



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. EDS 04112-21

AGENCY DKT. NO. 2021-32724

A.P. ON BEHALF OF J.P.,

Petitioner,

v.

UNION TOWNSHIP BOARD OF EDUCATION,

Respondent.

A.P., petitioner, pro se

Afshan T. Ajmiri Giner, Esq., for respondent (Florio, Perrucci, Steinhardt & Fader,
LLC, attorneys)

Record Closed: June 10, 2021

Decided: June 10, 2021

BEFORE, **BARRY E. MOSCOWITZ**, ALJ:

STATEMENT OF THE CASE

In this request for due process hearing, petitioner challenges the appropriateness of his son's individualized education program (IEP) and seeks an out-of-district placement.

PROCEDURAL HISTORY

On April 23, 2021, petitioner filed a request for due process hearing with the Department of Education, Office of Special Education Policy and Dispute Resolution (SPDR).

In his request for due process hearing, petitioner waived the resolution session and asked to proceed directly to a due process hearing.

On April 30, 2021, respondent filed a motion to dismiss instead of an answer.

On May 11, 2021, SPDR transmitted the case to the Office of Administrative Law (OAL) under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15, and the act establishing the Office of Administrative Law, N.J.S.A. 52:14F-1 to -23, for a hearing under the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6, and the Special Education Program, N.J.A.C. 1:6A-1.1 to -18.4.

The case was noticed for a settlement conference on May 27, 2021, but was adjourned at the request of the parties until June 10, 2021.

On May 25, 2021, petitioner requested an adjournment of the settlement conference indefinitely, which was denied, and the case was assigned to me for hearing.

As a result, the motion to dismiss is now ripe for decision.

FINDINGS OF FACT

In his request for due process hearing, petitioner, A.P., challenges the appropriateness of the IEP for his son, J.P., and seeks an out-of-district placement. Petitioner, however, does not have physical or legal custody of his son. In a Judgment and Decree for Divorce, issued by the Honorable Gregory L. Heath, Superior Court Judge, State of Alaska, dated July 9, 2013, M.P., J.P.'s mother, retains physical and legal custody of him.

In fact, more recently, on April 24, 2020, petitioner filed an Order to Show Cause to modify physical and legal custody of his son, which the Honorable Thomas K. Isenhour, Judge Superior Court, State of New Jersey, denied on May 22, 2020.

Meanwhile, M.P. certifies that she remains satisfied with her son's IEP and that she does intend to challenge it.

CONCLUSIONS OF LAW

The rules for special education in New Jersey define "custody" as the right to make educational decisions on behalf of a child. In this case, petitioner does not have custody of his child. N.J.A.C. 6A:14-1.3. Therefore, petitioner does not have the right to make educational decisions on behalf of his son.

And without the right to make educational decisions on behalf of his son, petitioner has no standing to request a due process hearing or obtain the relief he seeks through it.

As such, this case cannot continue and must be dismissed.

ORDER

This case is hereby dismissed.

This decision is final under 20 U.S.C. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2019) and is appealable by filing a complaint and bringing a civil action in either the Law Division of the Superior Court of New Jersey or a district court of the United States. 20 U.S.C. § 1415(i)(2); 34 C.F.R. § 300.516 (2019). If the parent or adult student believes that this decision is not being fully implemented with respect to a program or a service, then this concern should be communicated in writing to the Director, Office of Special Education Policy and Dispute Resolution.

June 10, 2021

DATE



BARRY E. MOSCOWITZ, ALJ

Date Received at Agency

June 10, 2021

Date Mailed to Parties:
dr

June 10, 2021
