

D.B. on behalf of minor children, S.B. and S.B., :
PETITIONERS, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE CITY OF : DECISION
PORT REPUBLIC, ATLANTIC COUNTY, :
RESPONDENT. :
_____ :

SYNOPSIS

Petitioner filed a petition of appeal challenging the authority of the respondent Board to require her to file a certification of residency on a monthly basis in order to have her two children retain continuing eligibility to attend Port Republic schools free of charge. Petitioner claimed that this requirement constituted harassment under *N.J.S.A. 18A:38-1*; the Board answered that such requirement was imposed because petitioner's residency was based on a month-to-month lease. Petitioner failed to appear at hearing.

The ALJ found that: petitioner removed her children from continued enrollment in Port Republic schools in February 2008, and enrolled them in Brigantine Public Schools; the school records of S.B. and S.B. were forwarded to Brigantine by respondent Board in February 2008; by inference, petitioner and her children are no longer residents of Port Republic; and respondent Board does not seek tuition payments or any other relief, but does seek a determination that the petition filed by petitioner be dismissed with prejudice. The ALJ concluded that petitioner has abandoned her appeal, and determined that the petition be dismissed with prejudice.

The Commissioner concurred with the ALJ that petitioner has failed to prosecute her appeal, and adopted the Initial Decision as the final decision in this matter.

<p>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.</p>

June 19, 2008

OAL DKT. NO.EDU 326-08
AGENCY DKT. NO. 388-12/07

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed.

As the Initial Decision explains, petitioner challenged as harassment respondent's requirement that she file a monthly certification of residency as a condition to the provision of a free public education to petitioner's two children. Respondent answered that the requirement was necessitated by the fact that petitioner resided in Port Republic by way of a month-to-month lease.

A hearing at the OAL was scheduled for May 1, 2008, but the petitioner failed to appear. The Commissioner notes that in the file is a copy of a notice dated March 19, 2008, which was sent to both parties, advising that the hearing would take place on May 1, 2008. The address to which petitioner's copy was sent is the address that petitioner designated on her petition.

Pursuant to *N.J.A.C.* 1:1-14.4(a), the Administrative Law Judge (ALJ) waited for at least one day to give petitioner the opportunity to offer an explanation for her nonappearance.

There being no explanation filed, the ALJ rendered his recommended decision on May 6, 2008, dismissing the petition for petitioner's failure to appear at the hearing and prosecute her appeal, and directing that the matter be returned to the Commissioner.

On page 2 of the Initial Decision, the ALJ indicates that the "file" of this case shows that petitioner removed her children from respondent's school district on or about February 26, 2008, and that respondent forwarded the children's school records to the Brigantine School District. If true, this would appear to render moot the relief requested in the petition, *i.e.*, the children's school attendance in Port Republic, and the invalidation of respondent's directive that she provide residency certification every month.

In any event, because petitioner failed to prosecute her appeal, the Commissioner adopts the ALJ's determination that the petition should be dismissed.

IT IS SO ORDERED. ¹

COMMISSIONER OF EDUCATION

Date of Decision: June 19, 2008

Date of Mailing: June 19, 2008

¹ This decision, as the Commissioner's final determination in the instant matter, may be appealed to the State Board of Education pursuant to *N.J.S.A. 18A:6-27 et seq.* and *N.J.A.C. 6A:4-1.1 et seq.*