291-99

J.S. AND L.S., on behalf of minor child, A.S.,	:	
PETITIONERS,	:	
V.	:	COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE BOROUGH OF MOUNTAIN LAKES, MORRIS COUNTY,	:	DECISION
RESPONDENT.	:	

SYNOPSIS

Petitioning parents sought an order compelling the respondent Board to admit their daughter as a non-resident tuition student.

The ALJ determined that, pursuant to *N.J.S.A.* 18A:38-3(a), a board of education may permit a nonresident to be admitted to a district's schools, but the statute does not require the board to allow this type of admission. Concluding that the respondent Board's discretionary authority to make determinations in this situation must be the overriding consideration, the ALJ dismissed the petition.

The Commissioner concurred with the findings and conclusions of the ALJ and agreed that petitioners failed to satisfy their burden of proving that the Board's decision to refuse to admit A.S. was arbitrary, capricious, unreasonable or otherwise made in bad faith. Commissioner also found that petitioners did not demonstrate entitlement to equitable estoppel of the Board's action. Petition was dismissed.

SEPTEMBER 3, 1999

J.S. AND L.S., on behalf of minor child, A.S.,	:	
PETITIONERS,	:	
V.	:	COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE BOROUGH OF MOUNTAIN LAKES, MORRIS COUNTY,	:	DECISION
RESPONDENT.	:	

The record of this matter and the initial decision of the Office of Administrative Law have been reviewed. Petitioners' exceptions are duly noted, and were considered by the Commissioner in rendering the within decision.[1]

Upon careful and independent review of the record, the Commissioner concurs with the ALJ that petitioners have failed to satisfy their burden of proving that the Board's decision to refuse to admit A.S., a nonresident, to its schools, was arbitrary, capricious, unreasonable, or otherwise made in bad faith.[2] However, as the ALJ notes, that finding does not end the present inquiry. Petitioners additionally argue that, since they relied to their detriment on representations made by the Board's employees, the Board should be equitably estopped from

[1] The exceptions essentially reiterate arguments which were presented in papers previously considered by the Administrative Law Judge (ALJ).
[2] In so finding, the Commissioner notes, as did the ALJ, that petitioners alleged a violation of the Open Public Meetings Act for the first time in their post-hearing brief. This issue was *not* included in the ALJ's Pre-hearing Order, issued December 4, 1998 and petitioners, apparently, did not object to the exclusion of same in the Order. Accordingly, the Commissioner does not address this issue.

precluding A.S.'s attendance in the District notwithstanding the validity of the Board's underlying policy decision.[3]

In assessing this claim, the Commissioner recognizes that the burden of proving entitlement to equitable estoppel rests on the petitioners, as they seek the benefit of the estoppel. *Virginia Construction Corp. v. Fairman*, 39 *N.J*. 61, 72 (1962*); Newark v. Natural Resource Coun. Dept. Env*. *Prot*., 82 *N.J.* 530, 545 (1980); *Miller v. Miller*, 97 *N.J.* 154, 163 (1984). The Court has held that, to establish a claim of equitable estoppel, the claimant must initially show a knowing and intentional misrepresentation by the party sought to be estopped under circumstances in which the misrepresentation would probably induce reliance. *O'Malley*, *supra*, at 317, *citing Horsemen's Benevolent & Protective Ass'n v. Atlantic City Racing Ass'n*, 98 *N.J*. 445 (1985). The Court has also recognized, however, that such representation may be made, if not "intentionally," then "under circumstances where it was both natural and probable that it would induce action." *Miller, supra,* at 163. Additionally, the party seeking estoppel must have relied upon the act to his or her detriment. *O'Malley*, *supra*, at 317; *Miller, supra*, at 163. Petitioners, therefore, must show a [mis]representation, reliance and detriment. They must also show that their reliance was both *justified* and *reasonable. Palatine I v. Planning Bd*., 133 *N.J*. 546, 563 (1993). Moreover, as the ALJ properly recognizes, equitable estoppel is rarely invoked against a governmental entity, where the estoppel would interfere with essential governmental functions. (Initial Decision at p. 11, *citing O'Malley, supra*)

[3] The Commissioner recognizes that a party may also assert the theory of promissory estoppel, requiring him/her to show "that (1) there was 'a clear and definite promise'; (2) the promise was 'made with the expectation that the promisee will rely on it' (3) 'the promisee must reasonably rely on the promise,' and (4) 'the promisee must incur a detriment in reliance thereon.'" *Peck v. Imedia*, Inc., 293 *N.J. Super*. 151, 165 (App. Div. 1996). An analysis under this standard would not differ in substance from the within analysis, and the outcome would be the same as that herein.

Here, there are two aspects to petitioners' claim. One is based on petitioners' understanding, at the times they enrolled their two older children in the District, that their third child, A.S., would also be allowed to attend when she reached the appropriate age; the other is based on the conduct of District staff in the months immediately following petitioners' attempt to enroll A.S. in the District's elementary program. With respect to the first aspect, to the extent that petitioners may have relied on their understanding and District practices as they existed at the times of their older children's enrollments in 1987 and 1992, respectively, such reliance cannot be considered reasonable. The Commissioner so finds, both for the reasons expressed by the ALJ, and because it is manifestly clear that a board of education always has the ability to change its past practices over time, during the course of fulfilling its responsibility to perform all acts and do all things, consistent with law and State Board rules, necessary for proper conduct, equipment and maintenance of the public schools. *N.J.S.A.* 18A:11-1.

With respect to the second aspect, working against petitioners' claim is the fact that petitioners knew from the start that their daughter, as a nonresident, had no statutory entitlement to attend school in the Board's District. Neither were they without knowledge that the Board might look unfavorably upon their request to admit her, notwithstanding her siblings' attendance in the schools of the District. Indeed, petitioners were informed by Superintendent Sakala as early as June of 1997 that the Board had changed its policy with respect to nonresident students (Initial Decision at p. 3) *and* they were aware that the Board had signaled as early as February 2, 1998 that it would *not* accept any additional tuition students at the elementary level. (*Id.* at p. 4)

On the other hand, the Board's administrators made representations to petitioners which clearly led them to act, reasonably and naturally, under the belief that A.S. was accepted as a nonresident student for the 1998-99 school year, notwithstanding Superintendent Sakala's

apparent knowledge that the Board's position *was not* completely or consistently aligned with his own. By letter dated February 26, 1998, Sakala informed petitioners that A.S. was accepted as a tuition student in the first grade for the 1998-99 school year. (Initial Decision at p. 5) Thereafter, L.S. was contacted by someone at the Wildwood School and told to bring in A.S., together with her health records, for registration. (*Id.*) In June of 1998, the Wildwood School sent two letters to petitioners indicating that A.S. would be attending the first grade in its District. (*Id.* at p. 6) Thus, petitioners appear to have met a central criterion for grant of equitable estoppel.

However, even granting that petitioners' reliance upon the administration's representations was justified and reasonable under the circumstances, in order to prevail in their claim, petitioners must also demonstrate that such reliance was to their detriment. Where a party reasonably relies upon the actions of another, changes his position in reliance, and incurs actual damages or harm as a result, equity will protect that party's interests. *Div. of Social Services v. C.R., 316 N.J. Super*. 600, 610 (Chan. Div. 1998), *citing Royal Assoc. v. Concannon,* 200 *N.J. Super*. 84, 490 (App. Div. 1985). Here, petitioners do not claim that A.S. will not have access to a thorough and efficient system of education if she is not admitted to the Board's schools. Rather, the detriment shown on the record is that, for the 1998-99 school year, petitioners' opportunity to send A.S. to the private school of their choosing was effectively thwarted by petitioners' reliance on the administration's actions. Additionally, petitioners allege that it is a "manifest injustice to a seven year old girl who cannot understand why she is not allowed to attend the school where her older sister goes." (Petitioners' Exceptions at p. 4) Recognizing that "[t]he doctrine of equitable estoppel is applied 'only in very compelling circumstances'***." *Palatine, supra,* at 560, *citing Timber Properties, Inc. v. Chester Township,* 205 *N.J. Super*. 273, 278 (Law Div. 1984) and *Gruber v. Mayor of Raritan Township,* 39 *N.J.* 1 (1962), the Commissioner cannot find that the loss of one year's opportunity to attend a preferred private school, or the inability of siblings to attend the same school, constitutes harm or "manifest

injustice" sufficient to warrant equitable remedy in light of the high standard to be met in invoking equitable estoppel against a governmental entity as set forth in *O'Malley, supra*.

Accordingly, the initial decision is affirmed for the reasons expressed therein and amplified above. The Petition of Appeal is hereby dismissed.[4]

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

SEPTEMBER 3, 1999

[4] 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.