

J.S.C. AND V.C., on behalf of minor child, A.L., :
:

PETITIONERS, :

:

V. : COMMISSIONER OF EDUCATION

:

BOARD OF EDUCATION OF THE MORRIS : DECISION

HILLS REGIONAL SCHOOL DISTRICT, :

MORRIS COUNTY, :

:

RESPONDENT. :

:

SYNOPSIS

Petitioners, District residents who took in A.L., contested the Board’s residency determination.

In light of testimony, the ALJ concluded that petitioners satisfied the residency requirements pursuant to *N.J.S.A.* 18A:38-1b(1). ALJ found that petitioners took in A.L. as their own child; they supported him *gratis* as A.L.’s father was not capable of providing support and care for the child due to both family and economic hardships. Thus, the ALJ found that the child was not residing within the District solely for purposes of receiving a free education within the District. ALJ concluded petitioners were not liable for tuition to the Board during the period of time that A.L. went to school in the District; and, therefore, the Board’s counterclaim for payment of tuition was dismissed with prejudice. ALJ determined that petitioners’ petition to allow A.L. to go to school in the District should be dismissed as moot in that the new employment of A.L.’s father had alleviated the family and economic hardships so as to permit A.L. to once again live with his father.

Accepting credibility assessments reached by the ALJ, the Commissioner adopted the initial decision as his own.

OCTOBER 29, 1997

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The record of this matter and the initial decision of the Office of Administrative Law (OAL) have been reviewed. It is noted that the within Board sought and received an extension of time within which to file exceptions in this matter. Its exceptions were timely filed in accordance with the extended timeline and were duly considered in the Commissioner's determination of this case.

Upon careful review and consideration, the Commissioner affirms the conclusion of the Administrative Law Judge (ALJ) that, under the circumstances existing herein, the requirements of *N.J.S.A.* 18A:38-1b(1) have been satisfied, thereby entitling minor child, A.L., to receive a free public education in the District for the period of enrollment at issue. As such, the Board's counterclaim for payment of tuition must be dismissed. In reaching this determination, the Commissioner accepts the credibility assessments reached by the ALJ in that she had the

benefit of observing the witnesses first hand and the record before the Commissioner provides no basis for overturning such assessments.*

Accordingly, the initial decision of the OAL is adopted as the final decision in this matter for the reasons stated therein. The Board's counterclaim for tuition is hereby dismissed with prejudice.

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

OCTOBER 29, 1997

* Notwithstanding the fact that the Board's exceptions raised arguments challenging factual findings and credibility assessments made by the ALJ, it did not provide transcripts of the hearing below for the Commissioner's consideration (*see In re Morrison*, 216 N.J. Super. 143 (App. Div. 1987)), nor did it supply the tape recording which it contends contains certain admissions of petitioners supporting the Board's position. Consequently, the Board's exceptions challenging such credibility assessments and the factual findings predicated thereupon are rejected as being without merit.