

S.J., on behalf of minor child, V.J., :
PETITIONER, : COMMISSIONER OF EDUCATION
V. : DECISION
BOARD OF EDUCATION OF THE :
SOUTH ORANGE-MAPLEWOOD
SCHOOL DISTRICT, ESSEX COUNTY, :
RESPONDENT. :

SYNOPSIS

Petitioner contested respondent's determination that her son, V.J., is ineligible to attend school in respondent's district, claiming that she was domiciled in the district until she became homeless in March 2006; respondent Board is therefore responsible for his education as a homeless child. Respondent district asserts that V.J. is not entitled to a free education in South Orange-Maplewood schools, and counterclaimed for tuition reimbursement for the period of ineligible attendance.

The ALJ found that: petitioner was homeless from March 2006 until June 2007; as of July 2007, petitioner was domiciled in Newark; from March 2006 through June 2007, V.J. was eligible for a free public education in respondent's school district; beginning in July 2007, V.J. was no longer eligible to attend respondent's schools free of charge; respondent Board may disenroll V.J. upon issuance of the final decision in this matter; and respondent's request for tuition reimbursement for V.J.'s attendance during the 2007-2008 school year is granted, to be calculated at the rate of \$67.20 per day for the number of days of attendance by V.J. during the current school year.

Upon a full and independent review of this matter, the Commissioner concurred with the findings of the ALJ regarding the period of homelessness of petitioner and her son, and that V.J. ceased to be eligible for free public education in respondent's school district as of July 2007. In response to petitioner's request that her son be permitted to finish out the current school year as a nonresident student and that she not be required to pay tuition because of the extreme financial hardship it would cause, the Commissioner found nothing in the record to support an order compelling the District to forgive tuition for the period of ineligible attendance or to permit V.J. to attend as a nonresident student. Accordingly, the Initial Decision of the OAL is adopted as the final decision in this matter.

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 5656-07
AGENCY DKT. NO. 121-5/07

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed, as has the petitioner's statement on exception, to which the Board of Education (Board) did not reply.

In her exceptions, the petitioner does not take issue with the findings of the Administrative Law Judge (ALJ), but asks that – since his behavior and attitude have improved at Columbia High School through the efforts of caring teachers – her son be permitted to finish out the 2007-08 school year in respondent's district as a nonresident student without payment of tuition, and that the tuition assessment against her be forgiven due to the extreme financial hardship it would cause. (Petitioner's Exceptions at 1-2)

Upon review, the Commissioner first concurs – for the reasons fully set forth by the ALJ – that the petitioner and her son were homeless from March 2006 through June 2007, prior to which time they resided in the respondent's school district so as to render V.J. entitled to attend school in South Orange-Maplewood during this period. She further concurs that – as of July 2007 – the petitioner and her son were no longer homeless, but rather domiciled in Newark; thus, at that point, V.J. ceased to be eligible for free public

education in the Board's district and the Board is entitled to collect tuition for the period of his ineligible attendance.

With respect to the petitioner's request for forgiveness of such tuition, the Commissioner finds that – while the Board is certainly free to exercise its own discretion and elect to forgo collection of the tuition it is now lawfully due – there is nothing in the record that would justify an order of the Commissioner compelling such action, notwithstanding that *N.J.A.C. 6A:22-6.3(b)* expressly permits this result when the particular facts so warrant. Similarly, while the Commissioner understands the petitioner's desire that her son be allowed to finish out the academic year in his current school, there is no basis in the record on which to order such relief; permitting nonresident students to attend school in a district – with or without payment of tuition – is a discretionary determination of the local district board of education pursuant to *N.J.S.A. 18A:38-3*, and nothing in the present record indicates that the Board abused its discretion or acted in violation of law or district policy in declining to permit V.J.'s attendance on this basis.

Accordingly, the Initial Decision of the OAL – finding V.J. ineligible to attend South Orange-Maplewood schools as of July 2007 and assessing the petitioner \$67.20 per day for V.J.'s enrollment during the 2007-2008 school year – is adopted as the final decision in this matter.

IT IS SO ORDERED.*

COMMISSIONER OF EDUCATION

Date of Decision: March 3, 2008

Date of Mailing: March 3, 2003

* 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.*