

I.B., on behalf of minor child, M.A., III, :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE TOWNSHIP : DECISION
OF BELLEVILLE, ESSEX COUNTY, :
RESPONDENT. :
_____ :

SYNOPSIS

Petitioner filed a *Pro Se* Residency Appeal challenging the Board’s residency determination that her nephew, M.A. is not eligible for a free education in the Belleville School District. A family court order granted petitioner joint custody, along with M.A.’s mother, in July 2004; the order gave petitioner residential custody. Subsequent to the custody order, M.A. was enrolled at Belleville High School in September 2004. Respondent Board contended that it had determined that M.A. was not entitled to attend Belleville schools pursuant to *N.J.S.A.* 18A:38-1, and sought tuition for the period of M.A.’s ineligible attendance.

The ALJ found, *inter alia*, that: M.A. was lawfully residing in Belleville by virtue of a joint custody order of the Superior Court, but was residing with I.B. solely because of his difficulties in the Newark School District; and I.B.’s actions in enrolling M.A. in Belleville Schools “were in violation of *N.J.S.A.* 18A:38-1.” The ALJ concluded that M.A. was not domiciled in Belleville; was not an affidavit student; was not entitled to a free education in Belleville Schools; and ordered the petitioner to pay respondent \$8,464.27 in tuition costs for the period of M.A.’s ineligible attendance.

The Commissioner rejects the recommended decision of the ALJ, finding that the petitioner’s claim should have been analyzed under *N.J.S.A.* 18A:38-2, which provides that any nonresident person over five and under twenty who is placed in the home of a resident in the school district by court order is entitled to a free education in the district. Inasmuch as it is not in the purview of the Commissioner to disturb an Order of the Superior Court, any challenge to the Order must be directed to that Court. The Commissioner orders respondent to continue to admit M.A. to its schools as long as there is no change in the Superior Court Order that would alter his entitlement.

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| <p>This synopsis is not part of the Commissioner’s decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.</p> |
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OAL DKT. NO. EDU 1447-05
AGENCY DKT. NO. 437-12/04

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. Petitioner's exceptions¹ and the Board's reply thereto, filed in accordance with *N.J.A.C.* 1:1-18.4, were fully considered by the Commissioner in reaching her determination herein.

Upon careful and independent review of the record in this matter, for the reasons detailed below, the Commissioner rejects the recommended decision of the Administrative Law Judge (ALJ).

Initially, the Commissioner finds that the ALJ applied the incorrect statute to arrive at her conclusion that petitioner did not meet her burden of proving that M.A. was entitled to a free education in the district. The Petition of Appeal in this matter, filed on December 17, 2004, clearly evidences that petitioner's *sole* claim of M.A.'s entitlement to attend the District's schools is predicated on a July 15, 2004 Order of the Honorable Hector E. Desoto, J.S.C.,

¹ On September 20, 2005, Charles P. Cohen, Esq. filed exceptions to the Initial Decision on behalf of petitioner, I.B. In that at all times during the course of these proceedings petitioner was *pro se*, Mr. Cohen was advised that he was required to file a letter entering his representation of I.B. before his exception submission could be considered. Such representation letter was received on September 22, 2005.

Superior Court of New Jersey, Chancery Division, Family Part, Essex Vicinage, granting her residential custody of M.A. Indeed, there is nothing in the petition or accompanying documents to suggest that petitioner's allegation before the Commissioner was that either the "domicile" or "affidavit student" portions of *N.J.S.A. 18A:38-1* were satisfied. As such, the Commissioner finds and determines that petitioner's claim should have been analyzed under *N.J.S.A. 18A:38-2*, and its implementing regulation, *N.J.A.C. 6A:22-3.2(e)*, rather than *N.J.S.A. 18A:38-1* as was done by the ALJ in her decision. In this regard, it is noted that *N.J.S.A. 18A:38-2* specifically provides that:

Public schools shall be free to any person over five and under 20 years of age nonresident in a school district who is placed in the home of another person, who is resident in the district, by order of a court of competent jurisdiction of this state***.

It is unambiguously apparent, pursuant to this provision, that M.A., who was placed in the home of I.B., an undisputed domiciliary of Belleville, by Order of Superior Court is entitled to a free public education in that District. Inasmuch as it is not within the jurisdictional purview of the Commissioner of Education "to vacate, modify or otherwise disturb an Order of the Court", any challenge to this Order by the Board or attestation of petitioner's noncompliance therewith must be directed to Superior Court. (*See D.W., on behalf of minor child, V.D.V. v. Board of Education of the Township of Bass River, Burlington County and Larry A. Mathis, Superintendent and D.D.V. v. Board of Education of the Township of Bass River, Burlington County and Larry A. Mathis, Superintendent*, decided by the Commissioner January 29, 2003, #35-03L)

Accordingly, the Commissioner directs that M.A. is entitled to a free public education in the Belleville school district pursuant to *N.J.S.A. 18A:38-2*. The Board is, therefore,

ordered to continue to admit him to its schools as long as there is no change in the Superior Court Order that would alter his entitlement.

IT IS SO ORDERED.²

ACTING COMMISSIONER OF EDUCATION

Date of Decision: October 24, 2005

Date of Mailing: October 24, 2005

² This decision 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.*