

#412-15 (OAL Decision: Not yet available online)

J.B., ON BEHALF OF MINOR CHILD, E.B., :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE : DECISION
TOWNSHIP OF SPRINGFIELD,
UNION COUNTY, :
RESPONDENT. :

SYNOPSIS

Petitioner appealed the determination of the respondent Board that his daughter, E.B., did not reside within the school district, and was therefore not entitled to a free public education in Springfield Township schools. Petitioner asserted that he is a domiciliary of Springfield, and owns a house in the township which was rendered uninhabitable by a fire on January 27, 2011; subsequently, he and his daughter lived temporarily with petitioner's father in Mountainside before moving to one – then another – apartment in Springfield. The Board contended that E.B. was not residing at the Springfield address provided by the petitioner, and sought repayment of tuition for the period of E.B.'s ineligible attendance. Hearings in this matter were conducted in the Office of Administrative Law (OAL) on January 15, 16 and 23, 2015, and on August 19, 2013.

The ALJ found, *inter alia*, that petitioner's daughter was not eligible for a free public education in Springfield schools and ordered that petitioner reimburse respondent for the cost of tuition for the period of E.B.'s ineligible attendance, specifically the following periods of time: December 2010 through June 2011; April 25, 2012 through June 2012; September 2012 through June 2013; and January 14, 2014 through June 2014.

Upon comprehensive review, the Commissioner cannot ascertain from the Initial Decision – because of inconsistencies in the record – when petitioner resided in Springfield and the exact amount of tuition due to the respondent Board. Accordingly, the Commissioner was constrained to remand this matter to the OAL for determination of: 1) the exact period when the minor child was ineligible to attend school in Springfield; and 2) calculation of tuition costs owed to the District for E.B.'s ineligible enrollment pursuant to *N.J.S.A. 18A:38-1b* and *N.J.A.C. 6A:22-6.3*.

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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December 28, 2015

OAL DKT. NO. EDU 14713-13
AGENCY DKT. NO. 229-9/13

J.B., ON BEHALF OF MINOR CHILD, E.B., :
PETITIONER, :
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BOARD OF EDUCATION OF THE : DECISION
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RESPONDENT. :

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed.¹ The parties did not file exceptions.

Upon such review, the Commissioner cannot ascertain from the Initial Decision – due to inconsistencies in the record – when petitioner resided in Springfield, and the exact amount of tuition owed to the District. For example, the Administrative Law Judge (ALJ) made a finding of fact that appellant’s testimony regarding where he lived in Springfield was credible. Although the Commissioner does not have the transcript of petitioner’s testimony, it appears from the Initial Decision that petitioner testified that he lived at 317 Morris Avenue in Springfield for three months beginning in August 2011, before moving into an apartment at Short Hills Village in Springfield.² Nevertheless, the ALJ ordered petitioner to reimburse the

¹ The Commissioner was provided with a transcript of the January 23, 2015 hearing at the OAL, but was not provided with transcripts of the other three hearings, which were held on January 15 and 16, 2015, and August 19, 2015.

² Notwithstanding petitioner’s testimony, the lease agreement indicates that petitioner’s lease at Short Hills Village began in September 2012. Furthermore, petitioner informed the District by letter dated August 26, 2011 (R-4) that he was living in Mountainside and was still renovating an apartment at 317 Morris Avenue. Accordingly, petitioner’s testimony is inconsistent with the record.

District for the cost of tuition from April 25, 2012 through the end of the 2011-2012 school year,³ as well as for the entire 2012-2013 school year, because petitioner lived outside of the Springfield School District during that time – despite petitioner’s contention that he lived in Springfield during that period.⁴

The ALJ then found that petitioner and the minor child resided in the Springfield School District during the first half of the 2013-2014 school year, at his apartment in Short Hills Village. However, the lease on that apartment started in September 2012 – not during the summer of 2013 – and there is no evidence in the record indicating that petitioner moved into the apartment during that summer. Accordingly, the Commissioner is unable to determine when petitioner resided in Springfield and for what period the minor child was ineligible to attend school in Springfield. The present record lacks information required to calculate the amount of tuition monies owed to the District – specifically, the exact number of days of ineligible attendance by the minor child.⁵

Because it is impossible to ascertain from the record the correct amount of tuition that is owed to the Board, the Commissioner must remand this matter to the OAL for

³ The District sent petitioner a letter dated April 25, 2012 (R-7) which assessed tuition for the period of September 2011 through June 2012. However, that letter did not comply with *N.J.A.C. 6A:22-4.2*, which requires that notices of ineligibility include a statement of the applicant’s right to an appeal before the Commissioner within 21 days and that if an appeal is not filed, the student will not be permitted to attend school beyond the 21st day following the notice date. The April 25, 2012 letter simply assessed tuition without informing petitioner of his right to an appeal of that determination; further, the District’s letter did not inform petitioner that his minor child was no longer permitted to attend school in Springfield. To the contrary, the minor child continued to attend school in Springfield for the 2012-2013 and 2013-2014 school years. Accordingly, the first valid notice of ineligibility that petitioner received was in August 2013, which resulted in the instant appeal.

⁴ It is undisputed from the record that the minor child did not attend school in Springfield after the 2013-2014 school year.

⁵ While the parties stipulate to the district’s tuition rates for 2010-2011, 2011-2012, 2012-2013 and 2013-2014, this fails to establish the total number of days of ineligible attendance. Pursuant to *N.J.S.A. 18A:38-1b*, “tuition shall be computed on the basis of 1/180 of the total annual per pupil cost to the local school district multiplied by the number of days of ineligible attendance.”

determination of: (1) the exact period when the minor child was ineligible to attend school in Springfield; and (2) calculation of tuition costs owed to the District for E.B.'s ineligible enrollment pursuant to *N.J.S.A. 18A:38-1b* and *N.J.A.C. 6A:22-6.2* and 6.3.⁶

Accordingly – for the reasons expressed herein – this matter is remanded to the OAL for determination of the period of ineligible enrollment and calculation of tuition costs due to the District.

IT IS SO ORDERED.⁷

ACTING COMMISSIONER OF EDUCATION

Date of Decision: December 28, 2015

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⁶ It should be noted that the current version of the relevant regulations did not take effect until December 16, 2013. Because the instant appeal was filed prior to that date, tuition shall be assessed in accordance with the regulations effective as of January 19, 2010.

⁷ This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L. 2008, c. 36* (*N.J.S.A. 18A:6-9.1*).