

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

SUMMARY DECISION

OAL DKT. NO. EDS 06476-16

AGENCY DKT. NO. 2016 24215

**TEANECK COMMUNITY CHARTER
BOARD OF EDUCATION,**

Petitioner,

v.

H.D. ON BEHALF OF M.D.,

Respondent.

Beth A. Callahan, Esq., for petitioner (Callahan & Fusco, attorneys)

Hillary D. Freeman, Esq., for respondent (Freeman Law Offices, attorneys)

Record Closed: August 19, 2016

Decided: September 2, 2016

BEFORE **MICHAEL ANTONIEWICZ, ALJ:**

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

The Teaneck Community Charter Board of Education has requested a due process hearing pursuant to the Individuals with Disabilities Education Act (IDEA), 20 U.S.C.A. § 1415. The petition seeks an Order requiring the parent's consent for the student's evaluation. This petition is in response to the parent's petition which sought emergent relief to keep the student in the school play. The parent's application for

emergent relief was denied by the Administrative Law Judge Kimberly Moss on March 30, 2016. On March 23, 2016, the petitioner filed its own petition for the above purpose.

The petition was filed at the Office of Special Education Programs (OSEP) on March 23, 2016, and transmitted to the Office of Administrative Law (OAL), where it was filed on April 28, 2016, as a contested case. A prehearing conference was conducted on May 25, 2016, and the matter was scheduled for hearing on June 27, 2016. At the joint request of counsel the hearing was adjourned and the parties submitted applications for their respective positions, i.e., petitioner requested that the respondent submit to a psychological evaluation and the respondent requested that the due process petition be dismissed. The parties have agreed to have the matter heard “on the papers” by letter, dated August 19, 2016.

FINDINGS OF FACT

The **FACTS** pertinent to this case are uncontroverted, and I **FIND**:

M.D. is an eleven-year-old (born September 29, 2004) student who attended the Teaneck Community Charter School (TCCS). He was classified under the category of Emotionally Disturbed and is eligible for special education services. The TCCS is a Kindergarten to eighth grade school located in Teaneck, New Jersey.

M.D. has been suspended numerous times at TCCS for behavioral issues. After M.D.’s involvement in bomb threats at TCCS, a letter was sent to M.D.’s mother, H.D., stating that M.D. would not be suspended for the bomb threats, provided that H.D. agreed to have psychiatric and psychological evaluations completed for M.D. H.D. refused to sign the permission form authorizing the evaluations.

After the suspension on February 23, 2016, the school and their attorney met with H.D. and her attorney for a re-entry meeting for M.D. It was agreed at the meeting that a positive behavior plan would be developed with H.D. Thereafter, this plan was developed with the input of all parties. Prior to M.D.’s suspension, he was participating in the school play. Due to the fact that M.D. was suspended and thus missed play

rehearsals, M.D. was dismissed from the play. In an effort to address this matter, the staff and administration of TCCS made an exception to permit M.D. to return to the play on the condition that he follow all rules.

At a meeting prior to M.D.'s return to the play, H.D. stated that she wanted M.D. to learn to get along with his peers and control his anger. TCCS requested that M.D. be observed by Dr. Joseph Galasso, Psy.D., in order to develop an appropriate social skills curriculum and enhance M.D.'s current program. In furtherance of TCCS's position, it sent a release form to H.D. to be executed which permitted M.D. to be observed and evaluated by Dr. Galasso. In response, H.D. refused to sign the release.

Despite the above, M.D. continued to participate in the play. On March 8, 2016, M.D. told the stage manager (a TCCS teacher) that he was leaving rehearsal. The teacher told M.D. that he was not permitted to leave the room. In contravention of this directive, M.D. left the rehearsal and further left the school building. The director of the play sought out M.D. and told him that if he left, he would be quitting the play. M.D. made an assertion afterwards that he was being bullied by another student. This behavior was a violation of the school's and the play's rules and he was dismissed from the play. On March 15, 2016, H.D. demanded that M.D. be reinstated in the play. H.D. was once again asked to permit an evaluation of M.D., which H.D. refused to authorize.

To date, H.D. has refused to permit an evaluation of M.D. by refusing to sign the release form to allow Dr. Galasso to complete an observation and evaluation. H.D. filed an emergent relief application to have M.D. reinstated in the play, which was denied and dismissed by Administrative Law Judge Kimberly Moss.

The TCCS has filed a due process petition seeking an Order requiring an evaluation of M.D. Pending the hearing, M.D. was placed on home instruction. H.D. continues to refuse to sign a consent form for the evaluations requested by the District. H.D. then moved from their Teaneck residence into a new home in Little Ferry, New Jersey. H.D. then withdrew M.D. from the TCCS and enrolled M.D. at Memorial Middle School in Little Ferry. A student transfer card, dated June 21, 2016, was executed by

Principal Ralph Gallo confirming that M.D. is transferring to Memorial Middle School in Little Ferry, New Jersey.

It is clear, and I **FIND**, that the above referenced facts are generally undisputed and shall, therefore, be accepted as **FACT**.

LEGAL ANALYSIS AND CONCLUSIONS OF LAW

N.J.A.C. 1:1-12.5 provides that summary decision should 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.” Our regulation mirrors R. 4:46-2(c), which provides that “the judgment or order sought shall be rendered if the pleadings, depositions, answers to interrogatories and admissions on file, 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 a judgment or order as a matter of law.”

A determination whether a genuine issue of material fact exists that precludes summary decision requires the judge to 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 fact finder to resolve the allegedly disputed issue in favor of the non-moving party. Our courts have long held that “if the opposing party offers . . . only facts which are immaterial or of an insubstantial nature, a mere scintilla, ‘fanciful frivolous, gauzy or merely suspicious,’ he will not be heard to complain if the court grants summary judgment.” Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520 (1995) (citing Judson v. Peoples Bank and Trust Co., 17 N.J. 67, 75 (1954)).

The “judge’s function is not himself [or herself] to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial.” Brill, supra, 142 N.J. at 540 (citing Anderson v. Liberty Lobby, 477 U.S. 242, 249, 106 S. Ct. 2505, 2511, 91 L. Ed. 2d 202, 212 (1986)). When the evidence “is so one-sided that one party must prevail as a matter of law,” the trial court should not hesitate

to grant summary judgment. Liberty Lobby, *supra*, 477 U.S. at 252, 106 S. Ct. at 2512, 91 L. Ed. 2d at 214. Petitioner has chosen not to contest the facts shared by the Board; there are thus no facts in dispute; and I **CONCLUDE** that this matter is ripe for summary decision.

I agree with the respondent that this matter should be dismissed as moot. Respondent argues, and I agree, that M.D. is no longer an enrolled student in TCCS. Federal and New Jersey regulations provide that “A charter school shall provide an **enrolled** student with educational disabilities with a free, appropriate public education in accordance with the Individuals with Disabilities Education Act, Part B (IDEA-B) at 20 U.S.C.A. §§ 1400 *et seq.*, 34 C.F.R. § 300 *et seq.*, N.J.S.A. 18A:36A-11(b) and N.J.A.C. 6A:14, Special Education; N.J.A.C. 6A:11-4.8 (emphasis added). It is clear and undisputed (and confirmed by the transfer card signed by the principal of the TCCS).

Petitioner has made the argument that “it is TCCS’s obligation to provide [M.D.] with appropriate services and evaluations” until M.D. has an IEP in another school able to meet his needs. However, the New Jersey Administrative Code states:

When a student with a disability transfers from one New Jersey school district to another or from an out-of-state school district to a New Jersey school district, the child study team of the district into which the student has transferred shall conduct an immediate review of the evaluation information and the IEP and, without delay, in consultation with the student’s parents, provide a program comparable to that set forth in the student’s current IEP until a new IEP is implemented, as follows:

1. For a student who transfers from one New Jersey school district to another New Jersey school district, if the parents and the district agree, the IEP shall be implemented as written. If the appropriate school district staff do not agree to implement the current IEP, the district shall conduct all necessary assessments and, within 30 days of the date the student enrolls in the district, develop and implement a new IEP for the student.

[N.J.A.C. 6A:14-4.1.]

Since H.D. withdrew M.D. from TCCS on or about June 21, 2016, and enrolled M.D. into Memorial Middle School in Little Ferry, and this action is acknowledged by the petitioner, TCCS is no longer responsible for the evaluation or development of an IEP for M.D. as of that date.

In addition, petitioner in its argument that this matter is not moot, states that until M.D. has an IEP in another school (Little Ferry) able to meet his needs, it is TCCS' obligation to provide him with appropriate services and evaluations. Petitioner cites no legal authority to support this position. Petitioner does cite two cases for the proposition: 1) that a school district has the right to conduct formal testing/assessments as part of a triennial evaluation and 2) that the school district is entitled to an order of the court overriding a parents' refusal when there was a clear disagreement about the appropriateness of the student's program. Neither of these cases are factually similar to the case at bar as neither case had the student withdrawing from the subject school district and enrolling in a different school district.

An action is moot when it no longer presents a justiciable controversy because the issues raised have become academic. 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., EDU 10067-98, Initial Decision (March 19, 1999), aff'd, Comm'r (May 3, 1999), <<http://njlaw.rutgers.edu/collections/oal/>>; J.L. and K.D. o/b/o J.L. v. Harrison Twp. Bd. of Educ., EDS 13858-13, Final Decision (January 28, 2014), <<http://njlaw.rutgers.edu/collections/oal/>>. Based on the above, I **CONCLUDE** that the petition of appeal filed by TCCS should be dismissed.

ORDER

Based on the foregoing, the due process petition is **DISMISSED** with prejudice.

This decision is final pursuant to 20 U.S.C.A. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2016) 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.A. § 1415(i)(2); 34 C.F.R. § 300.516 (2016). 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.

September 2, 2016

DATE

MICHAEL ANTONIEWICZ, ALJ

Date Received at Agency

Date Mailed to Parties:

jb