State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. EDS 12737-19

AGENCY DKT. NO. 2020-30522

J.S. ON BEHALF OF A.S.,

Petitioner,

v.

JERSEY CITY BOARD OF EDUCATION,

Respondent.

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J.S., petitioner, pro se

Jessica Kleen, Esq., for respondent (Machado Law Group, attorneys)

Record Closed: June 19, 2020 Decided: July 27, 2020

BEFORE **LESLIE Z. CELENTANO**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

On June 14, 2019, petitioner J.S., on behalf of A.S., filed a request for due process. The relief sought was the advancement of A.S. to kindergarten. According to the transmittal, the parties adjourned the matter until August 14, 2019, and after the matter did not resolve at mediation, the Office of Special Education Programs transmitted the case on September 13, 2019, to the Office of Administrative Law (OAL) for hearing.

Multiple settlement and telephone conferences were held, and on October 3, 2019, the case was assigned to the undersigned for hearing.

On October 8, 2019, a telephone prehearing conference was scheduled, during which petitioner requested an opportunity to appear before respondent Jersey City Board of Education ("Board" or "District"). As of the November 25, 2019, telephone conference, the Board had not advised whether it would permit petitioner to appear. The next scheduled meeting was on either December 16 or 19, and three Board members needed to agree to allow petitioner to be on the agenda. Petitioner wanted the Board to agree to move A.S. to kindergarten from the pre-K4 class. Counsel for the Board advised that there are specific steps to be followed for requesting a meeting with the Board, and that they were not followed here. A telephone conference was held on February 3, 2020. A subsequent telephone conference scheduled for March 23, 2020, was adjourned due to the COVID-19 office closure. The June 24, 2020, and July 8, 2020, telephone conferences were adjourned at the request of respondent's attorney.

FACTUAL DISCUSSION

A.S. was born on October 24, 2014, and was enrolled in the preschool program for four-year-olds for the 2019–2020 school year. Petitioner's due-process petition seeks the advancement of A.S. out of his pre-K4 class and into kindergarten. Pursuant to District policy, a child residing in the District is eligible for admission to kindergarten if he or she "shall have attained the age of five years on or before October 1 of that school year." See District Policy 5111. A.S. did not turn five until October 24 of that school year.

When the matter did not resolve following the telephone conference, a motion for summary decision was filed by respondent to dismiss the petition because neither the regulations nor Board policy require the relief sought; because the request is now moot; and because the Board action was not arbitrary, without rational basis, or induced by improper motives. A status conference scheduled for July 8, 2020, was adjourned at the request of respondent so that the pending motion could be addressed. The certification in support of the unopposed motion for summary decision was not challenged, and is therefore found as **FACT**.

ANALYSIS

A motion for summary decision may be granted 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. See N.J.A.C. 1:1-12.5(b). "An adverse party in order to prevail must by responding affidavit set forth specific facts showing that there is a genuine issue which can only be determined in an evidentiary proceeding," within twenty days of service of the motion. Ibid. If an adverse party fails to respond to the motion, "a summary decision, if appropriate, shall be entered." Ibid.

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 factfinder 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). Even if the non-moving party comes forward with some evidence, summary decision must be granted if the evidence is "so one-sided that [the moving party] must prevail as a matter of law." Id. at 536 (citation omitted). The opposing party "who offers no substantial or material facts in opposition to the motion cannot complain if the court takes as true the uncontradicted facts in the movant's papers." Burlington Cty. Welfare Bd. v. Stanley, 214 N.J. Super. 615, 622 (App. Div. 1987).

"[A] case is moot when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome." Donovan v. Punxsutawney Area Sch. Bd., 336 F.3d 211, 216 (3d Cir. 2003) (citing Powell v. McCormack, 395 U.S. 486, 496 (1969)); Anderson v. Sills, 143 N.J. Super. 432, 437 (Ch. Div. 1976). A case is considered "'moot' when the decision sought . . . can have no practical effect on the existing controversy." Greenfield v. N.J. Dep't of Corr., 382 N.J. Super. 254, 257–58 (App. Div. 2006). A case will be deemed moot where "the conflict between the parties has become merely hypothetical." In re Conroy, 190 N.J. Super. 453, 458 (App. Div. 1983).

Here, neither Board policy nor the applicable regulations require the relief petitioner seeks. A.S. had not reached the required age for admission into kindergarten for the 2019–2020 school year. Moreover, the school year unexpectedly ended in March 2020 due to the advent of the COVID-19 pandemic, and, as such, moving A.S. to kindergarten for the 2019–2020 school year is not practical, feasible, or possible, and this matter has become purely academic. A.S. was not eligible to be placed in kindergarten for the 2019–2020 school year, and has not attended kindergarten, thus rendering this matter moot.

Additionally, general education law authorizes boards to adopt policies and procedures for student promotion, N.J.S.A. 18A:35-4.9, and those policies "have the force and effect of law" where matters arise involving disputes in student placement. See A.T. ex rel. S.T. v. Bd. of Educ. of Rutherford, Bergen Cty., 2011 W.L. 5868005, at *1. The Commissioner will not overrule or second guess a determination of the local school authority unless the action of the board is "arbitrary, without rational basis or induced by improper motives." Id. at *7.

Based upon all of the foregoing, I **FIND** that there is no actual controversy to be decided, and **FIND** that this matter is moot. I **CONCLUDE** that this matter is ripe for summary decision and, as such, respondent's motion is **GRANTED** and the petition is dismissed with prejudice. Respondent is entitled to summary decision as a matter of law.

ORDER

For the reasons set forth above, it is hereby **ORDERED** that respondent's motion for summary decision is **GRANTED** and the petition is **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 Policy and Dispute Resolution.

July 27, 2020
DATE

LESLIE Z. CELENTANO, ALJ

Date Received at Agency July 27, 2020

Date Mailed to Parties: July 27, 2020
dr