

S.S. on behalf of minor children, A.S. :  
and A.S., :  
PETITIONER, : COMMISSIONER OF EDUCATION  
V. : DECISION  
BOARD OF EDUCATION OF THE :  
TOWNSHIP OF MARLBORO, :  
MONMOUTH COUNTY, :  
RESPONDENT. :  
\_\_\_\_\_ :

SYNOPSIS

Petitioner filed a *pro se* residency appeal challenging the respondent Board’s determination that her children, A.S. and A.S., were not entitled to a free public education in the Marlboro Township schools during the 2011-2012 school year. Petitioner asserted that she had lived in her father’s house in Marlboro during that time period. The respondent Board contended that petitioner in fact had been living with her grandparents in Edison, and sought tuition reimbursement in the amount of \$20,598.

The ALJ found that: based on the results of the Board’s residency investigation and the credible testimony and documentary evidence presented by the respondent, petitioner and her children resided at her grandmother’s address in Edison during the entire 2011-2012 school year; witnesses for the petitioner and documentary evidence presented on her behalf were less credible; as a practical matter, because of petitioner’s work hours, she and her children were domiciled in Edison during the period in question, though they have since established legitimate residency at the address in Marlboro; tuition rates for the children in the Marlboro schools for the 2011-2012 school year were \$9,904 for S.S.’s daughter, and \$10,694 for her son. Accordingly, the ALJ concluded that petitioner is liable to the Marlboro school district for 2011-2012 tuition for both children in the amount of \$20,598.

Upon review of the record and the Initial Decision, the Assistant Commissioner – to whom this matter was delegated pursuant to *N.J.S.A. 18A:4-34* – concurred with the ALJ’s findings and conclusions. Accordingly, the Initial Decision was adopted as the final decision in this matter, and respondent’s counterclaim for tuition in the amount of \$20,598 was granted.

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 192-12  
AGENCY DKT. NO. 362-12/11

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PETITIONER,	:	COMMISSIONER OF EDUCATION
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V.	:	DECISION
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	:	
RESPONDENT.	:	
_____	:	

The Commissioner<sup>1</sup> has reviewed the record of this residency dispute, and the Initial Decision of the Office of Administrative Law (OAL).<sup>2</sup> Upon such review, the Commissioner has determined to adopt the Initial Decision as the final decision in this case.

At issue in this matter is the question of whether petitioner lived in her father's house within respondent's school district during the 2011-2012 school year, or whether she and her children lived with her grandparents in Edison, New Jersey during that time period. At the OAL hearing respondent presented an investigator – William Vanderstreet – who conducted surveillance at both the grandparents' address in Edison and at the address where petitioner claimed to reside in Marlboro. His conclusion, and the conclusion of the respondent Board of Education after reviewing his reports, was that petitioner and her children resided in Edison. Petitioner's witnesses, *i.e.* herself

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<sup>1</sup> Pursuant to *N.J.S.A.* 18A:4-34, this matter has been delegated to the undersigned Assistant Commissioner.

<sup>2</sup> Notwithstanding that the Initial Decision advises in its concluding paragraph that the parties may file exceptions with the Commissioner, and the Administrative Law Judge explained to petitioner – on the last day of the hearing in the OAL – that she was entitled to file exceptions to the Initial Decision with the Commissioner, petitioner has not done so. *See* Transcript dated October 18, 2012 at 268. More specifically, neither party filed exceptions.

and her grandmother, father and uncle, all testified that she and her children lived in Marlboro during the 2011-2012 school year.

It is well established that the Commissioner must defer to the credibility findings of the Administrative Law Judge (ALJ), unless they prove themselves to be arbitrary, capricious, or unreasonable and unsupported by the record. *See, e.g. N.J.S.A. 52:14B-10(c); S.D. v. Div. Med. Assistance and Health Services*, 349 *N.J. Super.* 480, 485 (App. Div. 2002) (Credibility findings of an ALJ concerning a lay witness may not be modified or rejected unless it is explained why they are arbitrary and capricious or unsupported in the record); *D.L. and Z.Y. on behalf of minor children T.L. and K.L. v. Board of Education of the Princeton Regional School District*, 366 *N.J. Super.* 269, 273 (App. Div. 2004). In the present case, the ALJ found Vanderstreet's testimony to be reliable and unbiased. By way of contrast, the ALJ found the testimony of petitioner and her family to be orchestrated and motivated by self interest.<sup>3</sup> The ALJ additionally noted evasiveness, inconsistencies and incongruities in the testimony of petitioner's relatives, and an overall lack of common sense in petitioner's explanations about her schedules and "comings and goings" between Edison, Marlboro and the locations of the stores where she worked. Thus, the ALJ found that petitioner and her children lived in Edison during the 2011-2012 school year and that petitioner was liable to Marlboro for tuition.

In considering whether the ALJ's factual and credibility findings were reasonable and supported by the record, the Commissioner thoroughly examined the transcripts of each of the three days of hearings in the OAL, and the exhibits offered by the parties. The exhibits offered by petitioner were copies of various 'legal' documents offered to show that petitioner and her children

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<sup>3</sup> Indeed the transcripts reveal that the ALJ noted multiple times on the record that petitioner's grandfather attempted to coach petitioner and her grandmother while they were testifying.

were domiciled in Marlboro. The five documents worthy of attention are a driver's license, a receipt for a drivers license, a vehicle registration, a vehicle title, and a voter registration card.<sup>4</sup>

Petitioner's voter registration card was issued to her father's address on December 2, 2011– after petitioner had received respondent's notice that her children were ineligible to attend school in Marlboro. The driver's license, which was issued in March of 2011, shows petitioner's father's address in Marlboro on its face. However, it is not possible to verify – by examining the drivers license receipt from an earlier date – which address had been printed on the face of the earlier corresponding license. The vehicle title and registration were both issued in October 2011 and show petitioner's father's address. In sum, the drivers license and vehicle title and registration are supportive of petitioner's residence. However, they are not conclusive. Such evidence must be weighed against the totality of testimony and exhibits presented by the parties.

The most salient of the exhibits which respondent offered at the OAL hearing was the report of Vanderstreet's investigation. His surveillances were conducted in September and November of 2011 and January and February of 2012, on a total of twenty-four different dates. As Vanderstreet's report memorializes, the investigation revealed a pattern of early morning departures by petitioner and her children from her grandparents' address in Edison to the bus stop in Marlboro where her children boarded their respective buses – without ever entering petitioner's father's house in Marlboro, their purported residence. Another significant exhibit presented by respondent was a check written by petitioner to pay for school lunches, which check showed the Edison address of petitioner's grandparents.

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<sup>4</sup> Petitioner also offered a library card, a letter dated September 10, 2012 from a child care center in Freehold verifying attendance of her children, a letter from Wells Fargo to petitioner at her father's Marlboro address stating that an account she had opened in 2008 still had a sizable balance as of November 21, 2011, and a Sprint bill directed to petitioner's father's address. The Commissioner notes that the library card showed no name or address, and the fact that the cell phone bill and bank statement were sent to petitioner's father's address does not tie petitioner to that address – as would a lease or utility bill. Nor does the letter from the Freehold day care center tie petitioner to the Marlboro residence.

The Commissioner's review of the transcripts leads him to the same determination articulated by the ALJ in the Initial Decision. Vanderstreet and respondent's other witness – School Business Administrator Cindy Barr-Rague – offered straightforward testimony which was internally consistent and harmonious with the balance of the evidence. The testimony of petitioner and her relatives was riddled with evasiveness, lapses of memory, inconsistencies and implausible explanations – such as petitioner's contention that on school days, after bringing her children from Edison to Marlboro at close to midnight when she worked the evening shift, she woke all of them up in Marlboro at around 5:30 a.m., drove them all to Edison, dropped off the youngest child with her grandmother, drove back to Marlboro again to bring the older two children to their buses (without returning into the Marlboro house) and went straight to work from the bus stop.

Legal documents do not necessarily, in and of themselves, determine a minor child's domicile. *P.B. on behalf of minor child, Y.S. v. Board of Education of the Township of Ewing, Mercer County*, Commissioner Decision No. 128-11, decided March 24, 2011, at 2-3. If a district can show that a child does not actually reside at the address which the legal documents indicate, but rather resides with a parent or guardian outside the district, the district will not be obliged to provide the child with a free education. *See, e.g. B.C., on behalf of M.W. v. Board of Education of the City of Atlantic City, Atlantic County*, OAL Dkt. No. EDU 2623-08, Agency Dkt. No. 88-3/08, Commissioner Decision No. 381-09, decided October 19, 2009. (If a petitioner claims that a child is entitled to attend school in a school district on the basis of a court order granting custody/guardianship to the domiciled petitioner, the school district may present evidence that the child is not in fact domiciled in the school district).

The Commissioner is satisfied that the totality of the evidence shows that – notwithstanding petitioner's procurement of legal documents listing her father's address in

Marlboro – she and her children were actually residing in Edison during the 2011-2012 school year. The two school-age children were not entitled, during that period, to a free public education in respondent’s district. The proofs introduced by respondent indicate that the tuition for the two children for that school year amounted to \$20,598.

Accordingly, the petition is dismissed and respondent’s counterclaim for tuition in the amount of \$20,598 is granted.

IT IS SO ORDERED.<sup>5</sup>

ASSISTANT COMMISSIONER OF EDUCATION

Date of Decision: October 10, 2013

Date of Mailing: October 11, 2013

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<sup>5</sup> 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).