

E.A.E. on behalf of minor child S.N.W., :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE : DECISION
TOWNSHIP OF BLOOMFIELD,
ESSEX COUNTY, :
RESPONDENT. :

SYNOPSIS

Petitioner – a resident of Bloomfield – contested respondent’s determination that her son, S.N.W., was not domiciled in respondent’s district during the 2005-2006 school year. Respondent counterclaims for tuition reimbursement for the alleged period of ineligible attendance, based on an investigator’s observations of S.N.W. at his grandparents’ address in East Orange.

The ALJ found that petitioner admitted that she sent her son to stay with her parents in East Orange after she discovered that her live-in boyfriend was a convicted sex offender. Based on the foregoing, the ALJ concluded that S.N.W. was not domiciled in respondent’s district between November 2005 and May 2006; affirmed the residency determination of the respondent; and ordered E.A.E. to pay the district the appropriate per diem tuition rate for the period of S.N.W.’s ineligible attendance.

Upon careful and independent review of the record, the Commissioner rejects the Initial Decision of the OAL for the following reasons: respondent does not challenge the fact that petitioner is domiciled in its district; it is well settled that the domicile of a minor child is determined by the domicile of the parent; and – by virtue of E.A.E.’s undisputed domicile in Bloomfield – her child had a right to a free public education in respondent’s district. Accordingly, no tuition is due for S.N.W.’s attendance in Bloomfield schools during the 2005-2006 school year.

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| <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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OAL DKT. NO EDU 3893-06
AGENCY DKT. NO. 101-3/06

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Petitioner, E.A.E., a resident of Bloomfield, initiated this matter when respondent, Bloomfield Board of Education, acted to disenroll her son, S.N.W., from its school district. The record, Initial Decision of the Office of Administrative Law (OAL) recommending that respondent's action be upheld, and respondent's exceptions have been reviewed.¹ After careful consideration and for the reasons set forth *infra*, the Commissioner rejects the Initial Decision.

The Commissioner adopts the Administrative Law Judge's (ALJ) procedural history and relies upon the following undisputed facts:

1. Petitioner is the biological mother of S.N.W., a special needs student.
2. Petitioner has lived in Bloomfield for over four years, and currently resides on W. Avenue in Bloomfield, New Jersey.
3. S.L.W. has been attending school in Bloomfield since at least September 2004.
4. Petitioner's mother and step-father live a few blocks away from petitioner on N. M. Avenue in East Orange, New Jersey.

¹ No transcript of the July 14, 2006 hearing was provided to the Commissioner.

5. Petitioner's mother and step-father have no legal custody or guardianship of S.N.W.
6. During the period of time relevant to this controversy, petitioner often worked afternoons and nights.
7. In or about May 2005, petitioner learned through a Megan's Law notice that her live-in boyfriend was a convicted sex offender.
8. Due to her working schedule and concerns about her boyfriend's background, petitioner allowed S.N.W. to stay with her parents extensively during the 2005-2006 school year. During that school year S.N.W. was seen by respondent's residency compliance officer going to school from the grandparents' house and returning to it after school.
9. Petitioner's boyfriend vacated the W. Avenue residence in April 2006 and stopped trying to return there in May 2006.

At the outset, the Commissioner notes that respondent does not challenge the fact that petitioner was domiciled in its district; it contends that S.N.W. stayed with his grandparents in East Orange during the school year and consequently failed to meet the domicile requirement that would entitle him to a free public education in Bloomfield. However, it is well settled that a minor child does not establish his or her own domicile. Rather, the domicile of the child is determined by the domicile of the parent. *See Mississippi Band of Choctaw Indians v. Holyfield*, 490 U.S. 30, 48, 109 S. Ct. 1597, 1608, 104 L. Ed. 2d 29, 46 (1989); *Roxbury Twp. Bd. of Educ. v. West Milford Bd. of Educ.*, 283 N.J. Super. 505, 521-22 (App. Div.1995), *certif. denied*, 143 N.J. 325 (1996); *V.R. on behalf of A.R. v. Bd. of Ed. of Hamburg*, 2 N.J.A.R. 283, 286; 25 Am. Jur. 2d Domicil § 42 (1996); *Restatement (Second) Conflict of Laws* § 22 (1971).

It appears that S.N.W. spent the majority of his time at his grandparents' residence, due to his mother's work schedule and her boyfriend's history. S.N.W. nonetheless had a right to a free public education in respondent's district by virtue of the fact that his mother, petitioner, was domiciled in that district. *See, also, M.L.P. on behalf of minor child C.L.P. v. Board of Education of the Township of Bloomfield, Essex County*, OAL Dkt. No. EDU 1420-06, Agency Dkt. No. 395-12/05, decided September 19, 2006; *J.M. on behalf of minor child S.C. v. Board of Education of the Township of West Orange, Essex County*, OAL Dkt. No. EDU1061-00, Agency Dkt. No. 347-11/99, decided May 24, 2001.

Since the facts found by the ALJ established petitioner's domicile in Bloomfield, and there was nothing in the record to cast doubt on petitioner's legal custody of S.N.W., S.N.W. must be deemed to have been domiciled in Bloomfield during the 2005-2006 school year and entitled to a free public education there.

The Commissioner directs respondent to continue to enroll S.N.W. in its district, assuming that petitioner is still domiciled there, and denies respondent's request for tuition.²

IT IS SO ORDERED.³

COMMISSIONER OF EDUCATION

Date of Decision: December 19, 2006

Date of Mailing: December 20, 2006

² Insofar as the Commissioner finds that S.N.W. is domiciled in Bloomfield, respondent's exceptions are rendered moot.

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.