

S.M., on behalf of minor child, W.C., :
 :
 PETITIONER, :
 : COMMISSIONER OF EDUCATION
 V. :
 : DECISION
 BOARD OF EDUCATION OF THE :
 TOWNSHIP OF WEST ORANGE, :
 ESSEX COUNTY, :
 :
 RESPONDENT. :

SYNOPSIS

Petitioning uncle challenged the Board's residency determination that W.C., his nephew from Haiti, was not entitled to a free public education in the District.

The ALJ determined that petitioner did not demonstrate economic or family hardship and did not meet the requirements of *N.J.S.A. 18A:38-1b(1)*. The ALJ ordered petitioner to pay the District \$6,912.71 for the cost of providing a public education to W.C. during the 1999-2000 school year and \$45.61 per day for the 2000-2001 school year.

The Commissioner adopted the findings and determination in the Initial Decision as his own and directed petitioner to reimburse the Board the tuition due.

January 8, 2001

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The record of this matter and the Initial Decision of the Office of Administrative Law have been reviewed. The parties did not file exceptions.

Upon careful and independent review of the record in this matter, the Commissioner concurs with the Administrative Law Judge's (ALJ) finding that petitioner has failed to prove that W.C. is entitled to a free public education in respondent's District.¹ Accordingly, the Initial Decision of the ALJ is adopted for the reasons expressed therein, and the within Petition of Appeal is dismissed. Pursuant to *N.J.S.A.* 18A:38-1b(1), the Commissioner directs that petitioner reimburse the Board for tuition in the amount of \$6,912.71 for the 1999-

¹ Notwithstanding this determination, the Commissioner notes with concern the ALJ's finding that "[Josefa] Lopez told [petitioner] that he had to demonstrate an economic or family hardship and suggested that one way of doing so would be for him to obtain custody of W.C." (Initial Decision at 3) As to such representations made by local boards and district staff, the Commissioner cautions that: "****although a local board should offer, where appropriate, accurate information about the enabling statute, *N.J.S.A.* 18A:38-1 *et seq.*, its related policies, and the consequences of noncompliance, *it is not the role of a local board to provide legal advice to parents, guardians and residents regarding how they may constitute their families and relationships in order to effectuate compliance with the residency law, particularly where the advice may carry legal consequences beyond those which the parties may presently anticipate.*" *E.G.P. on behalf of minor child, M.B. v. Board of Education of the Borough of Rutherford, Bergen County*, Commissioner Decision December 21, 1998, *aff'd* State Board June 2, 1999. (emphasis added) (Slip Opinion at 20)

2000 school year, and \$45.61 per day for the 2000-2001 school year, as set forth in the Initial Decision.

IT IS SO ORDERED.²

COMMISSIONER OF EDUCATION

Date of Decision: January 8, 2001

Date of Mailing: January 8, 2001

² 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.