State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION
DISMISSAL
OAL DKT. NO. EDS 13751-24
AGENCY DKT. NO. 2024-37733

K.D. ON BEHALF OF N.D.,
Petitioner,
v.
EAST GREENWICH TOWNSHIP BOARD OF EDUCATION,
Respondent.

K.D., petitioner, pro se

Paul C. Kalac, Esq., for respondent, East Greenwich Twp. Board of Education (Weiner Law Group, attorneys)

Record Closed: November 19, 2024 Decided: November 20, 2024

BEFORE **TAMA B. HUGHES,** ALJ:

STATEMENT OF CASE AND PROCEDURAL HISTORY

K.D. (Petitioner) on behalf of her daughter, N.D., filed a Due Process Petition with the Office of Special Education, Department of Education, June 12, 2024. By this petition, petitioner seeks eligibility for special education and related services and an individualized

support plan for N.D. As background, in April 2024, N.D. was referred to the Child Study Team to determine whether she was eligible for special education and related services. Upon review of various data, East Greenwich Township, Board of Education (respondent) determined that no evaluations were warranted and that N.D.'s 504 plan in conjunction with other supports/interventions that had previously been put in place, were appropriately meeting N.D.'s academic needs. Petitioner disagreed with the respondent's determination and filed the instant Due Process Complaint.

The matter was transmitted to the Office of Administrative Law (OAL) as a contested case pursuant to N.J.S.A. 52:14B-1 to 15 and N.J.S.A. 52:14f-1 to 13, where it was filed on October 2, 2024. An initial call was held on October 7, 2024, at which time hearing dates of October 29, 2024, and November 14, 2024, were set. See October 23, 2024, Prehearing Order. The parties also requested that the matter be scheduled before a settlement judge in an effort to resolve the matter prior to a hearing. A settlement conference took place on or about October 16, 2024, before the Honorable Joseph A. Ascione, ALJ t/a, however the parties were unable to reach a resolution.

On October 18, 2024, petitioner requested that the hearing dates of October 29, 2024, and November 14, 2024, be adjourned to allow her more time to gather evidence for the case. Counsel for the respondent consented to the adjournment of the October 29, 2024, hearing date but not the November 14, 2024, hearing date. A conference call was held on October 22, 2024, at which time only the October 29, 2024, hearing date was adjourned with the consent of respondent's counsel to allow petitioner the opportunity to obtain/submit an expert report. A second hearing date was also put on the docket for November 20, 2024.

On November 1, 2024, petitioner requested an adjournment of the November 14, 2024, hearing date. A conference call was held on November 8, 2024, at which time the requested adjournment was denied.[1] On November 14, 2024, prior to the start of the hearing, counsel for the respondent made an application to dismiss petitioner's matter

[1] The conference call was initially scheduled for November 6, 2024, however due to a clerical error on the part of the OAL as it relates to petitioner's correct email address, petitioner never received notice of the call. The call was subsequently rescheduled to November 8, 2024.

asserting that the relief sought by the petitioner had been agreed upon by the BOE and therefore, a controversy no longer existed between the parties.

FACTUAL DISCUSSION

Based on the papers submitted and arguments of the parties, I make the following findings of **FACT**.

N.D. is currently in fifth grade in the East Greenwich Township School District – Samuel Mickle School.

N.D. has been diagnosed with Attention-Deficit/Hyperactivity Disorder (ADHD).

When N.D. was in third grade, she was given a 504 plan which has been carried through to her current grade level of fifth grade.

In April 2024, when N.D. was in fourth grade, K.D. referred her daughter to the Child Study Team to determine whether she was eligible for an Individualized Education Program (IEP). (Respondent Brief, Exhibit 2.)

At the time of review, it was determined that N.D. was not eligible for an IEP and that her 504 Plan was appropriately meeting her needs. (Respondent Brief, Exhibit 4.)

Petitioner timely filed a Request for Mediation which was subsequently converted to a complaint for Due Process[2] challenging the respondent's determination that her daughter was not eligible for special education and related services. The relief sought by the petitioner was as follows:

> 1. Comprehensive Review: The child Study Team should conduct a thorough review of my daughter's educational history, including her 504 plan and any relevant assessments or evaluations, to gain a comprehensive understanding of her needs and challenges.

[2] See June 18, 2024 Department of Education Letter to K.D.

2. Reevaluation of Eligibility: The team should reassess my daughter's eligibility for special education services, taking into account all relevant factors, including her diagnosed ADHD, documented struggles, and the impact of her disability on her academic performance.

3. Individualized Support Plan: Based on the findings of the review and reassessment, the team should develop an individualized support plan tailored to my daughter's specific needs. This plan should include appropriate accommodations, interventions, and services to address her educational challenges effectively.

4. Professional Development: Training and professional development opportunities should be provided to educators and staff members to enhance their understanding of the relevant laws, regulations, and guidelines governing special education services. This includes a comprehensive understanding of the Individuals with Disabilities Education Act (IDEA), Section 504 of the Rehabilitation Act and other pertinent legal frameworks. By Ensuring that educators are well-versed in the legal requirements surrounding special education services, we can promote greater adherence to these laws and better support students with disabilities like my daughter.

See Transmittal – Due Process Petition.

On November 13, 2024, the eve of trial, petitioner provided the respondent with a copy of her expert report/evaluation by Dr. Gregory A. Witkin, Ph.D., ABPP – a Board Certified Clinical Neuropsychologist. As part of his evaluation, Dr. Witkin conducted several tests, among which were the Wechsler Intelligence Scales for children, Fifth Edition (WISC-V) and the Wechsler Individual Achievement Test, Fourth Edition (WIAT-4) – selected subtests. These are the same tests that the district would have conducted had evaluations been done by the Child Study Team (CST). (Respondent Brief, Exhibit 5.)

On the hearing date of November 14, 2024, the respondent represented that while untimely under the Prehearing Order and five-day rule, they would accept Dr. Witkin's expert report and findings and agreed to hold an IEP meeting to determine whether N.D. was eligible for special education and related services.

The respondent further represented that no additional testing was required at this time because petitioner's expert had conducted the exact testing that they would have conducted as part of the evaluation process.

LEGAL ANALYSIS

The issue raised by petitioner is whether N.D. is eligible for special education and related services. The main relief sought by petitioner was for N.D. to be tested and re-evaluated by the CST for eligibility for an IEP.

The respondent notes that N.D. currently has a 504 Plan. In April 2024, N.D. was referred to the CST and an initial evaluation planning meeting was held. At that time, the district determined that testing was not warranted, finding instead that the 504 Plan and related interventions were appropriate for N.D.'s needs.

Subsequent to that meeting, petitioner sought an independent evaluation of N.D. by Dr. Witkins. The evaluations/tests that were done by Dr. Witkins were identical to testing that the district performs when evaluating a student's eligibility for special education and related services. According to the respondent, the district is willing to accept Dr. Witkins' report/findings and conduct an eligibility meeting as soon as possible with petitioner and Dr. Witkins in attendance, to determine whether N.D. is eligible to receive special education and related services.

Based upon this representation, respondent seeks to dismiss this matter as moot. The relief sought by the petitioner has been agreed to — specifically accepting the testing that has been done by petitioner's expert along with the results and conduct an evaluation meeting to determine eligibility. Therefore, there is no basis for this matter to move forward because the relief sought has been agreed to.

Petitioner first requested that the Tribunal accept late documentation in this matter claiming that the district failed to provide her timely access to the same. She wanted the documents, particularly Dr. Witkin's report, to support her contention that N.D. should

have been considered for an IEP. Petitioner, however, does not want Dr. Witkin's report to be used in lieu of the school testing — rather, she believes that the district is required to conduct their own testing and that Dr. Witkins' report should be used to supplement their findings. Nor does petitioner believe that the "practice effect" should be used as a shield by the district as an excuse to further delay the testing of her child. Last, petitioner believes that the district failed to provide sufficient notice and basis as to why they did not conduct testing on all areas of N.D.'s disability in the first place.

An action is moot when the decision sought "can have no practical effect on the existing controversy." Redd v. Bowman, 223 N.J. 87, 104 (2015). For reasons of judicial economy and restraint, it is appropriate to refrain from decision-making when an issue presented is hypothetical, judgment cannot grant effective relief, or the parties do not have a concrete adversity of interest. Anderson v. Sills, 143 N.J. Super. 432, 437 (Ch. Div. 1976); Fox v. Twp. of E. Brunswick Bd. of Educ., EDU 10067-98, Initial Decision (March 19, 1999), aff'd., Comm'r (May 3, 1999); J.L. and K.D. ex rel. J.L. v. Harrison Twp. Bd. of Educ., EDS 13858-13, Final Decision (January 28, 2014).

In P.S. ex rel. I.S. v. Edgewater Park Twp. Bd. of Educ., EDS 10418-04, Final Decision (October 31, 2005), http://njlaw.rutgers.edu/collections/oal/, a parent filed for due process due to a disagreement over a district's proposed placement of her child, and requested a different, approved private school. The district had agreed to the parent's placement request and moved to dismiss the petition as moot. The parent wanted to continue the hearing to resolve other related disagreements, but the ALJ concluded that the relief sought by the parent had already been granted by the district through their agreement to place the child at her requested school. The ALJ dismissed the petition as moot and reasoned that the parents had the right to file a new due process petition regarding other issues with the district.

A review of the facts here leads to the conclusion that no controversy exists upon which this Tribunal can rule upon. While the district stands firm that their determination in April 2024 that evaluations were not warranted was appropriate, it has agreed to a re-evaluation of N.D. to determine whether she is eligible for special education and related services. The testing that the district would have done to render that determination has

already been done by petitioner's expert less than a month ago. The district has agreed to accept the results and findings, and schedule a re-evaluation meeting within the next thirty days. While it is petitioner's contention that the district is required to perform their own evaluations, she has not pointed to any regulation or law which prohibits the district from accepting an independent expert opinion in rendering a determination on eligibility for special education and related services. See N.J.A.C. 6A:14-3.4.

Petitioner also seeks an individualized support plan based upon the re-evaluation meeting. Such relief as couched, does not exist in special education terminology. However, petitioner's intent is clear that she would like whatever programming that is put in place for her child — whether it is an IEP or a 504 Plan to be appropriate. While premature because a re-evaluation meeting has not yet occurred, it goes without saying that depending on the outcome of the re-evaluation meeting — whether N.D. is found eligible for special education and related services or whether a determination that continuation of a 504 Plan is appropriate, the district is required to provide appropriate accommodations, interventions and/or services to effectively address N.D.'s educational needs and challenges.

With regard to petitioner's requested relief that training and professional development opportunities be provided to educators and staff members to enhance their understanding of the relevant laws, regulations, and guidelines governing special education services – such relief/remedy is beyond the jurisdiction of this Tribunal. Training and professional development of respondent's staff is solely within the discretion of the district, not this Tribunal.

For all of the foregoing reasons, I **CONCLUDE** that this petition should be dismissed because the issues raised are now moot.

ORDER

I hereby **ORDER** that the Board's Motion to Dismiss is **GRANTED** and petitioner's Due Process complaint is **DISMISSED**. It is further **ORDERED** that a re-evaluation meeting take place within thirty-days of this Order for the purpose of determining N.D.'s

eligibility for special education and related services. Based upon the outcome of that meeting, appropriate programming shall be put in place.

This decision is final pursuant to 20 U.S.C. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2024) 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 (2024). 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.

November 20, 2024 _____
DATE

TAMA B. HUGHES, ALJ

Date Received at Agency: _____

Date emailed to Parties: _____

TBH/dc/cb

APPENDIX

Exhibits

For petitioner:

Letter Brief, dated November 18, 2024

For respondent:

Letter Brief, dated November 18, 2024