

#24-12 (OAL Decision: Not yet available online)

E.Z. on behalf of minor children B.J.C. :
and E.J.C., :
PETITIONER, : COMMISSIONER OF EDUCATION
: DECISION
V. :
: BOARD OF EDUCATION OF THE CITY
OF BAYONNE, HUDSON COUNTY :

SYNOPSIS

Petitioner filed a *Pro Se* residency appeal in March 2011, challenging the respondent Board's determination that her sons, B.J.C. and E.J.C., are not entitled to a free public education in Bayonne schools. Petitioner sought to have her sons finish the school year in Bayonne schools and asserted that she was temporarily residing in Newark for financial reasons, but intended to move back to Bayonne. The respondent Board filed a counterclaim seeking payment of tuition for the period of B.J.C. and E.J.C.'s ineligible attendance in the district's schools, between January 31, 2011 and June 22, 2011.

The ALJ identified the issues in this case to be whether petitioner and her sons were domiciled in Bayonne from January 31, 2011 to the end of the 2010-2011 school year and, if not, what amount of tuition reimbursement would be due from petitioner to respondent for the period of ineligible attendance. The ALJ found that: the weight of the evidence – including petitioner's statements to teachers, to the superintendent of schools, and to the Commissioner in her *pro se* residency appeal – indicates that petitioner and her two sons were not domiciled in Bayonne during the 2010-2011 school year. Accordingly, the ALJ recommended upholding the determination of the respondent Board to remove the children from the school system and ordering petitioner to reimburse the Board for 94 days each of tuition at the rate of \$50 per day per child.

Upon review of the record and the Initial Decision, the Commissioner concurred with the ALJ that subsequent to January 31, 2011, petitioner and her children have not been domiciled in Bayonne and are consequently not eligible for a free public education in the district's schools. The Commissioner concluded that the petitioner must reimburse respondent for back tuition as itemized in the un rebutted affidavit of Bayonne's District Superintendent, Patricia L. McGeehan, in the amount of \$9400. The Commissioner also clarified that contrary to the account of this case's procedural history set forth in the Initial Decision, he had not upheld the determination of the respondent Board prior to sending the case to the OAL, but had simply sent the case to the OAL for fact-finding and recommendations.

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| <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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January 23, 2012

OAL DKT. NO. EDU 3860-11
AGENCY DKT. NO. 66-3/11

E.Z. on behalf of minor children B.J.C. :
and E.J.C., :
PETITIONER, : COMMISSIONER OF EDUCATION
V. : DECISION
BOARD OF EDUCATION OF THE CITY :
OF BAYONNE, HUDSON COUNTY :

This matter came to the Commissioner as an appeal of respondent’s determination that petitioner’s children were not entitled to receive a free public education in its school district. The Commissioner has reviewed the record and Initial Decision of the Office of Administrative Law (OAL)¹ and, at the outset, wishes to clarify a portion of the procedural history set forth in the Initial Decision.

More specifically, the Initial Decision appears to suggest that upon receipt of the petition challenging respondent’s residency determination, the Commissioner found in favor of respondent and – upon petitioner’s request – sent the matter to the OAL for further review. (Initial Decision at 2 and 5) The sequence of events, however, was as follows. The Petition was filed with the Commissioner on March 22, 2011. The Commissioner made no determination at that time, but rather sent the case to the OAL for fact-finding and legal recommendations. Having received the OAL’s findings and recommendations by way of the December 7, 2011 Initial Decision, the Commissioner now issues his findings, conclusions and order.

¹ Neither party filed exceptions.

Upon consideration of the record, the Commissioner concurs with the Administrative Law Judge (ALJ) that subsequent to January 31, 2011, petitioner's minor children have not been domiciled in respondent's district and have consequently not been eligible for a free public education in respondent's schools. Because respondent filed a counterclaim for back tuition, the Commissioner must determine the amount of tuition, if any, that is due.

In the record is an un rebutted affidavit from respondent's District Superintendent, Patricia L. McGeehan, averring that the daily cost for educating petitioner's two children from January 31, 2011 through the end of the 2010-2011 school year was \$100.00 (for both). (Respondent's Exhibit R-7, Paragraph 6) McGeehan further alleged in the affidavit that there were 94 school days from January 31, 2011 to the end of the school year, bringing the total cost of the children's education during the period of ineligibility to \$9400. (*Ibid.*)

Accordingly, the petition is dismissed, respondent's disenrollment of petitioner's children is upheld, and petitioner shall reimburse respondent for back tuition in the amount of \$9400.

IT IS SO ORDERED.²

ACTING COMMISSIONER OF EDUCATION

Date of Decision: January 23, 2012

Date of Mailing: January 24, 2012

² This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L.* 2008, c. 36. (*N.J.S.A.* 18A:6-9.1)