

S.M., on behalf of minor child, J-D.G., :  
PETITIONER, :  
V. : COMMISSIONER OF EDUCATION  
BOARD OF EDUCATION OF THE : DECISION  
SOUTH ORANGE AND MAPLEWOOD :  
SCHOOL DISTRICT, ESSEX COUNTY, :  
RESPONDENT. :

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SYNOPSIS

Petitioner challenged the Board's residency determination. Petitioner failed to attend the hearing and the ALJ dismissed the petition and awarded \$8,250 in tuition to the Board. Petitioner sent a letter of explanation for missing the hearing to the Commissioner stating that she forgot the hearing date because of the length of time between the notice of hearing and the date of the hearing.

The Commissioner found that petitioner's explanation, raised for the first time some six weeks after the ALJ's decision, did not advance sufficient basis to compel overturning the ALJ's decision. The Commissioner noted that petitioner's forgetting of the hearing date and her failure to comply with numerous discovery directives represented significant disregard for the fundamental requirements of this forum and could not be countenanced.

The petition was dismissed and tuition assessed in the amount of \$8,250.

February 22, 2002

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.

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. On February 4, 2002, petitioner filed a letter of explanation with the Commissioner for her failure to appear at hearing which, in pertinent part, stated “[a] letter in regard to a court date was sent tome [sic] about four to five months before the court date, therefore[,] when the court date arrived I forgot about it.” Petitioner requests that this matter be reopened “so that [she] can provide the additional information requested by the Board of Education and to possibly reschedule another court date.” (*Ibid.*)

After due consideration of petitioner’s explanation, proffered for the first time almost six weeks after the Administrative Law Judge’s (ALJ) decision in this matter was rendered, the Commissioner finds and determines that petitioner has not advanced sufficient cause to compel the reversal of the ALJ’s recommended disposition of this matter. In so concluding, the Commissioner was particularly influenced by the apparent indifference petitioner has heretofore displayed with respect to the importance of her responsibilities in bringing this matter before him. Such indifference is evidenced not only by her “forgetting” the scheduled

Court date, but also by the within record which is replete with requests from Board counsel to the ALJ requesting assistance from the Court to compel petitioner to fulfill her discovery obligations pursuant to the administrative rules and prior directives of the Court.<sup>1</sup> The Commissioner cannot, on the basis stated by petitioner, countenance such disregard of the fundamental rules of this forum.

Thus, upon his careful review, the Commissioner concurs with the ALJ that, because petitioner neither appeared for the hearing scheduled in this matter, nor provided an acceptable explanation for such nonappearance, she has failed to carry her requisite burden of proof that J-D.G. was entitled to attend the District's schools free of charge.

Accordingly, the Initial Decision of the OAL is affirmed for the reasons expressed therein. The petition of appeal is dismissed and petitioner is directed to reimburse the Board a total of \$8,250, representing tuition for the 165 days of J-D.G.'s ineligible attendance in the District's schools during the 2000-2001 school year.

IT IS SO ORDERED.<sup>2</sup>

COMMISSIONER OF EDUCATION

Date of Decision: 2/22/02

Date of Mailing: 2/25/02

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<sup>1</sup> See letters dated December 19, 2001, August 15, 2001, August 13, 2001, and May 22, 2001 from Board counsel to ALJ Richard McGill.

<sup>2</sup> This decision, as the Commissioner's final determination 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:2-1.1 *et seq.* Commissioner decisions are deemed filed three days after the date of mailing to the parties.