

SOMERSET COUNTY EDUCATIONAL SERVICES COMMISSION, :
 PETITIONER, :
 V. : COMMISSIONER OF EDUCATION
 NORTH PLAINFIELD BOARD OF EDUCATION, SOMERSET COUNTY, : DECISION
 RESPONDENT. :

SYNOPSIS

Petitioning Commission contended that respondent Board’s refusal to pay for tuition and services rendered to L.G., a child under the age of 16 enrolled in the Alternative to Incarceration (ATI) Program pursuant to order of the Superior Court, Chancery Division, Family Part and residing in the District, was arbitrary, capricious, unreasonable and violative of the law. Commission sought tuition and pre- and post-judgment interest. Board denied obligation for tuition for L.G., contending that it had no obligation to provide any educational services to L.G., who had been expelled, and, further, that the Commission did not follow the necessary legal procedures to approve its involvement in operating the ATI.

ALJ found that the Commission did violate the law (*N.J.S.A. 18A:6-63*) since at no time did the Representative Assembly ever vote upon a proposal for the Commission to participate in the ATI Program. However, the ALJ determined that even though the lack of a direct approval by the Representative Body was a flaw in the procedural background, the violation was purely technical and such a detail, which the Commission argued was a matter of form over substance, should not stand in the way of the Commission recovering the tuition for services rendered to a student domiciled within North Plainfield. Moreover, the ALJ found that the fact that a local board expels a student under 16 does not necessarily mean that it should be permitted to escape any reasonable financial obligation toward the education of that child in whatever alternative school program he enters, whether with board input or here at the order of the Family Court. Expulsion need not be considered a financial issue. In the circumstances of this case, where the District was a constituent member of the Educational Services Commission (ESC) and the child in question was educated under the ATI Program under the auspices of the ESC, it was not at all improper for the local District, the child’s domicile, to pay its mandated financial obligation pursuant to the contract approved by the county superintendent. It would be inappropriate to shift the cost of the services rendered to the other constituent members of the ESC, while excluding any fiscal responsibility for the domiciliary District. Thus, the ALJ ordered that respondent pay petitioner the sum of \$20,050, plus post-judgment interest.

Commissioner adopted the initial decision with modification. Commissioner adopted that portion of the initial decision ordering respondent to pay petitioner the sum of \$20,050. Commissioner found and determined that a board of education’s action to expel a student, even when lawfully taken pursuant to the authority granted by *N.J.S.A. 18A:37-1 et seq.*, does not absolve a board from responsibility for a child’s tuition when, as herein, the school placement was controlled by the statutory provisions of *N.J.S.A. 18A:47-1 et seq.* Further, the Commissioner emphasized that he rejected arguments advanced by petitioner, or otherwise conveyed by the ALJ, that there was any obligation whatsoever on the part of a board to provide or pay for educational services for a student after it has lawfully acted to expel a student pursuant to *N.J.S.A. 18A:37-1 et seq.*, except, where as here, a court of appropriate jurisdiction ordered the student’s school placement or there exists a statutory or regulatory provision mandating such an obligation. Commissioner found that the fact that an expelled student may be under 16 does not alter this holding. Commissioner rejected award of post-judgment interest.

SEPTEMBER 7, 1999

OAL DKT. NO. EDU 2793-98
AGENCY DKT. NO. 63-3/98

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RESPONDENT. :
_____:

The record and initial decision issued by the Office of Administrative Law have been reviewed. No exceptions were filed by the parties.

Upon a comprehensive and independent review of the record, the Commissioner adopts that portion of the initial decision which determines that, under the specific facts of this matter, the failure of the Commission to obtain approval of the Alternative To Incarceration (ATI) Program by vote of its Representative Assembly is not a basis for defeating petitioner's claim for tuition payment. However, notwithstanding such adoption, the Commissioner strongly admonishes petitioner that its Board of Directors is to refrain from carrying out any functions which by statute have been designated to the Representative Assembly, *not* the Board of Directors.

Further, the Commissioner adopts, with clarification and modification, that portion of the initial decision which orders respondent to pay petitioner the sum of \$20,050. Given the factual circumstances of this matter, the Commissioner is in full agreement with

petitioner's legal position that the provisions of *N.J.S.A. 18A:47-1 et seq.* obligate respondent to pay tuition for L.G., an unclassified child, who at age 15 was placed into petitioner's ATI program by court order. *N.J.S.A. 18A:47-1* authorizes a board of education to establish and maintain a special school of instruction for the purpose of restraining, instructing and caring for dependent and delinquent children under age 16 who are committed to the school by the Superior Court, Chancery Division, Family Part. *N.J.S.A. 18A:47-4* reads in pertinent part that "[s]uch special school shall *receive*, restrain, and instruct dependent delinquent children, and children under the age of 16 years, committed to such school by the Superior Court, Chancery Division, Family Part..." (emphasis supplied). Further, *N.J.S.A. 18A 47-5* is clear and unambiguous as to the obligation of a board of education to pay for such court-ordered school commitments of juveniles who reside in its district. It reads:

Children who are dependent and delinquent, or who are habitually truant or incorrigible, or who shall be found by the court to require special instruction, and who reside in a school district in which there is no such special school of instruction may be committed to such a special school of instruction maintained in another district. The board of education of the receiving district shall be entitled to collect and receive from the board of education of the sending district such sum for the tuition and maintenance of such children as the boards agree to, but not in excess of the actual cost per pupil as determined according to rules of the commissioner approved by the state board. The board of education of the sending district shall issue an order, payable from any funds available for current expense, for such sum in favor of the custodian of school moneys of the school district maintaining the school to which the child shall have been committed.

As correctly argued by petitioner, it is undisputed that the above-cited statutory criteria have been satisfied in the instant matter; *i.e.*, L.G. was adjudged delinquent by Superior Court, Chancery Division, Family Part (Petitioner's Exhibit 12); L.G. was committed by order of that court and as a condition to his probation (Petitioner's Exhibits 12 and 13) to petitioner's

ATI Program, a school for delinquent children approved by the State Board of Education pursuant to *N.J.S.A. 18A:47-1 et seq.*; respondent does not argue that it has such an approved school/program; and L.G. was 15 years old at the time the court committed him to the ATI Program (Petitioner's Exhibit 12).

With regard to respondent's legal position that its action to expel L.G. terminated any obligation on its part to provide him educational services or to pay his tuition in the ATI Program, the Commissioner finds and determines that a board of education's action to expel a student, even when lawfully taken pursuant to the authority granted by *N.J.S.A. 18A:37-1 et seq.*, does *not* absolve a board from responsibility for the student's tuition *when*, as herein, the school placement is controlled by the statutory provisions of *N.J.S.A. 18A: 47-1 et seq.* In so holding, however, the Commissioner expressly rejects arguments advanced by petitioner, or otherwise suggested by the Administrative Law Judge (ALJ) in the initial decision, that there is any *general* obligation on the part of a board of education to provide or pay for educational services for a student after it has lawfully acted to expel the student pursuant to *N.J.S.A. 18A:37-1 et seq.*, notwithstanding that the student may be under 16 years of age; the exception occurs *only where*, as here, a court of appropriate jurisdiction has ordered the student's school placement or there exists a statutory or regulatory provision mandating such an obligation.¹ The Commissioner stresses, though, that this holding does not prevent, nor is it in any way intended to dissuade, boards of education from providing continued educational services to a student whom it has expelled, if the board so desires.

Lastly, the Commissioner clarifies the ALJ's order that respondent pay post-judgment interest to petitioner. Consistent with the regulations governing award of post-

¹ For example, under certain circumstances, a continuing obligation for the provision of a free appropriate public education may exist for a disabled student who is expelled.

judgment interest, *N.J.A.C.* 6:24-1.16, petitioner may apply for such interest should the Board fail to satisfy the award within 60 days as provided by rule.

Accordingly, as clarified and modified herein, the Commissioner adopts the initial decision of the ALJ.²

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

SEPTEMBER 7, 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.