

EDU #6053-01  
C # 321-04  
SB # 39-04

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|----------------------------|---|--------------------------|
| BOARD OF EDUCATION OF THE  | : |                          |
| HUNTERDON CENTRAL REGIONAL | : |                          |
| HIGH SCHOOL DISTRICT,      | : |                          |
| HUNTERDON COUNTY,          | : | STATE BOARD OF EDUCATION |
| PETITIONER-RESPONDENT,     | : | DECISION                 |
| V.                         | : |                          |
| E.F. AND G.F.,             | : |                          |
| RESPONDENTS-APPELLANTS.    | : |                          |
| _____                      | : |                          |

Decided by the Commissioner of Education, August 4, 2004

For the Petitioner-Respondent, James P. Granello, Esq.

For the Respondents-Appellants, Wills, O'Neill & Mellk (Arnold M. Mellk, Esq., of Counsel)

The Board of Education of the Hunterdon Central Regional School District (hereinafter "Board") filed a petition of appeal with the Commissioner of Education contending that E.F. and G.F. (hereinafter "respondents") were not domiciled within the District during the 2000-01 school year and, as a result, that their child, C.F., was not entitled to a free public education at Hunterdon Central Regional High School. The Board sought reimbursement from the respondents for tuition incurred during that year. The respondents countered that they were domiciled within the District during 2000-01.

The record revealed that the respondents resided within the Branchburg School District from 1971 to 1997. In July 1997, they leased an apartment in Flemington within

the Hunterdon Central Regional District, where they resided full-time until September 2001, while retaining their home in Branchburg.

On May 17, 2004, an administrative law judge (“ALJ”) determined that C.F. had not been entitled to a free public education in the Hunterdon Central Regional District during the 2000-01 school year. In support of the respondents' contention that the family's domicile was Flemington, the ALJ found that the respondents and C.F. lived in the Flemington apartment on a full-time basis; the respondents' driver's licenses, motor vehicle registration and voter registration records all reflected the Flemington address as their place of residence; all of their bills, including the tax bills on their home in Branchburg, were mailed to their Flemington apartment; they had resided in the Flemington apartment on a continuous basis since 1997; most of their furniture and furnishings from the Branchburg residence had been moved to the Flemington apartment; and the Branchburg residence was used by the respondents for storage of unneeded furniture and clothing and as a residence for an older daughter who paid them rent when she was employed and was able to pay.

However, the ALJ also found a number of factors that supported the Board's position: there was no evidence to establish that the respondents had made any efforts to sell their Branchburg home or to rent it at fair market rental; by their own admission, the respondents had leased the Flemington apartment to provide their children with a better education; in an amendment to their bankruptcy petition filed in April 2001,<sup>1</sup> the respondents stated their intention to return to their Branchburg residence when the lease on their Flemington apartment ended in September 2001; and the respondents

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<sup>1</sup> The record indicates that the respondents had filed a bankruptcy petition in May 1998.

actually vacated the Flemington apartment in September 2001 and moved back to their residence in Branchburg.

The ALJ inferred from these facts that it was never the respondents' intention to remain in Flemington. Rather, he found that their intention always had been to return to Branchburg after their children finished attending school in Hunterdon Central. The ALJ found this inference to be supported by respondent E.F.'s own admission in a prior proceeding that the respondents had leased the Flemington apartment in order to provide their children with a better education.

Observing that the domicile of a person is the place where he has his true, fixed, permanent home and principal establishment, and to which he has the intention of returning whenever he is absent, and from which he has no present intention of moving, the ALJ found that the respondents were domiciled in Branchburg while they were living in Flemington and that it was their intention to remain in Flemington only while their children were attending Hunterdon Central Regional High School. He therefore recommended that the Commissioner direct the respondents to pay tuition to the Board for C.F.'s ineligible attendance during the 2000-01 school year.

On August 4, 2004, the Commissioner adopted the ALJ's decision, agreeing that the respondents were not domiciled within the Hunterdon Central Regional School District during 2000-01. Concluding that the respondents' Flemington apartment was nothing more than a residential living arrangement of a limited duration, the Commissioner directed the respondents to pay the Board tuition in the amount of \$13,742.

The respondents filed the instant appeal to the State Board, contending that the Commissioner improperly considered their amended bankruptcy petition.

After a thorough review of the record, we reverse the decision of the Commissioner. We conclude that C.F. was entitled to a free public education in the Hunterdon Central Regional School District during the 2000-01 school year pursuant to the terms of N.J.S.A. 18A:38-1(d), which provides that public school shall be free to:

[a]ny person whose parent or guardian, even though not domiciled within the district, is residing temporarily therein, but any person who has had or shall have his all year-round dwelling place within the district for one year or longer shall be deemed to be domiciled within the district for the purposes of this section.

We observed in Whasun Lee v. Board of Education of the Township of Holmdel, decided by the State Board of Education, September 6, 1995, aff'd, Docket #A-653-95T5 (App. Div. 1996) [subsequent history omitted], that N.J.S.A. 18A:38-1(d) had its origins in the protection of the children of migrant workers. However, the language of that provision is clear and unambiguous in providing that “any person who has had or shall have his all year-round dwelling place within the district for one year or longer shall be deemed to be domiciled within the district....” (Emphasis added.)

The Board in this case does not dispute the fact that the respondents had resided in Flemington on a full-time year-round basis from July 1997 through September 2001. Thus, notwithstanding the fact that the respondents retained their residence in Branchburg, and regardless of whether we consider their assertion in their amended bankruptcy petition that they intended to return to Branchburg in September 2001, we conclude under the circumstances that the respondents have established that Flemington was their domicile for school attendance purposes during the 2000-01

school year pursuant to the express language of N.J.S.A. 18A:38-1(d).<sup>2</sup> As a consequence, C.F. was entitled to a free public education at Hunterdon Central Regional High School during that period. Accordingly, we reverse the decision of the Commissioner.

Attorney exceptions are noted.

Ronald Butcher abstained.

Maud Dahme recused herself.

March 2, 2005

Date of mailing \_\_\_\_\_

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<sup>2</sup> We note that the circumstances herein are distinguishable from the situation in Whasun Lee, supra, in which N.J.S.A. 18A:38-1(d) was found not to be applicable. In that case, the petitioners did not dispute the fact that their domicile had always been in Colts Neck, where they owned a house, and the record revealed that they had taken up part-time residency in a condominium in Holmdel on weekdays so that their children could attend school in that district.