

K.A., ON BEHALF OF MINOR CHILDREN, :
D.B., D.A., AND K.A., :
PETITIONER, : COMMISSIONER OF EDUCATION
V. :
BOARD OF EDUCATION OF THE BOROUGH : DECISION
OF LODI, BERGEN COUNTY, :
RESPONDENT. :

SYNOPSIS

In August 2017, *pro se* petitioner appealed the determination of the respondent Board that her minor children were not eligible for a free public education in the Lodi school district during the 2016-17 school year. Petitioner argued that the family had undergone hardships, and their living arrangements had changed; however, she claimed that they still lived in Lodi. The Board contended, however, that – based on the results of a residency investigation – D.B., D.A. and K.A. are transported by petitioner from a Wallington address associated with the children’s father to their schools in Lodi. The Board sought tuition for the period of the children’s ineligible attendance in Lodi schools. The matter was transmitted to the Office of Administrative Law (OAL) as a contested case. Prior to the scheduled hearing date, the Board filed a motion for summary decision.

The ALJ found, *inter alia*, that: there were no genuine issues of material fact regarding the 2016-17 school year; accordingly, an order on the motion for summary decision was issued in February 2018, granting the motion as to the 2016-17 school year, but denying as to the 2017-18 school year; that order included a tuition calculation for the 2016-17 school year totaling \$36,209; the residency investigation in this case was initially triggered when a District official received an anonymous tip that K.A. and her children do not live in Lodi; the results of the investigation supported the finding that D.B., D.A., and K.A. – though at one time apparently domiciled in Lodi – are now domiciled outside of the school district, but continued to attend Lodi public schools for the 2017-2018 school year; pursuant to *N.J.S.A. 18A:38-1(b)(2)*, petitioner has the burden of proof in a determination of residency; petitioner could not provide any documentation other than a lease to verify that she and her children live in Lodi; petitioner testified that she was homeless, but also testified that she lives with her father in Lodi; she further testified that she goes to the home of her estranged husband in Wallington after she takes the children to school. The ALJ concluded that: there is no evidence that the petitioner is homeless; petitioner was not domiciled in the Lodi School District for the 2017-2018 school year; and the respondent Board is entitled to reimbursement of tuition in the amount of \$19,823.

Upon review of the record in this matter, the Commissioner concurred with the ALJ’s findings and conclusion, and adopted the Initial Decision as the final decision, with modification to include tuition reimbursement for each day beyond February 9, 2018 that the minor children remain enrolled in the District’s schools – to be calculated at the rate of \$69.74 per day for both D.B. and D.A., and \$65.28 per day for K.A. 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.

June 7, 2018

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The record of this matter – including the February 16, 2018 Summary Decision Order – and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed,¹ as have the exceptions filed pursuant to *N.J.A.C. 1:1-18.4* by petitioner and the Lodi Board of Education’s (Board) reply thereto.²

In her exceptions, petitioner argues that her situation constitutes a hardship because she was displaced from her home after a flood, forcing her to live with her father and sometimes with her husband, from whom she is separated. She maintains that she does not have any bills or utilities in her own name as her father owns the home that she now lives in. Further, she forwards her mail to a “safe place.” Accordingly, she is unable to provide certain documentation as to her address. Petitioner emphasizes that she has lived in Lodi for ten years and her children are involved in extracurricular activities, so she hopes to provide stability rather than removing them from the school that they have attended their whole lives. Petitioner asks

¹ The Commissioner was not provided with a transcript of the March 2, 2018 hearing at the OAL.

² A response to a reply is not contemplated by *N.J.A.C. 1:1-18.4*. Accordingly, the response filed by petitioner to the Board’s reply exceptions will not be considered by the Commissioner.

that the Commissioner allow her children to remain in the district for the remainder of the school year. She explains that she is in the process of searching for another apartment and plans to move in immediately so that she can establish residence before the 2018-2019 school year begins.³

In reply, the Board contends that although petitioner claims a hardship exception, she did not argue hardship at the hearing before the Administrative Law Judge (ALJ). Instead, the Board points out that petitioner argued that she resided in Lodi with her father. Although petitioner testified that she was homeless, the ALJ found no evidence of that. As such, the Board argues that the ALJ appropriately found that the minor children do not reside in Lodi and assessed tuition for the time of ineligible enrollment in the district.

Upon review, the Commissioner concurs with the ALJ that petitioner failed to sustain her burden of establishing that she was a domiciliary of Lodi for the 2016-17 and 2017-18 school years. The Commissioner further concurs with the ALJ's conclusion that the minor children were, therefore, not entitled to a free public education in the district's schools during this time. The Commissioner does not find petitioner's exceptions to be persuasive. Although petitioner argues that she was undergoing a financial hardship, she did not establish that she was homeless. Further, although petitioner wants to provide stability for her children and keep them in the school they have attended, such an argument does not establish that petitioner is domiciled in Lodi or that her children are entitled to attend school in the district.

Pursuant to *N.J.S.A.* 18A:38-1b, the Commissioner shall assess tuition against K.A. for the time period during which the minor children were ineligible to attend school in Lodi. Therefore, the Commissioner concurs with the ALJ – as she concluded in the Summary

³ The Commissioner makes no determination as to the future domicile of petitioner, as this petition only involves the 2016-17 and 2017-18 school years.

Decision Order dated February 16, 2018 – that the Board is entitled to tuition reimbursement for the children’s ineligible enrollment during the 2016-17 school year in the amount of \$36,209 (\$12,553 for D.B., \$11,905 for D.A., and \$11,751 for K.A.). The Commissioner further agrees with the ALJ’s findings in the Initial Decision that the Board is entitled to tuition reimbursement for the 2017-18 school year through February 9, 2018 in the amount of \$19,823.44 (\$6,745.34 each for D.B. and D.A., and \$6,332.76 for K.A.). It appears from the parties’ submissions that the minor children have continued to attend school in Lodi beyond February 9, 2018. Review of the record indicates that the cost per day for the children to attend school in Lodi is \$69.74 each for D.B. and D.A. and \$65.28 for K.A. As such – in addition to the tuition reimbursement ordered by the ALJ – the Board is also entitled to tuition in the amount of \$69.74 each for D.B. and D.A. and \$65.28 for K.A. for each day beyond February 9, 2018 that the minor children remain in Lodi’s schools.

Accordingly, the Initial Decision of the OAL is modified as stated herein. Petitioner is directed to reimburse the Board in the amount of \$55,032.44 – plus \$69.74 each for D.B. and D.A., and \$65.28 for K.A., for each day beyond February 9, 2018 that the minor children remain enrolled in the District’s schools – for tuition costs incurred during the time period that D.B., D.A., and K.A. were ineligible to attend school in Lodi. The petition of appeal is hereby dismissed.

IT IS SO ORDERED.⁴

ACTING COMMISSIONER OF EDUCATION

Date of Decision: June 7, 2018
Date of Mailing: June 7, 2018

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).