

G.P. ON BEHALF OF MINOR	:	
CHILD, R.P.,	:	
	:	
PETITIONER,	:	COMMISSIONER OF EDUCATION
	:	
V.	:	DECISION
	:	
BOARD OF EDUCATION OF THE	:	
TOWNSHIP OF WEST ORANGE,	:	
ESSEX COUNTY,	:	
	:	
RESPONDENT.	:	

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SYNOPSIS

Petitioner challenged the Board’s residency determination that his niece, R.P., was not eligible for a free education in the West Orange Public Schools based on family or economic hardship. Petitioner’s appeal included an affidavit from R.P.’s mother, who resides in Haiti, alleging economic hardship and persecution of her family for its political beliefs. The matter was originally heard in June 2005, and an initial decision dismissing the petition and ordering petitioner to pay tuition was filed based on petitioner’s failure to appear at the hearing. The Commissioner remanded the matter to the OAL for a hearing on the merits, which was held on January 17, 2006.

The ALJ found that: petitioner’s supplemental submissions and testimony were credible and demonstrate that R.P.’s parents lack the economic ability to provide for their child; R.P.’s parents are suffering from political persecution; the family is in fear for their lives; and G.P. brought his niece into respondent’s district for reasons other than providing her a superior education. The ALJ concluded that petitioner has met his burden of proof that R.P. is domiciled in the district, and that he is providing care for R.P., gratis, due to family and economic hardships. Accordingly, the ALJ ordered that R.P. is entitled to a free education in the West Orange Public Schools, and denied the respondent’s application for tuition reimbursement.

The Commissioner must give deference to the credibility determinations of the ALJ, and therefore agrees with the ALJ’s conclusion that R.P. meets the standards set forth in N.J.S.A. 18A:38-1(b)(1) which allow a free public education to a student who resides in the home of a person domiciled in the district, is supported by that person gratis, is not in the district solely for the purpose of receiving a free education, and whose parents cannot support or care for her due to hardship. Accordingly, the Commissioner adopts the Initial Decision of the OAL in this matter.

This synopsis is not part of the Commissioner’s decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.

March 13, 2006

OAL DKT. NO. EDU 11591-05  
(OAL DKT. NO. EDU 10926-04 ON REMAND)  
AGENCY DKT. NO. 373-10/04

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The record in this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. No exceptions were submitted.

The controversy stems from G.P.'s (petitioner) application to the West Orange Board of Education (respondent) to allow his niece, R.P., to receive a free public education in West Orange, and respondent's denial of the application on September 13, 2004, for the stated reason that it did not meet the statutory requirement that the application be precipitated by family or economic hardship. On October 25, 2004 the Commissioner of Education received an appeal from the petitioner which included an affidavit dated October 21, 2004, from R.P.'s mother, R.D.P.

In the affidavit, R.D.P. alleged that her family members had been persecuted for their political beliefs; that they had lived from house to house in fear; that after a beating in retaliation for attendance at a protest against Haiti's president, R.P.'s brother had fled to the United States and applied for asylum; that before R.P. arrived in the United States to live with her uncle, the petitioner, she had been in hiding from the militia, which had tried to kidnap her; that R.P. had been traumatized

as a result of the conditions in Haiti; and that petitioner would care for R.P. gratis because of her mother's inability to provide her with security and basic necessities.

Respondent filed an answer on November 30, 2004, including a counterclaim for tuition reimbursement for the period in which R.P. had attended school in West Orange, and the matter was transmitted to the OAL. On February 7, 2005, the OAL sent a notice to the parties advising that the hearing would take place on June 3, 2005, at 9 a.m.

Petitioner did not appear at the hearing on June 3, 2005, and did not call the OAL to request an adjournment or explain his absence. (EDU 10926-04, Initial Decision at 2) On June 3, respondent moved for dismissal of the petition and an award of tuition reimbursement. (*Ibid.*) Testimony was presented about R.P.'s school attendance and about tuition rates in West Orange. (*Ibid.*) The matter was held until Monday, June 6, 2005. (*Ibid.*) When petitioner failed to appear, respondent's motion for dismissal of the petition and an award of tuition fees was granted. (*Ibid.*)

The administrative law judge's (ALJ) Initial Decision in EDU 10926-04 was issued on June 8, 2005. She concluded that since petitioner failed to attend the hearing, and in so doing failed to meet his burden to show that R.P.'s residency with him entitles her to a free education in West Orange, pursuant to N.J.S.A. 18A:38-1(b)(1), the petition should be dismissed. (EDU 10926-04, Initial Decision at 3) In addition, she concluded that, pursuant to N.J.S.A.18A:38-1(b)(2), and based upon the evidence, petitioner owed respondent tuition for the 2004-2005 school year. (EDU 10926-04, Initial Decision at 4)

Nine days after the Initial Decision in EDU 10926-04, on June 17, 2005, petitioner hand delivered to the office of the Commissioner of Education a letter reporting that he did not know about the hearing until two days after it took place. The letter stated:

If I were to know, I would not have ever made the mistake of not attending, I was waiting for that chance for so long. Please I would like to have the opportunity to prove my case. I am pleading for another chance to be able to do so.

Because the letter was filed within the time allowed for exceptions to the Initial Decision, because there was no evidence that there had been any communication between the court and the parties during the four months between the notice of the hearing and the date of the hearing, and because the facts alleged in the affidavit of R.P.'s mother, if true, could arguably have justified R.P.'s residence with her uncle in West Orange, and R.P.'s attendance at West Orange High School, the Commissioner granted petitioner's request for a hearing, and remanded the case to the OAL.

A hearing on the merits was held in the OAL on January 17, 2006. As a threshold matter, in her Initial Decision on Remand issued January 25, 2006, the ALJ found G.P. to be credible. (Initial Decision at 6) His testimony was consistent with the facts set forth in the affidavit of R.P.'s mother. Significantly, the ALJ noted that R.P.'s mother's affidavit had been incomplete due to the fact that R.P.'s mother neither speaks, reads nor writes in English, and consequently had to find an interpreter to compose her affidavit and letters, which she then signed. (Initial Decision at 3) The Commissioner notes that the vocabulary and syntax of the affidavit suggest that the interpreter was not fluent in English.<sup>1</sup> Thus, G.P.'s testimony at the hearing supplemented the affidavit and clarified the conditions under which R.P.'s family had been and still were living.<sup>2</sup>

Thus, the ALJ found that R.P. had gone to school in Haiti only on an intermittent basis because of political unrest and security issues. (Initial Decision at 2) In July, 2004, G.P. paid for her air fare to bring her to his home in West Orange, and has since been her sole source of support. (Initial Decision at 3) She has never returned to Haiti, and intends to stay in the United States and go to college. G.P. has applied to sponsor her for a green card. (Initial Decision at 4)

G.P. testified on January 17, 2006 that R.P.'s parents still live in Haiti in a two-room house with no running water, electricity or telephone. (Initial Decision at 3) (The above-referenced

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<sup>1</sup> Although the affidavit included a paragraph that stated that R.P. was being placed with her uncle "solely for the purpose of receiving a free public education" in West Orange, the ALJ found that the context of the affidavit necessitated the conclusion that the affiant meant to state that her daughter's residency with G.P. was not "solely for the purpose of receiving a free public education." (Initial Decision at 4)

<sup>2</sup> Indeed the conditions which R.P.'s mother described are consistent with journalistic and scholarly accounts of the last decade and a half in Haiti. See, e.g. Elizabeth D. Gibbons, *Sanctions in Haiti: Human Rights and Democracy under Assault*, Center for Strategic and International Studies, Washington, D.C., 1999.

affidavit from October 21, 2004, stated that they slept “house to house” because of political persecution.) R.P.’s father, a mason, could not find work because he unsuccessfully ran for mayor in his town as an opposition candidate to the incumbent regime. (Initial Decision at 3) He is also periodically harassed by rebel forces to the point where he flees over the border to Santo Domingo and “stays there for a while.” (*Ibid*) R.P.’s mother earns some income by buying food and clothing in Miami and selling it in Haiti. G.P. gave her \$2000 to initiate this retail business; it costs her \$150-200 to make each trip, and her profits provide a meager living for her and R.P.’s father. (*Ibid.*)

R.P.’s two older brothers have fled Haiti. (Initial Decision at 2) One fled dressed as a woman, after having been beaten by the “Chumeras Lavales” [Haitian President Aristede’s political enforcers], and is currently applying for political asylum. (Initial Decision at 4) G.P. assists both young men financially, as they are employed only sporadically. (Initial Decision at 3)

The Commissioner agrees with the ALJ’s determination that R.P. meets the standards set forth in *N.J.S.A. 18A:38-1(b)(1)* which allow a free public education to an “affidavit student,” i.e., a student who: resides in the home of a person domiciled in a school district; is supported by that person gratis; is not in the district solely for the purpose of receiving a free education; and whose parents cannot support or care for her due to hardship.

As a threshold matter, the Commissioner is bound by the ALJ’s determination that G.P.’s testimony was credible. *S.D. v. Div. of Med. Assistance and Health Services*, 349 *N.J. Super* 480, 485 (App. Div. 2002). That testimony established that R.P.’s parents live in an environment that is economically depressed and ranges from politically unstable to dangerous. More specifically, they are poor, and cannot count on the consistent operation of such institutions as schools and the administration of justice and law enforcement. Further, the evidence at the hearing showed that G.P. is not only supporting R.P. gratis, but is helping her brothers and has assisted her parents.

Accordingly, the Commissioner adopts the Initial Decision for the reasons expressed therein and supplemented above. G.P.'s petition is granted; R.P. is entitled to receive a free public education in the school district of West Orange. Respondent's request for tuition is denied.

IT IS SO ORDERED.<sup>3</sup>

ACTING COMMISSIONER OF EDUCATION

Date of Decision: March 13, 2006

Date of Mailing: March 13, 2006

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<sup>3</sup> 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.*