

EDU #9907-94 and #8036-95 (consolidated)  
C # 310-96  
SB # 54-96

H.M. AND L.M., on behalf of their minor :  
children, J.M. AND J.M., :

PETITIONERS-APPELLANTS, :

V. :

STATE BOARD OF EDUCATION

BOARD OF EDUCATION OF THE TOWN- :  
SHIP OF FREEHOLD, MONMOUTH :  
COUNTY, :

DECISION

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

Decided by the Commissioner of Education, July 15, 1996

For the Petitioners-Appellants, Ronald W. Sage, Esq.

For the Respondent-Respondent, Martin J. Anton, Esq.

In August 1988, petitioners, H.M. and L.M., purchased a property on Center Street in Freehold. The property consisted of two parcels, one of which was located in Freehold Township and the other in Freehold Borough. The house was situated entirely on the parcel located in the Borough. The parcel located on the Township side of the property contained two truck containers used as sheds. In 1991, petitioners enrolled their daughter, J.M., in kindergarten in the Township's public schools for the 1991-92 school year and supplied the district with proof of residency.

In October 1993, petitioners received a letter from the attorney for the Freehold Township Board of Education (hereinafter "Board" or "Township Board") advising them

that since their house was located in Freehold Borough, J.M. was not entitled to attend school in the Township. In August 1994, following a hearing, the Township Board determined that petitioners were not domiciled in the Township and ordered the removal of J.M. from the Township's schools.

In September 1994, petitioners filed the instant petition with the Commissioner of Education, alleging that J.M. should be permitted to attend school in Freehold Township. In July 1995, petitioners filed a second petition, which was consolidated with their initial petition, alleging that their son, J.M., should also be permitted to attend the Township's schools. The Township Board filed a counter-petition seeking tuition from petitioners for the period of their children's ineligible attendance.

On May 16, 1996, an Administrative Law Judge ("ALJ") found that petitioners were not domiciled in the Township since their residence was located within the jurisdiction of Freehold Borough and that petitioners had failed to show that the Township Board had known that their children were attending its schools illegally. Consequently, he recommended that petitioners' children be excluded from the schools of Freehold Township at the conclusion of the 1995-96 school year. The ALJ further found that equitable estoppel was not applicable to these facts. However, he concluded that, under the particular circumstances herein, petitioners should not be assessed tuition.

On July 15, 1996, the Commissioner adopted the ALJ's recommended decision with modification. The Commissioner concurred with the ALJ that petitioners had failed to demonstrate that their children were entitled to a free public education in the Township's schools. As a result, the Commissioner concluded that petitioners were

liable to the Board for tuition for the 1991-92 through 1995-96 school years, the period during which their children had attended school in the Township. The Commissioner also agreed that equitable estoppel was not applicable in this instance, noting that the Board's silence until October 1993 did not necessarily justify the operation of estoppel absent a showing that the Board had been aware of petitioners' violation and failed to act or that petitioners had reasonably relied on an affirmative representation by the Board that their children's enrollment in the district was proper. The Commissioner found "mere acquiescence...insufficient to buttress an estoppel claim." Commissioner's Decision, slip op. at 28.

Petitioners filed the instant appeal to the State Board, contending that the Board should be equitably estopped from recovering tuition for the period at issue under the unique circumstances presented herein.

After a thorough review of the record, including the transcript of the hearing held in the Office of Administrative Law in this matter,<sup>1</sup> we reverse that portion of the Commissioner's decision that directed petitioners to pay tuition to the Township Board for the period of their children's attendance in the Township's schools.

Petitioners' property, as previously noted, consisted of two parcels, one of which was situated in Freehold Township, the other in Freehold Borough. Petitioners provided the Township Board with all requested proofs of residency at the time they enrolled their daughter, J.M., in kindergarten in 1991, and there is nothing in the record to indicate that petitioners had acted with fraudulent intent to mislead the Board into

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<sup>1</sup> We note that the hearing transcript was not forwarded to the Commissioner by the Office of Administrative Law until September 30, 1996, after the Commissioner had already rendered his decision in this matter.

permitting their children to attend school in the Township. Moreover, we stress that petitioner L.M. testified without contradiction that the children of the previous occupants of their home had attended public school in the Township. Tr. 4/29/96, at 15. She indicated that such information was a consideration in their purchasing the property. Id.

Under these particular circumstances, we find that petitioners reasonably relied upon the Township Board's acceptance of their daughter, J.M., as a student in 1991, and conclude that fundamental fairness dictates that the Township Board be estopped from collecting tuition from petitioners for the years of their children's attendance. See East Orange v. Bd. of Water Com'rs., etc., 41 N.J. 6, 19 (1963) (equitable principles of estoppel may be applied against public bodies where the interests of justice, morality and common fairness dictate that course); State, Dept. of Envir. Protection v. Stavola, 103 N.J. 425, 436 n.2 (1986) (any administrative agency in determining how best to effectuate public policy is limited by applying principles of fundamental fairness). Cf. Whasun Lee v. Board of Education of the Township of Holmdel, Docket #A-653-95T5 (App. Div. 1996); Board of Education of the Borough of Fort Lee v. Kintos, Docket #A-4944-93T5 (App. Div. 1995).

Accordingly, we reverse that portion of the Commissioner's decision directing petitioners to pay tuition to the Township Board for the 1991-92 through 1995-96 school years.

Attorney exceptions are noted.

April 2, 1997

Date of mailing \_\_\_\_\_