Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2002-301

NOVEMBER TERM, 2002

David Searles	}	APPEALED FROM:
v.	}	Washington Superior Court
Board of Education and Town of Rutland School District	}	DOCKET NO. 666-12-01 Wncv
	}	Trial Judge: Alan W. Cheever

In the above-entitled cause, the Clerk will enter:

Plaintiff appeals the superior court' s dismissal of his suit seeking declaratory and injunctive relief concerning his choice of schools for his learning-impaired daughter. We affirm.

In August 2001, plaintiff moved to the Town of Rutland, which does not have its own high school but instead has elected to provide a high school education to its pupils by paying tuition " to an approved or independent high school, to be selected by the parents or guardians of the pupil." 16 V.S.A. § 822(a)(1). Section 166(b) of Title 16 provides that the State Board of Education " shall approve an independent school which offers elementary or secondary education if it finds, after opportunity for hearing, that the school provides a minimum course of study and that it substantially complies with the board' s rules for approved independent schools." Under board rules, independent schools must be specifically approved to provide special education services, and special education approval may be limited to one or more categories of disability.

At the beginning of the 2001-2002 school year, plaintiff enrolled his teenage daughter in the Rutland Learning Center. The Town of Rutland school district refused to pay the special education services provided to his daughter at the Center because the State Board had not approved the Center for such services in his daughter' s disability category " learning impairment. Plaintiff filed suit in December 2001 in the superior court, seeking (1) a declaratory judgment that the Center was approved for special education without restriction as to category of disability; (2) an injunction preventing the State Board from taking action to restrict approval of the Center by category of disability; and (3) a declaratory judgment that the State Board was not statutorily authorized to set up a system under which otherwise qualified students are excluded from receiving the benefit of having their tuition paid to independent schools because of, among other things, the category of their disability.

In April 2002, while the parties' opposing motions for summary judgment were pending, the State Board approved the Center' s application to provide special education services for pupils with a A learning impairment" category of disability. Shortly thereafter, the State Board filed a motion to dismiss plaintiff' s suit as moot. The superior court granted the motion, ruling that there was no longer a live controversy. Plaintiff appeals, arguing that the court erred in dismissing his suit because he continues to have a cognizable interest in challenging the State Board' s authority to limit approval of independent schools to provide special education services based on the category of disability. In plaintiff' s view, he has an ongoing prerogative to select his daughter' s school, and thus the approval of the Center for his daughter' s category of disability does not abate his interest in expanding the number of independent schools approved to provide special education services to his daughter.

We find these arguments unavailing. In his amended complaint, plaintiff stated that he had " determined to move to the Town of Rutland from Fair Haven so that under ' school choice' his children could attend the Rutland Learning Center, an approved independent school." He claimed that (1) the Center had been approved as an independent school for special education without restriction as to category of disability; and (2) the State Board lacks the statutory authority to deny approval of tuition payments to independent schools based on a pupil' s special education status or category of disability. In claiming the adverse affect to him resulting from application of the State Board' s rules, plaintiff stated that he had " selected the Rutland Learning Center under the ' school choice' as the approved independent school for his daughter to receive the education that she requires." Plaintiff contended that, by limiting approval of the Center to particular categories of disability, the State Board had deprived his daughter of required special education services " in a school selected by her parent under school choice," and that the school district' s refusal to pay for his daughter' s special education services " at the Rutland Learning Center deprives the parent of school choice because he will have to move his daughter to a school that is not his choice, in order for his daughter to receive all of her special education services."

It is abundantly clear from plaintiff' s complaint that his suit sought injunctive and declaratory relief that would provide him tuition reimbursement for special education services provided at the school of his choice " the Rutland Learning Center. Thus, the State Board' s April 2002 decision to approve the Center to provide special education services for the " learning impairment" category of disability meant that plaintiff had obtained what he sought in his suit. Plaintiff now claims, however, that he has not obtained complete relief because he is still limited in his choice of schools in which he can enroll his daughter and obtain full tuition reimbursement. But this claim on appeal does not alter the fact that the controversy, as framed in plaintiff' s amended complaint, no longer exists. See In re Barlow, 160 Vt. 513, 518 (1993) (case is moot if issues are no longer live or parties lack legally cognizable interest in outcome; case can become moot if plaintiff obtains relief by another means); Doria v. Univ. of Vermont, 156 Vt. 114, 117 (1991) (declaratory relief is available only when party is facing threat of actual injury; actual controversy must exist at all stages of review, not merely at time complaint is filed); see also Anderson v. State, 168 Vt. 641, 644 (1998) (mem.) (requirement of actual controversy means that consequences of dispute are reasonably to be expected, and not based on fear or anticipation).

Nowhere in the complaint does plaintiff even suggest that he is seeking to have his choice of schools expanded, or that he is interested in sending his daughter to a school other than the Center. Nor has plaintiff even attempted to show that there is a " reasonable expectation" or " demonstrated probability" that he will be placed in a similar situation again. Cf. In re S.H., 141 Vt. 278, 281 (1982) (" capable of repetition, but evading review" exception to mootness doctrine did not apply because plaintiff failed to present evidence creating reasonable expectation that she would be placed in restrictive juvenile home again in future). In short, as the superior court found, there is no longer a live controversy for the court to adjudicate because the State Board' s April 2002 approval gave plaintiff what he sought in his complaint. He would not have received any further benefit from having the court consider his challenge to the State Board' s rules.

Affirmed.

BY THE COURT:

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Jeffrey L. Amestoy, Chief Justice

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John A. Dooley, Associate Justice

James L. Morse, Associate Justice