

#221-06

OAL Decision: http://lawlibrary.rutgers.edu/oal/html/initial/edu03308-05_1.html

C.J. on behalf of minor child, I.O., :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE : DECISION
TOWNSHIP OF UNION, UNION :
COUNTY, :
RESPONDENT. :

SYNOPSIS

Petitioner contested the respondent's determination that her child, I.O., has not been domiciled in respondent's district since July 6, 2004 – the date on which physical custody of I.O. was returned to petitioner from the maternal grandparents – and is therefore not entitled to a free public education in respondent's schools.

The ALJ found that petitioner had not been domiciled in Union since regaining custody of her son on July 6, 2004, and that her testimony lacked credibility. The ALJ consequently ordered that petitioner's claim be dismissed and ordered petitioner to pay respondent \$14,308.60 for tuition before March 10, 2006, and a per diem amount of \$50.90, together with interest and costs, for each day that I.O. attended school after March 10, 2006.

The Commissioner concurs with the ALJ's determination that I.O. was not entitled to a free public education in Union Township, and orders the petitioner to pay tuition as set forth in the Initial Decision, but notes that while the Commissioner has authority to assess prejudgment and postjudgment interest, the criteria for same have not been met in the present case.

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| <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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June 16, 2006

C.J. on behalf of minor child, I.O., :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE : DECISION
TOWNSHIP OF UNION, UNION :
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RESPONDENT. :

The Initial Decision and record of this matter have been reviewed. No exceptions were filed and no transcripts were submitted to the Commissioner. In addition, respondent's exhibits R-3 and R-6 were missing from the record transmitted to the Commissioner's office.

Petitioner contests respondent's determination that her minor child, I.O., was not entitled to the free public education he received from respondent during the 2004-2005 school year, and is not eligible to receive a free public education from respondent during the current school year.

It is undisputed that prior to July 6, 2004, petitioner's parents, who live in the Township of Union, had physical custody of I.O., and properly sent him to school in respondent's district. However, by order dated July 6, 2004, petitioner obtained physical custody of I.O.¹ (Respondent's Exhibit R-2) Respondent claims that I.O. consequently should have attended school where petitioner lived.

¹ Although petitioner presented to the Administrative Law Judge (ALJ) a copy of a March 6, 2006, application to family court, purportedly signed by her mother, for joint custody of I.O., no evidence of the disposition of the application is in the record.

Prior to July 6, 2004, petitioner resided for a time in her parents' apartment (Mill Run) in Union. However, according to a report by respondent's residency investigator, on May 12, 2004, petitioner's father stated that he had recently taken petitioner off his lease, and that petitioner lived in Irvington. (Respondent's Exhibit R-1) According to the ALJ, petitioner's father testified similarly at the hearing; however, the Commissioner does not have the transcript(s).

Respondent also offered into evidence at the hearing a copy of a May 25, 2004 letter from Monique Washington, I.O.'s case manager at the Division of Youth and Family Services (DYFS), stating that she had been informed that petitioner lived alone in Bloomfield. (Respondent's Exhibit R-4) Respondent's residency investigator further probed petitioner's residency status in December 2004, and learned from a Mill Run employee that petitioner was not listed on her parents' lease. (Respondent's Exhibit R-1)

In light of the foregoing, despite the January 27, 2005 letter from petitioner's mother alleging that petitioner and her son had been living in the parents' apartment "for the past 2 ½ years" (Respondent's Exhibit R-5), the Commissioner agrees with the ALJ's finding that "after DYFS restored to [petitioner] custody of her child on July 6, 2004, she and her child were no longer residence [sic] of Union Township." (Initial Decision at 5) More specifically, petitioner failed to present a preponderance of evidence showing domicile in Union after May 2004 and, barring evidence that custody of I.O. was formally transferred back to petitioner's parents after July 6, 2004, the ALJ was correct in finding that I.O.'s domicile was defined by his mother's domicile. *N.J.A.C. 6A:28-2.4(a)(1)(i); D.L. and Z.Y. on behalf of minor children T.L. and K.L. v. Board of Education of the Princeton Regional School District*, 366 N.J. Super. 269, 274 (App. Div. 2004)

I.O. is not entitled to a free education in Union if he is neither "domiciled" in Union, *N.J.S.A. 18A:38-1(a)*, nor is being "kept in the home of another person domiciled within [Union] and

... supported by such other person gratis as if he were such other person's own child," due to the actual parent's inability to provide for the student. *N.J.S.A.* 18A:38-1(b)(1) ² Notwithstanding the January 27, 2005 letter from petitioner's mother (R-5), petitioner simply failed to provide facts to support either requirement by a preponderance of the evidence. In addition, the ALJ found petitioner's testimony to lack credibility. (Initial Decision at 5)³

Accordingly, the Commissioner adopts the ALJ's conclusion that I.O. was not entitled to a free public education in Union for the 2004-2005 and 2005-2006 school years. The Commissioner further adopts the ALJ's orders 1) dismissing the petition, 2) assessing petitioner \$14,308.60 for tuition covering the 2004-2005 school year and September through March 10, 2006 of the current school year, pursuant to *N.J.S.A.* 18A: 38-1(b) (2), and 3) requiring petitioner to also pay tuition, at the per diem rate of \$50.90 (Initial Decision at 6) for all subsequent days during which I.O. attended school in respondent's district.

Finally, while under *N.J.A.C.* 6A:3-1.17 the Commissioner has authority to assess prejudgment and postjudgment interest, the criteria for same have not been met in the present case.

IT IS SO ORDERED.⁴

ACTING COMMISSIONER OF EDUCATION

Date of Decision: June 16, 2006

Date of Mailing: June 19, 2006

² Such circumstances must be alleged in sworn statements by both the parent and the other person.

³ An agency head must generally defer to credibility determinations made by the ALJ who had the opportunity to hear the testimony and observe the demeanor of the witnesses. *N.J.S.A.* 52:14B-10(c). See also *D.L. and Z.Y. on behalf of minor children T.L. and K.L., v. Board of Education of Princeton Regional School District*, 366 *N.J. Super.* 269, 273 (App. Div. 2004), citing *State v. Locurto*, 157 *N.J.* 463, 470 (1999).

⁴ 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.*