

M.H.R., on behalf of minor child, L.C.G., :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE : DECISION
CITY OF CLIFTON, PASSAIC :
COUNTY, :
RESPONDENT. :
_____ :

SYNOPSIS

Petitioning brother contested Board’s determination that minor child, L.C.G., was not domiciled in the District and, therefore, was not entitled to a free public education in its schools.

ALJ found that L.C.G. was not seeking to be educated in the District solely for the purpose of receiving a free education and that L.C.G.’s natural parents in Mexico were unable to support him. ALJ found and concluded that petitioner satisfied the standard set forth in *N.J.S.A. 18A:38-1* and, therefore, L.C.G. was entitled to admittance in the District.

Commissioner concurred with the ALJ that L.C.G. was deemed entitled to a free education in the District in accordance with *N.J.S.A. 18A:38-1b(1)*, the “affidavit student” provision. Commissioner noted that the record did not sufficiently support that petitioner had been awarded legal custody of L.C.G. so as to find that L.C.G. was entitled to a free public education in the District pursuant to *N.J.S.A. 18A:38-1a*.

April 16, 1998

OAL DKT. NO. EDU 3005-96
AGENCY DKT. NO. 52-2/96

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The record of this matter and the initial decision of the Office of Administrative Law (OAL) have been reviewed. No exceptions were filed by the parties.

Upon careful and independent review of the record in this matter, the Commissioner concurs with the Administrative Law Judge (ALJ) that petitioner has demonstrated that L.C.G. is entitled to a free education in the District, pursuant to *N.J.S.A. 18A:38-1b(1)*, the “affidavit student” provision.

While the Commissioner acknowledges petitioner’s assertion that she has acquired custody of L.C.G. and recognizes that where petitioner is the legal guardian of L.C.G., and is indisputably a domiciliary of Clifton, then L.C.G.’s domicile is also considered to be Clifton, as 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), he is not persuaded that the record sufficiently supports the conclusion that petitioner

has, in fact, been awarded legal custody of L.C.G. so as to find that L.C.G. is entitled to a free public education in the District pursuant to *N.J.S.A. 18A:38-1a*.¹

Accordingly, L.C.G. is deemed entitled to a free education in the Board's District in accordance with *N.J.S.A. 18A:38-1b(1)*, his admission to continue so long as there is no change in petitioner's circumstances that would alter his entitlement.²

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

¹ The Commissioner further notes that such an entitlement to a free education pursuant to *N.J.S.A. 18A:38-1a* would also be dependent upon a finding of 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 State Board of Education 554.

² This decision, as the Commissioner's final determination in the instant matter, may be appealed to the State Board of Education pursuant to *N.J.S.A. 18A:6-27 et seq.* and *N.J.A.C. 6:2-1.1 et seq.*, within 30 days of its filing. Commissioner decisions are deemed filed three days after the date of mailing to the parties.