

EDU # 8199-91
C # 89-95
SB # 48-95
APP. DIV. #A-1753-95T3
EDU # 11593-96
C # 233-98
SB # 60-98

BOARD OF EDUCATION OF THE :
TOWNSHIP OF LIVINGSTON, ESSEX :
COUNTY, :

PETITIONER-RESPONDENT, : STATE BOARD OF EDUCATION

V. : DECISION ON MOTIONS

H.L. AND D.L., individually, and as :
natural guardians of K.L. AND J.L., :

RESPONDENTS-APPELLANTS. :

Decided by the Commissioner of Education, March 14, 1995

Decision on motion by the State Board of Education, July 5, 1995

Decided by the State Board of Education, October 5, 1995

Remanded by the Appellate Division, October 24, 1996

Decision on remand by the Commissioner of Education, May 26, 1998

Decided by the State Board of Education, February 3, 1999

For the Petitioner-Respondent, Riker, Danzig, Scherer, Hyland & Perretti
(James S. Rothschild, Jr., Esq., of Counsel)

For the Respondents-Appellants, H.L. and D.L., pro se

On February 3, 1999, the State Board of Education affirmed with modification the
decision of the Commissioner of Education in this matter. We agreed with the

Commissioner that the respondents had not been domiciled in Livingston until January 1991 and, as a result, that their children had not been entitled to a free public education in the Livingston school district prior to that time. As a result, we affirmed the Commissioner's determination that respondents were responsible for tuition from October 1, 1990 through January 18, 1991. We also affirmed the Commissioner's award of pre-judgment interest to the Livingston Board, but corrected the computation of the amount.

On February 16, 1999, the Livingston Board filed a motion for clarification of our decision of February 3 with regard to any nights that respondent H.L., a builder, might have spent at the house in Livingston while it was being constructed and prior to its becoming his domicile. On February 25, the respondents filed a brief in opposition to the Board's motion and also requested that the State Board reconsider its decision.

We deny the respondents' request for reconsideration and, in response to the Board's motion, clarify our decision only to the following extent. As we made clear in our decision of February 3, we fully agreed with the Commissioner that the Board had demonstrated by a preponderance of the credible evidence that the respondents were not domiciled in Livingston until January 1991. Indeed, as pointed out by the ALJ, whose findings and conclusions were adopted by the Commissioner, "[t]he records of the Building Department show that the house was virtually uninhabitable until almost the end of 1990, and it is not convincing that H.L. voluntarily spent many nights sleeping there." Initial Decision, slip op. at 21. In affirming the Commissioner's determination, we rejected the suggestion that any occasional nights H.L. may have spent at the Livingston property while overseeing construction during that period would establish

domicile so as to entitle his children to a free public education in the district pursuant to N.J.S.A. 18A:38-1.

April 7, 1999

Date of mailing _____