

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

DECISION

OAL DKT. NO. EDS 10891-16

AGENCY DKT. NO. 2016 24790

**NORTHERN HIGHLANDS REGIONAL
BOARD OF EDUCATION,**

Petitioner,

v.

C.E. AND A.E. ON BEHALF OF C.E.,

Respondents.

James L. Plosia, Jr., Esq., for petitioner (Plosia Cohen, attorneys)

Christine Ann Soto, Esq., for respondents

Record Closed: January 19, 2017

Decided: January 19, 2017

BEFORE **RICHARD McGILL**, ALJ:

The Northern Highlands Regional Board of Education (hereinafter “petitioner” or “District”) filed a petition for a due process hearing to challenge a request by C.E. and A.E. (hereinafter “respondents”) on behalf of their son, C.E., for independent evaluations. Respondents now move for summary decision.

PROCEDURAL HISTORY

Petitioner filed its request for a due process hearing with a cover letter dated June 16, 2016, with the Office of Special Education Programs. On June 24, 2016, respondents filed an Answer, and on July 7, 2016, they filed a motion for summary decision. On July 15, 2016, petitioner filed papers in opposition to the motion.

The matter was transmitted to the Office of Administrative Law on July 21, 2016, for determination as a contested case. On the same date, respondents filed a reply to petitioner's opposition. After settlement negotiations proved fruitless, the motion was submitted for disposition.

MOTION FOR SUMMARY DECISION

A. Legal Standard

A motion for summary decision should be granted where there is no genuine issue as to any material fact and the moving party is entitled to prevail as a matter of law. N.J.A.C. 1:1-12.5(b). The same standard is applied in the courts of this State pursuant to R. 4:46-2. Summary judgment "is designed to provide a prompt, businesslike and inexpensive method" to dispose of actions which do not present any genuine issue of material fact. Judson v. Peoples Bank & Trust Co. of Westfield, 17 N.J. 67, 74 (1954). Excessive caution which would undercut the purposes of a motion for summary judgment should be avoided. Pierce v. Ortho Pharmaceutical Corp., 84 N.J. 58, 65 (1980).

In determining whether there exists a genuine issue as to a material fact, the judge must "consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party in consideration of the applicable evidentiary standard, are sufficient to permit a rational fact finder to resolve

the alleged disputed issue in favor of the non-moving party.” Brill v. Guardian Life Ins. Co. of America, 142 N.J., 520, 523 (1995).

B. Positions of the Parties

Respondents maintain that they requested an independent transition evaluation and an independent speech and language evaluation on May 26, 2016. Petitioner had twenty days to request a due process hearing in accordance with N.J.A.C. 6A:14-2.5(c)1ii. Petitioner’s request for a due process hearing was filed on June 16, 2016. This date was the twenty-first day after May 26, 2016. Petitioner argues that the filing was untimely and therefore time-barred and that the petition should be dismissed.

Petitioner contends that respondents made an ambiguous request for “independent educational evaluations” in letters dated May 26 and 27, 2016. Respondents provided clarification of the request on May 31, 2016. Petitioner argues that the twenty days to request a due process hearing commenced on this date. Relative to this date, petitioner’s request for a due process hearing was timely.

C. Facts

In support of the motion for summary decision, respondents submitted the certification of parent C.E. with attachments, describing the general course of events. In response, petitioner generally did not dispute respondents’ factual assertions but rather supplied additional facts which were omitted by respondents. After a review of the submissions of the parties, I am satisfied that there is no genuine dispute as to any material fact. The material facts in this matter are as follows:

1. C.E. is a nineteen-year-old student who is eligible for special education and related services based on the criteria for autistic.

2. During an IEP meeting on May 26, 2016, respondents requested an independent transition evaluation and an independent speech and language evaluation.
3. By letter dated May 26, 2016, respondents' attorney confirmed that respondents were requesting "Independent Educational Evaluations" at District expense including a transition evaluation and a speech and language evaluation.
4. The letter was sent by email and facsimile to petitioner's attorney and was received on that date.
5. In a letter dated May 27, 2016, to petitioner's attorney, respondents' attorney again referred to "Independent Educational Evaluations."
6. This letter was sent by email.
7. By email dated May 31, 2016, to respondents' attorney, petitioner's attorney responded to the letter dated May 27, 2016, and requested clarification as to the meaning of "Independent Educational Evaluations," i.e., the specific evaluations being requested.
8. Respondent's attorney replied by email dated May 31, 2016, and stated that petitioners were specifically seeking an independent transition evaluation and an independent speech and language evaluation.
9. By letter dated June 16, 2016, petitioner filed a petition for due process with the Office of Special Education Programs.
10. The June 16, 2016 letter was date stamped as received by the Office of Special Education Programs on June 17, 2016.

D. Analysis

A parent may request an independent evaluation. N.J.A.C. 6A:14-2.5(c). The request shall specify the assessments that the parent is seeking as part of the independent evaluation request. Ibid. If the school district opposes the parental request, the pertinent regulation is N.J.A.C. 6A:14-2.5(c)1ii, which provides as follows:

“Not later than 20 calendar days after receipt of the parental request for an independent evaluation, the school district shall request the due process hearing.”

Here, the original written request dated May 26, 2016, clearly specified an independent transition evaluation and an independent speech and language evaluation as assessments sought by the parents. The term “Independent Educational Evaluations” is ambiguous in that it could refer to an educational evaluation or some other type of assessment. Nonetheless, it was clear from May 26, 2016, that respondents were seeking an independent transition evaluation and an independent speech and language evaluation. Under the circumstances, the twenty days for petitioner to request a due process hearing in regard to these two independent evaluations began on May 26, 2016.

Petitioner’s request for a due process hearing with a cover letter dated June 16, 2016, was actually received by the Office of Special Education Programs on June 17, 2016. Thus, petitioner’s request for a due process hearing was dated twenty-one days after the receipt of respondent’s request for independent evaluations and was filed twenty-two days thereafter. It follows that petitioner’s request for a due process hearing was untimely relative to the twenty-day time limit in N.J.A.C. 6A:14-2.5(c)1ii. This regulation uses the mandatory term “shall.” Because petitioner did not comply with the mandatory twenty-day time limit, I **CONCLUDE** that petitioner’s request for a due process hearing is time-barred by N.J.A.C. 6A:14-2.5(c)1ii.

Accordingly, it is **ORDERED** that the petition in this matter be dismissed.

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.

January 19, 2017

DATE

RICHARD McGILL, ALJ

Date Received at Agency

January 19, 2017

Date Mailed to Parties:
