

253-24
OAL Dkt. No. 04631-24
Agency Dkt. No. 49-3/24

New Jersey Commissioner of Education

Final Decision

L.C., on behalf of minor child, D.C.,

Petitioner,

v.

Board of Education of the Black Horse Pike,
Regional School District, Camden County,

Respondent.

The record of this matter, and the Initial Decision of the Office of Administrative Law (OAL), have been reviewed and considered. In this case, the petitioner filed a Pro Se Residency Appeal, requesting that her son, D.C., be allowed to finish high school at Black Horse Pike Regional High School. On April 4, 2024, the Board of Education (Board) for Black Horse Pike Regional School District (District) filed an Answer and Counterclaim requesting tuition costs. The Board alleged that L.C. and her son were residing in Maple Shade, which is not a sending area of the District. Thereafter, the matter was transmitted to the Office of Administrative Law (OAL) as a contested case.

The Administrative Law Judge (ALJ) found that petitioner failed to appear for both telephone conferences scheduled in this matter despite having received appropriate notice of same. Accordingly, the ALJ determined that petitioner had abandoned her appeal and returned the file to the Office of Controversies and Disputes pursuant to *N.J.A.C. 1:1-14.4(a)*. Further, the

ALJ noted that the respondent Board had elected to waive its right to assess tuition against L.C. and accepted the dismissal of petitioner's residency appeal as the appropriate relief in this case.

Upon review, the Commissioner concurs with the ALJ's determination that petitioner abandoned her appeal by failing to participate in the hearings scheduled in this matter; further, petitioner failed to sustain her burden of establishing that she was domiciled within the Black Horse Pike Regional School District when she sought to enroll her son in respondent's high school.

Accordingly, the Initial Decision is adopted as the final decision in this matter, and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.¹



ACTING COMMISSIONER OF EDUCATION

Date of Decision: July 1, 2024

Date of Mailing: July 3, 2024

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 04631-2024

AGENCY DKT. NO. 49-3/24

L.C. ON BEHALF OF MINOR CHILD, D.C.,

Petitioner,

v.

BLACK HORSE PIKE REGIONAL SCHOOL

DISTRICT, BOARD OF EDUCATION,

CAMDEN COUNTY,

Respondent.

L.C., on behalf of minor child, **D.C.**, petitioner, pro se

Daniel H. Long, Esq., for respondent (Wade, Long, Wood & Long, LLC.,
attorneys)

Record Closed: May 22, 2024

Decided: May 23, 2024

BEFORE **KATHLEEN M. CALEMMO**, ALJ:

In accordance with N.J.A.C. 1:1-3.3(b) and 1:1-14.4(a) this tribunal is directing the Clerk to return the case to the transmitting agency for the reasons stated below:

On February 29, 2024, L.C., on behalf of her son, D.C, filed a Pro Se Residency Appeal requesting that D.C. be allowed to finish high school at Black Horse Pike Regional High School. On April 4, 2024, the Board of Education (Board) for Black Horse Pike Regional School District (District) filed an Answer and Counterclaim requesting tuition costs. The Board alleged that L.C. and her son were residing in Maple Shade, which is not a sending area of the District.

The Department of Education, Office of Controversies and Disputes, transmitted the appeal to the Office of Administrative Law (OAL) to be heard as a contested case.

On April 18, 2024, the case was assigned to me. I held the initial telephone conference on May 7, 2024. Only Daniel H. Long, Esq, appeared on behalf of the Board. I scheduled a second telephone conference for May 22, 2024. The notice to the parties contained the following language: **"If you do not participate in the telephone conference, the file will be returned to the transmitting agency for appropriate action which may include imposition of the proposed penalty or granting the relief requested by the other party."** On May 22, 2024, only Mr. Long, on behalf of the Board, appeared for the telephone conference.

I have had no contact from L.C. since the matter was transmitted.

In the Answer and Counterclaim, the Board was seeking tuition and costs. At the telephone conference on May 22, 2024, Mr. Long represented that if this appeal was dismissed, the Board would waive its request for tuition from petitioner.

LEGAL ANALYSIS

Pursuant to N.J.A.C. 1:1-14.4:

- (a) 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).
- (b) If the nonappearing party submits an explanation in writing, a copy must be served on all other parties and the other parties shall be given an opportunity to respond.
- (c) If the judge receives an explanation:
 - 1. If the judge concludes that there was good cause for the failure to appear, the judge shall reschedule the matter for hearing; or
 - 2. If the judge concludes that there was no good cause for the failure to appear, the judge may refuse to reschedule the matter and shall issue an initial decision explaining the basis for that conclusion, or may reschedule the matter and, at his or her discretion, order any of the following:
 - i. The payment by the delinquent representative or party of costs in such amount as the judge shall fix, to the State of New Jersey or the aggrieved person;
 - ii. The payment by the delinquent representative or party of reasonable expenses, including attorney's fees, to an aggrieved representative or party; or
 - iii. Such other case-related action as the judge deems appropriate.

- (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.

I **CONCLUDE** that L.C. was provided with appropriate notices of scheduled proceedings, namely telephonic prehearing status conferences for May 7, 2024, and May 22, 2024.

I **CONCLUDE** that L.C. has abandoned this appeal by her failure to participate. A plain reading of N.J.A.C. 1:1-14.4(a), therefore, requires that the matter now be returned to the transmitting agency for appropriate disposition. See also N.J.A.C. 1:1-3.3(b).

The petitioner's abandonment of her appeal did not extinguish respondent's claim for tuition and costs. N.J.S.A. 18A:38-1(b)(1) provides that when the evidence does not support the claim of the resident, the resident shall be assessed tuition. In this matter, respondent elected to waive its right to assess tuition against L.C. and accept the dismissal of petitioner's residency appeal as the appropriate relief.

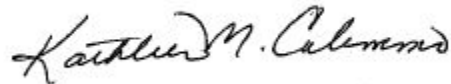
ORDER

Based on the foregoing, I **ORDER** that the clerk return the case to the transmitting agency for appropriate disposition pursuant to N.J.A.C. 1:1-3.3(b) and (c), dismissing the residency appeal.

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**. Exceptions may be filed by email to ControversiesDisputesFilings@doe.nj.gov or by mail to Office of Controversies and Disputes, 100 Riverview Plaza, 4th Floor, PO Box 500, Trenton, New Jersey 08625-0500. A copy of any exceptions must be sent to the judge and to the other parties.



May 23, 2024
DATE

KATHLEEN M. CALEMMO, ALJ

Date Received at Agency:

Date Mailed to Parties:

KMC/tat