



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

MOTION TO DISMISS

OAL DKT NO. EDS 09934-23

AGENCY DKT. NO. 2024-36527

S.O. AND K.O. ON BEHALF OF B.O.,

Petitioners,

v.

**FLEMINGTON-RARITAN REGIONAL
SCHOOL DISTRICT BOARD OF EDUCATION,**

Respondent.

Michael I. Inzelbuch, Esq., for petitioners (Law Office of Michael I. Inzelbuch,
attorney)

Curtis D'Costa, Esq., for respondent (Comegno Law Group, PC, attorneys)

Record Closed: October 19, 2023

Decided: October 31, 2023

BEFORE **TRICIA M. CALIGUIRE**, ALJ:

STATEMENT OF THE CASE

Petitioners S.O. and K.O. on behalf of B.O. bring this case under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§ 1401 to 1484(a), and 34 C.F.R. §§

300.500 et seq. (2022), seeking generally, changes to the Individualized Education Plan proposed for B.O. by respondent Flemington-Raritan Regional School District Board of Education (District) on or about August 24, 2023. By motion, respondent seeks to dismiss petitioners' complaint with prejudice for failure to attend a mutually agreed upon resolution meeting, pursuant to 34 C.F.R. § 300.510.

PROCEDURAL HISTORY

On September 7, 2023, petitioners filed a complaint for a due process hearing with the New Jersey Department of Education (NJ DOE), Office of Special Education (OSE). By memorandum dated September 11, 2023, OSE acknowledged receipt of petitioners' request. On September 15, 2023, respondent notified OSE that a resolution session was scheduled for September 22, 2023.

On September 25, 2023, respondent sent notice to OSE and petitioners of its motion to dismiss the request for a due process hearing for petitioners' alleged failure to participate in the resolution session. OSE did not act on the motion but transmitted this matter to the Office of Administrative Law (OAL), where it was filed on September 27, 2023, as a contested case. On October 2, 2023, a prehearing conference was held, and responsive briefs were submitted on October 17 and 19, 2023.

FINDINGS OF FACT

Based on the documents filed by the parties and those transmitted by OSE with the petition, I **FIND** as follows:

On September 7, 2023, both petitioners signed a statement by which they agreed **“to participate in a Resolution Session if so desired by the District.”** Parental Request for Due Process Petition, at 4 (emphasis in original).

On September 11, 2023, OSE sent an acknowledgement to petitioners, with copies to counsel for both parties,¹ which included the following paragraph:

IDEA 2004 provides that within 15 days of receipt of the request for a due process hearing, the parties must participate in a resolution session arranged and conducted by the district. If the parties are participating in a resolution session, the district will arrange this meeting.

On September 12, 2023, respondent's counsel sent an email to petitioners' counsel with several proposed dates for the resolution session. On September 13, 2023, at 4:08 p.m., by email, counsel for petitioners offered counsel for respondent a date for the resolution session of September 22, 2023, at 10:00 a.m. On September 14, 2023, at 12:08 p.m., counsel for respondent sent an email to petitioners' counsel with the information needed to participate in the Zoom resolution session on September 22, 2023, at 10:00 a.m.

On September 22, 2023, at 10:06 a.m., counsel for respondent sent counsel for petitioners an email reminder (as neither petitioners nor counsel had yet appeared on Zoom for the meeting). Neither petitioners nor their counsel appeared for the Zoom resolution session.

Neither party has produced copies of any communication from petitioners' counsel to respondent's counsel between September 15, and 22, 2023.

By certification dated September 29, 2023, petitioners state that they never received any communication, including an email with the Zoom meeting link, from the District regarding the September 22, 2023, resolution session. Petitioners do not provide any evidence that they communicated directly with the District or the District's attorney after they had retained counsel to represent them in this matter.² There is no evidence

¹ Attorneys and staff at the Comegno Law Group are referred to here as "respondent's counsel" and similarly, attorney and staff at the Law Office of Michael I. Inzelbuch are referred to here as "petitioners' counsel."

² Emails from petitioners' counsel to respondent's counsel regarding scheduling the resolution session do not show petitioners as copied.

from either party that petitioners' counsel gave his consent to direct communication from respondent's counsel to petitioners.

LEGAL ANALYSIS AND CONCLUSION

The IDEA provides the parties an opportunity to resolve their dispute before beginning the often lengthy (and expensive) due process proceedings. Specifically, the federal regulations promulgated pursuant to the IDEA provide, in pertinent part:

Within 15 days of receiving notice of the parent's due process complaint, and prior to the initiation of a due process hearing under § 300.511, the [District] must convene a meeting with the parent and the relevant member or members of the IEP Team who have specific knowledge of the facts identified in the due process complaint that—

- (i) Includes a representative of the public agency who has decision-making authority on behalf of that agency; and
- (ii) May not include an attorney of the [District] unless the parent is accompanied by an attorney.

[34 C.F.R. 300.510 (a)(1).]

Except where the parties have jointly agreed to waive the resolution process or to use mediation, notwithstanding paragraphs (b)(1) and (2) of this section, the failure of the parent filing a due process complaint to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until the meeting is held.

[34 C.F.R. 300.510(b)(3).]

If the [District] is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made (and documented using the procedures in § 300.322(d)), the [District] may, at the conclusion of the 30-day period, request that a hearing officer dismiss the parent's due process complaint.

[34 C.F.R. 300.510((b)(4).]

The regulations adopted by the NJ DOE underscore that the resolution session is meant to provide the District an opportunity to resolve the issues raised by the parents. See N.J.A.C. 6A:14-2.7(h). The guidance provided to parents by the NJ DOE make clear the importance of participating in a resolution session:

If you [Parents] fail to attend a resolution meeting with the school district . . . the school district may file a request to have your request for a due process hearing dismissed by an ALJ. If the ALJ determines that you did not have a valid reason for not attending the resolution meeting, the ALJ may dismiss your request for a due process hearing.

[Parental Rights in Special Education, NJ DOE (Revised May 2023).]

Petitioners argue that first, the thirty-day period provided for in the federal regulations had not concluded when respondent filed its motion to dismiss and, therefore, it should be disregarded as premature. The federal regulations state that the District “must” convene the resolution session within fifteen days of the filing of the petition, which in this case would have been September 22, 2023. Further, if the District is unable to obtain such participation, the District “may” file a motion to dismiss. By contrast, the New Jersey regulations state that if the matter is not resolved within thirty days to the parents’ satisfaction, OSE will transmit the matter to OAL for hearing. N.J.A.C. 6A:14-2.7(h)(4). Respondent’s motion to dismiss was filed with OSE, which transmitted both the matter and the motion to OAL for decision. Petitioners fail to cite any caselaw requiring the District to delay its filing for an additional fifteen days.

Second, petitioners argue that there is no evidence of direct communications between the District or its attorney and the petitioners and therefore, the District cannot be found to have made reasonable efforts to obtain petitioners’ participation in a resolution session.

The New Jersey Rules of Professional Conduct provide, in pertinent part:

In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows . . . to be represented by another lawyer in the matter . . . unless the lawyer has the consent of the other lawyer or is authorized by law or court order to do so, or unless the sole purpose of the communication is to ascertain whether the person is in fact represented.

[N.J. Rules of Court, RPC 4.2.]

There is no dispute that petitioners had retained counsel prior to filing their due process petition and no evidence that such counsel consented—or requested—that respondent’s counsel communicate directly with his clients regarding the scheduling of the resolution session. Had respondent’s counsel communicated directly with petitioners, he would have risked being cited for violating the ethics rules without good reason to conclude that such direct communication was necessary.

I **CONCLUDE** that based on the evidence before me, petitioners failed to participate in a properly scheduled resolution session and failed to make any efforts, even on the date of the session, to reschedule or explain their inability to participate.

ORDER

I **ORDER** that the motion of respondent to dismiss the request of petitioners for a due process hearing is **GRANTED** and the petition is **DISMISSED WITHOUT PREJUDICE**.

This decision is final pursuant to 20 U.S.C. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2022) 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 (2022). 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.

October 31, 2023

DATE



TRICIA M. CALIGUIRE, ALJ

Date Received at Agency:

Date Mailed to Parties:

TMC/kl/mph