

DIANE MALZONE, :

PETITIONER, : COMMISSIONER OF EDUCATION

V. : DECISION

STATE-OPERATED SCHOOL DISTRICT :
 OF THE CITY OF PATERSON,
 PASSAIC COUNTY, :

RESPONDENT. :

SYNOPSIS

Petitioner filed an appeal on April 2, 2012 of the respondent’s actions regarding her leave time, demanding that certain days of absence charged to her sick leave be re-characterized as days of absence due to injury on the job, and that her sick leave account be adjusted accordingly. The matter was transmitted to the OAL as a contested case, and a hearing was scheduled for July 31, 2014. On the day of the hearing, petitioner contends that the parties reached a settlement agreement, the terms of which were placed on the record. Respondent advised that on October 9, 2014, petitioner’s counsel presented a proposed written settlement agreement, which was to be executed bilaterally, first by petitioner and then by respondent.

In December 2012, when no written settlement agreement had been submitted to the OAL, the ALJ issued an Order to Show Cause why the matter should not be dismissed for failure to prosecute. A hearing on the order to show cause was held on December 29, 2014, at which time petitioner’s counsel was still unable to produce a signed settlement agreement and could provide no satisfactory explanation for same. Respondent subsequently requested dismissal of the matter. Accordingly, the ALJ ordered the instant matter dismissed with prejudice for failure to prosecute.

The Commissioner concurred with the ALJ that the matter is appropriately dismissed for failure to prosecute, and adopted the Initial Decision as the final decision in this matter.

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.

OAL DKT. NO. EDU 5095-12
AGENCY DKT. NO. 85-4/12

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PASSAIC COUNTY, :
RESPONDENT. :

Before the Commissioner is a recommendation – by the Administrative Law Judge (ALJ) assigned to the instant controversy – that the petition be dismissed. Upon review of the record, Initial Decision of the Office of Administrative Law (OAL), petitioner’s exceptions and respondent’s replies thereto, the Commissioner concurs that dismissal is warranted.

Petitioner instituted the litigation on April 2, 2012, demanding that certain days of absence which had been charged as sick leave be re-characterized as days of absence due to injury on the job, and that her sick leave account be adjusted accordingly. The matter was transmitted to the OAL on April 19, 2012, and scheduled for a hearing on July 31, 2014. Petitioner maintains that on the day of the hearing, the parties placed on the record the terms of a settlement. Respondent advises that two months later, on or about October 9, 2014, petitioner’s counsel memorialized the settlement terms in a document which was to be signed by her client and forwarded to respondent for execution.

Two months later – or five months after the parties purportedly recited settlement terms onto the hearing record – no settlement document had been submitted to the ALJ to

effectuate resolution of the litigation. The ALJ consequently issued an order to show cause why the matter should not be dismissed for lack of prosecution. A hearing on the order to show cause was held on December 29, 2014, at which time petitioner's counsel was still unable to produce a signed settlement agreement. Nor could counsel provide a satisfactory reason as to why, after five months, no executed agreement was forthcoming. Petitioner was given until January 10, 2015 to produce an executed agreement, but failed to do so. The ALJ closed the record on January 22, 2015, and issued an Initial Decision dismissing the petition on January 28, 2015 – six months after the alleged oral recitation of a settlement. The Commissioner adopts the Initial Decision.

For unreasonable **failure** to comply with any order of an administrative law judge or with any requirement of the OAL rules, an administrative law judge may dismiss an appeal, motion or claim. *See, N.J.A.C. 1:1-14.14(a)*. Further, a petitioner's failure to prosecute an appeal may result in dismissal of the appeal. *See, e.g., R.D.F. v. Westwood Regional Board of Education*, Commissioner Decision No. 85-99 (February 4, 1999); *R.J. v. Board of Educ. of the Lower Camden County Reg'l Sch. Dist.*, 97 N.J.A.R. 2d (EDU) 155; *N.O. v. Board of Educ. of the Bridgewater-Raritan Sch. Dist.*, 96 N.J.A.R. 2d (EDU) 746. Petitioner herein has both failed to adequately prosecute her case, and failed to comply with the ALJ's December 12, 2014 order directing her to show cause why her petition should not be dismissed.

Nor does the Commissioner find merit in petitioner's exceptions to the Initial Decision. First, the question of whether a settlement exists between the parties is unamenable to adjudication by the Commissioner. No transcript or recording of the July 31, 2014 hearing has been provided to the Commissioner, and no memorialization of the settlement which was purportedly put on the record at the hearing has been included in the record before the

Commissioner. Second, if an oral or written settlement contract exists, Superior Court is the forum in which petitioner may seek enforcement of same.

Accordingly, the Initial Decision of the OAL is adopted and the petition is dismissed.

IT IS SO ORDERED.*

COMMISSIONER OF EDUCATION

Date of Decision: March 13, 2015

Date of Mailing: March 16, 2015

*This decision may be appealed to the State Board of Education pursuant to *N.J.S.A. 18A:6-27 et seq.* and *N.J.A.C. 6A:4-1.1 et seq.*