

363-18+ (OAL Decision: Not available online)

E.S, ON BEHALF OF MINOR CHILDREN, E.S., E.S., K.S., AND T.S.,	:	
	:	
PETITIONER,	:	COMMISSIONER OF EDUCATION
	:	
V.	:	DECISION
	:	
BOARD OF EDUCATION OF THE CITY OF ELIZABETH, UNION COUNTY,	:	
	:	
RESPONDENT.	:	

SYNOPSIS

Petitioner filed a *pro se* residency appeal on behalf of E.S., E.S., K.S. and T.S., challenging the determination of the respondent Board that his children are not entitled to a free public education in Elizabeth schools. The respondent Board contended that the results of a residency investigation showed that petitioner and his children are no longer domiciled in Elizabeth. The matter was transmitted to the OAL as a contested case, and a hearing was scheduled for September 12, 2018; petitioner failed to appear and offered no explanation for his non-appearance.

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 September 12, 2018 and petitioner received appropriate notice thereof; petitioner failed to appear at the hearing; the Board's residency investigator appeared at the hearing and provided proofs for a counterclaim for tuition. The ALJ concluded that based on the uncontroverted testimony of the residency investigator and proofs presented, as well as E.S.'s own admission at an earlier Board hearing that he lived in Edison with his children, E.S. was not domiciled in Elizabeth from May 7, 2018 through the end of the 2017-2018 school year. Accordingly, the Board's counterclaim for tuition was granted, and petitioner was ordered to reimburse the Board in the total amount of \$ 12,643.40 for the period of ineligible attendance by petitioner's four children.

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 \$ 12,643.40, 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.
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December 14, 2018

OAL DKT. NO. EDU 07971-18
AGENCY DKT. NO. 128-5/18

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. The Administrative Law Judge’s (ALJ) recommended decision in this matter dismissed petitioner’s residency appeal as consequence for his failure to appear at the scheduled hearing without providing any explanation for the non-appearance. The ALJ further concluded that petitioner should be assessed tuition costs in the amount of \$12,643.40. The parties did not file exceptions to the Initial Decision.¹

In accordance with *N.J.A.C.* 1:1-14.4(d), an *ex parte* hearing was held during which the Board presented the testimony of Vito Tropeano, the district’s residency investigator, regarding the investigation into E.S.’s domicile and tuition due for the minor children’s ineligible attendance in Elizabeth schools. Based upon Mr. Tropeano’s undisputed testimony and the Board’s supplemental submission, the ALJ found that the minor children were ineligible to attend school in Elizabeth for a total of 35 days, from May 7, 2018 through the end of the 2017-

¹ The Commissioner was not provided with a transcript of the September 12, 2018 hearing at the OAL.

2018 school year.² Accordingly, petitioner was ordered to pay the Board tuition in the amount of \$12,643.40 (\$79.22 per day for E.S.; \$96.14 per day for E.S.; and \$92.94 per day each for K.S. and T.S.) for the period of the minor children's ineligible attendance in Elizabeth's schools.

The Commissioner fully concurs with the ALJ's determination and recommendation that petitioner's failure to prosecute this matter necessitates its dismissal and the award of tuition to the Board. Accordingly, the recommended decision of the OAL is adopted as the final decision in this matter and petitioner is hereby directed to pay the Board \$12,643.40 in tuition for his minor children's ineligible attendance in Elizabeth during the 2017-2018 school year.

IT IS SO ORDERED.³

COMMISSIONER OF EDUCATION

Date of Decision: December 14, 2018

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² The Commissioner notes that, pursuant to *N.J.S.A.* 18A:38-1, the burden is on petitioner – not respondent – to demonstrate that he is domiciled in the district.

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).