



**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

**FINAL DECISION**

OAL DKT. NO. EDS 09084-24

AGENCY DKT. NO. 2024-37830

**WENONAH BOROUGH  
BOARD OF EDUCATION,**

Petitioner,

v.

**M.P. ON BEHALF OF E.C.,**  
Respondent.

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**Daniel H. Long**, Esq., for petitioner (Wade, Long, Wood & Long, LLC, attorneys)

No appearance from **M.P.** petitioner, pro se

Record Closed: August 13, 2024

Decided: September 6, 2024

BEFORE **CARL V. BUCK III**, ALJ:

**STATEMENT OF THE CASE**

Respondent 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 June 26, 2024, petitioner, Wenonah Borough Board of Education (petitioner or Wenonah 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' June 6, 2024, request for independent educational evaluations at public expense.

As the Board filed this case no resolution period was required. The Board requested transmittal for a due process hearing. On July 5, 2024, 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 originally assigned to the Honorable Sarah Surgent, ALJ on July 9, 2024, and was subsequently assigned to me on July 9, 2024. I scheduled a telephone hearing to commence the case on July 16, 2024. The respondent did not appear. I scheduled a plenary hearing for this case on August 12, 2024, via the ZOOM communications platform to facilitate participation of all parties as early and easily as possible. Respondent did not appear at the time scheduled for the ZOOM hearing. I have received no communication from the respondent nor any contact with the respondent since I had been assigned to hear this case.

## **FINDINGS OF FACT**

On July 11, 2024, the OAL contacted the parties to arrange for an initial conference for scheduling this case by way of telephone conference on July 16, 2024. Respondent did not appear on that date at the time scheduled for the telephone conference. No explanation of respondent's nonappearance was received. On July 18, 2024, the OAL contacted the parties to arrange for a plenary hearing in this case on August 12, 2024, by way of the Zoom Audio/Video Conferencing platform. Respondent did not appear on that date at the time scheduled for the Zoom hearing. No explanation of respondent's nonappearance was received.

Recognizing that respondent had not withdrawn the request for independent educational evaluations, I instructed the petitioner to place its proofs on the record on August 12, 2024. Counsel for the Board elicited testimony from Kelle Crispin Frost, Director of Special Services; Tara Timms, Speech Pathologist; and Kristine Height, Superintendent and Principal. All witnesses testified succinctly yet comprehensively as to the student, processes and evaluations which were performed (which evaluations encompassed more than requested by M.P.), 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. Timms stated that, as to E.C.'s status, that "E.C. has made tremendous, significant progress." Further details regarding the application were placed on the record on August 12, 2024, and this Order shall be in accordance with the testimony and proofs given on the record on that date.

To date, respondent continues to refuse to participate in this case.

### **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 independent educational evaluations from petitioner, and they refuse to participate in this case, including a court-ordered telephone conference. Given this unreasonable failure to comply, I **CONCLUDE** that respondent is not entitled to the independent educational evaluations she 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.

- (a) no explanation for the failure to appear is received, and the circumstances require a decision on the merits, the judge may enter an initial decision on the merits based on the ex parte proofs, provided the failure to appear is memorialized in the decision.

I **CONCLUDE** that M.P. was provided with appropriate notices of scheduled proceedings, namely the telephonic prehearing status conference of July 16, 2024, and the ZOOM hearing of August 12, 2024.

I **FURTHER CONCLUDE** that M.P. has abandoned her ability to challenge this action by the Board by her failure to participate. Accordingly, as the petitioner's case was heard without M.P.'s participation I **CONCLUDE** that petitioner's request to deny respondent's request for independent evaluations is **GRANTED**.

### **ORDER**

Given my findings of fact and conclusions of law, , I **ORDER** that petitioner's request to deny respondent's 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 (DEA), 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, Office of Special Education.



September 6, 2024

DATE

CARL V. BUCK, III., ALJ

Date Received at Agency

Date Mailed to Parties:

CVB/tat

**EXHIBITS**

**Petitioner**

- P-1 504 Plan
- P-2 Speech and Language IEP
- P-3 OT Evaluation
- P-4 Learning Evaluation
- P-5 Speech Evaluation
- P-6 Written Notice Following an Initial Evaluation
- P-7 Independent Evaluations Request

**Respondent**

None