

When Children are Removed from their Biological Parents' Care, Which School District Do They Attend - Their Current School District or the School District Where They are Placed? Our Appellate Court Gives Us Guidance and Distinguishes Between Foster Care and Kinship Legal Guardians.

April 2, 2020 | by Jennifer Fortunato

In the case of K.K.M. v. Board of Education of the City of Gloucester City, A-1158-18T1 (App. Div. March 10, 2020), our Appellate Court gives us guidance as to which school district children are required to attend when they are removed from their birth parents' care by the Department of Child Protection and Permanency ("DCPP").

By way of background, in October 2014, A.W. and R.M. were registered in the Gloucester City School District living with their birth mother when they were removed by DCPP into foster care with the petitioner who lives in Laurel Springs. When children are placed into foster care, DCPP conducts an "education stability assessment" to determine if the children should remain in their current school district or if they should be transferred to the school district of their foster parents. DCPP conducted this assessment and determined that A.W. and R. M should remain in their current school district, Gloucester City School District.

In December 2014, the children were returned to their birth mother. On September 11, 2015, the children were removed again from their birth mother and placed again with the petitioner. On May 16, 2017, a court order awarded petitioner kinship legal guardianship of A.W. and R. M.

In October 2017, the Gloucester City Superintendent informed petitioner that the A.W. and R.M. had to be enrolled in the Laurel Springs School District where she lived.

Petitioner appealed administratively. The Administrative Law Judge (ALJ) granted summary judgment in favor of the Board of Education of Gloucester City. The AJL determined that A.W. and R.M. are no longer entitled to an education in the Gloucester City School District because they live with the petitioner, their legal guardian, outside of Gloucester, and are no longer foster children. The Commissioner adopted the ALJ's decision.

On appeal, petitioner argued that the children's "education stability assessment" was a conclusive determination and therefore the children's enrollment in the Gloucester City School District should not have been revoked when she obtained kinship legal guardianship status. The Appellate Court rejected petitioner's position and affirmed the ALJ's and Commissioner's decision.

The Appellate Court concluded that DCPD's determination that A.W. and R.M. remain in the Gloucester City School District after an "education stability assessment" was conclusive for as long as the children remained in foster care. However, once the petitioner obtained kinship legal guardianship status, the "education stability assessment" was no longer conclusive.

The Appellate Court reasoned, foster home (resource family home) only provides temporary out-of-home placement services. In contrast, a kinship legal guardian is a caregiver who assumes the care of a child due to parent incapacity, with the intent to raise the child to adulthood and is responsible for the care and protection of the child and providing for the child's health, education and maintenance. Since a kinship legal guardianship is not temporary, A.W. and R.M. were no longer eligible to continue to attend school in their birth mother's school district.