

477-04

OAL DKT. NO. EDU 7169-04 (http://lawlibrary.rutgers.edu/oal/html/initial/edu07169-04_1.html)

AGENCY DKT. NO. 138-4/04

L.C., on behalf of minor children,	:	
Y.C. and S.C.,	:	
	:	
PETITIONER,	:	COMMISSIONER OF EDUCATION
	:	
V.	:	DECISION
	:	
BOARD OF EDUCATION OF THE	:	
CITY OF ORANGE TOWNSHIP,	:	
ESSEX COUNTY,	:	
	:	
RESPONDENT.	:	
_____	:	

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed, as have exceptions filed by petitioner pursuant to *N.J.A.C.* 1:1-18.4. The Board did not file reply exceptions.

On exception, petitioner urges the Commissioner to reject the Initial Decision, contending that Board counsel and the Board’s witness made dishonest, deceitful statements, and that she has met the requisite burden of proof for demonstrating her children’s entitlement to attend school in the Board’s district. (Petitioner’s Exceptions at 2-3) In support of these contentions, petitioner references appended “sustaining credentials” consisting of copies of an April 20, 2004 log for petitioner’s home fax, showing that several pages were sent to the Board’s fax number on that date (“P-1”); an envelope from the Board’s attorney addressed to Petitioner at her fiancé’s apartment in Newark, marked “Return to Sender” (“P-2”); a copy of the Board’s Answer to the Petition of Appeal (“P-3”); a June 2004 envelope from the Board’s attorney addressed to Petitioner at her mother’s Orange apartment (“P-4”); the Board’s final notice of ineligibility for Y.C. (“P-5”); the Board’s February 3, 2004 notice of district-wide school re-

registration (“P-6”); a completed Landlord/Owner Affidavit from the Orange Township Public Schools, dated August 11, 2004 and notarized on August 28, 2004, purporting to show that petitioner and her children reside at her mother’s apartment in Orange (“P-7”); a current auto insurance card issued in March 2004 (“P-8”), a current vehicle registration issued in March 2004, and a current driver’s license issued in November 2003 (“P-9”), all listing petitioner’s address as her mother’s apartment in Orange; petitioner’s voting record, listing her address as her mother’s apartment in Orange and showing her to have last voted in 2002 (“P-10”); an August 11, 2004 phone bill for the Orange apartment, in her mother’s name (“P-11”); an undated photograph of the mailbox for the Orange apartment, showing petitioner’s name taped on the box along with her mother’s (“P-12”); a July 2004 utility bill for the Newark apartment addressed to petitioner’s fiancé (“P-13”); an undated memorandum from the “management” of the Newark apartment complex noting that apartment 4B is leased to petitioner’s cousin and 4K to petitioner’s fiancé (“P-14”); and a November 3, 2004 letter from Noverlys R. Dominguez of Realty Management Systems, noting “slight confusion” with respect to her conversation with someone at the school district office regarding verification of the occupants of the Orange apartment and advising that the “main account holder” on the apartment was petitioner’s mother but that petitioner and her children also reside there (“P-15”).

It must be stated at the outset that applicable procedural rules preclude consideration of petitioner’s documents, in that all but one of them (“P-15”) were brought to the record for the first time as attachments to petitioner’s post-hearing brief, not as evidence to be presented and assessed at hearing in accordance with *N.J.A.C.* 1:1-15.1 *et seq.* Because they were submitted in this manner, neither the Administrative Law Judge (ALJ) nor the Board attorney had the opportunity to question petitioner about the documents, nor to assess their

relevance or establish their validity; indeed, consistent with OAL rules, the record shows the ALJ to have expressly rejected petitioner's labeling of her documents as "Exhibits P-1 through P-14," not only omitting them from the Initial Decision's list of exhibits, but actually striking the "P-" designation from each. Moreover, even granting that the ALJ might have, in light of petitioner's *pro se* status, construed her submissions as a motion to reopen the record pursuant to *N.J.A.C.* 1:1-18.5(c), petitioner offered the ALJ no reason whatsoever, let alone the "extraordinary circumstances" required by rule, as to why these documents—all but one of which, the undated "P-14," unquestionably pre-date the hearing—could not have been produced there; instead, she simply appended the documents to her brief. The remaining document, "P-15," is dated several weeks subsequent to the Initial Decision and presented to the Commissioner contrary to the clear proscription, at *N.J.A.C.* 1:1-18.4(c), against introducing new evidence through exceptions; just as at the OAL, petitioner offered no explanation as to why her documents were not produced at hearing, nor any reason why "P-15" could not have been timely procured and introduced.¹

Notwithstanding the above, the Commissioner finds that no purpose would be served by rejecting petitioner's exceptions on procedural grounds and omitting any consideration whatsoever of her proffered documents, or by remanding this matter to the OAL so as to protract proceedings still further. Rather, the Commissioner finds that, even assuming the authenticity of the documents and granting every favorable inference to petitioner—both concessions solely for purposes of this discussion²—petitioner has not met her burden of establishing domicile in the

¹ In this regard, the Commissioner notes that petitioner has been given numerous opportunities, beginning in early April 2004, to present documentary proof of her claim of residency and that she did not appear at the Board hearing convened to assess that claim (Board's Answer; Exhibit R-3). Additionally, she received a two-week extension within which to make her post-hearing submission, so that she could consult legal counsel. (Letter of September 23, 2004, from petitioner to ALJ; letter of September 24, 2004 from Board to ALJ; letter of September 27, 2004 from ALJ to parties)

² The Commissioner notes that "P-7," "P-12" and "P-14" in particular appear suspect on their face, while "P-15" would appear to require both authentication and elaboration in light of other testimony and evidence submitted in this matter.

Board's district. Petitioner may not merely produce a handful of documents from the regulatory list of acceptable proofs and expect a finding of domicile without regard to the existence of compelling evidence to the contrary and a finding by the ALJ as the trier of fact, *N.J.S.A.* 52:14B-10(c), that petitioner was not credible in her testimony; at most, all petitioner's documents might prove is that she did at one time live at the Orange apartment, and that she still maintains some official attachments there. Neither of these conclusions is inconsistent with the ALJ's finding that petitioner is now domiciled with her fiancé in Newark along with her children. Similarly, those of petitioner's "exhibits" provided in an apparent attempt to undermine the credibility of the Board's witness and impugn the truthfulness of its attorney do not suffice for this purpose.

Accordingly, the Commissioner adopts the Initial Decision of the OAL, finding that Y.C. and S.C. are ineligible to attend school in the Orange Township School District and directing petitioner to remit tuition in the amount of \$24,286.00 for the 2003-04 school year plus, \$68.26 per child per diem for the period from September 1, 2004 to the date of their removal, as his final decision in this matter.

IT IS SO ORDERED.³

COMMISSIONER OF EDUCATION

Date of Decision: December 1, 2004

Date of Mailing: December 1, 2004

³ 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.*