



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

**FINAL DECISION**

OAL DKT. NO. EDS 12111-23

AGENCY DKT. NO. 2024-36619

**S.S. ON BEHALF OF M.W.,**

Petitioner,

v.

**BLOOMFIELD TOWNSHIP**

**BOARD OF EDUCATION,**

Respondent.

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

**Danielle Pantaleo**, Esq., for respondent (Busch Law Group, attorneys)

Record Closed: March 1, 2024

Decided: March 11, 2024

BEFORE **MARGARET M. MONACO**, ALJ:

**STATEMENT OF THE CASE**

This matter arises under the Individuals with Disabilities Education Act, 20 U.S.C. § 1400, et seq., (the IDEA), and the implementing federal and state regulations. S.S., on behalf of her son, M.W., seeks an out-of-district placement, along with additional therapy and counselling services.

## **PROCEDURAL HISTORY**

On or about October 3, 2023, petitioner filed a Request for Due Process Hearing with the Office of Special Education (OSE). Petitioner alleged that M.W. had been “assaulted and bullied” in his in-District placement and requested that M.W. be removed from the District, placed in an unspecified out-of-district placement, and receive additional therapy sessions and 1:1 counseling. On November 2, 2023, petitioner filed a Request for Emergent Relief seeking, among other relief, an immediate out-of-district placement for M.W. pending the outcome of the underlying due process proceeding.

The OSE transmitted petitioner’s Request for Due Process Hearing and Request for Emergent Relief to the Office of Administrative Law (OAL), where it was filed on November 6, 2023. Oral argument on petitioner’s emergent relief application was scheduled for November 15, 2023 at the OAL Newark office. Although counsel for the District appeared at the oral argument on November 15, 2023, petitioner failed to attend the scheduled proceeding. On November 17, 2023, I issued an Order dismissing petitioner’s motion for emergent relief without prejudice based on petitioner’s abandonment of, and/or petitioner’s failure to prosecute, her motion for emergent relief. A copy of my Order was sent to the parties, via e-mail and regular mail, on November 17, 2023.

A prehearing telephone conference was scheduled for December 5, 2023. Although counsel for the District appeared for the telephone conference, petitioner failed to participate in the scheduled proceeding. On December 8, 2023, I issued a Prehearing Order, which was sent to the parties, via e-mail and regular mail, and memorializes that the hearing was scheduled for January 31, 2024 at the OAL. On December 11, 2023, the District filed its Answer to Petitioner’s Request for Due Process.

By letter dated January 26, 2024, counsel for the District requested an adjournment of the hearing to provide the District the opportunity to file a motion to dismiss based upon a change in circumstances. By e-mail dated January 26, 2024, the parties were informed that I granted the District’s adjournment request and that the hearing was rescheduled for March 27, 2024.

On February 9, 2024, the District filed a motion for summary decision. In support of its motion, the District submitted a brief and a certification of the District's Director of Special Services, Suzanne Abendschoen (Abendschoen Cert.). On February 14, 2024, I sent a letter to the parties, via e-mail and regular mail, which advised:

On February 9, 2024, this office received the Board's motion for summary decision, including the Board's brief and the certification of Suzanne Abendschoen.

Petitioner is advised that if she opposes the motion, her opposition must be filed on or before March 1, 2024. A copy of the same should be sent to Ms. Pantaleo.

N.J.A.C. 1:1-12.5 governs motions for summary decision and directs in pertinent part: "When a motion for summary decision is made and supported, an adverse party in order to prevail must by responding affidavit set forth specific facts showing that there is a genuine issue which can only be determined in an evidentiary proceeding."

If petitioner fails to file a response, the motion will be considered unopposed. If petitioner files a response, the Board's reply shall be filed on or before March 10, 2024.

Petitioner did not respond to the motion by the March 1, 2024 deadline and petitioner has submitted no response to date.

### **FACTUAL DISCUSSION**

Based upon a review of the documentation submitted, I **FIND** the following undisputed **FACTS**:

M.W. is a twelve-year-old sixth-grade student who resides within the District and is eligible for special education and related services under the classification of "Autism." (Abendschoen Cert. at ¶ 3.)

M.W. previously attended Watsessing Elementary School in the District. (Abendschoen Cert. at ¶ 4.) M.W. attended a self-contained Learning and Language

Disabilities-Severe (LLD) classroom and received occupational therapy, speech therapy and counseling. (ibid.) In November 2022, petitioner elected to decline district transportation and opted to transport M.W. to and from school herself. (ibid.) For the entirety of this school year, petitioner has kept M.W. home based upon her disagreement with the District's proposed program and placement, and unsubstantiated allegations of bullying. (ibid.)

During the 2022–2023 school year, M.W. became reluctant to attend school and had significant absences. (Abendschoen Cert. at ¶ 5.) When M.W. did attend school, there were noted signs of improvement, but he still demonstrated difficulty with work completion, compliance with directions, and increased inappropriate and maladaptive behaviors with certain peers. (ibid.)

In August 2022, there were unsubstantiated allegations of bullying of M.W. by another student. (Abendschoen Cert. at ¶ 6.) In the Fall of 2022, another unsubstantiated allegation of bullying was made by petitioner on behalf of M.W. (Id. at ¶ 7.)

The District previously placed M.W. on home instruction until April 2023. (Abendschoen Cert. at ¶ 8.) The parent was advised that the home instruction would not continue after that date. (ibid.)

M.W. did not return to school for the beginning of the 2023–2024 school year. (Abendschoen Cert. at ¶ 9.)

On or about October 3, 2023, petitioner filed the instant Request for Due Process. Upon sufficient notice to M.W.'s parents, the District scheduled an IEP meeting for October 16, 2023, which petitioner did not attend. (Abendschoen Cert. at ¶ 11 and Exhibit A.) M.W.'s father attended the October 16, 2023 IEP meeting virtually. (ibid.) However, the Child Study Team (CST) rescheduled the IEP meeting because petitioner did not attend. (ibid.)

On October 19, 2023, the District sent a letter to petitioner regarding the compulsory education laws and requesting that M.W. return to school with a corrective

action plan to address his continued absences from school. (Abendschoen Cert. at ¶ 12 and Exhibit B.)

Upon sufficient notice to M.W.'s parents, the District scheduled an IEP meeting for November 2, 2023, which petitioner did not attend. (Abendschoen Cert. at ¶ 13 and Exhibit C.) M.W.'s father attended the November 2, 2023 IEP meeting virtually. (Ibid.) At the November 2, 2023 IEP meeting, the CST discussed M.W.'s continued absences from school, and his return to the District to the LLD program. (Id. at ¶ 14.) The District had previously offered petitioner a tour of the LLD program during the 2022–2023 school year. (Ibid.) The District also discussed M.W.'s potential attendance at an LLD class at Bloomfield Middle School and proposed a corrective action plan regarding attendance to the father. (Ibid.)

On November 2, 2023, M.W.'s father signed the IEP and returned it to the CST. (Abendschoen Cert. at ¶ 15 and Exhibit D.)

There has been an ongoing custody dispute between M.W.'s parents. (Abendschoen Cert. at ¶ 16.) On December 5, 2023, the Honorable Jodi L. Rosenberg, J.S.C. entered an Order to Show Cause with Temporary Restraints immediately transferring residential custody of M.W. to his father. (Ibid. and Exhibit E.) The court further ordered that M.W. “be immediately re-enrolled in the Bloomfield School District.” On December 15, 2023, Judge Rosenberg entered an Order directing that petitioner had until 4:00 p.m. that day to bring M.W. to the police department for transfer of custody to his father. (Ibid. and Exhibit E.)

M.W.'s father continues to have sole residential custody of M.W. (Abendschoen Cert. at ¶ 17.) On December 23, 2023, M.W. returned to the District's elementary school and his attendance has been consistent ever since. (Ibid. and Exhibit F.)

### **LEGAL DISCUSSION AND CONCLUSIONS**

Pursuant to N.J.A.C. 1:1-12.5(b), summary decision “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.” This rule is substantially similar to the summary-judgment rule embodied in the New Jersey Court Rules. See Judson v. Peoples Bank & Trust Co. of Westfield, 17 N.J. 67, 74 (1954). In Brill v. Guardian Life Insurance Co., 142 N.J. 520, 540 (1995), the New Jersey Supreme Court addressed the appropriate test to be employed in deciding the motion:

[A] determination whether there exists a “genuine issue” of material fact that precludes summary judgment requires the motion judge to 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 factfinder to resolve the alleged disputed issue in favor of the non-moving party. The “judge’s function is not . . . to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial.” . . . . If there exists a single, unavoidable resolution of the alleged disputed issue of fact, that issue should be considered insufficient to constitute a “genuine” issue of material fact for purposes of Rule 4:46-2.

[Citations omitted.]

In evaluating the merits of the motion, all inferences of doubt are drawn against the movant and in favor of the party against whom the motion is directed. Judson, 17 N.J. at 75. However, “[w]hen a motion for summary decision is made and supported, an adverse party in order to prevail must by responding affidavit set forth specific facts showing that there is a genuine issue which can only be determined in an evidentiary proceeding.” N.J.A.C. 1:1-12.5(b). The New Jersey Supreme Court has cautioned that, “if the opposing party offers no affidavits or matter in opposition, or only facts which are immaterial or of an insubstantial nature, a mere scintilla, . . . ‘[f]anciful, frivolous, gauzy or merely suspicious’ . . . , he will not be heard to complain if the court grants summary judgment, taking as true the statement of uncontradicted facts in the papers relied upon by the moving party, such papers themselves not otherwise showing the existence of an issue of material fact.” Judson, 17 N.J. at 75 (citation omitted). Stated differently, “[b]are conclusions . . . without factual support in tendered affidavits, will not defeat a meritorious application for summary judgment.” U.S. Pipe & Foundry Co. v. Am. Arbitration Ass’n, 67 N.J. Super. 384, 399-400 (App.Div.1961). Likewise, unsupported, and self-serving

statements, standing alone, are insufficient to create a genuine issue of material fact. Heyert v. Taddese, 431 N.J. Super. 388, 413-414 (App. Div. 2013). And the “non-moving party cannot defeat a motion for summary judgment merely by pointing to any fact in dispute.” Brill, 142 N.J. at 529. Disputed issues of fact that are immaterial or of an insubstantial nature will not suffice. Ibid. Rather, “[c]ompetent opposition requires ‘competent evidential material’ beyond mere ‘speculation’ and ‘fanciful arguments,’” Cortez v. Gindhart, 435 N.J. Super. 589, 605 (App. Div. 2014), certif. denied, 220 N.J. 269 (2015) (citation omitted), and the party opposing the motion “must do more than simply show that there is some metaphysical doubt as to the material facts.” Alfano v. Schaud, 429 N.J. Super. 469, 474 (App. Div. 2013), certif. denied, 214 N.J. 119 (2013) (citation omitted).

Against this backdrop, the District contends that petitioner’s claim for relief is moot. Based upon the foregoing facts and the applicable law, I **CONCLUDE** that there is no genuine issue as to any material fact and that the matter is ripe for summary decision.

It is firmly established that “questions that have become moot or academic prior to judicial scrutiny generally have been held to be an improper subject for judicial review.” Anderson v. Sills, 143 N.J. Super. 432, 437 (Ch. Div. 1976); see Oxfeld v. New Jersey State Board of Education, 68 N.J. 301 (1975). In this regard, “for reasons of judicial economy and restraint, courts will not decide cases in which the issue is hypothetical, a judgment cannot grant effective relief, or the parties do not have concrete adversity of interest.” Anderson, 143 N.J. Super. at 437.

“[A] case is moot when the issues presented are no longer ‘live’ or the parties lack a legally cognizable interest in the outcome.” Donovan v. Punxsutawney Area Sch. Bd., 336 F.3d 211, 216 (3rd Cir. 2003) (quoting Powell v. McCormack, 395 U.S. 486, 496 (1969)). A “court’s ability to grant effective relief lies at the heart of the mootness doctrine.” Ibid. In other words, “[i]f developments occur during the course of adjudication that eliminate a plaintiff’s personal stake in the outcome of a suit or prevent a court from being able to grant the requested relief, the case must be dismissed as moot.” Ibid. (quoting Blanciak v. Allegheny Ludlum Corp., 77 F.3d 690, 698-699 (3d Cir. 1996)). A case is considered to be moot “when the decision sought in a matter, when rendered,

can have no practical effect on the existing controversy.” Greenfield v. New Jersey Dep’t of Corrections, 382 N.J. Super. 254, 257-58 (App. Div. 2006) (citation omitted). An action is also moot when it no longer presents a justiciable controversy because the issues raised have been resolved. Betancourt v. Trinitas Hosp., 415 N.J. Super. 301, 311 (App. Div. 2010). See S.J o/b/o J.J v. Willingboro Bd. of Educ., EDS 14567-13 (February 19, 2014) <http://njlaw.rutgers.edu/collections/oal/> (dismissing parent’s petition as moot where the specific relief sought by the parent, i.e. a qualified one-on-one aide, was provided as a related service in a later IEP); P.S. o/b/o I.S. v. Edgewater Park Twp. Bd. of Educ., EDS 10418-04 (October 31, 2005) <http://njlaw.rutgers.edu/collections/oal/> (dismissing parent’s petition as moot where the IEP team accepted the parent’s requested placement of I.S. at the Bancroft School).

In short, petitioner’s due process request seeking an out-of-district placement is moot. It is undisputed that M.W.’s father, who has been awarded residential custody of M.W., executed a superseding IEP on November 2, 2023. Equally undisputed is that, in accordance with that IEP and the December 2023 court order, M.W. has been enrolled in the District and continues to attend school on a consistent basis since December 23, 2023. Since agreement has been reached concerning M.W.’s program and placement via the November 2, 2023 IEP, there is no pending controversy to be decided and no further relief to which petitioner is entitled.

Based upon the foregoing, I **CONCLUDE** that dismissal of petitioner’s Request for Due Process Hearing is warranted.


### **ORDER**

I **ORDER** that respondent’s motion for summary decision be and hereby is **GRANTED** and that petitioner’s Request for Due Process Hearing be and hereby 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.

\_\_\_\_\_  
March 11, 2024  
DATE

  
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**MARGARET M. MONACO, ALJ**

Date Received at Agency \_\_\_\_\_

Date Mailed to Parties: \_\_\_\_\_

jb