

M.S., on behalf of minor child, M.S., :
 PETITIONER, :
 V. : COMMISSIONER OF EDUCATION
 BOARD OF EDUCATION OF THE TOWNSHIP : DECISION
 OF WEST ORANGE, ESSEX COUNTY, :
 RESPONDENT. :
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SYNOPSIS

Petitioner, sister of M.S., challenged the Board’s residency determination that M.S. was not eligible for a free public education in West Orange. The Board sought tuition reimbursement for the period of ineligible attendance.

The ALJ concluded that petitioner failed to prove by a preponderance of credible evidence that M.S. was eligible for a free public education in the District. Petitioner did not prove that M.S.’s parents in Haiti were not capable of supporting or providing care for her due to a family or economic hardship. (*N.J.S.A. 18A:38-1(b)1*) Petition was dismissed. The ALJ concluded that petitioner should be assessed the tuition due the Board.

The Commissioner adopted the findings and determination in the Initial Decision as his own and ordered petitioner assessed tuition in the amount of \$5,473.20.

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The record in this matter and the Initial Decision of the Office of Administrative Law have been reviewed. Petitioner’s exceptions were submitted in accordance with *N.J.A.C.* 1:1-18.4, and were duly considered by the Commissioner in reaching his determination herein.¹

In her exceptions, petitioner disputes the finding by the Administrative Law Judge (ALJ) that M.S.’s parents are capable of supporting and providing care for her. Petitioner asserts that it was unfair of the ALJ to base his decision regarding economic hardship on what M.S.’s father owns, because the fact that M.S.’s father owns a house does not mean that he does not have an economic problem. (Petitioner’s Exceptions at 2-3) Petitioner avers that the three-bedroom house her parents own is about 14-15 years old, and although it does have indoor plumbing, there is no water coming through the pipes. Petitioner also states that her father’s car has been parked for years due to engine failure and that his television set is a 13” black and white one. (*Id.* at 2) Further, petitioner contends that if she had known that she would be responsible for tuition while awaiting the court’s decision, she would not have sent M.S. to school because “I knew I would not be able to pay this kind of money.” (*Id.* at 3)

¹ Respondent did not file exceptions to the Initial Decision nor reply to petitioner’s exceptions.

Upon review, the Commissioner determines to affirm the decision of the ALJ. Notwithstanding petitioner's assertions that M.S.'s parents have economic problems, as noted by the ALJ, M.S.'s parents are both in good health, are living on a retirement income and own their own home. Additionally, the father of M.S. states in his affidavit that his reason for sending his daughter to be educated in the United States is because he can no longer afford to send his daughter to a private school in Haiti. The Commissioner agrees that, while it is understandable that a private school education where M.S. would receive instruction in both French and English might be preferable to M.S.'s parents, an inability to afford a private school does not constitute the type of hardship contemplated by *N.J.S.A. 18A:38-1(b)1*.

With respect to petitioner's contention that she was not aware that she could be assessed tuition, the Commissioner notes that the affidavit for nonresident pupils she signed, and the acknowledgement letters that were sent to her from the Bureau of Controversies and Disputes refer her to the applicable statute, *N.J.S.A. 18A:38-1*. The Commissioner also observes that respondent's Answer, which was served on petitioner on October 5, 1999, requests that the Commissioner assess petitioner and/or M.S.'s parents a *tuition charge* for each day of M.S.'s ineligible attendance. While it is unfortunate that petitioner apparently did not fully realize her potential financial obligation under the statute, petitioner's submission of the required parental affidavit for nonresident students and her own account of conversations with District staff demonstrate that she understood that M.S.'s parents in Haiti must show that they were unable to support or provide for M.S.'s care if she were to attend school *free of charge* as an affidavit student in respondent's District.² The Commissioner, therefore, is compelled to accept the ALJ's recommendation assessing tuition for the period of M.S.'s ineligible attendance.

²Petitioner obtained an Order granting custody of her sister to her on March 24, 2000.

Accordingly, the Commissioner adopts the Initial Decision in this matter concluding that petitioner has failed to prove by a preponderance of credible evidence that M.S. met the requirements for a free education in respondent's schools from September 22, 1999 to March 24, 2000 for the reasons expressed therein. Petitioner is, therefore, assessed tuition in the amount of \$5,473.20.

IT IS SO ORDERED.³

COMMISSIONER OF EDUCATION

Date of Decision: December 15, 2000

Date of Mailing: December 15, 2000

³ This decision, as the Commissioner's final determination, 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. 6A:4-1.1 et seq.*, within 30 days of its filing. Commissioner decisions are deemed filed three days after the date of mailing to the parties.