

New Jersey Commissioner of Education
Final Decision

<p>J.L., on behalf of minor child, J.L.,</p> <p style="text-align: center;">Petitioner,</p> <p style="text-align: center;">v.</p> <p>Board of Education of the Upper Freehold Regional School District, Monmouth County,</p> <p style="text-align: center;">Respondent.</p>	
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Synopsis

Pro se petitioner filed an appeal on behalf of his son, J.L., challenging the respondent Board's removal of J.L. from three national honor societies following a finding that J.L. had committed plagiarism on a homework assignment in October 2020. Petitioner sought immediate reinstatement via a motion for emergent relief, which was denied in April 2021. The underlying petition remained pending before the OAL.

The ALJ found, *inter alia*, that: subsequent to the denial of emergent relief, both parties participated in a telephone prehearing conference on May 6, 2021, during which the parties agreed to a schedule for prehearing discovery; that schedule was subsequently adopted pursuant to *N.J.A.C.* 1:1-10.4; under the schedule, the respondent was to serve discovery requests on the petitioner no later than May 7, 2021, and the petitioner was to respond to those requests no later than May 21, 2021, but failed to do so; in a subsequent telephone conference, petitioner indicated that he no longer wished to pursue this matter and provide discovery to the Board, but he did not want to withdraw either; the Board indicated that they would file a motion to dismiss based on petitioner's failure to provide discovery. The ALJ concluded that the petitioner effectively abandoned his claim in this matter; further, petitioner's refusal to provide discovery impaired the respondent's ability to properly prepare and present a defense to the petitioner's claims, and such conduct justifies dismissal of the petition due to these procedural deficiencies. Accordingly, the ALJ granted the Board's motion to dismiss with prejudice.

Upon review, the Commissioner concurred with the ALJ's determination that the petition of appeal should be dismissed due to petitioner's failure to respond to the Board's discovery requests. Accordingly, the Board's motion to dismiss was granted, and the petition of appeal was dismissed.

<p>This synopsis is not part of the Commissioner's decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.</p>

New Jersey Commissioner of Education
Final Decision

J.L., on behalf of minor child, J.L.,

Petitioner,

v.

Board of Education of the Upper Freehold
Regional School District, Monmouth County,

Respondent.

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed and considered. The parties did not file exceptions.

Upon review, the Commissioner concurs with the Administrative Law Judge that the petition of appeal should be dismissed due to petitioner's failure to respond to the Board's discovery requests.¹ Accordingly, the Board's motion to dismiss is granted, and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.²


ACTING COMMISSIONER OF EDUCATION

Date of Decision: September 1, 2021
Date of Mailing: September 1, 2021

¹ The Commissioner also notes that petitioner's child turned 18 following the filing of the petition of appeal. Once the child has reached the age of majority, any claim is his – and not petitioner's – to pursue. *See N.J.A.C. 6A:3-1.3(a)(2)*. The record does not include any authorization from petitioner's child permitting petitioner to pursue this matter on the child's behalf.

² This decision may be appealed to the Appellate Division of the Superior Court pursuant to *N.J.S.A. 18A:6-9.1*. Under *N.J.Ct.R. 2:4-1(b)*, a notice of appeal must be filed with the Appellate Division within 45 days from the date of mailing of this decision.



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

GRANTING RESPONDENT'S

MOTION TO DISMISS

OAL DKT. NO. EDU 02939-21

AGENCY DKT. NO. 37-3/21

**J.L. ON BEHALF OF
MINOR CHILD J.L.,**

Petitioner,

v.

**BOARD OF EDUCATION OF THE
UPPER FREEHOLD REGIONAL SCHOOL
DISTRICT, MONMOUTH COUNTY,**

Respondent.

J.L., petitioner, pro se

Patrick J. Madden, Esq., for respondent (Madden & Madden, P.C., attorneys)

Record Closed: June 29, 2021

Decided: July 27, 2021

BEFORE **DAVID M. FRITCH, ALJ**:

STATEMENT OF THE CASE

The petitioner, on behalf of his son, J.L., initiated the present action by filing a pro se petition of appeal with the State of New Jersey Department of Education,

seeking relief on an emergent basis against respondent, the Board of Education of Upper Freehold Regional School (BOEUFRS), seeking immediate reinstatement of his son into three national honor societies following the respondent's removal of J.L. from these honor societies upon finding J.L. committed plagiarism on a homework assignment he submitted in October 2020.

PROCEDURAL HISTORY

The petition for emergent relief was received by the New Jersey Department of Education on March 4, 2021. The matter was transferred to the Office of Administrative Law (OAL), where it was filed on March 30, 2021. N.J.S.A. 52:14F-5(e), (f), and (g) and N.J.A.C. 1:6A-1 through 18.5. The emergent relief motion was heard on April 5, 2021, and the motion was denied in a recommended order dated April 6, 2021. That recommended order denying emergent relief was adopted by the New Jersey Commissioner of Education in an order dated April 27, 2021.

Following the denial of emergent relief, the underlying petition to appeal BOEUFRS' action remained pending before the OAL. A telephone prehearing conference was held with the parties on May 6, 2021, where the parties agreed to a schedule for prehearing discovery which required the respondent to serve discovery requests on the petitioner by May 7, 2021, and for the petitioner to provide responses to the respondent's discovery requests by May 21, 2021. At the request of the respondent, a subsequent telephone prehearing conference was held with the parties on June 4, 2021, to address discovery issues. At that conference, the respondent indicated that it had not received discovery responses from the petitioner. The petitioner did not deny failing to respond to the respondent's discovery requests and indicated that he may not wish to proceed further with the matter but did not wish to withdraw his petition at that time. The respondent indicated that, if the petitioner did not withdraw his petition, it would be filing the present motion to dismiss the petition. On June 9, 2021, the respondent filed the present motion to dismiss the petition for failure to respond to discovery. The motion was served on the petitioner via mail and email on June 9, 2021. The petitioner filed opposition to the respondent's motion on June 23,

2021. The respondent filed a reply brief in further support of their motion on June 29, 2021, and the record on the motion closed on that date.¹

FACTUAL DISCUSSION

A summary of the pertinent facts is undisputed and largely procedural, and I **FIND** the following **FACTS**:

1. The petitioner's motion for emergent relief was denied on April 6, 2021. Following denial of his emergent relief motion, both parties to this matter participated in a telephone prehearing conference with the undersigned on May 6, 2021.
2. During the telephone prehearing conference on May 6, 2021, the parties agreed to a schedule for prehearing discovery which was subsequently established by the undersigned pursuant to N.J.A.C. 1:1-10.4.
 - a. Under that schedule, the respondent was to serve discovery requests on the petitioner no later than May 7, 2021, and the petitioner was to respond to those requests no later than May 21, 2021. (Madden Cert. at ¶ 3.)
 - b. Consistent with this schedule, the respondent served discovery requests on the petitioner on May 7, 2021. (Id. at ¶ 4. See also id. at Ex. 2.)
3. The respondent did not receive a response to its discovery requests from the petitioner. (Id. at ¶ 5.) Counsel for the respondent contacted the petitioner on May 25, 2021, to address the petitioner's failure to respond to the outstanding discovery requests. (Id. at ¶ 6. See also id. at Ex. 3.)
4. The respondent is not delinquent in any of its discovery obligations. (Id. at ¶ 15.)

¹ Although, pursuant to the provisions of N.J.A.C. 1:1-12.2(b), the petitioner's response was due no later than ten days after receipt of the moving papers, which would have been June 21, 2021, the respondent did not object to receipt of the petitioner's untimely response to their motion, and filed a reply brief in further support of their motion on June 29, 2021.

5. On May 25, 2021, the respondent contacted the undersigned to request a telephone conference to address the discovery issues pursuant to N.J.A.C. 1:1-10.4(d). (Id. at Ex. 1.)

6. On June 4, 2021, a telephonic status conference was held with the parties. (Id. at ¶ 10.) During that conference, the petitioner did not contest the claim that he had not responded to the respondent's discovery requests nor did he file any timely objections to the respondent's discovery requests with the OAL pursuant to N.J.A.C. 1:1-10.4(d). The petitioner indicated that he did not wish to further pursue this matter and provide discovery responses to the respondent, however, he did not want to withdraw the matter either. (See Pet. Resp. (stating "at this time there is really no point in moving forward with this matter").) On that conference, the respondent indicated that it wanted to file a motion to dismiss the petition due to the petitioner's failure to respond to discovery. (Madden Cert. at ¶ 11.)

LEGAL DISCUSSION

Discovery requests must be responded to within fifteen days of notice and service, and discovery must be completed no later than ten days before the first scheduled evidentiary hearing or by such date ordered by the judge. N.J.A.C. 1:1-10.4. Here, the respondent served discovery requests on the petitioner on May 7, 2021. (Madden Cert. at ¶ 4. See also id. at Ex. 2.) It is factually undisputed that these requests were not responded to in a timely manner, which is the basis for the present motion. While the petitioner, in his response brief, attempts to characterize the respondent's discovery requests as "a mountain of discovery which had nothing at all to do with proving or denying whether [the respondent was] right or wrong" (Pet. Resp. Br.), it is undisputed that the petitioner did not file any timely objections to the respondent's discovery requests within ten days of receiving them as required by N.J.A.C. 1:1-10.4(d). To raise such vague objections in their response to the present motion is untimely and justifies denying the petitioner's present objections to the respondent's discovery requests. Id.

An ALJ may dismiss a petition for a party's failure to comply with procedural requirements under N.J.A.C. 1:1-14.14(a)(1). J.G. v. Paramus Bd. of Educ., 2008 U.S. Dist. LEXIS 30030, *9 (D.N.J. April 11, 2008). While dismissal should be imposed sparingly in the case of discovery rule violations, it is nonetheless appropriate where a party's "ability to defend his case is seriously impaired." Zaccardi v. Becker, 88 N.J. 245, 253 (1982). In his petition seeking emergent relief on this matter, the petitioner made a number of factual assertions including a claim that there were other students in J.L.'s class who committed offenses "much more severe and worse" but were allowed to join the school's honor societies. (Id.) The petition further asserted that the respondent's actions placed J.L.'s "total academic future in peril," as J.L. was seeking "to go to an Ivy League School or other prestigious university next year" and that if the respondent's actions were not reversed, the outcome would "affect that as well as future scholarships, internships, jobs, etc." (Pet. Statement of Facts to Accompany Pro Se Petition of Appeal. See also Madden Cert. at ¶ 18.) The petition also assures that the petitioner "can supply documentation to back up" the claims made in the petition. (Id.) Among the discovery sought by the respondent was information regarding the petitioner's college admissions and scholarships applied to. (Id.) In the absence of the petitioner's discovery responses, the respondent claims that it "cannot adequately address the factual bases of the [petitioner's p]etition." (Id. at ¶ 19.) The respondent further avers that it is "prejudiced by [the p]etitioner's failure to respond to discovery. (Id. at ¶ 17.)

As the underlying charges of plagiarism and violation of the school's Code of Conduct and Honor Code are not factually disputed in this matter (see April 6, 2021, Order Dismissing Petition for Emergent Relief at 5), the crux of the petitioner's case is that the respondent's actions in response to these violations were "inconsistent, discriminatory, and FAR TOO EXCESSIVE." (Pet. Statement of Facts to Accompany Pro Se Petition of Appeal (emphasis in original).) The discovery being sought in this matter is directly relevant to the petitioner's claims and the respondent's ability to form a defense to those claims. It is uncontested that the petitioner failed to answer the respondent's discovery requests and, based upon the petitioner's representations during the June 4, 2021, telephonic status conference, and in his subsequent response

to the respondent's motion, it is clear that the petitioner's failure to respond to the respondent's discovery requests is not a mere oversight or neglect. Savoia v. F.W. Woolworth Co., 88 N.J. Super. 153, 160 (App. Div. 1965). (See Pet. Response Br. (acknowledging failure to respond to "a mountain of discovery" from respondent and that "a dismissal may be warranted" but seeking dismissal of matter without prejudice).) I **CONCLUDE**, therefore, that the petitioner has effectively abandoned his claim in this matter. Such dilatory conduct from the party who initiated the claim as an emergent matter constitutes behavior that "thwarts persistent efforts to obtain the necessary facts" and justifies a claim's dismissal with prejudice. Abtrax Pharmaceuticals, Inc. v. Elkins-Sinn, Inc., 139 N.J. 499, 515-16 (1995). I **FURTHER CONCLUDE** that the petitioner's refusal to provide discovery in this matter impairs the respondent's ability to properly prepare and present a defense to the petitioner's claims, and such conduct justifies dismissal of the petition due to these procedural deficiencies. J.G., 2008 U.S. Dist. LEXIS 30030 at *11. See also H.F. obo Minor Child D.F. v. Bd. of Educ. of Teaneck, Bergen County, EDU 20234-15, Initial Decision, (September 28, 2016) <http://lawlibrary.rutgers.edu/oal/search.html>.

ORDER

Based on the foregoing, the respondent's motion to dismiss the petition is **GRANTED WITH PREJUDICE**.

I hereby **FILE** this initial decision with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

This recommended decision may be adopted, modified or rejected by the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who by law is authorized to make a final decision in this matter. If the Commissioner of the Department of Education does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION, ATTN: BUREAU OF CONTROVERSIES AND DISPUTES, 100 Riverview Plaza, 4th Floor, PO Box 500, Trenton, New Jersey 08625-0500**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

July 27, 2021
DATE



DAVID M. FRITCH, ALJ

Date Received at Agency: July 27, 2021

Date Mailed to Parties: July 27, 2021

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