



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

FAILURE TO APPEAR

OAL DKT. NO. EDS 03946-20

AGENCY DKT. NO. 2020-31355

J.C. and G.B. on behalf of A.B.,

Petitioners,

v.

**HAMILTON TOWNSHIP BOARD OF
EDUCATION**

Respondent.

J.C. and G.B. on behalf of A.B., petitioners, pro se

Michael A. Pattanite, Jr., Esq., for respondent (Lenox, Socey, Formidoni,
Giordano, Lang, Cooley & Casey, attorneys)

Record Closed: October 15, 2021

Decided: November 4, 2021

BEFORE **MARY ANN BOGAN, ALJ:**

STATEMENT OF THE CASE

Petitioners, J.C. and G.B. on behalf of A.B. filed a petition seeking continued in-class placement with a Behavior Intervention Plan (BIP), or in the alternate an out-of-district placement for A.B.

PROCEDURAL HISTORY AND STATEMENT OF FACTS

The Office of Special Education Policy and Dispute Resolution of the New Jersey Department of Education (Department) transmitted the petition to the Office of Administrative Law (OAL), where it was filed on April 2, 2020.

A telephone conference was scheduled for April 9, 2020, and then again on May 7, 2020, and both were adjourned at the request of all parties. A settlement conference was scheduled for June 4, 2020. On June 3, 2020, petitioners sent notification that they would not attend the settlement conference because they previously revoked their consent for special education services, but petitioners did not withdraw the case. On July 28, 2020, the District requested that the petitioners withdraw the case. A telephone conference was scheduled for December 14, 2010. The petitioners did not attend. Additional telephone conferences were scheduled for February 25, 2021, and May 10, 2021. Petitioners were notified by regular mail and email, but petitioners failed to attend both telephone conferences. The petitioners never sent an explanation explaining their reasons for their non-appearance for each of the telephone conferences.

On September 30, 2021, a letter written by the undersigned was sent to all parties. The letter informed the parties that petitioners failed to attend the previously scheduled conference calls with the judge and the Board attorney. The letter advised that they may send a letter withdrawing the case if they no longer wished to pursue the matter. The parties were also informed that this letter would serve as the final notice, and if no response was received by October 15, 2021, the case would be dismissed.

ANALYSIS AND CONCLUSIONS OF LAW

N.J.A.C. 1:1-14.4(a) provides that, if, after appropriate notice, a party does not appear in any proceeding scheduled by a judge, the judge shall hold the matter for one day before taking any action. If the judge does not receive an explanation for the nonappearance within one day, the judge may direct the Clerk to return the matter to the transmitting agency for appropriate disposition. Petitioners failed to appear at the scheduled proceeding, and they failed to provide an explanation one day following their

nonappearance or thereafter. Accordingly, the Clerk should return this matter to the Department of Education.

Based on the foregoing facts and the applicable law, I **CONCLUDE** that petitioners have abandoned this matter and that it should be returned to the transmitting agency.

ORDER

Based on the foregoing, it is hereby **ORDERED** that the petition for due process be **DISMISSED**.

This decision is final pursuant to 20 U.S.C. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2019) 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 (2019). 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 Policy and Dispute Resolution.

November 4, 2021

DATE



MARY ANN BOGAN, ALJ

Date Received at Agency:

Date Mailed to Parties:

MAB/nmn