

S.H., on behalf of minor child, S.B., :  
PETITIONER, :  
V. : COMMISSIONER OF EDUCATION  
BOARD OF EDUCATION OF THE TOWNSHIP : DECISION  
OF WEST ORANGE, ESSEX COUNTY, :  
RESPONDENT. :  
\_\_\_\_\_ :

SYNOPSIS

Petitioner contested respondent's determination that her nephew, S.B., is ineligible to attend West Orange Township schools because she failed to demonstrate a family or economic hardship which would render the parent unable to support or provide care for the child, pursuant to *N.J.S.A. 18A:38-1(b)*. Respondent seeks tuition reimbursement for the alleged period of ineligible attendance. Petitioner failed to appear at hearing scheduled for October 16, 2006, at which the Board presented its proofs on the counterclaim for tuition reimbursement, which were admitted into evidence.

The ALJ found that since no proof was offered to dispute the Board's contention, S.B.'s parent failed to demonstrate that she is incapable of supporting or providing care for her son due to family or economic hardship, and concluded that S.B. is not entitled to a free education in West Orange Township schools. The ALJ further concluded that the Board is entitled to recover tuition pursuant to *N.J.S.A. 18A:38-1(b)(2)*, and granted the Board's application for reimbursement in the amount of \$15,457.28, plus \$77.51 per day for each day S.B. attends school in the district after October 16, 2006.

Upon a full and independent review of this matter, including timely filed exceptions submitted by counsel for the previously *pro se* petitioner, the Commissioner is compelled to reject the Initial Decision and remands the matter to the OAL for a hearing on the merits. The Commissioner concluded that in view of the particular circumstances described in petitioner's exceptions, it would be contrary to the interests of justice to deprive the petitioner of the opportunity to have the merits of her case decided.

<p>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>
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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. Exceptions on behalf of the previously *pro se* petitioner, filed by Matthew E. Przywozny, Esq., were submitted in accordance with the provisions of *N.J.A.C.* 1:1-18.4 as were reply exceptions on behalf of the Board and these submissions were fully considered by the Commissioner in reaching her determination herein.<sup>1</sup>

Exceptions on behalf of petitioner, in pertinent part, state:

This matter was scheduled for a hearing before Judge Paone on October 16, 2006. Unfortunately, Mrs. Hunter failed to appear for the hearing as she mistakenly believed it to be on another day. Nevertheless, Judge Paone gave Mrs. Hunter until October 27, 2006 to submit objections on which date the record was to close.

Mrs. Hunter came with her husband to see me on the afternoon of October 25<sup>th</sup> at which time I tried to make sense of what has transpired with this case up to this point. \*\*\*I promptly sent the materials to Judge Paone via overnight delivery in hopes that they would be considered.

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<sup>1</sup> It is noted that the Board's reply exceptions urge the Commissioner to reject petitioner's exceptions as untimely given that the Administrative Law Judge's (ALJ) decision was issued on October 27, 2006 and petitioner's exceptions were not received by the Board until November 14, 2006. However, the Commissioner observes that *N.J.A.C.* 1:1-18.4, in pertinent part, specifies: "[w]ithin 13 days from the date the judge's initial decision was mailed to the parties, any party may file written exceptions with the agency head." (emphasis added) Here the record indicates that the ALJ's decision was mailed to the parties on October 30, 2006. As such, petitioner's exceptions, filed with the Agency on November 8, 2006, are well within the allotted regulatory timeframe. Respondent Board's receipt of petitioner's exceptions operates to trigger the running of the regulatory timeline for the filing of reply exceptions (*N.J.A.C.* 1:1-18.4(d)).

Although Judge Paone acknowledges receipt of the letter and documents on October 27, 2006, \*\*\* it appears that he had filed his decision in the morning of the 27<sup>th</sup> and that the package arrived in the afternoon. \*\*\*

It is understandable that Judge Paone reached that conclusion as he was unable to consider the affidavit of S.B.'s biological mother wherein it (sic) she explains that she does not have a permanent residence and is unable to support her son. He was not able to consider [the] statement of Sherell Hunter wherein she confirms that she is a West Orange resident who is S.B.'s guardian.

If Judge Paone's ruling, although reasonable based upon the lack of any meaningful record, is not overruled, Mrs. Hunter will be unable to enroll S.B. in any school, as he does not have a permanent residence in any other School District. (Petitioner's Exceptions at 1-2)

Upon her independent review of the record and full consideration of counsel's exceptions on behalf of petitioner, the Commissioner is compelled to reject the Initial Decision of the Administrative Law Judge (ALJ) and return this matter to the OAL for a hearing on its merits. Notwithstanding petitioner's failure to appear on the scheduled hearing date, in view of the particular circumstances here, the Commissioner concludes that it would be contrary to the interests of justice to deprive petitioner of the opportunity to have the merits of her case decided.

Accordingly, the Initial Decision of the OAL is rejected and this matter is remanded to the OAL for adjudication on its merits. Petitioner is cautioned, however, that should she again fail to appear on a scheduled hearing date without just cause and prior notice to the ALJ, no further opportunities to pursue this matter will be accorded her.

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

COMMISSIONER OF EDUCATION

Date of Decision: December 1, 2006

Date of Mailing: December 1, 2006

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<sup>2</sup> 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.*