

M.R.N. AND K.H., on behalf of minor	:	
children, D.J.N. AND J.M.N.,	:	
	:	
PETITIONERS,	:	
	:	
V.	:	COMMISSIONER OF EDUCATION
	:	
BOARD OF EDUCATION OF THE	:	DECISION
FLEMINGTON-RARITAN REGIONAL	:	
SCHOOL DISTRICT, HUNTERDON	:	
COUNTY,	:	
	:	
RESPONDENT.	:	

SYNOPSIS

Petitioning parents challenged the Board’s determination that their sons were not entitled to a free public education in the District during the 2001-02 school year. Petitioners claimed the boys lived with their father in Flemington; but, the Board alleged the children actually resided with their mother in Stockton. Thus, the Board sought tuition reimbursement for the period of ineligible attendance.

In light of the evidence and some damaging testimony from petitioners themselves, the ALJ concluded that petitioners failed to sustain the burden of proving that their sons were domiciled in the District. The ALJ determined that repayment of tuition was compulsory and that the Board should be awarded tuition in the amount of \$16,831.10 for the entire period of ineligible attendance. Petition was dismissed.

The Commissioner adopted the Initial Decision with modification. The Commissioner noted that notwithstanding the use of the word “shall,” rather than “may” in *N.J.S.A.* 18A:38-1(b)2, the Commissioner is not precluded from consideration of the principles of fundamental fairness and equitable estoppel in determining whether tuition should be assessed for the period of any ineligible attendance. Under the particular facts of this matter, however, the Commissioner determined that equity weighs in favor of the Board and agreed with the ALJ’s ultimate conclusion granting the Board’s counterclaim and assessing petitioners tuition for the period in question.

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.

OAL DKT. NO. EDU 6081-02S  
AGENCY DKT. NO. 200-7/02

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The record of this matter and the Initial Decision of the Office of Administrative Law have been reviewed. The parties did not file exceptions.

Upon careful and independent review of the record in this matter, the Commissioner concurs with the Administrative Law Judge (ALJ) that petitioners have failed to demonstrate that D.J.N. and J.M.N. are domiciled within the Flemington-Raritan Regional School District so as to entitle them to attend school in the District, free of charge, pursuant to *N.J.S.A. 18A:38-1 et seq.*

With respect to the Board's counterclaim for tuition, the Commissioner finds it necessary to comment on the ALJ's conclusion that the use of the mandatory "shall," as opposed to the permissive "may," in *N.J.S.A. 18A:38-1(b)2* makes the repayment of tuition compulsory in instances such as herein where petitioners have failed to sustain their burden of proof. Notwithstanding the use of the word "shall," rather than "may" in *N.J.S.A. 18A:38-1(b)2*, the Commissioner is *not precluded* from consideration of the principles of fundamental fairness and equitable estoppel in determining whether tuition should be assessed for the period of any ineligible attendance. See *East Orange v. Bd. of Water Com'rs., etc.*, 41 N.J. 6, 19 (1963)

(equitable principles of estoppel may be applied against public bodies where the interests of justice, morality and common fairness dictate that course) and *State, Dept. of Envir. Protection v. Stavola*, 103 N.J. 425, 436 n.2 (1986) (any administrative agency in determining how best to effectuate public policy is limited by applying principles of fundamental fairness). Cf. *H.M. and L.M. v. Board of Education of the Township of Freehold*, decided by the State Board of Education April 2, 1997; *Akbar Zadran v. Board of Education of the Township of Belleville*, decided by the State Board April 1, 1998; *Whasun Lee v. Board of Education of the Township of Holmdel*, Docket #A-653-95T5, decided by the New Jersey Superior Court, Appellate Division, October 9, 1996; and *Board of Education of the Borough of Fort Lee v. Kintos*, Docket #A-4944-93T5, decided by the New Jersey Superior Court, Appellate Division, October 13, 1995. Under the particular facts of this matter, however, the Commissioner determines that equity weighs in favor of the Board and agrees with the ALJ's ultimate conclusion granting the Board's counterclaim and thus assessing petitioners tuition for the period of their children's ineligible attendance in the District schools.<sup>1</sup>

Accordingly, the Initial Decision of the ALJ is adopted for the reasons expressed therein as modified above. The Commissioner directs that petitioners remit to the Board tuition in the amount of \$8,415.55 for each child for the 2000-2001 school year for a total amount of \$16,831.10.

IT IS SO ORDERED.<sup>2</sup>

COMMISSIONER OF EDUCATION

Date of Decision: February 24, 2003

Date of Mailing: February 24, 2003

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<sup>1</sup> The Commissioner notes that petitioners did not assert a fundamental fairness or equitable estoppel argument.

<sup>2</sup> 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. 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.