

T.B.W., on behalf of minor child, A.W.,	:	
	:	
PETITIONER,	:	
V.	:	COMMISSSIONER OF EDUCATION
BOARD OF EDUCATION OF THE	:	DECISION
TOWNSHIP OF BELLEVILLE, ESSEX	:	
COUNTY,	:	
	:	
RESPONDENT.	:	
_____	:	

SYNOPSIS

Petitioning parent sought reversal of residency determination by respondent Board in regard to her daughter, A.W. Respondent Board counterclaimed for tuition reimbursement for the alleged period of ineligible attendance.

In light of testimony of witnesses and documents in evidence, the ALJ concluded that petitioner failed to prove by a preponderance of credible evidence that A.W. was domiciled in Belleville as petitioner did not intend to change her domicile to Belleville or to abandon her old domicile in East Orange. ALJ ordered A.W. removed from the Belleville schools and to pay respondent \$31,023.93 in tuition plus an amount calculated at a rate of \$44.46 per school day for additional ineligible attendance.

Commissioner adopted initial decision as his own and directed payment of the tuition assessment. Commissioner noted that absent the submission of transcripts, he relied on the credibility determinations of the ALJ. Moreover, the Commissioner noted the scarcity of documents brought to the record by petitioner evidencing that she intended to make Belleville her true, fixed and permanent home, as opposed to a residence which may be temporary in nature.

JUNE 18, 1998

OAL DKT. NO. EDU 5959-96
AGENCY DKT. NO. 159-5/96

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The record of this matter and the initial decision of the Office of Administrative Law (OAL) have been reviewed. In that petitioner’s request for an extension of time in which to file exceptions did not meet the regulatory standard, *N.J.A.C. 1:1-18.8(b)*, such request was denied.

Upon careful and independent review of the record in this matter, the Commissioner concurs with the ALJ that petitioner has failed to meet her burden of proving by a preponderance of credible evidence that she is domiciled in Belleville so as to permit her daughter, A.W., to attend the Board’s schools, free of charge. *N.J.S.A. 18A:38-1a*. In so finding, the Commissioner notes the scarcity of documents brought to the record by petitioner evidencing that she intends to make Belleville her true, fixed and permanent home, as opposed to a residence which may be temporary in nature. (See *Matter of Unanue, supra*, citing *Kurilla, supra*, establishing that the law presumes a person’s domicile “***is the place where he has his true,

fixed, permanent home and principal establishment, and to which whenever he is absent, he has the intention of returning***;” *Collins v. Yancey*, 55 N.J. Super. 514, 520, 521 (Law Div. 1959) and *State v. Benny*, *supra*, establishing that the terms “residence” and “domicile” are not synonymous; a person may have several residences or places of abode, but only one domicile at a time.)

Moreover, the Commissioner observes that the record before him does not include transcripts of the hearing conducted at the OAL in this matter, and, therefore, he has no basis on which to challenge or otherwise disturb the factual findings and credibility determinations made by the administrative law judge in this matter. See *In re Morrison*, 216 N.J. Super. 143, 158 (App. Div. 1987). In the absence of transcripts from the hearing, due regard should be given to the person who heard the live testimony and assessed the witnesses’ behavior at the hearing. *Close v. Kordulak Bros.*, 44 N.J. 589, 599 (1965). Notably, the ALJ herein determined that petitioner’s testimony with respect to living at the Belleville address was not credible.

Accordingly, the initial decision of the ALJ is adopted for the reasons expressed therein. Petitioner is directed to reimburse the Board a total of \$31,023.93, representing tuition through the first half of the 1997-98 school year, plus a sum of \$44.46 per school day from the first day of the second semester until the date of this decision, or, if later, her removal from the District.*

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

JUNE 18, 1998

* This decision, as the Commissioner’s final determination in the instant matter, may be appealed to the State Board of Education pursuant to *N.J.S.A. 18A:6-27 et seq.* and *N.J.A.C. 6:2-1.1 et seq.*, within 30 days of its filing. Commissioner decisions are deemed filed three days after the date of mailing to the parties.