

#74-11 (OAL Decision: Not yet available online)

S.G.S. on behalf of minor child S.S., :

PETITIONER, :

V. : COMMISSIONER OF EDUCATION

BOARD OF EDUCATION OF THE : DECISION

NORTHERN VALLEY REGIONAL :

HIGH SCHOOL DISTRICT, :

BERGEN COUNTY, :

RESPONDENT. :

SYNOPSIS

Petitioner appealed the determination of the respondent Board that her daughter, S.S., was not eligible for a free public education in the Northern Valley Regional High School district during the 2009-2010 school year. The respondent contended that S.S. was domiciled with her father in Cresskill during the time period in question. Petitioner contends that S.S. was domiciled with her in Closter – a town within the Northern Valley district – and spent limited time in Cresskill with her father, from whom petitioner is separated.

The ALJ found that: the weight of the evidence indicates that petitioner and her daughter were domiciled within the school district, in an apartment in Closter, during the 2009-2010 school year; petitioner and S.S. then moved into a home in Demarest – another town within the district – in June 2010; and the occasional presence of S.S. at the Cresskill home of her father does not amount to residency at that address. Accordingly, the ALJ ordered that the respondent’s determination that S.S. was not domiciled in the Northern Valley Regional High School district for the 2009-2010 school year be reversed; and further ruled that the respondent Board is not entitled to tuition reimbursement from petitioner.

Upon a full and independent review, the Commissioner concurred with the ALJ and adopted the Initial Decision as the final decision 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 4, 2011

OAL DKT. NO. EDU 12412-09
AGENCY DKT. NO. 345-11/09

S.G.S. on behalf of minor child S.S., :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE : DECISION
NORTHERN VALLEY REGIONAL :
HIGH SCHOOL DISTRICT, :
BERGEN COUNTY, :
RESPONDENT. :
_____ :

The record of this matter and the Initial Decision have been reviewed. Respondent submitted exceptions which reiterate the arguments it presented in its post-hearing brief – which arguments are unpersuasive in light of the record as a whole. Accordingly, and for the following reasons, the Initial Decision is adopted as the final decision in this matter.

In this controversy, petitioner challenges respondent’s determination that during the 2009-2010 school year, her minor child, S.S., was ineligible to receive a public education in the Northern Valley Regional High School District. In the Commissioner’s view, the facts support the conclusions that 1) petitioner provided sufficient evidence of her own residency in respondent’s district during the 2009-2010 school year, 2) petitioner provided evidence that her minor child, S.S., lived with her in the district during the 2009-2010 school year, and

3) respondent presented insufficient evidence to support its position that S.S. lived outside the district with her father during the 2009-2010 school year.¹

Accordingly, the petition is granted. To the extent that the third affirmative defense in respondent's answer – in which respondent stated that it would seek tuition reimbursement – can be regarded as a counterclaim, that counterclaim is denied.

IT IS SO ORDERED.²

ACTING COMMISSIONER OF EDUCATION

Date of Decision: March 4, 2011

Date of Mailing: March 4, 2011

¹ The testimony of respondent's investigator – upon which respondent's cast primarily relies – was not thorough. He did not keep accurate records of his reconnaissance. He could not provide specific dates, times, or the exact number of occasions that he observed each of the addresses given to him, and he provided testimony – such as the date of his first encounter with S.S.'s father at the out-of-district home – which was discrepant with certain correspondence between himself and school administrators. Further, assuming *arguendo* that respondent's investigator – who admittedly spent no more than 21 hours over the course of nine months on the instant case – saw S.S. with her father on the occasions described in his testimony, it would still not rebut the *prima facie* case presented by petitioner that S.S. was domiciled with her mother, S.G.S., in an apartment in respondent's district for all but a few days of the 2009-2010 school year.

² This decision may be appealed to the Superior Court, Appellate Division, pursuant to *P.L. 2008, c. 36 (N.J.S.A. 18A:6-9.1)*.