State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION GRANTING RESPONDENT'S MOTION FOR SUMMARY DECISION
OAL DKT. NO. EDS 12033-24
AGENCY DKT. NO. 2024-37661

V.C. ON BEHALF OF T.S.,
Petitioner,
v.
EAST ORANGE BOARD OF EDUCATION,
Respondent.

V.C., petitioner, pro se

Nathanya G. Simon, Esq., for respondent (Scarinci Hollenbeck, LLC, attorneys)

Record Closed: November 29, 2024 Decided: December 11, 2024

BEFORE **JOSEPH A. ASCIONE**, ALJ (Ret., on recall):

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

In this matter V.C. on behalf of T.S. (petitioner) sought an out of district placement at a charter school. V.C. opposed the IEP placing T.S. at the mildly impaired special education program offered by the respondent, East Orange Board of Education (East

Orange or District). T.S. has moved from middle school to high school in September 2024. T.S. has not been accepted in the charter school V.C. desires him to attend. East Orange has moved to dismiss the petition. East Orange consulted with V.C. in the preparation of the Individual Education Plan (IEP) and determined that T.S.'s educational, emotional and social accomplishments were consistent with the student's proposed IEP. T.S. is classified as a student in need of special education for other health reasons, specifically Attention Deficit Hyperactivity Disorder (ADHD) and Oppositional Defiance Disorder (ODD).

This matter was transmitted to and filed with the Office of Administrative Law (OAL) on August 30, 2024, by the Department of Education for determination 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. Respondent moved for summary disposition on October 17, 2024. Petitioner's opposition has been limited to uncertified e-mails submitted on October 22, 2024, and November 26, 2024. The record closed on November 29, 2024. The Final Decision issued on December 5, 2024.

BACKGROUND

T.S. is fifteen years old and is a registered student in the East Orange High School Public School District. This is his first year of high school. On June 7, 2024 a child study team conducted an IEP meeting with the parent, V.C. by telephone and proposed the IEP for 2024-2025 school year. V.C. hoped T.S. would be accepted at a charter school but it appears there are no open positions at this time. V.C. has dealt with the district with a previous child and has been dissatisfied with the District.

V.C. filed the petition in the above matter on May 29, 2024, seeking an out of district placement or removal from special education for T.S. This date preceded the IEP meeting. On August 14, 2024, a mediation occurred prior to the filing with the Office of Administrative Law (OAL). V.C. withdrew her request for removal from special education for T.S. There was a settlement conference with the OAL on September 5, and September 25, 2024, at which time V.C. requested verbally to withdraw the petition. OAL Judge Marose, asked the parent to e-mail the withdrawal. This did not occur. At the first

pre-hearing conference on October 2, 2024, the petitioner did not initially appear and had to be called to participate in the conference. Petitioner V.C. complained her son was not being picked up for school. The District's counsel could not respond to this complaint, but committed to discover the problem which was resolved before the next conference on October 8, 2024. Petitioner, V.C. then complained she did not want to be further bothered with a hearing, refusing to withdraw her petition. The District was authorized to file a motion to dismiss. The District's motion was filed on October 17, 2024. On October 22, 2024, petitioner responded by e-mail, "Hello I received a letter from Ms. Simon office stating that she is filing a motion to dismiss with prejudice. I am recanting that motion and you can schedule me a court date. It's not fair that my child cannot get the a proper education." This office advised her of the due date for her opposition to the motion and that the opposition had to be certified. A telephone conference was scheduled for October 29, 2024, Petitioner again did not appear, and was not reachable by phone. Petitioner did not respond to the motion by a certification but on November 26, 2024, submitted this e-mail, "I, V.C. would like to request to proceed with this court order. I had numerous phone and video conference and everyone that I spoke to had stated that my son T.S. is struggling. First of all that special education program is not for my son. He doesn't get his one on one with the aide when he needs help there's no aide to provide assistance. There 16 students in his classroom there should be no more than 10 students in his class. My son has a social disorder A.D.H.D and O.D.D. Nor only are you laying teachers off, two of my son classes they hang out in the gym when they supposed to be learning. How can the students learn something if they in the gym for two of there classes? As a parent I went to town hall meetings and I asked them mayor and the superintendent what are they gonna do with our children education? I still have yet to get a response but it's no surprise. My son education should not suffer due lack of teachers that's being layed off. I just want a proper education for my son and healthy environment as well."

FACTUAL FINDINGS

Based upon consideration of the documentary evidence presented, and the absence of any certification from petitioner, I **FIND** the following **FACTS**:

1. T.S is fifteen-years-old and a first year high school student at East Orange Campus High School.

2. T.S. is eligible for special educational services based upon Other Health Impaired as a result of suffering from ADHD and ODD.

3. On June 7, 2024, an IEP meeting was held with V.C. attending by telephone. The child study team recommended T.S. for placement with the Mild/Moderate Learning or Language Disability Classroom for his core academic subjects. Additional counseling, behavioral modification interventions and other modifications to support his educational and behavioral needs. See the IEP. (Exhibit A)

4. V.C. has had previous experience with the District with an older child and is dissatisfied with the education provided to her older son. V.C. would prefer T.S. be placed at a charter school. However, the charter school does not have capacity for T.S. at this time.

5. V.C. complains her son is struggling but there is no evidence that it is not just the transition from middle school to high school.

6. At the October 8, 2024, telephone conference, petitioner advised she did not want to proceed but refused to e-mail a withdrawal. She advised she did not want to continue the matter and intended to block the district's attorney's number and the OAL number from her incoming calls.

7. Petitioner still complains of her son not obtaining a proper education but has not identified any deficiencies which can be addressed.

LEGAL ANALYSIS

Summary decision, or as it is known in judicial matters, summary judgment, 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 and the application to that set of material facts of the applicable law and standard of proof lead to a determination of the case without the necessity of a hearing at which evidence and testimony need be taken. The procedure is equally applicable in judicial as well as executive branch administrative cases. N.J.A.C. 1:1-12.5. The standards for determining motions for summary judgment are contained in Judson v. People's Bank and Trust Co. of Westfield, 17 N.J. 67, 74–75 (1954). The Supreme Court later elaborated on the motion and its standard in Brill v. Guardian Life Insurance Co. of America, 142 N.J. 520 (1995). Under the Brill standard, as in Judson, a motion for summary decision may only be granted where there are no "genuine disputes" of "material fact." The determination as to whether disputes of material fact exist is made after a "discriminating search" of the record, consisting as it may of affidavits, certifications, documentary exhibits and any other evidence filed by the movant and any such evidence filed in response to the motion, with all reasonable inferences arising from the evidence being accorded to the opponent of the motion. In order to defeat the motion, the opposing party must establish the existence of "genuine" disputes of material fact. The facts upon which the party opposing the motion relies to defeat the motion must be something more than "facts which are immaterial or of an insubstantial nature, a mere scintilla, 'fanciful, frivolous, gauzy or merely suspicious.'" Judson, supra, 17 N.J. at 75 (citations omitted). The Brill decision focuses upon the analytical procedure for determining whether a purported dispute of material fact is "genuine" or is simply of an "insubstantial nature." Brill, supra, 142 N.J. at 530. Brill concludes that the same analytical process used to decide motions for a directed verdict is used to resolve summary decision motions. "[T]he essence of the inquiry in each is the same: 'Whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.'" Id. at 536 (quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 251–52, 106 S. Ct. 2505, 2512, 91 L. Ed. 2d 202, 214 (1986)). In searching the proffered evidence to determine the motion, the judge must be guided by the applicable substantive evidentiary standard of proof, that is, the "burden of persuasion" that would apply at trial on the merits, whether that is the preponderance of the evidence standard or the clear and convincing evidence standard. If a careful review under this standard establishes that no reasonable fact finder could resolve the disputed facts in favor of the party opposing the motion, then the uncontradicted facts thus established can be examined in the light of the applicable

substantive law to determine whether or not the movant is clearly entitled to judgment as a matter of law.

The Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. §§ 1400-1487, requires States to ensure that all children with disabilities have access to a free appropriate public education ("FAPE") which is designed to meet their unique needs, and establishes procedural due process rights for the children. Each school district's board of education must have policies, procedures, and programs to ensure that all students with disabilities between the ages of three and twenty-one have access to a FAPE and are educated to the maximum extent appropriate in the least restrictive environment ("LRE"). N.J.A.C. 6A:14-1.2(b). Education in the LRE requires, whenever possible, the child is educated in the regular educational environment with children who are not disabled, i.e., the child is included in the mainstream education system. N.J.A.C. 6A:14-4.2; 20 U.S.C. § 1412(a)(5)(A); 34 C.F.R. 300.114. See also Oberti v. Bd. of Educ. of Borough of Clementon Sch. Dist., 995 F.2d 1204, 1214 (3d Cir. 1993). An education is "appropriate" if it includes "personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction." Hendrick Hudson Dist. Bd. of Educ. v. Rowley, 458 U.S. 176, 203 (1982). In New Jersey, a FAPE must include both special education and any necessary related services, such as counseling, occupational or physical therapy, and speech-language services. N.J.A.C. 6A:14-1.1(b)(3), (d); N.J.A.C. 6A:14-3.9(a). See also 20 U.S.C. § 1401(9), (26)(A); 34 C.F.R. 300.34(a).

Once a student is determined to be eligible for special education and related services the local educational agency ("LEA") must develop an individualized education program ("IEP") which establishes the rationale for a student's educational placement and serves as the basis for program implementation. N.J.A.C. 6A:14-1.3; -3.7.

The District prepared an extensive IEP and appears to be implementing the IEP. Whether that IEP and its implementation provides a free appropriate public education cannot be determined at this time, as sufficient time has not elapsed to consider the effectiveness of the IEP.

CONCLUSION

I **CONCLUDE** that East Orange did provide an appropriate analysis of T.S. and found disabilities which needed to be addressed. It did so by providing an extensive IEP.

I **FUTHER CONCLUDE** petitioner has not shown good cause for this tribunal to conduct a hearing at this time, as some time is required to determine if the proposed IEP will provide a free appropriate public education.

ORDER

It is hereby **ORDERED** that respondent's motion for summary disposition dismissing the petition is **GRANTED,** and

It is hereby **FURTHER ORDERED** that petitioner's claim to find the absence of a free appropriate public education is **DENIED, without prejudice**.

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.

December 11, 2024 — Joseph A. Ascione

DATE — **JOSEPH A. ASCIONE**, ALJ

Date Received at Agency: December 11, 2024

Date Sent to Parties: December 11, 2024

cc

APPENDIX
LIST OF EXHIBITS

For Petitioner:

No certified opposition

For Respondent:

R-1 Motion to Dismiss, dated 10/17/24

Exhibit A – T.S.'s IEP, dated 6/7/24

Exhibit B – Email from Nathanya G. Simon to V.C., dated 9/26/24