

EDU #11369-95
C # 32-97
SB # 17-97

AKBAR ZADRAN, :
PETITIONER-APPELLANT, :
V. : STATE BOARD OF EDUCATION
BOARD OF EDUCATION OF THE TOWN- : DECISION
SHIP OF BELLEVILLE, ESSEX COUNTY, :
RESPONDENT-RESPONDENT. :
_____ :

Decided by the Commissioner of Education, January 23, 1997

Decision on motions by the State Board of Education, May 7, 1997

For the Petitioner-Appellant, Rutgers University Constitutional Litigation Clinic
(Eric Neisser, Esq., of Counsel, and Penny M. Venetis, Esq., pro hac vice)

For the Respondent-Respondent, Gaccione, Pomaco & Beck (Frank Pomaco,
Esq., of Counsel)

Akbar Zadran (hereinafter "petitioner") and his family reside in a condominium complex which is located on the border between Belleville and Newark. Maps depict the complex as straddling the Belleville/Newark boundary line, with the bulk of the complex situated on the Newark side. Petitioner's unit sits directly on the boundary line, although the majority of his unit is located in Newark. Petitioner's landlord pays property taxes entirely to Newark for his unit.

On August 10, 1995, after petitioner's children had been attending public school in Belleville for two years, the assistant superintendent of that district, upon

ascertaining that the unit occupied by petitioner's family was taxed by Newark, sent a letter to petitioner advising him that his children could not attend public school in Belleville for the 1995-96 school year unless they relocated within the district.

On August 29, 1995, petitioner filed a petition with the Commissioner of Education, alleging that his domicile was in Belleville and that his children were therefore entitled to a free public education in that district pursuant to N.J.S.A. 18A:38-1(a). The Board of Education of the Township of Belleville (hereinafter "Board") filed a counter-petition seeking tuition from petitioner for the period of his children's attendance in the district. The Board contended that petitioner was domiciled in Newark and, consequently, that his children were ineligible for a free public education in Belleville.

On December 6, 1996, an Administrative Law Judge ("ALJ") agreed with the Board, concluding that petitioner's children were not eligible to attend public school in Belleville free of charge. The ALJ concluded that "it would be inequitable to impose the financial burden of educating the Zadran children on the citizens of Belleville while the citizens of Newark enjoy the benefit of tax revenues derived from their living arrangements." Initial Decision, slip op. at 6-7. However, under the circumstances, the ALJ concluded that the Board's recovery should be limited to tuition charges accruing since September 1995. Finding that petitioner was clearly on notice prior to the 1995-96 school year of the Board's contention that his family was not domiciled in Belleville, the ALJ recommended that the Commissioner of Education direct petitioner to reimburse the Board for tuition costs for his four children for the 1995-96 school year and for 1996-97 through the date of the hearing in the total amount of \$35,466.

On January 23, 1997, the Commissioner adopted the findings and conclusions of the ALJ and, noting that the Board had not objected to the ALJ's recommendation that recovery of tuition should be limited to charges accruing since September 1995, directed petitioner to remit tuition to the Board in the amount of \$35,466.

Petitioner filed the instant appeal to the State Board.

On May 7, 1997, we granted petitioner's motion to supplement the record on appeal pursuant to N.J.A.C. 6:2-1.9. We also granted petitioner's motion to admit Penny M. Venetis, Esq. pro hac vice so as to permit her to represent the petitioner before the State Board with respect to the current matter.

After a careful review of the record as supplemented on appeal, we reverse that portion of the Commissioner's decision which directed petitioner to reimburse the Board for tuition charges accruing since September 1995.

This case presents us with an unusual situation in which a single condominium unit is physically situated in two school districts. As previously indicated, Belleville had accepted petitioner's children into its public schools until it discovered that petitioner's landlord was paying property taxes on his unit to Newark. We note, however, that the payment of property taxes is not, in itself, dispositive of domicile. See, e.g., N.J.S.A. 54:4-25 ["When the line between taxing districts divides a tract of land, each part shall be assessed in the taxing district where located, unless the governing body of one of the taxing districts shall by resolution request that the entire tract be assessed by the adjoining taxing district in which a portion of the tract is located."] (Emphasis added.)]

As found by the ALJ, petitioner honestly believed that his unit was located in Belleville. The ALJ related that petitioner "had told the broker who found the apartment

for him that he wanted to live in Belleville. Moreover, the apartment has a Belleville mailing address and a Belleville telephone exchange. A written lease describes the premises as "2 Honnis Street, Belleville, NJ Apt. A-17." Initial Decision, slip op. at 3. Under these circumstances, it was not unreasonable for petitioner—whose unit was situated partially in Belleville—to believe that he was domiciled in Belleville. Indeed, when petitioner attempted to enroll his son in a high school in Newark in February 1997, the acting principal refused such enrollment on the grounds that petitioner had a Belleville address. Affidavit of Petitioner, Exhibit B. Nor is there any indication in the record that petitioner acted with fraudulent intent to mislead the Board into permitting his children to attend public school in Belleville.

While a claimant's perception of domicile cannot override legal and geographical realities, we conclude that it would be inequitable under the particular facts in the record before us to assess tuition against petitioner for the period of his children's attendance in the Belleville public schools.¹ See State, Dept. of Envir. Protection v. Stavola, 103 N.J. 425, 436 n.2 (1986) (any administrative agency in determining how best to effectuate public policy is limited by applying principles of fundamental fairness); H.M. and L.M. v. Board of Education of the Township of Freehold, decided by the State Board of Education, April 2, 1997. Accordingly, we reverse that portion of the Commissioner's decision which directed petitioner to reimburse the Board for tuition charges accruing since September 1995. Cf. Whasun Lee v. Board of Education of the

¹ We note that if petitioner had enrolled his children in Newark during the pendency of his appeal to the Commissioner and had ultimately prevailed on his contention that he was domiciled in Belleville since his unit was located partially in that district, he may have been responsible under the terms of N.J.S.A. 18A:38-1 for tuition payments to Newark for the period of his children's "improper" attendance in that district.

Township of Holmdel, Docket #A-653-95T5 (App. Div. 1996); Board of Education of the Borough of Fort Lee v. Kintos, Docket #A-4944-93T5 (App. Div. 1995).²

Attorney exceptions are noted.

April 1, 1998

Date of mailing _____

² The counsel for petitioner advised us in a letter dated September 30, 1997 that petitioner and his family have relocated to another condominium unit in the complex, which, purportedly, is located entirely in Belleville.