

#227-07 (OAL Decision: Not yet available on-line)

J.C. AND Z.T., ON BEHALF OF :  
MINOR CHILD, V.T., :  
 : COMMISSIONER OF EDUCATION  
 PETITIONERS, :  
 : DECISION  
 V. :  
 :  
 DAVID S. LIVINGSTON, SOMERSET :  
 COUNTY SUPERINTENDENT OF SCHOOLS, :  
 WILLIAM N. KING, WARREN COUNTY :  
 SUPERINTENDENT OF SCHOOLS, AND :  
 DR. ELAINE TRYJANKOWSKI, DIRECTOR, :  
 NEW JERSEY GOVERNOR’S SCHOOL, :  
 RESPONDENTS. :

---

SYNOPSIS

Petitioners alleged that their child’s application for admission to the Governor’s School of Engineering and Technology was rejected on the basis of racial discrimination. Respondents filed a motion to dismiss for lack of jurisdiction, which was denied by the ALJ.

The ALJ found that: petitioners wish to transfer this matter to the Division on Civil Rights (DCR) – contrary to their prior rejection of such transfer upon filing of their appeal with the New Jersey Department of Education, Bureau of Controversies and Disputes – as it now appears to them that limits on the Commissioner’s jurisdiction, particularly relating to monetary damages, make the DCR a more attractive venue in which to hear this case; and petitioners agree to dismissal before the Commissioner on the assumption that the matter may be pursued through the DCR. Accordingly, the ALJ ordered that the petition be dismissed without prejudice.

The Commissioner rejected petitioners’ assumption that this matter may be summarily transferred to the DCR and proceed as if originally filed with that agency, noting that DCR rules and procedures include a 180-day time limitation for the filing of a complaint and that the right and authority of the DCR to accept or reject complaints in accordance with such rules and procedures may not be preempted by the Commissioner. The Commissioner concluded that the appropriate course of action is to remand this matter to the OAL to be held in abeyance pending petitioners’ filing of their complaint with DCR, whereupon petitioners may either withdraw the matter before the Commissioner if their complaint is accepted or continue before the Commissioner if it is rejected. Accordingly, the Initial Decision of the OAL is rejected, and the matter is remanded to the OAL.

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.

June 12, 2007

OAL DKT. NO. EDU 6432-06  
AGENCY DKT. NO. 221-6/06

J.C. AND Z.T., ON BEHALF OF MINOR CHILD, V.T.,	:	
	:	COMMISSIONER OF EDUCATION
PETITIONERS,	:	
	:	DECISION
V.	:	
	:	
DAVID S. LIVINGSTON, SOMERSET COUNTY SUPERINTENDENT OF SCHOOLS,	:	
WILLIAM N. KING, WARREN COUNTY SUPERINTENDENT OF SCHOOLS, AND	:	
DR. ELAINE TRYJANKOWSKI, DIRECTOR, NEW JERSEY GOVERNOR'S SCHOOL,	:	
	:	
RESPONDENTS.	:	

---

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. No exceptions were filed by the parties.

Upon review, the Commissioner cannot accept the OAL's recommended resolution of this matter.

Petitioners have "agreed to dismissal" on the "assumption" that the matter may now be transferred to the Division on Civil Rights (DCR), where it would presumably proceed as if originally filed with that agency.<sup>1</sup> This assumption, however, has no basis in law or fact. The DCR has rules and procedures of its own, including a 180-day time limitation for the filing of a

---

<sup>1</sup> Pursuant to *N.J.A.C.* 6A:3.1-10(b), such transfer was initially proposed by the Department upon filing of the Petition of Appeal on June 16, 2006; however, it was vigorously opposed by petitioners in their responsive letter dated June 26, 2006. As a result of petitioners' objections, the matter was transmitted to the OAL with instructions to consider the question of Commissioner jurisdiction as a threshold issue and the State respondents duly moved to dismiss the petition on jurisdictional grounds; the ALJ, in an order dated December 26, 2006, denied this motion. The matter then continued, and petitioners now, for reasons of "the limitations on the Commissioner's jurisdiction particularly relating to monetary damages," deem the Commissioner an "unattractive venue" and "would prefer that the matter be transferred to the Division on Civil Rights." (Initial Decision at 2)

complaint,<sup>2</sup> and the Commissioner may not preempt the right and authority of the Director of the DCR to accept or reject complaints in accordance with such rules and procedures. Moreover, the Commissioner is mindful that petitioners in this matter: 1) objected to transferring their dispute to the DCR at the appropriate point in proceedings in accordance with *N.J.A.C.* 6A:3-1.10(b); 2) opposed a motion at the OAL to dismiss the matter before the Commissioner on jurisdictional grounds, notwithstanding that they now seek such dismissal contingent upon acceptance of their complaint in a forum perceived to be more advantageous; and 3) waited nearly a year to change their minds about their preferred venue, during which time the OAL duly expended time and resources in the conduct of contested case proceedings on behalf of the Commissioner. Under these circumstances, the Commissioner is loath to create the appearance that she condones petitioners' conduct or that she expects or urges the DCR to accept petitioners' complaint under the circumstances.

In light of the above, the Commissioner finds that the appropriate course of action is to remand this matter to the OAL with the directive that it be held in abeyance while petitioners file their complaint in the forum of their current choice. Then, upon the DCR's independent determination as to whether or not it will accept the complaint, petitioners may either withdraw their petition before the Commissioner and proceed before the DCR, or continue before the Commissioner if the DCR declines to accept the complaint—without prejudice, however, to respondents' ability to raise such defenses and objections as they deem appropriate, including renewal of their jurisdictional arguments at the end of the contested case pursuant to *N.J.A.C.* 1:1-14.10(j).

---

<sup>2</sup> See N.J.S.A. 10:5-18; also <http://www.state.nj.us/lps/dcr/>.

Accordingly, for the reasons set forth herein, the Initial Decision of the OAL is rejected and this matter is remanded for further proceedings consistent with the holding above.

IT IS SO ORDERED.<sup>3</sup>

COMMISSIONER OF EDUCATION

Date of Decision: June 12, 2007

Date of Mailing: June 12, 2007

---

<sup>3</sup> 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.*