

209-17R

R.W., ON BEHALF OF MINOR CHILD, J.W. :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE TOWNSHIP : DECISION
OF WASHINGTON, GLOUCESTER COUNTY, :
RESPONDENT. :
_____ :

SYNOPSIS

In May 2011, petitioner filed an appeal challenging her son’s suspension from general education classes and his assignment to an alternative school. Petitioner failed to appear on the second scheduled day of hearing in the matter, on December 5, 2011. The Commissioner subsequently remanded the matter to the OAL after receiving petitioner’s exceptions to the ALJ’s dismissal of the petition for her failure to appear. Again, petitioner failed to appear at a scheduled proceeding, and the ALJ assigned to the case at that time dismissed the matter for a second time. The file was mistakenly held at the OAL following the dismissal, and this error was not discovered until late 2016, after which the file was finally returned to the Commissioner. Because the file included a written explanation from petitioner regarding her non-appearance in 2012, the Commissioner returned the matter to the OAL for further disposition pursuant to *N.J.A.C.* 1:1-3.3(b). The case was re-assigned to a new judge, and an in-person conference was scheduled and conducted on April 26, 2017 for the purpose of determining whether, after the passage of time and changes in circumstances, there was any interest in proceeding with the case.

On remand, the ALJ found, *inter alia*, that: J.W. is now twenty-two years old, and has the legal right and authority as an adult to either proceed with a hearing or decide to end the appeal; as such, a letter was sent to J.W. on April 26, 2017, advising him that R.W. no longer has legal authority to act on his behalf and instructing that he had forty-five days in which to decide whether to proceed with a challenge to the legality of his 2011 suspension, or to withdraw the case; neither Board counsel nor the OAL has received and correspondence from J.W. or any attorney acting on his behalf; on June 13, 2017, counsel for the Board sent a letter to the OAL requesting that this matter be dismissed “on the basis of lack of interest by the petitioning party”. Accordingly, the ALJ concluded that petitioner has abandoned his appeal, and ordered that the appeal be dismissed for lack of prosecution.

Upon review, the Commissioner concurred with the ALJ’s determination that this matter should be dismissed for failure to prosecute. Accordingly, the Initial Decision was adopted as the final decision 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.
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July 27, 2017

OAL DKT. NO. EDU 1066-17
(EDU 5274-11 & EDU 1189-12 ON REMAND)
AGENCY DKT. NO. 115-5/11

R.W., ON BEHALF OF MINOR CHILD, J.W. :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE TOWNSHIP : DECISION
OF WASHINGTON, GLOUCESTER COUNTY, :
RESPONDENT. :
_____ :

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

Upon such review, the Commissioner concurs with the Administrative Law Judge's determination – for the reasons stated in the Initial Decision – that the petition of appeal should be dismissed for failure to prosecute. Accordingly, the Initial Decision is adopted as the final decision in this matter and the petition of appeal is dismissed.

IT IS SO ORDERED.¹

COMMISSIONER OF EDUCATION

Date of Decision: July 27, 2017

Date of Mailing: July 28, 2017

¹ 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).



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

DISMISSAL

R.W. on behalf of minor child, J.W.,

Petitioners,

v.

BOARD OF EDUCATION OF THE

TOWNSHIP OF WASHINGTON,

GLOUCESTER COUNTY,

Respondent.

OAL DKT. NO. EDU 1066-17

(ON REMAND OAL DKT. NOS.

EDU 5274-11 & EDU1189-12)

AGENCY DKT. NO. 115-5/11

R.W. and J.W., now an adult, petitioners, pro se

Lauren E. Tedesco, Esq., for respondent (Capehart & Scatchard,
attorneys)

Record Closed: June 14, 2017

Decided: June 16, 2017

BEFORE **JEFF S. MASIN**, ALJ t/a:

This case was originally filed by Ms. Watson in 2011, seeking emergent relief and challenging the decision of the Board of Education to suspend her son, J.W. and assign him to an alternative school. She also sought homebound instruction pending a determination of the suspension. A settlement was soon reached on part of the issues, however, Ms. Watson sought to rescind her agreement to that settlement and an administrative law judge ruled that she could not rescind her agreement. However, despite the partial settlement, there still remained to be determined the issue of whether

the suspension was to be upheld or overturned. When Ms. Watson failed to appear for a proceeding the case was dismissed, but was remanded to the OAL in 2012 by the Commissioner. When she again did not appear for a scheduled proceeding, the judge assigned to the case once again dismissed the case. While the file should have been immediately returned to the Department of Education for review of the judge's dismissal order, the judge did not return it, apparently having forgotten to do so. When this error was discovered in 2016 as the judge was about to depart the OAL, the file, with an order dismissing the case due to Ms. Watson's non-appearance in 2012, was forwarded to the Commissioner. The Commissioner then decided that as Ms. Watson had provided a justification for her non-appearance, the case would once again be remanded to OAL so that the remaining issue could be resolved. The case was then assigned to this judge.

An in-person conference was scheduled and conducted on April 26, 2017, with Mrs. Watson and Ms. Tedesco, who represents the Board. The purpose of this meeting was to determine whether, after so much time and changed circumstances, there was any interest in still proceeding with the case. During the conference, I advised Mrs. Watson that since Mr. Watson is now twenty-two years old and he, and not his mother, is the person who has the legal right and authority to either proceed with a hearing on the propriety of his suspension, or to decide that he no longer wishes to do so. As was explained to Ms. Watson, as the issues that were the subject of the original petition in 2011 were limited to concerns surrounding the suspension, other possible issues that she mentioned regarding the alleged failure of the school district to provide a legally adequate education to Mr. Watson are not part of this case. The only remedy that could be issued here if it were determined that the Board action in suspending Mr. Watson was improper would be an order to the Board to modify Mr. Watson's school record to eliminate any reference to this suspension. No other remedies, whether for a determination that the Board failed to meet its legal obligation to properly educate, money damages, or compensatory education, could be obtained from this case, although as I explained to Ms. Watson, it might be that such remedies could be sought in some other legal action.

I advised that since Ms. Watson did not have the legal authority to act for her son, I would allow him forty-five days in which to decide if he wishes to proceed with a challenge to the legality of the suspension, or wishes instead to withdraw the case. On April 26, 2017, I sent a letter to Mr. Watson, detailing the conversation with Ms. Watson. I noted the possible practical problems that might affect any hearing, given the passage of such time from the date of suspension, including whether witnesses are still available and whether they still recall the incident. In addition, I noted that during that conference I had not mentioned to Ms. Watson the standard applied by the long-standing case law regarding the Commissioner's review of local school board disciplinary actions is whether the action was arbitrary, capricious and unreasonable. This is a high standard that means that if the Board acted in a reasonable manner based on the facts, the Commissioner will not substitute her own judgment for that of the Board.

My letter of April 26, 2017 (Exhibit C-1.), in part, reads as follows:

. . . Mr. Watson may decide to discuss this matter, and perhaps other matters concerning his educational experience, with an attorney, although of course he is not required to do so. **However, I must insist that he advise myself and Ms. Tedesco, in writing, within forty-five days of today's date, of his decision to proceed or not.** If he is not proceeding, he should state that he is withdrawing his case. In that instance, I will issue a decision dismissing the case and send it back to the Commissioner for closure. If he is proceeding, I will schedule a prompt telephone conference with Mr. Watson or his attorney, and Ms. Tedesco, to arrange the schedule for the hearing. **Finally, if I hear nothing from Mr. Watson within forty-five days, I will dismiss the case on the basis of lack of interest in the petitioning party to pursue the case, and will send the file back to the Commissioner for closure.**

To date neither Board counsel nor the OAL has received any correspondence from Mr. Watson, or any attorney acting on his behalf. On June 13, 2017, counsel for the Board sent a letter requesting this matter be dismissed "on the basis of lack of interest by the petitioning party." (Exhibit C-2.)

Petitioner has not contacted neither the Board counsel or this forum since the date of the letter, nor has he forwarded either a withdrawal or a request to move forward to a hearing. Therefore, I **CONCLUDE** that petitioner has abandoned his appeal.

ORDER

It is hereby **ORDERED** that the appeal of Justice Watson is **DISMISSED FOR WANT OF PROSECUTION**.

I hereby **FILE** this initial decision with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

This recommended decision may be adopted, modified or rejected by the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who by law is authorized to make a final decision in this matter. If the Commissioner of the Department of Education does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION, ATTN: BUREAU OF CONTROVERSIES AND DISPUTES, 100 Riverview Plaza, 4th Floor, PO Box 500, Trenton, New Jersey 08625-0500**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.



June 16, 2017 _____

DATE

JEFF S. MASIN, ALJ t/a

Date Received at Agency: _____

Date Mailed to Parties: _____

mph

EXHIBITS:

Court Exhibits:

- C-1 Letter dated April 26, 2017, from Jeff S. Masin, ALJ t/a
- C-2 Letter dated June 13, 2017, from Lauren E. Tedesco, Esq.