

23-23

OAL Dkt. No. EDU 00375-22

Agency Dkt. No. 182-7/18

New Jersey Commissioner of Education

Final Decision

B.E., on behalf of minor child, F.E.,

Petitioner,

v.

Board of Education of the Township of
Piscataway, Middlesex County,

Respondent.

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

Petitioner challenges a suspension imposed by the Board on his minor child. The Administrative Law Judge (ALJ) scheduled a telephone conference regarding petitioner's appeal for October 12, 2022. Petitioner failed to appear and did not respond to an email asking him to explain his failure to appear. A telephone conference was then scheduled for November 14, 2022. Petitioner again failed to appear and did not respond to an email asking him to explain his failure to appear. Therefore, the ALJ dismissed the matter based on petitioner's failure to pursue the appeal.

Upon review, the Commissioner disagrees with the ALJ that the matter should be dismissed based on petitioner's failure to appear. The Initial Decision indicates that the scheduling notices were sent to the parties via email. Pursuant to *N.J.A.C. 1:1-9.5(c)*, scheduling

notices must be sent by regular mail unless emergent needs require otherwise. There is no indication in the record that the telephone conferences were emergent; to the contrary, the notices were emailed to the parties a month prior to the scheduled dates. Moreover, while sending scheduling notices via email may be acceptable in many circumstances, such as in cases where all parties or attorneys routinely communicate with the OAL via email, those circumstances are not present here. The record does not contain a single email from petitioner to the OAL. Furthermore, the Initial Decision specifically indicates that there was a concern about the correct spelling of petitioner's email address, and the scheduling notices were therefore sent to four separate email addresses. Given the lack of certainty that petitioner ever received the scheduling notices, the Commissioner finds that dismissal at this juncture is not appropriate.¹

Accordingly, this matter is remanded to the OAL for further proceedings consistent with this opinion.

IT IS SO ORDERED.


ANGELICA ALLEN-McMILLAN, J.D. D.
ACTING COMMISSIONER OF EDUCATION

Date of Decision: January 26, 2023

Date of Mailing: January 26, 2023

¹ If the scheduling notices were sent to petitioner via regular mail, the ALJ may clarify that fact on remand.



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

DISMISSAL

OAL DKT. NO. EDU 00375-22

AGENCY DKT. NO. 182/7/18

B.E. ON BEHALF OF F.E.,

Petitioner,

v.

**TOWNSHIP OF PISCATAWAY BOARD OF
EDUCATION, MIDDLESEX COUNTY,**

Respondent.

B.E., petitioner, pro se

David B. Rubin, Esq., for respondent

Record Closed: November 16, 2022

Decided: December 20, 2022

BEFORE **TRICIA M. CALIGUIRE**, ALJ

On May 1, 2018, the Township of Piscataway, Board of Education (Board) issued a decision suspending then-student F.E. for a portion of the next school year as discipline for conduct occurring on March 14, 2018. On or about July 30, 2018, B.E. on behalf of then-minor child F.E. filed a petition with the Commissioner of the New Jersey Department of Education appealing the suspension. This matter was transmitted to the Office of Administrative Law (OAL), where it was filed on August 16, 2018, as a contested case

pursuant to N.J.S.A. 52:154B-1 et seq. and N.J.S.A. 52:14F-1 et seq. and docketed as EDU 11838-18.

Prior to the 2018–2019 school year, petitioner B.E. withdrew F.E. from Piscataway High School and enrolled him in a private school. On October 15, 2018, the Board filed a motion to dismiss the petition for lack of jurisdiction or alternately, for failure to state a claim on which relief may be granted. Following the filing of responsive briefs, an initial decision was issued on November 20, 2018, granting the motion to dismiss.

On January 4, 2019, the Commissioner issued a final decision reversing the initial decision and remanding the matter for further proceedings at the OAL. On January 11, 2022, in response to an inquiry from Board counsel, the Director of the Office of Controversies and Disputes stated that her office failed to transmit the matter back to the OAL. Petitioner elected to pursue the matter and the matter on remand was transmitted to the OAL, docketed as EDU 00375-22, and assigned to me on January 20, 2022.

The parties appeared for a telephone prehearing conference on February 28, 2022, and stated that they would engage in negotiations toward settlement. On or about June 10, 2022, the parties stated that they had reached agreement on settlement but, on August 30, 2022, counsel for petitioner stated that his client had withdrawn his consent to settle. During a telephone conference on September 9, 2022, which was attended by B.E., counsel stated that he would file a formal request to be relieved as counsel. Neither respondent nor B.E. objected to this request. On September 23, 2022, an order was entered relieving the Law Firm of C.N. Njoku, LLC, as counsel to B.E. on behalf of F.E.

During the September 9, 2022, status conference, B.E. stated his intention to retain new counsel within thirty days and a telephone conference was scheduled for October 12, 2022. Notice of the October 12, 2022, telephone conference was sent to the parties on September 12, 2022. A dial-in number was provided. Due to concern for the correct

spelling of B.E.'s email address, the notice was sent to four separate emails and to his former counsel. The notice stated in bold print:

Failure to dial in for the telephone conference will result in the file being returned to the transmitting agency for appropriate action which may include imposition of the proposed penalty or granting the relief requested by the other party.

B.E. failed to appear for the October 12, 2022, telephone conference. B.E. failed to notify my office in advance or to request an adjournment. On October 14, 2022, an email was sent to B.E. asking him to explain his failure to appear. B.E. did not respond.

On October 14, 2022, notice was sent to the parties of a telephone status conference on November 14, 2022. A dial-in number was provided. B.E. failed to appear for the November 14, 2022, telephone conference. B.E. failed to notify my office in advance or to request an adjournment. On November 15, 2022, an email was sent to B.E. asking him to explain his failure to appear. B.E. did not respond.

Absent exigent circumstances, a petitioner's failure to prosecute a matter should result in its dismissal. Henderson v. Jersey Central Power and Light Company, Dkt. No. PUC 2470-10, Initial Decision (January 5, 2011) <http://lawlibrary.rutgers.edu/new-jersey-administrative-decisions-0> (citations omitted).

Here, neither exigent circumstances nor, for that matter, any explanation whatsoever, has been offered to excuse petitioner's failure to prosecute this matter.

DECISION AND ORDER

Accordingly, I **CONCLUDE** that petitioner has failed to prosecute its appeal and no longer requests relief in this matter. Therefore, I **ORDER** that this case be and is hereby **DISMISSED WITH PREJUDICE**.

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.

December 20, 2022

DATE



TRICIA M. CALIGUIRE, ALJ

Date Received at Agency:

Date Mailed to Parties:

TMC/nn