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ANTHONY P. SCIARRILLO
ATHINA LEKAS CORNELL
JEFFREY R. MERLINO
DENNIS MCKEEVER
LISA M. GINGELESKIE
JENNIFER A. OSBORNE
PAUL E. GRIGGS

edlawgroup@lindabury.com

Westfield Office

P. O. Box 2369
53 Cardinal Drive
Westfield, NJ 07091
(TEL) 908-233-6800
(FAX) 908-518-2967

Summit Office

480 Morris Avenue
Summit, NJ 07901
(TEL) 908-273-1212
(FAX) 908-273-8922

Rumson Office

20 Bingham Avenue
Rumson, NJ 07760
(TEL) 732-741-7777
(FAX) 732-758-1879

www.lindabury.com

Student Does Not Have to Live in a School District to be Entitled to an Education in the District

By Anthony P. Sciarrillo

The Commissioner of Education recently determined that a student, who was living with her grandmother in another district, was entitled to an education in the district where her mother was domiciled.

Under New Jersey law, a person over five years old, but under twenty years old, is entitled to a free public education in the school district where such person is "domiciled." (N.J.S.A. 18A:38-1(a).) Under the common law, a minor child is domiciled where the parent, custodian or guardian of that child is domiciled. (*P.B.K. v. Bd. of Educ. of Boro. of Tenafly*, 343 N.J.Super. 419, 427 (App.Div.2001).) In *M.L.P. v. Board of Education of the Township of Bloomfield*, a student lived with her grandmother in East Orange but attended school in Bloomfield, where the child's mother resided. The Bloomfield Board of Education disenrolled the student based upon its determination that the child was domiciled with her grandmother in East Orange, rather than with her mother in Bloomfield. The student and her parent appealed the Board's decision to the Commissioner. The Office of Administrative Law Administrative Law Judge ("ALJ") found for the Board.

The Commissioner then rejected the ALJ's finding and held that the student was domiciled in Bloomfield since her mother, who still maintained legal custody, was undisputedly domiciled in the district, and the domicile of a minor child follows that of his/her parent regardless of where the child may actually be living, since a child cannot establish her own domicile. The Board then appealed to the State Board of Education arguing that the Commissioner's finding directly conflicted with N.J.A.C. 6A:22-3.1(a)1 which states that a "student is domiciled in the school district when he or she is living with a parent or legal guardian whose permanent home is located within the school district." The State Board affirmed the Commissioner's finding and the Bloomfield Board appealed to the New Jersey Superior Court, Appellate Division. The Appellate Division found that the Commissioner and the State Board (*cont'd* ➔)

did not apply N.J.A.C. 6A:22-3.1(a)1 when considering the student's domicile and remanded the case so that referenced rule could be contemplated.

After applying the provisions of N.J.A.C. 6A:22-3.1(a)1 to the case, the Commissioner again found that the student was domiciled with her mother in Bloomfield, although she actually lived in another district. The Commissioner stated that taken alone, it could appear that N.J.A.C. 6A:22-3.1(a)1 precluded a finding that the student involved was domiciled with her mother, but that the rule must be viewed in light of the totality of statutory, regulatory, and decisional law related to determining where a student is domiciled for purposes of school attendance.

The Commissioner asserted that both the common law and decisional precedent consistently held that the domicile of a child's parent, custodian or guardian, is the domicile of the child, since a child cannot establish domicile on his/her own. Further, the Commissioner stated that New Jersey law recognized that children do not always live in the district of their legal domicile and has thus extended the entitlement to attend school to a limited number of "non-domicile" situations. The Commissioner held that the statutory scheme that focuses on where a child is actually living is meant to expand the child's entitlement, and not to remove, replace or preclude the child's fundamental right to attend school in a district.

Moreover, the Commissioner found that although N.J.A.C. 6A:22 attempts to address every type of situation, the rules did not contemplate the situation in *M.L.P* and did not expressly provide for that circumstance. The Commissioner stated that the entitlement provisions of N.J.A.C. 6A:22 assume that a student claiming domicile in a district will be living there with at least one parent or legal guardian, while those living with a caretaker will assumedly seek to attend school in the caretaker's district rather than that of their legal domicile. However, the Commissioner found that nothing in the rules suggests any intent "to 'redefine' the traditional concept of domicile as attaching to a child's parent or legal guardian, or to foreclose attendance in the schools of a district by a student otherwise eligible under [New Jersey law] and the common law." Therefore, the Commissioner held that the Board could not deny the student, a child of a district domiciliary who had not relinquished legal custody, her statutory right to attend the public schools of Bloomfield under N.J.A.C. 6A:22-3.1(a)1 even though that child lived with her grandmother in another district.



The information provided here is necessarily general and is not intended as legal advice or a substitute for legal advice. If you have any questions regarding this Alert, please contact Anthony P. Sciarrillo of the EdLaw Group at edlawgroup@lindabury.com.



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