

RICHARD J. MASINI, JR., :
 :
 PETITIONER, :
 :
 V. : COMMISSIONER OF EDUCATION
 :
 BOARD OF EDUCATION OF THE : DECISION
 HUNTERDON CENTRAL REGIONAL :
 HIGH SCHOOL DISTRICT, :
 HUNTERDON COUNTY, :
 :
 RESPONDENT. :

SYNOPSIS

Petitioner filed an appeal challenging the discipline imposed upon him for allegedly instigating a “swirly” incident, carried out by other students on a fellow high school hockey player. Specifically, the petitioner sought expungement from his record of a one-day out-of-school suspension, immediate reinstatement to the school’s hockey team, and permanent and immediate removal from his school record of all disciplinary actions relative to the “swirly” incident. Petitioner filed a motion for emergent relief, which was denied. The matter was scheduled for a hearing on the merits at the Office of Administrative Law (OAL) on September 23, 2011, but petitioner and his counsel failed to appear. Counsel for respondent Board appeared at the hearing and requested that a final order be entered dismissing the petition.

The ALJ found, *inter alia*, that: this matter had been pending in the OAL for more than six months and had been adjourned twice; petitioner received notice more than six weeks in advance of the scheduled hearing, yet failed to appear; counsel for petitioner provided a written explanation, namely that he did not want to appear because his request for an adjournment and his request to brief an issue – which may or may not have been raised at hearing – had been denied; this rationale for non-appearance does not rise to good cause to excuse the failure of either petitioner or counsel to appear; and the failure to appear in this case was intentional and deliberate. The ALJ concluded – pursuant to *N.J.A.C. 1.1-14.4(c)2* – that, under the circumstances herein, there was no good cause for failure to appear. Accordingly, the Board’s motion to dismiss the petition was granted.

Upon full review and consideration, the Commissioner agreed with the ALJ that this matter is appropriately dismissed. Accordingly, the recommended decision of the OAL was adopted for the reasons fully presented therein, and the petition was dismissed.

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.

October 21, 2011

OAL DKT. NO. EDU 806-11
AGENCY DKT. NO. 19-1/11

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. The parties did not file exceptions to the Initial Decision.

Upon full review and consideration, the Commissioner agrees with the Administrative Law Judge that this matter is appropriately dismissed as a consequence of petitioner's and his counsel's failure to appear – without good cause – at the hearing scheduled for September 23, 2011.

Accordingly, the recommended decision of the OAL is adopted – for the reasons succinctly presented therein – and the instant petition of appeal is hereby dismissed.

IT IS SO ORDERED.*

ACTING COMMISSIONER OF EDUCATION

Date of Decision: October 21, 2011

Date of Mailing: October 21, 2011

* 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*).