

EDU #6448-00
C # 266-00L
C # 178-01
C # 282-01
EDU #6113-01
C # 96-02
SB # 20-02

D.M., on behalf of minor, B.N., :
PETITIONER-RESPONDENT, :
STATE BOARD OF EDUCATION
V. :
DECISION ON MOTION
BOARD OF EDUCATION OF :
THE TOWNSHIP OF EWING, :
MERCER COUNTY, :
RESPONDENT-APPELLANT. :

Decided by the Assistant Commissioner of Education, August 21, 2000

Decided by the Commissioner of Education, June 6, 2001

Remanded by the Commissioner of Education, August 30, 2001

Decided by the Commissioner of Education, March 11, 2002

Decided by the State Board of Education, November 5, 2003

For the Petitioner-Respondent, D.M., pro se

For the Respondent-Appellant, Jeffrey F. Belz, Esq.

In a decision issued on November 5, 2003, the State Board of Education concluded that the petitioner had not met her burden of demonstrating by a preponderance of the credible evidence that her niece, B.N., was eligible for a free

public education in the Ewing school district under the criteria set forth in either subsection (a) or (b)(1) of N.J.S.A. 18A:38-1 during the period covered by the record. Consequently, we reversed the decision of the Commissioner of Education and granted the Ewing Board's counterclaim seeking tuition for the period of B.N.'s ineligible attendance.

The petitioner filed an appeal to the Appellate Division and filed a motion with the State Board for a stay of our decision of November 5. The petitioner contends that B.N. is living with her in Ewing and that the State Board's decision was "based on observations done years ago." Appeal Brief, at 1. The Ewing Board filed a brief in opposition to the motion.

After a careful review of the parties' submissions, we find that the petitioner's application fails to meet the standards that would entitle her to relief under Crowe v. De Gioia, 90 N.J. 126 (1982). We stress in so doing that the petitioner has provided nothing to support her contention that B.N. is currently living with her in Ewing.¹ We therefore deny her motion.

We reiterate, however, that our decision of November 5 did not determine any future entitlement that B.N. might have to a free public education in Ewing under the standard set forth in N.J.S.A. 18A:38-1 if her circumstances changed. State Board's Decision, slip op. at 9, n.10. Therefore, we remind the Ewing Board of its obligation to enroll B.N. in its public schools if the petitioner makes a reasonable showing to the

¹ We expressly noted in our decision of November 5 that our factual determination that B.N. was living with her mother in Trenton was based on the evidentiary record before us, which had closed in December 2001, and that the petitioner had not moved to supplement the record with additional evidence.

Board that she has now satisfied the criteria set forth in N.J.S.A. 18A:38-1, including proof that B.N. is currently residing with her in Ewing as she claims.

January 7, 2004

Date of mailing _____