

#2-13 (OAL Decision: Not yet available online)

THOMAS SIMMONS, :

PETITIONER, : COMMISSIONER OF EDUCATION

V. : DECISION

BOARD OF EDUCATION OF :  
 THE CITY OF ELIZABETH, :  
 UNION COUNTY, :

RESPONDENT. :

SYNOPSIS

In September 2011, petitioner – formerly a teacher in respondent’s school district – appealed the decision of the respondent Board to terminate his employment through a reduction in force (RIF) in June 2011. Petitioner asserted that the Board terminated his employment in contravention of his tenure and seniority rights under *N.J.S.A. 18A:28-5 et seq.*, and sought reinstatement and back pay retroactive to the date of his termination. The Board asserted that petitioner had not earned tenure because he was never properly certificated during his service as a district teacher. The parties filed cross motions for summary decision, but the factual dispute regarding the petitioner’s certification precluded summary disposition and the matter was scheduled for hearing. The ALJ advised petitioner’s counsel that if the certificate was produced there would be no need for an appearance as the matter could be decided summarily.

The ALJ found that: scheduled hearings in this matter were adjourned twice at petitioner’s request; a peremptory third hearing date was scheduled for November 26, 2012, and petitioner and his counsel were notified that no adjournment would be granted and failure to appear would result in dismissal of the petition; petitioner’s counsel appeared at the hearing, stating that he had heard from petitioner via an email which indicated that petitioner was once again unable to appear and that he was seeking assistance from his union representative to secure a copy of his teaching certificate; and petitioner’s message suggested that he had still made no sincere effort to obtain a copy of his elementary teaching certificate despite having been asked to do so since June 2012. Accordingly, the ALJ concluded that the petitioner has failed to cooperate in the prosecution of his appeal and has abandoned this matter. The ALJ ordered the matter returned to the Department of Education.

Upon careful and independent review, the Commissioner concurred with the ALJ’s findings and conclusions and, accordingly, adopted the Initial Decision of the OAL as the final decision in this matter and dismissed the petition.

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.

January 3, 2013

OAL DKT. NO. EDU 12829-11  
AGENCY DKT. NO. 288-9/11

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The Commissioner has carefully considered the record of this matter, the Initial Decision of the Office of Administrative Law (OAL), and the submissions filed by counsel subsequent to the Initial Decision. Regrettably, such consideration leads to the conclusion that petitioner failed to diligently prosecute his appeal.

Accordingly, the Initial Decision is adopted for the reasons set forth therein, and the petition is dismissed.

IT IS SO ORDERED.<sup>1</sup>

COMMISSIONER OF EDUCATION

Date of Decision: January 3, 2013

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