

C.B., on behalf of minor child, S.H., :
PETITIONER, :
V. :
BOARD OF EDUCATION OF THE : COMMISSIONER OF EDUCATION
BOROUGH OF HAWTHORNE, :
PASSAIC COUNTY. : DECISION
RESPONDENT. :
AND :
BOARD OF EDUCATION OF THE :
BOROUGH OF HAWTHORNE, :
PASSAIC COUNTY. :
V. :
D.H. and C.B. :
RESPONDENTS. :

SYNOPSIS

Petitioner appealed the determination of the respondent Board that her sister, S.H., is ineligible to receive a free public education in the Hawthorne school district. D.H., the mother of S.H., was joined in the litigation via her filing of a petition in April 2012. C.B. contended that her sister came to live with her after her mother's home was damaged by hurricane Irene, thus enabling S.H. to complete her senior year at the Passaic County Technical Institute (PCTI). The Board filed a counterclaim against both C.B. and D.H., seeking tuition for the period of S.H.'s ineligible attendance. The matter was heard previously in the OAL and an Initial Decision was issued in October 2012, which found that petitioners D.H. and C.B. are both liable to reimburse all or portions of the tuition that was paid by respondent to PCTI for S.H.'s attendance during the last three months of the 2010-2011 school year and the entire 2011-2012 school year. The Commissioner of Education issued a final decision remanding the matter to the OAL for fact finding to determine the exact amount of tuition due.

On remand, the ALJ found that: based on interim school administrator Anthony Mistretta's un rebutted affidavit certifying the amounts of tuition paid by respondent to the PCTI for S.H.'s education, D.H. is liable to respondent for tuition from April through June 2011 in the amount of \$3559.20; and D.H. and C.B. are both liable for the costs of tuition for the entire 2011-2012 school year in the amount of \$11,864. The ALJ recommended that the full tuition be paid within ninety days of the Commissioner's final decision in this matter unless an alternative payment schedule could be agreed to by the parties.

The Commissioner dismissed the petitions, granted respondent's counterclaims, and concurred with the ALJ's findings concerning the amount of tuition owed by C.B. and D.H. respectively. The Commissioner did not order a specific time frame for reimbursement of the tuition, but cautioned petitioners that they are obligated to make payment.

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.

March 7, 2013

OAL DKT. NO. EDU 16034-12N
AGENCY DKT. NUMBERS 342-11/11 and 70-3/12
(EDU 14659-11 and EDU 6569-12 on remand)

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DECISION

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RESPONDENTS. :

Before the Commissioner is an Initial Decision of the Office of Administrative Law (OAL) recommending specific amounts of tuition reimbursable by petitioners to the respondent Board of Education of the Borough of Hawthorne (“respondent” or “the Board”). The subject tuition amounts are reimbursable because respondent paid them to the Passaic County Technical Institute’s (PCTI) Board of Education for S.H.’s attendance there during a

period of time when S.H. was no longer domiciled in Hawthorne. Upon review of the Initial Decision and record, the Commissioner concurs with the Administrative Law Judge's (ALJ) allocation of the tuition amounts.

In a prior Initial Decision dated October 16, 2012, the OAL found that petitioners D.H. (S.H.'s mother) and C.B. (S.H.'s sister) are both liable to reimburse all or portions of the tuition that had been paid by respondent to PCTI's Board of Education for S.H.'s attendance in the last three months of the 2010-2011 school year and the entire 2011-2012 school year. No exceptions were filed to that Initial Decision, and the Commissioner of Education – in a final decision dated November 27, 2012 – did not reject the recommended dual assignment of liability. However, the record at the time of the November 27, 2012 decision did not contain facts sufficient to calculate the exact amount of tuition due. Thus, the case was returned to the OAL for further proceedings.

On remand, respondent's interim school business administrator/board secretary – Anthony Mistretta – submitted an un rebutted affidavit certifying the amounts of tuition paid by respondent to the PCTI Board of Education for S.H.'s education, and attaching copies of the contracts between respondent and the PCTI Board. More specifically, for both of the relevant school years, the annual tuition amount was \$11,864. Thus, tuition reimbursement for S.H.'s attendance at PCTI in the 2011-2012 school year is \$11,864. Since the period of ineligible attendance in the 2010-2011 school year was limited to April, May and June, the reimbursable tuition for that school year comes to \$3,559.20.

In light of the foregoing, and pursuant to *N.J.S.A.* 18A:38-1(b)(2), the Administrative Law Judge (ALJ) on remand found that D.H. was liable to respondent for tuition in the amount of \$3,559.20 for the 2010-2011 school year. For the 2011-2012 school year the

ALJ found D.H. and C.B. jointly and severally liable for tuition in the amount of \$11,864. The joint and several liability was correctly based upon the fact that respondent's payment of tuition for S.H.'s attendance at PCTI during the 2011-2012 school year had been made in reliance upon affidavits, from both D.H. and C.B., averring that S.H. resided in Hawthorne with – and was supported by – C.B. as a result of hurricane damage to D.H.'s residence in Garfield. Copies of said affidavits, whose contents were contradicted by the facts established in the record, were attached as exhibits to Mistretta's affidavit.

The Commissioner concurs with the ALJ's findings concerning the amount of tuition for which each of the two petitioners is liable. Accordingly, the petitions are dismissed and respondent's counterclaims for tuition are granted in the amounts set forth above. The Commissioner will not, at this time, order a specific time frame for reimbursement of the tuition, but petitioners are cautioned that they are obligated to make payment.

IT IS SO ORDERED.¹

COMMISSIONER OF EDUCATION

Date of Decision: March 7, 2013

Date of Mailing: March 8, 2013

¹ This decision may be appealed to the Superior Court, Appellate Division, pursuant to *P.L. 2008, c. 36* (*N.J.S.A. 18A:6-9.1*).