

98-24

OAL Dkt. No. EDU 04749-23

Agency Dkt. No. 96-4/23

New Jersey Commissioner of Education

Final Decision

A.G.F., on behalf of minor child, A.J.G.F.,

Petitioner,

v.

Board of Education of the Borough of
Mountain Lakes, Morris 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 petitioner filed a *pro se* appeal challenging three separate Harassment, Intimidation and Bullying (HIB) determinations made by the respondent Board in regard to petitioner's minor child. The matter was transmitted to the OAL as a contested case in May 2023. Following several pre-hearing telephone conferences, a hearing was set for January 18, 2024. Thereafter, on October 20, 2023, the Board filed a motion to compel the petitioner to respond to interrogatories as she had not provided a written response to discovery requests and failed to file an opposition to the respondent's motion. On December 5, 2023, the Administrative Law Judge (ALJ) granted the Board's motion and ordered the petitioner to provide written responses to the interrogatories by December 11, 2023. After petitioner failed to respond to the discovery request, the Board filed a motion to dismiss the appeal.

The ALJ determined that, pursuant to *N.J.A.C. 1:1-14.14*, the petition must be dismissed, as the petitioner: failed to provide discovery in accordance with the December 5, 2023 Order; failed to oppose the motion to dismiss; failed to appear for a January 5, 2024 conference call; failed to comply with discovery rules; and failed to offer a reasonable explanation as to why she failed to provide discovery, respond to the motions, or appear for the scheduled conference call. Accordingly, the ALJ granted the Board's motion to dismiss.

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

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to be 'CQR', is written over a faint, larger signature that is partially visible in the background.

ACTING COMMISSIONER OF EDUCATION

Date of Decision: February 5, 2024
Date of Mailing: February 7, 2024



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. EDU 04749-23

AGENCY DKT. NO. 96-4/23

A.G.F. ON BEHALF OF MINOR

CHILD A.J.G.F.,

Petitioner,

v.

BOROUGH OF MOUNTAIN LAKES

BOARD OF EDUCATION,

Respondent.

A.G.F., petitioner, pro se

Sean Fogarty, Esq., for respondent (Fogarty & Hara, attorneys)

Record Closed: January 5, 2024

Decided: January 17, 2024

BEFORE **SUSANA E. GUERRERO**, ALJ:

STATEMENT OF THE CASE

This matter involves an appeal by the petitioner of three separate Harassment, Intimidation, and Bullying (HIB) determinations made by the Mountain Lakes Board of Education (Board). The Board filed a motion seeking the dismissal of this matter due to the petitioner's failure to provide discovery and to comply with a prior Order directing petitioner to provide discovery by a date certain.

PROCEDURAL HISTORY AND FINDINGS OF FACT

Petitioner filed a Petition of Appeal with the Commissioner of Education, and the Commissioner transmitted the matter to the Office of Administrative Law, where it was filed as a contested case on May 31, 2023. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13.

An initial prehearing conference was held on July 11, 2023, and the parties participated in several conference calls thereafter. A Prehearing Order was entered on October 17, 2023, scheduling a hearing for January 18, 2024.

On October 20, 2023, the Board filed a motion seeking an order compelling the petitioner to respond to interrogatories.¹ Petitioner had not provided a written response to the discovery requests, and did not file an opposition to the respondent's motion. On December 5, 2023, I granted the respondent's motion, and ordered that the petitioner provide written responses to the Request for Admissions by December 11, 2023.

The petitioner never responded to the respondent's discovery requests. On December 21, 2023, the Board filed a motion to dismiss the petitioner's appeal for failing to provide discovery and comply with the December 5, 2023 Order directing petitioner to provide discovery by December 11, 2023. Petitioner did not file an opposition by January 2, 2024, pursuant to N.J.A.C. 1:1-12.2. I subsequently scheduled a telephone conference for January 5, 2024 to address the motion and the outstanding discovery. Board counsel appeared for the conference, but the petitioner did not. I **FIND** that the petitioner failed to provide the Board with the requested discovery, failed to comply with the December 5, 2023 Order compelling discovery, and that the petitioner never filed an opposition to the

¹ Respondent had served a first set of Interrogatories on petitioner on July 19, 2023, which were due by August 3, 2023. Respondent requested a conference to address discovery. A conference was held with the parties in August 2023, at which time the respondent agreed to revise and condense the Interrogatories, and petitioner was instructed to respond to these revised discovery requests within fifteen days of receipt. On or around September 12, 2023, respondent serviced revised Interrogatories together with a Request for Admissions. During a September 26, 2023 conference, I extended the time for petitioner to answer discovery. During an October 12, 2023 conference, petitioner acknowledged receiving the discovery requests but indicated that she would not be responding to the requests. Respondent subsequently filed the motion to compel discovery.

respondent's motion. Petitioner also never provided an explanation as to why she failed to appear for the January 5, 2024 telephone conference.

LEGAL ANALYSIS AND CONCLUSIONS

N.J.A.C. 1:1-10.4(c) requires a party to provide requested discovery “[n]o later than 15 days from receipt of a notice requesting discovery.” N.J.A.C. 1:1-10.4(e) also requires that all discovery should be completed no later than ten days before the hearing. Petitioner failed to respond in writing to the Board’s discovery demands within fifteen days, and she failed to provide this discovery at least ten days prior to the hearing.

N.J.A.C. 1:1-14.14 authorizes a judge to dismiss a matter and take other appropriate action for an “unreasonable failure to comply with any order of a judge” or for failing to comply with the court rules. Petitioner unreasonably failed to comply with the discovery order and the court rules after being given extensions to provide the requested discovery, and after the Board simplified and streamlined its requests as directed.

Given that the petitioner failed to provide discovery in accordance with the December 5, 2023 Order; failed to oppose the motion to dismiss; failed to appear for the January 5, 2024 conference; failed to comply with the aforementioned discovery rules; and failed to offer a reasonable explanation as to why she has failed to provide discovery, respond to the motions, or appear for the scheduled conference call, I **CONCLUDE** that dismissal of the Petition is appropriate, and that the Board’s motion should be granted.

ORDER

It is hereby **ORDERED** that the respondent’s motion to dismiss is **GRANTED** and that the Petition be **DISMISSED**.

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 17, 2024
DATE


SUSANA E. GUERRERO, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

jb