

S.W.H. AND D.S.H., on behalf of minor :
children, J.H.L. AND J.H.L.,

PETITIONERS,

V.

BOARD OF EDUCATION OF THE :
BOROUGH OF FORT LEE, BERGEN :
COUNTY,

RESPONDENT.

COMMISSIONER OF EDUCATION

DECISION

SYNOPSIS

Petitioning relatives challenged Board's residency determination that minor nieces, J.H.L. and J.H.L., were not domiciled in the District.

Citing *Gunderson*, the ALJ found that petitioners met the requirements of the "affidavit student" law. Petitioners did prove that they were the sole caretakers and supporters of the children. ALJ concluded the children were not seeking to be educated in Fort Lee solely for the purpose of receiving a free education; thus, J.H.L. and J.H.L. were entitled to admittance in the District.

Commissioner adopted findings and determination in initial decision as his own.

S.W.H. AND D.S.H., on behalf of minor	:	
children, J.H.L. AND J.H.L.,	:	
	:	
PETITIONERS,	:	
	:	
V.	:	COMMISSIONER OF EDUCATION
	:	
BOARD OF EDUCATION OF THE	:	DECISION
BOROUGH OF FORT LEE, BERGEN	:	
COUNTY,	:	
	:	
RESPONDENT.	:	
	:	

The record of this matter and the initial decision of the Office of Administrative Law (OAL) have been reviewed. Respondent's exceptions were filed on an untimely basis and, therefore, such exceptions are not considered herein.¹

Upon a careful and independent review, the Commissioner concurs with the findings of the Administrative Law Judge (ALJ) as clarified herein. Initially, the Commissioner agrees that, pursuant to *N.J.S.A. 18A:38-1*, minors J.H.L. and J.H.L. are entitled to a free public education in respondent's District. In this regard, the Commissioner is cognizant of the State Board's recent guidance concerning a petitioner's burden to demonstrate family or economic hardship in order to fulfill the requirements of the affidavit student statute. The State Board has specifically provided that

***in order to satisfy that standard, the family or economic hardship must be real and demonstrable, evincing a current

¹ Respondent's exceptions, due on October 14, 1997, were received in the Office of the Commissioner and by the Bureau of Controversies and Disputes on October 15, 1997. In that there was no indication by respondent that they were faxed or proof that they were otherwise filed on October 14, 1997, they may not be considered pursuant to *N.J.A.C. 1:1-18.4(a)*.

incapability on the part of [the minor children's] parents to support [them] or provide care as the result of that hardship.” (*J.B., on behalf of her grandchild, R.H. v. Board of Education of the Twp. of Ocean, Monmouth County*, decided by the State Board of Education September 3, 1997, slip opinion at p. 6)

Here, petitioners have established before the ALJ that the minors' parent is presently incapable of supporting or providing care for her children, due to family hardship, in that she is a professional concert violinist who is required to constantly travel around the world and is, therefore, unable to meet the childrens' emotional, social and developmental needs or provide a stable home environment. The Commissioner has no cause to question the ALJ's assessment of petitioners' credibility as such assessment is not belied by the record.

Accordingly, the Commissioner affirms the initial decision of the OAL for the reasons expressed therein.²

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

DATE: November 10, 1997

² To the extent that the ALJ's comments at page 5 might be subject to misconstrual, the Commissioner clarifies that a finding of intent to attend school in a district other than that of domicile, so as to preclude eligibility for attendance at school under *N.J.S.A. 38-1b*, does not require that the family have chosen the particular district at issue, as opposed to some other district within the country or state, as the intended district of attendance. See *P.B.K., on behalf of minor child, E.Y. v. Board of Education of the Borough of Tenafly, Bergen County*, decided by the Commissioner October 14, 1997.