State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION-DISMISSAL
OAL DKT. NO. EDS 08217-2022
AGENCY DKT. NO. 2023-34757

N.L. ON BEHALF OF S.C.,
Petitioner,
v.
WASHINGTON TOWNSHIP BOARD OF EDUCATION,
Respondent.

N.L., petitioner, pro se

Sanmathi Dev, Esq., for respondent (Capehart & Scatchard, P.A., attorneys)

Record Closed: October 27, 2022 Decision: November 1, 2022

BEFORE **ELAINE B. FRICK**, ALJ:

STATEMENT OF THE CASE

Petitioner, N.L., on behalf of her minor child, S.C., (parent and student), seek continuation of the student's program and placement with the same teacher in the elementary school for the respondent, Washington Township Board of Education (the District). Respondent has filed a motion to dismiss the due process petition, asserting

there is no such relief permitted as a matter of law. Petitioner opposes the motion, contending that S.C. is unique, and the disruption caused to S.C. by moving her to a different classroom, with a different teacher, is detrimental to the student.

PROCEDURAL HISTORY

Petitioner initiated a mediation-only request with the New Jersey Department of Education (DOE) on July 6, 2022. Mediation was conducted on July 28, 2022. The matter was not resolved. Petitioner requested to convert the mediation-only request to a due process hearing request. The DOE did so. Respondent submitted the Board's Answer and Affirmative Defenses to the DOE on August 4, 2022. The matter was transmitted to the Office of Administrative Law (OAL), where it was docketed on September 21, 2022, to be heard as a contested case. N.J.S.A. 52:14B-1 to 14B-15; N.J.S.A. 52:14F-1 to 14F-13.

Prior to the parties attending a settlement conference at the OAL, respondent submitted a Motion to Dismiss on September 30, 2022, to the settlement conference Administrative Law Judge (ALJ). The settlement conference was conducted on October 4, 2022. The matter was not resolved, and was thus assigned to the undersigned ALJ for a hearing.

A telephonic conference was conducted with the parties on October 7, 2022. A briefing schedule was set for the Motion to Dismiss. Petitioner submitted written opposition to the motion on October 11, 2022. Respondent's reply letter brief was submitted on October 19, 2022. Oral argument was heard telephonically on October 27, 2022. The record closed on that date.

FACTUAL DISCUSSION AND FINDINGS

Based upon the written submissions and argument presented by the parties, certain facts were undisputed, and I thus **FIND** as **FACTS** the following:

The student, S.C., is currently nine years old. The child is classified as multiply disabled. Petitioner describes S.C. as having "a very rare genetic mutation leaving her to be a very complex, non-verbal child with severe disability." (Parental request for mediation submission.) The student is in the multiple disabilities classroom placement, pursuant to the most recent Individualized Educational Program (IEP) from the annual meeting in January 2022. That IEP continued placement of the student in the multiple disabilities classroom for the remainder of the 2021–2022 school year; provided for Extended School Year (ESY) in the summer of 2022; and continued placement of the student in the multiple disabilities classroom for the 2022–2023 school year.

Per her parent, S.C. has been in the same program and placement for four years, with the same classroom teacher, Ms. M.C., and the same aides. The District agreed that Ms. M.C. was the teacher for S.C.'s classroom for the 2021–2022 school year. Counsel for the District could not affirmatively agree during oral argument that Ms. M.C. and the same individuals who serve as aides in the multiply disabled classroom were the exact same staff going back four years.

For the 2022–2023 school year, S.C. has been placed in the same program, the multiply disabled class, pursuant to the January 2022 IEP. However, the physical classroom has changed and there is a different teacher.

Arguments of the parties

The District contends that the due process petition should be dismissed as there is no legal basis for petitioner's request to keep the student with the same teacher, Ms. M.C. The District asserts that the student is in the appropriate placement, which is not disputed by petitioner; and that petitioner has acknowledged, in her opposition filing, that there is no law stating the District must grant her request for a specific teacher. Petitioner's request is seeking relief that is not permitted under the law and thus should be dismissed, as there is no legal basis to mandate that the parent's request for a specific teacher must be awarded.

Petitioner does not dispute the programming for the student. She seeks to keep

S.C. with the same classroom teacher, Ms. M.C., she has had in the past, for the next two academic years to minimize disruption to S.C. Petitioner asserts that S.C. is a very unique and rare student, and does not cope well with change. She believes the classroom environment, in which S.C. has been in with Ms. M.C., allowed S.C. to thrive and progress. Petitioner recognizes that S.C. will have to move to the middle school in two years. Petitioner seeks to minimize the anticipated negative impact which will occur to S.C. if she does not remain with the same teacher now, recognizing that they must cope with such disruption in two years when S.C. will transition from the elementary school building to the middle school building. Petitioner understands that personnel and staffing decisions are within the discretion of the District, yet asserts that a parent's request in a situation that is unique, such as with her daughter, S.C., should "hold a lot more weight." (Petitioner's opposition filing.)

Petitioner has asserted, during oral argument, that she requested that the Child Study Team (CST) reconvene, which meeting did occur towards the end of the last school year. She asserts it was discussed during that meeting that she wanted S.C. to remain with the same teacher for the 2022–2023 school year. Petitioner contends that the school did some "trials" with S.C. by placing her in a different classroom with a different teacher for fifteen minutes while she had a snack. She acknowledged the student did well since she is fine while snacking. Petitioner's concern is that S.C., who is non-verbal, can have extreme "melt downs" and it is hard to snap her out of it. Her former teacher, Ms. M.C., was very good at picking up on cues from S.C.

Petitioner filed her request for mediation-only, which was converted into the pending due process petition when she learned that the school would be continuing S.C.'s placement in the same program but that her physical classroom would change and the teacher would not be Ms. M.C. Petitioner wanted to stop that change from occurring, and keep S.C. in the same physical classroom with teacher, Ms. M.C., for the next two years. She seeks to minimize any disruptions to S.C., until the time that change will be necessary when transitioning from the elementary school to the middle school.

Respondent contends that it cannot agree with the information asserted by petitioner regarding S.C.'s condition. Further, even though a CST meeting may have

occurred towards the end of the school year, it does not always result in a new or modified IEP. Respondent recognizes the very personal struggles parents endure regarding their children; here, however, there is simply no legal basis for the relief sought by petitioner, and the petition should be dismissed.

LEGAL ANALYSIS AND CONCLUSIONS

The Federal Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400 et seq., was enacted to ensure that children with disabilities have access to a Free Appropriate Public Education (FAPE). 20 U.S.C. § 1412(a)(1). IDEA provides the framework for special education in New Jersey, as reflected in New Jersey statutes N.J.S.A. 18A:46-1 to 46-55 and regulations at N.J.A.C. 6A:14-1.1 to 14-10.2. IDEA requires states to implement policies and procedures to ensure disabled students are provided FAPE.

FAPE includes special education instruction and related services designed to meet the needs of a child. 20 U.S.C. § 1401(9); N.J.A.C. 6A:14-1.1, et seq. The primary method of ensuring delivery of FAPE is through an IEP. 20 U.S.C. § 1414(d)(1)(A). An IEP outlines the child's present levels of academic achievement and functioning, outlines measurable goals and the services to be provided, and establishes objective criteria for evaluating the child's progress. 20 U.S.C. § 1414(d)(1)(A)(i); C.H. v. Cape Henlopen School District, 606 F.3d 59, 65 (3d Cir. 2010).

IDEA leaves the interpretation of FAPE to the courts. See Ridgewood Bd. of Educ. v. N.E., 172 F.3d 238, 247 (3d Cir. 1999). In Bd. of Educ. of the Hendrick Hudson Central School District v. Rowley, 458 U.S. 176 (1982), the United States Supreme Court held that a State provides a disabled child with FAPE if it provides "personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction." Id. at 203. The Court reasoned that IDEA was intended to bring previously excluded disabled children into the public education systems of the States and to require the States to adopt procedures that would "result in individualized consideration of and instruction for each child." Rowley, 458 U.S. at 189. IDEA was amended by Congress in 1997, subsequent to Rowley. The amendments focused on ensuring that students with

disabilities receive a "quality public education" and not just "some benefit." Forest Grove School District v. T.A., 557 U.S. 230, 239 (2009).

Here, the District will have satisfied the requirements of the law by providing S.C. with personalized instruction and sufficient support services which "are necessary to permit the child 'to benefit' from the instruction." G.B. v. Bridgewater-Raritan Regional Bd of Educ., 2009 U.S. Dist. LEXIS 15671 (D.N.J. Feb. 27, 2009), citing Rowley, 458 U.S. at 189. IDEA does not require the District to maximize S.C.'s potential or provide her the best education possible, or a specific program of instruction, or placement with a specific teacher. Instead, IDEA requires a school district to provide a basic floor of opportunity, with an education that provides significant learning and meaningful benefit to the student. Carlisle Area Schools v. Scott P., 62 F.3d 520, 533–34 (3d Cir. 1995); Ridley School District v. M.R., 680 F.3d 260, 269 (3d Circ. 2012). A school district must offer an IEP that is "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." Endrew F. v. Douglas County School District RE-1, 580 U.S. 386, 349 (2017).

The New Jersey Administrative Code permits the filing of motions to be made in administrative hearings. N.J.A.C. 1:1-12.1, et seq. A Motion to Dismiss is not specifically enumerated under the Administrative Code, but an ALJ may proceed in the absence of a specific regulation, in accordance with the New Jersey Court Rules, to achieve "just results, simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay." N.J.A.C. 1:1-1.3(a). The New Jersey Court Rules provide that a party may move for dismissal of a complaint for failure to state a claim upon which relief can be granted. R. 4:6-2(e).

A reviewing court must search a complaint "in depth and with liberality" to ascertain whether a cause of action "may be gleaned even from an obscure statement of claim." Printing Mart-Morristown v. Sharp Electronics Corp., 116 N.J. 739, 746 (1989), citation omitted. At this preliminary stage of litigation, a reviewing tribunal "is not concerned with the ability of plaintiffs to prove the allegation contained in the complaint" and "plaintiffs are entitled to every reasonable inference of fact." Id., citations omitted. A "generous and

hospitable approach" must be taken when examining the allegations of fact within a complaint. Id.

The common method for resolving a case on the papers in an administrative proceeding, without a hearing, is by a motion for summary decision under N.J.A.C. 1:1–12.5. The New Jersey Court Rule regarding a motion to dismiss specifies that if the dismissal is sought based upon failure to state a claim, and if matters outside the initial pleading are presented to and not excluded by the court, then the motion shall be treated as a summary judgment motion, which is the equivalent motion to an administrative law summary decision motion. R. 4:6-2; N.J.A.C. 1:1–12.5.

A party in an administrative law matter "may move for summary decision upon all or any of the substantive issues in a contested case." N.J.A.C. 1:1–12.5(a). The motion "shall be served with briefs and with or without supporting affidavits" and the decision "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." N.J.A.C. 1:1–12.5(b). The non-moving party will prevail if they "set forth specific facts showing that there is a genuine issue which can only be determined in an evidentiary proceeding." Id., See R. 4:46-2 and Brill v. Guardian Life Insurance Co. of America, 142 N.J. 520, 540 (1995).

When rendering a determination on a motion for summary judgment, "the 'judge's function is not . . . to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial.'" Brill at 540, citing Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986). Summary judgment, like summary decision, "is designed to provide a prompt, businesslike and inexpensive method of disposing of any case" upon a discriminating search of the merits of the pleadings and documentation presented for such a motion. Brill at 540, citations omitted. If such a search of the information demonstrates there is no genuine issue of material fact requiring disposition at a hearing, the motion shall be granted. Id. "An evidentiary hearing is mandated only when the proposed administrative action is based on disputed adjudicatory facts." In re Farmers' Mutual Fire Assurance Association of New Jersey, 256 N.J. Super. 607, 618 (App. Div. 1992).

Here, there is no dispute as to the programming and placement of the student, pursuant to her most recent IEP. S.C. is in the appropriate program pursuant to the IEP. The dispute is the parent's desire for the student to remain with the same classroom teacher, Ms. M.C., under whom petitioner asserts the student has progressed and thrived. Petitioner contends that S.C. does not cope well with change, and seeks to minimize disruption to the student caused by changing her teacher, knowing that S.C. will need to cope with change in two years when transitioning from the elementary school to the middle school. Petitioner is concerned that due to S.C.'s condition, regression typically occurs from age nine through twelve. She cannot say for certain if some recent observed instances of the student's behaviors are due to her medical condition or difficulty in adapting to the change of the classroom and teacher.

Respondent contends that the matter shall be dismissed, as there is no legal basis for the parent to dictate the specific teacher or personnel for their student. In the matter of L.Z. and S.Z. on behalf of K.Z. v. Springfield Twp. Board of Education, OAL Dkt No. EDS 09419-06, 2007 N.J. Agen Lexis 684 (October 5, 2007), the parents sought a specific individual to continue to provide services for their child. The ALJ did not grant the relief, as there was no showing that the school's replacement provider resulted in the denial of FAPE. The ALJ emphasized that "the District has the discretion and prerogative to select personnel." Id. at *20-21.

There is no legal basis to support petitioner's contention that the student shall remain with the same teacher, Ms. M.C., for this academic school year, 2022–2023. The IEP is being followed, with placement in the multiply disabled classroom. It is thus deemed reasonably calculated to enable S.C. to make appropriate progress in light of her circumstances. Endrew F. 580 U.S. at 349. It is recognized that the parent's impassioned plea for her child to have the least disruption possible, and keep her progressing, is a genuine concern. This does not demonstrate that a genuine issue of material fact is in dispute. Nothing has been demonstrated or asserted that the need for this specific teacher is to ensure FAPE is provided. There is no right under the law to be placed with a specific staff member teacher. I thus **CONCLUDE** that with no basis in law for the relief

sought by petitioner, the Motion to Dismiss should be **GRANTED** and the matter shall be **DISMISSED**.

ORDER

It is **ORDERED** that respondent's Motion to Dismiss is **GRANTED** and the petition shall be **DISMISSED**.

This decision is final pursuant to 20 U.S.C. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2022) 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 (2022). 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.

November 1, 2022
DATE

ELAINE B. FRICK, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

EBF/jns