



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. EDS 10685-22

AGENCY DKT. NO. 2023-35203

R.F. ON BEHALF OF Q.F.,

Petitioner,

v.

COLLINGSWOOD BOROUGH

BOARD OF EDUCATION,

Respondent.

No appearance by or on behalf of R.F., petitioner, pro se

Robert A. Muccilli, Esq., for respondent (Capehart & Scatchard, P.A., attorneys)

Record Closed: December 6, 2022

Decided: December 6, 2022

BEFORE **ELAINE B. FRICK, ALJ:**

STATEMENT OF THE CASE

Petitioner, R.F., the parent on behalf of a minor student, Q.F., seeks the emergent relief of immediate implementation of a one-to-one aide on the school bus, as per the student's Individual Educational Program (IEP). The underlying due process petition transmitted with the emergent relief application asserts that petitioner disagrees with the removal of the bus aide for Q.F.

PROCEDURAL HISTORY

On November 25, 2022, petitioner submitted a parental request for a due process hearing and expedited due process proceeding to the New Jersey Department of Education, Office of Special Education (OSE). The OSE transmitted the emergent relief request and underlying due process request to the Office of Administrative Law (OAL), where it was filed on December 1, 2022, to be heard as an emergent contested matter. N.J.S.A. 52:14B-1 to 14B-15; N.J.S.A. 52:14F-1 to 14F-13.

Oral argument on the emergent matter was scheduled to be heard on December 5, 2022, via Zoom audio/video technology. A certification of Deb Vesper, Supervisor of Special Education in the District, was forwarded via email on December 5, 2022, in advance of the scheduled oral argument. Counsel for the District and the District's witness representatives connected into the Zoom proceeding. Petitioner failed to appear.

Despite petitioner's non-appearance, and due to the nature of the asserted emergent relief seeking to implement a provision of the IEP, in addition to the conflicting assertion in the underlying due process request that petitioner disagreed with the District's removal of an aide on the bus for the student, oral argument was heard from the District. Brief testimony was heard from Deb Vesper, whose certification was provided in advance of the oral argument.

FACTUAL DISCUSSION AND FINDINGS

Based upon the submissions of the parties, including the certification and testimony from the District's witness, Deb Vesper, and the argument of counsel for the District, I **FIND** as **FACTS** the following:

Q.F. is a twelve-year-old student enrolled in the Collingswood school district. On September 23, 2022, an IEP meeting was conducted, and the IEP developed for the student included the provision of transportation of Q.F. with a one-to-one aide on the bus.

Implementation of the IEP was delayed until October 18, 2022, due to the parent not signing the IEP.

The District recently was informed there is no room on Q.F.'s bus for an additional adult who would be serving as Q.F.'s one-to-one aide. The District is going to advertise to seek bids for a bus with a one-to-one aide for the transport of Q.F.

The District asserts that in the interim, there is sufficient support on Q.F.'s bus to meet the student's transportation needs since there is a shared aide and several one-to-one aides for other students on the bus.

Petitioner's submitted emergent request for relief seeks immediate implementation of the one-to-one aide for Q.F. on the bus.

Oral argument via Zoom was scheduled for Monday, December 5, 2022, at 9:30 a.m., regarding petitioner's emergent application. The parties were noticed to appear for the emergent Zoom oral argument proceeding. The parties were also provided the Zoom link information via an email from the OAL IT department, sent to the parties on December 2, 2022, at approximately 6:30 a.m.

R.F. failed to appear for the Zoom proceeding on their emergent application at the scheduled time of 9:30 a.m. The Zoom link information was re-sent to the parties, via email, at approximately 9:50 a.m. Petitioner was given additional time to connect into the Zoom proceeding. Petitioner did not connect into the proceeding.

R.F. did not contact any representative of the OAL to indicate they would be unable to appear for the December 5, 2022, emergent proceeding. R.F. did not contact any representative of the OAL on December 6, 2022, to explain their failure to appear for the scheduled proceeding.

LEGAL ANALYSIS AND CONCLUSIONS

Parents, guardians, or the District Board of Education (BOE) may apply in writing for emergency relief. N.J.A.C. 1:6A-12.1(a). An applicant for emergency relief must set forth in their application the specific relief sought, and must specify the circumstances they contend justify the emergent relief they are requesting. Id.

In special education matters, emergent relief shall only be requested for the following issues:

- i. Issues involving a break in the delivery of services;
- ii. Issues involving disciplinary action, including manifestation determinations and determinations of interim alternate educational settings;
- iii. Issues concerning placement pending the outcome of due process proceedings; and
- iv. Issues involving graduation or participation in graduation ceremonies.

N.J.A.C. 6A:14-2.7(r)1.

The New Jersey Administrative Code 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. N.J.A.C. 1:1-14.4(a). If the judge does not receive an explanation for the non-appearance within one day, the judge may direct the Clerk to return the matter to the transmitting agency for appropriate disposition.

Here, petitioner's written request for emergent relief seeks immediate implementation of the student's IEP to provide a one-to-one aide on the bus. Petitioner's underlying due process petition was transmitted to the OAL as petitioner disagreeing with the removal of the bus aide for the student.

Petitioner failed to appear for the requested emergent application, and failed to provide any explanation as to their non-appearance within one day after the scheduled

proceeding. I **CONCLUDE** that petitioner abandoned their emergent application for relief, due to their failure to appear for the scheduled proceeding for which they received notice. I thus **CONCLUDE** that the emergent request is dismissed, and the emergent file shall be returned to the transmitting agency.

Counsel for the District, and the Supervisor of Special Education for the District, confirmed that the student's IEP does provide for a one-to-one aide on the bus for Q.F. The transmitted underlying due process request was that petitioner was challenging the removal of the bus aide for the student. The provision of a one-to-one aide on the bus has not been removed from the student's IEP. That provision remains in the IEP of September 23, 2022. Hence, the asserted disagreement of petitioner, with regards to the removal of the aide for the student on the bus, is not a dispute. I **CONCLUDE** that the underlying due process petition shall be dismissed, for failure to state a claim for relief, as the provision of an aide for the student on the bus has not been removed from the student's IEP.

ORDER

It is **ORDERED** that the Clerk shall return the parent's emergent relief request to the New Jersey Department of Education, Office of Special Education.

It is further **ORDERED** that the underlying due process petition shall be dismissed, for failure to state a claim for relief.

This decision on application for emergency relief resolves all of the issues raised in the due process complaint; therefore, no further proceedings in this matter are necessary. This decision on application for emergency relief is final pursuant to 20 U.S.C. § 1415(i)(1)(A) 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). 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.

December 6, 2022

DATE



ELAINE B. FRICK, ALJ

Date Received at Agency

Date Mailed to Parties:

EBF/jns