

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

SUMMARY DECISION

OAL DKT. NO. EDS 02101-15

AGENCY DKT. NO. 2015 22226

J.G. o/b/o J.R.,

Petitioner,

v.

ELIZABETH BOARD OF EDUCATION,

Respondent.

J.G., petitioner, pro se

Jessika Kleen, Esq., for respondent (Machado Law Group, attorneys)

Record Closed: July 6, 2015

Decided: August 10, 2015

BEFORE **IMRE KARASZEGI, JR.**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner, J.G. on behalf of J.R., filed for emergent relief/due process on January 13, 2015, seeking the development of an Individualized Education Program (IEP) for J.R. On February 12, 2015, the Office of Special Education Services (OSE) transmitted the matter to the Office of Administrative Law (OAL) where it was assigned Docket No. EDS 02101-2015. At a hearing on March 27, 2015, petitioner's request for emergent relief was denied and an Order was entered memorializing same. On or about March 24, 2015, the District filed a Motion for Summary Decision asserting that the requested

relief, that is the subject of petitioner's due process petition, has been provided to J.R. Therefore, the District contends, the request for due process is moot and/or not ripe for adjudication. Petitioner filed opposition papers to the District's motion on March 28, 2015, and June 9, 2015.

FACTUAL DISCUSSION

I **FIND** the following undisputed **FACTS**:

J.R., a minor child, resides with C.R. in Elizabeth, New Jersey. J.R. was enrolled in the Elizabeth School District in November 2013. J.R. has been provided accommodations and modifications pursuant to a plan which is compliant with Section 504 of the Rehabilitation Act of 1973. On or about February 25, 2015, the District's Child Study Team (CST) initiated an evaluation to determine J.R.'s need for Individuals with Disabilities Education Act (IDEA) services.

Numerous Orders have been entered by the Family Courts of New York and New Jersey regarding petitioner, J.G., and C.R. concerning the minor child, J.R.

LEGAL ANALYSIS AND CONCLUSIONS OF LAW

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 Company of America, 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.”

[Id. at 540 (citations omitted).]

In this case, petitioner’s opposition to the District’s motion for summary decision focuses on the validity and/or authenticity of various New York and New Jersey Family Court Orders that grant custody of J.R. to C.R. as well as the subsequent actions taken by C.R. on behalf of J.R.

Having reviewed the parties’ submissions in support of, and opposition to, the within motion, I **CONCLUDE** that any challenges to the validity and/or authenticity of the Family Court Orders, or claims for modification of those Orders, must be decided in the Family Courts. I also **CONCLUDE** that because it is an undisputed material fact that the District’s CST initiated an evaluation to determine J.R.’s need for IDEA services in conjunction with the development of an appropriate IEP, there is no genuine issue challenged for purposes of the motion for summary decision. In light of the aforementioned facts, petitioner’s petition for due process is moot. For this reason alone, the District’s motion for summary decision is **GRANTED** and the petition for due process is **DISMISSED**.

This decision is final pursuant to 20 U.S.C.A. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2012) 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 (2012). 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.

August 10, 2015

DATE

IMRE KARASZEGI, JR., ALJ

Date Received at Agency

8/10/15

Date Mailed to Parties:

8/10/15

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