

#303-08 (OAL Decision: Not yet available on-line)

O.B. on behalf of minor child, K.C., :

PETITIONER, :

V. : COMMISSIONER OF EDUCATION

BOARD OF EDUCATION OF THE : DECISION

TOWNSHIP OF MOUNT OLIVE, :

MORRIS COUNTY, :

RESPONDENT. :

SYNOPSIS

Petitioner, a resident of Mount Olive, filed a *pro se* residency appeal on behalf of K.C., who was enrolled as a high school student in the Mount Olive School District for the 2007-08 school year. The respondent Board contended that K.C. is not eligible for a free public education in the district. The petitioner failed to appear for a scheduled hearing on May 19, 2008, and failed to provide any explanation for her non-appearance. Counsel for the respondent Board submitted a letter requesting payment of tuition in the amount of \$12,499.76 for the period of K.C.'s ineligible attendance in Mount Olive schools.

The ALJ found that petitioner has abandoned this matter, and ordered that the appeal be dismissed pursuant to *N.J.A.C.* 1:1-14.4; the ALJ granted the respondent's counterclaim for tuition reimbursement in the amount of \$12,499.76.

The Commissioner adopted the portion of the Initial Decision that finds petitioner liable for tuition, but found that the record contains no competent evidence concerning the per diem tuition rate or the number of days chargeable to O.B. for the period of K.C.'s ineligible attendance. Accordingly, the matter is remanded to the OAL for factual findings concerning the correct amount of tuition due to respondent.

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.

July 14, 2008

OAL DKT. NO. EDU 11928-07
AGENCY DKT. NO. 282-9/07

O.B. on behalf of minor child, K.C., :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE : DECISION
TOWNSHIP OF MOUNT OLIVE, :
MORRIS COUNTY, :
RESPONDENT. :

The record for this matter and the Initial Decision of the Office of Administrative Law (OAL) memorializing the petitioner’s failure to appear at the OAL hearing – and a copy of the notification sent to the parties by the OAL on April 22, 2008, informing them that the hearing in this matter would be held on May 19, 2008 – have been reviewed. It is noted that the OAL hearing notice was sent to the address petitioner entered on her petition.

The Commissioner notes that the ALJ held the matter for several days after the hearing to give petitioner the opportunity to offer an explanation for her nonappearance, pursuant to *N.J.A.C. 1:1-14.4(a)*. No explanation having been filed, the ALJ rendered his recommended decision on June 2, 2008, and directed that the matter be returned to the Commissioner.

The Commissioner adopts the portion of the Initial Decision that finds petitioner liable for tuition, for the reasons set forth therein. However, the record contains no competent evidence concerning the per diem tuition rate to be charged for K.C., the number of days chargeable to O.B., and the bases for both figures. The letter from respondent’s counsel is not evidential.

Accordingly, the Commissioner holds that petitioner is liable for K.C.'s tuition, and remands the matter to the OAL for factual findings concerning the correct amount of tuition to be charged to petitioner and awarded to respondent.

IT IS SO ORDERED. *

COMMISSIONER OF EDUCATION

Date of Decision: July 14, 2008

Date of Mailing: July 14, 2008

* This decision may be appealed to the Superior Court, Appellate Division, pursuant to P.L. 2008, c. 36.