

272-01

H.M., on behalf of her minor child, R.E., :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE : DECISION
PRINCETON REGIONAL SCHOOL :
DISTRICT, MERCER COUNTY, :
RESPONDENT. :
_____ :

SYNOPSIS

Petitioner challenged the Board's determination that her daughter is not entitled to a free education in the District. After petitioner's request for emergent relief was denied, an administrative hearing was conducted.

The ALJ determined that the petition should be dismissed because petitioner and her child did not reside in the respondent District but, rather, petitioner had rented a duplex with two other persons based on her incorrect understanding that doing so would satisfy the requirements for registering her child in the District's schools although she continued her domicile and residence in Pennsylvania. Concluding that petitioner was not misled by respondent, the ALJ rejected petitioner's fairness/equitable estoppel argument and her assertion that renters are treated disparately from those who own property or are building homes in the District.

The Commissioner affirmed the decision of the ALJ for the reasons set forth therein. The Commissioner denied petitioner's motion to reopen the record to permit her to demonstrate that, had she known of the District policy of permitting persons who intend to move into the District within 60 days of the start of school to enroll their children in the District's schools free of tuition, she would have enrolled her daughter and obtained a suitable residence within the 60-day period, rather than the duplex she rented. In this regard, the Commissioner noted that petitioner had failed to secure a residence for the 2001-2002 school year as of the date of the ALJ's decision, which was months after the expiration of the 60-day period. The Commissioner also rejected petitioner's estoppel and disparate treatment arguments and affirmed the determination of the ALJ that petitioner's daughter is not entitled to a free education in the District. Finally, the Commissioner determined that petitioner must pay respondent \$9,791 in tuition for the 2000-2001 school year.

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.

OAL DKT. NO. EDU 889-01
AGENCY DKT. NO. 55-2/01

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The record of this matter and the Initial Decision of the Office of Administrative Law have been reviewed. Exceptions were submitted by petitioner in accordance with *N.J.A.C.* 1:1 18.4 and were duly considered by the Commissioner in reaching his determination.¹

In her exceptions, petitioner essentially reiterates the arguments presented before the Administrative Law Judge (ALJ) claiming that, although she and her daughter never lived in the house she rented in conjunction with two other individuals so that she could produce the required lease specified on the green enrollment form, she believed that she was acting in accordance with the District's requirement for residency as listed on that form because respondent's enrollment form failed to explain the definition of residency within the meaning of the residency statutes. Thus, petitioner maintains, she honestly misunderstood the legalities of residency and domicile which would entitle her daughter to attend respondent's schools free of charge. (Petitioner's Exceptions at 6-8) Petitioner also asserts that the ALJ's contention that the

¹ Petitioner submitted additional exceptions, which she labels as an "addendum" to her exceptions, five days after the due date for exceptions. Since *N.J.A.C.* 1:1-18.4 does not provide for submissions after the date for filing exceptions or for submitting exceptions in a bifurcated manner, petitioner's additional submission has not been considered.

basic facts are undisputed is not correct, stating that the facts as the ALJ recites them are “absolutely disputed.” (*Id.* at 2) Petitioner claims that the ALJ misconstrued her testimony and that of Director Bryant and Attendance Officer Cream and that the ALJ was biased in favor of respondent’s view of the disputed facts. (*Id.* at 1-2) Additionally, petitioner asserts that Mr. Bryant lied on the witness stand with respect to the availability of any waiver offered to tenants, and that the ALJ’s denial of her motion to reopen the case so that she might bring other witnesses to prove that Mr. Bryant testified falsely and to prove that respondent “is allowing people to rent or own without sleeping in their domiciles, and yet still attend school,” prevents a fair determination in this matter. (*Id.* at 8)

Upon careful and independent review of the record in this matter, including transcripts of the proceedings before the ALJ and exceptions submitted by petitioner, the Commissioner affirms the findings and conclusions in the Initial Decision.

Initially, the Commissioner notes his agreement that no meaningful purpose would be served by the granting of petitioner’s motion to reopen. Even assuming, *arguendo*, that Mr. Bryant testified falsely with respect to the availability of any waiver offered to tenants who plan to move into the District within 60 days of the opening of school, petitioner’s assertion that, if she had known about the waiver, this knowledge would have changed everything because she would have waited to find a house that she could live in, is, at best, speculative. Petitioner has stated that rentals are difficult to find in Princeton, and, as the ALJ observed, petitioner’s closing statement indicates that she has yet to find a house in Princeton for the coming year. Even if petitioner had been successful in finding a home in order to move into Princeton after the start of school, however, she would have had to apply to the superintendent for approval of the 60-day waiver and such approval would be based on the facts presented in her application. Moreover,

petitioner did not provide affidavits from the additional witnesses she now wishes to call indicating what “newly discovered” evidence they would testify to in a second hearing. Additionally, the Commissioner concludes that petitioner has had a full and fair opportunity to present her arguments and to present witnesses on her behalf. Therefore, the Commissioner finds that petitioner’s motion to reopen was appropriately denied.

The Commissioner also rejects petitioner’s claim that equitable estoppel should be applied so as to excuse her from paying tuition for her daughter’s ineligible attendance in respondent’s schools because she made an error that anyone not familiar with the legalities of domicile might make, and that she was misled by the lack of information explaining that a person had to actually live in the District, not just rent or own property in the District, to attend school without charge. Nothing in the record demonstrates that petitioner consulted with anyone in authority in the District concerning her plan to rent part of a house in Princeton, without living there, so that her daughter could qualify for a free education in respondent’s schools, while she and her daughter continued to live in Lahaska, Pennsylvania. As noted by the ALJ, the District does have a detailed policy on nonresident student attendance and full disclosure by the petitioner would have enabled a full exchange of information.

With respect to petitioner’s claim that tenants are treated disparately from those building a home within respondent’s School District because those building a home need not live in the District until the fourth quarter to receive a free education, while tenants, at best, must move into the District within 60 days, the Commissioner finds that such distinction alone is not necessarily improper. As noted by the ALJ, the Board’s policy is written such that tenants and existing home buyers fall into one category and new construction falls into another, which may reasonably be attributed to the fact that construction of a new home is often marked by

unanticipated delays. Moreover, as the ALJ pointed out, *petitioner lives out-of-state*, not in respondent's District, and is, therefore, not a tenant or homeowner within the meaning of the District's out-of-district admission policy.

Accordingly, the Commissioner affirms the Initial Decision of the ALJ for the reasons expressed therein. Petitioner is, therefore, directed to reimburse the Board tuition in the amount of \$9,791.²

IT IS SO ORDERED.³

COMMISSIONER OF EDUCATION

Date of Decision: August 27, 2001

Date of Mailing: August 29, 2001

² This amount is the total annual tuition for Princeton High School due from petitioner for a full year of her daughter's attendance pursuant to a letter from the superintendent of schools dated February 8, 2001. (Answer to Motion for Emergent Relief, Exhibit C)

³ This decision, as the Commissioner's final determination, 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.*, within 30 days of its filing. Commissioner decisions are deemed filed three days after the date of mailing to the parties.