

G.P. ON BEHALF OF MINOR :
CHILD, R.P., :
 :
 PETITIONER, : COMMISSIONER OF EDUCATION
 :
 V. : DECISION
 :
 BOARD OF EDUCATION OF THE :
 TOWNSHIP OF WEST ORANGE, :
 ESSEX COUNTY, :
 :
 RESPONDENT. :
 _____ :

SYNOPSIS

Petitioner challenged the Board's residency determination that his niece, R.P., was not eligible for a free education in the Township of West Orange School District based on family or economic hardship. Petitioner's appeal included an affidavit from R.P.'s mother, who resides in Haiti, alleging persecution of her family for its political beliefs. Petitioner did not appear at the OAL hearing and respondent moved for dismissal of the petition and an award of tuition reimbursement.

The ALJ found that: petitioner enrolled his niece, R.P., in West Orange High School in September 2004; R.P. attended the school on a regular basis through the date of the hearing on June 3, 2005; the tuition rate at West Orange High School for the 2004-05 school year was \$12,655; and petitioner failed to attend the scheduled hearing or call to ask for an adjournment or to explain the reason for his failure to appear. Based on the petitioner's failure to appear at hearing, the ALJ concluded that he failed to meet his burden of proof pursuant to *N.J.S.A. 18A:38-1(b) (1)*, and further concluded that respondent did meet its burden under *N.J.S.A. 18A:38-1(b) (2)*, and is entitled to tuition reimbursement and removal of R.P. from the district schools; the ALJ so ordered.

Upon review of the record, the initial decision of the OAL, and a letter from petitioner dated June 17, 2005, the Commissioner rejects the ALJ's recommendations, and remands the matter to the OAL for a hearing on the merits. In so deciding, he states that there is enough in the record to justify, at minimum, a hearing to determine whether the allegations in R.P.'s mother's affidavit about the family's political oppression and economic hardship in Haiti are legitimate and sufficient to justify tuition-free attendance for R.P. in West Orange schools, and notes that such an important inquiry should not be short-circuited by dismissal of petitioner's appeal, where petitioner is *pro se*, where there was one hearing notice four months before hearing date and no further communication between the parties and the OAL, and where petitioner promptly took action when he learned that he missed the hearing. Accordingly, the Commissioner remands this matter to the OAL for an expedited hearing.

<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 10926-04
AGENCY DKT. NO. 373-10/04

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The record in this matter, the initial decision of the Office of Administrative Law (OAL), and a communication from the petitioner, a copy of which is annexed hereto, have been reviewed. Upon consideration of the foregoing, the Commissioner of Education (Commissioner) remands the matter to the OAL for a hearing on the merits.

Factual and Procedural History

G.P. (petitioner) applied to the West Orange Board of Education (respondent) to allow his niece, R.P., to receive a free public education in West Orange. Respondent denied his application on September 13, 2004, for the stated reason that it did not meet the statute's requirement of family or economic hardship. On October 25, 2004 the Commissioner of Education received an appeal from the petitioner which included an affidavit dated October 21, 2004, from R.P.'s mother, R.D.P., who resides in Haiti.

In the affidavit, R.D.P. alleged that her family was persecuted for its political beliefs: that they lived from house to house in fear; that after a beating in retaliation for attendance at a protest against Haiti's president, R.P.'s brother fled to the United States and applied for asylum; that before R.P. arrived in the United States to live with her uncle, the petitioner, she had been in hiding from the militia, which had tried to kidnap her; that R.P. was traumatized as a result of the conditions in Haiti; and that petitioner would care for R.P. gratis because of her mother's inability to provide her with security and basic necessities.

Respondent filed an answer on November 30, 2004, including a counterclaim for tuition reimbursement for the period in which R.P. had attended school in West Orange, and the matter was transmitted to the OAL. On February 7, 2005, the OAL sent a notice to the parties advising that the hearing would take place on June 3, 2005, at 9 a.m..

Petitioner did not appear at the hearing on June 3, 2005, and did not call the OAL to request an adjournment or explain his absence (Initial Decision, p.2). Respondent's counsel represented that he had left petitioner a telephone message on June 2, 2005, with the date and location of the hearing and his telephone number, but petitioner had not returned the call. *Ibid.* At 10:15 a.m. on June 3, respondent moved for dismissal of the petition and an award of tuition reimbursement. *Ibid.* Testimony was presented about R.P.'s school attendance and about tuition rates in West Orange. *Ibid.* The matter was held until Monday, June 6, 2005. *Ibid.* When petitioner failed to appear, respondent's motion for dismissal of the petition and an award of tuition fees was granted. *Ibid.*

The administrative law judge's (ALJ) initial decision was issued on June 8, 2005. The ALJ found that petitioner enrolled R.P. as an eleventh grader in West Orange High School on September 13, 2004; that she attended the school regularly throughout the year; that tuition

for the 2004-2005 school year was \$12,655; and that petitioner failed to attend the hearing scheduled to adjudicate R.P.'s right to a free education in West Orange (Initial Decision, p.3). He concluded that since petitioner failed to attend the hearing, and in so doing failed to meet his burden to show that R.P.'s residency with him entitles her to a free education in West Orange, pursuant to *N.J.S.A. 18A:38-1(b)(1)*, the petition should be dismissed. *Ibid.* In addition, he concluded that, pursuant to *N.J.S.A. 18A:38-1(b) (2)*, and based upon the evidence, petitioner owed respondent tuition for the 2004-2005 school year (*id.* at 4).

Nine days after the initial decision, on June 17, 2005, petitioner hand delivered to the office of the Commissioner of Education the letter, a copy of which is annexed hereto, wherein he reports that he did not know about the hearing until two days after it took place. The letter further states in pertinent part:

If I were to know, I would not have ever made the mistake of not attending, I was waiting for that chance for so long. Please I would like to have the opportunity to prove my case. I am pleading for another chance to be able to do so.

Discussion

Petitioner's letter was submitted within the time allowed for exceptions and can be regarded as a challenge to the initial decision. While the letter does not set forth specific facts explaining why petitioner did not know about the hearing date, the Commissioner notes that there was no contact between the parties and the OAL between the February 7, 2005 hearing notice and the June 3, 2005 hearing date, a period of four months. Also, respondent's counsel's representation that he left a message for petitioner on the day before the hearing is not grounds for concluding that petitioner knew about the hearing. The reference in the initial decision to

counsel's representation contains no specifics about how counsel left the message and with whom.

N.J.S.A. 18A:38-1(b) (1) allows a free public education for anyone (of qualifying age) who lives with and is supported gratis by a person domiciled in the school district, so long as the supporting person makes certain representations, and the parent of the student shows reasons why he or she cannot support or care for the student. More specifically, *N.J.S.A. 18A:38-1(b) (1)* states in pertinent part:

Any person who is kept in the home of another person domiciled within the school district and is supported by such other person gratis as if he were such other person's own child, upon filing by such other person with the secretary of the board of education of the district, if so required by the board, a sworn statement that he is domiciled within the district and is supporting the child gratis and will assume all personal obligations for the child relative to school requirements and that he intends so to keep and support the child gratuitously for a longer time than merely through the school term, and a copy of his lease if a tenant, or a sworn statement by his landlord acknowledging his tenancy if residing as a tenant without a written lease, and upon filing by the child's parent or guardian with the secretary of the board of education a sworn statement that he is not capable of supporting or providing care for the child due to a family or economic hardship and that the child is not residing with the resident of the district solely for the purpose of receiving a free public education within the district. The statement shall be accompanied by documentation to support the validity of the sworn statements, information from or about which shall be supplied only to the board and only to the extent that it directly pertains to the support or nonsupport of the child.

The record does not include what, if anything, petitioner initially submitted to respondent concerning his domicile, his intention to support R.P., and his commitment to assume responsibility for her for the long term. However, respondent does not appear to be challenging those issues. Respondent alleges that R.P.'s parents have not made a showing that economic or family hardship warrants that R.P. live with her uncle.

The Commissioner has determined that there is enough in the record to justify, at a minimum, a hearing to determine whether the allegations in R.P.'s mother's affidavit about the family's political oppression and economic hardship in Haiti are legitimate and sufficient to justify tuition-free attendance for R.P. at West Orange High School. Such an important inquiry should not be short-circuited by dismissal of petitioner's appeal, where petitioner is *pro se*, where there was one hearing notice four months before the hearing date and no further communications between the parties and the OAL, and where petitioner promptly took action when he learned that he missed the hearing.

Accordingly, for the reasons stated herein, the Commissioner remands this matter to the OAL for an expedited hearing on the merits of petitioner's appeal.

IT IS SO ORDERED.¹

COMMISSIONER OF EDUCATION

Date of Decision: July 14, 2005

Date of Mailing: July 14, 2005

¹ This decision may be appealed to the State Board of Education pursuant to *N.J.S.A. 18:6-27 et seq.* and *N.J.A.C. 6A:4-1.1 et seq.*