

--- F.3d ----, 2012 WL 3984592 (C.A.3 (N.J.))
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United States Court of Appeals,
Third Circuit.

D.F., a minor, individually and by his parent and legal guardian A .C., Appellant
v.

COLLINGSWOOD BOROUGH BOARD OF EDUCATION, a/k/a Collingswood Public Schools.

No. 11-2410.

Argued June 4, 2012.

Opinion Filed Sept. 12, 2012.

Appeal from the United States District Court for the District of New Jersey, (D.C. Civ. Action No. 1-10-cv-00594) District Judge: Honorable [Joseph E. Irenas](#).
[Jamie Epstein](#) (argued), Cherry Hill, NJ, for Appellant.

[Richard L. Goldstein](#), [Walter F. Kawalec, III](#) (argued), Marshall, Dennehey, Warner, Coleman & Goggin, Cherry Hill, NJ, for Appellee.

[John D. Rue](#), [Rafael Rosario](#) (argued), White & Case, New York, NY, [Ruth Deale Lowenkron](#), Education Law Center, New York, NY, for Amici Curiae, Education Law Center, et al.

Before [SCIRICA](#), [GREENAWAY, JR.](#), and [NYGAARD](#), Circuit Judges.

OPINION

[GREENAWAY, JR.](#), Circuit Judge.

Appellant D.F. was a five-year-old kindergartener during the 2008-2009 school year, his first under the supervision of Appellee Collingswood Borough Board of Education ("Collingswood"). He had previously been educated in the Camden school system, which had identified him as a special needs student and developed an Individualized Education Plan ("IEP") for him. Collingswood adopted the Camden IEP in substantial part, with the consent of D.F.'s mother, A.C. In January 2009, A.C. filed a due process petition alleging violation of D.F.'s rights under the Individuals with Disabilities in Education Act ("IDEA"). Sometime later, she filed a second due process petition expanding the claims. D.F. and A.C. subsequently moved out of state, at which point the New Jersey Administrative Law Judge ("ALJ") dismissed the pending due process petitions as moot. D.F. filed this suit in the District Court challenging the ALJ's orders. The parties filed cross-motions for summary judgment and the District Court granted Collingswood's motion, thereby upholding the ALJ's orders. D.F. timely appealed.

We must now resolve three questions: (1) whether the out-of-state move rendered all of D.F.'s claims moot; (2) if the claims are not moot, whether summary judgment was nonetheless proper because D.F.'s IDEA rights were not violated; and (3) wheth-

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er D.F. was a prevailing party for purposes of attorneys' fees. We hold that the District Court erred in determining that the claims were moot and in entering summary judgment. It correctly found that D.F. was not a prevailing party entitled to attorneys' fees. We therefore affirm in part, reverse in part, and remand this case to the District Court for further factual development.

I. BACKGROUND

A. 2008

D.F., an African-American male with special educational needs, was enrolled in an inclusion ^{FN1} pre-school class in the Camden City Public Schools for the 2007-2008 school year. There were fewer than ten students in the class, supervised by four adults. According to the IEP generated in Camden, he exhibited characteristics consistent with Attention Deficit Hyperactivity Disorder ("ADHD") and Oppositional Defiant Disorder ("ODD"). (Appellant's App. 8.) Although his cognitive abilities were at or above grade level, he had difficulty with visual-motor integration skills. Generally speaking, he experienced problems with hyperactivity, aggression, distractibility, and impulsivity. In Camden, D.F. had experienced issues with throwing objects, hitting peers, running away, and temper tantrums. Once a Behavior Intervention Plan ("BIP") was created, his negative behaviors began to diminish.