



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

SUMMARY DECISION

OAL DKT. NO. EDS 10752-24

AGENCY DKT. NO. 2024-37809

**SOUTH ORANGE-MAPLEWOOD BOARD
OF EDUCATION,**

Petitioner,

v.

M.D. ON BEHALF OF J.F.,

Respondent.

**Amanda N. Castrogiovanni, Esq., Marc G. Mucciolo, Esq., and Douglas M.
Silvestro, Esq.,** for petitioner (The Busch Law Group, attorneys)

M.D., respondent, pro se

Record Closed: September 26, 2024

Decided: October 24, 2024

BEFORE **JOSEPH A. ASCIONE**, ALJ (Ret., on recall):

STATEMENT OF THE CASE
AND PROCEDURAL HISTORY

In this matter South Orange-Maplewood Board of Education (petitioner or District) seeks an order denying further independent educational evaluations of J.F. (respondent)

as all appropriate evaluations have been performed. The District has moved to grant its petition denying any current further evaluations.

This matter was transmitted to and filed with the Office of Administrative Law (OAL) on August 6, 2024, by the Department of Education for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -23. A related matter captioned M.D. on behalf of J.F. v. South Orange-Maplewood Board of Education, OAL Docket 10751-24, Agency Docket # 2024-37443, contained a summary decision motion seeking to dismiss the petitioner's due process claim in that matter. Petitioner moved for summary disposition on September 10, 2024. Respondent submitted an uncertified e-mail opposing the relief requested. The tribunal requested that respondent's e-mail be certified; respondent never responded further. Oral argument was scheduled for September 26, 2024. There was no appearance by respondent. The record closed on September 26, 2024.

FACTUAL FINDINGS

Please refer to the factual findings in the Final Decision in the OAL Docket 10751-24, which are incorporated by reference herein.

LEGAL ANALYSIS

Summary decision, or as it is known in judicial matters, summary judgment, is a well-recognized procedure for resolving cases in which the facts that are crucial to the determination of the matters at issue are not actually in dispute and the application to that set of material facts of the applicable law and standard of proof lead to a determination of the case without the necessity of a hearing at which evidence and testimony need be taken. The procedure is equally applicable in judicial as well as executive branch administrative cases. N.J.A.C. 1:1-12.5. The standards for determining motions for summary judgment are contained in Judson v. Peoples Bank and Trust Co. of Westfield, 17 N.J. 67, 74-75 (1954). The Supreme Court later elaborated on the motion and its standard in Brill v. Guardian Life Insurance Co. of America, 142 N.J. 520 (1995). Under the Brill standard, as in Judson, a motion for summary decision may only be granted

where there are no “genuine disputes” of “material fact.” The determination as to whether disputes of material fact exist is made after a “discriminating search” of the record, consisting as it may of affidavits, certifications, documentary exhibits, and any other evidence filed by the movant and any such evidence filed in response to the motion, with all reasonable inferences arising from the evidence being accorded to the opponent of the motion. In order to defeat the motion, the opposing party must establish the existence of “genuine” disputes of material fact. The facts upon which the party opposing the motion relies to defeat the motion must be something more than “facts which are immaterial or of an insubstantial nature, a mere scintilla, ‘fanciful, frivolous, gauzy or merely suspicious.’” Judson, 17 N.J. at 75 (citations omitted). The Brill decision focuses upon the analytical procedure for determining whether a purported dispute of material fact is “genuine” or is simply of an “insubstantial nature.” Brill, 142 N.J. at 530. Brill concludes that the same analytical process used to decide motions for a directed verdict is used to resolve summary decision motions. “[T]he essence of the inquiry in each is the same: ‘whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.’” Id. at 536 (quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 251–52 (1986)). In searching the proffered evidence to determine the motion, the judge must be guided by the applicable substantive evidentiary standard of proof, that is, the “burden of persuasion” that would apply at trial on the merits, whether that is the preponderance of the evidence standard or the clear and convincing evidence standard. If a careful review under this standard establishes that no reasonable fact finder could resolve the disputed facts in favor of the party opposing the motion, then the uncontradicted facts thus established can be examined in the light of the applicable substantive law to determine whether or not the movant is clearly entitled to judgment as a matter of law.

The Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§ 1400–1482, requires states to ensure that all children with disabilities have access to a free appropriate public education (FAPE) that is designed to meet their unique needs, and establishes procedural due process rights for the children. Each school district’s board of education must have policies, procedures, and programs to ensure that all students with disabilities between the ages of three and twenty-one have access to a FAPE and are educated to the maximum extent appropriate in the least restrictive environment

(LRE). N.J.A.C. 6A:14-1.2(b). Education in the LRE requires, whenever possible, that the child is educated in the regular educational environment with children who are not disabled, i.e., the child is included in the mainstream education system. N.J.A.C. 6A:14-4.2; 20 U.S.C. § 1412(a)(5)(A); 34 C.F.R. § 300.114. See also Oberti v. Bd. of Educ. of Borough of Clementon Sch. Dist., 995 F.2d 1204, 1214 (3d Cir. 1993). An education is “appropriate” if it includes “personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction.” Hendrick Hudson Cent. Sch. Dist. Bd. of Educ. v. Rowley, 458 U.S. 176, 203 (1982). In New Jersey, a FAPE must include both special education and any necessary related services, such as counseling, occupational or physical therapy, and speech-language services. N.J.A.C. 6A:14-1.1(b)(3), (d); N.J.A.C. 6A:14-3.9(a). See also 20 U.S.C. § 1401(9), (26)(A); 34 C.F.R. § 300.34(a).

Once a student is determined to be eligible for special education and related services, the local educational agency (LEA) must develop an individualized education program (IEP) that establishes the rationale for a student’s educational placement and serves as the basis for program implementation. N.J.A.C. 6A:14-1.3; -3.7.

Here, the District has provided an IEP for J.F. The parent has failed to sign the IEP, but it appears the District has implemented the IEP, to the parent’s consternation. However, the parent has failed to prosecute its petition, has failed to appear on the return date of this motion, and has failed to properly submit opposition to the motion.

Pursuant to N.J.A.C.1:6A-14.4(a), if a district denies a parental request for an independent educational evaluation (IEE), one may still be afforded to the parent by order of an ALJ. That regulation provides that “[f]or good cause and after giving the parties an opportunity to be heard, the judge may order an independent educational evaluation of the pupil.” To determine whether there is good cause, a factual determination must be made as to whether the CST conducted the appropriate evaluations, and whether those evaluations contained enough information about the pupil and his educational needs, to aid in the development of an appropriate IEP. Union Twp. Bd. of Educ. v. V.K. o/b/o R.K., EDS 5964-03, Final Decision (Nov. 5, 2003), https://njlaw.rutgers.edu/collections/oal/final/eds05964-03_1.html. Respondent has

failed to provide any support for this tribunal to find good cause to order IEEs, pursuant to N.J.A.C. 1:6A-14.4.

In the event J.F. does not make meaningful progress educationally, socially, and emotionally, the District is subject to due process for failing to provide a FAPE.

CONCLUSION

I **CONCLUDE**, the District did provide an appropriate analysis of J.F. and assessed him qualified for special educational assistance for other health impairments, providing him with an IEP designed to provide a free appropriate public education.

I **FUTHER CONCLUDE** that respondent has not shown good cause for this tribunal to direct further IEEs of J.F.

ORDER

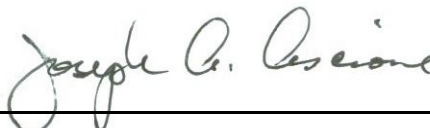
It is hereby **ORDERED** that petitioner's motion for summary disposition dismissing the respondent's request for further IEEs is **GRANTED**, and

It is hereby **FURTHER ORDERED** that respondent's claim for IEEs for J.F. is **DENIED**.

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.

October 24, 2024

DATE



JOSEPH A. ASCIONE, ALJ (Ret., on recall)

Date Received at Agency:

October 24, 2024

Date Sent to Parties:
cc

October 24, 2024

APPENDIX

Exhibits

For Petitioner:

P-1 Motion for Summary Decision, dated 9/10/24

- Exhibit A: Invitation for the Initial Identification and Evaluation Planning Meeting, dated 3/19/24
- Exhibit B: Meeting recap via email, dated 4/9/24, Initial Identification and Evaluation Planning Meeting Report, dated 4/11/24 and M.D.'s Signed Consent for the Evaluations, dated 4/18/24
- Exhibit C: Social History Assessment Report
- Exhibit D: Educational Evaluation Report, dated 5/28/24
- Exhibit E: Psychological Evaluation Report, dated 5/22/24
- Exhibit F: Emails between M.D. and Ms. Gutierrez, dated 5/29/24 – 5/30/24, Letter Scheduling the Initial Eligibility Determination and IEP Planning Meeting, dated 5/29/24
- Exhibit G: Correspondence from M.D., dated 6/5/24
- Exhibit H: Email Reminder from Ms. Gutierrez, dated 6/12/24
- Exhibit I: Eligibility Determination and Proposed IEP, dated 6/12/24
- Exhibit J: Email from Ms. Gutierrez to M.D., dated 6/13/24
- Exhibit K: Email from M.D. to Ms. Gutierrez, dated 6/14/24
- Exhibit L: Petition to Deny Independent Evaluations
- Exhibit M: Due Process Petition

For Respondent:

None