#409-14 (OAL Decision: http://njlaw.rutgers.edu/collections/oal/html/initial/edu4833-13_1.html)

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| K.F. on behalf of minor children T.B. and K.B., | : | |
| PETITIONER, | : | COMMISSIONER OF EDUCATION |
| V. | : | DECISION |
| BOARD OF EDUCATION OF THE HUNTERDON CENTRAL REGIONAL HIGH SCHOOL DISTRICT, HUNTERDON COUNTY, | : | |
| RESPONDENT. | : | |

## SYNOPSIS

Petitioner appealed the determination of the respondent Board that her children, T.B. and K.B., were not entitled to a free public education in Hunterdon Central Regional High School (HCRHS) during the 2011-2012 and 2012-2013 school years. The Board contended that petitioner and her children were domiciled during the period in question in Martinsville, which is outside of respondent's district. Petitioner conceded that she and her children were residing in Martinsville during 2011-2012 and 2012-2013, but argued that the Board abused its discretion by failing to credit extenuating circumstances under *N.J.A.C.* 6A:22-6.3, and that the children should have been permitted to remain in school without paying tuition. The parties filed cross motions for summary decision.

The ALJ found, *inter alia*, that: the facts in this matter are not disputed; in May 2010, petitioner relocated from a house she owns in Whitehouse Station to a home in Martinsville in order to live with J.R.; thereafter, T.B. and K.B. were enrolled in the Bridgewater-Raritan School District for the 2010-2011 school year; T.B. did not adjust well to her new school, and was seen by a psychotherapist in March 2011; subsequently, petitioner represented that she planned to return to her home in Whitehouse Station, and reenrolled the children in respondent's district using that address; however, petitioner had leased her house to tenants who remained in it until they were evicted in February 2013; petitioner's family did not thereafter relocate back to Whitehouse. The ALJ determined that there was no merit to petitioner's contentions that the Board ignored extenuating circumstances – including her intent to return to Whitehouse Station, the depression T.B. allegedly suffered as a result of changing schools, and the loss of K.F.'s job in December 2012 – in determining not to permit her children to continue in the district; further,it was petitioner's voluntarily acts which created her misfortune. Accordingly, the ALJ concluded that the respondent Board's decision to dismiss T.B. and K.B. and to assess tuition was within its authority, and ordered the petitioner to reimburse the Board in the amount of $63,182 for tuition for the period of T.B. and K.B.'s ineligible attendance.

The Commissioner found, *inter alia*, that: petitioner's move to Martinsville in 2010 gave every indication of being a voluntary domicile change; petitioner claimed that she intended to move back to her former home in respondent's district, but her actions suggest otherwise; petitioner bore the burden of proving that her children were entitled to a free public education in HCRHS, but failed to do so. The Commissioner concluded that T.B. and K.B. were not domiciled within the respondent's district, and were therefore not entitled to attend HCRHS free of charge. Summary decision was granted to the respondent, and petitioner was ordered to pay the Board tuition in the amount of $63,182. The petition was dismissed.

OAL DKT. NO. EDU 4833-13
AGENCY DKT. NO. 63-3/13

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Before the Commissioner is a challenge to respondent's determination that petitioner owes it tuition for a period of two years during which petitioner's minor children attended school at Hunterdon Central Regional High School (HCRHS) while residing in Martinsville, a town in Somerset County which is outside respondent's district. The Commissioner has carefully and independently reviewed the record and Initial Decision of the Office of Administrative Law (OAL), and adopts the Administrative Law Judge's (ALJ) conclusion that there are no grounds for a reversal of respondent's determination and consequent assessment of tuition.[1]

Prior to May 2010, petitioner and her children resided within respondent's district – in Whitehouse Station. It is undisputed that they moved to Martinsville in May 2010 to live with J.R. Martinsville is within the Bridgewater-Raritan School District, and the children were enrolled in that district for the 2010-2011 school year. Petitioner related that her elder child did not adjust well to the change. She alleged that, in March 2011, a therapist diagnosed the child as

[1] Petitioner filed exceptions to the Initial Decision but does not appear to have served said exceptions on respondent. An attempt was made to contact petitioner concerning same, to no avail. In any event, the Commissioner finds petitioner's exceptions to be without merit.

severely depressed and recommended to petitioner that she return the child to school in respondent's district.[2]

In 2011, petitioner still owned the house in Whitehouse Station where she and her children had previously lived, but it was occupied by tenants to whom she had leased the premises. Nonetheless, in August 2011 petitioner used the Whitehouse Station address to reenroll her children in HCRHS for the 2011-2012 school year. Notwithstanding the fact that the family was living in Martinsville, petitioner's children attended HCRHS for that entire year and the first semester of the 2012-2013 school year as well. In January 2013, respondent learned that petitioner and her children had not been living in its district.[3]

The record contains a letter (and email) dated January 21, 2013 from Suzanne Cooley, HCRHS principal, advising petitioner that her children would be removed from school as of January 29, 2013. This advice was reiterated by District Superintendent Christina Steffner in an email dated February 2, 2013, and by Cooley in an email dated February 3, 2013. The children were not allowed to attend HCRHS on February 4, 2013, but were allowed to return on February 8, 2013, pending a hearing before the Board of Education (Board) about their status.[4]

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[2] As the ALJ noted, the record indicates that petitioner's elder child was seen only once by the therapist. Petitioner provided no expert report or other evidence which would allow the ALJ to find as fact said alleged diagnosis and recommendation. (Initial Decision at 3)

[3] An anonymous call triggered an investigation. District Superintendent Christina Steffner went to the Mullen Road address listed in the files for petitioner's children, and was told by the inhabitants that petitioner had not lived there for years. On or about January 14, 2013, T.B. advised HCRHS Principal Suzanne Cooley that she lived in Martinsville, and had been living there since 2010. On or about February 1, 2013, K.B. told Steffner the same.

[4] A relative who lived in respondent's district emailed Steffner and Cooley on Sunday, February 3, 2013, stating that petitioner's children could live with her; but that proposal never came to fruition. Petitioner alleged that Cooley and Steffner refused the proposal. The Commissioner finds that the email did not meet the standards of *N.J.S.A.* 18A:38-1(b)(1). Further, petitioner admitted that her purpose in arranging for her children to stay with the relative was the benefit of free public educations in the HCRHS district. (Answer 15 to respondent's requests for admissions)

In a registered letter dated February 7, 2013, Cooley informed petitioner as follows:

> If the Board determines at the hearing on February 25, 2013, that T.B. and K.B. are not domiciled in the Hunterdon Central Regional School District, you will be assessed tuition for this school year, prorated to the time of T.B.'s and K.B.'s ineligible attendance in the Hunterdon Central Regional School District.
>
> Alternately, in order to avoid a hearing before the Board, you may choose to withdraw T.B. and K.B. from the Hunterdon Central Regional School District.
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> (Exhibit 8 to February 4, 2014 certification of Suzanne J. Cooley)

Petitioner chose not to withdraw her children from the district and participated in the February 25, 2013 hearing before respondent's Board. On the date of the hearing the Board voted to disenroll petitioner's children and directed the administration to pursue tuition reimbursement for the 2011-2012 school year and September through February 25 of the 2012-2013 school year.

At the outset, it is petitioner's burden to prove by a preponderance of the competent and credible evidence that her children were entitled to a free public education in respondent's district.[5] The gravamen of petitioner's appeal is her contention that her children should have been treated as though they were domiciled in respondent's district. The justifications which she offers are 1) she owns and pays property taxes on a house in the district, 2) the family once lived in the house, and 3) the family was prevented from returning to the house by unruly tenants who resisted eviction and by the damage caused by the tenants, which damage had to be remediated before the house could be inhabited. On its face, petitioner's

[5] If petitioner seeks to invoke respondent's discretionary authority to allow the children to attend tuition free pursuant to *N.J.S.A.* 18A:38-3, then she must prove that respondent's decision was arbitrary, capricious, or unreasonable.

account could support a reasonable argument that her family's domicile was Whitehouse Station. However, the record contains facts which suggest otherwise.

A person's domicile "is the place where a person dwells and which is the center of his domestic, social and civil life." *In re Unanue*, 255 *N.J. Super*. 362, 374 (Law Div. 1991), *aff'd*, 311 *N.J. Super*. 589 (App. Div.), *certif. denied*, 157 *N.J.* 541 (1998), *cert. denied*, 526 *U.S.* 1051 (1999) (quoting *Citizens Bank and Trust Co. v. Glazer*, 70 *N.J.* 72, 81 (1976). For domicile to be established, it must be shown that: 1) an actual and physical taking up of an abode has occurred; 2) there is an intent to make a home in said abode permanently or least indefinitely; and (3) there is an intent to abandon the previous domicile. *Id.* at 376. A court must evaluate all of the facts of the case to determine the place in which there is the necessary concurrence of physical presence and intent to make that place one's home. *Ibid.* In the instant case, it is appropriate to conduct a domicile analysis both with regard to petitioner's move from Whitehouse Station to Martinsville in 2010, and her later allegations that she intended to move back to Whitehouse Station.

The Commissioner finds that petitioner's move from Mullen Road in Whitehouse Station to Washington Valley Road in Martinsville bore the indicia of a domicile change. It is undisputed that in May 2010 petitioner took up abode in J.R.'s Martinsville home and brought her children with her. An intent to remain in Martinsville on more than a temporary basis is evidenced by petitioner's admission that she moved to Martinsville to be with her "partner." (Answer 19 to respondent's first set of interrogatories) Further, upon moving to Martinsville petitioner enrolled her children in the Bridgewater-Raritan school district. (Answer to respondent's Request for Admission #8) Petitioner's intent to abandon domicile in Whitehouse Station may be inferred by the fact that, as of the end of November 2013,

notwithstanding that the tenants had long been evicted from her Whitehouse Station property, petitioner and one of her children still lived with J.R. in Martinsville.[6] (Answer 50 to respondent's first set of interrogatories)[7]

The facts in the record indicate that in August 2011, when petitioner enrolled her children in HCRHS (Answer to Request for Admissions #9), Martinsville remained the domicile of petitioner and her children. At that point in time, they indisputably still resided with J.R. in Martinsville. Indeed, J.R. was listed as the children's guardian on emergency contact forms. (Exhibit 1 to Certification of Superintendent Christina Steffner) And despite petitioner's representations to respondent's employees that she and her family intended to move back to Whitehouse Station, answers to respondent's Requests for Admissions #9 and #10, she took no steps at that time to evict her tenants from her Whitehouse Station property. The record instead shows that the tenants remained on the property,[8] and petitioner and her children remained in Martinsville with J.R. for the next year and a half while the children were attending school at HCRHS. These actions speak louder than the assertions petitioner had made to respondent's staff about her intentions when she enrolled her children in HCRHS for the 2011-2012 school year. More specifically, they strongly suggest an intention to maintain domicile in Martinsville.

In summary, it is undisputed that petitioner's two children attended HCRHS during the 2011-2012 school year and the 2012-2013 school year. The Commissioner concurs with the ALJ that petitioner and her children were not domiciled in respondent's district during

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[6] The other child had gone to live with her father in New York.

[7] The Commissioner notes that in petitioner's most recent filing she maintains that she and her family resumed living in the Whitehouse Station house in July 2013 and continue to reside there. This clearly contradicts her answer to question #50 of respondent's first set of interrogatories, and detracts from her credibility

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[8] Petitioner took no legal action against her tenants until late December 2012, when she instituted eviction proceedings for non-payment of rent and other fees. (Answer 21 to respondent's second set of interrogatories; Answer to Request for Admission #14)

those two school years. The children were consequently not entitled to free public educations at HCRHS during that period of time. In its counterclaim to the petition, respondent identified the annual tuition for 2011-2012 as $15,215 per student and the annual tuition for 2012-2013 as $16,376 per student. These figures were not rebutted by petitioner.

Accordingly, summary disposition is granted to respondent, petitioner is ordered to pay respondent tuition in the amount of $63,182, and the petition is dismissed.

IT IS SO ORDERED. [9]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: October 2, 2014

Date of Mailing: October 2, 2014

[9] This decision may be appealed to the Superior Court, Appellate Division, pursuant to *P.L.* 2008, *c.* 36, *N.J.S.A.* 18A:6-9.1.