



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

ELIZABETH CITY BOARD OF EDUCATION,

Petitioner.

v.

V.S. O/B/O I.A.,

Respondent.

OAL DKT. NO. EDS 09199-23

AGENCY DKT. NO. 2023-36109

V.S. O/B/O I.A.,

Petitioner,

v.

ELIZABETH CITY BOARD OF EDUCATION,

Respondent.

OAL DKT. NO. EDS 09200-23

AGENCY DKT. NO. 2023-36515

Richard P. Flaum, Esq., for respondent (DiFrancesco, Bateman, Kunzman,
Davis, Lehrer & Flaum, attorneys)

V.S., respondent, pro se

Record Closed: March 25, 2024

Decided: March 25, 2024

BEFORE **WILLIAM COURTNEY, ALJ:**

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

The Elizabeth City Board of Education (Board) completed evaluations of I.A. as a result of a reevaluation planning meeting that occurred on March 31, 2023. The Board concluded several evaluations including an educational evaluation, psychological evaluation, and speech evaluation and a classroom observation. As a result of the evaluations, the Board determined that I.A. does not have a disability that corresponds to the disabilities defined in N.J.A.C. 6A:14 - 3.5 or 3.6 and/or the disability does not adversely impact I.A.'s educational performance and that I.A. is not in need of special education and related services or speech and language services only. On or about June 12, 2023, I.A.'s parent requested independent evaluations in accordance with N.J.A.C. 6A: 14-2.5(c). On June 22, 2023, the Board filed a Due Process petition requesting the denial of the parent's request for independent evaluations. Both the Board's and parent's requests were forwarded to the Office of Administrative Law (OAL) for hearing on September 15, 2023 and an Order was entered on February 6, 2024 consolidating the matters for hearing.

FINDINGS OF FACT

On January 25, 2024, a prehearing conference was scheduled with respect to the Board's Due Process petition. After the matters were consolidated on February 6, 2024, I scheduled another the prehearing conference for March 19, 2024 at 2:00pm and the parents failed to appear at the prehearing conference. Just prior to the scheduled conference I received a letter from counsel for the Board advising that the parents had relocated out of state and that I.A. was no longer attending school within the district. The Board also provided a copy of a Special Education Records Request from the Panama-Buena Vista Union School District Special Services Center in Bakersfield, California seeking I.A.'s records, including her most recent IEPs and Assessment Reports. Based upon I.A.'s transfer out of the Elizabeth City School District, the Board has notified the OAL that it is withdrawing its petition for due process (OAL Docket NO. 09199-23). They also requested that the parents due process petition be dismissed.

CONCLUSIONS OF LAW

Given the documentation provided by the Board, along with the parent's failure to attend the scheduled prehearing conference on March 19, 2024, it would appear, and **I FIND** that I.A. no longer resides within the Elizabeth City School District and no longer attends the public-school kindergarten program at Mabel G. Holmes School No. 5, located within the District. Accordingly, the relief the parents seek, which consists of a stay-put order, a request for an Independent Educational Evaluation (IEE) and the continuation of Occupational Therapy (OT) and speech services is moot and their petition requesting said relief must be dismissed.

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 the 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); Fox v. Twp. of New Brunswick Bd. Of Educ., EDU 10067-98 Initial Decision March 19, 1999), affirmed by Commissioner (May 13, 1999): J.L. v. Harrison Twp. Bd of Educ., EDS 13858-13, Final Decision (January 28, 2014).

In this case the student is no longer residing or attending school within the District. I.A. currently resides within and is applying for special education and related services in the State of California. This tribunal cannot order the Board to provide OT, speech services or any special education or related services to a student who does not reside within its school district. There is also no relief being sought by the parents that would have a practical effect on the existing controversy now that I.A. is no longer attending a district school.

For the reasons set forth above, **I CONCLUDE** that the parent's Due Process Petition must be dismissed.

ORDER

IT IS on this 25th Day of March 2024 **ORDERED**:

1. That the Board's withdrawal of its due process petition (OAL Docket No. EDS 09199-23) be and hereby is **GRANTED**; and
2. That the parent's due process petition (OAL Docket No. EDS 09200-23) be and hereby is **DISMISSED**.

This decision is final pursuant to 20 U.S.C. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2024) 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 (2024). 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.



March 25, 2024
DATE

WILLIAM COURTNEY, ALJ

Date Received at Agency

March 25, 2024

Date Mailed to Parties:
am

March 25, 2024