

EDU #3562-96  
C # 75-97  
SB # 28-97

J.A., on behalf of her minor niece, T.C., :  
PETITIONER-APPELLANT, :  
V. : STATE BOARD OF EDUCATION  
BOARD OF EDUCATION OF THE : DECISION  
SOUTH ORANGE-MAPLEWOOD :  
SCHOOL DISTRICT, ESSEX COUNTY, :  
RESPONDENT-CROSS/APPELLANT. :

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Decided by the Commissioner of Education, February 19, 1997

For the Petitioner-Appellant, Education Law Center (Ellen M. Boylan, Esq., of Counsel)

For the Respondent-Cross/Appellant, Leary, Bride, Tinker & Moran (Glenn R. Moran, Esq., of Counsel)

J.A. (hereinafter "petitioner") filed a petition with the Commissioner of Education alleging that the Board of Education of the South Orange-Maplewood School District (hereinafter "Board") had improperly denied her niece, T.C., who was living with her in South Orange, a free public education in the district under N.J.S.A. 18A:38-1(b).<sup>1</sup> The

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<sup>1</sup> N.J.S.A. 18A:38-1 provides, in pertinent part:

Public schools shall be free to the following persons over five and under 20 years of age:

- a. Any person who is domiciled within the school district;
- b. (1) Any person who is kept in the home of another person domiciled within the school district and is supported by such other person gratis as if he were such other person's own child, upon filing by such other person with the secretary of the board of education of the district, if so required by the board, a sworn statement that he is domiciled within the district and is supporting the child gratis and will assume all personal obligations for the child relative to school requirements and that he intends so to keep and support the child gratuitously for a longer time than merely through the school term, and a copy of his lease if a tenant, or a sworn statement by his landlord acknowledging his tenancy if residing as a tenant without a written lease, and upon filing by the child's

Board filed a counterclaim seeking tuition for the period of T.C.'s attendance in the district.

On January 2, 1997, following a hearing, the Administrative Law Judge ("ALJ") concluded that petitioner had sustained her burden of demonstrating T.C.'s entitlement to attend public school in the district free of charge. The ALJ found that petitioner had demonstrated that T.C.'s mother was not capable of supporting her or providing care due to a family and economic hardship.

On February 19, 1997, the Commissioner adopted the credibility determinations, findings and conclusions of the ALJ and directed the Board to provide T.C. with a free public education. Citing Gunderson v. Board of Education of the City of Brigantine, decided by the Commissioner of Education, 95 N.J.A.R.2d (EDU) 39, aff'd by the State Board of Education, 95 N.J.A.R.2d (EDU) 132, the Commissioner concluded that "the ALJ's factual findings, under the circumstances of this case, may be considered to have satisfied the statutory purpose for requiring documentation to support the claim that family or economic hardship exists, sufficient to permit T.C. to be admitted into the Board's District as an affidavit pupil." Commissioner's Decision, slip op. at 15-16.

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parent or guardian with the secretary of the board of education a sworn statement that he is not capable of supporting or providing care for the child due to a family or economic hardship and that the child is not residing with the resident of the district solely for the purpose of receiving a free public education within the district. The statement shall be accompanied by documentation to support the validity of the sworn statements....If in the judgment of the board of education the evidence does not support the validity of the claim by the resident, the board may deny admission to the child. The resident may contest the board's decision to the commissioner within 21 days of the date of the decision and shall be entitled to an expedited hearing before the commissioner on the validity of the claim and shall have the burden of proof by a preponderance of the evidence that the child is eligible for a free education under the criteria listed in this subsection. The board of education shall, at the time of its decision, notify the resident in writing of his right to contest the board's decision to the commissioner within 21 days. No child shall be denied admission during the pendency of the proceedings before the commissioner. In the event the child is currently enrolled in the district, the student shall not be removed from school during the 21-day period in which the resident may contest

The Commissioner, however, declined to find the Board's alleged policy of denying any application under N.J.S.A. 18A:38-1(b) that was not accompanied by supporting documentation to be arbitrary, capricious or unreasonable. The Commissioner observed that the statute expressly required sworn statements to be accompanied by documentation to support their validity. He noted, in addition, that the statute ensured subsequent due process before the Commissioner with no loss of educational opportunity in the interim. The Commissioner also rejected petitioner's contention that she had been entitled to a statement from the Board detailing the reasons for its denial of her application.

Despite the Commissioner's determination that her niece was entitled to a free public education in South Orange-Maplewood, petitioner filed the instant appeal to the State Board. Petitioner again contends that the Board's notice letter denying her application for T.C.'s admission to the district failed to satisfy the minimum requirements of due process and that the Board's alleged policy of denying admission under N.J.S.A. 18A:38-1(b) to any student lacking documentation to support the sworn statements required by the statute was arbitrary and capricious.

The Board cross-appealed from the Commissioner's decision, arguing that petitioner had failed to establish T.C.'s entitlement to a free public education in the district.

After a careful review of the record before us,<sup>2</sup> we affirm the Commissioner's decision as modified herein.

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the board's decision nor during the pendency of the proceedings before the commissioner.

<sup>2</sup> We note that the parties did not provide us with a transcript of the hearing held in the Office of Administrative Law in this matter.

For the reasons expressed by the ALJ and Commissioner, we find that petitioner has demonstrated T.C.'s entitlement to a free public education in South Orange-Maplewood. Under the particular circumstances herein, we agree that petitioner has sustained her burden under the standard set forth in N.J.S.A. 18A:38-1(b). We also agree that the Board was not required to provide petitioner with a statement of reasons for the denial of her application or to provide specific details about the appeals procedure in its notice letter, except to advise petitioner that she had the right to contest the Board's decision with the Commissioner of Education within 21 days.

However, we modify the Commissioner's decision to the extent that it might be read to permit a district board to mechanically deny any application for admission under N.J.S.A. 18A:38-1(b) which is not accompanied by documentation to support the sworn statements submitted with the application. As the Commissioner observed in Gunderson, supra, at 42:

...the parental affidavit provision [in N.J.S.A. 18A:38-1(b)] is [not] meant to act as a bar to a child who, do [sic] to particular circumstances, cannot produce such an affidavit but provides evidence that the underlying requirements of the law are being met. To hold otherwise harms a party the Legislature never meant to penalize, unreasonably places form over substance and overlooks the substantial State interest in ensuring the education of all its children.

Similarly, a lack of documentation in support of the sworn statements required by N.J.S.A. 18A:38-1(b) may not necessarily bar a child from admission in a case in which documentation cannot be produced due to the particular circumstances of the situation. Hence, a district board policy that automatically bars admission solely on the basis of a lack of documentation, without permitting consideration of those circumstances, would

be arbitrary and capricious. However, given the outcome of this case and the fact that we are unable to determine on the basis of the record before us, which does not include transcripts, whether the South Orange-Maplewood Board actually had such a policy, we decline to determine that question in the context of this appeal.

Accordingly, as modified herein, we affirm the decision of the Commissioner.

August 6, 1997

Date of mailing \_\_\_\_\_