

#161-12 (OAL Decision: Not yet available online)

R.F., on behalf of minor child, D.R.,	:	
	:	
PETITIONER,	:	
	:	
V.	:	COMMISSIONER OF EDUCATION
	:	
BOARD OF EDUCATION OF THE	:	DECISION
TOWNSHIP OF WEST ORANGE,	:	
ESSEX COUNTY,	:	
	:	
RESPONDENT.	:	
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SYNOPSIS

Petitioner, the aunt of student D.R., appealed the determination of the respondent Board that her nephew is not entitled to a free public education in the West Orange school district. Petitioner contended that she has a court order giving her custody of D.R., and that he lives with her in West Orange. The respondent Board asserted that D.R. does not live with R.F. in West Orange, but rather lives with his mother in Montclair.

The ALJ found that: R.F. has custody of her nephew pursuant to a court order; however, the testimony of the Board’s investigator, and the report submitted by him to the district, indicated that D.R. was never observed at the home of R.F. in West Orange, but rather started each school day at his mother’s house in Montclair; based on the facts presented, D.R. was not domiciled in West Orange during the 122 school days he had attended school in West Orange as of the date of the hearing in this matter, despite the fact that R.F. had custody of D.R. Accordingly, the ALJ affirmed the Board’s decision to remove D.R. from its schools, and ordered petitioner to reimburse the district for tuition in the amount of \$15,229.26, plus \$124.83 per day for each day D.R. attends school in the district after March 26, 2012.

Upon a full and independent review, the Commissioner concurred with the findings and conclusion of the ALJ. Accordingly, the Initial Decision of the OAL was adopted as the final decision in this case, and the petition was dismissed.

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.

April 27, 2012

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. The parties did not file exceptions to the Initial Decision.

Upon full consideration, the Commissioner concurs with the Administrative Law Judge (ALJ) that petitioner has failed to satisfy her burden of establishing that D.R. is domiciled in West Orange so as to entitle him to a free public education in that District's schools. In so determining, the Commissioner is cognizant that – notwithstanding that petitioner has a Court Order giving her custody of D.R.¹ – this fact in and of itself is not dispositive of D.R.'s entitlement to school attendance in respondent's schools. (*See D.M., on behalf of minor, B.N. v. Board of Education of the Township of Ewing, Mercer County*, decided by the State Board of Education November 5, 2003) The record in this matter is devoid of any evidence demonstrating that D.R. was actually living with petitioner in West Orange. Rather, the pattern observed by the district's investigator is wholly inconsistent with such a finding as D.R.

¹ It is noted that although papers in the file acknowledge the District's receipt of this Order, a copy of such Order is not contained in the file.

was never observed starting his day at petitioner's home. Petitioner has not offered anything, aside from the existence of the custody order, which would overcome the Board's evidence and allow the Commissioner to conclude that – in accordance with the terms of the order – D.R. is living with petitioner in West Orange.

Accordingly, the recommended decision of the OAL is adopted as the final decision in this matter. Petitioner is hereby directed to pay the Board tuition reimbursement in the amount of \$15,229.26 for D.R.'s ineligible attendance in its schools during the period September 2011 through March 26, 2012 (122 days @ \$124.83 per day) and an additional \$124.83 for each day subsequent to March 26 that D.R. attends the district's schools.

IT IS SO ORDERED.²

ACTING COMMISSIONER OF EDUCATION

Date of Decision: April 27, 2012

Date of Mailing: April 27, 2012

² 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).