

B.F.-H., on behalf of minor child, A.C., :  
PETITIONER, :  
V. : COMMISSIONER OF EDUCATION  
BOARD OF EDUCATION OF : DECISION  
WOODBRIDGE TOWNSHIP, :  
MIDDLESEX COUNTY, :  
RESPONDENT. :

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### SYNOPSIS

Petitioner, the grandmother and legal guardian of A.C., appealed the determination of the respondent Board that A.C. is not eligible for a free public education in the Woodbridge Township school district. Petitioner was a long-time resident of Woodbridge, until her home was damaged by fire in 2006 and she began efforts to renovate the structure. Permit approvals and the Township's requirement that the home be demolished and rebuilt resulted in unanticipated delays of more than two years before construction on the house actually began. The petitioner has had her household belongings in storage during this time period, and has lived in a number of locations – including Linden Township – with family and friends while awaiting the reconstruction of her home. The Board asserts that petitioner is not a resident of Woodbridge Township as she does not satisfy the physical residence requirement of domicile, and has her sole residence in Linden.

The ALJ found that: the petitioner has established her domicile in Woodbridge Township in accordance with *N.J.S.A.* 18A-38.1(a); A.C. was entitled to attend Colonia High School in Woodbridge Township free of charge for the 2006-07 and 2007-08 school years, and may continue to attend the school free of charge until her domicile changes; and domicile has not been established in Linden Township pursuant to *N.J.A.C.* 6A:22-3.1(a)(4) because petitioner has not resided in Linden Township on an all-year-round basis for at least one year. The ALJ concluded that respondent Board is responsible for A.C.'s education for the 2006-07 and 2007-08 school years, and is further responsible for A.C.'s education for the 2008-09 school year until such time as her domicile, for school attendance purposes, is established in the Township of Linden on a year-round basis.

Upon a full and independent review, the Commissioner provided clarification and amplified the Initial Decision, which was adopted as the final decision in this matter.

<p>This synopsis is not part of the Commissioner's decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.</p>
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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 and petitioner’s reply thereto – filed in accordance with the directives of *N.J.A.C.* 1:1-18.4 – were duly considered by the Commissioner in reaching her determination here. However, the Board’s December 12, 2008 submission was not considered because the above-referenced applicable rule makes no provision for response to reply exceptions.

The Board’s exceptions charge that the Administrative Law Judge (ALJ) erroneously found petitioner to be domiciled in Woodbridge Township because “she has the intention of returning to that location when the new home construction [at 806 W. Avenue<sup>1</sup> in Colonia] is complete.” Initial Decision at 7 (Board’s Exceptions at 3) It asserts that established legal precedent surrounding the concept of domicile clearly belies such a finding in this matter. First, citing *J.B., on behalf of C.B. and E.B. v. Board of Education of the Hopewell Valley Regional School District*, decided by the Commissioner September 23, 1999, the Board maintains that domicile has *two* requisites, *i.e.*, 1) a physical residence and 2) an intent to remain in this location, both of which are required to establish a legal entitlement based on domicile. (*Id.* at 3-4) Secondly, citing *L.B. on behalf of D.B. and S.B. v. Teaneck Board of Education*, decided by the Commissioner September 24, 1998, *aff’d* State Board, January 6, 1999 and *K.L. and K.L. on behalf of minor children, M.L. and C.L. v. Board of Education of*

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<sup>1</sup> The street address has been abbreviated to protect the student’s privacy.

*the Borough of Kinnelon*, decided by the Commissioner July 23, 2008, the Board avers that the Commissioner has deemed a mere property interest within a school district insufficient to establish domicile. Rather, petitioner “must actually and physically take up an abode on that property in order to be presently domiciled within a school district.” (*Id.* at 5) Next, pointing to *Board of Education of the Township of Livingston v. H.L. and D.L. Individually and as Natural Guardians of K.L. and J.L.*, decided by the Commissioner May 26, 1998, *aff’d* State Board, February 3, 1999, the Board advances that construction is not sufficient to satisfy the physical residence requirement of domicile. (*Id.* at 6) Finally, it argues that – pursuant to *L.B., on behalf of D.B. and S.B. v. Teaneck Board of Education, supra*, – “[m]erely entertaining the possibility, or having a floating intention, of returning to one’s former domicile at some later time is not sufficient evidence that one is presently domiciled at that location.” (*Id.* at 7-8) In this matter, the Board advances, petitioner has not physically taken up an abode in Colonia since November 2006 when her house was demolished. Although petitioner has paid property taxes on 806 W. Avenue, this location has been no more than a vacant lot from November 2006 until – at the very earliest – August 2008. Pursuant to the above-referenced controlling case law, the Board argues, notwithstanding that petitioner was previously domiciled in Colonia, maintains some ties to that area and possesses a “floating intention” of returning to 806 W. Avenue at some future date, “an actual, physical residence is required to establish domicile at that location, and mere construction does not qualify as a physical residence to establish domicile.” (Board’s Exceptions at 3)

The Board next excepts to what it asserts is the ALJ’s failure to consider the impact of the May 15, 2008 agreement signed by petitioner wherein she “agreed to withdraw A.C. from the Woodbridge Township Public Schools by June 30, 2008, and further agreed not to seek A.C.’s re-enrollment in that school system until she built a house on 806 W. Avenue, Colonia, New Jersey, or otherwise became domiciled in Woodbridge Township.” (Board’s Exceptions at 8) The plain language of this agreement, the Board argues, is an acknowledgement by petitioner that she is not domiciled in Colonia. As she has not satisfied either of the two conditions which it was agreed would alter this status, A.C. possesses no entitlement to attend the District’s schools. Notwithstanding that the ALJ did not

conclude in his decision that petitioner's signing of the May 15, 2008 agreement constituted a "knowing waiver of statutory right" such a conclusion was unnecessary, the Board maintains, as on May 15, 2008 petitioner A.C. never possessed a statutory right to attend the District's schools in the first place because at that time and all relevant time periods surrounding this matter, A.C.'s legal guardian "has lacked a physical residence in Colonia." (Board's Exceptions at 9)

In response, petitioner cites *James A. Lyon Jr. v. Sidney Glaser*, 60 N.J. 259 (1972) for the proposition that "[d]omicile is a state of mind and reflects the person's intention; domicile involves taking up residence in a location which is accompanied by an intention to make the home permanently in that location indefinitely." (Petitioner's Reply Exceptions at 6) Furthermore, she argues, "[w]hen a domicile is established, the domicile remains in that particular location, until the person moves from that location with the intention of establishing a domicile in a new location. *Lyon, supra* at 264" (*Ibid.*) Petitioner contends that the facts in this matter confirm that these two components of the concept of domicile have clearly been satisfied. Specifically,

[Petitioner] was domiciled in Colonia, New Jersey having moved there in 1979. When she became the legal guardian [of her granddaughter, ] A.C. [in August 2006], A.C. was deemed to be domiciled in Colonia, New Jersey. [Petitioner] had a physical presence in Colonia, New Jersey and an intention to remain permanently there. When there was a fire and subsequent demolition of the home at 806 W. Avenue, [petitioner] had to move temporarily from this area. There was no intention to change domicile or establish a new domicile. [Petitioner] had to move from her home so that it could be demolished and a building permit could be issued. She understood that a new home would be completed in six months. She made plans to live elsewhere for a period of six months. [Petitioner] and A.C. lived with a friend in Edison, New Jersey for a period of three months and then she lived with a friend in Irvington, New Jersey. As the time drew near for permits to be issued to build the new home, there were ongoing issues with the plan to re-build the home which involved issues with the County of Middlesex and the Township of Woodbridge building departments. [Petitioner's] intention to move back to Colonia had to be changed with each setback and she had to make new living arrangements each time that she learned that re-building would be further delayed. Within the last year, looking at the time period from September of 2007 forward, [petitioner] lived in Old Bridge with relatives, in Linden with relatives, she visited relatives in Florida and she then lived in Virginia with a close family friend. In September 2007, [petitioner] lived for a few weeks in Old Bridge. [Petitioner] then lived in Linden from September through January 2008. In January she

had to undergo surgery and as a result needed to stay with relatives to recuperate. She then stayed in Linden again. By the summer of 2008, from July 2 through July 29, [petitioner] visited relatives in Florida and then stayed with a friend in Virginia for three weeks where she had designated living quarters. In August, [petitioner] had to undergo major surgery and returned to Linden after the surgery. There was no intention to ever establish domicile in any of these locations, and [petitioner] simply lived in these various areas on a temporary basis. [Petitioner] indicated that she lived at various locations so that she would not burden any one friend or family member.

[Petitioner] maintained only one domicile, which was in Colonia, New Jersey. She continued to receive her mail in Colonia and she voted in this area as she had always done for 29 years. [Petitioner] maintained a garden on her land at 806 W. Avenue which she tended to frequently. [Petitioner] continued to handle all business affairs in Colonia, had her taxes done with use of the 806 W. Avenue address and she paid a mortgage, homeowner's insurance, property taxes and sewer bills in Colonia, New Jersey. [Petitioner] worshipped at Saint John Vianny Church where she was a parishioner for 29 years. The drivers license issued to [petitioner] always reflected her address at 806 W. Avenue. [Petitioner] placed all of her worldly possessions in storage with a plan to place these possessions in her home again once the home was re-built. [Petitioner] expended large amounts of money in the re-building of her home and from all actions, it was apparent that she had maintained domicile in Colonia even with living in other locations on a temporary basis. The intention to remain in Colonia was evident in all of her actions. (Petitioner's Reply Exceptions at 8-10)

Petitioner maintains that the cases cited by the Board are clearly distinguishable from this matter in that those cases depicted families who had either never yet lived in a school district or who had only a nebulous intention of returning to a certain school district. While the concept of only a "floating" intention of going to or returning to a particular locale properly describes the cases cited by respondent, such is not the case here as petitioner "had both an intention and a definite plan to return to her home in Colonia, New Jersey." (*Id.* at 13)

With respect to the May 15, 2008 agreement, petitioner – citing *Camden Board of Education v. Alexander*, 181 N.J. 187 (2004) and *David A. Garfinkel, M.D. v. Morristown Obstetrics & Gynecology Associates P.A., et al*, 168 N.J. 124 (2001) – maintains that it is well-established that language in an agreement which deals with the bargaining away of a statutory right must state such an intent in clear and unambiguous terms, and such an intent will not be assumed absent this specific

language. Moreover, there also must be clear evidence that an individual who is waiving a statutory right made a knowing and voluntary decision to do so. In that the Board's May 15, 2008 agreement lacked this requisite specificity, petitioner argues, that agreement "is lacking validity and is not enforceable." (Petitioner's Reply Exceptions at 14-15, quote at 15)

Upon a comprehensive review of the instant record, the Commissioner concurs with the ALJ that minor child, A.C., was entitled to a free public education in the Woodbridge Township Board of Education's schools for the 2006-07, 2007-08 school years and continues to be so entitled for the current school year. Initially, the Commissioner so finds based on her conclusion that petitioner is a domiciliary of the district. Particularly instructive in so concluding was in *Matter of Unanue*, 255 N.J. Super. 362, 374-376 (App. Div. 1991) wherein the Court extensively discussed the concept of domicile, and in pertinent part stated:

"In a strict legal sense, the domicile of a person is the place where he has his true, fixed, permanent home and principal establishment, and to which whenever he is absent, he has the intention of returning, and from which he has no present intention of moving." ...This identification of domicile with the concept of home continues to have vitality in New Jersey..." Home is the place where a person dwells and which is the center of his domestic, social and civil life."...In that case (*Citizens Bank & Trust Co. v. Glaser*, 70 N.J. at 81), the court stated that "the overwhelming proportion of the indicia as to what the decedent regarded as her real, principal and permanent home...as well as the central fulcrum of her life must here be found to converge..." in that location found to be her domicile...Thus, the concepts of home and domicile mean more than physical residence. They also embody the subject's objective and subjective relationship to that residence.  
at 374, 375 (Citations omitted)

...Thus, a person may not arbitrarily designate a given residence as his domicile. It is necessary that the requisite subjective intent be present since domicile is "very much a matter of the mind – of intention." at 376 (Citations omitted)

It is, therefore, clear that – because of its very nature – determination of a disputed case with respect to domicile requires an evaluation of all the facts and circumstances of the case. (See *Lyon v. Glaser*, 60 N.J. 259, 265) Recognizing this, the Commissioner rejects each of the school law cases cited by the Board as standing for a black or white proposition which necessarily must effect the outcome of this

particular case. Because domicile cases are extremely fact sensitive, meaningful comparisons between cases and concepts can be difficult to make when taken out of context. The Commissioner's full review persuades her that none of the cases advanced by the Board is similar enough in nature or factual circumstances to the instant matter so as to provide precedential support for the Board's positions. Rather, the Commissioner finds and concludes that the record in this matter abundantly evidences that petitioner has at all times considered 806 W. Avenue in Colonia – where she has lived since 1979 and raised her family – to be the place where she has her “true, fixed, permanent home and principal establishment and to which whenever [she] is absent, [she] has the intention of returning, and from which [she] has no present intention of moving.” (*Unanue, supra*) That petitioner was compelled to leave 806 W. Avenue because of damage to her home which necessitated its demolition and rebuilding, or that she was thwarted in her intention to return to her home by various building permit issues with the County and the Township and, as a consequence, was unable to physically reside at this property for more than two years, does not determine that 806 W. Avenue did not remain her domicile. Petitioner's various temporary living arrangements during this period were no more than that, on her way back to 806 W. Avenue. It is amply evident that petitioner considered this location her domicile and never abandoned her intention to return there at the earliest possible time.

However, even assuming, *arguendo*, that petitioner had not been found to be domiciled in the District, the Commissioner finds that A.C. would have possessed entitlement to a free public education in the schools of Woodbridge Township by virtue of the fact that during the period at issue here petitioner qualified as homeless.<sup>2</sup>

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<sup>2</sup> It is noted that in the instant petition of appeal filed in this matter on June 26, 2008 – in addition to advancing her domicile argument – petitioner also argued that A.C. was entitled to attend Woodbridge Township schools free of charge because petitioner, B.F.-H. and A.C. were homeless. Petitioner was advised by the Bureau of Controversies and Disputes at that time that any claim of homelessness in her petition was premature and she must immediately seek a determination, pursuant to *N.J.A.C. 6A:17-2.8(a)*, from the County Superintendent before such a claim could proceed. The record confirms that petitioner subsequently sought the necessary determination from the Middlesex County Executive Superintendent of Schools and, by letter from him dated August 5, 2008, was advised that he found her not to be homeless. The Commissioner here reverses that finding.

The regulatory provisions governing the education of homeless children defines a “homeless child” as one “who lacks a fixed regular and adequate residence.” (*N.J.A.C. 17-2.2*) *N.J.A.C. 17-2.3* provides further detail to this definition, *i.e.*, a child is homeless when he or she resides in any of the following: 1) a publicly or privately operated shelter designed to provide temporary living accommodations; 2) a public or private place not designated for or ordinarily used as a regular sleeping accommodation; 3) the residence of relatives or friends with whom the homeless child is temporarily residing out of necessity because the family lacks a regular or permanent residence of its own; 4) any temporary location wherein children and youth are awaiting foster care placement.

The instant record evidences that with the demolition of her home at 806 W. Avenue in November 2006, petitioner and A.C. were displaced from their permanent housing. Petitioner placed her possessions, including furniture, clothing and household items into storage and she and A.C. undertook a series of short-term, temporary living arrangements with various friends and relatives in Edison, Irvington, Old Bridge, Virginia, Florida, Linden, returned again to Old Bridge, and again to Linden, moving frequently in an attempt to minimize imposition and disruption to any one of the individuals who had kindly provided them lodging. It was anticipated that this period of transitory living would last only six months or so, at which time they could return home. Difficulties securing necessary building permits from both the Township and the County building departments served to vastly extend rebuilding time and petitioner and A.C. continued to relocate. The Commissioner finds and concludes that under the definitional construct of “homeless” individuals presented above, petitioner and A.C. qualified as homeless during the period they were displaced from their home until that home’s rebuilding, as they “lacked a fixed, regular, and adequate residence.” That petitioner’s stay in Linden, New Jersey may have been more protracted than other of her temporary accommodations does not alter the finding of homelessness during the stay in that location. During this time petitioner underwent two separate surgeries which necessitated recuperation and her prime consideration had to be with healing rather than

worrying about the disruption her continued presence might be causing family members. Her inability to continuously relocate as she had previously done does not operate to make Linden, New Jersey – any more than her other transitory stops – a “fixed, regular and adequate residence.” Educational responsibility in this situation is specifically prescribed by statute. *N.J.S.A.* 18A:7B-12.1 specifies that “the district of residence” is responsible for the education of a homeless child. The district of residence for children whose parent [or guardian] temporarily moves from one school district to another as the result of being homeless is the district in which the parent [guardian] last resided prior to becoming homeless. (*N.J.S.A.* 18A:7B-12(c)). Pursuant to these provisions, respondent – Board of Education of Woodbridge Township – was responsible for the education of A.C. during her entire period of “homelessness”.

As to the May 15, 2008 agreement signed by petitioner: given the Commissioner’s prior determination that petitioner was domiciled in Woodbridge, this agreement has no effect whatsoever on the outcome of this matter. Even assuming, *arguendo*, that the Commissioner accepts that petitioner could waive A.C.’s unambiguous statutory and constitutional entitlement to a free education (*N.J.S.A.* 18A:38-1 *et seq.*, New Jersey Constitution, Article VIII, Sec. IV, para. 1), by virtue of the signing of a document which clearly and unequivocally 1) advised her that a statutory right was being waived and 2) contained language confirming that petitioner knowingly and voluntarily had the intent to waive such statutory right, the agreement presented to petitioner for signature did not satisfy even a modicum of these requisites and was, therefore, *void ab initio*.

Finally, in light of her determination here, the Commissioner finds it unnecessary to reach to the ALJ’s discussion on pp. 8-11 with respect to the Board’s claim that, pursuant to *N.J.S.A.* 18A:38-1(d), petitioner and A.C. are domiciled in Linden Township.<sup>3</sup>

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<sup>3</sup> It may be helpful, however, for the parties to be aware that the the Commissioner recently clarified the legislative intent and applicability of *N.J.S.A.* 18A:38-1(d) and other “non-domicile” provisions in *M.L.P., on behalf of minor child, C.L.P. v. Board of Education of the Township of Bloomfield, Essex County*, Commissioner decision #495-08, decided December 29, 2008, wherein she stated:

Accordingly, as clarified and amplified above, the Initial Decision of the OAL – finding that minor child, A.C., was entitled to a free public education in the Woodbridge Township schools for the 2006-07 and 2007-08 school years, and continues to be so entitled for the current school year – is adopted as the final decision in this matter.

IT IS SO ORDERED.<sup>4</sup>

COMMISSIONER OF EDUCATION

Date of Decision: February 9, 2009

Date of Mailing: February 10, 2009

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In implementing the constitutional imperative for provision of a thorough and efficient system of free public education, the Legislature has provided, through *N.J.S.A. 18A:38-1(a)*, that the fundamental entitlement of a child to attend school attaches to a particular local school district based on the domicile of the child – which under common law and decades of decisional precedent has consistently been held to be the domicile of the child’s parent, custodian or guardian...(citations omitted)

However, in recognition that children do not always live in the district of their legal domicile, the Legislature has additionally provided, through enactment of *N.J.S.A. 18A:38-1(b), (d), (e) and (f)*, that entitlement to attend school shall extend to a limited number of “non-domicile” situations where attendance at school in the district of domicile may not be appropriate or practicable. Thus, to the extent that the statutory scheme focuses...on where a child *is actually living*, it is to *expand* the child’s entitlement beyond the district of legal domicile when exceptional circumstances warrant, *not* to remove, replace or preclude exercise of the child’s fundamental right to attend school in such district – a right which must be honored where the protections of the statute’s “exceptional” provisions are not invoked by the child’s parent or guardian. (citations omitted)  
(Slip Opinion at 6-7)

<sup>4</sup> This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L. 2008, c. 36*.