

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

DECISION

MOTION TO DISMISS

OAL DKT. NO. EDS 14390-15

AGENCY DKT. NO. 2016 23452

D.O. on behalf of M.O.,

Petitioners,

v.

**JACKSON TOWNSHIP BOARD OF
EDUCATION,**

Respondent.

John D. Rue, Esq., for petitioner (Law Office of John D. Rue, attorney)

Joanne Butler, Esq., for respondent (Schenck, Price, Smith & King, attorneys)

Record Closed: January 27, 2016

Decided: March 21, 2016

BEFORE **JOHN S. KENNEDY**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

On September 10, 2015, petitioners filed a due process complaint with the Department of Education, Office of Special Education Programs (OSEP). The sole issue raised in the complaint is the Jackson Township Board of Education's (Board's) failure to provide petitioner a copy of M.O.'s student records. Respondent filed a sufficiency challenge on September 10, 2015. On September 15, 2015, the petition was held to be

sufficient by ALJ Delanoy. The matter was assigned to ALJ Russo and on September 16, 2015, respondent filed a Motion to Dismiss in lieu of answer. Petitioner filed opposition to the motion on October 1, 2015, and respondent filed a reply on October 16, 2015. The matter was reassigned to this ALJ in December 2015, and a telephone hearing was conducted on January 27, 2016.

STATEMENT OF FACTS

It is undisputed and I therefore **FIND** as **FACT** that the sole issue raised in the Petition for Due Process is the Board's alleged failure to provide petitioner a copy of M.O.'s student records.

LEGAL ANALYSIS AND CONCLUSION

For the following reasons, the OSEP's motion to dismiss will be treated as a motion for summary decision. While N.J.A.C. 1:1-12.1 does not specifically limit the types of motions that may be made in administrative hearings, and a motion to dismiss is not otherwise precluded under the Uniform Administrative Procedure Rules, the more common method for resolving a case on the papers without a plenary hearing in administrative proceedings is by a motion for summary decision under N.J.A.C. 1:1-12.5.

Pursuant to N.J.A.C. 1:1-12.5(b), 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." Further, "[w]hen a motion for summary decision is made and supported, an adverse party in order to prevail must by responding affidavit set forth specific facts showing that there is a genuine issue which can only be determined in an evidentiary proceeding." Ibid. This standard is substantially similar to that governing a civil motion under New Jersey Court Rule 4:46-2 for summary judgment. E.S. v. Div. of Med.

Assistance & Health Servs., 412 N.J. Super. 340, 350 (App. Div. 2010); Contini v. Bd. of Educ. of Newark, 286 N.J. Super. 106, 121 (App. Div. 1995).

In Brill v. Guardian Life Insurance Co., 142 N.J. 520 (1995), the New Jersey Supreme Court set forth the standard governing a motion for summary judgment:

[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 factfinder 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, supra, 142 N.J. at 540 (citation omitted).]

It is clear in this case that no issue of material fact exists that precludes summary decision. The sole issue to be determined is whether a due process hearing may be requested to obtain copies of student records.

In its motion, respondent asserts that the petitioner’s request to supply student records is not available through due process. Respondent cites S.P. and C.P. o/b/o M.P. v. Lakewood Township Board of Education, OAL Dkt. No. EDS 10099-13, Agency Ref. No. 2014-20034; J.R. and C.H. obo S.R. v. Hopewell Valley Regional Board of Education, OAL Dkt. No. EDS 00815-14, Agency Ref. No. 2014-20666, in support of its argument that the provision of copies of student records is not the proper subject of a due process petition, and therefore, the petition must be dismissed.

Petitioner asserts that the Individual with Disabilities Education Act (IDEA) guarantees the right of access to student records. See 34 C.F.R. 300.613. N.J.A.C. 6A:14-2.7(a) specifies the issues that may be addressed in a due process hearing request. It provides, “a due process hearing may be requested when there is a

disagreement regarding identification, evaluation, reevaluation, classification, educational placement, the provision of a free, appropriate public education, or disciplinary action.” See also, 34 C.F.R. 300.507.

Neither N.J.A.C. 6A:14-2.7(a) nor 34 C.F.R. 300.507 provide that a demand for providing copies of student’s records may be the subject of a due process hearing. While petitioners assert in their brief dated October 1, 2015 (Corrected October 19, 2015) that there is currently a disagreement between the parties regarding M.O.’s special education placement, that is a separate due process petition not currently pending before this tribunal. I therefore **CONCLUDE** that the relief requested in the Petition is not appropriately addressed in a due process hearing pursuant to N.J.A.C. 6A:14-2.7(a).

ORDER

Based on the foregoing, I **ORDER** that the petition be **DISMISSED**.

This decision is final pursuant to 20 U.S.C.A. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2015) 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 (2015). 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.

March 21, 2016 _____

DATE

JOHN S. KENNEDY, ALJ

Date Received at Agency:

Date Sent to Parties:

JSK/vj