

#320-15 (OAL Decision: Not yet available online)

Y.C., ON BEHALF OF MINOR CHILD, E.C., :
PETITIONER, :
V. :
BOARD OF EDUCATION OF THE BOROUGH :
OF FAIR LAWN, BERGEN COUNTY, :
RESPONDENT. :
_____ :

SYNOPSIS

Petitioner challenged the residency determination of the respondent Board that his son, E.C., was ineligible for continued enrollment in the Fair Lawn school district. Respondent's determination was based on the results of a residency investigation which indicated that E.C. was domiciled with his mother in Garfield, New Jersey. Petitioner thereafter asserted that E.C. was moving with him to a house in Fair Lawn, which is owned by petitioner's nephew. The Board sought tuition reimbursement for the period from December 8, 2014 through the end of the 2014-2015 school year.

The ALJ found, *inter alia*, that: petitioner's testimony was not credible; although petitioner argued that the house in Fair Lawn was his permanent home because he had no present intent of moving from it, Y.C.'s actions in establishing an address in Fair Lawn in December 2014 were calculated to allow E.C. to attend Fair Lawn schools; the totality of the circumstances indicates that Y.C. is not a permanent resident of Fair Lawn; petitioner purchased a house in Saddle Brook in June 2014, where his girlfriend lives and where he leaves his second vehicle; the house in Fair Lawn is a single family home owned by petitioner's nephew, who resides there with his wife and two young children; and petitioner and his son rent a single room within his nephew's house, which rental did not commence until after petitioner received notice that his son would no longer be eligible to attend Fair Lawn schools because he did not reside within the school district. The ALJ concluded that petitioner failed to demonstrate by a preponderance of the evidence that E.C. was eligible for a free education in Fair Lawn schools and, accordingly, Y.C. owes the Board tuition for the 121 school days between December 8, 2014 and the end of the school year on June 24, 2015, in the amount of \$10,030.90.

Upon review, the Commissioner concurred with the ALJ's findings and conclusion that the petitioner's son was not entitled to a free public education in Fair Lawn schools for the period in question. The Commissioner ordered petitioner to reimburse the Board for tuition in the amount of \$10,030.90, representing 121 days of E.C.'s ineligible attendance in Fair Lawn schools at a cost of \$82.90 per day. 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.

October 5, 2015

OAL DKT. NO. EDU 1447-15
AGENCY DKT. NO. 375-12/14

Y.C., ON BEHALF OF MINOR CHILD, E.C., :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE BOROUGH : DECISION
OF FAIR LAWN, BERGEN COUNTY,
: :
RESPONDENT.
_____ :

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed.¹ The petitioner filed exceptions which were received in the Department of Education on September 18, 2015.²

Upon such review, the Commissioner concurs with the Administrative Law Judge's (ALJ) finding that petitioner failed to sustain his burden of establishing that he was a domiciliary of Fair Lawn for the 2014-2015 school year. The Commissioner further concurs with the ALJ's conclusion that the minor child was, therefore, not entitled to a free public education in the District's schools during this time.

Pursuant to N.J.S.A. 18A:38-1b, the Commissioner shall assess tuition against petitioner for the time period during which the minor child was ineligible to attend school in Fair Lawn. Although the ALJ found that the Board was entitled to reimbursement in the amount of \$82.92 per day from December 8, 2014 through the remainder of the 2014-2015 school year, a

¹ The Commissioner was not provided with a transcript of the April 13, 2015 hearing at the OAL.

² Petitioner's exceptions were not timely filed in accordance with N.J.A.C. 1:1-18.4. Additionally, there was no indication that petitioner's exceptions were served upon the Board or the Administrative Law Judge. Accordingly, they were not considered by the Commissioner.

review of the record indicates that the appropriate reimbursement amount is \$82.90 per day. Therefore, the Board is entitled to tuition reimbursement in the amount of \$10,030.90 (\$82.90 per day for 121 days), pursuant to *N.J.S.A. 18A:38-1b*.

Accordingly, the Initial Decision of the OAL – as modified herein – is adopted as the final decision in this matter. Petitioner is directed to reimburse the Board in the amount of \$10,030.90 for tuition costs incurred during the time period that E.C. was ineligible to attend school in Fair Lawn. The petition of appeal is hereby dismissed.

IT IS SO ORDERED.³

COMMISSIONER OF EDUCATION

Date of Decision: October 5, 2015

Date of Mailing: October 8, 2015

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*).