



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

ORDER DENYING
SUMMARY DECISION
(CONSOLIDATED)

C.F. AND M.F. ON BEHALF OF S.F.,

Petitioners,

v.

**JACKSON TOWNSHIP BOARD OF
EDUCATION,**

Respondent.

OAL DKT. NO. EDS 00244-23

AGENCY REF. NO. 2023-35207

And

**JACKSON TOWNSHIP BOARD OF
EDUCATION,**

Petitioner,

v.

C.F. AND M.F. ON BEHALF OF S.F.,

Respondents.

OAL DKT. NO. EDS 03195-23

AGENCY REF. NO. 2023-35271

Michael I. Inzelbuch, Esquire, for petitioners-respondents, C.F. and M.F. on behalf of S.F.

Andrew W. Li, Esquire, for respondent-petitioner, Jackson Township Board of Education (Comegno Law Group, LLC, attorneys)

BEFORE **DEAN J. BUONO**, ALJ:

STATEMENT OF THE CASE

In this matter arising under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§ 1400 to -1482, and the New Jersey Special Education Laws, N.J.S.A. 18A:46-1 to -55 and N.J.A.C. 6A:14-1.1 to -10.2, petitioners-respondents C.F. and M.F., the parents of a disabled student, S.F., seek tuition reimbursement from the Jackson Township Board of Education (Board or Jackson) for their unilateral placement of S.F. at the School for Children with Hidden Intelligence (SCHI) for the 2021–2022 and 2022–2023 school years under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§ 1400 to -1485, and the New Jersey regulations governing special education, N.J.A.C. 6A:14-1.1 to -10.2. The Board has filed a motion for summary decision denying the parents’ reimbursement request.

PROCEDURAL HISTORY AND STATEMENT OF FACTS

Petitioners-respondents filed a complaint for due process with the Office of Special Education (OSE). The complaint was filed under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C.A. §§1400 to 1482. Respondent-petitioner filed its motion for summary decision and petitioners-respondents filed a reply.

S.F. is a five-year-old student whose school district of residence is Jackson. S.F. was born with multiple disabilities that affect his social, physical and cognitive development. S.F. is also visually impaired. In 2021, Jackson classified S.F. as eligible for special education and related services as a “preschool child with a disability.”

Although Jackson proposed an individualized education program (IEP) placing S.F. at an in-district preschool for both the 2021–2022 and 2022–2023 school years, S.F. has never attended school in Jackson; instead, S.F.’s parents unilaterally placed him at SCHI for the 2021–2022 and 2022–2023 school years.

In July 2021, Jackson proposed an IEP placing S.F. in an intensive in-district preschool special education program that included speech therapy, physical therapy, occupational therapy, a teacher of the visually impaired, and a one-to-one aide. The IEP also included “exposure to typically developing peers through inclusion opportunities in the general education preschool program for 3-4 years-olds during whole group and/or small group lessons and activities.”

S.F.’s parents rejected the IEP based on their belief that S.F. required an “established, experienced vision program. . . [because of a] diagnosis and subsequent surgeries [that] have left him with a complicated vision impairment” and that “[S.F.]’s developmental delays appear significantly higher than those of the children” with whom he would be educated under the proposed IEP.

Then, on August 23, 2021, S.F.’s parents requested that Jackson modify the IEP to instead place S.F. at SCHI for the 2021–2022 school year, and notified Jackson that, absent such modification, the parents would seek reimbursement for their unilateral placement of S.F. at SCHI. In response, on August 31, 2021, Jackson declined the parents’ request to modify the IEP, and informed them that, because S.F. was not enrolled in Jackson, Jackson would not consider the parents’ request for tuition reimbursement for S.F.’s attendance at SCHI.

Jackson also offered S.F. an in-district IEP for the 2022–2023 school year. The June 8, 2022, IEP “proposed that [S.F. attends] the Jackson School District’s Intensive self-contained pre-school program with a better than 2:1 student to adult ratio, specialized instruction utilizing an ABA [Applied Behavior Analysis] curriculum model, inclusion opportunities with typically developing peers, speech and language therapy, occupational therapy, physical therapy, direct instruction by a teacher of the visually impaired, extended school year, and transportation.” Also under the IEP, a “teacher of the visually impaired [would] consult with classroom staff and related service providers regarding instructional supports and environment/material adaptations as they relate to [S.F.]’s Cortical Visual Impairment.”

On August 15, 2022, the parents notified Jackson that they intended to keep S.F. at SCHI for the 2022–2023 school year and seek tuition reimbursement from Jackson.

In November 2022, S.F.'s parents filed with the Office of Special Education (OSE) a due process petition seeking from Jackson independent educational evaluations at public expense, an IEP placing S.F. at SCHI, tuition reimbursement for the parents' unilateral placement of S.F. at SCHI, and other relief. In response, in December 2022, Jackson filed with OSE a cross-petition to deny the parents' request for evaluations at public expense. OSE subsequently transmitted the cross-petitions to the Office of Administrative Law (OAL) for due process hearings. The parents' petition, C.F. & M.F. ex rel. S.F. v. Jackson Twp. Bd. of Educ., EDS 00244-23, and the Board's petition, Jackson Twp. Bd. of Educ. v. C.F. & M.F. ex rel. S.F., EDS 03195-23, were consolidated by order on April 26, 2023.

On September 6, 2023, the undersigned ordered Jackson to pay for an independent educational evaluation (IEE) of S.F. by Dr. Anna Corn, a research professor who has experience with children with visual impairments. Dr. Corn has yet to complete her evaluation of S.F.

On February 23, 2024, Jackson filed a motion for summary decision dismissing the parents' due process petition. Jackson argues that the parents are not entitled to tuition reimbursement under N.J.A.C. 6A:14-2.10 because Jackson made a free, appropriate public education (FAPE) available to S.F., but his parents failed to cooperate with Jackson' efforts to educate S.F. in an in-district program and instead elected to enroll S.F. at SCHI. The parents oppose the Board's motion by arguing that they reasonably cooperated with Jackson's efforts to educate S.F. but that they decided to unilaterally place S.F. at SCHI because Jackson's proposed IEPs were inappropriate.

LEGAL DISCUSSION

Under N.J.A.C. 1:1-12.5(a), "[a] party may move for summary decision upon all or any of the substantive issues in a contested case." A motion for summary decision may be granted "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). And, if “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.” Ibid. In determining whether a genuine issue exists, the appropriate test is “whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party.” Brill v. Guardian Life Ins. Co., 142 N.J. 520, 540 (1995).

Jackson’s motion for summary decision must be denied because there are genuine issue of material fact that necessitate a hearing on the following issues: (1) the appropriateness of the IEPs proposed by Jackson for the 2021–2022 and 2022–2023 school years; (2) the appropriateness of SCHI; and, (3) the reasonableness with which the parents acted in unilaterally placing S.L. at SCHI for the 2021–2022 and 2022–2023 school years.

The IDEA is designed to assure that disabled children may access a FAPE that is tailored to their specific needs. 20 U.S.C. § 1400(c). Under the New Jersey laws implementing the IDEA, each district board of education is responsible for “the location, identification, evaluation, determination of eligibility, development of an [IEP] and the provision of a [FAPE] to students with disabilities” who reside in the district.¹ N.J.A.C. 6A:14-1.1(d); N.J.A.C. 6A:14-1.3.

¹ An IEP is a written statement that explains how a FAPE will be provided to the child. 20 U.S.C. § 1414(d)(1)(A)(i). The IEP must contain such information as a specific statement of the student’s current performance levels, the student’s short-term and long-term goals, the proposed educational services, and criteria for evaluating the student’s progress. 20 U.S.C. § 1414(d)(1)(A)(i)(I)-(VII). In developing an IEP, the IEP or child study team, which includes district staff members and the child’s parents, shall consider such factors as “the strengths of the student and the concerns of the parents for enhancing the education of their child,” “the academic, developmental and functional needs of the student,” “the results of the initial evaluation or most recent evaluation of the student,” and, “[i]n the case of a student whose behavior impedes his or her learning or that of others, consider, when appropriate, strategies, including positive behavioral interventions and supports to address that behavior.” N.J.A.C. 6A:14-3.7(c).

Under N.J.A.C. 6A:14-2.10, a school board “shall not be required to pay for the cost of education, including special education and related services, of a student with a disability if the district board of education made available a [FAPE] and the parents elected to enroll the student in a nonpublic school, an early childhood program, or an approved private school for students with disabilities.” N.J.A.C. 6A:14-2.10(a).

But if parents enroll their disabled child “in a nonpublic school, an early childhood program, or approved private school for students with disabilities without the consent of, or referral by, the district board of education,” also known as a unilateral or parental placement, “an [ALJ] may require the district board of education to reimburse the parents for the cost of enrollment if . . . the district board of education had not made a [FAPE] available to the student in a timely manner prior to enrollment and . . . the private placement is appropriate.” N.J.A.C. 6A:14-2.10(b).

However, tuition reimbursement may be reduced or denied if the parents failed to provide the school district with notice of their intent to enroll their child in a private school within at least ten business days or upon a finding by the ALJ that the parents otherwise acted unreasonably in unilaterally placing their child in a private school. N.J.A.C. 6A:14-2.10(c).

Jackson’s motion must be denied because, when viewing the papers in the light most favorable to the parents, the non-moving party, it is clear that there are several material issues of fact and questions of law that can only be decided after an evidentiary hearing. These genuine issues of material fact and questions of law relate to the standards for unilateral placement reimbursement under N.J.A.C. 6A:14-2.10. In particular, the issues that must be determined at a hearing are: (1) the appropriateness of the IEPs proposed by Jackson for the 2021–2022 and 2022–2023 school years; (2) the appropriateness of SCHI; and (3) the reasonableness with which the parents acted in unilaterally placing S.L. at SCHI for the 2021–2022 school year and again for the 2022–2023 school year. These issues cannot be decided on the papers; moreover, Dr. Corn has yet to complete her IEE, which will inform a determination on S.L.’s educational needs.

In sum, the important questions of fact and law regarding the IEPs offered by Jackson, S.F.'s program at SCHI, and the reasonableness of the parents' actions in unilaterally placing S.F. at SCHI for the 2021–2022 and 2022–2023 school years may only be determined at a due process hearing with testimony and other evidence from both fact and expert witnesses.

CONCLUSION

For these reasons, I deny the motion and a hearing shall be held on the following issues: (1) the appropriateness of the IEPs proposed by Jackson for the 2021–2022 and 2022–2023 school years; (2) the appropriateness of SCHI; and, (3) the reasonableness with which the parents acted in unilaterally placing S.L. at SCHI for the 2021–2022 and 2022–2023 school years.²

I CONCLUDE that an issue of material fact exists.

ORDER

It is **ORDERED** that the respondent-petitioner's motion for summary decision be and hereby is **DENIED**. It is **FURTHER ORDERED** that this matter be heard on the merits.

May 2, 2024 _____

DATE



DEAN J. BUONO, ALJ

Date Mailed to Parties: _____

DJB/cb

c: Clerk, OAL-T

² It does not appear that the parents have amended their due process petition to include a request for tuition reimbursement for the current, 2023–2024 school year.