

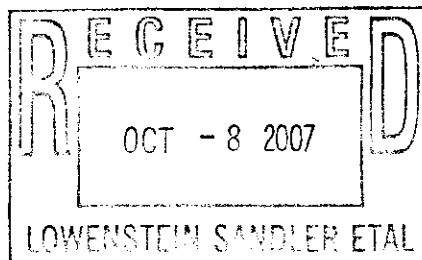


State of New Jersey
OFFICE OF ADMINISTRATIVE LAW
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**A copy of the administrative law
judge's decision is enclosed.**

This decision was mailed to the parties

on OCT - 4 2007





State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. EDU 01319-06

AGENCY DKT. NO. 315-11/05

**BOARD OF EDUCATION OF THE TOWNSHIP
OF BELLEVILLE, ESSEX COUNTY,**

Petitioner,

v.

Y.D., ON BEHALF OF MINOR CHILDREN,

S.D., N.D., Z.B. AND Z.B.,

and

**STATE-OPERATED SCHOOL DISTRICT
OF NEWARK, NEW JERSEY**

Respondents.

Mark A. Wenczel, Esq. for petitioner Belleville Board of Education (Gaccione, Pomaco and Malanga, attorneys)

Adrienne L. Isacoff, Esq. for respondent Y.D. (Lowenstein Sandler, PC)

Arsen Zartarian, Esq. for respondent State-Operated School District of the City of Newark (Office of the General Counsel Newark School District)

Record Closed: July 19, 2007

Decided: October 3, 2007

BEFORE **SANDRA ANN ROBINSON, ALJ:**

STATEMENT OF THE CASE

The Board of Education of the Township of Belleville, New Jersey appeals a determination made by the Essex County Superintendent of Schools that respondent, Y.D. and her children are homeless and that the Belleville School District is responsible for the children's education during the 2005/2006 school year. The Belleville School District challenges the superintendent's decision.

Y.D. acknowledges that she and her children were evicted from several apartments in Belleville due to non-payment of rent. Between evictions from the Belleville residences, Y.D. and the children occasionally and temporarily resided with various family members in Irvington and Newark, New Jersey. Y.D. argues that since she and her children first became homeless in Belleville and Belleville was their last regular permanent place of residency, that the law requires the District to maintain responsibility for the education of her children without entitlement of tuition reimbursement.

The Belleville School District argues that, since Y.D. and her children stayed in Newark for a significant portion of 2005/2006, the Newark School District should be responsible for tuition and transportation reimbursement. The Newark School District contends that, if Y.D. and her children were not homeless and were actually domiciled in Newark, but attending school in Belleville, petitioner's relief would not be against Newark, but rather against Y.D.

PROCEDURAL HISTORY

The Belleville BOE appealed the superintendent's determination, that Y.D. and her children were homeless and that the Belleville School District was responsible for the children's education. The Department of Education transmitted this case to the Office of Administrative Law (OAL) on January 12, 2006 for a hearing pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et. seq. The undersigned received the

case on March 17, 2006 and scheduled the first hearing for June 2006; the commencement of the case was delayed due to counsels' maternity leave.

On September 29, 2006 petitioner filed an amended petition to add the Newark School District as a third party. The rationale for the amendment was based on allegations that respondent's children were never homeless during the period of the claim in this matter because they were domiciled in Newark. The motion was denied after the undersigned took into consideration certifications, briefs and oral arguments.

Testimony was completed in May 2007 and on July 19, 2007 the record was closed upon receipt of summation briefs.

SUMMARY OF TESTIMONY

Edward Appleton has been the Belleville School Business Administrator and Board Secretary since 1988, with responsibility for advertising board meetings, note taking and submission of reports and records to the New Jersey State Board of Education. He also holds the titles of homeless liaison and affirmative action coordinator.

Mr. Appleton was in the private session of the board meeting on October 17, 2005, when Y.D. presented her situation. No minutes were recorded for the private session, but notes were taken by Mr. Appleton. In the private session Y.D. explained her month-to-month whereabouts and said she was homeless. Y.D. told the board members that, when she was initially evicted in Belleville, she found another apartment in Belleville and lived there until she was evicted. Y.D. then stayed with her mother in Irvington, New Jersey until she had to leave because the lease prohibited her from staying any length of time. She then found and moved into another apartment in Belleville, but was soon evicted. She alternated staying with her mother, aunt and cousins in Newark, while she continued to look for another apartment in Belleville. In October 2005 she was staying in Newark with her mother and was working at Newark Airport.

The board members voted to remove the children from the rolls. Mr. Appleton testimony summarized the school boards reasoning, "The board decided to disenroll the students because of Y.D.'s short stays in Belleville. The board believed Y.D. was disingenuous because there was no stability and she just wanted the children to attend Belleville Public Schools." Mr. Appleton said that no homeless liaison was assigned to Y.D.'s family, but the Belleville's Special Services Division requested coordinated transportation services for Y.D.'s children when they were moving from place-to-place. The documents and testimony presented disclosed that during the 2004/2005, 2005/2006 and 2006/2007 school years, the Belleville BOE randomly transported Y.D.'s children from Irvington and Newark pick-up addresses to the Belleville schools. The transportation cost per pupil per day is approximately \$171. During 2005/2006, the annual per pupil cost was \$34,965; the rate and cost for Y.D.'s children was adjusted because four students had to be transported. Mr. Appleton presented a certification and also testified that basic state aid funding has been constant in Belleville since 2003, and no added or decreased funding has occurred because Y.D.'s children were listed on the rolls.

Bruce Morgan has served as an investigator, for the Belleville BOE since 2001. He investigates the residence of all students and coordinates investigations pertaining to change of address disputes. Usually it's the parent's responsibility to inform the school of a change in address and to register their child in a new location. Mr. Morgan investigated Y.D.'s domicile and recalled that disenrollment efforts first started in September 2003. However, the Belleville BOE re-enrolled Y.D.'s children at the direction of the county superintendent of schools after he determined they were homeless.

Y.D. provided a 21 Clinton Street, Belleville address on all initial 2003 enrollment documents for her children. She signed a lease for 21 Clinton Street on February 14, 2003 and was evicted from that address on October 2, 2003. When correspondence to Y.D. sent to 21 Clinton Street was returned to the school, an investigation commenced. The owner of 21 Clinton told Mr. Morgan that Y.D. had been evicted for non-payment of rent, and relocated to Irvington. Mr. Morgan learned that Y.D. returned to Belleville on March 6, 2004, after signing a lease for an apartment at 69 Emmet Street. Y.D. was

evicted from Emmet Street in September 2004 for non-payment of rent. Thereafter, Y.D. stayed with her mother in Newark, until on February 4, 2005 when she moved to Division Street in Belleville. She remained on Division Street until June 1, 2005 when she was evicted for non-payment of rent. Y.D. then, returned to live with relatives in Newark until October 31, 2006, the date on which she located an apartment on Franklin Street in Belleville. Y.D. continues to live at the Franklin Street address.

Mary Paige, respondent's mother has resided at 366 14th Avenue in Newark since May 15, 2005. Ms. Paige receives Section 8 tenant-based assistance and cannot house persons in her apartment who aren't on the lease agreement. The Section 8 guidelines allow Ms. Paige a total of thirty days per year to have guests remain overnight. Ms. Paige suffers from a coronary disease and has asthma. Only Ms. Paige and her nephew are approved on the lease for residency in the two-bedroom apartment located at 366 14th Street. Her nephew is eleven year old, HIV positive and has also asthma. During the hearing, Ms. Paige reviewed the September 5, 2006 letter from her landlord, which cited a violation of lease terms due to unauthorized individuals staying in the apartment.

Y.D. is the mother of four children, who attended Belleville schools commencing September 2003. S.D. was born November 17, 1987; N.D. was born May 30, 1993; Z.B. was born June 10, 1999; and Z.B. was born June 10, 1999.

Y.D. was married for eleven years to S.D., the father of S.D. and N.D. S.D. infected Y.D. with a sexually transmitted disease. While she was trying to end the relationship, her husband beat and raped her. In January 1997, Y.D. obtained a restraining order against S.D. in an effort to stop his domestic violence acts against her. S.D. served prison time and, upon release, he provided child support until he stopped working in 2003.

The father of Z.B. and Z.B. is K.B., who resides in Newark, New Jersey. K.B. and Y.D. never married. K.B. didn't provide child support between 2003 and 2005, but commencing late in 2005 his whereabouts became known and Y.D. acquired court assistance to obtain \$380 every two weeks in child support.

Y.D. and her children initially moved to Belleville in February 2003, and signed a lease with Egidio and Elisabete Floro for an apartment located at 21 Clinton Street. S.D. was enrolled in Belleville High School and ND was enrolled in Belleville Middle School. Z.B. and Z.B. underwent pre-school evaluations, which determined their need for enrollment in special education classes at Belleville Elementary School No.5.

When S.D. stopped working, Y.D. was unable to pay the rent. Y.D. also had to temporarily stop working when she suffered a miscarriage. The rent arrears increased and Y.D. was evicted from the 21 Clinton Street apartment by a court order dated September 25, 2003. She was forced to move into her mother's Section 8 apartment at 70 Park Place, Irvington, New Jersey, where her brother also legally resided. She remained for several months until she recuperated and located another apartment in Belleville. Y.D. always wanted to return to Belleville; she never planned to continue living with her mother in Section 8 housing and knew that her mother's lease agreement would be jeopardized the longer she and the children had to remain there. For a brief period, Y.D. moved with the paternal grandmother of her youngest child, but grandmother also had a restricted lease arrangement and couldn't house other people in her apartment for more than thirty days.

In March 2004, Y.D. moved back to Belleville, and signed an apartment lease with Maria Ortiz at 69 Emmet Street. Y.D. still was not receiving child support and, even though she was working for FJC Security Services at Newark Airport, she found it very difficult to earn enough money for survival and payment of rent. Y.D. was evicted from 69 Emmet Street by court order dated August 31, 2004 for failure to pay rent. She then moved temporarily to her mothers' apartment, now located at 15 Tremont Terrace, Irvington, New Jersey.

Y.D. had no means of transporting the children from Irvington to Belleville, so E.F., the father of Y.D.'s youngest child, lent Y.D. money to stay in a motel in Belleville for a few weeks, in order to prevent interruption in the children's classes. For awhile, E.F. paid for the children to take a cab to school. E.F. was unable to house Y.D. and

the children in his apartment on Magnolia Lane in Belleville because of restrictions on his lease agreement. Y.D.'s mother, who was on temporary disability, was evicted from the 15 Tremont Terrace apartment and the family moved temporarily to Y.D.'s aunt's apartment located at 361 Sanford Avenue in Newark.

By February 2005 Y.D. signed an apartment lease to rent the second floor of a two-family house, located at 43 Division Street, in Belleville, New Jersey. Y.D. was evicted from this apartment by court order dated June 14, 2005, because her young children were noisy and the child with the speech impediment often screamed. Y.D.'s mother and cousin were then residing at 366 14th Avenue in Newark and Y.D. was forced to temporarily stay with them. Her children slept on the bed with their cousin and their grandmother, and Y.D. slept on the floor. Because this apartment was also governed by Section 8 guidelines Y.D. had to quickly make other living arrangements. While searching for an apartment in Belleville, Y.D. resided temporarily with her former boyfriend's mother, Ms. Hunt, who is the grandmother of Y.D.'s newest born child. That apartment was located at 671-B South 10th Street in Newark. Y.D. received mail there on a temporary basis when she started receiving child support from K.B. late in 2005. Child-support payments can't be delivered to a post office box, so Y.D. used the baby's grandmother's address. Y.D. responded to the inquiries of the Belleville BOE regarding her then current residence and explained that her stay with Ms. Hunt was temporary until she could locate another apartment in Belleville. Shortly after, Y.D. moved from Ms. Hunt's apartment because she too was restricted under the terms of her Section 8 lease agreement, to limit recurring overnight guest to stays of thirty-days. Y.D. temporarily moved back to her mother's apartment at 368 14th Avenue, in Newark.

Y.D. continued receiving child support from K.B. in 2006. Her tax records show earnings of \$35,608 in 2004; \$28,736 in 2005; and \$21,738 in 2006. A decrease in earnings was realized in 2005/2006 when she stopped working due to medical complications arising from her pregnancy. Since the birth of her youngest child J.F., Y.D. has been able to resume work at Newark Airport, and hold a second job with Federal Express. She works 30 hours a week for FJS Security at \$14.44 an hour, and 17 hours a week for Federal Express at \$11.25 an hour. E.F. the father of Y.D.'s infant,

E.F.'s mother, Y.D.'s mother and other family members help her with child-care. Y.D. receives child support from E.F. through his wage garnishments at Clara Maas Hospital.

On November 1, 2006, Y.D. signed a new lease for an apartment at 511 Franklin Avenue in Belleville. She continues to reside there with her school-age children and J.F. her infant son. ND, Z.B. and Z.B. continue to attend school in Belleville. S.D. graduated from Belleville High School in June 2006.

Y.D. received a letter from Belleville BOE dated September 27, 2005, which provided notice that her children were not entitled to a free education in Belleville because they were residing at 366 14th Avenue in Newark, New Jersey. Y.D. explained her temporary living arrangements at a Belleville BOE meeting held on October 17, 2005. On October 18, 2005 the BOE notified Y.D. that her children would be disenrolled from the Belleville School District. On November 1, 2005 Y.D. appealed the decision of the BOE to the Essex County Superintendent of Schools. Thereafter the County Superintendent advised Y.D. that, based on the content of documents submitted by Education Law Center and the discussions Y.D. had with his staff, he had determined that Y.D. and her children could be considered homeless during the period they resided with family members; and that the Belleville School District was responsible for her children's education. The District then filed an appeal of the Superintendent's decision.

Y.D. testified that the tempestuous circumstances of her life forced her to temporarily stay from time-to-time with family in Irvington and Newark, until she could reestablish herself in Belleville. She never was able to pay or contribute to expenses during her temporary stays with relatives. Y.D. never acquired regular permanent housing when staying with relatives, who had restrictive lease agreements, which prohibited anyone not named on the lease from dwelling there for lengthy periods. She never had a lease agreement for an apartment in another municipality, only in Belleville. Y.D. always believed and intended that Belleville was her place of residence. She first became homeless in Belleville and only left there temporarily when she couldn't find a site for relocation in Belleville.

Y.D.'s children always attended Belleville schools, even when they were temporarily staying out-of-district. Y.D. said she was fined \$500 on an occasion for keeping her children home for several weeks. The case was heard and dismissed based on the evidence that Y.D. was waiting for transportation. Y.D. never requested that another municipality transport her children during their temporary absence from Belleville. The Belleville School District approved transportation for the children from Irvington or Newark to the Belleville schools.

Y.D. said that, because of the special education needs of two of her children, she especially didn't want them pulled back and forth between different schools. Because her children had the same teacher throughout their years in Belleville elementary school, they have learned to speak, made tremendous progress and achieved the goals established for them.

Y.D. says she is now able to pay her \$925 monthly rent, which includes heat and hot water. Her net weekly income is \$850.00, which includes the \$380 bi-weekly in child-support payments. Y.D. testified that she has developed a positive outlook about managing and improving her life.

FINDINGS OF FACT

1. Y.D. was married to S.D. for eleven years before divorcing;
2. Y.D and S.D. had two daughters (SD & ND);
3. Y.D. pressed domestic violence charges against S. D.;
4. S.D. caused Y.D. to have a sexually-transmitted disease;
5. S.D. beat and raped YD;
6. S.D. was incarcerated for his violence against Y.D.;

7. Y.D. met K.B. and they had two boys ZB and ZB;
8. K.B. did not pay child support between 2003 and 2005;
9. Late in 2005, the court ordered K.B. to make child-support payments every two weeks in the amount of \$380;
10. When Y.D. first moved to Belleville in 2003, she and her children resided at located at 21 Clinton Street;
11. In 2003, one child was in middle school, one in high school and two in special education;
12. In 2003, S.D. stopped working and Y.D. stopped receiving support for S.D. and N.D.;
13. In September 2003, Y.D. was evicted from the 21 Clinton Street because of non-payment of rent;
14. Y.D. and her children moved into her mother and brother's Section 8 apartment at 70 Park Place, Irvington, New Jersey;
15. During September 2003, Y.D. also suffered a miscarriage;
16. Y.D. stayed with her mother several months and with the paternal grandmother of her youngest child, until she recuperated and located another apartment in Belleville;
17. Y.D. couldn't remain with her mother or the baby's grandmother because their Section 8 leases prohibited additional residents; and they could not house overnight guests for more than thirty-days;

18. In March 2004, Y.D. moved back to Belleville under a lease agreement for 69 Emmet Street;
19. In March 2004, Y.D. was working, but still was not receiving child support;
20. On August 31, 2004, Y.D. was evicted from 69 Emmet Street, in Belleville, for failure to pay rent;
21. On September 1, 2004, Y.D. temporarily returned to her mothers' apartment, which was then located at 15 Tremont Terrace, Irvington, New Jersey;
22. E.F., the father of Y.D.'s youngest child, lent Y.D. money to stay in a motel in Belleville for a few weeks, so the children's classes would not be interrupted;
23. E.F. was unable to house Y.D. and the children in his apartment on Magnolia Lane in Belleville because of restrictions on his lease agreement;
24. Y.D.'s mother was evicted from the 15 Tremont Terrace apartment and the family moved into Y.D.'s aunt's apartment located at 361 Sanford Avenue in Newark;
25. In January 2005, Y.D. signed an apartment lease for an apartment on the second floor of a two-family house, located at 43 Division Street, in Belleville, New Jersey;
26. On June 14, 2005, Y.D. was evicted from this apartment because her young children were noisy;
27. Y.D. temporarily returned to her mother and cousin's two-bedroom apartment located at 366 14th Avenue in Newark;

28. Y.D. stayed with her former boyfriend's mother Ms. Hunt, at 671-B South 10th Street in Newark. Y.D. received child support payments and mail at this address;
29. Child-support payments can't be delivered to a post office box;
30. Y.D. explained to the Belleville investigator that she was staying at the South 10th Street address temporarily until she could locate housing in Belleville;
31. Y.D. temporarily moved back to her mother's apartment at 366 14th Avenue, in Newark.
32. Y.D. continued receiving child support from K.B. in 2006 and she received a salary increase in 2006;
33. Y.D. earned \$35,608 in 2004; \$28,736 in 2005; and \$21,738 in 2006;
34. Y.D. earnings decreased when she required medical attention and temporarily had to stop working;
35. Y.D. has returned to work at Newark Airport, has a second job with Federal Express, receives child support from E.F's wage garnishment and has child-care support from her family and her infant child's family;
36. Y.D. signed a new lease for on November 1, 2006 for an apartment located at 511 Franklin Avenue in Belleville, where she continues to reside with her school-age children and J.F. her infant son;
37. N.D., Z.B. and Z.B. continue to attend school in Belleville, and S.D. graduated from Belleville High School in June 2006;
38. Y.D. never secured an apartment outside of Belleville;

39. Y.D. never paid rent or contributed to the rent during her temporary stays with family and friends;
40. Y.D.'s children always went to school in Belleville, even when they were temporarily staying outside of the district;
41. Belleville always arranged for the transportation of Y.D.'s children to the Belleville schools, even when Y.D. and the children were temporarily outside of the district;
42. The Essex County Superintendent of Schools determined that Y.D. and her children were homeless and therefore entitled to an education paid for by the Belleville BOE, since Belleville was the school district of origin;
43. Y.D. and her children stayed with family and friends out of necessity. There was never a time when they could legally assume a residence with the relatives or friends because the leasing terms and conditions of the family member or friend prohibited the addition of residents;
44. Y.D. and her children were never domiciled in Newark;
45. Belleville School District reported to the New Jersey Department of Education that Y.D.'s children were enrolled in the Belleville school system.

LEGAL DISCUSSION AND ANALYSIS

EDUCATION OF HOMELESS CHILDREN AND DETERMINATION OF SCHOOL DISTRICT:

N.J.S.A. 18A:7B-12 is the authority for determining the district of residence for funding purposes, for homeless families. The Commissioner of Education shall determine district of residence for children whose parent or guardian temporarily moves from one school district to another as the result of being homeless. The district of residence shall be the district in which the parent or guardian last resided prior to

becoming homeless. A homeless person or family temporarily lacks a fixed, regular and adequate residence. In this case the proofs show that there was no one place where Y.D. and her children could have stayed permanently. The leasing arrangements for her mother, aunt, cousin and even her boyfriend required that overnight guests be approved and only for a short period of time.

In accord with N.J.A.C. 6A:17-2.4, responsibilities of the school district of origin, for a homeless child shall include a determination of the school in which the child shall be enrolled after consulting with parents. The district board of education identified as the school district of origin for homeless children, shall be the school district of origin for as long as the parent remains homeless. In the instant case, Y.D.'s children first became homeless in Belleville. The Belleville School District has continued to educate the children in-district, and, approve, arrange for and continuously transport the children to the Belleville schools, for their academic training, even when they temporarily were staying out-of-district.

The Belleville School District bears the burden of showing, that the county superintendent's finding that Y.D.'s homelessness originated in Belleville, was arbitrary, capricious or unreasonable. There was no proof was offered by the school district to show that the superintendent's acts were unlawful, arbitrary, capricious, unreasonable or based upon or induced by improper motives. N.J.S.A. 18A:38-1 (f) provides that a public school education shall be free to any person over five and under twenty years of age, whose parent or guardian moves from one school district to another school district as a result of being homeless, and whose district of residence is determined pursuant to N.J.S.A. 18A:7B-12.

Y.D. resided and was domiciled in Belleville at the time she and her children first became homeless, therefore, Belleville is responsible for the continuation of the children's education during the extent of the parent's homelessness, even when they were temporarily away from Belleville.

In J.S. on behalf of D.S. v. Parsippany-Troy Hills Township Board of Education, OAL Docket No. EDS-01676-2001 (2001) the parents petitioned for a due process hearing to address placement in Vernon Township, as the domicile for the their child. The family lived in Troy Hills and was evicted from their apartment in Troy Hills due to nonpayment of rent. The children attended Parsippany-Troy Hills schools. The family temporarily resided with friends in Vernon Township and enrolled the children in Vernon Township schools, while they searched for a permanent relocation. When the family over-extended their temporary stay in their friends house and moved in various hotels and later in the home of petitioner's father in West Paterson. The parents attempted to continue their children's education in Vernon by arguing that they became "homeless" when their Vernon friends asked them to leave their home. ALJ McKeown rejected the reasoning and found that petitioner's became homeless when they were evicted for nonpayment of rent in Troy Hills. The stay in Vernon was always intended to be temporary and no evidence of permanency was ever established. Petitioner did not have a fixed, regular, and adequate residence while staying temporarily with friends. Petitioner became the homeless in Troy Hills when they were evicted.

In J.B. on behalf of C.B. and E.B. v. Board of Education of the Hopewell Valley Regional School District, OAL Docket No. EDU-4487-98 (1999) ALJ Duncan held that domicile has two elements, a physical residence and the intent to remain there; and both elements are required in order to establish a legal entitlement of domicile. In this case, Y.D. never had a place to stay outside of Belleville, that was her own. Neither Y.D. nor the persons she temporarily stayed with had any intention of converting a temporary situation into a permanent one. The lack of intention to establish permanency is strengthened by the facts that all lease holders in the temporary locations were restricted from housing persons not listed on their lease agreements.

Petitioner argued that Y.D. and her children were not homeless "out of necessity", but that Y.D. deliberately manufactured a domicile in Belleville so her children could attend school there. However, the facts of this case reveal that Y.D. and her children fulfill the meaning of N.J.A.C. 6A:17-2.3, which provides that, a child shall be deemed homeless when he or she resides in 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. The testimony and documents do not indicate that Y.D. and her children located a regular or permanent residence outside of Belleville, which they independently could have maintained. Petitioner believes Y.D. is responsible for relocating to affordable housing outside of Belleville and could have located housing at lower monthly rentals than in Belleville, which would have prevented the multiple evictions.

Case law has been established that citizens of the United States have a right to travel from state to state without restriction and to be afforded all rights and privileges of citizens in every state:

Although preservation of fiscal integrity is a valid state interest, states may not accomplish that goal by establishing invidious distinctions between citizens in violation of the equal protection clause of the United State Constitution. When benefits are distributed unequally, distinctions between citizens are subject to scrutiny under the equal protection clause... Sanchez v. Department of Human Services, 314 N.J. Super. 11 (1998)

Freedom to travel throughout the United States has long been recognized as a basic right under the Constitution. Likewise, intrastate travel is protected by the United State Constitution. The freedom to travel includes freedom to enter and abide in any State in the Union. Dunn v. Blumstein, 405 U.S. 330, 338, 31 L. Ed. 2d 274, 92 S. Ct. 995 (1972). A violation of the equal protection clause of the Fourteenth Amendment exists when, absent a compelling state interest, the right to pass and repass through every part of the country, as freely as in our own states (Connecticut and Pennsylvania), without interruption, is restricted. Shapiro v. Thompson, 394 U.S. 618, 89 S. Ct. 1322, 22 L. Ed. 2d 600 (1969).

TRANSPORTATION OF HOMELESS CHILDREN BACK TO SCHOOL DISTRICT:

N.J.A.C. 6A:17-2.4 provides that, when homeless children attend school in the district of residence while temporarily residing in another district, the district of residence shall provide for transportation to and from school. See N.J.S.A 18A:58-7; N.J.A.C. 6A:27-6.2 (b) and (c).

In Y.D.'s case Belleville always provided for the children's transportation to and from school Belleville schools, even when the children were temporarily away from Belleville.

THE NEWARK SCHOOL DISTRICT'S RESPONSIBILITY TO EDUCATE Y.D.'S CHILDREN:

The Newark School District argued that Y.D. came to Newark after becoming homeless as a result of an eviction from a Belleville apartment. It is petitioners allegation that Y.D. and her children were not homeless and were actually domiciled in Newark during the 2005/2006 school year, even though they attended the Belleville schools. The Newark School District contends that petitioner's relief should be not against Newark, but against Y.D. N.J.S.A. 18A:38-1b(2) provides, "If in the judgment of the Commissioner the evidence does not support the claim of the residence, he shall assess the resident, tuition for the student prorated to the time of the student's ineligible attendance on the district".

The Newark School District argued that Belleville filed the petition against Y.D. in November 2005 and never notified Newark of a dispute until recently in 2007 when an amended petition was filed. Newark noted that Belleville's claim for reimbursement of tuition and travel cost, commenced after the OAL hearing started against Y.D. Specifically, Belleville never communicated with the Newark District to initiate the facilitation of enrollment for Y.D.'s children into the Newark Public Schools. The undue delay in filing against Newark negated any opportunity for Newark to mitigate potential exposure, since the 2005/06 school year has concluded. Newark cites, Pfeffer v. Delran Township, 159 N.J. Super. 497 (1978) in submitting that the delay in being named a

respondent has prejudiced Newark, and any claim should be barred by the doctrine of laches.

The County Superintendent required Belleville to include Y.D.'s children on the enrollment records. Consequently, the children were included in Belleville reports to the New Jersey Department of Education for purposes of the Application of Scholastic State Aid (ASSA) funding. Newark contends that Belleville's claim for reimbursement should be estopped and barred based on principles of equity and the doctrine of judicial estoppel, which precludes the same party in legal proceedings from taking contradictory positions on the same subject. Belleville school district personnel disagree with the county superintendent's determination that Y.D. became homeless in Belleville. The school district's objective is to recoup funds expended for educational services provided to Y.D.'s children, by showing that the superintendent's determination of homelessness was arbitrary and capricious. Belleville's inclusion of Y.D.'s children for funding purposes was within the standard of procedures for filing any funding application – all students in the school must be listed. Belleville did not receive ASSA funds. The circumstances of the case requires that testimony be completed and a conclusion presented prior to a determination of whether Newark has been or will be prejudiced by the outcome of the case.

CONCLUSION

Based on all of the foregoing, I **CONCLUDE** that Y.D. and her children never became domiciled in Newark or Irvington. The temporary housing arrangements during Y.D.'s homelessness alternated between Belleville and Irvington, and Belleville and Newark. There was never a time when Y.D. established a permanent residence after becoming homeless in Belleville. In all temporary dwelling locations respondent's hosts held restrictive lease agreements, which prohibited additional persons from acquiring residency without authorization and an amendment of the lease terms, if approved. Respondent never rented or leased an apartment in Newark or Irvington. Y.D.'s children never ceased being educated by the Belleville school system and the Belleville BOE never ceased transporting the children to school, even when they were temporarily staying out-of-district.

I also **CONCLUDE** that Y.D. has always remained a resident of and domiciled in Belleville and continues to be entitled to have her children enrolled in Belleville School District without responsibility for tuition or transportation reimbursement.

I further **CONCLUDE** that no proof exists in this case, that the Essex County Superintendent of Schools acted arbitrary, capriciously or unreasonably or based his decision upon or was induced by improper motives, when determining that Y.D. and her children were homeless.

ORDER

It is **ORDERED** that the determination of the Essex County Superintendent of Schools, that Y.D.'s family was homeless and last domiciled in Belleville shall remain in full force and effect;

It is further **ORDER** that Belleville shall remain responsible for the education of Y.D.'s children.

And, additionally it is **ORDERED** that Belleville shall not be entitled to any tuition or transportation reimbursement from Y.D. or from the Newark School District.

I hereby **FILE** this initial decision with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

This recommended decision may be adopted, modified or rejected by the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who by law is authorized to make a final decision in this matter. If the Commissioner of the Department of Education does not adopt, modify or reject this decision within forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen (13) days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION, 100 Riverview Plaza, 4th Floor, PO Box 500, Trenton, New Jersey 08625-0500**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

October 3, 2007
DATE

Sandra Ann Robinson
SANDRA ANN ROBINSON, ALJ

Date Received at Agency:

10-3-07

OCT - 4 2007
DATE

Mailed to Parties
[Signature]
**DIRECTOR AND
CHIEF ADMINISTRATIVE LAW JUDGE**
OFFICE OF ADMINISTRATIVE LAW

lr

APPENDIX

WITNESSES

PETITIONER'S:

Edward Appleton, Belleville School Business Administrator, Board Secretary
Bruce Morgan, Investigator Belleville BOE

RESPONDENT'S:

Y.D., respondent
Mary Paige, respondent's mother

EXHIBITS

PETITIONER'S:

- P-1 Investigator's notes
- P-2 Residential Lease dated February 14, 2003 for 21 Clinton Street, Belleville
- P-3 Residential Lease dated March 2, 2004 for 69 Emmet Street, Belleville
- P-4 Residential Lease dated February 4, 2005 for 43 Division Avenue, Belleville
- P-5 Lease dated October 31, 2006 for 511 Franklin Avenue, Belleville
- P-6 Section 8 Certification signed by Mary Paige dated 8/1/05
- P-7 Order for Orderly Removal dated September 25, 2003
- P-8 Landlord/Tenant eviction pleadings between August and October 2004 regarding Y.D.'s tenancy at 69 Emmett Street, Belleville
- P-9 Landlord/Tenant eviction pleadings regarding Y.D.'s eviction from 43 Division Avenue, Belleville
- P-10 March 9, 2006 correspondence from Belleville Board of Education residency officer, to Y. D. with Landlord Certification completed by Y. D. and copy of mail address to Y.D. at Newark address with note from Y.D.

- P-11 Student registration forms
- P-12 Notices of Initial Determination of Ineligibility from Belleville Board of Education to Y.D.
- P-13 Belleville Board of Education transportation files documents for S.D., N.D., Z.B. & Z.B.
- P-14 Application for reduced price meals or free milk
- P-15 Redacted notes from Belleville Board of Education private executive meeting dated October 17, 2005
- P-16 2006-2007 estimated tuition rates
- P-17 November 1, 2005 correspondence from Essex County Superintendent to Y.D., copying Belleville Board of Education Superintendent
- P-18 Amended Petition of Appeal
- P-19 Certification of Edward J. Appleton

RESPONDENT'S:

- R -1 Letter from Education law Center dates October 27, 2005 ID ONLY
- R-2 Restraining Order against S. D. dated January 17, 1997
- R-3 Envelop from Child Support dated March 30, 2006 to Y.D c/o Marion Hunt
- R-4 Income Tax Return 2004
- R-5 Income Tax Return 2005
- R-6 Income Tax Return 2006
- R-7 Voucher from FJC Security Services to Y.D. dated April 27, 2007

R-8 Voucher from FJC Security Services to Y.D. dated May 4, 2007

R-9 Voucher from FJC Security Services to Y.D. dated May 11, 2007

R-10 Voucher from FedEx to Y.D. dated May 11, 2007

R-11 Section 8 Housing Certification by M. Paige dated August 1, 2005

R-12 Letter from R. Trinidad to M. Paige dated September 5, 2006