

J.M.R., o.b.m. T.G. and K.G., :  
PETITIONER, :  
V. : COMMISSIONER OF EDUCATION  
BOARD OF EDUCATION OF THE : DECISION  
TOWNSHIP OF EWING, MERCER :  
COUNTY, :  
RESPONDENT. :

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SYNOPSIS

Petitioner filed a *pro se* Residency Appeal challenging the respondent's resolution that disenrolled her children, T.G. and K.G., from the Ewing School District. Petitioner claimed that – during the time frame in question -- she and her children resided in Ewing with petitioner's parents, but visited her fiancé frequently at his Trenton residence. The matter was transmitted to the OAL, and a hearing was scheduled for September 30, 2004. Petitioner failed to appear at the hearing; respondent filed a certification stating that petitioner owes the Ewing School District \$10,668.90 in tuition for the 110 days that petitioner's children were illegally enrolled.

The ALJ found that petitioner enrolled her two children in the Ewing School District for 110 school days while the petitioner was not domiciled therein. Accordingly, the ALJ concluded that petitioner owes respondent \$10,668.90, and ordered that petitioner reimburse respondent said amount.

Upon careful and independent review of the record in this matter, the Initial Decision, and the petitioner's exception letter, the Commissioner adopts the decision and recommended order of the ALJ. It was proper under the circumstances for the ALJ to enter an initial decision based upon respondent's *ex parte* proofs, and, pursuant to *N.J.A.C.* 1:1-18.4(c), petitioner's exception letter cannot resuscitate her appeal.

<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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OAL DKT. NO. EDU 6269-04  
AGENCY DKT. NO. 236-7/04

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The record in this matter, the Initial Decision of the Office of Administrative Law (OAL), and petitioner's exceptions have been carefully and independently reviewed, and the Commissioner is constrained to adopt the decision and order of the Administrative Law Judge (ALJ).

On June 7, 2004, respondent Ewing Township Board of Education passed a resolution disenrolling T.G. and K.G. from the Ewing School District, based upon surveillance evidence, gathered primarily in February 2004, indicating that they lived in Trenton. On July 8, 2004, J.M.R. submitted a petition challenging respondent's action. In it she alleged that she and her children resided in Ewing with her parents, but that she and the children often stayed with her fiancé in Trenton. Attached to her petition were copies of respondent's June 7 resolution and the surveillance reports upon which the resolution had been based.

Other than a notation in one of the surveillance reports that J.M.R.'s car was registered to her parents' address in Ewing, petitioner submitted with her petition no support of her allegation that she and the children resided in Ewing. To the contrary, eleven of the above

mentioned twelve surveillance reports supported the conclusion that petitioner's children were not staying in Ewing. Surveillance on nine of the eighteen days in February 2004 showed the children leaving for school from the Trenton address of petitioner's fiancé.

The matter was transmitted to the OAL on July 23, 2004. On August 9, 2004, the OAL sent a notice to counsel for respondent, and to petitioner at the address of her parents in Ewing. The notice acknowledged receipt of the case, advised that another notice with a hearing date would be sent, and instructed, in pertinent part, that:

All discovery must be complete 5 days before the hearing unless another date is established by the judge. Therefore, parties must begin immediately to exchange information, to seek access to public documents, to exhaust other informal means of obtaining information and, if necessary, to serve discovery notices and motions.

On August 30, 2004, the OAL notified the parties that the hearing would begin on September 30, 2004. This notice included the following instructions:

A judge will decide the case based on only what is presented at the hearing. If there are any papers you would like the judge to consider, you must have them at the hearing. Please bring two copies of each paper. If you want any witnesses to testify, you must arrange for their attendance at the hearing. If you are not sure that they will attend the hearing, you should serve them with a subpoena together with the appropriate fee at a reasonable time before the hearing, if possible, three days before the hearing.

The notice also advised that briefs would not be allowed after the hearing without the judge's permission, and that non-attendance at the hearing could result in dismissal of the case.

It is undisputed that petitioner did not attend the hearing on September 30, 2004. A letter dated October 8, 2004 from respondent's counsel to the ALJ indicates that the ALJ agreed to accept a certification by respondent's residency officer to serve as support for respondent's answer and counterclaim, which contended that petitioner's children attended 110 days of school in Ewing while residing in Trenton, and that petitioner consequently owed

respondent tuition. At \$47.92 per day for the younger child and \$49.07 for the older daughter, the certification calculated \$10,668.90 as the total tuition due. The Commissioner notes that this October 8, 2004 correspondence and certification were not copied to petitioner. Nor was a follow-up letter dated May 12, 2005 from respondent to the ALJ.

On July 18, 2005 the ALJ wrote to respondent. In the letter the ALJ referred to the fact that petitioner had not appeared at the hearing, and stated “I was advised that the petitioner had moved and her children were registered in the Trenton school system.” The ALJ appeared not to have received respondent’s certification concerning tuition, and advised: “I will dismiss petitioner’s claim for lack of prosecution and return the file to the Department of Education as a failure to appear if I do not receive the certificate within 10 days.” This letter was sent to both parties. The respondent replied to the ALJ’s letter on July 26, 2005, forwarding a copy of the October 2004 certification, but did not copy petitioner on this correspondence.

In the initial decision, issued on August 30, 2005 and mailed on September 1, 2005, the ALJ established that on September 30, 2004, respondent’s counsel had informed him that petitioner’s children had been registered for school in Trenton. Nonetheless, respondent wished to recoup tuition for the year that the children had attended school in Ewing. (Initial Decision at 1)

Based upon his review of respondent’s unopposed certification, the ALJ found that petitioner had enrolled her two children in respondent’s district for 110 school days while she was not domiciled therein, and that the calculations in respondent’s certification showed that petitioner owes respondent \$10,668.90. (Initial Decision at 2) Accordingly, he ordered petitioner to pay respondent said amount. (*Ibid.*)

In her “exceptions,” dated September 7, 2005, petitioner reiterates the allegations in her petition that she resided in Ewing during the 110 days in question and only visited (frequently) her fiancé in Trenton. (Petitioner’s Exceptions at 1-2) As was the case with her petition, petitioner includes no evidentiary support for the allegations. Rather, she states “I will be willing to provide any documentation needed to support my appeal.” (*Id.* at 2) Petitioner does not deny that she received notices from the OAL advising that she must prepare all her documentary and testamentary evidence before the hearing that would be scheduled for her case, and submit the evidence at the hearing. Nor does she deny that she received notice that the hearing would be on September 30, 2004, or explain why she did not attend the hearing.

The Commissioner cannot disagree with the ALJ’s determination that respondent has prevailed on its counterclaim for tuition. Under the circumstances of this case, it was proper for the ALJ to enter an initial decision on the merits based upon respondent’s *ex parte* proofs, provided that in the decision he memorialized petitioner’s failure to appear, which he did. *N.J.A.C.* 1:1-14.4(c). I note with disapproval that respondent did not copy petitioner on his correspondence with the ALJ. However, petitioner does not deny that she had two notices from the OAL advising her to prepare her evidence and present it at the hearing, and that she received both a notice and a copy of a letter from the OAL advising her that failure to appear at the hearing could result in the dismissal of her petition for lack of prosecution. That same letter made clear that the ALJ would award respondent tuition upon respondent’s submission of a certification.

Petitioner’s “exceptions” cannot resuscitate her appeal, because “[e]vidence not presented at the hearing shall not be submitted as part of an exception, nor shall it be

incorporated or referred to within exceptions.” *N.J.A.C.* 1:1-18.4(c). Accordingly, the Initial Decision and recommended Order of the ALJ are hereby adopted.

IT IS SO ORDERED\*

ACTING COMMISSIONER OF EDUCATION

Date of Decision: October 13, 2005

Date of Mailing: October 13, 2005

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\*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.*