

W.A., on behalf of minor child, B.A., :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE : DECISION
BOROUGH OF SOUTH PLAINFIELD,
MIDDLESEX COUNTY. :
RESPONDENT. :

SYNOPSIS

Petitioning parent challenged the Board's residency determination that his daughter B.A. was not domiciled in the South Plainfield District and, therefore, was not entitled to continue to attend school in the District.

In light of testimony from witnesses, including the School District's Residency Officer and former police investigator, the ALJ dismissed the petition, concluding that B.A. resided with her mother, who was not domiciled in the District, and that since B.A. was not kept in the home within the respondent District, B.A. was not entitled to be educated in the District. The ALJ ordered that petitioner was liable for tuition from the time B.A. enrolled in the South Plainfield School District in 1998 to the present, a total amount of \$25,617. The ALJ denied the Board's request for prejudgment interest, but awarded postjudgment interest pursuant to *N.J.A.C. 6A:3-17*.

The Commissioner agreed with the ALJ that petitioner failed to prove that B.A. was domiciled in the District so as to be entitled to a free public education in that District. The Commissioner directed that petitioner reimburse the Board tuition in the amount of \$25,617. Concurring with the ALJ, the Commissioner denied prejudgment interest. The Commissioner, however, also denied postjudgment interest because the requisite time had not passed pursuant to *N.J.A.C. 6A:3-17*. In the absence of express statutory authority to award counsel fees, the Commissioner determined that he may not direct that the Board be compensated for legal fees.

August 27, 2001

<p>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.</p>

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The record of this matter and the Initial Decision of the Office of Administrative Law have been reviewed. Exceptions were submitted by petitioner in accordance with *N.J.A.C.* 1:1-18.4 and were duly considered by the Commissioner in reaching his determination herein.

Petitioner's exceptions state in their entirety:

On July 12, 2001, a decision was render[ed] on the above referenced petition by the honorable Joseph F. Martone.

Consider this letter my exceptions to the entire decision rendered.

It is obvious we need help from a higher authority for BA to receive her basic civil rights.

Upon careful and independent review of the record in this matter, which includes transcripts of proceedings before the Administrative Law Judge (ALJ), the Commissioner concurs with the finding by the ALJ that petitioner has failed to prove that B.A. is domiciled in the South Plainfield School District so as to entitled her to a free public education in that District. Pursuant to *N.J.S.A.* 18A:38-1b(2), therefore, the Commissioner directs that petitioner reimburse the Board for tuition in the amount of \$8,138 for the 1998-99 school year, \$8,797 for the 1999-

2000 school year and \$8,682 for the 2000-01 school year, for a total of \$25,617, as set forth in the Initial Decision at page 15.

With respect to the Board's counterclaim for prejudgment and postjudgment interest, the Commissioner concurs with the ALJ that the Board has failed to establish that petitioner deliberately violated the statute, acted in bad faith or acted from other improper motive. Accordingly, the Commissioner concludes that the Board is not entitled to prejudgment interest in this matter. The Commissioner also observes that the Board's claim for postjudgment interest is not properly before him at this time, since the requisite time period has not passed pursuant to *N.J.A.C.* 6A:3-1.17(c)2. The Board's claim for postjudgment interest is, therefore, also denied.

Finally, in the absence of express statutory authority to award counsel fees, the Commissioner may not direct that the Board be compensated for legal fees in this matter.¹ *See Balsley v. North Hunterdon Bd. of Educ.*, 117 N.J. 434 (1990) and *State, Dept. of Environ. Protect. v. Ventron Corp.*, 94 N.J. 473 (1983).

Accordingly, the Initial Decision of the ALJ is affirmed, with modification as set forth above. Petitioner is, therefore, directed to reimburse the Board for tuition in the amount of \$25,617.

IT IS SO ORDERED.²

COMMISSIONER OF EDUCATION

Date of Decision: August 27, 2001

Date of Mailing: August 29, 2001

¹ The Commissioner notes that the Initial Decision is silent with respect to the Board's counterclaim for legal fees.

² This decision, as the Commissioner's final determination, may be appealed to the State Board of Education pursuant to *N.J.S.A.* 18A:6-27 *et seq.* and *N.J.A.C.* 6A:4-1.1 *et seq.*, within 30 days of its filing. Commissioner decisions are deemed filed three days after the date of mailing to the parties.