

#261-16 (OAL Decision: Not yet available online)

M.A., ON BEHALF OF MINOR CHILD, M.A., :
 PETITIONER, :
 V. : COMMISSIONER OF EDUCATION
 :
 : DECISION
 BOARD OF EDUCATION OF THE TOWNSHIP :
 OF EWING, MERCER COUNTY, :
 :
 RESPONDENT. :
 _____ :

SYNOPSIS

Petitioner filed a *pro se* residency appeal on behalf of his daughter in June 2014, challenging the respondent Board’s determination that M.A. was not entitled to a free education in Ewing Public Schools. The Board counterclaimed for tuition for the period from October 3, 2013 through May 19, 2014, based on the results of a residency investigation. The matter was transmitted to the Office of Administrative Law (OAL) as a contested case. Petitioner failed to appear at the hearing, and provided no explanation for his non-appearance. The Board did appear, and provided documentary and testimonial evidence in support of its claim for tuition reimbursement.

The ALJ found, *inter alia*, that: pursuant to *N.J.S.A.* 18A:38-1(a), public schools are required to provide a free public education to individuals between the ages of five and twenty years who are domiciled within the school district; the domicile of an unemancipated child is that of her parent or guardian; *N.J.S.A.* 18A:38-1(b)(2) provides parents with the right to appeal a residency determination by a Board of Education; petitioner herein failed to appear and prosecute his appeal, and offered no explanation of his failure to do so; accordingly, the ALJ concluded that the Board’s determination that M.A. was not domiciled in Ewing during the period in question should be upheld, and the petition dismissed pursuant to *N.J.A.C.* 1:1-14.4. The ALJ further granted the Board’s application for tuition reimbursement in the amount of \$10,354.18.

Upon review, the Commissioner concurred with the ALJ findings and conclusions, and adopted the Initial Decision of the OAL as the final decision in this matter. Petitioner was directed to pay the Board \$10,354.18 in tuition for his child’s ineligible attendance in Ewing Schools during the 2013-2014 school year.

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.

July 15, 2016

OAL DKT. NO. EDU 08374-14
AGENCY DKT. NO. 141-6/14

M.A., ON BEHALF OF MINOR CHILD, M.A., :
PETITIONER, :
COMMISSIONER OF EDUCATION
V. :
DECISION
BOARD OF EDUCATION OF THE TOWNSHIP :
OF EWING, MERCER COUNTY, :
RESPONDENT. :
_____ :

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. The Administrative Law Judge's (ALJ) recommended decision in this matter dismissed petitioner's residency appeal as a consequence of his failure to appear at the hearing scheduled for this matter without providing any explanation for the non-appearance. The ALJ further concluded that petitioner should be assessed tuition costs in the amount of \$10,354.18. The parties did not file exceptions to the Initial Decision. ¹

In accordance with *N.J.A.C.* 1:1-14.4(d), an *ex parte* hearing was held during which the Board presented the testimony of David Mikalauskas, the district's residency officer, respecting the tuition due the Board for M.A.'s ineligible attendance in its schools. Based upon Mr. Mikalauskas' undisputed testimony, the ALJ found that the school district's total annual per pupil cost for the 2013-2014 school year was \$13,908.00. The ALJ further found that the minor child was ineligible to attend school in Ewing for a total of 134 days, from October 3, 2013 through May 19, 2014. Accordingly, petitioner was ordered to pay the Board tuition in the

¹ The Commissioner was not provided with a transcript of the June 3, 2016 hearing at the OAL.

amount of \$10,354.18 (\$77.27 per day for 134 days) for the time period of the minor child's ineligible attendance in Ewing's schools.

The Commissioner fully concurs with the ALJ's determination and recommendation that petitioner's failure to prosecute this matter necessitates its dismissal and the award of tuition to the Board. Accordingly, the recommended decision of the OAL is adopted as the final decision in this matter and petitioner is hereby directed to pay the Board \$10,354.18 in tuition for his child's ineligible attendance in Ewing during the 2013-2014 school year.

IT IS SO ORDERED.²

COMMISSIONER OF EDUCATION

Date of Decision: July 15, 2016

Date of Mailing: July 15, 2016

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*).