



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

ORDER DENYING

SUMMARY DECISION

OAL DKT. NO. EDS 03574-24

AGENCY DKT. NO. 2024-36969

J.B. AND P.B. ON BEHALF OF Y.B.,

Petitioners,

v.

**ELMWOOD PARK BOARD OF
EDUCATION,**

Respondent.

Michael I. Inzelbuch, Esq., for petitioners

Jaclyn S. Darminio, Esq., for respondent (Inglesino Taylor LLC, attorneys)

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

STATEMENT OF THE CASE

In this case 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 J.B. and P.B. (parents) have filed a due-process petition seeking reimbursement from respondent Elmwood Park Board of Education (Elmwood Park) for the unilateral placement of their disabled

son, Y.B., at Sinai School (Sinai), a sectarian school for children with special needs, for the 2023–2024 school year.

The parties filed cross-motions for summary decision regarding the appropriateness of the program that Elmwood Park offered Y.B. and whether the parents are entitled to reimbursement for the unilateral placement of Y.B. at Sinai.

Because it is clear from the motion papers that there are several material facts in dispute, I must deny the parties' cross-motions and order that a hearing be held to determine: (1) the appropriateness of the program offered by Elmwood Park for the 2023–2024 school year; (2) the appropriateness of Sinai; and (3) the reasonableness with which the parents acted in unilaterally placing Y.B. at Sinai. These issues can only be determined at an evidentiary hearing with fact and expert witnesses.

PROCEDURAL HISTORY

On January 23, 2024, the parents filed with the Office of Special Education (OSE) a due-process petition seeking an individualized education program (IEP) placing Y.B. at Sinai and reimbursement for their unilateral placement of Y.B. at Sinai for the 2023–2024 school year. Elmwood Park subsequently filed with the OSE an answer denying certain allegations made by the parents and opposing the relief sought by the parents, and on March 18, 2024, the OSE transmitted the matter to the Office of Administrative Law for a due-process hearing.

On April 5, 2024, Elmwood Park filed a motion for summary decision dismissing the parents' due-process petition because Elmwood Park offered Y.B. a free, appropriate public education (FAPE) for the 2023–2024 school year and the parents unreasonably rejected the school district's proposed program and unilaterally placed Y.B. at Sinai.

On April 18, 2024, the parents filed a cross-motion for summary decision finding that Elmwood Park failed to offer Y.B. a FAPE and that Sinai is the appropriate

placement for Y.B. and ordering Elmwood Park to reimburse the parents for the costs associated with the unilateral placement at Sinai for the 2023–2024 school year.

FACTUAL DISCUSSION

The parties submitted competing certifications in support of their respective motions. P.B., Y.B.'s mother, and Susan Caplan, a learning consultant who evaluated Y.B. in 2023, filed certifications on behalf of petitioners, and Iwona Drozd-Majdanski, a licensed social worker employed by Elmwood Park who served as Y.B.'s case manager, and Kathleen Gesumaria, Elmwood Park's director of Special Services, provided certifications for Elmwood Park.

The parties agree that Y.B. was born on September 1, 2008, that he is classified as eligible for special education and related services under the category of "specific learning disability," and that he lives with his parents in Elmwood Park. The parties also agree that, prior to the 2023–2024 school year, Y.B. attended a private school and that he had been educated under an Individual Service Plan issued by the Bergen County Special Services School District on January 30, 2023. However, this is just about where the parties stop seeing eye to eye on the facts.

In particular, the four certifications reflect extensive disagreements about several facts with respect to the timing and circumstances of relevant events or nonevents, including Y.B.'s enrollment in Elmwood Park's schools for the 2023–2024 school year, communications between Y.B.'s parents and the school district after Y.B.'s enrollment, the educational program offered by Elmwood Park, and the parents' decision to unilaterally place Y.B. at Sinai rather than accept the program offered by Elmwood Park for the 2023–2024 school year.

It is undisputed that on September 13, 2023, P.B. notified Elmwood Park of the parents' intent to enroll Y.B. at Sinai for the 2023–2024 school year and to seek reimbursement from Elmwood Park for the costs associated with Y.B.'s attendance at Sinai. And while the parties continued to communicate thereafter about the possibility of educating Y.B. in Elmwood Park's schools, the parents did not think the program

offered by Elmwood Park was appropriate, and Y.B. has instead attended Sinai for the 2023–2024 school year.

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).

Here, the parties’ cross-motions for summary decision must be denied because there are numerous genuine issues of material fact that must be resolved at an evidentiary hearing in order to determine which party is entitled to prevail as a matter of law. The papers submitted by the parties in support of their cross-motions reveal that there are genuine issues of material fact regarding the parents’ entitlement to reimbursement. Thus, a hearing is necessary to determine the following issues: (1) the appropriateness of the educational program offered by Elmwood Park for the 2023–2024 school year; (2) the appropriateness of Sinai; and (3) the reasonableness with which the parents acted in unilaterally placing Y.B. at Sinai.

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.

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).

6A:14-1.1(d); N.J.A.C. 6A:14-1.3. When a disabled student like Y.B. “transfers from a nonpublic school with a services plan, appropriate school district staff shall conduct an immediate review of the services plan and shall provide comparable services pending completion of any necessary assessments and, as appropriate, the development of an IEP for the student” and “[a]n IEP for the student shall be in place within 60 calendar days from the date of enrollment in the school district.” N.J.A.C. 6A:14-4.1(m).

A school district is not required to educate its special education students within its own schools. Instead, under N.J.S.A. 18A:46-14, if “a child study team determines that a suitable special education program for a child cannot be provided” in the district, and that “the most appropriate placement for that child is in an academic program in an accredited nonpublic school” in another school district, the school district of residence can place the child in an out-of-district school at public expense. However, the major caveat to such an arrangement is that the private school at which the child is placed by the school district of residence must be “nonsectarian.” N.J.S.A. 18A:46-14.

Nonetheless, as the United States District Court for the District of New Jersey held twenty years ago in L.M. v. Evesham Township Board of Education, 256 F. Supp. 2d 290 (D.N.J. 2003), “[p]arents who withdraw their child from public school and unilaterally place him or her in private school while challenging the IEP may be entitled to reimbursement of their tuition costs if the ALJ [administrative law judge] finds that the LEA’s [local education agency] proposed IEP was inappropriate, and that the parents’ unilateral placement was appropriate” Id. at 292 (citing Florence Cnty. Sch. Dist. Four v. Carter, 510 U.S. 7, 12 (1993)). The court further held in L.M. that the United States Supreme Court’s decision in “Florence precludes a[n] LEA from relying on a state law [N.J.S.A. 18A:46-14 (“Naples Act”)] that bans payment to sectarian institutions as a basis for denying parental reimbursement when the LEA has failed to provide a FAPE and the unilateral parental placement is deemed appropriate under the IDEA.” Id. at 298.

Thus, while Elmwood Park cannot place Y.B. at Sinai at public expense, the parents may place Y.B. at Sinai at private expense and seek reimbursement from

Elmwood Park. But, as noted in L.M., there are conditions that must be met (or unmet) before parents may be awarded reimbursement.

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 [ALJ] finds that the district board of education had not made a [FAPE] available to the student in a timely manner prior to enrollment and that the private placement is appropriate.” N.J.A.C. 6A:14-2.10(b). This is so even if the unilateral placement is a sectarian school. L.M., 256 F. Supp. 2d 290.

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).

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 Elmwood Park’s compliance with N.J.A.C. 6A:14-4.1(m) and 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 program offered by Elmwood Park for the 2023–2024 school year; (2) the appropriateness of Sinai; and (3) the reasonableness with which the parents acted in

unilaterally placing Y.B. at Sinai.² These issues cannot be decided on the papers; instead, such important questions of fact and law may only be determined at a due-process hearing with testimony and other evidence from both fact and expert witnesses. Therefore, I **CONCLUDE** that summary decision is not appropriate.

ORDER

It is **ORDERED** that the motions for summary decision be and hereby are **DENIED**. A conference will be held as scheduled on July 9, 2024, at 2:30 p.m.

June 18, 2024

DATE



DEAN J. BUONO, ALJ

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² Of course, the reimbursement to which they may be entitled if they are ultimately successful would be limited to the nonsectarian costs of the placement. According to Sinai's website, "SINAI operates schools and adult programs for individuals with a wide range of learning and developmental disabilities as well as other special needs," and "[w]e focus on maximizing each student's academic, emotional, and social potential, while developing a strong knowledge and love of his or her traditional Jewish heritage." See SINAI Schools, www.sinaischools.org.