

J.B., on behalf of minor children, C.B.
AND E.B.,

PETITIONER,

V.

COMMISSIONER OF EDUCATION

BOARD OF EDUCATION OF THE
HOPEWELL VALLEY REGIONAL
SCHOOL DISTRICT, MERCER COUNTY.

DECISION

SYNOPSIS

Petitioning parent sought order from the Commissioner requiring the Board to permit her children, C.B. and E.B., to continue to attend the Board's public schools free of charge even though her lease on a house in the District had expired and she was evicted, effective February 1, 1998, was homeless and living in a motel in February, and, in March, was allegedly forced to return to the house she owned in Montgomery Township. Petitioner requested an exemption to Board Policy No. 5100 – Enrollment Admission and Eligibility for Free Public Education, which required payment of tuition when domiciliary residence in the District is lost. Board sought payment of tuition for periods of ineligible attendance, the months of April, May and June 1998.

ALJ found that domicile has two elements, both of which are required in order to establish a legal entitlement: a physical residence *and* the intent to remain there. ALJ found that after petitioner left the Hopewell/Pennington area, she never signed a contract to lease, buy, etc., any residence in the District and, accordingly, her children never qualified to attend free of charge as future residents. Also, the fact that other districts may have a different policy concerning free tuition for students whose parents moved out of the district during the school year, does not make the Board's policy arbitrary, capricious or unreasonable. Commissioner may not substitute his judgment for the Board's. Thus, neither of petitioner's children had a right to attend the District's schools free of charge. ALJ ordered petitioner to reimburse the Board for the period of ineligible attendance in accordance with tuition rates calculated pursuant to the formula established by the New Jersey Department of Education for a total of \$5,160.

Commissioner adopted findings and determination in initial decision as his own.

SEPTEMBER 23, 1999

J.B., on behalf of minor children, C.B. :
AND E.B., :
 :
 PETITIONER, :
 :
 V. : COMMISSIONER OF EDUCATION
 :
 BOARD OF EDUCATION OF THE : DECISION
 HOPEWELL VALLEY REGIONAL :
 SCHOOL DISTRICT, MERCER COUNTY. :
 :

The record of this matter and the initial decision of the Office of Administrative Law (OAL) have been reviewed. Petitioner submitted exceptions¹ which were duly considered by the Commissioner in rendering the within decision.²

Upon careful and independent review of the record in this matter, the Commissioner concurs with the ALJ's conclusion that for April, May and June of 1998, petitioner and her children were not domiciled within respondent's District and, therefore, her children were not entitled to a free education in the District for that time period.³

¹ Although petitioner was represented by an attorney at the OAL, *N.J.A.C.* 1:1-5.1, said counsel withdrew her appearance on behalf of petitioner as of August 23, 1999. Accordingly, petitioner submitted exception arguments on her own behalf.

² To the extent petitioner raises allegations in her exceptions concerning respondent's failure to develop an Individualized Education Program (IEP) for her son during the 1997-98 school year, the Commissioner notes that this issue was not included in the Petition of Appeal, and does not appear to have been presented at the hearing. *N.J.A.C.* 1:1-18.4(c). Further, the Commissioner is without jurisdiction to hear and determine such a claim, and, therefore, he does not address this issue in his decision.

³ In so affirming, the Commissioner adds only that, with respect to the ALJ's observation that "every domicile, by definition, is a residence" (Initial Decision at p. 11), such a residence, must be actual and accompanied by an intention to remain, but "[i]t may be a nursing home, a hotel [or] a boarding house; a home in a particular building is not necessary. ***" (*O'Hara v. Glaser*, 60 *N.J.* 239, 248)

The Commissioner further agrees that the record supports the conclusion that petitioner was homeless as of February 1, 1998; “[o]nce petitioner and her children moved back into the home which petitioner owns at 28 M. Avenue in Belle Mead, New Jersey [as of April 1, 1998], however, there is no way the family could be considered to remain ‘homeless.’” (Initial Decision at p. 13) Although petitioner argues in her exceptions that the Board failed to act in accordance with *N.J.A.C. 6:3-8.1 et seq.* to ensure that her children had access to a free public education for the two-month period of their homelessness,⁴ the Board specifically disputes that it had timely notice of her homelessness. As Toni Simzak, Vice Principal of the Timberlane Middle School, affirmed:

I initially learned that Petitioner and her children were residing at the State Depot Motel from Ms. Sonnie Kane, a teacher at the Timberlane Middle School. Ms. Kane advised me that she had learned that Petitioner was residing at the motel from student C.B., Petitioner’s oldest child, not from Petitioner herself.

At no point during the 1997-1998 school year did Petitioner advise me that she considered herself to be homeless, nor did it appear to me at any point in the 1997-1998 school year that Petitioner and her children were homeless. (Certification of Toni Simzak, January 25, 1999 at pp. 1, 2)

Additionally, the Business Administrator/Board Secretary averred:

Petitioner notified the Respondent that she and her two children would be moving back to Montgomery Township as of April 1, 1998. During the 1997-98 school year, one of Petitioner’s children was enrolled in second grade and her other child was enrolled in sixth grade. (Certification of John Nemeth at p. 3)

⁴ Although petitioner testified that she resided at the Stage Depot Motel in Pennington from February 1, 1998 until March 2, 1998, and indicated that “she did not remember exactly where she stayed during the month of March***” (Initial Decision at p. 6), in her exceptions, petitioner affirms that she “was able to remain in the hotel searching for rentals until the second week of March ***” and she “stayed with friends who did not want to be identified during the remaining week in March.***” (Petitioner’s Exceptions at p. 9) In any event, as the ALJ indicated, determining where petitioner lived in March of 1998 is not necessary to the resolution of this matter, since the Board does not seek tuition for this period of time.

This issue was not, according to the Prehearing Order, before the ALJ; therefore, the record is insufficient to make findings or conclusions in this regard. However, notwithstanding petitioner's contention, the Commissioner notes that petitioner's children were not denied admittance to the very district she desired them to attend during their period of homelessness, and the Board does not seek reimbursement of tuition for this period. Moreover, although petitioner protests the Board's failure, in its letter of April 2, 1998, to advise her of "mediation procedures or the possibility of working with a homeless liaison," (Petitioner's Exceptions at p. 7), she does not dispute that, as of April 1, 1998, she *was no longer homeless*.⁵

Accordingly, the initial decision is adopted for the reasons expressed therein. The Petition of Appeal is hereby dismissed and petitioner is directed to reimburse the Board for \$5,160.⁶

IT IS SO ORDERED.⁷

COMMISSIONER OF EDUCATION

SEPTEMBER 23, 1999

⁵ Petitioner avers, "There was never any dispute that I was not homeless while living in Montgomery under a roof of my own." (Petitioner's Exceptions at p. 12)

⁶ It is noted that petitioner's children have been enrolled in the Montgomery Township schools since September of 1998. The assessment of tuition covers the children's admission to respondent's District April, May and June of 1998.

⁷ 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.