

71-17R

A.B., ON BEHALF OF MINOR CHILD, T.B. :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE : DECISION
RED BANK REGIONAL HIGH SCHOOL
DISTRICT, MONMOUTH COUNTY, :
RESPONDENT. :

SYNOPSIS

Petitioner filed a *pro se* residency appeal on behalf of her daughter, T.B., seeking a determination that T.B. is entitled to a free public education in the Red Bank Regional High School District. The respondent Board alleged that a residency investigation completed in February 2016 showed that A.B. and T.B. are domiciled in the Tinton Falls School District, and not the Red Bank Regional High School District. The petitioner failed to appear at a scheduled hearing on August 29, 2016. Subsequently, correspondence from petitioner explaining her absence was received by the Commissioner and was forwarded to the ALJ on August 30, 2016. The OAL sent a notice of petitioner's failure to appear to the Commissioner on the same day. Consequently, the Commissioner remanded the matter to the OAL, finding that the ALJ's dismissal of the matter for failure to appear was contrary to the requirements of *N.J.A.C. 1:1-14.4(a)*; further, the ALJ's failure to issue an Initial Decision at the time of dismissal was improper pursuant to *N.J.A.C. 1:1-14.4(c)2*.

On remand, the ALJ found, *inter alia*, that: pursuant to *N.J.S.A. 18A:38-1*, a petitioner has the burden of proof in a determination of residency ineligibility; in this matter, a hearing was scheduled for November 22, 2016, and petitioner received appropriate notice thereof; petitioner failed to appear at the hearing; representatives of the Board did appear, and provided testimony with respect to the tuition amounts due; subsequently, the OAL received a copy of a letter from petitioner, dated November 22, 2016, which alleged "health issues" as the reason for petitioner's non-appearance and requested an adjournment of the matter for a minimum of twelve weeks; despite petitioner's untimely request to delay the hearing, petitioner was given another opportunity to present evidence in opposition to the request for tuition reimbursement as well as the determination of ineligibility for T.B., if the request was made in writing within ten days; petitioner again failed to provide any opposition. The ALJ concluded that T.B. was ineligible for a free public education in the Red Bank for the period of enrollment in the district from March 2014 through June 2015, and from November 2015 through June 2016. Accordingly, the Board's counterclaim for tuition in the total amount of \$18,433.60 was granted, and the petition was dismissed.

Upon review, the Commissioner concurred with the ALJ that T.B. was not domiciled in Red Bank during the period in question, and was therefore not entitled to a free public education in the district's schools. Accordingly, the Initial Decision was adopted as the final decision in this case. Petitioner was ordered to reimburse the Board in the amount of \$18,433.60, and the petition was 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.

March 2, 2017

OAL DKT. NO. EDU 16381-16
(EDU 04961-16 ON REMAND)
AGENCY DKT. NO. 87-3/16

A.B., ON BEHALF OF MINOR CHILD, T.B., :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE RED BANK : DECISION
REGIONAL HIGH SCHOOL DISTRICT
MONMOUTH COUNTY, :
RESPONDENT. :

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed.¹ The parties did not file exceptions.

Upon such review, the Commissioner concurs with the Administrative Law Judge's (ALJ) finding that T.B. was not domiciled in Red Bank for the 2014-2015 and 2015-2016 school years, and therefore, was not entitled to a free education in the District.

Pursuant to *N.J.S.A.* 18A:38-1b and *N.J.A.C.* 6A:22-6.3, the Commissioner shall assess tuition against petitioner for the time period during which T.B. was ineligible to attend school in the District. During the 2014-2015 school year, T.B. attended school in the District for sixty days – from March 18, 2015 to June 30, 2016. The tuition assessed for the 2014-2015 school year is \$4,533.60 (\$75.56² per day for sixty days). During the 2015-2016 school year, T.B. attended school in the District for the entire year. The tuition assessed for the 2015-2016 school year is \$13,900.00 (annual per pupil cost). Therefore, the total tuition due to the Board

¹ The Commissioner was not provided with a transcript of the August 29, 2016 hearing at the OAL.

² The Initial Decision incorreced cited the District's daily tuition cost for the 2014-2015 school year as \$75.65. The correct amount is \$75.56.

for T.B.'s ineligible attendance in the District during the 2014-2015 and 2015-2016 school years is \$18,433.60.

Accordingly, the Initial Decision of the OAL is adopted as the final decision in this matter. Petitioner is directed to reimburse the Board in the amount of \$18,433.60 for tuition costs incurred for the 2014-2015 and 2015-2016 school years, during which time T.B. was ineligible to attend school in Red Bank. The petition of appeal is hereby dismissed.

IT IS SO ORDERED.³

ACTING COMMISSIONER OF EDUCATION

Date of Decision: March 2, 2017

Date of Mailing: March 2, 2017

³ 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).



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
DISMISSING PETITION AND
GRANTING COUNTERCLAIM
FOR TUITION

OAL DKT. NO. EDU16381-16⁴
AGENCY DKT. NO. 87-3/16

A.B.,

Petitioner,

v.

**RED BANK REGIONAL HIGH
SCHOOL BOARD OF EDUCATION,
MONMOUTH COUNTY,**

Respondent.

No appearance by or on behalf of **A.B.**, petitioner, pro se

Anthony Sciarrillo, Esq., for respondent (Sciarrillo Cornell Merlino McKeever & Osborne, attorneys)

Record Closed: January 24, 2017

Decided: January 24, 2017

BEFORE **SARAH G. CROWLEY**, ALJ:

⁴ A prior petition was filed under docket number EDU 04961-16.

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

On February 17, 2016, petitioner was served with a notice of ineligibility for their minor child, T.B. Petitioner opposed the respondent's claim, and after a hearing before the Red Bank School Board, a Final Notice of Ineligibility was sent to petitioner advising that the Board determined that T.B. was ineligible to attend school in the district. On March 21, 2016, petitioner filed an appeal of the Board determination with the Department of Education on April 1, 2016. The New Jersey State Department of Education, Bureau of Controversies and Disputes, transmitted the matter to the Office of Administrative Law (OAL) as a contested matter. N.J.A.C. 1:1-8.2 and N.J.A.C. 1:1-18.7(a) to ascertain residency of petitioner and tuition due, if any.

After petitioner failed to participate in three separate pre-hearing conference calls, and on August 29, 2016 failed to appear at the scheduled hearing date, the respondent's request to dismiss the petition for failure to appear was granted. After no explanation was provided by petitioner for the failure to appear within the designated time frame under N.J.A.C. 1:1-14.4(a) the initial petition bearing docket number EDU 04961-2016, was dismissed and sent back to the transmitting agency. The matter was remanded by the Commissioner on October 26, 2016, under the above captioned docket number. A hearing was scheduled for November 22, 2016. The petitioner failed to appear for the hearing. A hearing was conducted on November 22, 2016, and testimony was provided by Christina Galvao, the Red Bank Regional Board of Education School Business Administrator with respect to tuition amounts due.

Following the hearing, a letter, which had been addressed to the Director of Bureau of Controversies and Disputes, Kathleen Duncan, was received in this office. Neither the undersigned nor the attorney for the petitioner was copied on this letter dated November 22, 2016. The letter acknowledges receipt of the hearing notice and alleges "health issues" without any further elaboration or excuse for yet another non-appearance. On November 30, 2016, the undersigned wrote to the petitioner and advised that no good cause for the non-appearance was provided and that the petitioner's request to adjourn the matter, "for at least twelve weeks" was denied. The undersigned advised petitioner that notwithstanding the untimeliness of the request and

the failure to provide any good cause for another non-appearance, that petitioner would be afforded an opportunity to present evidence in opposition to the request for tuition reimbursement as well as the determination of ineligibility for T.B. if such a request was made in writing within ten days. No such request was made, and the record closed after submission of a letters from the respondent's attorney regarding tuition reimbursement dated January 16, 2017, and January 23, 2016.

FINDINGS OF FACTS

Based upon the petitioner's failure to provide any opposition and the undisputed testimony of the respondent's witnesses and their documentary evidence, I **FIND** the following as **FACT**:

1. T.B. attended Red Bank Regional High school for the 2014-2015 and the 2015-2016 school years, and did not reside in the district. Notice of ineligibility was sent to the petitioner in February 2016.
2. Tuition for the 2014-2015 school year was \$13,600.00.
3. Per day tuition for the 2014-2015 school year was \$75.65.
4. T.B. attended school in the district for 60 days in the 2014-2015 school year, from March 18, 2015 through June 30, 2016. Total tuition due for this period is \$4,533.60.
5. Tuition for the 2015-2016 school year was \$13,900. T.B. attended school for the entire school year.
6. Total tuition due for T.B. is \$18,433.60.

LEGAL DISCUSSION AND CONCLUSION

Petitioner has the burden of proof in a determination of residency ineligibility N.J.S.A. 18A:38-1. Petitioner failed to participate in said proceeding and has presented no defense to the claim. The respondent appeared and provided testimony and evidence on the issues of residency and the tuition reimbursement sought.

Accordingly, I **CONCLUDE** that T.B. was ineligible for education in Red Bank and based on T.B.'s enrollment in the district from March 18, 2015 through June 30, 2016, and from November 15, 2015, through June 30, 2016. I further **CONCLUDE**, that respondent is entitled to reimbursement in the amount of \$18,433.60, reflecting the per diem tuition for the foregoing time period in accordance with N.J.A.C. 6A:22-6.2.

ORDER

It is hereby **ORDERED** that the petition is hereby **DISMISSED**; and it is further **ORDERED** that respondent's counterclaim for tuition reimbursement in the amount of \$18,433.60 is **GRANTED** in all respects.

I hereby **FILE** this initial decision with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

This recommended decision may be adopted, modified or rejected by the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who by law is authorized to make a final decision in this matter. If the Commissioner of the Department of Education does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION, ATTN: BUREAU OF CONTROVERSIES AND DISPUTES, 100 Riverview Plaza, 4th Floor, PO Box 500, Trenton, New Jersey 08625-0500**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.



January 24, 2017

DATE

SARAH G. CROWLEY, ALJ

Date Received at Agency:

January 24, 2017 (emailed)

Date Mailed to Parties:

SGC/mel

APPENDIX
LIST OF WITNESSES

For Petitioner:

None

For Respondent:

Christina Galvo, School Business Administrator

LIST OF EXHIBITS

For Respondent:

- R-1 Tuition Rates 2014-2015
- R-2 Correspondence dated July 31, 2014
- R-3 Tuition Rates 2015-2016