

OAL DKT. NO. EDU 4694-02

(Link to OAL Decision: http://lawlibrary.rutgers.edu/oal/html/initial/edu04694-02_1.html)

AGENCY DKT. NO. 186-6/02

C.H., ON BEHALF OF MINOR CHILD, J.H., :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE : DECISION
PRINCETON REGIONAL SCHOOL :
DISTRICT, MERCER COUNTY, :
RESPONDENT. :
_____ :

The record of this matter and the Initial Decision of the Office of Administrative Law have been reviewed. Petitioner filed timely exceptions, to which the Board of Education (Board) duly replied.

In his exceptions, petitioner urges the Commissioner to reject the Initial Decision's findings and conclusions to the extent that they do not hold petitioner to have been domiciled, or temporarily residing, in Princeton during the entire 2001-02 school year. Petitioner specifically objects to the findings of the Administrative Law Judge (ALJ) that petitioner's separation from his wife ended in February 2002, that his residency in Princeton ended on or about February 2002, and that he was not domiciled in Princeton after February 2002. According to petitioner, the record demonstrates that he neither decided nor acted to return permanently to Lawrenceville until the summer, so that the ALJ erred in concluding that, as of February 2002, petitioner intended to return to Lawrenceville on a permanent basis and his intermittent stays there between February and the summer consequently constituted a change in domicile. Petitioner also objects to the ALJ's failure to consider, in addition to his claim of domicile, the proffered

alternative ground of temporary residence in the district pursuant to *N.J.A.C.* 6A:28-2.4(a)4. (Petitioner's Exceptions at 1-11)

In reply, the Board urges adoption of the Initial Decision, contending that petitioner's claim of domicile is belied by testimony demonstrating that petitioner's move to his father's home in Princeton was "only a temporary arrangement to help ease a family crisis. He never changed his legal domicile, as required by *N.J.S.A.* 18A:38-1. His wife described the family separation as a 'plan,' the result of which was unpredictable. She testified on cross-examination that, even from the beginning of the school year, [petitioner] and J.H. stayed overnight in Lawrenceville on Monday nights, since the family had counseling sessions on those evenings. She further admitted that, beginning in February, 2002, and continuing for 'a few months,' [petitioner] and J.H. spent additional nights at the Lawrenceville home. *** [Petitioner] testified that his intention during this February – May period was to return to the Princeton residence. However, this avowed intention was not sufficient to prove that Princeton was his domicile, since the facts do not support such a finding even prior to February, 2002. In other words, [petitioner] could not 'return' to a domicile that did not exist." (Board's Reply at 1-2) The Board further opines that the ALJ did not need to consider petitioner's claim of temporary residence in light of her (correct) finding that petitioner and his wife "reconciled or at least reunited" in their Lawrenceville home in February 2002. (*Id.* at 2)

Upon his own review, the Commissioner determines to modify the Initial Decision of the ALJ. Preliminarily, the Commissioner notes that there is no genuine dispute between the parties about the material facts of petitioner's living arrangements, as opposed to the intention underlying them and the conclusions to be drawn from them; nor do the parties dispute the ALJ's

recitation of testimony or her implicit assessment of witness credibility.¹ In reviewing the body of testimony and evidence presented, however, the Commissioner cannot concur with the ALJ that petitioner was at any point *domiciled* in Princeton. Instead, as the record makes abundantly clear and neither party denies, petitioner's family unit was in crisis and, in an attempt to preserve it, the parents undertook a trial separation until they could determine whether the problems with their children could be resolved and they would then decide either to divorce or to reconcile; if the latter, they would again live together in Lawrenceville. Both parents testified that, when petitioner moved to Princeton, they did not know whether he would return to Lawrenceville. Petitioner himself testified that he returned frequently to Lawrenceville for home maintenance purposes and that he did not change his driver's license or the address at which he received official documents, actions which customarily serve as indicia of intent to establish a new domicile. Under these circumstances, it is difficult to agree that petitioner intended, even for a short time, to make Princeton a "permanent abode," as found by the ALJ. (Initial Decision at 8) That assessment, however, does not end the inquiry in this matter, as the Board would suggest.

The facts herein are, in the Commissioner's view, more appropriately analyzed under the provision of law allowing for free attendance at school by a student whose parent or guardian is temporarily residing in the district, N.J.S.A. 18A:38-1(d), so long as the sole purpose of such residency is not to obtain a free public education, *N.J.A.C.* 6A:28-2.4(a)4; *Whasun Lee v. Board of Education of the Township of Holmdel*, App. Div. A-653-95T5, decided October 9, 1996, published 97 *N.J.A.R.2d* (EDU) 77, 80-82. There is no dispute in this matter

¹ It is here noted that petitioner submitted, along with his exceptions to the Initial Decision and without objection by the Board, an unofficial copy of the sound recording of the OAL hearing obtained pursuant to *N.J.A.C.* 1:1-14.11(b); that recording, however, was not considered in rendering the within decision. Although it was unnecessary in the present instance for the Commissioner to review the hearing transcript because petitioner, in his exceptions, challenges the conclusions drawn by the ALJ from stated facts rather than the facts themselves, the Commissioner must generally caution that parties challenging an ALJ's findings of fact are required to provide the Commissioner with those portions of the official transcript relevant to the exceptions filed. *In re Morrison*, 216 *N.J. Super.* 143, 158 (App. Div. 1987) An unofficial copy of the sound recording of OAL proceedings may not be substituted for the required transcript, and will not be considered if so submitted.

that petitioner and J.H. were living with petitioner's father in Princeton until February 2002. After that time, however, the Commissioner finds that, contrary to the holding of the ALJ, petitioner and J.H. continued to reside in Princeton until the beginning of summer, after the school year had ended, and that their concededly more frequent stays in Lawrenceville are indicative of the family's counseling needs and state of transition rather than of an actual change in residence, which did not finally occur until petitioner and J.H. moved back to the family home in the summer. Moreover, the record amply demonstrates that, while a desire to change J.H.'s school environment undeniably entered into the family's decision to undertake a trial separation, and a desire to have him finish out the school year without interruption may well have colored the timing of the family's actual physical reunification once it became apparent the separation was not working, these factors were but one part of a larger complex of issues giving a legitimate non-school purpose to petitioner's residency in Princeton. Certainly, this matter does not present itself as a case where, contrary to the intent of *N.J.S.A.* 18A:38-1, parents have contrived to establish a temporary residence in another district in order to create a sham "entitlement" for their child(ren) to attend school there. *Lee, supra.*

Accordingly, for the reasons set forth above, the Initial Decision of the OAL is modified to hold that no tuition is due the Board because petitioner was temporarily residing in the Princeton school district for the duration of the 2001-02 school year and such residency was not for the purpose of unlawfully procuring a free public education in the district.

IT IS SO ORDERED.²

COMMISSIONER OF EDUCATION

Date of Decision: August 11, 2004

Date of Mailing: August 11, 2004

² 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.*