



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. EDS 10193-20

AGENCY REF. NOS. 2021-32233

**CHERRY HILL TOWNSHIP BOARD
OF EDUCATION,**

Petitioner,

v.

B.V. AND B.V. ON BEHALF OF B.V,

Respondent.

Eric Harrison, Esq., for petitioner (Methfessel & Werbel, P.C., attorneys)

Jamie Epstein, Esq., for respondent

Record closed: January 11, 2021

Decided: January 12, 2021

BEFORE **JEFFREY N. RABIN**, ALJ:

STATEMENT OF THE CASE

Petitioner, the Cherry Hill Township Board of Education, filed a due process appeal seeking an order to deny the respondent-parents' request for an Independent Educational Evaluation (IEE) of student B.V. Petitioner advised this court on December 8, 2020, that the matter in dispute no longer existed and that petitioner wished to withdraw its appeal. Petitioner further asserted that no legally acceptable Answer or counterclaim had been filed by respondents, and that any such counterclaim filed would have to be returned to

the New Jersey Department of Education (DOE). Respondent failed to submit a timely Amended Answer and counter-petition.

PROCEDURAL HISTORY

On October 26, 2020, petitioner filed a Petition for due process with the Office of Special Education Policy and Procedure (OSEPP), DOE. The underlying due process Petition was transmitted to the Office of Administrative Law (OAL), where it was filed on or about October 29, 2020, to be heard as a contested case. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14 F-1 to -13.

On December 8, 2020, petitioner advised this court that the matter in dispute no longer existed and that petitioner wished to withdraw its appeal. During a telephone hearing on December 9, 2020, respondent refused to consent to the withdrawal of the Petition due to a purported “counter-petition” having been filed, and was given until December 14, 2020 (later amended, at respondent’s request, to December 21, 2020), to submit an Amended Answer and counter-petition. As confirmed in petitioner’s letter brief dated December 22, 2020, respondent failed to meet the December 21, 2020, deadline for amending its documents. Respondent did not submit these documents until January 7, 2021.

LEGAL ANALYSIS

The issue is whether an Administrative Law Judge may accept a party’s withdrawal of its due process appeal when no timely, legally acceptable Answer or counterclaim has been filed, without a motion from the withdrawing party or consent from their adversary.

During the telephone hearing of December 9, 2020, petitioner confirmed that the matter in dispute no longer existed, that the petitioner wished to withdraw its appeal, that no timely, legally acceptable Answer or counterclaim had been filed, or that any counterclaim should be returned to DOE for processing, assignment of an Agency Reference Number, and scheduling of a resolution session and mediation prior to transmittal to OAL.

Respondent claimed that the within Administrative Law Judge had no authority to accept petitioner's withdrawal and return this file to DOE because he had filed an Answer and "counter-petition" on November 30, 2020. Petitioner argued, and respondent agreed, that respondent's Answer and counter-petition were deficient for having no signatures or request for relief. Respondent in fact asked for the opportunity to submit an Amended Answer with a counter-petition. This court would have accepted the withdrawal and returned the file to DOE, and this matter would have concluded; however, respondent-counsel Epstein claimed this court had no authority to accept a withdrawal without consent from respondent or a motion being filed by petitioner, and Mr. Epstein declined to issue that consent on behalf of respondent.

As a result, per its request, respondent was given until December 14, 2020, to submit an Amended Answer and counter-petition, and both parties were given the opportunity to subsequently brief whether an Administrative Law Judge has the authority to accept a withdrawal of an appeal from the petitioning party without respondent's consent. Respondent subsequently asked this court for an extension to submit its Amended Answer and counter-petition until December 21, 2020.

However, respondent failed to submit an Amended Answer and cross-petition by that date and, in fact, submitted said documents on January 7, 2021, eighteen days late. Petitioner filed a timely and accurate brief as to this matter; respondent has not filed a brief, any legal arguments, or anything to contradict petitioner's letter-brief.

Petitioner was correct to assert that while New Jersey Court Rule 4:37-1 requires a motion or consent with respect to the voluntary dismissal of a civil lawsuit, there is no such authority applicable to contested Individuals with Disabilities Education Act (IDEA) matters transmitted from the DOE to OAL. Hearings before the OAL are governed by the New Jersey Administrative Code, specifically at N.J.A.C. 1:1. The provision governing withdrawal of a request for a hearing does not require either a motion or consent of a respondent.

Accordingly, based on the law as applied to the facts in this case, I **CONCLUDE** that no timely, legally acceptable Answer or counterclaim had been filed by respondent in this matter and that an Administrative Law Judge is authorized to accept a petitioner's withdrawal of its due process Petition without an order being filed by the petitioner and without the consent of the respondent.

ORDER

Petitioner's request for the within due process appeal to be withdrawn is hereby **GRANTED**, and this file may be returned to DOE.

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).

January 12, 2021 _____

DATE



JEFFREY N. RABIN, ALJ

Date Received at Agency _____

Date Mailed to Parties: _____

JNR/dw

APPENDIX

EXHIBITS

For petitioner:

Letter brief, dated December 22, 2020

For respondent:

Documents filed November 30, 2020