



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. EDS 02904-24

AGENCY DKT. NO. 2024-36946

**WATCHUNG HILLS REGIONAL
BOARD OF EDUCATION,**

Petitioner,

v.

L.B. and G.B. ON BEHALF OF L.B.,

Respondent.

Robin S. Ballard, Esq., for petitioner (Schenck, Price, Smith & King, LLC,
attorneys)

No appearance from **L.B. and G.B.**, petitioners, pro se

Record Closed: September 5, 2024

Decided: October 21, 2024

BEFORE **KIM C. BELIN**, ALJ:

STATEMENT OF THE CASE

Respondents refused to appear for the hearing of this case. Should this case be dismissed? Yes. For the unreasonable failure to comply with any order of a judge or with any requirement of the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6,

the judge of a case may take any appropriate case-related action, including dismissal. See N.J.A.C. 1:1-14.14.

PROCEDURAL HISTORY

On January 17, 2024, petitioner, Watchung Hills Regional Board of Education (petitioner or Watchung or Board), filed a petition for due process with the State of New Jersey, Department of Education (DOE), Office of Special Education Policy and Dispute Resolution (SPDR). In its petition, petitioner sought an order denying respondents' January 9, 2024, request for independent educational evaluations (IEE) at public expense.

As the Board filed this case, no resolution period was required. The Board requested transmittal for a settlement conference. On February 27, 2024, the SPDR transmitted the case to the Office of Administrative Law (OAL) under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15, and the act establishing the OAL, N.J.S.A. 52:14F-1 to -23, for a hearing under the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6, and the Special Education Program, N.J.A.C. 1:6A-1.1 to -18.5. The matter was assigned to the undersigned on March 7, 2024, after the attempts at settlement were unsuccessful.

I scheduled a pre-hearing conference call to commence the case on June 7, 2024, however, the respondents did not appear. I scheduled another telephone conference call on July 8, 2024. The respondents did not appear. I scheduled a plenary hearing for this case on September 5, 2024, and the respondents did not appear at the time scheduled for the hearing. When contacted by phone by OAL staff, G.B. verbally stated that she had no intention of participating in the hearing and wished to withdraw from the case. On September 5, 2024, I received an email from the respondents dated August 26, 2024, stating that they did not desire to continue with the proceedings. The email states: "I respectfully request that all further actions in this matter cease immediately Please acknowledge receipt of this letter and confirm that all actions related to this process have been stopped."

FINDINGS OF FACT

On January 9, 2024, the respondents requested independent educational evaluations (IEE) for L.B. On January 17, 2024, the petitioner filed a petition for due process seeking to deny the respondents' request on the basis that the evaluations conducted by the petitioner's child study team were appropriate and the respondents were not entitled to the IEEs because they failed to state their disagreement with the petitioner's evaluations.

On April 29, 2024, the parties had an initial telephone conference call. At this time, the respondents were represented by counsel. The parties agreed to a tentative hearing date of June 10, 2024, or September 5, 2024, depending upon the availability of witnesses. On June 7, 2024, the respondents did not appear for the status conference call, and this tribunal was made aware that the respondents were no longer represented by counsel. A status conference call was scheduled for July 8, 2024, with notice sent directly to the respondents, however, they failed to appear during that conference call.

Petitioner's counsel affirmed that September 5, 2024, was an agreeable date for its witnesses. Accordingly, a prehearing order and notice of hearing were sent to the parties. On September 5, 2024, the respondents failed to appear for the hearing. The respondents verbally told OAL staff that they did not intend to participate in the hearing. This was confirmed in an email to petitioner's counsel from the respondents dated August 26, 2024, and received by the undersigned on September 5, 2024. The email specifically states:

Dear Ms. Ballard,

I am writing to inform you that as the parent of L.B., I do not wish to continue with the current proceedings, including the upcoming hearing scheduled for September 5, 2024. I have not consented to this process and I do not wish for any actions to be taken on behalf of my child without my explicit consent.

It is my understanding that, as L.B.'s parent, I have the right to make decisions regarding his education and any legal

proceedings related to it. I respectfully request that all further actions in this matter cease immediately and that no decisions or actions be taken on my child's behalf without my full, informed consent.

Now, I can't help but wonder - why all this sudden army of experts? It feels like an entire battalion has gathered to march against my one and only child! We've got everyone from school psychologists to interim directors, all preparing to testify. Oh my, are they sure they're in the right place? Because it seems more fitting for a royal court than for a simple child's education evaluation. I mean, what exactly are we fighting here, dragons?

Please ensure that no further action is taken on behalf of L. B. without my explicit consent. Additionally, any and all consent forms signed by me that may authorize these actions are to be considered void immediately. Please acknowledge receipt of this letter and confirm that all actions related to this process have been stopped. I appreciate your understanding and trust that this will help bring this whole "war of experts" to an end.

Sincerely, L.B. and G.B.

[R-1.]

Recognizing that the respondents had not withdrawn their request for IEEs, I instructed the petitioner to place its proofs on the record on September 5, 2024. Counsel for the Board elicited testimony from Dr. Patrick O'Halloran, School Psychologist and Case Manager who testified succinctly yet comprehensively as to the student, processes and evaluations which were performed, the outcome of and actions on the results of those evaluations, the services provided to the student as a result of the evaluations and continuing activities. Dr. O'Halloran concluded that good cause did not exist for the IEEs.

To date, respondents continue to refuse to participate in this case. They have expressly requested that the legal proceedings cease and rescinded all consent that may have triggered this litigation.

CONCLUSIONS OF LAW

For the unreasonable failure to comply with any order of a judge or with any requirement of the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6, the judge of a case may take any appropriate case-related action. See N.J.A.C. 1:1-14.14. In this case, respondents no longer seek IEEs from the petitioner, and they affirmatively refuse to participate in this case. Given this unreasonable failure to comply, I **CONCLUDE** that respondents are not entitled to the IEEs they had sought and that petitioner is entitled to the relief it seeks under the authority granted to me by N.J.A.C. 1:1-14.14, which provides:

For unreasonable failure to comply with any order of a judge or with any requirements of this chapter, the judge may:

1. Dismiss or grant the motion or application;
2. Suppress a defense or claim;
3. Exclude evidence;
4. Order costs or reasonable expenses, including attorney's fees, to be paid to the State of New Jersey or an aggrieved representative or party;
- or
5. Take other appropriate case-related action.

I **CONCLUDE** that L.B. and G.B. were provided with appropriate notices of scheduled proceedings, namely the telephonic prehearing status conferences of June 7, 2024, and July 8, 2024, and the hearing of September 5, 2024.

I further **CONCLUDE** that L.B. and G.B. have abandoned their ability to challenge this action by the Board by their failure to participate. Accordingly, as the petitioner's case was heard without L.B. and G.B.'s participation, I **CONCLUDE** that petitioner's request to deny respondents' request for IEEs is **GRANTED**.


ORDER

Given my findings of fact and conclusions of law, I **ORDER** that petitioner's request to deny respondents' request for independent educational evaluations at public expense

is **GRANTED**. I **ORDER** that respondents' request for independent educational evaluations at public expense is **DENIED**, and that petitioner has complied with the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400 et seq.; Title 6A of the New Jersey Administrative Code, Chapter 14; and the right to a "Thorough and Efficient" education as guaranteed by the New Jersey Constitution, Article VIII, Section IV, Paragraph I, regarding these independent educational evaluations.

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, Officer of Special Education.

October 21, 2024
DATE


KIM C. BELIN, ALJ

Date Received at Agency

Date Mailed to Parties:

KCB/kd

APPENDIX

Exhibits

Petitioner

- P-1 Initial Identification and Evaluation Planning – Proposed Action, dated February 14, 2023
- P-2 Request for Additional Assessment – Proposed Action, dated March 1, 2023
- P-3 Speech/Language Evaluation, dated March 27, 2023
- P-4 Psychological Evaluation, dated April 13, 2023
- P-5 Educational Evaluation, dated April 17, 2023
- P-6 Social History Assessment, dated April 24, 2024
- P-7 Parent request for Independent Educational Evaluations, dated January 9, 2024
- P-8 Resume for Patrick O'Halloran

Respondent:

- R-1 Email dated September 5, 2024