

New Jersey Commissioner of Education
Decision

S.K.S., on behalf of minor child, S.H.,

Petitioner,

v.

Board of Education of the City of Jersey City,
Hudson County,

Respondent.

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. The parties did not file exceptions.

Upon review, the Commissioner agrees with the Administrative Law Judge (ALJ) that petitioner has abandoned this appeal because petitioner's attorney failed to appear at five telephone prehearing conferences without providing an explanation. Accordingly, the Initial Decision is adopted as the final decision in this matter for the reasons expressed therein, and the petition is hereby dismissed with prejudice.

IT IS SO ORDERED.¹

ACTING COMMISSIONER OF EDUCATION

Date of Decision: April 6, 2021
Date of Mailing: April 6, 2021

¹ This decision may be appealed to the Appellate Division of the Superior Court pursuant to *N.J.S.A.* 18A:6-9.1. Under *N.J.Ct.R.* 2:4-1(b), a notice of appeal must be filed with the Appellate Division within 45 days from the date of mailing of this decision.



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

DISMISSAL

OAL DKT. NO. EDU 11443-20

AGENCY DKT. NO. 222-10/20

S.K.S. ON BEHALF OF MINOR CHILD, S.H.,

Petitioner,

v.

**BOARD OF EDUCATION OF THE CITY OF
JERSEY CITY, HUDSON COUNTY,**

Respondent.

Corinne Mullen, Esq. for petitioner (The Mullen Law Firm, attorneys)

Jessika Kleen, Esq. for respondent (Machado Law Group, attorneys)

BEFORE **KELLY J. KIRK**, ALJ:

Petitioner S.K.S. on behalf of minor child, S.H., appeals from the suspension imposed upon S.H. by respondent, Jersey City Board of Education.

In June 2020, S.H. was suspended from school for seven days. Petitioner appealed the suspension, and the Board held a hearing on July 9, 2020. On July 15, 2020, the Board deliberated in closed session and thereafter notified petitioner that the suspension was upheld. Petitioner filed a request for reconsideration. By letter dated

September 25, 2020, the Board notified petitioner that the request for reconsideration was denied. Petitioner filed a Petition of Appeal on October 14, 2020. Respondent filed an Answer to Petition of Appeal on December 9, 2020. The matter was transmitted by the Department of Education (Department) to the Office of Administrative Law (OAL), where it was filed on December 11, 2020 for determination as a contested case.

By notice dated January 11, 2021, a telephone prehearing conference was scheduled for January 19, 2021 at 3:00 p.m. By 3:15 p.m., Ms. Mullen still had not called in for the conference. Respondent's attorney was able to reach Ms. Mullen's office and was advised that Ms. Mullen would be available for the conference on January 20, 2021 at 9:00 a.m. By notice dated January 19, 2021, the telephone prehearing conference was rescheduled for January 20, 2021 at 9:00 a.m. However, by 9:15 a.m., Ms. Mullen still had not called in for the conference. By email dated January 20, 2021, respondent's attorney's assistant advised that she had spoken to Ms. Mullen and that Ms. Mullen would be available for the conference at 2:00 p.m. Accordingly, on January 20, 2021, an email was sent to the parties confirming that the telephone prehearing conference was rescheduled for 2:00 p.m. However, by 2:15 p.m., Ms. Mullen still had not called in for the conference. Thereafter, on January 20, 2017, the parties were notified by email that since Ms. Mullen could not be reached for telephone prehearing conference, it was rescheduled for January 27, 2021 at 9:00 a.m. However, by 9:15 a.m. Ms. Mullen still had not called in for the conference. Ms. Mullen did not contact the OAL to explain any of these failures to appear.

Finally, on January 27, 2021, a notice of mandatory telephone prehearing was sent to the parties, accompanied by a letter that stated follows:

This matter has been scheduled for a telephone prehearing conference four times, but Ms. Mullen has failed to participate. Accordingly, please be advised that the telephone prehearing conference has been rescheduled for **February 16, 2021 at 9:00 a.m.** A notice of telephone prehearing conference is enclosed. Please mark your calendars. The telephone number to call at the time of the conference is (877) 336-1839 and the access code is 6486063.

Participation in this telephone prehearing conference is **MANDATORY**. If Ms. Mullen fails to call at the time of the telephone prehearing conference on February 16, 2021 at 9:00 a.m., it will be presumed that her client does not wish to pursue this matter **and the appeal will be dismissed, and the file will be returned to the Department of Education.** Therefore, if either party is unavailable for this telephone conference, please notify my assistant, Maria, at maria.montaner@oal.nj.gov within seven (7) days of the date of this letter, in order that the conference may be promptly rescheduled.

By email dated January 27, 2021, Ms. Mullen confirmed that “[c]ounsel for plaintiffs will be on the call.” However, by 9:15 a.m. on February 16, 2021, Ms. Mullen still had not called in for the conference, and she has not contacted the OAL.

N.J.A.C. 1:1-14.4(a) provides as follows:

If, after appropriate notice, neither a party nor a representative appears at any proceeding scheduled by the Clerk or judge, the judge shall hold the matter for one day before taking any action. If the judge does not receive an explanation for the nonappearance within one day, the judge shall, unless proceeding pursuant to (d) below, direct the Clerk to return the matter to the transmitting agency for appropriate disposition pursuant to N.J.A.C. 1:1-3.3(b) and (c).

Further, N.J.A.C. 1:1-14.14(a) provides that for unreasonable failure to comply with any order of a judge or with any requirements of the Uniform Administrative Procedure Rules, the judge may (1) dismiss or grant the motion or application; (2) suppress a defense or claim; (3) exclude evidence; (4) order costs or reasonable expenses, including attorney's fees, to be paid to the State of New Jersey or an aggrieved representative or party; or (5) take other appropriate case-related action.

Petitioner's attorney failed to appear for the telephone prehearing conference four times prior, and even after notice that the February 16, 2021 telephone prehearing conference was mandatory and that failure to participate would result in dismissal of this matter, petitioner's attorney failed to appear for a fifth time and did not contact the OAL

thereafter with any explanation for the nonappearance. Accordingly, I **CONCLUDE** that petitioner has failed to appear and the petition of appeal should be **DISMISSED**. I further **CONCLUDE** that the Clerk should return this matter to the Department of Education.

It is **ORDERED** that this matter is **DISMISSED** and that the Clerk return this matter to the Department of Education for appropriate disposition.

I hereby **FILE** this initial decision with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

This recommended decision may be adopted, modified or rejected by the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who by law is authorized to make a final decision in this matter. If the Commissioner of the Department of Education does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10. Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION, ATTN: BUREAU OF CONTROVERSIES AND DISPUTES, 100 Riverview Plaza, 4th Floor, PO Box 500, Trenton, New Jersey 08625-0500**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.



February 18, 2021

DATE

KELLY J. KIRK, ALJ

Date Received at Agency:

Date Mailed to Parties:
