

M.C., on behalf of minor child, S.L., :
 PETITIONER, :
 V. : COMMISSIONER OF EDUCATION
 BOARD OF EDUCATION OF THE TOWNSHIP : DECISION
 OF EWING, MERCER COUNTY. :
 RESPONDENT. :
 _____ :

SYNOPSIS

Petitioner filed a *pro se* residency appeal on behalf of her daughter, S.L., seeking a determination that S.L. is entitled to a free public education in the Ewing Township School District. The respondent Board contended that a residency investigation in May 2016 indicated that M.C. and S.L. are domiciled within the Trenton School District, and not in Ewing. The Board filed a counterclaim seeking reimbursement of tuition. The petitioner failed to appear at a scheduled hearing on August 7, 2017; she was reached by telephone that day and stated first that she had forgotten about the hearing, and then changed her story, asserting that her daughter was sick. Petitioner requested that the matter be adjourned and rescheduled; subsequently, petitioner failed to submit proof establishing good cause for having missed the scheduled hearing, as requested by the ALJ.

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 August 7, 2017, and petitioner received appropriate notice thereof; petitioner failed to appear at the hearing; representatives of the Board did appear, and provided proofs for its counterclaim for tuition; and the record remained open for petitioner to provide proof of good cause for her failure to appear, which was never submitted. The ALJ concluded that: by preponderance of the credible evidence, petitioner and her daughter were not domiciled within the Ewing Township School District during the time period at issue, and S.L. was not entitled to a free public education in that school district; and the Board is entitled to reimbursement for the costs of tuition in the total amount of \$15,583.56. Accordingly, the Board’s counterclaim for tuition in was granted, and the petition was dismissed.

Upon review, the Commissioner concurred with the findings and conclusions of the ALJ, and the Initial Decision was adopted as the final decision in this matter. Petitioner was ordered to reimburse the Board in the amount of \$15,583.56, and the petition was dismissed with prejudice.

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.

September 28, 2017

OAL DKT. NO. EDU 4735-17
AGENCY DKT. NO. 65-3/17

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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.

Petitioner failed to appear at the hearing scheduled on August 7, 2017, and further neglected to provide documents corroborating her reason for her failure to appear, despite having been requested by the Administrative Law Judge (ALJ) to submit same. Upon such review, the Commissioner finds that petitioner’s failure to appear for the August 7, 2017 hearing before the OAL, and her subsequent failure to submit proof establishing good cause – as requested by the ALJ – render the petition abandoned.²

The Commissioner concurs with the ALJ’s assessment of tuition sought by the Board in this matter for a period of S.L.’s ineligible attendance in the District’s school. Pursuant to *N.J.S.A. 18A:38-1(b)* and *N.J.A.C. 6A:22-6.3*, the Commissioner shall assess tuition against petitioner for the time period during which S.L. was ineligible to attend school in the District. Furthermore, *N.J.A.C. 6A:22-6.2* provides that tuition may be assessed for “the period during

¹ The Commissioner was not provided with a transcript of the August 7, 2017 hearing at the OAL.

² Petitioner was also provided an opportunity to explain her failure to appear concurrent with the OAL’s transmittal of the matter back to the Department. Petitioner did not, however, exercise the opportunity to provide such explanation.

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." Petitioner filed her residency appeal on March 31, 2017. Therefore, under *N.J.A.C. 6A:22-6.2*, petitioner may be assessed tuition for a portion of the 2015-2016 school year as it falls within the one year time-frame prior to petitioner's March 31, 2017 filing and the 21-day period preceding said filing. Petitioner may also be assessed tuition for the entirety of the 2016-2017 school year, as the appeal was pending through to the conclusion of that school year. Finally, if S.L. remained enrolled in the District for the 2017-2018 school year during the pendency of this matter, then petitioner may also be assessed tuition for S.L.'s ineligible attendance for that time period.

The Initial Decision states that respondent has sought tuition from May 23, 2016 – which falls within the time period set forth in *N.J.A.C. 6A:22-6.2* – through to the conclusion of the 2016-2017 school year, during which time S.L. attended school for a total of 204 days. The Board has certified that the per-day tuition for the 2015-2016 and 2016-2017 school years is \$76.39. Therefore, the Board is entitled to tuition reimbursement in the amount of \$15,583.56.

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 \$15,583.56 for tuition costs sought by the Board during the time period that S.L. was ineligible to attend school in Ewing. The petition of appeal is hereby dismissed with prejudice.

IT IS SO ORDERED.³

COMMISSIONER OF EDUCATION

Date of Decision: September 28, 2017
Date of Mailing: September 29, 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*).