



*State of New Jersey*  
OFFICE OF ADMINISTRATIVE LAW

**FINAL DECISION**

**MOTION FOR SUMMARY DECISION**

(CONSOLIDATED)

OAL DKT. NO. EDS 00823-22

AGENCY DKT. NO. 2022-33733

**MAHWAH TOWNSHIP  
BOARD OF EDUCATION,**

Petitioner,

v.

**S.M. ON BEHALF OF L.T.,**

Respondent,

and

**J.T.,**

Intervenor.

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**S.M. ON BEHALF OF L.T.,<sup>i</sup>**

Petitioner,

v.

**MAHWAH TOWNSHIP  
BOARD OF EDUCATION AND  
INCLUSIVE LEARNING ACADEMY,**

Respondent,

and

**J.T.,**

Intervenor.

OAL DKT. NO. EDS 02482-22

AGENCY DKT. NO. 2022-33960

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<sup>i</sup> The parent, S.M., shall be referred to as Petitioner, and Mahwah BOE shall be referred to as Respondent so as to avoid confusion.

**S.M.**, , petitioner, pro se

**Nathanya G. Simon**, Esq., for respondent (Scarinci Hollenbeck, attorneys

**J.T.**, intervenor, pro se

Record Closed: November 25, 2022

Decided: November 30, 2022

BEFORE: **THOMAS R. BETANCOURT**, ALJ:

**STATEMENT OF THE CASE AND PROCEDURAL HISTORY**

EDS 00823-22 was transmitted to the Office of Administrative Law (OAL) as a contested matter on February 2, 2022. Pursuant to N.J.A.C. 1:1-13.1 et seq. A prehearing conference was held on March 2, 2022, and a Prehearing Order was entered on March 3, 2022.

EDS 02482-22 was transmitted to the Office of Administrative Law (OAL) as a contested matter on April 4, 2022. Pursuant to N.J.A.C. 1:1-13.1 et seq., a telephone prehearing conference was held in the above-entitled matters on April 11 and 12, 2022, and Prehearing Order was entered on April 13, 2022.

A prehearing order was issued by the undersigned on March 3, 2022. That order was issued prior to Inclusive Learning Academy (ILA) entering an appearance. An Amended Prehearing Order was entered on May 2, 2022. In said Order the two above captioned matters were consolidated.

Respondent, Inclusive Learning Academy (ILA), filed a motion to dismiss (incorrectly titled a motion for summary judgment) on April 28, 2022. Petitioner, S.M., filed her opposition thereto on May 26, 2022, via email. ILA filed their response thereto on June 1, 2022. Counsel for Mahwah Board of Education submitted a letter dated May 5, 2022, indicating that there were no objections should the motion be granted. Petitioner

filed her opposition to ILA's motion via email on May 26, 2022. ILA filed their reply thereto on June 1, 2022.

A telephone conference was held on the record on May 24, 2022, at the request of J.T., father of L.T. In attendance at the telephone conference were J.T. and counsel for Mahwah Board of Education and ILA. M.S. did not call into the telephone conference. After waiting ten minutes the undersigned held the telephone conference without M.S. J.T. was permitted to file a motion to intervene in the matter. The hearing dates of June 8, 2022 and June 10, 2022, were adjourned. A new hearing date of July 12, 2022 was set.

J.T. filed his motion to intervene on May 27, 2022. Counsel for Mahwah Board of Education submitted a letter, dated June 10, 2022, in support of J.T.'s motion. Petitioner filed her opposition on June 13, 2022.

Respondent's (ILA) motion to dismiss, and J.T.'s motion to intervene, were granted by Order dated June 14, 2022.

Respondent Mahwah Board of Education filed a motion for summary decision, on November 4, 2022. Petitioner S.M. filed her response to said motion on November 25, 2022.

### **FACTUAL DISCUSSION**

L.T. is deemed eligible for special education and related services under the classification of Multiply Disabled. L.T. was attending an out of district school, Inclusive Learning Academy (ILA) in accordance with her Individualized Education Program (IEP), (Exhibit A). ILA closed in August of 2022 unexpectedly, and notified Petitioner and the District that it would not reopen in September due to decreased enrollment, (Exhibit B).

Petitioner and the District met on August 26, 2022, to discuss a new placement for L.T., (Exhibit C).

A new IEP was developed for the 2022/2023 school year, and was formalized on October 4, 2022. L.T. is currently attending the District's Ramapo Ridge Middle School. Transportation is provided with a nurse. The BIP in the prior IEP was not included in the current IEP, (Exhibit D).

Petitioner has continued to insist that the present due process petition she filed is not moot, citing irrelevant issues not germane to her present due process petition. This, notwithstanding being advised that the matter is moot, (Exhibit E). In point of fact, Petitioner has filed a new due process petition regarding the current IEP. That matter is not assigned to the undersigned. Petitioner has requested that the undersigned consolidate her current due process petition with the newly filed petition.

The District had a Functional Behavior Assessment (FBA) in December 2021. Petitioner had requested an independent FBA. The District then filed a due process petition, EDS 00823-22, requesting an order denying said request. The Petitioner then filed her due process petition seeking, among other things, an FBA related to L.T. at ILA.

### **LEGAL ANALYSIS AND CONCLUSION**

A motion for summary decision may be granted if the papers and discovery presented, as well as any affidavits which may have been filed with the application, show that there is no genuine issue of material fact and the moving party is entitled to prevail as a matter of law. N.J.A.C. 1:1-12.5(b). If the motion is sufficiently supported, the non-moving party must demonstrate by affidavit that there is a genuine issue of fact which can only be determined in an evidentiary proceeding, in order to prevail in such an application. Ibid. These provisions mirror the summary judgment language of R. 4:46-2(c) of the New Jersey Court Rules.

The motion judge must "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." Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 523 (1995). And even if the non-moving party comes forward with some evidence, this forum must

grant summary decision if the evidence is "so one-sided that [the moving party] must prevail as a matter of law." *Id.* at 536 (citation omitted).

Respondent alleges the matter is moot as ILA is closed and not available for the placement of L.T., as was previously done in accordance with the previous IEP.

In Betancourt v. Trinitas Hosp.,<sup>ii</sup> 415 N.J. Super. 301, 08, the New Jersey Supreme Court defines mootness as follows:

"We first set forth the principles that inform a consideration of claims of mootness. Mootness is a threshold justiciability determination rooted in the notion that judicial power is to be exercised only when a party is immediately threatened with harm. Jackson v. Dep't of Corr. 335 N.J. Super. 227, 231, 227, 762 A.2d 255 (App.Div. 2000), *certif. denied*, 167 N.J. 630, 772 A.2d 932 (2001). "A case is technically moot when the original issue presented has been resolved, at least concerning the parties who initiated the litigation." DeVesa v. Dorsey, 134 N.J. 420, 428, 634 A.2d 493 (1993) (Pollock, J., concurring) (citing Oxford v. N.J. State Bd. of Educ., 68 N.J. 301,303, 344 A.2d. 769 (1975)). To restate, "an issue is "moot" when the decision sought in a matter, when rendered, can have no practical effect on the existing controversy." (citations omitted).

In the instant matter Petitioners no longer reside in the District. They do not reside in the State of New Jersey. As the District is no longer responsible for the education of M.A., any decision would be moot as it would have no practical effect on the existing controversy.

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.

Accordingly, I **CONCLUDE** that Respondent's motion for summary decision should be **GRANTED**.

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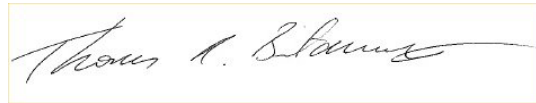
<sup>ii</sup> The litigants in this matter are not related to the undersigned.

**ORDER**

It is hereby **ORDERED** that Respondent's motion for summary decision is **GRANTED** on EDS 00823-22; and,

It is further **ORDERED** that Petitioners' petition for due process, EDS 02482-22, be **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.



November 30, 2022

DATE

THOMAS R. BETANCOURT, ALJ

Date Received at Agency:

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Date Mailed to Parties:

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**APPENDIX**

List of Moving Papers

For Respondent Mahwah:

Brief in support of motion for summary decision with Exhibits A through E

For Petitioner S.M.:

Email response in opposition to motion with attachments

For Intervenor J.T.:

None