



**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

**FINAL DECISION**

**DISMISSAL**

OAL DKT. NO. EDS 06822-21

AGENCY DKT. NO. 2022-33250

**HIGHLAND PARK BOARD OF EDUCATION,  
MIDDLESEX COUNTY,**

Petitioner,

v.

**Y.D. on behalf of D.G.,**

Respondent.

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**Alyssa K. Weinstein, Esq.,** on behalf of petitioner, Highland Park Board of Education  
(The Busch Law Group LLC, attorneys)

**Y.D.,** respondent, pro se

Record Closed: October 13, 2021

Decided: October 26, 2021

BEFORE **TRICIA M. CALIGUIRE, ALJ:**

**STATEMENT OF CASE AND PROCEDURAL HISTORY**

This case arises under the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1401 to 1484(a) and C.F.R. §300.500. Petitioner Highland Park Board of Education (Board) seeks an order denying the request of respondent Y.D. on behalf of D.G. for independent evaluations of D.G.

On August 11, 2021, the Office of Special Education Policy and Dispute Resolution transmitted this matter to the Office of Administrative Law (OAL) for hearing as a contested case pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13. The matter was assigned to the Honorable Maryann Bogan, Administrative Law Judge (ALJ), and scheduled for a settlement hearing on August 26, 2021.

Due to the failure of the parties to confirm their participation on the proposed date or to offer alternate dates, the matter was reassigned to me without a settlement conference. A dial-in, telephonic hearing was scheduled for September 7, 2021, at 4:00 p.m., a notice of which was sent to the parties on September 2, 2021, by email. On September 7, 2021, neither party appeared. The telephonic hearing was rescheduled for September 14, 2021, at 4:00 p.m., notice of which was sent to the parties by email. Respondent failed to appear. The telephonic hearing was rescheduled for September 27, 2021, at 3:00 p.m., but respondent again failed to appear. Petitioner, the appearing party, requested permission to present ex parte proofs and to obtain a final decision on the merits, pursuant to N.J.A.C. 1:1-14.4(d).

On September 29, 2021, the parties were sent notice that the hearing was scheduled for October 13, 2021, and would be conducted via Zoom Video Communications, Inc. (Zoom), a remote audio/video platform licensed by the OAL for use during the COVID-19 emergency. On October 6, 2021, petitioner submitted a statement of facts and exhibits to be introduced during the hearing. Both parties appeared for the hearing; during a prehearing conference, the parties reached apparent resolution of the issues in dispute but declined to enter a formal settlement agreement. The parties made statements on the record, and the record closed.

### **FACTUAL DISCUSSION**

There are no facts in dispute. Based on review of the petition, petitioner's pre-hearing submission and the sworn testimony of Y.D., I **FIND** the following as **FACTS**:

D.G. is a nineteen years of age<sup>1</sup>; he resides with his mother, Y.D., in the geographical area served by the Highland Park School District (District). Prior to August 2021, D.G. was enrolled in the District and at all relevant times, was classified as eligible for special education and related services.

On or about July 13, 2021, Y.D. made a verbal request to District personnel to have D.G. evaluated. He had last been evaluated three years earlier and therefore, was due for triennial reevaluations, as required by N.J.A.C. 6A:14-3.8(b)(2). Members of the District child study team (CST) assigned to D.G. sent requests to Y.D. to schedule the reevaluation planning meeting. (P-2.) Y.D. responded by email that, essentially, she had not asked for the reevaluations proposed by the CST. (P-3.)

A reevaluation planning meeting was held on August 2, 2021, with members of the CST in attendance by Zoom. Y.D. attended for a portion of the meeting by telephone. (P-6.) During this meeting (and as confirmed during the prehearing conference), Y.D. stated that the evaluation she had requested was of the placement proposed by the District for D.G.<sup>2</sup>

On August 2, 2021, the District case manager sent Y.D. a reevaluation plan by which the District CST proposed to conduct an educational evaluation, a psychological evaluation, a speech and language evaluation, an occupational therapy evaluation, a physical therapy evaluation, and a psychiatric evaluation. (P-7.) The District case manager also requested that Y.D. complete, sign and return a form indicating her consent for the proposed evaluations. (P-7.) Y.D. did not return the consent form and the District has not conducted reevaluations of D.G.

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<sup>1</sup> On March 24, 2021, D.G. signed an instrument by which he delegated the right to make educational decisions on his behalf to his mother, Y.D. Despite some inaccuracies in the document, on April 12, 2021, the District notified D.G. and Y.D. that it recognized D.G.'s decision. (P-1.)

<sup>2</sup> During the prehearing conference, Y.D. stated that in the draft IEP presented to her on July 13, 2021, the District proposed to send D.G. to a school outside the district and she wanted him to remain at Highland Park High School. The July 13, 2021 draft IEP was not provided by either party in this matter but the parties confirmed that the CST recommended an out-of-district placement. It is not lost here that the CST did not request to conduct triennial reevaluations until Y.D. objected to the proposed placement and verbally requested what Y.D. claims was a review of that placement. Even so, Y.D., who was assisted throughout the IEP process by the Middlesex County Care Management Organization, did not file for due process and/or request stay put and did not permit evaluations which may have resulted in a change in the proposed placement.

On August 30, 2021, Y.D. formally withdrew D.G. from the District. (P-9.)

After being duly sworn, Y.D. confirmed that D.G. is no longer enrolled in the District. She stated that she is aware that on August 2, 2021, respondent proposed to conduct triennial reevaluations of D.G., including educational, psychological, speech and language, occupational therapy, physical therapy, and psychiatric evaluations. She understands that D.G. is eligible for special education and related services in the District until he reaches the age of twenty-one and she may contact the District prior to that date to schedule the proposed reevaluations.<sup>3</sup>

Y.D. confirmed that her request for independent evaluations of D.G. was never submitted to respondent in writing and voluntarily withdrew her verbal request for petitioner to fund an independent evaluation of D.G.

### **LEGAL ANALYSIS**

The issue raised by petitioner is whether Y.D.'s verbal request for an independent evaluation obligates the District to fund an independent evaluation of D.G. and/or the placement proposed for D.G. The parent's right to request an independent evaluation is described in N.J.A.C. 6A:14-2.5(c), as follows:

Upon completion of an initial evaluation or reevaluation, a parent may request an independent evaluation if there is disagreement with the initial evaluation or a reevaluation provided by a district board of education.

There is no dispute that D.G. is eligible for special education and related services, that he received such services as a student at Highland Park High School, and that he had last been evaluated in 2018. As provided at N.J.A.C. 6A:14-3.8(a), "[w]ithin three years of the previous classification, a multi-disciplinary reevaluation shall be completed to determine whether the student continues to be a student with a disability."

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<sup>3</sup> Y.D. also confirmed her understanding that D.G. will remain eligible to receive special education and related services from the District until he is twenty-one, as long as he continues to reside in the District.

The District was unable to perform the recommended reevaluation of D.G. without Y.D.'s consent. "Prior to conducting any assessment as part of a reevaluation of a student with a disability, the district board of education shall obtain consent from the parent pursuant to N.J.A.C. 6A:14-2.3." N.J.A.C. 6A:14-3.8(c). Y.D. did not provide consent, D.G. was not reevaluated and, as of August 30, 2021, D.G. is no longer enrolled in the District.

An action is moot when the decision sought "can have no practical effect on the existing controversy." Redd v. Bowman, 223 N.J. 87, 104 (2015). 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); Fox v. Twp. of E. Brunswick Bd. of Educ., EDU 10067-98, Initial Decision (March 19, 1999), aff'd., Comm'r (May 3, 1999); J.L. and K.D. ex rel. J.L. v. Harrison Twp. Bd. of Educ., EDS 13858-13, Final Decision (January 28, 2014).

In P.S. ex rel. I.S. v. Edgewater Park Twp. Bd. of Educ., EDS 10418-04, Final Decision (October 31, 2005), <http://njlaw.rutgers.edu/collections/oal/>, a parent filed for due process due to a disagreement over a district's proposed placement of her child, and requested a different, approved private school. The district had agreed to the parent's placement request and moved to dismiss the petition as moot. The parent wanted to continue the hearing to resolve other related disagreements, but the ALJ concluded that the relief sought by the parent had already been granted by the district through their agreement to place the child at her requested school. The ALJ dismissed the petition as moot and reasoned that the parents had the right to file a new due process petition regarding other issues with the district.

A review of the facts here leads to the conclusion that no issue remains as to which judgment can grant effective relief. D.G. is no longer enrolled in the District and Y.D. has withdrawn her request for an independent evaluation. Y.D. confirmed her understanding that should she reconsider her decision and re-enroll D.G. in the District, the next step would be to for her to permit reevaluations of D.G. as proposed by the CST. For these reasons, I **CONCLUDE** that a due process hearing on the question of whether the District is required to

fund an independent evaluation of D.G. and/or an evaluation of whether the placement most recently proposed by the CST for D.G. is appropriate would be a hypothetical exercise.

Based on the foregoing, I **CONCLUDE** that this petition should be dismissed with prejudice because the issue raised is now moot. If at some future date, Y.D. re-enrolls D.G. in the District, either party may file a new petition for due process should a dispute then arise.

**ORDER**

I **ORDER** that the petition be **DISMISSED WITH PREJUDICE** as moot.

This decision is final pursuant to 20 U.S.C. §1415(i)(1)(A) and 34 C.F.R. §300.514 (2018) 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 (2021). 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.

October 26, 2021

DATE

  
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TRICIA M. CALIGUIRE, ALJ

Date Received at Agency:

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Date emailed to Parties:

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TMC/nmn

## **APPENDIX**

### **WITNESSES**

#### **For Petitioner:**

None

#### **For Respondent:**

Y.D.

### **EXHIBITS**

#### **For Petitioner:**

- P-1 Delegation of Right to Make Educational Decisions, dated March 24, 2021, and related emails
- P-2 Emails from CST to Y.D., dated July 19 and 22, 2021
- P-3 Email from Y.D. to CST, dated July 22, 2021
- P-6 Certification of Susan Budine, dated October 1, 2021
- P-7 Reevaluation Plan for D.G., dated August 2, 2021
- P-9 Withdrawal Sheet for D.G., dated August 30, 2021

#### **For Respondent:**

None