

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D18785
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_____AD3d_____

Argued - March 14, 2008

PETER B. SKELOS, J.P.
JOSEPH COVELLO
RANDALL T. ENG
JOHN M. LEVENTHAL, JJ.

2007-04027
2007-04028

DECISION & ORDER

In the Matter of James A. (Anonymous);
New York City Department of Education,
nonparty-appellant.

(Docket No. D-1919-06)

Michael A. Cardozo, Corporation Counsel, New York, N.Y. (Kristin M. Helmers and
Janet L. Zaleon of counsel), for nonparty appellant.

In a juvenile delinquency proceeding pursuant to Family Court Act article 3, the nonparty New York City Department of Education appeals from (1) an order of the Family Court, Kings County (Spodek, J.), dated December 27, 2006, which, upon an order of disposition also dated December 27, 2006, adjudicating James A. to be a juvenile delinquent, directed it “to provide an Individualized Education Plan for [James A.], naming Judge Rotenberg Center (250 Turnpike Street, Canton, Massachusetts . . .) as placement, as well as completing any forms or paperwork required;” and (2) an order of the same court dated April 16, 2007, which denied its motion to vacate the order dated December 27, 2006.

ORDERED that the order dated April 16, 2007, is reversed, on the law, without costs or disbursements, the motion to vacate the order dated December 27, 2006, is granted, and the order dated December 27, 2006, is vacated; and it is further,

ORDERED that the appeal from the order dated December 27, 2006, is dismissed as academic in light of our determination of the appeal, without costs or disbursements.

April 8, 2008

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MATTER OF A. (ANONYMOUS), JAMES

The Family Court is a court of limited jurisdiction and is possessed of only those powers specifically enumerated in the Constitution and by statute (*see* NY Const, art VI, § 13[c]; *Matter of Mouscardy v Mouscardy*, 63 AD2d 973, 974-975). Here, the court exceeded its authority under Family Court Act § 255 by directing the nonparty New York City Department of Education (hereinafter the DOE) to provide an Individualized Education Plan for the child, James A., specifically naming the Judge Rotenberg Center as his placement (*see Matter of Naima C.*, 39 AD2d 964; *see also Matter of Lorie C.*, 49 NY2d 161; *Matter of Janyce B.*, 37 AD3d 459; *Matter of Ronald W.*, 25 AD3d 4) and encroached upon powers granted to the DOE by Education Law §§ 4402 and 4404.

SKELOS, J.P., COVELLO, ENG and LEVENTHAL, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court