



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

**FINAL DECISION**

**SUMMARY DECISION**

OAL DKT. NO. EDS 04399-21

AGENCY DKT. NO. 2021-32709

**C.K. ON BEHALF OF I.G.,**

Petitioner,

v.

**MILLVILLE CITY BOARD OF  
EDUCATION,**

Respondent.

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**C.K.**, on behalf of I.G., petitioner, pro se

**Amy Houck-Elco**, Esq., for respondent (Cooper Levenson, attorneys)

Record Closed: November 30, 2021

Decided: December 2, 2021

BEFORE **CATHERINE A. TUOHY**, ALJ:

**STATEMENT OF THE CASE**

In accordance with the provisions of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1415, C.K. has requested a due process hearing on behalf of her daughter, I.G., who is classified as eligible for special education and related services. Petitioner, on behalf of her daughter, seeks an independent reading evaluation, provision of either Orton Gillingham or Wilson Reading Program in district, or placement in either a public or private school in a specialized reading program.

## **PROCEDURAL HISTORY**

On April 20, 2021, petitioner filed a due process petition with the Office of Special Education Programs (OSEP) seeking on behalf of her minor student, an independent reading evaluation, provision of either Orton Gillingham or Wilson Reading Program in district, or placement in either a public or private school in a specialized reading program. Respondent filed its answer on or about May 6, 2021. The matter was transmitted to the Office of Administrative Law (OAL) where it was filed as a contested case on May 20, 2021, pursuant to N.J.S.A. 52:14B-1 to 15; N.J.S.A. 52:14F-1 to 13.

A prehearing order was entered on July 15, 2021, and the matter was scheduled for a hearing November 9, November 10, December 7, December 9, and December 10, 2021. A telephone prehearing conference was conducted on October 29, 2021. Pursuant to the prehearing order and the October 29, 2021, telephone conference, the parties submitted a joint stipulation of facts, dated November 3, 2021. On November 3, 2021, respondent filed a motion to bar petitioner's witnesses from testifying for failing to provide a summary of testimony pursuant to the five-day rule. The matter was conferenced on November 9, 2021, following technical difficulties with the internet connection. Petitioner was allowed the opportunity to submit a summary of her witnesses' testimony. Respondent was allowed the opportunity to file a motion for summary decision based on the stipulation of facts that the relief requested by petitioner in her due process petition had been agreed to by respondent. The November 10, 2021, hearing date was adjourned on consent. Petitioner provided a summary of her witnesses' testimony on November 15, 2021. Respondent filed a motion for summary decision on November 19, 2021, essentially arguing that this matter is now moot. Petitioner opposed same on November 26, 2021. Respondent filed a reply to the opposition on November 30, 2021, and the record closed.

**FACTUAL DISCUSSIONS AND FINDINGS**

Pursuant to the Joint Stipulation of Facts entered between the parties, dated November 3, 2021, the following facts are not in dispute and thus are **FOUND** as **FACT**:

1. Petitioner C.K. and C.G. are the parents of I.G. (#1.)
2. I.G. is currently sixteen-years old and in eleventh grade at Millville Senior High School. (#2.)
3. Petitioners reside in Millville, N.J. (#3.)
4. The Millville Board of Education is a body corporate and politic of the State of New Jersey empowered by law to administer the Millville School District. (#4.)
5. The Millville School District educates students from grades pre-k to twelve. (#5.)
6. On January 10, 2020, C.K. requested I.G. be evaluated by the Child Study Team. (#24.)
7. On January 24, 2020, the Child Study Team held an evaluation plan meeting that C.K. did not attend. (#23.)
8. On February 13, 2020, C.K. signed permission to conduct evaluations by the Child Study Team. (#24.)
9. On February 19, 2020, a psychiatric evaluation was conducted. (#25.)
10. On March 16, 2020, Governor Murphy via Executive Order 104 closed schools due to the Coronavirus-19 pandemic. Schools remained closed for the end of the 2019-2020 school year and in-person evaluations could not be conducted. (#26.)

11. On September 24, 2020, the District sent C.K. a letter from Mr. Matusz scheduling the evaluations for September 29, 2020. (#28.)

12. On September 28, 2020, C.K. cancelled the evaluations due to a death in the family and asked for them to be rescheduled upon her daughter's return to school. (#29.)

13. Evaluations were conducted on October 27, 2020, November 2, 2020, November 9, 2020, and November 16, 2020. (#30.)

14. School was closed for Thanksgiving (one-half day on November 25, 2020 and school resumed November 30, 2020.) School was closed for holiday break (one-half day December 23, 2020 and resumed January 4, 2021.) (#31.)

15. On January 14, 2021, an eligibility meeting took place and a draft initial IEP was provided to C.K. C.K. did not sign the initial IEP and instead asked for additional assessments, speech evaluation and learning evaluation. (#32.)

16. On February 17, 2021, and February 23, 2021, a learning evaluation was conducted. (#33.)

17. On February 22, 2021, a speech evaluation was conducted. (#34.)

18. I.G. was found eligible for special education and related services at an eligibility meeting on March 22, 2021, under the classification of Specific Learning Disability (SLD). (#6.)

19. I.G.'s full scale I.Q. is 109, her nonverbal subtest score is 116, and her lowest score in oral fluency was 69, making her eligible for SLD under the discrepancy model. (#7.)

20. On March 22, 2021, after I.G. was found eligible for special education and related services, an initial IEP was drafted providing I.G. with special education and related services. That initial IEP is dated March 22, 2021. (#8.)

21. Millville Senior High School schedule consists of one-half year block scheduling, per subject, for students. (#9.)

22. I.G.'s IEP, dated March 22, 2021, provides for the following classes:

One-half year block language arts, pull-out resource program

One-half year block math, in-class support

One-half year block science, in-class support

One-half year block social studies, class support. (#10.)

23. I.G. is scheduled for pull-out resource program, language arts, in the second half of the 2021-2022 school year based upon the one-half year block schedule. Her pull-out resource program is Wilson's Just Words Program. (#11.)

24. In addition, prior to court, Mr. Matusz and the District offered the following settlement to Petitioner:

1. Independent evaluation by a neurologist or neuropsychologist to evaluate I.G. for Dyslexia. The independent evaluator would be picked by petitioner under the criteria Board Policy 6171.45 independent evaluations.

2. Confirmation that I.G. is in the Wilson Just Words Program and will continue in the program.

3. Compensatory services, Wilson Just Words, or if I.G. completes Wilson Just Words, another similar program such as Lexia for two years. (The two years includes: the remainder of this school year; ESY 2022 and next school year.) (#21.)

## LEGAL ANALYSIS AND CONCLUSIONS OF LAW

N.J.A.C. 1:1-12.5(b) provides that summary decision should 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.” Our regulation mirrors R. 4:46-2(c), which provides that “[t]he judgment or order sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories and admissions on file, 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 a judgment or order as a matter of law.”

A determination whether a genuine issue of material fact exists that precludes summary decision requires the 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. Our courts have long held that “if the opposing party . . . offers . . . only facts which are immaterial or of an insubstantial nature, a mere scintilla, ‘Fanciful, frivolous, gauzy or merely suspicious,’ he will not be heard to complain if the court grants summary judgment.” Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 529 (1995) (citing Judson v. Peoples Bank & Trust Co., 17 N.J. 67, 75 (1954)). The “judge’s function is not himself [or herself] to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial.” Brill, 142 N.J. at 540 (citing Anderson v. Liberty Lobby, 477 U.S. 242, 249 (1986)). When the evidence “is so one-sided that one party must prevail as a matter of law,” the trial court should not hesitate to grant summary judgment. Liberty Lobby, 477 U.S. at 252.

**I CONCLUDE** that this matter is ripe for summary decision since there are no issues of material fact in dispute and that respondent is entitled to summary decision as a matter of law as set forth below.

The issues for disposition are limited to the claims set forth in the due process petition. 20 U.S.C. § 1415(f) (3)(B); See, N.J.A.C. 6A:14-2.7(c) (the request for due

process must “state the specific issues in dispute, relevant facts and the relief sought”.) The regulations provide that “a request for due process hearing . . . serves as notice to the respondent of the issues in the due process complaint.” N.J.A.C. 6A:14-2.7(f). This is especially more important where, as in New Jersey, a respondent school district has the burden of proof and the burden of moving forward. See: N.J.S.A. 18A:46-1.1.

Respondent moved for summary decision based on the joint stipulation of facts submitted by the parties, dated November 3, 2021, arguing that it has offered to provide petitioner with the relief requested in her due process petition, yet petitioner refuses to resolve the matter. Petitioner, in her November 26, 2021, opposition to the motion, in section I. “Statement of Facts,” second paragraph states:

Plaintiff acknowledges that the district is now offering all of the items listed that would bring remedy to this matter except for the relief that out of district or private learning be considered for compensatory education as well”.

Under section “III Argument” petitioner argues: “Plaintiff seeks to have a hearing to determine if a private out of district learning program be considered as stated as an “or” option in the original petition.

Petitioner’s due process petition sought an independent reading evaluation, provision of either Orton Gillingham **or** Wilson Reading Program in district, **or** placement in either a public or private school in a specialized reading program. Petitioner did not plead compensatory education in her due process petition. Petitioner is attempting to defeat the motion for summary decision by claiming that although the District has now offered the relief requested in district, the District did not offer her the alternative relief requested in her petition, of an out of district placement. This argument has no merit. The District had to offer one or the other, but not both.

Furthermore, the IDEA includes a mainstreaming requirement requiring education in the “least restrictive environment.” 20 U.S.C.A. § 1412(a)(5) mandates that:

[t]o the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

The law describes a continuum of placement options, ranging from mainstreaming in a regular public school setting as least restrictive, to enrollment in a residential private school as most restrictive. 34 C.F.R. § 300.115 (2015); N.J.A.C. 6A:14-4.3. Federal regulations further require that placement must be “as close as possible to the child’s home.” 34 C.F.R. § 300.116(b)(3) (2015); N.J.A.C. 6A:14-4.2; Oberti v. Clementon Bd. of Educ., 789 F. Supp. 1322 (D.N.J. 1992.)

Courts in this Circuit have interpreted this mainstreaming requirement as mandating education in the least restrictive environment that will provide meaningful educational benefit. “The least restrictive environment is the one that, to the greatest extent possible, satisfactorily educates disabled children together with children who are not disabled, in the same school the disabled child would attend if the child were not disabled.” Carlisle Area Sch. v. Scott P., 62 F.3d 520, 535 (3d Cir. 1995), cert. den. sub. nom., Scott P. v. Carlisle Area Sch. Dist., 517 U.S. 1135, 116 S. Ct. 1419, 134 L. Ed. 2d 544 (1996).

Millville Senior High School is I.G.’s home district and is the least restrictive environment. Her placement in the language arts pull-out program where I.G. will receive instruction in Wilson Just Words will provide I.G. meaningful educational benefit in the least restrictive environment as required by law.

The District has demonstrated that the relief requested has been agreed to be provided and petitioner has acknowledged same in the joint stipulation of facts as well as in her opposition papers.



The parties have stipulated that the District has offered petitioner an independent evaluation by a neurologist or neuropsychologist to evaluate I.G. for Dyslexia. The independent evaluator would be picked by petitioner pursuant to the Board policy for independent evaluations. The parties have stipulated as fact that the District is providing I.G. with the the Wilson Just Words Program in her language arts, pull-out program and will continue in the program. The District has also offered two years of compensatory education which was not plead in petitioner's due process petition. I.G. will be continued to be offered Wilson Just Words, or if she completes Wilson Just Words, she will be provided with another similar program such as Lexia for two years. The two years compensatory services include the remainder of this school year, ESY 2022 and the next school year.

The Board submits that the undisputed facts indicate the District has provided all the relief requested and there is no issue left before this tribunal to resolve. Essentially, the claims of the petition have been rendered moot, and I agree. An action is moot when it no longer presents a justiciable controversy because the issues raised have become academic. For reasons of judicial economy and restraint it is appropriate to refrain from decision-making when an issue presented is hypothetical, judgment cannot grant effective relief, or the parties do not have a concrete adversity of interest. Anderson v. Sills, 143 N.J. Super. 432, 437 (Ch. Div. 1976); J.L. and K.D. o/b/o J.L. v. Harrison Twp. Bd. of Educ., EDS 13858-13, Final Decision (January 28, 2014) <<http://lawlibrary.rutgers.edu/oal/search.html>>. The District has offered to provide petitioner what she requested in her petition and in addition, compensatory services for two years.

I **CONCLUDE** that respondent is entitled to summary decision dismissing petitioner's due process petition as moot.

### **ORDER**

It is hereby **ORDERED** that respondent's motion for summary decision be **GRANTED**. Petitioner's due process petition is **DISMISSED**.

This decision is final pursuant to 20 U.S.C.A. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2017) 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 (2017). 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.



December 2, 2021  
DATE

CATHERINE A. TUOHY, ALJ

Date Received at Agency

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Date Mailed to Parties:

CAT/tat