



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

MOTION TO DISMISS

OAL DKT. NO. EDS 08716-23

AGENCY DKT. NO. 2024-36304

D.C. ON BEHALF OF Z.C.,

Petitioner,

v.

**WATCHUNG HILLS REGIONAL
HIGH SCHOOL BOARD OF EDUCATION,**

Respondent.

D.C. on behalf of Z.C., petitioner, pro se

Robin S. Ballard, Esq., for respondent Watchung Hills Regional High School
Board of Education (Schenck Price Smith & King, LLP, attorneys)

Record Closed: December 26, 2023

Decided: January 11, 2024

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

STATEMENT OF THE CASE

Petitioner, D.C., brought this case on behalf of his minor son, Z.C., to contest the proposed placement of Z.C. in an out-of-district private school. Although the parties did not settle this matter, on November 29, 2023, petitioner signed an individualized education plan (IEP) for Z.C., which provides for placement of Z.C. at Watchung Hills Regional High School (WHRHS), as petitioner requested in the due process petition.

Respondent Watchung Hills Regional High School Board of Education (Board) now moves for dismissal of the petition on the grounds that the controversy is moot. I agree. For the reasons set forth more fully below, petitioner has obtained the relief requested in his petition for due process, making this matter moot.

PROCEDURAL HISTORY

On August 3, 2023, petitioner filed a request for a due process hearing with the Office of Special Education under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§ 1401 to 1484(a), and 34 C.F.R. §§ 300.500 et seq. (2022). On August 9, 2023, respondent filed its answer. The parties waived the resolution period, and this matter was transmitted to the Office of Administrative Law (OAL) as a contested matter.

On September 7, 2023, the parties appeared for a settlement conference before the Honorable Dean J. Buono, ALJ.¹ The parties reached a tentative settlement. Due to a dispute over the terms of the proposed settlement agreement, the parties requested a second settlement conference, which was scheduled for October 10, 2023. Petitioner requested that Judge Buono be recused from handling this conference; the conference was adjourned, and on September 21, 2023, this matter was assigned to me for hearing.

On October 17, 2023, during a prehearing telephone conference, the parties agreed to again consider resolving this matter prior to a hearing, and a settlement was reached. Due to a dispute over the terms of the proposed settlement agreement, I convened a settlement conference on November 13, 2023, during which the dispute was resolved. By letter dated November 20, 2023, respondent notified me that the parties could not resolve a subsequent dispute over certain terms in the proposed settlement agreement and therefore requested a conference.²

¹ Unless stated otherwise, the OAL conducted all settlement conferences in this matter by Zoom Communications, Inc. (Zoom).

² The terms under dispute did not include Z.C.'s program and/or placement.

On November 29, 2023, the District child study team (CST), including petitioner, met to review the proposed IEP for Z.C. for the remainder of the 2023-2024 school year.³ With petitioner's consent, the IEP was implemented immediately.

On December 19, 2023, respondent filed a motion for summary decision on the grounds that there is no dispute as to material facts and because the November 29, 2023, IEP places Z.C. at WHRHS, there is no longer a live controversy between the parties. Petitioner responded by email on December 25, 2023. Respondent made no further filings, and the motion is now ripe for review.

FACTUAL DISCUSSION AND FINDINGS

The parties have raised no dispute as to the following **FACTS**, and therefore, I **FIND**:

Z.C. is a fourteen-year-old boy who is eligible for special education and related services under the classification of moderate intellectual disability. He resides in Warren, New Jersey, where he attended school during and through the 2022-2023 school year.

During the 2022-2023 school year, the Warren District CST proposed an IEP for Z.C., placing him in an out-of-district school. Petitioner opposed this placement and duly filed a petition for due process against the Warren Township Board of Education.

Warren Township sends high-school-age students to WHRHS, and accordingly, as of July 1, 2023, Z.C. became a student of the Watchung Hills Regional High School District (District). On August 3, 2023, petitioner filed the present matter against the Board, stating his objection to the proposed out-of-district placement of Z.C. and requesting the following relief: "Let [Z.C.] stay in the high school."

Z.C. began the 2023-2024 school year at WHRHS and has remained there since.

³ This IEP also covered the first several months of the 2024-2025 school year, to be reviewed prior to December 2024.

The due process hearing on this matter was not scheduled because on two occasions prior to November 20, 2023, the parties stated that they had reached an agreement on settlement, the terms of which included the placement of Z.C. at WHRHS. A settlement agreement was not executed by the parties, and, therefore, a telephone hearing to set the due process hearing date was scheduled.

On November 29, 2023, the District CST, including petitioner, met to conduct Z.C.'s annual review. The IEP proposed by the District places Z.C. at WHRHS and includes related services, transportation, and an extended school year. On November 29, 2023, D.C. signed a consent form, permitting the IEP to be implemented immediately. As stated above, implementation of the IEP did not require a change in placement; Z.C. stayed in the same placement at WHRHS.

Respondent contends that the sole relief requested by D.C. in his August 2, 2023, petition was for Z.C. to attend WHRHS and therefore, with the implementation of the November 29, 2023 IEP, there is no longer any dispute between the parties, rendering the petition moot.

Petitioner responds that he will not withdraw his petition and seeks a hearing to explain the poor treatment he believes he has been subject to by the WHRHS administration.

LEGAL ANALYSIS AND CONCLUSION

Summary decision is a well-recognized procedure for resolving cases in which the facts that are crucial to the determination of the matters at issue are not actually in dispute. By applying the applicable law and standard of proof to the undisputed facts, a decision may be reached in a case without the necessity of a hearing at which evidence is presented and testimony taken. The procedure is equally applicable in judicial as well as executive-branch administrative proceedings. N.J.A.C. 1:1-12.5.

The regulations provide that the decision sought by the movant "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.” N.J.A.C. 1:1-12.5(b). For the adverse party (in this case, D.C.) to prevail, he “must set forth specific facts showing that there is a genuine issue which can only be determined in an evidentiary proceeding.” Ibid.

The standards used to determine motions for summary decision are found in Judson v. Peoples Bank & Trust Co., 17 N.J. 67, 74–75 (1954), and later in Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520 (1995). A motion for summary decision may only be granted where the moving party sustains the burden of proving “the absence of a genuine issue of material fact,” and all inferences of doubt are drawn against the movant. Judson, 17 N.J. at 74-75. The existence of disputed facts will only prevent summary decision if the disputed facts are material to the application of the underlying charges. Frank v. Ivy Club, 120 N.J. 73, 98 (1990).

The papers filed by both parties in this case reveal no dispute with respect to material facts, and, therefore, I **CONCLUDE** that summary decision is appropriate. Petitioner alleges action by an employee of the District which he terms to have been, at the least, unprofessional. Such allegations—even if true—involve action directed at petitioner personally and have not prevented the District CST from providing Z.C. an appropriate education, as described in the November 29, 2023, IEP. Further, such alleged behavior did not prevent respondent from granting D.C.’s request for relief. Z.C. began the 2023-2024 school year at WHRHS and remains there, consistent with the IEP proposed by the District and accepted by D.C. on November 29, 2023.

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 D.C.'s claim, that the out-of-district placement initially proposed by Warren, and adopted by respondent, was inappropriate for Z.C., and the relief sought by D.C., that Z.C. would be educated at WHRHS, leads to the conclusion that no issue remains as to which judgment can grant effective relief. While petitioner has made it clear that he maintains a grievance with District personnel, the issue transmitted to the OAL by the Office of Special Education—determination of the appropriate placement for Z.C. for the 2023-2024 school year—has been resolved.

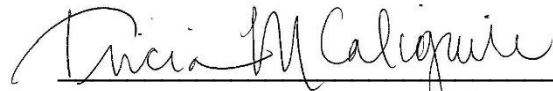
Based on the foregoing, I **CONCLUDE** that this matter should be dismissed because the issue raised by petitioner is now moot.

ORDER

For the reasons set forth above, I **ORDER** that the issue raised by the petition of D.C. on behalf of Z.C. against respondent, Watchung Hills Regional High School District Board of Education, is moot and, therefore, the petition 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.

January 11, 2024



TRICIA M. CALIGUIRE, ALJ

Date Received at Agency:

Date Mailed to Parties:

TMC/kl