

234-18 (OAL Decision: Not available online)

B.M., ON BEHALF OF MINOR CHILDREN, :
D.W. AND A.W., :
 :
 PETITIONER, : COMMISSIONER OF EDUCATION
V. :
 : DECISION
BOARD OF EDUCATION OF THE TOWNSHIP :
OF UNION, UNION COUNTY, :
RESPONDENT. :

SYNOPSIS

Petitioner challenged the residency determination of the respondent Board that her minor children are not entitled to a free public education in the Union Township School District. Petitioner asserted that she and her children live with extended family in Union. The Board contended that the results of a residency investigation showed that the children are domiciled out-of-district, with their father, in Irvington. Accordingly, the Board sought tuition reimbursement for both children for the entire 2017-2018 school year. The matter was transmitted to the Office of Administrative Law as a contested case, and a hearing was held on June 20, 2018.

The ALJ found, *inter alia*, that: the issue herein is whether petitioner’s minor children are eligible to attend Union Township school free of charge, in accordance with *N.J.S.A. 18A:38-1*; petitioner and her two children – aged 10 and 18 – reside, for financial reasons, with B.M.’s sister, N.E., in a three bedroom home in Union; petitioner works the night shift – from 11 pm to 7 am – as a nurse’s aide; the father of the children, who resides in Irvington, helped care for ten-year-old A.W. at his apartment when B.M. was not be able to take her to school in the morning; this situation existed because B.M. worked a second job as a morning baby sitter until the job ended in March of 2018; thereafter, the children stayed in Union every night; despite the results of the Board’s residency investigation, B.M. and her sister, N.E., testified credibly that B.M. and her two children moved into N.E.’s home in Union after experiencing hard times when B.M. and her husband separated. The ALJ concluded that it is clear from the documentary and testimonial evidence that B.M. and her children have been domiciled within the Union school district since the beginning of the 2017-2018 school year, and are therefore entitled to attend the Board’s public schools free of charge.

Upon review of the record in this matter, the Commissioner concurred with the ALJ’s findings and conclusion, and adopted the Initial Decision 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.
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August 9, 2018

OAL DKT. NO. EDU 04439-18
AGENCY DKT. NO. 57-3/18

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed, as have the exceptions filed pursuant to *N.J.A.C. 1:1-18.4* by the Board. Petitioner did not file a reply.

In its exceptions, the Board urges the Commissioner to reject the Initial Decision, which found that petitioner and the minor children were domiciled in Union Township and were therefore entitled to attend school in Union Township free of charge. The Board argues that the Administrative Law Judge (ALJ) discounted the evidence submitted by the Board's investigator, who – between October 2017 and June 2018 – conducted surveillance fifty-eight times on the Union Township address, where petitioner claims she lives with her sister, and the Irvington address, where the children's father lives. The Board notes that the investigator did not observe petitioner or her children leave the Union Township home in the morning or return from school in the afternoon, except for a few occasions when petitioner's car would drive up in the afternoon, a child would run into the house and back out to the car, which would then drive away. The investigator did, however, observe petitioner's car parked at the Irvington address on fifteen dates from October 2017 to January 2018, but not after. The Board maintains that petitioner did not submit any evidence besides

her testimony and that of her sisters, which the Board argues is self-serving. As such, the Board contends that in light of the evidence, petitioner did not meet her burden of demonstrating that she lives in Union Township.

Upon review, the Commissioner notes that the ALJ had the opportunity to assess the credibility of the various witnesses who appeared before her and make findings of fact based upon their testimony, and the ALJ found the testimony of petitioner and her sisters to be credible. Despite evidence submitted by the Board, the ALJ found the testimony and explanation by the witnesses concerning their living situation and whereabouts on the dates in question to be credible. In this regard, the clear and unequivocal standard governing the Commissioner's review is:

The agency head may not reject or modify any findings of fact as to issues of credibility of lay witness testimony unless it is first determined from a review of the record that the findings are arbitrary, capricious or unreasonable or are not supported by sufficient, competent, and credible evidence in the record.
[*N.J.S.A.* 52:14B-10(c)].

The Commissioner finds no basis in the record to disturb the ALJ's credibility assessments. As such, the Commissioner concurs with the ALJ that petitioner is domiciled in Union Township and therefore the minor children are entitled to attend school in the District free of charge.

Accordingly, the Initial Decision of the OAL is adopted as the final decision in this matter.

IT IS SO ORDERED.¹

COMMISSIONER OF EDUCATION

Date of Decision: August 9, 2018

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¹ 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).