State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

D.K. ON BEHALF OF B.K.,
Petitioner,
v.
SOUTH AMBOY BOARD OF EDUCATION,
Respondents.

OAL DKT. NO. EDS 07236-16
AGENCY DKT. NO. 2016-24425

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B.K. ON BEHALF OF B.K.,
Petitioners,
v.
SOUTH AMBOY BOARD OF EDUCATION,
Respondent.

OAL DKT. NO. EDS 07239-16
AGENCY DKT. NO. 2016 24322

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D.K., pro se, for petitioner

B.K.. pro se, for petitioner

Douglas Silvestro, Esq., for petitioner (Busch Law Group, attorneys)

Record Closed: June 15, 2016 Decided: June 16, 2016

BEFORE **ELLEN S. BASS**, ALJ:

These consolidated matters arose with the filing of a petition for due process in accordance with the Individuals with Disabilities Education Act (IDEA), 20 U.S.C.A. § 1415, by B.K., on behalf of his daughter B.K., in which he challenged proposed evaluative testing for his daughter, and sought fines and other monetary relief. He moreover contended that he was not appropriately included in the educational planning process for his daughter.

The petition was transmitted to the Office of Administrative Law (OAL) on May 13, 2016, together with an expedited request for due process filed by B.K.'s ex-wife, D.K. on May 6, 2016. In accordance with N.J.A.C. 6A:14-2.7(o)(2), the expedited petition was transmitted with instructions that a hearing take place on or before June 9, 2016. D.K.'s petition was filed in the aftermath of a disciplinary suspension, and sought a finding that B.K.'s conduct was a function of her disability, and that she should be returned to school. D.K. resides with her daughter in South Amboy; B.K. resides in a neighboring community. The two cases were consolidated via order dated May 20, 2016, and the parties appeared for hearing on June 7, 2016.

At the hearing it became immediately apparent that D.K.'s petition against the Board was amenable to settlement, and that indeed, both school personnel and D.K. agreed that B.K. should remain on home instruction for the remainder of the school year; that comprehensive evaluative testing should be conducted over the summer; and that thereafter, decisions could be made regarding B.K.'s eligibility for special education services and whether she should be placed in a more specialized educational setting. The relationship between D.K. and B.K. is apparently quite contentious, so much so, that B.K. was somewhat disruptive; and his highly emotional disagreement with his ex-wife's views of their daughter's needs interfered with my ability to conduct the proceeding. So that D.K.'s petition could proceed expeditiously, as required by the regulation, I separated the two matters for hearing, and indicated to the parties that thereafter, I would reconsolidate the matters for purposes of a final decision. B.K. strenuously objected to my decision. After some discussion, I allowed him to remain in the hearing room as an observer while I addressed D.K.'s petition of appeal.

A settlement agreement was drafted and reviewed, and D.K. asked to adjourn the hearing so that she could more thoughtfully consider the settlement document. Hearing no objection from counsel for the Board, I adjourned both matters until June 15, 2016. Counsel for the Board appeared, as did B.K. D.K. did not appear, but counsel provided me with a settlement document which fully resolved all issues raised by EDS 07236-16, and had been signed by D.K. The agreement was awaiting signature by the Board, and a fully conformed copy was forwarded to me later in the day via telecopier.

I have reviewed the terms of the settlement and I **FIND** that D.K. and the Board have voluntarily agreed to its terms as evidenced by their signatures or their representatives' signatures on the attached document; that the settlement fully disposes of all issues in controversy between them; and is consistent with the law. Under the terms of that settlement, D.K. has provided consent to have her daughter tested for purposes of determining her eligibility for special education services.

After reviewing the procedural posture of the two cases, we proceeded on June 15, 2016, to hear a motion to dismiss filed by the Board on May 4, 2016. The Board contends that the claims raised by B.K. are rendered moot by his ex-wife's consent to evaluate B.K., and that the other claims raised by the petition are not cognizable in this forum nor do they constitute relief available under the IDEA. I gave B.K. an opportunity to be heard. He reiterated his disagreement with proceeding with testing, and denied that his daughter has any problems, academic, psychological or otherwise.

I **CONCLUDE** that the petition of appeal bearing docket number EDS 07239-16 should be dismissed. Prior to evaluating a child, the Board must obtain formal consent from her parents or parent. N.J.A.C. 6A:14-2.3. In accordance with N.J.A.C. 6A:14-1.3, "[c]onsent shall be obtained from the parent having legal responsibility for educational decision making." Here, I heard no evidence that D.K. lacked the authority to make educational decisions on her daughter's behalf. Rather, B.K. strenuously urged only that he shared the right to make decisions about his daughter equally with his ex-wife.[1] B.K. urged that he was repeatedly disenfranchised by the Board; excluded from meetings; and otherwise not included in the decision-making process for B.K. The Board adamantly denied these allegations, pointing out that its personnel offered B.K. ample opportunities to be involved in his daughter's education. But this disagreement is of no moment. The petition filed by B.K. contends that the Board is improperly proceeding with evaluations and asks that the testing not go forward; but it is clear that B.K.'s claims are without merit.

[1] I inquired about the divorce decree, and neither parent produced it, at either court appearance.

Indeed, the Board correctly asserts that it need obtain consent only from one parent. To rule otherwise would embroil local school districts in matrimonial disputes that they are powerless to resolve, and would stymie efforts to plan for student programs, to the detriment of the orderly operation of the schools. If B.K. and D.K. cannot agree about how to care for their daughter, or feel that one or the other is caring for her improperly, family court is the proper forum to resolve such disputes; not the OAL or the public schools. I **CONCLUDE** that the Board's motion to dismiss should be granted. D.K.'s consent to such testing makes it plain that the Board, through its Child Study Team, may proceed with its evaluations, and that if it does so, it will be compliant with law. Thereafter, there can be no initial IEP implemented without D.K.'s consent or B.K.'s consent. B.K. correctly urges that he is entitled to remain involved with his daughter's educational program, and he should be invited to the meetings that will follow administration of the needed tests.

B.K.'s petition also asks that I fine the Board monetarily, and grant him compensation for his time and expenses in coming to this proceeding. This relief is not authorized by the IDEA and is **DENIED**.

ORDER

Based on the foregoing, I **ORDER** that D.K. and the Board comply with the settlement terms as to EDS 07236-16. For the reasons expressed herein, the Board's motion to dismiss EDS 07239-16 is **GRANTED.**

This decision is final pursuant to 20 U.S.C.A. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2009) 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.A. § 1415(i)(2); 34 C.F.R. § 300.516 (2009).

June 16, 2016

DATE

ELLEN S. BASS, ALJ