

BOARD OF EDUCATION OF THE :
TOWN OF HAMMONTON, ATLANTIC COUNTY, :
 : COMMISSIONER OF EDUCATION
 PETITIONER, :
 : DECISION
 V. :
 BOARD OF EDUCATION OF THE :
 CITY OF GLOUCESTER, CAMDEN COUNTY, :
 :
 RESPONDENT. :
 _____ :

SYNOPSIS

The Hammonton Board of Education (Hammonton) appealed the October 31, 2013 determination of the Interim Executive County Superintendent for Camden County (ECS) that J.B. and her children were homeless and that Hammonton was the district of origin and responsible for the cost of educating the children. Hammonton contended that the family had voluntarily moved to Gloucester, and that Gloucester is financially responsible for the cost of educating the children in Gloucester schools. Gloucester filed a motion to dismiss in lieu of an answer, arguing that Hammonton’s petition – which was filed on November 26, 2013 – was filed in the wrong forum and was untimely pursuant to *N.J.A.C.* 6A:23A-19.2(d) because it was filed directly with the Commissioner of Education rather than with the Division of Finance of the Department of Education (DOF).

The ALJ found, *inter alia*, that: Hammonton’s petition was timely filed pursuant to *N.J.A.C.* 6A:23A-19.2(d) as it was filed within 30 days, and the fact that it was addressed to the Commissioner of Education and only copied to the DOF – which is a sub-unit of the Department of Education – does not justify dismissing the matter; to dismiss based on the aforementioned criteria would be placing form before substance and, whenever possible, controversies should be decided substantively on the merits and not dismissed for procedural technicalities; and petitioner is entitled to relief under the doctrine of substantial compliance, as the Commissioner, the DOF, and Gloucester all had timely notice that Hammonton was challenging the ECS decision. The ALJ denied Gloucester’s motion to dismiss, and returned the matter to the DOF for a determination of the correct district of residence pursuant to *N.J.A.C.* 6A:23A-19.2(d).

Upon consideration of the sparse record in this matter, the Commissioner adopted the ALJ’s denial of Gloucester’s motion to dismiss the petition, but rejected the Initial Decision’s recommendation that the matter be transmitted to the DOF. In so deciding, the Commissioner explained that petitioner was not appealing a residency determination, but rather the ECS’s determination that J.B. and her children were homeless – and that petitioner was the school district financially responsible for the cost of their education. That is a determination to be made by the Commissioner, not by the DOF. Accordingly, the matter was remanded to the OAL for a fact-finding hearing to determine whether J.B. and her family had become homeless when they moved to Gloucester in September 2013, and whether that status remains unchanged going forward.

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.

July 31, 2014

OAL DKY. NO. EDU 18575-13
AGENCY DKT. NO. 292-11/13

BOARD OF EDUCATION OF THE	:	
TOWN OF HAMMONTON,	:	
ATLANTIC COUNTY,	:	COMMISSIONER OF EDUCATION
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PETITIONER,	:	DECISION
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CITY OF GLOUCESTER,	:	
CAMDEN COUNTY,	:	
	:	
RESPONDENT.	:	

Before the Commissioner is the Hammonton Board of Education’s (petitioner or Hammonton) challenge to the determination of the Camden Interim Executive County Superintendent (ECS) that three students who had transferred from the Hammonton school district to the Gloucester school district (respondent or Gloucester) were homeless, and that Hammonton was the “district of origin.” Upon review of the sparse record, the Initial Decision of the Office of Administrative Law (OAL) and the parties’ exceptions, the Commissioner adopts the Administrative Law Judge’s denial of Gloucester’s motion to dismiss the petition, but rejects the Initial Decision’s recommendation that the matter be transmitted to the Division of Finance of the Department of Education (DOF). The case is instead remanded to the OAL for a fact-finding hearing to determine whether J.B.’s family is homeless.

The allegations in the record, few of which are in evidentiary form, recite that from September 2011 until September of 2013, J.B. and her three children – N.F., V.F. and G.F. – were

domiciled in Hammonton in the house of a relative.¹ The relative's house was sold, requiring the family to move into the home of J.B.'s mother at 21 South Stinson Avenue in Gloucester. On September 10, 2013, J.B. enrolled the three children in the Gloucester school district and submitted an affidavit in which she attested that the family was homeless.

In connection with J.B.'s characterization of her family as homeless, Gloucester forwarded tuition contracts to Hammonton. Hammonton declined to take responsibility for the costs of the children's educations, contending that they were not homeless. Consequently, on October 22, 2013, Gloucester asked the Camden ECS to make a determination about the status of J.B.'s family, and submitted to the ECS copies of its records. Hammonton submitted a letter of opposition on October 29, 2013, and on October 31, 2013, the ECS issued her determination that the family was homeless.

In so determining, the ECS relied on the facts that the family had been forced out of the Hammonton relative's house due to its sale, and that J.B. and her children were "living in a doubled up situation with another relative [in Gloucester] out of necessity and therefore lack[ed] fixed housing due to economic hardship." The ECS further found that Hammonton was the family's "district of origin," making it responsible for the costs of the children's educations pursuant to *N.J.A.C. 6A:17-2.4*.² Hammonton appealed the ECS' determinations on November 26, 2013 by way of a petition of appeal. The original petition was filed with the Commissioner and a copy was served on the Division of Finance of the Department of Education.³ On December 20, 2013, in lieu

¹ In its verified petition, Hammonton established that J.B. and her children also resided in Hammonton from at least September 2007 through September 2009.

² A copy of the ECS' determination is annexed to Gloucester's exceptions.

³ Petitioner endeavored on June 17, 2014 to amend its petition to add J.B. as a respondent. However, the Commissioner sees no indication in the file that the ALJ gave petitioner leave to so amend, pursuant to *N.J.A.C. 6A:3-1.7*.

of an answer, respondent filed a motion to dismiss the petition, contending that it was filed in the wrong forum and was untimely. The case was transmitted to the OAL on December 23, 2013.

According to respondent Gloucester, shortly after Hammonton's appeal was transmitted to the OAL, J.B. disenrolled G.F. from the Gloucester school district (on January 15, 2014) and returned with her to Hammonton – to a new address. (Respondent's Exceptions at 2) On March 28, 2014, J.B. disenrolled N.F. from the Gloucester school district, moved him back to Hammonton, and allowed him to quit school. (*Ibid.*) Also according to Gloucester, J.B. indicated that after the conclusion of the 2013-2014 school year, she would transfer V.F. from Gloucester back to Hammonton. (*Ibid.*)

On June 17, 2014, the OAL issued its Initial Decision recommending denial of Gloucester's motion to dismiss Hammonton's petition, and forwarding of the case to the DOF. As mentioned above, the denial of the motion is adopted. Petitioner's appeal of the October 31, 2013 ECS decision was served upon the Commissioner and DOF on November 26, 2013 – less than thirty days after issuance of the objected-to ECS determination. Thus, if petitioner had been challenging a district of residence determination, the ALJ is correct that its November 26, 2013 service upon the DOF of a copy of its petition would have satisfied the requirement in *N.J.A.C. 6A:23A-19.2* that it “submit a written notification of a dispute to the Division of Finance, within thirty days of receipt of a final notice that a child was determined to be a resident of the district for purposes of State funding.”⁴

However, the Commissioner rejects the ALJ's recommendation that the matter be sent to the DOF. Petitioner was not appealing a residency determination. Rather, it was appealing

⁴ As the ALJ pointed out, petitioner's submission would also have been adequate under the doctrine of substantial compliance.

the ECS's determination of homelessness and the ultimate determination concerning which district is financially responsible. That is a determination to be made by the Commissioner, not the DOF.

In the instant case, resolution of the question of whether J.B.'s children were homeless while they were in Gloucester must precede any determinations about their domicile or about which district was financially responsible for their educations. The ECS determined that the children were indeed homeless, and *N.J.A.C. 6A:17-2.8(a)* directs that an appeal from a determination of homelessness be presented to the Commissioner. If the Commissioner concurs that the children were homeless, *N.J.S.A. 18A:38-1* provides the guidance necessary to identify the district responsible for the costs of the children's educations.

More specifically, if the Commissioner ultimately determines that J.B.'s family was not homeless when the children moved to 21 South Stinson Avenue and enrolled in the Gloucester school district, it will follow that the children were entitled to a free public education provided by Gloucester, pursuant to *N.J.S.A. 18A:38-1(a)* or (b). If the Commissioner adopts the ECS's determination that J.B.'s family *was* homeless, it will follow that Hammonton remained responsible for the costs of the children's educations for the first year of their stay in Gloucester, pursuant to *N.J.S.A. 18A:38-1(f)* and *N.J.S.A. 18A:7B-12(c)*. If the family's habitation in J.B.'s mother's house were to continue through September 2014 or further, financial responsibility for the children's educations would switch to Gloucester regardless of the family's "homeless status." *See N.J.S.A. 18A:38-1(d)*.

In other words, the threshold issue in this case is whether J.B.'s children were homeless when they entered school in Gloucester in 2013. The ECS opined that they were, and the Commissioner is the correct forum for an appeal from the ECS's determination. Were there a proper record before the Commissioner, he could now adopt or reject the ECS's determination

about the children's status and follow the provisions of *N.J.S.A.* 18A:38-1 to assign financial responsibility. Unfortunately, the record is inadequate to allow the Commissioner to make the necessary determinations.

Accordingly, respondent's motion to dismiss the petition is denied and this matter is remanded to the OAL for a fact-finding hearing relating to J.B.'s assertion that she and her family were homeless when they moved to Gloucester in September 2013 – and thereafter.

IT IS SO ORDERED.⁵

ACTING COMMISSIONER OF EDUCATION

Date of Decision: July 31, 2014

Date of Mailing: July 31, 2014

⁵ 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).