

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

GRANTING SUMMARY DECISION

OAL DKT. NO. EDS 12832-17

AGENCY DKT. NO. 2018-26866

A.W. on behalf of C.W.,

Petitioner,

v.

**LAKEWOOD TOWNSHIP BOARD OF
EDUCATION,**

Respondent.

A.W. on behalf of C.W., petitioner, pro se

Michael I. Inzelbuch, Esquire, for respondent

BEFORE **DEAN J. BUONO**, ALJ:

STATEMENT OF THE CASE

Respondent brought a motion for summary decision because the petitioner sought ESY compensation, transportation, reimbursement for transportation costs and a 1:1 bus aide for C.W. from the Lakewood Township Board of Education (Board or District). However, respondent argues that a prior “DECISION OF SETTLEMENT” approved by the Honorable Lisa James Beavers, ALJ, on February 14, 2017, deals with these issues and is binding on the parties and summary decision is appropriate.

PROCEDURAL HISTORY

Petitioner filed a complaint for due process with the Office of Special Education Programs (OSEP). The complaint was filed under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C.A. §§1400 to 1482.

After two telephone conferences, the undersigned provided the petitioner an opportunity to retain legal counsel prior to replying to the respondent's proposed motion for summary decision. On November 8, 2017, respondent filed its motion for summary decision. On December 1, 2017, petitioner filed a reply.

STATEMENT OF FACTS

Respondent argues that the "singular" issue before the Court is whether a prior "DECISION OF SETTLEMENT" entered and approved by the Honorable Lisa James Beavers, ALJ, on February 14, 2017, is binding on the parties. The Board argues that the plain meaning of the Agreement was clear and the parent's actions by accepting reimbursement monies for the 2016-2017 and 2017-2018 school years evidence the binding effect.

In fact, the Board argues that "[s]imply put – there is an Agreement, the parties relied on same, the ALJ accepted same, and the parents cannot have it both ways, to wit, they cannot accept reimbursement monies based on the Agreement but then say there is no Agreement." Therefore, this matter is ripe for summary decision.

Petitioner argues that "[w]e reached a settlement where she would attend Harbor school in Eatontown a 50 to 60-minute drive each way from our daughter's residence. The board could not provide adequate safe transportation and offered us a parental contract to transport her safely. The terms of the settlement were \$35,000. \$18,800 for transportation and \$16,200 to pay for compensatory education over the four months we found her teachers and paid for. In her IEP it requires specialized transportation without one on one aide trained in crisis management. This is a significant cost to the district as most companies charge in the neighborhood of \$350 a day. We were offered half of that but agreed because at the time we needed her placed in school."

They further argue that “[w]hen the settlement was originally written I requested from the B.O.E. lawyer to add a clause that would be OFFERED a parental contract for the coming year. . . The board did not offer a contract and are claiming that by signing the settlement I agreed to the terms. This is ridiculous as the settlement says they will OFFER a contract. It does not say I will accept it. . . It is preposterous to believe that when we were paid \$18,800 for six months that for the next year we would except the same for 12 months!”

Furthermore, they argue that “[w]e are asking your Honor to see the facts as they are and see that we have never signed any contract for the present year as the settlement was for last year. There was a clause added at my request which in no way agrees to any terms for the current year.”

I FIND AS FACT that petitioner executed a “DECISION OF SETTLEMENT” entered and approved by the Honorable Lisa James Beavers, ALJ, on February 14, 2017, and it is binding on the parties.

I FURTHER FIND AS FACT that petitioner was provided opportunities to hire a lawyer to assist them in negotiating, comprehending and executing the settlement agreement or proceeding to a due process hearing. However, they chose to proceed pro se.

LEGAL DISCUSSION

Pursuant to 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.” This rule is substantially similar to the summary judgment rule embodied in the New Jersey Court Rules, R. 4:46-2. See Judson v. Peoples Bank & Trust Co. of Westfield, 17 N.J. 67, 74 (1954). In connection therewith, all inferences of doubt are drawn against the movant and in favor of the party against whom the motion is directed. Id. at 75. In Brill v. Guardian Life Insurance Co., 142 N.J. 520 (1995), the New Jersey Supreme Court addressed the appropriate test to

be employed in determining the motion:

[A] determination whether there exists a 'genuine issue' of material fact that precludes summary judgment requires the motion 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 alleged disputed issue in favor of the non-moving party. The 'judge's function is not . . . 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 (citations omitted).]

Respondent's argument for summary decision is correct based upon the facts as presented. The prior "DECISION OF SETTLEMENT" approved by the Honorable Lisa James Beavers, ALJ, on February 14, 2017 addresses the issues brought by petitioner in this petition and is binding on the parties. Petitioner's own words suggest that they did not bargain for the contents of the prior settlement agreement and simply "agreed because at the time we needed her placed in school." However, "buyers remorse" is not cause to deconstruct a prior settlement agreement.

Petitioner was afforded many safeguards in the language of the settlement agreement. In particular, Paragraph 7 of the settlement agreement indicates that: "[t]his Agreement represents the entire understanding between the parties and will not be modified, in whole or in part, except by a subsequent written and signed agreement. This Agreement has been entered into freely, willingly and voluntarily, without duress or coercion, and with each party having an opportunity to consult with counsel of their choosing and option." Also, Paragraph 9 of the same indicates that: "[p]etitioner represents that he reviewed the terms of this Agreement and that he understands the terms contained in each of the paragraphs of this Settlement Agreement and Release. Petitioner understand[sic] that he has the right to review this Agreement with an attorney of his choosing." Petitioner chose not to do any of the above and proceed with the settlement and not proceed to a due process hearing.

There is no issue of fact to be determined. As such, having reviewed the parties' submissions and argument in support of, and opposition to, the within motion for summary decision, **I CONCLUDE** that no issue of material fact exists and respondent's motion for summary decision should be granted.

ORDER

It is **ORDERED** that the respondent's motion for summary decision be and hereby is **GRANTED**. It is **FURTHER ORDERED** that the instant petition 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 (2017) 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 (2017). 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 12, 2017

DATE

DEAN J. BUONO, ALJ

Date Received at Agency _____

Date Mailed to Parties: _____

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