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OAL Dkt. No. EDU 07430-23
Agency Dkt. No. 173-6/23

New Jersey Commissioner of Education
Final Decision

R.C., on behalf of minor child, M.D.,

Petitioner,

v.

Board of Education of the Township of
Springfield, Union County,

Respondent.

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL), granting the respondent Board's motion to dismiss, have been reviewed and considered. The parties did not file exceptions.

The petitioner filed a *pro se* appeal challenging the Board's determination that her minor child, M.D., was not the victim of harassment, intimidation, and bullying (HIB). The matter was transmitted to the OAL for a hearing regarding the merits of the Board's HIB decision. The Administrative Law Judge (ALJ) scheduled three pre-conference hearings in this case, none of which were attended by the petitioner despite having received appropriate notice of each hearing date. Accordingly, the ALJ concluded that the matter must be dismissed with prejudice, pursuant to *N.J.A.C. 1:1-14.4*, for petitioner's failure to appear three times for a court proceeding without any explanation and for failure to provide the required written reply to the Board's motion to dismiss.

Upon review, the Commissioner concurs with the ALJ that the petition must be dismissed. Accordingly, the Initial Decision is adopted as the final decision in this matter. The petition of appeal is hereby dismissed.

IT IS SO ORDERED.


ANGELINA ALLEN McMILLAN, Jd.S.
ACTING COMMISSIONER OF EDUCATION

Date of Decision: January 26, 2024

Date of Mailing: January 31, 2024



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION GRANTING
MOTION FOR DISMISSAL
WITH PREJUDICE

OAL DKT. NO. EDU 07430-23

AGENCY DKT. NO.173-6/23

R.C. o/b/o MINOR CHILD, M.D.,

Petitioner,

v.

**BOARD OF EDUCATION OF THE TOWNSHIP
OF SPRINGFIELD, UNION COUNTY,**

Respondent.

R.C. on behalf of **M.D.**, petitioner pro se

Jaclyn M. Morgese, Esq. (Cornell, Merlino, McKeever & Osborne, attorneys,
for respondent)

Record Closed: January 8, 2024

Decided: January 8, 2024

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

STATEMENT OF THE CASE

Petitioner R.C. (Petitioner) appealed a finding by respondent that an act or acts of HIP toward M.D. did not occur. According to the initial HIN 338 HIB reporting form filed

by petitioner, on February 17, 2020, an accusation was made about M.D. that she “to carry a gun at the school, writing threatening (sic) message on the message board of the school. Student report on Instagram, snapshot and text messages that my daughter has a list of people she wants to kill,” that classmates always made fun of the way she was dressed and “give her names ‘prostitute’”. On April 25, 2023, respondent notified R.C. that the Springfield Board of Education (BOE) affirmed the Superintendent’s decision that an act of HIB did not occur. On June 23, 2023, R.C. on behalf of M.D. filed a pro se Petition of Appeal of said decision with the New Jersey Commissioner of Education. On August 14, 2023, the 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. On December 20, 2023, respondent filed a Notice of Motion, with a certification of mailing to petitioner, with supporting affidavit, exhibits and legal brief, to Dismiss the Appeal alleging R.C.’s nonparticipation in the proceedings since the matter was filed, leading up to and culminating with R.C.’s failure to appear for a telephone Prehearing Conference December 14, 2023. For the reasons which follow, I grant the respondent’s Motion to Dismiss.

FACTS

All of the following facts are supported by respondent’s unopposed motion certification and exhibits. Respondent’s Answer to the Petition of Appeal and affirmative Defenses, dated July 27, 2023 (Exhibit C) note that petitioner’s appeal did not make specific allegations but was a general appeal, and thus the Answer was also general. On August 22, 2023, in order to quickly learn more of the case, petitioner and respondent were notified via email that the undersigned (me/the court) would like to hold a prehearing conference via telephone on any one of five specified dates and times between August 29, 2023, and September 22, 2023. Counsel for respondent replied the same day that she was available on all of those five dates and times for the prehearing. (Exhibit E) However, no reply was made by R.C. or anyone on her behalf. Accordingly, my assistant asked again on September 14, 2023, that, the other proposed times for the conference having passed, or having become unavailable that the September 22, 2023, date was still available for a conference and to respond “ASAP” (Exhibit F).

Instead of responding to my assistant, on September 20, 2023, Rumana Hussain (R. Hussain), an assistant for Attorney Paul Fernandez, advised respondent's attorney that he represented R.C. and M.D. that Mr. Fernandez wanted to prepare for the September 22 conference and asked respondent's attorney what the case was about (Exhibit G). On the same date, the petitioner's counsel (Ms. Morgese) advised my assistant of Mr. Fernandez's involvement. On the following date, September 21, 2023, at 8:56 a.m., my assistant wrote to R. Hussain, who had been communicating for him with Ms. Morgese, and asked that counsel for R.C. send to her a letter of representation in this OAL matter, and to confirm their presence at the conference the next day. However, neither Ms. Hussain nor anyone else from Mr. Fernandez's involvement replied. Accordingly, the Prehearing had to be cancelled/adjourned. On September 28, 2023, my assistant again wrote to R. Hussain, again asking his office to send a letter of representation and confirm a new date for a prehearing conference. (Exhibit H)

On October 10, 2023, Mr. Fernandez's office was again advised by my assistant that I wanted to hold the prehearing conference at specific times on either October 17 or October 20, 2023, and to please reply. While Ms. Morgese replied that she was available on both dates and times, no reply was received by Mr. Fernandez. (Exhibit I). Morgese Certification, paragraph 22.

On November 28, 2023, Ms. Morgese wrote to the Court to inquire as to reschedule the prehearing conference as the respondent was interested in moving the case. On December 7, 2023, having noted the previous attempts to schedule R.C., through her attorney Mr. Fernandez, my assistant wrote to him noting the previous lack of response and asking for an immediate reply by confirming his representation in this matter and his availability for a prehearing conference. Mr. Fernandez replied the same day: "My apologies. My firm declined to take the matter and [R.C.] was advised to attend all hearings." (Exhibit K) On December 7, 2023, at 3:38 p.m., my assistant wrote to R.C. quoting my words:

Ms. [R.C.] has been unresponsive to prior attempts by the Court to schedule a Prehearing, on September 22, 2023, October 11, and other dates in which we inquired of her availability of that of a chosen attorney. We learned for certain

today that an attorney for [R.C.] was never retained. Please be advised that a prehearing will be held by telephone on December 14 at 10:30 a.m. If [R.C.] is not responsive and/or does not attend with no good explanation provided before that time, her Due Process request will be dismissed. (Exhibit L).

On the same day, my assistant sent by regular mail a notice of the conference to R.C. including the conference call in information (Court 's Exhibit A).

On December 14, 2023, at approximately 10:30 a.m. the Prehearing conference was set to begin with, at that time only myself and Ms. Morgese on the line. With Ms. Morgese listening on the conference line, I called R.C. at the phone number provided in the Service list given to the OAL in the transmittal by the Commissioner. When a person answered the phone, I identified myself what I was calling about, and asked for R.C. In response, this individual hung up the phone. Morgese Certification, paragraphs 33-36.

LAW

If "after appropriate notice," neither a party or representative of that party should fail to appear "at any proceeding scheduled by the Clerk or judge" and after one day having received no explanation for the nonappearance, the Court may return the matter to the agency for appropriate disposition. N.J.A.C. 1:1-14.4. Additionally, "a. For unreasonable failure to comply with any order of a judge or requirements of this chapter, the judge May 1. Dismiss or grant the motion or application" N.J.A.C. 1:1-14.14

Here, respondent has filed with correct Notice and in compliance with the OAL's regulations a motion to dismiss with prejudice the petitioner's appeal. Respondent's motion was filed December 20, 2023. Pursuant to N.J.A.C. 1:1-12.2 (b), the Petitioner had ten days to file a response. Accordingly, the petitioner's response was due December 30, 2023. Not surprisingly, given R.C.'s palpable lack of interest, there has been no reply and so the motion is unopposed. Out of an abundance of caution, I have chosen to hold my decision until ten business days after the filing of the motion. Again, unsurprisingly, there has been no response from this petitioner, who brazenly has not only missed three court appearances, never retained a representative for her, never

communicated in any manner with the court nor had a representative do so over nearly half a year, and who the evidence suggests, after failing to call in to the conference call, actually hung up the phone on a judge who, in one final effort to get her to cooperate on the third scheduled conference date attempted to call her. Even if the motion were not unopposed, I can hardly imagine what can be said to justify this conduct worthy of strong sanction. There is no question that the matter should be dismissed and with prejudice.

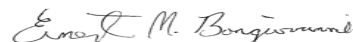
ORDER

Based upon all of the foregoing, I **FIND** that this matter should be and is hereby **DISMISSED WITH PREJUDICE**, for petitioner's willful noncompliance with the requirements of the Rules of the OAL, specifically for three times failing to appear for a court proceeding without any explanation, and for failure to provide the required written reply to a motion to dismiss.

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.



January 8, 2024

DATE

ERNEST M. BONGIOVANNI, ALJ

Date Received at Agency:

January 8, 2024

Date Mailed to Parties:

January 8, 2024

id