

U.S.K., on behalf of minor child, J.W.Y., :
PETITIONER, :
V. :
: COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE : DECISION
BOROUGH OF FORT LEE, BERGEN :
COUNTY, :
RESPONDENT. :

SYNOPSIS

Petitioning aunt challenged Board's residency determination concerning her nephew, J.W.Y.

In light of credible testimony of petitioner, the ALJ concluded that petitioner satisfied the residency requirements pursuant to N.J.S.A. 18A:38-1b(1) in that petitioner was domiciled within the District; petitioner was supporting J.W.Y. *gratis*; the parents were presently not capable of supporting him due to family hardship; and J.W.Y. was not residing with petitioner solely for the purpose of receiving a free public education in the District. Thus, the ALJ concluded that petitioner was not liable for tuition to the Board during the period of time that J.W.Y. attended school in the District. ALJ ordered granted the petition allowing J.W.Y. to attend school in the District and dismissed the District's counterclaim for payment of tuition.

Commissioner concurred with the decision of the ALJ so long as there is no change in petitioner's circumstances that would alter J.W.Y.'s entitlement.

October 28, 1998

OAL DKT. NO. EDU 3958-99
AGENCY DKT. NO. 66-4/99

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. The parties filed no exceptions to the Initial Decision.

Upon his independent and careful review, the Commissioner concurs with the findings and conclusion of the Administrative Law Judge that, under the circumstances existing in this matter, petitioner satisfies the criteria set forth in *N.J.S.A. 18A:38-1b(1)* and, as such, minor child, J.W.Y., is entitled to a free public education in the Fort Lee School District.

Accordingly, the recommended decision of the OAL is affirmed for the reasons stated therein. The Board is ordered to permit J.W.Y.'s attendance in its school system free of charge so long as there is no change in petitioner's circumstances that would alter his entitlement. The Board's counterclaim for tuition is hereby dismissed.*

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

October 28, 1999

* This decision, as the Commissioner's final determination in the instant matter, may be appealed to the State Board of Education pursuant to *N.J.S.A. 18A:6-27 et seq.* and *N.J.A.C. 6:2-1.1 et seq.*, within 30 days of its filing. Commissioner decisions are deemed filed three days after the date of mailing to the parties.