

#195-07 (No OAL Decision)

BOARD OF EDUCATION OF THE :  
TOWNSHIP OF WEST ORANGE, :  
ESSEX COUNTY, :

PETITIONER, :

V. : COMMISSIONER OF EDUCATION

NEW JERSEY STATE DEPARTMENT : DECISION  
OF EDUCATION, :

RESPONDENT. :

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SYNOPSIS

The West Orange Board of Education challenged the decision of the Interim Essex County Superintendent that petitioner must provide free public education to five homeless children following a determination that the last known residence of the children's mother was in petitioner's district. Respondent Department filed a motion to dismiss, citing petitioner's failure to exhaust its administrative remedies pursuant to *N.J.A.C. 6A:17-2.8(b)* and *N.J.A.C. 6A:23-5.2(d-f)*.

The Commissioner finds that *N.J.A.C. 6A:17-2.8(b)* and *N.J.A.C. 6A:23-5.2(d-f)* require the petitioner to first bring an appeal of the county superintendent's determination to the Division of Finance in the Department of Education; as petitioner has not done so, the Commissioner lacks jurisdiction in this matter. Accordingly, the petition is dismissed and the matter referred to the Division of Finance for decision pursuant to the regulations.

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.

May 31, 2007

BOARD OF EDUCATION OF THE :  
TOWNSHIP OF WEST ORANGE, :  
ESSEX COUNTY, :  
PETITIONER, :  
V. : COMMISSIONER OF EDUCATION  
NEW JERSEY STATE DEPARTMENT : DECISION  
OF EDUCATION, :  
RESPONDENT. :  
\_\_\_\_\_ :

This matter was initiated as a challenge by the petitioning West Orange Board of Education to the decision by the Interim Essex County Superintendent of Schools that petitioner should provide free public education for five children who are currently housed in a shelter in Newark. The decision was based upon the Superintendent’s determination that the last known residence of the children’s mother, S.M., before she became homeless was in petitioner’s district.

The respondent, New Jersey State Department of Education, answered by way of a motion to dismiss the petition, alleging that petitioner failed to exhaust its administrative remedies. Respondent referred to *N.J.A.C. 6A:17-2.8(b)*, which is the regulation that allows a school district which has been designated by a county superintendent as a homeless child’s district of origin to appeal to the Department of Education. *N.J.A.C. 6A:17-2.8(b)* expressly directs that a district wishing to make such an appeal follow the instructions set forth in *N.J.A.C. 6A:23-5.2(d-f)*.

The first of those provisions directs the appealing district to “submit a written notification of a dispute to the Division of Finance [of the Department of Education], within 30 days of the receipt of a final notice that a child was determined to be a resident of the district for purposes of state funding.” *N.J.A.C.* 6A:23-5.2(d). The second provision instructs the Division of Finance to “attempt to resolve the dispute administratively and [ ] notify the district board of education whether a redetermination of district of residence shall be made ....” *N.J.A.C.* 6A:23-5.2(e). The third provision allows a district board of education to “initiate a formal proceeding before the Commissioner to resolve such a dispute if the Division of Finance is unable to resolve a dispute within the 90-day time limit . . . .” *N.J.A.C.* 6A:23-5.2(f).

Thus, respondent is correct that the regulations require that petitioner first bring its appeal of the county superintendent’s determination to the Division of Finance in the Department of Education. As petitioner has not done so, the Commissioner does not yet have jurisdiction.

In its reply to respondent’s motion to dismiss the petition, petitioner argued against the dismissal of its appeal, citing as support of its position a sentence in the letter from Interim Essex County Superintendent of schools to petitioner, memorializing his determination that petitioner is responsible for the education of S.M.’s children. That sentence stated that petitioner had “the right to appeal this decision to the Department of Education/Bureau of Controversies and Disputes pursuant to *N.J.A.C.* 6A:23-5.2(d), (e) and (f).”

While petitioner does have the right to appeal to the Commissioner of Education through the Bureau of Controversies and Disputes, it must follow the procedures set forth in the regulation which the Interim Essex County Superintendent cited. As discussed above, that

regulation requires petitioner to first give notice to the Division of Finance which, in turn, must attempt to resolve the dispute administratively.

Accordingly, the petition before the Commissioner is dismissed and this matter is hereby referred to the Division of Finance for decision pursuant to *N.J.A.C. 6A:17-2.8(b)* and *N.J.A.C. 6A:23-5.2 (d-f)*.

IT IS SO ORDERED.<sup>1</sup>

COMMISSIONER OF EDUCATION

Date of Decision: May 31, 2007

Date of Mailing: May 31, 2007

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<sup>1</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.*