

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

SYNOPSIS

Petitioner appealed the determination of the respondent Board that her daughter, T.K., is not eligible for a free public education in the Township of West Orange school district. Petitioner contends that she formerly resided in Irvington prior to moving to West Orange in December 2006, and now operates a daycare center out of the Irvington address. The Board asserts that petitioner is not a resident of West Orange, and seeks tuition reimbursement in the amount of \$14,068.30.

The ALJ found that: petitioner and her witness gave compelling and credible testimony, and presented evidence showing that T.K. was domiciled in West Orange with her mother during the period in question; petitioner owns a property in Irvington that is used as a business and is no longer her primary residence; and respondent's surveillance results were based on the fact that petitioner brought her child from West Orange to her Irvington daycare center in the early morning hours until her assistant arrived, then drove T.K. back to West Orange for the school day. The ALJ concluded that, based on a preponderance of credible evidence and testimony, petitioner met her burden to demonstrate that T.K. is entitled to a free public education in West Orange schools pursuant to *N.J.S.A. 18A:38-1(a)*.

Upon a full and independent review, the Commissioner adopted the Initial Decision as the final decision in this matter, and ordered the Board to continue to admit T.K. into its public school system free of charge unless there is a change in circumstances that would alter her entitlement.

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.

June 22, 2009

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. Exceptions of the respondent Board – filed in accordance with the requirements of *N.J.A.C.* 1:1-18.4 – were fully considered by the Commissioner in reaching her determination herein. Petitioner did not file reply exceptions.

The Board’s exceptions charge that the Administrative Law Judge’s (ALJ) analysis of the facts surrounding petitioner’s claim of domicile in West Orange is perfunctory at best. Citing testimony it avers was adduced at hearing by its registrar, Frank Guarneri,¹ along with the reports of its residency investigators, the Board urges that the evidence clearly demonstrates that petitioner did not establish that she is domiciled in West Orange. Additionally, the Board maintains that it is incomprehensible that the ALJ could accept petitioner’s incredible story. (Board’s Exceptions at 1-2)

Upon full consideration of the record, and recognizing that the ALJ having had the opportunity to assess the credibility of the witnesses who appeared before her and having

¹ It is noted that the record did not contain transcripts of the hearing conducted at the OAL.

made findings of fact based on their testimony (the ALJ specifically notes that both petitioner and her witness, Trevor Layne, “gave compelling and credible testimony.” Initial Decision at 4) – and the standard governing the Commissioner’s review being clear and unequivocal² – the Commissioner concurs with the ALJ that Y.K. has sustained her burden of establishing that she was a domiciliary of West Orange during the period at issue here, thereby entitling her child, T.K., to a free public education in the District’s schools.

Accordingly, the Initial Decision of the OAL is adopted for the reasons expressed therein. The Board is hereby ordered to continue to admit T.K. into its public school system, free of charge, so long as there is no change in circumstances that would alter her entitlement.

IT IS SO ORDERED.³

COMMISSIONER OF EDUCATION

Date of Decision: June 22, 2009

Date of Mailing: June 24, 2009

² The Commissioner “may not reject or modify any findings of fact as to issues of credibility of lay witness testimony unless it is first determined from a review of the record that the findings are arbitrary, capricious or unreasonable or are not supported by sufficient, competent and credible evidence in the record.” *N.J.S.A. 52:14B-10(c)*.

³ This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L. 2008, c. 36*.