

#334-16 (OAL Decision: Not yet available online)

BOARD OF EDUCATION OF THE CITY OF	:	
TRENTON, MERCER COUNTY,	:	
	:	
PETITIONER,	:	COMMISSIONER OF EDUCATION
V.	:	
	:	DECISION
BOARD OF EDUCATION OF THE MERCER	:	
COUNTY SPECIAL SERVICES SCHOOL	:	
DISTRICT, MERCER COUNTY,	:	
	:	
RESPONDENT.	:	
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SYNOPSIS

The Trenton Board of Education (Trenton) appealed the Mercer County Special Services School District’s (MCSSSD) refusal to allow Trenton to supply the individual aides assigned to special education students that the district places at MCSSSD. Trenton sought to compel MCSSSD to accept individual aides provided by the agency it had contracted with to provide aides and paraprofessionals for Trenton’s special education students during the 2015-2016 school year, Insight Workforce Solutions. Trenton sought to make this change, as well as others, to reduce the district’s operating expenses. The parties filed cross motions for summary decision.

The ALJ found, *inter alia*, that: there are no material facts at issue, and the matter is ripe for summary decision; it is undisputed that Trenton is the agency responsible for creating Individualized Education Plans (IEP) for children with disabilities that reside within its jurisdiction; however, MCSSD – as the receiving school – is the district responsible for implementing the IEPs; MCSSSD is a Special Services School District created by a County Board of Freeholders to provide educational and related programs for special needs children; MCSSSD has its own board of education, which is governed by Title 18A of the New Jersey statutory code; as such, MCSSSD is in charge of its own employment matters, including hiring, conduct, and compensation; as the receiving school, MCSSSD determines a yearly tuition rate for students, which is paid by Trenton; individual aides are an extraordinary service, and not included in the yearly tuition rate; Trenton’s claim that it is free to provide individual aides for its students through a separate vendor because these services are charged under an agreement that is wholly distinct from its Special Education Tuition Contract Agreement with MCSSSD is without merit; although Trenton has the responsibility to ensure that MCSSSD complies with each student’s IEP, it is MCSSSD’s responsibility to provide the students with the required aides in its school, and MCSSSD has the right to determine how that responsibility will be fulfilled; MCSSSD could select another method for providing individual aides, but is under no obligation to do so; *N.J.A.C. 6A:23A-17.1(e)(5)(viii)* instructs that individual aides are an extraordinary service which MCSSSD may bill directly to Trenton, but there is no authority for Trenton to unilaterally force MCSSSD to accept Trenton’s preferred individual aides; and Trenton has failed to raise a claim upon which relief can be granted. Accordingly, the ALJ concluded that MCSSSD is entitled to judgment as a matter of law, and is not obligated to use the individual aides recommended by Trenton. MCSSSD’s motion to dismiss was granted.

Upon review, the Commissioner concurred with the findings and conclusions of the ALJ, and adopted the Initial Decision of the OAL as the final decision in this matter for the reasons expressed therein.

This synopsis is not part of the Commissioner’s decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.

OAL DKT. NO. EDU 16465-15  
AGENCY DKT. NO. 306-10/15

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed, as have the exceptions filed pursuant to *N.J.A.C. 1:1-18.4* by the petitioner Trenton Board of Education (Trenton). The respondent, Mercer County Special Services School District Board of Education (MCSSSD), did not file a reply.

Trenton’s exceptions essentially recast and reiterate the substance of its submissions at the OAL, arguing that Trenton should be permitted to supply individual aides through a contracted vendor to its students who attend MCSSSD, rather than be forced to contract with MCSSSD for the individual aides. Trenton points out that it is responsible for implementing a student’s Individualized Education Plan (IEP), including providing individual aides. Trenton also contends that the ALJ erred in finding that aides provided by Trenton’s contracted vendor would interfere with MCSSSD’s control over its employment matters because MCSSSD would not be responsible for the aides.

Upon review, the Commissioner concurs with the ALJ that there is no authority permitting Trenton to force MCSSSD to accept Trenton's individual aides. The Commissioner finds Trenton's exceptions unpersuasive. Individual aides are "extraordinary services" for which a district board of education may bill directly, pursuant to *N.J.A.C. 6A:23A-17.1(e)(5)(viii)*. As such, while Trenton and MCSSSD annually enter into a Special Education Tuition Contract Agreement for the cost of a student's placement at MCSSSD, Trenton is billed separately by MCSSSD for the cost of individual aides, using purchase orders pursuant to a personal assistant contract. (Certification of Jayne Howard, at ¶ 10)

When sending students to MCSSSD, Trenton maintains responsibility for the provision of services and ensures compliance with a student's IEP. *N.J.A.C. 6A:14-7.1(b)*. However, it is MCSSSD that implements the IEP and actually provides the services. See *Frequently Asked Questions Regarding the Provision of Related Services for Students Placed by Local Education Agencies in NJ Approved Private Schools for Students with Disabilities (FAQ)*, MCSSSD Reply Brief, Exhibit 1. It follows that MCSSSD would maintain some autonomy in providing the services and programs that it is charged with administering. Indeed, the legislature has given MCSSSD "the power to appoint or employ such officers, agents and employees as may be required to carry out the provisions of P.L. 1971, c.271 and to fix and determine their qualifications, duties, compensation, terms of office and all other conditions and terms of employment and retention." *N.J.S.A. 18A:46-38*.

There is no legal authority for Trenton to unilaterally require MCSSSD to use Trenton's contracted vendor for individual aides when MCSSSD is otherwise able to provide that service. As such, MCSSSD is not prohibited from providing its own individual aides.<sup>1</sup>

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<sup>1</sup> The Commissioner notes that nothing prohibits Trenton and MCSSSD from agreeing upon the use of Trenton's individual aides when entering into their personal assistant contract. To the extent that the parties may dispute the

Accordingly, the Initial Decision of the OAL is adopted as the final decision in this matter for the reasons stated therein, and the petition is hereby dismissed.

IT IS SO ORDERED.<sup>2</sup>

COMMISSIONER OF EDUCATION

Date of Decision: September 20, 2016

Date of Mailing: September 20, 2016

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terms of or compliance with the personal assistant contract for individual aides, the Commissioner would not have jurisdiction over that contract dispute because it does not arise out of New Jersey school law. *N.J.S.A. 18A:6-9*.

<sup>2</sup> This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L. 2008, c. 36 (N.J.S.A 18A:6-9.1)*.