

#310-12 (OAL Decision: not yet available online)

Y.C. on behalf of minor child A.A., :  
PETITIONER, : COMMISSIONER OF EDUCATION  
V. : DECISION  
BOARD OF EDUCATION OF THE :  
BOROUGH OF SOUTH PLAINFIELD, :  
MIDDLESEX COUNTY, :  
RESPONDENT. :

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SYNOPSIS

Petitioner filed a *pro se* residency appeal in February 2011 challenging the determination of the respondent Board that her niece, A.A., was not eligible for a free public education in the South Plainfield school district. Petitioner failed to appear at a November 2011 hearing in this matter, despite having received appropriate notice thereof. Accordingly, the Commissioner – by decision issued January 10, 2012 – dismissed the matter with prejudice but remanded the case to the OAL for supplementation of the record with regard to the amount of tuition counterclaimed by the Board. A hearing on this issue was conducted on June 25, 2012 at the OAL; the petitioner again failed to appear despite appropriate notice.

The ALJ found that: Y.C. enrolled her niece in respondent’s schools on January 24, 2011; on March 7, 2011, Y.C. presented the respondent with proof of guardianship over A.A.; A.A. was ineligible for a free public education in South Plainfield for the period from January 24, 2011 to March 7, 2011; and the amount of tuition due for this period is \$2,828. The ALJ concluded that the Board is owed tuition reimbursement for A.A.’s period of ineligible attendance, and ordered petitioner to pay the respondent \$2,828.

After independent review and consideration, the Deputy Commissioner – to whom this matter was delegated pursuant to *N.J.S.A. 18A:4-33* – concurred with the findings and conclusion of the ALJ and adopted the Initial Decision as the final decision in this matter.

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.

August 3, 2012

OAL DKT. NO. EDU 503-12  
AGENCY DKT. NO. 33-2/11

Y.C. on behalf of minor child A.A., :  
PETITIONER, : COMMISSIONER OF EDUCATION  
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BOARD OF EDUCATION OF THE :  
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This matter originally came before the Deputy Commissioner – to whom this matter was delegated pursuant to *N.J.S.A. 18A:4-33* – as a challenge to respondent’s determination that A.A. had been ineligible to receive a free public education from respondent between the dates of January 24, 2011 and March 7, 2011. In consequence of petitioner’s failure to appear at the hearing scheduled for November 28, 2011 in the Office of Administrative Law (OAL), and her failure to provide an explanation for the non-appearance within the allotted time, the Deputy Commissioner upheld respondent’s determination and remanded the case to the OAL for a determination as to the amount of tuition owing.

On June 25, 2012, a hearing was held in the OAL for that purpose. The record indicates that notice of the hearing was sent to petitioner, but she did not attend. Respondent’s witness testified about respondent’s daily tuition rate and about the number of days of A.A.’s ineligible attendance. The Administrative Law Judge (ALJ) found the testimony credible and unrefuted, and concluded in a June 26, 2012 Initial Decision that the amount of tuition due for A.A. is \$2,828.00.

On July 12, 2012, two weeks after the second hearing in this case, a letter from petitioner was received in the Commissioner's office wherein she 1) stated that respondent's representative never told her that she would be liable for tuition until she secured legal custody of A.A., and 2) conceded that she "now recognize[s] that [she] must appear before the courts to better explain [her] circumstances." There is no indication that a copy of the letter was sent to petitioner or its counsel.

The Deputy Commissioner cannot consider petitioner's letter, as it is not competent evidence and was not a part of the record in the OAL.<sup>1 2</sup> Nor has any legitimate explanation been offered for petitioner's non-participation in the proceedings prior to this date. Accordingly, the Deputy Commissioner adopts the Initial Decision as the final decision in this case. Petitioner is liable to respondent for tuition in the amount of \$2,828.00.

IT IS SO ORDERED.<sup>3</sup>

DEPUTY COMMISSIONER OF EDUCATION

Date of Decision: August 3, 2012

Date of Mailing: August 6, 2012

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<sup>1</sup> If the letter was meant as an exception to the Initial Decision, it was untimely filed and therefore was not considered.

<sup>2</sup> Moreover, the Deputy Commissioner notes that even assuming, *arguendo*, that respondent's representative had never advised her that she might be liable for tuition, paragraph 6 of the petition signed by petitioner provides that she "understand[s] that if the Commissioner finds that [she has] abandoned or withdrawn this appeal and/or that the child/ren are ineligible for a free education in [respondent's] district, [she] may be assessed tuition costs . . . ."

<sup>3</sup> This decision may be appealed to the Superior Court, Appellate Division, pursuant to *P.L. 2008, c. 36 (N.J.S.A. 18A:6-9.1)*.