

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

L.O. ON BEHALF OF W.L.,

Petitioner,

v.

MIDDLETOWN TOWNSHIP

BOARD OF EDUCATION,

Respondent,

OAL DKT. NO. EDS 1948-14

AGENCY DKT. NO. 2014 20497

AND

MIDDLETOWN TOWNSHIP

BOARD OF EDUCATION,

Petitioner,

v.

L.O. ON BEHALF OF W.L.,

Respondent.

OAL DKT. NO. EDS 5937-14

AGENCY DKT. NO. 2014 21122

(CONSOLIDATED)

L.O. on behalf of W.L., petitioner/respondent pro se

Joanne Butler, Esq., for respondent/petitioner Middletown Township Board of
Education (Schenk, Price, Smith & King, LLP, attorneys)

Record Closed: July 31, 2014

Decided: July 31, 2014

BEFORE **JOHN F. RUSSO, JR.,** ALJ

These cases arise under the Individuals with Disabilities Education Act, 20 U.S.C.A. §§1400 to 1482.

For the purpose of issuing this decision I am consolidating these two related matter on my own motion. A party may move to consolidate a case that has been transmitted to the OAL with any other contested case involving common questions of fact or law between identical parties or between any party to the filed case and any other person, entity or agency. N.J.A.C. 1:1-17.1. The following shall be considered:

1. The identity of parties in each of the matters;
2. The nature of all the questions of fact and law respectively involved;
3. To the extent that common questions of fact and law are involved, the saving in time, expense, duplication and inconsistency which will be realized from hearing the matters together and whether such issues can be thoroughly, competently, and fully tried and adjudicated together with and as a constituent part of all other issues in the two cases;
4. To the extent that dissimilar questions of fact or law are present, the danger of confusion, delay or undue prejudice to any party;
5. The advisability generally of disposing of all aspects of the controversy in a single proceeding; and
6. Other matters appropriate to a prompt and fair resolution of the issues, including whether a case still pending in an agency is contested or is ripe to be declared contested.

[N.J.A.C. 1:1-17.3.]

Consolidation saves time and expense, and avoids duplication and inconsistency.

Based on the above, I **CONCLUDE** that the within matters should be **CONSOLIDATED**.

L.O. filed a petition for due process with the Office of Special Education (OSE), seeking changes to the child's IEP. OSE transmitted this matter to the Office of Administrative Law (OAL) where it was filed on February 18, 2014, and given the OAL docket number EDS 1948-14. Middletown Township Board of Education filed a petition for due process with OSE. It was transmitted to the OAL on May 14, 2014, and given the docket number EDS 5937-14.

This matter was initially scheduled for a settlement conference before Judge Schuster on February 24, 2014, but it was adjourned at the request of petitioner L.O. and rescheduled for March 12, 2014. The matter was then reassigned to the undersigned, and a settlement conference was conducted that day. The parties were not able to resolve the matter, and a follow-up settlement conference was scheduled for April 3, 2014. This conference was adjourned, again at the request of L.O., and again rescheduled for May 22, 2014.

On May 22, 2014, counsel for respondent and Robert Dunn, the District Director of Student Services, appeared for the rescheduled settlement conference. L.O. did not appear. L.O. contacted the Judge's chambers by telephone on May 22, 2014, advising that she could not attend. The Board and the Court have been more than accommodating in agreeing to two adjournment requests, prior to the eleventh hour notice from L.O. that she would not be appearing.

As a result of L.O.'s failure to appear and/or properly request an adjournment, the Middletown Township Board of Education requested by letter dated June 20, 2014, that the petition filed by L.O. be dismissed, and grant the petition filed by the Middletown Board denying L.O.'s request for an independent evaluation. This letter was copied to L.O. but as of July 31, 2014, she has not objected to the Board's request or otherwise responded any way since May 22, 2014. So I am closing the record and granting the Board's request.

Based on the above, I **CONCLUDE** that the petition filed by L.O. be dismissed, and the petition filed by the Middletown Board denying L.O.'s request for an independent evaluation be granted.

ORDER

Therefore, I **ORDER** the within matters, EDS 1948-14 and EDS 5937-14, should be and hereby are **CONSOLIDATED**.

I further **ORDER** that EDS 1948-14 be and is hereby **DISMISSED WITH PREJUDICE** and without costs.

Furthermore, I **ORDER** that the Board's petition, EDS 5937-14, requesting that this Court deny L.O.'s request for an independent evaluation, is hereby **GRANTED**.

This decision is final pursuant to 20 U.S.C.A. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2012) 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.A. § 1415(i)(2); 34 C.F.R. § 300.516 (2012). 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.

July 31, 2014
DATE

JOHN F. RUSSO, JR., ALJ

Date Received at Agency

Date Mailed to Parties:

/bdt