

126-24
OAL Dkt. No. EDU 04745-23
Agency Dkt. No. 148-5/23

New Jersey Commissioner of Education
Final Decision

A.N., on behalf of minor children, S.R. and
K.W.,

Petitioner,

v.

Board of Education of the City of Elizabeth,
Union County,

Respondent.

The record of this matter, which was transmitted to the Commissioner by the Office of Administrative Law (OAL) pursuant to *N.J.A.C. 1:1-14.4* and includes an advisement of petitioner's failure to appear at the scheduled OAL hearing on January 25, 2024, has been reviewed. Petitioner did not file an explanation for her failure to appear, notwithstanding the opportunity to do so. Accordingly, petitioner's residency appeal is hereby dismissed, and the Board's determination that petitioner's minor children were not entitled to a free public education in Elizabeth remains in effect.

However, the Elizabeth Board of Education (Board) filed exceptions, arguing that the Administrative Law Judge (ALJ) should have heard and considered the Board's position regarding its counterclaim against petitioner for tuition reimbursement, instead of dismissing it with the residency appeal.

Upon review, the Commissioner concludes that the Board was entitled to provide ex parte proofs once petitioner failed to appear for the hearing and was also entitled to an initial decision on the merits of its counterclaim. See *N.J.A.C. 1:1-14.4(d)*. Pursuant to *N.J.S.A. 18A:38-1b*, the Commissioner shall assess tuition against petitioner for the time period during which the minor children were ineligible to attend school in the district. The statute provides that the Commissioner may order tuition “computed on the basis of 1/180 of the total annual per pupil cost to the local district multiplied by the number of days of ineligible attendance.” *N.J.S.A. 18A:38-1b*. In the absence of any factual findings by the ALJ regarding these issues, the Commissioner is unable to complete the necessary calculations.

Accordingly, this matter is remanded to the OAL for further proceedings to develop the factual record regarding the number of days of ineligible attendance and the per diem cost of tuition.

IT IS SO ORDERED.



ACTING COMMISSIONER OF EDUCATION

Date of Decision: March 1, 2024
Date of Mailing: March 6, 2024