

EDU #1754-96
C # 42-97
SB # 18-97

JANINE BARNA, :
PETITIONER-APPELLANT, :
V. : STATE BOARD OF EDUCATION
BOARD OF EDUCATION OF THE : DECISION
TOWN OF IRVINGTON, ESSEX :
COUNTY, :
RESPONDENT-RESPONDENT. :

Decided by the Commissioner of Education, January 30, 1997

For the Petitioner-Appellant, Weinberg & Weinberg (James M. Weinberg,
Esq., of Counsel)

For the Respondent-Respondent, Schwartz, Simon, Edelstein, Celso &
Kessler (James R. Morano, Esq., of Counsel)

Janine Barna (hereinafter "petitioner"), a teaching staff member, alleged that the Board of Education of the Town of Irvington (hereinafter "Board") had violated N.J.S.A. 18A:37-2.1 when it failed to initiate expulsion proceedings against R.S., a student who had assaulted her. On December 12, 1996, an Administrative Law Judge ("ALJ") recommended granting summary judgment to the Board and dismissing the petition. The ALJ concluded that N.J.S.A. 18A:37-2.1, as amended in June 1995, does not require that an offending student be expelled. Therefore, the ALJ found that the Board had complied with the statute when it conducted disciplinary proceedings against R.S.

and imposed a five-day suspension. On January 30, 1997, the Commissioner adopted the findings and conclusions of the ALJ and dismissed the petition.

On February 25, 1997, petitioner's attorney filed a notice of appeal with the State Board "solely to preserve the rights" of petitioner. The State Board granted petitioner's request to place the briefing schedule in abeyance so that she could seek new counsel.

On July 15, 1997, the director of the State Board Appeals Office notified petitioner's counsel that a substitution of attorney was required to be filed by July 31, 1997. Petitioner was sent a copy of that correspondence. When no response was received, petitioner's counsel was advised by letter dated August 22, 1997 that "in the absence of a substitution of attorney, you continue to be the attorney of record" and that his appeal brief was therefore due on September 22, 1997. Petitioner was also sent a copy of the August 22 letter.

Petitioner, however, failed to file her appeal brief by September 22, 1997, and has still failed to file a brief in support of her appeal, more than six weeks after the extended due date. Nor has the petitioner provided any explanation for her failure to file or requested an additional extension.

Consequently, we dismiss the appeal in this matter for failure to perfect.
N.J.A.C. 6:2-1.12(a).

November 5, 1997

Date of mailing _____