



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. EDS 03054-23

AGENCY DKT. NO. 2023-35549

B.R. AND A.R. ON BEHALF OF S.R.,

Petitioners,

v.

WEST DEPTFORD TOWNSHIP

BOARD OF EDUCATION,

Respondent.

Johanna G. Burke, Esq., for petitioners (Fight4Autism)

Robert A. Muccilli, Esq., for respondent (Capehart & Scatchard, P.A., attorneys)

Record closed: August 30, 2023

Decided: August 30, 2023

BEFORE **ELAINE B. FRICK**, ALJ:

STATEMENT OF THE CASE

Petitioners, B.R. and A.R., on behalf of S.R. (the parents and student), filed a due process petition under the Individuals with Disabilities Education Act (IDEA), seeking out of district placement of the student. Respondent, West Deptford Board of Education (the District) opposed the petition. The District has filed a motion to dismiss, with prejudice, for failure to state a claim upon which relief can be granted, due to petitioners having

withdrawn the student from the District and having enrolled the child in the Washington Township school district.

PROCEDURAL HISTORY

Petitioners submitted their petition to the New Jersey Department of Education seeking relief. The matter was transmitted to the Office of Administrative Law (OAL) where it was filed on April 12, 2023, to be heard as a contested matter. N.J.S.A. 52:14B-1 to 14B-15; N.J.S.A. 52:14F-1 to 14F-13.

The parties participated in settlement conferences with the Hon. Barry Moscovitz, Acting Director and Chief ALJ of the OAL. The matter was unresolved and assigned to the undersigned ALJ as the hearing judge.

A prehearing telephonic conference was conducted with counsel for the parties on July 5, 2023. The parties were mandated to participate in an additional settlement conference with Judge Moscovitz, prior to the next scheduled prehearing telephonic conference of August 24, 2023. The hearing was scheduled to proceed on September 22, 2023.

As of July 25, 2023, the parties had not scheduled the settlement conference with Judge Moscovitz. The petitioners would not communicate with their counsel to confirm a settlement conference date.

On August 24, 2023, respondent's counsel appeared for the telephonic conference. There was no appearance by or on behalf of petitioners. A Prehearing Order issued on August 25, 2023, confirming the status of the matter and the scheduled hearing date of September 22, 2023.

On August 25, 2023, respondent submitted its motion to dismiss. On August 25, 2023, petitioners' counsel submitted an email in response to the motion filings, stating "I will not be opposing this."

FACTUAL DISCUSSION AND FINDINGS

The following information was gleaned from the motion submission by respondents and the file documents, and the motion being unopposed, I **FIND** as **FACTS** the following:

S.R. is a minor child who is eligible for special education and related services with a classification as autism. (Petition at ¶1, 2.) S.R. was enrolled as a student in the West Deptford school district for the 2022-2023 school year. (Petition at ¶1.) S.R. was attending kindergarten in the autism ABA program. (Petition at ¶1.)

On March 5, 2023, petitioners submitted a petition for due process to the Department of Education, Office of Special Education. Petitioners sought placement of S.R. in an out-of-district setting. (Petition at ¶4.) The petition was transmitted to the OAL on April 12, 2023.

The parties attended settlement conferences through the OAL with Judge Moscovitz. The matter was not resolved. The file was assigned to the undersigned ALJ for a hearing. During the first prehearing telephonic conference with counsel on July 5, 2023, the parties were mandated to return to Judge Moscovitz for another settlement conference. They were advised to coordinate scheduling of the settlement conference with Judge Moscovitz's Judicial Support Specialist (JSS). A follow-up pre-hearing telephonic conference was scheduled for August 24, 2023, and the hearing date was scheduled for September 22, 2023. Notices for the proceedings issued to the parties.

As of July 25, 2023, the parties had not scheduled the mandated settlement conference with Judge Moscovitz. Petitioners' counsel communicated via email that her clients were not responding to her emails regarding scheduling the settlement conference.

While their due process petition was pending, petitioners withdrew S.R. from the West Deptford school district, and enrolled him in the Washington Township school district. As per the student transfer card, S.R.'s last day of attendance in West Deptford was June 16, 2023. (Exhibit C, respondent's motion submission.) Petitioners' forwarding address on the transfer card is in Sewell, New Jersey. (Exhibit C, respondent's motion

submission.) Judicial notice is taken that Sewell is a town that sends its students to the Washington Township school district. Petitioners executed an authorization to the District, on July 26, 2023, to release S.R.'s records and provide verbal information to the Washington Twp school district. (Exhibit C, respondent's motion submission.)

On August 24, 2023, the District's counsel was dialed in for the scheduled pre-hearing telephonic conference. No one appeared on behalf of the petitioners. The parties were advised that the hearing date remained as scheduled to proceed on September 22, 2023. The Prehearing Order of August 25, 2023, issued to the parties, which confirmed the scheduling status of the matter.

On August 25, 2023, respondent submitted its motion to dismiss. On August 25, 2023, petitioners' counsel submitted an email in response to the motion filings, stating "I will not be opposing this."

LEGAL ANALYSIS AND CONCLUSIONS

The IDEA, 20 U.S.C. §1400, et seq., was enacted to improve education for disabled students. One of the purposes of IDEA is "to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living[.]" 20 U.S.C. § 1400(d)(1)(A). The responsibility to deliver appropriate services rests with the local public school district. N.J.A.C. 6A:14-1.1(d). The OAL has the authority to conduct due process hearings and render final decisions in IDEA matters. N.J.A.C. 6A:14-2.7.

The New Jersey Administrative Code permits the filing of motions to be made in administrative hearings. N.J.A.C. 1:1-12.1, et seq. A Motion to Dismiss is not specifically enumerated under the Administrative Code, but an ALJ may proceed in the absence of a specific regulation in accordance with the New Jersey Court Rules, to achieve "just results, simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay." N.J.A.C. 1:1-1.3(a). The New Jersey Court Rules provide that a party may move for dismissal of a complaint for failure to state a claim upon which relief can be granted. R. 4:6-2(e).

The common method for resolving a case on the papers in an administrative proceeding, without a hearing, is by a motion for summary decision under N.J.A.C. 1:1–12.5. The New Jersey Court Rule regarding a motion to dismiss specifies that if the dismissal is sought based upon failure to state a claim, and if matters outside the initial pleading are presented to and not excluded by the court, then the motion shall be treated as a summary judgment motion, which is the equivalent motion to an administrative law summary decision motion. R. 4:6-2; N.J.A.C. 1:1–12.5.

A party in an administrative law matter “may move for summary decision upon all or any of the substantive issues in a contested case.” N.J.A.C. 1:1–12.5(a). The motion “shall be served with briefs and with or without supporting affidavits” and the decision “may 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.” N.J.A.C. 1:1–12.5(b). The non-moving party will prevail if they “set forth specific facts showing that there is a genuine issue which can only be determined in an evidentiary proceeding.” Id., See R. 4:46-2 and Brill v. Guardian Life Insurance Co. of America, 142 N.J. 520, 540 (1995).

When rendering a determination on a motion for summary judgment, “the ‘judge’s function is not . . . 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, Inc., 477 U.S. 242, 249 (1986). Summary judgment, like summary decision, “is designed to provide a prompt, businesslike and inexpensive method of disposing of any case” upon a discriminating search of the merits of the pleadings and documentation presented for such a motion. Brill at 540, citations omitted. If such a search of the information demonstrates there is no genuine issue of material fact requiring disposition at a hearing, the motion shall be granted. Id. “An evidentiary hearing is mandated only when the proposed administrative action is based on disputed adjudicatory facts.” In re Farmers’ Mutual Fire Assurance Association of New Jersey, 256 N.J. Super. 607, 618 (App. Div. 1992).

Here, the relief sought by petitioners is to have their student child placed in an out-of-district program placement. While their petition was pending, they voluntarily removed

the child from West Deptford, and enrolled the student in the Washington Township school district. Respondent asserts that petitioners no longer have a viable claim for relief. The student is no longer in the West Deptford District, and thus the District is no longer responsible to educate the student, rendering moot petitioners' request for relief.

The United States Constitution limits the judiciary to the adjudication of actual cases and controversies. U.S. Const. art III, § 2. "Simply stated, 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). "[A]n actual controversy must exist not only at the time the complaint is filed, but through all stages of the litigation." Already, LLC v. Nike, Inc., 568 U.S. 85, 90-91 (2013). Mootness thus occurs when the original issue raised by the parties who initiated the litigation has been resolved. Comando v. Nugiel, 426 N.J. Super. 203, 219, (App. Div. 2014), citing DeVesa v. Dorsey, 134 N.J. 420, 428 (1993). If the requested decision "can have no practical effect on the existing controversy", the matter is moot. Redd v. Bowman, 223 N.J. 87, 104 (2015), citing Deutsche Bank National Trust Co. v. Mitchell, 422 N.J. Super. 214, 221-222 (App. Div. 2011).

The petitioner student has been withdrawn from the West Deptford school district. The petitioners apparently now reside within the Washington Township school district. It is no longer the responsibility of West Deptford to educate the child. N.J.A.C. 6A:14-1.1(d). The relief petitioners sought, to have the student placed out of district, is no longer a viable claim. I **CONCLUDE** the claim has been rendered moot by virtue of the parents removing the student from the District and enrolling the student in another school district. Thus, I **CONCLUDE** that summary disposition of the matter is appropriate, and the motion to dismiss is **GRANTED**.

It is further noted that petitioners failed to comply with the mandated return to Judge Moscovitz to participate in a settlement conference. As per petitioners' counsel, her clients refused to respond to her regarding the scheduling arrangements for the settlement conference. I **CONCLUDE** petitioners' failure to participate in the scheduling arrangements for the settlement conference was a willful and intentional disregard of a directive of this tribunal.

Petitioners were also noticed to appear for a pre-hearing telephonic conference on August 24, 2023. Petitioners' counsel failed to appear for the scheduled telephonic conference. There was no explanation provided by petitioners or on their behalf, regarding the failure to appear since that time.

The New Jersey Administrative Code provides that if a party does not appear in any proceeding at the OAL, after appropriate notice issued by the clerk or an ALJ, the ALJ shall hold the matter for one day, before taking any action. N.J.A.C. 1:1-14.4(a). If the ALJ does not receive an explanation for the non-appearance within one day, the judge may direct the clerk to return the matter to the transmitting agency for appropriate disposition. Id. There was no appearance by petitioners' counsel, nor petitioners, for the pre-hearing telephonic conference on August 24, 2023. They received proper notice of the telephonic conference with the dial in information, during the July 5, 2023, telephonic conference. Written notice of the scheduled proceedings issued immediately thereafter from the OAL. The District's counsel telephonically appeared for the conference on August 24, 2023, and attempted to reach out to petitioners' counsel to connect in for the telephonic conference. Petitioners' counsel did not dial in, and the telephonic conference was terminated after waiting fifteen minutes for petitioners to appear. There has been no explanation provided on behalf of petitioners as to their failure to appear for the scheduled proceeding. I **CONCLUDE** petitioners' failure to appear for the telephonic conference was intentional. I **CONCLUDE** petitioners' failure to provide an explanation as to their non-appearance demonstrates their abandonment of this action.

Petitioners' only response to the District's motion to dismiss, was submitted by petitioners' counsel via email on August 25, 2023, which simply stated "I will not be opposing this." I **CONCLUDE** petitioners' failure to oppose the motion to dismiss further confirms their intentional abandonment of their petition for due process. I thus **CONCLUDE**, based upon petitioners' intentional failure to comply with the directive to participate in a settlement conference; their failure to appear for the telephonic conference; their failure to provide an explanation for their non-appearance; and their failure to oppose the motion to dismiss, mandates that the matter shall be **DISMISSED, WITH PREJUDICE.**

ORDER

It is **ORDERED** that respondent's Motion to Dismiss is **GRANTED** and the petition shall be **DISMISSED**. It is further **ORDERED** that petitioners have willfully abandoned their petition, and thus it is **DISMISSED, WITH 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 30, 2023

DATE

ELAINE B. FRICK, ALJ

Date Received at Agency:

Date Mailed to Parties:

EBF/gd/mpb

APPENDIX

August 25, 2023, submission by respondent:

Motion to Dismiss

Brief

Exhibits

- A. Petition for Due Process, March 5, 2023
- B. OAL filing
- C. Student Transfer Card and Authorization to release records