGS OF FACT

On April 23, 2024, both parties appeared before me. Settlement was again explored, and this time bore fruit. The agreement was detailed in its nature and extensive as to its terms, including specific compensatory education, transportation requirements, the hiring of a 1:1 student aide, contact information, a non-deprecation clause, parental transportation (if necessary), and “reimbursement” for student transportation. (OAL-1.) The terms were placed on the record and K.H. provided sworn testimony in a colloquy regarding her understanding, the voluntariness with which she agreed to the terms, the absence of threat or coercion, that K.H. was not impaired, that she had the opportunity to obtain counsel and had elected not to do so, that she knowingly and voluntarily waived her right to have counsel of her choosing represent her, that she did not have any questions for respondent’s counsel or myself, and K.H.

believed the agreement to be in D.P.'s best interest. Following my finding that the terms of the agreement were entered into knowingly, intelligently, and voluntarily, the District was directed to reduce the terms of the agreement into writing and provide a copy to K.H. for execution. Of note, the District did not reserve a right to vote on the agreement, and Superintendent Dr. A. Patrick Michel, who was present at the proceeding, had apparent authority to commit to the terms.

The expectation was for the District to provide a written agreement within roughly two weeks following the proceeding. On May 8, 2024, the District circulated a draft copy of the settlement agreement and advised it was working with K.H. to effectuate the terms. The matter was calendared for June 10, 2024, to follow up regarding execution. June 10, 2024, passed without execution. During this interim period, new counsel was assigned and I provided additional time to obtain all signatures. Following successive attempts for K.H. to sign the agreement, I directed the parties to appear in-person on July 26, 2024.

On July 26, 2024, the parties appeared before me for the second time. Also present was Dr. Megan Taylor on behalf of the District. The District represented that it complied with the terms of the April 23, 2024, agreement, but K.H. still refused to execute the agreement. Initial discussions focused on discerning what K.H. agreed with and what she opposed. Questions arose about the specific agreed-upon terms, leading to replaying the April 23, 2024, proceeding via CourtSmart.[1]

Following replay of the April 23, 2024, proceeding and colloquy, the District's undated, written "Settlement Agreement and Release of Claims" was marked as OAL-1. Then to focus on the gravamen of K.H.'s concerns, I went through OAL-1 paragraph by paragraph to ascertain which paragraph(s) remained the subject of concern.

Of note, paragraph 12 of the settlement agreement contains an indemnification clause. Upon review, this term was not discussed or agreed to on April 23, 2024. By

[1] Specifically, the part of the recording that contained the settlement agreement and colloquy with K.H. April 23, 2024, at 11:55 a.m. to 12:06 p.m.

agreement, the offending paragraph (12) was struck, and in its place the following language, consistent with N.J.S.A. 39:6B-2, was added:

> 12. The parent, when transporting the student pursuant to this agreement, must maintain and have in effect automobile insurance as required by New Jersey law.

The other term K.H. strenuously objected to—but which was clearly agreed upon—was the rate of reimbursement should K.H. transport D.P. to and from school: $66.66 per day. K.H. did not allege she was mistaken at the time of agreement; that her assent was based upon misrepresentation or fraud; or that she was coerced or co-opted. Rather, K.H. asserts that she should receive the same remuneration as the commercial bus company that transports D.P. and those similarly situated in the District: $133.32 per day. Put simply, K.H. sought to renegotiate the agreement because she wanted more money. Because she wanted more money, K.H. refused to sign OAL-1.

I **FIND** that, based upon K.H.'s answers to my questions on April 23, 2024, as well as my observations as to her body language, tone, speed of response, and other indicia of credibility, at the time of her entry into the agreement, K.H. was fully aware of the terms of the agreement, even more so considering she was directly involved in their negotiation; K.H. was not under the influence of any substance which deleteriously or otherwise adversely affected her ability to comprehend the nature and scope of the agreement or her acts; K.H. was not coerced or pressured to enter into the agreement; she had ample opportunity to seek counsel and knowingly and voluntarily waived the right to have counsel present; K.H. was provided with the opportunity to ask questions of the District's attorney and myself; K.H. believed the agreement to be in the best interest of D.P.; K.H. agreed with the terms of the agreement (as set forth on the record on April 23, 2024); and the agreement resolved the entirety of K.H.'s petition filed on behalf of D.P.

CONCLUSIONS OF LAW

Oral settlements in Special Education matters are delicate situations. The solace provided by the expectation of conclusion may be easily undone, particularly where the matter involves an unrepresented party. Such settlements must be handled carefully and, when necessary, meticulously examined. Enforcing an oral settlement agreement in a New Jersey Special Education matter requires that the elements of a contract are found and that due process is protected. For litigants appearing without counsel, concerns are heightened and the prophylactic measures employed closely reviewed. Before a finding may be made binding a self-represented litigant to an agreement, rigorous examination is required. The varied nature of each—intrinsic to such matters—necessitates specific factual analyses, all considered within a totality approach.

Pursuant to N.J.A.C. 1:1-19.1, oral settlements are permissible. See N.J.A.C. 1:1-19.1(a)(2) (settlement terms may be required to be disclosed to the Administrative Law Judge (ALJ)); N.J.A.C. 1:1-19.1(b) (ALJ to issue decision incorporating terms of settlement agreement where "voluntary, consistent with the law and fully dispositive of all issues in controversy. . . ."). N.J.A.C. 1:1-19.1(b) provides:

> Under (a) above, if the [ALJ] determines . . . from the parties' testimony under oath that the settlement is voluntary, consistent with the law and fully dispositive of all issues in controversy, the [ALJ] shall issue an initial decision incorporating the full terms and approving the settlement.
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> [N.J.A.C. 1:1-19.1(b) (emphasis added).][2]

The OAL does not have jurisdiction to compel compliance with its decisions or with the terms of a settlement agreement. See, e.g., Z.H. v. Cinnaminson Twp. Bd. of Educ., OAL Docket No. EDS 05048-2021 (Feb. 8, 2022)

[2] While N.J.A.C. 1:1-19.1 does not require settlement terms to be placed in writing, or for that matter, reduced to writing following their entry on the record, this is generally the better practice. This is further amplified where a board of education approval is a necessary component to acceptance. See, e.g., J.S. ex. rel. R.S. v. South Orange-Maplewood Bd. of Educ., 2006 N.J. AGEN LEXIS 440 (June 14, 2005), *7, 35 (no agreement to enforce where settlement is conditional; "An agreement regarding the expenditure of public funds for educational purposes such as that proposed here [reimbursement for unilateral placement in private clinics and schools] requires the assent of the Board of Education.").

https://njlaw.rutgers.edu/collections/oal/, aff'd obiter basis, 2023 U.S. Dist. LEXIS 114768, at 16, 17 (Jul. 5, 2023) (Hillman, J.). The OAL, however, does have the ability to determine if a settlement occurred and, if so, its terms. See R.T. and T.T. on behalf of P.T. v. East Brunswick Twp. Bd. of Educ., OAL Docket No. EDS 09961-17 (June 7, 2018) https://njlaw.rutgers.edu/collections/oal/ *7, 10 ("Where the parties agree upon the essential terms of a settlement, so that the mechanics can be 'fleshed out' in a writing to be thereafter executed, the settlement will be enforced notwithstanding the fact the writing does not materialize because a party later reneges." (Quoting Bistricer v. Bistricer, 231 N.J. Super. 143, 145 (Ch. Div. 1983))).

The initial query here—the proverbial first bridge to cross—is whether a settlement occurred. Settlements in special education matters in New Jersey sound in general principles of contract law. See Z.H. at 24 (citing Lauren W. v. DeFlaminisi, 480 F.3d 259, 275 (3d Cir. 2007); D.R. v. E. Brunswick Bd. of Educ., 109 F.3d 896 (3d Cir. 1997)). As explained in Z.H.:

> "A contract arises from offer and acceptance, and must be sufficiently definite that the performance to be rendered by each party can be ascertained with reasonable certainty." Weichert Co. Realtors v. Ryan, 128 N.J. 427, 435 (1992) (internal quotations omitted). When parties "agree on essential terms and manifest an intention to be bound by those terms, they have created an enforceable contract." Ibid. When the parties fail to agree to one or more essential terms, the "courts generally hold that the agreement is unenforceable." Ibid. But, once "the basic essentials are sufficiently definite, any gap left by the parties should not frustrate their intention to be bound." Hagrish v. Olson, 254 N.J. Super. 133, 138 (App. Div. 1992) (quoting Berg Agency v. Sleepworld-Willingboro, Inc., 136 N.J. Super. 369, 377 (App. Div. 1975)). Absent a demonstration of "fraud or other compelling circumstances," the courts are to honor and enforce the contract, even if later circumstances make the agreement less beneficial to a party. Pascarella v. Bruck, 190 N.J. Super. 118, 124-25 (App. Div. 1983); Zuccarelli v. State Dep't of Envtl. Prot., 326 N.J. Super. 372, 381 (App. Div. 1999).
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> [Z.H. at 24–25.]

A contract—and invariably, a settlement agreement—comes into being where there is "a manifestation of mutual assent by the parties to the same terms. . . . [W]hile the manifestation of mutual assent is usually had by an offer and an acceptance. . . , it is elementary that there can be no operative acceptance" unless there is a "meeting of the minds." Johnson & Johnson v. Charmley Drug Co., 11 N.J. 526, 538 (1953). A meeting of the minds is an essential component in ascertaining whether there was an accord and, as such, a legally enforceable obligation. Morton v. 4 Orchard Land Trust, 180 N.J. 118, 120 (2004); Johnson & Johnson v. Charmley Drug Co. at 538. ("There. . . needs [to] be an agreement—a 'meeting of the minds' on the subject matter, to use a classic timehonored term, or there is no legally enforceable obligation.") The terms must evince fundamental agreement between the parties over the nature and scope of the term or terms. Compare and contrast Gross v. Yeskel, 100 N.J. Eq. 293, 294 (E&A 1926) ("It is manifest that the parties to this agreement have not agreed to the same thing in the same sense, so that there was lacking in the situation the meeting of the minds of the contracting parties, which forms the essential element to the valid consummation of a contract.").

Second, settlement agreements in New Jersey Special Education matters require more than just a recitation of the contractual components on the record to satisfy significant due process concerns. This includes examining the litigants' understanding of the agreement, whether they comprehend the nature and extent of their actions, and whether, overall, their actions are knowing, intelligent, and voluntary.

For example, in R.T., the parties were able to come to an agreement on their second hearing day, which was placed on the record. The petitioners were placed under oath and queried. During their testimony, the petitioners stated (1) they were not under the influence of any substance that would impair their ability to testify truthfully; (2) they had adequate time to review the settlement agreement terms; (3) all the terms were placed on the record—that there were no "side deals" discussed, requested, anticipated, or agreed to by the parties; (4) they reviewed the terms with their attorney; (5) they understood the terms; (6) no one forced them into the agreement; (7) they entered into the agreement willingly and voluntarily; (8) they agreed to the terms of the agreement; (9) they gave up their right to proceed with the hearing and that the matter

would be concluded; (10) they understood a written agreement would be drafted and they would be required to sign it; (11) there were no questions of their own attorney, opposing counsel, or the ALJ; and (12) they were satisfied with their attorney's services. R.T. at 3–4. The petitioners later refused to execute the written settlement agreement. Id. at 5.

Enforcing the settlement agreement in R.T., Judge Antoniewicz observed that "it is a well-established principle of the law that 'settlement of litigation ranks high in [the] public policy' of New Jersey." Id. at 6 (quoting Pascarella v. Bruck, 190 N.J. Super. 118, 125 (App. Div.), certif. denied, 94 N.J. 600 (1983)). "'An agreement to settle a lawsuit, voluntarily entered into, is binding upon the parties, whether or not made in the presence of the Court and even in the absence of a writing.'" Id. at 7 (quoting Cooper-Jarrett v. Cent. Transp., 726 F.2d 93, 96 (3d Cir. 1984). Oral agreements are acceptable "[a]s long as the parties orally agree to the essential terms. . . ." Ibid. Likewise, such settlement agreements may be enforced "'notwithstanding the fact that a writing does not materialize because a party later reneges.'" Ibid. (citing and quoting McDonnell v. Engine Distribs., 2007 U.S. Dist. LEXIS 70925 at **10–11 (quoting Lahue v. Pio Costa, 263 N.J. Super. 575, 596 (App. Div. 1993)).

Based upon K.H.'s colloquy on April 23, 2024, and upon examining the attendant facts and circumstances, including consideration of her arguments on July 26, 2024, I **CONCLUDE** that K.H. knowingly, intelligently, and voluntarily entered into the settlement agreement reflected as OAL-1 (as modified). Additionally, and from a review of the April 23, 2024, record, as well as an examination of OAL-1, I **CONCLUDE** there was no express or inferred reservation that the agreement was conditional—that it required the District to vote on it before it went into effect. If anything, normal indicia of a condition precedent—reservation on the record, express reservation in the written agreement, a signature line for a District board of education member or administrator on OAL-1—all were absent. Moreover, the original signatory binding the District to the Agreement was Superintendent Michel. Cf. J.S. ex. rel. R.S. v. South Orange-Maplewood Bd. of Educ., 2006 N.J. AGEN LEXIS 440 (June 14, 2006), **4–6, **7–8 (reservation on record as to requirement of board vote; matter involving reimbursement and future payment of out-of-district, private placement; no evidence of assent to

agreement by respondent board). As such, I **CONCLUDE** there was assent to the agreement by the District (i.e. without reservation) and **FURTHER CONCLUDE** there was a meeting of the minds and acceptance of the agreement by both K.H. and the District.

While execution of the written settlement agreement was pending, K.H. stood by as the District performed pursuant to the agreement. At no point did K.H. seek to stop or question the District's actions as performance went from initial to material. Post-hearing, K.H. did not seek time for review by counsel nor claim it necessary. It was only after the District materially performed in accordance with the agreement that K.H. began to leverage the District, refusing to execute the written agreement in the absence of doubling the transportation reimbursement rate. Perhaps if K.H. had raised a pre-performance concern or made a claim as to irregularity in advance, merit may be afforded to the proposition that there was no meeting of the minds. However, that is inapposite of what occurred. It does not go unnoticed that the term of the agreement which draws much of K.H.'s later attention is not directly related to D.P.'s education or support services, such as speech or vocational therapy.

Considered in its totality, I **CONCLUDE** the necessary contractual elements were met and the due process protections—scrutinized closely as the matter involves a party representing herself—adhered to. Moreover, there is no evidence of mistake, misrepresentation, or fraud which may otherwise vitiate the consensual entry into the agreement. Add to this, while the District materially performed, K.H. stood by, then utilized the opportunity to seek double the payment to her personally. I **CONCLUDE** there is no reason at law or in equity that the parties should not be bound to the settlement agreement entered into the record on April 23, 2024.

ORDER

I hereby **ORDER** that the agreement set forth at OAL-1 (as amended), with the signature of Dr. Megan Taylor, dated July 26, 2024, is adopted, its terms incorporated into D.P.'s Individualized Education Program, and it shall be appended to this Final Decision and incorporated in full by reference herein.

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 20, 2024
DATE

ROBERT D. HERMAN, ALJ

Date Received at Agency:

Date Mailed to Parties:

RDH/sg/jm

APPENDIX

WITNESSES

For petitioner

None

For respondent

None

EXHIBITS

For petitioner

None

For respondent

OAL-1 Settlement agreement (with removed release of claims paragraph) (6 pages)