

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

PETITIONER, :

V. : COMMISSIONER OF EDUCATION

CHRISTINE APPLGATE AND BARBARA : DECISION
ZIMMERMAN, :

RESPONDENTS. :

SYNOPSIS

The instant petition was filed subsequent to an appeal of the Board's action to remove respondent Applegate's three children from its schools, which was entered by J.W.A., the children's father. A hearing was held at the OAL under Docket No. EDU 10157-054, at which J.W.A. failed to appear; the Board presented evidence at hearing to support its claim that the children were not domiciled in Hamilton; and the initial and final decisions found in favor of the Board. The Board now seeks payment of tuition for the period of ineligible attendance, attorney fees, and other relief from respondents Applegate and Zimmerman -- the children's mother and grandmother -- as affiants on the Board's host family forms.

The ALJ concluded that petitioning Board has sustained its burden of proof with respect to its claim for tuition for each child at the daily rate of \$48.70 for the 2004-2005 school year. The ALJ ordered respondents to pay the Board tuition in the amount of \$7,499.80 per child, for a total of \$22,499.40, for the period of their ineligible attendance, and denied the petitioning Board's request for counsel fees.

Upon careful review of the record in this matter, the Commissioner adopts the Initial Decision of the ALJ, ordering the respondents to reimburse the Board in the amount of \$22,499.40 for A.A.'s, N.A.'s and J.A.'s ineligible attendance in the District's schools. In so doing, the Commissioner notes that in the absence of express statutory authority to award legal fees, petitioner's request for legal fees in this matter is denied.

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.

December 5, 2005

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The record of this matter and the Initial Decision of the Office of Administrative Law have been reviewed. No exceptions were filed by the parties.

Upon a careful and independent review of the record in this matter, the Commissioner concurs with the Administrative Law Judge (ALJ) that respondents – who did not appear for the hearing in this matter – have failed to demonstrate that they are not responsible for the payment of tuition in the amount of \$48.70 per day per child for the 154 days of A.A.’s, N.A.’s and J.A.’s ineligible attendance in the Hamilton Township School District (District) from September 7, 2005 to May 10, 2005. The Commissioner finds that respondents must, therefore, reimburse the Hamilton Board of Education (Board) \$7,499.80 per child for a total of \$22,499.40 for A.A.’s, N.A.’s and J.A.’s ineligible attendance in the District’s schools.

With respect to petitioner’s request for legal fees, in the absence of express statutory authority to award legal fees, the Commissioner may not direct that petitioner be compensated for legal fees in this matter. *See Hinfey v. Matawan Regional Board of Education,*

77 N.J. 514, 525 (1978); *B.B., on behalf of her son, L.C. v. Board of Education of the Union County Regional High School District No. 1 and Donald Merachnik, Superintendent of Schools, Union County*, 1987 S.L.D. 323; *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, as set forth above, the Initial Decision of the ALJ is adopted for the reasons expressed therein.

IT IS SO ORDERED.*

ACTING COMMISSIONER OF EDUCATION

Date of Decision: December 5, 2005

Date of Mailing: December 5, 2005

* 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.*