#177-06S (OAL Decision: http://lawlibrary.rutgers.edu/oal/html/initial/edu08011-05_1.html)

RECORD SEALED

BOARD OF EDUCATION OF THE TOWNSHIP OF DELAWARE, HUNTERDON COUNTY,

PETITIONER,

V.

NEW JERSEY DEPARTMENT OF EDUCATION,

RESPONDENT.

COMMISSIONER OF EDUCATION

DECISION

SYNOPSIS

Petitioning Board of Education appealed the Department's determination that it was legally responsible to pay the educational costs for pupil S.W., a minor now being educated at KidsPeace, a private school where he was placed by the Division of Youth and Family Services (DYFS) during the 2004-2005 school year. S.W., Sr., the custodial parent, had been evicted from a residence in the Delaware Township school district a month prior to the child's placement at KidsPeace, and subsequently moved back to his parent's home in Flemington. Petitioner contends therefore that S.W., Sr. was not homeless at the time that S.W. was placed at KidsPeace, and that the provisions of *N.J.S.A.* 18A:7B-12(c) do not apply.

The ALJ concurred with the petitioner, finding, *inter alia*, that: "homeless" is not a proper description of S.W., Sr.'s situation; S.W., Sr.'s residency at his parents home cannot necessarily be construed as temporary, and his intent to leave cannot be the determining factor in identifying him as homeless; S.W., Sr. was never in any real sense "homeless"; and statutory liability for funding the educational costs rests with the district in which the parent resides, therefore petitioner is not responsible for these expenses. In so determining, the ALJ relied upon two prior cases in which the Commissioner decided that students and their parents were not homeless. The ALJ ordered the record of this matter sealed.

The Commissioner found, *inter alia*, that: the court order placing S.W. in KidsPeace was issued while S.W., Sr., resided in Delaware Township; at the time of the Department's determination, an assessment of the permanence of S.W., Sr.'s residence with his parents would have been premature; the cases upon which the ALJ relied are not apposite to the present case; petitioner did not meet its burden to show that the Department's assignment of educational costs was arbitrary, capricious or unreasonable; there is no evidence that S.W., Sr. had a legal right to remain in his parents' home, and it was reasonable for the Department not to assume that this would be his permanent home. Accordingly, the Commissioner rejects the ALJ's determination regarding S.W.'s educational costs for the 2004-2005 school year; orders petitioner to pay same; remands the case to the OAL for a determination concerning whether petitioner remained the responsible district for S.W.'s educational costs after June 2005; and adopts the ALJ's order to seal the record, but not the decision.

May 10, 2006

OAL DKT. NO. EDU 08011-05S
AGENCY DKT. NO. 222-8/05

BOARD OF EDUCATION OF THE TOWNSHIP OF DELAWARE, HUNTERDON COUNTY,	:	
PETITIONER,	:	COMMISSIONER OF EDUCATION
V.	:	DECISION
NEW JERSEY DEPARTMENT OF EDUCATION,	:	RECORD SEALED
RESPONDENT.	:	

The record, Initial Decision and parties' exceptions and reply exceptions in this matter have been reviewed.[1] The Commissioner notes that the issue to be determined, whether the Delaware Township school district is liable for the educational costs of a classified student's residential school placement, is fact sensitive. Consequently, the absence of a transcript of the hearing in the Office of Administrative Law (OAL), and the limited number of specific findings of fact in the Initial Decision has restricted the Commissioner's ability to evaluate certain factual contentions as to which the parties disagree. Nonetheless, the Commissioner believes that there is sufficient evidence in the record to render a modified decision.

The controversy centers on the minor child, S.W. The parties agree that in April 2003, custody of S.W. was awarded to S.W., Sr., who resided at the time in his parents' home in Flemington. Six months later, in November 2003, S.W., Sr. moved with his children to Delaware Township. S.W. attended school in Delaware Township from November 2003 until January 21, 2005, at which time the New Jersey Division of Youth and Family Services (DYFS)

[1] Petitioner's "sur-reply letter brief" dated March 6, 2006 was not considered, as there is no provision for such consideration in *N.J.A.C.* 1:1-18.4.

removed him from his father's residence in Delaware Township, pursuant to an agreement signed by his father, and placed him temporarily in a Catholic Charities Diagnostic Center in Bridgewater, New Jersey. (Respondent's Exhibit at 4-5)

It appears that by court order dated February 24, 2005, the Hunterdon Division of Youth and Family Services was authorized to place S.W. in a private residential facility, i.e., KidsPeace, in Orefield, Pennsylvania. (Respondent's Exhibit at 3-4) Subsequently, S.W., Sr. was evicted from his residence in Delaware Township. According to case worker contact sheets that were included in a file produced by DYFS to the OAL, S.W., Sr. went to stay with his parents in Flemington at some point between March 15 and April 8, 2005.[2] On April 7, 2005, S.W. was delivered to KidsPeace. (*Ibid.)*

A DYFS case worker contact sheet dated April 22, 2005 memorialized an April 12, 2005 conversation between a case worker and S.W., Sr. wherein S.W., Sr. indicated that he did not plan to be at his parents' residence for a long time. He apparently so testified at the OAL hearing, and the ALJ found that testimony to be credible. (Initial Decision at 3) Another conversation between S.W., Sr. and a DYFS case worker on May 20, 2005 – memorialized on a May 23, 2005 DYFS contact sheet – indicated that S.W., Sr. was still trying to find a way to leave his parents' residence.

In the meanwhile, on April 21, 2005, Karen Gagne – the State Responsible Student Coordinator for the Office of Education in the Department of Human Services – sent Raymond Hofelder, of the Department of Education's Office of School Funding, a form containing information offered to enable him to determine the district of residence for S.W., for the purpose of assigning responsibility for the costs of S.W.'s educational expenses in the

[2] The Commissioner cannot ascertain whether the materials in this DYFS file were marked as exhibits at the OAL hearing, but a letter dated December 5, 2005, from the ALJ to the parties gave them notice, pursuant to *N.J.A.C.* 1:1-15.2, that the ALJ deemed them relevant to the case.

KidsPeace facility. (Respondent's Exhibit at 1-7) The form described S.W., Sr. as "transient," (Respondent's exhibit at 3) and stated that S.W., Sr. "became transient" from his Delaware Township address on County Road "approx. the end of March 2005." (Respondent's Exhibit at 5) After reviewing the information from the Department of Human Services, Hofelder assigned financial responsibility for S.W.'s placement to Delaware Township because it was the "[d]istrict where father last resided before becoming homeless" and he was "[h]omeless at time of placement." (Respondent's Exhibit at 7) Accordingly, by letter dated May 5, 2005, Yut'se Thomas, Director of the Office of School Funding, notified petitioner that it was responsible for S.W.'s educational costs for the 2004-2005 school year. (Respondent's Exhibit at 8)

Petitioner challenged the determination by letter dated May 23, 2005 from petitioner's attorney. Before responding, Hofelder requested verification from DYFS of the information it had provided concerning S.W., Sr. Gagne forwarded him a copy of an internal communication, dated June 20, 2005, from Nicole Palumbo, the DYFS employee who had placed S.W. Palumbo conveyed both her personal knowledge about the facts relating to S.W.'s placement, and the information she received from S.W.'s current caseworker.

Palumbo explained that at the time she was assigned to S.W.'s case, she learned of S.W., Sr.'s eviction and change of location from his incarcerated girlfriend. When Palumbo contacted S.W., Sr., he indicated that he was temporarily staying with his parents to allow him to save money to acquire a "nicer place" for when his children returned to him. (Respondent's Exhibit at 10) On June 25, 2005, Palumbo spoke with a subsequent case worker who had been assigned to S.W., and had just visited S.W., Sr. This case worker told Palumbo that S.W., Sr. still maintained that he was with his parents temporarily to save money. *(Ibid.)*

On August 11, 2005 – after receipt of the update from Palumbo, via Gagne – Yut'se Thomas (now an Assistant to the Commissioner of Education) sent another letter to petitioner upholding respondent's original decision that S.W., Sr. was homeless; that the Delaware Township School District was the last district in which S.W., Sr. resided before becoming homeless; and that, consequently, petitioner is responsible for the costs of S.W.'s education for the 2004-2005 school year. (Respondent's Exhibit at 11-12) The facts articulated as the bases for this determination were: that S.W., Sr. was evicted from his residence in Delaware Township due to the inability to pay rent; that he moved in with his parents out of necessity; that he expressly told the DYFS caseworker that his stay with his parents was temporary, i.e., until such time as he could afford his own place; and that Delaware Township was consequently S.W., Sr.'s last district of residence before he became homeless. (Respondent's Exhibit at 12)

Petitioner filed its appeal with the Commissioner of Education (Commissioner) on August 31, 2005, the case was transmitted to the OAL on September 27, 2005, and a hearing was conducted on December 19, 2005.

In his Initial Decision, the ALJ made reference to *N.J.S.A.* 18A:7B-12, which requires a "district of residence" determination to serve as the basis for assignment of a student's educational costs. As the ALJ pointed out, *N.J.S.A.* 18A:7B-12b directs that the district of residence for a child who has been placed by a State agency in a private residential facility "shall be the present district of residence of the parent or guardian with whom the child lived prior to his most recent . . . placement by [the] State agency." (Initial Decision at 1-2) The Commissioner notes that, similarly, *N.J.A.C.* 6A:23-5.2(a)(2) states:

> The "present district of residence" of a child placed by a State agency in a . . . private school or out-of-state facility also referred

> to in the first paragraph of *N.J.S.A.* 18A:7B-12b means the New Jersey district of residence of the child's parent(s) or guardian(s) as of the date of the child's initial placement by the State agency.

In his Initial Decision the ALJ also made references to *N.J.S.A.* 18A:7B-12c, which informs that: "[t]he district of residence for children whose parent or guardian temporarily moves from one school district to another as the result of being homeless shall be the district in which the parent or guardian last resided prior to becoming homeless." Further, *N.J.S.A.* 18A:7B-12c characterizes a 'homeless' person as "an individual who temporarily lacks a fixed, regular and adequate residence." (*Id.* at 2) The Commissioner notes, in addition, that *N.J.A.C.* 6A:17-2.3 characterizes a child as homeless when he or she resides in – among other alternatives – "the residence of relatives or friends with whom the homeless child is temporarily residing out of necessity because the family lacks a regular or permanent residence of its own." *N.J.A.C.* 6A:17-2.3(a)(3).

The ALJ correctly explained that it is the Department of Education (Department) that determines the district of residence for a student placed by a State agency in a residential facility. *N.J.A.C.* 6A:23-5.2(b). That determination is made using information provided by the placing agency, in this case DYFS. (*Id.* at 2-3)

The information that DYFS provided to the Department is in the record for this case. It establishes that S.W. had lived with his father and attended school in petitioner's district for over a year prior to his removal from the home by DYFS on January 21, 2005. When DYFS obtained a court order – on February 24, 2005 – to send S.W. to KidsPeace, his father still lived in petitioner's district. On April 7, 2005 – when S.W. was physically transferred to KidsPeace – S.W., Sr. may have left petitioner's district, but the DYFS record is not precise. Neither party has established the date between March 15 and April 8 on which S.W., Sr. moved into his

parents' house. The Initial Decision contains no specific finding of fact on this point, and the Commissioner was not provided with a transcript from which she could seek relevant testimony.

In light of the foregoing, the specifics of which were not directly addressed by either the ALJ or the Department in the context of the statutory language in *N.J.S.A.* 18A:7B-12b, the Commissioner must consider the possibility that the petitioner is the correct assignee for S.W.'s educational costs under the terms of that statutory provision. Since S.W., Sr. was living in Delaware Township on the date DYFS obtained a court order approving S.W.'s placement at KidsPeace, and may or may not have finished moving to his parents' house on April 7, 2005, when S.W. arrived at KidsPeace, the Commissioner cannot categorically rule out – based on the record before her – that at the time of S.W.'s placement at KidsPeace, the "present district of residence of the parent or guardian with whom the child lived prior to his most recent . . . placement by a State agency" was petitioner's district. Further, the Commissioner notes that when a determination about the parent or guardian's district of residence cannot be made, the district in which the child resided prior to his or her state placement is designated to pay for the child's educational expenses. *N.J.S.A.* 18A:7B-12b. That district was Delaware Township.

The analysis used by the Department to assign responsibility for S.W.'s educational costs, however, appeared to turn on the issue of homelessness. It was *N.J.S.A.* 18A:7B-12c (see also *N.J.A.C.* 6A:23-5.2(g)) upon which the Department relied in making its determinations about S.W.'s educational costs. Thus, the ALJ analyzed same in evaluating petitioner's claims. The Initial Decision recites (but makes no specific finding of fact) that S.W., Sr. had been living with his parents in the Flemington-Raritan School District at the time the Department made its cost assignment determination. (Initial Decision at 2) Despite

the fact that S.W., Sr. consistently maintained that his stay with his parents was temporary, the ALJ rejected the Department's determination that S.W., Sr. was homeless at the time of his son's placement to KidsPeace. More specifically, while recognizing that the Department's determination was entitled to deference (Initial Decision at 3), the ALJ ultimately concluded that S.W., Sr. was never homeless, and that responsibility for S.W.'s educational costs should have been conferred on the Flemington-Raritan School District "from the time of [his] eviction and relocation to his parents' home." (Initial Decision at 7)

At the same time, the ALJ noted that "it may be felt by the Commissioner or the State Board that it is more appropriate that some period of time pass between the date when Mr. W. was evicted and moved in with his parents until that point in time when the stay with his parents became 'sufficiently fixed, regular and adequate so as to preclude a finding of homelessness.'" If so, the ALJ's recommendation was that petitioner pay S.W.'s educational costs only through the end of the 2004-2005 school year and the summer of 2005, if applicable. *(Ibid.)*

In disagreeing with the Department that S.W., Sr. was homeless at the time it assigned responsibility for S.W.'s educational costs, the ALJ discussed the provision in *N.J.S.A.* 18A:7B-12c which states: "[f]or the purpose of this amendatory and supplementary act, 'homeless' shall mean an individual who temporarily lacks a fixed, regular and adequate residence." The ALJ observed that there was "no contention that [S.W., Sr.'s] parents' home was not a permanent structure or that it was not physically adequate to serve as a dwelling in which the parents and their son could reside." (Initial Decision at 3) He perceived the operative question to be how much weight to give S.W., Sr.'s perception that his parents' house was not his fixed and regular residence, but rather a temporary abode.

S.W., Sr. apparently testified at the OAL hearing – and the ALJ found credible his testimony – that he had believed his stay at his parent's house was temporary. *(Ibid.)* However, the ALJ did not believe that S.W.'s intent to stay only temporarily necessarily meant that his sojourn with his parents would be brief. The ALJ observed that it is not unusual for adult children to return to live with their parents after college, failed marriages, financial setbacks, or during periods of indecision about the paths to follow in their lives. In his view, while the children may regard their return to their parents' homes as temporary, "at some point the intent to leave might begin to seem more the dream than the attainable goal. For these reasons, mere intent cannot be the determining factor in identifying someone as homeless." (Initial Decision at 4)

In connection with these issues, the ALJ discussed two prior cases in which the Commissioner of Education decided that students and their parents were not homeless: *L.C. on behalf of B.C. v. Board of Education of the Township of Branchburg,* 96 *N.J.A.R.* 2d (EDU) 1003, and *Board of Education of the Township of Maurice River, Cumberland County, v. Board of Education of the City of Wildwood, Cape May County,* 93 *N.J.A.R.* 2d (EDU) 895.

In *L.C.*, a parent and child who had lived for years in Branchburg, were evicted and went to stay with a relative in Somerville. *L.C., supra,* 96 *N.J.A.R.* 2d at 1003. The parent viewed the move as temporary, but paid half of the rent and received mail at the apartment, even though her name was not on the lease. (*Id.* at 1003-1004) Almost five months after the parent and child moved to Somerville, the Branchburg Board of Education – having belatedly learned of same – voted that the parent and child were no longer domiciled in Branchburg, and that the child was consequently not entitled to a free education therein. (*Id.* at 1004)

The parent countered that she and her child were homeless, pursuant to *N.J.A.C* 6A:17-2.3(a)(3), which states that a child may be considered homeless if he or she temporarily resides with relatives or friends out of necessity because the family lacks a regular or permanent address of its own. She argued that, pursuant to *N.J.S.A.* 18A:31-1(f) and *N.J.S.A.* 18A:7B-12(c), the Branchburg school district was responsible for her child's education because it was their district of residence when they became "homeless." (*Id.* at 1005)

The ALJ and Commissioner in *L.C.* determined that petitioner and her child were not domiciled in Branchburg, and were not homeless. While petitioner's transfer to her brother's apartment may have been initially characterizable as temporary, the particular facts of petitioner's living arrangements, both at the time of respondent's determination and at the time of the OAL hearing, supported the conclusion that her residence in her brother's apartment had become sufficiently fixed, regular and adequate to preclude a finding of homelessness. More specifically, the Commissioner found that "petitioner's brother's home [had], in the months since September 1995, effectively become petitioner's regular and fixed residence." (*Id.* at 1005-1006)

In *Maurice River*, a child, A.P., who had lived in the Wildwood school district moved with his mother to his grandmother's home in Maurice River in May 1991. The reason for the move was a "marital dispute." *Maurice River*, 93 *N.J.A.R.* 2d (EDU) at 896. From the beginning of the 1991-1992 school year until October 18, 1991, A.P. still attended school (a pre-first program) in Wildwood, because his mother was hoping for a reconciliation and a return to A.P.'s father's home in Wildwood. *(Ibid.)*

Because the reconciliation did not occur, A.P.'s mother enrolled him in the Maurice River school district on October 22, 1991. On the registration form, she placed a check

mark next to the following reason for A.P.'s enrollment in the Maurice River district: "We are out of necessity living with relatives or friends." (*Ibid.)* Two weeks later – after A.P.'s grandmother wrote a letter to the county welfare agency stating that A.P.'s family could no longer live with her – A.P. moved with his mother to an apartment in Maurice River, where they received a rent subsidy for a year. The family continued to live in the Maurice River apartment through the time of the hearing in the OAL, and after the rent subsidy expired. *(Id.* at 896-897*)*

It was the Maurice River Board of Education (petitioner), not A.P.'s mother, that contended that A.P. was homeless and accordingly demanded tuition payment from respondent Wildwood Board of Education. It based its determination of homelessness on 1) the above mentioned October 22, 1991 enrollment form that indicated that A.P. was living by necessity with a relative, and 2) information from county welfare agency employees that A.P.'s family – which was given a rent subsidy for the first year it lived in its Maurice River apartment – was homeless. *(Ibid.)*

The *Maurice River* ALJ and the Commissioner found that A.P. was not a homeless child during the 1991-1992 school year. (*Id.* at 897) They rejected the notion that receipt of a housing subsidy signifies that the recipient is homeless; such subsidies are, in fact, provided to prevent homelessness. *(Ibid.)* They also rejected the idea that all persons living with relatives, even out of necessity, are homeless. *(Ibid.)* And they further pointed out that A.P.'s father still had a home in Wildwood. *(Ibid.)* The Commissioner adds that it is unclear, from the published facts in *Maurice River*, whether A.P.'s mother left the marital home by necessity, which could make a difference when applying the statutory and regulatory definitions of homelessness to the facts of the case.

The ALJ in the instant case considered *L.C.* and *Maurice River* to be precedent because in both those cases it was determined that parents (and their children) who stayed with relatives out of necessity were nonetheless not homeless for purposes of determining which school district was responsible for tuition. The ALJ concluded that S.W., Sr.'s situation was comparable to L.C.'s and B.P.'s (A.P.'s mother), and that his intention to stay with his parents only until he could save money for a place of his own was, like L.C.'s intention, not enough of a basis to characterize him as homeless. (Initial Decision at 3) As mentioned above, at the time of the OAL hearing, S.W., Sr. was still residing with his parents.

The Commissioner does not agree that *L.C.* and *Maurice River* are apposite to the present case. There appears to be no dispute that at the time of the Department's initial determination concerning S.W.'s educational costs, S.W., Sr. had very recently been evicted for non-payment of rent, and had unequivocally told his DYFS caseworker that he was temporarily staying with his parents to save money for a new residence. There is nothing to the contrary in the record before the Commissioner. Thus this case deviates from *L.C.* and *Maurice River* in that – at the time of the Department's determination – insufficient time had passed for the Department to assess whether S.W., Sr. would truly reside with his parents for a short stay, or make his stay more permanent. After-the-fact observation that at the time of the OAL hearing in December 2005, S.W., Sr. was still, after nine months, residing in his parents' home – suggesting some degree of permanence – did not render invalid the Department's May 5, 2005 decision about the 2004-2005 school year.

In addition, the present case is factually dissimilar from *Maurice River* in other ways. At the time of the Maurice River Board of Education's petition for tuition reimbursement, A.P.'s family had not only lived in Maurice River for five months, but A.P.'s mother had given

up her hope of returning to her husband in Wildwood and, by November 1 of the school year in question, the family had transitioned to its own apartment in Maurice River. Those circumstances were not conducive to a classification of homelessness, and bear little precedential value for the case now before the Commissioner.

Nor does the fact pattern in *L.C.* bear much similarity to the present case. The record before the Commissioner does not indicate whether, at the time of the Department's determination, S.W., Sr. had been regularly paying money toward his parents' household expenses, as the mother did in *L.C.*, or whether S.W., Sr. had taken any other actions in the few weeks he had been with his parents that would suggest his presence at his parents' residence might be more than short-lived. In the absence of same, the Department's conclusion that S.W., Sr. was homeless could not be characterized as unreasonable.

Further, *N.J.A.C.* 6A:17-2.4(c) and *N.J.A.C.* 6A:23-5.2(g) direct that the district of residence described in *N.J.S.A.* 18A:7B-12 shall continue to be the district of residence "for as long as the parent(s) or guardian(s) remain homeless." When S.W., Sr. was evicted, there were no more than three months left to the 2004-2005 school year. By the time an intelligent assessment of the permanence or transience of S.W., Sr.'s stay at his parents' home – and the ancillary determination about homelessness – could have been made, the school year would have been all but finished, and S.W.'s educational costs for the last three months would have been assignable to petitioner under those regulations.

A school district challenging the Department's determination about residency bears the burden of proving that the Department's determination was arbitrary, capricious or without reason. *State-Operated School District of the City of Newark v. New Jersey Dept. of Education, Division of Finances,* EDU 1370-98, Final Decision (March 22, 1999). The

Department's decision is entitled to a presumption of correctness. *Board of Education of the Borough of South River v. N.J. Department of Education,* EDU10117-98 (November 1, 2000). The Commissioner does not agree with the Initial Decision that petitioner met its burden to show that respondent's assignment of S.W.'s educational costs for the 2004-2005 school year was arbitrary, capricious or unreasonable.

The Commissioner also carefully reviewed both parties' exceptions. At the outset, the Commissioner notes that petitioner was correct in pointing out that the ALJ did not make specific factual findings in support of his determinations. However, the Commissioner can neither rely on petitioner's nor respondent's characterizations of the testimony at the OAL hearing because neither party provided a transcript of same.

The Commissioner does not agree with respondent that *J.S. on behalf of D.S. v. Parsippany-Troy Hills Township Board of Education, and J.S. on behalf of J.S. v. Parsippany-Troy Hills Township Board of Education,* OAL DKT. NO. EDS 1676-01, OAL DKT. NO. EDS 1677-01, CONSOLIDATED AGENCY DKT. NO. 01-4866, AGENCY DKT. NO. 01-4867 (March 19, 2001) present a fact pattern apposite to this case. In *J.S.,* petitioner and his family were living in the Parsippany-Troy Hills school district, where the children had been attending school, when they were evicted from their apartment in August 2000. (*J.S.* at 3) Some friends in Vernon Township allowed the family to stay with them, *gratis*, while J.S. searched for permanent housing. (*Ibid.*) At the beginning of September J.S. enrolled his children in the Vernon Township schools, using a note from Mr. K., the friend with whom the family was staying. (*Ibid.*) The note verified that J.S. and his family were residing with Mr. K. *(Ibid.)*

About two weeks later, however, Mr. K. asked J.S. and his family to leave. (*Ibid.*) After some nights in a hotel and one night in a car, J.S. and his family moved in with his

father in West Paterson, where they remained at least through the time of the OAL hearing, [which was in February of 2001]. *(Id.* at 4*)* The ALJ was asked to decide, *inter alia*, which district, between Parsippany-Troy Hills and Vernon Township, was responsible for the children's education. For some reason, neither party raised the issue of whether West Paterson should be the responsible district. (*Id.* at 9, n.4)

Petitioner demanded that his children be allowed to attend school in Vernon, arguing that Vernon was the last place the family resided before becoming homeless. (*Id.* at 5) The ALJ disagreed, finding that the facts made it obvious that J.S.'s friends in Vernon understood their hosting of J.S.'s family to be temporary. (*Id.* at 7) Thus, J.S.'s family did not have a fixed, regular and adequate residence in Vernon. *(Ibid.)* The district responsible for the children's education was, consequently, Parsippany-Troy Hills.

At the time of Vernon Township's notice to J.S. that they did not believe his children were entitled to a free education in Vernon Township, J.S.. and his family had already left Vernon Township, having only resided there for about a month. It was already clear that the Vernon residency was temporary. By way of contrast, the Department's determination in the instant case was made at a time when the nature of S.W., Sr.'s residency with his parents was not clear. In sum, *J.S.* neither supports nor hurts respondent's position.

Finally, a point raised in *Board of Education of the Township of Delran, Burlington County v. Board of Education of the City of Clifton, Passaic County*, OAL DKT. NO. EDU 04113-96S, AGENCY DKT. NO. 87-3/96 (December 23, 2004), bears some discussion in connection with the issues in the present case. In *Delran*, K.G. and her three children lived in Clifton for at least two years prior to November 1995, when they were evicted for failure to pay rent. (*Delran* at 2) From November 20, 1995 until January 18, 1996, K.G. and

her children stayed in an apartment in Delran with a J.M., and her children attended school in Delran for the two months. (*Ibid.*) K.G.'s name was not on the lease for the Delran apartment, and she had no approval from the apartment complex management to reside there. *(Ibid.)* On or about January 18, 1996, K.G. and the children relocated to Hackensack. *(Ibid.)*

Delran demanded tuition from Clifton for K.G.'s three children for the two months they attended school in Delran, asserting that under the regulation that preceded *N.J.A.C.* 6A:17-2.3(a)(3), K.G.'s children were homeless after they were evicted from their home in Clifton, and also during their stay – out of necessity – at J.M.'s apartment in Delran. (*Id.* at 1-2) Consequently, Delran maintained that responsibility for the children's education lay with Clifton. The ALJ agreed, and further observed that "[i]t can hardly be argued that residence in a home in which one has no legal right to remain is 'regular' or 'fixed.'" (*Id.* at 6) Thus, K.G.'s family's status while it was in Delran was "homeless." The ALJ explained that for purposes of tuition assignment, the concern was whether the district where the family stayed in an unauthorized arrangement should bear the costs for educating the children, rather than the district which was responsible for them before they became adrift. (*Ibid.*)

In his reference to "legal rights," the ALJ may have been alluding to petitioner's allegation that K.G. and her children did not have permission from the management of J.M.'s apartment complex to reside in J.M.'s apartment. However, this principle also applies to the fact that an individual who is not named on a dwelling's lease or deed does not have a legal right to reside in that dwelling, unless circumstances exist that bestow upon the individual an equitable right.

Notwithstanding the fact that it was his parents that S.W., Sr. went to after his eviction, there is no evidence showing that he had a <u>legal</u> right to remain in his parents' home,

either by the presence of his name on a lease or deed, or by an implied contract created by monetary or other types of contributions by him to the household or dwelling. Thus, when he went to his parents after the eviction, it was reasonable for the Department to refrain from jumping to the conclusion that his parents' home would be his permanent residence.

In summary, the Commissioner rejects the determination in the Initial Decision that respondent erred in assigning S.W.'s educational costs for the 2004-2005 year to petitioner, and orders petitioner to pay same. Further, the Commissioner declines to make any determinations about S.W.'s educational costs for the summer of 2005 or the 2005-2006 school year, as the record is insufficient to support same, and remands the case to the OAL for a determination concerning whether petitioner remained the responsible district for S.W.'s educational costs after June 2005. A copy of this decision will be simultaneously forwarded to the Flemington-Raritan Regional School District so that their Board may determine whether to intervene in this matter upon remand. Finally, the Commissioner adopts the ALJ's order for the sealing of the record (but not the decision).

IT IS SO ORDERED.[3]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: May 10, 2006

Date of Mailing: May 10, 2006

[3] 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.*