

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 ON MOTIONS
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. :

Decided by the Commissioner of Education, August 26, 2003

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)

Appellant in this case is a taxpayer residing in Lakewood who sought a ruling from the Commissioner of Education that the Lakewood Board of Education's 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.

The Administrative Law Judge (“ALJ”) recommended that the Commissioner grant summary decision to the Board. The ALJ’s consideration of the matter focused on the propriety of the Board’s busing policy that was set forth in Local Policy 3541.31, which was first adopted by the Board on June 25, 1975, and revised on June 12, 1995, at which time appellant was a member of the Board. Because the appellant had been on the Board when the policy was revised but had not challenged it until seven years later, the ALJ found that appellant’s petition was untimely and should be dismissed on that basis. The ALJ also found that appellant did not have the requisite standing to challenge the Board’s policy under the New Jersey State Constitution and State law or to pursue his claims that the Board’s policy violated the United States Constitution and federal law except for his claim that the policy violated the Establishment Clause of the United States Constitution. The ALJ, however, concluded that appellant could not show that the Board’s application of its busing policy violated the Establishment Clause since the Board offered transportation to all students in the district without regard to religion.

The Commissioner rejected the ALJ’s recommendation to dismiss the petition on the grounds that it was untimely. While he agreed with the ALJ’s conclusion that appellant did not have the requisite standing to pursue his claims

under the United States Constitution and federal law except for his Establishment Clause claim, the Commissioner found that appellant did have standing to challenge the Board's busing policy under the New Jersey State Constitution. However, the Commissioner concluded that appellant had not met his burden to present specific facts to show that the busing policy at issue was being applied in a discriminatory manner and, therefore, had failed to demonstrate that Policy 3541.31 and its implementation were contrary to law.

On September 15, 2003, appellant filed a notice of appeal with the State Board of Education, and on November 5, he filed his appeal brief. However, on October 6, 2003, he filed two motions seeking to compel the production of documents, and the briefing schedule was placed in abeyance pending resolution of the motions.

One of the motions filed by appellant alleges that the copy of Local Policy 3541.31 that the Board provided him is not authentic, and he appears to be seeking an order from the State Board compelling the Lakewood Board to provide him with all documents and "statements" relating in any way to Local Policy 3541.31. In his second motion, appellant alleges that the Commissioner and/or members of his staff "deliberately or otherwise, altered, amended, or otherwise manufactured a document purporting to be Lakewood's 1979 or 1995 amended 'courtesy busing' policy." He specifically challenges the inclusion of a statutory citation in the Commissioner's decision.

On October 10, 2003, appellant filed a third motion. In this motion, appellant argues that the copies of Local Policy 3541.31 in the record are not

authentic and because that document does not include the words “courtesy busing,” the document is hearsay and should be excluded from the record. Appellant contends, therefore, that there is no residuum of legal and competent evidence to support the Commissioner’s decision and that the decision should be reversed and the matter remanded.

We reject as entirely without merit appellant’s contentions that the copies of Local Policy 3541.31 that are included in the record are not authentic. We also reject any suggestion that the Commissioner or any staff member in any way altered or changed any document in the record. Nor would we direct production of documents where as here, the appellant was offered the opportunity to come to the Department of Education to review all of the documents included in the record but did not avail himself of this opportunity. Certification of Sandra Farrell, at 1. Similarly, we find nothing to warrant excluding Local Policy 3541.31 from consideration in deciding this appeal. Therefore, the State Board denies all three of the motions that have been filed by the appellant, and we direct that the briefing schedule on the merits of this matter proceed. Accordingly, the Lakewood Board’s answer brief will be due twenty days from the date of this decision.

January 7, 2004

Date of mailing _____