

#441-13 (OAL Decision: Not available online)

R.B., on behalf of minor child, A.B., :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE : DECISION
TOWNSHIP OF BURLINGTON,
BURLINGTON COUNTY, :
RESPONDENT. :

SYNOPSIS

Petitioner R.B. filed a petition for emergent relief on June 21, 2013, challenging the discipline imposed upon A.B. by the respondent Board following an April 2013 incident in which A.B. allegedly yelled “I have a shotgun” into a darkened auditorium full of students. Specifically, the petitioner sought a determination that the discipline imposed was excessive, and that the decision to exclude A.B. from his high school graduation ceremony – held on June 24, 2013 – be reversed. Emergent relief was denied following a hearing on the day of graduation, and A.B. did not walk with his class. The Commissioner’s final decision adopting the Order of the OAL directed that the matter “continue at the OAL with such proceedings as the parties and the ALJ deemed necessary to bring it to closure.”

The ALJ made subsequent multiple attempts to contact the petitioner’s attorney regarding any underlying issues to be resolved, and respondent’s attorney contacted the ALJ to indicate that he was willing to file a motion to dismiss as there were no other issues to resolve. Ultimately, the ALJ set October 25, 2013 as the deadline by which she would close the record and issue an Initial Decision dismissing the matter unless petitioner’s counsel followed up on a written request for hearing dates submitted on October 7, 2013. As no response was received, the record closed and an Initial Decision was issued on October 28, 2013 dismissing the matter as moot. Thereafter, petitioner’s counsel submitted exceptions challenging the ALJ’s determination, contending, *inter alia*, that an issue remains as to whether the discipline imposed was excessive, arbitrary, capricious, or otherwise unreasonable.

Upon full review and consideration, the Commissioner found, *inter alia*, that: it was unnecessary to reach a determination on the issue of mootness, as petitioner failed to prosecute the appeal; and absent extraordinary circumstances, a petitioner’s failure to prosecute should result in dismissal of the matter. Accordingly, the recommended decision of the OAL dismissing the petition was adopted, with modification, and 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.
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December 12, 2013

OAL DKT. NO. EDU 8515-13
AGENCY DKT. NO. 136-6/13

R.B., on behalf of minor child, A.B., :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE : DECISION
TOWNSHIP OF BURLINGTON,
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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. Petitioner’s exceptions – filed in accordance with *N.J.A.C.* 1:1-18.4 – were fully considered by the Commissioner in reaching his determination herein. Respondent filed neither exceptions nor a reply to petitioner’s exceptions.

In this matter, petitioner challenges discipline imposed upon A.B. by the respondent school district after A.B. allegedly yelled “I have a shotgun” into a darkened auditorium full of students. A.B. was suspended for ten days, and was also barred from certain school activities, including attending the prom and walking in his class’ graduation ceremony. A.B. served the 10-day suspension and did not attend the prom.

On June 21, 2013, three days before graduation, petitioner filed a petition for emergent relief. Therein, petitioner alleged that respondent “applied excessive, arbitrary and capricious, and otherwise unreasonable discipline upon A.B. by denying him the privilege of going to his Senior Prom, and, by denying him the privilege of participating in his Senior Class

Graduation Ceremonies.” By way of relief, petitioner requested an order “finding and holding that:

1. The discipline applied to A.B. by the Respondent was excessive;
2. The Respondent’s decision to exclude A.B. from his Senior Class Graduation Ceremonies is reversed and it is ordered that A.B. be permitted to attend and participate in his Senior Class Graduation Ceremonies.
3. Such other relief as the Administrative Law Judge determines to be appropriate.

A hearing on the application for emergent relief was held on June 24, 2013, after which the ALJ issued an Initial Decision denying the relief sought by petitioner. On the same day, the Commissioner issued a final decision adopting the Order of the OAL denying the application for emergent relief and directing that the matter “continue at the OAL with such proceedings as the parties and the ALJ deem necessary to bring it to closure.” In accordance with the denial of his application for emergent relief, A.B. did not participate in his class’s graduation ceremony.

Thereafter, the ALJ attempted to contact petitioner’s counsel to ascertain whether petitioner asserted there were any outstanding issues to be determined in the matter. The ALJ received no response to her initial telephone inquiry. Nor did she receive a response to any of her three subsequent telephone messages. When all four of the messages left between July 2, 2013 and August 5, 2013 went unanswered, the ALJ scheduled a telephone conference call for August 23, 2013 to deal with the matter. Petitioner’s counsel was, however, unable to participate in the conference call due to a family illness. Shortly thereafter, respondent’s counsel advised the ALJ that he would file a motion to dismiss, since there were no other issues to be resolved. The motion was never filed.

On October 7, 2013, petitioner's counsel submitted to the ALJ a written request for the matter to be scheduled for hearing. Once again, the ALJ repeatedly attempted to contact petitioner's counsel. Messages were left on October 10, 2013 and October 21, 2013. In the latter message, the ALJ indicated that, if petitioner's counsel did not contact her by October 25, 2013, she would close the record and issue an Initial Decision. Once again, petitioner's counsel failed to respond to the ALJ's telephone messages. In accordance with her telephone message of October 21, 2013, the ALJ closed the record on October 25, 2013.

On October 27, 2013, the ALJ issued an Initial Decision in which she determined that the matter should be dismissed as moot. Therein, the ALJ observed that the only specific relief requested in this matter was to allow petitioner to participate in his graduation ceremony. With the graduation ceremony having passed, the ALJ concluded there are no underlying issues to be determined, and that the matter is moot.

In his exceptions, petitioner challenges the ALJ's determination that the matter is moot. Specifically, petitioner contends that an issue remains as to whether the discipline imposed was excessive, arbitrary, capricious, or otherwise unreasonable. Petitioner further argues that, if the issue is decided in his favor, the ALJ should order the removal of all references to the inappropriate discipline from A.B.'s pupil records. Notably, petitioner does not dispute the ALJ's recitation of her unsuccessful attempts to contact counsel.

Upon a comprehensive review of this matter, the Commissioner finds it unnecessary to reach a determination on the issue of mootness, as the matter is properly dismissed for failure to prosecute. Absent exigent circumstances, a petitioner's **failure to prosecute** a matter should result in its dismissal. *N.O. v. Board of Education of the Bridgewater-Raritan School District*, 96 N.J.A.R.2d (EDU) 746 (1996); *R.J. v. Board of Education of the*

Lower Camden County Regional School District, 97 N.J.A.R.2d (EDU) 155 (1996). Here, petitioner's counsel failed and refused to respond to inquiry by the ALJ on no less than six separate occasions. On the last occasion, counsel was specifically advised that the matter would be dismissed in the absence of a response. Yet, even when faced with dismissal, no effort was made to respond to the ALJ. Nowhere in petitioner's exceptions is this blatant apathy even addressed, let alone justified by an explanation that might establish exigent circumstances. The record reflects that petitioner was dilatory in prosecuting this matter and consistently unresponsive to repeated communications from the ALJ, without justification. As such, the matter is properly dismissed.

Accordingly, the Initial Decision of the OAL dismissing the Petition of Appeal is adopted, as modified above, and the Petition of Appeal is hereby dismissed.

IT IS SO ORDERED.¹

COMMISSIONER OF EDUCATION

Date of Decision: December 12, 2013

Date of Mailing: December 16, 2013

¹ This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L.* 2008, *c.* 36 (*N.J.S.A.* 18A:6-9.1).