

#432-11 (OAL Decision: Not yet available online)

I.C.W., on behalf of minor child, J.W., :
 PETITIONER, :
 V. : COMMISSIONER OF EDUCATION
 BOARD OF EDUCATION OF THE : DECISION
 BOROUGH OF MOUNTAIN LAKES,
 MORRIS COUNTY, :
 RESPONDENT. :

SYNOPSIS

Petitioner appealed the Board’s determination that her child, J.W., was not eligible for membership in the National Honor Society as the result of a disciplinary suspension during his ninth grade year. Petitioner initially filed a motion for emergent relief, which was denied. The case was heard on its merits in August 2011. During the pendency of the proceedings, it was learned that J.W. had turned 18 and thereby attained adult status and standing to pursue this matter in his own right. Accordingly – because J.W. did not participate in the appeal process in any way – the respondent Board moved to dismiss the matter since I.C.W. lacks standing to bring the action on behalf of her adult son.

The ALJ found, *inter alia*, that: despite being advised by counsel for the petitioner that he is the only person with standing to pursue this matter, J.W. did not elect to submit a Certification of Substitution or appear at the OAL hearing to place on the record his desire to have his mother proceed as his representative; the non-notarized letter purportedly from J.W. indicating that he authorized his parents to act on his behalf was not convincing evidence that it was J.W.’s idea or intention to assert his rights in this case and to demand induction into the National Honor Society. Accordingly, the ALJ granted the Board’s motion to dismiss for lack of standing.

Upon comprehensive review and consideration, the Commissioner adopted the Initial Decision of the OAL as the final decision in this matter. Accordingly, the petition was dismissed.

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.

October 14, 2011

OAL DKT. NO. EDU 05838-11
AGENCY DKT. NO. 129-5/11

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The record of this matter and the Initial Decision of the Office of Administrative Law (“OAL”) have been reviewed, as have the exceptions filed pursuant to *N.J.A.C. 1:1-18.4* by the petitioner¹ and the Board of Education’s reply thereto.²

In her exceptions, the petitioner argues that the Administrative Law Judge (ALJ) erroneously dismissed the petition in this matter based on lack of standing. Petitioner contends that the ALJ’s dismissal was based upon nothing more than an assumption that J.W., who turned 18 in the middle of the case, had no interest in pursuing the matter. The petitioner also maintains that it is unreasonable to expect J.W. to proceed with this case on his own because he is profoundly deaf and language impaired. Petitioner further points out that although it was not notarized, J.W. signed a statement authorizing his parents to proceed on his behalf. Finally, the petitioner emphasizes that all of the testimony was completed prior to the ALJ’s decision to dismiss the case, and as such, there would be no prejudice or undue expense to the Board if the

¹ The exceptions filed by counsel for the petitioner state that I.C.W. and G.W. (J.W.’s father) are both petitioners in this matter; however the only petitioner of record is I.C.W.

² The record included the transcript from the hearing conducted at the OAL on August 1, 2011 as well as the emergent relief hearing. The record did not include a transcript from the hearing on August 15, 2011, during which the parties argued the Board’s motion to dismiss based on a lack of standing.

Commissioner were to require that the matter be decided on the merits. Therefore, the petitioner contends that J.W. is entitled to a determination as to whether the Board acted in an arbitrary, capricious or unreasonable manner when it denied his induction into the National Honor Society.

In reply, the Board urges the Commissioner to adopt the ALJ's determination that the petition should be dismissed based on a lack of standing. The Board maintains that it is undisputed that during the course of the appeal it was discovered that J.W. had turned 18, and when an individual reaches the age of 18 in New Jersey he must sue and be sued in his own name as an adult pursuant to *N.J.S.A. 9:17b-1* and *b-3*. Additionally, the Board notes that J.W. has not participated in any of the proceedings involving the dispute in this matter, including the board meeting where his parents challenged the decision not to admit him into the National Honor Society; the emergent relief hearing; the first day of the hearing on the merits; or even the oral argument where the Board argued that the case should be dismissed based upon a lack of standing. The Board further stresses that after the ALJ advised the petitioner of the steps necessary for J.W. to continue with this matter, he also declined to exercise those options. Therefore, the Board argues that based upon the circumstances it was reasonable for the ALJ to conclude that J.W. had no interest in pursuing the appeal.

Upon a comprehensive review of the record in this matter, the Commissioner concurs with the ALJ's recommendation that this case be dismissed based on a lack of standing. The Commissioner is in accord with the ALJ's determination that once J.W. turned 18, petitioner I.C.W. no longer had standing to pursue this claim. The ALJ afforded the petitioner and J.W. the option of having J.W. file a Certificate of Substitution or appear before the ALJ and inform him that he would like his parents to proceed on his behalf. J.W. did not exercise either option, and

as a result it was appropriate for the ALJ to conclude that J.W. did not intend to proceed with the appeal.

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

IT IS SO ORDERED.³

ACTING COMMISSIONER OF EDUCATION

Date of Decision: October 14, 2011

Date of Mailing: October 18, 2011

³ Pursuant to *P.L. 2008, c. 36 (N.J.S.A. 18A:6-9.1)*, Commissioner decisions are appealable to the Superior Court, Appellate Division.