

P.E.W. AND C.J.W., on behalf of minor children, H.W. AND P.W.,	:	
	:	
PETITIONERS,	:	
	:	
V.	:	COMMISSIONER OF EDUCATION
	:	
BOARD OF EDUCATION OF LINWOOD AND THOMAS BARUFFI, CAMDEN COUNTY,	:	DECISION
	:	
RESPONDENTS.	:	

SYNOPSIS

Petitioners, parents of twin fourth grade students in the Board's District, sought an order placing the children in the homeroom of a teacher other than the teacher whose classroom to which they were assigned.

After petitioners' request for emergent relief was denied, the matter was settled. The settlement was approved by the ALJ. Subsequent to his approval of the settlement, the ALJ received a Motion to Enforce Litigants' Rights from petitioners, which he forwarded to the Commissioner requesting that it be considered as exceptions to the Initial Decision approving the settlement.

Upon review of the settlement and petitioners' submission, the Commissioner determined to reject the settlement and remand the matter for further proceedings, since the exceptions reveal that an amicable resolution of the matter had not, in fact, been reached. The Commissioner also noted that the settlement was couched primarily as a Section 504 plan and that he has no jurisdiction over 504 claims. Accordingly, the Commissioner reminded the parties that issues concerning such plans must be adjudicated in the appropriate forum.

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.
--

P.E.W. AND C.J.W., on behalf of minor children, H.W. AND P.W.,	:	
	:	
PETITIONERS,	:	
	:	
V.	:	COMMISSIONER OF EDUCATION
	:	
BOARD OF EDUCATION OF LINWOOD AND THOMAS BARUFFI, CAMDEN COUNTY,	:	DECISION
	:	
RESPONDENTS.	:	

The record, Order setting forth the parties settlement agreement¹, and Initial Decision issued by the Office of Administrative Law (OAL), pursuant to *N.J.A.C.* 1:1-19.1, have been reviewed. On February 25, 2002, the Administrative Law Judge (ALJ) forwarded to the Commissioner a communication petitioners submitted to the ALJ, which the ALJ requested be treated as exceptions to the Initial Decision.² The “Order to Enforce Litigant’s Rights,” which is set forth in petitioners’ “exceptions,” seeks an order which reads in pertinent part:

- a. The Respondents are to immediately comply with the expert’s recommendation to switch the Petitioner’s daughter from her current primary classroom setting;
- b. Require Respondents to reimburse Petitioners \$525.00 for the cost to conduct the medical evaluation and report;
- c. Legal fees and costs awarded in the amount of \$ _____ which is to paid [sic] by the Respondent within ____ days of the execution of this Order;

¹ The Commissioner notes that *N.J.A.C.* 1:1-19.1(a) requires that, where settlement terms are disclosed in writing, by consent order or stipulation, the document must be signed by all parties or their attorneys. In the instant matter, the document setting forth the settlement terms was not signed by petitioners or their attorney.

² *N.J.A.C.* 1:1-18.4(e) provides that in all settlements, exceptions shall not be filed, unless permitted by the ALJ or agency head.

d. Any other relief the Court may deem equitable and just.

Upon review of the record and petitioners' "exceptions," the Commissioner declines to approve the settlement as the final decision in this matter. The "exceptions" clearly indicate that amicable resolution of the dispute has not been reached. Moreover, the "exceptions," which were submitted to the ALJ less than one week from the date the ALJ issued his decision, are seeking enforcement of terms which had no force or effect, because the Initial Decision, including the settlement terms, had not been reviewed or approved by the Commissioner. *See N.J.A.C. 1:1-18.6*. Consequently, the Commissioner finds and determines that this matter shall be remanded to the OAL for modification of the settlement terms or plenary hearing on the merits, if the parties are unable to agree on modification of the settlement terms.

In so holding, however, the Commissioner notes that the settlement terms set forth in the Initial Decision appear to be elements of an accommodation plan under Section 504 of the Rehabilitation Act of 1973. As such, the Commissioner reminds the parties that he has no jurisdiction over the evaluation, determination of eligibility for and/or the development and implementation of Section 504 accommodation plans for students with disabilities.³ Therefore, the Commissioner cautions that such issues must be adjudicated consistent with procedures for, and in a forum of, appropriate jurisdiction, and any settlement herein must be confined to issues properly before the Commissioner. *See, for example, S.A., a minor child, By His Parents, L.A. and A.A. v. Monroe Township Board of Education*, OAL DKT. NO. EDS 331-00 (May 8, 2001), 2001 WL 670837 (N.J. Adm.)

³ The Commissioner notes for the record that there was no indication in the initial papers filed with the Commissioner that Section 504 was at issue.

Accordingly, the matter is hereby remanded to the OAL for further proceedings in conformity with this decision.⁴

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

Date of Decision: 3/11/02

Date of Mailing: 3/11/02

⁴ This decision may be appealed to the State Board of Education pursuant to *N.J.S.A.* 18A:6-27 *et seq.* and *N.J.A.C.* 6A:4-1.1 *et seq.*, within 30 days of its filing. Commissioner decisions are deemed filed three days after the date of mailing to the parties.