

C.P. on behalf of minor child, Z.P., :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE : DECISION
TOWNSHIP OF EWING,
MERCER COUNTY, :
RESPONDENT. :

SYNOPSIS

Petitioner filed a residency appeal on behalf of her grandson, Z.P., who is enrolled as an elementary school student in the Ewing Public Schools for the 2008-09 school year. The respondent Board sought reimbursement of tuition for the period of Z.P.'s alleged ineligible attendance. Petitioner failed to appear for the hearing held in January 2009; respondent Board submitted an affidavit attesting to the tuition owed for Z.P.'s period of ineligible attendance.

The ALJ found that: petitioner failed to meet her burden of proving by a preponderance of the evidence that Z.P. is entitled to a free education in Ewing schools, and concluded that the petition should be dismissed for lack of prosecution and that the Board's counterclaim for tuition in the amount of \$7,286 should be granted.

The Commissioner noted that the record showed that respondent Board presented a custody order and an affidavit implicitly conceding that Z.P.'s period of ineligibility ended on November 21, 2008. Accordingly, the instant petition was rendered moot. However, the Commissioner found that respondent presented sufficient evidence to show that for a period of time, Z.P. attended school in respondent's district without satisfying eligibility requirements; therefore, respondent's counterclaim was granted.

<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>

March 27, 2009

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The Commissioner's review of the record in this matter¹ reveals the following. C.P., the grandmother of Z.P., enrolled Z.P. in respondent's school district in the summer of 2007. Prior to February 5, 2008, it came to the attention of respondent's attendance officer that Z.P. may have been residing with his mother in Trenton. After an investigation, including surveillance of the Ewing address in February, March and April of 2008, the attendance officer concluded that Z.P. was not residing with his grandmother in Ewing.

A notice of ineligibility was sent to Z.P.'s mother, S.P., and a hearing took place before respondent on August 27, 2008, wherein S.P. gave testimony. At the conclusion of the hearing respondent disenrolled Z.P.

C.P. filed a petition of appeal with the Commissioner on October 14, 2008; respondent answered and counterclaimed on October 20, 2008; and the matter was transmitted to the Office of Administrative Law (OAL) on October 21, 2008. On November 21, 2008, a court

¹ No exceptions were filed.

order was issued awarding C.P. residential custody of Z.P, but that order was not, at that time, brought to the attention of the OAL.

Notices of a January 26, 2009 hearing were sent by the OAL to the parties. On that date respondent appeared but petitioner did not. The record was opened; respondent's exhibits – including a copy of the above referenced custody order (R-5) – were accepted; and the record remained open for the purpose of receiving supplemental evidence from respondent concerning the amount due on its counterclaim for tuition for Z.P.'s period of ineligible attendance. Petitioner failed to provide an explanation to the Administrative Law Judge (ALJ) for her absence.

On February 11, 2009, respondent supplemented the record by filing evidence supporting its tuition claim. In an affidavit, the residency officer provided the *per diem* rate and the number of days Z.P. attended school in respondent's district without being eligible to do so. The attendance officer used, as the first day of ineligible attendance, the first day of the above referenced surveillance. The date of the previously mentioned custody order served as the terminus of the period of ineligibility.

At the outset, the Commissioner notes that the district appears to have, *de facto*, abandoned its position that Z.P. is ineligible for a free public education in its district, rendering the petition moot. More specifically, while the petitioner did not attend the hearing, the respondent nonetheless presented the custody order and an affidavit implicitly conceding that Z.P.'s period of ineligibility ended on November 21, 2008.

However, the Commissioner also finds that respondent presented sufficient evidence to support its position that, for a period of time, Z.P. attended school in respondent's

district without satisfying the eligibility requirements. Accordingly, respondent's counterclaim is granted and respondent is awarded tuition in the amount of \$ 7,826.

IT IS SO ORDERED.²

COMMISSIONER OF EDUCATION

Date of Decision: March 27, 2009

Date of Mailing: March 30, 2009

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