State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

MOTION FOR SUMMARY DECISION

OAL DKT. NO. EDS 13696-18

AGENCY DKT. NO. 2019 28737

A.M. ON BEHALF OF T.P.,

Petitioners,

v.

EASTAMPTON TOWNSHIP BOARD OF EDUCATION,

Respondent.

_____

Paul Melletz, Esq., for petitioners (Grestein, Grayson, Cohen and Melletz, attorneys)

Susan Hodges, Esq., for respondent (Parker McCay, P.A., attorneys)

Record Closed: January 22, 2019 Decided: January 25, 2019

BEFORE **CATHERINE A. TUOHY**, ALJ:

STATEMENT OF THE CASE

In accordance with the provisions of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C.A. § 1415, petitioner, A.M. has requested a due process hearing on behalf of her son, T.P., who is classified as eligible for special education and related services. Petitioner seeks an appropriate program in the least restrictive environment, compensatory education and reimbursement for all fees associated with this matter. At

issue is whether the District provided T.P. with a Free and Appropriate Public Education (F.A.P.E.). Respondent petitioner's due process petition

PROCEDURAL HISTORY

On August 31, 2018, petitioner filed a due process petition with the Office of Special Education Policy and Procedure (OSEPP). The matter was transmitted to the Office of Administrative Law (OAL) where it was filed as a contested case on September 21, 2018 pursuant to N.J.S.A. 52:14B-1 to 15; N.J.S.A. 52:14F-1 to 13. A telephone pre-hearing conference was conducted on October 12, 2018 and a pre-hearing Order entered on October 17, 2018 scheduling the matter for hearing February 5, 12, 13 and 20, 2019. Respondent school district filed a motion for summary decision on October 22, 2018 and thereafter filed a corrected version dated October 26, 2018 requesting that petitioner's due process petition be dismissed as time-barred. Petitioner filed opposition to same on November 26, 2018.

FACTUAL DISCUSSIONS AND FINDINGS

The facts pertinent to the motion are largely uncontroverted, and I **FIND**:

T.P. is a student who resides in the respondent school district and was referred to the CST on February 16, 2016. On March 4, 2016 an initial IEP meeting was held and the District agreed to conduct psychiatric, psychological and OT evaluations as well as an in-school behavior observation by a certified BCBA. T.P. was found eligible for special education services and an IEP was developed on June 1, 2016 for the remainder of the school year and for the following 2016-2017 school year but petitioner did not consent to the proposed IEP because petitioner did not agree with the classification of "Emotionally Disturbed". On June 10, 2016, petitioner sent a letter requesting another meeting to discuss her concerns about the proposed IEP and the classification recommended by the CST. On June 16, 2016, petitioner withdrew T.P. from the Eastampton Community School. T.P. attended Kings Christian School from September 2016 to June 2017.

T.P. was re-enrolled in the Eastampton Community School and an IEP meeting was held on July 12, 2017. The CST proposed a classification of "Other Health Impaired" and an IEP developed for the 2017-2018 school year, to which petitioner gave her consent.

Petitioner filed for due process on August 31, 2018 alleging that the proposed June 1, 2016 IEP did not provide T.P. with FAPE and seeking reimbursement for the tuition paid to Kings Christian School and uniform costs. More than two years have elapsed since petitioner unilaterally withdrew T.P. from respondent school district on June 16, 2016 until the filing of the due process petition on August 31, 2018.

LEGAL ANALYSIS

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. I **CONCLUDE** that this matter is ripe for summary decision, and that the respondent school district is entitled to judgment as a matter of law.

The IDEA establishes a cause of action for deprivation of any person's right to FAPE, as that term is defined by the statute. 20 U.S.C. §§ 1400, et seq. The goal of the IDEA's due process protections is to ensure that all children with disabilities have redress when they feel their school district is not providing educational support that complies with the requirements of law. See: Hendrick Hudson Cent. Sch. District Bd. of Educ. v Rowley, 458 U.S. 176, 179 (1982); Endrew F. v. Douglas Cnty. Sch. Dist., 580 U.S. ___ (2017);137 S.Ct. 988; 197 LEd 2d 335.

But a petition for due process filed under the IDEA must be brought within strict statutory timelines. The statute provides that

> [a] parent or agency shall request an impartial due process hearing within two years of the date the parent or agency knew or should have known about the alleged action that forms the basis of the complaint, or, if the State has an explicit time limitation for requesting such a hearing under this subchapter, in such time as the State law allows.
>
> [20 U.S.C. § 1415(f)(3)(C)]

Elsewhere, 20 U.S.C.§ 1415(b)(6) provides that the procedures required by the IDEA shall include:

> (6) An opportunity for any party to present a complaint—

> (A) with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child; and
>
> (B) which sets forth an alleged violation that occurred not more than 2 years before the date the parent or public agency knew or should have known about the alleged action that forms the basis of the complaint, or, if the State has an explicit time limitation for presenting such a complaint under this subchapter, in such time as the State law allows, except that the exceptions to the timeline described in subsection (f)(3)(D) shall apply to the timeline described in this subparagraph.

The Third Circuit Court of Appeals has interpreted these provisions to mean that "parents have two years from the date they knew or should have known of the violation to request a due process hearing through the filing of an administrative complaint. . ." G.L. v. Ligonier Valley School District Authority, 802 F. 3d 601, 626 (3rd. Cir. 2015). In G.L. the parties had urged that these two statutory provisions contained an incongruity that arguably expanded the window for relief available to a petitioner. The court rejected this argument, holding that the IDEA's "two-year statute of limitations . . . functions in a traditional way, that is, as a filing deadline that runs from the date of reasonable discovery and not as a cap on a child's remedy for timely-filed claims that happen to date back more than two years before the complaint is filed." Id. at 616.

The verified petition itself at paragraph eleven indicates that on March 17, 2016 petitioner warned the respondent school district that she would be seeking reimbursement of tuition costs because T.P. was not receiving appropriate support services. Petitioner did not consent to the June 2016 proposed IEP and knew or should have known at that time to request a due process hearing through the filing of an administrative complaint within two years. A review of the due process petition indicates that all of the factual allegations plead against respondent involve events that took place prior and up to the June 1, 2016 IEP meeting.

I **CONCLUDE** that this petition has been filed outside the statutory timelines and should be dismissed. It is well established that statutes of limitations are intended to stimulate litigants to pursue a right of action within a reasonable time so that the opposing

party may have a fair opportunity to defend, thus preventing the litigation of stale claims. Ochs v. Federal Ins. Co., 90 N.J. 108, 112, (1982). The statutory goal is "'to penalize dilatoriness and serve as a measure of repose'" by giving security and stability to human affairs. Ibid. (quoting Farrell v. Votator Div., 62 N.J. 111, 115 (1973)).

ORDER

Based on the foregoing, the respondent's motion for summary decision is **GRANTED**. The petition is **DISMISSED**.

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.

January 25, 2019
DATE

CATHERINE A. TUOHY, ALJ

Date Received at Agency: January 25, 2019 (emailed)

Date Mailed to Parties:

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APPENDIX

WITNESSES

For Petitioners:

None

For Respondent:

None

EXHIBITS

Joint Exhibits:

J-1 Petition for Due Process (eight pages)

For Petitioners:

P-1 Brief in Opposition to Motion for Summary Decision and Certification of A.M. with exhibits (nine-two pages)

For Respondent:

R-1 Brief in Support of Respondent's Motion for Summary Decision and Certification of Kelly D. Eagles (ten pages)