

T.M., on behalf of minor child, M.E.,	:	
	:	
PETITIONER,	:	
	:	
V.	:	COMMISSIONER OF EDUCATION
	:	
BOARD OF EDUCATION OF THE	:	DECISION
TOWNSHIP OF WEST ORANGE,	:	
ESSEX COUNTY,	:	
	:	
RESPONDENT.	:	
_____	:	

SYNOPSIS

Petitioning relative challenged the Board's determination that M.E. may not attend its schools. The Board counter-petitioned for tuition for the period of time M.E. attended its schools.

Petitioner failed to appear at the hearing of the matter. The ALJ determined that petitioner had, accordingly, failed to carry the burden of proof, that the petition should be dismissed pursuant to N.J.S.A. 18A:38-1b(1), and that the Board should be awarded \$7,094.64 in tuition.

The Commissioner affirmed the determination of the ALJ, noting, however, that such dismissal was without prejudice to any entitlement M.E. may have to attend school pursuant to N.J.S.A. 18A:38-1a, if M.E. is adopted by petitioner.

August 18, 2000

OAL DKT. NO. 11827-99
AGENCY DKT. NO. 307-10/99

T.M., on behalf of minor child, M.E.,	:	
	:	
PETITIONER,	:	
	:	
V.	:	COMMISSIONER OF EDUCATION
	:	
BOARD OF EDUCATION OF THE	:	DECISION
TOWNSHIP OF WEST ORANGE,	:	
ESSEX COUNTY,	:	
	:	
RESPONDENT.	:	
_____	:	

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. The parties did not file exceptions, nor did petitioner file any explanation of her failure to appear at hearing.

Upon careful and independent review of the record, the Commissioner concurs with the ALJ, for the reasons expressed in the initial decision, that petitioner has failed to meet the burden of proof in demonstrating M.E.’s entitlement to attend school in respondent’s district pursuant to *N.J.S.A. 18A:38-1(b)*.

However, the Commissioner also notes that, in her Petition of Appeal, petitioner claims that her adoption of M.E. was imminent as of October 1, 1999, and that, with the consent of M.E.’s parents, she had “***launched the administrative and judicial process” in Ethiopia necessary to adopt M.E., and that the adoption was “awaiting final signature ***.” (Petition of Appeal at 2) The Commissioner, therefore, dismisses this matter without prejudice to any claim of entitlement by M.E. to attend the schools of the district pursuant to *N.J.S.A. 18A:38-1(a)*. *See L.A. v. Board of Education of the Town of West Orange, 97 N.J.A.R.2d (EDU) 266 (1996), aff’d*

by the State Board of Education, 97 *N.J.A.R.2d* (EDU) 554 (1997); and *V.H. v. Board of Education of the Township of Quinton*, 97 *N.J.A.R.2d* (EDU) 124, *aff'd* by the State Board of Education 97 *N.J.A.R.2d* (EDU) 554 (1997) (establishing that, as of the date that a resident of a district takes legal control of a child, entitlement to attend school free of charge is no longer to be examined pursuant to *N.J.S.A. 18A:38-1(b)*.)

Accordingly, the decision of the ALJ finding M.E. not entitled to attend school pursuant to *N.J.S.A. 18A:38-1(b)* and directing payment of tuition for the period of ineligible attendance, is affirmed, subject to the clarification set forth herein.

IT IS SO ORDERED.*

COMMISSIONER OF EDUCATION

Date of Decision: August 18, 2000

Date of Mailing: August 22, 2000

* This decision, as the Commissioner's final determination, 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. 6A:4-1.1 et seq.*, within 30 days of its filing. Commissioner decisions are deemed filed three days after the date of mailing to the parties.