



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. EDS 10874-18

AGENCY DKT. NO. 2018-28372

J.C. ON BEHALF OF E.C.,

Petitioner,

v.

**LIVINGSTON TOWNSHIP BOARD OF
EDUCATION,**

Respondent.

No Appearance by J.C. o/b/o E.C., petitioner, pro se

Isabel Machado, Esq., for respondent (Machado Law Group, Attorneys)

Record Closed: June 10, 2019

Decided: June 11, 2019

BEFORE **JUDE-ANTHONY TISCORNIA**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

This case arises under the Individuals with Disabilities Education Act, 20 U.S.C.A. §§1400 to 1482. J.C. on behalf of E.C., by way of her attorney, Richard Flaum of DiFrancesco, Bateman, Kunzman, Davis, Lehrer & Flaum, PC, filed a request for a due

process hearing. The Office of Special Education Programs of the New Jersey Department of Education transmitted the matter to the Office of Administrative Law (OAL), where it was filed on July 30, 2018. An amended due process petition was filed by petitioner by way of her attorney on January 8, 2019. The hearing was originally scheduled for January 29 and 30, 2019, at 9:30 a.m., February 19, 2019, at 9:30 a.m. and March 6, 2019, at 9:30 a.m. The above referenced hearing dates were adjourned by mutual request of the parties due to petitioner's attorney being unable to get in touch with his client for several months. Petitioner's attorney filed a Motion to Withdraw as Counsel on April 30, 2019, which was unopposed. The Motion was set down for a hearing on June 10, 2019, at 9:30 a.m. with the plenary hearing to begin immediately thereafter. At the hearing, the Motion was granted. J.C. o/b/o E.C., pro se, failed to appear at the plenary hearing. This is a final decision regarding a failure to appear (FTA).

FINDINGS OF FACT

I **FIND** the following uncontested **FACTS**:

1. On August 23, 2018, the parties met for a settlement conference with the Honorable Michael Antoniewicz, ALJ. The matter failed to settle and was reassigned to the undersigned.
2. The hearing was scheduled on January 29 and 30, 2019, at 9:30 a.m., February 19, 2019, at 9:30 a.m. and March 6, 2019, at 9:30 a.m. The hearing dates were adjourned by mutual request of the parties due to petitioner's attorney being unable to get in touch with his client for several months and requesting more time to do so.
3. Petitioner's attorney filed a Motion to Withdraw as Counsel on April 30, 2019, which was unopposed. The Motion was set down for Oral Argument on June 10, 2019, at 9:30 a.m. with the plenary hearing to begin immediately thereafter.

4. The OAL mailed written Notice of Oral Argument and Notice of Hearing with a peremptory date of June 10, 2019, at 9:30 a.m. at the Office of Administrative Law, 33 Washington Street, 7th Floor, Newark, New Jersey, to both counsels and to J.C. o/b/o E.C personally. This Notice was sent to J.C. at 36 Brandon Ave., Livingston, NJ 07039, which is the same address that J.C. provided on her petition for due process. This Notice was not returned to the OAL as undelivered.
5. After oral argument was entered into the record, the Motion for Richard Flaum to withdraw as counsel was granted.
6. J.C. o/b/o E.C., pro se, failed to appear at the plenary hearing at the OAL on June 10, 2019. Respondent's counsel, Isabel Machado, Esq., appeared for the scheduled proceeding.
7. J.C. did not contact any representative of the OAL on June 10, or prior to that date, to advise that she could not appear or to advise why she could not appear.

CONCLUSIONS OF LAW

Based upon the foregoing facts and the applicable law, I **CONCLUDE** that petitioner has abandoned this matter and that the matter should be returned to the transmitting agency.

N.J.A.C. 1:1-14.4(a) provides that, if, after appropriate notice, a party does not appear in any proceeding scheduled by a judge, the judge shall hold the matter for one day before taking any action. If the judge does not receive an explanation for the nonappearance within one day, the judge may direct the Clerk to return the matter to the transmitting agency for appropriate disposition. J.C. failed to appear at the scheduled proceeding, and she failed to provide an explanation for their nonappearance one day

following their nonappearance. Accordingly, the Clerk should return this matter to the Office of Special Education Programs.

ORDER

It is **ORDERED** that the Clerk return this file to the Office of Special Education Programs of the New Jersey Department of Education.

This decision is final pursuant to 20 U.S.C. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2018) 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 (2018). 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.

June 11, 2019



DATE

JUDE-ANTHONY TSICORNIA, ALJ

Date Received at Agency

Date Mailed to Parties:

id