

BOARD OF EDUCATION OF THE :
TOWNSHIP OF NORTH BRUNSWICK, :
MIDDLESEX COUNTY, :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE : DECISION
BOROUGH OF SOMERVILLE, :
SOMERSET COUNTY AND NEW JERSEY :
STATE DEPARTMENT OF EDUCATION, :
RESPONDENTS. :
_____ :

SYNOPSIS

The Board of Education of the Township of North Brunswick challenged the determination of the Somerset County Superintendent that North Brunswick is the district of origin and residence of the children of the S family, and asked the Commissioner to determine that the family is homeless and that Somerville was their last permanent residence. Respondents both filed answers, and moved to dismiss the petition on the grounds that it had been filed well beyond the allowable 30-day filing period authorized by *N.J.A.C. 6A:17-2.8(b)* and *N.J.A.C. 6A:23-5.2(d)*.

The ALJ found that: North Brunswick was aware of the County Superintendent’s determination that it was the residence of the children in question on or about January 17, 2007, and did not file its notification with the New Jersey Department of Education, Division of Finance, until June 8, 2007; the filing was substantially beyond the permitted 30-days from receipt of notice of the County Superintendent’s determination; no legitimate reason for failure to file a timely notice has been presented. The ALJ concluded that North Brunswick failed to comply with *N.J.A.C. 6A:23-5.2(d)*, and therefore the petition should be dismissed.

Upon full consideration, the Commissioner concurred with the ALJ and adopted the Initial Decision as the final decision in this matter; the petition was dismissed as untimely.

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.

OAL DKT. NO. EDU 10499-07
AGENCY DKT. NO. 335-9/07

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. Exceptions of petitioner North Brunswick Board of Education (North Brunswick) and reply exceptions of respondent Somerville Board of Education (Somerville) were filed in accordance with the prescriptions of *N.J.A.C. 1:1-18.4*.

On exception, North Brunswick attempts to argue: 1) that summary decision was prematurely granted as the Administrative Law Judge (ALJ) merely “presumed” that the Board had notice of the County Superintendent’s January 17, 2006 decision, without any factual or discovery support; 2) that this matter is improperly dismissed as it has only been adjudicated with respect to tuition derived by the district “for school funding purposes,” and failed to address the legal obligation of respondent Somerville to pay on the legal theories of quantum meruit or unjust enrichment; and 3) there is a statutory entitlement to reimbursement for tuition and

transportation costs which cannot be restricted by an administrative code 30-day limitation provision.

In response, respondent Somerville posits: 1) petitioner's argument with respect to summary decision being prematurely granted is wholly disingenuous as **at no time** during the course of this matter did it either allege that it was unaware of the determination of the County Superintendent or offer any excuse for its delay in appealing that determination; 2) to the extent petitioner believed it may have had other theories of recovery in this matter, it should have raised them in its underlying pleadings or responsive brief. Advancement of speculative claims must be made before – not after – the issuance of the Initial Decision; and 3) as the County Superintendent determined that petitioner, not Somerville, was the district of origin of the family in this matter, petitioner possessed no statutory entitlement to tuition and transportation which was curtailed by administrative regulations.

Upon a careful and independent review, the Commissioner – finding petitioner's exceptions without merit – concurs with the ALJ that this matter is appropriately dismissed as untimely.

Accordingly, the recommended decision of the OAL is adopted – for the reasons clearly articulated therein – and the instant Petition of Appeal is dismissed.

IT IS SO ORDERED.*

COMMISSIONER OF EDUCATION

Date of Decision: March 3, 2008

Date of Mailing: March 3, 2008

* 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.*