

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. EDS 16337-16

AGENCY DKT. NO. 2017-25048

A.B. ON BEHALF OF E.R.,

Petitioner,

v.

**PATERSON BOARD OF EDUCATION
AND PASSAIC COUNTY TECHNICAL
INSTITUTE,**

Respondents.

Regana Bracey, Parent Advocate, for petitioner pursuant to N.J.A.C. 1:1-5.4(a)(7)

Joel M. Miklacki, Esq., for respondent Passaic County Technical Institute

Frances E. Barto, Esq., for respondent Paterson Board of Education (Barto & Barto, attorneys)

Record Closed: June 11, 2018

Decided: July 9, 2018

BEFORE **MICHAEL ANTONIEWICZ**, ALJ:

STATEMENT OF THE CASE

Respondents, Passaic County Technical Institute (PCTI) and Paterson Board of Education (Paterson), each brought a motion for summary decision because PCTI maintains that Paterson and not PCTI is responsible for E.R.'s placement and Paterson maintains that based on the fact that E.R. is now eighteen years old, his rights under the

Individuals with Disabilities Education Act (IDEA) and other New Jersey education laws belong exclusively to E.R. and thus A.B. has no standing to maintain this action.

PROCEDURAL HISTORY

Petitioner filed a complaint for due process with the Office of Special Education Programs (OSEP). The complaint was filed under the IDEA, 20 U.S.C. §§ 1400 to 1482 and was filed for mediation/due process hearing with OSEP on May 20, 2016. Petitioner is seeking a private school placement for E.R. as a result of both learning and behavioral disabilities as well as a return of educational credits which were unearned by E.R. in the matter E.R. v. Passaic County Vocational Board of Education, (OAL Dkt. No. EDS 07093-16, Agency Dkt. No. 2016-24523). This matter was resolved by way of settlement with the settlement agreement, dated February 14, 2016, where the claims set forth in the complaint were dismissed and PCTI agreed to return all educational credits lost by E.R. for the 2015-16 school year. The settlement agreement allowed the petitioner to file a new action against the Paterson School District with respect to E.R.'s future school placement "as the District of Paterson is E.R.'s district of residence and the District of Paterson should make the appropriate placement to a school with a therapeutic component for E.R."

The present action was thereafter filed by A.B. on behalf of E.R. against Paterson and PCTI seeking future school placement for E.R. on August 4, 2016. On September 21, 2016, PCTI filed an answer to the petitioner's due process petition, denying the allegations contained in the due process complaint. The matter was scheduled for a settlement conference in November 2016 and was not resolved; however, new IEPs were prepared by each of the respondents and E.R. was to undergo a psychiatric evaluation. E.R. continues to be registered to attend the school at PCTI. Paterson maintains its position that because E.R. is not enrolled in the Paterson Public School District, the Paterson School District does not have standing to provide E.R. with an educational placement. Paterson also maintains that because E.R. turned eighteen, his rights under the IDEA belong to E.R. and A.B. does not have standing to sue.

Both respondents each filed a separate motion for summary decision in February and March 2018. After being given an extensive period of time to file responsive papers, the petitioner has failed to file a reply to these motions as of the time this decision was rendered.

STATEMENT OF FACTS

1. E.R. is an eighteen-year-old male with a birthdate of April 4, 1999.
2. A.B. is the mother of E.R. and has filed this due process petition.
3. A.B. and E.R. reside in the City of Paterson, New Jersey.
4. E.R. is not enrolled to attend school in the Paterson Public School District.
5. E.R. is enrolled at PCTI, a school that he applied for and was accepted into as A.B. felt that learning a trade was essential to E.R.'s education.
6. E.R. is a special needs student classified as "Multiply Disabled" and diagnosed with Attention Deficit Hyperactivity Disorder (ADHD) and Oppositional Defiant Disorder.
7. During the 2016-2017 school year, E.R. was a twelfth-grade student at PCTI with an Individualized Education Plan (IEP) providing for special education and related services.
8. E.R. was not placed at PCTI by the Paterson Public School District. E.R.'s tuition at PCTI was paid by the Paterson Public School District.
9. A.B. and E.R. were put on notice by Paterson of Paterson's position that it could not place him in a school without him registering as a student in the Paterson Public School District.
10. On November 22, 2016, E.R. was evaluated by Arthur S. Platt, D.O., by way of psychiatric evaluation, at which time Dr. Platt confirmed the finding of the child

study team's recommendation that E.R. required a small classroom setting as well as various other accommodations which cannot be met at PCTI.

11. An IEP meeting was held at PCTI on December 21, 2016.
12. At the above IEP meeting the following was noted: E.R.'s truancy was negatively affecting his educational performance and was failing most classes; teachers offered to work with E.R. to make up work missed, which was refused by E.R.; E.R. had missed nineteen days of school; E.R. had little or no motivation toward academics; many of his unexcused absences were allegedly due to E.R.'s inability to manage school due to emotional difficulties; the child study team recommended that E.R. be returned to the sending district for a more appropriate placement; E.R. would benefit from a highly structured setting for students with disabilities; E.R.'s academic needs will be best served in a placement that offers small classes with more personalized attention and awareness of E.R.'s emotional dynamics; PCTI is not meeting E.R.'s needs and is not the appropriate placement for E.R.; and E.R. requires a therapeutic program.
13. By January 11, 2017, E.R. was in "loss of credit" status due to excessive absenteeism.

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 and 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, 142 N.J. at 540 (citations omitted).]

There is no issue of fact to be determined. As such, having reviewed the parties’ submissions and argument in support of, and no opposition to the motions being filed by the petitioner to the within motions for summary decision, I **CONCLUDE** that no issue of material fact exists and respondents’ motions for summary decision should be decided.

Motion for Summary Decision by PCTI

The basis for PCTI’s motion for summary decision is that the Paterson Board of Education is the fact that the Paterson is responsible for the educational placement of E.R.

New Jersey enacted legislation, N.J.S.A. 18A:46-1 et seq. and has also adopted regulations to ensure that disabled children have a right to a free, appropriate public education (FAPE) as set forth in the IDEA. In accordance with the IDEA, a disabled child must be provided with educational opportunities that meet the unique needs of that child through an IEP.

Each School District Board of Education in New Jersey is therefore required to provide FAPE program and related services for disabled students in the least restrictive environment. N.J.A.C. 6A:14-1.1(d); N.J.A.C. 6A:14-4.2.

A "District Board of Education" is defined as

"the school district of residence, the board of trustees of a charter school, the State agency or other public education agency which acts as the district of residence for the location, identification, evaluation, determination of eligibility, development of an individualized education program and the provision of a free appropriate, public education to students with disabilities except as defined otherwise."

[N.J.A.C. 6A:14-1.3.]

In this case, E.R. is without dispute a resident of the City of Paterson. As such, Paterson is the school district of residence and accordingly, the Paterson BOE, and not PCTI, is responsible for the placement, expense, and assurances that the provision of FAPE to E.R. are met. In the event a FAPE cannot be provided in-district to E.R., then it is Paterson's responsibility to place E.R. in an out-of-district placement in accordance with N.J.A.C. 6A:14-4.3.

PCTI further alleges, that Paterson BOE, in accordance with N.J.A.C. 6A:19-2.3, pays for E.R.'s tuition to PCTI, as additional evidence of Paterson's responsibility to provide a FAPE. In fact, A.B. agreed in the prior settlement that the Paterson BOE is the school district responsible for E.R.'s future school placement. PCTI further alleges, without any specific supporting facts, that the Paterson BOE has acknowledged that it was the School District responsible for placing E.R. in an appropriate educational setting. This is contradicted by Paterson's motion for summary decision and is made without any evidence to support same.

PCTI further argues that it cannot meet E.R.'s special education needs. The obligation to provide special education to E.R. may be met through instruction in a regular class with supplementary aids and services such as a teacher aide or related service like speech correction, resource programs, a special class program in the student's school district, a special education program in another setting, including another school district, a vocational school, or an educational services commission, programs in hospitals or other medical facilities, other programs operated by the State of New Jersey, community rehabilitation programs, privately operated schools in the State of New Jersey and out of state, which are approved by the Department of

education, an accredited non-public school not specifically approved for the education of students with disabilities, or individual instruction at home or in other appropriate facilities. N.J.A.C. 6A:14-4.3(a) and (b). PCTI alleges that although a vocational may be an appropriate setting for a disabled student in certain circumstances, PCTI is not the appropriate school for E.R. based on this student's individual needs.

PCTI is a vocational/technical school and due to that, it is limited in the types of educational programming it can provide to students. Petitioner enrolled E.R. in PCTI on her own. E.R. was not placed at PCTI by the district board of education. Apparently, A.B. wanted her son, E.R., to "learn a trade." PCTI maintains that E.R., while at PCTI, had an excessive amount of unexcused absences, to the point where E.R. lost credit for various classes. E.R.'s teachers offered to work with E.R. in order to assist E.R. with missed work. However, E.R. refused these efforts by the teachers.

The staff at PCTI, though required to provide special education services, can only do so within the framework of PCTI, which is to provide an educational program for students pursuing vocational and/or technical studies. PCTI alleges that E.R.'s educational profile – with excessive absences unrelated to medical reasons, lack of motivation, and requiring small class sizes – cannot be met at PCTI. PCTI further alleges that the petitioner now admits this fact.

Pursuant to N.J.A.C. 6A:19-5.1(a)(1)(i), vocational/technical schools are responsible to achieve statewide performance targets for a series of core indicators in order to receive funding in the following areas: (1) academic attainment in reading/language arts; (2) technical skill attainment; (3) student graduation rates; (4) academic attainment in mathematics; (5) placement-employment, post-secondary education, or advanced training, or military service; (6) non-traditional student participation; and (7) non-traditional student completion. Vocational/technical schools such as PCTI are neither required nor capable of placing students in educational programs that are not vocational/technical – otherwise, they would be unable to meet their performance targets and further would be unable to accommodate the demand of students who can succeed in such programs.

E.R.'s last IEP stated that "E.R.'s level of educational performance indicates that E.R.'s academic needs will be best served in a placement that offers small classes with more personalized attention and awareness of E.R.'s emotional dynamics. PCTI is [unable to meet] E.R.'s needs, other than PCTI's statement that it is unable to meet E.R.'s needs and thus is not the appropriate placement for ER." The report goes on to indicate that E.R. requires a therapeutic program which is not offered at PCTI, that many of E.R.'s unexcused absences are due to E.R.'s inability to manage school due to emotional difficulties, E.R. continues to struggle despite the supports and accommodations that PCTI attempted to provide, that the child study team will recommend that E.R. be returned to the sending district for a more appropriate placement, and that E.R. would benefit from a highly structured setting for students with disabilities.

In signing the above-referenced IEP with the benefit and assistance of her child's advocate, A.B. accepted the terms contained in that IEP, did not dispute same and, in fact, was in accord with the agreement. Based on these facts, it is undisputed that PCTI cannot offer E.R. the educational setting and services the student requires.

Motion for Summary Decision by Paterson Board of Education

Paterson also filed a motion for summary decision based on two arguments: 1) that E.R. was enrolled at PCTI, a school that he had applied for and been accepted to and continues to be registered and attend; and 2) E.R. has turned eighteen years old and thus his rights under the IDEA and New Jersey education laws belong exclusively to E.R. Accordingly, Paterson argues that A.B. does not have standing to sue.

Under argument number one, I **FIND** that Paterson is not entitled to a summary decision based on the facts and law as applied on the motion made by PCTI and set forth hereinabove. E.R. continues to reside in Paterson and Paterson continues to pay for E.R.'s schooling at PCTI, and as such Paterson remains responsible for E.R.'s education.

With regard to the second argument made by Paterson, I make the following decision. The issue of standing is important because it deals with the ability of a party

to initiate and maintain an action before the court. In re Adoption of Baby T, 160 N.J. 332, 340 (1999). Furthermore, the issue of standing cannot be waived or conferred by consent. Id. at 341. To be entitled to sue, a party must have “a sufficient stake and real adverseness with respect to the subject matter of the litigation.” Baby T, 160 N.J. at 340.

In this case, E.R. has turned the age of majority (18) and accordingly his education rights under the IDEA and the New Jersey education laws belong exclusively to him. A.B., even though she is his mother does not maintain any rights regarding her adult son’s education, unless she has in her position a transfer of those rights to her. A.B. has submitted no such evidence in response to his motion or this proceeding. E.R.’s interests in this case may very well differ from those of his mother. Based on the above, I **FIND** that Paterson is entitled to a summary decision on this issue as there is no evidence that A.B. has the authority to pursue this matter.

ORDER

It is **ORDERED** that both the respondents’ motions for summary decision be and hereby are **GRANTED**.

This decision is final pursuant to 20 U.S.C. § 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. § 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.

July 9, 2018
DATE

MICHAEL ANTONIEWICZ, ALJ

Date Received at Agency

July 10, 2018

Date Mailed to Parties:
jb
