

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. EDS 01982-19

AGENCY DKT. NO. 2019 29243

K.P. ON BEHALF OF I.M.,

Petitioners,

v.

SADDLE BROOK TOWNSHIP BOARD

OF EDUCATION,

Respondent.

K.P. on behalf of **I.M.**, petitioner, pro se

Jessika Kleen, Esq., for respondent (Machado Law Group)

Record Closed: October 25, 2019

Decided: December 9, 2019

BEFORE **JUDE-ANTHONY TISCORNIA**, ALJ:

STATEMENT OF THE CASE

K.P. (petitioner) on behalf of her minor daughter, I.M., seeks an IEP meeting in order to form an Individualized Education Plan (IEP); and out-of-district placement.

ISSUES

Has respondent school district failed to set up an IEP meeting and formulate an IEP? Is petitioner entitled to an out-of-district placement?

PROCEDURAL HISTORY

Petitioner filed a request for due process, which was received by the Office of Special Education Policy and Planning on January 7, 2019. The matter was transmitted to the Office of Administrative Law (OAL) on February 7, 2019, for determination as a contested case. The case was transmitted to the undersigned on March 21, 2019. A Motion for summary decision was filed on April 3, 2019. After conferring with the parties via telephonic conference on April 5, 2019, it was determined that a ruling on the foregoing motion would be suspended pending the outcome of an older due process petition (EDS 01186-18) involving the identical parties and the same 2018-2019 IEP. That case was successfully resolved via settlement agreement signed on July 16, 2019. An in-person settlement conference was then conducted regarding the foregoing case on August 22, 2019, at which time the parties failed to reach an amicable resolution. At the conclusion of the settlement conference, the respondent renewed her motion for summary decision. Petitioner was given thirty days to submit a written response to the motion. On September 23, 2019, a request by petitioner for a thirty-day extension to October 25, 2019, was received and granted by the undersigned. The record was closed on October 25, 2019.

FACTS

Based upon the documents submitted in support of and in opposition to the motion for summary decision, I **FIND** the following as **FACT**:

1. Petitioner filed the forgoing Due Process Petition seeking an immediate IEP meeting on January 7, 2019.
2. The District has attempted to meet with petitioner for an IEP meeting at least four times.
3. On January 8, 2019, attorney for respondent school district sent the petitioner a letter confirming that an IEP meeting was scheduled for February 1, 2019, at 10:30 a.m.
4. On February 21, 2019, attorney for respondent school district sent the petitioner a letter proposing that an IEP meeting be held on March 4, 2019, at 9:30 a.m.

5. On February 26, 2019, attorney for respondent school district sent the petitioner a letter confirming that an IEP meeting was scheduled for March 4, 2019, at 10:30 a.m.
6. On March 13, 2019, attorney for respondent school district sent the petitioner a letter confirming that an IEP meeting was scheduled for March 18, 2019, at 10:00 a.m.
7. On March 15, 2019, attorney for respondent school district sent the petitioner a letter informing her that the district had to move the IEP meeting from March 18, 2019, to March 19, 2019, at 10:00 a.m. due to the unavailability of the translator.
8. The last attempt to meet occurred on March 19, 2019. Petitioner failed to make herself available at any of the proposed IEP meetings, including this final proposed meeting.
9. As this was the fourth and last attempt to meet with petitioner, the IEP team conducted the meeting on March 19, 2019, in her absence, and proposed an IEP for the student.
10. The proposed IEP was mailed to petitioner.
11. Petitioner does not propose an out-of-district placement in her due process petition. Rather, petitioner's prayer for relief as set forth in her due process petition simply states "out of school district," which has been interpreted by respondent to mean petitioner seeks an out-of-district placement for her child.

Summary Decision Standard

A "motion for summary decision shall be served with briefs and with or without supporting affidavits." N.J.A.C. 1:1-12.5(b). A summary decision 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." Ibid. A court should grant summary judgment when the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, show that there is no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law. Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 528-29 (1995).

Here, Petitioner demands the district IEP team convene in order to craft a new IEP for her minor daughter. Respondent had arranged for an IEP meeting to be conducted on at least four separate occasions, notifying petitioner of each. Petitioner has failed to make herself available to attend the meetings, and an IEP meeting was ultimately conducted without petitioner being present. I therefore **FIND** that respondent has made reasonable attempts to accommodate petitioner's demand for an IEP meeting and I further **FIND** that petitioner has failed to appear at any such meeting. Given that the meeting was ultimately conducted in petitioner's absence, I **CONCLUDE** that the forgoing petition demanding an IEP meeting is moot. Further, I **FIND** that petitioner has failed to provide any supporting documents or any reason why an out-of-district placement is warranted. I therefore **CONCLUDE** that an out-of-district placement is not warranted in this matter and I further **CONCLUDE**, as a matter of law, that the forgoing motion should be granted as no material issue of fact remains.

ORDER

Based upon the foregoing, it is **ORDERED** that respondent Saddle Brook Board of Education's motion for summary decision is **GRANTED** as there are no issues of material fact in dispute and the moving party is entitled to prevail as a matter of law.

It is further **ORDERED** that the Clerk return this file to the Office of Special Education Programs of the New Jersey Department of Education.

This decision is final pursuant to 20 U.S.C. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2019) 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 (2019). 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 Programs.

December 9, 2019

DATE

JUDE-ANTHONY TISCORNIA, ALJ

Date Received at Agency

12/9/19

Date Mailed to Parties:

id