

#282-12 (OAL Decision: Initial Decision not yet available online)

L.B., on behalf of minor children, J.K.B., L.B. :
and J.B., :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
: DECISION
BOARD OF EDUCATION OF THE CITY
OF LINDEN, UNION COUNTY, :
RESPONDENT. :

SYNOPSIS

Petitioner appealed the determination of the respondent Board that her children were not eligible for a free public education in the Linden school district. Petitioner contended that her children had been transferred from Roselle public schools to Linden public schools in 2007 pursuant to the Unsafe Schools Choice Option under No Child Left Behind (NCLB). The Board asserted that petitioner's children were enrolled in its schools based on a 2007 joint custody order that granted residential custody of the children to C.P., a family friend who is domiciled in Linden, and that a residency investigation had established that the children are in fact living with petitioner in Roselle. The Board further contended that there are no documents reflecting the alleged Unsafe School Choice Option transfer, nor any record of an agreement between the Roselle and Linden districts pursuant to the education of petitioner's children.

The ALJ found, *inter alia*, that: the record is devoid of any credible evidence that the children were enrolled in Linden schools pursuant to the Unsafe School Choice Option, or that the children were enrolled on any basis other than the custody order; petitioner testified that the custody order had nothing to do with the children being enrolled in Linden public schools, but the school registration documents – which were signed by petitioner – on their face contradict this assertion; further, the section of the 2007 Linden registration forms which asks whether the child is being enrolled as the result of exercising the NCLB unsafe school choice option is crossed out; petitioner's arguments were not credible; neither the petitioner nor her husband lived in Linden during the time the children were enrolled in the Linden schools; the children did not reside in Linden during the time of their school enrollment; the petitioner and her children resided in Roselle during their enrollment in Linden schools; and no Board agreement or resolution exists relative to a 2007 transfer from Roselle to Linden pursuant to the Unsafe School Choice Option. The ALJ concluded that petitioner failed to prove by a preponderance of the credible evidence that her children were eligible for a free public education in Linden schools; accordingly, petitioner must reimburse the Board for tuition in the amount of \$76,223.40 for the period of her children's ineligible attendance in the district schools.

Upon full review and based on the ALJ's credibility determinations and the complete lack of any credible evidence to the contrary, the Commissioner concurred with the findings and conclusion of the ALJ and adopted the initial decision of the OAL 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.

OAL DKT. NO. EDU 1271-12
AGENCY DKT. NO. 16-1/12

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. Petitioner's exceptions – filed on July 6, 2012 in response to an Initial Decision mailed on June 19, 2012 – were untimely pursuant to *N.J.A.C. 1:1-18.4* and, therefore, these were not considered here.¹

Upon full consideration, the Commissioner is compelled to concur with the Administrative Law Judge's (ALJ) findings and conclusion – based on her credibility determinations in this matter² and the complete lack of any creditable evidence to the contrary – that petitioner has failed to sustain her burden of establishing that her children, J.K.B., L.B. and

¹ It is noted that at no time prior to the expiration of the regulatory timeline for the submission of exceptions did petitioner seek an extension of time within which to file exceptions.

² The ALJ having had the opportunity to assess the credibility of the various witnesses who appeared before her, and having made findings of fact based on their testimony, the standard governing the Commissioner's review is clear and unequivocal:

The agency head may not reject or modify any findings of fact as to issues of credibility of lay witness testimony unless it is first determined from a review of the record that the findings are arbitrary, capricious or unreasonable or are not supported by sufficient, competent, and credible evidence in the record. (*N.J.S.A. 52:14B-10(c)*).

The Commissioner finds no basis whatsoever in the record to reject the ALJ's recitations of testimony, her determination of witness credibility or her fact finding analysis.

J.B. were entitled to a free public education in the Board of Education of the City of Linden's schools.

Accordingly, the recommended decision of the OAL is adopted as the final decision in this matter. Petitioner is hereby ordered to pay the Board a total of \$76,223.40 for her children's ineligible attendance in its schools (\$37,743 for the 2010-11 school year and \$38,480.40 for the 2011-12 school year). It is further ordered that the Police Report in this matter – P-6 – is hereby sealed. The instant petition of appeal is dismissed.

IT IS SO ORDERED.³

ACTING COMMISSIONER OF EDUCATION

Date of Decision: July 16, 2012

Date of Mailing: July 17, 2012

³ 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*).