State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

DISMISSAL

OAL DOCKET NO. EDS 14479-18

A.P. AND G.P. ON BEHALF OF L.P.,

Petitioners,

v.

FREEHOLD REGIONAL

HIGH SCHOOL BOARD OF EDUCATION,

Respondent.

AGENCY REF. NO. 2019-28669

AND

OAL DOCKET NO. EDS 00436-19

FREEHOLD REGIONAL

HIGH SCHOOL BOARD OF EDUCATION,

Petitioner,

v.

A.P. AND G.P. ON BEHALF OF L.P.,

Respondents.

AGENCY REF. NO. 2019-28969

(CONSOLIDATED)

Michael I. Inzelbuch, Esq., for Petitioners-Respondents A.P. and G.P. on behalf of L.P. (Law Office of Michael I. Inzelbuch, attorney)

John B. Comegno, II, Esq., and **Erin A. Berman,** Esq., for Respondent-Petitioner Freehold Regional High School Board of Education (Comegno Law Group, P.C., attorneys)

Record Closed: May 15, 2020

Decided: May 20, 2020

BEFORE **TRICIA M. CALIGUIRE,** ALJ:

STATEMENT OF CASE

These consolidated matters arise under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§ 1400-1485, and N.J.S.A. 18A:36A-11(b). Petitioners-respondents, A.P. and G.P., bring an action on behalf of their son, L.P., seeking a finding that the special education services for L.P. in the May 8, 2018 Individualized Education Program (IEP) proposed by respondent-petitioner, Board of Education of the Freehold Regional High School, Monmouth County (Board), do not meet L.P.'s educational needs and fail to confer a free appropriate public education (FAPE) to L.P., and seeking an order directing the Board to continue L.P.'s placement at Academy 360 School (Academy 360), an out-of-district school that meets L.P.'s educational needs. In its petition, respondent-petitioner, Board, seeks an order compelling A.P. and G.P. to consent to evaluations of L.P. by professionals chosen by the Board.

PROCEDURAL HISTORY

On May 22, 2018, petitioners-respondents, A.P. and G.P. filed a petition of appeal and request for mediation with the New Jersey Department of Education (DOE), Office of Special Education (OSEP), disputing the proposed in-district placement of L.P. by the Board. The first mediation/resolution period was adjourned by request of the parties until October 4, 2018. On October 4, 2018, the parties met for a mediation conference but were unable to reach resolution. The matter was transmitted by OSEP to the Office of Administrative Law (OAL) as a contested case on October 11, 2018, pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13. The matter was docketed as EDS 14449-18, and immediately scheduled for settlement hearing. At the request of petitioners-respondents, due to a scheduling conflict, the settlement hearing was adjourned and rescheduled for October 25, 2018, before the Honorable Dean J. Buono, Administrative Law Judge (ALJ).

The matter did not settle, was reassigned to the undersigned on October 25, 2018, and scheduled for a telephonic hearing on October 29, 2018. At petitioner-respondent's request, the October 29, 2018 hearing was rescheduled for November 5, 2018. During this telephonic hearing, petitioners-respondents stated that they would be retaining an attorney

and a subsequent telephonic hearing was scheduled for November 13, 2018, during which the schedule for hearing would be set with counsel for both parties. Both parties appeared for the November 13, 2018 hearing, during which respondent stated that it had filed a due process petition with OSEP to compel evaluations of L.P. Counsel for A.P. and G.P. stated that they did not object to evaluations of L.P.; the parties agreed to discuss this matter between themselves pending the OSEP mediation conference.

On October 20, 2018, respondent-petitioner, Board, filed a petition of appeal with OSEP to compel evaluations of L.P. On January 7, 2019, the parties met for a mediation conference but were unable to resolve this matter. The matter was transmitted by OSEP to the OAL, where it was filed on January 9, 2019, for hearing as a contested case pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13. This matter was docketed as EDS 00436-19, assigned to the Honorable Jeffrey R. Wilson, ALJ, and scheduled for a settlement hearing on January 17, 2019. The matter did not settle and was assigned to the undersigned on January 22, 2019.

On January 7, 2019, the parties participated in a telephonic hearing scheduled on the first matter, EDS 14479-18, during which they discussed their mutual intention to conduct six separate evaluations of L.P. By way of motion dated January 18, 2019, the parties requested that the matters, EDS 14479-18 and EDS 00436-19, be consolidated and an Order of Consolidation was entered on January 24, 2019.

Due to the difficulty of scheduling hearing dates, and the parties' stated intention to work cooperatively to conduct, share, and complete all evaluations, a single hearing date was scheduled for August 28, 2019. At the same time, counsel for petitioners-respondents agreed to notify the undersigned on or before June 26, 2019, of the status of settlement discussions and the progress of evaluations, and to provide additional hearing dates.

At the request of the Board, the hearing of August 28, 2019, was adjourned and rescheduled for November 6, 2019, December 3 and 11, 2019. On September 9, 2019, the parties participated in a telephonic hearing during which they reported that evaluations were yet to be completed; further, the Board had objections regarding two of the evaluations

conducted by the independent professionals retained by petitioners-respondents. Prior to November 6, 2019, the hearing was extended to May 27, 2020, and the first hearing date adjourned. On November 7, 2019, petitioners-respondents requested an order directing the Board to furnish specific records and for an adjournment of the December 3, 2019, hearing date. On November 13, 2019, the Board joined the request for adjournment and stated that all requested records had in fact been provided. The adjournment request was denied.

On December 3, 2019, during a prehearing conference with the undersigned, the parties represented that they had reached a tentative agreement on evaluations which could result in the withdrawal by the Board of its petition. First, however, the Board agreed to provide petitioners-respondents a written explanation of why evaluations were still necessary; petitioners-respondents agreed to then notify the Board should they consent. After review of the Board letter, dated December 4, 2019, petitioners-respondents objected to further evaluations as unnecessary and untimely. For these reasons, I agreed to consider a motion by the Board to compel evaluations and oral argument was heard on this motion on December 11, 2019. At oral argument, petitioners-respondents moved to exclude evidence not disclosed by the Board prior to December 3, 2019, including specifically, materials related to a functional behavior assessment (FBA) of L.P. conducted by the Board.

On December 11, 2019, following oral argument, I issued a verbal order, confirmed in writing on December 17, 2019, directing the parties to supplement their arguments in writing by specific dates. Both parties responded on a timely basis and on January 31, 2020, the motion of respondent-petitioner Board to compel evaluations of L.P. was granted**,** and petitioners-respondents, A.P. and G.P., were directed to make L.P. available for evaluations immediately. The motion of petitioners-respondents, A.P. and G.P., to exclude evidence not disclosed by the Board prior to December 3, 2019, was denied and all evidence intended to be introduced at hearing was required to be disclosed by both parties to the other on or before May 1, 2020. The hearing was scheduled for May 27, 2020.

Due to the closing of the OAL during the COVID-19 emergency, the parties were directed to participate in a telephonic hearing on May 13, 2020, the purpose of which was to discuss alternatives to an in-person hearing. By electronic mail received May 4, 2020, and regular mail

received May 15, 2020, the Board provided the undersigned copies of its expert reports. During the May 13, 2020 telephonic hearing, the parties were advised that with the completion of these reports, no justiciable controversy remained and both petitions would therefore be dismissed with prejudice. On May 14, 2020, counsel for petitioners-respondents, A.P. and G.P., submitted a letter requesting confirmation that L.P. would continue to attend Academy 360 following dismissal of these matters and requesting oral argument and reconsideration should dismissal interrupt the stay-put placement. For the reasons set forth below, oral argument was not directed[1] and the record closed on May 15, 2020.

FACTUAL DISCUSSION AND FINDINGS

Based on the documents filed by the parties in these consolidated matters, I **FIND** the following **FACTS:**

1. L.P. is a seventeen year old male special education (SE) student who resides within the Freehold Regional High School District (District) and who is currently enrolled in Academy 360, a DOE-approved independent school. L.P. is eligible for SE services; he is classified as autistic.

2. Prior to and during the 2016-2017 school year, L.P. was enrolled in the Howell Township Public School District (Howell), which sends students to the District for grades nine through twelve. On May 17, 2017, while L.P. was attending eighth grade in Howell, representatives of Howell and the District met with A.P. and G.P. and, as a result of that meeting, an IEP was issued recommending placement of L.P. in an autism classroom in the District for the 2017-2018 school year.

3. Prior to May 26, 2017, A.P. and G.P. on behalf of L.P. filed a due process petition with OSEP seeking to amend the May 17, 2017 IEP. On May 26, 2017, A.P. and G.P. participated in a resolution session with representatives of Howell, and the parties reached agreement to change L.P.'s placement to Academy 360 prior to the end of the 2016-2017 school year. The District was not aware of, and did not

[1] N.J.A.C. 1:1-12.2(d) provides the judge with discretion to direct oral argument.

participate in, the resolution session and was not a party to the agreement reached by Howell and A.P. and G.P.

4. L.P. began attending Academy 360 prior to July 1, 2017, on which date the District assumed responsibility for L.P.'s education.

5. On December 17, 2017, the District and A.P. and G.P. agreed to a revised IEP for L.P. which continued his placement at Academy 360.

6. On May 8, 2018, the District convened an annual review of L.P.'s IEP. During this meeting, the Board requested, and petitioners-respondents agreed, to waive triennial evaluations of L.P., even though L.P. had last been evaluated in 2015.

7. On May 21, 2018, A.P. and G.P. on behalf of L.P. filed a petition for due process to challenge the in-district placement proposed in the May 8, 2019 IEP, stating that "the district made the recommendation [to] change L.P.'s placement" without conducting any evaluations. A.P. and G.P. knew, however, that the Board proposed to change L.P.'s placement prior to the May 8, 2018 IEP meeting and before they agreed to waive evaluations.

8. On February 6, 2019, A.P. and G.P. signed consent for evaluations of L.P. conditioned on the Board first reviewing the results of the educational evaluation, speech and language evaluation, and the FBA that were to be conducted by independent professionals chosen by A.P. and G.P.

9. Over the course of 2019, both parties conducted certain evaluations of L.P. and of the programs offered to L.P. by both Academy 360 and the District. In its petition, the Board sought to compel a neurodevelopmental evaluation, a speech and language evaluation, a social evaluation, an educational evaluation, an FBA, and a vocational assessment. Pursuant to the order entered in these matters on January 31, 2020, the Board completed its evaluations of L.P.

10. On May 4 and 15, 2020, the Board submitted copies of reports of the following evaluations of L.P. conducted by Board-appointed experts: a social evaluation, a pediatric neurologic-neurodevelopmental examination; a vocational evaluation;

a review of the L.P.'s Academy 360 program (which Board counsel stated substituted for an FBA), a speech and language re-evaluation, and a psychoeducational evaluation.

11. L.P. attended Academy 360 during the 2018-2019 school year and during the 2019-2020 school year.

12. To date, the parties have not reached agreement on an IEP for L.P.

LEGAL ANALYSIS AND CONCLUSION

The primary purpose of the IDEA is to ensure that all disabled children will be provided a FAPE. 20 U.S.C. § 1400(d)(1)(A). New Jersey has also enacted legislation and adopted regulations that assure all disabled children the right to a FAPE. N.J.S.A. 18A:46-1 to -46; N.J.A.C. 6A:14-1.1 et seq. The regulations provide that a school district of residence is responsible for "the location, identification, evaluation, determination of eligibility, development of an individualized education program and the provision of a [FAPE] to students with disabilities." N.J.A.C. 6A:14-1.3. In determining whether a student is eligible for special education services, a school district must conduct an initial evaluation, which "shall consist of a multi-disciplinary assessment in all areas of suspected disability," and if the child is deemed eligible, a school district must conduct "a multi-disciplinary reevaluation . . . to determine whether the student continues to be a student with a disability" at least every three years. N.J.A.C. 6A:14-3.4(f); N.J.A.C. 6A:14-3.8(a). Though both parties agree that L.P. continues to be a child with a disability, the law recognizes that the needs of every child evolve and change with time and therefore, provides for a triennial review and reassessment of those needs and how they appropriately can be met.

"[W]ithin three years of the previous classification, a multi-disciplinary reevaluation shall be completed to determine whether the student continues to be student with a disability." N.J.A.C. 6A:14-3.8. The reevaluation begins with a review of existing data, classroom observations and input from teachers and related services providers. N.J.A.C. 6A:14-3.8(b). Based on that review, the child study team is required to determine what, if any, additional data is needed to determine "[t]he present levels of academic achievement and functional performance

and educational and related developmental needs of the student," and "how they should appropriately be addressed in the student's IEP[.]" N.J.A.C. 6A:14-3.8(b)(iii). There will both be situations where there is no need for additional assessments, and situations where the educators and parents determine that such assessments are essential to sound educational decision-making. The regulations make it plain, however, that additional formal assessments may be conducted only with the consent of the parent. N.J.A.C. 6A:14-2.3. Where, as here, consent has been withheld, the school district may file for due process. N.J.A.C. 6A:14-2.7(b).

This matter began with a dispute over the IEP proposed for L.P. by the Board on May 8, 2018. Petitioners-respondents, A.P. and G.P., claimed that the May 8, 2018 IEP did not meet L.P.'s educational needs and failed to confer a FAPE to L.P., and therefore, sought to continue L.P.'s placement at Academy 360 rather than have him return to the District for the 2018-2019 school year. Respondent-petitioner, Board, then sought to compel A.P. and G.P. to consent to evaluations of L.P. by professionals chosen by the Board, evaluations that had been initially waived at the Board's request. By virtue of the doctrine of stay-put, 20 U.S.C. §1515(j) and N.J.A.C. 6A:14-2.7(u),[2] L.P. remained at Academy 360 not just for the time period covered by the May 8, 2018 IEP, but for the entire 2018-2019 school year and the next school year, 2019-2020. After many delays, the Board has now completed all evaluations of L.P. Both parties have obtained the relief they requested in their respective petitions.

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).

[2] The "stay-put rule" provides that no change shall be made to a student's educational placement pending the outcome of a due process hearing, and "functions as an automatic preliminary injunction," dispensing with the need for the judge to weigh the above factors for emergent relief. Drinker v. Colonial Sch. Dist., 78 F.3d 859, 864 (3d Cir. 1996).

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.

As stated above, a review of the claims made and relief sought by both parties leads to the conclusion that no issue remains as to which judgement can grant effective relief. While petitioners-respondents requested confirmation that dismissal of these matters will not impact L.P.'s placement, L.P.'s placement for the 2020-2021 school year is not at issue in this case. There is no reason, and no legal basis, for speculation as to disputes that may arise, and the potential resolution of such disputes, regarding an as-yet to be proposed IEP for L.P. for the 2020-2021 school year.

Based on the foregoing, I **CONCLUDE** that both matters in this consolidated action should be dismissed with prejudice because all issues raised by the parties are now moot.

ORDER

For the reasons set forth above, I **ORDER** that the issues raised by the petition of A.P. and G.P. on behalf of L.P. against respondent, Freehold Regional High School District Board of Education, OAL Docket No. 14479-18, are moot and, therefore, the petition is **DISMISSED WITH PREJUDICE.**

Further, I ORDER that the issues raised by the petition of Freehold Regional High School District Board of Education against respondents, A.P. and G.P. on behalf of L.P., OAL Docket No. 00436-19, are moot and, therefore, the petition is **DISMISSED WITH PREJUDICE.**

This decision is final pursuant to 20 U.S.C.A. §1415(i)(1)(A) and 34 C.F.R. §300.514 (2016) 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.A. §1415(i)(2); 34 C.F.R. §300.516 (2016).

May 20, 2020

TRICIA M. CALIGUIRE, ALJ

Date Received at Agency:

Date Mailed to Parties:

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TMC/nd
c: Clerk OAL-T