

F.A., ON BEHALF OF MINOR CHILD, L.M., :  
PETITIONER, : COMMISSIONER OF EDUCATION  
V. : DECISION  
BOARD OF EDUCATION OF THE :  
LENAPE REGIONAL HIGH SCHOOL :  
DISTRICT, BURLINGTON COUNTY, :  
RESPONDENT. :  
\_\_\_\_\_ :

SYNOPSIS

Petitioner filed a *Pro Se* residency appeal, challenging the respondent Board’s determination that her niece, L.M., is not entitled to a free public education in the Lenape Regional High School District. Petitioner stated that her niece was living with her so that she could finish school in a better environment, and that L.M.’s mother would contribute to the support of her daughter while L.M. was living with her aunt. Respondent Board filed a counterclaim seeking payment of tuition for the number of days L.M. attended school in the district. Petitioner failed to be available for a scheduled telephone conference in this matter. She was then notified that her appearance at a pre-hearing conference scheduled for December 29, 2009 was required, or her appeal could be dismissed. Petitioner failed to appear at the pre-hearing conference, and offered no explanation for her absence.

The ALJ found that: petitioner failed to submit an explanation for her failure to appear; pursuant to *N.J.A.C.* 1:1-14.4(c), the respondent Board is entitled to an initial decision on the merits based on the *ex parte* proofs presented at hearing; petitioner has failed to establish that L.M.’s mother is incapable of supporting or providing care for her daughter due to a family or economic hardship pursuant to *N.J.S.A.* 18A:38-1, and that L.M. was sent to reside with petitioner solely for the purpose of receiving a free education in the respondent’s district. Accordingly, the ALJ concluded that L.M. is not entitled to a free education in the Lenape Regional High School District, and that the Board is entitled to reimbursement of tuition in the amount of \$ 4,164.48 for the period of L.M.’s ineligible attendance.

Upon a full and independent review of the record, the Commissioner adopted the Initial Decision of the OAL as the final decision in this matter, directing that petitioner shall reimburse the Board in the amount of \$ 4,164.48 plus \$77.12 per day for each day of L.M.’s attendance beyond the 54 days accrued as of January 4, 2010. The petition was dismissed.

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 26, 2010

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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 such review, the Commissioner concurs with the Administrative Law Judge that petitioner<sup>1</sup> has failed to meet her burden of demonstrating L.M.'s entitlement to free public education in the schools of the respondent Board of Education, and that tuition as calculated by the Board is appropriately assessed for the period of L.M.'s ineligible attendance in the district.

Accordingly, for the reasons expressed therein, the Initial Decision of the OAL is adopted as the final decision in this matter, and petitioner is directed to reimburse the Board for tuition in the amount of \$4,164.68 plus \$77.12 for each day, if any, of L.M.'s attendance beyond the 54 days accrued as of January 4, 2010.<sup>2</sup>

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

ACTING COMMISSIONER OF EDUCATION

Date of Decision: February 26, 2010

Date of Mailing: March 1, 2010

<sup>1</sup> On page one of the Initial Decision, petitioner is inadvertently identified as L.M.'s mother; however, it is clear from the record and remainder of the decision that petitioner is L.M.'s aunt.

<sup>2</sup> See Certification of James H. Hager, School Business Administrator (Exhibit R-4).

<sup>3</sup> Pursuant to *P.L. 2008, c. 36 (N.J.S.A. 18A:6-9.1)*, Commissioner decisions are appealable to the Appellate Division of the Superior Court.