

#321-04

OAL DKT. NO. EDU 6053-01 (http://lawlibrary.rutgers.edu/oal/html/initial/edu06053-01_1.html)
AGENCY DKT. NO. 303-7/01

BOARD OF EDUCATION OF THE	:	
HUNTERDON CENTRAL REGIONAL	:	
HIGH SCHOOL DISTRICT,	:	
HUNTERDON COUNTY,	:	
	:	
PETITIONER,	:	
	:	
V.	:	COMMISSIONER OF EDUCATION
	:	
E.F. AND G.F.,	:	DECISION
	:	
RESPONDENTS.	:	
	:	
_____	:	

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. Respondents sought and were granted an extension of time within which to file exceptions to the Initial Decision and such submission was made in accordance with the extended timeframe. The Board filed timely reply/cross exceptions. All of these materials were fully considered by the Commissioner in reaching his determination herein.

Upon his full and independent review of the record in this matter,¹ the Commissioner, finding respondents' exceptions without merit, agrees with the conclusion of the Administrative Law Judge (ALJ) that respondents were not legally domiciled in the Hunterdon Central Regional School District during the 2000-2001 school year so as to allow their child, C.F., free attendance in the District's schools and the Board, therefore, is entitled to recover tuition from respondents for this school year.

¹ It is noted that the record contains transcripts of the hearings conducted on May 5, 2000 and August 14, 2002.

In so finding, the Commissioner was cognizant that it is well-established that “the domicile of a person is the place where he has his true, fixed, permanent home and principal establishment, and to which whenever he is absent, he has an intention of returning, and from which he has no present intention of moving.” *Matter of Unanue*, 255 N.J.Super. 362, 374 (Law Division 1991) citing *Kurilla v. Roth*, 132 N.J.L. 213, 215 (Sup. Ct. 1944). Once established, a domicile continues until superseded by a new domicile. *Lyon v. Glaser*, 60 N.J. 259, 263 (1972). Moreover, notwithstanding that an individual may subsequently acquire another residence, he can have only one true domicile. *State v. Benny*, 20 N.J. 238, 251 (1955) Elaborating on the concept of residence vis-à-vis that of domicile, this Court stated:

Residence, ***though parallel in many respects to domicile, is something quite different in that the elements of permanency, continuity and kinship with the physical, cultural, social and political attributes which inhere in a “home” according to our accepted understanding, are missing. Intention adequately manifested is the catalyst which converts a residence from a mere place in which a person lives to a domicile. *Ibid*.

Guidance in ascertaining whether a residence is merely a place to live or a domicile was provided by the Court in *Lyon v. Glaser*, *supra*, wherein it found that three elements must be considered: 1) physical presence in the residence; 2) an intent to make the residence a permanent or at least an indefinite home; and 3) an intent to abandon the old domicile. (*Lyon* at 264) Although there is no dispute that the within respondents satisfied the first of these elements, having taken up physical presence in the Flemington apartment, the Commissioner’s review persuades him that the preponderance of the credible evidence in this matter leads to a determination that elements 2 and 3 have not been demonstrated. As recognized by the ALJ, although there is objective evidence here supporting respondents’ claim that the family’s domicile was, during the time period at issue, the apartment in Flemington (Initial Decision at

10-11), there are also a number of persuasive objective factors which undermine this contention and support the Board's position that respondents' domicile continued to be their Branchburg home. Specifically, there is no evidence in the record to establish that respondents made any effort either to sell their Branchburg residence or to rent it at a fair market value; by their own admission respondents leased the apartment in Flemington to provide their high school-aged children with a better education; in an April 2001 amendment to respondents' petition in the U.S. Bankruptcy Court, they stated that they intended to return to the Branchburg residence as their full-time residence in September 2001;² and on or about September 3, 2001, subsequent to their youngest child's graduation from Hunterdon Central Regional High School, respondents vacated the Flemington apartment and returned to their Branchburg residence where they have continued to remain. (Initial Decision at 11) The Commissioner concludes that these factors are compelling indicia that respondents' Flemington apartment was no more than a residential living arrangement of a limited duration, fully concurring with the evaluative conclusion of the ALJ, "that it is proper for me to infer from these facts that it was never respondents' intention to remain at the Flemington apartment as their domicile, but their intention has always been to return to their Branchburg residence after their children completed attending the schools in petitioner's school district." (Initial Decision at 12) Therefore, because respondents were not

² It is noted that respondents' exceptions object to the ALJ's consideration of their bankruptcy petition as an indication of their intent here, citing to *Mazza v. Cavicchia*, 15 N.J. 498, 514 (1954), wherein the Court held:

[i]n any proceeding that is judicial in nature, whether in a court or in an administrative agency, the process of decision must be governed by the basic principle of the exclusiveness of the record. "Where a hearing is prescribed by statute, nothing must be taken into account by the administrative tribunal in arriving at its determination that has not been introduced in some manner into the record of the hearing." (Respondents' Exceptions at pp. 5-6)

The Commissioner finds respondents' contention in this regard specious, as the Amendment to their Chapter 13 Plan was admitted into evidence in this matter as Exhibit P-12, without objection by respondents, except as to relevancy, and, as such, is a legitimate component of the record. Moreover, the Commissioner fully concurs with the ALJ's discussion on pp. 11-12 of his Initial Decision with respect to the propriety of utilizing this and respondents' subsequent move back to Branchburg as probative factors in making his domicile determination.

legal domiciliaries of the Hunterdon Central Regional High School District during the 2000-2001 school year, the Board is entitled to recoup payment of \$13,742 from respondents for the cost of audited tuition for their child's ineligible attendance in its schools during this period.

Notwithstanding this result, the Commissioner declines to grant the Board's cross exception request for interest in this matter. With respect to pre-judgment interest, the Commissioner concludes that the record before him does not support a finding that respondents' actions were taken in bad faith or in deliberate violation of the law (*N.J.A.C.* 6A:3-1.17(c)1). As to post-judgment interest, such a request is premature, as the 60-day timeline relative to the granting of this interest does not even begin to toll until the Commissioner renders his decision in the instant matter. (*N.J.A.C.* 6A:3-1.17(c)2)

Accordingly, the Initial Decision of the OAL is adopted as the final decision in this matter. Respondents are hereby directed to pay the Board tuition, in the amount of \$13,742, for their child's ineligible attendance in its schools during the 2000-2001 school year.

IT IS SO ORDERED.³

COMMISSIONER OF EDUCATION

Date of Decision: August 4, 2004

Date of Mailing: August 4, 2004

³ 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.*