

New Jersey Commissioner of Education

Final Decision

F.E.,

Petitioner,

v.

Board of Education of the Township of Piscataway,
Middlesex County,

Respondent.

Synopsis

Petitioner appealed the April 2018 decision of respondent, Township of Piscataway Board of Education (Board), to impose a one-year suspension on him for posting threatening messages on Instagram. On August 10, 2023, the Board unconditionally expunged the disputed suspension from F.E.'s permanent record. Subsequently, on August 22, 2023, the Board filed a motion to dismiss F.E.'s claim for mootness, which was opposed by the petitioner.

The ALJ found, *inter alia*, that: F.E. opposed the motion to dismiss on the grounds that the relief he requests is not an expungement but "a dismissal of the charges with unconditional apology"; F.E.'s student records in the Piscataway School District no longer include any reference to the incident for which he received discipline in March 2018; any claims petitioner might have had against the Piscataway School District are now moot as the suspension of F.E. was expunged by the Board, and a plenary hearing in this matter would have no practical effect on the outcome of the case. The ALJ concluded that the matter is now moot, and petitioner's appeal must be dismissed.

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

319-23

OAL Dkt. No. 01496-23

(EDU 00375-22 on Remand)

Agency Dkt. No. 182-7/18

New Jersey Commissioner of Education

Final Decision

F.E.,

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v.

Board of Education of the Township of
Piscataway, Middlesex 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 that the petition must be dismissed.

Accordingly, the Initial Decision is adopted as the final decision in this matter, and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.¹


ACTING COMMISSIONER OF EDUCATION

Date of Decision: October 27, 2023

Date of Mailing: November 1, 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 GRANTING

MOTION TO DISMISS

OAL DKT. NO. EDU 01496-23

(ON REMAND FROM EDU
00375-22)

AGENCY DKT. NO. 182-7/18

F.E.,¹

Petitioner,

v.

TOWNSHIP OF PISCATAWAY

BOARD OF EDUCATION,

Respondent.

F.E., petitioner, pro se

David B. Rubin, Esq., for respondent (Attorney at Law, attorney)

Record Closed: September 15, 2023

Decided: September 19, 2023

BEFORE TRICIA M. CALIGUIRE, ALJ:

¹ This original petition in this matter was filed by B.E. while his son, F.E., was a minor. By certification dated July 21, 2023, F.E., having reached the age of majority, stated that he would prosecute this case on his own.

STATEMENT OF CASE

Petitioner, F.E., appeals the April 2018 decision of respondent, Township of Piscataway Board of Education (Board), to impose a one-year suspension on him for, generally, posting threatening messages on Instagram.

By motion the Board seeks dismissal of F.E.'s appeal on the grounds of mootness because of the August 10, 2023, decision of the Board to unconditionally expunge the disputed suspension from F.E.'s permanent record. F.E. opposes this motion on the grounds that he committed no offense, and the expungement does not address his claim of innocence. I **FIND** that this matter is moot and therefore, I **CONCLUDE** that the petition must be dismissed.

PROCEDURAL HISTORY

On July 30, 2018, then-petitioner B.E. filed a petition of appeal with the Department of Education's Office of Special Education Policy and Dispute Resolution (OSEP). This matter was transmitted to the Office of Administrative Law (OAL), where it was filed for hearing as a contested case and docketed as EDU 11838-18, pursuant to N.J.S.A. 52:14B-1 to -15, and N.J.S.A. 52:14F-1 to -13.

Prior to the 2018-2019 school year, B.E. disenrolled F.E. from the Piscataway School District (District) and enrolled him at a private school. On respondent Board's motion, the petition was dismissed on the grounds that with F.E.'s removal from the District, the Commissioner no longer had jurisdiction to consider the appeal. This decision was reversed on January 4, 2019. The Commissioner remanded the matter to the OAL for further proceedings but failed to transmit the remand until January 2022. The remand was docketed as EDU 00375-22.

Prior to hearing in EDU 00375-22, the parties negotiated a settlement of all issues in dispute but, on August 30, 2022, Chinemerem Njoku, Esq., then-counsel for B.E., notified me that B.E. refused to settle on the terms he previously agreed to and therefore,

Mr. Njoku moved to be relieved as counsel. An order approving Mr. Njoku's withdrawal from this matter was issued on September 23, 2022.

In a telephone prehearing conference on September 9, 2023, B.E. stated that he intended to proceed to a hearing, but then failed to appear at two subsequent telephone conferences without notice or explanation. By Initial Decision Dismissal, dated December 20, 2022, the petition was dismissed for failure to prosecute. This decision was reversed by the Commissioner and the matter was remanded to the OAL for further proceedings, where it was docketed as EDU 01496-23.

On or about April 2023, B.E. moved to amend the petition to add claims for reimbursement of private school tuition and for attorneys' fees. On May 10, 2023, after obtaining an extension of the filing deadline, the Board filed its objections to the motion to amend and a cross-motion for summary decision. Following an order issued to resolve a dispute over discovery, B.E. responded in the form of an amended motion on June 29, 2023.

By order dated July 14, 2023, both the motion of B.E. to amend his petition and the motion of the Board for summary decision were denied and B.E. was ordered to obtain the consent of F.E., who was now over the age of eighteen, to pursue his claim against the Board. By certification dated July 21, 2023, F.E. stated that he would represent himself in this matter "because [he is] of the age of majority, direct victim of the [Board's] decision, and [has] full knowledge of the case[.]"

On August 11, 2023, counsel for the Board notified me and petitioner that the Board unconditionally expunged the discipline issued to F.E. that is the subject of this matter. My chambers notified F.E. that he had the option to withdraw his petition challenging the suspension or to appear for the previously scheduled August 21, 2023,

telephone conference. F.E. did neither and failed to contact my chambers or opposing counsel to explain.²

On August 22, 2023, the Board filed a motion to dismiss F.E.'s claim for mootness. F.E. submitted his opposition to the motion on September 5, 2023; the Board replied the same day. On September 15, 2023, the Board submitted proof of the Board's action and the motion to dismiss is now ripe for review.

FACTUAL DISCUSSION AND FINDINGS

Based on undisputed statements found in the documents filed in this matter (and the related matters which preceded it) to date, I **FIND** as **FACTS**:

1. On March 29, 2018, the District Superintendent issued F.E. a one-year suspension from Piscataway High School (PHS) for creating a terroristic threat, cyberbullying, and disruption of school. At the time, F.E. was under eighteen years old.
2. In April 2018, following a hearing, the Board modified F.E.'s suspension to maintain F.E. on home instruction through the end of the 2017-2018 school year, to assign F.E. to the District's in-school PS3 Program for the first two marking periods of the 2018-2019 school year, and to return F.E. to the general education program in the third marking period on specific conditions, including counseling and community service.
3. F.E. completed the 2017-2018 school year, and began the 2018-2019 school year, at Bishop George Ahr High School (renamed as St. Thomas Aquinas High School), a private parochial school. F.E. did not return to PHS and graduated from St. Thomas Aquinas High School in June 2020.

² In his brief opposing the motion to dismiss, F.E. apologized for missing the telephone conference due to "my network issue that affected my emails and other social media messages." Ltr. Br. of Petitioner (September 5, 2023), at 1.

4. F.E. is now more than eighteen years old.
5. On August 10, 2023, the Board voted to unconditionally expunge the suspension of March 29, 2018, from F.E.'s permanent record at PHS. See Certification of Dr. Frank Ranelli, Superintendent of Schools, and the revised copy of F.E.'s disciplinary record.
6. The Board moves to dismiss this matter on the grounds that the sole issue, whether the discipline imposed on F.E. in March 2018 was appropriate, is moot.
7. F.E. opposes the motion to dismiss on the grounds that the relief he requests is not an expungement but "a dismissal of the charges with unconditional apology." Ltr. Br. of Petitioner, at 2.

LEGAL ANALYSIS AND CONCLUSION

An action is moot when the decision sought "can have no practical effect on the existing controversy." Redd v. Bowman, 223 N.J. 87, 104 (2015). 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); J.L. and K.D. ex rel. J.L. v. Harrison Twp. Bd. of Educ., EDS 13858-13, Final Decision (January 28, 2014).

In P.S. ex rel. I.S. v. Edgewater Park Twp. Bd. of Educ., EDS 10418-04, Final Decision (October 31, 2005), <http://njlaw.rutgers.edu/collections/oal/>, a parent filed for due process due to a disagreement over a district's proposed placement of her child, and requested a different, approved private school. The district had agreed to the parent's placement request and moved to dismiss the petition as moot. The parent wanted to continue the hearing to resolve other related disagreements, but the ALJ concluded that the relief sought by the parent had already been granted by the district through their agreement to place the child at her requested school.

The ALJ dismissed the petition as moot and reasoned that the parents had the right to file a new due process petition regarding other issues with the district.

In a case similar to this one, student S.D. was suspended for alleged use of drugs in school; approximately one year later, after a petition had been filed challenging the Board's decision to uphold the discipline, the Board expunged the discipline. D.W. on behalf of S.D. v. Bridgewater-Raritan Regional School District, OAL Dkt. No. 11438-19, Initial Decision (July 29, 2020), aff'd. (Comm'r. September 11, 2020). The ALJ concluded that since no record of the suspension remained in the student's file, there was no relief which the judge could provide, and he dismissed the case as moot. On review, the Commissioner concurred "that petitioner's claim is moot because the suspension imposed by the Board on S.D. has been expunged."

A review of the facts here leads to the conclusion that no issue remains as to which judgment can grant effective relief. F.E.'s student records in the Piscataway School District include no reference to the incident for which he received discipline in March 2018. For this reason, I **CONCLUDE** that a due process hearing on a challenge to a decision of the Board for which there is no record would be a hypothetical exercise.³

Based on the foregoing, I **CONCLUDE** that the petition should be dismissed with prejudice because the sole issue raised is now moot.

ORDER

Based on the foregoing, I **ORDER** that the motion of respondent Township of Piscataway Board of Education to dismiss the petition of F.E. for mootness is **GRANTED** and F.E.'s petition challenging the discipline imposed on him by respondent in March 2018 is **DISMISSED WITH PREJUDICE**.

³ F.E. is aware that he may seek the financial damages to which he believes he is entitled in another forum. See Petitioner's Br. at 2.

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 initial 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, P.O. 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.



September 19, 2023 _____

DATE

TRICIA M. CALIGUIRE, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

TMC/kl/mph