

J.W.A., on behalf of minor children, A.A., N.A. and J.A.,:

PETITIONER, :

V. : COMMISSIONER OF EDUCATION

BOARD OF EDUCATION OF THE TOWNSHIP : DECISION
OF HAMILTON, MERCER COUNTY, :

RESPONDENT. :

_____ :

SYNOPSIS

Petitioner filed a *Pro Se* Residency Appeal challenging the Board's residency determination that his children, A.A., N.A. and J.A., were not eligible for a free education in the Hamilton Township School District.

Respondent Board filed an answer to the petition, and asserted a counterclaim for payment of tuition. The matter was transmitted to the OAL as a contested case, and a hearing was scheduled for February 1, 2005. Notwithstanding Petitioner's failure to appear, testimony was taken pertaining to the minor children's domicile and the cost of their education provided by respondent Board. The Board provided certification of the district's daily per student tuition rate for school year 2002-2003 (\$44.81), and school years 2003-2004 and 2004-2005 (\$48.70). The ALJ concluded that the Board's proofs as to ineligibility for attendance and as to the tuition rates were convincing and satisfied its burden of proof for the counterclaim, and that J.W.A. must pay the respondent tuition calculated at the rates set forth in the Board's certification.

Upon careful review of the record in this matter and the Initial Decision, the Commissioner concurred that the petitioner's appeal must be dismissed for failure to prosecute, and that the Board's counterclaim for tuition for the 2004-2005 school year be granted. However, the Commissioner found no evidence in the record to support tuition assessment on petitioner for the 2002-2003 and 2003-2004 school years. Accordingly, the Initial Decision is adopted as modified above, and the petitioner is directed to pay the Board at the per diem rate of \$48.70 per child for the period of ineligible attendance during the 2004-2005 school year.

<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>

OAL DKT. NO. EDU 10157-04
AGENCY DKT. NO. 349-10/04

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. The parties filed no exceptions to the Initial Decision.

Upon his full and independent review,¹ the Commissioner concurs with the Administrative Law Judge that petitioner's appeal here is appropriately dismissed for failure to prosecute and the Board's counterclaim for tuition for the 2004-2005 school year is appropriately granted. However, the Commissioner finds no evidence in the record before him to support an assessment on petitioner in this matter for the 2002-2003 and 2003-2004 school years. Consequently, tuition claims for these school years are dismissed without prejudice.

Accordingly, the recommended decision of the OAL is adopted, as modified above. Petitioner is hereby directed to compensate the Board, at the per diem rate of \$48.70 per child, for the period of A.A., N.A. and J.A.'s ineligible attendance in the Board's schools during the 2004-2005 school year and the instant Petition of Appeal is hereby dismissed.

IT IS SO ORDERED.²

COMMISSIONER OF EDUCATION

Date of Decision: April 29, 2005

Date of Mailing: April 29, 2005

¹ It is noted that the instant record included an audiotape of the proceedings conducted at the OAL wherein the Board offered evidence and made arguments in support of its tuition claim.

² This decision 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.*