

202-99

S.C., on behalf of minor child, B.W., :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE : DECISION
TOWNSHIP OF DEPTFORD, :
GLOUCESTER COUNTY, :
RESPONDENT. :
_____ :

SYNOPSIS

Petitioner sought an order declaring that B.W. was permitted to attend the public schools in respondent's district free of charge pursuant to *N.J.S.A.* 18A: 38-1.

The ALJ dismissed the petition without prejudice, finding that the matter was moot since it was uncontroverted that B.W. was domiciled outside the district and receiving schooling in that district.

The Commissioner concurred with the ALJ, stressing, however, that the notice and due process rights of *N.J.S.A.* 18A: 38-1 must be construed in light of the recent Appellate Division decision, *J.A., for herself and on behalf of her minor niece, T.C. v. Board of Education for the District of South Orange and Maplewood*, A-1615-97T2 decided March 2, 1999.

June 25, 1999

OAL DKT. NO. EDU 10336-98
AGENCY DKT. NO. 456-10/98

S.C., on behalf of minor child, B.W., :
 :
 PETITIONER, :
 :
 V. : COMMISSIONER OF EDUCATION
 :
 BOARD OF EDUCATION OF THE : DECISION
 TOWNSHIP OF DEPTFORD, :
 GLOUCESTER COUNTY, :
 :
 RESPONDENT. :
 :
 _____ :

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 his independent review of the record, the Commissioner concurs with the finding of the Administrative Law Judge that, since it is uncontroverted that minor child B.W. is currently domiciled outside of the district and receiving schooling in that district, the within matter is appropriately dismissed as moot. The Commissioner, however, stresses that the notice and due process rights of *N.J.S.A. 18A:38-1* must be construed in light of the recent court decision in *J.A., for herself and on behalf of her minor niece, T.C. v. Board of Education for the District of South Orange and Maplewood*, Superior Court of New Jersey, Appellate Division, A-1615-97T2, decided March 2, 1999.¹

¹Additionally, while the record is somewhat equivocal on this point, if, indeed, the September 22, 1998 letter to petitioner (Initial Decision at p. 3) constituted the District's notice that petitioner's child was ineligible to attend the schools of the District effective September 28, 1998, such notice, on its face, was not in compliance with the provisions of *N.J.S.A. 18A:38-1b(2)*. That provision specifies, "No child shall be removed from school *during the 21-day period in which the parent may contest the board's decision* or during the pendency of the proceedings before the commissioner." (emphasis added)

Accordingly, the initial decision of the OAL is affirmed for the reasons stated therein and the instant Petition of Appeal is dismissed as moot.²

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

June 25, 1999

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.