

349-15R (OAL Decision: Not available online)

J.C., ON BEHALF OF MINOR CHILD, J.C., :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE : DECISION
CITY OF LINDEN, UNION COUNTY, :
RESPONDENT. :
_____:

SYNOPSIS

Petitioner appealed the determination of the respondent Board that her daughter, J.C., is not domiciled in the Linden School District and therefore not entitled to a free public education in Linden schools. The respondent Board contended that petitioner and J.C. reside at a home in Roselle, New Jersey, which petitioner and her husband purchased in 1993, and consequently owe tuition for the period of J.C.'s ineligible attendance in Linden schools. Petitioner asserted that she is no longer domiciled at the Roselle house because she is separated from her husband. A hearing in the matter was conducted on September 9, 2014, and an Initial Decision was issued on May 29, 2015, in which the ALJ concluded that petitioner and her daughter are not domiciled in the respondent's school district; the ALJ ordered the petitioner to reimburse the Board at the per diem rate of \$85.67 for the period of J.C.'s ineligible attendance in its schools. Subsequently, the Commissioner remanded the matter to the OAL for calculation of the exact amount of tuition due and supplementation of the record as warranted.

On remand, the ALJ determined that the petitioner owes the respondent Board a total sum of \$ 20,453.44 in tuition costs for the period of J.C.'s ineligible attendance in the district's schools during the 2013-2014 and 2014-2015 school years.

The Commissioner adopted the recommended decision of the OAL with modifications to correct typographical errors in the Initial Decision's calculation of the tuition due to the respondent Board. The petitioner was directed to reimburse the Board in the amount of \$20,453.44 for tuition costs incurred during the period of J.C.'s ineligible attendance in Linden schools.

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.

October 22, 2015

OAL DKT. NO. EDU 10599-15
(EDU 7290-14 ON REMAND)
AGENCY DKT. NO. 136-5/14

J.C., ON BEHALF OF MINOR CHILD, J.C., :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE : DECISION ON REMAND
CITY OF LINDEN, UNION COUNTY, :
RESPONDENT. :
_____ :

The record in this matter – including the Initial Decision of the Office of Administrative Law (OAL) dated May 29, 2015, as well as the Initial Decision of the OAL dated September 17, 2015, issued pursuant to the Commissioner’s remand – has been reviewed. The parties did not file exceptions.

On July 8, 2015, the Commissioner determined that petitioner failed to sustain her burden of establishing that she was a domiciliary of Linden during the 2013-2014 school year; thus, the minor child was not entitled to a free public education in the District’s schools. As a result, the Commissioner remanded the matter to the OAL for calculation of tuition due to the Board. *See Board of Education of the Township of Cranford v. A.McG. and L.McG.*, 95 N.J.A.R. 2d (EDU) 74, aff’d 96 N.J.A.R. 2d (EDU) 140, rev’d and remanded, App. Div., February 10, 1998, A-4742-95, slip opinion at pp. 8-10 (initial decision requires, where applicable, calculation of tuition due).

Pursuant to N.J.S.A. 18A:38-1b, the Commissioner shall assess tuition against petitioner for the time period during which the minor child was ineligible to attend school in Linden.

N.J.A.C. 6A:22-6.2 indicates that – where an appeal has been filed – tuition may be assessed “for the period during which the hearing and decision on appeal were pending, and for up to one year of a student’s ineligible attendance in a school district *prior* to the appeal’s filing and including the 21-day period to file an appeal.”

The Board notified petitioner on May 7, 2014¹ of its determination that the minor child was ineligible to attend school in Linden, as it appeared petitioner resided elsewhere. Petitioner appealed the Board's determination on June 2, 2014. According to the record, the minor child continued to attend school in Linden subsequent to the Board's determination and during the appeal's pendency, *i.e.*, for the remainder of the 2013-2014 school year and for the entire 2014-2015 school year.

On remand, the Administrative Law Judge (ALJ) ordered petitioner to pay tuition costs in the amount of \$20,453.44. Pursuant to *N.J.S.A.* 18A:38-1b and *N.J.A.C.* 6A:22-6.2, tuition is hereby assessed to petitioner in the amount of \$20,453.44 for the following days of ineligible attendance:

- May 7, 2014 through May 30, 2014 (*ineligible attendance prior to the filing of petitioner's appeal*) and June 2, 2014 through June 20, 2014² (*period during which the hearing and decision on appeal were pending*):

(32 school days in 2013-2014 x \$85.67/day³ = \$2,741.44)

- September 3, 2014 through June 23, 2015 (*period during which the hearing and decision on appeal were pending*):

(180 school days in 2014-2015 x \$98.40/day = \$17,712.00)

TOTAL: \$2,741.44 + \$17,712.00 = \$20,453.44

¹ Although the May 7, 2014 Final Determination of Ineligibility states that tuition would be charged to petitioner at a *per diem* rate of \$80.21, the Certification of Kathleen Gaylord, Business Administrator/Board Secretary contained in the record indicates that the *per diem* tuition rate for students in grades 9-12 for the 2013-2014 school year was \$85.67.

² While the ALJ found on Page 2 of the Initial Decision that June 2, 2015 was the last day of school for the District's students – perhaps due to reliance upon the Affidavit of JoAnn Hamilton, Director of Pupil Personnel Services/Guidance, which appears to contain several typographical errors – the school calendar contained in the record confirms that the last day of school was June 20, 2015.

³ While the ALJ found on Page 2 of the Initial Decision that the *per diem* rate of \$85.67/day was applicable to the 2012-2013 school year – again, likely due to reliance upon the Affidavit of JoAnn Hamilton – the aforementioned Certification of Kathleen Gaylord and supporting exhibits confirm that this *per diem* rate actually applied to the 2013-2014 school year.

Accordingly, the recommended Initial Decisions of the OAL are adopted, as modified herein. The Board's claim for payment of tuition is granted, and the petition of appeal is hereby dismissed. Petitioner is directed to reimburse the Board in the amount of \$20,453.44 for tuition costs incurred during the time period that the minor child was ineligible to attend school in Linden.

IT IS SO ORDERED.⁴

COMMISSIONER OF EDUCATION

Date of Decision: October 22, 2015

Date of Mailing: October 22, 2015

⁴ 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*).