



**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

**FINAL DECISION**

OAL DKT. NO. EDS 05078-20

AGENCY DKT. NO. 2020-31539

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

Petitioners,

v.

**RINGWOOD BOARD OF EDUCATION,**

Respondent.

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**Robert A. Robinson, Esq.,** for petitioners

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

Record Closed: October 30, 2020

Decided: November 19, 2020

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

**STATEMENT OF THE CASE AND PROCEDURAL HISTORY**

On April 9, 2020, petitioners A.L. and L.L., on behalf of G.L., filed a due-process petition seeking compensatory services, which was filed at the Office of Administrative Law (OAL) on May 29, 2020. Petitioners are seeking compensatory education since March 16, 2020.<sup>1</sup> Respondent Ringwood Board of Education (Board or District) asserts

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<sup>1</sup> The date of school closures due to COVID-19.

that it has provided the services and offered to provide additional related services during the summer of 2020, which offer was declined. The District asserts that there is no present dispute, and the matter is moot.

The Board requested that petitioners withdraw the Petition, as the requested relief had now been fully granted. Petitioners have not withdrawn the Petition, and a hearing is scheduled for December 2, 2020. The Board filed a motion to dismiss for mootness on September 21, 2020. Petitioners' response was received on October 23, 2020, and the Board replied on October 30, 2020.<sup>2</sup>

### **FACTUAL DISCUSSION**

G.L. is a fourteen-year-old student at Ryerson Middle School, and is classified under the Individuals with Disabilities Education Act (IDEA) with a specific learning disability. He receives services through an individualized education program (IEP), which provides for speech therapy once a week in a small group; reading-specialist services twice a week in a small group; and an occupational-therapy consultation once a month between the therapist and his teacher.

Following the closure of all public schools in New Jersey on March 16, 2020,<sup>3</sup> schools were directed to implement remote instruction. Thereafter, on April 3, 2020, the New Jersey Department of Education (DOE) issued a memorandum modifying the special-education code to permit provision of related services via electronic means. N.J.A.C. 6A:14-3.9, modified by Executive Order No. 103 (2020), effective April 1, 2020, provides:

During an extended public health-related school closure, related services may be provided through telemedicine and telehealth or through electronic communications, which include virtual, remote, or other online platforms, as

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<sup>2</sup> This decision is filed in accordance with Governor Philip Murphy's Executive Order 127 issued April 14, 2020, created by the COVID-19 emergency.

<sup>3</sup> On March 16, 2020, Governor Murphy issued Executive Order 104, closing all public schools in the state until further notice.

appropriate and as required by the student's IEP to the greatest extent possible.

[52 N.J.R. 976(a) (May 4, 2020).]

The District initially sought the parents' consent to delivery of related services via a telepractice, and sought indemnification against any injuries from physical or privacy risks. The consent form also indicates:

Please note, whether you agree to the delivery of related services via these platforms or not, once schools reopen your child's IEP Team will meet to evaluate your child's entitlement for compensatory education.

Petitioners signed the consent form on April 9, 2020, after confirming with the director of special services that they were not waiving any compensatory education. Later that day, they revoked their consent on the advice of counsel. The District then asked whether petitioners wished for G.L. to continue to receive services in another manner.<sup>4</sup> No response was received from petitioners. When the District reopened from spring break,<sup>5</sup> petitioners were asked again whether they agreed to have related services provided via alternative methods, but no response was received.

Petitioners filed for due process on April 28, 2020, objecting to the District request for a waiver. Commencing on Monday, May 4, 2020, following the issuance of DOE guidelines on May 1, 2020, all students began receiving telepractice related services, regardless of whether a signed consent form was in place.

### Speech

G.L.'s IEP requires speech therapy once a week in a small group. G.L. received speech services through Google Classroom on March 20, 2020, March 27, 2020, April 3, 2020, April 9, 2020, April 28, 2020, May 5, 2020, May 6, 2020, May 13, 2020, May 20,

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<sup>4</sup> Google Classroom is the approved method of remote instruction for the District, and permits lessons to be assigned and electronic communication between staff and students, text and chat messaging, and communication with parents.

<sup>5</sup> The District was closed for spring break from Tuesday, April 14, through Friday, April 17, 2020.

2020, May 27, 2020, June 3, 2020, and June 10, 2020. The District also offered five compensatory speech-therapy sessions during the extended school year (ESY) in July 2020 (8th, 15th, 22nd, 27th, and 29th; G.L. was absent for the July 22 session). The District offered additional services for the month of August. Petitioners declined this offer, indicating that their schedule did not permit same for the entire month of August.

### Reading Services

G.L.'s IEP provides for reading services twice a week in a small group. G.L. received reading services through Google Classroom with lessons assigned on March 20, 2020, March 24, 2020, March 25, 2020, March 27, 2020, March 31, 2020, April 3, 2020, April 9, 2020, April 13, 2020, April 21, 2020, April 24, 2020, April 28, 2020, April 30, 2020, May 4, 2020, May 6, 2020, May 13, 2020, May 18, 2020, May 20, 2020, May 27, 2020, June 1, 2020, June 3, 2020, June 8, 2020, and June 10, 2020.

During the ESY, G.L. was to receive two reading services per week, but was offered three per week for the four-week period, and attended eleven of the twelve lessons thus offered. The District offered to provide reading services throughout the month of August, but petitioners indicated that they were not available until school started in September. The District also advised that, while not required to do so while fully remote, it would nevertheless conduct a compensatory-education determination.

### Occupational-Therapy Consult

G.L.'s IEP provides for an occupational-therapy consult, not direct services. The consult "may be provided by a related services provider, a teacher of students with disabilities, or a child study team member to the general education teacher and/or the teacher aide." N.J.A.C. 6A:14-4.5(e). G.L. received the monthly consults on April 29, 2020, May 14, 2020, and June 3, 2020.

### Parties' Arguments

The Board argues that the present matter is ripe for dismissal based upon mootness, as respondent agreed to provide the requested relief sought in the Petition, and provided additional services during the ESY. Moreover, the offer of additional services for the remainder of the summer was declined by petitioners. Respondent also offered to evaluate G.L. regarding the need for compensatory education, even though it remains fully remote for instruction and compensatory-education determinations are not required to be made.

Petitioners argue that respondent withheld related services in order to pressure petitioners into signing a waiver; that respondent has provided no proof that it provided services to G.L. for the time period in question; and that therefore a live controversy exists requiring a due-process hearing.

### ANALYSIS

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.” 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). “[T]he Commissioner of Education does not decide moot cases.” W. Morris Reg’l Bd. of Educ. v. A.M. & K.H. ex rel. A.M., EDS 07418-05, Final Decision (November 30, 2005), <https://njlaw.rutgers.edu/collections/oal/>. 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. 1966). 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).

The Board initially sought consent to the delivery of livestream related services at the beginning of the COVID-19 school closures. Petitioners refused to sign a consent form. Thereafter, the Department of Education instructed that such consent was not necessary, and the District provided telepractice related services to G.L. without a signed consent form. The District also provided additional related services to G.L. during the ESY, and offered to provide even more related services during the summer of 2020, but this offer of additional services was rejected by petitioners. Moreover, the District indicates that it has not sought the waiver of any rights regarding compensatory education from petitioners, nor any other special-education rights. Finally, the District has offered to evaluate G.L. regarding the need for compensatory education even though the District remains fully remote, and not currently required to make compensatory-education determinations. New Jersey DOE guidance provides:

[D]istricts must offer special education services to the most appropriate extent possible while students are away from their schools/programs. IEP teams may need to consider compensatory services when students return to school and IEPs may need to be adjusted accordingly. The IEP team should determine the amount of compensatory related services students with IEPs may require, on a case-by-case basis, when school resumes.

[Updates and Frequently Asked Questions Related to COVID-19 School Closures, updated March 23, 2020, [https://www.state.nj.us/education/topics/COVID19%20Frequently%20Asked%20Questions%20\(FAQ\)%20Related%20to%20School%20Emergency%20Preparedness%20Plans.pdf](https://www.state.nj.us/education/topics/COVID19%20Frequently%20Asked%20Questions%20(FAQ)%20Related%20to%20School%20Emergency%20Preparedness%20Plans.pdf).

I **FIND** that the District has agreed to provide and has provided related services to G.L. and offered additional services, and as such **FIND** that petitioners have received the relief sought. I **CONCLUDE** there is no actual controversy to be decided, and further **CONCLUDE** that the petitioners’ claims that respondent failed to provide G.L. with compensatory related services must be dismissed as moot.

**CONCLUSION**

Based upon all of the foregoing, I **CONCLUDE** that the District's motion to dismiss should be granted based on mootness. The requested relief has been provided. I **CONCLUDE** that this case is moot and should be dismissed.

**ORDER**

For the reasons set forth above, it is hereby **ORDERED** that respondent's motion to dismiss is **GRANTED** and that this case is hereby **DISMISSED**.

This decision is final pursuant to 20 U.S.C. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2020) 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 (2020). 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.

November 19, 2020  
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DATE

  
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**LESLIE Z. CELENTANO, ALJ**

Date Received at Agency

November 19, 2020  
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Date Mailed to Parties:  
dr

November 19, 2020  
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