

#126-05

B.M., on behalf of minor child, K.F., :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE TOWNSHIP : DECISION
OF MONTCLAIR, ESSEX COUNTY, :
RESPONDENT. :
_____ :

SYNOPSIS

Petitioner appealed the Board's residency determination that her daughter, K.F., was not eligible for a free education in the Township of Montclair School District. Petitioner alleged that the residency determination had been retaliation from the Board for petitioner's complaints that the Montclair School District did not appropriately recognize Black History Month.

Based upon the documentary evidence and the demeanor of the witnesses at hearing, the ALJ found petitioner's assertion of retaliation to be incredible and her testimony regarding residence to be unsupported by documentation and, at times, inconsistent with the documentary evidence. The ALJ furthermore found the testimony of the Board to be persuasive that the petitioner was not living in the District during the period in question, based on the testimony of the Board which asserted that: 1) the Board did not receive cooperation from B.M.; 2) the Board was unable to locate the petitioner at her alleged residence; and 3) the Board was unable to contact the petitioner at her purported address by certified mail. The ALJ concluded that the petitioner failed to carry her burden to prove by a preponderance of credible evidence that she was domiciled in Montclair during the relevant time, and that petitioner has failed to prove that K.F. was entitled to a free public education in the Township of Monclair from November 2003 to the present and is therefore owes the Board tuition for this period of ineligible attendance. The ALJ ordered that B.M. pay respondent tuition in the total amount of \$10,832.78 for unauthorized attendance for the period from November 24, 2003 to March 1, 2005.

The Commissioner concurs with the findings of the ALJ in this matter. Accordingly, the Initial Decision of the OAL is adopted for the reasons expressed therein, and the Petition of Appeal is dismissed.

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.

OAL DKT. NO. EDU 11685-04
AGENCY DKT. NO. 351-10/04

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. Petitioner's exceptions, filed on March 28, 2005, in response to an Initial Decision mailed to the parties on March 8, 2005, were untimely and, therefore, not considered herein.

Upon his careful and independent review of the record in this matter, and based on the Administrative Law Judge's (ALJ) credibility assessments, *N.J.S.A. 52:14B-10(c)*, the Commissioner concurs with the ALJ that petitioner has failed to sustain her burden of establishing that K.F. was a domiciliary of Montclair and, thus, entitled to a free public education in that District's schools.

Accordingly, the Initial Decision of the OAL is adopted for the reasons expressed therein, and the within Petition of Appeal is hereby dismissed. The Commissioner directs that petitioner pay the Board tuition in the amount of \$10,832.78¹ for the period of K.F.'s ineligible attendance in its schools, November 24, 2003 to March 1, 2005.

IT IS SO ORDERED.²

COMMISSIONER OF EDUCATION

Date of Decision: April 7, 2005

Date of Mailing: April 7, 2005

¹ Pursuant to the school calendar attached to the Certification of Bruce Dabney, dated February 23, 2005, this amount is broken down thusly: 2003 school year, 130 days at a per diem rate of \$48.38 or \$6,289.40; 2004-05 school year, 86 days at a per diem rate of \$52.83 or \$4,543.38, for a grand total of \$10,832.78.

² 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.*