

E.M. AND J.M., on behalf of minor child,	:	
K.G.,	:	
	:	
PETITIONERS,	:	
	:	
V.	:	COMMISSIONER OF EDUCATION
	:	
BOARD OF EDUCATION OF	:	DECISION
THE BOROUGH OF LINCOLN	:	
PARK, MORRIS COUNTY,	:	
	:	
RESPONDENT.	:	

SYNOPSIS

Petitioners, guardians of K.G., a citizen of Poland, contested the Board's determination that K.G. was not entitled to a free public education in the District.

ALJ concluded that petitioners supported K.G. *gratis* as if she were their own child; that they intended to keep and support her beyond merely the school term; that K.G.'s father was not capable of supporting her due to family or economic hardship; that K.G. was not residing in the District solely for the purpose of obtaining a free public education; and that K.G. was entitled to a free public education while residing with petitioners. ALJ ordered that petitioners be granted relief in the form of a free public education for the period of time that K.G. was residing with petitioners and that the portion of the petition requesting admission to public school be dismissed as moot due to K.G.'s return to Poland.

Citing *Gunderson*, Commissioner adopted findings and determination in initial decision as his own. Commissioner denied award of attorney fees as that relief is not within the Commissioner's scope of authority. (*Balsley*)

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The record of this matter and the initial decision of the Office of Administrative Law (OAL) have been reviewed. Exceptions of petitioners were timely filed pursuant to *N.J.A.C. 1:1-18.4*.

Petitioners fully support the Administrative Law Judge’s (ALJ) finding that K.G. was entitled to a free public education in the District, excepting solely to the ALJ’s failure to award attorney fees which she specifically requested in her Amended Petition filed in this case. Petitioners aver that although fees of counsel in the within matter easily exceed \$15,000, “***as a gesture of good faith to the Board of Education, and in order to promptly resolve this matter for settlement purposes[, they are] prepared to accept the sum of \$2,500 by way of legal fees in this matter so as to put an end to this unpleasant episode[.]” and requests the Commissioner to award such fees. (Petitioners’ Exceptions at p. 2)

Upon careful review and consideration of the entire record in this matter, the Commissioner affirms the conclusion of the ALJ that K.G. was entitled to a free public education, financed by the Board, during the period of time she resided with E.M. and J.M, as the surrounding facts and circumstances existing here indicate to his satisfaction that petitioners have met the

underlying requirements of *N.J.S.A.* 18A:38-1b. (See *Gunderson v. City of Brigantine Board of Education*, 95 *N.J.A.R.* 2d (EDU) 39 (1994), *aff'd* State Board, 95 *N.J.A.R.* 2d (EDU) 132.) In reaching his determination, the Commissioner specifically notes that it was unnecessary to reach to the ALJ's analysis of this matter vis-à-vis the Illegal Immigration Reform and Immigrant Responsibility Act (Initial Decision at pp. 7-9), as K.G.'s visa status is purely an immigration issue and is of no moment whatsoever when considering her eligibility for a free public education pursuant to *N.J.S.A.* 18A:38-1.

With respect to petitioners' exceptions wherein they are seeking attorney fees in this matter, the Commissioner observes that it is long-established that, notwithstanding that the Commissioner of Education "has fundamental and indispensable jurisdiction over all disputes and controversies arising under the school laws[,] *N.J.S.A.* 18A:6-9," (*Hinfey v. Matawan Regional Board of Education*, 77 *N.J.* 514, 525 (1978)), he does not have plenary authority to award counsel fees to a successful complainant in an education controversy. (See *Balsley v. North Hunterdon Board of Education*, 117 *N.J.* 434, 442-43 (1990).) (Also see *State, Department of Environmental Protection v. Ventron Corp.*, 94 *N.J.* 473 (1983).) As such, the additional relief sought in petitioners' Amended Petition cannot be granted as a matter of law, as an award of attorney fees or costs of suit is not within the Commissioner's scope of authority.

Accordingly, the initial decision of the OAL, determining that K.G. was entitled to a free public education financed by the Borough of Lincoln Park during the period of time she resided with petitioners, is affirmed for the reasons set forth therein.¹

IT IS SO ORDERED.²

COMMISSIONER OF EDUCATION

April 9, 1999

¹It is noted that the record confirms that K.G. returned to Poland on June 5, 1998.

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.