

EDU #5959-96
C # 264-98
C # 403-98L
SB # 63-98

T.B.W., on behalf of minor child, A.W., :
PETITIONER-APPELLANT, :
V. : STATE BOARD OF EDUCATION
BOARD OF EDUCATION OF THE : DECISION
TOWNSHIP OF BELLEVILLE, ESSEX :
COUNTY, :
RESPONDENT-RESPONDENT. :

Decided by the Commissioner of Education, June 18, 1998

Decision on motion by the Commissioner of Education, September 17, 1998

For the Petitioner-Appellant, Marshall, Wooden, Corbett & Davenport (Renata Wooden, Esq., of Counsel)

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

In a petition filed with the Commissioner of Education, T.B.W. (hereinafter "petitioner") challenged the determination by the Board of Education of the Township of Belleville (hereinafter "Board") in April 1996 that her daughter, A.W., who had attended school in that district since September 1993, was not entitled to a free public education in the district. The petitioner contended that she had separated from her husband in 1993 and had moved out of their marital home in East Orange with A.W. to live with her cousin, F.B., in Belleville. The Board filed a counterclaim seeking tuition for the period of A.W.'s attendance in the district.

In his Initial Decision, the Administrative Law Judge (“ALJ”) recommended that the petitioner be directed to reimburse the Board for tuition since September 1993, concluding that she had failed to demonstrate that A.W. was domiciled in Belleville during the period relevant to this matter. The ALJ found the Board’s witnesses to be “fully credible” and did not “consider the testimony to the effect that T.B.W. and A.W. actually resided...in Belleville during the period in question to be credible.” Initial Decision, slip op. at 16. The ALJ observed that “[t]he fact that A.W. was observed ‘on numerous occasions’ boarding a bus which goes to East Orange casts doubt on T.B.W.’s claim.” Id. The ALJ found that the petitioner:

has not established that she actually moved from East Orange to Belleville. Additionally, T.B.W. did not change her address for almost all purposes from East Orange to Belleville, and she conceded that she changed the address on her driver's license in 1996 for the specific purpose of creating proof of residency in Belleville. These circumstances indicate that T.B.W. did not intend to change her domicile to Belleville or to abandon her old domicile.

Id.

The Commissioner adopted the findings and conclusions of the ALJ and directed the petitioner “to reimburse the Board a total of \$31,023.93, representing tuition through the first half of the 1997-98 school year, plus a sum of \$44.46 per school day from the first day of the second semester until the date of this decision, or, if later, her removal from the District.” Commissioner’s Decision, slip op. at 22. Noting that the record before him did not include transcripts of the hearing held in the Office of Administrative Law, the Commissioner found he had no basis on which to challenge or otherwise disturb the factual findings and credibility determinations made by the ALJ, and he stressed that the ALJ had determined that the petitioner’s testimony with regard to her

living in Belleville was not credible. The Commissioner subsequently denied a motion filed by the petitioner for a stay of his decision.

The petitioner filed the instant appeal to the State Board.

Although the petitioner also filed a motion for a stay with the State Board, she failed to correct deficiencies in the motion and apparently has abandoned it.¹ Hence, we deny that motion.

After a thorough review of the record, including the transcripts of the hearing held in the Office of Administrative Law, which were not available to the Commissioner, we affirm the decision of the Commissioner as clarified herein.

The law is clear that public schools shall be free to “[a]ny person who is domiciled within the school district.” N.J.S.A. 18A:38-1(a). As the ALJ correctly observed, the petitioner had the burden of demonstrating by a preponderance of the credible evidence that she was domiciled in Belleville during the relevant period. N.J.S.A. 18A:38-1(b)(2). Due consideration should be afforded to the fact that the ALJ had the opportunity to observe the witnesses, see Quinlan v. Bd. of Ed. of North Bergen Tp., 73 N.J. Super. 40, 50 (App. Div. 1962), and we are required to give due regard to the ALJ’s ability to judge the witnesses’ credibility, Clowes v. Terminix Int’l, Inc., 109 N.J. 575, 587 (1988), and to “recognize and give due weight to the ALJ’s unique position and ability to make demeanor based judgments,” Whasun Lee v. Board of

¹ The petitioner failed to file a supporting brief with her motion or 17 copies of the Commissioner’s decision denying a stay, as required by the regulations governing appeals to the State Board, N.J.A.C. 6:2-1.1 et seq. (now codified at N.J.A.C. 6A:4-1.1 et seq.). The petitioner was advised of such deficiencies and, when she failed to correct them, was notified that her motion was being referred to the Legal Committee for dismissal as a result of such failure.

Education of the Township of Holmdel, Docket #A-5978-98T2 (App. Div. 2000) [subsequent history omitted], slip op. at 14.

Our review of the transcripts reinforces the Commissioner's determination. Mario Pettineo, Jr., a crossing guard in Belleville, alerted Frank Montagna, a member of the Belleville Board, that he had seen a student boarding a bus to East Orange after school on numerous occasions. Tr. 2/3/98, at 6-9, 14, 30. Pettineo testified that the student was "always going away from the Township [after school], towards Bloomfield or East Orange on that 92 bus," id. at 7, and that "she kept getting on the bus every time I saw her." Id. at 10. He indicated that he saw her waiting for the bus to East Orange "[t]wo, three times a week" and that it was "[s]ometimes on a Monday, sometimes on a Tuesday, Thursday, Friday." Id. at 14. Montagna subsequently observed the student, who was pointed out to him by Pettineo, boarding that bus on three consecutive days, Wednesday, March 20 through Friday, March 22, 1996, and he followed the bus in his car until it left Belleville. Id. at 45-47, 62-63, 66. On the third day, he was accompanied by Dr. Joseph Ciccone, the Assistant Superintendent in the district. Id. at 47, 66. Dr. Ciccone followed the bus in a van and saw the student get off in East Orange and enter a house which was identified as being owned by the petitioner and her husband. Tr. 2/2/98, at 101-102. At the hearing, Dr. Ciccone identified the student as A.W. Id. at 102.

The petitioner conceded that she did not change her address from East Orange to Belleville on any documents until after the Board took action to disenroll A.W. in April 1996. Id. at 62-64. The record reveals that the petitioner did not report a change of address to her employer or to the post office and that she continued to use her house in

East Orange as her address for all purposes, including her driver's license, car insurance and tax returns, until April 1996.²

After reviewing the transcripts of the hearing, and giving due weight to the ALJ's unique position to make demeanor-based judgments, we find no basis for disturbing the ALJ's credibility findings. Our review of the record leads us to agree with the conclusion reached by the ALJ and adopted by the Commissioner that the petitioner has not demonstrated that she was domiciled in Belleville during the period at issue. We stress in so doing, however, that our decision is in no way predicated on the ALJ's statement that it is "difficult to believe that T.B.W. would remain in the living arrangement as described for a period of years when she owned her own home [jointly with her husband] nearby." We are unwilling to base a determination of domicile upon such speculation. Moreover, although the petitioner contends that A.W. spent weekends in East Orange with her father, the record demonstrates that she was taking the bus back to East Orange after school even during the week. See p. 4 infra.

Accordingly, as clarified herein, we affirm the decision of the Commissioner.

November 6, 2002

Date of mailing _____

² Although the petitioner provided the Board with a lease agreement in August 1993 between herself and her cousin, exhibit J-1, in evidence, she subsequently admitted that she did not have a lease arrangement with her cousin and that the document had been created solely for purposes of providing a proof of residency to the district. The petitioner pleaded guilty in Belleville Municipal Court to violation of a local ordinance as a result of providing false information to a public official.