

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. EDS 15780-18

AGENCY DKT. NO. 2019-28751

S.M. ON BEHALF OF L.T.,

Petitioner,

v.

MAHWAH TOWNSHIP

BOARD OF EDUCATION,

Respondent.

S.M., petitioner, pro se

Nathanya G. Simon, Esq., for respondent (Scarinci & Hollenbeck, LLC,
attorneys)

Record Closed: July 22, 2019

Decided: August 5, 2019

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

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

On September 5, 2018, petitioner S.M., on behalf of L.T., filed for an emergent-relief hearing; however, the Office of Special Education Programs (OSEP) determined that emergent-relief criteria was not met, and so the request was denied. According to the transmittal, the parties adjourned the matter until October 29, 2018, and after the matter did not resolve at mediation, OSEP transmitted the case to the Office of Administrative Law (OAL) for hearing. Multiple settlement and telephone conferences

were held, and on February 21, 2019, the case was assigned to the undersigned for hearing.

On March 8, 2019, a telephone prehearing conference was scheduled, but it was adjourned at the parties' request. Telephone conferences were held on April 5, 2019, and April 29, 2019.

The matter did not resolve, and was scheduled for hearing on September 20, 2019. A motion for summary decision was filed by respondent Mahwah Township Board of Education ("Board" or "District") on June 28, 2019, and on July 19, 2019, petitioner withdrew her due-process petition, without prejudice. On July 22, 2019, petitioner rescinded her withdrawal and filed her opposition to the motion.

FACTUAL DISCUSSION

L.T. is a nine-year-old student, classified multiply disabled, and is domiciled in Mahwah Township, New Jersey. The District is the local education agency (LEA) responsible for providing L.T. with a free appropriate public education in the least restrictive environment. L.T. currently attends the Inclusive Learning Academy, an out-of-district placement located in Kinnelon, New Jersey. L.T. is provided with a 1:1 licensed practical nurse (LPN) for bus transportation and in school due to medical needs arising from diagnoses of cerebral palsy and a seizure disorder.

On or about September 5, 2018, petitioner filed a due-process petition ("Petition"), alleging that the Board did not have a back-up mechanism to utilize if the primary nursing agency they contracted with could not arrange for a substitute LPN for L.T., if their primary nurse was sick or had an emergency. Petitioner requested that the Board contract with a second nursing agency to provide a substitute, in case of an instance where the primary nursing agency could not provide its own substitute. In response to petitioner's request, on or around October 5, 2018, the District arranged for another nursing agency to provide back-up LPN services.

On or about October 16, 2018, the original nursing agency stated that they were unable to provide LPN services to L.T. as of October 19, 2018. In the message to the District, the agency reasoned that petitioner was extremely challenging to work with and that petitioner's constant demands of the agency, incessant phone calls and emails, and expressed dissatisfaction with two of their nurses prompted them to remove their services. Fortunately, the agency that had been serving as the back-up agency agreed to become the primary agency, commencing the following Monday, October 22, 2018.¹ The District and the now primary agency discussed and agreed to terms pertaining to L.T.'s needs in an LPN. The District outlined these terms and sent them to petitioner, who continued to raise issues regarding the transportation.

On or about November 12, 2018, the District contracted with a second nursing agency to provide back-up substitute LPN coverage if the primary agency was unable to provide their own LPN or a substitute LPN. Petitioner was notified that the two contracts, with a primary agency and with a back-up agency, were now in place. The Board requested that petitioner withdraw the Petition, as the requested relief had now been fully granted. Petitioner failed to withdraw the Petition.

On February 26, 2019, at an Annual Review IEP meeting for L.T., the District proposed to continue providing a 1:1 LPN for L.T. for her bus transportation and at school. Petitioner has still not withdrawn the Petition, and a hearing is scheduled for September 20, 2019. The Board filed a motion for summary decision on June 28, 2019, to dismiss with prejudice on the basis that the Petition is now moot. Petitioner withdrew her petition on July 19, 2019, but on July 22, 2019, rescinded her withdrawal.

Parties' Arguments

The Board argues that the present matter is ripe for summary decision and dismissal with prejudice, as petitioner has already received all the requested relief sought in her Petition. The Board maintains agreements with two separate nursing agencies to provide LPN services for L.T., and those agreements will renew for the

¹ Thus, there was no interruption in nursing services.

upcoming school year and each subsequent year unless terminated by the parties. The Board argues that petitioner's refusal to withdraw this Petition, along with petitioner's raising issues unrelated to the present Petition, is unreasonable and constitutes a form of harassment to the Board and District staff. In the Board's motion for summary decision, the Board reserves all rights to seek petitioner's contribution to and reimbursement of reasonable attorney's fees and costs incurred for the continued necessity of litigation as petitioner continues attempting to force an evidentiary hearing.

Petitioner, a pro se parent, has a lengthy list of complaints against the District. Some of these complaints date back to L.T.'s first day of school in 2013, and many of the issues with the District do not relate to the Petition at issue. Regarding the present matter, the back-up mechanism for a substitute LPN, petitioner argues that the substitute must be available to meet with L.T. and understand her needs and medications before taking her to school for the day.

ANALYSIS

A motion for summary decision may be granted 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. See N.J.A.C. 1:1-12.5(b). "An adverse party in order to prevail must by responding affidavit set forth specific facts showing that there is a genuine issue which can only be determined in an evidentiary proceeding," within twenty days of service of the motion. Ibid. If an adverse party fails to respond to the motion, "a summary decision, if appropriate, shall be entered." Ibid.

"[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 (3d Cir. 2003) (citing Powell v. McCormack, 395 U.S. 486, 496 (1969)); Anderson v. Sills, 143 N.J. Super. 432, 437 (Ch. Div. 1976). A case is considered "'moot' when the decision sought . . . can have no practical effect on the existing controversy." Greenfield v. N.J. Dep't of Corr., 382 N.J. Super. 254, 257-58 (App. Div. 2006). A case will be deemed moot where "the conflict between the parties

has become merely hypothetical.” In re Conroy, 190 N.J. Super. 453, 458 (App. Div. 1983).

In P.S. ex rel. I.S. v. Edgewater Park Township Board of Education, 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 her 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 due to the same. The parent wanted to continue the hearing to resolve other disagreements she had over the program that would be provided to the child at her requested placement. The administrative law judge (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 if they chose to do so.

Here, petitioner alleged that L.T. would be unable to attend school if her 1:1 LPN were unavailable and the District did not contract with an additional nursing agency as a back-up mechanism. At the time of the Petition, the Board had contracted with a primary agency and then reached an agreement with another agency for back-up substitute LPN services. When the primary agency removed their services to L.T., the Board contracted with the back-up agency to serve as the new primary agency, and with another back-up agency without delay or any break in service.

The District has maintained contracts with the two nursing agencies without interruption since November 12, 2018. The contracts will renew for the upcoming school year and each year thereafter unless terminated by the parties. Thus, I **FIND** that there is no actual controversy to be decided, and that petitioner has received the relief sought in the Petition. I therefore **CONCLUDE** that as in Edgewater, the Petition should be dismissed as moot.

Here, as in Edgewater, petitioner desires to continue with the scheduled evidentiary hearing to address other issues she alleges she has had with the District

outside of the present Petition. It is her right to file for due process again in the future, if she chooses to do so, to remedy what other issues she may have with the District. However, the issues she continues to raise with the District are not related to the District's contracts with the two nursing agencies for 1:1 LPN services for L.T.

CONCLUSION

Based upon all of the foregoing, I **CONCLUDE** that the Board's motion for summary decision to dismiss with prejudice petitioner's parental petition for due process should be granted based on mootness. The requested relief, contracts with a primary nursing agency and a second agency as a back-up mechanism in case of the primary agency's inability to provide a substitute, has been provided to petitioner. These contracts will not be terminated unless by one of the parties and will be in place for the upcoming school year. Any remaining issues that petitioner may have with the Board may be raised in another due-process petition in the future. I **CONCLUDE** that respondent is entitled to summary decision as a matter of law.

ORDER

For the reasons set forth above, it is hereby **ORDERED** that respondent's motion for summary decision is **GRANTED** and the petition is **DISMISSED**.

This decision is final pursuant to 20 U.S.C. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2019) 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 (2019). 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.

August 5, 2019

DATE

LESLIE Z. CELENTANO, ALJ

Date Received at Agency

August 5, 2019

Date Mailed to Parties:
dr
