

New Jersey Commissioner of Education

Final Decision

Board of Education of the Township of Sparta,
Sussex County,

Petitioner,

v.

M.N., on behalf of A.D.,

Respondent.

Synopsis

In this matter, the petitioning Board contended that A.D., a special education student who previously attended high school in Sparta, obtained a New Jersey-issued high school diploma in April 2019. Prior to that date, A.D. obtained a GED. The Board argued that the high school diploma which A.D. received from the State of New Jersey is “fully aligned with the State’s academic standards,” and therefore A.D. is no longer entitled to be enrolled in the district’s schools. Respondent’s mother, M.N., contended that A.D. did not receive a “regular” high school diploma and should therefore be allowed to continue enrollment in Sparta schools. The Board filed a motion for summary decision.

The ALJ found, *inter alia*, that: there are no material facts at issue in this case, and the matter is ripe for summary decision; the issue to be determined in this case is whether obtaining a GED and a State-issued high school diploma preclude A.D. from reenrollment in the school district; *N.J.A.C. 6A:14-2.1(a)* states that prior to receiving a high school diploma, a student with a disability age 16 through 21 who voluntarily leaves a public school program may reenroll at any time up to and including the school year of his or her 21st birthday; the Board contends that A.D. has in fact received a high school diploma that is “fully aligned with the State academic standards; respondent’s argument that A.D. did not receive a “regular” high school diploma fails, as A.D. did in fact receive a State issued high school diploma that is fully aligned to the State standards; A.D. did not merely obtain a GED; respondent’s argument that A.D. was entitled to written notice regarding a change in his placement is misguided, as A.D. voluntarily disenrolled from the school district prior to obtaining the State-issued high school diploma; He was not enrolled in the District at this time. In fact, he voluntarily dis-enrolled in the District. At that point the District had no obligation to provide an education, or notice, to A.D.. This argument fails as what A.D. received is, in fact, a State issued high school diploma that is “fully aligned with State standards.” A.D. did not merely obtain a GED.. Accordingly, summary decision was granted in favor of the Board, and the petition was dismissed.

Upon review of the record, the Commissioner concurred with the ALJ’s findings and conclusion. The Initial Decision was adopted as the final decision in this matter, for the reasons well expressed therein, and the petition was dismissed.

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.

202-21

OAL Dkt. No. EDU 05866-21

Agency Dkt. No. 87-6/21

New Jersey Commissioner of Education

Final Decision

Board of Education of the Township of
Sparta, Sussex County,

Petitioner,

v.

M.N., on behalf of A.D.,

Respondent.

The record of this matter, the Initial Decision of the Office of Administrative Law (OAL), the exceptions filed by respondent pursuant to *N.J.A.C. 1:1-18.4*, and the Board's reply thereto, have been reviewed and considered.

The Respondent's child, A.D., is a special education student who attended school in Sparta. Respondent withdrew A.D. from the district in March 2019. In April 2019, A.D. was issued a high school diploma by the State of New Jersey after he achieved the required Statewide standard score on the General Education Development test (GED). A series of dis-enrollments by the district and reenrollments by respondent followed, with the district ultimately informing respondent in May 2021 that A.D. was no longer entitled to receive services from the district because he had met New Jersey graduation requirements.

Following the filing of the Board's motion for summary decision, the Administrative Law Judge (ALJ) concluded that A.D. received a State-issued high school diploma that is fully aligned with State standards, not merely a (GED) diploma, and therefore he

is no longer entitled to be enrolled in the district's schools. The ALJ further concluded that respondent was not entitled to written notice of the change in A.D.'s placement because it came about through his own actions.¹

In her exceptions, respondent argues that the diploma A.D. received is not a regular high school diploma. Respondent notes that A.D. did not attend high school for four years and that the 120 course credits required for graduation from a district does not compare with studying at home for a month and barely passing GED tests. Respondent also contends that she should have received notice when the district decided to discontinue services and unenroll A.D.

In reply, the Board argues that respondent's exceptions merely reiterate arguments made below. The Board notes that students are permitted to obtain State-issued diplomas through non-traditional pathways and contends that such a diploma is not a lower credential and should not be considered differently simply because a student who obtains it is classified. The Board argues that the lack of a regulatory distinction between diplomas awarded by a district board of education and diplomas awarded by the Commissioner demonstrates that the State Board of Education did not intend to create different categories of credentials. Finally, the Board notes that it neither discontinued services nor disenrolled A.D., who had in fact been withdrawn from the district by respondent.

Upon review, the Commissioner concurs with the ALJ that A.D.'s diploma is a "regular high school diploma" that is fully aligned with State standards and, therefore, A.D. is no longer entitled to a free education in Sparta or any other New Jersey school district. The record reflects that the diploma awarded to A.D. was issued by the State of New Jersey Board of

¹ This matter was filed concurrently with a special education due process petition docketed as Agency Dkt. No. 2021-32852, OAL Dkt. No. EDS 05384-21. The ALJ determined not to consolidate the two matters and denied the portion of the Board's motion for summary decision pertaining to the due process petition. The Commissioner's jurisdiction does not extend to due process petitions, which fall exclusively within the purview of the Department's Office of Special Education Policy and Dispute Resolution. *N.J.A.C. 6A:14-2.7*. Accordingly, any issues relating to the due process petition will not be addressed herein.

Education, signed by the Commissioner of Education, and indicated that A.D. has satisfied in full the statutory and regulatory requirements of the State for a high school diploma.

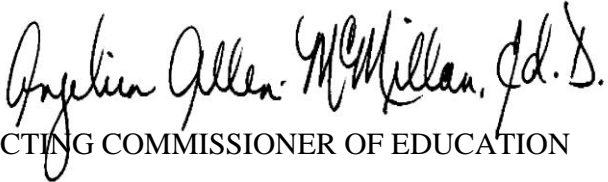
The Commissioner has previously noted that a diploma “signifying attainment of the skills and knowledge deemed necessary by the State of New Jersey for its students to be successful in their careers and daily lives” can be earned by completing the requirements of *N.J.A.C. 8A:5-1(a)* associated with traditional high school coursework, or, among other things, by achieving the required scores on the GED. *B.A. and J.H., on behalf of minor child, M.A.A. v. Bd. of Educ. of the Borough of Somerville, Somerset Cty.*, Commissioner Decision No. 201-09 (June 22, 2009). The Commissioner further indicated that “through its acceptance of alternative measures” to obtain a diploma, “particularly the GED program,” “the State has implicitly recognized that means other than course/credit/assessment completion as contemplated by *N.J.A.C. 6A:8-5.1(a)* can legitimately evidence acquisition of an education sufficient to satisfy the statutory and constitutional mandate and warrant issuance of a State-endorsed diploma so as to end a student’s entitlement to attend the public schools of a district.” *Ibid.*

Furthermore, there is no distinction in *N.J.A.C. 6A:8-5.2* between a district-issued diploma and a State-issued diploma, such that both diplomas demonstrate that the student has completed an education that is fully aligned with State standards. The State Board of Education, in implementing alternate pathways for students to obtain diplomas, has recognized that students may complete their education in non-traditional ways. A State-issued diploma simply reflects such an alternate pathway and is in no way a lesser credential. Accordingly, having obtained a State-issued diploma, A.D. is no longer entitled to a free education in the district’s schools.²

² The Commissioner further concurs with the ALJ’s conclusions regarding the Board’s obligation to provide notice to respondent, for the reasons detailed in the Initial Decision.

Accordingly, the Board's motion for summary decision is granted, and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.³


ACTING COMMISSIONER OF EDUCATION

Date of Decision: September 28, 2021
Date of Mailing: September 28, 2021

³ This decision may be appealed to the Appellate Division of the Superior Court pursuant to *N.J.S.A.* 18A:6-9.1. Under *N.J.Ct.R.* 2:4-1(b), a notice of appeal must be filed with the Appellate Division within 45 days from the date of mailing of this decision.



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

SUMMARY DECISION

OAL DKT. NO EDU 05866-21

AGY REF NO. 87-6/21

**BOARD OF EDUCATION OF THE TOWNSHIP
OF SPARTA, SUSSEX COUNTY,**

Petitioner,

v.

M.N. ON BEHALF OF A.D.,

Respondent.

Katherine A. Gilfillan, Esq., for Petitioner (Schenck, Price, Smith & King, LLP,
attorneys)

M.N., Respondent, pro se

Record Closed: August 13, 2021

Decided: August 16, 2021

BEFORE **THOMAS R. BETANCOURT**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner filed a Petition for Declaratory Ruling with the Office of Controversies and Disputes in the New Jersey Department of Education (DOE) on June 11, 2021.

The Acting Commissioner declined the request pursuant to N.J.S.A. 52:14B-8 and N.J.A.C. 6A:3-2.1(a)1, and directed that the matter proceed as a petition of appeal pursuant to N.J.A.C. 6A:3-1.1 et seq.

The matter was transmitted to the Office of Administrative Law on July 9, 2021.

A prehearing conference was held on this matter, and a companion case (EDS 05384-21), on July 13, 2021, with a prehearing order entered on the same date. The matters were not consolidated.

Petitioner filed a Motion for Summary Decision dated July 23, 2021. Respondent submitted a reply brief on August 6, 2021. Petitioner filed a response thereto on August 13, 2021. The record closed on August 13, 2021.

FACTUAL BACKGROUND

The following relevant, material facts are not in dispute:

1. A.D. initially enrolled in the District at the start of the 2018-2019 school year. He was a transfer from the Ramapo Indian Hills School District.
2. A.D. was provided an IEP and attended school in District.
3. A.D. was provided home instruction commencing on March 11, 2019.
4. On March 25, 2019, A.D. was withdrawn from the District by his parent. (Exhibit E, Lorentz Affidavit)
5. A.D. was issued a high school diploma by the State of New Jersey on April 29, 2019. (Exhibit F, Lorentz Affidavit)
6. The parent requested that A.D. be reenrolled in the District sometime in mid-April 2019, and A.D. was reenrolled.

7. By letter dated May 22, 2019, the high school principal, Michael Lauricella, advised respondents that A.D. was no longer entitled to receive services from the District as he had met New Jersey graduation requirements. (Exhibit G, Lorentz Affidavit)
8. Thereafter, A.D. was permitted to reenroll in the District for the 2019-2020 school year. (Exhibit H, Lorentz Affidavit)
9. A.D. attended school in District at the start of the 2019-2020 school year. In March of 2020 in person instruction was halted due to the COVID-19 pandemic. A.D. was issued a Chrome book for remote learning.
10. On June 8, 2020, A.D. was again disenrollment from the District. (Exhibit J, Lorentz Affidavit)
11. On September 9, 2020, the parent again sought to reenroll A.D. in the District. The reenrollment did not occur as A.D. decided to join the Army. (Exhibit K, Lorentz Affidavit)
12. A.D. obtained a medical discharge from the Army on December 16, 2020. (see page 19 of brief in opposition)

ISSUE

Does obtaining a GED, and a State issued high school diploma, preclude A.D. from reenrollment in the District.

LEGAL ANALYSIS AND CONCLUSION

Standard for Summary Decision

A motion for summary decision may be granted if the papers and discovery presented, as well as any affidavits which may have been filed with the application, show that there is no genuine issue of material fact and the moving party is entitled to prevail as a matter of law. N.J.A.C. 1:1-12.5(b). If the motion is sufficiently supported,

the non-moving party must demonstrate by affidavit that there is a genuine issue of fact which can only be determined in an evidentiary proceeding, in order to prevail in such an application. Ibid. These provisions mirror the summary judgment language of R. 4:46-2(c) of the New Jersey Court Rules.

The motion judge must “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.” Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 523 (1995). And even if the non-moving party comes forward with some evidence, this forum must grant summary decision if the evidence is “so one-sided that [the moving party] must prevail as a matter of law.” Id. at 536 (citation omitted).

In the instant matter there are no disputed relevant material facts, and the matter is ripe for summary decision.

A.D. obtained a New Jersey issued high school diploma, dated April 29, 2019. Prior to that, A.D. obtained a GED.

N.J.A.C. 6A:14-2.1(a) states: Prior to receiving a high school diploma, a student with disability age 16 through 21 who voluntarily leaves a public school program may reenroll at any time up to and including the school year of his or her 21st birthday.

34 C.F.R. §300,102(a)(3)(i) provides that the obligation to provide FAPE does not apply to “children with disabilities who have graduated from high school with a regular high school diploma.”

However, 34 C.F.R. §300,102(a)(3)(iv) states: “As used in paragraphs (a)(3)(i) through (iii) of this section, the term regular high school diploma means the standard high school diploma awarded to the preponderance of students in the State that is fully aligned with State standards, or a higher diploma, except that a regular high school

diploma shall not be aligned to the alternate academic achievement standards described in section 1111(b)(1)(E) of the ESEA. A regular high school diploma does not include a recognized equivalent of a diploma, such as a general equivalency diploma, certificate of completion, certificate of attendance, or similar lesser credential.”

The District argues that what A.D. received from the State of New Jersey is “fully aligned with the State’s academic standards.” Citing B.A. and J.J. o/b/o Minor Child M.A.A. v. Board of Education of the Borough of Somerville, Somerset County, 2009 N.J. AGEN LEXIS 24, Commissioner of Education, #201-09, June 22, 2009.

In B.A. and J.J. o/b/o Minor Child M.A.A. v. Board of Education of the Borough of Somerville, Somerset County, the Commissioner succinctly set forth an analysis that is, in my mind, dispositive of the matter herein, as follows:

“To properly establish the context of petitioners' claim, it is also necessary to consider that: 1) the Legislature and State Board of Education have provided for implementation of the constitutional mandate through a K-12 delivery system, a student's successful progression through which culminates in receipt of a State-endorsed high school diploma, NJ.S.A. 18A:7C-1 et seq. and N.J.A.C. 6A:8-1.1 et seq.\ 2) a general education student's entitlement to access this system terminates either upon graduation through receipt of a State-endorsed diploma - which in the normal course of events occurs at the end of 12th grade, but may occur sooner or later under certain circumstances - or upon reaching the age of 20 without having so graduated, NJ.A.C 6A:8-5.2(a), NJA.C. 6A:8-5.2(b) and N.J.A.C 6A:8-5.2(d); 3) a State-endorsed high diploma - the credential signifying attainment of the skills and knowledge deemed necessary by the State of New Jersey for its students to be successful in their careers and daily lives - can be earned not only by completing the specific course, credit and assessment requirements of N.J.A.C. 6A:8-5.1(a), but also by demonstrating academic skills and knowledge equivalent to such requirements through alternative means, specifically, by performing at proficient levels in all areas of the High School Proficiency Assessment (HSPA) and completing 30 general education college credits, NJ.A.C. 6A:8-5.2(d), or by

achieving the required scores on the General Educational Development (GED) test of the American Council on Education, N.J.A.C. 6A:8-5.2(c); 6:30-1.3.”

What A.D. obtained is a State endorsed diploma. This comports with the requirement of 34 C.F.R. §300,102(a)(3)(iv) which requires the diploma to be “fully aligned with State standards”.

Respondent argues that A.D. did not receive a “regular” high school diploma. This argument fails as what A.D. received is, in fact, a State issued high school diploma that is “fully aligned with State standards.” A.D. did not merely obtain a GED.

Respondent further argues that A.D. was entitled to written notice regarding a change in his placement. This argument is misguided. The change in placement was at A.D.’s own doing: the receipt of the State issued high school diploma. He was not enrolled in the District at this time. In fact, he voluntarily dis-enrolled in the District. At that point the District had no obligation to provide an education, or notice, to A.D.

Respondent cites Letter to Cort, United States Department of Education, May 14, 2010, as support for the claim that A.D. has a right to FAPE and a right to re-enroll and obtain a regular high school diploma. While guidance from the United States Department of Education is helpful, it does not carry the weight of law. Further, Respondent fails to note that A.D. voluntarily disenrolled from the District and obtained a State issued high school diploma that is “fully aligned with State standards.”

Based upon the foregoing, I **CONCLUDE** that Petitioner’s Motion for Summary Decision regarding the within matter (EDU 05866-21) be **GRANTED**.

ORDER

It is hereby **ORDERED** that Petitioner’s Motion for Summary Decision is **GRANTED** as follows:

1. The diploma issued to A.D. by the State of New Jersey is a “regular” high school diploma terminating his entitlement to enroll in a public school in the State; and
2. The diploma issued to A.D. by the State of New Jersey is a “regular” high school diploma terminating his prospective entitlement to receive a free and appropriate public education.

That portion of Petitioner’s motion requesting that Respondent’s due process petitioner (filed as the petitioner in the companion case, EDS 05384-21) is **DENIED**. The undersigned determined not to consolidate that matter with the instant matter. Accordingly, EDS 05384-21 shall proceed to hearing on August 24, 2021.

I hereby **FILE** this initial decision with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

This recommended decision may be adopted, modified or rejected by the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who by law is authorized to make a final decision in this matter. If the Commissioner of the Department of Education does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION, ATTN: BUREAU OF CONTROVERSIES AND DISPUTES, 100 Riverview Plaza, 4th Floor, PO Box 500, Trenton, New Jersey 08625-0500**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

August 16, 2021



DATE

THOMAS R. BETANCOURT, ALJ

Date Received at Agency:

Date Mailed to Parties:

db

APPENDIX

List of Moving Papers

For Petitioner:

Motion for Summary Decision

Brief in support of motion

Affidavit of Ronnie Spring

Affidavit of Susan Lorentz with Exhibits A through J

Certification of Katherine A. Gilfillan, Esq. with Exhibit A

Brief in response to Respondent's brief in opposition

For Respondent:

Brief in opposition to motion for summary decision

Affidavit of M.N. (included in brief)