

151-17

A.P., ON BEHALF OF MINOR CHILD, M.S., :
 PETITIONER, :
 COMMISSIONER OF EDUCATION
 V. :
 DECISION
 BOARD OF EDUCATION OF THE TOWNSHIP :
 OF NEPTUNE, MONMOUTH COUNTY, :
 RESPONDENT. :
 _____ :

SYNOPSIS

In October 2016, *pro se* petitioner appealed the determination of the respondent Board that her daughter, M.S., is not entitled to a free public education in Neptune schools for the 2016-2017 school year. Petitioner contended that she resides in Neptune, but was staying temporarily at one of her rental properties in Asbury Park when the school district conducted a residency investigation. The Board argued that A.P. does not meet the residency requirements to be considered legally domiciled in Neptune Township, and that M.S. should be enrolled in Asbury Park schools. The Board filed a motion to dismiss in lieu of an answer to the petition.

The ALJ found that: petitioner failed to appear for a scheduled pre-hearing telephone conference on February 21, 2017, despite receiving appropriate notice of same; the matter subsequently proceeded, *ex-parte*, on the merits through certifications; petitioner failed to demonstrate that she is a resident of Neptune; M.S. still attends Neptune schools; petitioner has not requested a hearing before the Board; as of April 11, 2017, petitioner had attended school for 119 days during the current academic year; and the Board’s certification indicates that the reimbursable tuition rate is \$70 per day. The ALJ concluded that petitioner is not legally domiciled in Neptune, and M.S. is ineligible to receive a free public education in Neptune schools. Accordingly, the ALJ granted the respondent’s motion to dismiss and ordered the petitioner to reimburse the Board in the total amount of \$8,330 for tuition owed through April 11, 2017, and \$70 per school day attended thereafter.

Upon review, the Commissioner rejected the Initial Decision, and directed the Board to provide petitioner with a board hearing. In so deciding, the Commissioner found that the Board failed to comply with *N.J.A.C.* 6A:22-4.3 when it issued a final notice of ineligibility, removing M.S. from the District without a hearing, rather than the required preliminary notice of ineligibility that must “provide for a hearing before the district board of education prior to a final decision on removal.” The Commissioner accordingly dismissed the petition as premature.

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 5, 2017

A.P., ON BEHALF OF MINOR CHILD, M.S., :
PETITIONER, :
COMMISSIONER OF EDUCATION
V. :
DECISION
BOARD OF EDUCATION OF THE TOWNSHIP :
OF NEPTUNE, MONMOUTH COUNTY, :
RESPONDENT. :
_____ :

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed.¹

Petitioner is challenging the Board’s determination that she is not a resident of Neptune, and therefore her daughter is ineligible to attend Neptune Township schools. Petitioner received a final notice of ineligibility from the Board on October 7, 2016, disenrolling M.S. from the District and advising petitioner that she had 21 days to appeal the determination with the Commissioner in order for her daughter to remain enrolled during the pendency of the appeal. Petitioner timely filed the instant residency petition.²

N.J.A.C. 6A:22-4.3 explains the procedure for removing a currently enrolled student from a district. Specifically, *N.J.A.C.* 6A:22-4.3(b)(1) requires the chief school administrator to issue a preliminary notice of ineligibility that must “provide for a hearing before the district board of education prior to a final decision on removal.”

¹ Petitioner’s exceptions were filed out of time, and there is no indication that petitioner served the Board or copied the Administrative Law Judge (ALJ), as required by *N.J.A.C.* 1:1-18. Accordingly, petitioner’s exceptions were not considered by the Commissioner.

² The Commissioner notes that although the ALJ made a determination of tuition owed by the petitioner – which was based on a supplemental certification submitted by the respondent Board during ex-parte proceedings – the Board has never filed a counterclaim for tuition.

In this matter, the Board did not send a preliminary notice of ineligibility providing petitioner with the right to a board hearing. Instead, the Board provided only a final notice of ineligibility, removing M.S. from the District without a hearing.³ As the Board failed to provide petitioner with the right to a board hearing, petitioner is still entitled to an opportunity to present evidence to the Board regarding her domicile and her daughter's eligibility to attend school in the District.⁴

Accordingly, the Initial Decision of the ALJ is rejected. The Board is directed to provide petitioner with a board hearing, and the petition is hereby dismissed as premature.

IT IS SO ORDERED.⁵

ACTING COMMISSIONER OF EDUCATION

Date of Decision: June 5, 2017

Date of Mailing: June 6, 2017

³ The final notice of ineligibility is dated October 7, 2017, the same date that the Superintendent certified that the Board first became aware that petitioner and M.S. were not residing within the District. As such, it is apparent that the final notice of ineligibility is the first communication that the Board sent to petitioner regarding this matter.

⁴ The Commissioner reminds petitioner that at the board hearing, it is her burden to prove that she is a domiciliary of Neptune.

⁵ 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*).



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
FAILURE TO APPEAR
AND ON THE MERITS

OAL DKT. NO. EDU 00544-17

AGENCY DKT. NO. 279-10/16

A.P. ON BEHALF OF M.S.,

Petitioner,

v.

**BOARD OF EDUCATION OF THE
TOWNSHIP OF NEPTUNE,**

Respondent.

No appearance by or behalf of **A.P.**, petitioner

Joseph D. Castellucci, Jr., Esq. for respondent (Florio Perrucci Steinhardt & Fader, LLC, attorneys)

Record Closed: April 18, 2017

Decided: April 19, 2017

BEFORE **JOSEPH A. ASCIONE**, ALJ:

On January 13, 2017, this matter was transmitted to the Office of Administrative Law (OAL) for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13.

On January 31, 2017, the OAL mailed notice of the pre-hearing telephone conference in this matter for February 21, 2017. The OAL dispatched the notice to petitioner's address in Neptune, the address petitioner maintains is her residence for

purposes of this residency appeal. The petitioner failed to contact the OAL to provide a telephone number to contact her on the day of the prehearing telephone conference, and did not call or appear on said date. The Administrative Law Judge (ALJ) noted the failure to appear on February 21, 2017. The petitioner did not request any adjournment. The OAL obtained petitioner's telephone number from the respondent and contacted her on February 21, 2017, leaving a voice mail to contact this office. Petitioner made no contact as of February 23, 2017. On February 23, 2017, the ALJ wrote to petitioner at the Neptune, as well as at an Asbury Park address, paperwork of the investigation revealed as a potential residence. The correspondence advised of the failure of petitioner to contact the OAL with a means to communicate with her; and the fact that petitioner filed no response to respondent's motion to dismiss in lieu of answer. The ALJ advised petitioner in the correspondence that if petitioner provided no response by March 3, 2017, respondent's motion would be granted. The ALJ also requested, despite the fact, that the motion called for dismissal on the failure to exhaust administrative remedies, for the respondent to provide a certification as to the amount the respondent sought in recoverable education costs. The petitioner did contact the OAL on March 10, 2017, advising she did not receive the February 23, 2017, letter at either address. Petitioner then advised she did not oppose the motion. The ALJ noted the failure to appear. Pursuant to N.J.A.C. 1.1-14.4(d), the matter proceed on the merits ex-parte. Additional certifications regarding the number of days and cost per day for student educational reimbursement. The hearing closed on April 18, 2017.

FACTUAL DISCUSSION AND FINDINGS

I have reviewed the April 11, 2017, certification of Dr. Tami Crader, Superintendent of Schools and I **FIND**:

1. Petitioner failed to appear for the telephone pre-hearing conference and has represented to the OAL that she does not oppose the position of the respondent. Petitioner has failed to demonstrate that she is a resident of Neptune.

2. Petitioner's child still attends Neptune Township School district as she has not requested a hearing before the board, and accordingly, the board has taken no action. As of April 11, 2017, petitioner has attended 119 days this school year.
3. Respondent's reimbursable tuition is \$70 per day, as of April 11, 2017, the total reimbursable tuition is \$8,330, accruing at the rate of \$70 per school date thereafter.

CONCLUSION

Accordingly, it is on this 19th day of April 2017, **ORDERED** that the Motion to Dismiss the petition in lieu of answer is **GRANTED**, on default for failure to respond to the motion.

On April 18, 2017 respondent submitted a supplemental certification of the tuition reimbursement amount. It is on this 19th day of April 2017, **ORDERED** the respondent is entitled to be reimbursed from petitioner the amount of \$8,330.00 for tuition at the rate of \$ 70.00 per diem for a current total of 119 days as of April 11, 2017; and continuing at the rate of \$70.00 per day until petitioner removes her child from the school. This Initial Decision resolves all issues in this matter.

I hereby **FILE** this initial decision with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

This recommended decision may be adopted, modified or rejected by the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who by law is authorized to make a final decision in this matter. If the Commissioner of the Department of Education does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION, ATTN: BUREAU OF CONTROVERSIES AND DISPUTES, 100 Riverview Plaza, 4th Floor, PO Box 500, Trenton, New Jersey 08625-0500**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.



April 19, 2017 _____

DATE

JOSEPH A. ASCIONE, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

/lam

APPENDIX
LIST OF WITNESSES

For Petitioner:

None

For Respondent:

None

LIST OF EXHIBITS

For Respondent:

Motion to Dismiss and supporting papers

R-1 Supplemental tuition certification