

K.L., on behalf of minor children, :
E.L. and J.J., :
 :
 PETITIONER, :
 :
 V. : COMMISSIONER OF EDUCATION
 :
 BOARD OF EDUCATION OF THE : DECISION
 SOUTH ORANGE – MAPLEWOOD :
 SCHOOL DISTRICT, ESSEX COUNTY, :
 :
 RESPONDENT. :
 _____ :

SYNOPSIS

Petitioner filed an appeal of the respondent Board’s residency determination that her children – a senior in high school, and an elementary student – were not domiciled in the district and therefore not entitled to a free public education in South Orange-Maplewood schools. The Board filed a counterclaim for tuition in the amount of \$12,289.32. A hearing was held on June 1, 2009, at which petitioner admitted that – as of February 1, 2009 – she and her children no longer resided in respondent’s district. The parties tentatively agreed to a settlement at the conclusion of the hearing, wherein the parties agreed that tuition would be assessed for the period from February 1, 2009 through the end of the school year for both children, and that fixed monthly payments would be remitted by the petitioner over a period of years. Further settlement terms were negotiated subsequent to the hearing such that petitioner agreed to pay \$60 per month. Respondent tendered a written agreement for petitioner’s signature, but petitioner ultimately declined to sign the agreement because she had lost her job and would not be able to meet the monthly payments. Respondent Board then filed a motion to dismiss the petition or, in the alternative, to enforce the settlement which had been reached by the parties after the hearing.

The ALJ found that: the Board is entitled to enforcement of the oral settlement reached subsequent to and based on admissions made at the hearing; and the negotiated settlement agreement reached by the parties, but not executed, meets the requirements of *N.J.A.C. 1:1-19.1* and should be approved. Accordingly, the ALJ ordered the parties to comply with the terms of the draft settlement dated August 24, 2009.

The Commissioner adopted the Initial Decision as the final decision in this matter, noting, however, that in many districts students who change residence during their last year are allowed to finish tuition free in the district where they have been attending high school. Nonetheless, insofar as respondent has the right – under N.J.S.A. 18A:38-1(b)(2) – to move for tuition for both of petitioner’s children, the Commissioner ordered the enforcement of the settlement reached by the parties.

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 1630-09
AGENCY DKT. NO. 358-12/08

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	:	
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_____	:	

The procedural history of this matter is important to an understanding of the Initial Decision of the Office of Administrative Law (OAL). In consequence of petitioner’s appeal of respondent’s residency determination, and respondent’s counterclaim for tuition, a hearing took place on June 1, 2009.¹ The Initial Decision indicates that at the hearing, petitioner admitted that, as of February 1, 2009, she and her children no longer resided in respondent’s district. The Initial Decision further recites that a settlement was tentatively agreed to at the conclusion of the hearing, wherein the parties agreed that tuition would be assessed for the period from February 1, 2009 through the end of the school year for petitioner’s two children, and that fixed monthly amounts would be remitted by petitioner over a period of years.

Subsequent to the hearing, the parties apparently further negotiated settlement terms; *i.e.*, petitioner agreed to pay \$60 per month and respondent tendered a written agreement for petitioner’s signature. Petitioner, however, ultimately declined to sign the agreement, stating that she had lost her job and would not be able to meet the monthly payments required by the settlement.

Upon petitioner’s refusal to execute the written settlement agreement, respondent filed a motion to dismiss the petition or, in the alternative, to enforce the settlement which had been reached by

¹ No transcript has been provided for review.

the parties after the hearing. The Administrative Law Judge (ALJ) issued an Initial Decision enforcing the settlement, and neither party submitted exceptions.

From a legal standpoint, the record supports both the respondent's right to tuition in the amount of \$12,289.32, and the ALJ's determination that the parties had come to a settlement. Consequently, grounds existed for the ALJ to recommend enforcement of the settlement. The Commissioner therefore feels compelled to adopt the Initial Decision, but notes the following concerns.

It appears that on February 1, 2009, one of petitioner's two children was a high school senior, less than five months away from graduation. In many districts, students whose residences change during their last year are allowed to finish their high school career, tuition free, in the district where they have been attending high school. In light of the significant disruption that senior year transfers wreak upon students, the policy is well advised. It would appear eminently appropriate where, as here, there is evidence in the record that petitioner's financial circumstances are precarious.

Nonetheless, insofar as respondent has the right – under *N.J.S.A.* 18A:38-1(b)(2) – to move for tuition for both of petitioner's children, the Commissioner adopts the Initial Decision and orders enforcement of the settlement reached by the parties.

IT IS SO ORDERED.²

ACTING COMMISSIONER OF EDUCATION

Date of Decision: March 11, 2010

Date of Mailing: March 11, 2010

² This decision may be appealed to the Superior Court, Appellate Division, pursuant to *P.L.* 2008, *c.* 36.