

#4-12 (OAL Decision: Not yet available online)

T.K., on behalf of minor children, D.K., Y.K., and A.K.,	:	
	:	
PETITIONER,	:	
	:	
V.	:	COMMISSIONER OF EDUCATION
	:	
BOARD OF EDUCATION OF THE TOWNSHIP OF WEST ORANGE, ESSEX COUNTY,	:	DECISION
	:	
RESPONDENT.	:	
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SYNOPSIS

Petitioner appealed the determination of the respondent Board that her children, D.K., Y.K. and A.K., are not eligible for a free public education in the West Orange school district. Petitioner was notified by letter from the Board dated June 22, 2011 that her children would be removed from West Orange schools, and that she had 21 days in which to file an appeal of this determination with the Commissioner. The instant appeal was not filed until July 27, 2011. The Board filed a motion for summary decision, contending that petitioner’s appeal was untimely filed. Additionally, the Board filed a request for tuition reimbursement for the period of D.K., Y.K. and A.K.’s ineligible attendance in the West Orange school district at the beginning of the current school year.

The ALJ found that, pursuant to *N.J.S.A. 18A:38-1(b)(2)*, T.K.’s petition was filed beyond the 21-day window for the filing of appeals to a residency determination by the board and accordingly must be dismissed. The ALJ additionally found that although the petitioner did not abandon or fail to prosecute her appeal, there is nothing to preclude the Board from collecting tuition for the period of her children’s ineligible attendance. Accordingly, the ALJ dismissed petitioner’s appeal and granted the Board’s counterclaim for tuition in the amount of \$10,045.36.

Upon a full and independent review, the Commissioner determined that the ALJ’s finding that petitioner’s appeal was untimely is correct only with respect to entitlement to enrollment while the case is pending, and that the case on the merits is not barred by failure to file within 21 days of the board’s adverse notice. Additionally, the Commissioner was unable to find any evidence either proving or disproving T.K.’s residency in West Orange, and determined that without a negative finding of residency, there can be no entitlement to reimbursement of tuition. Accordingly, the case was remanded to the OAL for factual findings and legal conclusions regarding the petitioner’s domicile.

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.
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January 5, 2012

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The Commissioner has reviewed the record of this matter and the Initial Decision of the Office of Administrative Law (OAL) on the Board’s motion for summary decision. No exceptions were filed.

The Administrative Law Judge’s (ALJ) finding that T.K. untimely filed her residency petition is correct only with respect to entitlement to enrollment while the case is pending, pursuant to *N.J.S.A. 18A:38-1(b)*. Where residency petitions are filed beyond the 21 days specified in the statute, in order to be entitled to enrollment while the case is pending, a petitioner must file a motion for emergent relief and prevail on that motion. The case on the merits is not barred by failure to file within 21 days of the board’s adverse notice.

Here, however, the Commissioner was unable to find evidence – by way of certification or recitation of testimony<sup>1</sup> – proving or disproving T.K.’s residency in West Orange. Without a negative finding of actual residency, there can be no entitlement to reimbursement of tuition.

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<sup>1</sup> The Commissioner was not provided with a transcript of the hearing.

Accordingly, this case is remanded to the OAL for the purpose of factual findings and legal conclusions regarding the petitioner's domicile.

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

ACTING COMMISSIONER OF EDUCATION

Date of Decision: January 5, 2012

Date of Mailing: January 5, 2012

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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*.