

K.W., on behalf of minor child, A.L., :

PETITIONER, :

V. :

COMMISSIONER OF EDUCATION

BOARD OF EDUCATION OF THE :  
MORRIS HILLS REGIONAL SCHOOL :  
DISTRICT, MORRIS COUNTY, :

DECISION

RESPONDENT. :

\_\_\_\_\_ :

SYNOPSIS

Petitioning parent, K.W., contested Board’s determination that her daughter, A.L., who was in the Benedictine, a residential school for children with severe disabilities, was not entitled to a free public education pursuant to *N.J.S.A.* 18A:38-1 and the Individuals with Disabilities Education Act (IDEA). Board had been sharing the cost of A.L.’s placement but now the Board contended K.W. was no longer domiciled in New Jersey.

ALJ found that while petitioner testified that she still considered herself domiciled in New Jersey, the objective indications showed that the record evidenced that petitioner’s change of domicile from New Jersey to Tennessee occurred “incrementally” culminating “when petitioner determined to remain in Tennessee after the termination of the employment that caused her husband and then her to move to that state,” at which time her “intention to return to New Jersey had become so vague as to be a mere possibility or hope for the future.” Thus, the ALJ concluded that as of July 1997, petitioner had not carried her burden of demonstrating that she was currently domiciled in Denville and her daughter was not entitled to a free public education provided by the District. Therefore, the District was entitled to be repaid any tuition that it paid to Benedictine from July 1997 to the present.

Commissioner adopted findings and determination in the initial decision as his own and directed petitioner to reimburse the Board for any tuition moneys it paid on behalf of A.L. from July 1997 to the present.

AUGUST 3, 1998

OAL DKT. NO. EDU 9097-97  
AGENCY DKT. NO. 282-8/97

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V. : COMMISSIONER OF EDUCATION  
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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, submitted in accordance with *N.J.A.C. 1:1-18.4*, were duly considered by the Commissioner in reaching his determination herein.<sup>1</sup>

Upon careful and independent review of the record in this matter, the Commissioner determines to affirm the well-reasoned conclusion offered by the Administrative Law Judge (ALJ) finding that petitioner's domicile in this matter changed to Tennessee in July 1997, at which time the within Board no longer had any obligation to provide a free appropriate public education to minor child A.L.

In reaching his decision herein, the Commissioner initially recognizes that a determination as to domicile for a person having residences in two separate states, by its very nature, requires a sensitive analysis of the particular circumstances existing in the matter. In

making such determination, it must be remembered that “[d]omicile is very much a matter of the mind – of intention.” (*Lyon v. Glaser*, 60 N.J. 259, 264 (1972)) As was observed by the ALJ

[a domicile] may be acquired, or changed to a new one, where there is a concurrence of certain elements, *i.e.*, an actual and physical taking up of an abode in a particular state, accompanied by an intention to make his home there permanently or at least indefinitely, and to abandon his old domicile. A person has the right to choose his own domicile, and his motive in doing so is immaterial...A very short period of residence in a given place may be sufficient to show domicile, but mere residence, regardless of its length, is not sufficient. It has been said that concurrence, even for a moment, of the physical presence at a dwelling place with the intention of making it a permanent abode, effects the change of domicile. And once established, the domicile continues until a new one is found to have been acquired through an application of the same test. (citation omitted) (Initial Decision at p. 7)

Mindful that intent is the touchstone of a domicile analysis, and the manifestation of a person’s intent converts residence from a mere place in which a person lives to a domicile, *ibid.*, the Commissioner concludes that such intent must be determined by evaluating the words and demeanor of the person claiming domicile and then matching his or her assertions with the artifacts of the record which, when evaluated holistically, leave a persuasive impression of true domicile. See *B.M., on behalf of minor child, M.M. v. Board of Education of the Township of Cherry Hill, Camden County*, decided by the Commissioner September 22, 1997.

After his close review of the circumstances existing herein, the Commissioner finds unpersuasive the Board’s exceptions urging that evidence adduced at the hearing in this matter establish that, contrary to the ALJ’s finding that petitioner’s domicile changed in July of 1997, in point of fact petitioner changed her domicile as early as September 1995 when she relocated to Tennessee and that certain of petitioner’s actions during her first year in Tennessee, *i.e.*, changing of her driver’s license, automobile registration, and state and federal income tax

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<sup>1</sup> Petitioner’s reply exceptions, filed on July 17, 1998 in response to her acknowledged receipt of the Board’s exceptions on July 8, 1998 were untimely and, therefore, were not considered.

filings, constitute dispositive indicia of domicile which “clearly outweigh Petitioner’s testimony as to her intent.” (Board’s Exceptions at pp. 1-2) Rather, the Commissioner finds, as did the ALJ, that the record evidences that petitioner’s change of domicile from New Jersey to Tennessee occurred “incrementally rather than at any one particular moment,” (Initial Decision at p. 10) and culminated “when petitioner determined to remain in Tennessee after the termination of the employment that caused her husband and then her to move to that state,” at which time her “intention to return to New Jersey had become so vague as to be a mere possibility or hope for the future.” (*Id.*)

The Commissioner, likewise, rejects the Board’s exception challenge to the ALJ’s determination that petitioner’s testimony was credible, and its assertion that her testimony regarding her intent as to her domicile “cannot overcome the substantial evidence to the contrary.” (Board’s Exceptions at p. 2) In so doing, the Commissioner notes that the record before him did not include the transcript of the hearing conducted in this matter. In that challenges to factual findings predicated upon credibility determinations made by an administrative law judge require the party asserting such exceptions to supply the agency head with the relevant and necessary portion of the transcript, see *In re Morrison*, 216 N.J. Super. 143, 158 (App. Div. 1987), the Commissioner must defer to the credibility determinations reached by the ALJ who was in a position to hear and adjudge the credibility of witnesses. See *Parker v. Dornbierer*, 140 N.J. Super. 185, 188 (App. Div. 1976). Further, the Commissioner finds that the ALJ’s conclusions are sufficiently grounded in the record before him, and such record does not provide any cause to challenge the weight she ascribed to evidence, nor her credibility assessments. Simply stated, in addition to petitioner’s pronouncements that, notwithstanding that she was residing in Tennessee, New Jersey was, in fact, her domicile, the Commissioner finds

sufficient objective indicia of domicile in the record to support petitioner's claim, and the ALJ's finding, of her domicile in the District up to July 1997.

Accordingly, the initial decision of the OAL is affirmed for the reasons expressed therein. As petitioner was not eligible to receive a free public education from the Morris Hills Regional School District as of July 1997, the Board's decision to remove minor child, A.L., from its rolls as of that date is affirmed and petitioner is hereby directed to reimburse the Board for any tuition moneys it has paid on behalf of A.L. from July 1997 to date.<sup>2</sup>

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

AUGUST 3, 1998

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<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. 6:2-1.1 et seq.*, within 30 days of its filing. Commissioner decisions are deemed filed three days after the date of mailing to the parties.