

#54-10 (OAL Decision: Not yet available online)

G.D. and B.D., on behalf of minor children,	:	
E.D. and E.D.,	:	
	:	
PETITIONERS,	:	
	:	
V.	:	COMMISSIONER OF EDUCATION
	:	
BOARD OF EDUCATION OF THE	:	DECISION
CITY OF RAHWAY, UNION COUNTY	:	
	:	
RESPONDENT.	:	

SYNOPSIS

Petitioners filed a *pro se* residency appeal in November 2009, challenging the Board's determination that their daughters are not eligible to receive a free public education in the Rahway public schools because of petitioners' failure to demonstrate that they are properly domiciled within the City of Rahway. The respondent Board filed an answer and counterclaim for tuition. Notwithstanding that notice of the hearing scheduled for February 2, 2010 was mailed to the petitioners at the address designated in their petition of appeal – and was not returned as undelivered – petitioners failed to appear at the hearing, and provided no explanation for their nonappearance.

The ALJ found that petitioners failed to prosecute their appeal, leaving no basis to consider overturning the residency determination of the respondent Board, and respondent's proofs as to tuition rate establish entitlement to tuition reimbursement from petitioners in the amount of \$10,340 through February 2, 2010 and at a rate of \$57.44 per day thereafter. Accordingly, the ALJ ordered the petition dismissed with prejudice and granted the Board's counterclaim for tuition, together with post judgment interest pursuant to *N.J.A.C. 6A:3-1.17*.

Upon independent review of the record and petitioners' exceptions to the Initial Decision – which failed to provide any reason for their non-attendance at the hearing – the Commissioner concurred with the determination of the ALJ and adopted the Initial Decision of the OAL as the final decision in this matter, with one modification. The Commissioner declined to adopt that portion of the Initial Decision which awards the Board post judgment interest pursuant to *N.J.A.C. 6A:3-1.17*, as application for such award must be sought through a new petition of appeal.

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.
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February 25, 2010

OAL DKT. NO. EDU 12413-09
AGENCY DKT. NO. 349-12/09

G.D. and B.D., on behalf of minor children, E.D. and E.D.,	:	
	:	
PETITIONERS,	:	
	:	
V.	:	COMMISSIONER OF EDUCATION
	:	
BOARD OF EDUCATION OF THE CITY OF RAHWAY, UNION COUNTY	:	DECISION
	:	
RESPONDENT.	:	

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. Petitioner’s exceptions – filed in accordance with *N.J.A.C. 1:1-18.4* – were fully considered by the Commissioner in reaching his determination herein.

The Administrative Law Judge’s (ALJ) recommended decision in this matter dismissed petitioners’ residency appeal as a consequence of their failure to appear at the hearing scheduled for this matter without providing any explanation for their non-appearance. Because petitioners, therefore, failed to sustain their burden of establishing that their children, E.D. and E.D., were entitled to a free public education in the Rahway schools, the ALJ accepted the Certification of the Board’s Business Administrator as to the tuition due the Board for E.D. and E.D.’s ineligible attendance in its schools. Petitioners were ordered to pay the Board tuition of \$10,340 (for the period encompassing the commencement of the school year through February 2, 2010), and \$57.44 per school day thereafter as long as E.D. and E.D. remain in Rahway schools. Petitioners’ exceptions express great dissatisfaction with the ALJ and the

administrative process but provide absolutely no reason for their non-attendance at the hearing. The Commissioner, therefore, fully concurs with the ALJ's determination and recommendation that petitioners failure to prosecute this matter necessitates its dismissal and an awarding of tuition to the Board. However, the Commissioner declines to adopt that portion of the ALJ's decision which awards the Board post judgment interest pursuant to *N.J.A.C. 6A:3-1.17* as application for such award must be sought through a new petition of appeal (*N.J.A.C. 6A:3-1.17(a)2*); address the criteria set forth in *N.J.A.C. 6A:3-1.17(c)2*; and propose an interest calculation consistent with *N.J.A.C. 6A:3-1.17(d)*.

Accordingly, the recommended decision of the OAL is adopted as modified above. Petitioners are hereby directed to pay the Board \$10,340 in tuition for their children's ineligible attendance in the City of Rahway's schools through February 2, 2010 and \$57.44 per day for each subsequent school day they remain in these schools.

IT IS SO ORDERED.*

ACTING COMMISSIONER OF EDUCATION

Date of Decision: February 25, 2010

Date of Mailing: March 1, 2010

* This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L. 2008, c. 36* (*N.J.S.A. 18A:6-9.1*).