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State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

EMERGENT RELIEF

OAL DKT. NO. [EDS2151-02](#) AGENCY DKT. NO. 2002-6282

R.M. O/B/O G.B.

Petitioner,

v.

PAULSBORO BOARD OF EDUCATION AND

JERSEY CITY BOARD OF EDUCATION,

Respondent.

Jamie Epstein, Esq., appearing for petitioner

Phillip Duvilla, Esq., appearing for respondent Paulsboro Board of Education

Charlotte Kitler, Esq., appearing for respondent Jersey City Board of Education

Record Closed: April 5, 2002 Decided: April 17, 2002

BEFORE **JOHN R. FUTEY**, ALJ:

STATEMENT OF THE CASE

In this matter R.M., mother of G.B., seeks emergency relief regarding the program and placement services for her disabled student living in a homeless shelter.

This Special Education case arises under the Individual with Disabilities Education Act (hereinafter "IDEA"), as amended [20 U.S.C.A. ?1401](#) *et. seq.* and [N.J.S.A. 18A:46-1](#) *et. seq.* The matter was transmitted to the Office of Administrative Law (hereinafter "OAL") for emergent relief by the Commissioner of Education who requested that an Administrative Law Judge be assigned to conduct an emergent relief hearing in this matter. I was assigned to conduct this case, along with two other cases involving siblings of G.B. under OAL Docket Numbers EDS 2152-02 (re: S.G.) and EDS 2153-02 (re: R.G.). They were all assigned to me pursuant to the provisions of [N.J.S.A. 52:14F-5\(o\)](#). The matters were scheduled for hearing for April 5, 2002, at the Deptford Township Municipal Court Complex, Deptford, New Jersey at the request of the petitioner due to her having multiple sclerosis, which purportedly precluded her from traveling any significant distances.

On that date, the parties met and attempted to negotiate the matter. They subsequently advised that they had settled some of the issues in this matter and reduced that understanding to a settlement agreement (J-1). At the same time, one remaining issue remained outstanding, *to wit*, which expert shall perform the evaluations regarding each of the petitioner's children.

FACTS

Robert Kiliany is the Director of Special Services for the Paulsboro Public Schools. He testified that each of the three children in question have extensive disability issues which are properly addressed by a team approach to evaluations which are typically conducted by the Gloucester County Special Services School District. As a result, he maintained that the Gloucester County Special Services School District is in the most viable position to conduct those evaluations at this time. Petitioner, R.M., maintained that she preferred the services of Doctor Edna Berenbaum due to her unique expertise to address the multiple issues relating to her children. It was noted that this tribunal had previously accepted the services of Dr. Berenbaum in another proceeding, identified as *H.B. v. Deptford Township Board of Education*.

FINDINGS

Based upon all of the foregoing, and in light of this tribunal's understanding regarding the qualifications of Dr. Berenbaum in this matter, I **FIND** that since the parties have agreed that this tribunal shall be vested with the responsibility to select the evaluator for each of the children and, further, since I **FIND** that there is no showing that Dr. Edna Berenbaum is not otherwise qualified

to perform such evaluations and, in fact, she is eminently qualified in that regard, and, further, in light of the inordinate delays attendant to the children not having received timely evaluations in this matter by the respondent Paulsboro district, the preference for team approach evaluations is greatly outweighed by the need to have these evaluations conducted at this time by Dr. Berenbaum.

I also have reviewed the record, considered the testimony of the witnesses under oath and reviewed the settlement terms of the other issues generated in this matter (J-1). Based upon the foregoing, I **FIND** that the parties have voluntarily agreed to the settlement as evidenced by their signatures as well as their testimonies under oath. The settlement disposes of the issues in controversy set forth therein and is consistent with the law.

CONCLUSION AND ORDER

Based upon all of the foregoing, I **CONCLUDE** that this matter, along with the two companion matters involving the other two children identified herein, is no longer a contested case before the Office of Administrative Law. It is **ORDERED** that the parties comply with the settlement terms and that these proceedings are hereby **CONCLUDED**.

It is also **ORDERED** that Dr. Edna Berenbaum shall conduct all of the evaluations on each of the children in accordance with her expertise and the expressed individual need of all of the children.

And, since the terms of the settlement agreement as well as all of the findings relative to the remaining issue embrace all the issues which otherwise would have been more fully explored by way of further mediation and/or plenary hearing, and with the consent of the parties, I **CONCLUDE** that there are no other remaining issues with reference to the emergent relief application brought before me as to this child as well as well as the other two children referenced in this matter. As a result, it is **ORDERED** that order for emergent relief herein is converted into a Decision on the Merits regarding all raised by way of emergent relief.

This decision is final pursuant to [20 U.S.C.A. ?1415\(c\)](#) and [34 CFR 300.509](#). As to the settlement only in this matter, if either party feels that this decision is not being fully implemented as to the settlement terms, this concern should be communicated in writing to the Director, Office of Special Education Programs, New Jersey Department of Education.

And, further, as to the findings with reference to the evaluator determined in this matter, this

decision is final pursuant to [20 U.S.C.A. ?1415\(i\)\(1\)\(A\)](#) and [34 CFR 300.510](#) (1999) and is appealed by filing a compliant and bring a civil action either in the Superior Court of New Jersey or in the District Court of the United States. [20 U.S.C.A. ?1415\(i\)\(2\)](#), [34 CFR 300.512](#) (1999).

DATE **JOHN R. FUTEY**, ALJ

mamf

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