

BOARD OF EDUCATION OF THE :
TOWNSHIP OF HAMILTON, :
MERCER COUNTY, :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
C.A. AND B.Z., : DECISION
RESPONDENTS. :

SYNOPSIS

In September 2004, petitioning Board determined that A.A., N.A. and J.A. – children of J.W.A. and C.A. – were not domiciled within the school district, and therefore not entitled to a free public education in Hamilton Township Schools. J.W.A. appealed this determination to the Commissioner, who adopted the OAL’s decision upholding removal of the children from the district’s schools and requiring J.W.A. to reimburse the Board for tuition. While J.W.A.’s appeal was pending, the Board filed a petition against C.A. and B.Z. – the children’s mother and grandmother – seeking tuition reimbursement. Respondents failed to appear at hearing, and the Acting Commissioner adopted the OAL Initial Decision directing C.A. and B.Z. to pay tuition. Subsequently, respondents appealed to the State Board of Education, requesting to re-open the record to permit them to supplement it by presentation of testimony and documents. The matter was then remanded to the OAL for a hearing, at which C.A. did not appear.

The ALJ found that B.Z. was not a credible witness, and no other evidence – testimonial or documentary – was produced at the hearing to show that respondents had complied with the terms and conditions of *N.J.S.A. 18A:38-1(b)(1)*. The ALJ concluded that there is no basis in law or fact to alter or amend the order directing respondents to reimburse the Board for the period of ineligible attendance of C.A.’s children.

The Commissioner adopted the OAL’s Initial Decision as the final decision in this matter, and directed respondents to pay petitioner tuition in the amount of \$7,499.80 for each of C.A.’s three children, totaling \$22,499.40.

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.

May 31, 2007

OAL DKT. NO. EDU 4400-06
(EDU 436-05 ON REMAND)
AGENCY DKT. NO. 406-11/04

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. No transcript was provided to the Commissioner and the parties submitted no exceptions. The Commissioner adopts the Initial Decision – supplemented by the following comments – as the final decision, for the reasons articulated by the administrative law judge (ALJ).

Respondent C.A. failed to appear at the remand hearing ordered by the State Board of Education. Thus, she provided no basis for the Commissioner to modify the December 5, 2005 decision directing her to pay tuition fees in the amount of \$7,499.80 per child for her children’s attendance in petitioner’s schools.

Respondent, B.Z., who did appear at the remand hearing, failed to show that the children legally resided with her in Hamilton Township. While she appeared to make an argument under *N.J.S.A. 18A:38-1(b)(1)* that she had taken in C.A.’s children, supported them *gratis*, and sent them to petitioner’s schools because C.A. was unfit and neglected them, she did

not provide competent evidence to substantiate those allegations or to show that she and C.A. had complied with the terms and conditions of *N.J.S.A.* 18A:38-(b)(1).

Further, the ALJ found that “B.Z. totally lacked credibility,” both by misrepresenting that she was the children’s grandmother and by presenting inconsistent and implausible testimony. Her testimony was, according to the ALJ, also contradicted by, *inter alia*, surveillance reports submitted by petitioner and by the testimony of her own witness, the children’s father. Orders giving custody to the children’s maternal grandmother further undermined B.Z.’s account of the children’s domicile, legal status and living conditions. In matters of credibility, the Commissioner generally defers to the ALJ. *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, 273 (App. Div. 2004).

In sum, respondents’ supplemental documents and testimony at the OAL remand hearing were not sufficient to disturb the Commissioner’s December 5, 2005 decision ordering respondents to pay petitioner \$7,499.80 in tuition for each of C.A.’s three children, totaling \$22,499.40. Notwithstanding the fact that B.Z. may possibly have acted out of concern for the children, it appears nonetheless that the children were not entitled to a free public education in petitioner’s school district, and petitioner is entitled to reimbursement.

IT IS SO ORDERED.¹

COMMISSIONER OF EDUCATION

Date of Decision: May 31, 2007

Date of Mailing: June 1, 2007

¹ 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.*