

#302-07 (OAL Decision: Not yet available on-line)

R.A.J., on behalf of minor child, C.A.P., :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE TOWNSHIP : DECISION
OF EWING, MERCER COUNTY, :
RESPONDENT. :
_____ :

SYNOPSIS

Petitioner contested respondent Board’s determination that her grandchild, C.A.P. – a 10th grader who has been a student in the district’s schools since kindergarten – is ineligible to receive a free public education in Ewing Township schools. The relevant time frame for this case concerns the 2006-2007 school year, during which C.A.P. attended an out-of-district placement pursuant to his individualized educational plan. Respondent contended that C.A.P.’s mother, L.J., lives in Trenton, and sought to disenroll him and collect payment for tuition for the period from October 2006 through the end of the school year

The ALJ found that petitioner has satisfied, by a preponderance of evidence, the conditions required pursuant to *N.J.S.A. 18A:38-1* for entitlement to a free public education in Ewing Township Schools: petitioner is domiciled in the district, is supporting C.A.P. *gratis*, is assuming all personal responsibility for C.A.P. relative to school requirements, and intends to support C.A.P. gratuitously beyond the school year; C.A.P.’s parents are not capable of supporting him due to a family or economic hardship, and did not send him to reside with petitioner solely for the purpose of receiving a free education in the district. Accordingly, the ALJ concluded that C.A.P. was properly enrolled as an affidavit student for the 2006-2007 school year, and dismissed the Board’s counterclaim for tuition.

Upon full and independent review, and according due deference to the ALJ’s credibility determinations, the Commissioner concurs with the ALJ that C.A.P. was properly enrolled as an affidavit student for the 2006-2007 school year and adopts the Initial Decision as the final decision in this matter.

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.

July 27, 2007

OAL DKT. NO. EDU 2329-07
AGENCY DKT. NO. 81-3/07

R.A.J., on behalf of minor child, C.A.P., :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
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OF EWING, MERCER COUNTY, :
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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. The parties filed no exceptions to the Initial Decision.

Upon full and independent review of the record, and according due deference to the Administrative Law Judge's (ALJ) credibility determinations,¹ the Commissioner agrees with his conclusion that C.A.P. was properly enrolled in the Ewing Township School District as an affidavit student for the 2006-07 school year.

Accordingly, the Initial Decision of the OAL is adopted as the final decision in this matter for the reasons clearly stated therein.

IT IS SO ORDERED.²

COMMISSIONER OF EDUCATION

Date of Decision: July 27, 2007

Date of Mailing: July 30, 2007

¹ The Commissioner "may not reject or modify any findings of fact as to issues of credibility of lay witness testimony unless it is first determined from a review of the record that the findings are arbitrary, capricious or unreasonable or are not supported by sufficient, competent and credible evidence in the record." *N.J.S.A.* 52:14B-10(c). The record before the Commissioner provides no cause for modification or rejection in this regard.

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.*