

**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

**FINAL DECISION**

OAL DKT. NO. EDS 07553-19

AGENCY DKT. NO. 2019-29794

**C.R. ON BEHALF OF C.R.,**

Petitioner,

v.

**NUTLEY TOWN BOARD OF EDUCATION,**

Respondent.

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**C.R.**, petitioner, pro se

**Joanne L. Butler**, Esq., for respondent (Schenck, Price, Smith & King, LLP,  
attorneys)

Record Closed: July 1, 2019

Decided: July 1, 2019

BEFORE **BARRY E. MOSCOWITZ**, ALJ:

**STATEMENT OF THE CASE**

C.R. is a resident of East Orange who receives special education and related services in East Orange through an Individualized Education Program (IEP). From September 5, 2018, through March 22, 2019, C.R. attended school in Nutley under a special education tuition contract agreement with East Orange. Is Nutley responsible for the IEP? No. The responsibility for an IEP remains with the sending district and only the sending district can amend it. See N.J.A.C. 6A:14-7.5.

**PROCEDURAL HISTORY**

On March 7, 2019, Nutley notified East Orange that it could no longer provide a safe or effective education for C.R. and terminated their special education tuition contract agreement.

Ten school days later, on March 22, 2019, Nutley advised East Orange that C.R.'s attendance in Nutley had ended.

On April 16, 2019, petitioner filed a request for an expedited due-process hearing against Nutley, together with an application for emergent relief seeking, among other things, an alternative placement.

On June 5, 2019, the Office of Special Education Policy and Dispute Resolution transmitted the case to the Office of Administrative Law under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15, and the act establishing the Office of Administrative Law, N.J.S.A. 52:14F-1 to -23, for a hearing under the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6, and the Special Education Program, N.J.A.C. 1:6A-1.1 to -18.5.

On June 10, 2019, Nutley filed this motion for summary decision. Petitioner was given up to twenty days to oppose the motion but has failed to do so. To date, petitioner has submitted no opposition.

### **FINDINGS OF FACT**

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

C.R. is a resident of East Orange and is eligible for special education and related services under the category "autism." East Orange provided this education and those services to C.R. through an IEP, but C.R. attended school in Nutley under a special education tuition contract agreement. The agreement was for the 2018–19 school year and began on September 5, 2018. It was to end on June 25, 2019.

On March 7, 2019, Nutley determined that it could no longer provide a safe or effective education for C.R. and terminated the agreement. On that same date, the director of Special Services for Nutley, Helen Doyle-Marino, notified the Director of Special Education for East Orange, Tonya Santos, in writing, that Nutley could no longer provide a safe or effective education for C.R., and that Nutley had terminated the agreement. Meanwhile, East Orange had already scheduled an IEP meeting for the following day at 10:00 a.m.

Approximately ninety minutes before the meeting, Santos received a request from petitioner to reschedule the IEP meeting to April 12, 2019, so C.R.'s behaviorist could attend. Santos agreed and rescheduled the meeting. In response, Doyle-Marino advised Santos, on March 12, 2019, that the IEP meeting had to be held before April 12, 2019, because C.R.'s behaviors were worsening, necessitating the use of restraints.

Despite its notice of termination, Nutley had continued to allow C.R. to remain in district. On March 15, 2019, however, having endured C.R.'s increasingly aggressive behaviors, Nutley suspended C.R. for five days for having attempted to smear feces on a paraprofessional, and for having slammed the bathroom door on a teacher. Still, on March 18, 2019, the next day of school—and the first day of the suspension—petitioner sent C.R. to school in Nutley.

When Nutley asked petitioner to retrieve C.R., petitioner refused, so C.R.'s classmates had to be removed from the classroom, for their safety, instead. Notwithstanding the fact that no demands were placed on C.R. that day, C.R. attempted to hit staff nearly 300 times. As a result, on March 22, 2019—the tenth school day following the notice of termination—Nutley advised East Orange that C.R.'s attendance in Nutley had concluded.

## CONCLUSIONS OF LAW

### I.

Each district board of education is responsible for providing a system of free, appropriate special education and related services to students with disabilities age three through twenty-one. N.J.A.C. 6A:14-1.1(d). This responsibility remains with the district even when that district sends the student to another district for education. N.J.A.C. 6A:14-7.5. Thus, the sending district remains responsible for the IEP, N.J.A.C. 6A:14-7.5(a), and only the sending district can amend it, N.J.A.C. 6A:14-7.5(b)(1)(i).

Accordingly, under this regulatory scheme, when a receiving school is considering the termination of a student's placement before the end of the school year, the receiving school must contact the sending district immediately, and the sending district must convene an IEP meeting within ten days of the date of notification. N.J.A.C. 6A:14-7.7(a).

In this case, East Orange is the sending district and Nutley is the receiving district, so when Nutley considered terminating C.R.'s placement, Nutley contacted East Orange immediately. East Orange, however, did not convene the IEP meeting within ten days of that notification. Indeed, no new placement was either discussed or determined by that time. As the regulations plainly indicate, this responsibility for special education and related services remains with the sending district, not the receiving district. Therefore, I **CONCLUDE** that as of March 22, 2019—the day East Orange's special education tuition contract agreement with Nutley for the 2018–19 school year ended—Nutley no longer had any obligation to petitioner concerning C.R.'s entitlement to a free, appropriate special education under N.J.A.C. 6A:14-1.1(d).

### II.

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).

The motion shall be served with briefs and may be granted if the papers show that there is no genuine issue as to any material fact and the prevailing party is entitled to prevail as a matter of law:

The motion for summary decision shall be served with briefs and with or without supporting affidavits. The decision sought 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. When a motion for summary decision is made and supported, an adverse party in order to prevail must by responding affidavit set forth specific facts showing that there is a genuine issue which can only be determined in an evidentiary proceeding. Such response must be filed within 20 days of service of the motion. A reply, if any, must be filed no later than 10 days thereafter. If the adverse party does not so respond, a summary decision, if appropriate, shall be entered.

[N.J.A.C. 1:1-12.5(b).]

In this case, given my findings of fact and conclusions of law, I further **CONCLUDE** that no genuine issue of material fact exists, and that Nutley is entitled to prevail as a matter of law.

### **ORDER**

Given my findings of fact and conclusions of law, I **ORDER** that this case against Nutley is hereby **DISMISSED**.

This decision is final under 20 U.S.C. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2018) and is appealable by filing a complaint and bringing a civil action 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 (2018). If the parent or adult student believes that this decision is not being fully implemented with respect to program or services, this concern should be communicated in writing to the Director of the Office of Special Education Policy and Dispute Resolution.

July 1, 2019  
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DATE

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**BARRY E. MOSCOWITZ, ALJ**

Date Received at Agency

July 1, 2019  
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Date Mailed to Parties:  
dr

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