



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

SUMMARY DECISION

OAL DKT. NO. EDS 12952-17

AGY REF NO. 2018/26817

M.A. AND E.M. ON BEHALF OF A.A.,

Petitioners,

v.

**RIDGEWOOD VILLAGE BOARD OF
EDUCATION,**

Respondent.

M.A. & E.M., parents on behalf of minor child **A.A.**, pro se

Isabel Machado, Esq., for respondent (Machado Law Group, attorneys)

Record Closed: March 25, 2019

Decided: March 27, 2019

BEFORE **THOMAS R. BETANCOURT**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioners filed a request for a due process petition with the Office of Special Education Programs, New Jersey Department of Education (NJDOE).

The Department of Education transmitted the contested case pursuant to N.J.S.A. 52:14B-1 to 15 and N.J.S.A. 52:14f-1 TO 13, to the Office of Administrative Law (OAL), where it was filed on September 6, 2017.

A prehearing conference was held on December 12, 2017, and a prehearing order was entered by the undersigned on December 13, 2017.

On November 12, 2018, Lori M. Gaines, Esq., counsel for petitioners, filed a motion to be relieved as counsel. Requests for a response thereto were made to petitioners. No response as to the motion was received. Several emails were received from petitioner M.A., none of which responded to the motion to be relieved. Said motion was granted by Order dated November 20, 2018.

Respondent filed a motion for summary decision, dated March 4, 2019. Petitioners were to file a response thereto on or before March 25, 2019 pursuant to N.J.A.C. 1:1-12-5(b). No response was filed by Petitioners.

FINDINGS OF FACT

1. A.A. is a twelve year old student who is classified as eligible for special education and related services under the category of autistic.
2. Respondent is the District responsible for A.A.'s education.
3. January 30, 2019 is the last day A.A. attended school in the District.
4. The District has been unable to contact Petitioners since that date.
5. On February 7, 2019 the District received information that Petitioners had moved.
6. Shortly thereafter Dr. Katie Kashmanian, Principal of George Washington Middle School, was contacted by Ilene Chicas from the Division of Child Protection and Permanency.

7. Ms. Chicas informed Dr. Kashmanian that Petitioners had informed her, via email, they had moved out of state.
8. Petitioners no longer reside within the District. Upon information and belief the District believes that Petitioners are currently residing in Washington State.

LEGAL ANALYSIS AND CONCLUSION

A motion for summary decision may be granted if the papers and discovery presented, as well as any affidavits which may have been filed with the application, show that there is no genuine issue of material fact and the moving party is entitled to prevail as a matter of law. N.J.A.C. 1:1-12.5(b). If the motion is sufficiently supported, the non-moving party must demonstrate by affidavit that there is a genuine issue of fact which can only be determined in an evidentiary proceeding, in order to prevail in such an application. Ibid. These provisions mirror the summary judgment language of R. 4:46-2(c) of the New Jersey Court Rules.

The motion judge must “consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party . . . , are sufficient to permit a rational fact finder to resolve the alleged disputed issue in favor of the non-moving party.” Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 523 (1995). And even if the non-moving party comes forward with some evidence, this forum must grant summary decision if the evidence is “so one-sided that [the moving party] must prevail as a matter of law.” Id. at 536 (citation omitted).

Respondent alleges the matter is moot as Petitioners no longer reside within the District, or the State of New Jersey.

It is uncontroverted that Petitioners have moved to the State of Washington. Accordingly, there are no material facts in dispute and the matter is ripe for summary decision.

In Betancourt v. Trinitas Hosp.,ⁱ 415 N.J. Super. 301, 08, the New Jersey Supreme Court defines mootness as follows:

"We first set forth the principles that inform a consideration of claims of mootness. 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, 227, 762 A.2d 255 (App.Div. 2000), *certif. denied*, 167 N.J. 630, 772 A.2d 932 (2001). "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, 634 A.2d 493 (1993) (Pollock, J., concurring) (citing Oxford v. N.J. State Bd. of Educ., 68 N.J. 301,303, 344 A.2d. 769 (1975)). To restate, "an issue is "moot" when the decision sought in a matter, when rendered, can have no practical effect on the existing controversy." (citations omitted).

In the instant matter Petitioners no longer reside in the District. They do not reside in the State of New Jersey. As the District is no longer responsible for the education of A.A., any decision would be moot as it would have no practical effect on the existing controversy.

Accordingly, I **CONCLUDE** that Respondent's motion for summary decision should be **GRANTED**.

ORDER

It is hereby **ORDERED** that Respondent's motion for summary decision is **GRANTED**; and,

It is further **ORDERED** that Petitioners' petition for due process be **DISMISSED** with prejudice.

ⁱ The litigants in this matter are not related to the undersigned.

This decision is final pursuant to 20 U.S.C. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2018) and is appealable by filing a complaint and bringing a civil action either in the Law Division of the Superior Court of New Jersey or in a district court of the United States. 20 U.S.C. § 1415(i)(2); 34 C.F.R. § 300.516 (2018). If the parent or adult student feels that this decision is not being fully implemented with respect to program or services, this concern should be communicated in writing to the Director, Office of Special Education Programs.



March 27, 2019

DATE

THOMAS R. BETANCOURT, ALJ

Date Received at Agency

Date Mailed to Parties:

APPENDIX

List of Moving Papers

For Petitioner:

None

For Respondent:

Brief in support of the motion for summary decision

Certification of Dr. Katie Kashmanian

Certification of Kim Buxenbaum