

W.C.K., on behalf of minor child, M.P.-Y.C., :  
PETITIONER, :  
V. : COMMISSIONER OF EDUCATION  
BOARD OF EDUCATION OF THE : DECISION  
BOROUGH OF DUMONT, BERGEN :  
COUNTY, :  
RESPONDENT. :

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#### SYNOPSIS

Petitioner challenged the Board's residency determination that M.P.-Y.C. was not eligible for a free education in the Dumont Schools.

The ALJ found that petitioner is domiciled in the District and that she took M.P.-Y.C. into her home solely for the purpose of providing M.P.-Y.C. a free public education in the District. Moreover, the ALJ found that petitioner did not demonstrate that the parents, who reside in Hong Kong, were unable to support M.P.-Y.C. due to financial or family hardship. Thus, the ALJ concluded that petitioner did not satisfy the residency requirements pursuant to *N.J.A.C. 18A:38-1(b)1*. The ALJ concluded that petitioner was liable for tuition and directed the Board to submit to the Commissioner an updated accounting of the tuition due.

The Commissioner adopted the Initial Decision with modification. The Commissioner established that petitioner owed the Board tuition payments in the amount of \$11,479.32 based on the updated calculation of tuition due provided by the Board. The Commissioner also found that the Board was not entitled to pre-judgment interest or post-judgment interest and concluded that in the absence of express statutory authority, the Commissioner may not direct compensation for legal fees in this matter. The Commissioner directed payment of the tuition owed.

<p>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.</p>
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OAL DKT. NO. EDU 9381-02  
AGENCY DKT. NO. 301-9/02

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The record of this matter and the Initial Decision of the Office of Administrative Law have been reviewed. The Board's exceptions, a letter confirming its counterclaim for tuition for the 2002-03 school year as \$9,878.00 as set forth in the Initial Decision and calculating the tuition due for the 28 days of M.P.-Y.C.'s attendance in the district schools at \$57.19 a day for a total of \$1,601.32 for the 2003-04 school year, were timely filed pursuant to *N.J.A.C. 1:1-18.4(a)* and were considered in the Commissioner's determination of this matter.<sup>1</sup> Petitioner did not file exceptions nor did she reply to the tuition calculations set forth in the Board's exceptions.

Upon careful and independent review of the record in this matter, the Commissioner concurs with the findings and conclusions of the Administrative Law Judge that M.P.-Y.C. is not entitled to attend school free of charge as an affidavit student in the District pursuant to *N.J.A.C. 18A:38-1(b)1* in that: 1) petitioner has failed in her burden of proving that

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<sup>1</sup> The Initial Decision includes a directive to the Board to submit to the Commissioner an updated balance of tuition due. (Initial Decision at 5)

M.P.-Y.C. is not residing with her solely for the purpose of receiving an education in the United States; and 2) petitioner has failed to demonstrated that M.P.-Y.C.'s parents are unable to support him due to financial or family hardship.

With respect to the Board's counterclaim for tuition, the Commissioner agrees with the grant of the Board's counterclaim for tuition in the amount of \$9,878.00 for the 2002-03 school year and for tuition in the amount of \$1,601.32 for the 28 days of M.P.-Y.C.'s school attendance in the 2003-04 school year, for a total of tuition payments due of \$11,479.32.<sup>2</sup>

With respect to the other remedies sought in the Board's counterclaim, the Commissioner finds that the record does not support a finding that petitioner's actions were taken in bad faith or in deliberate violation of the law so as to entitle the Board to an award of pre-judgment interest. *N.J.A.C. 6A:3-1.17(c)1*. The Commissioner further notes that the Board's claim for post-judgment interest is not properly before him at this time, since the requisite time period has not passed pursuant to *N.J.A.C. 6A:3-1.17(c)2*.

Finally, turning to the Board's claim for counsel fees, in the absence of express statutory authority to award counsel fees, the Commissioner may not direct that the Board be compensated for legal fees in this matter. *See Hinfey v. Matawan Regional Board of Education*, 77 N.J. 514, 525 (1978); *B.B., on behalf of her son, L.C. v. Board of Education of the Union County Regional High School District No.1. and Donald Merachnik, Superintendent of Schools, Union County*, 1987 S.L.D. 323; *Balsley v. North Hunterdon Bd. of Educ.*, 117 N.J. 434 (1990); *and State, Dept. of Environ. Protect. v. Ventron Corp.*, 94 N.J. 473 (1983).

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<sup>2</sup> The Board notes in its exceptions that W.C.K. was granted legal guardianship of M.P.-Y.C. by the Bergen County Surrogate Court on October 15, 2003.

Accordingly, the Commissioner adopts the Initial Decision, as modified above, as the final decision in this matter for the reasons stated therein.

IT IS SO ORDERED.<sup>3</sup>

COMMISSIONER OF EDUCATION

Date of Decision: March 18, 2004

Date of Mailing: March 18, 2004

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<sup>3</sup> This decision 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.*