

M. H.-C., on behalf of minor child, A.R., :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE : DECISION
TOWNSHIP OF EWING,
MERCER COUNTY, :
RESPONDENT. :

SYNOPSIS

Petitioner appealed respondent's denial of her application to enroll her brother, A.R., in respondent's school district.

The ALJ found that A.R. resides with petitioner in respondent's district; petitioner and A.R.'s mother filed the necessary affidavits to apply to enroll A.R. in respondent's school district under *N.J.S.A. 18A:38-1(b)*; petitioner has residential and joint legal custody of A.R.; and petitioner took custody of A.R. due to economic and family hardship. Thus, the ALJ concluded that petitioner had met her burden to show, pursuant to *N.J.S.A. 18A:38-1(b)*, that A.R. is entitled to a free public education in respondent's district.

The Initial Decision was adopted as the final decision in this matter, as supplemented. The Commissioner concurred with the ALJ's determination that A.R. is entitled to a free public education in Ewing as an "affidavit student." The Commissioner further found that, as a result of the court order placing A.R. in petitioner's home, *i.e.*, bestowing upon petitioner joint legal and *residential* custodianship of A.R., A.R. is also entitled to a free public education in Ewing under *N.J.S.A. 18A:38-1(a)* and *N.J.S.A. 18A:38-2*.

<p>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.</p>

March 12, 2008

OAL DKT. NO EDU 8850-07
AGENCY DKT. NO. 270-9/07

M. H.-C., on behalf of minor child, A.R., :
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The record of this matter and the Initial Decision have been reviewed.¹ No exceptions were filed by the parties. For the reasons set forth in the Initial Decision² and those articulated *infra*, the Commissioner adopts the Initial Decision as the final decision in this case.

More specifically, the Commissioner concurs that the record contains evidence supporting the conclusion that economic hardship underlay A.R.’s transfer to petitioner’s household, making A.R eligible for a free public education in Ewing as an “affidavit student” under *N.J.S.A.* 18A:38-1(b). The Commissioner also finds that A.R. qualifies for a free education in the Ewing district pursuant to *N.J.S.A.* 18A:38-2.³

It is undisputed that A.R. actually resides with petitioner and that the record contains a copy of an order of the Superior Court, Mercer County, Family Part, awarding joint

¹ No transcript of the hearing in the Office of Administrative Law has been provided to the Commissioner.

² The Commissioner notes that the second full paragraph on page 2 of the Initial Decision contains a passage from another case concerning a minor whose initials are J.H. Viewing the Initial Decision as a whole, it is clear that this passage was inserted in error, and that the conclusions on page 9 of the Initial Decision constitute the Administrative Law Judge’s recommended decision in this matter.

³ *N.J.S.A.* 18A:38-2 specifically provides, in pertinent part, that:

Public schools shall be free to any person over five and under 20 years of age nonresident in a school district who is placed in the home of another person, who is resident in the district, by order of a court of competent jurisdiction of this state...

legal and *residential* custody of A.R. to petitioner. The Commissioner may not look behind that order. For example, in *L.D.M., on behalf of minor child, T.D. v Board of Education of the Township of West Orange, Essex County*, Commissioner Decision No. 151-01, decided May 11, 2001, L.D.M. had applied for custody of her younger brother, T.D., due to family circumstances. She was granted custody by way of an order of the Superior Court. The West Orange district maintained that it was not required to provide T.D. with a free public education. In determining, to the contrary, that T.D. *was* entitled to a free public education in West Orange, the Commissioner reasoned as follows:

As was determined by the Commissioner and affirmed by the State Board of Education in *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 (1996), *aff'd* by the State Board of Education, 97 N.J.A.R.2d 554 (1997),⁴ 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)*, the "affidavit student" provision.

(...) once L.D.M. assumed legal custody of T.D., the only appropriate inquiry for respondent was whether L.D.M. and T.D. were domiciled in the District pursuant to *N.J.S.A. 18A:38-1(a)*. Inasmuch as respondent does not dispute that L.D.M. is domiciled in West Orange, and the domicile of the child follows that of the parent or guardian having *legal custody* over him or her, *Mansfield Twp. Board of Education v. State Board of Education*, 101 N.J.L. 474, 479-480 (Sup. Ct. 1925), it is hereby found and determined that T.D. was entitled to a free public education pursuant to *N.J.S.A. 18A:38-1(a)*, as of the effective date that L.D.M. acquired legal custody of T.D. *See also Y.L., on behalf of M.A. v. Board of Education of South Orange-Maplewood*, Number 658-97, decided by the Commissioner of Education December 24, 1997. (...) Further, as was held in *L.A.*, and affirmed by the State Board, the motives of the party obtaining a custody order are not determinative. A custody order must be accepted on

⁴ In *V.H.*, when custody of a child was transferred from his parents to a great-grandmother, the child's domicile was changed to the district in which the great grandmother resided and he was deemed to be entitled to a free education in that district as of the effective date of the custody transfer.

its face. *See L.A.* at 269. *See also Y.L., supra.* (*L.D.M., supra,* at 7-8; *explanatory footnote supplied*)

See, also, V.S.-L., on behalf of minor child, Z.M.M. v. Board of Education of the City of Garfield, Bergen County, Commissioner Decision No. 281-07, decided July 9, 2007.

Respondent does not dispute that M.H.-C. is a resident of Ewing. In view of the above referenced custody order and school law, the Commissioner concludes that A.R. is entitled to a free public education in the Ewing school district. Respondent is, therefore, ordered to continue to admit him to its schools as long as there is no change in the Superior Court order that would alter his entitlement. Further, in view of the foregoing, no tuition is due respondent.

IT IS SO ORDERED.⁵

COMMISSIONER OF EDUCATION

Date of Decision: March 12, 2008

Date of Mailing: March 12, 2008

⁵ This decision 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.*