

#323-09 (OAL Decision: Not yet available online)

R.C. on behalf of minor child, R.C., :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE : DECISION
CITY OF VINELAND,
CUMBERLAND COUNTY, :
RESPONDENT. :

SYNOPSIS

The instant petition was filed as an application for emergent relief, requesting that petitioner's daughter be removed from the private school in which her mother placed her in 2006 or 2007, and re-enrolled in the Vineland public schools, where she had completed kindergarten through third grade. Petitioner claims that he has joint custody of his child, and contends that she was illegally removed from the public school system without his consent or permission. Petitioner further claims that the Vineland school district bears the blame for this action. The respondent Board asserts that it was advised in 2006 that the child had been enrolled in a private school by the mother, and it has acted properly and fulfilled all legal obligations.

The ALJ found, *inter alia*, that: petitioner has not met the criteria for emergent relief as set forth in *N.J.A.C. 6A:3-1.6* as the child is enrolled in private school for the 2009-2010 school year, and will not suffer any irreparable harm, and no facts have been presented to indicate that petitioner would be successful on the merits before the OAL; and petitioner's dispute appears to be over the custody arrangement, but he failed to produce the purported agreement giving him equal custody of his daughter. The ALJ concluded that this matter must be addressed in the Court with the appropriate jurisdiction, ie: the Superior Court of New Jersey, Family Division. The ALJ denied the application for emergent relief.

The Commissioner concurred with the ALJ and adopted the Initial Decision of the OAL as the final decision in this matter, noting that she has no jurisdiction under the school laws or pursuant to any other authority to adjudicate, bestow, terminate or modify custody rights, or to order a non-party parent to transfer her child from a private school to a public school. Accordingly, the petition was dismissed.

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.

October 7, 2009

R.C. on behalf of minor child, R.C., :
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Petitioner would like his daughter to be 1) removed from the private school in which her mother placed her in 2006 or 2007 and 2) enrolled in the Vineland school district. He filed an emergent application in addition to the instant petition.

At the hearing on petitioner’s emergent application in the Office of Administrative Law (OAL), petitioner was asked to provide evidence demonstrating that he is the father of the child in question, and that he has the residential and legal custody rights necessary to determine where the child may attend school. Petitioner failed to provide any such evidence. Nor did he explain why his petition was filed after the minor child had already attended the private school for two or three years.

After the conclusion of the hearing the Administrative Law Judge (ALJ) correctly determined that the standards for emergent relief set forth in *N.J.A.C. 6A:3-1.6* had not been met, and, consequently, denied the emergent application. More specifically, he concluded that 1) the child’s current enrollment in school – as verified by the respondent after contacting the child’s mother – precludes a finding of irreparable harm, and 2) the petitioner has not demonstrated a settled right, let alone a likelihood that his claim can succeed.

The Commissioner also concurs with the ALJ that the correct forum for claims such as petitioner's is Superior Court, Family Division. The Commissioner has no jurisdiction under the school laws or pursuant to any other authority to adjudicate, bestow, terminate or modify custody rights, or to order a non-party parent to transfer her child from private school to a public school. Accordingly, the underlying petition in this matter is dismissed.

IT IS SO ORDERED.*

COMMISSIONER OF EDUCATION

Date of Decision: October 7, 2009

Date of Mailing: October 8, 2009

* 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*.