

EDU #1447-05
C # 381-05
SB # 51-05

I.B., on behalf of minor child, M.A., III, :
PETITIONER-RESPONDENT, :
V. : STATE BOARD OF EDUCATION
BOARD OF EDUCATION OF THE : DECISION ON MOTIONS
TOWNSHIP OF BELLEVILLE,
ESSEX COUNTY, :
RESPONDENT-APPELLANT. :

Decided by the Acting Commissioner of Education, October 24, 2005

For the Petitioner-Respondent, I.B., pro se

For the Respondent-Appellant, Gaccione, Pomaco & Malanga (Mark A. Wenczel, Esq., of Counsel)

The petitioner, I.B., who lives in Belleville, filed a petition of appeal with the Commissioner of Education challenging the Belleville Board's determination that her nephew, M.A., was not entitled to a free public education in the Belleville school district. The petitioner based her challenge on an Order issued by the Superior Court of New Jersey, Chancery Division, Family Part, Essex Vicinage, on July 15, 2004, which granted custody of M.A. "jointly to the parties,"¹ and granted "residential custody" of M.A. to the petitioner.

¹ We note that the parties in the custody proceedings were the petitioner herein, who was the plaintiff, and M.A.'s mother and father, who were the defendants. The petitioner testified during the hearing in the Office of Administrative Law that the parties had consented to such an arrangement. Tr. 4/5/05, at 59.

The Acting Commissioner, finding that the petitioner's claim should have been analyzed under N.J.S.A. 18A:38-2 rather than 18A:38-1, concluded that M.A. was entitled to a free public education in Belleville by virtue of the Order of July 15, 2004 giving her residential custody of M.A. The Acting Commissioner asserted that it was not within her purview to disturb an Order of the Superior Court and that any challenge to that Order must be directed to the Court. She therefore ordered the Belleville Board to continue to admit M.A. to its schools as long as there was no change in the Superior Court's Order that would alter his entitlement.

The Belleville Board filed the instant appeal to the State Board, and both parties filed motions to supplement the record on appeal with documents pertaining to proceedings in Superior Court, Chancery Division in January 2006 on a motion filed by the Belleville Board to intervene in the custody matter and to vacate the Order of July 15, 2004. After a review of the papers filed, we grant the motions and will consider the supplemental materials provided by the petitioner and the Belleville Board in determining this matter.

May 3, 2006

Date of mailing _____

The papers filed in this matter further indicate that M.A.'s parents do not live together and that they do not reside in Belleville.