

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION GRANTING

SUMMARY DECISION

OAL DKT. NO. EDS 11310-15

AGENCY DKT. NO. 2016-23249

NEW PROVIDENCE BOARD OF EDUCATION,

Petitioners,

v.

F.C. o/b/o M.L.,

Respondent.

On July 30, 2015, EDS 11310-15 was transmitted to the Office of Administrative Law by the Department of Education, the Office of Special Education Services. The New Providence Board of Education (“District”) sought an order denying the parental request for independent evaluations. F.C. and K.L. o/b/o M.L. (“F.C.”) opposed the petition.

On February 28, 2017, respondents filed a Motion to Dismiss Docket No. 11310-15 for Failure to Prosecute. On March 2, 2017, the District filed a Motion for Summary Decision, essentially also seeking dismissal. The District asserted that respondent’s unilateral actions have rendered Docket No. EDS11310-15 moot.

STANDARD FOR SUMMARY DECISION

The standard for granting summary judgment (decision) is found in Brill v. Guardian Life Insurance Company of America, 142 N.J. 520 (1995). In Brill, the Supreme Court adopted a standard that requires the motion judge to engage in an analytical process essentially determining whether the competent evidence presented,

when viewed in the light most favorable to the non-moving party presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law. Id. at 533 (quoting Anderson v. Liberty Lobby, 477 U.S. 477, 251-52, 106 S. Ct. 2505, 91 L. Ed. 2d 202). To send a case to trial, knowing that a rational jury can reach but one conclusion, is indeed worthless and will serve no useful purpose.” Brill, supra, 142 N.J. at 541. An issue of fact is genuine only if, considering the burden of persuasion at trial, the evidence submitted by the parties on the motion, together with all legitimate inferences therefrom favoring the non-moving party, would require submission of the issues to the trier of fact. R. 4:46-2.

The burden of showing that no genuine issue of material fact exists . . . may be discharged by showing . . . that there is an absence of evidence to support the non-moving party’s case.” Celotex Corp. v. Catrett, 477 U.S. 317, 325, 106 S. Ct. 2548, 91 L. Ed. 2d 265(1986). In order to defeat a properly supported motion for summary judgment, a party may not rely upon self-serving conclusions, unsupported by specific facts in the record. Ibid. Instead, the non-moving party must point to concrete evidence in the record, which supports each essential element of his case. Ibid.

It is uncontroverted that there are two pending cases between the parties. In Docket No. EDS 02297-17, the New Providence Board of Education seeks an order denying F.C.’s request for independent evaluation of minor student. The District asserts, among other things that F.C. has already unilaterally obtained evaluations. On July 6, 2016, a private Audiologic & Central Auditory Processing Evaluation was conducted of M.L. On July 26, 2016, a private Neuropsychological Evaluation was conducted of M.L. On September 26, 2016 and October 3, 2016, a private Dyslexia Evaluation of M.L. was conducted. The District also asserts that it cannot obtain evaluations, including an outstanding Psychiatric Evaluation called for in or about June 2015, without respondents providing their unrestricted consent, which they have failed to do to date. In Docket No. 02298-17, F.C. o/b/o M.L. v. New Providence Board of Education, F.C seeks, among other things, reimbursement for the private evaluations that she obtained. As detailed above, F.C. unilaterally obtained evaluations. Accordingly, I **CONCLUDE** that the request for independent evaluations is moot. I also

note that F.C.'s assertion of entitlement to reimbursement for evaluations obtained is contained in the pending matter, Docket No. 02298-17.

I **CONCLUDE** that there is sufficient evidence to dismiss this matter by summary decision.

ORDER

Based on the foregoing, it is **ORDERED** that Summary Decision dismissing EDS 11310-15 is **GRANTED**.

This decision is final pursuant to 20 U.S.C.A. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2016) 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 (2016). 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.

March 2, 2017

DATE

EVELYN J. MAROSE, ALJ

Date Mailed to Agency:

March 2, 2017

Date Mailed to Parties:

sej