

BOARD OF EDUCATION OF THE :
TOWNSHIP OF EGG HARBOR, :
ATLANTIC COUNTY, :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE : DECISION
MAINLAND REGIONAL HIGH SCHOOL :
DISTRICT, ATLANTIC COUNTY, AND :
NEW JERSEY DEPARTMENT OF :
EDUCATION, DIVISION OF FINANCE, :
RESPONDENTS. :

SYNOPSIS

Petitioner Egg Harbor Township Board of Education appealed the determination of the New Jersey Department of Education, Division of Finance, that Egg Harbor is responsible for the cost of educating the children of the L. family for the 2008-2009 school year, following a determination of homelessness by the Atlantic County Executive Superintendent. The L. family lived in a number of locations between 2003 and 2010, including a period of 24 continuous months when they resided at a motel in Egg Harbor Township. Petitioner contends that a homeless family’s housing must be fixed and permanent before a district becomes liable for education costs. Respondent Mainland Regional High School District (Mainland) contends that once a homeless family resides in a district for one year, financial responsibility attaches, regardless of the form of housing. Mainland filed a motion for summary decision.

The ALJ found that: the facts are not in dispute and the matter is ripe for summary decision; the motels in which the L. family lived are not intended as permanent housing and therefore – in order for Egg Harbor to become the district of residence of the L. family, the family had to satisfy the one year criteria set forth in *N.J.S.A. 18A:38-1(d)*, which deems a homeless family domiciled in a particular jurisdiction so long as they have an “all-year-round dwelling place within the district for one year or longer”; the L. family was permanently domiciled within the Mainland district in 2005-2006, and became homeless again in the 2006-2007 school year; tuition responsibility remained with Mainland during this period, and would remain responsible until the L. household established a new residence or met the 12 month criteria set forth in *N.J.S.A. 18A:38-1(d)*; and starting in September 2008, Egg Harbor became the responsible district for tuition because the family had lived in a motel in the township for 12 months or more. Accordingly, the ALJ granted Mainland’s motion for summary decision and denied Egg Harbor’s request for relief.

Upon full and careful consideration, the Commissioner adopted the conclusions of the ALJ that Mainland bears tuition responsibility from 2005 to August 2008, that petitioner bears tuition responsibility from September 2008 through October 2010, and that – if the L. family still resides in Mays Landing as of November 2010 – tuition responsibility for B.L., if any, reverts to that district.

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 6680-09
AGENCY DKT. NO. 170-7/09

BOARD OF EDUCATION OF THE :
TOWNSHIP OF EGG HARBOR, :
ATLANTIC COUNTY, :

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This controversy arises from a disagreement between school districts as to the financial responsibility for the education of M.L. and B.L., the minor children of the L. family, which was homeless for a period of time.¹ Although the facts are undisputed, the parties offer conflicting interpretations of the statutes and regulations pertaining to homelessness, domicile and the right to a free public education.²

The facts are thoroughly set forth in the Initial Decision, but for ease of reference the Commissioner offers the following time line:

1998-2003 The L. family resided in the Karl-Le trailer park in Egg Harbor.

2003-2005 The L. family was evicted from Karl-Le, stayed with various in-laws and lived in various motels within petitioner's school district. (Petitioner does not ask for tuition reimbursement for this time period.)

¹ B.L. attended Atlantic County Special School Services (ACSSS) during the time period at issue in this case. No claims for reimbursement of tuition have been made concerning B.L.'s education.

² In addition to the record and the Initial Decision, petitioner's exceptions, the replies thereto by respondents Mainland Regional High School District (Mainland) and the New Jersey Department of Education (NJDOE), respondent Mainland's exceptions, and petitioner's reply thereto have been reviewed.

2005-October 2006 The L. family resided in the Atlantis Apartments in Somers Point. (M.L. finished eighth grade in Somers Point in June 2006.)

October 2006-December 2006 The L. family stayed with a sister-in-law and then in the Rex Motel in Egg Harbor for about six weeks.

January 2007-August 2007 The L. family lived in the Plaza Motel in Mays Landing and M.L. attended Oakcrest High School in the Greater Egg Harbor Regional High School district.

August 2007–October 2009 The L. family resided in the Rex Motel, Egg Harbor and M.L. attended Egg Harbor Township High School.

October 2009 The L. family moved to the Plaza Motel in Mays Landing, but M.L. completed 12th grade in Egg Harbor Township High School in June 2010.

August 2010 As of the August 20, 2010 hearing in the Office of Administrative Law (OAL), the L. family still resided in the Plaza Motel in Mays Landing.

After assessing the facts and relevant law, the Administrative Law Judge (ALJ) concluded that: 1) petitioner was responsible for the children’s education through a period ending in 2005, when the family moved to a permanent residence in the Atlantis Apartments in Somers Point; 2) Somers Point was responsible for the children’s education both during the family’s residence in Somers Point and during the subsequent school year (2006-2007), in which the family was homeless and lived first in an Egg Harbor motel and then in a Mays Landing motel; 3) because the family moved again in August 2007 – this time to the Rex Motel in Egg Harbor – the ALJ determined that the family was still homeless and Somers Point was still responsible for the children’s education for the 2007-2008 school year; 4) at the beginning of the 2008-2009 school year the L. family was domiciled in Egg Harbor by virtue of *N.J.S.A. 18A:38-1(d)*, which deems persons temporarily residing in a district to be domiciled there after they have lived there for a year; 5) petitioner was consequently responsible for the children’s education during the 2008-2009 school year; 6) because the family moved to a motel

in Mays Landing in October 2009, it was once again homeless, and petitioner was consequently still responsible for the children's education in the 2009-2010 school year; and 7) if the family has remained in Mays Landing past October 2010, B.L.'s education will be that district's responsibility. The Commissioner concurs with the ALJ's analysis.

In its exceptions petitioner contends that the ALJ was wrong to conclude that living in a motel, *i.e.* the Rex Motel in Egg Harbor, for over a year made the Egg Harbor district responsible for the L. children's tuition. Petitioner reasons that since – under *N.J.A.C.* 6A:17-2.3(a) – families dwelling in motels will be considered homeless for purposes of the education of their children, the district in which the motel is situated should not be responsible for the education of the children – even after a year of residence in the same motel. The Commissioner disagrees.

First, *N.J.S.A.* 18A:38-1(d) instructs that any student whose parent or guardian is not domiciled in a district (*e.g.* because he or she is homeless), but has had his or her all-year-round dwelling place in the district for at least one year, shall be deemed domiciled in the district for the purpose of *N.J.S.A.* 18A:38-1, which entitles a student to a free public education in the district of domicile. *N.J.S.A.* 18A:38-1(a). Thus, although a family may fall under the rubric of 'homeless,' it nonetheless achieves domicile for school law purposes after a year of residence in one district. With that designation of domicile in the district, comes the provision by the district of a public education to the minor children.³

Second, consideration of the time that a 'homeless' family has spent in the same location has resulted in administrative decisions bestowing domicile on such families. *See, e.g.*

³ As respondent NJDOE argues in its reply to Egg Harbor's exceptions, a finding of 'homeless' pursuant to the definitions in *N.J.A.C.* 6A:17-2.3(a) and *N.J.S.A.* 18A:7B-12 does not preclude the operation of *N.J.S.A.* 18A:38-1(d), which bestows domicile on families after a year in the same dwelling despite the fact that they otherwise qualify as 'homeless.'

Board of Education of the Borough of Magnolia, Camden County v. Board of Education of the Township of Deptford, Gloucester County and A.D. and T.D. on behalf of minor children, C.V., H.L., J.D., J.D. and C.D., and Board of Education of the Township of Deptford, Gloucester County v. New Jersey Department of Education, Finance Division, Board of Education of the Borough of Magnolia, Camden County and Board of Education of the Township of Moorestown, Burlington County, OAL Dkt. Nos. EDU 994-07 and EDU 8783-07, Initial Decision (March 27, 2009) at 15, http://lawlibrary.rutgers.edu/oal/html/initial/edu00994-07_1.html. In that Initial Decision, ALJ Israel Dubin instructed that *N.J.S.A. 18A:38-1(d)* “sets forth conditions under which a free public education shall be provided to a child, even though that child may not be domiciled in a particular school district.” More specifically, he found that “one must look at the length of time a family that is alleged to be homeless has resided in one location.” (*Ibid.*) ALJ Dubin rejected the Deptford Board of Education’s position that after four years in the same dwelling the family should still be considered homeless, finding that such a practice would create a category of ‘eternally homeless’ children.

Finally, the Commissioner notes that petitioner’s position would assign ultimate responsibility for tuition based on the physical configuration of the dwelling in which a family resides, irrespective of the duration of residence in the district. Such a position would render *N.J.S.A. 18A:38-1(d)* meaningless, since domicile attaches immediately if a student’s dwelling is found to be fixed, regular and adequate. *See, e.g. N.J.S.A. 18A:17B-12(c)*.

Respondent Mainland excepts to the ALJ’s finding that the Rex Motel “did not fulfill the criteria for permanent housing.” (Initial Decision at 9) This finding was based on the undisputed facts that the motel unit for the family of four consisted of a living room, a bedroom,

a bathroom and a space with a sink, refrigerator and microwave. (T28⁴) Rent was not paid pursuant to a lease, but rather on a weekly basis. (T29-30) Basic amenities, such as a stove, storage spaces or dining table were absent. (T28, T48) The family members ate while sitting on the beds and stored their clothes in bags on the floor. (T48-49) The family could receive but not make calls. (T58) Their mail went to the motel's mailbox. (*Ibid.*) Not surprisingly, Mrs. L. testified that she did not consider the Rex Hotel as a permanent home. (*See, e.g.* T26-27 and T52)

In support of its position that the Rex Hotel was a true, fixed and adequate residence that established the family's domicile in Egg Harbor – independently from the operation of *N.J.S.A.* 18A:38-1(d) – Mainland recites four facts supported by the record. First, Mainland points to the length of time that the L. family stayed at the Rex Hotel (August 2007-October 2009), and the family's failure to find another residence in keeping with its \$1700 monthly income. Second, Mainland makes much of the fact that the family used the motel address for such things as social security benefits, medical provider records, and Mrs. L's driver's license. Third, Mainland characterizes as significant the fact that the family brought food and toiletries to the motel. Fourth, Mainland appears to contend that Mrs. L's development of friendships with other motel residents was an indicia of permanent residency.

The Commissioner finds the foregoing arguments unpersuasive. The record shows that Mr. and Mrs. L made attempts to obtain more permanent housing, but Mr. L's disability and the family's limited resources limited their options. Mrs. L. testified that they are on waiting lists for low-income housing. (T53) The fact that the family used the motel address for such necessary purposes as the receipt of disability checks and as contact information for medical providers offers no insight regarding domicile. Mrs. L. testified, and the record

⁴ T designates the transcript of an August 20, 2010 hearing in the Office of Administrative Law.

supports, that the family had no alternate address. (See, e.g. T41; T47; T58-59) The Commissioner also rejects as meritless the notion that the purchase of food and toiletries, *per se*, or the nurturing of friendships with fellow motel residents transforms a temporary dwelling into a permanent residence. Finally, the cases cited by Mainland to support its position are inapposite. See, *L.C. on behalf of minor child B.C. v. Board of Education of the Township of Branchburg*, 96 N.J.A.R. 2d 1003 (decided September 12, 1996), and *Englewood Cliffs Board of Education v. E.S. and W.S. on behalf of minor children A.S. and E.S., and the Teaneck Board of Education*, EDU 11601-09, Initial Decision (May 20, 2010), <http://lawlibrary.rutgers.edu/oal/html/initial/edu11601-091.html>, Commissioner Decision No. 196-10, June 30, 2010.

In light of the foregoing, the Commissioner adopts the conclusions of the ALJ that 1) respondent Mainland bears tuition responsibility for the L. children from 2005 to August 2008, 2) petitioner bears tuition responsibility from September 2008 through October 2010, and 3) if the L. family still resides in Mays Landing as of November 2010, tuition responsibility for B.L., if any, reverts to that district. Respondent Mainland's motion to dismiss the petition is granted.

IT IS SO ORDERED.⁵

ACTING COMMISSIONER OF EDUCATION

Date of Decision: December 30, 2010
Date of Mailing: December 30, 2010

⁵ 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*).