

E.M. on behalf of minor child J.B., :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE CITY : DECISION
OF EAST ORANGE, STATE-OPERATED
SCHOOL DISTRICT OF THE CITY OF :
NEWARK, AND BOARD OF TRUSTEES
OF THE GREATER NEWARK :
CHARTER SCHOOL, ESSEX COUNTY.
_____ :

SYNOPSIS

Petitioner sought a determination that the Board of Education of the City of East Orange (Board) is responsible for both the transportation costs and placement of her son, J.B. – a student eligible for special education and related services – during the time in which petitioner resided in the East Orange School District and J.B. attended an out-of-district placement at the North Hudson Academy (NHA). Respondents contended that the controversy is moot since petitioner and her son have moved to North Carolina, and dismissal of the petition is therefore appropriate.

The ALJ found, *inter alia*, that: although petitioner argues that this case “involves important public issues concerning special education for disabled children enrolled in charter schools,” the actual education of J.B. is not at issue in the case since J.B. maintained his educational placement at NHA until April 2009, when the petitioner moved to North Carolina; if the petitioner’s claim is that the Board failed to provide a Free and Appropriate Public Education by not providing transportation for J.B. to NHA, a due process hearing within the framework of the Individuals with Disabilities Education Act would be the primary vehicle for resolving the dispute, but no due process petition was filed by petitioner in this regard; petitioner’s allegation that the “parties have an interest in determining which district is responsible for payment of private school placements where a charter school places a student in a private school for the handicapped, since there is a likelihood that this issue will arise again” is unsupported by any evidence that would substantiate any payment from petitioner to NHA for J.B.’s educational placement; NHA is not a party to this matter; petitioner has moved to North Carolina, and there is no claim for unpaid tuition. The ALJ concluded that the disputed issues have become moot and accordingly dismissed the petition.

Upon full review of the record in this matter, the Acting Commissioner adopted the conclusion of the ALJ that the case is moot. The petition was dismissed.

This synopsis is not part of the Commissioner’s decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.

OAL DKT. NO. EDU 11588-08
AGENCY DKT. NO. 291-10/08

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The Acting Commissioner has reviewed the record, Initial Decision of the Office of Administrative Law (OAL) and parties' exceptions and reply exceptions, and agrees with the Administrative Law Judge (ALJ) that the matter is moot as to the sole petitioner. While the issue of who was responsible for payment of J.B.'s tuition at North Hudson Academy (NHA) was never finally adjudicated, the jurisdictional requirements for such adjudication are no longer satisfied.

There is no showing in the record that petitioner paid or was charged for J.B.'s tuition at NHA, and NHA itself was neither a petitioner nor an intervenor in the case. Thus, the Acting Commissioner may not award damages for tuition. Similarly, since the record contains no proofs itemizing the transportation costs which petitioner alleges that she incurred, no award for same may be granted.

As the ALJ advised, the law instructs that courts will not decide cases in which the issue is hypothetical, a judgment cannot grant effective relief, or the parties do not have

concrete adversity of interest, *Anderson v. Sills*, 143 *N.J. Super.* 432, 437 (Ch. Div. 1976). (Initial Decision at 6.) Accordingly, the Acting Commissioner adopts the conclusion of the ALJ that the case is moot, and dismisses the petition.

IT IS SO ORDERED.¹

ACTING COMMISSIONER OF EDUCATION

Date of Decision: September 13, 2010

Date of Mailing: September 14, 2010

¹ This decision may be appealed to the Superior Court, Appellate Division, pursuant to *P.L. 2008, c. 36*.