

112-01

R.D., on behalf of minor children,
S.C., S.D'O. AND J.D'O.,

PETITIONER,

V.

COMMISSIONER OF EDUCATION

BOARD OF EDUCATION OF THE
BOROUGH OF FORT LEE, BERGEN
COUNTY,

DECISION

RESPONDENT-PETITIONER,

V.

J.C.D'O. AND T.D'O.,

THIRD-PARTY RESPONDENTS.

SYNOPSIS

Petitioner, on behalf of his child, niece and nephew (S.C., S.D'O. and J.D'O.), challenged the Board's determination that the children were not entitled to a free public education in the District. The Board claimed that petitioner did not have standing to file an appeal on behalf of his niece and nephew and filed a counterclaim for tuition against petitioner, as well as a third-party petition for tuition against the parents of the niece and nephew.

The ALJ found that there were no material facts at issue and that the District was entitled to summary decision as a matter of law. The ALJ found that the survey and deed showed that petitioner's residence was almost completely located in Englewood and his taxes were predominantly paid to Englewood. Since Englewood gains the benefit of petitioner's property taxes, the ALJ stated it would be unfair for Fort Lee to shoulder the financial burden of educating petitioner's children. Thus, the ALJ concluded that petitioner's children were not entitled to a free public education in Fort Lee since they do not reside in the District. The District's request for reimbursement of past tuition, however, was denied. The ALJ found that it would be inequitable under the facts of this case to direct petitioner to reimburse Fort Lee for tuition incurred before the date of the final order in this matter.

The Commissioner adopted the Initial Decision in part and modified it in part. The Commissioner concurred with the ALJ that, based on the undisputed facts, the minor children in this matter were not entitled to attend school in the District free of charge pursuant to *N.J.S.A. 18A:38-1(a)*. However, with respect to the Board's counterclaim against R.D. and its third-party petition against the parents of S.D'O. and J.D'O. for tuition dating back to the 1998-99 school year, although the Commissioner agrees with the ALJ that, under the circumstances, it would be inequitable to assess tuition against them for the period prior to the date on which the Board issued its final decision to exclude the children from the District, the Commissioner found it appropriate to assess tuition after that date.

APRIL 2, 2001

OAL DKT. NO. EDU 7327-00
AGENCY DKT. NO. 254-7/00

R.D., on behalf of minor children, S.C., S.D'O. AND J.D'O.,	:	
	:	
PETITIONER,	:	
	:	
V.	:	COMMISSIONER OF EDUCATION
	:	
BOARD OF EDUCATION OF THE BOROUGH OF FORT LEE, BERGEN COUNTY,	:	DECISION
	:	
RESPONDENT-PETITIONER,	:	
	:	
V.	:	
	:	
J.C.D'O. AND T.D'O.,	:	
	:	
THIRD-PARTY RESPONDENTS.	:	
_____	:	

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

Upon careful and independent review of the record in this matter, the Commissioner concurs with the Administrative Law Judge (ALJ) that, based on the undisputed facts, the minor children in this matter are not entitled to attend school in the District free of charge pursuant to *N.J.S.A. 18A:38-1(a)*. Thus, the Petition of Appeal is properly dismissed.

However, with respect to the Board's counterclaim against R.D. and its third-party petition against J.C.D'O. and T.D'O., the parents of J.D'O. and S.D'O., for tuition dating back to the 1998-99 school year, although the Commissioner agrees with the ALJ that, under these circumstances, it would be inequitable to assess tuition against them for that period *prior* to June 26, 2000, the date on which the Board issued its final decision to exclude the children from

its District, the Commissioner nevertheless finds it appropriate that R.D. and T.D'O. be assessed tuition for the children's ineligible attendance in the District *after* that date.¹ Notwithstanding R.D.'s prior misunderstanding, once the undisputed facts of this matter were established and the results of the property survey completed on May 25, 2000 were known, R.D. had no reasonable basis on which to claim domicile in the Fort Lee School District.² Thus, while R.D. may not have acted in bad faith in exercising his legal right to contest the Board's decision, neither he nor T.D'O. can be shielded from the fiscal consequences of the children's ineligible attendance subsequent to that decision. *See M.F. and P.J.F., on behalf of minor children v. Board of Education of the Township of Hope, Warren County, Commissioner Decision July 31, 2000; aff'd State Board February 7, 2001.*

Accordingly, the Initial Decision is adopted in part and modified in part. R.D. is hereby ordered to reimburse the Board at a per-diem rate of \$42.69 for the ineligible attendance of S.C. in the District for the 2000-2001 school year, up to and including the date of this decision. T.D'O. is hereby ordered to reimburse the Board at a per-diem rate of \$42.69 each for

¹ In its Answer, Counterclaim and Third-Party Petition, the Board asserts that Petitioner R.D. does not have standing to bring a Petition of Appeal on behalf of his niece and nephew, S.D'O. and J.D'O., in that he is not their guardian. Thus, the Board brings a "third party petition" against J.C.D'O. and T.D'O., the parents of the minor children S.D'O. and J.D'O., alleging that their domicile is outside the Borough of Fort Lee, that the children have no legal entitlement to attend school there free of charge, and demanding judgment against J.C.D'O. and T.D'O. as "third party respondents" for tuition associated with ineligible attendance. However, the Commissioner notes there is no indication in the record that J.C.D'O. resides with T.D'O. in R.D.'s home and, in fact, the only address in the record for J.C.D'O. is in Queens, New York. (Board's Third-Party Petition, Exhibit 4) Moreover, the Board does not indicate at which address J.C.D'O. was served. Under these circumstances, and noting that T.D'O.'s Answer to the Board's Third-Party Petition does not incorporate J.C.D'O. as a third-party respondent, the Commissioner does not consider J.C.D'O. a party for purposes of tuition assessment.

² The Commissioner notes that R.D. expressly bases his appeal on the best interests of the children and his payment of a nominal property tax to the District. The former is not a factor in determining domicile, and the latter, in and of itself, could not reasonably be construed under the circumstances to establish domicile in the District. (Petition of Appeal at 2; Petitioner's Brief, December 5, 2000 at 1, 2)

the ineligible attendance of J.D'O. and S.D'O. in the District for the 2000-2001 school year, up to and including the date of this decision.

IT IS SO ORDERED.³

COMMISSIONER OF EDUCATION

Date of Decision: April 2, 2001

Date of Mailing: April 3, 2001

³ This decision, as the Commissioner's final determination, 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. 6A:4-1.1 et seq.*, within 30 days of its filing. Commissioner decisions are deemed filed three days after the date of mailing to the parties.