

EUGENE VAN NOTE, :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE : DECISION
TOWNSHIP OF BRANCBURG, :
SOMERSET COUNTY, :
RESPONDENT. :

SYNOPSIS

Petitioning parent challenged the Board's decision to refuse bus service to his son to two locations within Branchburg in accordance with court-approved joint custody/visitation agreement wherein his son lived with him 5 days a week and with his mother 2 days a week.

In light of the record and the testimony of the transportation supervisor that the Board revised its transportation policy to end the issuing of bus passes which allowed students to be picked up or dropped off at alternate sites during the school week and restricting transportation to alternate drop off/pick up sites only "on a 5 day per week basis," the ALJ found that the reasons for revising the policy were reasonable and prudent, and designed to promote Branchburg's responsibility to provide safe, efficient and effective bus transportation to its students. The ALJ concluded that the Board did not act unreasonably, arbitrarily or capriciously in denying petitioner's request for the alternative pick-up and discharge locations for his son. Moreover, the ALJ concluded because a person may have only one domicile, for the purposes of this matter petitioner's son may have only one residence or home. Noting that petitioner did not present the entire Final Judgment for Divorce, the ALJ did not find merit in petitioner's argument that his son's living arrangements resulted from a Superior Court adjudication. The ALJ further concluded that because the Board was not a party to the Superior Court action, it had no additional duty for the son's transportation to and from his parents' homes. Petition was dismissed.

The Commissioner agreed with and adopted the recommended order of the ALJ dismissing the petition with clarification. The Commissioner concurred with the ALJ that the record did not support petitioner's argument that the relief he sought must be granted by the Board because, *inter alia*, the living arrangements for his son resulted from a Superior Court adjudication. The Commissioner, however, did not concur with the ALJ's inference that the Board's not being a party in the divorce action before the Superior Court had any bearing on the controversy presented in this matter. Also, noting that the recent *Somerville v. Manville* court decisions were not applicable in this matter because those rulings were limited to the factual circumstances therein, the Commissioner agreed with the ALJ's conclusion that petitioner's son may have only one domicile/residence. Petition was dismissed.

June 4, 2001

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The record and Initial Decision issued by the Office of Administrative Law have been reviewed. No exceptions were filed by the parties.

Upon review of the record, the Commissioner agrees with and adopts the recommended order of the Administrative Law Judge (ALJ) dismissing the Petition of Appeal for the reasons set forth in the Initial Decision with the following clarification.

Initially, the Commissioner agrees with the ALJ that the record does not support petitioner’s argument that the relief he seeks must be granted by the Board because, *inter alia*, the living arrangements for his son “result from a Superior Court adjudication.”¹ (Initial Decision at 5) In so holding, however, the Commissioner does not concur with the ALJ’s inference on page 5 of the Initial Decision that the Board’s not being a party in the divorce action before the Superior Court has any bearing whatsoever on the controversy presented in the instant matter.

¹ Exhibit P-4, which contains several pages of the Property Settlement Agreement/Superior Court divorce decree between petitioner and his former wife, states only that that the parties have resolved the issues of custody, visitation and support and that they shall continue to have joint and physical custody of their son. Nothing in the record would support any inference that the Superior Court decree placed a duty on respondent to provide transportation to and/or from each of the parent’s residences.

Further, the Commissioner concurs with the ALJ's conclusion that, for the purposes of this matter, petitioner's son may have only one domicile/residence. In so holding, the Commissioner is cognizant of the recent Appellate and Supreme Court decisions in *Somerville Bd. v. Manville Bd.*, 332 N.J. Super. 6 (App. Div. 2000), *aff'd* 167 N.J. 55 (2001) but does not find the decisions applicable herein because the rulings were limited to the factual circumstances presented in that specific matter.²

Accordingly, the petition is hereby dismissed.

IT IS SO ORDERED.³

COMMISSIONER OF EDUCATION

Date of Decision: June 4, 2001

Date of Mailing: June 4, 2001

² The Somerville case dealt with the issue of which school district was to bear the expense of educating a student, placed in a private school for the handicapped, whose divorced parents, residing in two different school districts, had joint custody and the districts had an oral agreement for four years to share the costs of the education. The trial court held that the student was a domiciliary of Somerville for purposes of a free public education and that, prospectively, Somerville alone had responsibility for the student's education. The New Jersey Appellate Division reversed the lower court's determination, holding that "*Under the particular circumstances of this case, fairness dictates that both districts bear equally the costs of the child's special education.****" (emphasis supplied) (at 17) On April 10, 2001, the New Jersey Supreme Court affirmed the Appellate Division decision. Further, it acknowledged, as did the Appellate Division, that the issue posed in the Somerville case is one that appropriately may be addressed by State regulation. With respect to this, the Supreme Court stated, "The Department of Education participated in this matter as *amicus curiae* before the Appellate Division, and provided that court with a draft regulation addressing issues of domicile and residency that had not as yet been published or the subject of public comment. We anticipate that any regulation adopted in the future by the Department addressing the issue before us would supersede our disposition of this appeal." (at 59) The Department's draft regulation dealing with domicile/residency is currently under discussion by the State Board of Education as Chapter 28 of Title 6A.

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.*, within 30 days of its filing. Commissioner decisions are deemed filed three days after the date of mailing to the parties.