

OAL Dkt. No. EDU 08998-19
Agency Dkt. No. 55-3/19

New Jersey Commissioner of Education
Final Decision

Mary Leonard,

Petitioner,

v.

Board of Education of the City of Plainfield,
Union County,

Respondent.

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. The parties did not file exceptions.

Upon such review, the Commissioner agrees with the Administrative Law Judge that the petition should be dismissed for failure to provide timely responses to discovery requests. Petitioner indicated on a conference call that she had no intention of responding to the Board's discovery requests or replying to the Board's motion to dismiss for failure to answer discovery.

Accordingly, the Initial Decision of the OAL is adopted as the final decision in this matter for the reasons expressed therein, and the petition is hereby dismissed with prejudice.

IT IS SO ORDERED.¹

COMMISSIONER OF EDUCATION

Date of Decision: January 22, 2020
Date of Mailing: January 23, 2020

¹ This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L.* 2008, *c.* 36 (*N.J.S.A* 18A:6-9.1).



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

MOTION TO DISMISS

OAL DKT. NO. EDU 08998-19

AGENCY DKT. NO. 55-3/19

MARY LEONARD,

Petitioner,

vs.

**BOARD OF EDUCATION OF THE
CITY OF PLAINFIELD, UNION COUNTY,**

Respondent.

Mary Leonard, Petitioner, pro se

Amy A. Pujara, Esq., for Respondents, (DiFrancesco, Bateman, Kunzman,
Davis, Lehrer & Flaum, attorneys)

Record Closed: December 18, 2019

Decided: December 19, 2019

BEFORE: **THOMAS R. BETANCOURT,** ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner filed a petition with the New Jersey Department of Education's Office of Controversies and Disputes on May 29, 2019.

The matter was transferred to the Office of Administrative Law (OAL), where it was filed on July 2, 2019, as a contested case.

A prehearing conference was held on July 12, 2019. A prehearing order was entered on July 15, 2019.

The matter was scheduled for hearing on October 16, 2019. Respondent requested that the matter be adjourned to permit it to file a motion to dismiss for failure to provide discovery. The adjournment was granted. Respondent filed a motion to dismiss for failure to provide discovery on October 25, 2019. Petitioner failed to provide a response thereto, or otherwise communicate with the OAL or the attorney for respondent.

The undersigned scheduled a telephone conference with the parties for December 4, 2019, at 12:15 p.m. The telephone conference was initiated by the OAL. Petitioner failed to answer the telephone.

Thereafter the undersigned scheduled a second telephone conference for December 18, 2019 at 3:30 p.m. That conference was held and was done on the record.

FACTUAL DISCUSSION

The prehearing order entered on July 15, 2019 required that all discovery be completed on or before August 30, 2019.

Respondent propounded interrogatories and a request for production of documents upon petitioner on August 6, 2019. On September 30, 2019 respondent forwarded a letter to petitioner requesting a response to the discovery request.

Petitioner has not responded to the discovery request of respondent.

Respondent filed a motion for dismissal for failure to answer the discovery request. Petitioner failed to respond to said motion, or otherwise move before the OAL.

During the course of the telephone conference of December 18, 2019, petitioner made it abundantly clear that she had no intention of either providing a response to the discovery request of respondent, or of responding to the motion.

LEGAL ANALYSIS AND CONCLUSION

N.J.A.C. 1:1-10.5 provides:

By motion of a party or on his or her own motion, a judge may impose sanctions pursuant to N.J.A.C. 1:1-14.14 and 14.15 for failure to comply with the requirements of this subchapter. Before imposing sanctions, the judge shall provide an opportunity to be heard.

An Administrative law judge has power to impose reasonable monetary sanctions on attorneys as representatives of parties. In re Timofai Sanitation Co., Inc. Discovery Dispute, 252 N.J. Super. 495 (A.D. 1991)

Before an administrative law judge could impose sanctions for violating a discovery order, court was required to conduct evidentiary hearing and make findings of fact. In re Timofai Sanitation Co., Inc. Discovery Dispute, 252 N.J. Super. 495 (A.D. 1991).

N.J.A.C. 1:1-14.14 states:

- (a) For unreasonable failure to comply with any order of a judge or with any requirements of this chapter, the judge may:
1. Dismiss or grant the motion or application;
 2. Suppress a defense or claim;
 3. Exclude evidence;
 4. Order costs or reasonable expenses, including attorney's fees, to be paid to the State of New Jersey or an aggrieved representative or party; or
 5. Take other appropriate case-related action.

A prehearing order was entered in this matter on July 15, 2019. The discovery end date set forth in said order was August 30, 2019.

In the instant matter there was no explanation offered as to why discovery went unanswered. The failure to provide requested discovery has caused the adjournment of the hearing date. It has also caused the instant motion to dismiss to be filed. This, in turn, has caused respondent to incur unnecessary counsel fees.

At the telephone conference of December 18, 2019, the petitioner made it clear she did not intend to either provide discovery or answer the pending motion. The telephone conference was petitioner's "opportunity to be heard" pursuant to N.J.A.C. 1:1-10.5.

Given the above, the undersigned has no choice but to grant the motion to dismiss.

Based upon the above, I **CONCLUDE** that respondent's motion to dismiss should be **GRANTED**.

ORDER

It is hereby **ORDERED** that respondent's motion to dismiss for failure to provide timely responses to discovery requests is **GRANTED**; and,

It is further **ORDERED** that petitioner's petition is **DISMISSED** with prejudice.

I hereby **FILE** this initial decision with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

This recommended decision may be adopted, modified or rejected by the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who by law is authorized to make a final decision in this matter. If the Commissioner of the Department of Education does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION, ATTN: BUREAU OF CONTROVERSIES AND DISPUTES, 100 Riverview Plaza, 4th Floor, PO Box 500, Trenton, New Jersey 08625-0500**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.



December 19, 2019 _____

DATE

THOMAS R. BETANCOURT, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

db

APPENDIX

List of Moving Papers

For Petitioner:

None

For Respondent:

Motion to dismiss for failure to provide discovery

Letter brief in support of motion to dismiss for failure to provide
discovery

Certification of Amy A. Pujara, Esq. with Exhibits A and B