

#406-08 (OAL Decision: Not yet available on-line)

A.S. on behalf of minor children T.S. :  
and O.H., :  
 :  
 PETITIONER, :  
 :  
 V. : COMMISSIONER OF EDUCATION  
 :  
 BOARD OF EDUCATION OF THE : DECISION  
 TOWNSHIP OF BLOOMFIELD, :  
 ESSEX COUNTY, :  
 :  
 RESPONDENT. :  
 \_\_\_\_\_ :

SYNOPSIS

Petitioner appealed a determination by the Board that his children, T.S. and O.H., are not entitled to a free education in the Bloomfield School District because petitioner is not domiciled in the district. The respondent Board filed a counterclaim for tuition for T.S. O.H. has been attending a special education program outside the district and tuition was not sought by the Board for his placement. Petitioner failed to appear for a scheduled hearing on August 14, 2008; ex parte proofs were presented by the respondent at the hearing.

The ALJ found that: petitioner failed to prosecute his appeal, leaving no basis to consider overturning the residency determination of the respondent Board; respondent's proofs as to ineligibility and tuition rate were convincing and satisfy its burden of proof for the counterclaim. The ALJ concluded that: the Board is entitled to a decision on the merits based on the unrefuted proofs presented at hearing; petitioner must pay the respondent tuition in the amount of \$ 7,550.40, representing the cost of T.S.'s tuition for 143 days of ineligible attendance; and at all relevant times, T.S. and O.H. were residents of and domiciled in West Orange. The ALJ dismissed the petition and granted the Board's counterclaim for tuition.

The Commissioner concurred with the ALJ, and adopted the Initial Decision as the final decision in this matter, with one modification. The Commissioner rejected the ALJ's finding that the children are domiciled in West Orange, as there is nothing in the record that establishes their domicile. The Commissioner dismissed the petition and ordered petitioner to pay tuition as set forth above.

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.

October 3, 2008

OAL DKT. NO. EDU 7136-08  
AGENCY DKT. 130-5/08

A.S. on behalf of minor children T.S. and O.H.,	:	
	:	
PETITIONER,	:	
	:	
V.	:	COMMISSIONER OF EDUCATION
	:	
BOARD OF EDUCATION OF THE TOWNSHIP OF BLOOMFIELD, ESSEX COUNTY,	:	DECISION
	:	
RESPONDENT.	:	
_____	:	

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. Because the respondent presented evidence that suggested that T.S. and O.H. did not live at the Bloomfield address listed in their student files, and that evidence was not rebutted by petitioner,<sup>1</sup> the Commissioner concurs with the Administrative Law Judge that petitioner is liable for the tuition amount that was assessed by respondent and supported by way of the affidavit of respondent's business manager, along with copies of respondent's school calendar and a business record identifying tuition figures for the 2007-2008 school year. Since, however, there is nothing in the record that actually establishes where T.S. and O.H. are domiciled, the Commissioner rejects the ALJ's express finding that they are domiciled in West Orange.

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<sup>1</sup> Petitioner did not appear for the OAL hearing, notwithstanding that a hearing notice dated July 7, 2008 was sent to the address which petitioner identified as his residence in Bloomfield. Nor did petitioner respond to a letter dated August 18, 2008 – sent by the ALJ to the same address – requesting an explanation for petitioner's absence at the hearing.

The petition is dismissed, respondent's counter claim for tuition in the amount of \$7550.40 is granted, and the findings of the Initial Decision are modified as set forth above.

IT IS SO ORDERED.<sup>2</sup>

COMMISSIONER OF EDUCATION

Date of Decision: October 3, 2008

Date of Mailing: October 3, 2008

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<sup>2</sup> This decision may be appealed to the Superior Court, Appellate Division, pursuant to *P.L. 2008, c. 36*.