

BOARD OF EDUCATION OF THE :
BOROUGH OF WESTVILLE, :
GLOUCESTER COUNTY, :

PETITIONER, :

V. : COMMISSIONER OF EDUCATION

BOARD OF EDUCATION OF THE : DECISION
BOROUGH OF OAKLYN, :
CAMDEN COUNTY, :

RESPONDENT. :

SYNOPSIS

Petitioner seeks a determination that respondent is responsible for the cost of educating W.J.H., a minor child receiving special education services, for the 2004-2005 school year. Petitioner contends that the controlling factor in this matter is an agreement between the divorced parents of W.J.H. – which was signed in February 2005 – and not the domicile of the child on October 15, 2004. The respondent filed a motion for summary decision.

The ALJ found, *inter alia*, that: there are no genuine issues of material fact and the matter is ripe for summary decision; prior to February 2005, W.J.H.'s physical custody was on a shared, equal-time, alternating-week basis, such that the child was not living with either parent for a majority of the school year, and there was no court order designating the school district of attendance; on October 15, 2004, W.J.H. resided with his father in the Westville school district; school attendance is determined by domicile and residence as a general rule; pursuant to *N.J.A.C. 6A:22-3.1(a)(1)(ii)*, a court-sanctioned agreement altering a residence-based determination must be in effect on the last school day prior to October 16 preceding the date of the application; and retroactive alteration of the school district of attendance based on a court order or court-sanctioned agreement would contravene regulations. Accordingly, the ALJ granted respondent's motion for summary decision, concluding that Westville is responsible for the cost of educating W.J.H. for the 2004-2005 school year.

Upon full and careful consideration, the Commissioner concurred with the ALJ's determinations, and adopted the Initial Decision 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 10144-05
AGENCY DKT. NO. 219-8/05

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The record and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed.¹ The Commissioner agrees that the matter is appropriate for summary decision, and adopts the Initial Decision as the final decision for the reasons set forth by the Administrative Law Judge.

Accordingly, respondent's motion for summary decision is granted and petitioner is responsible for the costs of W.J.H.'s education during the 2004-2005 school year.

IT IS SO ORDERED.²

COMMISSIONER OF EDUCATION

Date of Decision: September 29, 2009

Date of Mailing: September 30, 2009

¹ No exceptions were filed by the parties.

² This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L. 2008, c. 36*. (*N.J.S.A. 18A:6-9.1*)