

M.G.L., on behalf of herself and minor children, :
B.S., D.J. AND V.J.,

PETITIONER, :

V. : COMMISSIONER OF EDUCATION

BOARD OF EDUCATION OF THE : DECISION
TOWNSHIP OF WEST ORANGE, ESSEX :
COUNTY, :

RESPONDENT. :
:

SYNOPSIS

Petitioning parent contested the Board’s policies and procedures that resulted in a delay in enrolling her children in the District’s schools. Petitioner and her three children arrived from Haiti at the end of October 1998 and they appeared on November 3, 1998 at the Board’s administrative offices; yet, the children were not enrolled until December 2, 1998. Enrollment had been delayed pending completion of forms and applications containing pre-enrollment requirements, including a Certificate of Inhabitancy (CI) to be completed and issued by a municipal zoning and housing official, which form petitioner charged was improper and illegal.

The ALJ concluded that the action of the Board’s personnel was not unreasonable, arbitrary or capricious, even though registration was delayed for a number of days. The ALJ found that petitioner contributed to the delay by the language difficulties in this case and by not satisfactorily furnishing proof of residency in a timely fashion. The ALJ found that the children were enrolled the day that the completed proof of residency was submitted and one day after the Board was served with the petition. Petition was dismissed. The ALJ noted that the Board voluntarily agreed to remove the municipal CI from its school admission application packet. The ALJ ordered that said certificate be totally eliminated from the Board’s application procedures.

Having reviewed the record, including the transcript of the OAL hearing, the Commissioner agreed with and adopted the ALJ’s order that the CI be totally omitted from the Board’s application procedures. The Commissioner, however, determined that while the ALJ was absolutely correct in determining that it was improper for the Board to require that a CI be completed as part of its registration process, the CI contributed more substantially to the delay in enrollment than conveyed by the ALJ or the Board. The issue of residing in a dwelling in violation of local housing ordinances is not an issue that a board of education may consider in determining enrollment eligibility. Moreover, the Commissioner found that it was not appropriate for enrollment to be delayed, even in part, on the basis of incomplete transcripts since student transcripts go to the issue of a student’s educational placement, not to eligibility to enroll or be admitted to school. The Commissioner also found that incomplete immunization records may not interfere with the *enrollment*, notwithstanding that it may, by law, be a basis for delaying actual *admission* to school. (*N.J.S.A. 26:1A-9, N.J.A.C. 8:57-4.1 et seq.*) The Commissioner determined that the enrollment of the children occurred only due to the filing of a petition. The Commissioner determined that, in addition to the ALJ’s order that the District discontinue inclusion of a CI in its registration packet, the District is ordered not to allow the absence or incompleteness of transcripts and immunization records to interfere with the enrollment of a new student. Commissioner directed the county superintendent to review the District’s enrollment policies and procedures.

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The record and Initial Decision issued by the Office of Administrative Law have been reviewed. Petitioner's exceptions and the West Orange Board of Education's (Board) reply thereto were timely filed pursuant to *N.J.A.C.* 1:1-18.4.

Petitioner's exceptions urge affirmance of only that part of the Initial Decision which orders the Board to eliminate the Certificate of Inhabitancy (CI) form from its application procedures and rejection of the remainder of the decision denying all other relief. Petitioner further requests reversal of the Administrative Law Judge's (ALJ) January 24, 2000 Order denying her motion to amend the pleadings to conform to the evidence.

Petitioner first contends that the ALJ made numerous mistakes of fact which formed the basis of his legal rulings; *i.e.*, that the CI, incomplete immunization and incomplete school transcripts did not form a basis for the Board's delay/denial of admission in enrolling petitioner's children, each point of which she avers is admitted by the Board's employee for registering students, Ms. Lopez, both in her testimony at hearing and in answer to interrogatories. Petitioner next addresses the ALJ's finding that registration was "delayed" due to petitioner's failure to produce a transcript for one child and complete immunization records for all children

and to “satisfactorily” complete the Certificate of Residency-Renter form until December 2, 1998. (Initial Decision at 12 and 14) Petitioner reiterates her argument that the first two reasons for denying admission are plainly unlawful and urging that the record does not support a finding that failure to properly complete the Certificate of Residency form caused a delay in admission. As to this last point, petitioner states, *inter alia*, that:

***Ms. Lopez testified that she took the Certificate of Residency form from petitioner M.G.L. on November 16, 1998, retained it, and never returned it to M.G.L. to correct any deficiency, T127-17. Common sense dictates that Ms. Lopez would have returned the form to petitioner with instructions for proper completion if incompleteness had in fact been a reason for delaying admission.

Further, the record established that M.G.L. was motivated to enroll her children in school, and there is no reason to doubt that she would have properly filled in the form had she been so instructed. M.G.L. kept her appointment with Ms. Lopez on November 16, went to the municipal housing official twice, and even consented to a housing inspection, in an attempt to get the CI. She returned to Ms. Lopez’ office in late November after the initial denial on November 16, and after another rejection of the CI by the housing official, in a second attempt to gain admission. M.G.L. also went so far as to retain an attorney and file the petition. As the ALJ acknowledged, all that was required to satisfactorily complete the Certificate of Residency form was filling in the names of the inhabitants of the dwelling unit and M.G.L.’s signature, Initial Decision at p. 12, tasks which could have been accomplished at any time, and certainly on November 16, when petitioners first presented the form to Ms. Lopez. Finally, as discussed below¹, petitioners provided the Board with other proof of residency prior to December 2, 1998, and still were not admitted to the district. The record does not support a finding that M.G.L. was at fault for delaying admission. (Petitioner’s Exceptions at 3-4)

Petitioner next avers that the ALJ’s conclusion on page 13 of the Initial Decision that no convincing evidence was adduced that the registration would not have taken place on December 2, 1998, even if the petition had not been served on December 1, is in direct contradiction to Ms. Lopez’ testimony (Tr. at 90-92), which stated that she telephoned petitioner

¹ Petitioner excepts to the ALJ’s finding that she provided the Board with the landlord’s “separate letter verification

to schedule an appointment for her to register the children on December 2 in response to receipt of the petition. Petitioner also excepts to the ALJ's finding that there was a delay of only five or six school days in enrolling her children, averring that such a finding is unfounded, since she first applied for admission on November 3, and was not given an appointment to return until November 16, nine school days later, and the children were not admitted until December 2, an additional nine days later.

Petitioner further urges rejection of the ALJ's finding at page 15 of the Initial Decision that the Board stipulated it would "totally discontinue" use of the CI form in the registration packet and the finding at page 18 that the Board "had furnished assurance" that the CI "has been and will be removed as part of the enrollment application." As to this, she maintains that the record is devoid of any such stipulation or assurance by the Board; thus, the ALJ had no factual basis for making this finding.²

Petitioner also argues, *inter alia*, that the ALJ did not address her claim that her children were denied admission to school without due process, instead finding that the Board never denied admission and couching the Board's conduct as a "delay" in granting admission. As to this, petitioner maintains that regardless of whether the Board's conduct is characterized as a denial or a delay, the result was that petitioner's children were deprived of their constitutional and statutory right to a public education for an entire month, without ever receiving written notice explaining the basis for the Board's action or inaction. The final point of petitioner's

of residence" on December 2, 1998, averring that this is incorrect because Ms. Lopez testified at hearing (Tr. at 137-138) and admitted in interrogatories that petitioner provided her with the letter sometime in late November. (Petitioner's Exceptions at 4, 5)

² Petitioner conjectures that the ALJ's finding is referring to a letter sent by the Board's attorney to her attorney, after the close of the hearing, proposing to eliminate the CI from the application process in exchange for her dismissing with prejudice all other claims against the Board, a letter which petitioner maintains was provided to the ALJ in contravention of *N.J.A.C.* 1:1-15.10. (Petitioner's Exceptions at 6)

exceptions argues that her motion to amend the pleadings to conform to the evidence should have been granted.³

In response, the Board contends that petitioner's exceptions merely rehash arguments previously made to the ALJ which were comprehensively addressed and rejected in the Initial Decision. In support of this position, the Board relies on the arguments set forth in its post-hearing brief. The reply exceptions further aver, *inter alia*, that "[p]etitioner continues to fight a battle where none exists****" and she fails to grasp elemental facts such as the fact that her children could not have been immediately enrolled on November 3, 1998, the date she picked up the registration packet, because "[a] registration process must be followed, and if petitioner fails to comply with that process, it is not the fault of respondent." (Board's Reply Exceptions at 2, 3)

Upon careful and independent review of the record, including the transcript of the hearing before the OAL, the Commissioner agrees with and adopts the ALJ's order that the CI be totally omitted from the Board's application procedures. The Commissioner further finds, however, that the factual circumstances surrounding the issues in this matter are considerably more troubling than characterized by the Board in its reply exceptions and, in certain aspects, as addressed by the ALJ.

Initially, the Commissioner wishes to emphasize that the ALJ was absolutely correct in determining that it was improper for the Board to require that a CI be completed as part of its registration process, a factor which, in the Commissioner's judgment, contributed more substantially to the delay in the children's enrollment in this matter than conveyed by the

³ Following the hearing in this matter, petitioner filed a motion to amend the petition to conform to the evidence to add legal claims against the Board's policy and practice of denying admission based on incomplete immunizations and lack of school transcripts. The Board opposed the motion, arguing that petitioner had knowledge, through discovery, of the reasons why her children were not admitted to school until December 2, 1998, thus, her latest date of notice was April 7, 1999. Therefore, the Board argued, the motion to amend was untimely filed. On January 24, 2000, the ALJ issued a letter denying the motion because it was far out of time and he would not consider re-opening the hearing. The ALJ offered to keep the record open for petitioner to file responsive briefs which petitioner declined to do.

ALJ or the Board. Petitioner and M.C.L, the sister with whom petitioner and her children were residing, should never have been put in the position of having to make several visits to the West Orange Zoning and Housing Authority and be subject to a housing inspection as part of the registration process, factors which clearly contributed to the inability of petitioner to enroll her children in the District because of the Township's refusal to issue the CI. Nor, in the Commissioner's judgment, should there have been telephone conversations between the housing authority clerk and Ms. Lopez, the District's registrar, about the issue of the CI and the enrollment of petitioner's children. As determined by the Commissioner in *Board of Education of the City of Orange, Essex County v. New Jersey State Department of Education*, 1987 S.L.D. 2217 and *Middle Township Board of Education v K.K. and P.K.*, 93 N.J.A.R.2d (EDU) 461, residing in a dwelling in violation of local housing ordinances/conditions is not an issue/factor that a board of education may consider in determining enrollment eligibility.

As to other troublesome issues presented in this matter, the Commissioner finds that when petitioner came to the District office on November 3, 1998 to enroll her children, she should have been provided a date for review of the enrollment/registration material far sooner than November 16, 1998.⁴ The Commissioner further finds that it was not appropriate for *enrollment* to be delayed in this matter, even in part, on the basis of incomplete transcripts. There is no provision in statute or code which requires a parent or guardian to provide a transcript prior to a child's enrollment in school. Student transcripts go to the issue of a student's *educational placement*, not to eligibility to enroll or be admitted to school.

As to the issue of incomplete immunization records delaying the enrollment of petitioner's children, the Commissioner finds that incomplete immunization records may not interfere with the *enrollment* of a child in a school district, notwithstanding that it may, by law,

⁴ The Commissioner finds M.C.L.'s testimony entirely credible that two dates for review of registration material were provided to her and petitioner, November 16 and 22, 1998. (Tr. at 29)

be a basis for delaying actual *admission* to school. (*N.J.S.A. 26:1A-9, N.J.A.C. 8:57-4.1 et seq.*) However, it must be emphasized that any decision as to whether or not immunization records are complete and what impact there may be on attendance at school once the student is enrolled, is an issue which is solely to be determined by a certificated school nurse or administrator, not by support staff.

The Commissioner, upon review of the full record in this matter, further finds that any delay on petitioner’s part in accomplishing enrollment of her children in the District was not intentional. The Commissioner finds that the Certificate of Residency form (R-1) could in fact be confusing, since it does not allow for a situation where a parent, such as petitioner, and her children are residing with a person who is a resident of the District but is not a tenant on a rental/lease agreement. Circumstances were compounded by petitioner’s having to run around trying to get a CI, a document which, as previously determined, should not have been required in the first place. Additionally, the record does not satisfactorily establish why the children were not enrolled in the District upon presentation of the landlord’s letter of verification in late November. Further, the Commissioner finds that petitioner is correct in her contention that the record establishes that the enrollment of her children in the West Orange School District was only due to the filing of her Petition of Appeal and not due to any action on the part of the registrar or the Board finding petitioner’s children eligible for enrollment or attendance in the District.⁵

Moreover, while it is true that the Board itself never denied enrollment of petitioner’s children, the Commissioner finds that the enrollment of petitioner’s children was thrust into a limbo where no singular piece of “incomplete” registration information was said to be preventing enrollment and where no *actual denial* of enrollment was issued by the Board or

⁵ Pursuant to *N.J.S.A. 18A: 38-1*, the District was obligated to enroll the students during the pendency of a residency appeal to the Commissioner.

one of its administrators, but where *no education* was available to the children until petitioner learned through community, not school, sources of how to file an appeal with the Commissioner.

Given the above, the Commissioner determines that, in addition to the ALJ's order that the district discontinue inclusion of a CI in its registration packet, the District is ordered not to allow the absence or incompleteness of transcripts and immunization records to interfere with the enrollment of a new student.⁶ The Commissioner further directs that the county superintendent review the District's policies and procedures for enrolling new students to assure that (1) residency forms are easily understood and appropriate to various living arrangements and the requirements of *N.J.S.A. 18A:38-1*; (2) parents are immediately informed of the administrator to contact if they experience delays or difficulties in enrollment; and (3) decisions on enrollment are expeditiously issued and due process/appeal rights are communicated to the parents immediately upon presenting a student/s for purposes of enrollment in the District. All other relief requested by the petitioner is herein denied, including the remedy sought with respect to her motion to amend the petition.

IT IS SO ORDERED.⁷

COMMISSIONER OF EDUCATION

Date of Decision: September 7, 2000

Date of Mailing: September 7, 2000

⁶ In so holding, the Commissioner emphasizes that incomplete immunizations, pursuant to *N.J.A.C. 8:57-4.1 et seq.*, may be a basis for delaying *admission* to school.

⁷ 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:4-1.1 et seq.*, within 30 days of its filing. Commissioner decisions are deemed filed three days after the date of mailing to the parties.