#196-14 (OAL Decision: http://njlaw.rutgers.edu/collections/oal/html/initial/edu16270-13_1.html)

BOARD OF EDUCATION OF THE BOROUGH OF HAWTHORNE, PASSAIC COUNTY,	:	
PETITIONER,	:	COMMISSIONER OF EDUCATION
V.	:	DECISION
BOARD OF EDUCATION OF THE BOROUGH OF PROSPECT PARK, PASSAIC COUNTY AND NEW JERSEY STATE DEPARTMENT OF EDUCATION,	:	
RESPONDENTS.	:	

SYNOPSIS

The Hawthorne Board of Education (Hawthorne), appealed the determination of the Interim Executive County Superintendent of Schools for Passaic County (IECS) that it is the school district responsible for the cost of educating A.A., the son of N.A., who allegedly became homeless prior to enrolling in the Prospect Park School District between January 2013 and April 2013. During that period, A.A. attended the Benway School – an out-of-district placement – in accordance with his Individualized Education Plan. N.A. had been domiciled in Hawthorne prior to moving temporarily to her parent's home in Prospect Park in 2013; NA and her children subsequently moved to Florida. Hawthorne contended that N.A.'s family was not homeless pursuant to *N.J.A.C.* 6A:17-2.3, since the family was not forced out of its Hawthorne residence, and N.A. did not leave Hawthorne – nor reside with N.A.'s parents in Prospect Park – out of necessity.

The ALJ found that: *N.J.A.C.* 6A:17-2.3 provides, in pertinent part, that a child is homeless when he or she resides temporarily out of necessity in the residence of relatives because the family lacks a regular or permanent residence of its own; in the instant case – based on competent evidence presented at the OAL hearing – N.A. was not forced out of her Hawthorne apartment and there is nothing to suggest that her temporary relocation to her parents' home in Prospect Park was out of necessity; rather, N.A. voluntarily left her apartment to move back to Prospect Park as part of the process of moving to Florida, which occurred a few months later; thus, no crisis of immediacy displaced N.A.'s family, and the family's circumstances are clearly distinguishable from cases where a family becomes transient due to an emergency. The ALJ concluded that: no immediate circumstances, financial or otherwise, compelled N.A. to vacate her Hawthorne residence; Hawthorne sustained its burden of proving its allegations by a preponderance of the evidence; and the determination of the IECS that Hawthorne was N.A.'s last district of residence and therefore responsible for A.A.'s tuition was not reasonable. Accordingly, the ALJ reversed the IECS's determination and ordered that Prospect Park holds the responsibility for payment of A.A.'s educational program at the Benway School for the period from January 2013 to May 2013, in the amount of $21,441.75.

Upon consideration, the Commissioner adopted the Initial Decision as the final decision in this matter, but noted that he disagreed with the ALJ's characterization of the IECS's determination as "unreasonable"; rather, the IECS's decision was more than reasonable in light of the evidence available to him at the time. Prospect Park was ordered to pay the costs of A.A.'s educational program in the amount of $21,441.75.

May 12, 2014

OAL DKT. NO. EDU 16270-13
AGENCY DKT. NO. 247-10/13

BOARD OF EDUCATION OF THE BOROUGH OF HAWTHORNE, PASSAIC COUNTY,	:	
PETITIONER,	:	COMMISSIONER OF EDUCATION
V.	:	DECISION
BOARD OF EDUCATION OF THE BOROUGH OF PROSPECT PARK, PASSAIC COUNTY AND NEW JERSEY STATE DEPARTMENT OF EDUCATION,	:	
RESPONDENTS.	:	

The record in this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. The parties' exceptions and petitioner's reply exceptions, filed in accordance with *N.J.A.C.* 1:1-18.4, were fully considered by the Commissioner in making his determination herein.

This matter arises out of a dispute between the Hawthorne Board of Education and the Prospect Park Board of Education concerning which board is responsible for educating the children of N.A. In a letter dated July 15, 2013, Scott E. Rixford, Interim Executive County Superintendent (IECS) of Schools for Passaic County, determined that 1) N.A.'s family was homeless, 2) Hawthorne was the district in which N.A. last resided prior to becoming homeless, and 3) Hawthorne is responsible for the cost of educating N.A.'s son, A.A.,[1] in his placement at the Benway School from January 9, 2013 and April 19, 2013.

[1] N.A. had two children enrolled in Prospect Park during the period in question. However, Prospect Park did not seek tuition for the other child.

Following a plenary hearing in the Office of Administrative Law (OAL), the Administrative Law Judge (ALJ) recommended reversing the IECS's determination, finding that N.A. and her family were not homeless within the meaning of *N.J.A.C.* 6A:17-2.3 when they temporarily resided in Prospect Park with N.A.'s mother. The ALJ specifically found a lack of competent evidence to support a finding that the move was made out of necessity. Rather, the ALJ found it "more plausible" that N.A. and her family voluntarily left their apartment in Hawthorne to move back with N.A.'s mother in Prospect Park as part of the process of moving to Florida, as expressed to N.A.'s landlord in December 2012 and as actually executed a few months later. Accordingly, the ALJ determined that Prospect Park is responsible for payment of A.A.'s educational program at the Benway School from January 2013 to May 2013.

On exception, Prospect Park argues that the clear language of *N.J.S.A.* 18A:7B-12 dictates a finding that the A. family was homeless during their temporary residence in Prospect Park, since – upon vacating the Hawthorne apartment – the A. family no longer had a "fixed, regular and adequate residence." Prospect Park contends that the reason for the A. family's departure from Hawthorne is irrelevant, as "there is no statutory or regulatory standard for determining that homelessness itself is the result of 'necessity.'" Prospect Park further contends that the short period of time the A. family resided with N.A.'s mother is indicative of a "homeless situation."

In reply, Hawthorne requests that the Commissioner adopt the Initial Decision as his own, and order Prospect Park to pay the costs associated with educating the A. children while the family resided in Prospect Park. Hawthorne asserts that the ALJ correctly concluded that the A. family was not homeless during their temporary stay in Prospect Park, since there was no evidence presented to establish that the A. family moved in with N.A.'s mother "out of necessity." Furthermore, Hawthorne avers that the temporary living situation in Prospect Park did not deprive the A. family of a fixed, regular, and adequate residence, thus precluding a finding of homelessness.

Upon full consideration, the Commissioner concurs with the ALJ's determination that the A. family was not homeless within the meaning of *N.J.S.A.* 18A:7B-12c and *N.J.A.C.* 6A:17-2.3. The Commissioner explicitly rejects respondents' assertion that the impetus for the A. family's departure from the Hawthorne apartment is immaterial. To the contrary, the Commissioner finds that an inquiry into the circumstances surrounding the A. family's move is essential to the homelessness determination.

A "homeless child" is one who lacks a fixed, regular and adequate residence. *N.J.A.C.* 6A:17-2.2. Not every child residing temporarily with a relative is "homeless." Rather, pursuant to *N.J.A.C.* 6A:17-2.3(a)3, such a child is homeless when he or she resides in "[t]he 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." An examination of the conditions that precipitated the family's relocation is critical to ascertaining whether the living arrangement arose "out of necessity," and whether the family is without access to a "regular or permanent residence of its own."

In the instant matter, the ALJ specifically found that the A. family was not forced out of their Hawthorne apartment, that N.A. was up to date on her rent, and that there was no evidence that she was unable to pay rent going forward. The ALJ further found that N.A. voluntarily abandoned her Hawthorne home and temporarily relocated the A. family to her parent's home in Prospect Park as part of fulfilling her plan to move to Florida. The Commissioner finds that these facts do not support a determination that the A. family relocated out of necessity. Rather, the A. family had access to a fixed, regular and adequate residence, i.e., the Hawthorne apartment, but willfully and voluntarily chose to abandon it in favor of a stay with N.A.'s parents. As aptly recognized by the ALJ, "[t]his situation is not that of a homeless family." (Initial Decision at 8)

Accordingly, the Initial Decision is adopted as the final decision in the matter, and the determination of the Interim Executive County Superintendent of Schools for Passaic County[2] is hereby reversed. Prospect Park is ordered to pay the costs associated with A.A.'s educational program at the Benway School, for the period from January 2013 to May 2013, in the amount of $21,441.75.

IT IS SO ORDERED. [3]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: May 12, 2014

Date of Mailing: May 13, 2014

[2] Although the Commissioner concurs with the ALJ's determination that the IECS's decision must be reversed, the Commissioner disagrees with the ALJ's characterization of the determination as "unreasonable." Indeed, the Commissioner finds the IECS's decision was more than reasonable in light of the evidence available to him at the time the decision was made. This does not, however, end the inquiry. The IECS did not have the benefit of the testimony of N.A.'s landlord, which was adduced for the first time at hearing. That subsequently received evidence alters the propriety of the IECS's decision. It is for this reason that the IECS's otherwise reasonable decision cannot stand.

[3] This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L.* 2008, *c.* 36 (*N.J.S.A.* 18A:6-9.1).