

L.B., on behalf of minor children,	:	
D.B. AND S.B.,	:	
	:	
PETITIONER,	:	
	:	
V.	:	COMMISSIONER OF EDUCATION
	:	
BOARD OF EDUCATION OF THE	:	DECISION
TOWNSHIP OF TEANECK, BERGEN	:	
COUNTY,	:	
	:	
RESPONDENT.	:	
	:	

SYNOPSIS

Petitioner, custodial father of D.B. and S.B., challenged Board's residency determination.

ALJ concluded that petitioner had not carried his burden of demonstrating that he was currently domiciled in Teaneck; thus, petitioner's children were not entitled to a free public education provided by Teaneck. The District, however, was aware of petitioner's situation but nonetheless permitted his son to complete the 1993-94 school year, admittedly letting the matter "slip through the cracks" and permitting petitioner to register his daughter in 1996 without reviewing its original decision of residency and without clarifying the situation to petitioner. Consequently, because of the Board's mistake, the ALJ concluded that up until the March 1997 determination by the Board that petitioner was not domiciled in the District, it would be inequitable for petitioner to have to pay tuition for his children. Therefore, the ALJ concluded that petitioner owed tuition for D.B. and S.B. from March 5, 1997 to the end of the school year and for the 1997-98 school year. ALJ ordered petitioner's children removed from the District rolls and ordered petitioner to reimburse the Board for tuition from March 1997 to the present.

Having reviewed the record in this matter, including transcripts from two of the three days of hearing, the Commissioner adopted findings and determination in initial decision as his own. Commissioner ordered petitioner to reimburse the Board for the tuition owed.

SEPTEMBER 24, 1998

OAL DKT. NO. EDU 5472-97
AGENCY DKT. NO. 139-4/97

L.B., on behalf of minor children,	:	
D.B. AND S.B.,	:	
	:	
PETITIONER,	:	
	:	
V.	:	COMMISSIONER OF EDUCATION
	:	
BOARD OF EDUCATION OF THE	:	DECISION
TOWNSHIP OF TEANECK, BERGEN	:	
COUNTY,	:	
	:	
RESPONDENT.	:	
	:	

The record of this matter and the initial decision of the Office of Administrative Law (OAL) have been reviewed. Both the Board's and petitioner's exceptions, as well as the replies submitted thereto, are duly noted as submitted in accordance with *N.J.A.C.* 1:1-18.4, and were considered by the Commissioner in rendering the within decision.

Upon careful review of the record in this matter, which included transcripts from two of the three days of hearing at the OAL¹, the Commissioner concurs with the Administrative Law Judge's (ALJ) conclusion that petitioner has failed to prove that he is domiciled in respondent's District, so as to permit his children to attend school free of charge.

The Commissioner further notes his agreement with the ALJ's determination that it would be inequitable, under the circumstances herein, for petitioner to be assessed tuition prior to March 1997. (See *H.M. and L.M. v. Board of Education of the Township of Freehold, Monmouth County*, decided by the State Board of Education, April 2, 1997; *Akbar Zadran v.*

¹ The record included transcripts from hearings conducted on December 5, 1997 and May 19, 1998.

Board of Education of the Township of Belleville, Essex County, decided by the State Board of Education, April 1, 1998.)

Accordingly, the initial decision of the ALJ is adopted for the reasons expressed therein. Petitioner is hereby ordered to reimburse the Board for tuition costs of the attendance of D.B. and S.B. as follows. Consistent with the Board's testimony and supporting affidavits, tuition is assessed for S.B.'s attendance at the Whittier School from March 7, 1997 until the end of the 1996-97 school year, with tuition for May and June 1997 waived,² at a per annum rate of \$8,983, and at the rate of \$9,267 for her attendance at the Whittier School for the 1997-98 school year. Additionally, petitioner shall be assessed for D.B.'s attendance at the Benjamin Franklin Middle School from March 7, 1997 until the end of the school year, with tuition for May and June 1997 waived, at a per annum rate of \$11,144, and shall further be assessed \$11,497 for his attendance for the 1997-98 school year. (See Transcript of hearing on December 5, 1997 at p. 112; Board's November 24, 1997 Pre-Hearing Brief, Exhibit A, Affidavit of A. Spencer Denham at pp. 3, 4.)³

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

SEPTEMBER 24, 1998

² The Commissioner recognizes that the Board offered to waive tuition for the months of May 1997 and June 1997 in its letter of March 7, 1997 to petitioner. (Exhibit J-6) Accordingly, said tuition is deemed waived.

³ This decision, as the Commissioner's final determination in the instant matter, may be appealed to the State Board of Education pursuant to *N.J.S.A. 18A:6-27 et seq.* and *N.J.A.C. 6:2-1.1 et seq.*, within 30 days of its filing. Commissioner decisions are deemed filed three days after the date of mailing to the parties.