



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

FAILURE TO APPEAR/PROSECUTE

OAL DKT. NO. EDS 03044-22

AGENCY DKT. NO. 2022-34033

J.V. ON BEHALF OF B.C.,

Petitioner,

v.

WAYNE TOWNSHIP BOARD OF

EDUCATION,

Respondent.

No appearance by or on behalf of petitioner

Philip E. Stern, Esq., for respondent Wayne Township Board of Education
(DiFrancesco, Bateman, Kunzman, Davis, Lehrer & Flaum, P.C., attorneys)

Record Closed: May 6, 2022

Decided: May 23, 2022

BEFORE **SUSAN L. OLGATI, ALJ**

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

On or about March 17, 2022, pro se petitioner J.V., on behalf of her adult son, B.C., filed a due process petition seeking transportation by van as mandated by his Individualized Education Program (IEP). Thereafter, on or about April 18, 2022, the matter was transmitted to the Office of Administrative Law (OAL) for hearing as a contested case.

The matter was assigned to me for purposes of conducting a settlement conference scheduled on April 29, 2022, via Zoom remote video platform.

On the date of the April 29, 2022, settlement conference, J.V. failed to appear. During the settlement conference, district case manager, Jason Colatrella, contacted J.V. via email/text message and inquired whether she intended to appear for the conference. J.V. advised Mr. Colatrella that she no longer intended to pursue the petition.

Thereafter, Philip E. Stern, Esq., counsel for the district, sent a letter dated April 29, 2022, to the undersigned with copy to J.V., confirming the above referenced events that occurred during the scheduled settlement conference.

On May 3, 2022, Alison Sanchez of the OAL, emailed J.V. requesting confirmation of her intent to withdraw the due process petitioner no later than May 5, 2022.

As of the date of this decision, no response has been received from J.V.

LEGAL ANALYSIS AND CONCLUSIONS OF LAW

N.J.A.C. 1:1-14.4(a) provides that if a party fails to appear for a scheduled proceeding the judge shall hold the matter for one day before taking any action. N.J.A.C. 1:1-14.4(c) further provides that if the judge receives an explanation for the nonappearance and “concludes that there was no good cause for the failure to appear,” the judge may refuse to reschedule the matter and shall issue an initial decision explaining the basis for that conclusion, or may reschedule the matter and, at his or her discretion,

order the delinquent party to pay costs and fees to the State or the aggrieved person or other case-related action the judge deems appropriate.

Based on the foregoing, I **CONCLUDE** that petitioner J.V. has provided no explanation or response and therefore has failed to demonstrate good cause for her failure to appear for the April 29, 2022, settlement conference in this matter. I further **CONCLUDE** that based on statements reported by district representative, Jason Colatrella, as well as J.V's failure to respond to the April 29, 2022, letter of the district's counsel, it appears that petitioner no longer wishes to pursue the due process petition filed on behalf of her adult son. Accordingly, I **CONCLUDE** that the petition should be returned to the transmitting agency for dismissal without prejudice.

ORDER

Based upon the foregoing, it is **ORDERED** that the due process petition filed by petitioner should be returned to the Department of Education, Office of Special Education, for dismissal of the petition **without prejudice**.

This decision is final pursuant to 20 U.S.C. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2022) 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 (2022). 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.



May 23, 2022

DATE

SUSAN L. OLGATI, ALJ

Date Received at Agency: _____

Mailed to Parties: _____

SLO:as