



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

**FINAL DECISION**

**SUMMARY DECISION**

OAL DKT. NO. EDS 13872-23

AGENCY DKT. NO. 2024-36445

**B.Z. ON BEHALF OF N.Z.,**

Petitioner,

v.

**HAMILTON TOWNSHIP**

**BOARD OF EDUCATION,**

Respondent.

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**Richard J. Routh**, Esq., for petitioner (Legal Services of New Jersey, attorneys)

**Jared S. Schure**, Esq., for respondent, Hamilton Township Board of Education  
(Methfessel & Werbel, attorneys)

Record Closed: May 21, 2024

Decided: June 14, 2024

BEFORE **SARAH H. SURGENT**, ALJ:

**STATEMENT OF THE CASE AND PROCEDURAL HISTORY**

This matter follows an August 29, 2023 petition for due process by petitioner B.Z., on behalf of her child, N.Z., seeking compensatory education for transition services beyond N.Z.'s January 21, 2024 twenty-first birthday, due to remote learning

during the COVID-19 pandemic, from March 18, 2020, through September 1, 2021. As N.Z. is currently enrolled in transition services through June 30, 2024, B.Z. effectively seeks compensatory education transition services from July 1, 2024, through the end of the 2024–2025 school year. (R-1).

On August 30, 2023, B.Z.’s due process petition was received by the New Jersey Department of Education (DOE), Office of Special Education, which transmitted it to the Office of Administrative Law (OAL) on December 14, 2023, for a January 5, 2024, settlement conference with another ALJ, which was unsuccessful. On that date, the matter was assigned to this ALJ for the due process hearing. After several adjournments at the request of the parties, the hearing is currently scheduled for June 28, 2024.

On May 13, 2024, respondent, Hamilton Township Board of Education (Board), moved for summary decision, on the basis that B.Z. executed two prior settlement agreements involving prior due process litigation with the Board, resolving “all other issues between the parties from the beginning of time through the date[s] of [the] [a]greement[s]”—August 25, 2021, and August 16, 2022. (Rb1; R-5; R-9) (emphasis added). The Board maintains that B.Z.’s August 28, 2023, petition for due process for the alleged educational deprivation between March 18, 2020 and September 1, 2021, is therefore barred by the settlement agreements and must be dismissed with prejudice. (Rb1).

B.Z. opposes summary decision, and maintains that her pending petition is not barred because the prior settled due process petitions had no claims related to compensatory education, the settlement agreements contained no terms related to compensatory education, and the agreements stated they “resolve[d] any dispute founded in the referenced due process petition[s], and all other issues between the parties from the beginning of time through the date[s] of [the] [a]greement[s].” (Pb; R-5; R-9) (emphasis added). B.Z. also claims, without any sworn responding affidavit, that she was not represented by legal counsel when she executed the subject 2021 and 2022 settlement agreements, and therefore did not fully understand the implications of the waiver of claims language, and that while her compensatory education claim relates

to a period encompassed by the settlement agreements, the “issue” is actually the Board’s alleged failure to hold an individualized educational plan (IEP) meeting to discuss the possibility of compensatory education, and to make a determination regarding appropriate compensatory services. (Pb).

The issue presented is whether the compensatory education for transition services claim in B.Z.’s petition—which dates back to her prior resolved litigation—is justiciable in light of when the alleged education deprivation arose, and in consideration of limitations on the OAL’s ability to enforce, negate, or alter special education settlement agreements.

### **FACTUAL DISCUSSION AND FINDINGS OF FACTS**

These salient points are not in dispute. I therefore **FIND** the following **FACTS** and incorporate the above procedural history herein by reference.

The parties’ August 25, 2021, Settlement Agreement and Release states, in relevant part:

*This agreement is the written form of the material terms of the agreement between the parties to resolve any dispute founded in the referenced due process petition, and all other issues between the parties from the beginning of time through the date of this Agreement.*

1. The District agrees, and the parent consents to the student continuing at the Mercer County Special Services School District for the 2021-2022 school year.

2. The parties agree to meet in January 2022 to discuss the appropriate placement and transition plan for the student’s continuing education.

3. The parties agree, and this agreement shall constitute consent for, reevaluation of the student to occur in the Fall 2021 prior to the transition meeting referenced in paragraph two (2) above.

.....

7. The parties acknowledge they have read and understand the terms of this Agreement, that they have had the opportunity to have the Agreement reviewed by counsel, and that they are entering into this agreement knowingly, freely, voluntarily, without coercion and not under the influence of anything or anyone.

8. Petitioners represent that as the parent of N.Z., she has the sole authority to enter into this agreement.

9. This Agreement shall be interpreted, enforced, and governed under the laws of the State of New Jersey.

10. The language of all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against any of the parties.

11. This Agreement may only be amended in writing by way of a document signed by all parties.

[R-5 (emphases added) (sic passim).]

The parties' August 16, 2022, Settlement Agreement and Release states, in relevant part:

*This agreement is the written form of the material terms of the agreement between the parties to resolve any dispute founded in the referenced due process petition, and all other issues between the parties from the beginning of time through the date of this Agreement.*

1. The District agrees, and the Parent consents to the student continuing at the Mercer County Special Services School District for the 2022-2023 school year.

2. The parties agree to meet in March 2023 or before the end of the school year to discuss the appropriate placement and transition plan for the student's continuing education.

....

6. The parties acknowledge they have read and understand the terms of this Agreement, that they have had the opportunity to have the Agreement reviewed by counsel, and that they are entering into this agreement knowingly,

freely, voluntarily, without coercion and not under the influence of anything or anyone.

7. Petitioners represent that as the parent of N.Z., she has the sole authority to enter into this agreement.

8. This Agreement shall be interpreted, enforced, and governed under the laws of the State of New Jersey.

9. The language of all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against any of the parties.

10. This Agreement may only be amended in writing by way of a document signed by all parties.

[R-9 (emphases added) (sic passim).]

Each settlement was approved by OAL Final Decisions finding that the parties had voluntarily agreed to resolve all disputed matters and had voluntarily agreed to the settlements, which fully disposed of all issues in controversy between them and were consistent with the law. (R-7; R-8).

B.Z.'s August 28, 2023, unsworn due process petition states, in relevant part:

I am requesting a due process hearing on behalf of my child [N.Z.], . . . currently attending the Steinert Transition Program at the Hamilton Township free Public Library.

The due process request is for compensatory educational services for the *transition services* between March 18, 2020, through September 1, 2021, to which [N.Z.] lost these *transition services* while online learning during COVID.

I have previously brought compensatory educational services to the Hamilton School District's attention on numerous occasions even during an IEP meeting on 10/14/2022, to which was a recorded meeting, and was told that we are not here to discuss compensatory educational services, that that would be for another meeting. Also, when speaking through e-mail and over the phone with the districts lawyer Mr. Michael Pattanite on many occasions. I have even requested a meeting by the deadline of the law s905, that states the school district was required to have an IEP meeting to discuss the need for compensatory education

and services for every student with a disability who had an IEP at any time between March 18, 2020, and September 1, 2021. and make determinations about pandemic related compensatory education due to students by no later than December 31, 2022, deadline. Which they did not do.

I am seeking relief for compensatory educational services for the *Transition services* lost from March 18, 2020, through September 1, 2021, while online learning during COVID for [N.Z.'s] education to be added on at the end of this school year 2023-2024. Meaning, following the 2023-2024 school year additional months lost added into the 2024-2025 school year.

[R-1 (emphases added) (sic passim).]

In response to the pandemic and its potential impact on special education students, on March 3, 2022, the New Jersey Legislature enacted 2022 N.J.S.A. 905, retroactive to March 18, 2020, as N.J.S.A. 18A:46-1.3, which provides:

a. Notwithstanding the provisions of the “Individuals with Disabilities Education Act,” 20 U.S.C. s.1400 et seq., chapter 46 of Title 18A of the New Jersey Statutes, regulations promulgated thereto, and any other law, rule, or regulation to the contrary, a request for a due process hearing made by a parent, guardian, or local educational agency regarding the identification, evaluation, educational placement, or the provision of a free and appropriate public education [(FAPE)] of a child with a disability during a COVID-19 school closure or a period of virtual, remote, hybrid, or in-person instruction accruing between March 18, 2020 and September 1, 2021 may be filed at any time prior to September 1, 2023.

b. A local educational agency shall, not later than December 31, 2022, or earlier if requested by a parent or guardian, hold an Individualized Education Program (IEP) team meeting to discuss the need for compensatory education and services for every student with a disability who had an IEP at any time between March 18, 2020 and September 1, 2021. Notification of the IEP meeting shall indicate that a purpose of the meeting is to discuss the need for compensatory education and services for the period from March 18, 2020 to September 1, 2021. Following the meeting, written notice shall be provided to a parent or guardian in accordance with N.J.A.C. 6A:14-1.1 et seq. and shall indicate all determinations made by the IEP team with respect to the

need for and, if applicable, the provision of, compensatory education and services. All compensatory education and services deemed appropriate by the IEP team, including their frequency, duration, location, and agreed upon time period for delivery, shall be documented in an IEP in accordance with the provisions of N.J.A.C. 6A:14-1.1 et seq. and provided as indicated therein. A parent or guardian may file for a due process hearing at any time, up to and including September 1, 2023, to challenge the determinations of the IEP team if the parent or guardian disagrees with the determinations.

.....

d. If a parent or guardian filed for mediation or a due process hearing with respect to the need for compensatory education and services for a student with a disability who had an IEP at any time between March 18, 2020 and September 1, 2021, and the matter was resolved as a result of the mediation or a settlement agreement executed by the parties or a judicial or administrative order, then the parent or guardian shall be barred from filing the same claims for the same time period addressed in the prior filing.

[N.J.S.A. 18A:46-1.3(a), (b), (d) (emphases added).]

N.Z. had IEPs in place from January 15, 2020, through January 14, 2021, and January 11, 2021, through January 10, 2022, (P-1; P-2), and settlement agreements clearly contemplating transition services which covered “the beginning of time through the date[s] of [the] Agreement[s]”—August 25, 2021, and August 16, 2022, (R-5; R-9). The current petition for compensatory education for transition services therefore falls squarely within the bar of claims governed by subsection d, above. The above statute was in effect on March 3, 2022, retroactive to March 18, 2020, well before B.Z. executed the parties’ August 16, 2022, settlement agreement resolving “any dispute founded in [B.Z.’s] referenced due process petition, and all other issues between the parties from the beginning of time through the date of [the] [a]greement.” (R-9).

Moreover, without providing or pointing to any competent supporting evidence whatsoever, B.Z. argues that summary decision should be denied because when the August 16, 2022 settlement agreement was signed by B.Z., the above statute was already in effect, and N.Z. had already requested that the Board hold the statutorily-

required IEP meeting to determine the need for compensatory education for transition services, but there was not yet an “issue” to be resolved, because the statute allowed until December 31, 2022, for that meeting to be held. (Pb at 3). That is a non sequitur. If B.Z. raised the issue of compensatory education for transition services, and transition services were addressed in the August 16, 2022 settlement agreement, the “issue” existed at the time of the settlement agreement.

## **LEGAL ANALYSIS AND CONCLUSIONS**

### **I.**

A summary 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). That rule is substantially similar to the summary judgment rule embodied in the New Jersey Court Rules. See R. 4:46-2; Judson v. Peoples Bank & Trust Co. of Westfield, 17 N.J. 67, 74 (1954).

In Brill v. Guardian Life Ins. Co., 142 N.J. 520 (1995), the New Jersey Supreme Court addressed the appropriate test to be employed in determining the motion:

[A] determination whether there exists a “genuine issue” of material fact that precludes summary judgment requires the motion 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. 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.”

[Id. at 540 (quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986)).]

In evaluating the merits of the motion, “[a]ll inferences of doubt are drawn against the movant in favor of the opponent of the motion.” Judson, 17 N.J. at 75. However, “[w]hen 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.” N.J.A.C. 1:1-12.5(b) (emphasis added).

Having reviewed the parties’ submissions, I **CONCLUDE** that no genuine issues of material fact exist which require a plenary hearing to determine whether the Board’s motion for summary decision should be granted. This matter is therefore ripe for summary decision.

II.

Although N.J.S.A. 18A:46-1.3(a), above, altered the Individuals with Disabilities Education Act’s (IDEA) two-year statute of limitations period under 20 U.S.C. § 1415(f)(3)(C) and N.J.A.C. 6A:14-2.7(a)(1) for due process petitions related to compensatory education claims in the wake of New Jersey’s COVID-19 pandemic, I **CONCLUDE** that neither the statute nor any subsequent DOE guidance or case law on the issue supports the proposition that the statute was intended to invalidate waivers to issues encompassed by prior settlement agreements, such as the August 16, 2022 agreement between the parties, which settles “all other issues” between the parties from the beginning of time through the date of the agreement, without any reservation or exception. (R-9). Moreover, the statute specifically provides that if the issue of compensatory education was resolved by way of a settlement agreement, the subject child’s parent shall be barred from filing the same claims for the same time period, N.J.S.A. 18A:46-1.3(d), which, in this case, is March 18, 2020, through September 1, 2021. B.Z. avers that she raised the issue of compensatory education for transition services under the statute prior to executing the August 16, 2022, settlement agreement. (Pb; R-1). Thus, she cannot now be heard to claim that the statute confers upon her the right to raise the issue again, contrary to the settlement agreement. It does not.

Settlement agreements in New Jersey special education disputes are enforced under general principles of contract law. Lauren W. v. DeFlaminis, 480 F.3d 259, 275 (3d Cir. 2007); D.R. by M.R. v. E. Brunswick Bd. of Educ., 109 F.3d 896, 901 (3d Cir.

1997). “A contract arises from offer and acceptance and must be sufficiently definite [such] that the performance to be rendered by each party can be ascertained with reasonable certainty.” Weichert Co. Realtors v. Ryan, 128 N.J. 427, 435 (1992) (internal quotation marks omitted). When parties “agree on essential terms and manifest an intention to be bound by those terms, they have created an enforceable contract.” Ibid. However, when the parties fail to agree to one or more essential terms, “courts generally hold that the agreement is unenforceable.” Ibid. However, “so long as the basic essentials are sufficiently definite, any gap left by the parties should not frustrate their intention to be bound.” Hagrish v. Olson, 254 N.J. Super. 133, 138 (App. Div. 1992) (internal quotation marks omitted).

“[A]n agreement to settle a lawsuit is a contract which, like all contracts, may be freely entered into and which a court, absent a demonstration of fraud or other compelling circumstances, should honor and enforce as it does other contracts.” Zuccarelli v. State, Dep’t of Env’tl. Prot., 326 N.J. Super. 372, 380 (App. Div. 1999) (internal quotation marks omitted). “[A] subsequent change in the law is not a sufficient reason to rescind a settlement agreement.” Id. at 381. “[S]ettlement agreements are contracts governed by general principles of contract law.” Ibid.

One of those common law principles is that a contract, valid at its inception, is not invalidated or eviscerated by a subsequent change in decisional or statutory law. The rationale underlying the premise is that the original terms of a contract incorporate the relevant law at the time the contract is made. Consequently, the contract should not be disturbed by subsequent changes in the law. A party is bound to the contract it made at the time, even if it turns out to be a poor deal.

[Ibid.]

Moreover, the OAL is “without authority or jurisdiction to either enforce or set aside an enforceable contract.” A.P. v. Dennis Twp. Bd. of Educ., 1998 N.J. AGEN LEXIS 346 (May 13, 1998). See also 20 U.S.C. § 1415(e)(2)(F)(iii), (f)(1)(B)(iii)(II) (settlement agreements arising out of mediation and resolution process under IDEA are “enforceable in any State court of competent jurisdiction or in a District Court of the

United States”). If a special education settlement agreement is recent and for a definite time period, the parents had the opportunity to confer with counsel, and the terms of the agreement are unambiguous with regard to their waiver and release of claims, then a settlement waiving a student’s rights under the IDEA may be upheld. J.K. v. Voorhees Twp. Bd. of Educ., 2012 N.J. AGEN LEXIS 67 (Feb. 10, 2012). See also I.K. v. Sch. Dist. of Haverford Twp., 961 F.Supp. 2d 674, 688 n.8 (E.D. Pa. 2013), aff’d, 567 Fed. Appx. 135 (3d Cir. 2014) (collecting cases demonstrating that settlement agreements will substitute for FAPE and can include waiver of rights under IDEA). But see D.R., 109 F.3d at 901 (implying that a change in the student’s circumstances, such as their disability-related needs, may make a settlement agreement no longer enforceable).

Although New Jersey courts are not inclined to enforce a commercial contract entered into by parents that waive their child’s rights, that disinclination appears to be limited to waivers of constitutional rights (i.e., parental and reproduction rights) and future personal injuries. See Loesch v. Vassiliades, 17 N.J. Super. 306, 309 (App. Div. 1952); Hojnowski v. Vans Skate Park, 187 N.J. 323, 336–38 (2006). Parents can waive their child’s right to a FAPE. The fact that B.Z. entered into settlement agreements which she now believes fall short of providing N.Z. with a FAPE via compensatory education for transition services does not intrinsically violate law or public policy. The agreements are not void simply because B.Z. settled for less than what she now believes the law provides.

B.Z.’s claim that she did not have the benefit of counsel and therefore did not fully understand the implications of her waivers is also unavailing. She entered into two separate settlement agreements with the Board with identical language explicitly waiving “all other issues between the parties from the beginning of time” through the dates of the August 25, 2021 and August 16, 2022, agreements. Both agreements also specifically contemplated transition services. Both times B.Z. agreed that she had read and understood the terms of the agreements, had the opportunity to have them reviewed by counsel, and knowingly, freely, and voluntarily entered into them without any coercion or incapacity of any sort. By the plain language of the Final Decisions, the parties “agreed to resolve all disputed matters” and “entered into . . . settlement[s],” (R-7; R-8) (emphasis added), whereby B.Z. agreed that “all other issues between the

parties from the beginning of time through the date[s] of [the] [a]greement[s]" were resolved, (R-5; R-9) (emphasis added). B.Z.'s petition for compensatory education for transition services from March 18, 2020 through September 1, 2021, falls squarely within those parameters.

I therefore **CONCLUDE** that B.Z.'s waivers under the settlement agreements require dismissal of her present petition in this forum. Those agreements may not be negated or altered by this Tribunal. The Board's motion for summary decision must therefore be granted. Any or all issues regarding the voidability of the subject settlement agreements may be taken up in an action in a court of competent jurisdiction.

### **ORDER**

It is therefore **ORDERED** that the Board's motion for summary decision is hereby **GRANTED**; and it is further

**ORDERED** that B.Z.'s petition is hereby **DISMISSED**.

This decision is final pursuant to 20 U.S.C. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2024) 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 (2024). 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.

June 14, 2024 \_\_\_\_\_

DATE



**SARAH H. SURGENT, ALJ**

Date Received at Agency: \_\_\_\_\_

Date Mailed to Parties: \_\_\_\_\_

SHS/nn

**APPENDIX**

**WITNESSES**

**For petitioner**

None

**For respondent**

None

**EXHIBITS**

**For petitioner**

- Pb Petitioner's opposition brief, dated May 20, 2024
- P-1 IEP, dated January 15, 2020
- P-2 IEP, dated January 11, 2021
- P-3 Draft IEP, dated September 6, 2022

**For respondent**

- Rb1 Board's motion and brief in support of Summary Decision, dated May 13, 2024
- Rb2 Board's reply brief in support of Summary Decision, dated May 21, 2024
- R-1 Petition for Due Process, dated August 29, 2023
- R-2 Answer to Petition, dated January 17, 2024
- R-3 N.Z.'s school transcript, through June 2020
- R-4 DOE's Guidance Regarding Compensatory Education Determinations for Students with Disabilities as a Result of COVID-19, dated March 3, 2021
- R-5 Settlement Agreement and Release, dated August 25, 2021
- R-6 Intentionally left blank

- R-7 Final Decision Approving Settlement, dated September 22, 2021
- R-8 Final Decision Approving Settlement, dated August 23, 2022
- R-9 Settlement Agreement and Release, dated August 16, 2022
- R-10 Progress Report, Extended School Year Program 2023
- R-11 IEP, dated September 30, 2022
- R-12 IEP, dated October 14, 2022
- R-13 Progress Report for IEP Goals and Objectives, dated February 21, 2023
- R-14 IEP, dated February 28, 2023
- R-15 Email from Petitioner with “partial consent” to IEP, dated March 19, 2023
- R-16 N.Z.’s school transcript, through June 29, 2023
- R-17 Documents from Extended School Year 2023
- R-18 Notarized representation form, dated August 28, 2023
- R-19 Structured Learning Experience documents, dated September 21, 2023
- R-20 Email chain regarding B.Z.’s dissatisfaction with job sampling sites, dated September 7, 2023
- R-21 Email chain regarding B.Z. not allowing N.Z. to sign contracts, dated September 21, 2023
- R-22 Structured Learning Experience documents, dated October 2023
- R-23 Structured Learning Experience documents, dated November 2023
- R-24 Progress Report for IEP Goals and Objectives, dated February 13, 2024
- R-25 Forms from Access Link interview, dated January 5, 2024
- R-26 Email chain regarding Access Link application, dated February 26, 2024
- R-27 Summary of Performance, dated February 29, 2024
- R-28 Email chain regarding N.Z.’s participation in meeting, dated March 1, 2024
- R-29 Job application materials, dated March 18, 2024
- R-30 Work Based Learning update, dated April 30, 2024
- R-31 Curriculum Vitae of Jennifer Petruso