

#48-11+

MAUREEN E. SMITH, : AMENDED DECISION
 :
 :
 PETITIONER, :
 :
 V. : COMMISSIONER OF EDUCATION
 :
 BOARD OF EDUCATION OF THE CITY OF : DECISION
 ENGLEWOOD, BERGEN COUNTY, :
 :
 RESPONDENT. :
 _____ :

SYNOPSIS

Petitioner asserted that the Board’s decision to withhold her increment for the 2004-2005 school year was arbitrary and capricious.

Both petitioner and respondent failed to appear at the scheduled hearing despite appropriate notice, and neither provided any explanation for their nonappearance. As there was no explanation for such nonappearance, the Commissioner dismissed the matter by decision dated January 25, 2011 (#48-11). Subsequently, counsel for petitioner submitted a Motion to Vacate Dismissal, along with supporting certification explaining, *inter alia*, why the parties did not attend the OAL hearing.

Accordingly, the Commissioner vacated the January 25, 2011 dismissal decision and returned the matter to the OAL for such actions and/or proceedings as are necessary to bring it to conclusion.

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.

March 31, 2011

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The record of this matter and the advisement of the parties failure to appear – transmitted to the Commissioner by the Office of Administrative Law (OAL) pursuant to *N.J.A.C. 1:1-14.4* – along with copies of notifications sent to the parties by the OAL on December 14, 2010, providing them thirteen (13) days to submit an explanation for such nonappearance, was previously reviewed by the Commissioner. As there was no explanation of such failure to appear filed by petitioner, by decision dated January 25, 2011 (# 48-11), the Commissioner dismissed this matter as a controversy before him.

On February 18, 2011, counsel for petitioner submitted a Motion to Vacate Dismissal in this matter along with a supporting certification explaining the circumstances why he did not attend the OAL hearing in this case or respond to the OAL’s December 14, 2010 notice within 13 days. Counsel’s certification states that both parties in this matter were under the misapprehension that this case had been settled. Through inadvertence, however, the matter was not concluded. Additionally, counsel reports that his offices were relocated last year and,

notwithstanding that he notified the OAL of the change, it appears that some notices were sent to their old address and not received or were lost. Counsel further explains that he entered the hospital for surgery on November 16, 2010 and did not return to his office full time after recuperation and therapy until January 17, 2011. In light of counsel's certified explanation, the Commissioner has determined to grant his motion to vacate dismissal of this matter.

Accordingly, the Commissioner's January 25, 2011 dismissal decision is hereby VACATED and this matter shall be returned to the OAL for such action and/or proceedings necessary to bring it to conclusion.

IT IS SO ORDERED.*

ACTING COMMISSIONER OF EDUCATION

Date of Decision: March 31, 2011

Date of Mailing: April 1, 2011

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