

#34-16 (OAL Decision: Not yet available online)

BOARD OF EDUCATION OF THE TOWNSHIP :
OF HAMILTON, MERCER COUNTY, :
 :
PETITIONER, :
 :
V. : COMMISSIONER OF EDUCATION
 :
 : DECISION
C.P., ON BEHALF OF MINOR CHILD, E.V., :
 :
RESPONDENT. :
_____ :

SYNOPSIS

The petitioning Board served a Notice of Ineligibility on respondent C.P. in November 2014, following an investigation into the residency of her daughter which determined that E.V. did not reside in Hamilton Township, but instead was living in the City of Trenton. After a hearing before the Board in December 2014, the petitioner upheld the determination of ineligibility and served a Final Notice of Ineligibility on the respondent – who acknowledged receipt of the certified mail on February 3, 2015. The attorney for the respondent conceded that his client did receive and sign for the letter containing the Final Notice of Ineligibility, but no appeal was filed. On April 29, 2015, the Board filed a petition for an order assessing tuition. Thereafter, on May 28, 2015, C.P. sent a letter in response to the order assessing tuition. The matter was then transmitted to the OAL, where it was filed as a contested case on June 19, 2015. The Board filed a motion for summary decision, and respondent filed a cross motion for same. Through counsel, the respondent filed opposition to the petitioner’s motion, and sought to re-litigate the merits of the residency petition. However, no argument was submitted regarding why petitioner failed to timely appeal the Final Notice of Ineligibility.

The ALJ found, *inter alia*, that: it is undisputed that a letter providing notice of respondent’s right to appeal the Board’s residency determination was received by C.P., and advised her that an appeal must be made in writing to the Commissioner within twenty-one days of the decision; the letter was received, and no appeal was timely filed; the respondent sought to re-litigate the underlying merits of the residency matter, but provided no legal basis to support the request; E.V. attended school in the district during the 2014-2015 school year; the petitioning Board demonstrated at the December hearing that E.V. was not living in Hamilton Township during this period of time, and therefore assessment of tuition is appropriate and permissible under the regulations. The ALJ granted petitioner’s motion for summary decision, and ordered that the Board is entitled to reimbursement from the respondent for the cost of tuition in the amount of \$13, 723, representing the tuition rate in the District for the 2014-2015 school year.

The Commissioner concurred with the ALJ’s granting of summary decision to the Board, and adopted the Initial Decision as the final decision in this matter, with modification to the amount of tuition due based on evidence in the record that indicates the Board is entitled to reimbursement for 172 days of ineligible attendance by E.V., at a daily rate of \$76.24. The Commissioner directed the respondent to reimburse the Board in the amount of \$13,113.28.

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 3, 2016

OAL DKT. NO. EDU 9007-15
AGENCY DKT. NO. 102-5/15

BOARD OF EDUCATION OF THE TOWNSHIP :
OF HAMILTON, MERCER COUNTY, :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
C.P., ON BEHALF OF MINOR CHILD, E.V., : DECISION
RESPONDENT. :
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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. The parties did not file exceptions.

Upon such review, the Commissioner concurs with the Administrative Law Judge's (ALJ) determination that summary decision should be granted in favor of the Board. The Board determined that E.V. was not a domiciliary of Hamilton for the 2014-2015 school year and was, therefore, not entitled to a free education in the District's schools during that time. The Board informed respondent that an appeal of the Board's residency determination must be filed within twenty-one days, pursuant to *N.J.S.A. 18A:38-1b*. Despite receiving the Board's notice via certified mail, respondent failed to appeal the Board's determination. Accordingly, the Commissioner concurs with the ALJ that respondent may not re-litigate the issue of whether E.V. was entitled to a free education in the District during the 2014-2015 school year, as respondent did not appeal that determination and there is no evidence in the record which would warrant reopening that issue.

Pursuant to *N.J.S.A. 18A:38-1b*, the Commissioner shall assess tuition against respondent for the time period during which the minor child was ineligible to attend school in

Hamilton. There are inconsistencies in the ALJ's decision with respect to the total amount of tuition owed to the Board and the dates of ineligible attendance by the minor child.¹ A review of the record and the parties' submissions makes clear that there were 172 days of ineligible attendance by the minor child from September 3, 2014 through June 8, 2015. Therefore, the Board is entitled to tuition reimbursement in the amount of \$13,113.28 (\$76.24 per day for 172 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. Respondent is directed to reimburse the Board in the amount of \$13,113.28 for tuition costs incurred during the time period that E.V. was ineligible to attend school in Hamilton.

IT IS SO ORDERED.²

COMMISSIONER OF EDUCATION

Date of Decision: February 3, 2016

Date of Mailing: February 3, 2016

¹ The ALJ found that the Board is entitled to \$13,723 in tuition reimbursement. This figure represents the full cost of tuition for the entire 2014-2015 school year, rather than 172 days in which E.V. was ineligible to attend school in the District. Additionally, although the ALJ found that the Board was entitled to tuition beginning at the start of the 2014-2015 school year, it appears that she inadvertently wrote September 1, 2014, rather than September 3, 2014. Further, in the ALJ's order, she indicated that the Board was owed tuition starting September 24, 2014, which is inconsistent with her finding that the Board was entitled to tuition from the beginning of the school year.

² 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)*.