

E.H., on behalf of minor children, S.H. and SH.H.,	:	
	:	
PETITIONER,	:	
	:	
V.	:	COMMISSIONER OF EDUCATION
	:	
BOARD OF EDUCATION OF THE TOWNSHIP OF EWING, MERCER COUNTY,	:	DECISION
	:	
RESPONDENT.	:	

SYNOPSIS

Petitioner appealed the determination of the respondent Board that his children are ineligible for a free public education in respondent’s school district. Petitioner and his wife are divorced, and had originally resided at a home in the city of Trenton. However, following the divorce, an Order giving residential custody of the children to Cecilia Tompoe (Tompoe) – an unrelated Ewing resident – was entered in the Superior Court of New Jersey in September 2013, and joint legal custody was given to E.H. and the children’s mother, B.H. For the 2014-2015 school year, petitioner’s children were registered in Ewing Public Schools at Tompoe’s Ewing address pursuant to a host family affidavit wherein E.H. certified that he was living at the same address. The host family arrangement requires annual recertification, and when no such reregistration was filed for S.H. and SH.H for the 2015-2016 school year, the District commenced a residency investigation in which it was determined that the children were residing at their former address in Trenton. Petitioner contends that the host family arrangement is still in place, although he was forced to move back into the Trenton home so that it was not left vacant when his wife moved to Philadelphia; the children spend time at the Trenton address, but remain domiciled in Ewing under the host family agreement.

The ALJ found, *inter alia*, that: the testimony provided by witnesses for both petitioner and respondent in this matter was credible; the facts in this case show a complicated, tripartite custody and residence arrangement, sanctioned by an Order entered in the Superior Court of New Jersey; the 2013 Court Order sets the residence of the children, S.H. and SH.H., at the Ewing home of Tompoe; the parties have a fluid schedule for where the children sleep, dependent upon visitation with two parents and the variable work schedule of Tompoe; however, the Superior Court Order setting the children’s residence with Tompoe is ultimately the deciding factor in this case; and petitioner met his burden to show by a preponderance of the evidence that the domicile of his children is that of their residential guardian, as set forth in the 2013 Superior Court order. Accordingly, the ALJ ordered that petitioner’s appeal be granted, and that the action of the respondent Board disenrolling S.H. and SH.H. be reversed.

Upon review, the Commissioner concurred with the findings and conclusion of the ALJ. Accordingly, the Initial Decision of the OAL was adopted as the final decision in this matter.

This synopsis is not part of the Commissioner’s decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.

OAL DKT. NO. EDU 1721-16
AGENCY DKT. NO. 5-1/16

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_____	:	

The record of this matter and the Initial Decision of the Office of Administrative Law have been reviewed. The parties did not file exceptions to the Initial Decision.

Upon such review, the Commissioner concurs with the Administrative Law Judge (ALJ) that the petitioner established that his children are entitled to attend school in the Ewing School District in accordance with the Order of the New Jersey Superior Court, dated September 9, 2013. Accordingly, the recommended decision of the ALJ is adopted for the reasons expressed therein.

IT IS SO ORDERED.*

COMMISSIONER OF EDUCATION

Date of Decision: August 16, 2017
Date of Mailing: August 17, 2017

* This decision may be appealed to the Superior Court, Appellate Division, pursuant to *P.L.* 2008, *c.* 36 (*N.J.S.A.* 18A:6-9.1).



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. EDU 01721-16

AGENCY DKT. NO. 5-1/16

E.H., ON BEHALF OF, S.H. AND SH.H.,

Petitioners,

v.

**BOARD OF EDUCATION OF THE TOWNSHIP
OF EWING, MERCER COUNTY,**

Respondent.

Keith D. Sklar, Esq., for petitioners (Law Offices of Sklar Smith-Sklar, attorneys)

Joseph L. Roselle, Esq., for respondent (Schenck, Price, Smith & King, LLP,
attorneys)

Record Closed: August 25, 2016

Decided: July 10, 2017

BEFORE **PATRICIA M. KERINS**, ALJ:

STATEMENT OF THE CASE

E.H., father of S.H. and Sh.H. (petitioners), challenges the determination of respondent Ewing Township Board of Education (District) that his children did not reside

in the District. The District has filed a counterclaim seeking payment of tuition for the number of days S.H. and Sh.H. attended school in the District.

PROCEDURAL HISTORY

In December 2015, the District notified E.H. that his children were being disenrolled based on non-residency. On January 23, 2016, petitioner appealed the decision. On February 2, 2016, the case was transmitted to the Office of Administrative Law (OAL) for hearing as a contested case. The hearing was held on May 2, 2016, and the record remained open for the submission of post hearing briefs by the parties. Petitioner did not file any post hearing submissions and the record closed on August 25, 2016. Extensions of time were granted for the filing of the Initial Decision.

STATEMENT OF FACTS

Many of the material facts in this matter are undisputed. E.H. is the father of S.H. and Sh.H., students attending the District's schools. For the 2014-15 school year, S.H. and Sh.H. had been registered in the District pursuant to host family status whereby a parent certifies that he or she is living with another unrelated Ewing resident. The Ewing resident also certifies to the living arrangement. In March 2014 Cecelia Tompoe (Tompoe) of 66 Pennwood Drive, Ewing registered as the host for the children and E.H. certified as well. On September 9, 2013, an Order giving residential custody to Tompoe (P-1) had been entered in the Superior Court of New Jersey, Joint legal custody was given to E.H. and the children's mother B.H. However, Ewing requires that the host family recertify every year and when no such reregistration was filed on a timely basis for S.H. and Sh.H. for the 2015-16 school year the District commenced a residency investigation. After its residency investigation was completed Ewing took action to disenroll the students and assess tuition against E.H. for the period of September 16 through the present. E.H. contested the District's action and this appeal resulted.

In support of its action the District presented the testimony of David Mikaluskas, its Attendance and Residency Officer and Peter Manetto, an investigator who performed

the physical surveillance portion of the investigation. Mikaluskas testified that when the children were not reregistered for the 2015-16 year, the school the children were attending called the Tompoe home but allegedly no one at the number was familiar with the children. He also stated that no one responded to letters from the District inquiring about enrollment and as a result the District commenced its residency investigation. He then presented the District's computation of tuition owed. Tuition for S.H. on a yearly basis was \$13,980.00 and for Sh.H. it was \$14,984.00, resulting in a daily rate of \$76.39 and \$81.87 respectively. On cross-examination Mikaluskas admitted that when an attempt was made to reregister the children for that school year they were not allowed to do so because the District had questions regarding residency.

Manetto also testified for the District and reviewed his investigation into the children's residency. He first surveilled the children on twelve days in September and October 2015 (R-1) and again for days in March and April 2016. The surveillances were conducted at 40 Redding Avenue in Trenton, New Jersey, at a home owned by E.H. and at the Pennwood Avenue home of Tompoe. He stated that on Wednesday, September 16, 2015 and the next day Thursday, he surveilled the Pennwood Avenue address and did not observe the children there. He then surveilled the Redding Avenue address on ten occasions from Tuesday September 22, 2015, through Friday, October 16, 2015. On those days, he observed the children exiting the Trenton address and being transported to the school in Ewing or the Pennwood address where they took a school bus. After E.H. filed this appeal, Manetto conducted the additional eight days of surveillance in March and April 2016. On those days, which covered various days of the week, Manetto observed the children leaving the Trenton address and being transported to Ewing for school.

In response to the District's case petitioner E.H. and Tompoe testified. They both described a complicated family situation arising out the children's parents' divorce. E.H. stated that the family had been living at the Trenton address when he and B.H. divorced. When he and B.H. could not agree on custody B.H. wanted the children to live with Tompoe who was an aunt to the children. Tompoe then received residential

custody via the court order and E.H. and B.H., who shared joint legal custody, orally agreed on an arrangement whereby the children had visitation with their mother on weekends and stayed with their father on Thursday and Friday. The remaining time they stayed at the Tompoe home. For a period, E.H. resided at the Tompoe home but returned to the Trenton address after B.H. moved to Philadelphia in order to keep the house occupied. He further testified that once B.H. relocated from the Trenton home to Philadelphia he moved back to the Redding Avenue home to keep it secure until it was either sold or foreclosed upon.

He did not deny the results of Manetto's investigation but explained that the children's schedules at either home could vary based upon visitation with their mother and Tompoe's work schedule which could require her to be at work extremely early in the morning. He stated that the children stay with him if Tompoe's work or vacation schedule requires it. As to why he did not reregister the children he said that he assumed it was Tompoe's responsibility. As noted earlier the District did not allow reregistration once it became apparent there was an issue.

Tompoe then testified, describing the children as her niece and nephew. Aside from her husband and herself and the children, only her college age daughter resides in the home. She works as a cook at Princeton Medical Center but does not drive, depending on her husband for transportation. If she needs to get to work early on a given morning her husband must drive her and as the children could not be left alone, they might spend the evening at their father's home. If her daughter is home from college, then such an arrangement is not necessary. She testified that the children have their own rooms at her home and, as is the custom in their African community, E.H. does not provide her with payment but contributes food and sundries to their household. According to Tompoe the children stay with her on a Monday, Tuesday and Wednesday schedule unless her job schedule requires that they stay elsewhere to insure they're not being alone in the early morning hours. When questioned regarding the results of Manetto's investigation, she stated that on September 22, 2015 she had to go to work early and on October 12 and 13, 2015, she was on vacation for the week

and the children stayed with their father. On March 23, 2016, she had to leave by 4:30 a.m. for her job, and for safety and convenience sake the children stayed with their father.

She corroborated E.H.'s testimony that he had been residing with her when the children were initially registered in Ewing in 2014, and that he had only moved back to the Trenton residence when it was vacated by B.H. in order to prevent it from being vandalized as a vacant home until it was sold.

In reviewing the record in this case both Mikaluskas and Manetto were credible in their testimony. However, Mikaluskas' statement that school staff called the Tompoe home is excluded as no competent credible corroborating evidence was presented regarding that call. Manetto's testimony set forth the results of the District's investigation and petitioner did not contest the facts it set forth.

Similarly, I **FOUND** both Tompoe and E.H. to be credible. While they did not contest the facts as set forth in Manetto's surveillance, they provided credible explanations for their actions. As English is not their first language their testimony required careful attention as they described a complicated extended family situation in which the parties appeared to be grappling on a daily basis with the needs of children and jobs in an evolving family dynamic. Neither attempted to deny the children's schedule on the limited days Manetto surveilled them, however I **FOUND** their explanations for how the children's schedule was handled and the reasons for it to be credible.

LEGAL DISCUSSION

In New Jersey, a student is eligible to attend a school free of charge if the student is domiciled within the school district. N.J.S.A. 18A:38-1(a) and N.J.A.C. 6A:22-3.1(a). A child is domiciled within the district when he or she is living with a parent or legal guardian whose permanent home is located within the district. A home is

permanent when the parent or guardian intends to return to it after being absent from the home and has no present intent of moving from home, notwithstanding the existence of homes or residences elsewhere. The parent has the burden of proof by a preponderance of the evidence. N.J.S.A. 18A:38-1(b)2.

This matter presents an unusual fact pattern for a school residency case, and yet it is one is sanctioned by a New Jersey Superior Court Order. In the usual residency matter an issue often arises when parents have divorced. Although parents have joint custody a court order can determine the domicile of the child for purposes of enrollment in a given district. Here the matter is complicated by a valid New Jersey Superior Court Order giving Tompoe residential custody of the children with joint legal custody in the divorced parents. Once B.H. moved to Philadelphia and the children began spending time with both parents, while residing with Tompoe, it became a tripartite, rather than a dual living arrangement.

It is important to note that petitioner has shown that this tripartite arrangement is sanctioned by a Superior Court Order. By its very nature, it assumes that Tompoe is the residential guardian of the children with her home as their domicile. As the parents have joint legal custody the Order presumes they will make arrangements among themselves and Tompoe as to their time with the children. As such E.H. has the children with him at least two nights a week on Thursday and Friday, while their mother may take them for the weekend. All agree that the arrangement is flexible depending on their mother's schedule, Tompoe's work schedule and whether there is an adult available at Tompoe's home to oversee the children. Clearly E.H. as their father has attempted to assist Tompoe by being available for the children when her work or vacation schedule requires it.

The District points to the failure to reregister the children and the results of Manetto's investigation as key facts in the decision to disenroll the children. While Manetto's observations were credible, petitioner's explanation for the children's schedule and the terms of the Court Order provide a credible counterpoint to the

District's case. Manetto's investigation, while technically covering all days of the week was limited in its scope. Tompoe and E.H. were credible in her explanation of her vacation week in October 2015, and her work schedule. She and E.H. explained days in September and March 2016 when the children stayed at their father's home as a way of keeping them safe when she had to leave in the early morning. As such the sampling of days presented by the District's surveillance was limited in number. Further as testified to by the parties, visitation with their mother B.H. was often ad hoc and could result in the children being dropped off at their father's.

The facts in this matter show a complicated, tripartite custody and residence situation, sanctioned by Court Order. It is important to note, however, that the Court Order of 2013 allows for such an arrangement and sets the children's residence as that of Tompoe. While it appears that the parties have a fluid schedule for where the children sleep, dependent on visitation with two parents and the vagaries of work requirements, the Superior Court Order setting the children's residence with Tompoe is ultimately the deciding factor in this case.

DECISION AND ORDER

Petitioner has met his burden in this matter and has shown by a preponderance of the evidence that the domicile of his children is that of their residential guardian, Cecelia Tompoe as set forth in the New Jersey Superior Order of Janetta D. Marbrey, J.S.C.

It is, therefore, **ORDERED** that petitioner's appealed is granted and the action of respondent Ewing Township Board of Education disenrolling his children S.H. and Sh.H. is **REVERSED**.

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 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 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, ATTN: BUREAU OF CONTROVERSIES AND DISPUTES, 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.



July 10, 2017
DATE

PATRICIA M. KERINS, ALJ

Date Received at Agency:

July 10, 2017 (emailed)

Date Mailed to Parties:

/mel

LIST OF WITNESSES

For Petitioner:

E.H.

C.T.

For Respondent:

Peter L. Manetto

David Mikalauskas

LIST OF EXHIBITS

For Petitioner:

P-1 Consent Order of the County of Mercer Family Case Management Office
dated September 9, 2013

For Respondent:

R-1 Surveillance of Investigations Report dates September 16 through
October 15, 2015

R-2 Surveillance of Investigations Report date March 18, 2016

R-3 Residency Investigation Checklist Complaint date September 2, 2015

R-4 Ewing Township Public School Affidavit dated March 10, 2014