

#301-11

F.O., on behalf of minor children, D.O. and R.O., :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE BOROUGH : DECISION
OF WALDWICK, BERGEN COUNTY, :
RESPONDENT. :
_____ :

SYNOPSIS

Petitioner filed a *pro se* residency appeal on behalf of her children in November 2010. The respondent filed a motion to dismiss in lieu of an answer, asserting that the appeal was not timely filed, that petitioner lacks standing as she does not have primary custody of the children, and additionally does not reside in the district. A hearing at the Office of Administrative Law (OAL) was scheduled for June 7, 2011, but petitioner failed to appear despite having received appropriate notice and provided no explanation for her nonappearance. Having received no explanation from petitioner for her failure to appear, the OAL returned the file to the Commissioner.

There being no explanation filed, the Commissioner dismissed the petition with prejudice. The Commissioner additionally noted that the record included an unresolved claim for tuition reimbursement from the Board, and remanded the matter to the OAL for supplementation of the record regarding the amount of tuition sought, and an appropriate recommended initial decision regarding payment of same.

<p>This synopsis is not part of the Commissioner's decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.</p>

July 28, 2011

OAL DKT. NO. EDU 227-11
AGENCY DKT. NO. 651-11/10

F.O., on behalf of minor children, D.O. and R.O., :
PETITIONER, :
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BOARD OF EDUCATION OF THE BOROUGH : DECISION
OF WALDWICK, BERGEN COUNTY, :
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_____ :

The Commissioner has reviewed the record of this residency matter and advisement of failure to appear transmitted by the Office of Administrative Law (OAL) pursuant to *N.J.A.C. 1:1-14.4*, along with a copy of the notification sent to the petitioner by the OAL on June 20, 2011, providing her thirteen days to submit an explanation for such nonappearance. There being no explanation filed by petitioner, the petition of appeal is hereby dismissed with prejudice due to petitioner's failure to appear at hearing or provide an explanation for her nonappearance.¹

Notwithstanding the dismissal of the petition, the Commissioner notes that the Board's Answer in this residency matter contained a counterclaim for tuition which was left unresolved by the Administrative Law Judge. Although the record returned to the Commissioner by the OAL contains an affidavit of the Board's Business Administrator attesting to the amount of tuition claimed by the Board for the period of September 17, 2010 through June 7, 2011 as a consequence of the ineligible attendance of petitioner's children in its schools, it is unclear from

¹ A filing of counsel for the Board subsequent to the return of this file to the Agency objects to what it contends was an untimely facsimile submission sent by petitioner to the Agency on July 11, 2011. It is noted that the Agency has received no communication of any kind from petitioner since the return of this matter.

this submission if they are additionally seeking tuition through the end of the school year. Thus, this matter must be remanded to the OAL for supplementation of the record in this regard and an appropriate recommended initial decision regarding the payment of tuition.

IT IS SO ORDERED.²

ACTING COMMISSIONER OF EDUCATION

Date of Decision: July 28, 2011

Date of Mailing: July 29, 2011

² This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L. 2008, c. 36* (*N.J.S.A. 18A:6-9.1*).