



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

(Dismissal for Failure to Appear)

OAL DKT. NO. EDS 00357-19

AGENCY DKT. NO. 2019 29135

J.B. AND D.B. ON BEHALF OF E.B.,

Petitioners,

v.

HACKENSACK BOARD OF EDUCATION,

Respondent.

J.B. and D.B. on behalf of E.B., pro se

Joanne Butler, Esq., for respondent (Schenck, Price, Smith and King, attorneys)

Record Closed: June 18, 2019

Decided: June 19, 2019

BEFORE **ELLEN S. BASS**, ALJ:

This case, which arises under the Individuals with Disabilities Education Act, 20 U.S.C.A. §§1401 to 1484(a), was transmitted to the Office of Administrative Law for hearing and final decision on January 8, 2019. The matter was initially assigned to the Honorable Andrew Baron, A.L.J. Petitioners immediately filed repeated and voluminous submissions, including some five motions. Attempts by Judge Baron to schedule hearing and oral argument dates were initially unsuccessful, and petitioners repeatedly cited unavailability when dates were proposed. Ultimately a hearing date was scheduled for

April 29, 2019. But shortly before the hearing date, petitioners filed a motion asking for Judge Baron's recusal, which he granted, and the matter was reassigned to me.

Via letter order dated April 25, 2019, I advised the parties that the hearing would be rescheduled for June 18, 2019, and that this date was peremptory. I addressed two of the petitioners' motions and reserved decision on the remaining motions. My order explained the process through which proofs would be presented. My order summarized the issues presented for hearing.

Thereafter, on or about May 29, 2019, I receive yet another voluminous submission entitled "Request for Adjournment." Petitioners cited a need to complete additional testing for their son, and asked to adjourn the hearing until that testing could be completed. My assistant notified the parties that the adjournment request was denied. On May 30, 2019, petitioners forwarded a voluminous appeal of my adjournment request to the Acting Director of the Office of Administrative Law and the Commissioner of Education, this time citing an inability to attend due to a "complicated surgical procedure" scheduled for June 17, 2019. Neither granted the requested adjournment.

In the interim, petitioners appeared to be preparing for the hearing, and indeed, on or about June 5, 2019, issued over twenty subpoenas for the June 18, 2019, hearing date. Counsel for the Board objected to the subpoenas; asked that they be quashed; or in the alternative, that the named witnesses not be required to appear on the first scheduled hearing date. Via letter order dated June 11, 2019, I quashed subpoenas issued to the Commissioner of Education, employees of the Department of Education, the Superintendent of Schools, and the Board attorney. I reiterated that the hearing would proceed on June 18, 2019, and that once we gathered for the hearing, I would assist petitioners in determining which witnesses would best help develop the record. I directed that none of the subpoenaed witnesses needed to appear on the first hearing date, and that additional dates would be scheduled as needed. I made it clear that both parties would be permitted to call only a reasonable number of witnesses.

I heard nothing further from petitioners until I arrived at the OAL on the morning of June 18, 2019, and found a telecopier submission that had been sent at 8:11 p.m. the prior night. Petitioners indicated that they would not be appearing at the hearing, again citing D.B.'s medical situation. A doctor's note accompanied the submission, but it was unsigned, offered no specifics about petitioner's condition, nor did it mention a surgery. And notwithstanding her purported inability to appear the next day, petitioner was able, that evening, to draft, compile accompanying documents, and send an 86-page submission via telecopier.

Included in the June 17, 2019, submission was a request that I disqualify myself. All that was cited in support of that request was a disagreement with the rulings in my June 11, 2019, order. The request is **DENIED**.

On the morning of June 18, 2019, Board representatives timely appeared for the hearing, which was scheduled to commence at nine o'clock. Petitioners did not appear. Accordingly, the petition must be **DISMISSED** for failure to appear in accordance with N.J.A.C. 1:1-14.4.

ORDER

Based on the foregoing, I **ORDER** that the petition be **DISMISSED** for failure to appear.

This decision is final pursuant to 20 U.S.C. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2016) 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 (2016). 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 Programs.



June 19, 2019

DATE

ELLEN S. BASS, ALJ

Date Received at Agency

June 19, 2019

Date Mailed to Parties:
sej
