

#141-05 (<http://lawlibrary.rutgers.edu/cgi-bin/oalfind.cgi?docket=EDU9383-02>)

C.M., on behalf of minor children, A.B. and A.B., :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE CITY OF : DECISION
CLIFTON, PASSAIC COUNTY, :
RESPONDENT. :
_____ :

SYNOPSIS

Petitioner challenged the Board's residency determination that her nieces, A.B. and A.B., were not eligible for a free education in the City of Clifton School District based on family or economic hardship. The matter was transmitted to the OAL as a contested case. Petitioner failed to appear at the hearing.

Based on the petitioner's failure to submit an affidavit from the parent or guardian of the children setting forth the circumstances which comprise a qualifying family or economic hardship, the ALJ concluded that the petitioner failed to sustain her burden of proof, and dismissed the instant petition with prejudice. With respect to a counterclaim for tuition by the respondent Board, the ALJ noted that petitioner has not disputed the claim in any way and ordered that C.M. pay respondent tuition for the period of A.B. and A.B.'s ineligible attendance.

Upon a full and independent review, the Commissioner concurs with the ALJ that petitioner's appeal was appropriately dismissed for failure to prosecute. Accordingly, the Initial Decision is adopted as the Final Decision in this matter. The Commissioner directs the petitioner to compensate the Board in the amount of \$14,125.32, and the Petition of Appeal is dismissed.

<p>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.</p>

OAL DKT. NO. EDU 9383-02
AGENCY DKT. NO. 286-9/02

C.M., on behalf of minor children, A.B. and A.B., :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE CITY OF : DECISION
CLIFTON, PASSAIC COUNTY, :
RESPONDENT. :
_____ :

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. The parties filed no exceptions to the Initial Decision.

Upon his full and independent review, the Commissioner concurs with the Administrative Law Judge that petitioner's appeal is appropriately dismissed for failure to prosecute and the Board's counterclaim for tuition is appropriately granted.

Accordingly, the recommended decision of the OAL is adopted. Petitioner is hereby directed to compensate the Board in the amount of \$14,125.32¹ for the period of A.B. and A.B.'s ineligible attendance in the Board's schools and the instant Petition of Appeal is hereby dismissed.

IT IS SO ORDERED.²

COMMISSIONER OF EDUCATION

Date of Decision: April 19, 2005

Date of Mailing: April 19, 2005

¹ It is noted that the Affidavit of Karen Perkins, Business Administrator, specifies that the annual per pupil cost of attendance at the Board's Clifton High School is \$7,306, and that the two children in this matter attended this school for 170 days, equaling a tuition cost of \$7,062.66 for each child. However, Ms. Perkins' Affidavit incorrectly totals this amount as \$14,612, rather than the correct total of \$14,125.32.

² 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.*