

L.E.H., on behalf of minor child, Z.H., :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE : DECISION
TOWNSHIP OF WEST ORANGE,
ESSEX COUNTY, :
RESPONDENT. :

SYNOPSIS

Petitioner filed a *pro se* residency appeal on behalf of her daughter, Z.H., a student in respondent's school district. The respondent Board contends that Z.H. is not eligible for a free public education in the district based on information showing that petitioner is not a resident of West Orange. The petitioner failed to appear for a scheduled hearing on May 15, 2009. The Board seeks reimbursal of tuition for the period of Z.H.'s alleged ineligible attendance.

The ALJ found that the petitioner failed to appear and prosecute her appeal of the Board's residency determination; therefore, the ALJ concluded that the Board's determination that Z.H. was not domiciled in West Orange during the 2008-2009 school year should be upheld and the petition dismissed. Furthermore, the ALJ concluded that the Board has demonstrated entitlement to tuition reimbursement in the amount of \$10,643, plus \$78.84 per day for each day Z.H. continues to attend West Orange schools subsequent to May 15, 2009.

Upon independent review and consideration of the record, the Commissioner found that further proceedings are necessary to determine Z.H.'s eligibility for continued attendance in the Board's district. Accordingly, the matter was remanded to the OAL with a reminder to petitioner that she is expected to comply with applicable procedural rules and bears the burden of proving Z.H.'s entitlement pursuant to *N.J.S.A. 18A:38-1*.

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.

July 2, 2009

OAL DKT. NO. EDU 3787-09
AGENCY DKT. NO. 41-3/09

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed, as have petitioner's exceptions and the Board of Education's reply pursuant to *N.J.A.C. 1:1-18.4*.

In her exceptions, petitioner contends that she never received notice of the OAL hearing at which she failed to appear. She additionally asks the Commissioner to reject the OAL's order for payment of tuition and allow Z.H. to finish school in respondent's district – which she has long attended – in light of the fact that she and her family lost their home due to poverty and were forced to move in with family and friends, causing Z.H. to suffer greatly. (Petitioner's Exceptions at 1-2)

In reply, the Board urges adoption of the Initial Decision, contending that it would be unfair to the Board and district taxpayers to remand this matter for hearing – thereby allowing Z.H. to continue attending school in the district – when petitioner has totally failed to prosecute her claim, as evidenced by her nonappearance at scheduled hearings before both the Board and the OAL. The Board further observes that: 1) petitioner received the Initial Decision, which was

mailed to the same address at which she claims not to have received the OAL hearing notice; and
2) according to the Board's information, petitioner has been living in Orange for at least six months and does not even allege she remains domiciled in West Orange. (Board's Reply at 1)

Upon review, because this matter pertains to Z.H.'s ability to obtain the free public education to which she is entitled by law as a New Jersey resident, the Commissioner cannot ignore petitioner's assertion – however incredible the Board may believe it to be – that she did not receive notice of the scheduled OAL hearing, nor the suggestion that Z.H. may be the child of a homeless family and, consequently, entitled to attend school in the Board's district pursuant to *N.J.S.A. 18A:38-1(f)* and *N.J.A.C. 6A:17-2* (Education of Homeless Children). The Commissioner finds, therefore, that further proceedings are necessary to determine Z.H.'s eligibility for continued attendance in the Board's district.¹

Accordingly, the Initial Decision is rejected and this matter is remanded to the OAL for further proceedings as set forth above. Petitioner is reminded, however, that in pursuing her claims, she is expected to comply with applicable procedural rules and bears the burden of proving Z.H.'s entitlement pursuant to *N.J.S.A. 18A:38-1*.

IT IS SO ORDERED.²

COMMISSIONER OF EDUCATION

Date of Decision: July 2, 2009

Date of Mailing: July 2, 2009

¹ Any dispute concerning the determination of homelessness must first be brought to the Executive County Superintendent of Schools pursuant to *N.J.A.C. 6A:17-2.8*.

² This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L. 2008, c. 36*.