

K.O. AND O.O., on behalf of minor child, W.O.,
 PETITIONERS,
 V.
 BOARD OF EDUCATION OF THE SOUTH ORANGE AND MAPLEWOOD SCHOOL DISTRICT, ESSEX COUNTY,
 RESPONDENT.

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COMMISSIONER OF EDUCATION

DECISION

SYNOPSIS

Petitioners challenged the Board’s residency determination.

The ALJ dismissed the petition, pursuant to *N.J.A.C.* 1:1-14.14, due to petitioners’ failure to comply with the May 17, 1999 discovery order of the Court and granted the Board’s counterclaim for \$7,600, representing the annual tuition for W.O.’s attendance in the District’s schools during the 1997-98 school year, together with pre- and post-judgment interest.

The Commissioner concurred with the determination of the ALJ except for the award of pre- and post-judgment interest. The Commissioner did not accept that pre-judgment interest should be awarded since he concluded that the record was insufficient to persuade him definitively that the actions or inactions of petitioners were ascribable to bad faith or a deliberate violation of law or regulation. Similarly, the Commissioner determined that an award of post-judgment interest was inappropriate since a claim for such interest would only arise if petitioners fail to satisfy the judgment awarded in this decision within 60 days of its award, pursuant to *N.J.A.C.* 6:24-1.16(c)2.

OAL DKT. NO. EDU 7084-98
AGENCY DKT. NO. 150-5/98

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child, W.O.,	:	
	:	
PETITIONERS,	:	
	:	
V.	:	COMMISSIONER OF EDUCATION
	:	
BOARD OF EDUCATION OF THE	:	DECISION
SOUTH ORANGE AND MAPLEWOOD	:	
SCHOOL DISTRICT, ESSEX COUNTY,	:	
	:	
RESPONDENT.	:	
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The record of this matter and the initial decision of the Office of Administrative Law (OAL) have been reviewed. No exceptions were filed by the parties.

Upon his independent review of the record, the Commissioner concurs with the determination of the Administrative Law Judge (ALJ) that the within Petition of Appeal be dismissed, pursuant to *N.J.A.C.* 1:1-14.14, due to petitioners' failure to comply with the May 17, 1999 discovery order of the Court. He further concurs with the ALJ that the Board's counterclaim in the amount of \$7,600, which represents the annual tuition for W.O.'s attendance in the District's schools during the 1997-98 school year, is appropriately awarded. The Commissioner does not, however, accept that pre-judgment interest should be awarded to the Board in this matter, since he concludes that the record before him is insufficient to persuade him definitively that the actions or inactions of petitioners in this matter are ascribable to bad faith or a deliberate violation of law or regulation. Similarly, he determines that an award of post-judgment interest in the instant matter is inappropriate, since a claim for such interest would only

arise if the petitioners fail to satisfy the judgment awarded in this decision within 60 days of its award. *See N.J.A.C. 6:24-1.16(c)2.*

Accordingly, the initial decision of the OAL, as amended above, is affirmed for the reasons stated therein. The instant Petition of Appeal is dismissed and petitioners are hereby directed to pay the Board tuition in the amount of \$7,600.*

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

July 30, 1999

* 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.