

235-22  
OAL Dkt. No. EDU 13974-15  
Agency Dkt. No. 210-8/15

**New Jersey Commissioner of Education**  
**Final Decision**

Atlantic City Education Association and  
Erica Shepherd,

Petitioners,

v.


Board of Education of the City of  
Atlantic City, Atlantic County,

Respondent.

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.

Upon review, the Commissioner agrees with the Administrative Law Judge's determination that the petition should be dismissed. Accordingly, the Initial Decision of the OAL is adopted as the final decision in this matter for the reasons expressed therein, and the petition is hereby dismissed.

IT IS SO ORDERED.<sup>1</sup>

  
ANGELINA ALLEN McMILLAN, J.D.S.  
ACTING COMMISSIONER OF EDUCATION

Date of Decision: September 19, 2022  
Date of Mailing: September 19, 2022

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<sup>1</sup> This decision may be appealed to the Appellate Division of the Superior Court pursuant to *N.J.S.A. 18A:6-9.1*. Under *N.J.Ct.R. 2:4-1(b)*, a notice of appeal must be filed with the Appellate Division within 45 days from the date of mailing of this decision.



**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

**DISMISSAL**

OAL DKT. NO. EDU 13974-15

AGENCY DKT. NO. 210-8/15

**ATLANTIC CITY EDUCATION  
ASSOCIATION, ON BEHALF OF ITSELF,  
AND ON BEHALF OF ERICA SHEPHERD,  
AND ERICA SHEPHERD, INDIVIDUALLY,**

Petitioners,

v.

**BOARD OF EDUCATION OF THE CITY OF  
ATLANTIC CITY, ATLANTIC COUNTY,**

Respondent.

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**Jason E. Sokolowski, Esq.**, for petitioners (Zazzali, Fagella, Nowak, Kleinbaum  
& Friedman, attorneys)

**Tracy L. Riley, Esq.**, for respondent (Law Offices of Riley and Riley, attorneys)

Record Closed: August 1, 2022

Decided: August 11, 2022

BEFORE **KATHLEEN M. CALEMMO**, ALJ:

## **STATEMENT OF THE CASE**

Petitioners, the Atlantic City Education Association and Erica Shepherd, allege respondent, the Atlantic City Board of Education (BOE), violated Ms. Shepherd's tenure rights under N.J.S.A. 18A:17-2 by terminating her employment pursuant to a reduction in force which occurred on June 30, 2015. At issue is whether Ms. Shepherd's tenure rights were violated.

## **PROCEDURAL HISTORY**

This matter arose with the filing of a petition of appeal with the Commissioner of Education (the Commissioner) on August 5, 2015. The BOE filed its answer on September 4, 2015. The matter was transmitted to the Office of Administrative Law (OAL) as a contested case on September 9, 2015.

On December 23, 2019, Administrative Law Judge John S. Kennedy issued a Letter Order denying respondent's Motion for Summary Decision. After Judge Kennedy's appointment to the Judiciary of the Superior Court, the matter was assigned to me on or about July 29, 2021.

After conducting telephone conferences with the attorneys, I scheduled the matter for a hearing, via Zoom platform, on August 1, 2022. Ms. Shepherd failed to appear.

## **FACTUAL FINDINGS**

I **FIND** the following as **FACTS**:

This matter was scheduled for a Zoom hearing on August 1, 2022, at 9:30 a.m. Petitioner was notified of the hearing by her attorney, Mr. Sokolowski, by regular mail, dated July 22, 2022. In his correspondence, Mr. Sokolowski advised Ms. Shepherd that her appeal would be dismissed if she failed to participate in the hearing.

At a telephone conference on November 5, 2021, Mr. Sokolowski advised me that he had not had any contact from Ms. Shepherd despite his efforts. I allowed Mr. Sokolowski the opportunity to continue his attempts to contact Ms. Shepherd.

On May 31, 2022, Mr. Sokolowski sent a letter by regular mail to Ms. Shepherd and copied the Atlantic City Education Association asking Ms. Shepherd to advise whether she intended to pursue her appeal or withdraw it. She failed to respond.

On July 13, 2022, Mr. Sokolowski re-sent his May 31, 2022, correspondence to Ms. Shepherd but received no response. By correspondence, dated July 22, 2022, Mr. Sokolowski advised Ms. Shepherd of the August 1, 2022, Zoom hearing. He also informed her that she risked the dismissal of her appeal if she failed to appear.

None of the regular mailings to Ms. Shepherd were returned as undeliverable by the United States Post Office. This appeal has been pending for approximately seven years and Mr. Sokolowski has not had any contact from Ms. Shepherd in over two years despite diligent efforts.

Ms. Shepherd has abandoned her appeal by failing to participate.

### **LEGAL DISCUSSION AND CONCLUSIONS OF LAW**

Pursuant to N.J.A.C. 1:1-14.4(a),

If, after appropriate notice, neither a party nor a representative appears at any proceeding scheduled by the Clerk or judge, the judge shall hold the matter for one day before taking any action. If the judge does not receive an explanation for the nonappearance within one day, the judge shall, . . . direct the Clerk to return the matter to the transmitting agency for appropriate disposition pursuant to N.J.A.C. 1:1-3.3(b) and (c).

This matter was scheduled for a hearing via Zoom on August 1, 2022, at 9:30 a.m. Petitioner was given notice of the hearing date and time by her attorney. Petitioner did not appear for the Zoom hearing.

Accordingly, I **CONCLUDE** that despite receiving appropriate notice, Ms. Shepherd failed to appear at the hearing scheduled for August 1, 2022. Therefore, the matter should be dismissed as petitioner has abandoned her appeal.

**ORDER**

It is **ORDERED** that the Clerk return this matter to the Commissioner of the Department of Education for appropriate disposition pursuant to N.J.A.C. 1:1-3.3(b) and (c).

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. 52:14B-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.



August 11, 2022 \_\_\_\_\_  
DATE

\_\_\_\_\_  
**KATHLEEN M. CALEMMO, ALJ**

Date Received at Agency: \_\_\_\_\_

Date Mailed to Parties: \_\_\_\_\_

KMC/jns