

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. EDS 12370-15

OAL DKT. NO. 2016-23146

M.A. ON BEHALF OF M.A.,

Petitioner,

v.

SPARTA TOWNSHIP BOARD OF EDUCATION,

Respondent.

M.A. father of **M.A.**, appearing, pro se

Rodney Hara, Esq., for respondent (Forgarty & Hara, attorneys)

Record Closed: March 3, 2016

Decided: March 3, 2016

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

STATEMENT OF THE CASE

M.A. lives with his father who is domiciled in the Frelinghuysen School District. Is M.A. entitled to a free education public education in the Sparta Township School District? No. Public schools shall be free to any person domiciled in the school district, N.J.S.A. 18A:1(a), and a student is domiciled in the school district of the parent or guardian with whom the student lives for the majority of the school year, N.J.A.C. 6A:22-3.1(a)(1)(i).

PROCEDURAL HISTORY

On May 15, 2015, M.A. was placed on home instruction pending the determination of an alternative placement to address his oppositional behavior and academic difficulties. On June 11, 2015, the child study team conducted an IEP meeting and developed an IEP, which provided for an out-of-district placement in a behavioral disabilities program. Petitioner, however, rejected the IEP. As a result, on July 1, 2015, petitioner filed a request for due process with the Office of Special Education Programs.

On August 18, 2015, the Office of Special Education Programs 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, 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 November 19, 2015, petitioner sent respondent an email informing respondent that he was withdrawing his consent for special education and related services in the Sparta Township School District.

As of December 8, 2015, M.A. was no longer enrolled in the Sparta Township School District. Petitioner, however, refused to withdraw his request for due process. As a result, on January 29, 2016, respondent filed a motion to dismiss the case.

To date, petitioner has not filed any opposition.

FINDINGS OF FACT

Based upon the documentation submitted in support of the motion to dismiss, I **FIND** the following as **FACT**:

I.

M.A. is eleven years old and is eligible for special education and related services under the category “other health impaired.”

During the 2014-15 school year, when he was in fourth grade, M.A. attended school at the Helen Morgan Elementary School in Sparta, New Jersey. But on May 15, 2015, M.A. was placed on home instruction pending the determination of an alternative placement to address his oppositional behavior and academic difficulties. On June 11, 2015, the child study team conducted an IEP meeting to determine the appropriate program and placement for M.A. Petitioner participated in the IEP meeting by telephone and an IEP was developed. Significantly, the IEP provided for an out-of-district placement in a behavioral disabilities program.

Petitioner, however, rejected the IEP. On July 1, 2015, petitioner filed a request for due process with the Office of Special Education Programs. Since petitioner filed a request for due process, the Sparta Township School District could not implement the IEP and M.A. remained on home instruction.

II.

On August 17, 2015, a mediation session was conducted by the Office of Special Education Programs.

After two failed settlement conferences, one on September 24, 2015, and the other October 21, 2015, the case was assigned to me for hearing.

On October 30, 2015, the scheduled hearing date, I attempted to resolve the case one last time. I also conducted a case-management conference, which gave petitioner the opportunity to participate in another IEP meeting to consider alternative placements. At the IEP meeting, petitioner signed a release of pupil records for three out-of-district placements.

III.

On November 19, 2015, petitioner sent respondent an email informing respondent that he was withdrawing his consent for special education and related services in the Sparta Township School District.

In response, on November 24, 2015, respondent issued a Notice of Revocation for Consent of the Provision of Special Education and Related Services.

To date, petitioner has not responded.

IV.

On December 4, 2015, respondent received a letter from the Superintendent of Schools of the Frelinghuysen Township School District, advising respondent that M.A. had enrolled in its school district and to provide it with all of the pupil records for M.A. At the bottom of the request, petitioner had signed the form authorizing the release of the records, as petitioner had moved out of district. Indeed, petitioner was no longer living in Sparta but in Blairstown, New Jersey. As proof, on December 8, 2015, petitioner sent respondent a Transferring Student Release Form, which indicated that M.A. would be attending the Frelinghuysen Elementary School. The form also indicated that December 7, 2015, would be the last day his son, M.A., would be attending school in the Sparta Township School District. Therefore, by all accounts, M.A. lives with his father in Blairstown, New Jersey, is no longer enrolled in the Sparta Township School District, and is enrolled in the Frelinghuysen School District, at least as of December 8, 2015.

V.

On December 11, 2015, respondent sent petitioner a letter asking him to withdraw his request for due process, but petitioner did not respond.

On December 16, 2015, I held a telephone conference call with the parties, during which time respondent again asked petitioner to withdraw his request for due process, but petitioner refused.

As a result, respondent filed this motion to dismiss the case.

CONCLUSIONS OF LAW

Public schools shall be free to any person domiciled in the school district. N.J.S.A. 18A:1(a). The implementing regulations are even more specific. Under N.J.A.C. 6A:22-3.1(a)(1), a student is domiciled in the school district when he or she is the child of a parent or guardian whose domicile is located within the school district. To remove all doubt, when the parents or guardians are domiciled within different school districts, and no court order or written agreement exists designating the school district of attendance, the domicile is the school district of the parent or guardian with whom the student lives for the majority of the school year. N.J.A.C. 6A:22-3.1(a)(1)(i).

In this case, petitioner is no longer domiciled in the Sparta Township School District. In fact, December 7, 2015, was the last date M.A. was enrolled in the Sparta Township School District. Since M.A. now lives with his father in Blairstown, New Jersey, and was enrolled in the Frelinghuysen School District, at least as of December 8, 2015, I **CONCLUDE** that M.A. is no longer entitled to an education in the Sparta School District, that the Sparta School District is no longer obligated to provide M.A. with an education, and that no justiciable controversy exists at this time.

ORDER

Given my findings of fact and conclusions of law, I **ORDER** that this case be **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 (2015) 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 (2015). 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.

March 3, 2016 _____

DATE

BARRY E. MOSCOWITZ, ALJ

Date Received at Agency

March 3, 2016 _____

Date Mailed to Parties:

dr