State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION
OAL DKT. NO. EDS 10020-22
AGENCY DKT. NO. 2023-34827

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, attorneys)

Record Closed: March 23, 2023 Decided: April 5, 2023

BEFORE **MARGARET M. MONACO**, ALJ:

STATEMENT OF THE CASE

This matter arises under the Individuals with Disabilities Education Act, 20 U.S.C. § 1400, et seq., (the IDEA), and the implementing federal and state regulations. S.M., on behalf of her daughter, L.T., contests L.T.'s placement at the Inclusive Learning Academy (ILA).

PROCEDURAL HISTORY

On or about August 9, 2022, petitioner filed a request for due process (the Petition) with the Office of Special Education (OSE). The OSE transmitted the matter to the Office of Administrative Law (OAL), where it was filed for hearing on November 7, 2022. On or about November 21, 2022, the Mahwah Township Board of Education (the District) filed its Answer to Petition For Due Process With Affirmative Defenses. A prehearing conference was held on January 24, 2023, and a prehearing order was issued on January 30, 2023, which memorializes that the hearing was scheduled for March 28, 2023. The prehearing order further provides that the District "intends to file a motion that the within matter is moot"; the District "shall file the motion on or before February 10, 2023"; and "[p]etitioner shall file a response on or before February 24, 2023." On February 9, 2023, the District filed a motion for summary decision and submitted a brief with supporting exhibits, along with a certification of the District's Director of Special Services, Lisa Rizzo. Petitioner did not respond to the motion by the February 24, 2023 deadline. On March 3, 2023, counsel for the Board requested a ruling on the motion since petitioner had not withdrawn the Petition or filed a response to the motion. Petitioner later sent an e-mail on March 3, 2023, advising that she was "going to officially respond" to the motion and requesting advice regarding the "deadline for [her] response." In response, I informed the parties by e-mail on March 3, 2023, that, although the deadline for petitioner's submission, as discussed during the prehearing conference and memorialized in the prehearing order, was February 24, 2023, I would extend the time in which petitioner could file a response to March 8, 2023. Petitioner filed a response to the motion on March 8, 2023. In view of the pending motion, and the undersigned's request for supplemental submissions, the hearing was adjourned at the District's request and rescheduled for April 17, 2023. On March 16, 2023, the District filed a supplemental brief with a supporting exhibit, along with second certification of Lisa Rizzo (Rizzo Cert.). On March 23, 2023, petitioner filed a response accompanied by various documentation.

FINDINGS OF FACT

Based upon a review of the documentary evidence presented, I **FIND** the following pertinent **FACTS**:

L.T. is twelve years of age and in the seventh grade. (Rizzo Cert. ¶ at 2.) Pursuant to the May 2022 IEP in place at the time petitioner filed her Petition, L.T. was deemed eligible for special education and related services under the classification category of multiply disabled. (Ibid.)[1] See May 2022 IEP attached as Exhibit C to the District's February 9, 2023 brief. Prior to the 2022–2023 school year, L.T. attended an out of district placement, ILA. (Rizzo Cert. at ¶ 4.) The May 2022 IEP provided for the continuation of an out of district placement for the 2022–2023 school year, and the District was prepared to continue placement at ILA. See May 2022 IEP; Rizzo Cert. at ¶ 4.

On or about August 9, 2022, petitioner filed the instant Petition contesting L.T.'s placement at ILA.[2] In her Petition, petitioner describes how the problem can be resolved as follows:

> Temporary placement back in district until new placement, mutually agreed upon, is selected. District behaviorist, Mrs. Bussellini, Regina, who has 1:1 history, oversee & write a new behavior plan.

On August 23, 2022, ILA notified petitioner and District staff that ILA would not be reopening in September 2022 due to decreased enrollment. See August 23, 2022 e-mail attached as Exhibit D to the District's February 9, 2023 brief; Rizzo Cert. at ¶ 4. [3]

On August 26, 2022, the District convened a meeting with school staff and the parents to discuss the change in placement that now needed to occur for the 2022–2023

[1] L.T.'s classification category was recently changed to specific learning disability. (Rizzo Cert. at ¶ 2.)
[2] Petitioner also filed a request for emergent relief (OAL Dkt. No. EDS 06913-22), seeking an immediate change in placement from ILA. See Exhibit A attached to the District's February 9, 2023 brief. By Decision dated August 18, 2022, Administrative Law Judge Ernest M. Bongiovanni denied petitioner's application "to immediately change L.T.'s continued out of district placement at [ILA], pending a final due process hearing[.]" See Final Decision Denying Emergent Relief attached to the District's March 16, 2023 brief.
[3] Petitioner filed a second request for emergent relief on or about August 24, 2022 (OAL Dkt. No. EDS 07399-22), which, according to the OAL's records, was ultimately withdrawn. See Exhibit B attached to the District's February 9, 2023 brief.

school year. At that meeting, the parents indicated that they wanted L.T. to return to attend school in Mahwah, and a plan was developed for L.T. to return to a program and placement in Mahwah. See Rizzo Cert. at ¶ 4; meeting notes dated August 26, 2022 attached as Exhibit E to the District's February 9, 2023 brief.[4]

L.T. transitioned into the program starting on the first day of school in September 2022 and continues in the program in District to date. (Rizzo Cert. at ¶ 4.) A new IEP for the program and placement in Mahwah was developed and formalized in October 2022. See Id. at ¶¶ 4, 6; October 2022 IEP attached as Exhibit G to the District's February 9, 2023 brief.[5]

LEGAL DISCUSSION AND CONCLUSIONS

Pursuant to N.J.A.C. 1:1-12.5(b), summary decision "may 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." This rule is substantially similar to the summary-judgment rule embodied in the New Jersey Court Rules. See Judson v. Peoples Bank & Trust Co. of Westfield, 17 N.J. 67, 74 (1954). In Brill v. Guardian Life Insurance Co., 142 N.J. 520, 540 (1995), the New Jersey Supreme Court addressed the appropriate test to be employed in deciding the motion:

[4] The District's brief notes that petitioner had filed a petition for due process during the 2021–2022 school year challenging aspects to the ILA program and placement, and the District had filed a petition for due process opposing the request for an independent FBA. These matters were assigned to Administrative Law Judge Thomas R. Betancourt and consolidated (OAL Dkt. Nos. EDS 00823-22 and EDS 02482-22). Based on the change in L.T.'s placement, the District filed a motion for summary decision, arguing that the due process issues were moot. On November 30, 2022, Judge Betancourt issued a Final Decision granting the District's motion for summary decision and dismissing petitioner's petition for due process with prejudice. In this regard, Judge Betancourt explained: "None of the relief requested in Petitioner's due process is available as ILA is closed. That matter is moot. This is inclusive of Petitioner's request for an independent FBA, as that request is directly related to the program at ILA." See Final Decision attached as Exhibit H to the District's February 9, 2023 brief.

[5] The District's brief notes that petitioner filed a due process petition after L.T. transitioned into Mahwah involving the October 2022 IEP and the program in Mahwah that started in September 2022, which is pending before Administrative Law Judge Elissa Mizzone Testa (OAL Dkt. Nos. EDS 11066- 22 and EDS 00426-23).

> [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 factfinder to resolve the alleged disputed issue in favor of the non-moving party. The "judge's function is not . . . to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial." . . . . If there exists a single, unavoidable resolution of the alleged disputed issue of fact, that issue should be considered insufficient to constitute a "genuine" issue of material fact for purposes of Rule 4:46-2.
>
> [Citations omitted.]

In evaluating the merits of the motion, all inferences of doubt are drawn against the movant and in favor of the party against whom the motion is directed. Judson, 17 N.J. at 75. However, "[w]hen a motion for summary decision is made and supported, 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." N.J.A.C. 1:1-12.5(b). The New Jersey Supreme Court has cautioned that, "if the opposing party offers no affidavits or matter in opposition, or only facts which are immaterial or of an insubstantial nature, a mere scintilla, . . . '[f]anciful, frivolous, gauzy or merely suspicious' . . ., he will not be heard to complain if the court grants summary judgment, taking as true the statement of uncontradicted facts in the papers relied upon by the moving party, such papers themselves not otherwise showing the existence of an issue of material fact." Judson, 17 N.J. at 75 (citation omitted). Stated differently, "[b]are conclusions . . . without factual support in tendered affidavits, will not defeat a meritorious application for summary judgment." U.S. Pipe & Foundry Co. v. Am. Arbitration Ass'n, 67 N.J. Super. 384, 399-400 (App.Div.1961). Likewise, unsupported, and self-serving statements, standing alone, are insufficient to create a genuine issue of material fact. Heyert v. Taddese, 431 N.J. Super. 388, 413-414 (App. Div. 2013). And the "non-moving party cannot defeat a motion for summary judgment merely by pointing to any fact in dispute." Brill, 142 N.J. at 529. Disputed issues of fact that are immaterial or of an insubstantial nature will not suffice. Ibid. Rather, "[c]ompetent opposition requires 'competent evidential material' beyond mere 'speculation' and 'fanciful arguments,'" Cortez v. Gindhart, 435 N.J. Super. 589, 605 (App. Div. 2014), certif. denied, 220 N.J.

269 (2015) (citation omitted), and the party opposing the motion "'must do more than simply show that there is some metaphysical doubt as to the material facts.'" Alfano v. Schaud, 429 N.J. Super. 469, 474 (App. Div. 2013), certif. denied, 214 N.J. 119 (2013) (citation omitted).

Against this backdrop, the District contends that the claims set forth in the Petition are moot since it is undisputed that ILA has closed and the District has already granted petitioner her demanded relief. Based upon the foregoing facts and the applicable law, I **CONCLUDE** that there is no genuine issue as to any material fact and that the matter is ripe for summary decision.

It is firmly established that "questions that have become moot or academic prior to judicial scrutiny generally have been held to be an improper subject for judicial review." Anderson v. Sills, 143 N.J. Super. 432, 437 (Ch. Div. 1976); see Oxfeld v. New Jersey State Board of Education, 68 N.J. 301 (1975). In this regard, "for reasons of judicial economy and restraint, courts will not decide cases in which the issue is hypothetical, a judgment cannot grant effective relief, or the parties do not have concrete adversity of interest." Anderson, 143 N.J. Super. at 437.

"'[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) (quoting Powell v. McCormack, 395 U.S. 486, 496 (1969)). A "court's ability to grant effective relief lies at the heart of the mootness doctrine." Ibid. In other words, '"[i]f developments occur during the course of adjudication that eliminate a plaintiff's personal stake in the outcome of a suit or prevent a court from being able to grant the requested relief, the case must be dismissed as moot.'" Ibid. (quoting Blanciak v. Allegheny Ludlum Corp., 77 F.3d 690, 698-699 (3d Cir. 1996)). A case is considered to be moot "'when the decision sought in a matter, when rendered, can have no practical effect on the existing controversy.'" Greenfield v. New Jersey Dep't of Corrections, 382 N.J. Super. 254, 257-58 (App. Div. 2006) (citation omitted). An action is also moot when it no longer presents a justiciable controversy because the issues raised have been resolved. Betancourt v. Trinitas Hosp., 415 N.J. Super. 301, 311 (App. Div. 2010). See S.J o/b/o J.J v.Willingboro Bd. of Educ., EDS 14567-13 (February 19, 2014) http://njlaw.rutgers.edu/collections/oal/ (dismissing parent's petition as moot where

the specific relief sought by the parent, i.e. a qualified one-on-one aide, was provided as a related service in a later IEP).; P.S. o/b/o I.S. v. Edgewater Park Twp. Bd. of Educ., EDS 10418-04 (October 31, 2005) http://njlaw.rutgers.edu/collections/oal/ (dismissing parent's petition as moot where the IEP team accepted the parent's requested placement of I.S. at the Bancroft School).

In short, petitioner's Petition seeking a change in placement from ILA to Mahwah is moot. It is undisputed that ILA is now closed, and that L.T. transitioned into the in-District program in September 2022. The IEP that was challenged is no longer L.T.'s IEP, ILA is no longer her placement, and there is a new program, placement, and IEP. Since the requested change in placement has already occurred, petitioner has been granted her demanded relief and there is no further relief to which petitioner is entitled.

To the extent that petitioner's submissions assert other claims, the issues for disposition in this matter are limited to those set forth in petitioner's Petition, and petitioner cannot purse newly asserted claims in this proceeding. 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"). Additionally, there is no merit to petitioner's "cross-motion" requesting that the within matter, which is clearly moot, should now be consolidated with a new due process petition that petitioner filed on or about March 23, 2023.

Based upon the foregoing, I **CONCLUDE** that dismissal of petitioner's Petition with prejudice is warranted and petitioner's "cross-motion" should be denied.

ORDER

I **ORDER** that respondent's motion for summary decision be and hereby is **GRANTED** and that petitioner's cross-motion be and hereby is **DENIED**. I further **ORDER** that petitioner's Due Process Petition be and hereby is **DISMISSED WITH PREJUDICE**.

This decision is final pursuant to 20 U.S.C. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2022) 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 (2022). 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.

April 5, 2023
DATE

Margaret M Monaco
MARGARET M. MONACO, ALJ

Date Received at Agency

Date Mailed to Parties:

jb