



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

SUMMARY DECISION

OAL DKT. NO. EDS 10897-23

AGENCY DKT. NO. 2024-36447

G.W. AND K.W. ON BEHALF OF M.W.,

Petitioner,

v.

RINGWOOD BOARD OF EDUCATION,

Respondent

K.W. on behalf of **G.W.** petitioner, pro se

Jessika Kleen, Esq., for respondent (Machado Law Group, attorneys)

Record Closed: June 29, 2024

Decided: July 17, 2024

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

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioners filed a due process petition with the Office of Special Education, New Jersey Department of Education (NJDOE). Said petition was dated August 31, 2023.

The Department of Education transmitted the contested case pursuant to N.J.S.A. 52:14B-1 to 15 and N.J.S.A. 52:14f-1 TO 13, to the Office of Administrative Law (OAL), where it was filed on October 17, 2024.

A prehearing conference was held on November 9, 2023, and a prehearing order was entered by the undersigned on November 14, 2023.

Respondent filed a motion for summary decision, dated June 10, 2024. Petitioners filed a reply thereto on June 21, 2024. Respondent filed a response on June 27, 2024. Although not permitted by rule, N.J.A.C. 1:1-12.5, petitioners filed an additional reply on June 29, 2024. The undersigned permitted this response under authority given to an Administrative Law Judge pursuant to N.J.A.C. 1:1-3(b) as petitioner is pro se, and the undersigned determined that permitting this filing would not result in an adverse effect upon respondent.

STATEMENT OF FACTS

1. The District filed a due process petition on or about January 13, 2020 requesting a declaration that its proposed reassessment plan for M.W. was appropriate; and, requiring petitioners to consent to have the district re-evaluate M.W. (Ex. C, Figurelli Cert. ¶14)
2. The Honorable Jude Anthony Tiscornia, ALJ issued a Final Decision on September 4, 2021, which stated in pertinent part: “as long as [G.W. and K.W.] continue to withhold consent to allow [the District] to perform its evaluations on M.W., the parents, K.W. and G.W., will have waived their rights to challenge [the District’s] placement and programming for M.W., or otherwise allege that [the District’s] placement and programming for M.W. failed to provide a FAPE at any time after November 27, 2019. See Ringwood Bd. of Educ. v. K.W. and G.W., OAL No. EDS 02167-20, 2021 WL 8322401, at *2 (N.J. Adm. Sept. 24, 2021). (Exhibit C, Figurelli Cert. ¶ 15)
3. Petitioners appealed Judge Tiscornia’s Final Decision to the United States District Court for the District of New Jersey. U.S. District Court Judge Jamel K. Kemper upheld Judge Tiscornia’s Final Decision in his opinion dated April 29, 2024, granted the District’s motion to dismiss, and dismissed petitioners’ appeal. (Ex. D, Figurelli Cert. ¶17)
4. Petitioners have yet to consent to evaluations as requested by the District.

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).

There are no disputed material facts in the instant matter. Petitioners have waived their rights to challenge the District’s placement and programming for M.W. at any time after November 27, 2019. See ALJ Tiscornia’s decision in Ringwood Bd. of Educ. v. K.W. and G.W., OAL No. EDS 02167-20, 2021 WL 8322401, at *2 (N.J. Adm. Sept. 24, 2021). (Ex. C, Figurelli Cert. ¶15)

Petitioner’s appealed Judge Tiscornia’s decision to the United States District Court. District Court Judge Jamel K. Semper upheld said decision and dismissed petitioner’s appeal. (Ex. D, Figurelli Cert. ¶17)

Petitioners argue that the District is barred from filing the within motion for summary decision. That argument is baseless. Petitioner cites to an OSEP policy letter 22-04, dated April 15, 2022, from the United States Department of Education, that does

not govern summary decision motions. See N.J.A.C. 1:1-12.5, which governs summary decision motions in the OAL.

Petitioners further argue that a summary decision motion can only be filed as an IDEA sufficiency challenge within 15 days of the receipt of a due process petition. Said argument is also baseless.

Lastly, petitioners submit that a Final Decision approving settlement entered by the Honorable Susana Guerrero, ALJ, in furtherance of its argument that Judge Tiscornia's Final Decision does not apply. See Lakeland Regional Bd. of Educ. v. K.W. and G.W. o/b/o M.W., EDS 06974-23 and EDS 06975-23. The decision by Judge Guerrero concerns the Lakeland Regional Board of Education, not the Respondent in the present matter. It is wholly inapplicable in the instant matter.

Judge Tiscornia's decision, and the Opinion entered by U.S. District Court Judge Semper render Petitioners' due process petition moot as there is nothing to decide. Petitioners have waived the right to file said due process petition.

In Betancourtⁱ v. Trinitas Hosp., 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).

ⁱ The litigant Betancourt is not related to the undersigned.

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

ORDER

It is hereby **ORDERED** that Respondent's motion for summary decision is **GRANTED**; and,

It is further **ORDERED** that Petitioners' petition for due process be **DISMISSED** without prejudice.

This decision is final pursuant to 20 U.S.C. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2019) 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 (2019). 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 Policy and Dispute Resolution.



July 17, 2024

DATE

THOMAS R. BETANCOURT, ALJ

Date Received at Agency:

Date Mailed to Parties:

db

APPENDIX

List of Moving Papers

For Petitioner:

Brief in opposition to motion for summary decision

Certification of K.W.

Reply brief

For Respondent:

Brief in support of the motion for summary decision

Certification of Janine Figurelli, with Exhibits A through D

Reply brief