

S.B. on behalf of minor children,	:	
C.B. and K.M.,	:	
	:	
PETITIONER,	:	
V.	:	COMMISSIONER OF EDUCATION
	:	
BOARD OF EDUCATION OF THE	:	DECISION
KINGSWAY REGIONAL HIGH	:	
SCHOOL DISTRICT, GLOUCESTER	:	
COUNTY,	:	
	:	
RESPONDENT.	:	
	:	

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SYNOPSIS

Petitioner – a former resident whose family moved out of the district in April 2004 with the intent to return upon building a new home – challenged the respondent Board’s finding that her son and brother are not domiciled in the district and must consequently pay tuition. Petitioner contends that her family has complied with the district’s policy regarding future residents. She bases her contention upon a May 2005 agreement to purchase vacant land in the district and a residential lease dated November 2005, showing that she resides in a district serviced by the respondent district. Respondent moved for dismissal of the case, asserting that petitioner had failed to supply the lease and building plans, permits, etc. for her property located in the district.

The ALJ found, *inter alia*, that: petitioner meets the conditions of the future resident policy, having satisfied the implicit good faith understanding connected with a commitment to build; petitioner presented the district with a bona fide contract for the purchase of vacant land in May 2005; and dismissal of the case based on discovery violations is unwarranted. The ALJ consequently denied respondent’s motion to dismiss; concluded that petitioner qualified as a “Future Resident”; and ordered that C.B. and K.M. are eligible for a free public school education in respondent’s district, subject to sending district Logan Township’s verification that petitioner resides therein.

The Commissioner concurs with the ALJ that petitioner satisfied the conditions of the district’s future resident policy, and adopts the ALJ’s conclusions that: C.B. and K.M. are entitled to enroll in Kingsway for the 2005-2006 school year without paying tuition; and they are now entitled to attend school at Kingsway as residents of a district that has contracted to send its high school students there. Accordingly, the Commissioner orders that C.B. and K.M. continue as students at Kingsway, subject to verification by the Logan Township school district that petitioner resides therein, and orders petitioner to pay respondent tuition for the 2004-2005 school year in the amount of \$3,590.40, as stipulated, unless respondent agrees to the lower amount set forth in petitioner’s post-hearing brief.

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.

March 14, 2006

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The record in this case and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. No transcripts were transmitted to this office and no exceptions were submitted by the parties.

The matter was precipitated by respondent's August 16, 2005, determination that C.B. and K.M., petitioner's son and brother, were not residents of the Kingsway Regional High School District and were consequently not entitled to a free, public education in the district for the 2005-2006 school year. Petitioner appealed this determination, based upon the following facts, which do not appear to be disputed.

C.B. and K.M. are both currently in the 12<sup>th</sup> grade. They have attended Kingsway Regional High School (Kingsway) since the beginning of 9<sup>th</sup> grade. In April of 2005, S.B. and her husband sold their house in the Kingsway district and moved to a rental outside of the district, with the intent to return to the district upon building a new home. The parties have

stipulated that for the last two months of the 2004-2005 school year, petitioner will pay respondent tuition of \$3590.40 for her son and her brother. (Initial Decision, p. 2)<sup>1</sup>

On May 24, 2005, petitioner and her husband entered into a contract to buy a five-acre tract of vacant land in the Kingsway district. (R-1) The purpose of the purchase was to build a home on a portion of the land and subdivide the rest to a relative. Petitioner gave a copy of the contract to Terrence Crowley, the superintendent of the Kingsway district, and communicated with him a number of times, between the end of May and August 2005, about her plans to move back into the Kingsway school district.

On July 20, 2005, Crowley sent petitioner a letter stating that because petitioner was buying property without a dwelling, and since the closing would not be until September 15, 2005, after school began, her children would not qualify as district residents for the 2005-2006 school year. (R-3) Petitioner requested an appearance before the respondent board of education, and the matter was put on the agenda for August 16, 2005 (R-2). Unfortunately, petitioner's mother-in-law passed away suddenly on or about August 16, 2005, which required petitioner to go to Florida. She testified that she did not contact Crowley at that time because she had incorrectly calendared the board meeting for a different date.

At respondent's August 16, 2005, meeting it passed a motion that found that "based upon the evidence presented, the 'B' family are not residents of the district and are not entitled to a free public education and further that their residency ceased on April 30, 2005 and as such are responsible for tuition of \$8,245.60 for the months of May and June, 2005." (P-6) After her return from Florida, petitioner asked that the residency hearing be rescheduled, and was advised that the residency decision for the 2005-2006 school year had been made. She

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<sup>1</sup> Prior to the hearing in this matter, respondent moved that the petition be dismissed for petitioner's failure to produce certain documents, and petitioner countered that respondent had failed to produce its written policy concerning future residents. The administrative law judge (ALJ) ruled that since most of these issues were resolved at least three weeks prior to the hearing, neither party was prejudiced and dismissal of the case was not warranted. The Commissioner adopts the ALJ's ruling.

subsequently attended a board meeting to discuss the issue but was told that respondent's August 16, 2005, decision was final and she could appeal to the Commissioner of Education. She did so on September 2, 2005 (P-4), and the matter was transmitted to the OAL for an expedited hearing. Her appeal allowed her children to begin the school year at Kingsway.

The closing, transferring the five acres to petitioner and her relatives, occurred on September 15, 2005. (P-3) Petitioner and her husband still hoped, at that time, that their home would be built within three months. However, the surveyor whom they hired did not perform in a timely manner and had to be replaced. This delayed the design of a septic or sewer system, which design was a prerequisite to building permit approvals. When it became apparent that their new home would not be completed by the end of 2005, petitioner and her husband rented an apartment in Logan Township (P-2), a district that sends its high school students to Kingsway. The lease was for six months and began on December 1, 2005. In the meanwhile, petitioner and her husband continued to pursue the permits and approvals necessary to construct a home in the district, and have been paying taxes on the land since September 2005.

Based upon the foregoing facts, the petitioner urged that her children met the conditions of respondent's policy allowing "future residents" to attend Kingsway without paying tuition. That policy, set forth in petitioner's exhibit P-1 (page 2 of 3), states in pertinent part:

Future Residents

A child otherwise eligible for attendance whose parent/guardian has signed a contract to buy, build or rent a residence in this District shall be enrolled for a period not to exceed 90 days previous to the anticipated date of residency without tuition charges. If the child has not become a resident of the District by the end of the period of free attendance, tuition shall be required for the remainder of the time until residency is established.

Parents/guardians of children who are future residents shall be required to demonstrate proof of the anticipated residency. The

Board reserves the right to verify such claims and to remove from school a nonresident pupil whose claim cannot be verified.

The ALJ found that the petitioner satisfied the conditions, as does the Commissioner. By virtue of the fact that petitioner and her husband had – prior to the 2005-2006 school year – signed a contract to buy land in respondent’s district upon which to build a home, had closed on the land two weeks after school started, had entered into contracts (with surveyors and a septic engineering firm) to begin the building process, and had secured a rental property in Logan Township by November 20, 2005, the children were residents of respondent’s district or, at least, residents of a district within the region served by respondent. And they achieved that status within the 90-day period contemplated by respondent’s “future resident” policy.

Respondent has not adequately rebutted petitioner’s arguments about the future resident policy. In its August 16, 2005 determination, respondent neglected to address the question of whether the children could be considered future residents. At the OAL hearing respondent apparently argued that since the children were not “pre-qualified” as future residents, they did not qualify for the tuition-free 90-day period. However, the sales contract for the tract in respondent’s district had been presented to respondent’s representative, and petitioner had communicated to him on multiple occasions that her family expected to return to the district in the near future. Respondent cannot argue that petitioner’s children were not pre-qualified, when petitioner had provided that information and respondent had failed to address it when it made its ruling about C.B. and K.M. Nor did respondent submit a post hearing brief addressing the future resident issue.

In view of the foregoing, the Commissioner adopts the ALJ’s conclusions that:

1) C.B. and K.M. were entitled, under the future resident policy, to enroll in Kingsway for the

2005-2006 school year without paying tuition; and 2) they are now entitled to attend school at Kingsway as residents of a district that has contracted to send its high school students there.<sup>2</sup>

Accordingly, the Commissioner orders that C.B. and K.M. continue as students at Kingsway, subject to verification by the Logan Township school district that petitioner resides therein. Petitioner is ordered to pay respondent tuition for the 2004-2005 school year in the amount of \$3,590.40, as stipulated, unless respondent agrees to the lower amount set forth in petitioner's post-hearing brief.

IT IS SO ORDERED<sup>3</sup>

ACTING COMMISSIONER OF EDUCATION

Date of Decision: March 14, 2006

Date of Mailing: March 14, 2006

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<sup>2</sup> In the ALJ's initial decision is a brief discussion about the children's best interests. As a matter of common sense, the Commissioner cannot disagree that it will be advantageous for the children to be able to finish their secondary education in Kingsway; however, "best interests" is not the applicable legal standard for this controversy.

<sup>3</sup> The Commissioner's decision may be appealed to the New Jersey 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.*