



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

GRANTING MOTION FOR

SUMMARY DECISION

OAL DKT. NO. EDS 11644-23

AGENCY DKT. NO. 2024-36696

LINDEN CITY BOARD OF EDUCATION,

Petitioners,

v.

R.L. AND J.G. ON BEHALF OF V.L.,

Respondents.

Robert Devaney, Esq., appearing for petitioners (Florio, Perrucci, Steinhardt,
Cappell and Tipton, attorneys)

NO APPERANCE on behalf of respondents,

Record Closed: July 30, 2024

Decided: July 30, 2024

BEFORE **ERNEST M. BONGIOVANNI**, ALJ:

On October 31, 2023, an Emergent Application and underlying due Process Petition was filed by petitioners, the Linden Public School District (petitioners/District) under Docket EDS 11644-23. This case arises under the Individuals with Disabilities Act 20 U.S.C. Sections 1400 to 1482, Child Find, 504 of the Rehabilitation Act of 1973, as amended 29 U.S.C. Section 701 et seq., Americans with Disabilities Act, of 1990 as amended 42 U.S.C. Section 12101, and New Jersey Law Against Discrimination N.J.S.A.

10:5-1 et seq. was transmitted to the Office of Administrative Law (OAL) for hearing as a contested case pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14f 1 to-13.

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Following petitioners' Emergent Application and Due Process Petition, respondents (Parent/respondents) provided written consent to petitioners' requested relief namely, placing their child the student V.L. on home instruction pending out of district placement, consenting to the release of V.L.'s student records to out of district programs (Exhibit B) and cooperation with intake process. Petitioners therefore withdrew their Emergent Application, but kept the underlying Due Process Petition active. The parties had an informal meeting but were unable to resolve all the issues in the underlying petition for Due Process. However, the parents effectively consented to home instruction of V.L, however thereafter they revoked their consent to have the district send student records for out of District Placement. On February 14, 2024, petitioners advised my office that owing to the lack of the promised cooperation by respondents they would be compelled to file a motion for summary Decision. On April 3, 2024, the undersigned attempted to hold a telephonic prehearing conference with petitioners' counsel and respondents. Notice of the was telephonic conference which contained a warning that should there be a failure to attend, the party not in attendance could be considered in default. Also, our office having been advised a Polish interpreter would be needed for the parents, provided that such interpreter be present. At the appointed time on April 3, 2024, while Counsel for petitioners was present for the telephonic prehearing conference, as was the Polish Interpreter, the Parents failed to appear by not phoning in to the call. On the same day, the respondents were given leave to file a motion for summary decision. On April 15, 2024, the motion with certification and legal brief were filed, copies in Polish were provide by petitioners to respondents. Also, all parties were duly notified there would be oral argument on the motion on May 10, 2024. Respondents failed to file any written response to the Motion for Summary Decision. Also and again, while petitioners appeared for argument on the motion as did the Polish Interpreter, once again, the parents failed to attend or communicate with the Court before or since why they did not, nor indeed has there been any communication by the parents to the court.

After review of petitioners' Motion for Summary Decision seeking Summary Decision in petitioners' favor, its certifications in support of same, and legal brief, and the record before me, and the motion being unopposed, I **FIND** it is undisputed that:

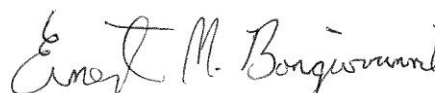
1. Due to V.L.'s behavioral problems, she was presenting a physical danger to the health and safety of students and staff at Linden Public Schools. See Certifications of Grethe Yackanin, MA, BCBA, Linden Public School District's Behavioralist and special ed. teacher and of Beata Parcewska, V.L.'s Teacher at the Self-contained Autism program at McManus Middle School
2. It is undisputed that it is in the best interest of all parties that V.L. remain on home instruction, pending out of district placement, also as previously agreed to by respondents, despite their subsequent lack of cooperation.
3. Respondents' lack of responsiveness creates a reasonable inference that they will not cooperate in sending V.L.'s records and intake into out of district placements.
4. This Court has given more than ample time and opportunity to respondents to participate and be heard in this matter and they have failed badly and defaulted.

According to the petitioners' summary for summary Decision is hereby **GRANTED**. For the above reasons, I also **CONCLUDE** that petitioners have abandoned their request for a hearing in this matter and have forfeited their right to further contest the actions complained of. Therefore, it is hereby **ORDERED** that V.L. remain on home instruction pending out of district placement. The District shall continue to provide all related services consistent with V.L.'s current IEP. It is further **ORDERED** that respondents shall fully cooperate with petitioners in the Intake Process for out of district placement, including execution of any and all necessary consent forms necessary to send student records. If respondents still refuse to provide such consent, the Court authorizes petitioners to send V.L.'s records without respondents' consent pursuant to this Court's authority under Moorestown Twp.. Bd. of Educ., v. TB., o/b/o J.B., 2011 WL 1653655 (N.J. Adm.) OAL DKT.. NO. EDS 444-11 (Decided April 20, 2011). See also N.J.A.C. 6a:32-7.5.

This decision is final pursuant to 20 U.S.C. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2024) 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 (2024). 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.

July 30, 2024

DATE



ERNEST M. BONGIOVANNI, ALJ

Date Received at Agency:

7/30/24

Date Mailed to Parties:

7/30/24

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