

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<b>BARBARA WALTER, Individually and on</b>	:	
<b>Behalf of Similarly Situated Individuals</b>	:	<b>CIVIL ACTION</b>
	:	
<b>Plaintiff,</b>	:	<b>NO. 05-418</b>
	:	
<b>v.</b>	:	
	:	
<b>SOUTHEASTERN PENNSYLVANIA</b>	:	
<b>TRANSPORTATION AUTHORITY</b>	:	
	:	
<b>Defendant.</b>	:	

**DUBOIS, J.**

**MARCH 28, 2007**

**MEMORANDUM**

**I. INTRODUCTION**

Plaintiff Barbara Walter, an individual with impaired mobility, filed suit against defendant Southeastern Pennsylvania Transportation Authority (“SEPTA”) individually and on behalf of other similarly situated individuals for violating the paratransit provision of the Americans with Disabilities Act (“ADA”), 42 U.S.C. § 12143. Plaintiff Barbara Walter was joined by plaintiff Laura Greene as a named plaintiff in the initial Complaint and Amended Complaint.

On June 2, 2006, the Court granted in part and denied in part defendant’s motion to dismiss, and dismissed plaintiff Greene’s case. Walter v. Southeastern Pennsylvania Transp. Auth., 434 F. Supp. 2d 346 (E.D. Pa. 2006). On June 16, 2006, defendant filed a motion to reconsider the Court’s June 2, 2006 Opinion. The Motion for Reconsideration was denied by the Court on August 25, 2006. Presently before the Court is defendant’s second Motion for Reconsideration of the June 2, 2006 Opinion, for Summary Judgment and to Vacate the June 2, 2006 Opinion.

## II. FACTUAL AND PROCEDURAL HISTORY

### A. Background

The facts of this case have been described extensively in Walter v. Southeastern Pennsylvania Transp. Aut., 434 F. Supp. 2d 346 (E.D. Pa. 2006) and 2006 U.S. Dist. LEXIS 60386 (E.D. Pa. Aug. 25, 2006) and will be repeated only as necessary to resolve the pending motions. Only those facts pertaining to plaintiff Walter have been included, since plaintiff Greene's case was dismissed.

Plaintiff Barbara Walter is a physically impaired resident of Philadelphia, Pennsylvania. Walter's impairment substantially limits her mobility. In March 2003, defendant SEPTA re-evaluated Walter's eligibility for CCT Connect paratransit service eligibility.<sup>1</sup> On March 11, 2003, after review of Walter's physical condition and functional ability, SEPTA's Independent Appeals Board determined that she was eligible for paratransit service under only three conditions: (1) "when the weather prevented her from getting to and from the bus stop," (2) "when the bus route required was not accessible," and (3) "when environmental/architectural barriers prevented her from getting to or from the bus." Dixon Affidavit ¶ 5; Def. Mot., Ex. 1.

Despite these limitations, Walter continued to receive paratransit service for all trips, without the limitations listed in her March 2003 eligibility determination, until July 1, 2004. Id. ¶ 6. On July 1, 2004, SEPTA's bus lines became fully wheelchair accessible, and SEPTA informed all conditionally eligible paratransit patrons, such as Walter, that they would be required to "follow the individualized eligibility determinations applicable to each of them."

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<sup>1</sup>Ms. Walter's eligibility for paratransit services prior to March 2003 is not a matter of record.

Id. ¶ 7.

Plaintiffs Walter and Greene filed their Complaint, individually and on behalf of others similarly situated, on January 31, 2005, followed by the filing of the first Motion for Class Certification on April 28, 2005, and the Amended Complaint on September 16, 2005. Plaintiff Walter's claim, as stated in the Amended Complaint, is that, under 49 C.F.R. § 37.123(e), SEPTA impermissibly denied plaintiff Walter access to paratransit services. 49 C.F.R. § 37.123(e)(2)(iii) provides that: "With respect to rail systems, an individual is eligible [for paratransit services] under this paragraph if the individual could use an accessible rail system, but – (A) there is not yet one accessible car per train on the system; or (B) key stations have not yet been made accessible." Amended Compl. ¶ 39. Plaintiff alleged in the Amended Complaint that, because key stations on defendant's rail lines - specifically the Walnut-Locust Station on the Broad Street Subway, and the 13th Street Station on the Market-Frankford Elevated Line - were not yet accessible, plaintiff Walter was eligible for paratransit service. See id. ¶¶ 22, 39.

**B. June 2, 2006 Opinion and Related Filings**

Defendant filed a Motion to Dismiss the Amended Complaint on September 30, 2005, which this Court granted in part and denied in part in a Memorandum and Order dated June 2, 2006. Walter, 434 F. Supp. 2d 346. In the June 2, 2006 Opinion, the Court denied defendant's Motion to Dismiss as to plaintiff Walter's case, but granted the motion to dismiss as to plaintiff Green. Plaintiff Greene's case was dismissed on the ground that her claim was based on commuter rail accessibility, which the ADA exempts from paratransit eligibility. See id. at 360. The Walter claim, which was based on the accessibility of SEPTA's Broad Street Subway Line and the Market-Frankford Elevated Line, was allowed to proceed.

Defendant's Motion to Dismiss presented an issue of national first impression: whether the DOT's paratransit regulations found at 49 C.F.R. § 37.123(e), the regulations relied upon in plaintiff's claims, are a reasonable interpretation of the paratransit eligibility statute found at 42 U.S.C. § 12143(c)(1). The Court held that the statute was ambiguous and that the implementing regulations were a reasonable interpretation. The Court further held that "[t]he ADA paratransit statute, 42 U.S.C. § 12143, and the implementing regulations found at 49 C.F.R. § 37.123, require that a transit authority provide paratransit service to disabled individuals who cannot use a rail system because key stations necessary for a trip have not been made accessible." Id. at 361. In so ruling, the Court explicitly rejected defendant's arguments that plaintiff Walter was not eligible for paratransit "merely because a few key stations have not been made handicap accessible." Id. at 350.

Following the dismissal of plaintiff Greene's case, plaintiff Walter filed a second Motion for Class Certification on June 7, 2006.<sup>2</sup> On June 16, 2006, defendant filed a Motion for Reconsideration or Alternatively for Certification of Issues for Immediate Appeal. By Order dated August 25, 2006, the Court denied the Motion for Reconsideration and, by agreement, that part of the Motion which sought certification of issues for immediate appeal was marked withdrawn.

### **C. Recertification**

Unbeknownst to the Court, in January 2006, while defendant's Motion to Dismiss was pending, Walter's paratransit eligibility was recertified by defendant SEPTA. Under her

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<sup>2</sup>Based upon the filing of the second Motion for Class Certification, the Court denied the first Motion for Class Certification as moot by Order dated June 14, 2006.

recertification, Walter was determined to be eligible for paratransit service when one or more of the following conditions exist: (1) “when weather (snow, ice) prevents her from getting to/from a bus stop,” (2) “when environmental barriers (e.g. steep hills or long gradual hills) or architectural barriers (i.e., construction or lack of pavements, side walks and/or curb cuts) prevent her from getting to and from the bus stop,” (3) “any time during the summer months when the temperature rises above 90 degrees (including the heat index) or when a ‘heat advisory’ is issued by the city (usually between June 15th and September 15th),” (4) “any time during the winter months when temperatures fall below 32 degrees (including the wind chill factor) or when a ‘code blue’ is issued by the city (usually between December 15th and March 15th),” and (5) “when she has to take a trip requiring 1 or more bus transfers.” Dixon Affidavit ¶ 14.

Counsel for SEPTA was apparently never informed by their client of the recertification, see Krenzel Affidavit ¶ 3, Def. Mot. Ex. 3, and SEPTA asserted that the pending lawsuit in no way influenced the decision to reinstate the eligibility. See id.; Dixon Affidavit ¶ 20 (“The existence of the lawsuit against SEPTA . . . had no impact or influence upon the recertification process as it pertains to Ms. Walter or any other paratransit patron.”). Counsel for SEPTA learned of Ms. Walter’s recertification in “the latter part of July 2006” through an investigation in connection with this lawsuit. Krenzel Affidavit ¶ 3. Counsel for plaintiff concede that they were aware of the recertification, but elected not to inform the Court of this development because of their belief that “it did not materially affect this litigation.” Letter from Tiryak, at 2, Def. Mot., Ex. 3, Attach. C (“Letter from Tiryak”).

During a telephone conference on August 22, 2006, it was revealed to the Court for the first time that plaintiff’s paratransit eligibility had been recertified in January 2006. The Court

told counsel that no formal action with respect to the recertification issue would be taken by the Court until the matter was presented by a Motion for Summary Judgment on or before September 11, 2006. See August 22, 2006 Order. Prior to the receipt of that Motion for Summary Judgment, on August 30, 2006, plaintiff sent a letter to the Court stating that plaintiffs would file a praecipe to dismiss the case without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1) due to the increasing accessibility of various rail lines.<sup>3</sup> Letter from Tiryak, at 2. In particular, counsel for plaintiff stated that, at the time of the letter, “the 13th Street key station on the Market-Frankford Line, which Ms. Walter would use, is on track to become wheelchair accessible within a few months.” Id.

On September 11, 2006, following additional correspondence from the parties and the Court, defendant filed a second Motion for Reconsideration of June 2, 2006 Memorandum and Opinion, For Summary Judgment, and To Vacate June 2, 2006 Memorandum. This Motion is now fully briefed.

Defendant’s pending motion for summary judgment, for reconsideration, and to vacate presents the following issues for disposition: (1) whether the January 11, 2006 recertification mooted plaintiff Walter’s claims, (2) whether the increased accessibility of rail lines mooted plaintiff Walter’s claims, (3) if plaintiff’s claims are moot, whether she can maintain standing to represent the purported class and (4) if plaintiff’s claims are moot, whether the Court must vacate the June 2, 2006 Memorandum and Order as an advisory opinion. For the reasons that follow,

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<sup>3</sup>As of this date, the Notice of Voluntary Dismissal pursuant to Rule 41 has not been filed. On September 6, 2006, plaintiff stated in a letter addressed to the Court that, should the Court consider and rule upon SEPTA’s Motion for Summary Judgment, plaintiff would file the Notice thereafter if necessary.

the Court concludes that plaintiff's claims were not mooted by either the recertification or the increased accessibility of rail lines and, accordingly, that part of defendant's motion which seeks summary judgment will be denied, and the June 2, 2006 Memorandum and Order will not be vacated.

## **II. DISCUSSION**

### **A. Motion for Summary Judgment**

#### **1. Legal Standard - Motion for Summary Judgment**

A court should grant summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c); Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). The Supreme Court has further ruled that a "genuine" issue exists if "the evidence is such that a reasonable jury could return a verdict for the non-moving party," and a factual dispute is "material" when it "might affect the outcome of the suit under the governing law." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986).

In considering a motion for summary judgment, "the inferences to be drawn from the underlying facts . . . must be viewed in the light most favorable to the party opposing the motion." Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587-88 (1986). In a summary judgment motion, the moving party has the initial burden of identifying evidence which demonstrates the absence of a genuine issue of material fact. White v. Ottinger, 442 F. Supp. 2d 236, 242 (E.D. Pa. 2006). The party opposing the motion, however, cannot rely merely upon bare assertions, conclusory allegations, or suspicions to support its claim. Fireman's Ins. Co. v.

DuFresne, 676 F.2d 965, 969 (3d Cir. 1982).

2. The Parties' Arguments

Defendant argues that judgment should be entered in its favor on the ground that plaintiff's claim is moot. Specifically, defendant argues that two events have independently mooted Walter's claim: (1) the January 11, 2006 recertification of plaintiff's paratransit eligibility; and (2) the increased availability of accessible rail lines. See Def. Mot. at 11 n.10. In response, plaintiff argues that the Court retains jurisdiction to resolve her claims because defendant's action - the recertification - should be characterized as the voluntary cessation of a challenged practice which can be modified or terminated.

3. Legal Standard - Mootness

"Mootness is the doctrine of standing in a time frame. The requisite personal interest that must exist at the commencement of the litigation (standing) must continue throughout its existence (mootness)." United States Parole Commn. v. Geraghty, 445 U.S. 388, 397 (1980) (quoting Henry Monaghan, *Constitutional Adjudication: The Who and When*, 82 Yale L.J. 1363, 1384 (1973)); see also Ruocchio v. United Transp. Union, Local 60, 181 F.3d 376, 385 n.11 (3d Cir. 1999)("Both standing and mootness involve the consideration of whether an Article III case or controversy exists"). "Article III requires that a plaintiff's claim be live not just when he first brings the suit, but throughout the entire litigation, and once the controversy ceases to exist the court must dismiss the case for lack of jurisdiction." Lusardi v. Xerox Corp., 975 F.2d 964, 974 (3d Cir. 1992); see also United States v. Virgin Islands, 363 F.3d 276, 285 (3d Cir. 2004) ("If a claim does not present a live case or controversy, the claim is moot, and a federal court lacks jurisdiction to hear it.").

4. January 11, 2006 Recertification

Defendant argues that plaintiff's January 11, 2006 recertification for paratransit eligibility has mooted her claims for relief because that recertification "provides precisely the relief that she sought through litigation." Def. Mot. 11. In response, plaintiff argues that the recertification was the voluntary cessation of a challenged practice that does not moot plaintiff's claims because defendant cannot prove that there is no likelihood that the wrong will be repeated.

a. Partial Relief

First, although not addressed by either party, it appears to the Court that defendant's action in recertifying plaintiff did not afford complete relief to plaintiff. A defendant's action that affords all the relief demanded by the plaintiff may, in some cases, serve to moot plaintiff's claims. See, e.g., Johnson v. Horn, 150 F.3d 276, 287-88 (3d Cir. 1998) ("[W]here a defendant agrees to afford all the prospective relief a plaintiff is requesting, mootness doctrine bars a federal court from deciding the merits of the issue."). "Decision remains appropriate, however, if there is a reasonable prospect that the court may award additional relief." 13A Wright & Miller, Federal Practice and Procedure, § 3533.2, at 239. For example, in International Brotherhood of Boilermakers v. Kelly, 815 F.2d 912 (3d Cir. 1987), the Third Circuit noted that "the availability of effective relief is one measure of the existence of a continuing controversy between parties with cognizable interests in the outcome." Id. at 915. In that case, the Third Circuit held that "because at least part of the relief requested by appellants' complaint before the district court remained available" the district court had incorrectly dismissed the underlying case as moot. Id. at 916. Thus, if a court may still provide relief, a plaintiff's claim is not mooted.

In the instant case, the only material difference between plaintiff's status with respect to

paratransit services in 2003 and in 2006 is that paratransit services are available in periods of extreme heat and cold and for any trip requiring more than one bus transfer. Compare Dixon Affidavit ¶ 5, with Dixon Affidavit ¶ 14. Significantly, the paratransit services provided by the January 11, 2006 paratransit services do not resolve all of plaintiff's claims presented in the Amended Complaint or provide all of the requested relief. In the Amended Complaint plaintiff alleged:

SEPTA violates Title II of the Americans with Disabilities Act, 42 U.S.C. § 12143, and its implementing regulations 49 C.F.R. § 37.123(e)(2), and Section 504 of the Rehabilitation Act, 29 U.S.C. § 794, by failing to include a provision as part of Plaintiffs' and the class members conditional eligibility providing eligibility for CCT Connect paratransit service for trips that they could take on SEPTA's rail system but for its inaccessible 'key' stations.

Amended Compl. ¶ 40. Continuing, plaintiff requested that this Court, *inter alia*, “[d]eclare that defendant SEPTA’s actions and inactions violate the American with Disabilities Act and Rehabilitation Act,” “[i]ssue appropriate injunctive relief and enjoin Defendant to comply with its obligations under the Americans with Disabilities Act, and Rehabilitation Act,” and “[g]rant plaintiffs such additional relief as this Court may deem just, proper, and equitable, including an award of reasonable attorneys fees, litigation expenses and costs under 42 U.S.C. § 12205 and 29 U.S.C. § 794(a).” Amended Compl. 9-10.

Defendant’s action in recertifying plaintiff did not afford plaintiff all of the relief sought in her Amended Complaint. On this issue, SEPTA confirmed that (1) there is no policy to provide eligibility for CCT Connect paratransit services for trips that riders could take on SEPTA’s rail system but for its inaccessible “key” stations, and (2) the January 11, 2006 recertification contains no such provision. See **Dixon Affidavit ¶ 14, 19** (“SEPTA has no policy

requiring that paratransit be provided whenever a paratransit patron seeks to use an inaccessible key station.”). Therefore, although the recertification has provided expanded access to paratransit services for plaintiff, it has not fully provided all of the relief sought. Cf. Int’l Brotherhood of Boilermakers, 815 F.2d at 915.

b. Voluntary Cessation of Challenged Practice

Moreover, assuming, *arguendo*, that the increased access to paratransit services affords plaintiff full relief, the Court can still address plaintiff’s claims because Court concludes the January 11, 2006 recertification was the voluntary cessation of challenged behavior.

In Friends of the Earth, Inc., v. Laidlaw Env’tl. Serv., 528 U.S. 167, 189 (2000), the Supreme Court stated that “it is well settled that ‘a defendant’s voluntary cessation of a challenged practice does not deprive a federal court of its power to determine the legality of the practice.’” Id. (quoting City of Mesquite v. Aladdin's Castle, Inc., 455 U.S. 283, 289 (1982)). The rationale for this exception to the mootness doctrine is that, if a defendant could moot a plaintiff’s claim by voluntarily ceasing a challenged practice, “courts would be compelled to leave the defendant free to return to his old ways.” Id. (internal citations omitted).

The standard for “determining whether a case has been mooted by the defendant’s voluntary conduct is stringent: A case might become moot if subsequent events made it *absolutely clear* that the allegedly wrongful behavior could not reasonably be expected to recur.” Id. (emphasis added) (citing United States v. Concentrated Phosphate Export Ass’n, 393 U.S. 199, 203 (1968)). Under this standard, the party alleging mootness bears the “‘heavy’ even ‘formidable’ burden of persuading the court that the challenged conduct cannot reasonably be expected to resume.” Virgin Islands, 363 F.3d at 284-85 (quoting Friends of the Earth, Inc., 528

U.S. at 189).

The Third Circuit recently discussed the voluntary cessation exception to the mootness doctrine in Virgin Islands. In that case, defendants voluntarily terminated a contract that had given rise to the lawsuit, and argued that such termination rendered plaintiff's claim for injunctive relief moot. The court found that defendant had failed to meet "its heavy burden of demonstrating that there is no reasonable expectation that it would again enter into a contract similar to the one at issue." 363 F.3d at 285. In so holding, the Virgin Islands court noted that the defendant continued to substantively defend its position, and found that "this stance does not bespeak of a genuine belief that the [allegedly unlawful behavior] was of a type that would not be contemplated again." Id. at 286.

In addressing the applicability of the "voluntary cessation" exception, defendant first argues that the recertification should not properly be considered a "voluntary cessation" because the recertification "occurred within the parameters of SEPTA's routine, three-year recertification of a paratransit patron." Def. Mot. 12. This argument is not persuasive. What is relevant for this inquiry is whether defendants have acted in a way that provides plaintiff the sought after relief, and whether defendants are free to "undo" that action should the Court dismiss the case. See, e.g. Cmty Serv., Inc. v. Wind Gap Mun. Auth., 2006 U.S. Dist. LEXIS 23385 (E.D. Pa. Apr. 25, 2006) (the granting of an ADA reasonable accommodation was considered a voluntary cessation of challenged practice). By increasing plaintiff's paratransit access, defendants did provide plaintiff some relief, but defendants are free to again alter plaintiff's paratransit eligibility if the Court dismisses the case. Cf. City of Mesquite, 455 U.S. at 289 ("In this case the city's repeal of the objectionable language would not preclude it from reenacting precisely the

same provision if the District Court’s judgment were vacated.”).

On that point, defendant argues that even if the recertification is considered a “voluntary cessation,” that exception to the mootness doctrine should not apply because there is no reasonable chance that plaintiff will be again subjected to the harmful conduct. In support of this argument defendant states that the voluntary cessation exception is necessarily premised on the reasonable risk that the allegedly harmful conduct will be repeated, a risk inapposite to this case because plaintiff’s eligibility will not be re-examined for three years.<sup>4</sup> See Dixon Aff. ¶ 9 (“Ms. Walter’s paratransit eligibility is valid for three years. Paratransit recertification occurs on a three year cycle in the ordinary course of SEPTA’s business.”).

Plaintiff responds by asserting that SEPTA’s internal policy of reviewing eligibility every three years does not meet defendant’s “‘heavy’ even ‘formidable’ burden of persuading the court that the challenged conduct cannot reasonably be expected to resume.” Virgin Islands, 363 F.3d at 284-85. The Court agrees. Defendant’s assurance that SEPTA’s recertification policy precludes the possibility that plaintiff’s paratransit eligibility will again be curtailed is insufficient to show with absolute certainty that there is no reasonable expectation that defendant’s allegedly wrongful conduct can reasonably be expected to resume. Cf. Cmty Serv., Inc., 2006 U.S. Dist. LEXIS 23385, at \*5 (“The fact that the granting of the reasonable accommodation could be revoked upon the defendant’s determination that a ‘change’ in the living arrangement had taken place indicates the potential for recurrence of the defendant’s

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<sup>4</sup>Defendant additionally argues that plaintiff will not again be subjected to the allegedly wrongful conduct because the rail lines are becoming increasingly accessible. That argument overlaps defendant’s assertion that the accessibility of the rail lines in and of itself moots plaintiff’s claims and will be addressed *infra* in **Section II.A.5**.

behavior.”). Defendant offers no evidence to support the contention that it is “absolutely clear” that limitations on plaintiff’s paratransit eligibility “could not reasonably be expected to recur.” Friends of the Earth, Inc., 528 U.S. at 189.

In reaching this determination, the Court notes that defendant continues to assert the substantive defense that SEPTA is not required to provide paratransit services for patrons when needed key stations are unavailable, a position that is contrary to the Court’s June 2, 2006 Opinion. Compare Dixon Affidavit ¶ 19 (“SEPTA has no policy requiring that paratransit be provided whenever a paratransit patron seeks to use an inaccessible key station.”) with Walter, 434 F. Supp. 2d at 361 (“The ADA paratransit statute, 42 U.S.C. § 12143, and the implementing regulations found at 49 C.F.R. § 37.123, require that a transit authority provide paratransit service to disabled individuals who cannot use a rail system because key stations necessary for a trip have not been made accessible.”).

##### 5. Accessibility of Rail Lines

Defendant further argues that the increasing accessibility of rail stations serves to moot plaintiff’s claim because the relief sought by plaintiff, accessible transportation, has been provided. See Def. Mot. 11 n.10. In support of this argument, defendant cites a letter to the Court from plaintiff’s counsel dated August 30, 2006, in which counsel acknowledges that SEPTA rail lines are becoming increasingly accessible—a development offered to explain plaintiff’s decision to seek a voluntary dismissal of the case. See id. (citing Tiryak Letter). Specifically, in the August 30, 2006 letter, plaintiff’s counsel states that “the relief sought by plaintiff has become unnecessary, due to the increasing accessibility of various rail lines. For example, it has come to our attention that the 13th Street key station on the Market-Frankford

Line, which Ms. Walter would use, is on track to become wheelchair accessible within the next few months.” Tiryak Letter 2. Aside from citing to the August 30, 2006 letter, SEPTA submitted no additional evidence that rail lines are in fact more accessible with its motion on September 11, 2006, and has provided no such evidence since that date.

Defendant’s conclusory assertion that rail lines are expected to become more accessible is insufficient to demonstrate that there is no genuine issue of material fact in this case. Although plaintiff acknowledges that at some unforeseen time in the future these claims may become moot, that is not the equivalent of stating that at this moment those claims are moot. On the present state of the record, it is unclear to what degree “key stations” have become accessible. Under the ADA, intercity rail systems have until 2010 to make key stations accessible. 42 U.S.C. § 12162(e)(2)(A)(ii)(I). On the basis of this record, the Court concludes that defendant has failed to meet its burden of identifying evidence which demonstrates the absence of a genuine issue of material fact, see White v. Ottinger, 442 F. Supp. 2d 236, 242 (E.D. Pa. 2006), and that the mere assertion that key stations are expected to become more accessible does not moot plaintiff’s claim.

#### 6. Conclusion - Motion for Summary Judgment

For the foregoing reasons, the Court concludes that plaintiff’s claim is not moot. Neither the recertification of plaintiff on January 11, 2006, nor the alleged increased accessibility of rail lines has deprived the Court of jurisdiction to hear plaintiff’s claims. Because plaintiff’s claim is not moot, the Court need not address defendant’s argument that plaintiff is without standing to represent the purported class. For all such reasons, that part of defendant’s motion which seeks summary judgment is denied.

## **B. Motion for Reconsideration/Motion to Vacate**

### 1. Legal Standard - Motion for Reconsideration/Motion to Vacate

“A federal district court has inherent power over interlocutory orders and may modify, vacate, or set aside these orders ‘when it is consonant with justice to do so.’” Rottmund v. Continental Assurance Co., 813 F. Supp. 1104, (E.D. Pa. ) (quoting United States v. Jerry, 487 F.2d 600, 605 (3d Cir. 1973). However, motions for reconsideration should be granted sparingly “because courts have a strong interest in the finality of judgments.” Douris v. Schweiker, 229 F. Supp. 2d 391, 408 (E.D. Pa. 2002).

A court may grant a motion for reconsideration on one of three grounds: (1) an intervening change in the controlling law; (2) the availability of new evidence not available when the court granted the prior motion; or, (3) the need to correct a clear error of law or fact or prevent “manifest injustice.” Max’s Seafood Café v. Quinteros, 176 F.3d 669, 677 (3d Cir. 1999); Walter, 2006 U.S. Dist. LEXIS 60386, at \*9. “Parties are not free to relitigate issues which the court has already decided.” United States v. Jasin, 292 F. Supp. 2d 670, 676 (E.D. Pa. 2003).

### 2. Analysis

That part of defendant’s motion which asks the Court to reconsider and to vacate its Order and Memorandum of June 2, 2006 is premised on the argument that Walter’s claims are moot. Defendant argues that:

Walter’s claim became moot on January 11, 2006, upon SEPTA’s determination that Walter was entitled to increased paratransit eligibility. As such, no case or controversy existed between SEPTA and Walter as of that date. As a consequence of the mootness of Walter’s claim, this Court’s June 2, 2006 Memorandum, a document richly undergirded by Walter’s allegations that she lacks the precise paratransit eligibility that she indeed

possesses, stands forth as a prototypical advisory opinion issued six months after any case or controversy among the parties evaporated. The June 2, 2006 Memorandum must be vacated as an advisory opinion.

Def. Mot. 16.

“The oldest and most consistent thread in the federal law of justiciability is that federal courts will not give advisory opinions.” Coffin v. Malvern Fed. Sav. Bank, 90 F.3d 851, 853 (3d Cir. 1996) (quoting 13 Wright and Miller, Federal Practice and Procedure, § 3529.1, at 293). An advisory opinion is one “rendered in the absence of a present case or controversy,” such as an opinion rendered in a case that has become moot. Boston Firefighters Union, Local 718 v. Boston Chapter, NAACP, Inc., 468 U.S. 1206, 1206 (1984).

In State of New Jersey, Dept. of Env'tl. Prot. and Energy v. Heldor Indus., Inc., 989 F.2d 702 (3d Cir. 1993), the Third Circuit vacated the opinion of the bankruptcy court as an impermissible advisory opinion because the case was moot when the opinion was issued—no case or controversy remained to be adjudicated. Accordingly a federal court is “constitutionally disabled” from issuing an opinion when no “live controversy” remains to be decided. Id. 708.

Because the Court concludes that plaintiff’s claims have not been mooted by either the January 11, 2006 recertification, or by the allegedly increased accessibility of rail lines, the Court’s June 2, 2006 Opinion was not, in fact, an advisory opinion and will not be vacated. That part of defendant’s motion which asks the Court to reconsider and to vacate its Memorandum and Order dated June 2, 2006 is denied.

### **III. CONDUCT OF ATTORNEYS**

In defendant’s Motion, SEPTA alleges that plaintiff’s counsel engaged in “disturbing lack of candor with respect to both the Court and to counsel for SEPTA.” Def. Mot. 21.

Defendant notes that the Court “has the inherent power to render any disciplinary action that it sees fit to dispense.” Id. at 24.

Counsel have a “continuing duty to inform the Court of any development which may conceivably affect an outcome of the litigation.” In re Universal Minerals, Inc., 755 F.2d 309, 313 (3d Cir. 1985) (citing Fusari v. Steinberg, 419 U.S. 379, 391 (1975) (Burger, C.J., concurring). “This is so, even where the new developments, new facts, or recently announced law may be unfavorable to the interests of the litigant.” Id.

Plaintiff’s counsel argue that they did not fail to disclose information to the Court because they independently concluded that the recertification of Ms. Walter was not material to the case. Plaintiff’s counsel states that “if the case was not rendered moot as a result of the action of SEPTA, then counsel surely had no obligation to advise the Court that the defendant had an invalid defense to present.” Pl. Resp. 7. The Court disagrees. This statement does not comport with counsel’s duty of candor as stated by the Third Circuit. Although the Court has ultimately concluded that plaintiff’s claim is not moot, it is clear that the recertification was a development that could have conceivably affected the outcome of the litigation and should have been disclosed by plaintiff’s counsel. The Court admonishes plaintiff’s counsel to avoid such conduct in the future, but concludes that no sanctions or other action by the Court is required.

#### **IV. CONCLUSION**

For the foregoing reasons, defendant’s Motion for Reconsideration of June 2, 2006 Memorandum and Opinion, for Summary Judgment, and to Vacate June 2, 2006 Memorandum is denied.

An appropriate Order follows.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<b>BARBARA WALTER, Individually and on</b>	:	<b>CIVIL ACTION</b>
<b>Behalf of Similarly Situated Individuals</b>	:	
<b>Plaintiff,</b>	:	
	:	
<b>v.</b>	:	<b>NO. 05-418</b>
	:	
<b>SOUTHEASTERN PENNSYLVANIA</b>	:	
<b>TRANSPORTATION AUTHORITY</b>	:	
<b>Defendant.</b>	:	

**ORDER**

**AND NOW**, this 28th day of March, 2007, upon consideration of Defendant SEPTA's Motion for Reconsideration of June 2, 2006 Memorandum and Opinion, for Summary Judgment, and to Vacate June 2, 2006 Memorandum (Document No. 49, filed Sept. 11, 2006); Plaintiff's Response to Defendant's Motions for Summary Judgment, to Vacate and For Reconsideration (Document No. 52, filed Sept. 27, 2006); and Reply Memorandum of Law in Support of Defendant SEPTA's Motion for Reconsideration of June 2, 2006 Memorandum, for Summary Judgment, and to Vacate June 2, 2006 Memorandum (Document No. 53, filed Oct. 6, 2006), for the reasons stated in the attached Memorandum, **IT IS ORDERED** that:

- A. That part of defendant SETPA's Motion which seeks summary judgment is **DENIED**; and
- B. That part of defendant's motion which asks the Court to reconsider and to vacate its Memorandum and Order dated June 2, 2006 is **DENIED**.

**BY THE COURT:**

/s/ Honorable Jan E. DuBois

**JAN E. DUBOIS, J.**