



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. EDS 00799-24

AGENCY DKT. NO. 2024-36793

B.S. ON BEHALF OF A.S.,

Petitioner,

v.

GREENWICH TOWNSHIP

BOARD OF EDUCATION,

Respondent.

Jamie Epstein, Esq., for petitioner, B.S. on behalf of S.A.

Paul C. Kalac, Esq., for respondent, Greenwich Township Board of Education
(Weiner Law Group, LLP, attorneys)

Record Closed: April 11, 2024

Decided: May 21, 2024

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

STATEMENT OF THE CASE

This matter follows a petition for due process by respondent Greenwich Township Board of Education (the Board/the District) and two applications for emergent relief by petitioner, B.S., on behalf of her minor child, A.S. The first of petitioner's petitions was dismissed and the latter was "converted" into a non-emergent due process

petition. The two remaining matters resolved by way of settlement and resulted in the entry of two separate Final Decisions. Subsequent to the settlement agreement and Final Decisions, petitioner filed a fourth action seeking, among other things, redress for the alleged failure of the District to conduct child find and compensatory education for the period covered in the prior matters. The issue presented is whether the claims in petitioner's now third petition—which date back to the now-resolved prior litigation—are justiciable in light of when the alleged cause of action arose and in consideration of limitations on the Office of Administrative Law's (OAL) ability to interpret settlement agreements.

PROCEDURAL HISTORY AND FACTS¹

On November 14, 2022, during A.S.'s first-grade school year, petitioner sought a child study team (CST) evaluation to ascertain whether A.S. was "eligible for special education and/or related services[.]"² On November 28, 2022, petitioner provided consent for the District to conduct four evaluations: a Psychological Evaluation; an Educational Evaluation; a Social Evaluation; and a Speech-Language Evaluation. Between December 2022 and February 2023, those four evaluations were conducted. Thereafter, on February 15, 2023, an individualized education program (IEP) was proposed by the District. On February 21, 2023, petitioner rejected the IEP and sought the following independent evaluations of A.S.: a Functional Analysis (and Behavior Intervention Plan if warranted); a Pediatric Neurological Assessment; a Speech and Occupational Therapy Assessment; an Assistive Technology Assessment; a Reading Assessment; and a Neuro-Psychological Evaluation.³ The District denied petitioner's request for these independent evaluations.

¹ Because the procedural history and factual recitation for purposes of this motion for summary decision are so intertwined as to be virtually indistinguishable, for purposes of legibility and overall comprehension, these sections are combined in this Final Decision.

² Final Decision, OAL Docket No. EDS 02880-23 (September 29, 2023) at Attachment (August 8, 2023, Settlement Agreement and Release).

³ Ibid.

On March 3, 2023, the District filed a petition with the Commissioner of the Department of Education (the Commissioner) seeking a due process hearing.⁴ On March 27, 2023, petitioner filed an application for emergent relief with the Commissioner. This application for emergent relief was denied on March 29, 2023. On that same day, petitioner filed her second application for emergent relief with the Commissioner. While the Commissioner denied petitioner's second application for emergent relief, it was "converted" into a due process petition in the normal course and transmitted to the OAL, where it was filed, to be heard as a contested case pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13.⁵

The first matter made its way to a due process hearing, which was conducted on May 8, 2023, June 5, 2023, and June 21, 2023. While post-hearing submissions were pending, several settlement conferences were conducted involving both matters. The settlement conference(s) and discussions between the parties bore fruit, with the parties entering into a settlement agreement on August 8, 2023.⁶ This settlement agreement resolved the litigation under Docket No. EDS 02880-23 and Docket No. EDS 04715-23.⁷

On August 22, 2023, an Amended Final Decision was entered on EDS 04715-23 (with the settlement agreement involving both open matters incorporated therein). As to the second, according to petitioner:

[T]he Final Decision was entered on 9/29/23 not 8/23/24 [sic]. The 8/8/23 Settlement Agreement was put on the record and incorporated into the 9/7/23 Final Decision. The [September 7, 2023] Final Decision in error stated, "2. The settlement fully disposes of all issues in controversy between them and is consistent with the law[.]" Said 9/7/23 Final

⁴ OAL Docket No. EDS 02880-23.

⁵ OAL Docket No. EDS 04715-23.

⁶ Final Decision, OAL Docket No. EDS 04715-23 (August 22, 2023) at Attachment (August 8, 2023, Settlement Agreement and Release); Final Decision, OAL Docket No. EDS 02880-23 (September 29, 2023) at Attachment (August 8, 2023, Settlement Agreement and Release).

⁷ *Id.* at Attachment (August 8, 2023, Settlement Agreement and Release), page 4 ("NOW, THEREFORE, in consideration of the mutual promises and covenants, and other good and valuable consideration set forth herein, the parties agree as follows to resolve both litigations identified above." (emphasis added)).

Decision was amended and corrected on 9/13/23. The 9/13/23 Final Decision was amended and corrected again on 9/29/23 and is attached. It instead stated: “2. The settlement and Board approval fully disposes of the issues of the Board of Education’s denial of BS on behalf of AS’[s] February 21, 2023[,] request for an Independent Education Evaluation (IEE).” Both corrections were requested jointly.⁸

[Pb (April 4, 2024) at 1 (emphasis added).]

Having reviewed the submissions of the parties and though the September 7, 2023, Final Decision does not appear to have been provided, for purposes of this motion, it is accepted that an initial Final Decision on Docket No. EDS 02880-23 was entered then subsequently amended.⁹ On September 11, 2023, an “Amended Final Decision Approving Settlement” bearing Docket No. EDS 02880-23 was entered. Then on September 29, 2023, a Final Decision, captioned “SECOND AMENDED FINAL DECISION APPROVING SETTLEMENT” and showing OAL Docket No. EDS 02880-23 was entered.¹⁰

In the opening paragraph of the August 22, 2023, Final Decision, it reads:

This case arises under the Individuals with Disabilities Education Act, 20 U.S.C. §§1400 to 1482. The parties have voluntarily agreed to resolve all disputed matters and have

⁸ The August 22, 2023, Final Decision, at paragraph two, states:

2. The settlement and Board approval fully disposes of all issues contained in the Settlement Agreement and Release (J-1). Specifically, petitioners waive their claim regarding respondent’s implementation of the February 15, 2023, Individualized Education Plan (IEP) without petitioner’s consent.

[OAL Docket No. EDS 04715-23, Final Decision (Aug. 22, 2023) at 2.]

⁹ The District’s counsel did not claim that the existence of a September 7, 2023, initial Final Decision on Docket No. 02880-23 was in error.

¹⁰ Collectively, the August 22, 2023, Final Decision and the September 29, 2023, Final Decision resolve the two then-pending matters in the OAL, OAL Docket Nos. EDS 02880-23 and EDS 04715-23, each incorporating the August 8, 2023, settlement agreement reciting resolution of both matters.

entered into a settlement agreement as set forth in the attached document.

[OAL Dkt. No. 04715-23, Final Decision (Aug. 22, 2023) at 1.]

Similarly, the opening paragraph of the September 29, 2023, Final Decision, reads:

This case arises under the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400 to 1482. The parties have voluntarily agreed to resolve all disputed matters and have entered into a settlement as set forth in the attached fully-executed Settlement Agreement and Release.

[OAL Docket No. EDS 02880-23, Final Decision (Sep. 29, 2023) at 1.]

Pursuant to the August 8, 2023, settlement agreement, the District agreed to pay for the following independent evaluations: a Functional Analysis (and Behavior Intervention Plan if warranted); a Pediatric Neurological Assessment; a Speech Therapy Assessment; an Occupational Therapy Assessment; an Assistive Technology Assessment; a Reading Assessment; and a Neuro-Psychological Evaluation. Comparatively, these were the same independent evaluations requested by petitioner in February 2023, except that three of the six requested providers differed.¹¹ The District also agreed they would “not implement an initial IEP without [petitioner’s] written consent[.]” (OAL Docket Nos. EDS 02880-23 and EDS 04715-23 Final Decision (Sep. 29, 2023) at Addendum, ¶¶ 1–3.)

Further, the August 8, 2023, settlement agreement at paragraph 5 states:

5. In consideration of the above, B.B.S. [petitioner], individually, and o/b/o of A.S.[.] hereby fully and completely releases the District, its Board, attorneys, employees, Directors, administrators (both past and present) and agents through the date this Settlement Agreement is signed by

¹¹ Final Decision, OAL Docket No. EDS 02880-23 (September 29, 2023) at Attachment (August 8, 2023, Settlement Agreement and Release).

both parties limited to: A. BBS/AS waive their claim regarding the BOE's denial of their 2/21/23 request for an IEE; and 2. BBS/AS waive their claim regarding the BOE's implementation of AS' [sic] 2/15/23 IEP without BBS's consent.*¹²

[OAL Docket Nos. EDS 02880-23 and EDS 04715-23 Final Decision (Sep. 29, 2023) at Addendum, ¶ 5.]

The independent assessments set forth in the August 8, 2023, settlement agreement were completed by November 8, 2023. On November 27, 2023, petitioner filed her third petition with the Commissioner.¹³ In it, petitioner sought the following relief:

- A. Finding A.S. is a disabled child eligible for special education and related services;
- B. Finding the BOE failed to perform its affirmative Child Find duty to offer A.S. a free and appropriate public education [(FAPE)];
- C. Finding the BOE failed to offer A.S. an appropriate 504 Plan;
- D. Order the BOE to offer A.S. eligibility for special education and related services consistent with the findings and recommendations of the IEE;
- E. Order the BOE to offer A.S. an IEP that is reasonably calculated to provide A.S. with a FAPE consistent with the findings and recommendations of the IEE;
- F. Order the BOE to offer A.S. compensatory education for the period of time the BOE knew, or should have known, A.S. was not receiving a FAPE consistent with the findings and recommendations of the IEE;
- G. Order the BOE to offer A.S. an appropriate 504 Plan consistent with the findings and recommendations of the IEE;

¹² There is an asterisk following paragraph 5 of the Aug. 8, 2023, settlement agreement. However, the asterisk is not referenced or found anywhere else in the document.

¹³ OAL Docket No. EDS 00799-24.

H. Order all other appropriate relief consistent with the findings and recommendations of the IEE; and

I. Order all other state and federal civil claims reserved.

[Petitioner's petition to the Commissioner, Dept. of Education, Nov. 27, 2023, at 5–6.]

On December 20, 2023, petitioner and the District met for an IEP meeting. At the IEP meeting and having accepted the detailed, independent expert reports and recommendations, the District offered petitioner an out-of-district placement for A.S. Cert. John Tirico, at ¶¶ 17–19; Exhibit “K.”¹⁴ After a one-month delay, on January 25, 2024, petitioner consented to the District's proposed IEP and placement. Id. at Exh. K.

On March 7, 2024, the Board filed a motion for summary decision pursuant to N.J.A.C. 1:1-12.5, accompanied by a letter brief and supporting certification with exhibits. On March 17, 2024, petitioner filed a response brief with a certification and documents in support. At ¶ 13 of petitioner's responsive certification, she states:

13. The Plaintiff denies these allegations as to agreeing to waive claims against the BOE regarding the evaluation request and the proposed IEP. Settlement and Release is limited to the following: BBS/A.S. wave [sic] their claim regarding the BOE's denial of their 2/21/23 request for an IEE, and BBS/A.S. waive their claim regarding the BOE's implementation of AS 2/15/23 IEP without BBS's consent* (APX 16-23).¹⁵

[Cert. of petitioner at ¶ 13.]

On March 22, 2024, the District filed a reply brief.

¹⁴ Petitioner refutes that the District “accepted all independent evaluation reports.” Petitioner's Cert. at ¶¶ 18. Specifically, petitioner stated that “[t]he BOE failed to accept the findings and recommendations of Dr. Russell, FBA evaluator failing to provide A.S. with a behavioral plan. . . .” Ibid. There are two behavioral consultants listed in A.S.'s IEP. While it is unclear from reviewing A.S.'s IEP which of the two—or both—evaluated A.S., what is clear from reviewing the IEP is that at least one assessment occurred and a plan was recommended. Tirico cert. at Exh. K.

¹⁵ The asterisk was not explained in petitioner's responsive certification.

Oral argument on the motion was scheduled for April 10, 2024. In the interim, on April 4, 2024, an email was sent to the parties, asking they address the following three questions during oral argument:

1. Whether the August 23, 2023, Final Decision and Settlement Agreement encompassed all issues in the two litigation matters (page 4 of the agreement)—and if not, what was encompassed.¹⁶
2. If there was not a meeting of the minds as to the Settlement Agreement, should it be enforced as to all terms.
3. If child find and, as a result, compensatory education, remain live issues, what is the relief that can be granted considering the present circumstances of A.S.

That same day and in response to my questions, petitioner provided her submission asserting that ¶ 2 of the “September 7, 2023, Final Decision, and the September 29, 2023, Final Decision were different.”¹⁷ Petitioner, however, did not refute or contest the initial paragraph of the August 22, 2023, Final Decision (OAL Dkt. No. EDS 04715-23) nor the initial paragraph of the September 29, 2023, Final Decision (OAL Dkt. No. EDS 02880-23), both of which stated identically (and in pertinent part): “The parties have voluntarily agreed to resolve all disputed matters and have entered into a settlement” (OAL Docket No. EDS 04715-23, Final Decision, (Aug. 22, 2023) at 1; OAL Docket No. 02880-23, Final Decision (Sep. 29, 2023) at 1 (emphasis added).)

Oral argument on the motion occurred on April 10, 2024. During oral argument, the gravamen of petitioner’s petition and her sought-after relief were parsed. As noted by the District’s counsel, “Judge. . . we’re down to the issue of Child Find and compensatory education as the only items remaining in Mr. Epstein’s seven pieces of

¹⁶ The date was a typo. It should have reflected the entry of the Final Decision on OAL Docket No. EDS 04715-23 as August 22, 2023, and not August 23, 2023.

¹⁷ Final Decisions involving this matter are as follows: A) August 22, 2023 (OAL Dkt. No. EDS 04715-23); B) September 29, 2023 (OAL Dkt. No. EDS 02880-23); and C) May 21, 2024 (OAL Dkt No. EDS 00799-24). There were two prior Final Decisions on OAL Docket No. EDS 02880-23, the first on September 7, 2023, and the second on September 11, 2023.

requested relief. . . .” (1T22:22–24.) This was further delineated with petitioner’s counsel:

JE: The Child Find issue is related to the IEP. . . . [T]he 2/15/23 IEP was inappropriate and did not offer A.S. of [sic] FAPE.

[1T23:6–15 (emphasis added).]

ALJ: [H]ow does or how is the February 15, 2023[,] IEP improper as it relates to Child Find?

JE: They failed to identify all areas of suspected disability that were interfering with A.S.’s ability to learn.

[1T27:5–9 (emphasis added).]

JE: [W]e have withdrawn our claim regarding whatever occurred after 2/5/24.

[1T28:12–13.]

JE: We’re looking for compensatory education prior to 2/5/24.

ALJ: Wasn’t that encompassed via - - wasn’t it basically encompassed within the 2/5/24 IEP which identified additional areas?

JE: No, that’s prospective relief.

[1T28:19–24]

ALJ: Mr. Epstein, are you saying that the education and services that A.S. is currently receiving are insufficient?

JE: It’s not - - it’s not before Your Honor. It’s been withdrawn.

ALJ: I am asking you.

JE: We don't - - we're not saying - - we're not saying one way or the other. It's not part of this case anymore.

[1T48:7–15.]

In sum, the remaining alleged issues concern those pertaining to, or arising in, February 2023.

During argument, petitioner's counsel raised concern regarding the "ninety-day" limitation on filing in accordance with the Individuals with Disabilities Education Act (IDEA), noting that "[u]nder the IDEA, you have 90 days to appeal it [the settlement agreement] if you don't agree with it, if you think there was an error."¹⁸ (1T14:7–8.) Counsel further argued, "You have a settlement agreement that's 90 days old and a final decision. The - - you have no jurisdiction over that. Under 20 U.S.C. 1415, the jurisdiction is in the Federal District Court of New Jersey." (1T24:18–22.)

Following oral argument, late in the afternoon of April 10, 2024, petitioner provided an unsolicited supplemental submission enunciating her position. Approximately fifteen minutes thereafter, the District objected to petitioner's supplemental submission. On April 11, 2024, both parties were advised that I would accept petitioner's April 10, 2024, supplemental submission, the hearing dates scheduled for the following week were cancelled, that I had decided to grant the District's motion for summary decision, and that the written decision would be forthcoming. In the evening of April 25, 2024, petitioner sent a letter advising the matter was "76 days or 31 over the legal limit" and asking "when the parties can expect to receive the final decision."¹⁹

¹⁸ See 20 U.S.C. § 1415(i)(2)(B) (Limitation) ("The party bringing the action shall have 90 days from the date of the decision of the hearing officer to bring such an action, or, if the State has an explicit time limitation for bringing such action under this subchapter, in such time as the State law allows."); see also N.J.A.C. 6A:3-1.3(i) ("The petitioner shall file a petition no later than the 90th day from the date of receipt of the notice of a final order, ruling, or other action by the . . . agency[] that is the subject of the requested contested case hearing.").

¹⁹ Cf. 1T37:14–23. During oral argument on April 10, 2024, petitioner's counsel stated:

Positions of the Parties

Once the issues remaining were pared at oral argument—child find and compensatory education relating to, involving, and resulting from the February 15, 2023, IEP—the District asserts that they were resolved by way of the August 8, 2023, settlement agreement, and entry of Final Decisions on August 22, 2023, and September 29, 2023.

Petitioner asserts that the August 8, 2023, settlement agreement and August 22, 2023, and September 29, 2023, Final Decisions do not encapsulate all then-existing issues. Specifically, paragraph two of the Final Decision executed on August 22, 2023, was modified by consent of the parties and functioned to preserve non-delineated issues which preceded the Final Decision. Last, the OAL does not have jurisdiction to enforce the settlement agreement as against petitioner.

LEGAL ANALYSIS

To begin, dense writing presented in a “shotgun approach” is more hindrance than help in understanding the relative positions of the parties. Discerning the key facts, circumstances, dispositions, and corresponding arguments, took far greater effort than should be required. Without assigning blame, both parties are reminded as to their obligations, to include providing a precise procedural history.

With administrative law matters, a “party may move for summary decision upon all or any of the substantive issues in a contested case.” N.J.A.C. 1:1-12.5(a). A motion for summary disposition pursuant to N.J.A.C. 1:1-12.5 is essentially the equivalent of a motion for summary judgment pursuant to R. 4:46-2. As set forth in Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520 (1995), the preeminent case involving

So the petition was filed 11/28/23. We're entitled to final decision in 45 days. It has now been over 120 days. There's a - - there's a class action settlement in the District Court where the State has agreed to provide final decisions in 45 days. That wasn't done here. The Board had since 11/28/23. They had the petitioner [sic] in their hand and they did nothing about it until March of 2024. Your Honor has no jurisdiction to enforce the settlement or set aside the settlement.

summary judgment motions, the deciding judge must determine whether a genuine issue of material fact exists and, in doing so, must 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 factfinder to resolve the alleged disputed issue in favor of the non-moving party.” Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995). In so doing, “[t]he ‘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 at 540 (citing Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986)).

Here, the material facts are not in issue: both parties agree that there was a settlement agreement and two Final Decisions which went into effect, all entered into and filed far after February 2023. Further, the documents in question speak for themselves. Noted also is the absence of a specific reservation clause. Neither the two Final Decisions nor the August 8, 2023, settlement agreement contain any such agreement or separation from the main clause(s). Since there is no genuine issue as to these material facts, the sole question remaining is whether the moving party—here, the District—is entitled to prevail as a matter of law. See N.J.A.C. 1:1-12.5(b).

As explained in detail by Judge Buck in Z.H. v. Cinnaminson Township Board of Education, OAL Docket No. EDS 05048-21 (Feb. 8, 2022):

In New Jersey, settlement agreements in special-education disputes are enforced under general principles of contract law. 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). “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 Env’tl. Prot., 326 N.J. Super. 372, 381 (App. Div. 1999).

Additionally, it appears that the OAL does not have the jurisdiction to either enforce or set aside an enforceable contract. A.P. v. Dennis Twp. Bd. of Educ., 1998 N.J. AGEN LEXIS 346 (May 13, 1998); see 20 U.S.C. § 1415(e)(2)(F)(iii), (f)(1)(B)(iii)(II) (“settlement agreements arising out of mediation and the resolution process under the IDEA are enforceable in any State court of competent jurisdiction or in a district court of the United States.”)

Regardless, if the agreement is recent and for a definite time period, the parties were represented by counsel, and the terms of the agreement are unambiguous in regard to the waiver and release of claims, then a settlement waiving a student’s rights under the IDEA may be upheld. J.K. v. Voorhees Twp. Bd. of Educ., 2012 N.J. AGEN LEXIS 67 (February 10, 2012); see also I.K. v. Sch. Dist. of Haverford Twp., 961 F. Supp. 2d 647, 688 n.8 (E.D. Pa. 2013), aff’d, 567 Fed. Appx. 135 (3d Cir. 2014) (citing cases showing that a settlement agreement will substitute for a FAPE, and that can include a waiver of rights under the IDEA). But see D.R. v. E. Brunswick Bd. of Educ., 109 F.3d at 901 (implying that a change in the student’s circumstances, such as their disability-related needs, may make a settlement agreement no longer enforceable). While New Jersey courts are disinclined to enforce a commercial contract entered into by parents that waive their child’s rights, this appears to be limited to those that waive constitutional rights (i.e., parental and reproduction rights) and future personal injuries. See Loesch v. Vassiliades, 17 N.J. Super. 306, 309 (App. Div. 1952); Hojnowski v. Vans Skate Park, 187 N.J. 323, 336–38 (2006).

[Z.H. v. Cinnaminson Twp. Bd. of Educ.], OAL Docket No. EDS 05048-21 (Feb. 8, 2022) at 24–26

<https://njlaw.rutgers.edu/collections/oal/>, aff'd in part, 2023 U.S. Dist. LEXIS 114768, at 16–20 (Jul. 5, 2023)]²⁰

In Z.H., the petitioner sought to vacate the settlement agreement entered into between his parents and the Cinnaminson Township Board of Education, and the Cinnaminson Board of Education filed a motion for summary decision seeking enforcement of the settlement agreement and claiming, in the alternative, that the OAL lacked jurisdiction to set aside the settlement agreement. Z.H. v. Cinnaminson Twp. Bd. of Educ., OAL Docket No. EDS 05048-21 (Feb. 8, 2022) at 10–13, 15–16. In the instant matter, the District asserts that petitioner’s current petition is barred—the cause of action predates the settlement agreement and entry of the Final Decisions—and that it is covered under the settlement agreement and Final Decisions, and therefore, prosecution is precluded. Petitioner claims the settlement agreement and Final Decisions are not a bar to her third petition and, in the alternative, the OAL lacks jurisdiction to determine what the settlement agreement and Final Decisions cover, including the ability to enforce the settlement agreement itself.

By the plain language of the Final Decisions, the parties—both represented by counsel at the time—“agreed to resolve all disputed matters” and “entered into a settlement agreement.” See OAL Docket No. EDS 04715-23, Final Decision, (Aug. 22, 2023) at 1; OAL Docket No. 02880-23, Final Decision (Sep. 29, 2023) at 1. In the instant matter, petitioner raises an issue which arose in February 2023.²¹ On August 8, 2023—six months later—petitioner and respondent enter into a voluntary agreement which is incorporated in two Final Decisions, the latter of which is September 29, 2023. There is no specific exception or carve-out in the settlement agreement for issues predating the Final Decisions. Rather, the language of the Final Decisions, wherein each states it covers “all disputed matters” and was entered six and seven months later, respectively, cuts harshly against any such reservation.

²⁰ “[T]he Court finds no error in the ALJ’s determination that the OAL simply did not have the power to void, enforce or otherwise interpret the 2017 Agreement.” Z.H. v. Cinnaminson Twp. Bd. of Educ., 2023 U.S. Dist. LEXIS 114768, at 16–17 (Jul. 5, 2023) (Hillman, J.).

²¹ No explanation was provided why this alleged issue was not part of the prior litigation.

While I tend to agree with petitioner in one respect—there is a ninety-day limitation of actions which applies involving Final Decisions and appeals for IDEA and Education matters in New Jersey—it is not part of this decision. See 20 U.S.C. § 1415(i)(2)(B) (Limitation); N.J.A.C. 6A:3-1.3(i) (ninety days to bring an action). Rather, the overarching question is whether the OAL has jurisdiction to hear a matter involving the exact same litigants which appears covered by a prior Final Decision.²² As

²² While not specifically raised, a question arises whether this is a corollary of res judicata or the “entire controversy doctrine.” See Bank Leumi USA v. Kloss, 243 N.J. 218, 227–28 (2020). For example, in that matter, the New Jersey Supreme Court explained:

[T]he entire controversy doctrine is furthered by Rule 4:5-1(b)(2), which requires parties to disclose in their initial pleadings “whether the matter in controversy is the subject of any other action pending in any court or of a pending arbitration proceeding” and “whether any other action or arbitration proceeding is contemplated.” That requirement serves “to implement the philosophy of the entire controversy doctrine.” Pressler & Verniero, Current N.J. Court Rules, cmt. 1 on R. 4:5-1 (2019).

The entire controversy doctrine “stems directly from the principles underlying the doctrine of res judicata or claim preclusion.” Prevratil v. Mohr, 145 N.J. 180, 187 (1996). However, “[t]he doctrine is a broad one, more preclusive than both res judicata and the Restatement [(Second) of Judgments].” Kozyra v. Allen, 973 F.2d 1110, 1111 (3d Cir. 1992).

The “doctrine ‘embodies the principle that the adjudication of a legal controversy should occur in one litigation in only one court; accordingly, all parties involved in a litigation should at the very least present in that proceeding all of their claims and defenses that are related to the underlying controversy.’” Wadeer, 220 N.J. at 605 (quoting Highland Lakes Country Club & Cmty. Ass’n v. Nicastro, 201 N.J. 123, 125 (2009)). The doctrine has three fundamental purposes: “(1) the need for complete and final disposition through the avoidance of piecemeal decisions; (2) fairness to parties to the action and those with a material interest in the action; and (3) efficiency and the avoidance of waste and the reduction of delay.” DiTrollo v. Antiles, 142 N.J. 253, 267 (1995).

Notwithstanding those guiding principles, the entire controversy doctrine “remains an equitable doctrine whose application is left to judicial discretion based on the factual circumstances of individual cases.” Dimitrakopoulos, 237 N.J. at 114 (quoting Nicastro, 201 N.J. at 125). “[A] court should not preclude a claim under the entire controversy doctrine if such a remedy would be unfair in the totality of the circumstances and would not promote the doctrine’s objectives of conclusive determinations, party fairness, and judicial economy and efficiency.” Id. at 119.

[Bank Leumi USA v. Kloss, 243 N.J. 218, 227–28 (2020).]

Either circumstance, however, appears likely to result in the same jurisdictional question.

with most, it appears the answer is the proverbial, lawyerly response to most questions: “It depends.”

If perhaps there were a specific reservation of a cause of action or wording so nebulous as to predispose one to believe it was understood by the parties that an issue were excepted, maybe in such instance. What presently appears is the opposite. While one can surmise an argument may be made by petitioner as to ambiguity between the language of the Final Decisions and the August 8, 2023, settlement agreement, any such determination beyond the four corners of the documents—that is, its plain meaning—transcends the limited jurisdiction of the OAL.

Put simply, the plain language of the Final Decisions at issue covers prior educational issues involving A.S. and the District. The cause of action which petitioner alleges in her third petition—child find—arose in February 2023. The mathematics are not particularly complex. Moreover, petitioner did not provide any facts asserting the child find issue allegedly arising in February 2023 was unknown or unknowable at the time the two Final Decisions were entered. Likewise, the two Final Decisions were entered, with the assistance of counsel, in August 2023 and September 2023. Time after time, petitioner had the opportunity to seek modification of the language contained in the various Final Decisions, which neither party appeared opposed to doing so, as there are multiple versions before the ultimate two Final Decisions were entered. With the absence of express language reserving the February 2023 child find issue, it underscores the inevitable result.

While couched in different terms, what petitioner seeks, vis-à-vis her third petition, is to reopen a matter(s) or to claim that an ambiguity permits the prosecution of an issue arising in February 2023, one which substantially predates the settlement agreement and two Final Decisions. Under either, there is a want of jurisdiction in the Office of Administrative Law. Neither is permitted—at least not in the OAL. Because of this, I **CONCLUDE** that the District’s motion for summary decision should be **GRANTED**.

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.

May 21, 2024

DATE



ROBERT D. HERMAN, ALJ

Date Received at Agency:

Date Mailed to Parties:

RDH/sg/dc

APPENDIX

WITNESSES

For petitioner

None

For respondent

None

EXHIBITS

For petitioner

- Petitioner's Third Petition for Relief (November 27, 2023) and demands for discovery (10 pages)
- Settlement Agreement and Release (August 8, 2023) (7 pages)
- Letter from petitioner's counsel (February 16, 2024) (1 page)
- Letter from U.S. Dept. of Education to Perry Zirkel, Ph.D. (April 15, 2022) (5 pages)
- Certification of B.S. (March 7, 2024) (5 pages)
- Final Decision Approving Settlement and accompanying letter (September 29, 2023) (11 pages)
- August 9, 2023, Greenwich Township Board of Education minutes accepting settlement agreement of August 8, 2023. (1 page)
- Letter from petitioner's counsel (April 10, 2024) with respondent's Answer to petitioner's November 27, 2023, Due Process Petition. (9 pages)
- Letter from petitioner's counsel (April 25, 2024) (1 page)

For respondent

- Certification of John Tirico (March 7, 2024) (132 pages)