

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

DISMISSAL FOR FAILURE

TO APPEAR

OAL DKT. NO. EDS 12666-14

AGENCY DKT. NO. 2015-21664

J.D. o/b/o J.H.,

Petitioner,

v.

**PLAINFIELD BOARD OF
EDUCATION,**

Respondent.

No Appearance (See below)

Lisa Fittipaldi, Esq., for respondent Plainfield Board of Education (DiFrancesco
Bateman, attorneys)

Record Closed: December 16, 2014

Decided: December 17, 2014

BEFORE JESSE H. STRAUSS, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

This case which arises under the Individuals with Disabilities Education Act, 20 U.S.C.A. §§1401 to 1484(a) and C.F.R. §§300.500. On October 1, 2014, the Office of Special Education Programs of the New Jersey Department of Education transmitted this matter to the Office of Administrative Law (OAL) for a hearing and final decision. J.D. on behalf of her son J.H. filed a petition for due process against the

Plainfield Board of Education seeking various services for J.H. through an appropriate Individualized Education Plan (IEP).

J.D. filed a Due Process Petition on August 27, 2014. As the parties were unable to resolve the dispute at an appearance before Administrative Law Judge Carol I. Cohen on October 30, 2014, I rescheduled the matter for December 16, 2014. Counsel for the Board, advised on October 30 that, although J.D. filed the pro se Due Process Petition on behalf of her son J.H., she did not have legal or physical custody of him at the time. Instead, the Division of Child Protection and Permanency (Division) has had, and still has legal and physical custody of J.H., who currently is in foster care.

On November 20, 2014, Superior Court Judge Theresa E. Mullen issued a Civil Action Order, that provides, among other things, as follows:

“The child, [J.H.], shall continue under the custody, care and supervision of the Division . . . ;
Legal custody of the child, [J.H.] shall be . . . continued with the Division;
Physical custody of the child, [J.H.], shall be . . . continued with the Division;
Child [J.] shall wear his prescription glasses; and see a nutritionist. [J.] shall have a neurodevelopmental evaluation at Children’s Specialized Hospital;
[J.D.] does not retain the right to make educational decisions for [J.H.] but can participate and shall receive notice of all meetings; Shelia Grimstead is appointed as education surrogate for [J.H.]. She shall be trained by the Plainfield School district w/in 30 days.
(Emphasis supplied.)

I directed the Board’s counsel to notify or to have a Board representative notify Grimstead of this Due Process proceeding so that she could make a determination as to whether to continue with this proceeding. Counsel reported that her client advised that it has been in touch with Grimstead and notified her of this proceeding; and also that discussions are ongoing with Grimstead with regard to evaluations, placement and programming for J.H. Counsel further reported that, according to her client, Grimstead had indicated that she had no intention of appearing at or participating in the hearing

generated by the Due Process Petition filed by J.D., who no longer has standing to make educational decisions on behalf of J.H.

Grimstead has never contacted the OAL. Additionally, she did not appear at the hearing in this matter on December 16, 2014.

J.D. appeared at the hearing as did counsel for the Board. When I asked J.D. by what authority could she proceed with this matter in light of Judge Mullen's Order, she responded that Judge Mullen's Order is on appeal to the Appellate Division. She acknowledged that there is no stay of Judge Mullen's Order.

CONCLUSIONS OF LAW

Based on the foregoing, I **CONCLUDE** that this matter has been abandoned and that it should be dismissed.

In light of Judge Mullen's Order, J.D. no longer has standing to make educational decisions for J.H. including the pursuit of relief sought in this Due Process Petition. Education Surrogate Shelia Grimstead, who is now charged with making educational decisions on behalf of J.H., has chosen not pursue this matter as evidenced, not by a formal withdrawal of the Due Process Petition, but by her failure to appear and/or participate.

N.J.A.C. 1:1-14.4(a) 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. Grimstead failed to appear at the scheduled proceeding, and she failed to provide an explanation for her nonappearance other than that conveyed through counsel for the Board.

Accordingly, the petition must be **DISMISSED** for failure to pursue a claim of action under N.J.A.C. 1:1-14.4.

ORDER

I **ORDER** that the petition be **DISMISSED**.

This decision is final pursuant to 20 U.S.C.A. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2012) 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.A. § 1415(i)(2); 34 C.F.R. § 300.516 (2012).

December 17, 2014

DATE

JESSE H. STRAUSS, ALJ

Date Received at Agency

12/17/14

Date Mailed to Parties:

id