

#225-13 (OAL Decisions: Not yet available online)

COURTNEY SHEA HAYMAKER,	:	
	:	
PETITIONER,	:	
V.	:	COMMISSIONER OF EDUCATION
	:	
BOARD OF EDUCATION OF THE CITY OF	:	DECISION
VENTNOR, ATLANTIC COUNTY,	:	
	:	
RESPONDENT.	:	
	:	
AND	:	
	:	
BOARD OF EDUCATION OF THE CITY OF	:	
VENTNOR, ATLANTIC COUNTY,	:	
	:	
PETITIONER.	:	
V.	:	
	:	
KATHLEEN HAYMAKER; ROBERT HAYMAKER;	:	
COURTNEY SHEA HAYMAKER ; AND	:	
BOARD OF EDUCATION OF THE TOWNSHIP OF	:	
EGG HARBOR, ATLANTIC COUNTY	:	
	:	
RESPONDENTS.	:	
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SYNOPSIS

The within dispute involves a sending-receiving relationship between the Ventnor Board of Education (Ventnor) and the Atlantic City Board of Education (Atlantic City), wherein students domiciled in Ventnor attend Atlantic City High School (ACHS) for grades 9 through 12. This consolidated matter was initiated as a residency petition filed by Courtney Haymaker (Haymaker) – then a senior at ACHS – challenging the respondent Board’s determination that she was not entitled to a free public education in Ventnor schools based on the contention that Haymaker was living in Egg Harbor with her father during the 2011-2012 school year. Subsequently, Ventnor filed a cross petition seeking to recover tuition for 2011-2012.

The ALJ found, *inter alia*, that: the threshold issue in this matter is whether Ventnor has standing to bring this action; it is undisputed that Haymaker attended ACHS for the 2011-2012 school year; tuition reimbursement is governed by the provisions of *N.J.S.A. 18A:38-1b(2)*, and its plain language infers that only the superintendent of the Atlantic City school district could determine that Haymaker was not domiciled in the district; during the 2011-2012 school year, Haymaker had no relationship with Ventnor; accordingly, only Atlantic City could bring an action for tuition against Haymaker and her parents; and Atlantic City failed to make a determination regarding Haymaker’s residency. The ALJ concluded that a sending district does not have standing to bring an action for tuition reimbursement against a student attending school in a receiving district, and that the only remedy for a sending district would be with or through the receiving district board of education. Accordingly, the ALJ dismissed the petition.

The Commissioner rejected the Initial Decision, finding that: the ALJ erred in determining that Ventnor did not have standing, and ignored the fact that Ventnor was responsible for Haymaker’s tuition; there is nothing in *N.J.S.A. 18A:38-1b(2)* that prohibits Ventnor from seeking reimbursement for tuition costs it has paid to send its students in grades 9-12 to ACHS, when it is later determined that such a student is not domiciled in the Ventnor School District. Accordingly, the matter was remanded to the OAL for a determination regarding Ventnor’s entitlement to reimbursement for Haymaker’s attendance at ACHS during the 2011-2012 school year.

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 17, 2013

OAL DKT. NOS. EDU 8153-12 and EDU 15246-12
AGENCY DKT. NOS. 156-6/12 and 248-9/12

COURTNEY SHEA HAYMAKER, :
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 PETITIONER, :
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 :
 RESPONDENTS. :
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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed as have the exceptions filed pursuant to *N.J.A.C.* 1:1-18.4 by the Ventnor Board of Education (Ventnor) and the Egg Harbor Board of Education’s (Egg Harbor) reply thereto.¹

This consolidated matter was initiated as a residency petition filed by Courtney Haymaker in May 2011 challenging Ventnor’s determination that she was not entitled to attend school in the district.² Ventnor and the Atlantic City Board of Education (Atlantic

¹ Courtney Haymaker, Robert Haymaker and Kathleen Haymaker did not file exceptions.

² Courtney Haymaker filed her petition in May of her senior year. She is no longer a student in the district.

City) have a sending-receiving relationship under which students in grades 9-12 who are domiciled in the Ventnor School District attend the Atlantic City High School. Thereafter, Ventnor filed a petition against Courtney Haymaker, Kathleen Haymaker, Robert Haymaker and the Egg Harbor Board of Education (Egg Harbor) seeking tuition costs for the 2011-2012 school year. Ventnor sought tuition costs against Egg Harbor under the theory that Courtney Haymaker resided with her father in Egg Harbor during the 2011-2012 school year, and as such Egg Harbor was also responsible for tuition costs that Ventnor incurred during Courtney Haymaker's attendance at Atlantic City High School. The Administrative Law Judge (ALJ) found that Ventnor did not have standing to seek tuition costs, and as a result he dismissed Ventnor's petition.³

Ventnor takes exception to the ALJ's determination that it does not have standing to seek tuition in this case because of the fact that students who reside in Ventnor's district attend Atlantic City High School as a part of the send-receive relationship. Ventnor argues that it has standing to seek tuition costs because it is Ventnor's obligation to provide a free public education to students domiciled in the boundaries of its school district despite the fact that it does not have its own high school and sends its high school students to Atlantic City High School. Ventnor repeatedly stresses that it pays Atlantic City for each student that its sends to Atlantic City High School. Ventnor also points out that all high school students who reside in Ventnor must first register with Ventnor before they are able to attend Atlantic City High School under the send-receive relationship.

Moreover, Ventnor maintains that Atlantic City would have no interest in bringing a case against Courtney Haymaker and her parents for tuition reimbursement because

³ Since the ALJ determined that Ventnor did not have standing to seek tuition, he found that it was not necessary to address the other issues in the consolidated matter.

Ventnor paid the tuition for Courtney's attendance during the 2011-2012 school year. Finally, Ventnor argues that it has been damaged by Courtney Haymaker's wrongful attendance at Atlantic City High school when she was not domiciled in Ventnor but was in fact domiciled in Egg Harbor with her father for the 2011-2012 school year. As a result, Ventnor urges the Commissioner to reject the Initial Decision and allow it to pursue tuition costs in this case.

In reply, Egg Harbor maintains that Ventnor has no standing in law or public policy to bring suit against Egg Harbor for the recovery of tuition costs. Egg Harbor contends that neither *N.J.S.A. 18A:38-1b(2)* nor *N.J.A.C. 6A:22-6.1* provide authority for Ventnor to seek tuition reimbursement from Egg Harbor. Egg Harbor emphasizes that *N.J.S.A. 18A:38-1b(2)* specifically authorizes a district only the right to collect tuition from the parent or guardian of the student in circumstances where a student has received a free education in the district in which they are not domiciled. Moreover, Egg Harbor argues that the law does not impose an obligation on Egg Harbor to look for or find students living within its territorial boundaries but who are unlawfully attending school in another district. Finally, Egg Harbor points out that it is not responsible if Courtney Haymaker deliberately and intentionally violated the law by attending Atlantic City high School for the 2011-2012 school year.

The Commissioner finds that the ALJ erroneously determined that Ventnor did not have standing to bring an action for tuition reimbursement. By stating that Ventnor has no relationship with Courtney Haymaker, the ALJ ignores the fact that Ventnor was responsible for the cost of Courtney Haymaker's tuition for the 2011-2012 school year, not Atlantic City. Moreover, the ALJ's focus on the mere fact that Courtney did not attend high school within the boundaries of the Ventnor School District completely overlooks the nature of a send-receive relationship. It was Courtney's alleged domicile in Ventnor that enabled her to attend Atlantic

City High School. Regardless of the fact that Ventnor does not have its own high school, it is still required to provide students in grades 9-12 with a free public education and to fund the cost of that education. Despite the ALJ's assertion to the contrary, there is nothing in *N.J.S.A. 18A:38-1b(2)* that prohibits Ventnor from seeking reimbursement for tuition costs it has paid to send its students in grades 9-12 to Atlantic City High School, when it is later determined that such a student is not domiciled in the Ventnor School District.⁴

It is undisputed that Ventnor incurred tuition costs for Courtney Haymaker's attendance at Atlantic City High School for the 2011-2012 school year; therefore, Ventnor has standing to seek reimbursement for those costs. Accordingly, the Initial Decision is rejected. The Commissioner hereby remands this matter to the OAL for further proceedings to determine whether Ventnor is entitled to tuition reimbursement in connection with Courtney Haymaker's attendance at Atlantic City High School during the 2011-2012 school year.

IT IS SO ORDERED.⁵

COMMISSIONER OF EDUCATION

Date of Decision: June 17, 2013

Date of Mailing: June 18, 2013

⁴ In the Initial Decision, the ALJ indicates that Atlantic City would have to seek tuition costs from the Haymakers because only the superintendent of the school Courtney Haymaker was "attending" could bring this cause of action. However, if Atlantic City were to bring an action for tuition and was in fact awarded tuition costs associated with Courtney Haymaker's attendance at Atlantic City High School for the 2011-2012 school year, the result would be a windfall for Atlantic City because Ventnor has already paid Atlantic City the tuition for Courtney Haymaker under the send-receive relationship.

⁵ This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L. 2008, c. 36* (*N.J.S.A. 18A:6-9.1*).