

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

SUMMARY DECISION

OAL DKT. NO. EDS 02180-15

AGENCY DKT. NO. 2013 19329

S.G. ON BEHALF OF J.G.,

Petitioner,

v.

FAIR LAWN BOARD OF EDUCATION,

Respondent.

S.G., petitioner, pro se

J.G., petitioner, pro se

Robin S. Ballard, Esq., for respondent (Schenck, Price, Smith & King, attorneys)

Record Closed: March 4, 2016

Decided: March 21, 2016

BEFORE MICHAEL ANTONIEWICZ, ALJ:

STATEMENT OF THE CASE

On December 30, 2014 S.G., on behalf of J.G., filed a Due Process Petition seeking relief regarding a challenge to the proposed changes to J.G.'s IEP for the eleventh grade in the 2014–2015 school year. Since that time, J.G. is no longer in the eleventh grade and, instead, has a new IEP for the twelfth grade for the 2015–2016 school year. Petitioner has not filed any challenge to that IEP.

FINDINGS OF FACT

The petitioner has failed to provide any submission in response to the respondent's application despite a letter being sent to the petitioner requesting response or a letter stating that she would not respond by March 4, 2016. I make the following **FINDINGS OF FACT** based on the District's submission and all other documents in the file:

1. J.G. was born on February 18, 1998, and thus is presently eighteen years of age and currently attends the twelfth grade at Fair Lawn High School in the Fair Lawn Public School District (the District).
2. J.G. is classified as eligible for special education and related services under the category of Other Health Impaired.
3. In the 2014–2015 school year J.G. attended the eleventh grade with supports through an IEP dated June 4, 2014, with accommodations, modifications, and placement in the resource center for English, mathematics, science, and social studies, as well as study skills.
4. On December 17, 2014, an IEP was prepared offering J.G. a resource center placement with the above services.
5. On December 30, 2014, the petitioner requested due process in order to challenge the proposed changes to J.G.'s IEP for the eleventh grade.
6. Petitioner's challenge to the 2014–2015 school year included a dispute to the fact that J.G. could use a computer in that year; a challenge to the former history teacher and aide having a negative impact on J.G.'s self-esteem and confidence; challenge to the teacher's unethical teaching methods in that year; the failure to use of pass/fail grades for that year; and providing appropriate transportation and parking.

7. On June 10, 2015, a new IEP was prepared for J.G. for the 2015–2016 school year and the petitioner did not request due process in order to challenge that IEP.
8. Since the time that the petitioner filed their petition, J.G. finished his eleventh grade and presently has a new IEP in effect for his twelfth grade.

This due process petition seeks multiple forms of relief relating to J.G.'s programming in the eleventh grade in the 2014–2015 school year. Respondent requested that this body dismiss this matter as moot because a new IEP was given to the petitioner for the 2015–2016 school year, the petitioner did not request due process for that IEP, and as a matter of law that IEP is in effect for J.G as set forth below.

The respondent has met the standard necessary for a summary decision as set forth in N.J.A.C. 1:1-12.5. See also Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995) and R. 4:46-2(a). As the petitioner has not filed any affidavit or other documents in response to the respondent's application, I **FIND** that there is no genuine issue of fact which needs an evidentiary hearing for determination. See In re Jackson, 96 N.J.A.R. (EDE) 1. As stated in Brill:

[T]he motion judge [is] to 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, supra, 142 N.J. at 540.]

From review of the pleadings, admissions, and the affidavit submitted by the respondent in its application it is clear that there is no dispute as to any material fact regarding this matter.

Here, the pending due process petition filed by the petitioner was brought under the Individuals with Disabilities Education Act. 20 U.S.C.A. § 1400 et seq. The petition

raised issues with reference to J.G.'s programming (and other non-education issues) for the eleventh grade as set forth in the IEP for the 2014–2015 school year. J.G. finished that school year and is now in the twelfth grade pursuant to a new IEP prepared and not disputed by the petitioner on June 10, 2015.

Pursuant to N.J.A.C. 6A:14-2.3(h)(3),

the district board of education shall implement the proposed action after the opportunity for consideration in (h)(2) [15 calendar day notice] above has expired unless:

- i. The parent disagrees with the proposed action and the district takes action in an attempt to resolve the disagreement; or
- ii. The parent requests mediation or a due process hearing according to N.J.A.C. 6A:14-2.6 or 2.7. A request for mediation or a due process hearing prior to the expiration of the 15th calendar day in (h)(2) above shall delay the implementation of the proposed action according to N.J.A.C. 6A:14-2.6(d)10 or 2.7(u).

Petitioner failed to challenge the IEP prepared for the twelfth grade on June 10, 2015.

The District has requested that the petition be dismissed because their claims are moot. An action is moot when it no longer presents a justiciable controversy because the issues raised have become academic. 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), <http://njlaw.rutgers.edu/collections/oal/>; S.J. v. Bd. of Educ. of Mountain Lakes, EDU 07081-03, Initial Decision (October 7, 2003), aff'd, Comm'r (Nov. 17, 2003), aff'd, St. Bd. (Feb. 3, 2004), <http://njlaw.rutgers.edu/collections/oal/>; see also C.P. ex rel. S.P. v. Berlin Twp. Bd. of Educ., EDS 0509-05, Final Decision (May 19, 2005), <http://njlaw.rutgers.edu/collections/oal/>.

This petition filed by the petitioner dealt with the IEP offered to J.G. in December 2014 regarding his programming for the 2014–2015 school year. That IEP then expired in June 2015 and a new IEP for the 2015–2016 (with J.G. as a senior) is now in effect. The issues raised by the petitioner, including his history teacher and aide, are no longer at issue as J.G. is no longer in that class. Any issues regarding parking is no longer at issue as J.G. is now a senior and thus has a parking pass.

Accordingly, it appears that there is no relief available to the petitioner as the IEP for the 2014–2015 school year has expired and the student has moved from his junior year to his senior year.

ORDER

Respondent has demonstrated in its application for Summary Decision that all of the issues raised by the petitioner in the due process application have been addressed and resolved or is no longer relevant. Accordingly, this matter is now moot.

This decision is final pursuant to 20 U.S.C.A. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2015) 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.A. § 1415(i)(2); 34 C.F.R. § 300.516 (2015). 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.

March 21, 2016

DATE

MICHAEL ANTONIEWICZ, ALJ

Date Received at Agency

Date Mailed to Parties:

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