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OAL Dkt. No. EDU 01428-20
Agency Dkt. No. 27-1/20

New Jersey Commissioner of Education

Final Decision

F.P., on behalf of minor child, M.P.,

Petitioner,

v.

Board of Education of the City of Newark, Essex County,

Respondent.

The Commissioner has reviewed the record of this matter and the Initial Decision of the Office of Administrative Law (OAL).[1] The parties did not file exceptions.

Upon review, the Commissioner concurs with the Administrative Law Judge (ALJ) that summary decision is appropriate, and that petitioner's claims should be dismissed because they were addressed by a settlement agreement between the parties prior to the filing of the petition of appeal.

Accordingly, the Initial Decision is adopted as the final decision in this matter, and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.[2]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: March 18, 2021
Date of Mailing: March 19, 2021

[1] The Commissioner notes that the Initial Decision indicates that the petition of appeal was filed with the Office of Special Education Policy and Procedure. The petition was actually filed with the Office of Controversies and Disputes.

[2] 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 DECISON
OAL DKT. NO. EDU 01428-20
AGENCY DKT. NO. 27-1/20

F.P. O/B/O MINOR CHILD, M.P.,
Petitioner,
v.
BOARD OF EDUCATION OF THE CITY OF NEWARK, ESSEX COUNTY,
Respondent.

F.P., petitioner, pro se

Afshan Ajimari Giner, Esq., and **Jaclyn S. D'Arminio,** Esq., for respondent (Florio, Perrucci, Steinhardt & Cappelli, LLC, attorneys)

Record Closed: June 4, 2020 Decided: February 1, 2021

BEFORE **JULIO C. MOREJON**, ALJ:

STATEMENT OF THE CASE

Petitioner, F.P., on behalf of M.P. ("student"), alleges that on November 27, 2019, the Board of Education of the City of Newark, ("the Board"), wrongfully suspended the student from attending the McKinley Elementary School ("McKinley"). F.P. alleges that the Board violated F.P. and the student's due process rights in failing to notify F.P. of the

student's suspension and failing to provide him with a hearing before the Board regarding the same. F.P. seeks relief to reinstate the student at the School.

PROCEDURAL HISTORY

On January 29, 2020, F.P. filed a petition of appeal with the Office of Special Education Policy and Procedure (OSEPP), seeking emergent relief pursuant to N.J.A.C. 6A-31.6, to overturn the student's suspension and to have him reinstated in the school. The matter was transferred to the Office of Administrative Law (OAL) and filed at the OAL on January 31, 2020, as an emergent and contested matter.

On February 12, 2020, the parties appeared before me and on February 13, 2020, I issued an Order denying the emergent relief sought. On March 2, 2020, the Commissioner of Education entered an Order on Emergent Relief concurring with my Order of February 13, 2020, denying emergent relief and ordering that the matter continue at the OAL on the issues raised in the petition of appeal regarding suspension of the student. Therefore, I retained F.P.'s petition of appeal for a disposition of the merits of his claim. A hearing was scheduled for May 20, 2020.

On or about April 21, 2020, the Board filed the within motion for summary decision. M.P. did not file opposition to the same. On June 4, 2020, oral argument was heard telephonically. M.P. did not call in to appear for oral argument, and the record closed. [3]

FACTUAL SUMMARY

At the time M.P. filed the underlying petition ("Second Petition") and emergent relief ("Second Emergent") in January 2020, M.P. was an 11-year-old student, currently in the 6th grade. He was transferred to McKinley at the beginning of the 2018-2019 school year. Since entering McKinley, the student has had several incidents that resulted in out-of-

[3] Pursuant to Executive Order No. 127, in any contested case, any pending deadline for filing of decision by an Administrative Law Judge at the OAL pursuant to N.J.S.A. 52:14B-10(c); and any pending deadline for adopting, rejecting or modifying are commended report and decision by the sending Agency, shall be extended by the number of days of the Public Health Emergency declared in Executive Order No. 103 (2020) plus an additional 90 days.

school suspensions of varying lengths. The Board alleges that multiple efforts had been made to evaluate the student by the Child Study Team (CST) to determine an appropriate program and that F.P. refused to consent to any evaluations.

In order to fully understand the facts of this matter, a discussion of a prior emergent application made by F.P. concerning identical allegations contained in the Second Petition and Second Emergent will follow.

M.P. alleges that after an incident that occurred on November 25, 2019, the Board suspended the student four (4) days). Thereafter, on or about December 2019, F.P. filed an emergent relief application, bearing OAL Docket No. EDU-17349-19, (First Emergent) and petition of appeal (First Petition) with the Commissioner of Education. Simultaneous to M.P.'s filing, the Board filed a due process petition with a request for emergent relief to compel F.P., to consent to evaluations of M.P. by the CST. On or about December 17, 2019, the First Emergent and First Petition were settled pursuant to the terms of a Settlement Agreement (Settlement), and the Board then withdrew its due process petition.

F.P. then filed the Second Emergent application and Second Petition, in January 20, 2020, containing the same allegations that he made in the First Petition and the First Emergent application. In the Second Petition F.P. alleged that the student was "expelled" from school and he sought the student's reinstatement to the school district. F.P. also alleged that he was not aware of the proceedings related to the First Petition and that his former attorney withdrew the First Petition without his knowledge

On February 13, 2020, I issued an Order denying the Second Emergent, and found that F.P. and the Board had entered into a Settlement Agreement on December 17, 2019, allowing for home instruction of the student and that F.P. would allow the CST to conduct certain evaluations of the student for the Board to determine what resources the student might require. The Order of February 13, 20220, did not dispose of the Second Petition, and therefore the allegations concerning the Board's suspension of the student contained in the Second Petition formed the basis for the underlying petition.

Before a hearing could be had in this matter, on or about March 2, 2020, F.P. represented to the Board that the student had transferred schools, but he did not provide the Board with the name of the new school. On March 4, 2020, counsel for the Board sent F.P. a letter requesting that he provide proof of the student's attendance in another school (Ajmiri Giner Cert. ¶ 13, Exhibit G). Petitioner was further asked to verify that he was complying with the State's compulsory education laws (Ajmiri Giner Cert. ¶ 14, Exhibit G). F.P. did not respond to the Board's inquiry; he did, however, respond to an email from the home instruction teacher relating to the student's home instruction (Ajmiri Giner Cert. ¶ 15, Exhibit H). To date, F.P. has not responded to counsel's or the District's queries regarding what school district M.P. was attending. F.P. has not submitted any documents or additional information in support of his allegations and request for relief in the Second Petition.

The Board then filed the within motion for summary decision to dismiss the Second Petition. The Board argues in its motion that F.P.'s present petition of appeal should be dismissed as the parties are bound by the terms of the Settlement Agreement resolving the issues reiterated in the First Petition, and thus, F.P. has no case or controversy to be decided before the OAL concerning the Second Petition.

DISCUSSION

A Motion for Summary Decision shall be granted "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." N.J.A.C. 1:1-12.5(a). If "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. A Motion for Summary Decision before the OAL must be analyzed, "in accordance with the principles set forth by the New Jersey Supreme Court in Brill v. Guardian Life Insurance Company of America, 142 N.J. 520, 540 (1995)." Nat'l Transfer v. New Jersey Dep't of Envtl. Prot., 347 N.J. Super. 401, 408 (App. Div. 2002). A determination that there is a genuine issue of material fact 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. Brill, 142 N.J. at 540-41.

In order to defeat the motion, the opposing party must establish the existence of genuine disputes of material fact relevant to the case. The facts upon which the party opposing the motion relies to defeat the motion must be something more than "facts which are immaterial or of an insubstantial nature, a mere scintilla, 'fanciful, frivolous, gauzy or merely suspicious.'" Brill. At 529 (citations omitted).

This matter is ripe for Summary Decision because the facts 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." N.J.A.C. 1:1-12.5(a).

I **FIND** that F.P. and the Board are parties to a duly executed Settlement Agreement, dated December 17, 2019, entered into between F.P. and the Board resolving all the issues raised in the First Petition, which issues are identical to the allegations raised in the Second Petition of appeal filed in January 2020. F.P. was represented by counsel, Bradley Flynn, Esq., at the time he entered into the Settlement Agreement with the Board. I **FIND** that the Board's moving papers also establish that the issues raised by F.P. in the Second Petition are identical to those raised in the First Petition and have been resolved by way of the Settlement Agreement. Finally, I **FIND** that the student is no longer enrolled in the school district since March 2020.

It is well settled, under New Jersey law, that an agreement to settle a lawsuit forms a contract between parties. Nolan v. Lee Ho, 120 N.J. 465, 472 (1990). Public policy encourages settlements. Jannarone v. W.T. Co., 65 N.J. Super. 472, 476 (App. Div.), *certif. denied* sub nom., Jannarone v. Calamoneri, 35 N.J. 61 (1961). Such public policy favoring settlements pertains to issues addressing sometimes difficult personal issues, including those involving the welfare of children. *See e.g.* Giangeruso v. Giangeruso, 310 N.J. Super. 476 (Ch. 1997); D.R. by M.R. v. East Brunswick Bd. of Educ., 838 F. Supp. 184, 189-90 (D.N.J. 1993).

Contractual interpretation is a legal matter ordinarily suitable for resolution on summary judgment. Celanese Ltd. v. Essex Cnty. Improvement Auth., 404 N.J. Super. 514, 528 (App. Div. 2009). A settlement agreement is governed by basic contract principles. J.B. v. W.B., 215 N.J. 305, 326 (2013)(*citing*, Pacifico v. Pacifico, 190 N.J. 258, 265 (2007)). The touchstone for interpretation is the parties' shared intent in reaching the agreement. Id. at 266. So long as that intent is evident from the contract's clear, unambiguous terms, the agreement will be enforced as written. Karl's Sales & Serv., Inc. v. Gimbel Bros., Inc., 249 N.J. Super. 487, 493 (App. Div.), *certif. denied*, 127 N.J. 548 (1991); Deerhurst Estates v. Meadow Homes, Inc., 64 N.J. Super. 134, 152 (App. Div. 1960), *certif. denied,* 34 N.J. 66 (1961). When a contract is plain and definite, as it is in this case, it is not the function of the court to rewrite or revise the contract but rather to enforce it. Pacifico, 190 N.J. at 266; Air Master Sales Co. v. Northbridge Park Co-Op, Inc., 748 F. Supp. 1110, 1114 (D. N.J. 1990).

I CONCLUDE that the Settlement Agreement entered into by M.P. and the Board in the First Petition is applicable to the allegations contained in the Second Petition, as the terms of the settlement resolved all claims and issues raised in the First Petition, which are again raised in the Second Petition. The Settlement Agreement is straightforward: In consideration of the Board reinstating the student to the school district, F.P. agreed to make the student available for the Board's CST to evaluate him so that the Board could determine whether M.P. should receive additional educational and other services when he returned to the school district. In addition, F.P. also agreed to ten (10) hours of home instruction for the student during the pendency of the CST evaluation and while the student was not in the school. I **CONCLUDE** that the filing of the Second Petition is F.P.'s attempt to undue the plain and unambiguous terms of the Settlement Agreement, as F.P.'s continued allegations to overturn the Board's suspension and to have M.P. reinstated in the school district were resolved in the Settlement Agreement.

Courts have refused to alter or vacate final settlements absent compelling circumstances because the settlement of litigation ranks so high in our public policy. Jannarone v. W.T. Co., 65 N.J. Super. 472 (App. Div.), *certif. denied,* 35 N.J. 61 (1961). Furthermore, settlement agreements will be honored absent a demonstration of unconscionability, fraud, or overreaching in negotiations of the settlement or other

compelling circumstances. Miller v. Miller, 160 N.J. 408, 419 (1999); Pascarella v. Bruck, 190 N.J. Super. 118, 125 (App. Div. 1983) (*citing*, Honeywell v. Bubb, 130 N.J. Super. 130, 136 (App. Div. 1974)). Before vacating a settlement agreement, our courts require "clear and convincing proof" that the agreement should be vacated. DeCaro v. DeCaro, 13 N.J. 36 (1953) I **CONCLUDE** that F.P. has failed to present any facts that suggests the existence of any such proofs. To the contrary, I **CONCLUDE** it is clear that F.P. knowingly and voluntarily entered into a binding Settlement Agreement of the First Petition, which fully satisfied the issues raised therein, that are again alleged in the Second Petition.

Finally, notwithstanding my conclusion that the Settlement Agreement is dispositive of the claims raised in the Second Petition, I **CONCLUDE** that F.P.'s actions in removing the student from the school district prevents the granting of his requested relief to lift the suspension and reinstate the student in the school district. In effect, by withdrawing the student from the school district, F.P. has abandoned his petition, and therefore, I **CONCLUDE** that the relief sought by F.P., cannot be granted and the Second Petition should be denied and therefor the Board's motion for summary decision **GRANTED**.

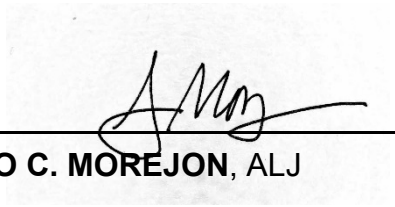
ORDER

IT IS hereby **ORDERED** that the Board's motion for summary decision is **GRANTED** and F.P.'s petition is **DISMISSED**.

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.



February 1, 2021
DATE

JULIO C. MOREJON, ALJ

Date Received at Agency: February 1, 2021

Date E-Mailed to Parties: February 1, 2021

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