

EDU #3929-98
C # 85-99
SB # 24-99

R.D.F., on behalf of his minor children, :
PETITIONER-APPELLANT, :
V. : STATE BOARD OF EDUCATION
BOARD OF EDUCATION OF THE : DECISION ON MOTION
WESTWOOD REGIONAL SCHOOL :
DISTRICT, BERGEN COUNTY, :
RESPONDENT-RESPONDENT. :

Decided by the Commissioner of Education, March 23, 1999

For the Petitioner-Appellant, R.D.F., pro se

For the Respondent-Respondent, Fogarty & Hara (Jessica L. Wildstein, Esq.,
of Counsel)

On March 24, 1998 R.D.F. (hereinafter "appellant") filed a petition of appeal with the Commissioner of Education challenging the determination by the Board of Education of the Westwood Regional School District (hereinafter "Board") that his children were not entitled to a free public education in the district under N.J.S.A. 18A:38-1a. The Board filed a counterclaim seeking removal of appellant's children from the district's schools and payment of tuition from the appellant for the period of his children's attendance in the district. Appellant did not file an answer to the Board's counterclaim. On December 17, 1998, the Board filed a motion to dismiss appellant's petition. Appellant did not respond to that motion.

On February 4, 1999, an Administrative Law Judge (“ALJ”) recommended dismissing the petition, concluding that the appellant had abandoned prosecution of his claim. The ALJ observed that the appellant had not complied with the Board’s discovery requests, had not responded to the Board’s motion to dismiss the petition and had failed to respond to correspondence sent to him by the Board and the Office of Administrative Law. The ALJ therefore deemed the Board’s allegations to be admitted and concluded that appellant was not domiciled in the district and, as a result, that his children were not entitled to a free public education in the district’s schools. Accordingly, the ALJ recommended that appellant’s children be disenrolled from the district and that appellant be directed to reimburse the Board for tuition for the period of his children’s ineligible attendance.

On March 23, 1999, the Commissioner adopted the findings and conclusions of the ALJ and ordered the appellant to reimburse the Board for his children’s tuition.

On April 23, 1999, the appellant, acting pro se, filed a photocopy of a notice of appeal with the State Board of Education. By letter dated April 27, 1999, the Director of the State Board Appeals Office notified appellant that he was required to file an original signed notice of appeal and also to provide proof of service of his notice on the Board. Appellant was also advised that a brief in support of his appeal was due on May 13, 1999.

On May 6, 1999, the appellant filed an original notice of appeal and proof of service as requested. He did not, however, file an appeal brief by May 13. By letter dated May 20, 1999, the Director of the State Board Appeals Office notified the appellant of his failure to file a brief and informed him that this matter was being referred

to the Legal Committee of the State Board for consideration of his failure to perfect the appeal.

On May 24, 1999, the Board filed a motion to dismiss the appeal as a result of appellant's failure to file a brief in support of his appeal.

Appellant has still failed to file an appeal brief, nearly eight weeks after the deadline for such filing. Nor has he responded to the Board's motion to dismiss, offered any explanation for his failure to file a brief or requested an extension of time for such filing. As a result, we grant the Board's motion to dismiss the appeal in this matter for failure to perfect. N.J.A.C. 6:2-1.12(a). See Paszamant v. Board of Education of the Borough of Highland Park, decided by the State Board, April 1, 1992, aff'd, Docket #A-4812-91-3 (App. Div. 1993).

July 7, 1999

Date of mailing _____