

New Jersey Commissioner of Education
Final Decision

<p>R.R., on behalf of minor child, W.R.,</p> <p style="text-align: center;">Petitioner,</p> <p style="text-align: center;">v.</p> <p>Board of Education of the City of Elizabeth, Union County,</p> <p style="text-align: center;">Respondent.</p>
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Synopsis

Petitioner filed a pro se petition in July 2019 challenging the determination of the respondent Board that her child, W.R., was not domiciled in the city of Elizabeth, and was therefore ineligible to receive a free public education in respondent's school district. The Board filed a counterclaim for tuition.

The ALJ found that petitioner advised during a telephone conference on September 12, 2019 that she was withdrawing the petition; in return, the respondent Board agreed to waive its counterclaim for tuition. An email, dated September 13, 2019, memorialized this telephone conference and requested that petitioner submit a withdrawal letter with copies to the Board and counsel. To date, no withdrawal letter has been submitted despite two additional requests for same. The ALJ concluded that the petitioner has unreasonably failed to comply with the ALJ's order to submit a withdrawal letter. Accordingly, the ALJ dismissed the case pursuant to *N.J.A.C. 1:1-14.14(a)(1)*.

Upon review, the Commissioner concurred with the ALJ's findings and conclusion in this matter. Accordingly, the Initial Decision of the OAL was adopted as the final decision and the petition was dismissed.

<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>

November 18, 2019

New Jersey Commissioner of Education
Final Decision

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

Petitioner,

v.

Board of Education of the City of Elizabeth,
Union 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 (ALJ) – for the reasons stated in the Initial Decision – that the petition of appeal should be dismissed. Accordingly, the recommended decision of the ALJ is adopted as the final decision in this matter and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.*

COMMISSIONER OF EDUCATION

Date of Decision: November 18, 2019
Date of Mailing: November 19, 2019

* This decision may be appealed to the Superior Court, Appellate Division, 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

OAL DKT. NO. EDU 10711-19

AGENCY DKT. NO. 174-7/19

R.R. ON BEHALF OF MINOR CHILD W.R.,

Petitioner,

v.

**BOARD OF EDUCATION FO THE CITY OF
ELIZABETH, UNION COUNTY,**

Respondent.

R.R., petitioner, pro se

Christina M. DiPalo, Esq. for respondent (LaCorte Bundy Varady & Kinsella)

Record Closed: September 12, 2019

Decided: October 17, 2019

BEFORE **NANCI G. STOKES**, ALJ

STATEMENT OF THE CASE

On September 12, 2019, petitioner agreed to withdraw her residency petition if respondent, Elizabeth Board of Education (Elizabeth), agreed to waive its counterclaim for tuition. Elizabeth agreed and waived its counterclaim, but petitioner failed to

withdraw her petition; despite my instructions to do so. Should this case be dismissed? Yes. Under N.J.A.C. 1:1-14(c)(1), dismissal may be granted for the unreasonable failure to comply with a judge's order.

PROCEDURAL HISTORY

On April 4, 2019, Elizabeth determined that petitioner's child, W.R., was not domiciled in the city of Elizabeth, New Jersey; therefore, W.R. was not eligible for public education in the school district.

On July 18, petitioner filed a residency appeal on behalf of her child.

On July 29, 2019, Elizabeth filed an Answer with the New Jersey State Department of Education.

On August 5, 2019, the Office of Controversies and Disputes within the New Jersey State Department of Education transmitted the case to the Office of Administrative Law (OAL) under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15, and the act establishing the OAL, N.J.S.A. 52:14F-1 to -23, for a hearing under the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6.

On August 21, 2019, I held a telephone prehearing conference and Elizabeth advised that it would be filing a Motion for Summary Judgement, which I received on September 10, 2019.

FINDINGS OF FACT

On September 12, 2019, during a telephone status conference, petitioner advised that a hearing was no longer needed because W.R. was enrolled in school in Elizabeth. Petitioner stated that she "did not care about last year," and that she would

submit a letter withdrawing her petition. In return, Elizabeth agreed to waive its counterclaim for tuition if the petition was dismissed.

On September 13, 2019, an email was sent to the parties memorializing the telephone conference and requested that petitioner submit a withdrawal letter with a copy to Elizabeth and Elizabeth's counsel at the addresses provided. (Exhibit 1). A memorandum restating these instructions was sent to petitioner by regular mail. (Exhibit 2). On September 18, 2019, I received a letter from Elizabeth withdrawing its counterclaim regarding tuition. (Exhibit 3).

Petitioner, however, failed to send her letter withdrawing her request for a hearing. On October 3, 2019, an email was sent to petitioner again requesting that she submit the withdrawal letter. To date, I have not received a withdrawal letter from petitioner.

Given these circumstances, petitioner has failed to act, and I **FIND** that she has abandoned her case.

CONCLUSIONS OF LAW

Under N.J.A.C. 1:1-14.14 (a)(1), a dismissal may be granted for the unreasonable failure to comply with judge's order. In this case, I instructed petitioner to submit a withdrawal letter, based upon Elizabeth's waiver of its counterclaim for tuition, but petitioner failed to do so. Meanwhile, petitioner had stated that she no longer cares about this case, and I found that petitioner constructively abandoned it. Given the circumstances, I conclude that petitioner has unreasonably failed to comply with my order and that this case be **DISMISSED**.

ORDER

Based on the foregoing, I **ORDER** that this case is **DISMISSED**.

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 is authorized by law 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 under N.J.S.A. 52:14B-10.

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.

October 17, 2019

DATE

Date Received at Agency:

Date Mailed to Parties:

ljb



NANCI G. STOKES, ALJ

October 17, 2019

EXHIBITS

1-September 13, 2019, E-mail to petitioner

2-September 13, 2019, Memorandum

3-October 3, 2019, E-mail to petitioner