State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

SUMMARY DECISION

OAL DKT. NO. EDS 09364-19

AGENCY DKT. NO. 2019-30094

H.M. ON BEHALF OF R.M.,

Petitioner,

v.

WASHINGTON TOWNSHIP

BOARD OF EDUCATION,

Respondents.

H.M., on behalf of R.M., petitioner, pro se

Sanmathi Dev, Esq., for respondent (Capehart & Scatchard, P.A., attorneys)

Record Closed: May 25, 2020 Decided: May 29, 2020

BEFORE **TAMA B. HUGHES**, ALJ:

PROCEDURAL HISTORY AND STATEMENT OF THE CASE

H.M., on behalf of R.M., (Petitioner) filed a Due Process Petition with the New Jersey Department of Education, Office of Special Education Programs (OSEP), on July 12, 2019. Through this petition, petitioner challenged the Washington Township

Board of Education's ("Board" or "District") determination that her daughter was no longer eligible for Special Education and related services and the information/documentation utilized by the District to arrive at that determination. Petitioner further sought testing for R.M. so that the current Individualized Educational Plan (IEP) could be appropriately amended to provide her daughter a Free and Appropriate Public Education (FAPE).

The matter was transmitted to the Office of Administrative Law (OAL) 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, where it was filed on July 12, 2019.

On July 18, 2019, a settlement conference was held before the Honorable Catherine Tuohy, Administrative Law Judge (ALJ). The matter did not settle and was assigned to the Honorable Tama B. Hughes, ALJ. A Prehearing Order (Order) was entered on July 25, 2019, through which the hearing dates of January 13, 2020, and January 17, 2020, were set.

In November 2019, at the request of the parties, the January 2020, hearing dates were adjourned and instead, an in-person settlement conference was held on January 9, 2020. Over the ensuing weeks, the parties attempted to resolve the matter, however, were unable to do so.

Hearing dates were set for March 30, 2020, and March 31, 2020, however, the dates were adjourned to June 2, 2020, and June 23, 2020, by request of the parties. On April 3, 2020, the District filed a Motion for Summary Decision. No opposition was filed by the petitioner.[1]

[1] A briefing schedule was provided to the parties on March 2, 2020. The Board's motion papers were due on April 3, 2020. Petitioner's opposition was due one month later - May 1, 2020. The Board's reply was due by May 12, 2020. As of May 1, 2020, no opposition was received by the petitioner. An email was sent to the petitioner on May 12, 2020, questioning whether she would be filing opposition papers. No response was received. On May 16, 2020, respondent sent, via email, a letter requesting, among other things, that their unopposed motion be granted. Petitioner was copied on the email. On May 19, 2020, all parties were advised that the Board's letter was received. On May 26, 2020, petitioner responded to the May 19, 2020, email wherein she stated that she has been dealing with an unexpected illness and hospitalization. Additionally, due to the Coronavirus restrictions, petitioner stated that she has not been able to access or to respond to emails. No additional information or supporting documentation was

FINDINGS OF FACT

Based on the papers submitted and arguments of the parties therein, I make the following findings of **FACT**.

R.M. is sixteen-years-old and is currently a tenth-grade student at the Washington Township High School. She is eligible to receive special education and related services under the classification of "Other Health Impaired" (Board's Brief - Eren Semen (Semen) Certification, Exhibit A - ¶ 7.) The classification is due in part to R.M. having been diagnosed with Attention Deficit/Hyperactivity Disorder (ADHD).

R.M. has been eligible to receive special education and related services since she was ten-years-old and in fourth grade (2013). (Board's Brief - Semen Certification, Exhibit A - ¶ 8.)

In May 2016, a triennial re-evaluation meeting regarding R.M. was held in which H.M. was present. (Board's Brief - Semen Certification, Exhibit A - ¶9.) During this meeting, the District proposed to conduct updated formal assessments to determine R.M.'s continued eligibility for special education and related services.

H.M. initially consented to the evaluations, however, subsequently revoked her permission. (Board's Brief - Semen Certification, Exhibit A - ¶10.) As a result of this revocation, the District did not perform the evaluations.

On March 14, 2019, when R.M. was fifteen-years-old and in tenth-grade, a second triennial meeting was held in which H.M. attended. (Board's Brief - Semen Certification, Exhibit A - ¶ 12.) Due to the time lapse of six years between testing, H.M.

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provided. Petitioner requested that the petition be withdrawn without prejudice. Understanding the unusual circumstances that everyone is operating under at this time due to the Coronavirus, I **FIND** that the petitioner was provided sufficient time and notice to file opposition papers or seek an extension. Given the underlying issues of the petition, I **CONCLUDE** that a determination on the merits of this motion is warranted.

was informed that updated testing was required to see if R.M. remained eligible to receive special education and related services.

The proposed assessments included a cognitive, academic, neurological and social history assessment. The psychological and academic achievement testing were to assess R.M.'s levels of intellectual functioning and academic performance. The formal rating scale (Conners Rating Scale), would have been given to the parent and R.M.'s teachers to determine whether or not R.M.'s diagnosis of ADHD was adversely affecting her academic performance. H.M. refused to provide consent. (Board's Brief - Semen Certification, Exhibit A - ¶ 14.)

H.M. was present for the April 19, 2019, eligibility conference. At that time, it was determined, based upon the District's review of other evaluative date (teacher interviews and student records) as no formal assessments were available, that R.M. was no longer eligible to receive special education and related services because her disability did not adversely affect her classroom performance. (Board's Brief - Semen Certification, Exhibit A - ¶ 16.)

Thereafter, on April 26, 2019, H.M. on behalf of R.M., filed the instant matter. Through this petition, H.M., stated that she disagreed with the District's determination that R.M. no longer required special education and related services. In Paragraph Five of the petition, H.M. stated that "I originally declined the case manager's request to have my child tested and I have reconsidered my decision". Among other forms of relief requested, H.M. again stated: "I originally declined the case manager's request to have my child tested and I have reconsidered my decision" she went on to state "I am requesting that she be tested and those results be considered in order to make a more accurate determination". (Board's Brief - Exhibit B.)

As a result of H.M.'s statement in her petition, on May 9, 2019, the District sent H.M. an updated re-evaluation plan and consent form. (Board's Brief- Exhibits C and D.)

On June 11, 2019, the parties participated in mediation conducted by OSEP. The mediation was unsuccessful, and H.M. did not provide consent for evaluations.

Thereafter, on July 24, 2019, H.M. was notified that the District had rescinded the April 12, 2019, determination that R.M. was no longer eligible for Special Education Services and that she would continue with an IEP in 2019-2020 school year. She was asked to sign the consent form that had previously been sent to her so that the assessments could be conducted. (Board's Brief - Exhibit E.)

H.M. did not sign the consent form sent by the District.

On June 12, 2019, the District filed a Petition for Due Process under OAL Docket Number EDS 08328-19, seeking to compel parental consent for re-evaluations of R.M. (Board's Brief – Exhibit F.) On July 25, 2019, the District filed a Motion for Summary Decision in the matter which was granted. (Board's Brief – Exhibit G.)

The District repeatedly attempted to conduct the proposed evaluations in accordance with this Tribunal's Order, however, H.M. continuously thwarted the Board's attempts to conduct the testing. (Board's Brief – Exhibit J.)

LEGAL DISCUSSION

N.J.A.C. 1:1-12.5 provides that summary decision should be rendered "if the papers and discovery which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law." Our regulation mirrors R. 4:46-2(c), which provides that "the judgment or order sought shall be rendered if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law."

A determination whether a genuine issue of material fact exists that precludes summary decision requires the judge to 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 allegedly disputed issue in favor of the non-moving party. Our courts have long held that "if the opposing party offers . . . only facts which are immaterial or of an insubstantial nature, a mere scintilla, 'fanciful frivolous, gauzy or merely suspicious,' he will not be heard to complain if the court grants summary judgment." Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520 (1995) (citing Judson v. Peoples Bank and Trust Co., 17 N.J. 67, 75 (1954)).

The "judge's function is not himself [or herself] to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial." Brill at 540 (citing Anderson v. Liberty Lobby, 477 U.S. 242, 249, 106 S. Ct. 2505, 2511, 91 L. Ed.2d 202, 212 (1986)). When the evidence "is so one-sided that one party must prevail as a matter of law," the trial court should not hesitate to grant summary judgment. Liberty Lobby at 252, 106 S. Ct. at 2512, 91 L. Ed.2d at 214.

Based upon the facts in the present matter as more fully set forth above, I **CONCLUDE** that this matter is ripe for summary decision.

Petitioner filed the instant matter due to the District's determination that her daughter was no longer eligible for Special Education and related services. Through this petition, the petitioner also sought testing/re-evaluation of R.M. so that the current IEP could be appropriately amended to provide her daughter a Free and Appropriate Public Education (FAPE).

The District argues that the petition is moot and that this Tribunal lacks jurisdiction over the matter as there is no cognizable claim. The District further argues that the Petition must be dismissed because petitioner has violated this Tribunal's Order by not allowing R.M. to be tested and has continuously blocked the District's attempts to do so. Last, the Board argues that the petition must be dismissed because the petitioner has continuously precluded their attempts to test R.M. which has

effectively blocked their ability to obtain the necessary information with which to defend themselves in this matter.

I concur with the District.

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>; J.L. and K.D. o/b/o J.L. v. Harrison Twp. Bd. of Educ., EDS 13858-13, Final Decision (January 28, 2014) <http://lawlibrary.rutgers.edu/oal/search.html>.

Here, petitioner challenged the District's determination that her daughter was no longer eligible for special education and related services. Petitioner also sought to have her daughter tested so that her existing IEP could be appropriately amended. However, within two weeks of filing for Due Process, the District rescinded its earlier determination and informed petitioner that H.M. would continue with an IEP at the start of the 2019/2020 school year. Thereafter, the District repeatedly attempted to have H.M. re-evaluated but was continuously precluded from doing so by the petitioner. As a result, the District filed a Petition for Due Process seeking to compel parental consent to conduct re-evaluations of R.M. The District prevailed in their application, however, when they attempted to conduct the re-evaluations, the petitioner threw up obstacles which prevented them from doing so.

Given the undisputed facts as noted above, I **CONCLUDE** that this issue/matter is moot.

When a case becomes moot prior to judicial resolution, it is appropriate to dismiss the petition. Oxfeld v. N.J. State Bd. Of Educ., 68 N.J. 301 (1975)

(distinguished on other grounds, In re Camden County Police Dep't Pilot Program 2014 N.J. Super. Unpub. LEXIS 2008), Nini v. Mercer County Comm. College, 202 N.J. 98, 117-118 (2010).

Given the fact that the matter is moot, the Board's remaining arguments do not need to be addressed. However, it must be noted that by my Order, dated September 6, 2019, in the parallel case of Washington Township Board of Education v. H.M. obo R.M. (OAL Docket No. 08328-19), the Board was given absolute authority to conduct the re-evaluations of R.M. While petitioners' concerns were to be taken into consideration, at the end of the day, it was the Board's decision as to what appropriate measures were to be taken to ensure that the integrity of the testing process remain intact. Petitioner has flagrantly ignored this fact and has repeatedly thwarted the Board's attempts to conduct the re-evaluation testing. As such, petitioner cannot now argue that the Board failed to provide FAPE when her own actions have prevented them from doing so. M.P. and K.P. obo T.P. v. Jackson Township Board of Education, 2015 N.J. AGEN LEXIS 718, OAL DKT. NO. EDS 18493; *See also* K.G. v. Cinnaminson Twp. Bd. of Education WL 4489672 (3d Cir. 2018)

Based on the finding that the petitioner has been provided the relief by the Board or the Board is willing to provide the requested relief responsive to the petitioners' demand in her petition, I **CONCLUDE** that a controversy no longer exists, meaning this case has become moot and therefore the petition should be **DISMISSED**.

ORDER

I hereby **ORDER** that the Board's Motion for Summary Decision is **GRANTED** and that the parents' petition be and is hereby **DISMISSED.**

This decision is final pursuant to 20 U.S.C. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2019) 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 (2019). 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.

May 29, 2020 _____

DATE

TAMA B. HUGHES, ALJ

Date Received at Agency _____

Date Mailed to Parties: _____

/dm

APPENDIX

For Petitioner:

No Opposition was submitted

For Respondent:

Brief in support of Motion for Summary Decision with Attached Exhibits A-J.