

#165-01

J.M., on behalf of minor child, S.C.	:	
	:	
PETITIONER,	:	
	:	
V.	:	COMMISSIONER OF EDUCATION
	:	
BOARD OF EDUCATION OF THE	:	DECISION
TOWNSHIP OF WEST ORANGE,	:	
ESSEX COUNTY,	:	
	:	
RESPONDENT.	:	
	:	
_____	:	

SYNOPSIS

Petitioning mother, J.M., challenged the Board's residency determination that her son, S.C., was not domiciled in West Orange Township because he spent equal time with his grandmother, J.P., in Boonton.

The ALJ concluded that S.C. may have had two residences, but by operation of law, his domicile was in West Orange, which was the domicile of his mother who had legal custody. The matter did not implicate *N.J.S.A.* 18A:38-1b(1), the “affidavit student” provision. Thus, the ALJ concluded that S.C. was domiciled in the Township of West Orange during the time he attended the West Orange School District and he was entitled to a free education as provided by *N.J.S.A.* 18A:38-1.

The Commissioner concurred with the ALJ that S.C. was entitled to attend school in the District pursuant to *N.J.S.A.* 18A:38-1a; neither S.C.’s overnight visits to his grandmother’s home in Boonton, nor, under the instant circumstances, his physical relocation to Parsippany, which was not addressed by the ALJ, impaired that right, as long as his mother was a domiciliary of West Orange. The Commissioner, however, remanded the matter to the OAL solely for additional fact-finding as is necessary to determine the date on which J.M. was no longer domiciled in West Orange but had moved to Parsippany and the amount of tuition, if any, which might be due West Orange as a result.

May 24, 2001

OAL DKT. NO. EDU 1061-00
AGENCY DKT. NO. 347-11/99

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. The Board's exceptions were submitted in accordance with *N.J.A.C. 1:1-18.4*.

In its exceptions, the Board notes that the Initial Decision fails to indicate that, beginning in December of 1999, S.C. became a full-time resident of Parsippany, but he nevertheless continued to attend school in its District until June 2000. Yet, the Board points out that the record contains a writing from J.P., S.C.'s grandmother, which suggests that J.M., S.C.'s mother, did not move to Parsippany with him in December of 1999. J.P. wrote:

[J.M.] DIDN'T move into Parsippany in December [1999] with myself, my husband, and her son, because her room was still under construction. She didn't move in until the end of May (I've attached a copy of the receipt for the rental truck we used to move her, which I realize is not proof of anything, just a point of reference). *** (emphasis in text) (Letter from J.P., January 9, 2001, cited in part in the Board's Exceptions at 2)

Additionally, the Board maintains that, prior to S.C.'s move to Parsippany, he slept in Boonton, at J.P.'s home, three out of five school nights. The Board argues:

Where the child spends the majority of the school week is where the child should attend school. The fact that the Boonton Board of Education (“BBOE”) misstates the law on school residency to petitioner (P-2) is not a reason for the West Orange taxpayers to shoulder the school costs of S.C. It appears that the BBOE never made an inquiry as to the potential existence of a hardship on the part of petitioner. *** (Board’s Exceptions at 2-3)

Thus, the Board reasons that petitioner should be assessed tuition for the 1998-99 school year (*id.* at 3), or, at the very least, for the period of S.C.’s ineligible attendance from December 1999 to June 2000. (*Id.* at 2)

Upon careful and independent review of the record in this matter, the Commissioner concurs that petitioner has demonstrated that S.C. was entitled to attend school in the Board’s District, free of charge, pursuant to *N.J.S.A.* 18A:38-1a, for the period of time that she, J.M., was domiciled in West Orange. In so finding, the Commissioner notes that although the Initial Decision fails to account for S.C.’s move to Parsippany in December of 1999, *his* move, under these circumstances, has no effect on the outcome of this matter.

Initially, as the ALJ observed, this matter does not implicate *N.J.S.A.* 18A:38-1b(1), the “affidavit student” provision; if S.C. was attending school in the district where his parent was domiciled, he was entitled to a free education in that district. *N.J.S.A.* 18A:38-1a. Thus, the *only* inquiry to be made by the respondent Board, both *before and after* S.C.’s move to Parsippany, was whether S.C.’s mother was a domiciliary of West Orange. Interestingly, the Board *does not dispute* that J.M. was, in fact, domiciled in West Orange for the predominant period of S.C.’s attendance in the District. Furthermore, the Commissioner recognizes that:

Persons legally incapable of choosing domicile acquire domicile by operation of law. [*In re Estate of Gillmore*, 101 *N.J. Super.* [77 App. Div. 1968] at 87. Under the common law, the domicile of a child was said to follow that of the father “until the child is emancipated and chooses a residence of its own.” *Mansfield Twp. v. State Bd. of Educ.*, 101 *N.J.L.* 474, 478 (Sup. Ct. 1925). *** In

more modern language, a child's domicile is equated with the domicile of the parent or guardian "having legal control of the child." *Mansfield Twp.*, at 479. *Clifton Board of Education v. Sauro*, 96 N.J.A.R.2d (EDU) 497 (1996) at 500.

Consequently, what the Boonton Board of Education apparently recognized, but the respondent Board still does not, is that, based on the aforementioned principle, S.C., as a minor child, could not choose his own domicile, and his domicile, therefore, *followed* that of his mother, who has legal custody of him.¹ As long as J.M. was domiciled in West Orange, her child was entitled to attend school in the District free of charge. *N.J.S.A.* 18A:38-1a. This is so, notwithstanding that S.C. may have, at one time, slept "60% of the school week in Boonton" with his grandmother, as the Board alleges, or even perhaps 100% of the school week in Parsippany, since there is *nothing* in the record before the Commissioner to indicate that petitioner and her mother were attempting to defraud the West Orange Board. Indeed, one can only conclude from this record that both were merely attempting to secure an education for S.C., in whichever district he was entitled to it, under challenging financial and familial circumstances. Notably, the Board cites to *no* legal authority for its convenient and simplistic declaration that "[w]here the child spends the majority of the school week is where the child should attend school." (Board's Exceptions at 2)²

¹ Exhibit P-2, a letter to petitioner from Superintendent/Principal of the Boonton Township School District David Gidich states, *inter alia*, "It has come to our attention that you may not live in this district and you should enroll [S.] in the school district where you reside." (Letter from David Gidich, September 15, 1998) Petitioner confirms that her mother was told by Mr. Gidich that "New Jersey statute stated that a child must attend school in the town of domicile of his parent or legal guardian." (Exhibit P-1)

² In this connection, the Commissioner finds particularly disturbing the following attestation from petitioner: My mother spent many hours on the phone and some in person, with Josefa Lopez of the West Orange Bd. of Education Central Office in an attempt to rectify the situation and make clear to her that we were not in West Orange illegally as she had decided was the case, but that we had come there ONLY because Boonton Township had told us that this was where we belonged.

Mrs. Lopez disagreed with what Boonton Township said about a child attending the district that his parent or legal guardian resides in and said it should be the town that the child resides in. My mother attempted to explain to her that [S.] actually lived equal amounts of time in both towns, AND that his mother resided full-time in West Orange. At that point the truant [officer] was brought in, in an attempt to disprove that [S.] spent equal time in West Orange. When that wasn't

Therefore, on these facts, the Commissioner finds that S.C.'s physical relocation to Parsippany for the portions of time he resided with his grandmother was of no legal consequence where his mother remained a domiciliary of West Orange. However, at the point petitioner moved from West Orange to Parsippany, S.C. was, most likely, no longer entitled to attend school in the District free of charge. While the parties appear to acknowledge that J.M., in fact, moved to Parsippany at some point, the record before the Commissioner does not permit a determination as to the precise date when J.M. was no longer domiciled in West Orange.

Accordingly, the Commissioner adopts the Initial Decision of the ALJ for the reasons expressed therein and amplified above, and remands this matter to the OAL *solely* for additional fact-finding as is necessary to determine the date on which J.M. was no longer domiciled in West Orange and the amount of tuition, if any, which may be due the Board as a result.

IT IS SO ORDERED.³

COMMISSIONER OF EDUCATION

Date of Decision: May 24, 2001

Date of Mailing: May 24, 2001

disproved, we were told that he didn't belong in West Orange, because he spent more SLEEPING time in West Orange and more awake time in Boonton Township and that besides that, it wasn't healthy for him to be transported that distance daily to and from school! (emphasis in text) (Exhibit P-1)

³ This decision, as the Commissioner's final determination, 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.*, within 30 days of its filing. Commissioner decisions are deemed filed three days after the date of mailing to the parties.