

M.E.M. on behalf of minor child L.A.V., :
PETITIONER, : COMMISSIONER OF EDUCATION
V. : DECISION
BOARD OF EDUCATION OF THE :
BOROUGH OF SOUTH PLAINFIELD, :
MIDDLESEX COUNTY, :
RESPONDENT. :

SYNOPSIS

Petitioner appealed the determination of the respondent Board that her grandson, L.A.V., was not eligible for a free public education in the South Plainfield school district between March and September 2011, when L.A.V. was living with his grandparents. The respondent contended that L.A.V. did not meet the requirements for enrollment as a non-resident affidavit student, and filed a counterclaim for tuition.

The ALJ found that: the testimony of M.E.M. and her daughter, G.M.T. – L.A.V.’s mother – was believable, credible and persuasive; G.M.T. does not contribute anything to the support of L.A.V.; petitioner has proven by a preponderance of the credible evidence that she supports L.A.V. gratis; L.A.V. was removed from his mother’s care by petitioner because of the violence she witnessed and the emotional strife that L.A.V. was inflicting upon his mother and siblings; the emotional discord and financial insecurity experienced by the family resulted from the long illness and subsequent death of L.A.V.’s stepfather, and clearly qualified as family hardship. Accordingly, the ALJ concluded that petitioner had met her burden to prove family hardship, and that L.A.V. is entitled to a free public education in the district as an affidavit student. Subsequent to the issuance of the ALJ’s initial decision, the respondent Board submitted a motion to reopen the record in which it advised that L.A.V. had gone to live with his biological father in New York State and inferred that this turn of events negated any finding of economic hardship and precluded L.A.V.’s entitlement to a free public education pursuant to *N.J.S.A. 18A:38-1b*.

Upon a full and independent review, the Commissioner denied respondent’s motion to reopen the record and granted petitioner’s appeal with respect to the time period from March to September 2011. In so doing, the Commissioner found, *inter alia*, that: respondent’s motion was heavily dependent on speculation; L.A.V. was removed from the family home because of behavioral problems that resulted from emotional and financial problems in the wake of the death of his stepfather; and the hardship that justifies a free education for affidavit students is not limited to economic hardship.

<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>

OAL DKT. NO. EDU 4726-11
AGENCY DKT. NO. 72-3/11

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This controversy arose when the respondent school district determined that L.A.V. – who lived in South Plainfield with his grandparents between March and September 2011 – was not entitled to a free public education in its district during that period of time. Upon review of the record and the Initial Decision of the Office of Administrative Law (OAL) – including the witness credibility determinations made therein – the Commissioner adopts the Administrative Law Judge’s (ALJ) determination that L.A.V.’s move to his grandparents’ home in South Plainfield was the result of hardships that he, his mother, and his siblings were experiencing, and that his situation met the standards set forth in *N.J.S.A. 18A:38-1(b)* warranting a free public education for “affidavit” students.

The Commissioner acknowledges the motion to reopen the record which respondent filed on September 14, 2011. In that motion, respondent: 1) advised that L.A.V. has gone to live with his biological father in New York State; 2) urged the Commissioner to presume that L.A.V.’s father could have cared for him from March 2011 forward; 3) inferred that L.A.V. did not, then, live with his grandparents as a result of economic hardship; and 4) concluded that L.A.V. was consequently not entitled to a free public education in its district under *N.J.S.A. 18A:38-1(b)*. No response to the motion has been filed on behalf of petitioner.

At the outset, the Commissioner notes that respondent's motion is heavily dependent upon speculation. Equally significant, however, is the fact that – separate and apart from the financial capabilities of L.A.V.'s biological father – the record indicates that M.E.M. removed L.A.V. from his mother's home because he was exhibiting behavioral problems in the wake of his stepfather's death. That death was clearly hard on the family, emotionally and financially, and appeared to precipitate aggressive behavior by L.A.V.

Nothing in respondent's motion refutes those facts, which were proffered by testimony that the ALJ found to be credible.¹ Moreover, the hardship that justifies a free education for an affidavit student is not limited to economic hardship. The child's parent is required to file a sworn statement that "he is not capable of supporting **or providing care** for the child due to a **family** or economic hardship." *N.J.S.A. 18A:38-1(b)(1)* (emphasis added). Such was the case here.

Accordingly, respondent's motion to reopen the record is denied. The ALJ's determination that L.A.V. qualified for a free public education under *N.J.S.A. 18A:38-1* is adopted, the petition is granted with respect to the time period from March to September 2011, and respondent's counterclaim is dismissed.

IT IS SO ORDERED.²

ACTING COMMISSIONER OF EDUCATION

Date of Decision: October 7, 2011

Date of Mailing: October 7, 2011

¹ The Commissioner will not disturb the ALJ's credibility determination unless it is arbitrary, capricious, unreasonable or unsupported by the record. *N.J.S.A. 52:14B-10(c)*; *D.L. and Z.Y. on behalf of minor children T.L. and K.L. v. Board of Education of the Princeton Regional School District*, 366 *N.J. Super.* 269, 273 (App. Div. 2004). No such grounds for rejection of the ALJ's credibility determinations exist in the present case.

² 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*)