

BOARD OF EDUCATION OF THE :
HUNTERDON CENTRAL REGIONAL :
SCHOOL DISTRICT, HUNTERDON :
COUNTY, COMMISSIONER OF EDUCATION

PETITIONER, : DECISION ON MOTION

V. :

E.F. AND G.F., :

RESPONDENTS. :

SYNOPSIS

Petitioning Board sought a declaration that respondents were not domiciled within its District during the 1997-98 school year. Petitioner subsequently filed an amended petition seeking the same determination for the 1998-99 school year.

At the OAL the ALJ granted petitioner's motion for partial summary decision as to the 1997-98 school year, finding that respondents offered nothing by way of responding affidavits or certifications demonstrating disagreement to require submission to a factfinder whether respondents were domiciled in petitioner's District for that year. The ALJ concluded that the doctrine of judicial estoppel precluded respondents from asserting that they were domiciliaries of petitioner's District in Hunterdon County when they maintained in prior litigation concerning the same school year that they were domiciled in another district in Somerset County. The ALJ denied without prejudice those portions of petitioner's motion seeking a declaration that respondents intentionally misrepresented their place of domicile to petitioner at the start of the 1997-98 school year so as to obtain a free education for their children and that respondents' defense to petitioner's 1997-98 tuition claim was frivolous, thereby permitting petitioner to pursue a claim for attorney's fees.

The Commissioner affirmed the recommended Order of the ALJ, concurring that respondents are estopped from asserting the inconsistent positions that they were domiciled in Branchburg and Flemington in the 1997-98 school year and finding that since respondents were not legally domiciled in petitioner's District during the 1997-98 school year, petitioner is entitled to recover \$22,878 representing costs to educate respondents' two children during that year. The Commissioner further affirmed the ALJ's ruling on the intentional misrepresentation and frivolous defense claims and ordered the matter to continue at OAL for proceedings on the Amended Petition of Appeal, which seeks reimbursement of tuition costs for the 1998-99 school year.

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The record of this matter and the recommended Order of the Office of Administrative Law (OAL) have been reviewed. Both the Board and respondents filed exception arguments, and the Board filed a reply, in accordance with *N.J.A.C. 1:1-18.4*.

The Board asserts in its exceptions that (1) there is sufficient material evidence to find that respondents made intentional misrepresentations as to their domicile at the beginning of, and during, the 1997-1998 school year; (2) there is sufficient material evidence to find that respondents' defense to the Board's claim was frivolous; (3) the Administrative Law Judge (ALJ) failed to address the Board's motion for sanctions against respondents pursuant to *N.J.A.C. 1:1-14.14* for failure to complete discovery in accordance with *N.J.A.C. 1:1-10.1 et seq.*; and (4) the ALJ failed to address the Board's request for pre- and post-judgment interest, pursuant to *N.J.A.C. 6:24-1.16*.

Respondents contend in their exceptions that the doctrine of judicial estoppel does not apply, since they are *not* now asserting an inconsistent legal theory or position. Rather, they aver that "[i]n the previous matter, [they] were domiciled in Branchburg. Presently, and before the commencement of the instant litigation, [they] relocated and became domiciled in Flemington." (Respondent's Exceptions at 2) Respondents reason that they are simply asserting a

“change in a factual situation.” (*Id.*) Additionally, respondents argue there is a genuine issue of material fact as to whether they were domiciled in Flemington during the 1997-1998 school year, sufficient to warrant submission of this matter to a factfinder. Thus, they maintain that the ALJ’s Order granting partial summary decision to the Board should be rejected. (*Id.* at 4)

Upon careful and independent review of the record in this matter, the Commissioner determines to affirm the recommended Order of the ALJ. Initially, the Commissioner concurs that the doctrine of judicial estoppel precludes respondents from asserting in the present matter that they were domiciliaries of Flemington during the 1997-1998 school year, when they maintained in prior litigation before the Commissioner that they were living in Branchburg during the same school year. In this connection, the Commissioner observes that, notwithstanding respondents’ contention, as noted above, that “[i]n the previous matter, [they] were domiciled in Branchburg [, but p]resently, and before the commencement of the instant litigation [in June of 1998] respondents relocated and became domiciled in Flemington” (Respondent’s Exceptions at 2), they *also* argued before the ALJ that they “established their domicile in Flemington *before the start of the 1997-1998 school year*, as evidenced by Mr. Barrett’s affidavit, respondent’s lease, and respondent’s verified petition.” (Respondents’ Brief in Opposition to Board’s Motion for Summary Decision at 5-6) (emphasis added)

The Hunterdon Central Regional Board has maintained that, “[a]t the beginning of the 1997-1998 school year, respondents presented to [it] a copy of a one (1) year lease on a one (1) bedroom apartment at Hunter Hills, Flemington, New Jersey and claimed that they and two of their children were domiciled at that address as of September 1, 1997.” (Brief in Support of Petitioner’s Motion for Summary Decision at 4) Based on their representations, respondents’ two children were permitted to attend the Hunterdon Central Regional High School, free of charge, from September 1997 until May 1998, when the Hunterdon Board determined that

respondents continued to own their Branchburg residence and, consequently, the Board challenged respondents' claim of domicile in its District. (*Id.* at 4)

Yet, as the ALJ noted, during the 1997-1998 school year, respondents' prior litigation was still in progress. Hearings were conducted in the matter of *E.F., on behalf of minor child, R.F. v. Board of Education of the Township of Branchburg, Somerset County*, on February 25 and 28, 1997 and September 18, 1997 at the Office of Administrative Law. (*E.F.*, slip. op. at 2) (*See also* P-1 at 2) The Initial Decision was issued on March 11, 1998, and the Commissioner's decision was issued on April 27, 1998. Throughout this litigation with the Branchburg Board of Education, and notwithstanding respondents' claim addressed to the Hunterdon Central Regional Board that they changed their domicile prior to the start of the 1997-1998 school year, E.F. and G.F. maintained they were residents of Branchburg during the 1996-1997 and 1997-1998 school years for the purpose of prosecuting their suit against Branchburg. (Brief in Support of Petitioner's Motion for Summary Decision at 3) "The doctrine of judicial estoppel is an equitable doctrine whose primary purposes are to promote the truth and to prevent parties from deliberately shifting positions to suit the exigencies of the moment." *Levin v. Robinson, Wayne & La Sala*, 246 N.J. Super. 167, 195 (Law Div. 1990), quoting *Department of Transp. v. Coe*, 112 Ill. App.3d 506, 510, 68 Ill. Dec. 58, 60, 445 N.E.2d 506, 508 (1983).

Moreover, respondents' affirmation in the prior proceeding that they were domiciliaries of Branchburg was "successful," in that it helped to form the basis of the ALJ's and the Commissioner's determination in that matter. *See Cummings v. Bahr*, 295 N.J. Super. 374, 387 (App. Div. 1996).¹ "If a court has based a final decision, even in part, on a party's assertion, that same party is thereafter precluded from asserting a contradictory position." (*Id.* at 387-388) The Commissioner additionally notes that the doctrine has been applied in quasi-judicial

¹ Therein, both the ALJ and the Commissioner agreed that petitioner failed to demonstrate that his son, *as a resident of Branchburg*, had a legal entitlement to attend the Hunterdon County Regional High School District, and the

proceedings to preclude a casino employee from introducing evidence at his license-revocation hearing before the Casino Control Commission which was inconsistent with his prior plea of guilty to the offenses of conspiracy to possess and distribute marijuana and possession of marijuana with intent to distribute in a school zone. *State, Dept. of Law v. Gonzalez*, 142 N.J. 618, 632, 633 (1995).

Further, respondents' claim, as raised in their exceptions before the Commissioner, that they were relying upon "the advice of counsel" when they failed to duly inform the ALJ of the change in their domicile in the course of the *E.F. v. Branchburg* proceedings, is disingenuous. Although respondents' counsel in the prior matter, Michael T. Barrett, Esq., indeed, admits that he withheld from the ALJ his knowledge, *obtained prior to the September 1997 hearing date in that case*, that respondents advised him that "they had relocated to Flemington," (Barrett Affidavit at 2), respondents cannot now insulate themselves from having taken such a position, where, as the Board herein recognizes, they "could have limited the issue [in the prior lawsuit] to only the [recovery of tuition for] the 1996-1997 school year but chose not to do so, apparently accepting the faulty reasoning offered by Mr. Barrett."² (Reply Brief in Support of Petitioner's Motion for Summary Decision at 2) (*See also, Levin v. Robinson, Wayne & La Sala*, 246 N.J. Super. at 178, where the Court rejected plaintiff's argument that judicial estoppel was not applicable since the position he asserted in his prior matrimonial action was offered "in good faith and upon advice of counsel." Instead, the Court adopted the view that there can be no "good faith exception" with respect to either

Board of Education of the Township of Branchburg, therefore, was under no obligation to pay R.F.'s tuition for attendance at Hunterdon Central Regional High School. (*E.F., supra*, slip. op. at 11, 14)

² Mr. Barrett attests that he withheld such information from the ALJ because he believed the respondents' move "did not impact upon the ultimate issue of the case, i.e., whether Branchburg has an obligation to pay tuition costs of one of its residents matriculating to Hunterdon Central, in light of the District's past practice." (Barrett Affidavit at 3) Additionally, Barrett was concerned that "the change in dynamic might affect the Judge's consideration of the case" and affirmed that "if the Judge knew that there was only one (1) year of tuition in issue, rather than four (4) years, she might find it easier to decide against the [respondents]." (*Id.*)

mistakes of law or fact, since such assertions could emasculate the doctrine of judicial estoppel. (*Id.* at 185) The Court further dismissed the plaintiff's assertion that his contradictory position in a prior proceeding was taken without an intent to deceive the Court. (*Id.* at 186)

Having determined that respondents are precluded from asserting the inconsistent positions that they were domiciled in Branchburg during the 1997-1998 school year (*E.F., supra*) and in Flemington during the 1997-1998 school year, (Respondents' Brief in Opposition to Board's Motion for Summary Decision at 5-6), and noting his concurrence with the ALJ that the record herein is ripe for summary decision with respect to the question of respondents' domicile during the 1997-1998 school year, the Commissioner further affirms the ALJ's finding that respondents were not legally domiciled within the Hunterdon School District during the 1997-1998 school year, and the Board, consequently, is entitled to recover \$22,878 representing costs to educate respondents' two children during that year. (Board's Exceptions at 3)

However, like the ALJ, the Commissioner declines to find on the basis of the record before him that respondents intentionally misrepresented their place of domicile to the school district at the start of the 1997-1998 school year so as to obtain a free education for their children, or that respondents' defense to the Board's 1997-1998 tuition claim was frivolous, so as to permit the Board to pursue a potential claim for attorney's fees in court. (Board's Exceptions at 3) The Commissioner, therefore, denies the Board's motion with respect to these issues, *without prejudice*. Similarly, noting the absence of arguments on the record pertaining to the issue of pre-judgment interest, the Commissioner makes no findings on this issue at this stage of the proceedings. The Commissioner further determines that the Board's request for findings regarding post-judgment interest is premature, in that post-judgment interest may be awarded when a respondent has been determined through adjudication to be responsible for a judgment, but has failed to satisfy the claim within 60 days of its award. (*N.J.A.C. 6:24-1.16(c)2*)

With respect to the Board's request for monetary sanctions against respondents under *N.J.A.C.* 1:1-14.14 for failure to complete discovery in accordance with OAL regulations, the Commissioner recognizes that he is not the agency head for purposes of review of said sanctions, and that the Board's request must be reviewed by the Director of the OAL in accordance with *N.J.A.C.* 1:1-3.2(c)4.

Accordingly, the recommended Order of the ALJ is affirmed; the Board's motion for summary decision is granted in part, and denied in part for the reasons expressed in the ALJ's Order and amplified above. This matter shall continue at the OAL, with further proceedings in accordance with this Order and the Board's Amended Petition of Appeal, which asserts a claim for reimbursement of costs for the 1998-1999 school year.

IT IS SO ORDERED.³

COMMISSIONER OF EDUCATION

February 2, 2000

³ This decision, as the Commissioner's final determination in the instant matter, may be appealed to the State Board of Education pursuant to *N.J.S.A.* 18A:6-27 *et seq.* and *N.J.A.C.* 6:2-1.1 *et seq.*, within 30 days of its filing. Commissioner decisions are deemed filed three days after the date of mailing to the parties.