

J.M., on behalf of minor, J.M., :  
PETITIONER, :  
V. : COMMISSIONER OF EDUCATION  
BOARD OF EDUCATION OF THE TOMS : DECISION  
RIVER REGIONAL HIGH SCHOOL :  
DISTRICT, OCEAN COUNTY, :  
RESPONDENT. :  
\_\_\_\_\_ :

SYNOPSIS

Petitioner challenged the determination of the District’s assistant superintendent denying admission to the District’s schools to her son. Petitioner sought admission of her son as an affidavit student or pursuant to the District’s policy regarding attendance of nonresident students.

The ALJ determined that petitioner’s son was not entitled to attend respondent’s schools because he did not fit within the Board’s policy for admitting nonresident students. Therefore, the Board had not acted in an arbitrary or capricious manner.

The Commissioner noted that this matter presents two issues: 1) J.M.’s entitlement to attend school in the District pursuant to *N.J.S.A.* 18A:38-1b(1), the “affidavit student” statute; and 2) the application of the Board’s policy regarding the attendance of nonresident students in the District. The Commissioner then found that petitioner had not demonstrated J.M.’s entitlement to attend school pursuant to *N.J.S.A.* 18A:38-1b. Additionally, the Commissioner determined that petitioner offered nothing in this record that would warrant an order compelling the District to accept J.M. as a nonresident student without payment of tuition.

December 13, 2001

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The record of this matter and the Initial Decision of the Office of Administrative Law have been reviewed. The parties did not file exceptions to the Initial Decision.

The instant matter presents two issues: first, J.M.’s entitlement to attend school in the District pursuant to *N.J.S.A.* 18A:38-1b(1), the “affidavit student” statute; and second, the application of the Board’s policy regarding the attendance of nonresident students in the District.

With respect to the first issue, the Commissioner notes that the District appears to have applied an incorrect legal standard to J.M.’s situation or, at least, to have miscommunicated the proper legal standard to petitioner and her husband.<sup>1</sup> Specifically, the pertinent statute *does not require*, and, accordingly, a local district *may not demand*, that legal guardianship must be

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<sup>1</sup>See Initial Decision at 3. The letter written by Assistant Superintendent John L. Gluck, dated December 1, 2000 (Exhibit R-6), states, in pertinent part:

Please be advised that the Toms River Regional School District does not accept the claim of residence enrollment of your son.  
In your letter dated November 21, 2000, you state that “[J.] resides with Mr. Cassidy during the week”. If that is in fact true, Mr. Cassidy must declare *guardianship* and you must claim that you are not capable of supporting or caring for your son due to family and/or economic hardship.\*\*\* (emphasis supplied)

obtained before enrollment will be considered for a student living with a person other than a parent or legal guardian.<sup>2</sup> *N.J.S.A.* 18A:38-1b(1).<sup>3</sup>

Furthermore, where a local board seeks to remove a *currently enrolled student* from its schools, such as J.M., the parent, legal guardian, adult student or resident keeping an “affidavit student” *is entitled by law* to a hearing before the board of education. *N.J.S.A.* 18A:38-1b(2). Under such circumstances, the board of education, rather than a particular administrator, is authorized to make the final determination as to the student’s eligibility or ineligibility to attend school in the district and, certainly, no student may be removed except by vote of the district board of education. (*Ibid.*) There is no indication on this record that petitioner received a hearing and Board vote prior to J.M.’s removal from school.

Notwithstanding these deficiencies in the District’s handling of J.M.’s enrollment dispute, petitioner had an opportunity through the instant contested case proceedings to provide information that would have demonstrated her son’s entitlement pursuant to *N.J.S.A.* 18A:38-1b(1) so as to warrant an order permitting J.M.’s continued attendance in the District free of charge. On the present record, however, the Commissioner cannot find that she did so.

With respect to the second issue, the application of the Board’s policy regarding the attendance of nonresident students in the District, the Commissioner notes that the record does not include a copy of the Board’s attendance policy for nonresidents. Additionally, it is

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<sup>2</sup> Moreover, although a local board should offer, where appropriate, accurate information about the enabling statute, *N.J.S.A.* 18A:38-1 *et seq.*, its related policies, and the consequences of noncompliance, it is *not* the role of a local board to provide legal advice to parents, guardians and residents regarding how they may constitute their families and relationships in order to effectuate compliance with the residency law, particularly where the advice may carry legal consequences beyond those which the parties may presently anticipate. *E.G.P., on behalf of minor child, M.B. v. Board of Education of the Borough of Rutherford, Bergen County*, decided by the Commissioner December 21, 1998, *aff’d* State Board of Education June 2, 1999.

<sup>3</sup> See, also, *N.J.A.C.* 6A:28-2.6(b)1, adopted by the State Board of Education on November 7, 2001. This rule will become effective upon publication in the *New Jersey Register*.

unclear whether *the Board*, in fact, issued a decision about the application of its policy to the particular facts in this matter. However, the pertinent statute clearly provides that acceptance of nonresident students is discretionary on the part of a local board, as long as its policies are fairly and evenly applied. *N.J.S.A.* 18A:38-3. On this record, petitioner offered nothing that would warrant the Commissioner to *compel* the Board to accept her son as a nonresident student without payment of tuition.

Accordingly, for the reasons expressed herein, the Commissioner concurs with the ALJ that the relief sought by petitioner in this matter must be denied.<sup>4</sup>

IT IS SO ORDERED.<sup>5</sup>

COMMISSIONER OF EDUCATION

Date of Decision: December 13, 2001

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<sup>4</sup> Such denial is without prejudice to any future Board consideration of J.M.'s entitlement under the proper legal standard for affidavit students *or* pursuant to its policy on nonresident students.

<sup>5</sup> 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.