



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

SUMMARY DECISION

OAL DKT. NO. EDS 01898-22

AGENCY DKT. NO. 2022-33886

S.B. ON BEHALF OF D.H.,

Petitioner,

v.

**CAMDEN PREP, INC. BOARD OF
EDUCATION,**

Respondent.

Shawn Beckett, Esq., for petitioner (Beckett Key Law Group, attorneys)

Teresa L. Moore, Esq., for respondent (Riker, Danzig, Scherer, Hyland & Perretti,
LLP attorneys)

Record Closed: June 1, 2023

Decided: June 9, 2023

BEFORE **CATHERINE A. TUOHY**, ALJ:

STATEMENT OF THE CASE

In accordance with the provisions of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1415, S.B. has requested a due process hearing on behalf of her daughter, D.H., seeking the completion of child study team evaluations, eligibility for

special education and related services, an appropriate program in a structured placement with a 1:1 aide and behavioral supports, along with the development of an appropriate IEP.

PROCEDURAL HISTORY

On or about February 1, 2022, petitioner filed a due process petition with the Office of Special Education (OSE) seeking on behalf of minor student, D.H., the completion of child study team evaluations, eligibility for special education and related services, an appropriate program in a structured placement with a 1:1 aide and behavioral supports, along with the development of an appropriate IEP. The matter was transmitted to the Office of Administrative Law (OAL) where it was filed as a contested case on March 14, 2022, pursuant to N.J.S.A. 52:14B-1 to 15; N.J.S.A. 52:14F-1 to 13. Respondent filed its answer to the due process petition on July 5, 2022. A prehearing telephone conference was conducted on July 6, 2022, and a prehearing order entered on July 8, 2022, scheduling the matter for a hearing on September 14, 2023, September 15, 2023, and September 22, 2023. Thereafter, on or about July 8, 2022, petitioner amended her petition seeking an out-of-district placement for D.H. A telephone prehearing conference was conducted on August 22, 2022, wherein the District consented to petitioner's request for an out-of-district placement. A settlement agreement was prepared and forwarded to petitioner shortly thereafter. Numerous follow up telephone conferences have been conducted but petitioner has not executed the settlement agreement.

Respondent filed a motion for summary decision on April 24, 2023, with a supporting certification of counsel, arguing that this matter is now moot as petitioner has received all of the relief requested in her initial and amended due process petitions. Petitioner has filed no opposition to respondent's motion for summary decision and the motion record closed June 1, 2023.

FACTUAL DISCUSSIONS AND FINDINGS

Pursuant to the April 24, 2023, certification of counsel submitted by respondent in support of its motion for summary decision, and unopposed by petitioner, the following facts are not in dispute and thus are **FOUND** as **FACT**:

On or about February 1, 2022, S.B. requested a due process hearing on behalf of her daughter, D.H., seeking the completion of child study team evaluations, eligibility for special education and related services, an appropriate program in a structured placement with a 1:1 aide and behavioral supports, along with the development of an appropriate IEP.

As of February 10, 2022, respondent had evaluated D.H.'s eligibility for special education and found her eligible. On February 16, 2022, respondent agreed to provide a 1:1 aide for D.H.

During the balance of the 2022–2023 school year, respondent was unable to hire an aide for D.H., but used its certified teaching staff as aides for her.

Petitioner was dissatisfied with D.H.'s placement at Camden Prep and on or about July 8, 2022, petitioner amended her petition for due process to seek an out-of-district placement for D.H.

In the summer 2022, D.H. was accepted to the Archway School at Cooper's Poynt in Camden, New Jersey, and respondent agreed to place D.H. at Archway at respondent's expense.

D.H. has attended Archway School at Cooper's Poynt since the start of the 2022–2023 school year at respondent's expense.

In August 2022, Teresa L. Moore, Esq., on behalf of respondent, Camden Prep, offered a settlement agreement for petitioner to execute, but petitioner has refused to execute the settlement agreement.

All of the relief sought in the original and amended petitions has been provided to D.H.

LEGAL DISCUSSION AND ANALYSIS

N.J.A.C. 1:1-12.5(b) provides that summary decision should be rendered “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.” Our regulation mirrors R. 4:46-2(c), which provides that “[t]he judgment or order sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories and admissions on file, 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 a judgment or order as a matter of law.”

A determination whether a genuine issue of material fact exists that precludes summary decision requires the 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. Our courts have long held that “if the opposing party . . . offers . . . only facts which are immaterial or of an insubstantial nature, a mere scintilla, ‘Fanciful, frivolous, gauzy or merely suspicious,’ he will not be heard to complain if the court grants summary judgment.” Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 529 (1995) (citing Judson v. Peoples Bank & Trust Co., 17 N.J. 67, 75 (1954)). 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 (citing Anderson v. Liberty Lobby, 477 U.S. 242, 249 (1986)). When the evidence “is so one-sided that one party must prevail as a matter of law,” the trial court should not hesitate to grant summary judgment. Liberty Lobby, 477 U.S. at 252.

I CONCLUDE that this matter is ripe for summary decision since there are no issues of material fact in dispute and that respondent is entitled to summary decision as a matter of law as set forth below.

The issues for disposition are limited to the claims set forth in the due process petition. 20 U.S.C. § 1415(f)(3)(B); See, N.J.A.C. 6A:14-2.7(c) (the request for due process must “state the specific issues in dispute, relevant facts and the relief sought”.) The regulations provide that “a request for due process hearing . . . serves as notice to the respondent of the issues in the due process complaint.” N.J.A.C. 6A:14-2.7(f). This is especially more important where, as in New Jersey, a respondent school district has the burden of proof and the burden of moving forward. See N.J.S.A. 18A:46-1.1.

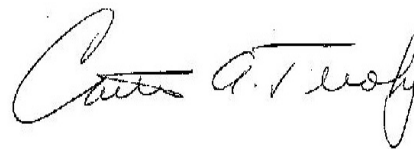
Respondent moved for summary decision supported by a certification of counsel dated April 24, 2023, arguing that it has provided petitioner with the relief requested in her initial and amended due process petition, yet petitioner refuses to resolve the matter. The Board submits that the undisputed facts indicate the District has provided all the relief requested and there is no issue left before this tribunal to resolve. D.H. was evaluated and found eligible for special education and related services and placed out-of-district at the Archway School at Cooper’s Poynt at petitioner’s request and at respondent’s expense since the beginning of the 2022–2023 school year. Essentially, the claims of the petition have been rendered moot, and I agree. 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); J.L. and K.D. o/b/o J.L. v. Harrison Twp. Bd. of Educ., EDS 13858-13, Final Decision (January 28, 2014) <<http://lawlibrary.rutgers.edu/oal/search.html>>. The District has provided petitioner with what she requested in her initial and amended due process petitions and is therefore entitled to summary decision dismissing the petitions.

I **CONCLUDE** that respondent is entitled to summary decision dismissing petitioner’s due process petitions as moot.

ORDER

It is hereby **ORDERED** that respondent's motion for summary decision be **GRANTED**. Petitioner's initial and amended due process petitions are **DISMISSED**.

This decision is final pursuant to 20 U.S.C.A. § 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.A. § 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.



June 9, 2023 _____

DATE

CATHERINE A. TUOHY, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

CAT/gd

APPENDIX

EXHIBITS

For petitioner

None

For respondent

Notice of Motion for Summary Decision with supporting Certification of Counsel,
Theresa L. Moore, Esq., dated April 24, 2023