

304-18 (OAL Decision: Not available online)

M.M., ON BEHALF OF MINOR CHILDREN, :
S.M., M.M., S.M., AND K.M., :
 :
 PETITIONER, : COMMISSIONER OF EDUCATION
 :
 V. :
 : DECISION
 BOARD OF EDUCATION OF THE CITY OF :
 ORANGE, ESSEX COUNTY, :
 :
 RESPONDENT. :

SYNOPSIS

In January 2018, *pro se* petitioner appealed the determination of the respondent Board that her children are ineligible for a free public education in respondent's school district. Petitioner contended that her children were targeted for removal from District schools because of an action she had taken up with the Board. Petitioner requested that her children be allowed to complete the 2017-2018 school year in Orange Schools. The Board filed a counterclaim for tuition. A hearing in this matter was held on August 17, 2018; petitioner, however, failed to appear at the hearing.

The ALJ found, *inter alia*, that: pursuant to *N.J.S.A.* 18A:38-1(a), children between the ages of five and twenty years old are entitled to a free public education in the school district in which they are domiciled; the domicile of an unemancipated child is that of her parent, custodian or guardian; in the instant case, one of petitioner's children, M.M., disclosed at a school suspension hearing that she did not reside in Orange; in November 2017, the District provided the petitioner with a Notice of Initial Ineligibility for her four children, all of whom attended school in Orange; the Board did not grant petitioner's request to allow the children to finish out the school year; after notification that the children were ineligible to continue to attend Orange schools, they continued to attend for a total of 116 days; the Board asserted that it is entitled to reimbursement for tuition for the period from December 11, 2017 through June 20, 2018, in the total amount of \$49,305.08. The ALJ concluded that petitioner's children were ineligible to receive a free education in the Orange School District during the 2017-2018 school year, and ordered petitioner to reimburse the Board for 116 days of tuition at a daily tuition rate for the minor children of: \$78.69 for K.M.; \$77.06 for S.M.; and \$134.65 each for S.M. and M.M.

Upon review, the Commissioner concurred with the ALJ's findings and conclusions, and adopted the Initial Decision as the final decision with the modification that the total amount of tuition due to the Board is \$49,305.80, rather than \$49,305.08.

<p>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.</p>

October 2, 2018

OAL DKT. NO. EDU 01482-18
AGENCY DKT. NO. 6-1/18

M.M., ON BEHALF OF MINOR CHILDREN, :
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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.

Upon such review, the Commissioner concurs with the Administrative Law Judge's (ALJ) finding that because petitioner failed to appear at the August 17, 2018 OAL hearing without providing an explanation, the petition of appeal is dismissed.

The Commissioner also agrees with the ALJ's assessment of tuition – pursuant to *N.J.S.A.* 18A:38-1b – against petitioner for the period of ineligible attendance by her minor children in Orange, in accordance with the Board's counterclaim seeking tuition. Therefore, the Board is entitled to tuition reimbursement in the amount of \$49,305.80² (\$78.69 per day for K.M., \$77.06 per day for S.M., and \$134.65 each per day for M.M. and S.M.) for the 116 days that the minor children were ineligible to attend school in Orange from December 11, 2017 through June 20, 2018.

¹ The Commissioner was not provided with a transcript of the August 17, 2018 hearing at the OAL.

² The ALJ miscalculated the amount of tuition at \$49,305.08, rather than \$49,305.80.

Accordingly, the Initial Decision of the OAL – as modified herein – is adopted as the final decision in this matter, and the petition of appeal is hereby dismissed. Petitioner is directed to reimburse the Board in the amount of \$49,305.80 for tuition costs incurred during the time period that the minor children were ineligible to attend school in Orange.

IT IS SO ORDERED.³

COMMISSIONER OF EDUCATION

Date of Decision: October 2, 2018

Date of Mailing: October 3, 2018

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*).