

A.E.T. AND L.T. ON BEHALF OF A.M.T.,:

PETITIONERS, :

V. :

COMMISSIONER OF EDUCATION

BOARD OF EDUCATION OF THE :  
NORTH HUNTERDON-VOORHEES :  
REGIONAL HIGH SCHOOL DISTRICT, :  
HUNTERDON COUNTY :

DECISION

RESPONDENT. :  
\_\_\_\_\_ :

SYNOPSIS

Petitioners challenged the determination of the respondent Board that their son, A.M.T., was ineligible for school tuition paid by the Board pursuant to *N.J.S.A. 18A:38-1a*. In 2004, A.M.T. was placed by the school district at Matheny Medical and Educational Center (Matheny) – a hospital and educational facility for children and adults with medically complex developmental disabilities. In May 2013, the Board notified the parents that A.M.T. was ineligible for continued enrollment in the school district based upon A.E.T.’s employment assignment in the Netherlands from 2009 until 2013. Petitioners contended that their domicile throughout this temporary work assignment remained within the school district. The Board sought tuition reimbursement from the parents in the amount of \$277,410 for the period of A.M.T.’s ineligible attendance.

The ALJ found, *inter alia*, that: based on the documentation submitted by the petitioners and their credible testimony at hearing, at all times between 2009 and 2014, petitioners were domiciled in respondent’s school district; though they also resided in the Netherlands due to A.E.T.’s temporary work assignment, they maintained a domicile within respondent’s district and returned at the end of the assignment; the temporary residence abroad was funded by A.E.T.’s employer and the family never intended to remain in Europe nor to abandon their New Jersey domicile. The ALJ concluded that at all times relevant from 2009 to 2014, the parents were domiciled within the Board’s school district and A.M.T. was entitled to receive a free and appropriate education at the Matheny School, paid for by the district. Accordingly, the petitioners’ appeal was granted and the Board’s cross-petition for reimbursement of tuition was denied.

Upon comprehensive review of the record and the Initial Decision, the Commissioner concurred with the ALJ’s findings and conclusions. Accordingly, the Initial Decision was adopted 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.

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The present controversy involves whether petitioners' temporary residence in the Netherlands eradicated their New Jersey domicile, thereby rendering A.M.T. ineligible for school tuition paid by respondent pursuant to *N.J.S.A. 18A:38-1a*.<sup>1</sup> To resolve this dispute, the Commissioner conducted a full and independent review of the record, the Initial Decision of the Office of Administrative Law (OAL), plus the parties' exceptions and reply exceptions. Upon such review, the Commissioner concurs with the Administrative Law Judge's (ALJ) comprehensive findings of fact and conclusions of law which are wholly supported by the credible evidence in the record. Thus, during the time period in question, A.M.T. was entitled to a free and appropriate education paid for by the respondent.

Following a plenary hearing at the OAL, the ALJ found that at all times relevant between 2009 and 2014, petitioners were domiciled within respondent's district: initially in Tewksbury, New Jersey, and later in Lebanon, New Jersey – after the Tewksbury home was sold.

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<sup>1</sup>A.M.T.'s individualized education program (IEP) warranted placement at Matheny Medical and Educational Center – a hospital and educational facility for children and adults with medically complex developmental disabilities.

Although petitioners also resided in the Netherlands due to A.E.T.'s temporary employment there – and L.T. frequently traveled between the Netherlands and New Jersey during A.E.T.'s overseas assignment – they maintained a domicile within respondent's district and returned home to Lebanon once A.E.T.'s employment concluded. Petitioners' temporary residence abroad was funded by A.E.T.'s employer; they never intended to remain there, nor did they intend to abandon their New Jersey domicile. Ultimately, the ALJ recommended granting petitioners' appeal and denying respondent's cross-petition for tuition reimbursement.

In its exceptions, respondent argues that: (1) the ALJ erroneously placed the burden of proof on the Board, ruling it failed to demonstrate petitioners had a domicile other than in the district; (2) the ALJ was swayed by petitioners' irrelevant testimony concerning A.M.T.'s severe disability; and (3) to the extent the ALJ determined that Board personnel waived the residency requirement, said finding is contrary to law. In their reply exceptions, petitioners argue that the ALJ utilized the proper burden of proof, that the facts surrounding A.M.T.'s disabilities are relevant, and that the ALJ did not base her decision on any theory of waiver.

The Commissioner finds respondent's exceptions to be without merit. First, the ALJ appropriately placed the burden of proof on petitioners, who demonstrated by a preponderance of evidence that they were domiciled within the district. Second, the ALJ's findings were not unduly influenced by testimony about A.E.T.'s disability and medical needs; on the contrary, the findings were made in accord with applicable law as cited within the Initial Decision. Third, the ALJ did not find that Board personnel waived the residency requirement – and the Commissioner makes no such finding here. Finally, respondent's reliance upon *Board of Education of Hunterdon Central Regional High School District, Hunterdon County v. E.F. and G.F.*, Commissioner Decision No. 321-04, decided August 4, 2004, is unconvincing. In that case, E.F. and G.F. failed to

establish domicile in petitioner's district when they rented an apartment in-district, admitted they did so to afford their children a better education, failed to rent out or sell their out-of-district home during the time period in question, and promptly returned to their out-of-district home once their youngest child graduated from high school. The facts herein are completely different.

Accordingly, the Initial Decision is adopted as the final decision in this matter, petitioners' appeal is granted, and respondent's cross-petition for tuition reimbursement is dismissed.

IT IS SO ORDERED.<sup>2</sup>

COMMISSIONER OF EDUCATION

Date of Decision: March 6, 2015

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