

Y.L., on behalf of minor cousin, M.A., :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE : DECISION
SOUTH ORANGE AND MAPLEWOOD :
SCHOOL DISTRICT, ESSEX COUNTY, :
RESPONDENT. :
_____ :

SYNOPSIS

Petitioner, Y.L., alleged that her cousin, M.A., was wrongfully denied admission to school in violation of *N.J.S.A.* 18A:38-1.

Noting absence of a specific showing of hardship, the ALJ denied petitioner’s motion for summary decision and concluded that the Board was entitled to tuition even though custody was attained by Y.L.

Commissioner affirmed in part, reversed in part the initial decision. Commissioner found that prior to November 13, 1995, the date on which custody of M.A. was granted to petitioner, M.A. was not entitled to a free public education in the District, as petitioner did not meet the requirements of *N.J.S.A.* 18A:38-1b(1). However, once Y.L. became the legal guardian, in the absence of any indication of fraud, M.A.’s domicile follows that of Y.L, making it unnecessary for Commissioner to reach to the question of the sufficiency of evidence offered to demonstrate hardship under the affidavit law. Thus, following date of custody order, M.A. was entitled to a free public education in the District. Petitioner was directed to pay tuition for the period of ineligible attendance at school prior to November 13, 1995.

December 24, 1997

OAL DKT. NO. EDU 1230-96
AGENCY DKT. NO. 450-11/95

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The record of this matter and the initial decision of the Office of Administrative Law (OAL) have been reviewed. Respondent's exceptions and the Board's reply thereto are duly noted as submitted in accordance with *N.J.A.C.* 1:1-18.4, and were considered by the Commissioner in rendering the within decision.

Upon careful and independent review of the record in this matter, the Commissioner determines to affirm in part, and reverse in part, the initial decision of the ALJ, as set forth herein. Initially, the Commissioner finds that the record supports the conclusion that, prior to November 13, 1995, the date on which custody of M.A. was granted to petitioner, M.A. was not entitled to a free public education in respondent's District, as petitioner did not meet the requirements set forth at *N.J.S.A.* 18A:38-1b(1). In so finding, the Commissioner notes that it is unnecessary for him to reach to the question of the sufficiency of evidence offered to demonstrate other factors such as family or economic hardship, where petitioner undisputedly does not meet

the threshold requirement that she “***is supporting the child gratis ***.” *N.J.S.A.* 18A:38-1b(1).

However, once Y.L. became the child’s legal guardian, the appropriate inquiry for the Board was whether she and M.A. were domiciliaries of the District, pursuant to *N.J.S.A.* 18A:38-1a, an analysis which does not necessarily ascribe significance to financial circumstance. Since the Board does not dispute that Y.L. is a domiciliary of Maplewood, and the domicile of a child follows that of the parent or guardian having *legal control* over her, *Mansfield Twp. Board of Education v. State Board of Education*, 101 *N.J.L.* 474, 479, 480 (Sup. Ct. 1925), the Commissioner finds that M.A. was entitled to a free public education in the district once Y.L. acquired legal custody of her.¹ In so finding, the Commissioner notes there is no evidence of fraud on the part of petitioner. *V.H. v. Board of Education of the Township of Quinton*, 97 *N.J.A.R.* 2d (EDU) 124, 125, *aff’d* at 554. Moreover, notwithstanding the Board’s contentions to the contrary, the Commissioner is not persuaded that petitioner’s motives for obtaining custody of M.A. are determinative. Absent any indications of fraud, the order, which does not appear to be a temporary one, should be accepted on its face. *L.A. v. Town of West Orange*, 97 *N.J.A.R.* 2d (EDU) 266, 269, *aff’d* at 554.²

Accordingly, petitioner is hereby directed to pay tuition for M.A., prorated from the date of her first attendance in the District, on or about October 3, 1995, until

¹It is noted that the parties do not dispute that Y.L. maintains *both* legal and physical custody of M.A. Contrast the situation in *Cranford Twp. Board of Education v. McG.*, 95 *N.J.A.R.* 2d (EDU) 74 (1994).

² The Board’s reply cites to language found in *L.A.*, *supra*. That is “***the Board reiterates the Commissioner’s own language in *L.A.*, *supra*, regarding the ease with which a custody order may fall into the hands of one seeking admission of a child: ‘As the Commissioner well knows, these custody orders are easily obtainable.’ 97 *N.J.A.R.* 2d 270.” (Board’s Reply at p. 3) However, the Board has erroneously attributed this language to the Commissioner. The quotation extracted from *L.A.* is actually the Commissioner’s *summary of the respondent’s arguments* on exception. The quotation is *clearly* preceded by the words, “Respondent states,” and is concluded with a citation to the pertinent page of the respondent board’s exceptions.

November 12, 1995. After November 13, 1995, however, M.A. is deemed to have been entitled to a free education in the Board's District in accordance with *N.J.S.A. 18A:38-1a*, her admission to continue so long as there is no change in petitioner's circumstances that would alter M.A.'s entitlement.

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

December 24, 1997