

C #251-03L
SB # 21-03

E.Y., on behalf of minor child, B.C., :
PETITIONER-RESPONDENT, : STATE BOARD OF EDUCATION
V. : DECISION
BOARD OF EDUCATION OF THE CITY :
OF CLIFTON, PASSAIC COUNTY, :
RESPONDENT-APPELLANT. :
_____ :

Decided by the Commissioner of Education, May 20, 2003

For the Petitioner-Respondent, E.Y., pro se

For the Respondent-Appellant, Chasan, Leyner, Bariso & Lamparello
(Anthony V. D'Elia, Esq., of Counsel)

In a letter decision issued on May 20, 2003, the Commissioner of Education granted summary judgment to the petitioner, who claimed that her niece, B.C., was entitled to a free public education in the Clifton school district. The Commissioner deemed the petitioner's claim to be admitted after the Clifton Board failed to submit an answer to the petition. Accordingly, he ordered the Board to continue to admit B.C. into its public school system free of charge.

The Clifton Board filed the instant appeal to the State Board of Education, explaining that "through certain miscommunications," the petition had not been forwarded to its counsel since "the Board's staff apparently was confused as to which employee was to forward the Notices to Board counsel." Appeal Brief, at 2. It contends

that its failure to file an answer to the petition “was excusable due to the aforementioned confusion within the Board offices.” Id. The Board asserts that “an application to set aside a default judgment is to be ‘viewed with great liberality and every reasonable ground for indulgence is tolerated to the end that a just result is reached.’ See Local 478 v. Baron-Holding Corp., 224 N.J. Super. 485, 488-89 (App. Div. 1988).” Id. It points out 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 school district under the standard set forth in N.J.S.A. 18A:38-1b. The petitioner did not file an answer brief.

Resolving all doubts in favor of the party seeking relief, Mancini v. EDS, 132 N.J. 330, 334 (1993), and taking into account the fact that the petitioner has not filed a brief in opposition to the appeal, we conclude that the Board has demonstrated that relief is warranted under the circumstances. Therefore, we vacate the Commissioner’s decision and remand this matter to him for further proceedings on the petition.

November 5, 2003

Date of mailing _____