

A.M. and M.S. on behalf of minor children, :
A.S. and L.S.,

PETITIONERS,

COMMISSIONER OF EDUCATION

V.

DECISION

BOARD OF EDUCATION OF THE
TOWN OF DOVER, MORRIS COUNTY,

RESPONDENT.

SYNOPSIS

Petitioners appealed the respondent Board's determination that their homeless status had expired and that their children, A.S. and L.S., no longer meet the homelessness criteria to attend Dover schools free of charge. Petitioners maintained that – although they have resided in the same motel in Mine Hill Township since 2006 – they are still homeless, and that until they find a permanent residence, it is in the best interest of the children to continue their enrollment in the Dover school district, which has an obligation to educate the children as their district of origin prior to becoming homeless. Respondent Board contends that since petitioners have resided in Mine Hill for more than five years and have no immediate plans to return to Dover, they no longer meet the statutory criteria for homelessness under N.J.S.A. 18A:7B-12(c). Accordingly, the Board argues that as a resident of Mine Hill, A.S. – a seventh grader – is permitted to attend Dover schools under the district's send/receive relationship with Mine Hill, but L.S. – a sixth grader – must attend school in Mine Hill, and that petitioners must reimburse Dover for the cost of L.S.'s tuition for the number of days the child has attended school in the district during the 2010-2011 school year.

The ALJ identified the issue in this case to be whether petitioners have maintained a homeless status since 2006, thus entitling the children to continue enrollment in the Dover school district as the district of origin pursuant to N.J.S.A. 18A:7B-12(c). The ALJ found that: the petitioners bear the burden of proof to establish domicile in Dover; the evidence presented by petitioners was unpersuasive, demonstrated no effort by petitioners to reestablish domicile in Dover, and offered no mitigating factors to justify entitlement to continued enrollment in Dover schools. Accordingly, the ALJ concluded that petitioners have not demonstrated a continued state of homelessness to meet the criteria for their children to attend Dover schools at the public expense, and that the school district is entitled to tuition for the sixth grade education of L.S. in the amount of \$10,773 for the 2010-2011 school year.

Upon full and careful consideration, the Commissioner rejected the Initial Decision and determined that petitioners' children shall remain enrolled in respondent's school district and that petitioners are not liable for tuition and transportation costs. In so deciding, the Commissioner found, *inter alia*, that: children who live in hotels/motels are classified as homeless pursuant to N.J.A.C. 6A:17-2.3(a)(1)(i); a goal of the regulations pertaining to homeless children is that continuity be maintained in their educational program; pursuant to N.J.S.A. 18A:38-1(d), homeless persons who reside within a school district for one year or longer shall be deemed to be domiciled within that district, and financial responsibility for the education of their children transfers to the new school district; the Mine Hill School District is liable for L.S.'s sixth grade tuition, and would also be responsible for the send/receive tuition for A.S. should respondent Board seek payment for same.

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.

OAL DKT. NO EDU 9780-10
AGENCY DKT. NO. 546-9/10

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: RESPONDENT. :

This controversy requires the assignment of fiscal responsibility for the education of petitioners' children, A.S. and L.S. The Commissioner has reviewed the record¹ and the Initial Decision of the Office of Administrative Law (OAL);² for the reasons which follow, the Initial Decision is rejected.

Petitioners and their children lived in Dover from 2004 to 2006, at which time they became homeless and moved to the Bounty Motel in the Township of Mine Hill, where they still reside. The parties do not appear to dispute the fact that when petitioners became homeless, Dover became the children's "School District of Origin." *N.J.A.C. 6A:17-2.2.* Under the regulations pertaining to homeless children – *N.J.A.C. 6A:17-1.1 et. seq.* (the Regulations) – the School District of Origin decides where the children will attend school, pays tuition for the children if they attend school in another district and provides transportation. *N.J.A.C. 6A:17-2.4.*

¹ No transcripts of the March 4, 2011 hearing were provided to the Commissioner. Consequently, the record is sparse, particularly regarding the details of petitioners' living arrangements.

² No exceptions to the Initial Decision were filed by either party.

The record indicates that after they became homeless and moved to the Bounty Motel, A.S. and L.S. continued to attend school in Dover – without objection from respondent – for four years. This is consonant with *N.J.A.C.* 6A:17-2.6(a)(1) and (2), which direct that – to the extent practicable – the children should be enrolled in the school district of origin and/or the last district of attendance, barring objections from the parents or guardians. A stated goal of the Regulations is that continuity be maintained in the educational programs of homeless children. *See, e.g., N.J.A.C.* 6A:17-2.6(b)(2).

In August 2010, however, respondent wrote to petitioners stating that the children were no longer eligible to attend school in Dover. Respondent reasoned that in light of petitioners' five years of residence in Mine Hill, their homeless status had expired and, with it, respondent's responsibility to educate petitioners' children. It now demands tuition reimbursement for L.S.'s attendance in its district during the 2010-2011 school year, reasoning that it had put petitioners on notice of their change in status. Petitioners argue that their residence in a motel constitutes homelessness, requiring respondent's district – as the school district of origin – to continue to provide their children with a free public education. Petitioners also maintain that it is in the best interests of their children to remain in respondent's school system.

Petitioners are correct in contending that their children are homeless. Children who live in hotels/motels are indeed classified as homeless pursuant to *N.J.A.C.* 6A:17-2.3(a)(1)(i). However, for purposes of assigning fiscal responsibility for the education of A.S. and L.S., the relevant inquiry is not whether petitioners are homeless, but rather whether they have resided in Mine Hill long enough for *N.J.S.A.* 18A:38-1(d) to attach. More specifically, school law imposes a limit upon how long a former district of domicile is financially responsible

for the education of homeless children. That limit may be found in *N.J.S.A. 18A:38-1(d)*, which states:

Any person whose parent or guardian, even though not domiciled within the district, is residing temporarily therein, but any person who has had or shall have his all-year-round dwelling place within the district for one year or longer, shall be deemed to be domiciled within the district for purposes of this section.

(Emphasis added.)

Thus, after one year of the family's residency in the Bounty Motel, it became the Mine Hill Township Board of Education's financial responsibility to educate petitioners' children. *See, also, Board of Education of the Township of Egg Harbor, Atlantic County v. Board of Education of the Mainland Regional High School District, Atlantic County and New Jersey Department of Education, Department of Finance*, Commissioner Decision No. 555-10 (December 30, 2010).

However, the reassignment of financial responsibility for the children's education from respondent to the Mine Hill school district did not inexorably require that the children change schools. As mentioned above, continuity of educational program is an objective of the Regulations. Stated differently, respondent erred in concluding that its release from financial responsibility for the children equated to the removal of the children from its schools.

The record reveals that the Mine Hill and Dover school districts have a send-receive relationship. Mine Hill students in grades seven through twelve attend school in the Dover school district at Mine Hill's expense. A.S., who has been in seventh grade during the 2010-2011 school year, is attending school in Dover. Respondent does not now appear to demand tuition for A.S., but if it did make such a demand, it would be Mine Hill – deemed the district of domicile under *N.J.S.A. 18A:38-1(d)* – that would be obligated to pay same.

L.S. has been in sixth grade during the 2010-2011 school year. Although students residing in Mine Hill normally attend sixth grade in Mine Hill, L.S. has been attending school in

Dover for more than six years. Once again, the Regulations disfavor disruptions in the continuity of a child's educational program. In the present case, to require L.S., who attended school in Dover from Kindergarten through fifth grade, to switch to Mine Hill for sixth grade – only to return to Dover in seventh grade, pursuant to the above-referenced send-receive relationship – would offend an underlying principle of the Regulations.

In light of the foregoing, the Mine Hill School District – not petitioners – is liable for L.S.'s sixth grade tuition in the amount of the daily rate, \$59.85, times the number of days of attendance. The record as presented to the Commissioner, however, lacks any proofs to support the latter number.³ Should respondent seek send-receive tuition for A.S., the responsible party would also be the Mine Hill School District.

While the Mine Hill School District apparently received correspondence relating to the instant litigation, it was not joined as a party. Accordingly, no order against Mine Hill will be issued in the context of this case. However, the relief requested by petitioners is hereby granted. A.S. and L.S. shall remain enrolled in respondent's school district and petitioners will not be liable for tuition and transportation costs.

IT IS SO ORDERED.⁴

ACTING COMMISSIONER OF EDUCATION

Date of Decision: June 14, 2011

Date of Mailing: June 15, 2011

³ The Commissioner notes that the present school year is almost at an end, and L.S. will likely be progressing to seventh grade. Thus, if petitioners' living situation remains the same in the coming school year, both children will attend school in Dover pursuant to the above referenced send-receive relationship.

⁴ This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L. 2008, c. 36*