

K.N. on behalf of minor child A.N., :  
PETITIONER, :  
V. : COMMISSIONER OF EDUCATION  
BOARD OF EDUCATION OF THE : DECISION  
MAINLAND REGIONAL SCHOOL :  
DISTRICT, ATLANTIC COUNTY, :  
RESPONDENT. :

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SYNOPSIS

Petitioner appealed the determination of the respondent Board that her child, A.N., was not eligible for a free public education in the Mainland Regional School District during the 2010-2011 school year. The petitioner asserted that she and A.N. have been living at various addresses in Northfield – which is located within respondent’s district – since she separated from her husband in 2006, and she has not established a permanent address because of continuing financial difficulties. Petitioner maintained that she and A.N. lived primarily with her sister in Northfield during the 2010-2011 school year, but sometimes stayed at the home of petitioner’s parents in Ventnor. The Board contends that petitioner and her daughter were not domiciled within the district, and demanded reimbursement for tuition.

The ALJ found, *inter alia*, that: based upon the credible evidence presented by the Board at the OAL hearing, petitioner and her daughter were not domiciled in the Mainland Regional district during the 2010-2011 school year, as they resided primarily in Ventnor with petitioner’s parents; petitioner and her family, however, were homeless under New Jersey school law; and, pursuant to *N.J.S.A. 18A:7B-12(c)*, tuition for homeless students must be paid by the last district of residence for up to one year. Accordingly, the ALJ concluded that the Board is not entitled to tuition reimbursement as the petitioner’s last residence before becoming homeless was in Northfield.

Upon a full and independent review, the Commissioner found that petitioner and her daughter were homeless during the 2010-2011 school year. Thus, neither resolution of the factual dispute regarding exactly where they were residing during that period nor an analysis of their “domicile” during the 2010-2011 school year was necessary for the disposition of this controversy. Accordingly, the Commissioner reversed the Board’s residency determination and concluded that no tuition is due from petitioner for the 2010-2011 school year.

<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>
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This matter was initiated by a *pro se* petition challenging respondent’s determination that A.N., petitioner’s minor child, was ineligible to receive a free public education in respondent’s district for the 2010-2011 school year. Although the petition lacks a specific request for relief and the file does not contain a transcript of the proceedings, the Commissioner concludes that petitioner seeks an order finding that respondent was responsible for A.N.’s education during the 2010-2011 school year. Upon review of the record and Initial Decision of the Office of Administrative Law (OAL),<sup>1</sup> the Commissioner finds that such an order is appropriate and modifies the decision of the Administrative Law Judge (ALJ) as follows.

The facts below are undisputed. In August 2006 – in consequence of a marital separation – petitioner and her two children<sup>2</sup> commenced residence with petitioner’s sister in Northfield, a jurisdiction within respondent’s school district. In December 2008 petitioner moved from her sister’s residence to an apartment in Northfield, where she and her children remained until June 1, 2009. On or about that date petitioner was constrained to vacate the apartment for lack of

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<sup>1</sup> Neither party filed exceptions.

<sup>2</sup> This controversy concerns the younger of petitioner’s two children, the older having completed high school prior to the 2010-2011 school year.

funds, and return to her sister's Northfield residence. On November 1, 2009, petitioner and her children moved into another apartment in Northfield, but once again had to vacate same for lack of funds – in or about April 2010. Thus, it is established that from August 2006 through at least April 2010 petitioner and A.N. lived in Northfield.

The factual dispute presented to the ALJ at the OAL related to where petitioner and A.N. resided after April 2010. Petitioner maintained that they returned to the home of her sister in Northfield. Respondent contended that surveillance by a third party investigator established that between November 30, 2010 and April 6, 2011, petitioner and A.N. lived with petitioner's parents in Ventnor – part of the Atlantic City High School District.

The Commissioner finds that resolution of the latter factual dispute is not necessary for the disposition of this controversy. Whether petitioner and A.N. were living with the sister in Northfield or the parents in Ventnor – or both – from November 30, 2010 through April 6, 2011 (the period of surveillance ordered by respondent), the fact remains that they were homeless during that period, *i.e.*, they “temporarily lack[ed] a fixed, regular and adequate residence,” *N.J.S.A.* 18A:7B-12(c). As such, their district of residence was “the district in which the parent or guardian last resided prior to becoming homeless.” *Ibid. See, also, N.J.S.A.* 18A:38-1(f). That district was the respondent's district, since petitioner and A.N. had resided in a Northfield apartment before their return to living with relatives in 2010.<sup>3</sup>

In light of the foregoing, no tuition is due from petitioner for the 2010-2011 school year. The Commissioner makes no findings about the current school year, to which –depending upon facts not before the Commissioner – *N.J.S.A.* 18A:38-1(d) may apply. As the ALJ noted, the pleadings did not raise that issue.

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<sup>3</sup> As the petitioner was homeless, the issue of domicile does not come into play for the school year in question.

Accordingly, the petition is granted and respondent's determination that A.N. was ineligible for a free education in its district for the 2010-2011 school year is reversed.

IT IS SO ORDERED.<sup>4</sup>

ACTING COMMISSIONER OF EDUCATION

Date of Decision: September 19, 2011

Date of Mailing: September 20, 2011

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<sup>4</sup> This decision may be appealed to the Superior Court, Appellate Division, pursuant to *P.L. 2008, c. 36*, (*N.J.S.A. 18A:6-9.1*)