

BOARD OF EDUCATION OF THE :
TOWNSHIP OF LAKEWOOD, :
OCEAN COUNTY, :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
NEW JERSEY STATE DEPARTMENT OF : DECISION ON MOTION
EDUCATION, DIVISION OF FINANCE, :
RESPONDENT. :
:

SYNOPSIS

Petitioning Board challenged the calculation of District income for the Board that was utilized in the determination of its State aid entitlement for the 1998-99 school year. Alleging it acted pursuant to statute in providing State aid to the Board for the 1998-99 school year, respondent Department moved for dismissal of the petition in that petitioner had failed to identify evidence and allege facts essential to its claims.

ALJ concluded that petitioner set forth sufficient facts in its petition to maintain its action against respondent. ALJ found petitioner clearly demonstrated a property interest and, thus, was protected by due process for its claim of alleged entitlement. ALJ concluded that the matter petitioner sought to adjudicate was properly before the OAL for determination as a "contested case." *N.J.S.A. 52:14B-2(b)*. Moreover, the ALJ concluded that respondent's motion to dismiss, grounded upon respondent's assertion that the petition did not comport with *N.J.A.C. 6:24-1.3*, was denied.

Commissioner concurred with the ALJ that respondent's motion was properly denied. Commissioner found that the express language of *N.J.S.A. 18A:7F-15* provides petitioner with the right of appeal, and that the parameters of such appeals have not, as yet, been further explicated through rule or decisional law. Matter was to continue at OAL for further proceedings as a contested case, the primary issue to be resolved being whether the district income wealth data relied upon by respondent were accurate.

OAL DKT. NO. EDU 8816-98
AGENCY DKT. NO. 182-6/98

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This matter was opened before the Commissioner on June 4, 1998. Thereafter, respondent filed a Motion to Dismiss, and the record was transmitted to the Office of Administrative Law (OAL), with a request that said motion be decided prior to scheduling a hearing on the merits.¹ On April 12, 1999, the Administrative Law Judge (ALJ) issued an interlocutory order which was inadvertently transmitted to the Commissioner for review as an initial decision. At respondent's request, arguments submitted on exception were deemed an application for interlocutory review, in accordance with *N.J.A.C.* 1:1-14.10, and, following petitioner's submission of a reply, the request for review was granted.

Respondent argues, for the reasons set forth in its papers on Motion to Dismiss, that the within Petition of Appeal pleads no facts or information calling into question the

¹ To the extent that the Initial Decision may be read to suggest that the transmittal of the record to OAL pursuant to the Administrative Procedure Act necessarily signifies that the Commissioner has determined it to be a contested matter deserving of a "trial-type hearing," (Initial Decision at p. 20), the Commissioner notes that transmittal of a matter to the OAL does not compel a determination that a hearing must be held, as OAL rules expressly provide for the filing of motions to dismiss and motions for summary decision.

corrected income calculation and state aid figure. (Respondent's Brief at p. 3) In this connection, respondent asserts that the ALJ's reliance on *J.E., supra*, is misplaced, in that petitioner "has no property right with respect to state school aid that would trigger an entitlement to a hearing." (*Id.* at pp. 4-5) Additionally, respondent reasserts its position that petitioner is not entitled to stabilization aid in the amount of the difference in aid figures from February 1998 to March 1998. (*Id.* at p. 7) Finally, respondent argues that the first issue, as identified on page two of the ALJ's decision, erroneously suggests that respondent bears the burden of proof in this case and "appears to set forth that the appropriateness of the income calculation is at issue, rather than the accuracy thereof.***" (*Id.* at pp. 7-8)

In reply, petitioner affirms that the Petition of Appeal should not be dismissed, in that the Board has pled sufficient facts to withstand respondent's motion. (Petitioner's Reply at p. 4) Further, petitioner maintains that it is entitled to appeal the calculation and amount of state aid, and asserts that it is also entitled to stabilization aid, as per a March 3, 1999 memorandum issued by the Department of Education. (*Id.* at p. 6)

Upon careful review of the record, the Commissioner concludes, as did the ALJ, that respondent's motion is properly denied.² Initially, the Commissioner finds that the express language of *N.J.S.A. 18A:7F-15* provides petitioner with the right of appeal, and that the parameters of such appeals have not, as yet, been further explicated through rule or decisional law. Moreover, nowhere in the record is there any indication of what type of source or sources petitioner might have relied upon to buttress with facts the claim of its petition that the district income wealth data relied upon by the Department were inaccurate. Therefore, given these circumstances, dismissal of the petition at the current juncture would be premature.

² In reaching this determination, the Commissioner finds no need to address the issue of whether petitioner has a property interest sufficient to sustain the within Petition of Appeal.

In so determining, however, the Commissioner specifically clarifies that, in further proceedings in this matter, petitioner will maintain the burden of proof. Additionally, as respondent correctly notes, the primary issue to be resolved in such proceedings is whether the district income wealth data relied upon by the Department were accurate. (*N.J.S.A.* 18A:7F-15)

Accordingly, for the reasons set forth above, respondent's motion to dismiss is hereby denied. This matter shall continue at the OAL for further proceedings as a contested case.

IT IS SO ORDERED.³

COMMISSIONER OF EDUCATION

May 19, 1999

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.* 6:2-1.1 *et seq.*, within 30 days of its filing. Commissioner decisions are deemed filed three days after the date of mailing to the parties.