

#151-01

L.D.M., on behalf of minor child, T.D., :  
PETITIONER, :  
V. : COMMISSIONER OF EDUCATION  
BOARD OF EDUCATION OF THE : DECISION  
TOWNSHIP OF WEST ORANGE, ESSEX :  
COUNTY, :  
RESPONDENT. :  
\_\_\_\_\_ :

SYNOPSIS

Petitioner sought to compel the respondent Board to provide a free public education to her brother T.D., who, she argued, resides with her because of a family hardship. The Board contested the petition because petitioner had not demonstrated that her brother was legally entitled to a free public education in West Orange.

The ALJ concluded that petitioner failed to demonstrate that her parents could not support her brother because of a family or economic hardship, and that petitioner's brother was not entitled to a free public education in West Orange prior to the date petitioner obtained an order of custody of T.D. The ALJ ordered payment of tuition by petitioner in the amount of \$10,159.47 for the period of T.D.'s attendance at school in West Orange prior to the date of the custody order.

The Commissioner reversed the decision of the ALJ, holding that, pursuant to the terms of the Custody Order obtained by petitioner, she obtained custody of her brother retroactive to January 27, 2000. As such, the Commissioner determined that T.D. was entitled to a free public education in the West Orange School District as of that date and that petitioner owed no tuition to respondent.

May 11, 2001

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

Upon independent review of the record of this matter, the Commissioner determines to reverse the Initial Decision of the Administrative Law Judge (ALJ) for the reasons set forth herein. The record clearly demonstrates that on February 7, 2001, L.D.M was granted legal custody of T.D., *retroactive to January 27, 2000*.<sup>1</sup> Consequently, the ALJ's analysis of this matter under the affidavit student provision, N.J.S.A. 18A:38-1b(1), is inapplicable. Based on these facts, the Commissioner finds and determines that T.D was entitled, during the entire period in dispute herein, to attend school in the West Orange School District free of charge pursuant to the requirements of *N.J.S.A.* 18A:38-1(a). As was determined by the Commissioner and affirmed by the State Board of Education in *L.A. v. Board of Education of the Town of West*

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<sup>1</sup> The Commissioner observes that the Custody Order of February 7, 2001 was obtained as a result of a tentative agreement reached between the parties wherein the District agreed that if petitioner obtained legal custody of T.D., respondent would accept a payment of \$2,000 for back tuition charges. (Respondent's Affidavit at 2) While it is clear that respondent did not expect a *retroactive* custody order as a result of the settlement discussion, once such an order is entered, there is no longer any basis on which the Board may argue, or the Commissioner may find, that tuition monies are due.

*Orange*, 97 N.J.A.R.2d (EDU) 266 (1996), *aff'd* by the State Board of Education, 97 N.J.A.R.2d (EDU) 554 (1997); and *V.H. v. Board of Education of the Township of Quinton*, 97 N.J.A.R.2d (EDU) 124 (1996), *aff'd* by the State Board of Education, 97 N.J.A.R.2d 554 (1997), as of the date that a resident of a district takes *legal control* of a child, entitlement to attend school free of charge is no longer to be examined pursuant to *N.J.S.A.* 18A:38-1(b), the “affidavit student” provision.

Consequently, in the instant matter, once L.D.M. assumed legal custody of T.D., the only appropriate inquiry for respondent was whether L.D.M. and T.D. were domiciled in the District pursuant to *N.J.S.A.* 18A:38-1(a). Inasmuch as respondent does not dispute that L.D.M. is domiciled in West Orange, and the domicile of the child follows that of the parent or guardian having *legal custody* over him or her, *Mansfield Twp. Board of Education v. State Board of Education*, 101 N.J.L. 474, 479-480 (Sup. Ct. 1925), it is hereby found and determined that T.D. was entitled to a free public education pursuant to *N.J.S.A.* 18A:38-1(a), as of the effective date that L.D.M. acquired legal custody of T.D. *See also Y.L., on behalf of M.A. v. Board of Education of South Orange-Maplewood*, Number 658-97, decided by the Commissioner of Education December 24, 1997. In so finding, the Commissioner notes that there is no claim of fraud on the part of petitioner. *See Y.L.; V.H., supra;* and *L.A., supra*. Further, as was held in *L.A.*, and affirmed by the State Board, the motives of the party obtaining a custody order are not determinative. A custody order must be accepted on its face. *See L.A.* at 269. *See also Y.L., supra*.

Accordingly, having determined that T.D. was eligible, pursuant to *N.J.S.A.* 18A:38-1(a), to attend school in the West Orange School District during the 1999-2000 and 2000-2001 school years, the recommendation of the ALJ ordering tuition payment by petitioner is herein reversed. Further, it is determined that T.D.’s eligibility for a free education

in the West Orange School District will continue until such time as L.D.M. no longer retains custody of T.D. or there is a change of domicile affecting entitlement to a free education in the West Orange School District.

IT IS SO ORDERED.<sup>2</sup>

COMMISSIONER OF EDUCATION

Date of Decision: May 11, 2001

Date of Mailing: May 14, 2001

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<sup>2</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.