

EDU #6438-02  
C # 503-03  
SB # 37-03

GEORGE S. OSBORNE, :  
 :  
 PETITIONER-APPELLANT, :  
 :  
 V. :  
 :  
 BOARD OF EDUCATION OF THE : STATE BOARD OF EDUCATION  
 TOWNSHIP OF LAKEWOOD, OCEAN :  
 COUNTY; MEIR GRUNHUT, BOARD : DECISION  
 PRESIDENT, NORMAN BELLINGER, :  
 BOARD VICE PRESIDENT, CHET :  
 GALDO, HARVEY KRANZ, SARA :  
 LICHTENSTEIN, IRENE MICCIO, :  
 ABRAHAM OSTREICHER, NEAL :  
 PRICE AND LEONARD THOMAS, :  
 MEMBERS OF THE BOARD, AND :  
 DR. ERNEST J. CANNAVA, :  
 SUPERINTENDENT OF THE :  
 LAKEWOOD SCHOOL DISTRICT, :  
 :  
 RESPONDENTS-RESPONDENTS. :

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Decided by the Commissioner of Education, August 26, 2003

Decision on motion by the State Board of Education, January 7, 2004

For the Petitioner-Appellant, George S. Osborne, pro se

For the Respondents-Respondents, Michael I. Inzelbuch, Esq.

For the Amicus Curiae, Coleman Law Firm (Ronald D. Coleman, Esq., of Counsel) and Mordechai Biser, Esq., Associate General Counsel, Agudath Israel of America, pro hac vice)

The petitioner, a taxpayer residing in Lakewood, sought a ruling from the Commissioner of Education that the Lakewood Board of Education's courtesy busing

policy was unlawfully discriminatory and designed to segregate students on the basis of race, religion and gender. The Board responded that both the policy and its implementation were neutral and, following transmittal of the matter to the Office of Administrative Law, it moved for summary decision. On August 26, 2003, the Commissioner granted the Board's motion. The Commissioner concluded that the petitioner had not met his burden to present specific facts to show that the busing policy was being applied in a discriminatory manner. Consequently, the petitioner had failed to demonstrate that the Board's policy and its implementation were contrary to law.

The petitioner filed the instant appeal to the State Board of Education.

After a thorough review of the record, we affirm the decision of the Commissioner for the reasons expressed therein. In so doing, we deny the petitioner's motion to compel production of documents and to close the record, which was filed on December 2, 2003, along with his second motion to close the record, which was filed on February 13, 2004.

In his motion to compel, the petitioner requests the same documents and information that he sought in previous motions. We considered and denied those motions in a decision rendered on January 7, 2004. Hence, we deny the motion now before us.

In his motions to close the record, the petitioner argues that the Board failed to file a brief in answer to his appeal brief within the timelines established by N.J.A.C. 6A:4-1.11. The petitioner requests that the record be closed, his appeal be deemed uncontested pursuant to R. 1:6-2, the allegations in his claim for relief be deemed to be

admitted pursuant to R. 4:5-5, and any defenses raised by the Board be stricken as insufficient in law pursuant to R. 4:6-5.

In our decision of January 7, 2004, we directed that the Board's answer brief was due within 20 days. In a letter dated January 26, 2004 and received on January 28, the Board indicated that it was relying on its submissions filed during the proceedings below, which are included in the record on appeal pursuant to N.J.A.C. 6A:4-1.8(a). Thus, regardless of the timeliness of the Board's answering letter,<sup>1</sup> the documents on which it relies in response to the petitioner's appeal brief are already part of the record before us, and we have reviewed them in determining this matter. See N.J.A.C. 6A:4-1.12(b) (if a respondent fails to meet a filing deadline for an answer brief, the State Board may consider the matter on the record then before it). Consequently, closing the record so as to preclude review of the Board's answering letter referencing its previous submissions would serve no purpose. We add in that regard that the court rules cited by the petitioner, R. 1:6-2, dealing with motions and briefs in the trial courts, R. 4:5-5, the effect of failure to deny allegations in a pleading setting forth a claim for relief in the courts, and R. 4:6-5, striking from any pleading any defense insufficient in law, are not applicable to these proceedings and, in any event, do not provide any basis for the relief sought by the petitioner.

April 7, 2004

Date of mailing \_\_\_\_\_

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<sup>1</sup> We note that any rule may be relaxed by the State Board in its discretion if adherence to that rule would result in an injustice. N.J.A.C. 6A:4-1.19.