

M.F., on behalf of minor children, K.F. and K.F., :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE BOROUGH : DECISION
OF ATLANTIC HIGHLANDS,
MONMOUTH COUNTY, :
RESPONDENT. :

SYNOPSIS

Petitioning parent challenged the Board's residency determination that her children were not domiciled in the District.

In light of the record and the testimony of witnesses, the ALJ found that the District established proof that petitioner was a resident and domiciliary of Sea Bright not Atlantic Highlands. The ALJ ordered the children removed from the Atlantic Highlands School District. The ALJ did not make any calculation with respect to unpaid tuition amounts since the Board made no claim for tuition.

The Commissioner adopted the Initial Decision with modification. Based on the record and the credibility assessments of the ALJ, the Commissioner concurred with the ALJ that petitioner failed to establish that she was a domiciliary of Atlantic Highlands so as to entitle her children to a free public education in that District. The Commissioner, however, rejected the ALJ's apparent belief that, absent the filing of a counterclaim for tuition, the Board is not entitled to collect such compensation for the period of the children's ineligible attendance in its schools. The Commissioner determined that tuition was clearly identified as a relief sought in the Board's Answer. Thus, the Commissioner remanded the matter to OAL solely for such further proceedings as may be needed in order to determine the amount of tuition due the Board for the period of ineligible attendance.

<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>

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. The Board’s exceptions were timely filed pursuant to *N.J.A.C.* 1:1-18.4. Petitioner requested and was granted an extension of time within which to file primary exceptions and replies to the exceptions filed by the Board.¹ Such submission, filed on petitioner’s behalf by James J. McGuire, Jr., Esq., was received in accordance with the extended timeframe.

The Board excepts to the Administrative Law Judge (ALJ) declining to assess tuition in this matter notwithstanding his finding that petitioner and her children were not domiciled in Atlantic Highlands during the period at issue herein. It urges that the ALJ’s reasoning in this regard, *i.e.*, “that ‘...since respondent has made no claim for tuition ...I am making no calculation with respect to unpaid tuition amounts[,]’ Initial Decision at Page 9” (Board’s Exceptions at 1 and 2), is clearly erroneous. The Board points out that Page 2 of its Answer to the petition in this matter specifically requested “that the Commissioner of Education

¹ Petitioner, who was previously *pro se*, stated that she wished to secure the services of her attorney to make the filing.

*** award respondent tuition pursuant to *N.J.S.A.* 18A:38-1(b)(1)***.” (*Id.* at 2) The Board attaches to its exceptions a Certification of its Board Secretary/School Business Administrator detailing the amount of tuition to which it claims to be entitled and urges that the Commissioner modify the decision of the ALJ to award it such amount.

Petitioner’s exceptions contest the validity of the ALJ’s factual findings and credibility assessments in reaching his conclusion that she and her children were not domiciled in Atlantic Highlands. She contends that, because domicile, by definition, involves not only the place where an individual resides but also the place that he or she has the “intent” of returning to permanently, in any judgment with respect to petitioner’s “intent,” her testimony should receive the greatest consideration.

Upon careful and independent review of the record in this matter, and based on the credibility assessments of the ALJ, *N.J.S.A.* 52:14B-10(c), the Commissioner finds no basis to disturb the conclusion of the ALJ that petitioner has failed to establish that she is a domiciliary of Atlantic Highlands so as to entitle her minor children, K.F. and K.F. to a free public education in that District. In so finding, the Commissioner stresses that challenges to the factual findings rendered by an ALJ require the objecting party to provide the Commissioner with relevant portions of the transcript of the hearing in order to permit him to assess the merits of those exceptions. *In re Morrison*, 216 *N.J. Super.* 143, 157-158 (App. Div. 1987). Transcripts were not filed in this matter.

The Commissioner, however, rejects the ALJ’s apparent belief that, absent the filing of a counterclaim for tuition, the Board is not entitled to collect such compensation for the period of K.F. and K.F.’s ineligible attendance in its schools. *See Z.A., on behalf of minor children, A.K. and J.K. v. Board of Education of the Village of Ridgewood, Bergen County*,

decided by the Commissioner July 23, 2003. *Also see N.J.S.A. 18A:38-1, N.J.A.C. 6A:3-8.1(d), N.J.A.C. 6A:28-2.10(b).* Rather, tuition is clearly identified as a relief sought in the Board's Answer and the Commissioner finds and concludes that, petitioner having failed to prevail on her appeal, the Board is entitled to collect such tuition in this matter. Inasmuch as the record before the Commissioner is devoid of any information which would form a basis for a calculation in this regard,² a remand to the OAL is required for additional fact finding as is necessary to determine the amount of tuition due, pursuant to *N.J.A.C. 6A:28-2.10.*

Accordingly, the Initial Decision of the OAL is adopted, as modified above, for the reasons expressed therein. This matter is hereby remanded to the OAL solely for such further proceedings as may be needed in order to determine the amount of tuition due the Board for the period of the ineligible attendance of petitioner's children in the District's schools.

IT IS SO ORDERED.³

COMMISSIONER OF EDUCATION

Date of Decision: September 22, 2003

Date of Mailing: September 22, 2003

² It is noted that the Board's Certification, submitted for the first time with its exceptions, is violative of *N.J.A.C. 1:1-18.4(c)* and cannot be considered herein.

³ This decision may be appealed to the State Board of Education pursuant to *N.J.S.A. 18A:6-27 et seq.* and *N.J.A.C. 6A:4-1.1 et seq.*