

#350-16R (OAL Decision: Not yet available online)

M.F., ON BEHALF OF MINOR CHILD, J.F. :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE : DECISION
RED BANK REGIONAL HIGH SCHOOL :
DISTRICT, MONMOUTH COUNTY, :
RESPONDENT. :

SYNOPSIS

Petitioner filed a *pro se* residency appeal on behalf of her daughter in August 2015, seeking a determination that J.F. resided within the regional area served by the Red Bank Regional High School. The respondent Board counterclaimed for tuition. The matter was transmitted to the Office of Administrative Law (OAL) to ascertain petitioner's residency and the amount of any tuition due. Petitioner failed to appear at a hearing scheduled for February 29, 2016, and the OAL returned the file to the Commissioner. In a decision dated March 22, 2016, the Commissioner remanded the matter to the OAL for resolution of the Board's counterclaim for tuition for the period of J.F.'s ineligible attendance in Red Bank schools. A hearing on the counterclaim was scheduled for July 6, 2016, but the petitioner again failed to appear.

On remand, the ALF found, *inter alia*, that: J.F. attended Red Bank Regional High School for the 2012-2013, 2013-2014, 2014-2015, and 2015-2016 school years; the Board's counterclaim sought tuition for only two of the school years in question, 2013-2014 and 2014-2015; the Board has established that the per-pupil cost for a high school student for these two school years was \$13,250 and \$13,600 per year, respectively. The ALJ concluded that J.F. was not entitled to attend school free of charge during the two school years in question, and ordered petitioner to reimburse Red Bank for tuition in the amount of \$26,850 for J.F.'s period of ineligible attendance.

Upon review, the Commissioner concurred with the ALJ's finding that J.F. was not entitled to a free public education in Red Bank during the 2013-2014 and 2014-2015 school years. However, the Commissioner modified the ALJ's calculation of tuition due to reflect that, pursuant to *N.J.A.C. 6A:22-6.2*, respondent is not allowed to recoup tuition for the 2013-2014 school year, but is entitled to tuition for the 2015-2016 school year. Accordingly, the Initial Decision was adopted with modification, and the petitioner was ordered to reimburse the Board \$27,500 for tuition costs for the 2014-2015 and 2015-2016 school years.

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.

October 4, 2016

OAL DKT. NO. EDU 04516-16
(EDU 14435-15 ON REMAND)
AGENCY DKT. NO. 232-8/15

M.F., ON BEHALF OF MINOR CHILD, J.F., :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE RED BANK : DECISION
REGIONAL HIGH SCHOOL DISTRICT :
MONMOUTH COUNTY, :
RESPONDENT. :

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed.¹ The parties did not file exceptions.²

Upon such review, the Commissioner concurs with the Administrative Law Judge's (ALJ) finding that J.F. was not domiciled in Red Bank for the 2013-2014 and 2014-2015 school years, and was not entitled to a free education in the District during that period of time. However, the ALJ's calculation of the total amount of tuition owed to the Board is modified as set forth below.

Pursuant to *N.J.S.A.* 18A:38-1b and *N.J.A.C.* 6A:22-6.3, the Commissioner shall assess tuition against petitioner for the time period during which J.F. was ineligible to attend school in the District. Furthermore, *N.J.A.C.* 6A:22-6.2 limits the assessment of tuition to "the period during which the hearing and decision on appeal were pending, and for up to one year of a student's ineligible attendance in a school district prior to the appeal's filing and including the 21-day period to file an appeal." In this matter, following a residency hearing on July 22, 2015, the Board issued a

¹ The Commissioner was not provided with a transcript of the July 6, 2016 hearing at the OAL.

² Petitioner failed to appear at the initial hearing scheduled for February 29, 2016, as well as the July 6, 2016 hearing for disposition of respondent's counterclaim. Petitioner also has not provided an explanation regarding her failure to appear.

Final Determination of Eligibility on August 6, 2015, finding – in relevant part – that petitioner did not reside in the Red Bank Regional School District during the 2013-2014 and 2014-2015 school years, and that tuition should be assessed for the period of J.F.’s ineligible attendance in the District’s school. Subsequently, on August 24, 2015, petitioners filed this instant appeal. Therefore, pursuant to *N.J.A.C. 6A:22-6.2*, petitioner may be assessed tuition for the 2014-2015 school year, but not the 2013-2014 school year – as it would exceed the one year limit. The petitioner may also be assessed tuition for the 2015-2016 school year, during which time the hearing and decision on appeal were pending and J.F. attended school in the District.

The Commissioner hereby modifies the ALJ’s assessment of the total tuition owed to the Board, as respondent is not allowed to recoup tuition for the 2013-2014 school year, but is entitled to tuition for the 2015-2016 school year. Therefore, the Board is entitled to tuition reimbursement in the total amount of \$27,500.00 – which is the sum of \$13,600.00 (the annual per pupil cost for the 2014-2015 school year), and \$13,900.00 (the annual per pupil cost for the 2015-2016 school year).

Accordingly, the Initial Decision of the OAL – as modified herein – is adopted as the final decision in this matter. Petitioner is directed to reimburse the Board in the amount of \$27,500.00 for tuition costs incurred for the 2014-2015 and 2015-2016 school years, during which time J.F. was ineligible to attend school in Red Bank.

IT IS SO ORDERED.³

ACTING COMMISSIONER OF EDUCATION

Date of Decision: October 4, 2016

Date of Mailing: October 4, 2016

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*).