



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

FAILURE TO APPEAR

OAL DKT. NO. EDS 06743-19

AGENCY DKT. NO. 2019-29683

L.K. ON BEHALF OF W.K.,

Petitioner,

v.

WASHINGTON TOWNSHIP

BOARD OF EDUCATION,

Respondent.

No appearance by L.K. on behalf of W.K., petitioner, pro se

Sanmathi Dev, Esq., for respondent (Capehart Scatchard, P.A., attorneys)

Record Closed: February 12, 2020

Decided: February 18, 2020

BEFORE **ELAINE B. FRICK, ALJ:**

STATEMENT OF THE CASE

Petitioners, L.K. on behalf of W.K., sought the removal of manifestation determinations in the student's file. Respondent, Washington Township Board of Education (the District) opposed the request.

PROCEDURAL HISTORY

Petitioners submitted a request for relief to the New Jersey Department of Education, Office of Special Education, on April 5, 2019. Respondent filed an Answer to the petition on April 8, 2019. The matter was transmitted to the Office of Administrative law (OAL) where it was filed on May 17, 2019, to be heard as a contested case. N.J.S.A. 52:14B-1 to 14B-15; N.J.S.A. 52:14F-1 to 14F-2.

Petitioners submitted an Amended Petition to the OAL on July 8, 2019. Respondent submitted an Answer to the Amended Petition on August 23, 2019. On November 12, 2019, an Addendum to the Order Denying Motion to Dismiss was entered, confirming that petitioners' requested relief was narrowed to the one issue of removal of the manifestation determinations in the student's file.

During a telephonic conference conducted by the ALJ with the parties on November 8, 2019, the hearing dates were scheduled for February 4, 2020, and March 10, 2020, at 9:30 a.m. A Pre-Hearing Order entered on November 12, 2019, confirmed the dates and times for the hearing, and confirmed the February 4, 2020, hearing would be conducted at the OAL Trenton location, 9 Quakerbridge Plaza, Mercerville, NJ 08619, due to the unavailability of a hearing room at the OAL Atlantic City location. The hearing scheduled for March 10, 2020, was to proceed at the OAL Atlantic City office at 1601 Atlantic Avenue, Atlantic City, New Jersey 08401.

On January 31, 2020, email notification was sent to the parties that a hearing room was available in the OAL Atlantic City office, and the parties were to report to the Atlantic City OAL on February 4, 2020, for the scheduled hearing.

Petitioner failed to appear on February 4, 2020, for the scheduled hearing.

On February 5, 2020, L.K. submitted a reply email to the OAL email of January 31, 2020, which had confirmed the revised location of the hearing for February 4, 2020. L.K. advised she was withdrawing her petition.

On February 6, 2020, the District submitted a Motion to Dismiss, due to petitioners' failure to appear on February 4, 2020. The District's counsel also sent correspondence on February 6, 2020, requesting that if L.K.'s petition was marked as withdrawn, that it be withdrawn with prejudice. L.K. sent an email reply, requesting that the matter be withdrawn without prejudice, wishing to retain the right to refile or seek alternate measures in the future.

FACTUAL FINDINGS AND DISCUSSION

I **FIND** the following as **FACTS**:

1. The parties received notice of the scheduled hearing date of February 4, 2020, during the telephonic status conference on November 8, 2019, which was confirmed in the Pre-Hearing Order of November 12, 2019.
2. The parties received confirmation on January 31, 2020, that the February 4, 2020, hearing would be heard at the OAL Atlantic City location.
3. Petitioner did not call or otherwise communicate with the OAL in advance of the February 4, 2020, date that she would not be appearing.
4. Petitioner, L.K., did not appear at the OAL in Atlantic City or in Trenton on February 4, 2020.
5. Petitioner, L.K., forwarded written communication, via email on February 5, 2020, in reply to the OAL January 31, 2020, notification of the hearing being moved to Atlantic City. Petitioner's email stated: "I am officially withdrawing my petition at the current time."

LEGAL ANALYSIS AND CONCLUSION

New Jersey Administrative Code 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. If the judge does not receive an explanation for the nonappearance within one day, the judge may direct the Clerk to return the matter to the transmitting agency for appropriate disposition.

Here, L.K. failed to appear at the scheduled proceeding on February 4, 2020. Within twenty-four hours, she sent written confirmation she intended to withdraw her petition. The District filed a Motion to Dismiss, and sent correspondence requesting that if a withdrawal was entered, that it be done with prejudice. Petitioner responded via email, wishing to retain the right to refile or seek alternate measures in the future.

I **CONCLUDE** that petitioner's failure to appear and her written notice of intent to withdraw the petition, confirm that petitioner has abandoned this matter. I thus **CONCLUDE** that the matter shall be returned as withdrawn, to the transmitting agency.

Petitioner's subsequent email correspondence that she wants to retain the right to refile or seek alternate measures merely indicates she may take action in the future, whatever that may be. It does not signal an intent to proceed with this issue or otherwise warrant holding open a petition for relief indefinitely. Petitioner's actions and writings support her intent to abandon the matter. I therefore **CONCLUDE** that petitioner's failure to appear and subsequent confirmation of withdraw, shall be deemed as the matter being withdrawn, with prejudice.

ORDER

It is **ORDERED** that the Clerk return this matter to the Office of Special Education Policy and Procedure of the New Jersey Department of Education, and the matter shall be deemed withdrawn, with prejudice.

This decision is final pursuant to 20 U.S.C. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2019) 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 (2019). 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 Policy and Dispute Resolution.



February 18, 2020
DATE

ELAINE B. FRICK, ALJ

Date Received at Agency

February 18, 2020

Date Mailed to Parties:

February 18, 2020 (Sent Via E-Mail)

/dm