



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

SUMMARY DECISION

OAL DKT. NO. EDS 00598-21

AGENCY DKT. NO. 2021-32391

M.D. ON BEHALF OF S.T.,

Petitioner,

v.

EAST ORANGE BOARD OF EDUCATION,

Respondent.

M.D., Petitioner, pro se

Carolyn R. Chaudry, Esq., for Respondent (Scarinci & Hollenbeck, attorneys)

Record Closed: April 7, 2021

Decided: April 30, 2021

BEFORE **KELLY J. KIRK**, ALJ:

STATEMENT OF THE CASE

Petitioner, M.D. (Mom), on behalf of S.T., filed a Petition for Due Process against respondent, East Orange Board of Education (Board or District), alleging, inter alia, that dating back to 2015–2016, Mom was disregarded as a member of the IEP team, that the District did not conduct timely evaluations, that the District failed to provide a transition

meeting for a transition and plan for high school, and that the District did not complete an evaluation, which resulted in S.T. entering high school without an IEP and denied her a free appropriate public education (FAPE), and seeking, inter alia,¹ that the District “be responsible for continuity of education at” S.T.’s current placement through high school, that services include extended school year (ESY) and other summer services, and that the District provide reimbursement for ESY and transportation.

PROCEDURAL HISTORY

On or about December 22, 2020, M.D. filed a Petition for Due Process against the Board seeking, per the transmittal, “continued placement in the West Caldwell Vocational-Technical School, along with reimbursement of all costs and compensatory education.” On or about January 12, 2021, the Board filed its answer to the Petition for Due Process. The matter was transmitted by the New Jersey Department of Education (the Department), Office of Special Education Policy and Dispute Resolution, to the Office of Administrative Law (OAL), where it was filed on January 21, 2021.

A telephone prehearing conference was held on February 11, 2021, at which time the District advised that it would be filing a motion for summary decision based upon the statute of limitations. Hearing dates were scheduled for April 7, 2021, and April 9, 2021. On February 26, 2021, the Board filed its motion for summary decision, accompanied by a letter brief and certification of Tonya Hardin Santos (Santos Cert.) with six exhibits. Petitioner requested adjournment of the scheduled hearing dates. On April 1, 2021, petitioner filed opposition to the motion for summary decision, consisting of forty-seven pages, including a handwritten response and various attachments and a “Motion to [Amend] Due Process in [Lieu] of a Formal Motion Petition.” On April 7, 2021, the Board filed a reply letter brief. The hearing dates were rescheduled for May 17, 2021, and May 26, 2021.

¹ The petition seeks other relief, including appointment of an attorney at District expense and a change in leadership in the District, including removal or request for resignation of its director of Special Services, which relief is not addressed herein as it falls outside the scope of a special education hearing.

FACTUAL DISCUSSION

The documentation submitted in connection with the motion reflects the following:

In 2017–2018, S.T. was in eighth grade at Whitney Houston Academy. She was deemed eligible for special education and related services under the classification “emotionally disturbed.” (See Santos Cert., Exhibit C.) An IEP reevaluation planning meeting was held on February 8, 2018. (See Santos Cert., Exhibit C.) As a result of the meeting, additional information was required to determine S.T.’s eligibility for general education and related services and to develop her IEP, and the District proposed educational and psychological assessments. (See Santos Cert., Exhibit C.) A psychological assessment was performed by Ana Lopez, M.A., Ed.S., on May 4, 2018, and she ostensibly prepared a Psychological Evaluation. (See Santos Cert., Exhibit D.) The stated reason for referral was, “Psychological evaluation is being completed as part of triennial Child Study Team evaluation to determine the appropriateness of [S.T.’s] current classification and placement and to assist in planning for her transition to high school at the end of the current academic year.” (See Santos Cert., Exhibit D.)

An Occupational Therapy Discharge Summary, dated May 21, 2018, reflects, “It is recommended that [S.T.] be discharged from Occupational Therapy Consultation,” and “ESY: Services during the extended school year program are not recommended.” (See Santos Cert., Exhibit E.)

An email from Patricia Clark-Jeter, director of Student-Related Services for Essex County Schools of Technology District (ECSTD), dated August 2, 2018, to Tonya Hardin Santos, the District’s director of Special Education, and to Cynthia Wilson Bradshaw, head administrative assistant for the District’s Department of Special Education Services, attached the “most up-to-date transportation list for special education students that attend Essex County Schools of Technology Donald M. Payne Tech (PT) and West Caldwell Tech High Schools.” (See Santos Cert., Exhibit B.) The attached list did not include the name “S.T.” (See Santos Cert., Exhibit B.)

On August 22, 2018, Mom forwarded to Bradshaw an email from Ayisha Ingram-Robinson, principal, dated April 5, 2018, requesting that Mom confirm the offer of admission by April 16, 2018, via email, and stating in part:

Congratulations! This is to inform you that your child has been accepted to Essex County Vocational Technical Schools West Caldwell Tech Campus starting September 2018. We are looking forward to your son/daughter joining us as a member of the Class of 2022.

The school district is offering a unique opportunity this summer for our incoming 9th grade students. The 9th Grade Summer Enrichment Program consists of classes in English and Mathematics. This year the program will tentatively (dates may change) take place on Monday through Friday from 8:30 am until 12:45 pm and will begin on July 5, 2018 and end on August 3, 2018. The location of the program will be at the Newark Tech Campus located at 91 West Market Street in Newark. If you have not done so already, please inform us if you are unable to attend the Summer Enrichment Program.

[See Santos Cert., Exhibit B.]

Mom's email was forwarded by Bradshaw to Santos on September 5, 2018. (See Santos Cert., Exhibit B.) On September 6, 2018, Santos forwarded the email to Clark-Jeter, stating in part:

The student's name does not appear on any of the lists you have provided. Please advise.

[See Santos Cert., Exhibit B.]

On September 11, 2018, Clark-Jeter emailed Santos and Bradshaw stating, in part:

It turns out that we mistook the mother's name for the daughter. [**S.T.**] is the daughter. She was accepted as a gen ed student, but it was later revealed that she is part of special

education. The parent keeps emailing me regarding transportation. Please advise me of her status.

[See Santos Cert., Exhibit B.]

On September 11, 2018, Bradshaw emailed Clark-Jeter, with a copy to Santos, as follows:

You indicated that she was accepted as a general [education] student although she has an IEP.

If she remains a general education student we will not provide door to door transport.

Please let me know the status.

[See Santos Cert., Exhibit B.]

On September 11, 2018, Clark-Jeter emailed Bradshaw and copied Santos, stating:

Yes The parent claimed she told the interviewer at the time. However, we have not [sic] record of her doing so. I took on this role on July 2, 2018, so I cannot tell you what was discussed.

I received an email from the parent on August 23, 2018, stating that her child was improperly placed. The principal at WCT confirmed that she also learned about the child being part of special education after the student was already accepted into the gen ed program. I have yet to receive an IEP because the student was enrolled as gen ed until recently. It is very frustrating and confusing. I will be reporting to WCT tomorrow morning. I will see if the documents have been delivered. Can you check to see if you have anything in EasyIEP on this student?

Meanwhile, she has been attending school with the mother dropping her off. The mom, however, expressed she can no longer do so and is requesting transportation.

[See Santos Cert., Exhibit B.]

On September 18, 2018, Clark-Jeter emailed Santos as follows:

Please let me know the outcome of the meeting with [S.T].
Was she declassified?

[See Santos Cert., Exhibit B.]

On September 19, 2018, Santos emailed Clark-Jeter, stating that the “parent cancelled.”
(See Santos Cert., Exhibit B.)

A psychiatric evaluation was conducted on October 18, 2018, by Ronald Crampton, M.D. (See Santos Cert., Exhibit F.)

On December 7, 2018, Clark-Jeter emailed Santos and asked: “Is this student considered SE for your district?” (See Santos Cert., Exhibit B.) On December 10, 2018, Clark-Jeter forwarded to Santos the Essex County West Caldwell Tech emails and asked her to “Please verify that this was done at your district.” (See Santos Cert., Exhibit B.)

The Petition for Due Process was filed with the Department on December 22, 2020.

LEGAL ANALYSIS AND CONCLUSIONS

Motion to Amend

Pursuant to N.J.A.C. 6A:14-2.7(i), “[a]fter a petition requesting a due process hearing is submitted to the Office [of Special Education Programs], the petition may be amended only with the consent of the other party, or if an administrative law judge allows the party to amend the petition.” Generally, pleadings may be freely amended when, in the ALJ’s discretion, an amendment would be in the interest of efficiency, expediency, and would not create undue prejudice. N.J.A.C. 1:1-6.2(a). However, no proposed amended pleading was submitted, and the request is to add an entirely new party to a

matter filed in December 2020, on which several conferences were held and a motion for summary decision was already filed. Hearing dates are scheduled for May 2021, and service upon an entirely new party, and filing of an answer, would not be in the interest of efficiency or expediency and would create undue prejudice. Accordingly, the motion to amend the petition is **DENIED**.

Motion for Summary Decision

Applications for summary decision after a matter has been transmitted to the OAL shall be filed with the ALJ in accordance with applicable rules of the OAL. N.J.A.C. 6A:3-1.12(b). A contested case before the OAL “can be summarily disposed of before an ALJ without a plenary hearing in instances where the undisputed material facts, as developed on motion or otherwise, indicate that a particular disposition is required as a matter of law.” In re Robros Recycling Corp., 226 N.J. Super. 343, 350 (App. Div.), certif. denied, 113 N.J. 638 (1988).

N.J.A.C. 1:1-12.5(b) provides, in pertinent part:

The motion for summary decision shall be served with briefs and with or without supporting affidavits. The decision sought 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. When 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.

Here, there is no genuine issue as to any material fact relative to the operative dates. Accordingly, I **CONCLUDE** that this matter is appropriate for summary decision.

The Petition reflects that S.T. is “currently in all honors and AP classes,” was recently “awarded Principal’s Honor Roll (High Honor Roll),” and maintained honor roll since freshman year, but alleges, inter alia, that Mom “disagreed with the IEP and

classification”; that the District “did not conduct evaluations in a timely manner”; that the District failed to provide a transition meeting for high school; that the District did not complete an evaluation, which resulted in S.T. starting high school without an IEP and denial of a FAPE; that S.T. was deemed general education by the ECSTD due to lack of an IEP and school records; and that there were “classes changing repeatedly during her first weeks/months in [the ECSTD] every time there was a ‘discovery’ (that a class was inappropriate) as paperwork was received from both myself and EO school district relating to IEP and or performance academically.” The Petition seeks that the District “be responsible for continuity of education at”² S.T.’s current placement through high school, that services include ESY and other summer services, and that the District provide reimbursement for ESY and transportation.

A parent must request an impartial due process hearing within two years of the date the parent 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 20 U.S.C. §§ 1411 et seq., in such time as the State law allows. 20 U.S.C. § 1415(f)(3)(C). The only exceptions to the two-year timeline are for a parent 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 20 U.S.C. §§ 1411 et seq. to be provided to the parent. 20 U.S.C. § 1415(f)(3)(D). Similarly, N.J.A.C. 6A:14-2.7(a) provides that 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. A request for a due process hearing must 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. N.J.A.C. 6A:14-2.7(a)(1). The two-year period for filing for a due process hearing may be extended by an ALJ 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

² It is observed that “S.T. remains full-time student at [ECSTD] and the East Orange Board of Education continues to pay tuition and provide transportation for student to attend there,” and that the District “has not taken any action to request student return to district nor is it intending to do so.” (See Santos Cert., ¶29.)

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

Confirming the foregoing, the Third Circuit has stated:

The IDEA statute of limitations requires a parent to request a due process hearing within two years of “the date the parent . . . knew or should have known about the alleged action that forms the basis of the complaint.” 20 U.S.C. § 1415(f)(3)(C); 34 C.F.R. § 300.511(e). Parents have the same two years to file an administrative complaint alleging a violation of the IDEA or § 504 of the Rehabilitation Act. 20 U.S.C. § 1415(b)(6)(B); 34 C.F.R. § 300.507(a)(2).

[D.K. v. Abington Sch. Dist., 696 F.3d 233, 244 (3rd Cir. 2012).]

Moreover, the Third Circuit held that to be excused from the statute of limitations, the first exception requires a showing that the District “intentionally misled” or “knowingly deceived” the petitioner, and the second exception “plainly indicates that only the failure to supply statutorily mandated disclosures can toll the statute of limitations.” Id. at 246.

A county system of vocational schools may be established in accordance with article 3 of N.J.S.A. 18A:54-1 et seq. Subject to the approval of the state board and to such rules as it may make, the commissioner shall superintend the establishment and maintenance of vocational schools and supervise and approve such schools. N.J.S.A. 18A:54-2. A “county vocational school district” or “CVSD” is a school district established pursuant to N.J.S.A. 18A:54-1 et seq. by a county board of chosen freeholders, pursuant to N.J.S.A. 18A:54-2 and 18A:54-12, for the purpose of providing efficient occupational, technical, and academic education opportunities to secondary and postsecondary students. N.J.A.C. 6A:19-1.2; N.J.A.C. 6A:26-1.2.

The board of education of each school district or regional school district in any county in which there is a county vocational school district shall send to any of the schools of the county vocational school district each pupil who resides in the school district or regional school district and who has applied for admission to and has been accepted for attendance

at any of the schools of the county vocational school district. N.J.S.A. 18A:54-20.1(a); see also N.J.A.C. 6A:19-2.3(a) (each resident district board of education shall ensure that resident students may apply to and, if accepted, attend a county vocational school pursuant to N.J.S.A. 18A:54-20.1). The board of education shall pay tuition for each of these pupils to the county vocational school district pursuant to N.J.S.A. 18A:54-20.1(a); see also N.J.A.C. 6A:19-2.3(a)(1) (the resident district board of education shall be responsible for the tuition and transportation costs of any resident student admitted to the county vocational school in which the school district is located, unless the resident district board of education maintains a vocational school pursuant to N.J.S.A. 18A:54-5 et seq., and such school offers the same program as the county vocational school where the student has been admitted). A county vocational school district shall admit resident students based on board-approved policies and procedures that ensure equity and access for enrollment that shall be posted on the school district's website. N.J.A.C. 6A:19-2.3(b). County vocational school districts receiving students from a district board of education shall enter into written contractual agreements for estimated tuition rates not to exceed the limitations imposed by N.J.S.A. 18A:54-23.4. N.J.A.C. 6A:19-2.3(c). Resident district boards of education shall evaluate their methods of transporting students attending a special education or vocational school located outside of the school district and nonpublic school students whose parents or legal guardians receive aid in lieu of transportation to determine whether services could be more economically provided through a coordinated transportation services agency (CTSA). N.J.A.C. 6A:27-10.2(a).

“Student with a disability” means a student who is eligible for special education and related services pursuant to N.J.A.C. 6A:14. N.J.A.C. 6A:19-1.2. The Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§ 1400–1482, ensures that all children with disabilities have available to them a free appropriate public education (FAPE) that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living, and ensures that the rights of children with disabilities and parents of such children are protected. 20 U.S.C. § 1400(d)(1)(A), (B); N.J.A.C. 6A:14-1.1. A “child with a disability” means a child with intellectual disabilities, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional

disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities, and who, by reason thereof, needs special education and related services. 20 U.S.C. § 1401(3)(A).

The District asserts, inter alia, that the petition should be dismissed because it was filed beyond the IDEA statute of limitations, and argues that Mom knew or should have known of her claims at the start of the 2018–2019 school year, but she failed to file a due process petition within two years. The District further argues that as of September 2018, the ECSTD was responsible for S.T.’s special education and related services and the District’s responsibility was limited to transportation and tuition.

Based upon the due process petition and documentation submitted relative to the motion for summary decision, S.T. last attended East Orange District schools during the 2017–2018 school year, at which time she was in eighth grade. Thereafter, S.T. enrolled in the ECSTD and commenced attending Essex County Vocational Technical Schools West Caldwell Tech (WCT) in September 2018. If it is determined that a student with a disability cannot remain in the general education setting with supplementary aids and services for all or a portion of the school day, a full continuum of alternative placements shall be available to meet the needs of the student, which include placement a special education program in a county vocational school district. N.J.A.C. 6A:14-4.3(b)(4). Pursuant to N.J.A.C. 6A:14-4.7(h)(1)(i), for a student placed in a vocational program outside of the district board of education in a full-time county vocational school, all responsibility for programs and services rests with the receiving district board of education. However, there was no District IEP for the 2018–2019 school year that “placed” S.T. at WCT. To the contrary, the documentation reflects that S.T. independently applied and was accepted to WCT as a general education student.

When a student with a disability transfers from one New Jersey school district to another, the child study team of the school district into which the student has transferred must conduct an immediate review of the evaluation information and the IEP and, without delay, in consultation with the student’s parents, provide a program comparable to that set forth in the student’s current IEP until a new IEP is implemented. N.J.A.C. 6A:14-4.1(g).

For a student who transfers from one New Jersey school district to another New Jersey school district, the IEP shall be implemented as written if the parents and district board of education agree. N.J.A.C. 6A:14-4.1(g)(1). If the appropriate district board of education staff do not agree to implement the current IEP, the district board of education shall conduct all necessary assessments and, within 30 days of the date the student enrolls in the school district, develop, and implement a new IEP for the student. Ibid. Thus, irrespective of whether S.T. was enrolled as a special education or general education student, identification, evaluation, reevaluation, classification, educational placement, and the provision of a free, appropriate public education would have been the responsibility of the ECSTD as of September 2018. Further, to the extent the District had previously agreed to any evaluations, they were completed by October 18, 2018, and provided to the ECSTD no later than December 10, 2018. (See Santos Cert., ¶22.)

Significantly, Mom's handwritten response to the motion primarily addresses issues in 2016, 2017, and 2018, which fall outside the two-year statute-of-limitations period commencing on December 22, 2018. Further, attached to her opposition are a June 27, 2016, report card; a fax cover sheet from February 24, 2017, and application for The Wight Foundation, Inc.; an application materials list for West Caldwell Tech; a June 7, 2017, letter about the Tyson Summer Arts Academy; a June 7, 2017, conference letter; a July 31, 2017, letter about the first day of school; an August 24, 2017, letter about the first day of school; and a December 2017 letter, application, requirements, and audition flyer from The Cicely L. Tyson Community School of Performing & Fine Arts for the 2018–2019 school year. Mom also attached an August 9, 2018, letter from the District stating, in part:

The first day of school is Thursday, September 6, 2018.

Please be informed that your child will receive Special Education Services at 101 East Orange Campus High School during the 2018–2019 school year. He/She will be in the Grade 9 program.

Should you have any questions regarding the details of this placement, please call me at (973) 266-5785 or email me at p.colema@eastorange.k12.nj.us.

[See Petitioner Opposition, Part 1.]

Mom underlined the address of the high school and noted on the letter, "District clearly did not know about my child's interest," "This is the Local H.S. Campus High," and "I disregarded it." (See Petitioner Opposition, Part 1.)

In view of the foregoing, I **CONCLUDE** that summary decision should be granted in favor of the respondent. S.T. was enrolled at WCT since September 2018, since which time the ECSTD has been responsible for her program and placement, including special education and related services, and Mom knew or should have known of any claims or causes of action against the District for more than two years prior to the date she filed the Petition. Accordingly, I **CONCLUDE** that the Petition is time-barred and should be dismissed.

ORDER

It is hereby **ORDERED** that summary decision is **GRANTED** in favor of the respondent, and the Petition is hereby **DISMISSED** with prejudice.

This decision is final pursuant to 20 U.S.C. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2020) 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 (2020).



April 30, 2021

DATE

KELLY J. KIRK, ALJ

Date Received at Agency

Date Mailed to Parties:
db
