

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

**DECISION ON MOTION**  
**FOR SUMMARY DECISION**

OAL DKT. NO. EDS 17210-15

AGENCY DKT.NO. 2016 23519

**D.S. ON BEHALF OF S.R.,**

Petitioner,

v.

**MONROE TOWNSHIP**

**BOARD OF EDUCATION,**

Respondent.

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**Marianne Rebel Brown, Esq.** for petitioner (Rebel Brown Law group, LLC,  
attorneys)

**John J. Armano, Jr., Esq.,** for respondent (Trimble & Armano, attorneys)

Record Closed: November 30, 2015

Decided: January 12, 2015

BEFORE **SARAH G. CROWLEY, ALJ:**

**STATEMENT OF THE CASE AND PROCEDURAL HISTORY**

On June 17, 2015, petitioner D.S., who is the parent of S.R., filed a Request for Due Process with the Office of Special Education Programs (OSEP) seeking to have S.R. participate in the Extended Day Program at Katzenback School for the Deaf.<sup>1</sup> The

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<sup>1</sup> The initial petition was filed on June 17, 2015 under docket number EDS 02341-2015 and was resolved by Agreement, dated August 14, 2015. A copy of the Settlement Agreement is annexed hereto, and made a part hereof as Exhibit A.

Monroe Township Board of Education (Board) agreed to mediation and the matter was referred to Lisa Ruffner for mediation. The matter was resolved by way of a Settlement Agreement which was reached during the mediation on August 14, 2015. Thereafter, the petitioner sent a letter to the Board seeking additional services and/or to change the terms of the Settlement Agreement. After respondent declined to provide the additional services, a new Due Process Petition was filed on September 22, 2015. On November 18, 2015, the Board filed a Notice of Motion (Motion) for Summary Decision on the basis of a final Settlement Agreement entered into with petitioner, precluding the request for relief herein. Petitioner filed opposition to the Motion and a telephone conference was conducted on November 30, 2015. The matter is now ripe for determination.

### **STATEMENT OF UNDISPUTED FACTS**

1. S.R. is an eleven-year-old boy who is classified eligible for Special Education Services under the classification “multiply disabled.” He has been diagnosed with a profound hearing loss. Due to safety issues, he requires a personal paraprofessional throughout the school day.

2. On May 28, 2015, an annual review meeting was held in connection with his Individual Educational Plan (IEP). After the parents would not consent to the IEP, a Request for Due Process was filed on June 17, 2017.

3. The June 17, 2015, Due Process Petition sought to have S.R. enrolled in the Extended Day Program. No other relief was sought.

4. On August 14, 2015, the parties participated in mediation which was conducted by Lisa Ruffner, a mediator appointed by the OSEP. A Settlement Agreement was reached between the parties, which was memorialized on that date.

5. The Settlement Agreement provided for an Extended Day program for S.R. until 5:30 p.m., with transportation and an aide. The Settlement Agreement further

provided that the program was for academic purposes only and would be terminated if the student participated in non-academic programs.

6. The Settlement Agreement was executed by the parent, the school district and the Mediator on August 14, 2015, thus resolving all the issues involved in the June 17, 2015, Due Process Petition.

7. Thereafter, on September 11, 2015, the attorney for S.R. wrote to the attorney for the Board and acknowledged that they “entered into a mediation agreement on August 14, 2015”, but requested that the extended day services be extended for an additional half hour and that a meal be provided to S.R.

8. The attorney for S.R. advised that the rationale for this request is that S.R.’s bus ride is over two hours and since his lunch is at 11:30 a.m., he would not be able to eat for almost eight hours.

9. There was never any discussion about dinner or extending the day beyond 5:30 p.m. when the petitioner executed the agreement.

10. There has been no mistake, fraud or any undue influence alleged by the petitioner in connection with the execution of the Settlement Agreement.

### **ARGUMENT OF THE PARTIES**

As stated, the within matter comes before me on the Motion for Summary Decision of the Board. The Board argues that it is entitled to entry of a decision in its favor as a matter of law. The issue is whether the Settlement Agreement precludes the re-litigation of the additional demands with respect to the Extended Day Program on behalf of S.R.

## LEGAL ANALYSIS AND CONCLUSIONS

It is well established that if there is no genuine issue as to any material fact, a moving party is entitled to prevail as a matter of law. Brill v. The Guardian Life Insurance Co. of America, 142 N.J. 520, 540 (1995). The purpose of Summary Decision is to avoid unnecessary hearings and their concomitant burden on public resources. Under the Brill standard, a fact-finding hearing should be avoided “when the evidence is so one-sided that one party must prevail as a matter of law.” Here, I **CONCLUDE** that the legal issue of the finality of the Settlement Agreement can be determined without the necessity of evidentiary hearings.

Settlements are highly favored mechanisms in our justice system for resolving disputes between parties. Without such amicable resolutions, the court and administrative forums would be overburdened with litigation, hearings and decisions and would grind to a halt. “For nearly forty-five years, New Jersey courts have found that the ‘[s]ettlement of litigation ranks high in [the] public policy’ of this State.” Nolan ex rel. Nolan v. Lee Ho, 120 N.J. 465, 472 (1990) (quoting Jannarone v. W.T. Co., 65 N.J. Super. 472, 476 (App. Div.), certif. denied, 35 N.J. 61 (1961)).” Puder v. Buechel, 183 N.J. 428, 437-38 (2005). The goal of this policy is “the notion that the parties to a dispute are in the best position to determine how to resolve a contested matter in a way which is least disadvantageous to everyone.” Dep’t of Pub. Advocate v. Bd. of Public Util., 206 N.J. Super. 523, 528 (App. Div. 1985). Accordingly, I am required to give effect to the parties’ settlement whenever such is consistent with the terms and the law.

Here, I **CONCLUDE** that the Settlement Agreement is clear and unambiguous on its face. It can only be interpreted in one manner and that is that the parents agreed to an Extended Day program which would end at 5:30 p.m. They knew the length of the time it took to travel from school to S.R.’s home, and they knew when his lunch was scheduled. The Board agreed to provide an aide for the program and the bus. However, there was nothing left to determine, the petitioner got exactly what they

wanted and they agreed to it. The Settlement Agreement is not susceptible of any other reading and must be enforced as it was written.

I agree with the Board and **CONCLUDE** that petitioner got the bargain of the Settlement Agreement of participation in the Extended Day program and Katzenback School and transportation with an aide. A settlement “freely entered into” can only be set aside for fraud or other compelling circumstances. Jennings v. Reed, 381 N.J. Super. 217, 226-27 (App. Div. 2005). The party seeking the extraordinary remedy of reopening a case or issues previously resolved by a voluntary settlement agreement must demonstrate by clear and convincing proof that the agreement was the result of fraud, undue influence or duress, or mutual mistake as to a material fact. A settlement cannot be voided or avoided simply because a party later determines that maybe they could get a better deal, or in this case, a dinner before leaving for the day. Any attempt to have it set aside is a burden petitioner has not carried in these proceedings. They have asserted no fraud, undue influence or mutual mistake to entitle them to set aside the agreement.

### **ORDER**

Based on the foregoing, it is **ORDERED** that the motion for Summary Decision on behalf of the Board is hereby **GRANTED** and the due process petition filed by petitioner, D.S., on behalf of S.R., is hereby **DISMISSED**.

This decision is final pursuant to 20 U.S.C.A. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2015) 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 (2015). 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 12, 2016

DATE

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**SARAH G. CROWLEY, ALJ**

Date Received at Agency

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Date Mailed to Parties:

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**APPENDIX**

**EXHIBIT**

A Settlement Agreement, dated August 14, 2015