

#305-15 (OAL Decision: Not yet available online)

E.S., on behalf of minor children, M.S. and Z.S., :

PETITIONER, :

V. : COMMISSIONER OF EDUCATION

BOARD OF EDUCATION OF THE CITY OF : DECISION  
LINDEN, UNION COUNTY, :

RESPONDENT. :

\_\_\_\_\_ :

SYNOPSIS

*Pro se* petitioner challenged the respondent Board’s determination that his children, M.S. and Z.S., were not entitled to a free public education in the City of Linden schools. Petitioner asserted that he owns two houses, one in Linden and the other in Roselle, and that the children spend much of their time in the Linden house. The Board maintained that a residency investigation found that M.S. and Z.S. are domiciled in Roselle, and therefore not eligible to attend Linden schools free of charge. The Board sought tuition reimbursement for the period of M.S. and Z.S.’s ineligible attendance, from February 9, 2015 through June 23, 2015.

The ALJ found, *inter alia*, that: pursuant to *N.J.S.A.* 18A:38-1(a), public schools are required to provide a free education to individuals aged 5 to 20 years who are domiciled within the school district; the domicile of unemancipated children is the domicile of their parent or guardian; the results of the Board’s residency investigation show that the children herein were domiciled in Roselle during the time period in question; petitioner failed to demonstrate by a preponderance of the credible evidence that his children were entitled to a free public education in Linden; pursuant to *N.J.S.A.* 18A:38-1(b)(2), a school board is entitled to recover tuition from a parent or guardian of a child found ineligible to attend school in its district; the daily tuition cost in Linden schools is \$103.22 per child; and petitioner’s two children attended Linden schools for a total of eighty four days from the beginning of the residency investigation until the end of the school year. Accordingly, the ALJ concluded that M.S. and Z.S. were not entitled to attend school in Linden free of charge, and the Board is owed tuition for the period of the children’s ineligible attendance. The ALJ dismissed the petition with prejudice and ordered E.S. to reimburse the Board for tuition in the amount of \$17,340.96.

Upon review of the record and the Initial Decision, the Commissioner found that petitioner failed to sustain his burden of establishing that he was a domiciliary of Linden during the period in question. Accordingly, the Initial Decision was adopted as the final decision in this matter and petitioner was directed to reimburse the Board in the amount of \$ 17,340.96. 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.

September 24, 2015

E.S., on behalf of minor children, M.S. and Z.S., :  
 PETITIONER, :  
 V. : COMMISSIONER OF EDUCATION  
 BOARD OF EDUCATION OF THE CITY OF : DECISION  
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 RESPONDENT. :  
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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed, as have the exceptions filed pursuant to *N.J.A.C. 1:1-18.4* by petitioner and the Board of Education’s (Board) reply thereto.<sup>1</sup>

In his exceptions, petitioner argues that because the Board only conducted surveillance of his Roselle home, and not at his Linden home, the Board did not observe that his minor children resided at the Linden home. In reply, the Board argues that petitioner failed to meet his burden of establishing that M.S. and Z.S. resided in Linden. The Board noted that it conducted surveillance on the Roselle property on approximately twenty dates between January and April 2015, which showed petitioner leaving the Roselle home and driving his minor children to school in Linden, and that petitioner’s father also told the Board’s attendance officer that petitioner lived in Roselle, and not at the Linden address.

Upon such review, the Commissioner concurs with the Administrative Law Judge’s (ALJ) finding that petitioner failed to sustain his burden of establishing that he was a domiciliary of Linden for the 2014-2015 school year. The Commissioner further concurs with the ALJ’s

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<sup>1</sup> The Commissioner was not provided with a transcript of the August 3, 2015 hearing at the OAL.

conclusion that the minor children were, therefore, not entitled to a free public education in the District's schools during this time.

Pursuant to *N.J.S.A.* 18A:38-1b, the Board is entitled to tuition reimbursement in the amount of \$17,340.96 (\$103.22 per child per day for 84 days) for the time period from February 9, 2015 through June 23, 2015, during which petitioner's minor children were ineligible to attend, as detailed in the ALJ's Initial Decision.

Accordingly, the Initial Decision of the OAL is adopted as the final decision in this matter. Petitioner is directed to reimburse the Board in the amount of \$17,340.96 for tuition costs incurred during the time period that M.S. and Z.S. were ineligible to attend school in Linden. The petition of appeal is hereby dismissed.

IT IS SO ORDERED.<sup>2</sup>

COMMISSIONER OF EDUCATION

Date of Decision: September 24, 2015

Date of Mailing: September 24, 2015

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<sup>2</sup> 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).