

375-23

OAL Dkt. No. EDU 2247-23 (EDU 06545-23 on remand)

Agency Dkt. No. 50-3/23

New Jersey Commissioner of Education

Final Decision

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

Petitioner,

v.

Board of Education of the Township of Union,
Union County,

Respondent.

The record of this matter, which was transmitted to the Commissioner by the Office of Administrative Law (OAL) pursuant to *N.J.A.C. 1:1-14.4* and includes an advisement of petitioner's failure to appear at the scheduled OAL hearing on November 30, 2023, has been reviewed. Petitioner did not file an explanation for her failure to appear, notwithstanding the opportunity to do so. Accordingly, this matter is no longer deemed to be a contested case before the Commissioner and is hereby dismissed with prejudice.

IT IS SO ORDERED.¹


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

Date of Decision: December 20, 2023

Date of Mailing: December 20, 2023

¹ 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

OAL Docket No.: EDU 06545-23

AGENCY DKT. No.: 50-3/23

(ON REMAND)

OAL DKT. NO. EDU 02247-23

R.J. ON BEHALF OF MINOR CHILD J.C.,

Petitioner,

v.

**BOARD OF EDUCATION OF THE TOWNSHIP
OF UNION COUNTY, UNION COUNTY,**

Respondent.

R.J. o/b/o minor child, J.C. pro se

Robert Devaney, Esq., for respondent (Florio Perrucci Steinhardt Cappelli Tipton
and Taylor, attorneys)

Record Closed: December 1, 2023

Decided: December 1, 2023

BEFORE JUDE-ANTHONY TISCORNIA, ALJ:

STATEMENT OF THE CASE

The forgoing matter involves a petition challenging residency determination made by the Township of Union (Union) against R.J. on remand from the Commissioner of the New Jersey Department of Education (Commissioner). The original complaint was returned to the agency due to R.J.'s continued failure to appear at telephonic conferences, including a peremptory telephonic conference that had been set for June 21, 2023. The Commissioner found this action improper and directed the undersigned to set the matter down for a hearing.

ISSUE

Notwithstanding the challenge to the underlying residency determination, neither party appeared at the hearing on the scheduled hearing date.

PROCEDURAL HISTORY

The underlying matter, docketed as EDU 02247-2023, was returned by the undersigned to the Department of Education, office of Controversies and Disputes (Department) on or about June 22, 2023. The matter was remanded to the undersigned by Order of the Commissioner dated July 17, 2023. The matter was re-docketed as EDU 06545-2023 and transmitted to the Office of Administrative Law (OAL) on July 20, 2023.

On July 28, 2023, the undersigned receive confirmation via e-mail from both R.J. and the Board's representative, Mr. Devaney, that both were available on August 4, 2023, telephonic conference. The conference was conducted on August 4, 2023, with Mr. Devaney appearing on behalf of the Board, and R.J. failing to appear.

On September 28, 2023, the parties were served with notice of a peremptory hearing date of November 30, 2023, at 9:30 a.m. On the scheduled hearing date, neither party appeared. At approximately 10:00 a.m. on the scheduled hearing date, the

undersigned received a Substitution of Attorney from the office of Lester E. Taylor III, Esq., advising that he was replacing Mr. Devaney as the attorney of record on the matter.

The matter was held by the undersigned for one day. The record was closed on December 1, 2023, with no communication having been received from R.J. by the undersigned.

Legal Conclusion

N.J.A.C. § 1:1-14.4 Failure to appear; sanctions for failure to appear

(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, unless proceeding pursuant to (d) below, 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).

(b) If the nonappearing party submits an explanation in writing, a copy must be served on all other parties and the other parties shall be given an opportunity to respond.

(c) If the judge receives an explanation:

1. If the judge concludes that there was good cause for the failure to appear, the judge shall reschedule the matter for hearing; or
2. If the judge concludes that there was no good cause for the failure to appear, the judge may refuse to reschedule the matter and shall issue an initial decision explaining the basis for that conclusion...

I **Conclude** that the substitution of attorney receive after the date and time of the scheduled hearing date does **not** constitute good cause for the petitioner school board and/or their representative to have failed to appear, as the matter was set down for a

hearing several months in advance and proper notice was issued by the OAL. I further **Conclude** that R.J. has provided no explanation for their failure to appear at the November 30, 2023, hearing.

Based on my conclusions above, and in conjunction N.J.A.C. 1:1-14.4 as cited above, I, hereby, 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).

ORDER

Based upon the foregoing, it is **ORDERED** that the foregoing matter shall be returned to the Commissioner of the Department of Education.

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 1, 2023

DATE



JUDE-ANTHONY TISCORNIA, ALJ

Date Received at Agency:

12/1/23

Date Mailed to Parties:

12/1/23

id