EDU #1447-05
C # 381-05
SB # 51-05

I.B., on behalf of minor child, M.A., III,	:	
PETITIONER-RESPONDENT,	:	
V.	:	STATE BOARD OF EDUCATION
BOARD OF EDUCATION OF THE TOWNSHIP OF BELLEVILLE, ESSEX COUNTY,	:	DECISION
RESPONDENT-APPELLANT.	:	

Decided by the Acting Commissioner of Education, October 24, 2005

Decision on motions by the State Board of Education, May 3, 2006

For the Petitioner-Respondent, I.B., pro se

For the Respondent-Appellant, Gaccione, Pomaco & Malanga (Mark A. Wenczel, Esq., of Counsel)

I.B. (hereinafter "petitioner"), who lives in Belleville, filed a petition with the Commissioner of Education in December 2004 challenging the determination by the Board of Education of the Township of Belleville (hereinafter "Board" or "Belleville Board") that her nephew, M.A., who was in 11th grade at Belleville High School during the 2004-05 school year, was not entitled to a free public education in the Belleville school district. The petitioner based her challenge on an Order issued by the Superior Court of New Jersey, Chancery Division, Family Part, Essex Vicinage, on July 15, 2004,

which awarded custody of M.A. "jointly to the parties,"[1] and granted "residential custody" of M.A. to the petitioner. The Board filed a counterclaim seeking tuition for the period of M.A.'s attendance.

On September 6, 2005, an administrative law judge ("ALJ") concluded that M.A. was not entitled to a free public education in the Belleville school district. Reviewing the matter under N.J.S.A. 18A:38-1, the ALJ found that M.A. was not domiciled in Belleville and was not an affidavit student. She recommended that the petitioner be directed to reimburse the Board for tuition in the amount of $8,464.27 for the period of M.A.'s ineligible attendance during the 2004-05 school year.

On October 24, 2005, the Acting Commissioner[2] rejected the ALJ's recommended decision. Finding that the petitioner's claim should have been analyzed under N.J.S.A. 18A:38-2, "Free attendance at school by nonresidents placed in district under court order," rather than 18A:38-1, "Attendance at school free of charge," the Acting Commissioner concluded that M.A. was entitled to a free public education in Belleville by virtue of the Order of July 15, 2004, which gave the petitioner "residential custody" of M.A. The Acting Commissioner asserted that it was not within her purview to disturb an Order of the Superior Court and that any challenge to that Order must be directed to the Court. She ordered the Belleville Board to continue to admit M.A. to its schools as long as there was no change in the Superior Court's Order that would alter his entitlement.

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[1] We note that the petitioner herein was the plaintiff in the custody proceedings. M.A.'s mother and father were the defendants. The petitioner testified during the hearing in this matter that the parties had consented to the custody arrangement directed by the Court. Tr. 4/5/05, at 59. The papers filed in this matter further indicate that M.A.'s parents do not live together and that they do not reside in Belleville.

[2] We note that on October 16, 2006, Acting Commissioner Lucille E. Davy was confirmed as the Commissioner of Education.

The Belleville Board filed the instant appeal to the State Board, arguing that N.J.S.A. 18A:38-2 is not applicable to the circumstances of this case. The Board contends that the wording and punctuation of N.J.S.A. 18A:38-2 make it clear that, in order for the statute to apply, the custody order at issue "must have issued for 'the care and welfare of indigent, neglected or abandoned children, or children in danger of becoming delinquent….'" Appeal Brief, at 4.

On May 3, 2006, we granted the parties' motions to supplement the record with documents pertaining to proceedings in Superior Court, Chancery Division in January 2006 on a motion filed by the Belleville Board to intervene in the custody matter and to vacate the Order of July 15, 2004.

After a thorough review of the record, including the supplemental materials, we reverse the decision of the Acting Commissioner. We agree with the Belleville Board that N.J.S.A. 18A:38-2 is not applicable to the factual situation presented by this matter and that the case is properly analyzed under N.J.S.A. 18A:38-1. After reviewing the record, we conclude that the petitioner has not met her burden of demonstrating that M.A. was entitled to a free public education in Belleville.

In interpreting a statute:

> ….The Legislature's intent is the paramount goal… and, generally, the best indicator of that intent is the statutory language. Frugis v. Bracigliano, 177 N.J. 250, 280, 827 A.2d 1040 (2003). We ascribe to the statutory words their ordinary meaning and significance, Lane v. Holderman, 23 N.J. 304, 313, 129 A.2d 8 (1957), and read them in context with related provisions so as to give sense to the legislation as a whole, Chasin v. Montclair State Univ., 159 N.J. 418, 426-27, 732 A.2d 457 (1999)….
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> A court should not "resort to extrinsic interpretative aids" when "the statutory language is clear and

> unambiguous, and susceptible to only one interpretation…." Lozano v. Frank DeLuca Const., 178 N.J. 513, 522, 842 A.2d 156 (2004) (internal quotations omitted). On the other hand, if there is ambiguity in the statutory language that leads to more than one plausible interpretation, we may turn to extrinsic evidence, "including legislative history, committee reports, and contemporaneous construction." Cherry Hill Manor Assocs. v. Faugno, 182 N.J. 64, 75, 861 A.2d 123 (2004) (internal quotations omitted). We may also resort to extrinsic evidence if a plain reading of the statute leads to an absurd result or if the overall statutory scheme is at odds with the plain language. See Hubbard ex rel. Hubbard v. Reed, 168 N.J. 387, 392-93, 774 A.2d 495 (2001).

DiProspero v. Penn, 183 N.J. 477, 492-93 (2005).

We find that N.J.S.A. 18A:38-2 is not clear and unambiguous on its face with regard to the scope of its application. Rather, as the Board contends, the statute is subject to interpretation with respect to whether the Legislature intended it to be limited to court orders granted for the care and welfare of indigent, neglected or abandoned children. As a result, we have turned to the legislative history for guidance in ascertaining the Legislature's intent.

The language currently found in N.J.S.A. 18A:38-2 was enacted in 1942 as an amendment to N.J.S.A. 18:14-1, "Pupils who may attend school; nonresidents in general," L.1942, c. 211, § 1, in a form substantially similar to the current wording.[3] The

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[3] At the time, N.J.S.A. 18:14-1 provided that "[p]ublic schools shall be free to all persons over five and under twenty years of age…who are residents of the school district. Nonresidents of a school district, if otherwise competent, may be admitted to the schools of a district with the consent of the board of education upon such terms as the board may prescribe." The 1942 amendment added, in pertinent part:

> except that any nonresident of the district shall be admitted free to the schools provided for the pupils residing in the district if such nonresident is a child placed in the home of a resident of said district by order of a court of competent jurisdiction in this State or by any society, agency or institution incorporated and located in this State having for its object the care and welfare of indigents neglected or abandoned children, whether or not such resident is compensated for keeping such nonresident child….

stated purpose of the bill was "to provide free educational appointments for children placed in foster homes by order of a court or by responsible social agencies of this State and to provide State appointment of school moneys for such pupils." (Emphasis added.) Sponsor's Statement, S. 196, L. 1942, c. 211. Thus, the Legislature's express intent was to assure that a child placed in a foster home by a court or social agency would receive a free public education in the district in which the foster home was located.

In a case analogous to the instant matter, D.M., on behalf of minor B.N. v. Board of Education of the Township of Ewing, decided by the State Board of Education, November 3, 2003, appeal dismissed, Docket #A-002172-03T3 (App. Div. 2004), the petitioner, who lived in Ewing Township, received an "Order of Temporary Custody" of her niece, B.N., from the Superior Court, Chancery Division. The petitioner challenged the Ewing board's determination that B.N. was not entitled to a free public education in the district. The Commissioner found that the petitioner's claim was properly analyzed under N.J.S.A. 18A:38-1(a), which provides that public schools are free to any person domiciled within the school district. Asserting that the critical issues were whether the petitioner was B.N.'s legal guardian within the intendment of the statute and, if so, whether B.N. was actually living with her in Ewing, the Commissioner concluded that the petitioner was, in fact, B.N.'s legal guardian within the intendment of the statute since the custody order, although designated as "temporary," committed the care and custody of B.N. to the petitioner until further order of the court and that the evidence was consistent with the petitioner's contention that B.N. was living with her in Ewing.

Accordingly, he held that B.N. was entitled to a free public education in the Ewing school district.

On appeal, the State Board agreed with the Commissioner that the applicable statute was N.J.S.A. 18A:38-1(a). However, after reviewing the hearing transcripts, which had not been available to the Commissioner, the State Board concluded that B.N. was actually living in Trenton with her mother. Although the petitioner had been granted "temporary custody" of B.N., the State Board found that she had not offered anything, aside from the existence of the custody order, that would counter the Ewing board's evidence that B.N. was living with her mother in Trenton. Therefore, it concluded that the petitioner had not met her burden of demonstrating that B.N. was eligible for a free public education in the Ewing school district under the criteria set forth in N.J.S.A. 18A:38-1(a).

In D.W., on behalf of minor child, V.D.V. v. Board of Education of the Township of Bass River et al., decided by the Commissioner of Education, January 29, 2003, which was relied upon by the Acting Commissioner in applying N.J.S.A. 18A:38-2 to the facts of this matter, the custody order included a directive expressly designating Bass River Township Elementary School as the school the children were to attend, a fact highlighted therein by the Commissioner, who stressed that he was "not vested with authority to vacate, disturb or otherwise disturb an Order of the Court." D.W., supra, slip op. at 3. In the instant matter, the custody order granted "residential custody" to the petitioner but did not include a directive designating a specific school or district for M.A.[4]

[4] We note that the Commissioner's decision in D.W. was not appealed to the State Board, and, by our decision today, we do not address or determine the particular facts of that case, which are not before us.

Turning to the record before us, our review leads us to conclude that the petitioner has not met her burden of demonstrating that M.A. was entitled to a free public education in the Belleville school district under N.J.S.A. 18A:38-1. N.J.S.A. 18A:38-1(a) provides that public school shall be free to "[a]ny person who is domiciled within the school district."[5] The petitioner had the burden of demonstrating that M.A. was eligible for a free public education in Belleville. N.J.S.A. 18A:38-1(b)(2). The evidence presented by the Board included the results of a surveillance investigation conducted in Belleville and Newark, including at Belleville High School, on 33 occasions between October 27, 2004 and March 3, 2005. During the course of their surveillance, the Board's domicile investigators never saw M.A. leaving the petitioner's home in the morning, despite repeated observations at that location. Tr. 4/5/05, at 11-49; Exhibits R-1 and R-2, in evidence. Rather, on the vast majority of days, they observed M.A. either leaving for school from Newark with his mother or being dropped off at school by his mother. Id. On the several occasions when the investigators conducted surveillance after school, M.A. was observed traveling to and entering his mother's house in Newark. Id. Based on their observations, the investigators concluded that M.A. was living in Newark with his mother.

Contrary to the observations of the Board's investigators, the petitioner testified that M.A. lived with her in Belleville during the week and that he only spent weekends with his mother in Newark. Id. at 59-76. She stated that M.A. had dinner at her house every night from Monday through Friday and breakfast at her house from Tuesday through Friday. Id. at 76. The only document admitted into evidence from the petitioner

[5] We note that the petitioner does not contend nor did she present any evidence to show that M.A. would qualify to attend school in Belleville as an affidavit student under N.J.S.A. 18A:38-1(b)(1).

was a letter from her husband clarifying a conversation he had with one of the district's investigators. Exhibit P-1, in Evidence.[6] M.A.'s mother did not testify.

Upon consideration of the record, we find that the evidence overwhelmingly supports the Board's position that M.A. was living in Newark with his mother during the period at issue. Thus, notwithstanding the Order granting "residential custody" to the petitioner, the petitioner has not demonstrated by a preponderance of the credible evidence that M.A. was actually living with her in Belleville during the period at issue and entitled to a free public education in the district under N.J.S.A. 18A:38-1. We therefore reverse the decision of the Acting Commissioner, dismiss the petition and grant the Belleville Board's counterclaim for tuition for the period of M.A.'s ineligible attendance.

We add in so doing that the tuition due to the Board may not include the period between October 24, 2005, the date of the Acting Commissioner's decision permitting M.A. to attend school in Belleville, and the date of our decision today reversing that determination. A decision of the Commissioner is binding on the parties unless and until reversed on appeal, N.J.S.A. 18A:6-25, and in this case the Acting Commissioner held that M.A. was entitled to a free public education in the Belleville school district.[7] Thus, during the pendency of the Board's appeal to the State Board, M.A. was entitled

[6] We note that during the hearing in this matter, the petitioner offered into evidence several additional letters from neighbors. Those documents were marked for identification purposes as Exhibits P-2 through P-4, but the ALJ denied their admission into evidence, explaining that the Board would be denied due process since it would not have the opportunity to cross-examine the authors of the letters. Tr. 4/5/05, at 66-69. Nonetheless, the ALJ, without explanation, considered two of those documents, Exhibits P-2 and P-3, in determining this matter. Initial Decision, slip op. at 6.

[7] We note that the Belleville Board did not seek a stay of the Acting Commissioner's decision.

to attend school in Belleville pursuant to the Acting Commissioner's directive, and we direct that this period be excluded from the calculation of tuition. See D.M., supra.

Finally, we deny the Board's request for oral argument as not necessary for a fair determination of this matter. N.J.A.C. 6A:4-3.2.

Kathleen Dietz opposed.

December 6, 2006

Date of mailing _____