

J.M., on behalf of minor children, M.C.C. :
AND M.C.C., :

PETITIONER, :

V. : COMMISSIONER OF EDUCATION

BOARD OF EDUCATION OF THE : DECISION
TOWNSHIP OF HAMILTON, MERCER :
COUNTY, :

RESPONDENT. :

_____ :

SYNOPSIS

Petitioner, grandmother of students M.C.C. and M.C.C., challenged the Board’s determination that they were not entitled to a free public education in the District in accordance with *N.J.S.A. 18A:38-1*.

The ALJ concluded that petitioner obtained custody of the children because she believed that it would satisfy the school residency requirements. The ALJ concluded that petitioner did not establish that she supported the children gratis. Moreover, the ALJ determined that the living arrangement and custody appeared to be temporary. The ALJ ordered that petitioner reimburse the Board tuition in the amount of \$13,827.60.

The Commissioner reversed the decision of the ALJ. The Commissioner concluded that an analysis pursuant to *N.J.S.A. 18A:38-1(b)*, the “affidavit student” provision, was inappropriate once it was determined that J.M. had legal custody of M.C.C. and M.C.C. Consistent with decisional law, the Commissioner further held that the motives of petitioner in obtaining an order transferring custody to J.M. are not subject to inquiry, and, absent a showing of fraud or other exceptional circumstances, M.C.C. and M.C.C are domiciled in Hamilton and entitled to a free public education from the District pursuant to *N.J.S.A. 18A:38-1(a)* until such time as legal and physical custody no longer rests with J.M. Finally, the Commissioner determined that the Board is not entitled to reimbursement of tuition.

OAL DKT. NO. EDU 118-00
AGENCY DKT. NO. 287-9/99

J.M., on behalf of minor children, M.C.C. :
AND M.C.C., :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE : DECISION
TOWNSHIP OF HAMILTON, MERCER :
COUNTY, :
RESPONDENT. :
_____ :

The record and Initial Decision issued by the Office of Administrative Law have been reviewed. No exceptions were filed by the parties.

Upon independent review of the record of this matter, the Commissioner determines to reverse the Initial Decision of the Administrative Law Judge (ALJ) for the reasons set forth herein. The record clearly demonstrates that on September 24, 1999, J.M. was granted legal custody of M.C.C. and M.C.C. On April 18, 2000, the Court ordered transfer of custody of these children to T.C., their natural mother, as of June 30, 2000, contingent upon T.C. having her own residence. Further, the Court ordered that if T.C. did not have her own residence on that date, custody of the children was to remain with J.M. until such time as T.C. establishes her own residence. (Exhibit P-15) Based on these facts, the Commissioner finds and determines that M.C.C. and M.C.C. were entitled, during the period in dispute herein, to attend school in the Hamilton Township School District free of charge pursuant to the requirements of *N.J.S.A.* 18A:38-1(a). As was determined by the Commissioner and affirmed by the State Board of

Education in *L.A. v. Board of Education of the Town of West Orange*, 97 N.J.A.R.2d (EDU) 266 (1996), *aff'd* by the State Board of Education 97 N.J.A.R.2d (EDU) 554 (1997); and *V.H. v. Board of Education of the Township of Quinton*, 97 N.J.A.R.2d (EDU) 124, *aff'd* by the State Board of Education 97 N.J.A.R.2d 554 (1997), as of the date that a resident of a district takes *legal control* of a child, entitlement to attend school free of charge is no longer to be examined pursuant to N.J.S.A. 18A:38-1(b), the “affidavit student” provision.

Consequently, in the instant matter, once J.M. assumed legal and physical custody of M.C.C. and M.C.C., the only appropriate inquiry for the Board was whether J.M. and M.C.C. and M.C.C. were domiciled in the District pursuant to N.J.S.A. 18A:38-1(a). Inasmuch as the Board does not dispute that J.M. is domiciled in Hamilton, and the domicile of the child follows that of the parent or guardian having *legal custody* over him or her, *Mansfield Twp. BOE v. State Board of Education*, 101 N.J.L. 474, 479-480 (Sup. Ct. 1925), it is hereby found and determined that M.C.C. and M.C.C. were entitled to a free public education pursuant to N.J.S.A. 18A:38-1(a), as of the date J.M. acquired legal custody of them. *See also Y.L., on behalf of M.A. v. Board of Education of South Orange-Maplewood*, Number 658-97, decided by the Commissioner of Education December 24, 1997. In so finding, the Commissioner notes that there is no claim of fraud on the part of petitioner. *See, L.A., supra; V.H., supra; and Y.L., supra.* Further, as was stated in *L.A.*, and affirmed by the State Board, “the motives pertinent to the custody order are not determinative. The order must be accepted on its face.” *L.A., supra*, 97 N.J.A.R.2d at 269. *See also Y.L., supra.* Lastly, unlike the circumstances found in *Cranford, supra*, there is no claim that M.C.C. and M.C.C. were not residing with J.M.

Accordingly, having determined that M.C.C. and M.C.C. were eligible, pursuant to N.J.S.A. 18A:38-1(a), to attend school in the Hamilton Township School District during the

1999-2000 school year, the recommendation of the ALJ ordering tuition payment by petitioner is herein reversed. Further, it is determined that their eligibility for a free education in the Hamilton Township School District will continue until such time as J.M. no longer retains custody of M.C.C. and M.C.C. or there is a change of domicile affecting entitlement to a free education in Hamilton.

IT IS SO ORDERED.*

COMMISSIONER OF EDUCATION

Date of Decision: August 4, 2000

Date of Mailing: August 4, 2000

* This decision, as the Commissioner's final determination, 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. 6A:4-1.1 et seq.*, within 30 days of its filing. Commissioner decisions are deemed filed three days after the date of mailing to the parties.