



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. EDS 18066-24

AGENCY DKT. NO. 2025-38456

T.M. ON BEHALF OF E.M.,

Petitioner,

v.

BERLIN BORO BOARD OF EDUCATION,

Respondent.

T.M., on behalf of minor child E.M., pro se

John A. Carleton, Esq., for respondent (Marmero Law, LLC, attorneys)

Record Closed: January 16, 2025

Decided: January 30, 2025

BEFORE **ALLISON FRIEDMAN**, ALJ:

STATEMENT OF THE CASE

On November 11, 2024, petitioner E.M., a special education student, was indefinitely suspended by respondent, Berlin Boro Board of Education (Berlin), from PALS (Protect All Latchkey Students), an aftercare school program, not an educational placement. May E.M.'s parents request an expedited due process hearing for his return? No. Parents may request an expedited hearing only if they disagree with the removal of their child from an educational placement. N.J.A.C. 1:6A-14.2.

PROCEDURAL HISTORY

On December 12, 2024, petitioner's mother, T.M., filed a request for an expedited due process hearing with the Department of Education, Office of Special Education (OSE). On December 30, 2024, the OSE transmitted the case to the Office of Administrative Law, under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15, and the act establishing the OAL, N.J.S.A. 52:14F-1 to -23, for hearing under the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6, and the Special Education Program, N.J.A.C. 1:6A-1.1 to -18.4. At the hearing on January 10, 2025, Berlin moved to dismiss the case. Testimony limited to the motion was taken and I set a briefing schedule to address the motion to dismiss. On January 16, 2025, the parties submitted their briefs.

FINDINGS OF FACT

Based on the testimony the parties submitted and my assessment of its credibility, together with the documents the parties submitted and my assessment of their sufficiency, I **FIND** the following as **FACT**:

E.M. has an individualized education program (IEP) to address his educational needs that arise from Duchenne Muscular Dystrophy and a recent diagnosis of attention deficit hyperactivity disorder (ADHD). (P-6.) E.M. is provided with a one-to-one aide to support him in general education settings and small group settings. The aide assists with work pace, implementation of accommodations and modifications, refocusing to task, organization of materials, monitoring of social interactions, and implementation of his behavior intervention plan. (Id. at 6.) For extracurricular activities and non-academic activities such as field trips, E.M. has a shared aide. (Id. at 31.) Significantly, the IEP does not extend beyond the regular school day. (Ibid.)

On November 11, 2024, E.M. was indefinitely suspended from PALS, for violations of the program's code of conduct. PALS runs before the regular school day begins, after the regular school day is over, and on days when the regular school day ends early. (R-1.) PALS, as the name itself indicates, was created to provide childcare in a safe and

familiar environment for students of the district. (*Ibid.*) There is no curriculum written for PALS and no instruction for students. At PALS, the child chooses between activities such as homework time, outside play, and arts and crafts. The primary responsibility of the PALS staff is to ensure the safety of the children and ensure that the PALS code of conduct is followed.

To remove all the doubt, the indefinite suspension of E.M. from the PALS program did not remove E.M. from the educational placement contained in his IEP.

CONCLUSIONS OF LAW

The regulation governing requests for expedited due process hearings, N.J.A.C. 1:6A-14.2, expressly states that an expedited hearing may be requested only when the parent disagrees with the determination that the pupil's behavior in violating school rules was not a manifestation of the pupil's disability or when the pupil is removed from his or her current educational placement. In this case, Berlin did not make a manifestation determination. Since the program is not educational, it is not part of the IEP, and the discipline did not affect the pupil's classification or placement the district was not required to make a manifestation determination. See N.J.A.C. 6A:14-2.8. Likewise, Berlin did not remove E.M. from his educational placement. Therefore, petitioner is not entitled to an expedited due process hearing.

Although not germane to the procedural issue being decided, it is worth addressing Berlin's argument that PALS is not a district-run program. Given the significant amount of district involvement, including district staff participation in hiring of staff, Board of Education approval for the hiring and resignation of staff, and use of the district email for PALS personnel, the ties are significant, and merely placing the PALS tuition fund into a separate account for outside enterprises that use District resources may not be enough to separate it from a district-run program. See K.G. & J.G. ex rel. O.G. v. Morris Bd. of Educ., EDS 11872-06, Final Decision (August 10, 2007), <https://njlaw.rutgers.edu/collections/oal/>.

Petitioner asserts that Berlin denied E.M. access to a district program because of his disability and because of Berlin's failure to accommodate it, but petitioner is mistaken because PALS is neither a school program nor an educational placement.

Accordingly, I **CONCLUDE** that the petitioner's request for an expedited due process hearing must be dismissed.

ORDER

Given my findings of fact and conclusions of law, I **ORDER** that this case is **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.

January 30, 2025

DATE


ALLISON FRIEDMAN, ALJ

Date Received at Agency:

Date E-Mailed to Parties:

AF/sb/kl

APPENDIX

Witnesses

For Petitioner

None

For Respondent

Dr. Shaitra Flores, Director of Curriculum and Instruction Berlin Boro School District

Exhibits

For Petitioner

- P-1 Berlin Boro BOE minutes, June 26, 2024
- P-2 Berlin Boro BOE minutes, August 28, 2024
- P-3 Berlin Boro BOE minutes, September 25, 2024
- P-4 Berlin Boro BOE minutes, October 26, 2024
- P-5 Berlin Boro BOE minutes, December 18, 2024
- P-6 IEP 2024

For Respondent

- R-1 PALS Family Handbook
- R-2 Berlin Boro BOE 2025 Detail Expenditure Sheet (Fund 60)
- R-3 Berlin Boro 2025 cash receipts from bank