

K.M, on behalf of minor children, H.M. and
D.M.,

PETITIONER, : COMMISSIONER OF EDUCATION

V. : DECISION

BOARD OF EDUCATION OF THE :
TOWNSHIP OF WEST ORANGE, ESSEX :
COUNTY,

RESPONDENT. :

_____:

SYNOPSIS

Petitioning uncle challenged the Board's residency determination that his brother's children, H.M. and D.M., were not entitled to a free education in the District.

The ALJ found that there was clearly a family hardship whereby the parents, who immigrated to the United States from India, were unable to provide a home and supervision for their children. Petitioner, who was domiciled in the District, kept the children in his home *gratis*. The ALJ concluded that the Board should provide H.M. and D.M. a free public education.

The Commissioner adopted the findings and determination in the Initial Decision as his own. The Commissioner affirmed that H.M. and D.M., under the totality of the factual circumstances presented, were entitled, pursuant to the requirements of *N.J.S.A. 18A:38-1(b)*, to attend school free of charge in the District.

April 20, 2001

K.M., on behalf of minor children, H.M. and D.M.,¹
PETITIONER, : COMMISSIONER OF EDUCATION
V. : DECISION
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The record and Initial Decision issued by the Office of Administrative Law have been reviewed. Respondent's exceptions, which were timely filed pursuant to *N.J.A.C.* 1:1-18.4, urge reversal of the recommended decision, essentially for the reasons presented to and rejected by the Administrative Law Judge (ALJ) during the hearing of this matter; namely, that the parents of H.M. and D.M. are fully capable of supporting and providing care for their children since they are in good health and are gainfully employed as motel workers; that the parents' inability to speak English does not constitute a hardship; and that the fact of their choosing to live at their place of employment, where children cannot stay, and where they can save on living expenses, cannot suffice as an economic hardship. Additionally, respondent urges that:

A "hardship" as set forth in *N.J.S.A.* 18A:38-1(b) is one that renders the parent(s) incapable of supporting or providing care for the child. Whether it would be better for the children to live with their uncle in West Orange is not a consideration. Whether the uncle and his family speak English is not a consideration. Whether it is cheaper for the parents to live in the motel is not a consideration. The only issue that matters is whether the parents can support their children. Despite the ALJ's Findings of Fact,

¹ It is noted for the record that, notwithstanding the case title on the Initial Decision, this matter actually involves two children, H.M. and D.M.

there is clearly nothing in the record to suggest that the parents cannot support them. (Respondent's Exceptions at 2)

Upon review of the record, the Commissioner agrees with and adopts the ALJ's recommended decision determining that H.M. and D.M. are entitled to attend school free of charge in the West Orange School District. While the Commissioner would agree that the inability to speak English is not *per se* demonstration of family or economic hardship, it is a consideration in understanding why the children's parents, upon immigrating to the United States from India, found it necessary to take a job in a motel whose owner is Indian and is able to communicate with them. Moreover, the Commissioner finds and concludes that respondent brings nothing to the record to support reversal of the ALJ's credibility determination with respect to petitioner's testimony that the parents of H.M. and D.M. must live at the motel because they are standby employees who may be called upon to work at any time of day and night and, because they are not permitted to have their children live with them in the motel room, they, therefore, are unable to provide a home and supervision for their children. Contrary to respondent's position otherwise, the parents' residing in the motel is not merely to save money on utilities and rent.

Accordingly, it is determined that H.M. and D.M., under the totality of the factual circumstances presented herein, are entitled, pursuant to the requirements of *N.J.S.A. 18A:38-1(b)*, to attend school free of charge in the West Orange School District.

IT IS SO ORDERED.²

COMMISSIONER OF EDUCATION

Date of Decision: April 20, 2001

Date of Mailing: April 20, 2001

² 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.