

F.B., on behalf of minor child, M.K.G.,	:	
	:	
PETITIONER,	:	
	:	
V.	:	
	:	
BOARD OF EDUCATION OF THE	:	
CUMBERLAND REGIONAL SCHOOL	:	
DISTRICT, CUMBERLAND COUNTY,	:	
	:	
RESPONDENT,	:	COMMISSIONER OF EDUCATION
	:	
AND	:	
	:	DECISION
	:	
BOARD OF EDUCATION OF THE	:	
CUMBERLAND REGIONAL SCHOOL	:	
DISTRICT, CUMBERLAND COUNTY,	:	
	:	
PETITIONER,	:	
	:	
V.	:	
	:	
F.B. AND A.R.G., custodial parents of	:	
minor child, M.K.G.,	:	
	:	
RESPONDENTS.	:	
	:	

SYNOPSIS

Petitioning aunt challenged Board's residency determination.

ALJ concluded that pursuant to *N.J.S.A. 18A:38-1*, petitioner failed to prove by a preponderance of reliable evidence that her niece, M.K.G., was entitled to attend the Board's school for the 1996-97 school year free of charge as she was domiciled outside the Board's jurisdiction. ALJ dismissed the petition for failure of petitioner to attend the proceeding; ALJ affirmed the Board's cross claim for tuition. ALJ ordered F.B. and A.R.G., M.K.G.'s mother, to reimburse the Board for M.K.G.'s tuition for the 1996-97 school year in the amount of \$7,155.

Commissioner adopted findings and determination in initial decision as his own with modification. Commissioner determined that petitioner failed to prove entitlement to free education pursuant to *N.J.S.A. 18A:38-1b(1)*, the affidavit student provision. Commissioner ordered the *resident*, F.B., not A.R.G., M.K.G.'s mother, to pay the Board the tuition due.

April 8, 1999

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RESPONDENTS. :

COMMISSIONER OF EDUCATION
DECISION

The record of this matter and the initial decision of the Office of Administrative Law have been reviewed. The parties did not file exceptions.

Upon careful and independent review of the record in this matter, the Commissioner determines that petitioner has failed to carry her burden of proving, by a preponderance of credible evidence, that M.K.G. was entitled to a free education in the Board's District, pursuant to *N.J.S.A. 18A:38-1b(1)*, affidavit student provision.¹

¹ The affidavit student provision establishes a "test," or list of criteria, which a resident must satisfy in order to demonstrate that the student residing with F.B. is entitled to a free education in the District. Thus, it was petitioner's

Accordingly, the Commissioner determines to affirm the initial decision of the Administrative Law Judge, with modification as set forth herein.² Petitioner is hereby ordered to reimburse the Board the amount of \$7,155 for M.K.G.'s tuition for the 1996-97 school year. The Commissioner declines, however, to assess A.R.G., M.K.G.'s mother, with tuition due and owing, inasmuch as the enabling statute, *N.J.S.A. 18A:38-1b(1)* authorizes him to assess *the resident*, F.B., with tuition, if he determines that the evidence does not support her claims, but neither the statute nor the equities in this particular matter warrant such assessment against A.R.G.³

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION.

April 8, 1999

burden to demonstrate that M.K.G. "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 ***." *N.J.S.A. 18A:38-1b(1)*. The statute further requires that the domiciliary provide the local board of education, if so required by the board, with (1) a sworn statement that she 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 she intends to keep and support the child gratuitously for a longer period of time than merely through the school term; (2) a copy of the lease, if a tenant, or a sworn statement by her landlord acknowledging tenancy if residing as an attendant without a lease; and (3) a sworn statement by the child's parent or guardian that such parent/guardian is not capable of supporting or providing care for the child due to 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. *N.J.S.A. 18A:38-1b(1)*. Further, "[t]he statement shall be accompanied by documentation to support the validity of the sworn statements ***." (*Id.*)

² To the extent that the initial decision may be read to suggest that this matter should be analyzed as a domicile case under *N.J.S.A. 18A:38-1a* (see initial decision at p. 6), the Commissioner herein clarifies that this matter is properly analyzed under *N.J.S.A. 18A:38-1b(1)*.

³ 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.