

New Jersey Commissioner of Education

Final Decision

J.D, on behalf of minor child, I.C.,

Petitioner,

v.

Board of Education of the Borough of Highland
Park, Middlesex County,

Respondent.

The record of this matter has been reviewed, along with the advisement by the Office of Administrative Law (OAL) that counsel for respondent Highland Park Board of Education failed to appear at a telephone prehearing conference¹ on March 2, 2021.

Counsel for the Board submitted an explanation regarding the failure to appear, asserting that she did not receive the hearing notice, and if she had, she would have attended. The Board’s attorney also points out that a motion to dismiss the petition has been pending in this matter for a year. Finally, counsel adds that the pandemic has been difficult professionally as many offices have been closed, and that she did not receive the notice in this circumstance.

Petitioner submitted a request that the Commissioner enter a default judgment against the Board, alleging that the Board failed to plead or otherwise defend this matter. Petitioner submitted a second request for relief, arguing that the Board failed to appear three times without explanation, and disputing the substance of the Board’s motion to dismiss.

¹ The failure to appear advisement indicates that respondent did not appear at a March 2, 2021 “scheduled hearing,” but the notice was for a telephone prehearing conference that day.

Upon review, the record demonstrates that the Board's counsel failed to appear at two telephone prehearing conferences on December 28, 2020 and March 2, 2021, but it is unclear whether the notices were sent electronically or through regular mail. While the failure to appear at two telephone prehearing conferences is troubling, the Commissioner understands the difficulties with retrieving mail from closed office buildings. Regardless, the Commissioner notes that this matter was improperly returned to the Department. Pursuant to *N.J.A.C. 1:1-14.4(d)*:

If the appearing party requires an initial decision on the merits, the party shall ask the judge for permission to present ex parte proofs. If no explanation for the failure to appear is received, and the circumstances require a decision on the merits, the judge may enter an initial decision on the merits based on the ex parte proofs, provided the failure to appear is memorialized in the decision.

In this matter, the appearing party was the petitioner. As such, returning the matter to the agency without an Initial Decision would achieve the opposite effect – a dismissal. The Commissioner further notes that, despite petitioner's request for a default judgment, the Board did file a responsive pleading: a motion to dismiss in lieu of an answer that is still pending a decision. As such, given counsel's explanation as to her lack of notice and the pending motion to dismiss, this matter is being returned to the OAL for further disposition, pursuant to *N.J.A.C. 1:1-3.3(b)*.

Accordingly, this matter is hereby re-transmitted to the OAL for further disposition as indicated herein.

IT IS SO ORDERED.


ACTING COMMISSIONER OF EDUCATION

Date of Decision: May 7, 2021
Date of Mailing: May 7, 2021