



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION
FAILURE TO APPEAR AND
DISMISSAL ON MOTION

OAL DKT. NO. EDS 13684-23

AGENCY DKT. NO. 2024-36491

N.D. and M.D. ON BEHALF OF N.C.,

Petitioner,

v.

VINELAND CITY

BOARD OF EDUCATION,

Respondent.

No appearance by or on behalf of N.D. and M.D., petitioners, pro se

Robert A. Muccilli, Esq., for respondent (Capehart & Scatchard, P.A., attorneys)

Record Closed: December 19, 2023

Decided: December 20, 2023

BEFORE ELAINE B. FRICK, ALJ:

STATEMENT OF THE CASE

Petitioners, N.D. and M.D., on behalf of their child, a minor student, N.C., seek compensatory education for N.C. due to disruption in the student's education from March 2020 to the return to school in September 2021, during the COVID-19 pandemic.

Respondent, Vineland City Board of Education (Vineland or the District or the BOE) filed a Motion to Dismiss in lieu of Answer for failure to state a claim. Petitioners failed to appear for the scheduled settlement conference and failed to appear for the pre-hearing telephonic conference scheduled in the Office of Administrative Law (OAL) regarding their due process petition.

PROCEDURAL HISTORY

Petitioners submitted a request for a due process hearing to the New Jersey Department of Education, Office of Special Education (OSE) on August 31, 2023. Respondent, the BOE, filed a Motion to Dismiss with the OSE on October 2, 2023. The OSE transmitted the matter to the OAL, where it was filed on December 8, 2023, to be heard as a contested matter. N.J.S.A. 52:14B-1 to 14B-15; N.J.S.A. 52:14F-1 to 14F-13.

The parties were scheduled to attend a settlement conference through the OAL with a settlement conference Administrative Law Judge (ALJ) on December 14, 2023. Petitioners failed to appear, and the matter was assigned to the undersigned ALJ as a contested matter.

A telephonic conference was scheduled on December 18, 2023. Petitioners failed to appear for the telephonic conference. Counsel for the BOE appeared for the telephonic conference.

FACTUAL DISCUSSION AND FINDINGS

Based upon the file documentation and review of the motion submission by the BOE, the following facts are undisputed or otherwise unchallenged, and I **FIND** as **FACTS** the following:

N.D. and M.D are the parents/guardians of student, N.C. The reported date of birth for N.C. is March 24, 2009. (Request for due process page 1.) Petitioners submitted a request for due process on August 31, 2023, to the OSE. The petitioners' address is

handwritten in as a location in Vineland. They identify the Vineland school district as the district responsible for their student. (Request for due process page 2.)

The petition indicates that the nature of the problem is:

The student is classified as a student with disabilities and is entitled to receive a free and appropriate education.

The student's education was disrupted during the period from March 2020 to the return to school in September 2021. As a result, during the COVID period the student did not receive a Free and Appropriate Education.

The student is entitled to compensatory education due to the disruption in education during the period from March 2020 to September 2021.

(Request for due process, page 3.)

Petitioners indicate the matter could be resolved as: "The petitioner is requesting the District to make up for the full amount of education and related services that the student did not receive." (Request for due process, page 3.) The petition is signed by N.D., with a handwritten date of August 28, 2023. (Request for due process, page 3.)

In lieu of an answer, on October 2, 2023, the District submitted to OSE a Motion to Dismiss, for failure to state a claim for relief, with a supporting legal brief, and certification, asserting that N.C. was not enrolled in the Vineland school district during the period of time for which compensatory education is sought. School representative, Theresa Godlewski, the Executive Director of Student Services in the Vineland school district certified as of September 8, 2023, that N.C. transferred from the Pennsauken School District to the Vineland School District for the 2023-2024 school year, on September 5, 2023. N.C. was not enrolled in the Vineland school district during the March 20, 2020, through September 30, 2021, time period, referred to as the "Covid period." (Certification of Godlewski, paragraph 2.)

The parties were scheduled to attend a settlement conference with an OAL ALJ on December 14, 2023. Petitioners failed to appear. The matter was scheduled for a

telephonic conference with the undersigned ALJ on December 18, 2023. Notice was issued to the parties with the appropriate dial-in information to participate in the conference. Respondent's counsel appeared as scheduled on December 18, 2023.

Petitioners failed to appear for the telephonic conference scheduled on December 18, 2023. Nothing was received by or on behalf of petitioners in advance of the telephonic conference to indicate they could not appear as scheduled. After twenty-four hours, as of December 19, 2023, nothing was received from petitioners explaining their failure to appear for either the previously scheduled settlement conference or for the telephonic conference scheduled before me on December 18, 2023.

Petitioners have failed to respond or otherwise submit any written response or opposition to the District's motion to dismiss.

LEGAL ANALYSIS AND CONCLUSIONS

The New Jersey Administrative Code 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. N.J.A.C. 1:1-14.4(a). If the judge does not receive an explanation for the non-appearance within one day, the judge may direct the Clerk to return the matter to the transmitting agency for appropriate disposition.

Here, petitioners submitted their due process request to OSE. The District submitted a Motion to Dismiss. The matter was transmitted to the OAL. The settlement conference was scheduled in the OAL, and petitioners failed to appear. The matter was assigned to a hearing ALJ, and a telephonic conference was scheduled for December 18, 2023. Notice was issued to petitioners at the contact information on file at the OAL.

Petitioners failed to appear again for an OAL proceeding related to their due process request. They have failed to submit any opposition or response to the District's motion to dismiss. There has been no explanation forthcoming from petitioners or on their behalf as to why they failed to appear for the settlement conference. They have failed to provide any explanation as to their non-appearance within one day after the

scheduled telephonic conference. I **CONCLUDE** that petitioners have abandoned their request for due process, having failed to appear for the settlement conference, and having failed to appear for the telephonic conference, for which they received notice. I thus **CONCLUDE** the due process request shall be dismissed and the file returned to the transmitting agency.

The District also submitted a Motion to Dismiss in lieu of an answer, with a supporting legal brief and certification from the school's representative. Petitioners have never responded or filed opposition to the motion.

The New Jersey Administrative Code permits the filing of motions to be made in administrative hearings. N.J.A.C. 1:1-12.1, et seq. A Motion to Dismiss is not specifically enumerated under the Administrative Code, but an ALJ may proceed in the absence of a specific regulation in accordance with the New Jersey Court Rules, to achieve "just results, simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay." N.J.A.C. 1:1-1.3(a). The New Jersey Court Rules provide that a party may move for dismissal of a complaint for failure to state a claim upon which relief can be granted. R. 4:6-2(e).

The common method for resolving a case on the papers in an administrative proceeding, without a hearing, is by a motion for summary decision under N.J.A.C. 1:1-12.5. The New Jersey Court Rule regarding a motion to dismiss specifies that if the dismissal is sought based upon failure to state a claim, and if matters outside the initial pleading are presented to and not excluded by the court, then the motion shall be treated as a summary judgment motion, which is the equivalent motion to an administrative law summary decision motion. R. 4:6-2; N.J.A.C. 1:1-12.5.

A party in an administrative law matter "may move for summary decision upon all or any of the substantive issues in a contested case." N.J.A.C. 1:1-12.5(a). The motion "shall be served with briefs and with or without supporting affidavits" and the decision "may be rendered if the papers and discovery which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law." N.J.A.C. 1:1-12.5(b).

The non-moving party will prevail if they “set forth specific facts showing that there is a genuine issue which can only be determined in an evidentiary proceeding.” Id., See R. 4:46-2 and Brill v. Guardian Life Insurance Co. of America, 142 N.J. 520, 540 (1995).

When rendering a determination on a motion for summary judgment, “the ‘judge’s function is not . . . to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial.” Brill at 540, citing Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986). Summary judgment, like summary decision, “is designed to provide a prompt, businesslike and inexpensive method of disposing of any case” upon a discriminating search of the merits of the pleadings and documentation presented for such a motion. Brill at 540, citations omitted. If such a search of the information demonstrates there is no genuine issue of material fact requiring disposition at a hearing, the motion shall be granted. Id. “An evidentiary hearing is mandated only when the proposed administrative action is based on disputed adjudicatory facts.” In re Farmers’ Mutual Fire Assurance Association of New Jersey, 256 N.J. Super. 607, 618 (App. Div. 1992).

Here, the only factual issue presented outside of petitioners’ due process request is confirmation by the District’s representative that the student had just enrolled in the Vineland school district as of September 5, 2023, having transferred from the Pennsauken school district. The representative further certified that N.C. did not attend school in Vineland from the time frame of March 2020, through September 2021, the Covid period when petitioners are seeking relief for disruption of N.C.’s schooling during the Covid pandemic, asserting a lack of free and appropriate education (FAPE) during that time.

Petitioners have failed to respond to the motion filings. They have not disputed the certification by the school representative, which certifies that N.C. did not attend school in Vineland during the timeframe petitioners are seeking relief for lack of FAPE.

The Federal Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400 et seq., was enacted to ensure that children with disabilities have access to FAPE. 20 U.S.C. § 1412(a)(1). FAPE includes special education instruction and related services

designed to meet the needs of the child. 20 U.S.C. § 1401(9); N.J.A.C. 6A:14-1.1, et seq. The school district of residence is the district responsible for the identification, evaluation, determination of eligibility for special education and related services, and development of an individualized education program (IEP), and to provide FAPE. N.J.A.C. 6A:14-1.3. The petition here is bare bones, simply asserting that N.C.'s education "was disrupted" during the Covid period and petitioners are requesting that the District "make up for the full amount of education and related services that the student did not receive."

Petitioners' claim should be directed to the school district of residence, which is the school where the child was enrolled and attending during the Covid period. The student was not enrolled in Vineland during that time period. Vineland has no responsibility to provide the compensatory relief sought of "make up for the full amount of education and related services" the student allegedly did not receive during the Covid period. Thus, there is no claim for relief properly asserted by petitioners as to Vineland in their request for due process. They have not appeared for any of the scheduled proceedings in the OAL after the respondent's filing of its Motion to Dismiss. I have determined that petitioners have abandoned their claim, and the petition should be dismissed. Such inaction by petitioners in failing to appear supports the conclusion that petitioners no longer wish to proceed against Vineland, since N.C. was not enrolled in the Vineland school district during the time, they have asserted a claim for relief. I must **CONCLUDE** that respondent's Motion to Dismiss shall be **GRANTED** and the due process request shall be **DISMISSED**, for failure to state a claim for relief as to Vineland in this matter.

ORDER

It is **ORDERED** that petitioners' due process request shall be **DISMISSED** for their abandonment of the action for failing to appear for scheduled OAL proceedings.

It is further **ORDERED** that the Motion to Dismiss by Vineland shall be **GRANTED**, and petitioners' due process request **DISMISSED** for failure to state a claim for relief.

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.



December 20, 2023 _____

DATE

ELAINE B. FRICK, ALJ

Date Received at Agency _____

Date Mailed to Parties: _____

EBF/gd