

C #195-01L  
SB # 24-01

K.D., on behalf of minor child, K.D.,	:	STATE BOARD OF EDUCATION
PETITIONER-APPELLANT,	:	DECISION
V.	:	
BOARD OF EDUCATION OF THE BOROUGH :		
OF NORTH HALEDON, PASSAIC COUNTY,	:	
RESPONDENT-RESPONDENT.	:	
_____	:	

Decided by the Assistant Commissioner of Education, June 19, 2001

For the Petitioner-Appellant, K.D., pro se

For the Respondent-Respondent, Lindabury, McCormick & Estabrook  
(Anthony P. Sciarrillo, Esq., of Counsel)

K.D. (hereinafter "petitioner") filed a petition with the Commissioner of Education challenging the determination of the Board of Education of the Borough of North Haledon (hereinafter "Board") that her daughter was not entitled to a free public education in that district. The Board filed a counterclaim seeking tuition from the petitioner for the period of her daughter's ineligible attendance in the district.

On June 19, 2001, the Assistant Commissioner of Education issued a letter decision in which he dismissed the petition for failure to state a claim for which relief could be granted. The Assistant Commissioner concluded that the petitioner had failed to demonstrate that she and her daughter were domiciled within the North Haledon School District so as to be entitled to a free public education in that district pursuant to

N.J.S.A. 18A:38-1. The Assistant Commissioner granted the Board's counterclaim for tuition and directed the petitioner to reimburse the Board for the period of her daughter's ineligible attendance in the North Haledon School District from January 24, 2001, when he found that the petitioner clearly understood that Hawthorne was responsible for the education of her daughter, through her daughter's last day of school in North Haledon.

The petitioner filed the instant appeal to the State Board, contending, inter alia, that the amount of tuition calculated by the Board following the Assistant Commissioner's decision – \$4,888.88 – is excessive. More specifically, the petitioner maintains that the amount being charged by the Board for her daughter's resource center instruction is unreasonable. The Board counters that the amount of tuition owed by the petitioner "was calculated based upon the adopted tuition rate for non-resident students plus the cost of resource center support per child divided by the total number of school days to arrive at a per diem cost of \$53.14....Pursuant to the Commissioner's decision, this per diem amount was then multiplied by 92 days, for January 25, 2001 through June 22, 2001, for a total of \$4,888.88." Answer Brief, at 2.

After a thorough review of the record, we affirm the decision of the Assistant Commissioner that the petitioner has not demonstrated that she is domiciled in North Haledon. Accordingly, we concur with the Assistant Commissioner that the petitioner is responsible for tuition for the period of her daughter's ineligible attendance in that district.

However, the record does not permit a determination of the petitioner's contention regarding the specific amount of tuition calculated by the Board following the Assistant Commissioner's decision.

N.J.S.A. 18A:38-1(b) provides in pertinent part that:

If in the judgment of the commissioner the evidence does not support the claim of the parent or guardian, the commissioner shall assess the parent or guardian tuition for the student prorated to the time of the student's ineligible attendance in the schools of the district. Tuition shall be computed on the basis of 1/180 of the total annual per pupil cost to the local district multiplied by the number of days of ineligible attendance....

The issue of the amount of tuition to which the Board is entitled was not litigated in the proceedings below and, therefore, was not addressed or determined by the Assistant Commissioner. Since the record before us does not permit such a determination, we remand this matter to the Commissioner for the limited purpose of determining the Board's "total annual per pupil cost" as it applies to the educational program provided to the petitioner's daughter, particularly with regard to the resource center, and for a resultant determination of the amount of tuition to which the Board is entitled.

We do not retain jurisdiction.

Kathleen A. Dietz abstained.

January 2, 2002

Date of mailing \_\_\_\_\_