

MR. AND MRS. T.F.S., on behalf of minor child, :
C.M.S., :

PETITIONERS, :

V. :

COMMISSIONER OF EDUCATION

BOARD OF EDUCATION OF :
SOUTH BRUNSWICK TOWNSHIP, :
MIDDLESEX COUNTY, :
DR. SAMUEL STEWART, SUPERINTENDENT :
OF SCHOOLS AND DEBRA JOHNSON, :
MAYOR, :

DECISION

RESPONDENTS. :

SYNOPSIS

Petitioners, in August 2002, challenged the respondent Board's decision denying their child transportation services to the Crossroads South Middle School; alleged that the walk route designated by the Board is unsafe; and demanded that the Board's decision be reversed as arbitrary, capricious and unreasonable. Four hearings occurred between October 2004 and February 2005, and the record closed on September 2, 2005. Subsequently, respondent submitted that C.M.S. is currently a student at South Brunswick High School, and is now receiving transportation services to and from school.

The ALJ concluded that given the change in circumstances, the issue is an improper subject for judicial review, and should be dismissed as moot. Therefore, the Initial Decision of the OAL recommended dismissal of the petition.

The Commissioner rejects the Initial Decision of the ALJ, finding that under the circumstances, the graduation of C.M.S. from the Crossroads Middle School does not render moot petitioners' action challenging the Board's refusal to bus C.M.S., as the specific action complained about is currently being repeated in regard to petitioners' younger child, J.R.S. The Commissioner notes that petitioners' claim they requested to amend their petition to substitute J.R.S. for C.M.S. prior to the ALJ's decision in this case, but were denied and told to file a new petition. The Commissioner concludes that no reasonable purpose would be served by requiring petitioners to file a new petition when the underlying facts, other than the name of the child, are identical; such an exercise would equate to a needless waste of scarce administrative and adjudicative resources. Accordingly, this matter is remanded to the OAL, where petitioners shall be allowed to submit an amended petition substituting J.R.S. for C.M.S.

<p>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.</p>

OAL DKT. NO. EDU 6674-02
AGENCY DKT. NO. 266-8/02

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. Petitioners' exceptions were filed in accordance with the requirements of *N.J.A.C.* 1:1-18.4. No reply exceptions were submitted.

Petitioners' exceptions vehemently oppose dismissal of this matter as moot by the Administrative Law Judge (ALJ). They assert that the instant Petition of Appeal was instituted over three years ago and now, "after much lengthy delay on the part of the OAL," is being dismissed, "after 4 full days of hearing, an extensive developed record, and final Briefs submitted by both Parties to this matter," solely because C.M.S. has moved on to high school. (Petitioners' Exceptions at 2) This result is particularly egregious, petitioners argue, since they now have a second child, J.R.S., who in September 2005 began attending the same school

previously attended by C.M.S., thereby continuing the same intolerable situation as previously existed as a consequence of the Board's determination here.

Petitioners claim that, prior to the ALJ's decision in this case, they communicated with him and made a "formal" request to amend their petition to substitute J.R.S. for C.M.S. and were refused, notwithstanding that *N.J.A.C. 1:1-6.2* clearly contemplates free amendment of pleadings. Rather, they report, the ALJ informed them that they would have to file a new petition and begin this whole case anew. (*Id.* at 2-3) Petitioners charge that bringing an entirely new action before the Commissioner on behalf of their second child "when the [second] child is exposed to the same Hazardous Parameters and conditions that existed in the matter with [their first] child" is senseless. (*Id.* at 3) They urge that the ALJ's decision be rejected and that this matter be remanded to the OAL for adjudication on the merits.

Upon careful and independent review of the record in this matter, the Commissioner determines to reject the Initial Decision of the ALJ, finding, instead, that under the circumstances, the graduation of petitioners' child, C.M.S., from the Crossroads South Middle School does not render moot the petitioners' action challenging the Board's refusal to bus their middle school child. In this regard, the Commissioner is mindful that:

An issue is "moot" when a determination is sought on a matter which, when rendered, cannot have any practical effect on the existing controversy. In other words, the conflict between the parties has become merely hypothetical. *See Black's Law Dictionary* 409 (5th ed. 1979), and *In re Conroy*, 190 *N.J. Super.* 453, 458 (App. Div. 1983)***. (*Barshatky v. Freehold Regional High School District Bd. of Educ.*, 95 *N.J.A.R.* 2d (EDU) 71, 73)

Although it is well-established that the Commissioner does not decide moot issues, (*See Carolyn Henry v. Board of Education of the City of Wildwood, Cape May County*, 1975 *S.L.D.* 1, 3), it is likewise well-established that an issue is not moot where the potential for

recurrence exists. *Galloway Township Board of Education v. Galloway Township Education Association*, 78 N.J. 25. Such is the case here. Notwithstanding C.M.S.'s graduation, as pointed out in petitioners' exceptions, their second child, J.R.S., began attendance at this same middle school in September 2005. As such, it is without question that the specific action of the Board complained about is currently being repeated.

Irrespective of the fact that the record in this matter evidences that the delays in the movement of this appeal — filed in August 2002 — are, in large measure, attributable to petitioners' own dilatoriness, in light of the stage of record development at this point in time and given that all of the underlying facts of this matter, other than the name of the specific child involved, are *identical*, the Commissioner finds and concludes that no reasonable purpose would be served by requiring petitioners to file an entirely new petition but, rather, such an exercise would equate to a needless waste of scarce administrative and adjudicative resources.

Accordingly, the Initial Decision of the OAL dismissing this case as moot is rejected. This matter is remanded to the OAL, where petitioners shall be allowed to submit an amended petition substituting J.R.S. for C.M.S., and this matter shall proceed for a determination on petitioners' underlying claim.

IT IS SO ORDERED.*

ACTING COMMISSIONER OF EDUCATION

Date of Decision: November 2, 2005

Date of Mailing: November 3, 2005

* This decision may be appealed to the State Board of Education pursuant to *N.J.S.A. 18A:6-27 et seq.* and *N.J.A.C. 6A:4-1.1 et seq.*