

S.Y. on behalf of minor children E.Y., :
ET AL, :
PETITIONER, : COMMISSIONER OF EDUCATION
: DECISION
V. :
: :
BOARD OF EDUCATION OF THE :
TOWNSHIP OF WYCKOFF, :
BERGEN COUNTY, :
: :
RESPONDENT. :
_____ :

SYNOPSIS

Petitioner challenged respondent's determination that her children were ineligible for a free public education in its district and filed an application for emergent relief on September 8, 2009. Following a hearing in the Office of Administrative Law (OAL), the ALJ originally assigned to the case issued an order returning the children to the respondent's schools. The Commissioner approved the OAL's order and directed further proceedings to resolve the underlying issues of the children's domicile during the 2007-2008 and 2008-2009 school years, and the merits of respondent's counterclaim for tuition. On May 22, 2014, the ALJ to whom the case had been reassigned issued an order finding that the petitioner's children had not been domiciled in respondent's district during the 2007-2008 and 2008-2009 school years and had therefore not been eligible to receive a free public education in Wyckoff. A subsequent Initial Decision addressing the amount of tuition due and owing to respondent was issued on October 28, 2014.

In the latter Initial Decision the ALJ found, *inter alia*, that: based on documents provided by the district, the per diem tuition charge was \$64.42 for the 2007-2008 school year, and \$65.72 for the 2008-2009 school year. The ALJ also found, however, that there were special circumstances warranting a waiver of tuition from the beginning of the 2007 school year to March 1, 2008, *i.e.*, the Board's late notice to petitioner – in February 2008 – that she was potentially liable for a very significant amount of tuition, the fact that petitioner had a good-faith intent to move to Wyckoff in 2007, and an unanticipated problem with getting approval for the completion of construction on a home petitioner and her husband were trying to build in Wyckoff. From March 1, 2008 forward, the Y family had notice of the tuition problem, and had the option of re-enrolling the children in Fair Lawn schools until problems with their new home in Wyckoff were resolved, but elected not to do so; accordingly, the ALJ concluded that no special circumstances applied to the tuition due for the 2008-2009 school year. In sum, the ALJ concluded that respondent is owed tuition for the period from March 1, 2008 through the end of that school year, and for the entirety of the 2008-2009 school year.

Upon a full and independent review, the Commissioner adopted the ALJ's recommendation for tuition due as reasonable given the factual record in this matter. The Commissioner concluded that petitioner is liable for a total of \$65,888.96 in tuition assessments for the 2007-2008 and 2008-2009 school years, and granted summary disposition 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.

December 15, 2014

OAL DKT. NO. EDU 9946-09
AGENCY DKT. NO. 229-9/09

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The controversy now before the Commissioner was initiated on September 8, 2009 when petitioner challenged, *inter alia*, respondent's determination that during the 2007-2008 and 2008-2009 school years petitioner's children had been attending its schools, notwithstanding that they were domiciled in Fairlawn and thus ineligible to receive a free public education in Wyckoff. Respondent filed a counterclaim against petitioner and a "cross-claim"¹ against her husband, M.Y., demanding tuition reimbursement for the above referenced two school years.

Petitioner applied for emergent relief, asserting that she moved her family to Wyckoff in August 2009 and urging that her children should therefore remain in respondent's schools. After a hearing in the Office of Administrative Law (OAL), the Administrative Law Judge then assigned to the case issued an order returning the children to respondent's schools. The Commissioner approved the OAL's order and directed further proceedings in the OAL to

¹ There is no provision for third-party practice in the Uniform Administrative Procedure Rules. However, since respondent's claims against M.Y. are moot (see *infra*), for purposes of the within proceeding this procedural error is irrelevant. The proper way to add a party to a pending case is to file a separate petition and then move for consolidation.

resolve the underlying issues of the children's domicile during the 2007-2008 and 2008-2009 school years, and the merits of respondent's tuition claim.

For reasons unknown to the Commissioner, the matter did not progress for almost three years – until respondent moved for summary disposition on June 18, 2012. Five months later the proceedings stalled once again, when the OAL was advised that petitioner's husband had filed for bankruptcy. In May 2014, respondent withdrew its "cross-claim" against M.Y. and urged that its summary disposition motion against petitioner regarding tuition reimbursement be adjudicated. On May 22, 2014, relying on testimony from the September 16, 2009 emergent relief hearing, the Administrative Law Judge (ALJ) to whom the case had been reassigned issued an order finding that petitioner's children had not been domiciled in respondent's district during the 2007-2008 and 2008-2009 school years and had therefore not been eligible for free public education there. The ALJ did not, at that time, make findings on the amount of tuition due and owing – if any.

Petitioner did not appeal the May 22, 2014 order. Nor does the Commissioner see any reason to disturb it, since the determination that the children were not eligible for a free education during the subject years is well grounded in the facts set forth in the record. It remains to consider the conclusions regarding tuition reimbursement which are set forth in the Initial Decision currently before the Commissioner.

By way of an affidavit dated June 1, 2012, respondent's business administrator, Alan Reiffe, explained that tuition is determined by using annual per-pupil costs, as established by the New Jersey State Department of Education (Department) through the school budget review process. (*See*, Reiffe Affidavit at Paragraphs 15 and 17) Respondent's Exhibit R-1 – a Department document entitled "The Advertised Section of the School District Budget Statement, 2010-2011, Bergen – Wykoff Twp" – set forth the per-pupil cost calculations which the

Department had identified for school years 2007-2008, 2008-2009, 2009-2010, and 2010-2011. Regarding the two years at issue in this controversy, the Department's annual per-pupil cost calculations were as follows: \$11,595 for the 2007-2008 school year and \$11,834 for the 2008-2009 school year. Petitioner has produced no evidence that the Department's figures are inaccurate.

Employing the Department's annual per-pupil cost for the 2007-2008 school year, \$11,595, and multiplying it by four (the number of petitioner's children who attended respondent's schools in that year) results in the tuition figure of \$46,380. Doing the same for the 2008-2009 school year, *i.e.*, multiplying the per-pupil cost of \$11,834 by four, results in tuition due for that year of \$47,336. Therefore, there is a basis in the record to assess petitioner total tuition in the amount of \$93,716. However, after considering the record as a whole and, in particular, petitioner's arguments and evidence concerning respondent's notice and/or communications with petitioner regarding tuition liability, the ALJ determined that special circumstances warranted a reduced assessment of tuition for the 2007-2008 school year.

Those special circumstances consisted of the ALJ's finding that respondent did not timely advise petitioner that her thwarted expectations – *i.e.*, that the family's new house in Wykoff would be ready by October 1, 2007 – were no longer a sufficient basis to justify free public educations for her children in Wykoff during the 2007-2008 school year:

Here, the Board can demonstrate only that it first warned the family in February 2008 that it was potentially liable for a very significant amount of money. (R-2a.) Given the [untimely] notice, the fact that the family had [originally shown] a good-faith intent to move [to Wykoff] in 2007, and the unexpected problem with the DEP [a determination that the house petitioner was building was located on wetlands], I CONCLUDE that special circumstances warrant waiving the tuition from the beginning of the 2007 school year to March 1, allowing some time for the February 15, 2008, notice to the Y.'s to actually leave the Board's offices and reach the Y.'s. However, from that time on, they had notice of the tuition problem, and had the option

of re-enrolling their children in Fair Lawn until such time as the problems with their home were finally resolved. (Initial Decision at 7)

Respondent has not excepted to the ALJ's recommendation that the amount of tuition assessed for the 2007-2008 school year be reduced, and the Commissioner adopts the ALJ's recommendation as reasonable given the factual record in this matter.

Thus, the tuition assessed for the 2008-2009 school year will be \$47,336, computed *supra*, but the tuition due for the 2007-2008 school year will be calculated by multiplying the daily per-pupil cost by the balance of school days after the last school day of February 2008. The daily per-pupil cost for the 2007-2008 school year was \$64.42 (\$11,595 divided by 180). Respondent's Exhibit R-2c, an invoice sent to petitioner on or about March 3, 2008, identifies as 108 the number of school days which had transpired as of the end of February 2008. Therefore, tuition assessment for the remaining 72 school days of the 2007-2008 school year amounts to \$4,638.24 per child, or \$18,552.96 for four children. Using the foregoing information, the Commissioner concludes that petitioner is liable for a total of \$65,888.96 in tuition assessments for the 2007-2008 and 2008-2009 school years.

Accordingly, summary disposition is granted to respondent and the petition is dismissed. Petitioner is liable to respondent for tuition in the amount of \$65,888.96.

IT IS SO ORDERED.²

ACTING COMMISSIONER OF EDUCATION

Date of Decision: December 15, 2014

Date of Mailing: December 15, 2014

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