

J.F.L., on behalf of minor child, M.L., :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE BOROUGH : DECISION
OF AUDUBON, CAMDEN COUNTY, :
RESPONDENT. :
_____ :

SYNOPSIS

Petitioner challenged the Board's two-day suspension of his son, M.L., for inappropriate behavior, and sought to expunge his official student record. The Board filed a motion to dismiss, asserting that the petition was not timely filed pursuant to *N.J.A.C. 6A:3-1.3(i)*.

The ALJ found that: petitioner failed to respond to the Board's motion to dismiss; therefore, the facts were not in dispute and the matter could be decided by summary decision. Accordingly, the ALJ granted the Board's motion, and dismissed the petition.

Upon a full and independent review, the Commissioner rejected the recommended decision of the ALJ and remanded the matter to the OAL for further proceedings, finding that there was in fact a timely answer to the Board's motion to dismiss contained in the file. Consequently, the Commissioner remanded the matter in order for the ALJ to review and consider the implication(s) petitioner's response to the Board's motion may have on the outcome of his recommended decision.

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.

February 22, 2010

OAL DKT. NO. EDU 2996-09
AGENCY DKT. NO. 96-5/09

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. Petitioner’s exceptions¹ and the Board’s reply thereto – filed in accordance with the directives of *N.J.A.C. 1:1-18.4* – were fully considered by the Commissioner in reaching his determination herein.

Upon full review of the instant record, the Commissioner determines to reject the recommended decision of the Administrative Law Judge (ALJ) and remand this matter to the OAL for further proceedings.

The Commissioner observes that upon receipt of the Board’s Motion to Dismiss in Lieu of Answer by the Agency on May 28, 2009, this case was – on May 29, 2009 – transmitted to the OAL for adjudication. On June 9, 2009 the Agency received the *pro se* petitioner’s reply to the Board’s motion which was forwarded to the OAL on that date and stamped as filed by the OAL on June 9, 2009, 4:48 p.m.²

¹ It is noted that although this matter was initiated by petitioner *pro se*, he retained counsel to file exceptions on his behalf.

² Petitioner’s exceptions contain a copy of a second response to the Board’s motion – dated August 16, 2009; addressed to the ALJ; with proof of certified mailing and acknowledged receipt in Trenton – apparently in reply to

Notwithstanding the fact that petitioner's June 9, 2009 brief in reply to the Board's motion was contained in the file of the instant matter when it was returned to the Agency by the OAL, the ALJ in his decision treated the Board's motion as unopposed and granted summary decision to the Board. Consequently, the Commissioner finds and concludes that this matter must be remanded to the OAL in order for the ALJ to review and consider the implication(s) petitioner's response to the Board's motion may have on the outcome of his recommended decision.

Accordingly, the ALJ's recommended Initial Decision is rejected and this matter is hereby remanded to the OAL for further proceedings in light of the above.

IT IS SO ORDERED.³

ACTING COMMISSIONER OF EDUCATION

Date of Decision: February 22, 2010

Date of Mailing: February 23, 2010

the ALJ's August 9, 2009 directive. This document, although virtually identical in content to the one submitted to the Agency on June 9, 2009, was not contained in the record before the Commissioner.

³ This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L. 2008, c. 36* (*N.J.S.A. 18A:6-9.1*).