



**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

**FINAL DECISION**

OAL DKT. NO. EDS 10847-20

AGENCY DKT. NO. 2021-3210

**A.K. AND K.K. ON BEHALF OF A.K.,**  
Petitioners,

v.

**PARSIPPANY-TROY HILLS BOARD OF  
EDUCATION,**

Respondent.

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**Donald Soutar**, Esq. for petitioners (John Rue & Associates)

**Eric Harrison**, Esq., for respondent, Parsippany-Troy Hills Board of Education  
(Methfessel & Werbel)

Record Closed January 5, 2021

Decided: January 19, 2021

BEFORE **KIMBERLY A. MOSS**, ALJ:

This matter having been opened before the Office of Administrative Law by Eric Harrison Esq., attorney for respondent on motion for summary decision. Petitioner opposed a motion for summary decision on or about November 25, 2020. I received petitioner motion and reply to the opposition on or about January 5, 2021. Hearings dates are scheduled for April 1, 2021, April 14, 2021, and April 26, 2021.

**FACTUAL DISCUSSION**

A.K. is a student residing in the Parsippany -Troy Hills (District). He has been diagnosed with Autism Spectrum Disorder and Attention Deficit Hyperactivity Disorder

(ADHD). A.K. received special education services from pre-school through the first half of the second grade. The District completed triennial re-evaluations of A.K. during the fall of 2014-2015. A re-evaluation eligibility meeting was held on December 10, 2014. At that time the District determined A.K. was no longer eligible for special education and related services or speech language services only. A.K. was provided with a 504 plan.

On July 27, 2017, petitioners requested the District re-evaluate A.K. The District did not respond. Petitioners again requested a re-evaluation for A.K. at the start of the 2017-2018 school year. An eligibility meeting was held on December 18, 2017. The District on March 28, 2018 determined that A.K. was not eligible for special education and related services and provided A.K. with a 504 plan. In August 2018, K.K. reached out to the District to discuss A.K.'s transition to middle school.

Petitioner sent the District a letter on October 5, 2018. The letter states that petitioners strongly disagree with the District's conclusion that A.K. is not eligible for special education and related services; that The District failed in its legal obligation under IDEA; that A.K. has struggled and regressed; and that petitioners intend to enroll A.K. in private school and seek reimbursement from the District. Petitioner in her certification states that she only realized the District did not provide A.K. with FAPE until after he was enrolled in Arrow Academy. However, this is in direct contradiction with the October 5, 2018 letter where petitioners state that the District failed in its IDEA obligation to A.K.

Petitioners filed the Due Process Complaint on October 19, 2020.

### **LEGAL ANALYSIS AND CONCLUSION**

Respondent seeks to summarily dismiss petitioner's claim. The rules governing motions for summary decision in an OAL matter are embodied N.J.A.C. 1:1-12.5. These provisions mirror the language of Rule 4:46-2 and the New Jersey Supreme Court's decision in Judson v. Peoples Bank and Trust Company of Westfield, 17 N.J. 67 (1954). Under N.J.A.C. 1:1-12.5(b), the determination to grant summary judgment should be based on the papers presented as well as any affidavits, which may have been filed with the application. In order for the adverse, i.e., the non-moving party to

prevail in such an application, responding affidavits must be submitted showing that there is indeed a genuine issue of fact, which can only be determined in an evidentiary proceeding. The Court in *Brill v. Guardian Life Insurance Company of America*, 142 N.J. 520, 523 (1995), set the standard to be applied when deciding a motion for summary judgment. Therein the Court stated:

The determination whether there exists a genuine issue with respect to a material fact challenged 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.

There is no genuine issue of material fact in this matter.

20 U.S.C. 1415 (f)(3)(c) & (d) provides:

(C) Timeline for requesting hearing. A parent or agency shall request an impartial due process hearing within 2 years of the date the parent or agency knew or should have known about the alleged action that forms the basis of the complaint, or, if the State has an explicit time limitation for requesting such a hearing under this part [20 USCS §§ 1411 et seq.], in such time as the State law allows.

(D) Exceptions to the timeline. The timeline described in subparagraph (C) shall not apply to a parent if the parent was prevented from requesting the hearing due to—

(i) specific misrepresentations by the local educational agency that it had resolved the problem forming the basis of the complaint; or

(ii) the local educational agency's withholding of information from the parent that was required under this part [20 USCS §§ 1411 et seq.] to be provided to the parent.

N.J.A.C. 6A:14-2.7(a)(1) provides:

1. A request for a due process hearing shall be filed within two years of the date the party knew, or should have known, about the alleged action that forms the basis for the due process petition. The two-year period for filing for a due process hearing may be extended by an administrative law judge if:

i. A district board of education specifically misrepresented to the parent that the subject matter of the dispute was resolved to the parent's satisfaction; or

ii. The district board of education withheld information that was required by law to be provided to the parent.

There is no evidence in this matter that the District misrepresented to the parent that the matter was resolved or that the District withheld information that it was required to provide to the parent.

Petitioner cited the case of G.L. v. Ligonier Valley School District Authority 802 F.3<sup>rd</sup> 601 (3<sup>rd</sup> Circuit 2015) regarding the time for file in a due process petition. However, in G.L. v Ligonier, the petitioner filed the Due Process petition within two years which is not the case in this matter.

The October 5, 2018, letter clearly states that the petitioners believe that the District did not comply with IDEA. They unilaterally placed A.K. at Arrow Academy and requested tuition reimbursement. On October 5, 2018, petitioners knew about the action that forms the basis of the Due Process petition, namely, the District did not comply with IDEA. The petition was filed on October 20, 2020, which is more than two years after October 5, 2018.

I **CONCLUDE** that the petition was filed more than two years after petitioners knew about the action that forms the basis of the Due Process petition.

### **ORDER**

Based on the foregoing, it is **ORDERED** that the due process petition be and is hereby **DISMISSED**. Accordingly, the April 2021 hearing dates are cancelled.

This decision is final pursuant to 20 U.S.C. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2018) 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. § 1415(i)(2); 34 C.F.R. § 300.516 (2018). 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.

January 19, 2021



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DATE

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**KIMBERLY A. MOSS, ALJ**

Date Received at Agency

January 19, 2021

Date Mailed to Parties:

January 19, 2021