

EDU # 218-07  
C # 349-07  
SB # 26-07

A.M.S., on behalf of minor child, A.D.S., :  
PETITIONER-RESPONDENT, :  
V. : STATE BOARD OF EDUCATION  
BOARD OF EDUCATION OF THE CITY OF : DECISION ON MOTION  
MARGATE, ATLANTIC COUNTY, :  
RESPONDENT-APPELLANT, :  
AND :  
BOARD OF EDUCATION OF THE :  
TOWNSHIP OF JACKSON, OCEAN :  
COUNTY, :  
RESPONDENT-RESPONDENT. :  
\_\_\_\_\_ :

Decided by the Commissioner of Education, September 7, 2007

For the Respondent-Appellant, Margate Board of Education, Capehart & Scatchard (Robert A. Muccilli, Esq., of Counsel)

For the Petitioner-Respondent, A.M.S., Hinkle, Fingles & Prior (Ira M. Fingles, Esq. of Counsel)

For the Respondent-Respondent, Jackson Township Board of Education, Schwartz, Simon, Edelstein, Celso & Kessler (Mark H. Zitomer, Esq. of Counsel)

This is an appeal of a September 7, 2007 decision of the Commissioner of Education holding that petitioner-respondent A.M.S. was domiciled in the City of Margate, thus entitling his son, A.D.S., to a free public education in the Margate School

District. Respondent-appellant, Board of Education of the City of Margate, is challenging the Commissioner's determination that it is the school district responsible for providing A.M.S.'s son a free public education, contending that a school district in Pennsylvania where A.D.S.'s grandparents reside is the school district responsible for providing a free public education to A.D.S.

In her decision, the Commissioner concluded that A.M.S., an enlisted member of the U.S. military, established his domicile in Margate, as it is his "home base," notwithstanding that his parents are providing him an apartment there free of rent and other costs and that he is rarely physically present at that location because of his military assignments elsewhere. The Commissioner further concluded that A.M.S.'s arrangement with A.D.S.'s grandparents, wherein they have provided care for him since his mother's death due to the physical absence of A.M.S. while on duty with the military, does not establish the grandparent's residence in Pennsylvania as A.D.S.'s domicile and the school district responsible for providing him a free public education.

The Commissioner opined that N.J.S.A. 18A:38-1, which delineates the criteria for determining the school district responsible for the education of students, must be read to implement its primary intent, "to effectuate the provision of a free public education to the school-age children of the state." Commissioner's decision, slip op. at 9. Taking into consideration A.M.S.'s situation – he is a widowed member of the military on active duty who was compelled to have his parents provide day-to-day care for his son while serving in the military – the Commissioner concluded that, as a New Jersey domiciliary, A.M.S.'s son was entitled to a free public education in the school district where he is domiciled, rather than from the out-of-state school district where A.M.S.'s

parents who are caring for his son are domiciled. To interpret the law differently, the Commissioner concluded, would mean that, in a circumstance where a student must live with another person because his parent cannot care for him because of military service elsewhere, would eliminate that student's entitlement to a free public education in New Jersey when the relative or other person caring for the student does not reside in New Jersey. The Commissioner reasoned that:

Clearly, these are circumstances that might ordinarily have shifted A.D.S.'s entitlement to attend school (at least for a time) to the grandparent's district pursuant to N.J.S.A. 18A:38-1(b), as it did in East Brunswick. In this case, however, because the grandparents reside in Pennsylvania, reading the statute to conclude that A.D.S. must be educated as an "affidavit" student effectively places him outside the purview of New Jersey law; so that, instead of acting to A.D.S.'s benefit, the law would then work to deprive him (and petitioner) of their rights as New Jersey citizens for no reason other than that petitioner's parents – who offered to assist their suddenly widowed son with the care of his adopted child – happen to live across the state border. Surely the statute and its implementing rules do not contemplate such an unjust result, or one so contrary to the purpose of the law, and the Commissioner declines to so interpret them. . .

Commissioner's Decision, slip op. at 11.

After the appeal was filed by the Board of Education of the City of Margate, on November 13, 2007, the petitioner-respondent, A.M.S., filed the instant motion to supplement the record on appeal with a letter dated October 15, 2007 from the New Jersey Department of Human Services, Division of Developmental Disabilities (DDD) to A.S., a grandparent of A.D.S. The letter is purportedly an offer of a long-term placement of A.D.S. by DDD in Bancroft Neurohealth, which the letter states is a placement that will meet A.D.S.'s habilitation needs.

A.M.S. argues that the document is relevant to a determination of the appeal and should be made a part of the record on appeal. A.M.S. asserts that, because the State of New Jersey (through DDD) will be funding the residential component of A.D.S.'s placement in Bancroft Neurohealth, his grandparents' primary connection to the placement (a unilateral placement originally made and funded by A.M.S.'s family) has been severed, thus demonstrating that Margate, and not the Pennsylvania school district where A.D.S.'s grandparents reside, was correctly determined by the Commissioner to be the school district responsible for providing a free public education to A.D.S. In addition, A.M.S. argues that A.D.S. could "[fall] through the cracks in terms of funding the educational component of his Bancroft placement" if the decision of the Commissioner is not upheld by the State Board, as a determination that A.D.S.'s district of residence is in a foreign jurisdiction would mean that New Jersey law would not apply to compel funding of the educational component of the placement by a school district in New Jersey. This, it is argued, could result in there being no funding of the educational component of the placement in the event that the Pennsylvania school district where A.D.S.'s grandparents reside were to oppose any efforts to compel it to fund such costs. Brief of Petitioner-Respondent, at 2-3.

Respondent-appellant, Board of Education of the City of Margate, opposes the motion, arguing that a determination of DDD as to eligibility for DDD services is based on different criteria than determination of the school district responsible to provide a student a free public education and thus has no relevance when reviewing the decision on appeal. Margate also argues that the letter did not come into being until after the hearing of this matter was concluded, thus denying it an opportunity to develop a record

of the circumstances in which the letter was issued at the hearing of this case. This, it is asserted, would make it prejudicial to Margate to include the letter in the record of the appeal. Margate further argues that petitioner-respondent has failed to include documentation that the offer of placement in the letter was accepted. Absent documentation of acceptance of the placement, it is asserted that a conclusion that A.M.S.'s grandparents no longer have any financial responsibility for his care cannot be made based on the letter proffered for inclusion in the record on appeal. Finally, Margate asserts that petitioner-respondent has failed to support his assertion that the school district in Pennsylvania where A.D.S.'s grandparents reside will not fund the educational component of his placement in Bancroft Neurohealth if it is determined responsible to educate A.D.S., as there is no evidence of a refusal of that school district to fund A.M.S.'s education other than petitioner-respondent's unsupported speculation to that effect.<sup>1</sup> Brief of Respondent-Appellant, at 1-3.

After a thorough review of the papers filed on the motion, we conclude that the proposed exhibit is not material to the issue on appeal, N.J.A.C. 6A:4-1.9(b), and we deny petitioner-respondent A.M.S.'s motion to supplement the record. Our review of the letter and the arguments both for and against including it in the record on appeal compel a determination that the letter has no relevance to a determination of the district responsible to provide A.D.S. a free public education. A determination by DDD to offer and fund a placement for an individual to meet his habilitation needs has no bearing on an interpretation of the laws applicable to a determination of the school district responsible to provide a student a free public education. In addition, the fact that a

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<sup>1</sup> Respondent-respondent, Board of Education of the Township of Jackson, submitted a letter stating that it has no objection to including the letter at issue in the record on appeal.

conclusion by the State Board on appeal that no school district in New Jersey is responsible to provide A.D.S. a free public education could result in there being no funding source for the educational component of his placement at Bancroft Neurohealth does not render the document relevant to a determination of this appeal. Regardless of the potential adverse consequences of a particular determination on appeal, this appeal must be reviewed within the context of the statutory and regulatory scheme applicable to determinations of the school district responsible for providing a student a free public education. The document proffered by petitioner-respondent A.M.S. for inclusion in the record on appeal is not relevant to such a determination and is therefore not properly included in the record on appeal pursuant to N.J.A.C. 6A:4-1.9(b).

Debra Casha, Kathleen Dietz and Dorothy Strickland abstained.

January 9, 2008

Date of mailing \_\_\_\_\_