

20 U.S.C. Â§1415 and [34 CFR 300.500](#) (1986) et seq., requested that an administrative law judge be assigned to conduct a hearing in this matter. The Director of the Office of Administrative Law, in turn, assigned the case to me for handling. N.J.S.A. 52:14B-2(b) and N.J.S.A. 52:14F-15(o). The matter was scheduled to be heard on August 30, 2005. However, prior to commencing the hearing, the parties' respective attorneys were summoned to my chambers to discuss a possible settlement. At that time, petitioner insisted on a full-day program, preferably at the day care center C.C. had attended the previous year, with occupational therapy once a week and speech/language therapy to be provided three times per week in a one-on-one setting and one time per week in a group. ">

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

DECISION

OAL DKT. NO. [EDS6386-05](#)

AGENCY DKT. NO. 2005 10173

A.S. o/b/o C.C.,

Petitioner,

v.

MAGNOLIA BOROUGH

BOARD OF EDUCATION,

Respondent.

Jamie Epstein, Esq., for petitioner

Paul Kalac, Esq., for respondent (Parker, McCay, P.A., attorneys)

Record Closed: August 30, 2005 Decided: August 31, 2005

BEFORE ISRAEL D. DUBIN, ALJ

This special education case arises under the Individuals with Disabilities Education Act, [20 U.S.C.A. Â§Â§1400](#) to 1487. On June 13, 2005, petitioner filed a request for due process with

the New Jersey Department of Education, Office of Special Education Programs, seeking a full day program and related services for C.C., a three-year-old boy who has been classified as autistic and eligible for special education and related services.

The Commissioner of Education transmitted the matter to the Office of Administrative Law (OAL) on August 17, 2005, and, in accordance with [20 U.S.C. Â§1415](#) and [34 CFR 300.500](#) (1986) *et seq.*, requested that an administrative law judge be assigned to conduct a hearing in this matter. The Director of the Office of Administrative Law, in turn, assigned the case to me for handling. [N.J.S.A. 52:14B-2\(b\)](#) and [N.J.S.A. 52:14F-15\(o\)](#).

The matter was scheduled to be heard on August 30, 2005. However, prior to commencing the hearing, the parties' respective attorneys were summoned to my chambers to discuss a possible settlement. At that time, petitioner insisted on a full-day program, preferably at the day care center C.C. had attended the previous year, with occupational therapy once a week and speech/language therapy to be provided three times per week in a one-on-one setting and one time per week in a group.

Declining to place C.C. in a day-care center, the Board instead proposed a morning placement in the district's autism program, which has a three-to-three teacher/student ratio, and an afternoon placement in its preschool disabled program. The Board also offered to provide occupational therapy two times per week, speech/language therapy three times per week in a one-on-one setting and one time per week in a group, and a one-to-one aide for lunch.

Although she found the proposed related services acceptable, petitioner declined the Board's offer, arguing that placement in either the autism or pre-school disabled program would constitute placement in the most restrictive environment. Petitioner instead reiterated her demand that C.C. be placed in the day-care center with occupational and speech/language therapy provided at that facility.

Upon hearing petitioner's objection, the Board offered to place C.C. in the district's open pre-school program, where he would have the opportunity to engage in activities with his non-disabled peers. As before, the district also offered a one-on-one aide during lunch and the related services previously discussed. This appeared to be acceptable to petitioner.

However, once on the record, petitioner's counsel raised, for the first time, the issue of

compensatory education. Counsel based his demand upon the fact that C.C. had only sporadically received the speech/language therapy called for in his Early Intervention Program, a problem that persisted after C.C. turned three on May 15, 2005. Consequently, he insisted that the district provide compensatory education for the fifteen therapy sessions it had failed to provide from that date through to the conclusion of the school year.

The Board objected, arguing that it could not be held responsible for services the State had been obligated, and failed, to provide. The Board also asserted that although it had convened a transition meeting and provided petitioner with a draft initial IEP, it had never received a response, much less her consent, to the proposed placement and services that were to be provided through to the end of the 2004-05 school year and in the upcoming 2005-06 school year. Nevertheless, it offered to provide C.C. with speech/language therapy five times per week in a one-on-one setting and one time per week in a group for a limited period of time. In this way, the Board would provide C.C. with the fifteen additional sessions demanded by petitioner, twelve additional sessions he would have received had he been enrolled in an Extended School Year program, and three additional sessions so as to round off the total number of additional services to thirty. However, it would not consent to the additional sessions being designated as compensatory education.

While still on the record, petitioner's counsel was asked if, with the exception of the demand for compensatory education, the Board's proposed educational placement and related services met his client's concerns, needs, and demands. He replied that the proposed placement and related services were acceptable, but that he would not consent to the proposal without a provision expressly awarding his client compensatory education.

Based upon the foregoing, I offered to issue an interim order directing the district to amend and implement the proposed IEP as discussed, and reserve decision on the issue of compensatory education pending receipt of counsel's respective briefs. Petitioner's counsel declined the offer, insisting upon a "final enforceable order." In the absence of such an order, he would advise his client to continue sending C.C. to the day-care center while the entire matter was litigated.

Here, the parties have for all intents and purposes agreed that C.C.'s initial IEP shall include, and that he will in fact receive, the following special education and related services:

1.

Enrollment in and daily attendance at the Magnolia School District's open pre-school

- program as a full- time student from approximately 8:30 a.m. to 3:10 p.m.;
2. A full-time one-to-one aide who shall remain with C.C. throughout the school day, including his lunch period;
 3. Occupational therapy one time per week; and
 4. Speech/Language therapy three times per week in a one-on-one setting and one time per week in a group setting.
 5. Autism and Occupational Therapy evaluations performed at the Board's expense. It is the Court's understanding that the parties shall exchange separate lists of three proposed specialists to conduct each of these evaluations and choose a specialist appearing on each party's list or otherwise select a specialist that both can agree upon.

With the 2005-06 school year scheduled to begin six days hence on September 6, 2005, there can be no rational justification for depriving C.C. of the special education and related services he needs because of a disagreement over whether certain additional services the Board is willing to provide should be designated as compensatory education. This is particularly true where, as here, there is a question of law whether the Board was obligated to provide the services in question and the issue may be resolved by way of Summary Decision.

Based upon the foregoing, I **CONCLUDE** that consistent with petitioner's acknowledgment that the proposed revisions to the IEP address the concerns raised in her request for due process, C.C.'s initial IEP should be revised to include and, commencing with the beginning of the new school year on September 6, 2005, he should be provided with the special education and related services enumerated above. Accordingly, petitioner's request for due process should be and is hereby **DISMISSED**. However, the newly-raised issue of C.C.'s entitlement to compensatory education shall first be **SEVERED** and considered in its own right under OAL Docket No. 6517-05. It is so **ORDERED**.

This decision is final pursuant to 20 U.S.C.A. §1415(i)(1)(A) and 34 CFR 300.510 (2002) 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 CFR 300.512 (2002). If either party feels that this decision is not being fully implemented, this concern should be communicated in writing to the Director, Office of Special Education Programs.

DATE ISRAEL D. DUBIN, ALJ

IDD/mamf

The request for due process did not include any such demand.

Counsel demanded the thirteen additional services or a specific amount of monetary damages in lieu thereof. The number of sessions was limited to thirteen because neither the Early Intervention Program or proposed initial IEP called for an Extended School Year program.

The district did not contest the number of additional sessions to be provided, but rather its obligation to provide them at all. Therefore, the remaining issue was one of law and lent itself to determination by way of Summary Decision.

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