

OAL DKT. NO. EDU 6012-04 (http://lawlibrary.rutgers.edu/oal/html/initial/edu06012-04_1.html)
AGENCY DKT. NO. 178-5/04

BOARD OF EDUCATION OF THE BOROUGH	:	
OF MILFORD, HUNTERDON COUNTY,	:	
	:	
PETITIONER,	:	
	:	
V.	:	COMMISSIONER OF EDUCATION
	:	
NEW JERSEY STATE DEPARTMENT OF	:	DECISION
EDUCATION,	:	
	:	
RESPONDENT.	:	
_____	:	

The record and the Initial Decision issued by the Office of Administrative Law (OAL) have been reviewed. Petitioner’s exceptions and respondent’s reply thereto were submitted in accordance with *N.J.A.C.* 1:1-18.4,¹ and were considered by the Deputy Commissioner to whom this matter has been delegated for decision, pursuant to *N.J.S.A.* 18A:4-33, in reaching his decision to remand this matter to the OAL for revision of the Initial Decision, and/or further proceedings as necessary, for the reasons set forth below.²

Upon a thorough review of the Initial Decision, the Deputy Commissioner finds that the ALJ: 1) failed to set forth any explanation as to his reasoning in concluding that the

¹ Notwithstanding petitioner’s assertion in its letter of January 12, 2005 that respondent’s reply exceptions, filed on January 7, 2005, were not timely, as respondent correctly points out in its responsive letter of January 14, 2005, *N.J.A.C.* 1:1-1.4 specifies that “[i]n computing any period of time fixed by rule or judicial order, the day of the act or event from which the designated period begins to run is not to be included” and further provides that “[i]n computing a period of time of less than seven days, Saturday, Sunday and legal holidays shall be excluded.” In that it is undisputed that respondent received petitioner’s exceptions on December 30, 2004, and the next day (December 31) was a holiday, followed by a Saturday (January 1) and a Sunday (January 2), respondent’s five days for reply did not commence until January 3, 2005. Accordingly, respondent’s reply exceptions were timely filed on the fifth day, January 7, 2005, pursuant to *N.J.A.C.* 1:1-18.4(d).

² Given the deficiencies in the Initial Decision, the Deputy Commissioner was unable to conduct the necessary review of the Administrative Law Judge’s (ALJ) findings of fact, legal conclusions and final determination. The Deputy Commissioner, therefore, considered only the arguments set forth by the parties with respect to whether the ALJ provided a reasonable articulation for his determinations and has not considered the parties’ exception arguments on the merits in this matter.

grant of summary decision is appropriate in this instance;³ 2) failed to set forth findings of fact and the basis for his legal conclusions, pursuant to the requirements at *N.J.A.C.* 1:1-18.3(c), in order for the Deputy Commissioner to determine whether the recommendations in the Initial Decision are sufficiently (and solidly) grounded in fact and law; and 3) failed to provide reasons for the rejection of petitioner's claim of a continuing violation of public rights. Additionally, the ALJ did not provide a full articulation of the relief requested by petitioner in the Initial Decision so as to enable the Deputy Commissioner to assess petitioner's assertion that the ALJ "erred in disregarding the nature of the relief sought." (Petitioner's Exceptions at 14)

Accordingly, in that the Initial Decision does not contain the essential elements for adequate agency review, the Deputy Commissioner hereby remands this matter to the OAL for revision of the Initial Decision and/or further proceedings as necessary, consistent with the concerns set forth above.

IT IS SO ORDERED.⁴

DEPUTY COMMISSIONER OF EDUCATION

Date of Decision: January 31, 2005

Date of Mailing: February 1, 2005

³ Pursuant to *N.J.A.C.* 1:1-12.5(b) and *Contini v. Bd. of Educ. of Newark*, 286 *N.J. Super.* 106, 121-122 (App. Div. 1995) (*citing Brill v. Guardian Life Ins. Co.*, 142 *N.J.* 520 (1995)), summary decision may be granted in an administrative proceeding if there is no genuine issue of material fact in dispute and the moving party is entitled to prevail as a matter of law. It is noted that the ALJ does not address petitioner's claims that it has alleged facts sufficient to sustain a judgment in its favor and that "discovery in this matter has not even begun, and is necessary to resolve material facts that are in dispute (Petitioner's Opposition to Motion to Dismiss at 14-15), nor is there any discussion by the ALJ with respect to how his determination comports with *N.J.A.C.* 1:1-12.5(b) and *Contini, supra*.

⁴ 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.* 6A:4-1.1 *et seq.*