

OAL DKT. NO. EDU 5824-02
AGENCY DKT. NO. 149-5/02

W.H.S., on behalf of minor child, T.S.,	:	
	:	
PETITIONER,	:	COMMISSIONER OF EDUCATION
	:	
V.	:	DECISION
	:	
BOARD OF EDUCATION OF THE	:	
SOUTH ORANGE-MAPLEWOOD	:	
SCHOOL DISTRICT, ESSEX COUNTY,	:	
	:	
RESPONDENT.	:	
_____	:	

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. Petitioner filed timely exceptions, to which the Board of Education (Board) duly replied.

In his exceptions, petitioner urges the Commissioner to consider “matters not addressed in the written decision, as well as some new additional details that support our position.” Specifically, petitioner 1) proposes that the Commissioner order the Board to permit T.S.’s attendance in its schools based upon petitioner’s offer to pay supplemental taxes to the Board as if petitioner’s home were located entirely in South Orange; 2) argues that the unique districting of his home results in differential treatment, since the family’s voting rights lie in South Orange yet T.S. cannot attend school there, whereas neighboring families *both* attend school *and* vote in the same district (Orange); and 3) contends that T.S.’s right to a thorough education is compromised by forcing him to attend a school that does not offer instruction sufficient to meet his needs as an advanced student. (Petitioner’s Exceptions at 1-2, quotation at 1)

In reply, the Board objects to petitioner's submission on grounds that it exceeds the permissible scope of exceptions as set forth in *N.J.A.C.* 1:1-18.4, particularly in its attempt to introduce information and evidence not presented at hearing in violation of *N.J.A.C.* 1:1-18.4(c). The Board protests that petitioner had both the knowledge and the opportunity during the two-year pendency of this matter to obtain the newly proffered municipal information, and that his impermissible supplementation of the record by "degrading the education available in the Orange school system" and offering documents pertaining to T.S.'s academic performance is nothing more than an attempt "to justify why his son should be educated in the school system which he considers superior," a consideration which has no relevance in the instant matter. (Board's Reply at 1-3, quotation at 3)

Upon review, the Commissioner determines to adopt the Initial Decision, with clarification as set forth below.

Initially, the Commissioner stresses that the question of T.S.'s entitlement to attend school in the Board's district free of charge pursuant to *N.J.S.A.* 18A:38-1 was decided by the Acting Commissioner's July 3, 2002 decision in this matter, and that the sole questions before the Administrative Law Judge (ALJ) in the present proceeding were 1) whether tuition was due for any period of T.S.'s prior ineligible attendance in the district, and 2) whether the Board's refusal to enroll T.S. as a non-resident student was arbitrary, capricious or unreasonable. Therefore, to the extent that the Initial Decision addresses areas beyond the scope directed by the Commissioner in transmitting this matter to the OAL, the Commissioner does not reach the ALJ's discussions, findings and conclusions.

Turning to questions properly under consideration herein, the Commissioner notes that although the documentary record is unclear, the Board does not contest the ALJ's statement that T.S. never actually attended school in the district so that no tuition is due for the period of time prior to the July 3, 2002 decision of the Acting Commissioner. The

Commissioner concurs with the ALJ that the Board's decision not to admit T.S. on a tuition basis was consistent with district policy and that petitioner has brought forward no evidence indicating abuse of the Board's lawful discretion in this regard. While petitioner's circumstances may, indeed, be frustrating in light of his preference to have T.S. attend school in one rather than the other of the two districts in which his property is located, the fact remains that entitlement to attend school in a particular district is based upon domicile, and petitioner's domicile does not lie within his preferred district. Because any decision to permit attendance by nonresident students is entirely within the discretion of the Board, so long as that discretion is not exercised in an unlawful or arbitrary manner, there is no basis on which the result sought by petitioner can be compelled.

Accordingly, to the extent set forth above, the Commissioner adopts the Initial Decision of the OAL as his final decision in this matter. The Board's decision not to admit T.S. as a nonresident student is upheld and the Petition of Appeal is dismissed with respect to those issues not determined by the Acting Commissioner's decision of July 3, 2002. Because T.S. did not attend school in the district during the pendency of the earlier proceeding pursuant to *N.J.S.A.* 18A:38-1, no tuition is due the Board for any period of ineligible attendance.

IT IS SO ORDERED.^{1 2}

ACTING COMMISSIONER OF EDUCATION

Date of Decision: September 1, 2004

Date of Mailing: September 1, 2004

¹ Pursuant to *N.J.A.C.* 1:1-18.4(c), in reaching the determination herein, the Commissioner did not consider the new information submitted by petitioner with his exceptions.

² This decision 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.*