

I.J., on behalf of minor child, Q.J., :
 :
 PETITIONER, :
 :
 V. : COMMISSIONER OF EDUCATION
 :
 BOARD OF EDUCATION OF THE TOWNSHIP : DECISION
 OF HAMILTON, MERCER COUNTY, :
 :
 RESPONDENT. :
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SYNOPSIS

Petitioner appealed the determination of the respondent Board that her son, Q.J., was not eligible for a free public education in the Hamilton Township school district during the 2012-2013 and 2013-2014 school years. Petitioner contended that her son is domiciled in Hamilton with his father, D.B., at the home of A.D., D.B.'s cousin. The Board asserted that Q.J. has not resided at A.D.'s address since September 2012, and sought reimbursement of tuition for the period of his ineligible attendance.

The ALJ found that: based on the reports from the residency investigation and the evidence presented at hearing, custody of Q.J. was shared by his parents, I.J. and D.B.; Q.J. moves frequently between A.D.'s Hamilton address and his mother's Trenton address; he spends far more time in Trenton with I.J. than he does in Hamilton; I.J. retains financial responsibility for her son; after leaving in the morning from his mother's Trenton address, Q.J. attended school in Hamilton; A.D. has not assumed guardianship of Q.J., nor is she responsible for his support and maintenance; Q.J.'s father, D.B., has not been physically present in A.D.'s household since September 2012, when he was incarcerated; in the absence of D.B., I.J. retained care and custody of Q.J.; I.J. indicated that she intended to make her custody permanent by filing for a change in custody status in Superior Court in February 2014. The ALJ further found that, although Q.J. may have been domiciled at one time in Hamilton, he was no longer domiciled there as of September 2012, and must be considered as having been domiciled at the residence of his mother, I.J., in Trenton for purposes of school attendance for the 2012-2013 and 2013-2014 school years. Accordingly, the ALJ concluded that Q.J. was not entitled to a free public education in Hamilton schools, and respondent is entitled to reimbursement for tuition costs in the amount of \$16,961.28, representing the amount due from September 5, 2012 through December 20, 2013.

Upon review, the Commissioner concurred with the ALJ's conclusion that the petitioner has failed to sustain her burden of proving that Q.J. was entitled to a free public education in Hamilton schools. Further, the Commissioner found that the Board is entitled to tuition reimbursement from petitioner for the entire period of Q.J.'s ineligible attendance, including the additional period from January 2, 2014 through March 5, 2014. Accordingly, the ALJ ordered petitioner to reimburse the Board in the amount of \$19,619.76.

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.

May 2, 2014

OAL DKT. NO. EDU 12782-13
AGENCY DKT. NO. 193-8/13

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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' 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 parties did not file reply exceptions.

Petitioner's exceptions essentially recast and reiterate her arguments advanced before the Administrative Law Judge (ALJ) below. As it is determined that these were considered and addressed by the ALJ in her decision, they will not be revisited here.

The Board urges the Commissioner to adopt the ALJ's conclusions that petitioner failed to carry her burden of establishing that Q.J. was entitled to a free public education in the Hamilton Township School District during the 2012-2013 and 2013-2014 school years, and that the Board is entitled to tuition reimbursement from petitioner for the period of Q.J.'s ineligible attendance. The Board requests, however, modification of the amount of petitioner's tuition reimbursement obligation. More specifically, the Board seeks an increase in the reimbursement amount from \$16,961.28 to \$19,619.76, the additional \$2,658.48 representing tuition for Q.J.'s continued ineligible attendance from January 2, 2014 through March 5, 2014.

Upon full consideration, the Commissioner is compelled to concur with the ALJ's conclusion that petitioner has failed to sustain her burden of establishing that her child, Q.J., was entitled to a free public education in the Hamilton Township School District. Further, the Commissioner finds that the Board is entitled to tuition reimbursement from petitioner for the entire period of Q.J.'s ineligible attendance, including the additional period from January 2, 2014 through March 5, 2014. The Board is, therefore, entitled to tuition reimbursement from petitioner for Q.J.'s ineligible attendance in the total amount of \$19,619.76, as follows:

- \$12,204.00 for the 2012-2013 school year (180 days @ \$67.80 per day)
- \$7,415.76 for the 2013-2014 school year (106 days @ \$69.96 per day)

Accordingly, the recommended decision of the OAL is adopted as modified above. Petitioner is directed to compensate the Board in accordance with this decision and the instant petition of appeal is hereby dismissed.

IT IS SO ORDERED.¹

ACTING COMMISSIONER OF EDUCATION

Date of Decision: May 2, 2014

Date of Mailing: May 2, 2014

¹ 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).