

New Jersey Commissioner of Education

Final Decision

Daniella Maniscalco,

Petitioner,

v.

Board of Education of the Borough of Merchantville,
Camden County,

Respondent.

Synopsis

Pro se petitioner filed a petition in October 2022 in which she challenged the respondent Board’s actions relating to the handling of her resignation from employment with the school district. The matter was dismissed on March 13, 2023 after the petitioner failed to appear for a scheduled hearing. Petitioner filed exceptions/explanations with the Commissioner as to why she failed to appear as scheduled; the matter was then reinstated and remanded to the Office of Administrative Law (OAL) in a Final Decision dated April 10, 2023. The matter was subsequently scheduled for an in-person hearing at the OAL on September 26, 2023.

The ALJ found, *inter alia*, that: prior to the hearing date, petitioner objected to respondent’s exhibit and witness list, questioning why, among other things, two specific individuals were not being called by the Board to testify; petitioner did not provide any exhibits or supply a witness list as requested; at the September 26th hearing – which was converted to a Zoom format – petitioner refused to move forward because the Board did not produce the two witnesses that she believed were necessary to develop a full record; petitioner expressed significant displeasure with the overall handling of the matter, and steadfastly refused to proceed; when asked if she was thereby withdrawing her complaint, the respondent repeatedly answered “no”, but subsequently removed herself from the Zoom hearing without comment. The ALJ found that the petitioner’s conduct at the hearing was obstructive and intentional, and concluded that petitioner had abandoned her request for a hearing and forfeited her right to further contest the actions of the Board that she had complained about. Accordingly, the ALJ dismissed the petitioner’s appeal with prejudice.

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

323-23
OAL Dkt. No. 03369-23
(EDU 10388-22 on Remand)
Agency Dkt. No. 276-10/22

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v.

Board of Education of the Borough of
Merchantville, Camden 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.¹

Upon review, the Commissioner concurs with the Administrative Law Judge that the petition must be dismissed due to petitioner's refusal to move forward with the scheduled hearing.

Accordingly, the Initial Decision is adopted as the final decision in this matter, and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.²


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

Date of Decision: October 30, 2023
Date of Mailing: November 1, 2023

¹ Petitioner emailed the Office of Controversies and Disputes on October 19, 2023, alleging that the Administrative Law Judge improperly handled her case. As this email was received after the deadline for exceptions, it was not considered.

² 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 WITH PREJUDICE

OAL DKT. NO. EDU 03369-23

(ON REMAND EDU 10388-22)

AGENCY DKT. NO. 276-10/22

DANIELLA MANISCALCO,

Petitioner,

v.

BOARD OF EDUCATION OF

BOROUGH OF MERCHANTVILLE,

Respondent.

Daniella Maniscalco, petitioner, pro se

Daniel Long, Esq., for respondent (Wade, Long, Wood & Long, LLC, attorneys)

Record Closed: September 26, 2023

Decided: October 2, 2023

BEFORE **TAMA B. HUGHES**, ALJ:

This matter originated under Docket No. EDU 10388-22 and transmitted to the Office of Administrative Law (OAL) on November 17, 2022, for a hearing as a contested case pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14f 1 to-13. Through this complaint, the petitioner challenged the Board's actions related to the handling of her resignation. The matter was dismissed on March 13, 2023, for failure to appear.

Petitioner filed exceptions/explanations with the Commissioner of the Department of Education as to why she failed to appear on the scheduled status calls. In a Final Decision, dated April 10, 2023, the matter was reinstated and remanded to the Office of Administrative Law, under OAL Docket No. EDU 03369-23, for a hearing. See April 10, 2023, Final Decision.

On June 27, 2023, a prehearing conference call was held at which time the in-person hearing date of September 26, 2023, was set.¹ See July 6, 2023, Prehearing Order. Subsequent to the issuance of the Prehearing Order, petitioner sent over a series of emails objecting to among other things: how the matter was being handled; the options available to her to resolve the matter; the location of the hearing; and the fact that she wanted another hearing judge. By letter, dated July 25, 2023, petitioner's concerns and questions were addressed. See July 25, 2023, letter.

On September 21, 2023, respondent's exhibits and witness list were provided to the petitioner and this Tribunal. By email that same date, petitioner objected to respondent's exhibit and witness list, questioning why, among other things, two other individuals, were not being called by the respondent to testify at the hearing. Petitioner did not provide any exhibits or supply a witness list.

On the hearing date, the petitioner refused to go forward with the hearing because the respondent did not produce the two witnesses that she believed were necessary to develop a full record. A lengthy colloquy took place both off the record and then on the record, wherein petitioner expressed her significant displeasure over the handling of the matter, the fact that no one told her that she herself could have subpoenaed and/or called the witnesses, how the undersigned was treating her, and the denial of her request for an adjournment. Throughout all of this, respondent's counsel stood by ready to proceed with his witnesses.

¹ The hearing date was subsequently converted to a remote hearing, via Zoom. At the time of notice, both parties were informed that all of the exhibits that they intended to rely upon, needed to be provided one week in advance of the hearing with a copy to this Tribunal, along with the proposed witness list.

Petitioner was repeatedly asked if she was ready to proceed with the hearing to which she would respond that she would only proceed if the two witnesses that she believed were necessary were brought in by the respondent to testify. When asked if she was going to withdraw the complaint given the fact that she refused to proceed with the hearing, she repeatedly stated “no.” After this colloquy went on for some time - during which petitioner became increasingly argumentative, petitioner intentionally removed herself from the zoom hearing. The record remained open for several more minutes; however, the petitioner did not re-enter the remote hearing.

I **FIND** that the petitioner’s conduct, her refusal to move forward, and leaving the virtual hearing, to be intentional and obstructive.

For the above reasons, I **CONCLUDE** that the petitioner has abandoned her request for a hearing in this matter and has forfeited her right to further contest the actions complained about. Accordingly, this matter should be dismissed with prejudice for lack of prosecution and failure to appear.

ORDER

It is **ORDERED** that the petitioner’s appeal be **DISMISSED WITH PREJUDICE** pursuant to N.J.A.C. 1:1-14.4, and I **DIRECT** the Clerk to return the matter to the agency for appropriate disposition.

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.

October 2, 2023

DATE



TAMA B. HUGHES, ALJ

Date Received at Agency:

Date Mailed to Parties:

TBH/gd/lam