

330-18 (OAL Decision: Not available online)

S.W., ON BEHALF OF MINOR CHILD, L.D., :
PETITIONER, : COMMISSIONER OF EDUCATION
V. : DECISION
BOARD OF EDUCATION OF THE CITY OF :
ELIZABETH, UNION COUNTY, :
RESPONDENT. :
_____ :

SYNOPSIS

Petitioner filed a *pro se* residency appeal on behalf of her child, L.D., seeking a determination that L.D. is entitled to a free public education in the Elizabeth schools. The respondent Board contended that a residency investigation in February 2018 indicated that petitioner and her child are not domiciled in Elizabeth, and that S.W. was given the opportunity by the Board to present proof of residency, but failed to do so. S.W. also failed to appear at the OAL hearing in this matter. The Board filed a counterclaim for tuition for the period of L.D.'s ineligible attendance.

The ALJ found, *inter alia*, that: pursuant to N.J.S.A. 18A:38-1, a petitioner has the burden of proof in a determination of residency ineligibility; in this matter, a hearing was scheduled for September 12, 2018 and petitioner received appropriate notice thereof; petitioner failed to appear at the hearing; the Board's residency investigator appeared at the hearing and provided proofs for a counterclaim for tuition. The ALJ concluded that based on the uncontested testimony of the residency investigator and proofs presented, L.D. was not domiciled in Elizabeth from February 20, 2018 to the end of the 2017-2018 school year. Accordingly, the Board's counterclaim for tuition was granted, petitioner was ordered to reimburse the Board in the total amount of \$6,337.60 for the period of L.D.'s ineligible attendance, and the petition was dismissed.

Upon review, the Commissioner concurred with the findings and conclusions of the ALJ, and the Initial Decision was adopted as the final decision in this matter. Petitioner was ordered to reimburse the Board in the amount of \$6,337.60. The petition was dismissed.

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.

November 1, 2018

OAL DKT. NO. EDU 07901-18
AGENCY DKT. NO. 101-4/18

S.W., ON BEHALF OF MINOR CHILD, L.D., :
PETITIONER, : COMMISSIONER OF EDUCATION
V. : DECISION
BOARD OF EDUCATION OF THE CITY OF :
ELIZABETH, UNION COUNTY, :
RESPONDENT. :

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. The Administrative Law Judge's (ALJ) recommended decision in this matter dismissed petitioner's residency appeal as a consequence of her failure to appear at the hearing scheduled for this matter without providing any explanation for the non-appearance. The ALJ further concluded that petitioner should be assessed tuition costs in the amount of \$6,337.60. The parties did not file exceptions to the Initial Decision.

In accordance with *N.J.A.C. 1:1-14.4(d)*, an ex parte hearing was held during which the Board presented the testimony of Vito Tropeano, the district's residency investigator, regarding the investigation into S.W.'s domicile and tuition due for L.D.'s ineligible attendance in Elizabeth schools. Based upon Mr. Tropeano's undisputed testimony and the Board's supplemental submission, the ALJ found that the school district's daily per pupil cost for the 2017-2018 school year was \$79.22. The ALJ further found that the minor child was ineligible to attend school in Elizabeth for a total of 80 days, from February 20, 2018 through the end of the 2017-2018 school year.¹ Accordingly, petitioner was ordered to pay the Board tuition in the

¹ The Commissioner notes that, pursuant to *N.J.S.A. 18A:38-1*, the burden is on petitioner – not respondent – to demonstrate that she is domiciled in the district.

amount of \$6,337.60 (\$79.22 per day for 80 days) for the time period of the minor child's ineligible attendance in Elizabeth's schools.

The Commissioner fully concurs with the ALJ's determination and recommendation that petitioner's failure to prosecute this matter necessitates its dismissal and the award of tuition to the Board. Accordingly, the recommended decision of the OAL is adopted as the final decision in this matter and petitioner is hereby directed to pay the Board \$6,337.60 in tuition for her child's ineligible attendance in Elizabeth during the 2017-2018 school year.

IT IS SO ORDERED.²

COMMISSIONER OF EDUCATION

Date of Decision: November 1, 2018

Date of Mailing: November 1, 2018

² 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*).