Lawrence Union Free Sch. Dist. v New York City Dept. of Educ.
2017 NY Slip Op 30419(U)
March 1, 2017
Supreme Court, New York County
Docket Number: 155191/2015
Judge: Margaret A. Chan

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 33

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LAWRENCE UNION FREE SCHOOL DISTRICT
Plaintiff,

DECISION/ORDER
Index No. 155191/2015

-against-

NEW YORK CITY DEPARTMENT OF EDUCATION,
Defendant.
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MARGARET A. CHAN, J.:

Plaintiff Lawrence Union Free School District, a public school district in Nassau County, New York, seeks reimbursement of $1,122,354.46 from defendant New York City Department of Education for special education and health services it had rendered to alleged New York City students attending nonpublic schools in plaintiff's school district. In motion sequence 1, plaintiff moves for summary judgment pursuant to Education Law §§ 3602-c and 912. Defendant opposes the motion and cross-moves to dismiss pursuant to CPLR 3612(b) and 3211(a)(7) for failure to state a cause of action as plaintiff failed to follow reimbursement procedures. In motion sequence 2, plaintiff moves to amend its verified complaint to add a cause of action for unjust enrichment, which defendant opposes.

A party moving for summary judgment must make a prima facie showing that it is entitled to judgment as a matter of law (*see Alvarez v Prospect Hosp.*, 68 NY2d 320 [1980]). Once a showing has been made, the burden shifts to the parties opposing the motion to produce evidentiary proof, in admissible form, sufficient to establish the existence of material issues of fact which require a trial of the action (*see Zuckerman v City of New York*, 49 NY2d 557 [1980]). On a motion to dismiss pursuant to CPLR § 3211(a)(7), the court must liberally construe the pleading, accept the alleged facts as true, and accord the non-moving party the benefit of every possible favorable inference (*see Leon v Martinez*, 84 NY2d 83, 87 [1994]; *Thomas v Thomas*, 70 AD3d 588 [1st Dept 2010]). The court need only determine whether the alleged facts fit within any cognizable legal theory (*id.*).

Pursuant to Education Law § 3602-c, plaintiff is responsible for providing special education services to disabled students attending nonpublic schools in its district (*see Board of Educ. of Bay Shore Union Free School Dist. v Thomas K.*, 14 NY3d 289 [2010]). Plaintiff is also required under Education Law § 912 to provide health services to New York City resident students who attend nonpublic schools in plaintiff's district. Plaintiff, as the district of location, seeks reimbursement for the costs of these special education and health services from defendant, the district of residence. Plaintiff provided these services for school years from 2007 through 2013 and requested reimbursement from defendant.

Defendant denied plaintiff's special education services reimbursement for the 2007-08 through 2012-13 school years because plaintiff failed to provide proof of written parental consent from the students for whom plaintiff is requesting reimbursement. Defendant also denied plaintiff's health services reimbursement for the 2013-2014 school year because plaintiff did not submit a Proof of NYC Residency Form for the students who were the recipients of plaintiff's health services. A Proof of NYC Residency Form is required for a reimbursement claim pursuant to Education Law § 912.

On the issue of reimbursement for special education under Education Law § 3602-c, the provision states in pertinent part, that

> "a school district of location providing services to non-resident students shall be entitled to recover costs of services . . . directly from the district of residence of the student if consent of the parent or person in parental relation is obtained to release of personally identifiable information concerning their child. If such consent is not obtained, the school district of location shall submit to the commissioner, in a form prescribed by the commissioner, a claim for costs of services . . . that includes the address of the student's permanent residence, including the school district of residence, and a certification by officials of the nonpublic school attended by the student that such address is the address of record of such student. Upon certification by the commissioner of the amount of such claim, the state comptroller shall deduct such amount from any state funds which become due to such school district of residence."

(Education Law § 3602-c (7)(b)).

Plaintiff's interpretation of this statutory provision, as gleamed from its argument, is that (i) a district of location must seek reimbursement from the district of residence only if parental consent is obtained; (ii) absent the parental consent, a district of location has the option to seek reimbursement from the New York State Education Department (NYSED); or (iii) seek reimbursement from the district of residence through litigation.

A plain reading of this statutory provision shows that a school district of location is to be reimbursed by the district of residence if there is parental consent to release the student's personal information. If there is no consent, then the district of location must submit a claim for the costs it seeks in a form prescribed by the commissioner. The first part of plaintiff's argument is apposite to the statutory language of Education Law § 3602-c(7)(b). Plaintiff, the district of location, did not submit the parental consent forms to defendant, the district of residence, when it sought reimbursement of the special education services it provided. Thus, it may seek reimbursement from the NYSED.

The second part of plaintiff's argument that the district of location may, but need not seek reimbursement from the NYSED if it does not have the parental consent form is based on plaintiff's reading of a June 2008 State Education Department memorandum (Pltf's Aff, Exh B) entitled "Guidance on Reimbursement Claims for the Cost of Providing Special Education Services to Parentally-Placed Students Pursuant to Education Law Section 3602-c" ("Guidance Memo"). The relevant section for reimbursement claims with written parental consent states:

> If the district of location has parent consent to share personal identifiable special education information about the student with the district of residence, the district of location is entitled to directly bill the school district of residence . . . .

(Pltf's Aff, Exh B, p 2, emphasis in original)

The relevant section for reimbursement claims without written parental consent to the NYSED states:

> In accordance with section 3602-c of Education Law, a school district of location may submit a claim to the Department for reimbursement of costs incurred to provide special education services to a student with a disability who is a NYS resident, but resides in another school district, only when the parent of that student has refused consent to share personally identifiable special education information between the school district where the nonpublic school is located and the school district of the student's residence.

(*id.*, emphasis in original).

Plaintiff's position is that submitting claims without parental consent to NYSED is optional. Plaintiff focuses on the word "may" in the first sentence of latter section of the Guidance Memo. In so arguing, plaintiff dismisses the need to have the parental consent forms, pointing out that if the New York State legislature required parental consent or proof of residency, it would have expressly stated it in the statute. Extending plaintiff's reasoning then, if legislature intended on giving districts of residence an option, it would have so stated, and would not have one part of the statutory provision eviscerate the other part. Also, in dismissing the need for parental consent forms, plaintiff ignores much of the relevant Education Law provisions in § 3602 that imputes financial responsibility to a district of residence – that is the residence of the parents (*see Board of Educ. of Garrison Union Free School Dist. v Greek Archdiocese Institute of St. Basil*, 18 NY 3d 355, 361 [2012] ["Throughout the Education Law, the relevant provisions addressing who is the financially responsible party emphasize the residence of the parents or the responsibility of the entity or agency placing the child in the institution"]).

Plaintiff contends that neither the parental consent form nor proof of residency affects its right to be reimbursed. This contention bypasses the Guidance Memo's explanation about the "federal regulations requiring parental consent . . . before billing a district of residence" and the basis for the different billing procedures based on whether there was parental consent (*id.*, p 2). Plaintiff's disagreement with the federal regulation regarding the parental consent requirement was not addressed in his motion.

The conclusion is that Education Law § 3602-c (7)(b) does not offer an option for a district of location to seek reimbursement. Absent parental consent, plaintiff may seek reimbursement from NYSED as Education Law § 3602-c (7)(b) states that the district of location "shall" submit to the NYSED Commissioner a claim of cost. The use of the word "shall" in the statutory provision denotes a mandate.

However, plaintiff posits that the statute does not preclude it from seeking reimbursement from defendant through litigation before it exhausts its administrative remedies (Pltf's Memo of Law, p 14). Plaintiff does not explain why it can disregard the reimbursement procedures set in place by NYSED or statute, or why it need not exhaust its administrative remedies before commencing litigation. Considering that the NYSED is "charged with implementing Education Law §3602", and "has the general authority and duty

to review the records of school districts receiving state funds to ensure the legitimacy of their claims", plaintiff has another venue in the education system to seek the relief it requests through litigation *(see Rochester City School Dist. v New York State Educ. Dept*, 31 AD3d 993 [3d Dept 2006]).

Education Law § 912 directs that the district of residence pays the district of location for the health services provided for its resident students. To determine whether the services was rendered to a resident student for whom the district of residence is financially responsible, defendant uses a one-page, fill-in-the-blanks form as proof of residency. Thus, this form is required with the request for reimbursement. Plaintiff has not shown any statutory or other authority to circumvent the procedures as set forth in the relevant statutes or guidance memorandum. Plaintiff has not shown why proof of residency is not necessary when the scheme of Education Law 912 focuses on districts of residence as being financially responsible for its resident students' health services when they attend nonpublic schools in an outside district. Finally, plaintiff has not shown that the students in its claims are defendant's financial responsibility as there is no information on their residency.
As such, plaintiff has not stated a cause of action under Education Law § 3602-c or § 912 against defendant. And because plaintiff failed to seek reimbursement through the proper channels as directed by statute, or provide the required information to support its claims, its motion to amend the complaint to assert a cause of action for unjust enrichment is denied. Plaintiff's invoices accompanying the complaint lists bills without names or addresses of the beneficiary of the services, and its generated lists of names offer no address information for to discern the district of residence. Without any salient facts, plaintiff cannot establish a cause of action for unjust enrichment (*see Georgia Malone & Co., Inc. v Rieder,* 19 NY3d 511, 517 [2012])

Accordingly, plaintiff's motion (sequence 1) for summary judgment is denied, as is its motion (sequence 2) to amend the complaint; and defendant's cross-motion (sequence 1) to dismiss the complaint pursuant to CPLR 3211(a)(7) is granted. The clerk of the court is direct to enter judgment as written.

This constitutes the decision and order of the court.

DATE : 3/1/2017

MARGARET A. CHAN, JSC