

J.C. AND S.C., on behalf of minor child,	:	
D.C.,	:	
	:	
PETITIONERS,	:	
	:	
V.	:	COMMISSIONER OF EDUCATION
	:	
BOARD OF EDUCATION OF THE	:	DECISION
TOWNSHIP OF WEST ORANGE, ESSEX	:	
COUNTY,	:	
	:	
RESPONDENT.	:	
_____	:	

SYNOPSIS

Petitioning aunt and uncle challenged the Board's residency determination that their nephew, D.C., was not entitled to a free education in the District.

The ALJ determined that Petitioner S.C. and a friend who testified were credible witnesses. In light of the record and the testimony of the witnesses, the ALJ found that petitioners were domiciled within the District and were supporting their nephew *gratis* because D.C.'s parent was not capable of providing parental support due to substance abuse. Moreover, the ALJ concluded that D.C. was not residing with petitioners solely for the purpose of receiving a free public education in the District. Therefore, the ALJ concluded that petitioners were not liable for tuition to the District during the period that D.C. attended its schools. The ALJ dismissed the District's claim for payment of tuition.

The Commissioner concurred with the ALJ that petitioners demonstrated that D.C. was entitled to a free education in the District pursuant to *N.J.S.A.* 18A:1b(1). The Commissioner ordered the Board to continue to admit D.C. into its public school system free of charge.

OAL DKT. NO. EDU 11816-99  
AGENCY DKT. NO. 301-10/99

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. The Board’s exceptions are duly noted as submitted in accordance with *N.J.A.C.* 1:1-18.4, and were considered by the Commissioner in reaching his decision.

Upon careful and independent review of the record in this matter, and based upon the Administrative Law Judge’s credibility determinations, the Commissioner concurs that petitioners have demonstrated that D.C. is entitled to attend school in the Board’s District, free of charge, pursuant to *N.J.S.A.* 18A:38-1b(1)<sup>1</sup>. Accordingly, the Initial Decision of the OAL is adopted for the reasons expressed therein. The Board is hereby ordered to continue to admit

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<sup>1</sup> The record indicates that, as of May 15, 2000, petitioners have applied to the Superior Court of New Jersey, Essex Vicinage Family Division, to obtain custody of D.C. Should such custody be awarded, D.C. may claim entitlement to attend school in 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* 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).)

D.C. into its public school system.

IT IS SO ORDERED.<sup>2</sup>

COMMISSIONER OF EDUCATION

Date of Decision: September 11, 2000

Date of Mailing: September 13, 2000

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<sup>2</sup> 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.