65-21

New Jersey Commissioner of Education

Final Decision

D.D., on behalf of minor child, A.B.,

Petitioner,

v.

Board of Education of the Town of West New York, Hudson County,

Respondent.

Synopsis

Petitioner contended that her son was unfairly suspended from school during the 2019-2020 school year and sought his reinstatement. The respondent Board replied that its actions were reasonable; compliant with applicable law and regulation; and that in any event, the suspension was lifted during the 2019-2020 school year, rendering petitioner's claims moot.

The ALJ found, *inter alia*, that: petitioner confirmed in January 2021 that the suspension at issue had been lifted, and A.B. had been returned to school remotely due to Covid-19; despite the fact that petitioner agreed to withdraw the instant petition, she failed to do so; the Board thereafter filed a motion to for summary decision. The ALJ concluded that, as the only relief petitioner sought in her petition was the lifting of the suspension, this matter is now moot, and petitioner's appeal must be dismissed.

Upon review, the Commissioner concurred with the findings and conclusions of the ALJ. Accordingly, the Initial Decision of the OAL was adopted as the final decision in this matter, and the petition was dismissed as moot.

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.

March 17, 2021

OAL Dkt. No. EDU 05468-20
Agency Dkt. No. 101-5/20

New Jersey Commissioner of Education

Final Decision

D.D., on behalf of minor child, A.B.,

Petitioner,

v.

Board of Education of the Town of
West New York, Hudson County,

Respondent.

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. The parties did not file exceptions.

Upon such review, the Commissioner agrees with the Administrative Law Judge's (ALJ) conclusion that this matter is moot. Petitioner has already received the relief sought by the petition, as A.B.'s suspension has been lifted and he has returned to class as a classified student.[1] Additionally, petitioner indicated to the ALJ that she intended to withdraw this matter but failed to submit the withdrawal in writing. Accordingly, the Initial Decision of the OAL is adopted as the final decision in this matter, and the petition is hereby dismissed.

IT IS SO ORDERED.[2]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: March 17, 2021
Date of Mailing: March 21, 2021

[1] The district has shifted to remote learning due to the COVID-19 pandemic. As such, to the extent that A.B. has not returned to in-person learning, it is solely due to the pandemic and unrelated to any discipline.

[2] This decision may be appealed to the Appellate Division of the Superior Court pursuant to *N.J.S.A.* 18A:6-9.1. Under *N.J.Ct.R.* 2:4-1(b), a notice of appeal must be filed with the Appellate Division within 45 days from the date of mailing of this decision.

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
SUMMARY DECISION
OAL DKT. NO. EDU 05468-20
AGENCY DKT. NO. 101-5/20

D.D. ON BEHALF OF A.B.,
Petitioner,
v.
BOARD OF EDUCATION OF THE TOWN OF WEST NEW YORK, HUDSON COUNTY,
Respondent.

D.D. on behalf of **A.B.,** pro se

David I. Solomon, Esq., for respondent (Florio, Perrucci, Steinhardt, Cappelli Tipton and Taylor, attorneys)

Record Closed: February 1, 2021 Decided: February 4, 2021

BEFORE **ELLEN S. BASS**, ALJ:

STATEMENT OF THE CASE

Petitioner contends that her son was unfairly suspended from school during the 2019-2020 school year and seeks his reinstatement. The West New York Board of Education ("the Board") replies that its actions were always reasonable; compliant with

applicable law and regulation; and that in any event, the suspension was lifted during the 2019-2020 school year, rendering petitioner's claims moot.

PROCEDURAL HISTORY

A pro se petition of appeal was filed with the Commissioner of Education by D.D. on April 16, 2020. An answer was filed on behalf of the Board, and the matter was transmitted to the Office of Administrative Law ("OAL") as a contested case on June 8, 2020. The case was initially assigned to Judge Andrew Baron on July 17, 2020.[3] Judge Baron scheduled a telephonic prehearing conference with the parties, but the petitioner failed to appear. Before a follow-up attempt to confer with the parties took place, the matter was reassigned to me on December 15, 2020.

I conferred with the parties on January 6, 2021, at which time D.D. confirmed that the suspension at issue had been lifted, and that her son had been returned to school, albeit remotely due to COVID-19. She moreover confirmed that, insofar as the only relief she sought was his reinstatement, there was no further relief that I could offer her in this forum. I suggested that she withdraw her petition of appeal and she agreed. Thereafter, my assistant contacted petitioner two times to inquire about the withdrawal; D.D. twice indicated it would be forthcoming. D.D. has not forwarded a letter of withdrawal to date.

On January 12, 2021, I directed the parties to address in writing, before January 26, 2021, the question of whether the claims in the petition are moot. I received a Motion for Summary Decision, letter memorandum and an accompanying certification of Allan Roth, Esq., from counsel for the Board on January 26, 2021. I afforded petitioner several more days to file her submission. But hearing nothing from her, I closed the record on February 1, 2021.[4]

[3] The slight delay in assigning the case was occasioned by the COVID-19 pandemic.

[4] The factual background set forth in the Roth certification is uncontested.

FINDINGS OF FACT

The salient facts are not in dispute, and I **FIND**:

A.B. was an eleventh-grade student during the 2019-2020 school year and attended Memorial High School. After a disciplinary incident in January 2020, A.B. was placed on a long-term suspension. A hearing was conducted before the Board on February 12, 2020. Petitioner did not attend. Via letter dated February 21, 2020, she was advised that the Board had upheld A.B.'s suspension through the end of the school year and that he would be reinstated in September 2020. He was placed on homebound instruction. Thereafter, on March 13, 2020, and with his mother's consent, A.B. was classified as eligible for Special Education services; provided with an Individualized Education Program (IEP); and his suspension was lifted.

But by March 16, 2020, classes had shifted to remote instruction for all West New York students, A.B. included.[5] Petitioner expresses concern in her petition that her son was unable to participate in baseball during 2020, a sport in which he excelled. Sadly, all extra-curricular activities, including baseball, were suspended in the Spring of 2020 in West New York due to COVID. The COVID crisis continues to date, and West New York students continue to receive remote instruction, including A.B., who is now a senior and on track to graduate provided he completes his coursework and achieves the necessary grades.

I have carefully reviewed the petition of appeal, which in addition to alleging that A.B. was unfairly disciplined, asserts that the Board, through its administration, was responsible for a break-in and trespass at her home which took place after Board representatives allegedly had complained about her to the West New York police; and that school personnel gave false information to the West New York Housing Authority with the intent to have her evicted. But the only relief sought in the petition is that A.B. "be allowed to return to school."

[5] On or about March 9, 2020, Governor Murphy, via Executive Order 103, declared a public health emergency due to the COVID-19 pandemic.

CONCLUSIONS OF LAW

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. The facts alleged by the Board are uncontested and its motion is unopposed. The Board is entitled to judgment as a matter of law.

Petitioner has already received the relief sought by her petition. A.B.'s suspension has been lifted, and he has been returned to classes as a classified student. Petitioner has at no time suggested otherwise. While A.B. is engaged in remote learning, this is due only to the pandemic, and not related to the controverted discipline. Accordingly, the claims petitioner raises are moot and should be dismissed.

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; judgement 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). See also: S.J. v Mountain Lakes Bd. of Educ., EDU 07081-03, Initial Decision (October 7, 2003), aff'd Comm'r (November 17, 2003), aff'd., St. Bd. (February 3, 2004),<http://lawlibrary.rutgers.edu/oal/search.html>.

There is no relief which I can afford this petitioner. An order lifting A.B.'s suspension would at this juncture be purely academic.[6] It is not my role, nor that of the Commissioner, to function in the abstract or to enter rulings that are advisory.[7] See: N.J. Civil Service Ass'n v. State of New Jersey, 88 N.J. 605,611 (1982); Crescent Park Tenants Assoc. v. Realty Eq. Corp. of New York, 58 N.J. 98, 107 (1971).

ORDER

Based on the foregoing, it is **ORDERED** that the petition of appeal be **DISMISSED**.

This recommended decision may be adopted, modified or rejected by the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION,** who by law is authorized

[6] It bears reiterating that an end to the suspension is the only relief sought by the petition.

[7] To the extent that the petitioner alleges that actions by school personnel were harassing or resulted in a break-in at her home, these claims do not arise under the school laws and accordingly, are not cognizable in this forum. N.J.S.A. 18A:6-9. It is well-established that claims concerning school staff do not necessarily arise under the school laws. See: Bd. of Educ. of East Brunswick v. Twp. Council, 48 N.J. 94, 102 (1966).

to make a final decision in this matter. If the Commissioner of the Department of Education does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision 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 **COMMISSIONER OF THE DEPARTMENT OF EDUCATION, ATTN: BUREAU OF CONTROVERSIES AND DISPUTES, 100 Riverview Plaza, 4th Floor, P.O. Box 500, Trenton, New Jersey 08625-0500,** marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

February 4, 2021	
DATE	**ELLEN S. BASS**, ALJ
Date Received at Agency:	February 4, 2021
Date Mailed to Parties:	February 4, 2021

sej