

A.M., on behalf of minor child, O.M.,	:	
	:	
PETITIONER,	:	
	:	
V.	:	COMMISSIONER OF EDUCATION
	:	
BOARD OF EDUCATION OF THE	:	DECISION
BOROUGH OF MAYWOOD,	:	
BERGEN COUNTY,	:	
	:	
RESPONDENTS.	:	

SYNOPSIS

Pro se petitioner A.M. challenged the decision of the respondent Board to retain O.M. in kindergarten for the 2017-2018 school year. Petitioner initially sought to have O.M. promoted to first grade pursuant to an Emergent Relief application, which was denied because petitioner failed to demonstrate entitlement to emergent relief pursuant to *Crowe v. DeGioia*, 90 N.J. 126 (1982). The Commissioner issued a final decision in this matter on October 6, 2017, concurring with and adopting the OAL’s September 13, 2017 Order denying emergent relief. The matter was then scheduled for a plenary hearing before the OAL. The Board subsequently filed a motion for summary decision, asserting that the issue of O.M.’s promotion to first grade is moot and, accordingly, the petitioner’s appeal must be dismissed.

The ALJ found, *inter alia*, that: that there were no genuine issues of material fact in this case, and the matter is ripe for summary decision; an issue is considered moot when the determination sought, when rendered, can have no practical effect on the existing controversy; in the instant case, O.M. was not promoted, and has continued in kindergarten from September 2017 to the present; a hearing in the matter would have no practical effect since it is not reasonable to promote O.M. to the first grade in the Spring of 2018. The ALJ concluded that the matter is moot, and granted the Board’s motion for summary decision.

Upon consideration and review, the Commissioner concurred with the ALJ’s determination for the reasons expressed in the Initial Decision. The Commissioner noted that the assertion made by petitioner in his exceptions – that petitioner was “not allowed” to present his case during the Emergent Relief hearing – is without merit. Further, petitioner’s allegations regarding the ALJ’s conduct is not within the Commissioner’s jurisdiction, nor can the Commissioner award money damages relating to same. Accordingly, the Initial Decision of the OAL was adopted as the final decision in this matter, and the petition was dismissed with prejudice.

This synopsis is not part of the Commissioner’s decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.

OAL DKT. NO. EDU 12751-17
AGENCY DKT. NO. 196-8/17

A.M., on behalf of minor child, O.M., :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE : DECISION
BOROUGH OF MAYWOOD,
BERGEN COUNTY, :
RESPONDENTS. :

The record of this matter, the Initial Decision of the Office of Administrative Law (OAL), and petitioner’s exceptions have been reviewed. In this matter, petitioner challenged the Board’s decision to retain O.M. in kindergarten for the 2017-2018 school year. Petitioner filed a request for Emergent Relief in August 2017, seeking to have O.M. promoted to first grade; the requested relief was denied, as petitioner failed to demonstrate entitlement to same. The matter was then scheduled for a plenary hearing before the OAL. The Administrative Law Judge (ALJ), following receipt of petitioner’s letter correspondence of January 18, 2018, decided the matter on the papers and dismissed the case as moot – finding that a hearing on the merits would have no practical effect as it would be unreasonable to promote O.M. to first grade in the Spring of 2018.

Petitioner’s exceptions allege “misconduct” by the ALJ, and argue that petitioner was “not allowed” to present his case during the Emergent Relief hearing. Petitioner asserts that the relief sought – to advance O.M. to first grade – is now moot, but his allegations against the ALJ remain unresolved. Petitioner also seeks damages in the amount of \$100,000.

Upon consideration and review, the Commissioner is in accord with the ALJ's determination, for the reasons thoroughly set forth in the Initial Decision. The Commissioner notes, however, that petitioner's assertion that he was "not allowed" to present his case is without merit, as the ALJ's Order on Emergent Relief clearly set forth and considered petitioner's contentions – despite petitioner's failure to comply with *N.J.A.C.* 6A:3-1.9 and *N.J.A.C.* 1:1-5.4. Furthermore, the ALJ considered the parties' submissions and arguments – specifically the parties' agreement that the matter was now moot and a plenary hearing was not necessary – in rendering the Initial Decision. Lastly, any allegations pertaining to an ALJ's conduct is not within the Commissioner's jurisdiction, nor can the Commissioner award money damages relating to same. Therefore, petitioner's arguments concerning the ALJ in this matter, and his request for money damages, are improperly raised in his exceptions.

Accordingly, the recommended decision of the ALJ is adopted as the final decision in this matter. Respondent's motion for summary decision is granted and the petition of appeal is hereby dismissed with prejudice.

IT IS SO ORDERED.¹

ACTING COMMISSIONER OF EDUCATION

Date of Decision: March 8, 2018

Date of Mailing: March 8, 2018

¹ This decision may be appealed to the Superior Court, Appellate Division, pursuant to *P.L.* 2008, c. 36 (*N.J.S.A.* 18A:6-9.1).



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION GRANTING

SUMMARY DECISION

OAL DKT. NO. EDU 12751-17

AGENCY DKT. NO. 196-8/17

A.M. on behalf of minor child O.M.,

Petitioner,

v.

**BOARD OF EDUCATION OF THE BOROUGH
OF MAYWOOD, BERGEN COUNTY,**

Respondent.

A.M., petitioner, pro se

Amy E. Canning, Esq., for respondent (Fogarty and Hara, attorneys)

Record Closed: January 18, 2018

Decided: January 26, 2018

BEFORE **EVELYN J. MAROSE**, ALJ:

Petitioner, A.M. o/b/o O.M., challenged the decision of Respondent, the Board of Education of the Borough of Maywood (Board), to retain O.M. in Kindergarten for the 2017-2018 School Year. The matter was transmitted to the Office of Administrative Law on August 29, 2017.

Petitioner initially sought to have O.M. promoted to first grade pursuant to Emergent Relief. After reviewing several hundred papers submitted in support of and in

opposition to Emergent Relief, an Order Denying Emergent Relief was entered in September 13, 2017. That Order was forwarded to the parties and the Commissioner of Education. On October 6, 2017, the Commissioner of Education issued a Final Decision, concurring that petitioner had failed to demonstrate entitlement to emergent relief pursuant to Crowe v. DeGioia, 90 N.J. 126 (1982) and codified at N.J.A.C. 6A:3-1.6, and adopting the September 13, 2017 OAL Order for the reasons set forth therein. The Commissioner further noted that the “matter shall continue at the OAL with such proceedings as the parties and ALJ deem necessary to bring it to closure.” Accordingly, in November 2017, upon receipt of the Commissioner of Education’s Final Decision, a Due Process Hearing was scheduled for January 30, 2018.

The Board filed a Motion for Summary Decision on December 29, 2017. The Board asserted that O.M.’s promotion to first grade is no longer practical or feasible and therefore this matter has become purely academic, and in the interests of judicial economy and restraint necessitates dismissal pursuant to the doctrine of mootness. The Petitioner filed responding papers on January 18, 2018. Petitioner asserted his disagreement with the Initial Order and the Final Decision of the Commissioner, but agreed that there was no benefit to a hearing on O.M. being promoted at this time since she has been retained in kindergarten for the 2017-18 academic year.

STANDARD FOR SUMMARY DECISION

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.” N.J.A.C. 1:1-12.5(b).

The standard for granting summary judgment (decision) is found in Brill v. Guardian Life Insurance Company of America, 142 N.J. 520 (1995). In Brill, the Court looked at the precedents established in Matsushita Electrical Industrial Co. v. Zenith Radio Corporation, 475 U.S. 574, 106 S. Ct. 1348, 89 L. Ed. 2d 538 (1986), Anderson v. Liberty Lobby, 477 U.S. 242, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986), and Celotex Corporation v. Catrett, 477 U.S. 317, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986), wherein

the Supreme Court adopted a standard that “requires the motion judge to engage in an analytical process essentially the same as that necessary to rule on a motion for a direct verdict: ‘whether the evidence presents a sufficient disagreement to require submission to a Jury or whether it is so one-sided that one party must prevail as a matter of law.’” Brill, 142 N.J. at 533 (quoting Liberty Lobby, 477 U.S. at 251-52, 106 S. Ct. at 2512, 91 L. Ed. 2d at 214). The Court stated that under the new standard,

a determination whether there exists a “genuine issue” of material fact that precludes summary judgment requires the motion judge 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. The “judge’s function is not himself [or herself] to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial.”

[Brill, 142 N.J. at 540 (quoting Liberty Lobby, 477 U.S. at 249, 106 S. Ct. at 2511, 91 L. Ed. 2d at 212).]

The Brill standard contemplates that the analysis performed by the trial judge in determining whether to grant summary judgment should comprehend the evidentiary standard to be applied to the case or issue if it went to trial. “To send a case to trial, knowing that a rational Jury can reach but one conclusion, is indeed ‘worthless’ and will ‘serve no useful purpose.’” Brill, 142 N.J. at 541.

In addressing whether the Brill standard has been met in this case, further guidance is found in R. 4:46-2(c):

An issue of fact is genuine only if, considering the burden of persuasion at trial, the evidence submitted by the parties on the motion, together with all legitimate inferences therefrom favoring the non-moving party, would require submission of the issue to the trier of fact.

An issue is considered moot “when a determination is sought on a matter which, when rendered, cannot have any practical effect on the existing controversy.” The doctrine of mootness should be disregarded only with regard to “those cases in which the challenge relates to a matter of public interest, capable of repetition, yet evading

review.” L.H. and L.H. o/b/o H.R. v. Rahway Bd of Educ., OAL DKT. No. EDU 05449-00 (Nov. 14, 2002), aff’d following remand Comm’r (Nov. 18, 2002).

STATEMENT OF FACTS & LEGAL ARGUMENT

It is uncontroverted that O.M. was not promoted and accordingly has been attending kindergarten from September 2017 to date. A hearing of this matter cannot have any practical effect since it would not be reasonable to promote O.M. to the first grade in the Spring of 2018, without the benefit of academics that first grade students have been receiving since September. It would also not be reasonable to promote her directly into second grade for the 2018-19 school year, without the benefit of a year of first grade academics.

I **FIND** that this matter is moot. I also **FIND** that this matter is not appropriate for hearing based upon the limited and narrow exception to the general doctrine of mootness, since promotion and retention issues are challenged with sufficient regularity to reserve judicial review for live controversies where such relief is available. I **CONCLUDE** that this matter is ripe for Summary Decision.

ORDER

I hereby **ORDER** that the Board’s Motion for Summary Judgment is **GRANTED**.

I hereby **FILE** my Initial Decision with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

This order on application for emergency relief may be adopted, modified or rejected by the **COMMISSIONER OF EDUCATION**, who by law is authorized to make a final decision in this matter. The final decision shall be issued without undue delay, but no later than forty-five (45) days following the entry of this order. If the **COMMISSIONER OF EDUCATION** does not adopt, modify or reject this order within forty-five days, this recommended order shall become a final decision on the issue of emergent relief in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **DIRECTOR, BUREAU OF CONTROVERIES AND DISPUTES, NEW JERSEY DEPARTMENT OF EDUCATION, 100 Riverview Plaza, Route 29, P.O. Box 500, Trenton, New Jersey 08625**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.



January 26, 2018

DATE

EVELYN J. MAROSE, ALJ

Date Received at Agency:

January 26, 2018

Date Mailed to Parties:

sej