

**New Jersey Commissioner of Education**  
**Final Decision**

M.I., on behalf of minor children, A.D. and P.P.,

Petitioner,

v.

Board of Education of the City of Elizabeth,  
Union County,

Respondent.

**Synopsis**

Petitioner filed a pro se petition challenging the determination of the respondent Board of Education of the City of Elizabeth (Board) that her minor children, A.D. and P.P., were ineligible to receive a free public education in respondent's schools. Petitioner asserted that she and her children do, in fact, live at the Elizabeth address provided when the children were enrolled and that she had provided proof of her residence as required by the Board. The Board has subsequently determined that the children are eligible to attend Elizabeth schools, and withdrew its claim for tuition. Petitioner has not, however, withdrawn her appeal in this matter.

The ALJ found, *inter alia*, that: the children are attending Elizabeth Public Schools free of charge; the District has formally withdrawn its counterclaim for tuition; and there is no further matter in controversy. The petitioner has already achieved the relief she sought in her appeal. The ALJ determined that the matter is moot and, accordingly, granted the Board's motion to dismiss the petition, with prejudice.

Upon review, the Commissioner concurred with the ALJ's findings and conclusions. Accordingly, the Initial Decision of the OAL was adopted as the final decision in this matter, and the petition was dismissed with prejudice.

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.

188-22

OAL Dkt. No. EDU 05322-21

Agency Dkt. No. 71-5/21

**New Jersey Commissioner of Education**

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A.D. and P.P.,

Petitioner,

v.

Board of Education of the City of Elizabeth,  
Union County,

Respondent.

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. The parties did not file exceptions.

Upon the review of the record, the Commissioner is in accord with the ALJ's conclusion - for the reasons set forth in the Initial Decision – that the issues raised by the petitioner are moot. Accordingly, the Initial Decision is adopted as the final decision in this matter and the petition of appeal is hereby dismissed as moot, with prejudice.

IT IS SO ORDERED.<sup>1</sup>

  
ANGELINA ALLEN-McMILLAN, J.D.  
ACTING COMMISSIONER OF EDUCATION

Date of Decision: August 5, 2022

Date of Mailing: August 5, 2022

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<sup>1</sup> This decision may be appealed to the Appellate Division of the Superior Court pursuant to *N.J.S.A. 18A:6-9.1*. Under *N.J.Ct.R. 2:4-1(b)*, a notice of appeal must be filed with the Appellate Division within 45 days from the date of mailing of this decision.



**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

**DISMISSAL**

OAL DKT. NO. EDU 05322-21

AGENCY DKT. NO. # 71-5/21

**M.I. O/B/O MINOR CHILDREN A.D. AND P.P.,**

Petitioners,

v.

**CITY OF ELIZABETH BOARD OF EDUCATION,**

Respondent.

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**M.I.**, Petitioner, pro se (no appearance)

**Brian J. Kane**, Esq., (La Corte, Bundy, Varady & Kinsella) for Respondent

Record Closed: June 22, 2022

Decided: June 28, 2022

BEFORE **DANIELLE PASQUALE**, ALJ:

**STATEMENT OF THE CASE**

M.I., Petitioner, filed a petition challenging the determination of Respondent Elizabeth Board of Education that Petitioner and her family do not reside in the Elizabeth New Jersey School District (District). M.I. maintained throughout that she did, in fact, live in Elizabeth, New Jersey at the listed address. M.I. wrote in her Pro Se Residency Appeal that she had provided proof of same. In response, on June 18, 2021, the Respondent

filed an Answer and Counterclaim and while the attorney of record initially had difficulties communicating with Petitioner, Ms. DiPalo did, in fact, write to me to state that M.I. provided sufficient proof of her Elizabeth Residency and the District determined that it would permit her children to re-enroll as students. The students are currently enrolled and the District has withdrawn its counterclaim for any reimbursement. I take Judicial Notice that M.I. has been on multiple phone calls both in English and in Spanish and was thinking of withdrawing her case but never did. We sought a response as did the District for months but never received one. I finally listed the case for a hearing on June 22, 2022 where she was properly noticed and failed to appear. The argument to dismiss the case due to mootness was heard in M.I.'s absence.

### **LEGAL ANALYSIS**

As the District properly argues, mootness is a threshold justiciability determination rooted in the notion that judicial power is to be exercised only when a party is immediately threatened with harm. Jackson v. Dep't of Corr., 335 N.J. Super. 227, 231 (App. Div. 2000). "A case is technically moot when the original issue presented has been resolved at least concerning the parties who initiated the litigation." DeVesa v. Dorsey, 134 N.J. 420, 428 (1993). Courts normally will not decide issues when a controversy no longer exists, and the disputed issues have become moot. Id.

An action is moot when it no longer presents a justiciable controversy because the issues raised have become academic. For reasons of judicial economy and restraint it is appropriate to refrain from decision-making when an issue presented is hypothetical, judgment cannot grant effective relief, or the parties do not have a concrete adversity of interest. Anderson v. Sills, 143 N.J. Super. 432, 437 (Ch. Div. 1976); Fox v. Twp. of E. Brunswick Bd. of Educ., EDU 10067-98, Initial Decision (March 19, 1999), aff'd, Comm'r (May 3, 1999) <<http://lawlibrary.rutgers.edu/oal/search.html>>; S.J. v. Bd. of Educ. of Mountain Lakes, EDU 07081-03, Initial Decision (October 7, 2003), aff'd, Comm'r (Nov. 17, 2003), aff'd, St. Bd. (Feb. 3, 2004) <<http://lawlibrary.rutgers.edu/oal/search.html>>.

When a decision being sought in a particular matter will have no practical effect on the existing controversy, it is considered moot. A matter becomes moot when an issue becomes hypothetical in nature, 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).

“Therefore, when there has been a change in circumstances that raises doubt concerning the immediacy of the controversy, courts will ordinarily dismiss cases as moot, regardless of the state to which litigation has progressed.” Id. at 437.

In the instant matter, I **FIND** as it is undisputed that M.I. lives in Elizabeth and that both her children do as well and that she provided proof of same. I also **FIND** that they are currently enrolled in the Elizabeth School District. I **FURTHER FIND** that The District has withdrawn its counterclaim as a result of our hearing/motion on June 22, 2022.

Again, it is undisputed and I am taking judicial notice of the District’s description of M.I. being unresponsive and uncooperative even when the District was explaining that her residency was no longer in dispute as I was present on some of those calls and my assistant copied on some of that correspondence. It bears mentioning that my assistant speaks both English and Spanish and has communicated many times with M.I. in both languages, and thus I so **FIND**. As the District has formally withdrawn their counterclaim and the children are attending Elizabeth Public Schools and there are no legal fees at issue, I **FIND** that there is no matter in controversy that this court can decide or relief that the court can grant and thus the issues are moot. In short, I **FIND** that the Petitioner has already achieved the relief she sought in her appeal.

Therefore, I **CONCLUDE** that the petition is moot because M.I.’s showed the proof of residency, it is undisputed that she and her children live and are currently enrolled in the District and the District has withdrawn its counterclaim. As such there is nothing for this court to decide as the Petitioner has already received the relief she sought in her appeal.

**ORDER**


Based on the foregoing, I hereby **ORDER** that Respondent's Motion to Dismiss on behalf of mootness is **GRANTED**. I **ORDER** that the **DISMISSAL IS WITH PREJUDICE** based on mootness and later Petitioner's failure to appear and/or pursue an action.

I hereby **FILE** this initial decision with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

This recommended decision may be adopted, modified or rejected by the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who by law is authorized to make a final decision in this matter. If the Commissioner of the Department of Education does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION, ATTN: BUREAU OF CONTROVERSIES AND DISPUTES, 100 Riverview Plaza, 4th Floor, PO Box 500, Trenton, New Jersey 08625-0500**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

June 28, 2022  
DATE

  
DANIELLE PASQUALE ALJ

Date Received at Agency: June 28, 2022

Date E-Mailed to Parties: June 28, 2022

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