

297-03

BOARD OF EDUCATION OF THE WALLKILL :  
VALLEY REGIONAL HIGH SCHOOL :  
DISTRICT, SUSSEX COUNTY, :

PETITIONER, :

V. :

COMMISSIONER OF EDUCATION

BOARD OF EDUCATION OF THE BOROUGH :  
OF RAMSEY, BERGEN COUNTY AND THE :  
NEW JERSEY STATE DEPARTMENT OF :  
EDUCATION, DIVISION OF FINANCE, :

DECISION

RESPONDENTS. :

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SYNOPSIS

Petitioning Regional High School District challenged the Department's determination that petitioner was the "district of residence" for P.P., a student placed by DYFS in a skills development home. Petitioner asserted that respondent Board was responsible for the tuition and transportation costs of P.P.'s educational placement.

The ALJ found that P.P. resided with and was in the physical custody of his father, D.P., in the respondent District of Ramsey prior to his placement in the skills development facility. The ALJ found that respondent failed to provide any proof that D.P.'s parental rights were terminated. Thus, the ALJ determined that pursuant to statute, respondent Ramsey, the district of residence of P.P.'s father with whom P.P. live, albeit for a matter of weeks, prior to admission to a State facility, was the district responsible for P.P.'s educational costs. *N.J.S.A.* 18A:7B-12b and *N.J.A.C.* 6A:23-5.2(1) and (2).

The Deputy Commissioner adopted the findings and determination in the Initial Decision as his own.

<p>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.</p>
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June 18, 2003

OAL DKT. NO. EDU 10198-00  
AGENCY DKT. NO. 384-10/00

BOARD OF EDUCATION OF THE WALLKILL :  
VALLEY REGIONAL HIGH SCHOOL :  
DISTRICT, SUSSEX COUNTY, :  
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PETITIONER, :  
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V. : COMMISSIONER OF EDUCATION :  
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BOARD OF EDUCATION OF THE BOROUGH : DECISION :  
OF RAMSEY, BERGEN COUNTY AND THE :  
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The record of this matter and the Initial Decision of the Office of Administrative Law have been reviewed. Exceptions were submitted by Respondent Board of Education of the Borough of Ramsey (hereinafter, "Ramsey"); a reply thereto was filed by petitioner in accordance with *N.J.A.C.* 1:1-18.4.

Ramsey's exceptions acknowledge that the issue herein is whether it, or petitioner, the Board of Education of the Wallkill Valley Regional High School District, is the "district of residence" for P.P. who has been placed by DYFS in a skills development home from June 5, 1998 to the present, pursuant to *N.J.S.A.* 18A:7B-12(b) and *N.J.A.C.* 6A:23-5.2(a)(1) and (2). (Ramsey's Exceptions at 3) Ramsey maintains that P.P.'s placement with his father, D.P., for approximately six weeks was merely a temporary arrangement, upon his father's option, to avoid having to place P.P. in foster care. (*Id.* at 4) Ramsey also contends that D.P. never obtained custody of P.P., notwithstanding his stated intent and, therefore, concludes:

[W]hile the [Administrative Law Judge] A.L.J. determined that P.P.'s father assumed physical custody of P.P. on March 30, 1998 when P.P. was placed in his home \*\*\*, such custody ended immediately on June 5, 1998 upon P.P.'s departure from his father's home. Indeed, the fact that DYFS unilaterally removed P.P. from his father's home upon his father's request to do so irrefutably proves that DYFS had legal custody of P.P. throughout his temporary residence in Ramsey. Otherwise, DYFS could not have removed P.P. from his father's home absent a showing of neglect or abuse.\*\*\* (citation omitted) (*Id.* at 5)

Ramsey maintains that the phrase "district of residence" assumes an intent for a permanent residence and cites *Bd. of Ed. of Summit v. Bd. of Ed. of Twp. of Millburn*, 95 N.J.A.R.2d (EDU) 506 to advance its argument, notwithstanding that this case involves the application of *N.J.S.A.* 18A:38-1 *et seq.*, rather than *N.J.S.A.* 18A:7B-12. (*Id.* at 7-8)

Ramsey next asserts "that principles of equity require that, when a student resides temporarily in a district with a parent who is not vested with any legal custody, a 'district of residence' cannot be established." (*Id.* at 9) Here, the parties do not dispute that P.P.'s mother had sole legal and physical custody through March 29, 1998, and that P.P. lived with her for approximately eight years in the boundaries of Wallkill. Thus, Ramsey reasons:

Simply because P.P.'s father agreed to temporarily have P.P. live with him in Ramsey rather than reside with a foster family should not compel Ramsey to bear the educational costs for P.P. through his twenty-first birthday. In other words, a temporary six (6) week placement should not be allowed to override the eight (8) year history of residence established by P.P.'s mother in Wallkill. \*\*\* While the A.L.J. concluded that the address of P.P.'s mother is either unknown \*\*\* or out-of-state \*\*\*, responsibility should not revert to P.P.'s father as the default "district of residence" simply because P.P. lived with him briefly prior to attending the skill development home.\*\*\* (*Id.* at 10)

Ramsey, therefore, urges the Commissioner to reverse the ALJ's decision and find that petitioner is P.P.'s "district of residence."

In reply, petitioner notes that the Initial Decision correctly disposes of Ramsey's contention that D.P.'s parental rights had been terminated and, therefore, the underpinning of the Department's determination was, in fact, faulty. (Petitioner's Reply at 4-5) Additionally, petitioner argues that the ALJ correctly interpreted the applicable statutes and regulations governing a "district of residence" determination for school funding purposes because "[t]he pertinent statutes do not speak in terms of domicile, or custody, or permanency." (*Id.* at 6) For this reason, petitioner asserts that Ramsey improperly relies on the decision in *Summit, supra*, which, as the ALJ noted, does not analyze the provisions of *N.J.S.A.* 18A:7B-12. Finally, petitioner urges the Commissioner to reject Ramsey's equitable arguments as "baseless," inasmuch as it is not supported by the facts on record. (*Id.* at 7)

Upon careful and independent review of the record in this matter, the Deputy Commissioner, to whom this matter has been delegated for review pursuant to *N.J.S.A.* 18A:4-33, concurs with the ALJ that petitioner has proven that the Respondent Department's determination of residence for funding purposes cannot be sustained, where petitioner has duly demonstrated that Ramsey is the present district of residence of P.P.'s father,<sup>1</sup> with whom P.P. lived, albeit for a matter of weeks, prior to P.P.'s most recent admission to a State facility upon his placement by DYFS therein in June of 1998. *See, N.J.S.A.* 18A:7B-12b and *N.J.A.C.* 6A:23-

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<sup>1</sup> Indeed, the parties do not dispute that P.P.'s father has, at all times, resided in Ramsey. (Initial Decision at 4)

5.2(1) and (2).<sup>2</sup>

Accordingly, the Initial Decision of the ALJ is adopted for the reasons set forth therein.

IT IS SO ORDERED.<sup>3</sup>

DEPUTY COMMISSIONER OF EDUCATION

Date of Decision: June 18, 2003

Date of Mailing: June 19, 2003

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<sup>2</sup> In so concluding, the Commissioner is not persuaded by Ramsey's reliance on the decision in *Summit, supra*, for support of its contention that legal custody is essential to a "district of residence" determination under *N.J.S.A.* 18A:7B-12(b). To the extent an analysis pursuant to *N.J.S.A.* 18A:38-1 is even relevant herein, the Commissioner notes that, subsequent to the issuance of *Summit*, the State Board of Education adopted regulations that render inconsequential whether a parent has legal custody of a child in those instances where parents are domiciled in different districts and a local board must determine whether the student is entitled to attend school in the district pursuant to *N.J.S.A.* 18A:38-1(a) through (e). *N.J.A.C.* 6A:28-2.4(a)1ii.

<sup>3</sup> This decision 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.* 6A:4-1.1 *et seq.*