

B.W., on behalf of minor child, D.P., :
 PETITIONER, :
 V. : COMMISSIONER OF EDUCATION
 BOARD OF EDUCATION OF THE : DECISION
 SOUTH ORANGE-MAPLEWOOD SCHOOL :
 DISTRICT, ESSEX COUNTY, :
 RESPONDENT. :

SYNOPSIS

Petitioner challenged the Board’s determination that her child was not domiciled in the District and its demand for tuition from petitioner, claiming that she never changed her domicile, but became homeless.

The ALJ determined that petitioner and her child had not been domiciled or resided in the South Orange-Maplewood School District since October 2001, but, in fact, had been and continue to be domiciled in Union, New Jersey. The ALJ ordered payment of tuition to the Board at a per diem rate of \$50.29 for the dates of D.P.’s ineligible attendance during the 2002-03 school year.

The Commissioner adopted the decision of the ALJ finding that D.P. was not domiciled in the South Orange-Maplewood School District so as to be entitled to a free public education in respondent’s District, but modified the tuition calculation, ordering petitioner to pay the District tuition in the amount of \$9,345.00 for the 2002-03 school year and \$50.29 for each day of D.P.’s ineligible attendance in the 2003-04 school year. The Commissioner denied the Board’s claim for pre and post-judgment interest and legal fees.

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The record of this matter and the Initial Decision of the Office of Administrative Law have been reviewed. The parties did not file exceptions.

Upon careful and independent review of the record in this matter, the Commissioner concurs with the Administrative Law Judge’s (ALJ) finding that B.W. and D.P. are neither homeless nor domiciled in the South Orange-Maplewood School District so as to entitle D.P. to a free public education in respondent’s district, but, in fact, are, and continue to be, domiciled in Union, New Jersey.

With respect to the Board’s counterclaim for tuition, the Commissioner finds that the ALJ’s conclusion in the Initial Decision that petitioner is to pay a \$50.29 per diem rate to the Board solely for the dates of D.P.’s ineligible attendance during the 2002-03 school year is not supported in the record. (Initial Decision at 11) Initially, it is noted that the \$50.29 per diem rate provided by the Board refers to the daily tuition rate for the *2003-04 school year*, rather than the *2002-03 school year*. (Exhibit R-38, in evidence) Moreover, in reviewing the Board’s counterclaim for tuition, the Board seeks the award of tuition “for the period of ineligible attendance, as well as attorneys[?] fees, pre and post-judgment interest, and costs of suit, and such further relief as deemed appropriate by the Commissioner.” (Answer and Counterclaim at 5) The Board’s counterclaim for tuition, therefore, is not limited to the 2002-03 school year. Accordingly, petitioner is directed to reimburse the Board \$9,345.00 for the period of D.P.’s

ineligible attendance in the District's schools for the 2002-03 school year (*Id.* at 5, Number 11 and Exhibit R-36, in evidence), and \$50.29 for each day of D.P.'s ineligible attendance in the 2003-04 school year (Exhibit R-38, in evidence).

With respect to the other remedies sought in the Board's counterclaim, the Commissioner finds that the record does not support a finding that petitioner's actions were taken in bad faith or in deliberate violation of the law. *N.J.A.C.* 6A:3-1.17(c)1. The Commissioner further notes that the Board's claim for post-judgment interest is not properly before him at this time, since the requisite time period has not passed pursuant to *N.J.A.C.* 6A:3-1.17(c)2.

Finally, turning to the Board's claim for counsel fees, in the absence of express statutory authority to award counsel fees, I may not direct that the Board be compensated for legal fees in this matter. *See Hinfey v. Matawan Regional Board of Education*, 77 N.J. 514, 525 (1978); *B.B., on behalf of her son, L.C. v. Board of Education of the Union County Regional High School District No.1. and Donald Merachnik, Superintendent of Schools, Union County*, 1987 S.L.D. 323; *Balsley v. North Hunterdon Bd. of Educ.*, 117 N.J. 434 (1990); and *State, Dept. of Environ. Protect. v. Ventron Corp.*, 94 N.J. 473 (1983).

Accordingly, the Commissioner adopts the Initial Decision, as modified above, as the final decision in this matter for the reasons stated therein.

IT IS SO ORDERED.*

ACTING COMMISSIONER OF EDUCATION

Date of Decision: December 29, 2003

Date of Mailing: December 29, 2003

* This decision 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.*