

New Jersey Commissioner of Education**Final Decision**

Eric Simkin,

Petitioner,

v.

Board of Education of the Township of Voorhees,
Camden County,

Respondent.

Synopsis

Pro se petitioner challenged the respondent's filling of a vacancy created by the resignation of Board member Rachel Van Aken (Van Aken) on February 24, 2022. Petitioner maintained that the Board lacked the authority to fill this vacancy and sought to overturn the Board's appointment of Julie Ketover (Ketover) to fill Van Aken's unexpired term; petitioner further sought to nullify any votes cast by Ketover as a Board member. The Board contended that this matter is moot as Ketover was subsequently elected to a full term as a Board member on November 8, 2022. The Board further contended that the petition fails to state a claim upon which relief can be granted and filed a motion to dismiss.

The ALJ found, *inter alia*, that: on February 24, 2022, a vacancy on the Board was created by the resignation of Van Aken; the Board sought to fill the vacant seat for the remainder of Van Aken's term, which expired in November 2022; following two unsuccessful attempts to fill the vacancy in March and April of 2022, the Board rescinded its previous actions regarding the vacancy and voted on June 15, 2022 to appoint Ketover to fill the vacant seat for the remainder of Van Aken's term; and petitioner contended that the Board's actions on June 15, 2022, violated N.J.S.A. 40A:14-201(b)(2) as more than sixty-five days had passed since Van Aken's resignation; however, it is undisputed that Ketover was duly elected to a seat on the Board on November 8, 2022 and petitioner's argument that Ketover's appointment to the seat, three months earlier, could have "dramatically effected the election" is speculative and has no relevance to the within proceeding. The ALJ concluded that the petition is moot because Ketover was duly elected as a member of the Board on November 8, 2022, and there is nothing left to decide in this case. Accordingly, the ALJ granted the Board's motion to dismiss the case for mootness.

Upon review, the Commissioner concurred with the ALJ, for the reasons thoroughly detailed in the Initial Decision, that the petition of appeal is moot. Accordingly, the Board's motion to dismiss was granted, and 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.

111-23
OAL Dkt. No. 07409-22
Agency Dkt. No. 216-8/22

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Voorhees, Camden County,

Respondent.

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

Upon review, the Commissioner concurs with the Administrative Law Judge, for the reasons thoroughly detailed in the Initial Decision, that the petition of appeal is moot.

Accordingly, the Board's motion to dismiss is granted, and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.¹


ACTING COMMISSIONER OF EDUCATION

Date of Decision: April 11, 2023
Date of Mailing: April 12, 2023

¹ 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 ON

MOTION TO DISMISS

OAL DKT. NO. EDU 07409-22

AGENCY DKT. NO. 216-8/22

ERIC SIMKIN,

Petitioner,

v.

**BOARD OF EDUCATION OF THE
TOWNSHIP OF VOORHEES, CAMDEN
COUNTY,**

Respondent.

Eric Simkin, petitioner, pro se

Jeffrey P. Catalano, Esq., for respondent (Parker McCay, P.A., attorneys)

Record Closed: February 16, 2023

Decided: March 10, 2023

BEFORE **KATHLEEN M. CALEMMO**, ALJ:

STATEMENT OF THE CASE

Petitioner, Eric Simkin, filed this action against respondent, the Board of Education of the Township of Voorhees, Camden County (the Board), as an emergent-relief request and petition. After emergent relief was denied, the Commissioner of Education continued

the petition at the Office of Administrative Law (OAL) for such proceedings as were deemed necessary to bring the matter to closure.

Petitioner challenged how the respondent filled the vacancy caused by the resignation of Board member, Rachel Van Aken, on February 24, 2022. Petitioner maintained that the Board lacked the authority to fill this vacancy. Therefore, he sought to overturn the Board's appointment of Julie Ketover to fill Van Aken's unexpired term and to nullify any votes cast by Ketover as a Board member.

The Board contends that the matter is now moot due to Ketover's election as a Board member on November 8, 2022, for her own term. The Board further contends that the petition fails to state a claim on which relief can be granted, thereby requiring dismissal of the petition.

PROCEDURAL HISTORY

On August 26, 2022, the Department of Education, Office of Controversies and Disputes transmitted petitioner's Motion for Emergent Relief to the OAL to be heard as a contested case. I issued an Order on September 6, 2022, denying the request for emergent relief. On September 14, 2022, the Commissioner issued an Order adopting the September 6, 2022, Order, and continued the matter at the OAL for such proceedings deemed necessary to bring the matter to closure.

Following telephone conferences and the exchange of discovery, the Board filed a Motion to Dismiss. On February 8, 2023, Simkin filed a brief in opposition. On February 15, 2023, the Board filed its reply.

FACTUAL DISCUSSION

On February 24, 2022, a vacancy on the Board was created by the resignation of Rachel Van Aken. The Board sought to fill this seat for the remainder of her term which would end in November 2022. The Board was unsuccessful in two attempts during meetings on March 16, 2022, and on April 11, 2022, to fill the vacancy.

By email, dated April 12, 2022, the Board's Solicitor advised Executive County Superintendent, Daryl Minus-Vincent, that the deadline for the Board to appoint a candidate to fill the vacancy expired on April 30, 2022. (Respondent Exhibit A.) The vacancy created by Ms. Van Aken's resignation was not on the agenda for its May 4, 2022, meeting.

At the June 15, 2022, Board Meeting, Board President Monica Watson added an agenda item to rescind the previous votes to fill the vacancy. The Board then voted to appoint Ms. Ketover to fill the vacant seat for its unexpired term by a vote of five to three. Petitioner contends that under N.J.S.A. 8A:12-15(a), the Board lacked the authority to fill this vacancy because more than sixty-five days had passed since the occurrence of Van Aken's resignation.

After appointing Ms. Ketover to the vacant seat on June 15, 2022, the Board Solicitor sent an email to the new Executive County Superintendent, Carmen Rodriguez, informing him that the Board filled the vacancy. (Respondent Exhibit B.)

Ms. Ketover was sworn in as a Board member at the August 29, 2022, Board meeting and voted during that meeting as a member of the Board. She voted to approve the 2022–2023 curriculum for Social Studies; Science; Math; Language Arts Literacy; Health and Physical Education; Visual and Performing Arts; and World Language. The motion passed with seven members voting yes and one member abstaining. Even if Ms. Ketover's vote was invalidated, this motion would still have passed, and the Curriculum would have taken effect.

On November 8, 2022, Ms. Ketover was duly elected to a seat on the Board.

The above facts are not disputed. Rather, petitioner maintains that the Board's actions on June 15, 2022, violated N.J.S.A. 40A:14-201(b)(2), because sixty-five days had passed since Van Aiken's resignation.

LEGAL ANALYSIS AND CONCLUSION

As the Board properly argued, 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 has no practical effect on the existing controversy, it is considered moot. "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." Anderson, 143 N.J. Super. at 437.

In the instant matter, I **FIND** as it is undisputed that Julie Ketover was duly elected to a seat on the Board on November 8, 2022. Petitioner's argument that Ketover's appointment to the seat, three months earlier, could have "dramatically effected the election" is speculative and has no relevance to this proceeding. Any decision rendered by this tribunal about the Board's action on June 15, 2022, when it voted to approve Ketover's appointment to fill Van Aiken's unexpired term and on August 29, 2022, when it voted to approve Ketover as a member of the Board would have no practical effect due

to Ketover's election on November 8, 2022. As such, I **FIND** that this action no longer presents a justiciable controversy. There is no relief that can be afforded to this petitioner, as there has been no injury shown.

Therefore, I **CONCLUDE** that the petition is moot because Ketover was duly elected on November 8, 2022, as a member of the Board. As such, there is nothing for this tribunal to decide.

ORDER

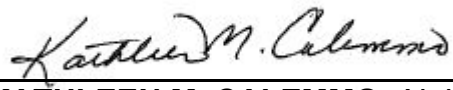
Based on the foregoing, I hereby **ORDER** that respondent's Motion to Dismiss on behalf of mootness is **GRANTED**.

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.

March 10, 2023
DATE



KATHLEEN M. CALEMMO, ALJ

Date Received at Agency:

Date Sent to Parties:

KMC/jns

APPENDIX OF MOTION PROCEEDING

For petitioner

Opposition Brief, with supporting Exhibits, filed February 8, 2023

Exhibit A – Roster of Officials

Exhibit B – Emails

Exhibit C – District Policy

Exhibit D – Interrogatories and Answers to Interrogatories

Exhibit E – Correspondence

For respondent

Motion Brief, with supporting Exhibits, filed January 6, 2023

Exhibit A – Solicitor Cavallo’s email to Executive County Superintendent
Minus-Vincent, dated April 12, 2022

Exhibit B – Solicitor Cavallo’s email to Executive County Superintendent
Rodriguez, dated June 21, 2022

Exhibit C – Official Election Results

Reply Brief, filed February 15, 2023