

R.D.F., on behalf of his minor children,

PETITIONER,

V.

BOARD OF EDUCATION OF THE WESTWOOD REGIONAL SCHOOL DISTRICT, BERGEN COUNTY,

RESPONDENT.

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COMMISSIONER OF EDUCATION

DECISION

SYNOPSIS

Petitioning parent challenged Board's residency determination.

ALJ dismissed petition as petitioner failed to respond to the Board's Motion to Dismiss; thus, the Board's allegations of ineligible attendance were deemed admitted. ALJ ordered petitioner's children disenrolled from the District. ALJ ordered petitioner to reimburse the Board for the tuition owed for the periods of the children's ineligible attendance in the District.

Commissioner concurred with the ALJ that petitioner was not domiciled in the District and that his children were not entitled to a free education in the District pursuant to *N.J.S.A. 18A:38-1a*. Petitioner was ordered to pay the tuition owed; he can choose to leave his children in the District until the end of the 1998-99 school year for added tuition cost.

OAL DKT. NO. EDU 3929-98  
AGENCY DKT. NO. 83-4/98

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PETITIONER,	:	
	:	
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	:	
BOARD OF EDUCATION OF THE WESTWOOD REGIONAL SCHOOL DISTRICT, BERGEN COUNTY,	:	DECISION
	:	
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The record of this matter and the initial decision of the Office of Administrative Law have been reviewed. Although petitioner was granted an extension of time in which to submit exceptions to the initial decision, his submission, which he identified as his “exceptions,” consisted only of evidence that had not heretofore been brought to the record, and, as such, could not be considered by the Commissioner. *N.J.A.C.* 1:1-18.4(c). Additionally, there was no indication that petitioner served a copy of his submission upon either the respondent Board or the Administrative Law Judge (ALJ). *N.J.A.C.* 1:1-18.4(a)

Upon careful and independent review, the Commissioner concurs that the within Petition of Appeal is properly dismissed, in that petitioner failed to respond to the Board’s Motion to Dismiss, which was served upon him on December 15, 1998.<sup>1</sup> Additionally, the Commissioner concurs that the Board’s allegations in its Counterclaim, as filed on

April 15, 1998, are deemed admitted, in that petitioner has failed to respond to such allegations. Therefore, petitioner is deemed not domiciled in the Township of Washington, and his children, therefore, are not entitled to a free education in the Board's District, pursuant to *N.J.S.A. 18A:38-1a*.

Accordingly, the initial decision of the ALJ is adopted for the reasons expressed therein. Although petitioner's children are *not* entitled to a free education in the Board's District, given the timing of the issuance of this decision within the school year, the Commissioner directs that petitioner's children, C.D.F., R.D.F. and M.D.F., be permitted to complete the 1998-99 school year *on a tuition basis*. That is, if petitioner so chooses, his children may remain in the District until the end of the 1998-99 school year and the Board will, then, increase its tuition calculations accordingly.<sup>2</sup> Alternatively, if petitioner chooses, his children can be disenrolled immediately and the Board will reduce its tuition figures now based on a disenrollment date of April 30, 1999 correspondingly. *In either event*, petitioner is hereby ordered to reimburse the Board for tuition costs for the attendance of his three children in respondent's District.

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

March 23, 1999

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<sup>1</sup> In its Motion to Dismiss, the Board clearly indicated that it was seeking a total of \$67,438.32 in tuition, representing tuition for petitioner's three children from the dates of their enrollment, September 1, 1996 and December 1, 1996 through **April 30, 1999**.

<sup>2</sup> The tuition assessed for the three children will be \$67,438.32, *plus* tuition for the three children for May and June, 1999.