



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

DISMISSAL-FAILURE TO APPEAR

**CAMDEN CITY BOARD OF
EDUCATION,**

Petitioner,

v.

L.H. AND J.V. ON BEHALF OF L.H.,

Respondents,

AND

L.H. AND J.V. ON BEHALF OF L.H.,

Petitioners,

v.

**CAMDEN CITY BOARD OF
EDUCATION,**

Respondent.

OAL DKT. NO. EDS 03965-20

AGENCY DKT. NO. 2020-31458

OAL DKT. NO. EDS 04040-20

AGENCY DKT. NO. 2020-31427

Bradley Flynn, Esq. for petitioners/respondent, L.H. and J.V. on behalf of L.H.
(Montgomery Law, LLC, attorneys)

Caitlin Pletcher, Esq. for respondent/petitioner, Camden City Board of Education
(Florio, Perrucci, Steinhard and Cappelli, LLC, attorneys)

Record Closed: January 31, 2022

Decided: February 2, 2022

BEFORE **JEFFREY R. WILSON**, ALJ:

These cases arise under the Individuals with Disabilities Education Act, 20 U.S.C. §§1401 to 1484(a) and C.F.R. §§300.500. OAL Docket No. EDS 03965-20 was transmitted to the Office of Administrative Law (OAL) for hearing on April 9, 2020. OAL Docket No. EDS 04040-20 was transmitted to the OAL for hearing on April 16, 2020. These cases were assigned to this Administrative Law Judge (ALJ) on August 10, 2020.

On August 11, 2020, the parties participated in a telephone prehearing conference. At that time, a summary decision motion briefing schedule was established, and a hearing date was set for December 2, 2020. By correspondence, dated October 26, 2020, respondent's counsel reported that the petitioner was considering the District's proposed settlement agreement and requested the briefing schedule be adjourned. Furthermore, the correspondence requested an additional settlement conference with the settlement judge. In response, this ALJ scheduled a telephone conference for November 2, 2020.

Petitioner's counsel did not participate in the November 2, 2020, telephone conference and another was schedule for November 9, 2020. Petitioner's counsel did not participate in that conference either. At that time, a telephone settlement conference was scheduled with a settlement judge, on November 12, 2020. The parties participated in that conference and another on November 19, 2020. It was reported by the settlement judge that the parties were close to a settlement.

At the December 2, 2020, hearing date, the parties jointly requested an adjournment. It was agreed the that matter would be relisted to January 21, 2021, to be heard by telephone. On that date, it was again reported the parties were close to settlement and the matter was relisted to February 26, 2021, to be heard by telephone.

On February 26, 2021, it was reported that a proposed settlement agreement was being circulated. In addition, the parties jointly requested another conference before the settlement judge¹, and the matter was adjourned to April 23, 2021, to be heard by telephone.

¹ The requested settlement conference was held on March 23, 2021.

On April 23, 2021, it was reported all issue between the parties were resolved except attorney fees. By joint request, the matter was adjourned to May 7, 2021. On that date it was reported that the attorney fees issue was still under consideration and the matter was adjourned by joint request to May 21, 2021, to be heard by telephone.

Neither party dialed-in for the May 21, 2021, telephone hearing/conference. The following email was sent to counsel that day:

A telephone conference was to be held on May 21, 2021 at 2:00 p.m. before Judge Jeffrey R. Wilson. Notice of the telephone conference was e-mailed to you both on May 10, 2021. Neither of you participated in the telephone conference.

Another telephone status conference will be held on June 11, 2021, at 3:00 p.m. Attached you will find proper notice with the dial-in instructions. If you fail to participate in this conference, Judge Wilson has advised you will be marked as a failure to appear and the files will be returned to the transmitting agency as a closed matter.

On June 11, 2021, it was reported that a settlement agreement was being circulated for signing and would be filed with the OAL after Board approval in June or July. Based upon this information, a telephone hearing/settlement conference was scheduled for August 13, 2021, at 3:00 p.m., with the understanding the matter would be adjourned if the fully executed settlement agreement and Board resolution were filed before that date. Accordingly, these cases were consolidated by order dated June 14, 2021.

Neither party dialed-in for the August 13, 2021, telephone hearing/conference. Furthermore, the fully executed settlement agreement and Board resolution were not filed. Later that date, counsel for the respondent sent an email apologizing for missing the telephone hearing/conference and reported:

By way of update, the Board's July 27th meeting was cancelled and this settlement agreement will be going before the Board at its August 24, 2021 meeting. I will provide the Court with a fully executed settlement agreement and Board resolution noting the approval of same soon after that meeting.

Based upon this information, a telephone hearing/settlement conference was scheduled for September 29, 2021, with the understanding the matter would be adjourned if the fully executed settlement agreement and Board resolution were filed before that date.

Neither party dialed-in for the September 29, 2021, telephone hearing/conference. On September 30, 2021, the following email was sent to the parties:

In her August 13, 2021 email, counsel informed our office that July 27, 2021, Board meeting was cancelled and that the settlement agreement would be going before the Board at its August 24, 2021 meeting. Counsel further indicated that she would provide our office with a fully executed settlement agreement and Board resolution noting the approval of same soon after that meeting. Based upon this representation, a telephone hearing/conference was scheduled for September 29, 2021, at 3:00 pm with the understanding that the hearing/conference would be adjourned upon receipt of the fully executed settlement agreement and Board resolution. As of this date, our office has not received the fully executed settlement agreement and Board resolution. Furthermore, neither party participated in the September 29, 2021, telephone hearing/conference.

Judge Wilson has scheduled another telephone status conference will be held on October 29, 2021, at 3:00 p.m. You will receive dial-in instructions under separate cover. If you fail to participate in this conference, he will mark the files as a failure to appear and return them to the transmitting agency as closed matters.

On October 26, 2021, a file review revealed the fully executed settlement agreement and Board resolution still had not been filed with the OAL. Accordingly, the following email was sent to the parties.

In her August 13, 2021 email, counsel informed our office that July 27, 2021 Board meeting was cancelled and that the settlement agreement would be going before the Board at its August 24, 2021 meeting. Counsel further indicated that she would provide our office with a fully executed settlement agreement and Board Resolution noting the approval of same soon after that meeting. Based upon this representation, a telephone hearing/conference was scheduled for September 29, 2021, at 3:00 pm with the understanding that the hearing/conference would be adjourned upon receipt of the fully executed settlement agreement and Board Resolution. As of this date, our office has not received the fully executed settlement agreement and Board Resolution. Furthermore, neither party participated in the September 29, 2021, telephone hearing/conference

As you are aware, another telephone status conference is to be held on October 29, 2021, at 3:00 p.m. You previously received dial-in instructions under separate cover. Please advise if the settlement agreement will be filed with our office prior to this date. If not, the hearing/status conference will be adjourned to November 19, 2021 @ 3:00 p.m.

Neither party dialed-in for the November 19, 2021, telephone hearing/conference. Furthermore, the fully executed settlement agreement and Board resolution were still not filed. On November 22, 2021, the following letter emailed to the parties:

A telephone conference/hearing was to be held on November 19, 2021, at 3:00 p.m. Notice was e-mailed to you both on October 27, 2021. Neither of you participated in the telephone conference/hearing.

Another telephone conference/hearing will be held on January 21, 2022, at 3:00 p.m. You will receive dial-in instructions under separate cover. **If you fail to participate in this conference/hearing, I will mark these files as a failure to appear and return them to the transmitting agency as closed matters. (emphasis included)**

Neither party dialed-in for the January 21, 2022, telephone hearing/conference. Furthermore, as of this date, the fully executed settlement agreement and Board resolution have not been filed with the OAL. As of the date of this decision, the parties have not

explained their non-appearance. Accordingly, these petitions must be **DISMISSED** for failure to pursue a claim of action under N.J.A.C. 1:1-14.4.

ORDER

I hereby **ORDER** that these consolidated petitions be **DISMISSED**.

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.



February 2, 2022
DATE

JEFFREY R. WILSON, ALJ

Date Received at Agency: _____

Date emailed to Parties: _____

JRW/tat