

M.D.P.-W. AND M.D.F., on behalf of minor	:	
child, M.W.,	:	
	:	
PETITIONERS,	:	
	:	
V.	:	COMMISSIONER OF EDUCATION
	:	
BOARD OF EDUCATION OF THE	:	DECISION
BOROUGH OF LAWNSIDE, CAMDEN	:	
COUNTY,	:	
	:	
RESPONDENT.	:	
	:	

SYNOPSIS

Petitioners, mother and aunt of minor child, M.W., challenged Board's residency determination that M.W. was not entitled to a free public education in the District.

ALJ concluded that since M.W. was not supported *gratis* by his aunt M.D.F., the person domiciled in the school district, M.W. was not entitled to a free education in said District.

Commissioner modified the initial decision. Commissioner found that because M.D.F. was a domiciliary of the District and she was the guardian of M.W. having legal control over him, M.W. was entitled to a free public education in the District until the date when his mother, M.D.P.-W., regained custody of him. (N.J.S.A. 18A:38-1a) However, after his mother regained custody of M.W., he was not entitled to remain in the District free of charge. (N.J.S.A. 18A:38-1b(1)) Commissioner concluded that Petitioner M.D.F. was, therefore, liable for tuition from the date she relinquished custody of M.W. until the final date of M.W.'s attendance in the District for the 1997-98 school year.

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The record of this matter and the initial decision of the Office of Administrative Law have been reviewed. Petitioners' exceptions and the Board's reply thereto are duly noted as submitted in accordance with *N.J.A.C.* 1:1-18.4.

In their exceptions, M.D.P.-W. affirms that she "signed over legal temporary custody" of her son to her sister, M.D.F., in 1995 so that she could attend Rutgers University Nursing School. (Petitioners' Exceptions at p. 1) M.D.P.-W. avers that, as a single parent working full time and attending nursing school full time, she "found it impossible" to raise her son and achieve her goals at the same time. (*Id.*) Therefore, in an effort to provide her son with a safe environment, she signed over legal custody to her sister. Further, M.D.P.-W. asserts,

***[m]y son did reside in Lawnside, however I did support him, and he did visit and that is my understanding of what the Judge Clark (sic), based her decision on. However, I was not aware that just because I supported him, he was not entitled to a free education in Lawnside.

On a more positive note, as my original plans and intention followed, I graduated [f]rom Rutgers University on May 22, 1998, have regained custody of my son back, and he will no longer be attending Lawnside Schools. (*Id.* at p. 2)

In reply, the Board contends that the Administrative Law Judge (ALJ) improperly failed to assess petitioners with tuition due and owing for school years 1995-96 (\$7,941), 1996-97 (\$7,666) and 1997-98 (\$8,308), in accordance with *Cranford Township Board of Education v. A. McG.*, 95 N.J.A.R. 2d (EDU) 74.

Upon careful and independent review of the record in this matter, the Commissioner determines to modify the initial decision of the ALJ, as set forth herein.

The record indicates that M.D.F. acquired legal custody of M.W. on June 12, 1995, “until further Order of the Court.” (R-1). As M.D.F. was the child’s legal guardian after that date, the appropriate inquiry for the Board was whether M.D.F. and M.W. were domiciliaries of the District, pursuant to N.J.S.A. 18A:38-1a, an analysis which does not necessarily ascribe significance to financial circumstance. Since the Board does not dispute that M.D.F. is a domiciliary of Lawnside, and the domicile of a child follows that of the parent or guardian having *legal control* over him, *Mansfield Twp. Board of Education v. State Board of Education*, 101 N.J.L. 474, 479, 480 (Sup. Ct. 1925), the Commissioner finds that M.W. was entitled to a free public education in the District *until the date when his mother, M.D.P.-W. regained custody of him.*¹ In so finding, the Commissioner notes that the ALJ found that M.D.F. “keeps M.W. in her home, as if M.W. were her own child, and provides him with guidance, discipline, and emotional and psychological support.” (Initial Decision at p. 5) Absent any indications of fraud, the Commissioner finds no reason why the custody order should not be accepted on its face. *L.A. v. Town of West Orange*, 97 N.J.A.R. 2d (EDU) 266, 269, aff’d

¹ The Commissioner accepts M.D.P.-W.’s affirmation that she has regained custody of her son, and that said resumption of custody was properly effectuated.

State Board 554; *V.H. v. Board of Education of the Township of Quinton*, 97 N.J.A.R. 2d (EDU) 124, 125, aff'd State Board 554.

However, *after* the date when M.D.P.-W. regained custody of her son, M.W.'s entitlement to a free education in the District was governed by *N.J.S.A. 18A:38-1b(1)*, the "affidavit student" provision. Here, the Commissioner concurs with the ALJ that M.D.F. undisputedly did not meet the threshold requirement that she was "*** supporting the child gratis ***." *N.J.S.A. 18A:38-1b(1)*.

Accordingly, pursuant to *N.J.S.A. 18A:38-1a*, M.W. is deemed to have been entitled to a free education in the Board's District *until the date that his mother, M.D.P.-W. regained custody of him*. However, after the date on which M.D.P.-W. regained custody, M.W.'s domicile followed his mother, and M.W. was not entitled to remain in the District, free of charge. *N.J.S.A. 18A:38-1b(1)*. In accordance with *N.J.S.A. 18A:38-1b(1)*, Petitioner M.D.F. is, therefore, liable for tuition from the date she relinquished custody of M.W. until the final date of M.W.'s attendance in the District for the 1997-98 school year. Said tuition shall be calculated based on the annual rate of \$8,308, as provided by the Board.²

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

SEPTEMBER 4, 1998

² This decision, as the Commissioner's final determination in the instant matter, may be appealed to the State Board of Education pursuant to *N.J.S.A. 18A:6-27 et seq.* and *N.J.A.C. 6:2-1.1 et seq.*, within 30 days of its filing. Commissioner decisions are deemed filed three days after the date of mailing to the parties.