State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

MOTION FOR SUMMARY DECISION

OAL DKT. NO. EDS 00890-17

AGENCY DKT. NO. 2017 25520

L.W.,

Petitioner,

v.

JERSEY CITY BOARD OF EDUCATION AND

PARSIPPANY-TROY HILLS BOARD OF EDUCATION,

Respondents.

_____

Anastasia Winslow, Esq., for petitioner (Winslow Law, attorneys)

Cherie Adams, Esq. for respondent, Jersey City (Adams, Gutierrez and Lattiboudere, attorneys)

Jared Schure, Esq., for respondent, Parsippany-Troy Hills (Methfessel and Werbel, attorneys)

Record Closed: May 30, 2017 Decided: May 30, 2017

BEFORE **ELLEN S. BASS**, ALJ:

STATEMENT OF THE CASE

L.W. has requested a due process hearing pursuant to the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1415.[1] She is 23 years-old, and claims an entitlement to compensatory education from both the Jersey City Board of Education (Jersey City) and the Parsippany-Troy Hills Board of Education (Parsippany). Having resided in each school district, she alleges that each failed to provide her a Free and Appropriate Education (FAPE). Jersey City replies that her petition is out of time, and that in any event, petitioner's parents declined to consent to special services which is tantamount to a waiver. Parsippany urges that L.W.'s "child find" claims are without merit. Both school districts ask that the petition be dismissed.

PROCEDURAL HISTORY

The petition was filed at the Office of Special Education Programs (OSEP) on December 19, 2016, and was transmitted to the Office of Administrative Law (OAL) as a contested case on January 20, 2017. After unsuccessfully attempting to amicably resolve the claims raised by the petition at an appearance on January 18, 2017, the school districts filed motions for summary decision on February 21, 2017. A cross-motion for summary decision was filed on March 10, 2017, and replies were filed on March 28, 2017. Oral argument took place on March 31, 2017. Supplementary briefs were filed by counsel for petitioner and counsel for Jersey City on May 1, 2017.

Petitioner had sought release of documents via her cross-motion; those in the possession of the school districts were produced. Although not a party to this action, on April 12, 2017, counsel for the Division of Child Protection and Permanency (DCP&P) filed a letter memorandum indicating no objection to my *in camera* review of documents in that agency's possession, and a release of those documents that I deemed pertinent

[1] Petitioner also asserts violations of the Americans with Disabilities Act, 42 U.S.C. §12101, et. seq. This forum has no jurisdiction over ADA claims. She likewise cites to Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, et. seq. as a basis for her claims. The IDEA makes it clear that petitioner must first exhaust the IDEA's administrative proceedings if she seeks relief available under the IDEA. See: 20 U.S.C. § 1415(l) and Fry v Napolean Community Schools, 580 U.S.___ (2017); 137 S. Ct. 743; 197 L. Ed. 2d 46. This due process petition appears to meet that exhaustion requirement. But as to the viability of petitioner's claims under these other related federal laws, that is a matter for another day and a different forum.

to the issues raised here. I released the subject documents to counsel under a protective order dated April 17, 2017.

In light of my ruling on the pending summary decision motions, as more fully set forth below, a follow-up hearing date of June 5, 2017, stands adjourned.

FINDINGS OF FACT

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

Jersey City

L.W. is cognitively impaired, and has not earned a high school diploma. She had a difficult and disturbing childhood; was shunted between the care of two apparently ill and dysfunctional parents; and was periodically placed under the supervision of the then Division of Youth and Family Services (DYFS) (now DCP&P). L.W. would have indisputably benefitted from special education interventions, but the record reveals that, notwithstanding the many adults in her life, to include her parents and DYFS workers, there was never the consent given that would have permitted the Jersey City schools to intervene on her behalf educationally. L.W. urges that blame for her educational deprivation falls squarely at the feet of the Jersey City public schools; that simply put, school personnel did not try hard enough to help her. The record lends little support to L.W.'s contentions. Rather, the history of disregard for L.W. evidenced by this record demonstrates that Jersey City tried to classify L.W. on more than one occasion, but never secured the cooperation required under the IDEA.

L.W. initially was referred to the Child Study Team (CST) during the 2001-2002 school year, when she was six years of age. An order of the Superior Court entered in 1999 gave her father full educational decision making responsibility; and he consented to the evaluation process. Based on the test results it was determined that L.W. was not eligible for classification. No one challenged the CST's determination via the filing of a petition for due process. L.W. continued to be followed by the Intervention and Referral Services Team (I&RS), and was again referred to the CST in January 2007.

L.W.'s father, E.P., did not appear at an evaluation plan meeting on February 13, 2007. Notice was again sent for a meeting to be held on February 26, 2007; E.P. again did not respond, and the CST was unable to evaluate L.W. or determine eligibility for special education and related services. By order of the Superior Court dated December 10, 2007, L.W. and her siblings were placed under the custody, care and supervision of DYFS. Physical custody was transferred to L.W.'s mother, H.W.

On May 8, 2008, the Superior Court entered an order continuing to place L.W. under the legal custody of DYFS, and continuing her physical custody in the care of her mother. That order directed that L.W. be placed by Jersey City in its "Bright Future Program." By letter dated May 27, 2008, Jersey City advised the DYFS caseworker that it "was unaware of such a program in [its] district." But it advised that "school staff…will attempt to place [L.W.] in an appropriate program." A letter from DYFS dated May 30, 2008, asks that she be placed in the Better Choices program. Correspondence from Jersey City dated June 4, 2008, advised DYFS that L.W. had not been attending school. Other documents reveal that in or about March 2008 L.W. had been placed on home instruction.

By letter dated July 14, 2008, the DYFS worker asked Jersey City for a plan for L.W.'s education, noting that "[w]e were not able to resolve the issues related to [L.W.]'s absence and her resistance to returning to [school]." Jersey City promptly replied by letter dated July 23, 2008, and advised that L.W. had been accepted into the Better Choices program, but had refused to attend. The letter noted, "[w]e had strongly suggested that the girl should be evaluated as to her eligibility for special education services. This had been suggested by our schools in the past (I believe twice in the past). We continue to make that recommendation…"

A September 4, 2008, memorandum from counsel for Jersey City advises school administration that home instruction should commence at once five days per week, per court order. On October 14, 2008, the Superior Court ordered that an evaluation be completed, and a law guardian was appointed for L.W. A meeting took place on October 27, 2008, at which time L.W.'s mother agreed to let the needed evaluations proceed. Psychological, educational and social work assessments were completed in

October and December 2008. The social work notes reveal that H.W. shared that she had been treated for mental illness.

An eligibility meeting was scheduled for January 3, 2009, but L.W.'s mother did not attend. The meeting was rescheduled for January 27, 2009, and attempts were made to reach H.W. via telephone. H.W. answered the phone, but she hung up when she learned that the call was about CST services. In her absence, the CST found L.W. eligible for special services and sent a proposed Individualized Educational Program (IEP) home for review. But no consent for the IEP was forthcoming, and the district thus was unable to implement it. School personnel followed up with the DYFS worker; forwarded the proposed IEP; explained that the district could not legally proceed; and suggested he follow up in Superior Court. School personnel shared that absent further direction from the parent, the DYFS worker, or the Superior Court, L.W. would remain on homebound instruction for the remainder of the school year 2008-2009. No due process challenge was filed by anyone on L.W.'s behalf, challenging the failure to implement her IEP, the content of that IEP, or challenging her continued homebound status.

L.W. was enrolled in a ninth-grade class for the 2009-2010 year, but stopped attending school. In her certification, she asserts that she requested homebound instruction to continue, but that this request was denied. No school documents verify that such a request was made or rejected, however.[2] A document entitled "Off Roll Due to Excessive Absence," indicates that L.W. was dropped from the school district rolls on May 13, 2010, for nonattendance. A copy of that form was sent home that day. As she was sixteen years old, and refusing to attend school, the compulsory attendance laws no longer permitted the school district to press for her attendance. No due process petition was filed by anyone challenging the district's action in removing L.W. from its rolls. No one at any time reenrolled L.W. in the Jersey City schools.

[2] The evaluations completed in 2008 reflect that L.W. has a full-scale IQ of 78, in the borderline range. Her broad reading ability is at a fourth-grade level. But the certification she submitted uses surprisingly sophisticated language. A paragraph that shares that her mother "had schizophrenia and had to take anti-psychotic medication," is an example. I am lead to question if L.W. authored her certification, and thus likewise am compelled to question the credibility of some of the assertions contained therein.

Parsippany-Troy Hills

In February 2012, L.W. gave birth to a son, J.R. She was then living with J.R.'s father in Rockaway, New Jersey; but he was abusive. A call to the police led to involvement by DCP&P. In January 2013, J.R. was removed from L.W.'s care and placed with a resource parent. L.W. left the home of her child's father, and lived in hotels and homeless shelters. A certification from the Executive Director of Programs for Family Promise, a Morris Plains homeless shelter, recounts that L.W. resided there from about April 2013 through May 20, 2014. The shelter is one of four in Morris County, and is located within the jurisdiction of the Parsippany school district. Director Ally Wise recounted that when L.W. resided at her shelter, Wise became aware of her learning deficits and sought to support L.W. in achieving her educational goals. Somewhat inexplicably, Wise related that she was unaware that L.W. might be entitled to services via the public schools, so she reached out to community and private educational providers. Wise unsuccessfully sought to enroll L.W. in a GED program; her intake scores were too low and she was not accepted by the program. An attempt to secure services via the Huntington Learning Center likewise never materialized due to a lack of funding from the Department of Children and Families.

L.W. has resided on her own in an apartment in Parsippany since May 2014, having moved there when she was twenty years old. J.R. continues to reside with his resource parent in Roxbury Township. In or about November 2014, Parsippany was informed that L.W. lived in its community, but only because her son was referred for special education services. Insofar as L.W. lives in Parsippany, that district remained statutorily responsible for J.R.'s educational costs. See: N.J.S.A. 18A:7B-12. But while the resource parent registered J.R. for school in Parsippany in or about March 2015, he has never attended the Parsippany schools. In January and February 2015, J.R. was evaluated for special education services by the Morris County Educational Services Commission. A neurological evaluation completed in December 2014 does note that L.W. stopped attending school in seventh grade and "may have some cognitive difficulty." This report was shared with the Child Study Team and is referred to in J.R.'s IEP. L.W.'s interaction with Parsippany thereafter has been quite limited. She did attend several IEP meetings, but school personnel urge that at no time did she share

with district personnel that she had her own educational difficulties. Nor does she contend otherwise. Neither she nor anyone on her behalf enrolled L.W. in the Parsippany schools. L.W. was known to the district only as the biological parent of a classified student who resided in a resource home in a neighboring district.

Finally, Parsippany points out that it has in place, and faithfully implements, a robust set of measures designed to satisfy its obligations under the IDEA's "child find" provisions, and takes various steps to ensure that it identifies, locates and evaluates all children with disabilities who reside within its jurisdiction. But Wise indicated that she was unaware of these "child find" activities, and Parsippany does not contend that it had in place any policies or procedures relating specifically to Family Promise. A uncertified letter from the executive director of Family Promise, Joann Bjornson, dated March 4, 2017, states that her agency is unaware how Parsippany locates, identifies and evaluates children for special education services. But I can afford the Wise certification and Bjornson letter little weight. It strains credibility that licensed social workers who operate a homeless shelter would be as uninformed about the educational opportunities/requirements for homeless children as Wise and Bjornson appear to be.

LEGAL ANALYSIS AND CONCLUSIONS OF LAW

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 two respondent school districts are entitled to judgment as a matter of law.

The Claims against Jersey City

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 2 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 petition reveals several points in time where L.W.'s parents knew or should have known (KOSHK) that her rights ostensibly were being violated. In 2001, she was determined to be ineligible for special services; her parents might have disagreed. In 2009 she was classified; her parents might have rejected the program offered and sought an alternative. In or about 2010 she was disenrolled from school; having not attained the age of twenty-one nor having obtained a high school diploma, her parents might have asserted that discontinuing her education was a denial of FAPE. And along

the way, DYFS intervened on her behalf, and knew enough to assert her rights via child protection proceedings in Superior Court. It too could have sought to take the steps needed to bring an action to assert L.W.'s rights under the IDEA.

Some sixteen years have elapsed since L.W. was deemed ineligible for services in 2001. Some eight years have elapsed since the district sought unsuccessfully to classify L.W.; some seven years have passed since her disenrollment from the Jersey City schools. I **CONCLUDE** that this petition has been filed outside the statutory timelines and should be dismissed as against Jersey City. 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)).

L.W. appears to suggest that the Jersey City CST should have communicated directly with her. She notes that N.J.A.C. 6A:14-2.7 contains a statute of limitations that echoes Federal law, but provides that "a party" rather than "a parent" must file for due process no later than two years from the KOSHK date. Thus, L.W. asserts that she did not know she had a viable claim until she reached the age of majority; accordingly, the statute should be tolled. Implied in petitioner's argument is that the aborted January 2009 meeting should have continued with L.W. representing her own interests, at age fifteen, so she could have been made aware that she was entitled to special education services.

This argument is a nonstarter. The regulations do countenance claims by adult students. But in 2009, L.W. would not become an adult student for another three years, and the IDEA clearly required that an adult parent or guardian plan her educational future until then. See: N.J.A.C. 6A:14-3.7; N.J.A.C. 6A:14-1.3. Indeed, L.W.'s argument would turn special education law on its head. The IDEA is intended to assure educational programming for students in real time, and was not enacted as a vehicle for former students to redress the inaction of their parents when they reach adulthood.

Until she reached the age of majority it is irrelevant what L.W. knew or should have known, because the IDEA required that her parents advocate on her behalf. The burden was thus on them to timely file for due process. The regulations do state that a district must inform an eligible student that her rights will transfer to her upon reaching the age of majority. N.J.A.C. 6A:14-3.7(e)(14)(emphasis supplied). But only an parent can supply the consent that would have permitted such eligibility initially to take place.

Indeed, 20 U.S.C. § 1414(a)(D)(2) provides that "[a]n agency that is responsible for making a free appropriate public education available to a child with a disability …shall seek to obtain informed consent from the parent of such child before providing …services to the child." New Jersey's implementing regulations are in accord, and provide that "[c]onsent shall be obtained…prior to implementation of the initial IEP..." N.J.A.C. 6A:14-2.3(a)(2). Moreover, there is no vehicle in the law to press for that crucial initial consent, as the regulation goes on to state that "[w]hen a parent refuses to provide consent for implementation of the initial IEP, no IEP shall be finalized and the district board of education may not seek to compel consent through a due process hearing…" N.J.A.C. 6A:14-2.3(c). The district correctly asserts that its "hand were tied." As to whether the inaction by L.W.'s parents was tantamount to a waiver, it is unnecessary to reach this argument, since the untimeliness of the petition is sufficient grounds for its dismissal. And suffice it to say, that the record recounts several efforts by Jersey City to seek classification within the boundaries of its authority, to include interactions with DYFS and the Superior Court.

L.W. argues that Jersey City was obliged to appoint a surrogate parent on her behalf, relying upon the provisions of N.J.A.C. 6A:14-2.2(a) as follows:

> Each district board of education or responsible State agency shall ensure that the rights of a student are protected through the provision of an individual to act as surrogate for the parent and assume all parental rights under this chapter when:
>
> 1. The parent as defined according to N.J.A.C. 6A:14-1.3 cannot be identified;
>
> 2. The parent cannot be located after reasonable efforts;

3. An agency of the State of New Jersey has guardianship of the student, or the student is determined a ward of the State and, if the student is placed with a foster parent, the foster parent declines to serve as the student's parent; or

4. The student is an unaccompanied homeless youth as that term is defined in section 725(6) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. § 11434(a)6).

Plainly, none of the regulation's enumerated scenarios are applicable here. L.W.'s parents could be identified and they could be located. Although there was DYFS involvement, L.W. had not been placed with a foster parent. At the time that L.W. resided in Jersey City, she was not an unaccompanied homeless youth.

Petitioner's arguments are tantamount to a suggestion that the school district was obliged to delve deeply into L.W.'s troubled home life, and essentially determine that her parent's lack of cooperation rendered them unfit to serve as her parents. Not only would doing so have far exceeded the scope of the school district's authority, it is not contemplated by the applicable regulations. N.J.A.C. 6A:14-1.3 expressly states that "[u]nless parental rights have been terminated by a court of appropriate jurisdiction, the parent retains all rights under this chapter." While DYFS at times retained legal custody of L.W., she shared no Superior Court order that terminated her parents' rights. Accordingly, Jersey City was legally obliged to respect L.W.'s parents' disinterest in pursuing special education.

Petitioner unsuccessfully urges that the exceptions to the statutory statute of limitations apply here. In a somewhat circular argument she urges that because the district failed to properly provide special education it intentionally misrepresented information and mislead her. 20 U.S.C. § 1415 (f)(3)(D); N.J.A.C. 6A:14-2.7. But nearly all due process petitions assert a denial of FAPE, and petitioner's argument would render the statute of limitations a nullity. Nor does this record reveal that Jersey City withheld information in a manner that would serve as an exception to the statute of limitations. Its personnel may not have communicated with L.W., but they did communicate repeatedly with the adults responsible for L.W.

Finally, I am unable to agree that petitioner's case should be permitted to proceed under a theory of equitable tolling. Petitioner's reliance on Lake v. Arnold, 232 F 2d 360 (3d Cir. 1999) is misplaced. There, a mentally disabled teen was sterilized, and sought to bring suit for damages against the guardian system that had permitted this procedure to take place. The statute of limitations there was tolled because the plaintiff had been prevented from asserting her rights in an "extraordinary way." This case is different in several respects. An IDEA case is not a claim for damages, but for educational services. And the IDEA envisions that adults will assert a child's rights to educational programming; the fact that the many adults in L.W.'s life did not timely do so, may create a cause of action against some or all of them, but not against the Jersey City Schools.

I **CONCLUDE** that the claims against Jersey City should be dismissed as untimely.

The Claim Against Parsippany-Troy Hills

L.W.'s claims against Parsippany-Troy Hills spring from the requirement in Federal Law that local public school districts locate and identify children in need of special education services. Known as "child find," the requirements of 20 U.S.C. §1412(a)(3)(A) provide for the implementation of policies and procedures designed to ensure that "[a]ll children with disabilities residing in the State, …regardless of the severity of their disabilities, and who are in need of special education and related services, are identified, located and evaluated…" See also: 34 C.F.R. §300.111; N.J.A.C. 6A:14-3.3.

Parsippany had a continuing obligation under the IDEA to identify and evaluate students reasonably suspected of having a disability. P.P. ex rel. Michael P. v. West Chester Area Sch. Dist., 585 F.3d 727, 738 (3d Cir. 2009). But case law interpreting this obligation has recognized that it is not, and cannot be, the intent of the law that school districts locate and service each and every struggling student. The courts have recognized that "the IDEA is not an absolute liability statute and the 'child find' provision does not ensure that every child with a disability will be found." J.S. v Scarsdale Union

Free Sch. Dist., 826 F. Supp. 2d 635, 660(S.D.N.Y. 2011), quoting A.P. v. Woodstock Bd. of Educ., 572 F. Supp. 2d 221 (D.C. Ct. 2008). And the courts have moreover recognized that where a disability is not clear, the student or her parents have some obligation to bring their concerns to the school district's attention. See e.g. B.J. v River Vale Bd. of Educ., EDS 1335-06, Final Decision (June 19, 2007) http://njlaw.rutgers.edu/collections/oal/>.

I **CONCLUDE** that petitioner's arguments that Parsippany failed to meet its obligations to identify her as a special education student strain the intent of the "child find" obligations contained in the IDEA and are unpersuasive. L.W. urges that the Parsippany school district should have identified her special needs when she was a twenty-year-old; because her troubled past and incomplete educational history was alluded to in a neurological report shared as part of the evaluation of her son, who did not reside in Parsippany. L.W.'s moving papers urge that she is an individual anxious to receive an education, asserting that she has filed this due process petition with only that goal in mind. Yet at no time did L.W. present herself to Parsippany personnel, enroll in their school system, and ask for educational services; not even when she met with them to discuss services for her son. I **CONCLUDE** that continuing her education was a partnership in which L.W was required to participate. I am unable to hold Parsippany responsible for a failure to recognize L.W.'s needs when she could have readily enrolled in the district, and did not do so.

Petitioner's contention that Parsippany was responsible to extend its outreach to Family Promise, the homeless shelter in which she resided, ignores the statutory scheme for the education of homeless students. Indeed, during that time, Parsippany was not responsible for L.W.'s education. N.J.S.A. 18A:7B-12.1 provides that the "district of residence" is responsible for the education of a homeless child, which is defined as the "the district in which the parent or guardian last resided prior to becoming homeless." N.J.S.A. 18A:7B-12(c). Since L.W. resided with the father of her child in Rockaway before becoming homeless, that district likely was responsible for her education until she permanently relocated to Parsippany. The fact that the homeless shelter was within the boundaries of Parsippany does not make Parsippany responsible

for her education under the statutory scheme.[3] I thus cannot agree that Parsippany failed to have an adequate "child find" procedure in place because it did not aggressively advertise at Family Promise. The truth of the matter is that likely many of the children within the shelter were the educational responsibility of other school districts; the districts from whence they came.

I **CONCLUDE** that petitioner's claim for violation of the "child find" requirements against Parsippany are without merit and should be dismissed.

ORDER

Based on the foregoing, the motions for summary decision filed by Jersey City and Parsippany-Troy Hills are **GRANTED**. The motion for summary decision filed by the petitioner is **DENIED**. The petition is **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 (2010) 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 (2010). 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.

May 30, 2017

DATE **ELLEN S. BASS**, ALJ

Date Received at Agency _____

[3] See also: N.J.A.C. 6A:17-1.2, which defines "school district of residence" as the district "in which the parent or guardian of a homeless child resided prior to becoming homeless." Since L.W. turned eighteen while residing in Rockaway, her district of residence would be the last place she herself resided prior to becoming homeless. Since children cannot formulate the requisite intent to establish domicile, their domicile follows that of their parents. P.B.K. v Tenafly Bd. of Educ., 343 N.J. Super. 419, 427 (App. Div. 2001). Once an adult, that child can determine her own domicile. See also N.J.A.C. 6A:22-3.1 (a)(2).

Date Mailed to Parties: _____