

EDU #3920-02
C # 529-03
SB # 41-03

T.D'O and R.D., on behalf of minor	:	
children, J.F.D., S.M.D. and S.C.,	:	
	:	
PETITIONERS-APPELLANTS,	:	STATE BOARD OF EDUCATION
V.	:	
	:	DECISION
BOARD OF EDUCATION OF THE BOROUGH :	:	
OF FORT LEE, BERGEN COUNTY,	:	
	:	
RESPONDENT-CROSS/APPELLANT.	:	
_____	:	

Decided by the Commissioner of Education, September 2, 2003

For the Petitioners-Appellants, Kenneth J. Lindenfelser, Esq.

For the Respondent-Cross/Appellant, Robert T. Tessaro, Esq.

T.D.'O and R.D. (hereinafter "petitioners") filed a petition of appeal with the Commissioner of Education challenging a determination made by the Board of Education of the Borough of Fort Lee ("Board" or "Fort Lee Board") that their children, J.F.D., S.M.D., and S.C., were not domiciled in Fort Lee and, therefore, not entitled to a free public education in the district. During the proceedings in the Office of Administrative Law, the parties filed cross motions for summary decision.

The facts are not in dispute. The record indicates that a portion of the petitioners' property is located in the Borough of Fort Lee and a portion in the City of Englewood. An investigation conducted by the Board determined that the portion of the property located within Fort Lee was assessed for land only, with an annual real estate tax bill of

\$335.65. Englewood assessed the property for land and improvements, resulting in an annual tax bill in the amount of \$4,412. The petitioners were advised by the Board that their children could continue to attend school in the district if a portion of their residence was located within the district. The petitioners represented to the Board that they would construct an addition to the house with living quarters within the district boundaries, and, on the basis of that representation, their children were permitted to continue attending school in the district without charge. Construction of the addition began in August 2001.

On November 29, 2001, the Interim Superintendent advised the petitioners that the State Board had adopted a regulation requiring students whose residence was located within two school districts to attend school in the district in which the majority of their property taxes were paid. N.J.A.C. 6A:28-2.4(a)1(vii).¹ The petitioners were informed that since the taxes paid to Englewood would exceed the taxes paid to Fort Lee even after completion of the addition, their children were no longer entitled to a free public education in Fort Lee. The petitioners continued with the construction of the addition, and a certificate of occupancy was issued in May 2002.

On July 31, 2003, an administrative law judge (“ALJ”) recommended dismissing the petition, concluding that the petitioners’ children were not eligible for a free public education in the Fort Lee school district. The ALJ concluded that since the petitioners paid the majority of their property taxes to Englewood, it would be unfair for Fort Lee to

¹ N.J.A.C. 6A:28-2.4(a)1(vii), which became effective on December 17, 2001, provides that:

Where a student's dwelling is located within two or more local school districts, or bears a mailing address that does not reflect the dwelling's physical location within a municipality, the district of domicile for school attendance purposes shall be that of the municipality to which the resident pays the majority of his or her property tax, or to which the majority of property tax for the dwelling in question is paid by the owner of a multi-unit dwelling.

continue to bear the financial burden of providing a free public education to their children while Englewood received the benefit of the bulk of the petitioners' property taxes. Finding no dispute that the petitioners' children were not domiciled within the district, the ALJ concluded that they were not entitled to a free public education in Fort Lee. The ALJ further concluded, however, that it would be inequitable under the circumstances to assess tuition against the petitioners for the period of their children's attendance in the district's schools.

On September 2, 2003, the Commissioner adopted the ALJ's recommendations and dismissed the petition. The Commissioner concurred with the ALJ that the petitioners' children were not domiciled in Fort Lee and, thus, were not entitled to a free public education in that district. Citing Zadran v. Board of Education of the Township of Belleville, decided by the State Board of Education, April 1, 1998, the Commissioner also agreed that it would be inequitable under the circumstances to assess tuition against the petitioners for the period of their children's attendance.

The petitioners filed the instant appeal to the State Board. The Fort Lee Board filed a counterclaim seeking tuition.

After a thorough review of the record and upon consideration of the unique facts of this case, we reverse the Commissioner's determination that the petitioners' children are not entitled to a free public education in the Fort Lee school district. Notwithstanding the adoption of N.J.A.C. 6A:28-2.4(a)1(vii), we conclude that it would be inequitable to bar the petitioners' children from attending school in Fort Lee under these particular circumstances. Cf. Whasun Lee v. Board of Education of the Township of Holmdel, Docket #A-653-95T5 (App. Div. 1996) (subsequent history omitted); Board

of Education of the Borough of Fort Lee v. Kintos, Docket #A-4944-93T5 (App. Div. 1995).

It is undisputed that the Board agreed to allow the petitioners' children to continue to attend school in the district if the petitioners constructed an addition to their house on that portion of the property situated in Fort Lee. In reliance on that agreement, the petitioners began to construct such an addition, expending approximately \$100,000 in the process. There is no suggestion that the petitioners acted in anything other than good faith, and we find that they reasonably relied upon the Board's assurance. Moreover, they did so to their detriment, spending approximately \$100,000 in order to satisfy the Board's requirement.²

Under these circumstances, we conclude that fundamental fairness dictates that the Board be estopped from barring the petitioners' children from a free public education in the district and, similarly, from collecting tuition from the petitioners for the period of their children's attendance. See Gruber v. Mayor and Tp. Committee of Raritan Tp., 39 N.J. 1, 13 (1962) (equitable principles of estoppel may be applied against public bodies where the interests of justice, morality and common fairness dictate that course). Although equitable estoppel is not applied against public bodies to the same extent as against private parties, O'Neill v. State Highway Dep't, 50 N.J. 307, 319 (1967), and while the Board could not have anticipated the adoption of N.J.A.C. 6A:28-2.4(a)1(vii), the unique facts of this case compel the application of equitable principles.

² Although it can be argued that the petitioners received the benefit of more spacious living quarters, there is no indication that they would have built an addition to the house and expended such a significant sum in the absence of the Board's assurance that it would permit their children to continue to attend school in the district if they did so.

Accordingly, we reverse the Commissioner's determination that the petitioners' children are not entitled to a free public education in Fort Lee and, in view of this conclusion, affirm his determination that they are not responsible for tuition for the period of their children's attendance in the district. We therefore direct the Fort Lee Board to permit the petitioners' children to attend public school in the district free of charge as long as they continue to be domiciled at the controverted property. We stress in so doing that our determination is limited to the petitioners in this matter and is not applicable to future residents of the property.

Attorney exceptions are noted.

March 3, 2004

Date of mailing _____