



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. EDS 04010-24

AGENCY DKT. NO. 2024-36883

N.S. ON BEHALF OF H.S.,

Petitioner,

v.

PISCATAWAY TOWNSHIP BOARD OF

EDUCATION,

Respondent.

N.S., petitioner, pro se

David B. Rubin, Esq., for respondent (David R. Rubin, P.C. attorneys)

Record Closed: January 6, 2025

Decided: February 21, 2025

BEFORE **WILLIAM T. COOPER III**, ALJ:

STATEMENT OF THE CASE

The petitioner, N.S. (N.S. or petitioner), on behalf of her son, H.S., filed a petition for due process with the Department of Education, Office of Special Education, seeking an order directing the Piscataway Township Board of Education (Board or respondent) to provide H.S. with an extra year of eligibility at Piscataway High School. Respondent

denied petitioner's request based on H.S. attaining the age of twenty-one on June 6, 2024.

PROCEDURAL HISTORY

On February 8, 2024, petitioner filed a petition for due process with the Department of Education, Office of Special Education.

On March 12, 2024, the Office of Special Education transmitted the case to the Office of Administrative Law (OAL), where it was filed on March 26, 2024, 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.

On May 1, 2024, a prehearing telephone conference was conducted. Respondent advised that it intended to file a motion to dismiss due to the fact that the student would be attaining the age of twenty-one on June 6, 2024. A motion schedule was set wherein respondent would file the motion on or before May 24, 2024, and petitioner would respond on or before June 7, 2024. A hearing on the motion would be conducted on June 13, 2024.

On May 2, 2024, the respondent filed the motion to dismiss. (R-1.) Petitioner did not respond to the motion and failed to appear for the motion hearing on June 13, 2024. The matter was rescheduled for June 25, 2024.

On June 25, 2024, the petitioner did not appear for the scheduled telephone conference. The matter was then rescheduled for July 19, 2024.

On July 19, 2024, the petitioner appeared for the scheduled telephone conference. The petitioner requested an adjournment to consult with an attorney. Respondent consented to the adjournment request, and the matter was rescheduled for August 28, 2024.

On August 28, 2024, the petitioner did not appear for the scheduled hearing. The hearing was rescheduled for September 18, 2024. The scheduling notice contained a specific warning to the petitioner that failure to appear on September 18, 2024, could result in the granting of relief as requested by the other party.

On September 18, 2024, the petitioner did not appear for the scheduled hearing. The hearing was rescheduled for October 25, 2024. The scheduling notice contained a specific warning to the petitioner that failure to appear on October 25, 2024, could result in the granting of relief as requested by the other party.

On October 25, 2024, the petitioner did not appear for the scheduled hearing.

An email was then sent from the OAL to the petitioner, asking for her explanation for her failure to appear; a timely response was not received. However, on November 19, 2024, the petitioner submitted a written request that the matter be adjourned until the spring of 2025. The respondent immediately objected to this request.

On November 19, 2024, an email was transmitted to petitioner outlining the above procedural history and explaining that a response to the motion to dismiss was long overdue. Petitioner was instructed that she had until January 3, 2025, to submit her response to the pending motion to dismiss. Further, petitioner was advised that if no response were received, the motion to dismiss would be deemed unopposed.

The petitioner responded on November 20, 2024, seeking an adjournment until the spring of 2025. The respondent immediately objected to this request.

The petitioner did not submit a response to the motion to dismiss on or before January 3, 2025, as instructed.

All notices for all scheduled events had been provided by email and regular mail to the petitioner's.

At all times, the respondent has been ready to proceed in this matter.

FACTUAL DISCUSSION

The following facts are derived from the petitioner's due process petition and the legal memorandum submitted by the respondent, and I so **FIND**:

The petitioner, N.S., on behalf of her son, H.S., filed a petition for due process with the Department of Education, Office of Special Education, seeking an order directing the respondent to provide H.S. with an extra year of eligibility at Piscataway High School. H.S.'s date of birth is June 6, 2003, and he turned twenty-one on June 6, 2024.

The petitioner claims in the due process petition that H.S. "was denied a year of in-classroom instruction during COVID-19." Further, petitioner admits that she delayed H.S.'s graduation based on the fact that he did not receive four years of in-class instruction. Petitioner argues that because H.S. regressed during the COVID-19 pandemic he should be afforded another year of school.

The petitioner did not allege that respondent wrongfully withheld educational services from H.S. before he turned twenty-one.

The respondent filed a motion to dismiss the due process petition on May 2, 2024. The petitioner has failed to respond to the pending motion.

The petitioner has failed to appear for scheduled hearings on June 13, 2024; August 28, 2024; September 18, 2024; and October 25, 2024. On November 19, 2024, an email was transmitted to petitioner outlining the above procedural history of this matter and explaining that a response to the motion to dismiss was long overdue. Petitioner was instructed that she had until January 3, 2025, to submit her response to the pending motion to dismiss. Further, petitioner was advised if no response were received the motion to dismiss would be deemed unopposed.

The petitioner responded on November 20, 2024, seeking an adjournment until the spring of 2025. The respondent immediately objected to this request.

The petitioner has not submitted a response to the motion to dismiss.

LEGAL ANALYSIS AND CONCLUSION

I. Motion to Dismiss

The Uniform Procedure Rules, N.J.A.C. 1:1-1.1 et seq., do not provide for the filing of a motion to dismiss, but indicate that in the absence of an applicable rule, the OAL may proceed in accordance with the New Jersey Court Rules. N.J.A.C. 1:1-1.3(a). Under R. 4:6-2(e), the inquiry on a motion to dismiss is “confined to a consideration of the legal sufficiency of the alleged facts apparent on the face of the challenged claim.” Reider v. State of N.J. Dep’t of Transp., 221 N.J. Super. 547, 552 (App. Div. 1987) (citation omitted). In ruling on the motion, “all facts alleged in the complaint and the legitimate inferences drawn therefrom are deemed admitted.” Smith v. City of Newark, 136 N.J. Super. 107, 112 (App. Div. 1975).

Here, the petition alleges that H.S. requires an additional year of education with respondent despite his having turned twenty-one because he regressed during the COVID-19 pandemic.

Under the Individuals with Disabilities Education Act, a school district’s obligation to provide, and a student’s right to receive, a free and appropriate public education both terminate when the child reaches the age of twenty-one. 20 U.S.C. § 1412(a)(1)(A); Lauren W. v. DeFlaminis, 480 F.3d 259, 272 (3d Cir. 2007). A district can be compelled to provide compensatory education beyond the age of twenty-one only if it is alleged and then proven that a district wrongfully withheld services before a student reached that age. Ferren C. v. Sch. Dist. of Phila., 612 F.3d 712, 718 (3d Cir. 2010).

The due process petition does not specifically allege a compensatory education claim, rather the petitioner is under the mistaken belief that H.S. is due an extra year of education by virtue of N.J.S.A. 18:46-6.3. This statute affords students an extra year of education beyond the age of twenty-one to ameliorate the effects of the COVID-19

pandemic. However, the statute only extends the benefits to students turning twenty-one during the 2020–2021, 2021–2022, and 2022–2023 school years. Here H.S. turned twenty-one during the 2023–2024 school year.

Applying the law to the facts of this case, I **CONCLUDE** that the due process petition should be **DISMISSED**.

II. Failure to Appear

N.J.A.C. 1:1-14.4 provides for the procedure when a party fails to appear at any proceeding.

- (a) If, after appropriate notice, neither a party nor a representative appears at any proceeding scheduled by the Clerk or judge, the judge shall hold the matter for one day before taking any action. If the judge does not receive an explanation for the nonappearance within one day, the judge shall, unless proceeding pursuant to (d) below, direct the Clerk to return the matter to the transmitting agency for appropriate disposition pursuant to N.J.A.C. 1:1-3.3(b) and (c).
- (b) If the nonappearing party submits an explanation in writing, a copy must be served on all other parties, and the other parties shall be given an opportunity to respond.
- (c) If the judge receives an explanation:
 - 1. If the judge concludes that there was good cause for the failure to appear, the judge shall reschedule the matter for hearing; or
 - 2. If the judge 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 any of the following:
 - i. The payment by the delinquent representative or party of costs in such amount as the judge shall fix, to the State of New Jersey or the aggrieved person;

- ii. The payment by the delinquent representative or party of reasonable expenses, including attorney's fees, to an aggrieved representative or party; or
- iii. Such other case-related action as the judge deems appropriate.

(d) If the appearing party requires an initial decision on the merits, the party shall ask the judge for permission to present ex parte proofs. If 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.

Here, the petitioner failed to appear for scheduled hearing dates on June 13, 2024, June 25, 2024, September 18, 2024, and October 25, 2024. A follow-up email was sent to her from the OAL, seeking an explanation from petitioner as to her failure to appear on the above-listed dates. Petitioner sent an email on November 19, 2024, requesting that the matter be adjourned until the "spring of 2025." Consequently, the motion hearing was given a peremptory listing on January 3, 2025, but the petitioner failed to appear as directed. To date the petitioner has failed to oppose the motion to dismiss, although she was provided ample opportunity to do so.

Given the lack of receipt of any reasonable explanation for the petitioner's failure to appear on the scheduled hearing dates, I **CONCLUDE** that this matter should be dismissed, and the file returned to the New Jersey Office of Special Education.

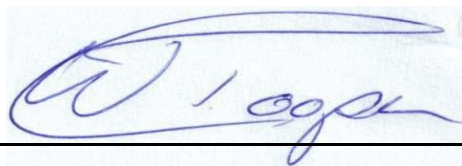
ORDER

I hereby **ORDER** that the appeal filed by the petitioner, N.S. on behalf of H.S., is hereby **DISMISSED**, and the file is returned to the New Jersey Office of Special Education.

This decision is final pursuant to 20 U.S.C. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2025) 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.

February 21, 2025

DATE



WILLIAM T. COOPER III, ALJ

Date Received at Agency:

Date Mailed to Parties:

WTC/cb

APPENDIX

Exhibits

For petitioner

None

For respondent

R-1 Motion to Dismiss dated May 2, 2024