

G.H., on behalf of minor children, M.H., :
S.A. and I.H., :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION :
BOARD OF EDUCATION OF THE : DECISION :
CITY OF GLOUCESTER, CAMDEN :
COUNTY, :
RESPONDENT. :
_____ :

SYNOPSIS

Petitioner filed a pro-se residency appeal contesting the April 2011 determination of the respondent Board that petitioner and her children, M.H., S.A. and I.H., no longer resided in the City of Gloucester and were not eligible for a free public education in the Gloucester school district for the 2010-2011 school year. Petitioner contended that she is homeless, and that this matter stems from a lease that she had signed on an apartment in Audubon which she never actually occupied because the landlord terminated the lease before she could move in. The respondent Board contended that G.H. and her children resided in Audubon and filed a counterclaim for tuition.

The ALJ found: that this matter should not have been filed as a residency appeal under *N.J.A.C.* 6A:22; rather, Gloucester should have notified the county superintendent of its determination that Audubon became the district of residence once the homeless parent signed a lease to live within that school district; *N.J.A.C.* 6A:17-2.6(h) provides that homeless children are allowed to stay in the district of residence – in this case, Gloucester City – for the remainder of the academic year even if the children become permanently housed elsewhere during the academic year; and this case should have been presented to the appropriate county superintendent so that he or she could determine where the children should have been enrolled for the 2010-2011 school year. The ALJ concluded that the OAL does not have jurisdiction to grant relief to any of the parties, and accordingly dismissed the petition for lack of jurisdiction.

Upon a full and independent review of the record, the Commissioner, *inter alia*, concurred with the ALJ that the issue in this case is not a residency dispute under *N.J.A.C.* 6A:22; rather, a homelessness determination must be made pursuant to *N.J.A.C.* 6A:17-2.6(h). The Commissioner noted that the ALJ was not barred from deciding this matter, however, as the Commissioner does have jurisdiction to hear the matter under *N.J.S.A.* 18A:6-9. Petitioner, however, did not appear at the July 29, 2011 hearing and there appear to be facts in dispute in this matter. Accordingly, the Commissioner dismissed the petition and the Board’s counterclaim without prejudice.

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.

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed.¹ This matter was initiated by the petitioner, G.H., as a *pro se* residency appeal, and the Board of Education filed a counterclaim for tuition. The Administrative Law Judge (ALJ) dismissed the petition of appeal and the Board’s counterclaim for lack of jurisdiction.

Upon review of the record, the Commissioner is in accord with the ALJ’s determination that the issue in this case is not a residency dispute under *N.J.A.C.* 6A:22; rather, a homelessness determination must be made pursuant to *N.J.A.C.* 6A:17-2.8. Although the ALJ properly determined this matter was not a residency appeal, the Commissioner notes that the ALJ was not barred from deciding this matter because the Commissioner has jurisdiction “to hear and determine ... all controversies and disputes arising under school law.” *See N.J.S.A.* 18A:6-9. However, in light of the fact that the petitioner did not appear at the July 29, 2011 hearing and

¹ The parties did not file exceptions to the Initial Decision.

there appear to be facts in dispute regarding an alleged lease agreement, the ALJ would not have been able to reach a conclusion on the homelessness issue based upon the current record.

Under these circumstances, the petition of appeal and the Board's counterclaim are hereby dismissed without prejudice.

IT IS SO ORDERED.²

COMMISSIONER OF EDUCATION

Date of Decision: _____

Date of Mailing: _____

² Pursuant to *P.L. 2008, c. 36 (N.J.S.A. 18A:6-9.1)*, Commissioner decisions are appealable to the Superior Court, Appellate Division.