

New Jersey Commissioner of Education
Final Decision

M.M., on behalf of minor child,

Petitioner,

v.

Board of Education of the Township of
Lafayette, Sussex County, and Jennifer
Cenatiempo, former Superintendent,

Respondents.

The record of this matter, the Initial Decision of the Office of Administrative Law (OAL), and the exceptions filed by petitioner pursuant to *N.J.A.C. 1:1-18.4* have been reviewed and considered.¹

Petitioners² allege that their minor child was the victim of harassment, intimidation, and bullying (HIB). On or about December 27, 2021, the Lafayette Board of Education (Board) issued a decision that petitioners' child was not the victim of HIB. The case was transmitted to the OAL for a hearing regarding the merits of the Board's HIB decision and alleged violations of the Anti-Bullying Bill of Rights Act.

¹ Respondents did not file a reply to petitioner's exceptions.

² The petition of appeal was filed by M.M., who is the minor child's mother. W.M., the child's father, later moved to intervene, and the motion was granted. Accordingly, although the case caption names only M.M., this decision will refer to "petitioners," to include both M.M. and W.M. Additionally, throughout the course of the events related to this case, some actions have been undertaken by petitioners jointly, while others were taken by M.M. individually. For ease of reference, all actions taken by W.M. and/or M.M. on behalf of their child, whether jointly or individually, will be referred to as actions taken by "petitioners."

The Administrative Law Judge (ALJ) scheduled a hearing for June 30, 2023. Petitioners requested that the hearing be held virtually rather than in person. The ALJ denied petitioners' request to appear virtually. When petitioners failed to appear for the scheduled hearing on June 30, 2023, the ALJ dismissed the case pursuant to *N.J.A.C. 1:1-14.4*.

In their exceptions, petitioners argue that the Board failed to comply with a previous Commissioner decision ordering them to provide video evidence to petitioners, which allegedly impaired their ability to present their case. Petitioners also contend that they should have been allowed to participate in the hearing virtually because they do not have childcare, W.M. would have to miss a day of work, and M.M. does not have a reliable car.

Upon review, the Commissioner concurs with the ALJ that the petition must be dismissed. *N.J.A.C. 1:1-14.6* gives the ALJ broad authority to determine the nature of the proceedings. The ALJ determined that the hearing in this matter should be conducted in person, and the Commissioner finds no reason to disturb that determination. Furthermore, the Commissioner concludes that petitioners have not demonstrated good cause for their failure to appear. Their disagreement with the ALJ's discovery order does not provide an excuse for failing to participate in the proceedings. Nor do petitioners' alleged difficulties regarding childcare, time off work, or transportation, which petitioners do not contend were limited to preventing them from appearing on June 30, 2023, but rather prevent them from ever appearing in person. While petitioners may find a virtual hearing more convenient, the authority to determine the appropriate format of a hearing lies with the ALJ, not with petitioners.

Additionally, in accordance with *N.J.A.C. 1:1-14.9*, the Commissioner has reviewed the ALJ's January 9, 2023 Order Denying Motion for Discovery Sanctions. Prior to transmitting this matter to the OAL, the Commissioner ordered the Board to produce video evidence sought by petitioner.

M.M., on behalf of minor child v. Board of Education of the Township of Lafayette, Commissioner Decision No. 333-21L+ (Dec. 20, 2021). Petitioners moved for sanctions based on the Board's alleged failure to comply with the Commissioner's order. However, the record reflects that the Board provided all video evidence that was at issue at the time of Commissioner Decision No. 331-21L+ – that is, all video evidence which the Board had previously allowed petitioners to view, but not copy. Therefore, the Board has complied with Commissioner Decision No. 331-21L+, and no sanctions are warranted. Furthermore, with regard to discovery requests made by petitioners after Commissioner Decision No. 331-21L+ was issued, the Commissioner concurs with the ALJ's January 9, 2023 Order denying those requests,³ for the reasons detailed therein.

Accordingly, the Initial Decision is adopted as the final decision in this matter. The petition of appeal is hereby dismissed.

IT IS SO ORDERED.⁴


ANGELINA ALLEN McMILLAN, J.D.
ACTING COMMISSIONER OF EDUCATION

Date of Decision: August 21, 2023
Date of Mailing: August 21, 2023

³ The ALJ did order the Board to produce copies of video clips specified in the HIB report and any video clips the Board intended to use at hearing. The Commissioner also concurs with this portion of the ALJ's Order.

⁴ This decision may be appealed to the Appellate Division of the Superior Court pursuant to *N.J.S.A. 18A:6-9.1*. Under *N.J.Ct.R. 2:4-1(b)*, a notice of appeal must be filed with the Appellate Division within 45 days from the date of mailing of this decision.



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

DISMISSAL WITH PREJUDICE

OAL DKT. NO. EDU 00546-22

AGENCY DKT. NO. 216-11/21

M.M. o/b/o MINOR CHILD,

Petitioner,

v.

**BOARD OF EDUCATION OF THE TOWNSHIP OF
LAFAYETTE, SUSSEX COUNTY, AND JENNIFER
CENATIEMPO, FORMER SUPERINTENDENT,**

Respondents.

M.M. o/b/o her minor child, pro se.

ERIC L. HARRISON, Esq., for respondents (Methfessel and Werbel, attorneys)

Record Closed: June 30, 2023

Decided: July 5, 2023

BEFORE **ERNEST M. BONGIOVANNI, ALJ:**

On June 21, 2022 this matter was transmitted to the Office of Administrative Law (OAL) for hearing as a contested case pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14f 1 to-13. The parents allege HIB violations and that the respondent violated their child's rights for failing to determine there were any HIB violations and by not fairly investigating allegations which stem from their understanding of what their child told them.

After several attempts by phone or virtual appearances to hold a prehearing conferences, a hearing was scheduled for June 30, 2023, notice of which was sent to the petitioners by the Office of Administrative Law on May 17, 2023.

On June 21, 2023 petitioners¹ sent an email request to change the in-person hearing scheduled for June 30, 2023, to a virtual hearing. The undersigned denied the request and petitioner was advised of same in writing. On June 23, 2023, petitioner made a request to reconsider the denial, this request directed to the assignment judge. The undersigned advised petitioner there would be no reconsideration. Petitioners asked that in lieu of an in-person hearing, certain documents of theirs should simply be entered as exhibits “for the record.” W.M. argued that he and M.M. should not be required to come to attend court for the hearing, because they “will not be able to present evidence,” as the respondent Board of education had not been made to comply with Court Ordered Discovery.

However, on January 9, 2023, in a written decision, the undersigned denied a motion by petitioners for “Sanctions” against respondent for their alleged noncompliance with a 2022 Order for Discovery signed by the Commissioner before the matter had been transmitted to the undersigned for a hearing. As the denial of sanctions decision made very clear, I disagreed that since the transmittal there was any noncompliance by the respondent, Board of Education, that all required Discovery was provided and that petitioners repeated demands for many hours of additional videotapes of children at the school had no foundation, were unreasonable and amounted to possible harassment and stalling tactics. Further I clarified the then current status of Discovery and gave petitioners additional time to make more specific demands, e.g. naming dates times and places of specific videos and description of what the videos would show and the basis for believing they show HIB taking place.

Between the January 9, 2023 denial of the motion for sanctions and the June 30, 2023 hearing, petitioners never argued formally or informally that respondents had not complied with the conditions and Discovery elements of the Order denying sanctions. No

¹ M.M., the child’s mother was the sole petitioner; however, on March 8, 2023, W.M., the child’s father and husband of M.M. was allowed to enter his appearance after his motion to intervene was granted.

motion whatsoever was filed to enforce my decision. Petitioners did on March 10, 2023 provide a 24-page email which simply disagreed with the aforesaid January 9, 2023 decision; thus there is no argument of any noncompliance by respondent with the Court's Order.

Further, even had there been an argument, cogent or otherwise, made regarding the Sanctions Denial Order, petitioners failed to articulate any relationship between the Discovery issues raised and the "reason" for the recent and somewhat sudden request that the hearing be virtual. In fact, there was and is no relationship between the alleged longstanding but already decided Discovery complaints and the arbitrary demand the hearing be virtual. On June 21, and June 23, 2023, in two emails to the court, petitioners made it clear that W.M. and M.M. refused to appear because they had been , in their minds, and despite a Court decision to the contrary, denied Discovery. They adamantly refused to participate in the hearing in any meaningful way. In their own words: "Since we are not acting as witnesses in this matter and have been denied video evidence to show what happened outside our witness, but reported accurately by our child, we can only provide simple statements about what our child told us. ...There is no need for an in-court appearance." Further in another email June 21, 2023, petitioners stated: "We cannot attend an in-person hearing...", as they "have no childcare for our son."

However, petitioners made it clear they were not asking for an adjournment to arrange childcare on some other date or time for their son. Rather, petitioners were adamant they would not attend any in court hearing at any other time. As they continue to explain, their reason for refusing to appear is they have been denied their rights and denied Discovery. In their words: "There is no reason to lose work. My wife and I can give statements we would like to give on behalf our child which can easily be done virtually...Lastly I will not allow my wife to go alone ² far away to sit in front of a hostile judge and the school attorney after the history this matter...and what has occurred when

² At a previous conference before W.M. made a motion to intervene, when M.M. had raised the subject of childcare, it was suggested W.M. could provide childcare. Soon thereafter W.M. made a motion to intervene. In any event no one suggested M.M. had to appear alone, quite the contrary as the Court had even granted a motion by W.M. to intervene. Moreover, the parents failed to articulate any extraordinary reason regarding childcare or for that matter how they could provide childcare for the minor child, approximately age 8 while appearing virtually but could not provide it for the same childcare during an in-person hearing.

my wife has been alone with previous judges and the school attorney, she should not have to be intimidated... We have already been expressly denied what the Commissioner says we need to prove merits, so we can't prove merits . There is no need to suffer more loss of work and we still don't have childcare so we both won't be able to attend."

Again both parents made it clear they did not seek an adjournment to get childcare and I find this "reason" to be specious. Further, even if the petitioners believed what they say it is apparent they have no idea, or perhaps rather no concern, despite the court's many indulgences, regarding how hearings are supposed to work; that they are not just "allowed to give statements" about what their child said, and that respondents have rights as litigants just as much as petitioners do, one which includes confronting witnesses, and another which is objecting to alleged evidence. Finally, it was abundantly clear from their own words they petitioners have no intention, and possibly never had the intention, of appearing in court and participating in a hearing in a meaningful way, and instead want the court to make up a complete set of rules to apply to them alone.

On June 23, 2023, petitioner again e-mailed to request a reconsideration of the denial to allow them to participate/appear virtually. This reconsideration was not granted.

After receiving the aforesaid communications from petitioners, they were advised by the Court in writing that if they failed to appear in person for the hearing on June 30, 2023 at 9:30 as scheduled weeks earlier, their case would be dismissed. Further, petitioners were advised no exhibits sent by them would be entered into evidence as there would be no evidentiary hearing without their appearance.

On the day of hearing, petitioners did not appear. Respondent, their single witness and attorney were on time and present and said they were "ready" to proceed. The petitioners' failure to appear was deliberate and calculated, regardless of its "reason." Accordingly, the petition must be **DISMISSED WITH PREJUDICE**.

For the above reasons, I **CONCLUDE** that petitioners have abandoned their request for a hearing in this matter and has forfeited their right to further contest the

actions complained of. Accordingly, this matter should be dismissed with prejudice for lack of prosecution and failure to appear.

ORDER

It is **ORDERED** that the petitioners' appeal be **DISMISSED WITH PREJUDICE** pursuant to N.J.A.C. 1:1-14.4, and I **DIRECT** the Clerk to return the matter to the agency for appropriate disposition.

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.

July 5, 2023



DATE

ERNEST M. BONGIOVANNI, ALJ

Date Received at Agency:

7/5/23

Date Mailed to Parties:

7/5/23

id