

C #195-01L
SB # 24-01
C #193-02L
SB # 28-02

K.D., on behalf of minor child, K.D., :
PETITIONER-APPELLANT, : STATE BOARD OF EDUCATION
V. : DECISION
BOARD OF EDUCATION OF THE BOROUGH :
OF NORTH HALEDON, PASSAIC COUNTY, :
RESPONDENT-RESPONDENT. :
_____ :

Decided by the Assistant Commissioner of Education, June 19, 2001

Remanded by the State Board of Education, January 2, 2002

Decision on remand by the Commissioner of Education, May 10, 2002

For the Petitioner-Appellant, K.D., pro se

For the Respondent-Respondent, Lindabury, McCormick & Estabrook
(Anthony P. Sciarrillo, Esq., of Counsel)

K.D. (hereinafter "petitioner") filed a petition with the Commissioner of Education challenging the determination by the Board of Education of the Borough of North Haledon (hereinafter "Board") that her daughter was not entitled to a free public education in that district. The Board filed a counterclaim seeking tuition from the petitioner for the period of her daughter's ineligible attendance in the district.

On June 19, 2001, the Assistant Commissioner of Education issued a letter decision in which he dismissed the petition for failure to state a claim for which relief could be granted. The Assistant Commissioner concluded that the petitioner had failed to demonstrate that she and her daughter were domiciled within the North Haledon School District so as to be entitled to a free public education in that district pursuant to N.J.S.A. 18A:38-1. The Assistant Commissioner granted the Board's counterclaim for tuition, and he directed the petitioner to reimburse the Board for the period of her daughter's ineligible attendance in the district from January 24, 2001 through her daughter's last day of school in North Haledon.

The petitioner filed an appeal to the State Board, contending, inter alia, that the amount of tuition calculated by the Board following the Assistant Commissioner's decision – \$4,888.88 – was excessive. More specifically, the petitioner maintained that the amount being charged by the Board for her daughter's resource center instruction was unreasonable. The Board countered that the amount of tuition owed by the petitioner "was calculated based upon the adopted tuition rate for non-resident students plus the cost of resource center support per child divided by the total number of school days to arrive at a per diem cost of \$53.14....Pursuant to the Commissioner's decision, this per diem amount was then multiplied by 92 days, for January 25, 2001 through June 22, 2001, for a total of \$4,888.88." Answer Brief, at 2.

In a decision issued on January 2, 2002, the State Board of Education affirmed the decision of the Assistant Commissioner that the petitioner had not demonstrated that she was domiciled in North Haledon. Accordingly, we concurred with the Assistant Commissioner that the petitioner was responsible for tuition for the period of her

daughter's ineligible attendance in that district. However, we found that the record did not permit a determination of the petitioner's contention regarding the specific amount of tuition calculated by the Board following the Assistant Commissioner's decision. We therefore remanded this matter to the Commissioner for the limited purpose of determining the Board's "total annual per pupil cost" as it applied to the educational program provided to the petitioner's daughter, particularly with regard to the resource center, and for a resultant determination of the amount of tuition to which the Board was entitled. We did not retain jurisdiction.

In a letter decision issued on May 10, 2002, the Commissioner accepted the Board's tuition calculation and, observing that the petitioner had not filed any objections to the Board's figures, held that the petitioner owed tuition in the amount of \$4,895.05.

The Commissioner explained that the Board's calculation was:

based on K.D.' [sic] ineligible attendance at its schools for 92 days in the 2000-2001 school year. Adding the applicable cost for K.D.'s grade level (\$3,622.38 for attendance in 5th grade for 92 days) to the amount charged for 92 days of resource room services (\$1,272.67 for 2¼ hours of resource room services per day, at \$6.14 per hour), respondent seeks \$4,895.05 in tuition.

Commissioner's Decision, slip op. at 1.

The petitioner filed the instant appeal to the State Board.

After a thorough review of the record, we affirm the decision of the Commissioner as clarified and corrected herein. We agree that the petitioner is responsible for tuition in the amount of \$3,622.38 for regular education classes for her grade category for the period of her daughter's ineligible attendance in the district. We also concur that the petitioner is responsible for additional tuition for resource room services during that

period. Based upon the figures provided by the Board, the amount due for resource room instruction is \$1,270.98.¹ The petitioner does not dispute the fact that the Board provided her daughter with such services. Pursuant to the terms of the residency statute, tuition “shall be 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(2). Since resource room services constitute a cost to the Board,² such an expenditure was properly included in the Commissioner’s award, and the petitioner has not shown that the figures utilized by the Board in computing the tuition due for such instruction are in error.

We therefore affirm the decision of the Commissioner as clarified and corrected herein.

December 3, 2003

Date of mailing _____

¹ We note that the figures provided by the Board for resource room services, supra at 3, compute to a total of \$1,270.98, rather than \$1,272.67 as indicated by the Board and adopted by the Commissioner.

² See, e.g., N.J.A.C. 6A:23-3.1 (in determining the “actual cost per student” for determining the tuition rate in a sending-receiving relationship, the receiving district, in addition to the tuition charged for each grade category, may charge the sending district for students receiving services in a resource room “an additional amount up to the actual direct instructional cost per student for such services calculated on an hourly basis”).