

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

**FINAL DECISION**

OAL DKT. NO. EDS 03468-17

AGENCY DKT. NO. 2017-25701

**D.B. AND M.B. ON BEHALF OF M.B.,**

Petitioners,

v.

**FREEHOLD REGIONAL HIGH SCHOOL**

**BOARD OF EDUCATION,**

Respondent.

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**D.B.**, petitioner, pro se

**Shifra Tarica**, Esq., for respondent (Comegno Law Group, P.C., attorneys)

Record Closed: July 5, 2018

Decided: July 9, 2018

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

**STATEMENT OF THE CASE AND PROCEDURAL HISTORY**

M.B. is a twenty-year-old student, who remains enrolled in the Freehold Regional High School District ("District"). M.B.'s interests are being represented by his mother D.B., pursuant to a power of attorney entered into on May 4, 2017. Petitioner filed a due-process petition which was transmitted to the Office of Administrative Law and filed on March 13, 2017, as a contested case. The transmittal indicates:

On behalf of adult student, petitioners seek placement at Fusion Academy and district to report to Social Security that

student did not drop out of school, therefore, is still entitled to benefits.

The petition details the description of the issue as follows:

On October 11, 2016, Manalapan High School erroneously reported to the Social Security Administration that [M.B.] dropped out of school. As a result, we received a letter from Social Security stating he is no longer entitled to benefits because he is not enrolled as a full time [sic] student. The result of this action continues to cause undue enormous financial hardship to the family.

On November 28, 2016 [sic] the school held an IEP meeting proposing placement at Regional Learning [sic] Academy which is located in the Manalapan High School building. Due to his disability, [M.B.] is not able to attend that program.

Petitioner's proposed resolution to the problem then states the following:

High school must report to the Social Security Administration, in writing that [M.B.] has never dropped out of school and is enrolled as a full time [sic] student and have his Social Security benefits reinstated immediately since November 2016.

[M.B.] believes that placement at Fusion Academy can resolve this and wants to be placed there.

Thereafter on June 6, 2017, a Prehearing Order was entered specifically providing that "the hearing shall be limited to the issues raised in the pleadings. The petitioners are seeking placement at Fusion Academy and 'District to report to Social Security that student did not drop out of school, therefore is still entitled to benefits.'"

On January 23, 2018, an in-person settlement conference took place prior to what was to be the commencement of the hearing, and at the conclusion of that conference an agreement was placed on the record which provided as follows:

1. Petitioner agreed to cooperate fully with the admission process at Fusion Academy, the placement she sought.

2. The Board agreed to provide the Social Security Administration with a copy of M.B.'s transcripts and attendance records.
3. Petitioner would execute a full release and waiver of all claims.

Following the placement of the settlement on the record, petitioner articulated for the first time that although she had no questions and understood the agreement and was entering into it voluntarily, she now wanted to discuss it with her family.

Thereafter, on January 31, 2018, a status conference was held wherein petitioner advised that she would not abide by the settlement because of the release-and-waiver-of-claims provision.<sup>1</sup> Petitioner was instructed that if she did not intend to abide by the settlement, she needed to respond to the Board's motion to dismiss that had been previously filed on January 17, 2018. No opposition to the Board's motion has been received to date.

Notwithstanding respondent's disagreement over the appropriateness of the desired placement, the Board agreed as part of the settlement reached in this matter to place M.B. at Fusion Academy, and has collaborated with Fusion Academy to facilitate acceptance. The Board provided records after receiving consent to do so, and Fusion invited M.B. to participate in a "shadow day," which is a requirement of its admissions process. It was arranged for M.B. to attend a shadow day on April 26, 2016, for approximately three hours; however, that morning, petitioner D.B. notified Fusion Academy that M.B. would not be attending and asked for a new date. Fusion accommodated this request; however, petitioner initially did not attempt to reschedule the shadow day. On June 22, 2016, M.B. attended only a partial shadow day, and Fusion advised that he needed to make up the additional time and attend another day in order for Fusion to determine whether he was a good fit for its program. Accordingly, a second day was scheduled for August 2, 2016; however, M.B. failed to attend on that date. The Board has been unable to facilitate a placement for M.B. at Fusion due to the lack of cooperation with the admissions process.

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<sup>1</sup> This was specifically part of the settlement placed on the record on January 23, 2018.

Regarding the Social Security issue, the Board properly responded on August 16, 2016, to a Request for Administrative Information from the Social Security Administration, enclosing his transcript and his IEP.

Upon M.B. reaching the age of eighteen, the Board was required to submit documentation to the Social Security Administration regarding his status, and as of that time he had earned only ten credits, and he had ceased to participate in instruction as of June 17, 2015. Accordingly, on November 11, 2016, the District submitted a “Notice of Cessation of Full-Time Student Attendance” to the Social Security Administration. The Social Security Administration thereafter terminated M.B.’s benefits, advising him by letter dated November 30, 2016, that he was no longer entitled to benefits because he was no longer a full-time student.

Students in the state of New Jersey are required to attend school between the ages of six and sixteen. N.J.S.A. 18A:38-25. While the IDEA provides for the education of students through age twenty-one when appropriate, an adult student cannot be compelled to attend. Here, the program and placement options were rejected, and a request made for placement at Fusion Academy. M.B. then declined to participate in the admissions process for out-of-district placements at Fusion and remained in non-full-time status.

### **LEGAL DISCUSSION AND CONCLUSION**

The Constitution limits the judiciary to the adjudication of actual cases and controversies. U.S. Const. art III, § 2. Accordingly, “[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 (3rd Cir. 2003) (citing Powell v. McCormack, 395 U.S. 486, 496 (1969)). Specifically, it is “[t]he court’s ability to grant effective relief [that] lies at the heart of the mootness doctrine.” Ibid. (citation omitted). For instance, when developments evolve during the “course of adjudication” that negate the plaintiff’s interest in the outcome of a case or thwart a court

from being able to give the requested relief, the suit must be dismissed as moot. Ibid. (citation omitted). “This requirement that a case or controversy be ‘actual [and] ongoing’ extends throughout **all stages** of . . . judicial proceedings . . . .” Ibid. (citing Khodara Envtl., Inc. v. Beckman, 237 F.3d 186, 193 (3rd Cir. 2001) (emphasis supplied). In the absence of an actual case or controversy, a ruling by a court would constitute an advisory opinion, disregarding the Constitution’s limitation of jurisdiction. See id. at 217, n.3; see also Armstrong World Indus., Inc. v. Adams, 961 F.2d 405, 410 (3d Cir. 1992) (stating, “[Article III, section 2 of the Constitution] ‘stands as a direct prohibition on the issuance of advisory opinions.’”).

Similarly, the doctrine of mootness has utility in the administrative setting if no effective relief can be granted in a case. Benjamin v. Masciocchi, Comm’r of Educ., EDU 14102-11, Initial Decision (March 12, 2013), adopted, Comm’r (April 11, 2013), <http://njlaw.rutgers.edu/collections/oal/> (citing In re Tenure Hearing of Mujica, EDU 5184-01, Initial Decision (March 15, 2006), adopted, Comm’r (April 25, 2006), <http://njlaw.rutgers.edu/collections/oal/>). An action is considered moot when it no longer presents a justiciable controversy, and the conflict between the parties has become merely hypothetical. Ibid. (citing In re Conroy, 190 N.J. Super. 453, 458 (App. Div. 1983)). It is well-settled law in New Jersey that cases that have become moot prior to adjudication are no longer actionable. Ibid. (citing Mujica, EDU 5184-01). Cases in which the issues are hypothetical, a judgment cannot grant effective relief, or there is no concrete adversity of interest between the parties are moot. See Advance Elec. Co., Inc. v. Montgomery Twp. Bd. of Educ., 351 N.J. Super. 160, 166 (App. Div. 2002) (citing Anderson v. Sills, 143 N.J. Super. 432, 437 (Ch. Div. 1976)).

In the petition for due process the petitioner sought placement at Fusion Academy. Respondent, despite its disagreement over the appropriateness of such a placement, in the settlement conference agreed to place M.B. at Fusion Academy. Therefore, there is no dispute as to where M.B. should be placed and the issue is moot. It should be noted that the only reason M.B. is not currently enrolled in Fusion Academy is petitioner’s failure to comply with the admissions requirements of Fusion Academy.

Furthermore, the petitioner seeks to have the respondent report to Social Security that M.B. did not drop out of school and is still entitled to benefits. Social Security determinations are outside the scope of the Office of Administrative Law. Social Security eligibility determinations must be appealed through the Social Security Administration. See 20 C.F.R. 404.907 (2018).

Under the Court Rules, when a court reviews a motion to dismiss for failure to state a claim pursuant to R. 4:6-2(e), it must assume the truth of the non-moving party's allegations and give the non-moving party the benefit of all factual inferences that its allegations support. "The standard traditionally utilized by courts to determine whether to dismiss a pleading for failure to state a claim on which relief may be granted is a generous one." Green v. Morgan Props., 215 N.J. 431, 451 (2013). As the Court explained:

[i]n reviewing a complaint dismissed under Rule 4:6-2(e) our inquiry is limited to examining the legal sufficiency of the facts alleged on the face of the complaint. The essential test is simply whether a cause of action is suggested by the facts.

In exercising this important function, a reviewing court searches the complaint in depth and with liberality to ascertain whether the fundament of a cause of action may be gleaned even from an obscure statement of claim, opportunity being given to amend if necessary.

Moreover, the court is not concerned with the ability of plaintiffs to prove the allegation contained in the complaint, rather, plaintiffs are entitled to every reasonable inference of fact. As we have stressed, the examination of a complaint's allegations of fact required by the aforestated principles should be one that is at once painstaking and undertaken with a generous and hospitable approach.

[Id. at 451–52. (internal quotation marks and citations omitted).]

In the present matter, respondent's motion to dismiss for failure to state a cause of action is appropriately granted, as the OAL does not have jurisdiction to decide a claim under the Social Security Act. See 20 C.F.R. 404.907 (2018).

**ORDER**

It is therefore **ORDERED** that the due-process petition is **DISMISSED**.

This decision is final pursuant to 20 U.S.C. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2017) 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 (2017). 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 Programs.

July 9, 2018

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DATE

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**LESLIE Z. CELENTANO, ALJ**

Date Received at Agency

July 9, 2018

Date Mailed to Parties:  
dr

July 9, 2018