State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. EDS 03961-20

AGENCY DKT. NO. 2020-31365

J.E. ON BEHALF OF I.F.,

Petitioner,

v.

EAST ORANGE BOARD OF EDUCATION,

Respondent.

_____

J.E., petitioner, pro se

Alyssa K. Weinstein, Esq., for respondent (Scarinci Hollenbeck, attorneys)

Record Closed: June 1, 2020 Decided: June 1, 2020

BEFORE **BARRY E. MOSCOWITZ**, ALJ:

STATEMENT OF THE CASE

In her petition for due-process hearing, petitioner J.E. demands that her son I.F. be returned to school immediately, and in her letter accompanying the petition, she requests an individualized-education-program (IEP) meeting. Respondent East Orange Board of Education granted the relief sought and provided compensatory education. Is the case moot? Yes. "[A] case is moot when the issues presented are no longer 'live' or

the parties lack a legally cognizable interest in the outcome." Powell v. McCormack, 395 U.S. 486, 496 (1969).

PROCEDURAL HISTORY

On March 4, 2020, petitioner filed a petition for due-process hearing and a request for emergent relief with the New Jersey Department of Education, Office of Special Education Policy and Dispute Resolution (OSEPDR).

On April 8, 2020, the OSEPDR transmitted the petition for due-process hearing to the Office of Administrative Law (OAL) under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15, and the act establishing the Office of Administrative Law, N.J.S.A. 52:14F-1 to -23, for a hearing under the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6, and the Special Education Program, N.J.A.C. 1:6A-1.1 to -18.4.

On May 8, 2020, respondent filed a motion to dismiss the petition instead of an answer; on May 15, 2020, petitioner filed her opposition; and on May 18, 2020, respondent filed its response.

FINDINGS OF FACT

Based on the documents submitted in support of and in opposition to the motion, and assuming the facts alleged in the petition for due-process hearing are true, and giving petitioner the benefit of all legitimate inferences, I **FIND** the following as **FACT**:

On March 4, 2020, petitioner filed a petition for due-process hearing and a request for emergent relief with the OSEPDR.

In the petition, petitioner stated that I.F. had been suspended from school, and that she wanted him back in school immediately, or placed in an alternative setting pending the Board hearing:

> [I.F.] has been suspended from school since February 11, 2020, for 10 days, which ended on February 26, 2020. The District continues to keep him out on an "unauthorized suspension," denying him services and education . . . .
>
> I need [I.F.] back in school immediately or to be placed at an alternative placement pending the decision of the [Board] hearing. Additionally, I want to meet with the [Child Study Team] to discuss an action plan moving forward.

In the request for emergent relief, petitioner repeated that I.F. had been suspended from school, and that she wanted him immediately returned to school:

> My son [I.F.] has been suspended from school since February 10, 2020, and has not been provided with any home instruction. This is a violation of his IEP, and he is being denied an education that is sorely needed . . . .
>
> My request is to have him immediately return to educational setting [sic]. He has lost an exorbitant amount of instructional time and I am seeking a plan of action to recoup education time lost to ensure that he is academically on track.

In a letter dated March 4, 2020, which accompanied her petition for due-process hearing and her request for emergent relief, petitioner wrote that no one from respondent had reached out to her to schedule an IEP meeting, and that she wanted her son returned to school immediately, with an IEP meeting to follow:

> [I.F.] remains suspended and is marked absent, which is an "unauthorized suspension" . . . .
>
> At the [Board] hearing, the [school district] failed to provide any tangible documentation . . . to impose a 10-day suspension on [I.F.], despite my many requests to do so during the entire [Board] hearing proceeding. At the time of the [Board] hearing, [the school principal's statements were] unconscionable and disheartening to say the least. In essence, [I.F.] was denied due process and [the school district] did not conduct a thorough investigation, but instead hastily imposed a 10-day suspension that was capricious and arbitrary . . . . This is a true miscarriage of the educational system and is a great disservice to my son's education and reputation.

> . . . The decision by the District . . . is a violation of statute . . . which clearly states that a student with an IEP cannot be suspended for more than 10 total days in a school year without the IEP team meeting to decide if the behavior is related to his disability. [A]s of today, he has been suspended from school (16 days). He has not been provided with any home instruction . . . .
>
> Moreover, no one from the District . . . has reached out to me to schedule an IEP meeting . . . to review what factors were taken into consideration to impose a 10-day suspension and to conduct a manifestation determination to ascertain if the behavior exhibited was a result of his IEP.
>
> I am filing this Emergent Relief requesting that my son, [I.F.], be immediately returned to school and for the District and [school] to cease and desist from violating his IEP and depriving him of an education . . . . Additionally, I want to meet with the District and CST to review [I.F.'s] current IEP and placement and to collectively determine next steps.

On March 5, 2020, the OSEPDR transmitted the request for emergent relief to the OAL, while the petition for due-process hearing remained at the OSEPDR, pending resolution of the request for emergent relief.

On March 9, 2020, respondent permitted I.F. to return to school, and petitioner withdrew her request for emergent relief.

The following day, March 10, 2020, I.F. failed to swipe his identification card at school, so he was marked absent from school that day, and petitioner, in response, accused respondent of "targeting" her son by "maliciously falsifying his attendance record."

On April 8, 2020, the parties appeared for mediation, and respondent agreed to provide I.F. with thirty-four hours of compensatory education in the form of home instruction for two hours a day for seventeen days to cover the seventeen days I.F. was not in school due to his suspension and the hearing process before the Board. Respondent also agreed to reevaluate I.F. and convene an IEP meeting to discuss

program and placement. Thus, respondent agreed to provide all the relief petitioner sought in her petition for due-process hearing.

Still, petitioner did not withdraw her petition, and on April 8, 2020, the OSEPDR transmitted the petition for due-process hearing to the OAL for hearing.

CONCLUSIONS OF LAW

A special education due-process hearing "may be requested when there is a disagreement regarding identification, evaluation, reevaluation, classification, educational placement, the provision of a free, appropriate public education, or disciplinary action." N.J.A.C. 6A:14-2.7(a). "[A] case is moot when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome." Powell v. McCormack, 395 U.S. at 496. At the heart of this doctrine is a court's ability to grant effective relief. Wilson v. Reilly, 163 Fed. Appx. 122, 125 (3d Cir. 2006). "Thus, 'if developments occur during the course of adjudication that eliminate a plaintiff's personal stake in the outcome of a suit or prevent a court from being able to grant the requested relief, the case must be dismissed as moot.'" Ibid. (quoting Blanciak v. Allegheny Ludlum Corp., 77 F.3d 690, 698–99 (3d Cir. 1996)).

In this case, petitioner demanded that respondent permit her son to return to school immediately or place him in an alternative setting pending the Board hearing. In her letter accompanying the petition, petitioner demanded that respondent convene an IEP meeting. Since respondent has already permitted I.F. to return to school and agreed to convene an IEP meeting—and since respondent has already begun the provision of compensatory education to compensate for the days that her son was not in school due to his suspension—no disagreement remains that is cognizable by law. Moreover, I can no longer grant the relief requested, as it has already been provided.

Nevertheless, in her opposition, petitioner demands, for the first time, an out-of-district placement, but that demand was not included in the petition. As such, this demand is not at issue in this case, and I cannot grant that relief either. Should petitioner want to

address that issue with respondent, she may do so at the IEP meeting. Again, it is not before me now.

Finally, all allegations of "bad faith," "retaliation," "bias," and "unconscionable conduct" are not contemplated by N.J.A.C. 6A:14-2.7(a).

Therefore, I **CONCLUDE** that this case is moot and should be dismissed.

ORDER

Given my findings of fact and conclusions of law, I **ORDER** that the motion to dismiss is **GRANTED**, and that this case is hereby **DISMISSED**.

This decision is final under 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 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 thinks that this decision is not being fully implemented with respect to programs or services, this concern should be communicated in writing to the Director, Office of Special Education Policy and Dispute Resolution.

June 1, 2020
DATE

BARRY E. MOSCOWITZ, ALJ

Date Received at Agency: June 2, 2020

Date Mailed to Parties: June 2, 2020
dr