

BOARD OF EDUCATION OF THE :  
TOWNSHIP OF LIVINGSTON, :  
ESSEX COUNTY, :  
PETITIONER, : COMMISSIONER OF EDUCATION  
V. : DECISION ON REMAND  
H.L. AND D.L., :  
RESPONDENTS. :

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SYNOPSIS

Petitioning Board sought calculation of pre-judgment interest in matter wherein petitioner was entitled to tuition in the amount of \$5,614.03 for the attendance of H.L. and D.L.'s two children in the Livingston schools when respondents were not domiciled in the District (October 1, 1990 until January 22, 1991). The Board calculated the pre-judgment interest for the period from January 22, 1991 through the date of the Commissioner's decision, May 26, 1998, to be \$2,310.36 by the method set forth in the Rules Governing the Courts, R.4:42-11, because it was unable to obtain any discovery from respondents as to their financial affairs. Respondents claimed loss of all financial records in the move to Livingston. In his opinion of May 28, 1999, the Commissioner determined that the record was insufficient to determine the interest by the method specified in *N.J.A.C. 6:24-1.16(d)1*, as directed by the State Board, and remanded the matter to OAL for the sole purpose of computing the pre-judgment interest in accord with the applicable regulation.

The ALJ concluded that one last attempt should be made to comply with the requirements of *N.J.A.C. 6:24-1.16(d)1*, that is, to calculate pre-judgment interest based upon "the average rate of interest earned on investments by" respondents from January 22, 1991 through May 26, 1998. The ALJ ordered respondents to produce all records and documents relating to their investments for the years 1991 through 1998 for the Board by April 15, 2000. Upon receipt of the information, the Board would review the records to ascertain the average rate of interest and submit the calculations. If respondents fail to disclose the information or provide inadequate information by the specified date the ALJ ordered that, upon submission of an affidavit stating that respondents failed to provide the required discovery, the Board would receive an order granting summary decision for pre-judgment interest in the amount of \$2,310.46 as calculated in accord with *N.J.A.C. 6:24-1.15* and *N.J.A.C. 6:24-1.16(d)2*.

The Commissioner concurred with the ALJ and adopted findings and determination in Initial Decision as his own. Commissioner directed respondents to remit the amount of \$2,310.36 to the Board.

June 23, 2000

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The record of this matter and the Initial Decision of the Office of Administrative Law have been reviewed. Respondent's exceptions and the Board's reply thereto are duly noted, and were considered by the Commissioner in reaching his decision.

Upon careful and independent review of the record, the Commissioner concurs with the conclusions of the ALJ and, accordingly, adopts the Initial Decision as his own. Respondents are directed to remit to the Board \$2,310.36, representing pre-judgment interest from January 22, 1991 through May 26, 1998 on \$5,614.03, the amount of tuition determined due and owing in the matter entitled, *Board of Education of the Township of Livingston v. H.L. and D.L.*, Commissioner Decision on Remand May 26, 1998, *aff'd* State Board of Education February 3, 1999, *aff'd* Appellate Division March 29, 2000, A-3897-98T1.<sup>1</sup>

IT IS SO ORDERED.<sup>2</sup>

COMMISSIONER OF EDUCATION

Date of Decision: June 23, 2000

Date of Mailing: June 23, 2000

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<sup>1</sup> As noted in the ALJ's Order on Motion, dated January 28, 2000, *N.J.A.C.* 6:24-1.16(d)1 governs the award of pre-judgment interest in this matter, notwithstanding that the more recent approach to awarding such interest, as recently adopted by the State Board of Education (*N.J.A.C.* 6A:3-1.17(d)) may provide guidance. Pursuant to *N.J.A.C.* 1:1-14.10(j), the Commissioner affirms the ALJ's Interlocutory Order of January 28, 2000.

<sup>2</sup> This decision, as the Commissioner's final determination, 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.