

86-18 (OAL Decision: Not available online)

A.T., on behalf of minor children, E.T. and J.T., :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE BOROUGH : DECISION
OF RAMSEY, BERGEN COUNTY, :
RESPONDENT. :
_____ :

SYNOPSIS

In February 2015, petitioner A.T. appealed the determination of the respondent Board that her minor children were ineligible for a free public education in respondent's school district; petitioner further appealed the associated assessment of tuition due to the Board. Petitioner contended that she resided in Ramsey from September 1, 2014 through March 1, 2015. The Board asserted that a residency investigation had revealed that petitioner and the children reside in Mahwah. A.T. and S.T. are the parents of E.T. and J.T.; in January 2014, A.T. and S.T. entered into a Consent Order in Family Court that provided for S.T. to be the parent of primary residence in Ramsey, for purposes of determining the school district for the children. A.T. resided in Mahwah, New Jersey.

The ALJ found, *inter alia*, that: although it is undisputed that a Consent Order was entered on January 30, 2014 which designated S.T. to be the parent of primary residence for the purpose of determining the school district for E.T. and J.T., the Board's residency officer only observed the children at their mother's house in Mahwah; further, S.T. testified that the children were mostly residing with the petitioner in Mahwah from September 2014 through March 2015. Based on the foregoing, the ALJ concluded that: the children's domicile was their mother's home in Mahwah, despite the consent order; they were therefore not entitled to a free public education in Ramsey schools; petitioner was not a domiciliary in the Ramsey School District for the specified time period, and the respondent Board is therefore entitled to reimbursement for the costs of tuition for E.T. and J.T. from September 1, 2014 through March 1, 2015. The ALJ ordered petitioner to pay tuition reimbursement in the total amount of \$18,301.

The Commissioner rejected the Initial Decision finding, *inter alia*, that when there exists a court order or written agreement between separately domiciled parents as to where the children will attend school, domicile – for the purposes of schooling – is dictated by said order or agreement; therefore, consistent with the intent and purpose of *N.J.A.C. 6A:22-3.1*, E.T. and J.T. are eligible to attend school in the Ramsey School District. Respondent is not entitled to tuition costs for the period between September 2014 and March 2015, as the children were legally eligible to attend Ramsey schools. The petition was dismissed.

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.

March 19, 2018

OAL DKT. NO. EDU 03301-15
AGENCY DKT. NO. 24-2/15

A.T., on behalf of minor children, E.T. and J.T., :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE BOROUGH : DECISION
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The record of this matter, the Initial Decision of the Office of Administrative Law (OAL), and the Corrected Initial Decision have been reviewed,¹ as have petitioner’s exceptions and respondent’s reply thereto, filed pursuant to *N.J.A.C. 1:1-18.4*.²

The Administrative Law Judge (ALJ) found that despite the existence of a Consent Order between the parents – A.T. and S.T. – designating S.T. as the parent of primary residence for the purposes of the children’s education, E.T. and J.T. were not entitled to attend school in the Ramsey School District because they either “mostly resided” with A.T. in Mahwah or were “not residing” with S.T. in Ramsey.³ The ALJ, therefore, concluded that the children’s domicile was with A.T. for the purposes of their schooling.

¹ The Commissioner was not provided with a transcript of the hearings at the OAL.

² The Commissioner has also reviewed respondent’s correspondence of January 2, 2018, as well as the additional correspondence submitted by petitioner and respondent on January 29, 2018 and January 30, 2018, respectively.

³ In the absence of a full transcript of the hearings, it is unclear whether S.T. testified that the children “mostly resided with A.T.” or that the children “were not residing with him” at all. Page 5 of the Initial Decision states that “S.T. confirmed that the children mostly resided with A.T. at her home” between September 2014 and March 2015, while Page 6 of the Initial Decision states that “S.T. testified that the children were not residing with him” from September 2014 through March 2015 (emphasis added). Although this discrepancy has no bearing on the ultimate outcome of this matter, the Commissioner deems it necessary to note such inconsistencies for the purposes of clarifying any ambiguity in the record.

Petitioner's exceptions take issue with the ALJ's consideration of the facts and the legal conclusions. Specifically, petitioner argues that the ALJ – to whom this matter was reassigned following the conclusion of the hearing conducted by another ALJ – did not include petitioner's exhibits and testimonial facts of several witnesses. Petitioner also argues that *N.J.A.C. 6A:22-3.1(a)(1)(i)* does not require determination of the time the children spent with each parent, and that the existence of an agreement between the parents – coupled with S.T.'s residence in Ramsey – permits E.T. and J.T. to attend the District's schools. In reply, the Board argues that petitioner's exhibits were properly omitted as she did not offer them into evidence. Respondent also argues that the ALJ was within her discretion in making credibility determinations of the witnesses and the testimony, and that a full recitation of facts and testimony is not required. Lastly, respondent submits that the ALJ's determination of this case was correct based on her application of *N.J.S.A. 18A:38-1* and *N.J.A.C. 6A:22-3.1*.

Upon such review, the Commissioner rejects – for the reasons set forth herein – the ALJ's decision finding that E.T. and J.T. were domiciled with A.T. in Mahwah, and therefore, not entitled to a free public education in the Ramsey School District.

As a preliminary matter, the Commissioner notes that despite the relaxation of the rules of evidence in administrative hearings, litigants must, nonetheless, offer into evidence any relevant documents and exhibits that they wish to be considered in support of their case. *See N.J.S.A. 52:14B-10, N.J.A.C. 1:1-15.1, N.J.A.C. 1:1-15.7*. Furthermore, while ALJs are certainly within their discretion to make credibility determinations of witnesses pursuant to *N.J.S.A. 52:14B-10(c)* and *N.J.A.C. 1:1-15.8*, it is axiomatic that the Commissioner considers the factual findings and determinations of the ALJ material – and relies on the ALJ's credibility determinations of witness testimony – in rendering a final agency decision. As such, in cases

where the adjudication of the issue is fact-specific, it is vital that the factual findings and discussion in the Initial Decision provide thorough consideration of the evidence in the record, including witness testimony and credibility determinations. Residency matters indubitably require fact-specific analysis. In this case, however, the Commissioner finds that the issue can be decided as a matter of law; therefore, the Commissioner is able to make a determination without the benefit of a factually-detailed Initial Decision.

The governing regulation in this matter – *N.J.A.C. 6A:22-3.1(a)(1)(i)* – provides in pertinent part:

When a student's parents or guardians are domiciled within different school districts and there is no court order or written agreement between the parents designating the school district of attendance, the student's domicile is the school district of the parent or guardian with whom the student lives for the majority of the school year. This subparagraph shall apply regardless of which parent has legal custody.

(emphasis added)

In other words, when there exists a court order or written agreement between separately domiciled parents as to where the children will attend school, domicile – for the purposes of schooling – is dictated by said order or agreement. *See K.H., on behalf of minor children, A.H. and V.H. v. Bd. of Educ. of the Boro of Butler, Morris County*, OAL Dkt. No. EDU 14258-16 (Jan. 19, 2017), Comm. Dec. No. 70-17 (March 2, 2017) (finding when there is a Consent Order or written agreement between the parents that designates the school district of attendance, the amount of time spent with either parent does not dictate where the children must attend school); *see e.g., Bd. of Educ. of the Boro of Westville, Gloucester County v. Bd. of Educ. of the Boro of Oaklyn, Camden County*, OAL Dkt. No. EDU 10144-05 (Aug. 19, 2009), Comm. Dec. No. 316-09 (Sept. 29, 2009) (finding there was no designation of school district of attendance

until the February 2005 addendum to the court-sanctioned agreement; thus, Westville was responsible for the cost of educating the child for the 2004-2005 school year),⁴ and *R.A.R., on behalf of minor child, R.D.R. v. Bd. of Educ. of the Black Horse Reg'l. High Schl. Dist., Camden County*, OAL Dkt. No. 8849-07 (Jan. 25, 2008), Comm. Dec. No.102-08 (Mar. 5, 2008) (the child, who lived with her father permanently, was domiciled with her father where the mother had primary physical custody and there was no written agreement between the parents pertaining to the child's education).⁵ Significantly, a review of the Comments and Responses to the Rule Proposals from 2009 clarifies the regulation's intent to allow "separated parents domiciled in different school districts to decide between themselves as to the district in which their child(ren) will attend school" to maintain educational continuity. *See* 42 *N.J.R.* 179(b).

The parties are reminded that the fundamental purpose of the regulatory scheme is to ensure that students' access to education is not disrupted by reason of disputes between parents and/or school districts. In this matter, the parents entered into a Consent Order on January 30, 2014, wherein S.T. – who is domiciled in Ramsey – was designated as the "parent of primary residence" of the minor children "**for purposes of schooling**" (emphasis added). The Commissioner acknowledges that the Consent Order does not specifically state the "Ramsey School District;" however, the language of the Order is sufficient for the purposes of *N.J.A.C.* 6A:22-3.1(a)(1)(i) because it reflects the parents' agreement and intent for E.T. and J.T.

⁴ The Commissioner notes that although the *Westville* matter implicates *N.J.A.C.* 6A:22-3.1(a)(1)(ii), it is consistent with the understanding that a court order or written agreement pertaining to school district takes precedence in matters involving separately domiciled parents.

⁵ The Commissioner has considered the legal authority cited by both parties and finds that the Board's reliance on *P.B. on behalf of minor child, Y.S. v. Bd. of Educ. of the Twp. of Ewing, Mercer County*, OAL Dkt. No. 10545-10 (Feb. 15, 2011), Comm. Dec. No. 128-11 (Mar. 24, 2011) and *R.C.P., on behalf of minor children, J.P. and J.P. v. Bd. of Educ. of the Twp. of Hillside, Union County*, OAL Dkt. No. 06127-14 (Nov. 21, 2014), Comm. Dec. No. 494-14 (Dec. 23, 2014), is misguided. In *P.B.*, the parents had a "Joint Residential Custody Order" and there was no specification as to the school district. In *R.C.P.*, there was a custody order, and pursuant to the subject regulation, custody alone was not dispositive of domicile for purposes of the children's education.

to attend school where S.T. is domiciled. Therefore, consistent with the purpose and intent of *N.J.A.C. 6A:22-3.1*, the children are eligible to attend school in Ramsey.

Accordingly, the Initial Decision of the OAL is rejected. Respondent is not entitled to tuition costs incurred between September 2014 and March 2015, as E.T. and J.T. were eligible to attend school in Ramsey. The petition of appeal is hereby dismissed.

IT IS SO ORDERED.⁶

ACTING COMMISSIONER OF EDUCATION

Date of Decision: March 19, 2018

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