

EDU #677-96
C # 54-97
SB # 23-97

BOARD OF EDUCATION OF THE BOROUGH :
OF SOMERVILLE, SOMERSET COUNTY, :

PETITIONER-APPELLANT, :

V. :

STATE BOARD OF EDUCATION

BOARD OF EDUCATION OF THE CITY OF :
NEW BRUNSWICK, MIDDLESEX COUNTY :
AND THE NEW JERSEY STATE :
DEPARTMENT OF EDUCATION, :

DECISION

RESPONDENTS-RESPONDENTS. :

Decided by the Commissioner of Education, February 5, 1997

For the Petitioner-Appellant, McDonald, Rogers & Rizzolo (Michael J. Rogers, Esq., of Counsel)

For the Respondent-Respondent Board of Education of the City of New Brunswick, Hendricks and Hendricks (George F. Hendricks, Esq., of Counsel)

For the Respondent-Respondent New Jersey State Department of Education, John K. Worthington, Deputy Attorney General (John J. Farmer, Attorney General of New Jersey)

This case centers on a single issue: whether a county jail is a "residence" within the meaning of N.J.S.A. 18A:7B-12 so as to impose financial responsibility on the school district in which the county jail is located for the costs of a placement of a child made by the Division of Youth and Family Services ("DYFS"). Based on the stipulation of the parties to this matter and her analysis of the applicable law, the Administrative

Law Judge (“ALJ”) concluded that a county jail did not constitute a residence within the meaning of the statute. The Commissioner rejected the ALJ’s determination, holding that a county jail could be considered as a present residence for purposes of establishing financial responsibility for such placements.

After careful review of the record and the applicable legal framework, we reverse the Commissioner’s decision in this matter.

The facts in this case are straightforward and undisputed. As stipulated by the parties, N.M. was a second-grade pupil in the Somerville School District during the 1990-91 school year. In March 1991, N.M. was removed from her home by DYFS and placed with foster parents outside of the Somerville School District. N.M. has never returned to the Somerville public schools. On or about May 11, 1995, N.M. was placed by DYFS in the Youth Consultant Services Facility in New Brunswick. N.M.’s mother, M.V., was incarcerated in the Somerset County Jail from approximately April 1995 until October 6, 1995. At all times relevant to this matter, M.V. was neither domiciled in nor a resident of Somerville.

Acting upon a request from the Department of Human Services, the Department of Education determined that Somerville was the district of residence for N.M. because, at the time of the request, her mother was incarcerated in the Somerset County Jail. As a result, the Somerville School District was assessed tuition for N.M. for the 1994-95 school year and for a portion of the 1995-96 school year.

In December 1995, the Board of Education of the Borough of Somerville (hereinafter “Somerville Board”) filed a petition of appeal with the Commissioner of Education, contending that a county jail was not an appropriate facility for determining a

child's district of residence and that, as a result, the Somerville Board was not responsible for N.M.'s tuition. As set forth above, the ALJ concurred with the Somerville Board that a county jail was not a residence for purposes of establishing financial responsibility for N.M.'s placement, and the Commissioner rejected the ALJ's determination.

N.J.S.A. 18A:7B-12, the statute applicable to this matter, provides in pertinent part that:

a. The district of residence for children in foster homes shall be the district in which the foster parents reside. If a child in a foster home is subsequently placed in a State facility or by a State agency, the district of residence of the child shall then be determined as if no such foster placement had occurred.

b. The district of residence for children who are in residential facilities, or who have been placed by State agencies in group homes, private schools or out-of-state facilities, shall be the present district of residence of the parent or guardian with whom the child lived prior to his most recent admission to a State facility or most recent placement by a State agency.

If this cannot be determined, the district of residence shall be the district in which the child resided prior to such admission or placement.

c. The district of residence for children whose parent or guardian temporarily moves from one school district to another as the result of being homeless shall be the district in which the parent or guardian last resided prior to becoming homeless. For the purpose of this amendatory and supplementary act, "homeless" shall mean an individual who temporarily lacks a fixed, regular and adequate residence.

d. If the district of residence cannot be determined according to the criteria contained herein, or if the criteria contained herein identify a district of residence outside of the

State, the State shall assume fiscal responsibility for the tuition of the child....

Under N.J.S.A. 18A:7B-12(b), N.M.'s district of residence for purposes of establishing financial responsibility for her placement is "the present district of residence of the parent or guardian with whom the child lived prior to his most recent admission to a State facility or most recent placement by a State agency." Hence, it is N.M.'s mother's present district of residence that would establish financial responsibility if that district can be determined.

The regulations adopted by the State Board of Education under authority of the statute provide further guidance in determining M.V.'s "present district of residence." As provided by N.J.A.C. 6:20-5.3:

(a) The district of residence for school funding purposes shall be determined according to the following criteria:

2. The "present district of residence" of a child placed by a State agency in a group home, private school or out-of-state facility also referred to in paragraph one of N.J.S.A. 18A:7B-12(b) shall mean the New Jersey district of residence of the child's parent(s) or guardian(s) as of the date of the child's initial placement by the State agency. In subsequent school years spent in the educational placement made by a State agency, the child's "present district of residence" shall be determined in the same manner as for a child in a residential State facility as set forth in (a)1.

3. The "district of residence" referred to in paragraph two of N.J.S.A. 18A:7B-12(b) shall mean the New Jersey district of residence in which the child resided with his or her legal guardian immediately prior to his or her initial admission to a State facility or placement by a State agency.

(b) The commissioner shall determine the "present district of residence" or "district of residence" referred to in N.J.S.A. 18A:7B-12(b) based upon the address submitted by the Department of Corrections or the Department of Human

Services on forms prepared by the Department of Education.

...

N.J.A.C. 6:20-5.4 further provides:

(a) The address submitted to the Department of Education for determining the district of residence for school funding purposes for a child described below shall be the address defined below:

1. If the State has custody of the child or if a court or the State has appointed a third party as the custodian of the child, the present address of the parent(s) or guardian(s) with whom the child resided immediately prior to his or her initial admission to a State facility or placement by a State agency shall be submitted.
2. If the child's parents are divorced with joint guardianship, the present address of the individual parent with whom the child resided as of the date required by N.J.A.C. 6:20-5.3(a)(1) or (2) shall be submitted.
3. If the child never resided with his or her parent(s) or guardian(s), the address of the facility, group home, or private school shall be submitted.
4. If the child's sole parent or legal guardian resides in a State facility, the address of the State facility wherein the parent or guardian resides shall be submitted.

Accordingly, M.V.'s "present district of residence" is to be determined based on her address as of May 11, 1995, the date on which DYFS placed N.M. in the State facility.

There is no dispute that M.V. was incarcerated in the Somerset County Jail from April 1995 until October 1995. This encompasses the date on which N.M.'s placement occurred. Hence, M.V.'s address on the relevant date was the Somerset County Jail. However, the address in this case does not provide M.V.'s present district of residence because, as the ALJ found, N.J.S.A. 18A:1-1 provides that "residence means domicile,

unless a temporary residence is indicated.” In that N.J.S.A. 18A:7B-12(b) does not provide any indication that “present residence” is a temporary residence, M.V.’s present residence on the pertinent date must be her domicile.

As set forth in the ALJ’s Initial Decision, an individual may have many residences, but can have only one domicile. Miller v. U.S. Fidel. & Guar. Co., 127 N.J. Super. 37, 42 (App. Div. 1974); Continos v. Parsekian, 68 N.J. Super. 54, 58-59 (App. Div. 1961); DeFiore v. Erie-Lackawanna R.R. Co., 67 N.J. Super. 267 (Law Div. 1961).

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....Home is the place where a person dwells and which is the center of his domestic, social and civil life....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.

Matter of Unanue, 255 N.J. Super. 362, 374-5 (Law Div. 1991); See also, In re Jaffe, 74 N.J. 86, 90-91 (1977).

Incarceration in the county jail is for less than one year. N.J.S.A. 2C:43-10. Given that a stay in the county jail is brief by definition, a county jail cannot, as the ALJ correctly concluded, be an individual’s domicile. Because a county jail cannot be an individual’s domicile, the address of the Somerset County Jail could not provide M.V.’s present district of residence as of May 11, 1995. On this record, the conclusion is unavoidable that M.V.’s present district of residence was unknown. In this respect, we stress that a county jail is not a State facility so that N.J.A.C. 6:20-5.4(a)4 does not apply.

On this record, we conclude that Somerville is not responsible for N.M.'s tuition for 1994-95. Moreover, under the statute, if the parent's district of residence cannot be determined, then the district of residence shall be the district in which the child resided prior to the placement. N.J.S.A. 18A: 7B-12(b). In this case, N.M. was in foster care and, under these circumstances where the parent's district of residence can not be determined, the child's district of residence must be determined as if no foster placement had occurred. N.J.S.A. 18A: 7B-12(a). Although the stipulation by the parties indicates that prior to her placement in foster care, N.M. was attending Somerville public school, the record does not establish that this was the district of residence of either the parent or the child. Hence, we agree with the ALJ that although there is a possibility that Somerville might ultimately be responsible for N.M.'s tuition by further operation of the statute, any such obligation cannot be based on M.V.'s stay in the Somerset County Jail.

Arnold G. Hyndman abstained.

July 5, 2000

Date of mailing _____