

RECORD SEALED

BOARD OF EDUCATION OF THE :
BOROUGH OF MADISON, MORRIS :
COUNTY, :

PETITIONER, :

V. : COMMISSIONER OF
EDUCATION :

DR. EVA SZILLERY AND DR. SHARON : DECISION
CLOVER, MORRIS COUNTY :
SUPERINTENDENT OF SCHOOLS, :

RESPONDENTS. :

_____ :

SYNOPSIS

Petitioning Board sought a determination as to whether Respondent Szillery and her child, S.W., were in a homeless state commencing with the school year 1994-95 until the present. Petitioner sought reimbursement for tuition for S.W.'s education.

ALJ concluded that Respondent Szillery was homeless during November and December 1994 following her loss of employment and forced eviction. However, in light of evidence and testimony of the Board's investigator, the ALJ concluded that respondent and her child were not homeless in 1995 until the present and that they were resident and domiciled in Scotch Plains while S.W. attended Madison public schools. ALJ ordered tuition for November and December 1994 be returned to respondent, subject, however, to an offset of sums owed by respondent to the Board. ALJ ordered respondent to pay tuition for her son at the nonresidential tuition rate commencing with January 1, 1995 until such time as S.W. may withdraw or is removed as a Madison public school student, subject to an offset of sums owed by the Board to respondent. ALJ ordered S.W. removed from Madison public schools as a public school student. It is noted that by previous order the ALJ ordered the record sealed.

Commissioner adopted findings and determination of the ALJ as his own.

JULY 11, 1997

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The record of this matter and the initial decision of the Office of Administrative Law (OAL) have been reviewed. Exceptions for the Board and Respondent Szillery, and replies thereto, were timely filed in accordance with *N.J.A.C. 1:1-18.4*.¹

Respondent Szillery's general contention is that she and her son, S.W., were in 1995, and continue to be, homeless and, therefore, entitled to a free public education in the Board's schools. In that these exceptions generally recast and reiterate arguments raised throughout this litigation and considered by the Administrative Law Judge (ALJ), they are not summarized in detail herein.

In reply, the Board refutes each of the arguments raised by Respondent Szillery and contends the point raised by her were thoroughly addressed by the ALJ and, thus, the Commissioner should adopt the determination of the ALJ finding that she is not homeless. The

¹ Although the Board's reply exceptions were filed on June 30, 1997, more than five days from the date the Commissioner received Respondent Szillery's exceptions, such replies were timely filed in that Respondent Szillery sent them via first class mail to the Board while she hand-delivered them to the Commissioner. Further, Respondent Szillery provided no proof that they were faxed or otherwise delivered to the Board.

Board also excepts the ALJ's finding that Respondent Szillery was homeless for the period encompassing November and December 1994, asserting that the ALJ's ruling is inconsistent with his finding at page 11 of the initial decision that the Board proved that Respondent Szillery and S.W. were not homeless as of May 1994. Thus, the Board seeks an order that her nonresidential tuition obligation extend from November 1994 through the 1996-97 school year.

Respondent Clover notes that the only issue before the ALJ concerning the County Superintendent was whether her decision regarding the determination of Respondent Szillery's homelessness during November 1994 and December 1994 and reimbursement of tuition for that time was arbitrary and capricious, and urges affirmance of the initial decision on that point. She further reiterates that this affirmation should not, in any way, lead the Commissioner to find that Dr. Szillery was homeless for the period from November 1994 through July 1995, in that the "reasonable accommodation" made by the School district is not tantamount to a determination of homelessness for the entire year.

Upon a careful and independent review, the Commissioner concurs with the findings and conclusions of ALJ for the reasons expressed therein. The Commissioner is satisfied that the ALJ fully considered and correctly rejected the claims presented in Respondent Szillery's exceptions, including her assertions that she was homeless in 1995 until the present and that S.W. is entitled to a free public education in the Board's schools. The Commissioner further concurs with the ALJ's determination that Respondent Szillery was properly deemed homeless by the County Superintendent in November and December 1994, and that no tuition should be charged for this period.

Accordingly, the Commissioner concurs with the decision of the ALJ and orders Respondent Szillery to pay the Board tuition for S.W. at the nonresidential tuition rate, commencing January 1, 1995, until such time as S.W. may withdraw or is removed from the Board's schools, subject to offset by the amounts paid by Respondent Szillery for S.W.'s attendance during November and December 1994, as directed by the ALJ.

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

JULY 11, 1997