

OAL DKT. NO. EDU 2273-97
AGENCY DKT. NO. 82-3/97

B.M., on behalf of minor child, M.M., :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE : DECISION
TOWNSHIP OF CHERRY HILL,
CAMDEN COUNTY, :
RESPONDENT. :
_____ :

The record of this matter and the initial decision of the Office of Administrative Law have been reviewed. Respondent’s exceptions and petitioner’s reply thereto are duly noted as submitted in accordance with *N.J.A.C.* 1:1-18.4, and were considered by the Commissioner in rendering the within decision.

Upon careful and independent review of the record in this matter, the Commissioner determines to affirm, with clarification as herein stated, the well-reasoned findings and conclusions offered by the Administrative Law Judge (ALJ) in a matter which presents a rather unique set of circumstances requiring a finding of domicile for a petitioner whose family has multiple geographic connections. The Commissioner appreciates that such an analysis is sensitive, and further recognizes that “[c]oncepts of domicile *** are not immutably fixed and the term ‘may have different content and shades of meaning depending upon the context in which it is used.’” *Clifton Bd. of Education v. Sauro*, 96 *N.J.A.R. 2d (EDU)* 497, 500, citing *In re Estate of*

Gilmore, 101 N.J. Super. 77, 86-87 (App. Div. 1968). Thus, the Commissioner concurs with the ALJ that intent, the touchstone of a domicile analysis, must be determined “***by evaluating the words and demeanor of the person claiming domicile, and then matching his or her assertions with the artifacts of record which, when evaluated holistically, leave a persuasive impression of true domicile.” (Initial Decision at pp. 11, 12)

In so doing, the Commissioner notes that the Board raises extensive exceptions with respect to the factual findings of the ALJ based on the testimony of the witnesses and the credence and weight ascribed to such testimony. However, in that the record before the Commissioner did not include transcripts from the two days of hearing conducted in this matter, challenges to the factual findings predicated upon credibility determinations made by an administrative law judge require the party asserting such exceptions to supply the agency head with the relevant and necessary portion of the transcript. See *In re Morrison*, 216 N.J. Super. 143, 158 (App. Div. 1987). The ALJ’s findings cannot be properly rejected, as the Board so urges, without appraisal of the portions of the transcribed record which are relevant to the Board’s exceptions. (*Id.* at 159) Thus, without such pertinent transcript citations from which to draw his own conclusions, the Commissioner defers to those credibility determinations reached by the ALJ who was in a position to hear and adjudge the credibility of witnesses. See *Parker v. Dornbierer*, 140 N.J. Super. 185, 188 (App. Div. 1976). Further, the Commissioner finds that such factual findings and conclusions are sufficiently grounded in the record before him, and such record does not provide any cause to challenge the weight ascribed to evidence, nor to credibility assessments rendered by the ALJ. That is, there are sufficient objective indicia, or “artifacts,” of domicile in the record to support petitioner’s claim.

In response to the Board's concern, as raised in its exception arguments, that the ALJ improperly commingled evidence relating to M.D.'s special education proceeding which has been bifurcated from this matter, the Commissioner clarifies that his conclusion herein is reached without consideration of any such facts or conclusions, as may have been offered by the ALJ, in that they are irrelevant to a domicile analysis. (Board's Exceptions at p. 8)

Finally, the Commissioner observes that, although the ALJ rightfully notes that the domicile of a child traditionally follows that of her natural father (Initial Decision at p. 13), the more obliging, and still legally correct, rule for a changing society is that an unemancipated child's domicile is equated with the domicile of the parent or guardian "having legal control of the child." *Sauro, supra*, citing *Mansfield Twp. v. State Bd. of Educ.*, 101 N.J.L. 474, 479 (Sup. Ct. 1925). In any event, that person is petitioner.

Accordingly, the initial decision of the ALJ is adopted for the reasons expressed therein. Having established through a preponderance of credible evidence that petitioner and M.D. are domiciled in the District, M.D. is thus entitled to the benefits afforded by N.J.S.A. 18A:38-1a, so as long as there is no change in petitioner's circumstances that would alter M.D.'s entitlement.

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

SEPTEMBER 22, 1997