

#179-05 (OAL Initial Decision not yet available)

D.O., on behalf of minor children, E.O. AND R.O., :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE BOROUGH : DECISION
OF CLEMENTON, CAMDEN COUNTY, :
RESPONDENT. :
_____ :

SYNOPSIS

Petitioner filed a *Pro Se* Residency Appeal challenging the Board's residency determination that two of her children, E.O. and R.O., are not eligible for a free education in the Borough of Clementon School District. Petitioner contended that she has custody of her three children, all of whom are domiciled with her in Clementon. Respondent Board filed an answer to the petition, and submitted a cross petition for payment of tuition for E.O. and R.O.

The ALJ found, *inter alia*, that: based on credible evidence and testimony presented by respondent Board, E.O. and R.O. reside with their father in Maple Shade; petitioner has failed to sustain her burden of proof in this matter; and petitioner is liable to the Board for tuition in the amount of \$46.02 per day per child for the period of E.O. and R.O.'s ineligible attendance during the 2004-05 school year. Therefore, the ALJ ordered that: the petitioner's appeal be dismissed; D.O. remove her children, E.O. and R.O., from Clementon Elementary School; and D.O. shall pay tuition to respondent Board for the period of their ineligible attendance, in the amount of \$6,810.96, plus \$46.02 per day per child for each day E.O. and R.O. continue attendance as non-resident students beyond March 1, 2005.

Upon careful and independent review of the record, the Commissioner adopted the conclusions of the ALJ in this matter, emphasizing that, pursuant to *N.J.S.A. 52:14B-10(c)*, the ALJ's credibility determinations are entitled to the Commissioner's deference. Accordingly, the Initial Decision is adopted for the reasons expressed therein.

<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>

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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 a careful and independent review of the record in this matter, and mindful that the Administrative Law Judge's (ALJ) credibility determinations are entitled to the Commissioner's deference, *N.J.S.A. 52:14B-10(c)*, the Commissioner determines to adopt the ALJ's conclusion that petitioner has failed to carry her burden of proof that her children were entitled to a free public education in the Clementon School District during the period at issue in the 2004-05 school year. The Commissioner further agrees with the grant of the Board's counterclaim for tuition in the amount of \$6,810.96 for the 74 days that E.O. and R.O. illegally attended school in the District from October 26, 2004 through March 1, 2005 and \$46.02 per day, per child, for each day of attendance as non-resident students after March 1, 2005.

Accordingly, the Initial Decision is adopted for the reasons expressed therein.

IT IS SO ORDERED.*

COMMISSIONER OF EDUCATION

Date of Decision: May 18, 2005

Date of Mailing: May 18, 2005

* 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.*