

#127-05

H.R., on behalf of minor child, N.P., :
PETITIONER, : COMMISSIONER OF EDUCATION
V. : DECISION
BOARD OF EDUCATION OF THE :
CITY OF CLIFTON, PASSAIC COUNTY, :
RESPONDENT. :
_____ :

SYNOPSIS

Petitioner appealed the Board’s residency determination that her niece, N.P., was not eligible for a free education in the City of Clifton School District, based on family and economic hardship. The Board failed to submit an Answer to the petition. Therefore, on May 21, 2003, the Commissioner granted summary decision in favor of the petitioner.

Subsequently, the Board filed an appeal to the State Board of Education, explaining that “miscommunications” in the Board’s offices resulted in the petition not being forwarded to its counsel; that failure to file an answer to the petition was excusable given the “confusion within the Board offices”; and asserting that the burden in this matter is on the petitioner to demonstrate the existence of a family or economic hardship which would entitle her niece to a free public education in the Clifton schools under the standard set forth in N.J.S.A. 18A:38-1b. The petitioner failed to file an answer brief. The State Board vacated the Commissioner’s decision and remanded the matter to him for further proceedings on the petition.

A hearing was subsequently scheduled at the OAL. Petitioner failed to appear, and failed to submit explanation for such nonappearance. The Commissioner therefore dismissed the petition of appeal with prejudice. However, notwithstanding dismissal of the petition, the Commissioner noted that the Board’s Answer in this residency matter contained counterclaim for tuition in an unspecified amount, which was left unresolved by the ALJ. The Commissioner thereby remanded this matter to the OAL for supplementation of the record and an appropriate recommended order regarding the payment of tuition.

<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>

OAL DKT. NO. EDU 11801-03
AGENCY DKT. NO. 82-3/03

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_____ :

The record of this matter and the advisement of petitioner's failure to appear transmitted to the Commissioner by the Office of Administrative Law (OAL) pursuant to *N.J.A.C.* 1:1-14.4, along with a copy of the notification sent to the parties by OAL on February 24, 2005 and providing petitioner ten days to submit an explanation for such nonappearance, have been reviewed. There being no explanation filed by petitioner, the petition of appeal is hereby dismissed with prejudice due to petitioner's failure to appear at hearing or provide an explanation for her nonappearance.¹

Notwithstanding dismissal of the petition, however, the Commissioner notes that the Board's Answer in this residency matter contained a counterclaim for tuition which was left unresolved by the Administrative Law Judge. In that the record before the Commissioner contains no affidavit of a responsible Board official attesting to

¹ In so holding, the Commissioner notes petitioner's letter filed on August 16, 2004, which could be read as a statement of intent to rely on the arguments therein and documents previously submitted, thereby explaining petitioner's failure to appear at hearing; even granting such an intent and reviewing the record on that basis, however, the evidence is insufficient to support a finding of entitlement for N.P. to attend the schools of respondent's district free of charge pursuant to *N.J.S.A.* 18A: 38-1.

the amount of tuition claimed by the Board as a consequence of the ineligible attendance of N.P. in its schools, this matter is hereby remanded to the OAL for supplementation of the record in this regard and an appropriate recommended order regarding the payment of tuition.

IT IS SO ORDERED.^{2 3}

COMMISSIONER OF EDUCATION

Date of Decision: April 7, 2005

Date of Mailing: April 7, 2005

² It is noted that this matter was decided on remand from the State Board of Education, which determined, in a decision dated November 5, 2003, that the Commissioner's May 21, 2003 grant of summary decision to petitioner, due to the Board's failure to answer the petition, should be vacated. The State Board reasoned that such relief was warranted because petitioner did not oppose the Board's claim that its failure to answer was excusable under the circumstances, and because, in a matter where judgment has been entered on a default basis, it is appropriate to resolve all doubts in favor of the party seeking relief. (Slip Opinion at 2)

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.*