



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. EDS 07880-18

AGENCY REF. NO. 2018-27876

D.A. ON BEHALF OF D.A.,

Petitioner(s),

v.

JERSEY CITY BOARD OF EDUCATION,

Respondent.

D.A., petitioner, pro se

Cherie Adams, Esq. on behalf of respondent (Adams, Gutierrez & Lattibourdere, LLC)

Record Closed: January 22, 2019

Decided: January 23, 2019

BEFORE **KIMBERLY A. MOSS**, ALJ:

Petitioner, D.A., filed a due process petition on behalf of her minor child D.A., requesting respondent (Respondent or Board) provide a Functional Behavioral Assessment. Respondent denied the request and the matter was transmitted to the Office of Administrative Law (OAL) on June 4, 2018. A telephone prehearing was conducted wherein the parties agreed on a hearing date of November 14, 2018. On the date of the hearing, petitioner failed to appear. An additional hearing date was

scheduled for March 13, 2019. Respondent filed a motion for summary decision on December 14, 2018. Respondent filed an amended certification of an January 17, 2019. On January 22, 2019, petitioner sent an email again requesting an FBA for D.A.

FACTUAL DISCUSSION

Having reviewed the record in its entirety, I **FIND** the following to be the **FACTS** in this matter:

D.A. is a six-year-old student eligible to receive special education and related services under the classification category of autistic. She is currently enrolled in the District's Primary Applied Behavioral Analysis (ABA) class. The due process petition requested an FBA. The petitioner does not state why petitioner believes it is necessary that D.A. have a FBA done. The petition does not state that D.A. has any type of behavioral issues. Petitioner has not provided any basis for the need for a FBA for D.A. Petitioner did not appear on the November 14, 2018 hearing. Further, petitioner has not contacted the undersigned to explain why she failed to appear for the hearing. Petitioner's response to Respondent's motion was to state D.A. should have a FBA. She provided no reason as to why D.A. needed an FBA.

LEGAL DISCUSSION AND CONCLUSIONS

Pursuant to N.J.A.C. 1:1-12.5(b), a summary 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." This rule is substantially similar to the summary judgment rule embodied in the New Jersey Court Rules, R. 4:46-2. See Judson v. Peoples Bank & Trust Co. of Westfield, 17 N.J. 67, 74 (1954). In connection therewith, all inferences of doubt are drawn against the movant and in favor of the party against whom the motion is directed. *Id.* at 75. In Brill v. Guardian Life Insurance Co.,

142 N.J. 520 (1995), the New Jersey Supreme Court addressed the appropriate test to be employed in determining the motion:

[A] determination whether there exists a 'genuine issue' of material fact that precludes summary judgment requires the motion judge to consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational fact finder to resolve the alleged disputed issue in favor of the non-moving party. 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, supra, 142 N.J. at 540 (citations omitted).]

In this matter, petitioner failed to appear for the November 14, 2018 hearing. Her petition for due process requested a FBA for minor child D.A. Petitioner has provided no evidence as to why a FBA is necessary for her daughter. Petitioner has abandoned the prosecution of this case.

I **CONCLUDE** that as a result of petitioner failing to appear for the hearing and providing no evidence or information of any type to substantiate the need for D.A. to have a FBA, petitioner has abandoned the prosecution of this case.

Accordingly, this matter is no longer a contested case before the OAL. It is therefore **ORDERED** that respondent's motion for Summary Decision is hereby **GRANTED**. It is **FURTHER ORDERED** that this matter be and is hereby **DISMISSED WITH PREJUDICE**.

This decision is final pursuant to 20 U.S.C. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2017) 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 (2017). 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 Programs.

January 23, 2019



DATE

KIMBERLY A. MOSS, ALJ

Date Received at Agency

January 23, 2019

Date Mailed to Parties:
ljb

January 23, 2019