



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

MOTION TO DISMISS

(CONSOLIDATED)

OAL DKT. NO. EDS 11119-22

AGENCY DKT. NO. 2023-35216

**NORTHERN VALLEY REGIONAL
BOARD OF EDUCATION,**

Petitioner,

v.

S.L. ON BEHALF OF N.L.,

Respondent.

S.L. ON BEHALF OF N.L.,

Petitioner,

v.

**NORTHERN VALLEY REGIONAL
BOARD OF EDUCATION,**

Respondent.

OAL DKT. NO. EDS 11120-22

AGENCY DKT. NO. 2023-35228

S.L. parent of **N.A.**, appearing pro se

Isabel Machado, Esq., for respondent (Machado Law Group, LLC, attorney)

Record Closed: August 1, 2023

Decided: August 22, 2023

BEFORE **THOMAS R. BETANCOURT**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Respondentⁱ, Northern Valley Regional Board of Education (NVR) filed a request for due process with the Office of Special Education Programs (OSEP), New Jersey Department of Education (NJDOE).

Petitioner, S.L., filed a request for due process with OSEP.

The Department of Education transmitted the both contested matters pursuant to N.J.S.A. 52:14B-1 to 15 and N.J.S.A. 52:14f-1 TO 13, to the Office of Administrative Law (OAL), where they were filed on December 14, 2022.

A prehearing conference was held on January 9, 2023. A prehearing order was entered by the undersigned on the same date. Said matters were consolidated by the prehearing order.

Respondent filed a notice of motion for summary decision on March 7, 2023.

Petitioner filed a motion for summary decision on April 2, 2023.

Respondent filed a reply brief on April 10, 2023.

Petitioner filed a letter of explanation, dated April 11, 2023, regarding her motion and lack of response to Respondent's motion. The undersigned permitted the late filing of Petitioner's motion over the objection of Respondent.

On May 11, 2023, Respondent filed a motion by letter requesting the dismissal of Petitioner's due process petition as N.L. had turned 18 years of age and S.L. no longer had standing.

ⁱ NVR shall be referred to as Respondent. S.L o/b/o N.L. shall be referred to as Petitioner.

FINDINGS OF FACT

1. N.L. became 18 years of age on April 25, 2023. (Battaglia Cert. ¶4)
2. N.L. is a special education student at NVR. He is classified as multiply disabled. He has an IEP dated June 21, 2022. (Battaglia Cert. ¶3)
3. S.L. is N.L.'s mother and filed a due process petition on his behalf with OSEP on November 10, 2022.
4. S.L. was advised during a telephone conference on May 17, 2023 that she no longer had standing to continue as N.L. had reached 18 years of age; and that she must provide written authorization from N.L. to continue.
5. No such authorization was submitted. (C-1)
6. A telephone conference was scheduled for July 31, 2023. Counsel for NVR called in. Neither S.L nor N.L. did so. (C-2)
7. Another telephone conference was scheduled for August 1, 2023. Again, Counsel for NVR called in. Neither S.L. nor N.L. did so. (C-3)

LEGAL ANALYSIS AND CONCLUSION

A motion for summary decision may be granted if the papers and discovery presented, as well as any affidavits which may have been filed with the application, show that there is no genuine issue of material fact and the moving party is entitled to prevail as a matter of law. N.J.A.C. 1:1-12.5(b). If the motion is sufficiently supported, the non-moving party must demonstrate by affidavit that there is a genuine issue of fact which can only be determined in an evidentiary proceeding, in order to prevail in such an application. Ibid. These provisions mirror the summary judgment language of R. 4:46-2(c) of the New Jersey Court Rules.

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 fact finder 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).

And even if the non-moving party comes forward with some evidence, this forum must grant summary decision if the evidence is “so one-sided that [the moving party] must prevail as a matter of law.” Id. at 536 (citation omitted).

In the instant matter, notwithstanding Respondent’s position that Petitioner’s claims are moot, there remain issues regarding material facts. While Petitioner has failed to submit sufficient medical evidence supporting her claim that N.L. should receive home instruction, that does not necessarily mean that it is unobtainable. Petitioner has until five days prior to the hearing date to submit her evidence to Respondent (see Prehearing Order dated January 9, 2023). The hearing date in this matter is October 2 and 3, 2023.

As to Petitioner’s motion for summary decision, there is indeed material fact as to whether or not N.L. should receive home instruction. There has not been sufficient medical evidence submitted to support this request.

Neither motion for summary decisions should be granted at this point.

As to the motion to dismiss for lack of standing:

N.J.A.C. 6A:14-2.3(m) states:

Except when a parent has obtained legal guardianship, all rights under this chapter shall transfer to the student upon attainment of the 18th birthday. The district board of education shall provide the adult student and the parent with written notice that the rights under this chapter have transferred to the adult student. The adult student shall be given a copy of the special education rules ([N.J.A.C. 6A:14](#)), the due process hearing rules ([N.J.A.C. 1:6A](#)), and the procedural safeguards statement published by the Department of Education.

In A.B. o/b/o E.R. v. Paterson Board of Education and Passaic County Technical Institute, 2018 WL 3609528, at *5”, the Administrative Law Judge states:

“The issue of standing is important because it deals with the ability of a party **OAL DKT. NO. EDS 16337-16 9 to initiate and maintain an action before the court.** In re Adoption of Baby T, 160 N.J. 332, 340 (1999). Furthermore, the issue of standing cannot be waived or conferred by consent. Id. at 341. To be entitled to sue, a party must have “a sufficient stake and real adverseness with respect to the subject matter of the litigation.” Baby T, 160 N.J. at 340. In this case, E.R.

has turned the age of majority (18) and accordingly his education rights under the IDEA and the New Jersey education laws belong exclusively to him. A.B., even though she is his mother does not maintain any rights regarding her adultson's education, unless she has in her position a transfer of those rights to her. A.B. has submitted no such evidence in response to his motion or this proceeding. E.R.'s interests in this case may very well differ from those of his mother. Based on the above, I FIND that Paterson is entitled to a summary decision on this issue as there is no evidence that A.B. has the authority to pursue this matter."

In the instant matter N.L. turned 18 years of age on April 25, 2023. Here, as in Paterson, supra, S.L. has submitted no evidence in response to the motion to dismiss for lack of standing. Further, S.L. was advised that the same must be provided and has failed to do so.

Accordingly, I **CONCLUDE** that the cross motions for summary decision should be **DENIED**; and that the motion to dismiss should be **GRANTED**.

Based upon the above, Respondent's due process petition is rendered moot.

In Betancourt v. Trinitas Hosp.,ⁱⁱ 415 N.J. Super. 301, 08, the New Jersey Supreme Court defines mootness as follows:

"We first set forth the principles that inform a consideration of claims of mootness. Mootness is a threshold justiciability determination rooted in the notion that judicial power is to be exercised only when a party is immediately threatened with harm. Jackson v. Dep't of Corr. 335 N.J. Super 227, 231, 227, 762 A.2d 255 (App.Div. 2000), *certif. denied*, 167 N.J. 630, 772 A.2d 932 (2001). "A case is technically moot when the original issue presented has been resolved, at least concerning the parties who initiated the litigation." DeVesa v. Dorsey, 134 N.J. 420, 428, 634 A.2d 493 (1993) (Pollock, J., concurring) (citing Oxford v. N.J. State Bd. of Educ., 68 N.J. 301,303, 344 A.2d. 769 (1975)). To restate, "an issue is "moot" when the decision sought in a matter, when rendered, can have no practical effect on the existing controversy.'" (citations omitted).

Accordingly, Respondent's due process petition should be dismissed.

ⁱⁱ The litigants in this matter are not related to the undersigned.

ORDER

It is hereby **ORDERED** that Respondent's motion for summary decision is **DENIED**; and,

It is further **ORDERED** that Petitioner's motion for summary decision is **DENIED**; and

It is further **ORDERED** that Respondent's motion for dismissal for lack of standing be **GRANTED**; and

It is further **ORDERED** that Petitioner's due process petition is **DISMISSED** without prejudice; and

It is further **ORDERED** that Respondent's due process petition is **DISMISSED** without prejudice.

This decision is final pursuant to 20 U.S.C. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2022) 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 (2022). 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.



August 22, 2023

DATE

THOMAS R. BETANCOURT, ALJ

Date Received at Agency:

Date Mailed to Parties:

db

APPENDIX

List of Moving Papers

For Petitioner:

Letter brief dated April 2, 2023

Letter of explanation dated April 11, 2023 with two attachments:

Letter from Terri Smith, MD, dated December 14, 2022 (Ex. A); and

Letter from Terri Smith, MD, dated November 3, 2022 (Ex. B)

Also submitted (not as part of Petitioner's motion):

Handwritten letter from Terri Smith, M.D., dated April 12, 2023 (Ex. C)

Letter from Khalid S. Anam, M.D., dated May 13, 2023 (Ex. D)

For Respondent:

Brief in support of the motion for summary decision

Certification of Barbara Battaglia with Exhibits A through D

Reply Brief

For the OAL:

C-1 email from Christine M. Martinez, Esq. Machado Law Group, dated July 27, 2023

C-2 email from OAL assistant to litigants dated July 31, 2023

C-3 email from OAL assistant to litigants dated August 1, 2023