

BOARD OF EDUCATION OF THE CITY :
OF PORT REPUBLIC, ATLANTIC COUNTY, :
 :
PETITIONER, :
 :
V. : COMMISSIONER OF EDUCATION
 :
L.A. AND C.A., ON BEHALF OF MINOR : DECISION
CHILDREN, P.A. AND T.A., :
 :
RESPONDENT. :
 :
_____ :

SYNOPSIS

This matter arose out of a dispute between the parties over the continued enrollment of L.A. and C.A.'s children as tuition students in Port Republic schools, and was resolved through a settlement agreement in February 2005. Thereafter, the Board filed a complaint in Superior Court alleging that respondents had failed to adhere to the terms of the settlement, and seeking to enforce the settlement through removal of the children from school, or tuition for the 2004-05 school year. The matter went to trial in Superior Court; after several days of hearing, the judge suspended proceedings and referred the matter to the ALJ who had heard earlier proceedings in the matter at the OAL for clarification of the issues to be resolved pursuant to the meaning of the language of the agreement.

The ALJ found, *inter alia*, that: issues in this action are limited to those directly addressed in the February 2005 settlement agreement; paragraph 7 of the settlement agreement is controlling in this matter, and includes a sentence that says that the paragraph does not apply if respondents failed to establish residency as required in paragraph one of the settlement; it is uncontested that respondents failed to establish residency within the time frame required in the settlement; therefore, under the express language of paragraph 7, the Board has no cause of action in this matter. The ALJ concluded that the Board has not prevailed, and is not entitled to attorney's fees and costs; ultimate disposition of this issue, however, remains with the Superior Court judge who retained jurisdiction. The ALJ ordered the petition dismissed with the exception of the issues related to attorney's fees and costs, and ordered the matter returned to the Superior Court for final disposition.

The Commissioner concurs with the findings and conclusions of the ALJ, and adopts the Initial Decision as the final decision in this matter. The matter is returned to Superior Court for final resolution of the issues of attorney's fees and costs.

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 9, 2007

OAL DKT. NO. EDU 4154-06
AGENCY DKT. NO. 152-4/06

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. The Board's exceptions and respondents' reply thereto, filed in accordance with *N.J.A.C.* 1:1-18.4, were fully considered by the Commissioner in reaching her determination herein.¹

The Board's exceptions charge that in his Order of March 6, 2007 establishing the issues to be resolved in this matter, the Administrative Law Judge (ALJ) disregarded the directive of the Honorable William Nugent, J.S.C. which specifically directed that he determine whether respondents established residency in Port Republic for the entire 2004-05 school year. (Board's Exceptions at 3) The Board further excepts to the ALJ's interpretation of paragraphs 1

¹ By letter dated September 19, 2007, the Board urged that respondent's reply exceptions – filed on September 18, 2007, in response to the Board's primary exceptions filed on September 12, 2007 – were untimely and, therefore, should not be considered by the Commissioner. It is noted that, pursuant to *N.J.A.C.* 1:1-18.4(d) and *N.J.A.C.* 1:1-1.4, reply exceptions are due no later than 5 *business days*, after a party's receipt of primary exceptions. Consequently, respondents' submission in this regard was timely filed.

and 7 of the Settlement Agreement; his failure to ascribe proper weight to the testimony of its witnesses; and his failure to find the Board the prevailing party in this matter. (Id. at 5-6)

Upon careful and independent review of the record, according due deference to the Administrative Law Judge's (ALJ) credibility determinations² and finding the Board's exceptions without merit, the Commissioner concurs with the findings and conclusions of the ALJ for the reasons clearly articulated in his decision. In so doing, the Commissioner is in full agreement with and hereby adopts the ALJ's comprehensive Order dated March 6, 2007, which specifically clarifies and sets the parameters for the issues referred to him for adjudication by the Honorable William Nugent, J.S.C. In framing these issues, he read Judge Nugent's Order within the context of the Settlement Agreement and the causes of action set forth in the Board's Superior Court complaint, and further utilized his familiarity with the case and found:

[t]he Complaint filed before Judge Nugent sought to enforce the Settlement Agreement. Nowhere does the Settlement Agreement address future residency issues. While it is true that the Complaint demands removal of the children from the Board's school district, that demand must be read within the context of the language of the Settlement Agreement. ***While paragraph 2 of Judge Nugent's Order refers to "(whether her children were consistently sleeping at the premises located at 144 Pomona Avenue during the school year)", I conclude that said language represents a misconception of the intent of the Settlement Agreement. Judge Nugent left it to me [to] reconfigure the issues herein, and I have relied upon my knowledge of the case to do so. (ALJ's March 6, 2007 Order at 3-4)

Accordingly, the recommended decision of the OAL is adopted and the instant Petition of Appeal, with the exception of those issues over which jurisdiction has been retained

² The Commissioner "may not reject or modify any findings of fact as to issues of credibility of lay witness testimony unless it is first determined from a review of the record that the findings are arbitrary, capricious or unreasonable or are not supported by sufficient, competent and credible evidence in the record." *N.J.S.A.* 52:14B-10(c). The record before the Commissioner provides no cause for modification or rejection in this regard.

by Superior Court, is hereby dismissed. This matter shall be returned to the Honorable William E. Nugent, J.S.C., Superior Court of New Jersey, Law Division, Atlantic County, for final resolution of the issues of attorney's fees and costs.

IT IS SO ORDERED.³

COMMISSIONER OF EDUCATION

Date of Decision: October 9, 2007

Date of Mailing: October 9, 2007

³ 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.*