

Y.Y., ON BEHALF OF MINOR CHILDREN,	:	
W.Y. AND D.Y.,	:	
	:	
PETITIONER,	:	
	:	
V.	:	COMMISSIONER OF EDUCATION
	:	
BOARD OF EDUCATION OF THE BOROUGH	:	DECISION ON REMAND
OF NORTH ARLINGTON, BERGEN COUNTY,	:	
	:	
RESPONDENT.	:	

SYNOPSIS

The Commissioner remanded this matter to the OAL for a hearing on the merits in April 2017. *Pro se* petitioner appealed the determination of the respondent Board that her children, W.Y. and D.Y., are not entitled to a free public education in North Arlington schools. Petitioner contended, *inter alia*, that she has separate residences in North Arlington, Bergen County, and in Kearny, Hudson County, but is legally domiciled in North Arlington. The respondent Board of Education of North Arlington argued that Y.Y. is not legally domiciled within the school district, but instead is domiciled at the family residence in the Township of Kearny.

The ALJ found, *inter alia*, that: *N.J.S.A.* 18A:38-1(a) and *N.J.A.C.* 6A:22.3.1(a) set forth the right of a student to a free public education; pursuant to the statute and regulations, public schools are free to persons between the ages of five and twenty who are domiciled within the school district; parents bear the burden of establishing domicile by a preponderance of the evidence; school districts have the authority to dis-enroll students who are not domiciled within their district; although petitioner furnished a volume of papers indicating her residence/domicile, the important factor for determination in this case is where, in actuality, the children were living; petitioner asserted that she is separated from her husband, and that the children spend most of the week with her in North Arlington, but spend weekends with her husband in Kearny; witnesses on behalf of the Board testified credibly to many dates in which Y.Y. and/or her husband left the Kearny address and escorted her children to school in Bergen County; petitioner withheld permission for the Board to visit her North Arlington residence in order to verify her claim of domicile; a review of petitioner’s testimony is replete with explanations for why she and the children must spend significant time at the Kearny residence; and petitioner’s claims of domicile in North Arlington were not corroborated by any witness testimony on her behalf. The ALJ concluded that Y.Y.’s children were never domiciled in North Arlington and remained domiciled in Kearny from September 2014 forward. Accordingly, the ALJ ordered petitioner to reimburse tuition paid by the respondent Board to Bergen County Technical School on behalf of W.Y., and noted that an application for reimbursement of tuition due to North Arlington for D.Y.’s attendance can be submitted to the ALJ.

Upon review, the Commissioner found no basis in the record to disturb the ALJ’s credibility determinations, and concurred with the findings and conclusions in the Initial Decision. The Commissioner noted that the ALJ demonstrated no bias against petitioner, nor did he ignore petitioner’s submissions and testimony in this matter. Finally, the Commissioner determined that the present record lacks information required to calculate the amount of tuition owed to the Board. Accordingly, the matter was remanded to the OAL for calculation of tuition due, and supplementation of the record as warranted.

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 05241-17
(EDU 09260-16 ON REMAND)
AGENCY DKT. NO. 149-5/16

Y.Y., ON BEHALF OF MINOR CHILDREN, :
W.Y. AND D.Y, :
 :
 PETITIONER, : COMMISSIONER OF EDUCATION
V. :
 : DECISION ON REMAND
BOARD OF EDUCATION OF THE BOROUGH :
OF NORTH ARLINGTON, BERGEN COUNTY, :
RESPONDENT. :

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 petitioner and the Board, and the parties' replies thereto.

In this matter on remand, petitioner challenges the Board's residency determination that the minor children are not domiciled in North Arlington, but rather live in their father's home in Kearny. Following a hearing on the merits, the Administrative Law Judge (ALJ) found that the petitioner and her minor children were not domiciled in North Arlington, and therefore, the Board is entitled to tuition for the period of time they were ineligible to attend school in the District.

In her exceptions, petitioner argues that the Initial Decision was based on fraudulent evidence and false testimony. Specifically, petitioner challenges the factual accuracy of testimony from Anita Gilmore and Carla Gomes, witnesses for the Board. Petitioner also alleges that the Board's counsel committed fraud and colluded with the above witnesses to falsify evidence and testimony. Petitioner maintains that the investigators illegally searched her

driver's license and motor vehicle information in order to conduct surveillance. Petitioner further disputes the findings of the surveillance, giving explanations as to why she or her car were at the Kearny address on some of the dates in question. With respect to the surveillance video, petitioner challenged the authentication of the video, alleging that it was falsified, and maintains that her motion to suppress the video was improperly denied.

Petitioner contends that the ALJ erred in finding that she was not domiciled in North Arlington simply because she was seen at the Kearny address performing acts of ownership. Petitioner maintains that she jointly owns the Kearny property and has a right to use it even if she is not domiciled there. She submitted a variety of documents to establish her residency in North Arlington, which she alleges the ALJ ignored. Further, petitioner's son D.Y. was removed from the District in September 2015, and was homeschooled by petitioner and her husband at the Kearny address until he began attending Kearny Middle School in September 2016. As such, petitioner argues that the ALJ failed to consider that this is another aspect of why she spent time in Kearny. Petitioner also takes exception with the ALJ's statement that more important than the documentation submitted by petitioner is where her children actually live. Petitioner contends that W.Y. lived in North Arlington, as demonstrated by his college applications and drivers learning permit. With respect to D.Y., petitioner maintains that he was living in North Arlington and only began spending more time in Kearny after the Board removed him from school.

Petitioner alleges that the ALJ was biased in his Initial Decision. She questions why the ALJ referred to her third floor apartment in North Arlington as an "attic" apartment. Further, she contends that the ALJ unfairly held it against her that she did not have anyone else testify on her behalf, and that she did not allow the Board to visit her home.

Finally, petitioner argues that, pursuant to *N.J.A.C. 6A:22-6.2(a)*, the District may only seek tuition for up to one year of the minor children's ineligible attendance. As the petition was filed on May 23, 2016, the tuition assessment cannot go beyond May 2015. Additionally, the ALJ incorrectly ordered tuition payments to Kearny rather than the Board.

In its exceptions, the Board argues that the ALJ correctly found that petitioner failed to demonstrate that the minor children are domiciled in North Arlington, and therefore are not eligible to attend school in the District. However, the Board points out that the ALJ ordered tuition for W.Y. to be paid to the Township of Kearny rather than the North Arlington Board of Education. Further, the Board contends that the total to be reimbursed for W.Y.'s attendance at Bergen County Technical School (Bergen Tech) is \$34,334.40 for the 2014-15, 2015-16, 2016-17 and 2017-18 school years. With respect to D.Y., the Board contends that tuition is owed for 159 days of the 2014-15 school year and for 11 days of the 2015-16 school year, in the total amount of \$10,329.92. The Board suggests that this matter be remanded for the submission of proofs as to the issue of tuition.

In reply to petitioner's exceptions, the Board argues that petitioner's conspiracy theories and credibility arguments should be disregarded. The Board does not dispute that petitioner has a right to use her Kearny property, but emphasizes that she cannot arbitrarily designate North Arlington as her domicile without objective proofs. Further, even if petitioner is domiciled in North Arlington, the ALJ appropriately found that her sons remained domiciled in Kearny with their father. The Board points out that petitioner's own testimony established that the North Arlington apartment is small, and the ALJ's reference to petitioner's living space as an "attic apartment" cannot be construed as bias against her. Further, contrary to petitioner's arguments, the Board maintains that the ALJ acknowledged the documentary proofs that

petitioner submitted, but properly discounted them as they only demonstrate that she owns the North Arlington property – not that she is actually domiciled there. Instead, the evidence submitted by the Board at the hearing established that petitioner and her minor children spent significant amounts of time in Kearny. Finally, with respect to petitioner’s argument regarding the limit on tuition reimbursement up to one year, the Board contends that petitioner filed her appeal on October 6, 2015, and not May 23, 2016.

In reply to the Board’s exceptions, petitioner argues that the Board’s counsel submitted “falsely calculated and unsubstantiated claims” regarding the minor children’s attendance and tuition. (Petitioner’s reply at 1) Petitioner alleges that counsel knows that the tuition calculation cannot begin before May 2015, but seeks to recoup tuition for the entire 2014-2015 school year.

Upon review, the Commissioner concurs with the ALJ’s finding that petitioner failed to sustain her burden of establishing that she and her children were domiciled in North Arlington from the 2014-2015 school year to the present. The Commissioner further concurs with the ALJ’s conclusion that the minor children were, therefore, not entitled to a free public education in the District’s schools during that time.

Pursuant to *N.J.S.A.* 18A:38-1b, the Commissioner shall assess tuition against petitioner for the time period during which the minor child was ineligible to attend school in North Arlington. However, the Commissioner notes that pursuant to *N.J.A.C.* 6A:22-6.2(a), the Commissioner may only assess tuition for the period during which the hearing was pending “and for up to one year of a student’s ineligible attendance in a school district prior to the appeal’s filing and including the 21-day period to file an appeal.” As the Board issued its final notice of ineligibility on May 4, 2016, the tuition assessment is limited to the period from May 4, 2015 to

the present. The Commissioner agrees with the parties that any tuition assessed is due to the Board of Education of North Arlington, and not the Township of Kearny.

The ALJ found that not enough evidence was presented with respect to tuition due to the Board for D.Y.'s attendance. As such, the present record lacks the information required for the Commissioner to calculate the amount of tuition owed to the Board for D.Y.'s ineligible attendance, specifically the number of days D.Y. attended school in North Arlington from May 4, 2015 to the end of the 2014-15 school year, and in the 2015-16 school year.* Additionally, the Commissioner requires the information regarding the daily cost per pupil (based on 1/180 of the total annual per pupil cost) so that an exact amount of tuition owed may be computed.

With respect to W.Y., the ALJ ordered that petitioner reimburse the Board for any tuition payments it made to Bergen Tech on W.Y.'s behalf. However, further information is required on the exact amount of tuition owed to the Board for W.Y.'s attendance at Bergen Tech from May 4, 2015 through the 2017-18 school year.

The Commissioner does not find petitioner's exceptions to be persuasive. Petitioner did not meet her burden of demonstrating that she and her children are domiciled in North Arlington. Instead, there is sufficient evidence in the record – including the September 2015 surveillance that showed petitioner leave the Kearny address with W.Y., followed by a man leaving with D.Y. and dropping him off at school in North Arlington; the October 2016 surveillance that showed petitioner leaving the Kearny address with W.Y. and dropping him off at Bergen Tech; and the surveillance conducted over several dates in May and June 2017 that showed petitioner leaving the Kearny address on four occasions and driving W.Y. to Bergen Tech – to support the ALJ's finding that although petitioner may have established a

* It appears as though D.Y. did not attend school in North Arlington for the 2016-17 and 2017-18 school years.

domicile for herself in North Arlington, the minor children remained domiciled in Kearny with their father.

Many of petitioner's exceptions involve assertions regarding false or inaccurate testimony, or collusion to submit false testimony and evidence. The Commissioner notes that the ALJ had the opportunity to assess the credibility of the various witnesses who appeared before him and make findings of fact based upon their testimony. 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)].

As such, the Commissioner finds no basis in the record to disturb the ALJ's credibility assessments. The ALJ did not demonstrate bias against petitioner or ignore the documents she submitted and the explanations she provided as to why she and her children spent time at the Kearny address. Instead, he found the testimony of other witnesses to be more credible and appropriately placed more weight on that evidence.

Accordingly, this matter is remanded to the OAL for calculation of tuition due to the Board, and supplementation of the record as warranted.

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

Date of Decision: July 26, 2018

Date of Mailing: July 27, 2018



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

Y.Y. ON BEHALF OF MINOR CHILDREN

W.Y. AND D.Y.,

Petitioner,

v.

**BOARD OF EDUCATION OF THE BOROUGH
OF NORTH ARLINGTON, BERGEN COUNTY,**

Respondent.

INITIAL DECISION

OAL DKT. NO. EDU 05241-17

AGENCY DKT. NO. 149-5/16

Y.Y. ON BEHALF OF MINOR CHILDREN

W.Y. AND D.Y.,

Petitioner,

v.

**BOARD OF EDUCATION OF THE BOROUGH
OF NORTH ARLINGTON, BERGEN COUNTY,**

Respondent.

ON REMAND

OAL DKT. NO. EDU 09260-16

AGENCY DKT. NO. 149-5/16

Y.Y. parent of D.Y. and W.Y. petitioner, pro se

Jennifer M. Hermann, Esq., for respondent, Borough of North Arlington
Board of Education (Methfessel & Werbel, attorneys)

William C. Soukas, Esq. for respondent, Board of Education of the
Vocational Schools, Bergen County (Nowell, P.A., attorney)

Timothy D. Cedrone, Esq. for respondent, Town of Kearny (Apruzzese,
McDermott, Masetro & Murphy, attorneys)

Record Closed: September 6, 2017

Decided: May 8, 2018

BEFORE **JEFFREY A. GERSON**, ALJ t/a:

STATEMENT OF THE CASE

This is a residency contest. Y.Y. contends that she and her two children are domiciled in the Borough of North Arlington, Bergen County. The Borough of North Arlington contends that Y.Y. and her children are not domiciled in North Arlington, but are domiciled in Kearny, New Jersey, Hudson County.

This is the remanded matter of EDU 09260-16 which was remanded to the Office of Administrative Law after the Commissioner in a decision dated April 17, 2017 determined that there were questions of fact to be resolved at a full hearing.

Upon remand, the matter was reassigned to the undersigned on or about April 25, 2017.

The case was heard to conclusion on July 7, 2017.

Subsequent to the hearing on July 7, 2017, petitioner filed a Motion to Suppress Evidence and made additional requests attempting to prevent the submission of video tapes captured by a security system monitored by a neighbor in Kearny.

Both sides submitted closing briefs on or about August 28, 2017. Subsequent submissions responding to the closing briefs were received on or about September 6, 2017. On that date, the record closed.

TESTIMONY

Five witnesses on behalf of the respondent testified at the hearing. Y.Y. testified on her own behalf.

The first witness to testify was Anthony Scala, a Detective employed by the North Arlington Police Department. Part of his assignment as a detective for the Borough includes investigating juvenile matters and conducting residency checks at the request of the Board of Education. Scala investigated this matter on two dates, September 16 & 17, 2015. On September 16, 2015, Scala went to Y.Y.'s North Arlington address at about 6:30 a.m. and stayed until about 7:30 a.m. During that time, he did not observe Y.Y. or her children leave the residence. Upon further investigation, Scala discovered that D.Y., Y.Y.'s younger child had arrived at school in North Arlington.

On September 17, 2015, Detective Scala observed Y.Y. and her older son leave the Kearny address and travel to an unknown location. which Detective Scala was unaware. He subsequently observed the younger son leave the Kearny address and drive away with an elderly man who dropped D.Y. off at a school in North Arlington.

Other than some conversations with Y.Y., that was the extent of Detective Scala's investigation.

The next witness to testify was Harry Melber, an Investigator employed by Check Em Out Investigations. Melber conducts residency investigations on behalf of his employer.

He testified that on or about October 13, 2016, he conducted surveillance at the North Arlington address, but did not see either of petitioner's two vehicles. He then proceeded to the Kearny address and saw both of petitioner's vehicles parked there. He continued his surveillance on that morning and saw Y.Y. and W.Y. exit the Kearny address and enter Y.Y.'s vehicle. He followed them to Bergen County Technical School in Hackensack where W.Y. was dropped off.

Melber conducted no further investigation until May 30, 2017 and which time he observed Y.Y.'s vehicle parked at her Kearny residence at approximately 6:00 a.m. On

June 1, 2017, Melber conducting further surveillance of petitioner's residence in Kearny observed her car there and also saw Y.Y. and W.Y. exit the home, enter her car and travel to Bergen Tech.

On several dates in June, Melber conducted surveillance at the Kearny address and observed Y.Y.'s vehicle parked there.

On June 7th, June 16th and June, 19th, Melber saw Y.Y. leave with her son, W.Y. and travel to Bergen Tech.

The next witness to testify was Carla Gomes, a Process Server for Simply Status. Gomes testified that she attempted to serve process on Y.Y. at her Kearny address and saw Y.Y.'s husband and younger son at the residence, both of whom indicated that Y.Y. was not there. Gomes then proceeded to the North Arlington address, apparently had some conversations with unnamed people in the vicinity of the North Arlington residence of Y.Y., but really offered nothing of significant evidential value to the case.

The next witness to testify was Kathleen Morano, the school's Business Administrator/Board Secretary for the North Arlington Board of Education.

According to Morano, she learned of the possibility of a residency problem with respect to Y.Y. from an employee in her office who also was a part-time employee in Kearny. After learning from her employee that a Kearny resident was attending the Bergen County Academy program although they were not residents of Bergen County, she notified the Superintendent of Schools of North Arlington, who, according to Morano, was apparently already familiar with the possibility that a Kearny resident was contending that she was domiciled in North Arlington.

More importantly, Morano confirmed that Y.Y. attended a Board meeting with an attorney in anticipation of a disenrollment hearing for her children. Documentation was submitted by Y.Y. at the meeting and there was some questions about a PSE&G bill and Y.Y. was given a second meeting to attend, at which point she would have been able to clarify the PSE&G bills and present any further testimony or documentation that

she desired to submit. That meeting was conducted in May of 2016, but as a result of some delays, Y.Y. left prior to the full meeting being conducted. At that meeting, both Y.Y.'s children were dis-enrolled as can be seen from documentation forwarded to Y.Y. after that meeting.

The next witness to testify was Anita Gilmore, Y.Y.'s neighbor in Kearny.

In July, 2015, Ms. Gilmore's granddaughter was visiting her when she told Ms. Gilmore that Y.Y.'s son was a student in her class in a North Arlington Elementary School. It was this conversation that Ms. Gilmore had with her granddaughter that led Ms. Gilmore to initiate an investigation into Y.Y.'s residency. Ms. Gilmore, having lived in Kearny in excess of 40 years, advised Board member Stanley Titterington of the possibility that Y.Y. was in violation of residency requirements.

It was apparent during the cross examination of Ms. Gilmore that to describe the relationship between her and Y.Y. as contentious would be complimentary. There is an extensive history of discord with complaints filed in Municipal Court, Superior Court and in Federal Court. The relationship between Ms. Gilmore and Y.Y. would cause any factfinder to be somewhat reluctant to trust the testimony that emanated from these witnesses when referring to each other. However, there is little in Ms. Gilmore's testimony that must be examined from a credibility standpoint since there is little debate that Y.Y. was her neighbor and the relationship between the two was dysfunctional. Ms. Gilmore, in the recent past, had significant upheavals in her family which she conceded may have had some deleterious effect on her ability to recall details. She did however confirm that a security system that she has protecting her property captured many days which Y.Y. was at the Kearny location, performed some functions of ownership (gardening) and was seen coming and going in the morning and afternoons at the residence. Attached hereto as Exhibit 1 is a depiction of what is reflected in videos prepared by respondent. Having viewed the videos, I concur with the recitation as depicted in Exhibit 1.

Ms. Gilmore went on to testify to several aspects of this matter that actually concern themselves with the relationship between her and Y.Y. Since the only issue to

be resolved herein is whether or not Y.Y. and/or her family were domiciled in North Arlington, little weight was given to this portion of her testimony.

The last witness to testify was Y.Y. By way of background, Y.Y. came to this country from China in 1998. The 30 year difference in her age and that of her husband did not prevent them from marrying and subsequently purchasing the Kearny residence in 2001. They lived together until October 2013 when Y.Y. moved to a home in North Arlington on Church Street. According to her testimony, her older son, W.Y., remained with her husband while her younger son stayed with her in North Arlington.

Y.Y.'s testimony with respect to why she moved out of the Kearny residence in October 2013 was as follows:

A. And when did you move out of that house:

Q. October of?

A. 2013

Q. And when you moved out, what – what was the point of moving out?

A. Well, you know, my husband and I, we are thirty years ago difference. And so, actually, at some point we have a very different desire of life. And so, I wanted to do something, more activities outside. Because my husband, he has ALS, also called Lou Gehrig's Disease. So, he's limited – limited.

Q. So, am I right in saying that in October of 2013 you separated?

A. Yes. Yes.

Q. And when you separated, where did your sons go.

A. Well, the –

Q. At that point, they were eight and twelve.

A. Yes. My older one stayed most time with my husband. And, then my younger one stayed most time with me. But also they visit the Kearny very often. Because they play piano. So the Kearny has the room and the piano.

Q. They have a piano at that address?

A. Yes.

Q. How often did you sleep at the Kearny address after October of 2013?

A. Well, I have to say, before this residency issue arise – arisen. And I sleep probably less than one day or two day a week at most. But since this residency issue occurred, I probably spend a little bit more time just because there are various issues and also my husband, his health deteriorated a little bit more than before. Yes. Well, and also a little background about my husband and me. I feel – I feel like, you know, even we have different desire of life at this point, but I -- I do care about him, his well-being. And he's a very decent person. So actually, when I came to this country, I was on my own. And actually, my husband, we met just several months after I came to this country. And we married afterwards. And he supported me unconditionally.

Q. When was that?

A. 1998. So I went to Business School. Do my own things.

Q. And then the two of you bought the Kearny property in 2001?

A. Yes.

Q. Did he buy it or did you both buy it?

A. Well, we – we both kind of did it. Because he back then, work as a Professor at NJT in Rutgers. And that I work full-time at a pharmaceutical company.

Q. You did?

A. I did.

Q. Okay.

A. So, you know, I feel like – And also, since we're onto the topic, because of my husband's condition, his doctor said that he only have about three years to live. So, (crying) I do think I should take care of him for the rest of his life.

Q. Okay. So, you spend time at Kearny taking care of your husband. But you have address in North Arlington. Do you stay there at all?

A. I – I do, Your Honor. And because a lot of times, you know, my – There are school days, actually, most of the time my husband – Actually, my older son and I, we go back to North Arlington after, you know, things get calmed down in Kearny. My son actually – I teach him Chinese. So we mar – We have the TV's, the Chinese cable TV. So we watch some TV. And I train him about, you know, the pronunciation, the reading, talking.

Q. Now, you do that in Kearny?

A. In North Arlington.

Q. North Arlington.

A. -- has the Chinese cable. And also – Actually, my husband and I, we have a slight different view of approaching the education. So, when – with my young – older son, we talk about things more before, you know, beyond he discuss with his father. And also, you know – So then, --

Q. How old is your husband?

A. He's 79.

Q. Okay. You did mention that when you decided to move out of the Kearny address in October of 2013, your older son stayed in Kearny with your husband?

A. Yes.

Q. Okay. And he's – How – did he get to go to Bergen County Technical?

A. Well, that's the time he – he wasn't at the Bergen Tech at that time. He wasn't –

Q. Okay. When – When did he start there?

A. September, 2014.

Q. September of 2014. That's when you had already moved to North Arlington.

A. Yes.

Q. And you had purchased the property in North Arlington.

A. Yes. And –

Q. Okay.

A. For my son, he – he takes a bus, go to the Bergen Tech.

Q. Take a bus from?

A. North Arlington, in front of the library in the high school. And sometime, if he happens to stay at the Kearny, I drive him to the Bergen Tech School.

Q. Okay. How many bedrooms is the Kearny, third floor Kearny apartment?

A. You mean the North Arlington.

Q. I'm sorry. North Arlington.

A. Two

Q. Two?

A. Yeah.

Q. How many bathrooms?

A. One.

Q. Would you say that's a little small for the three of you? Two boys and you?

A. well, it is a little. Well, I think it's adequate. Because there's the two – It's actually a king size bed for the two boys. And – And now there was a bed for me in separate room. But since my younger son was kicked out of school in 2015, he spends a lot of time in Kearny, sleeping in Kearny. So it's a – you know, but actually, my younger son, he has a friend from North Arlington. During the summer time, he goes to his friend's house in North Arlington or his friends come to our house in North Arlington. And we had a barbeque. So, we have a – you know, there's also a little place in the basement they can play.

In January 2014, Y.Y. registered her younger son in North Arlington providing them with the address of Union Place where she had been living since October 2013. Her older son, having remained in Kearny, subsequently graduated from the middle school in June 2014. Prior to his graduation from Kearny Middle School, Y.Y. in June 2014 completed the purchase of 33 Union Place with a co-owner, a relative from China. It was a three family home into which they moved in October 2014. In September 2014, W.Y., Y.Y.'s older son, started attending Bergen County Technical High School in Bergen County.

The North Arlington property which Y.Y. purchased was a 3 family home, the third floor of which was a relatively small attic apartment with two bedrooms and one bathroom. Though, according to Y.Y., she intended to occupy one of the two larger rental units either on the first or second floor, she apparently never had the opportunity to do so.

Y.Y. went on to testify to all of the indicia that would normally be evidence of domicile, including her license, her voting registration, many bills, and assorted other indicators of at the very least her residency in North Arlington.

Y.Y. did not dispute that she does in fact spend a considerable amount of time at the Kearny residence, but attributes that for the most part to her husband's health conditions. She in fact had become a health aide and bills an insurance company for her nursing/medical attention accorded to her husband. She testified that she and her

two children eat dinner, for the most part, on a regular basis each night at the Kearny residence. But then, she, most of the time, returns to the North Arlington residence.

THE LAW

N.J.S.A. 18A:38-1(a) and N.J.A.C. 6A:22.3.1(a) sets forth the right of a student to a free public education, which in pertinent parts states:

Public schools shall be free to the following persons over five and under twenty years of age:

- a. Any person who is domiciled within the school district[.]

Consideration in proving residency for purposes of establishing eligibility for school district placement is found at N.J.A.C. 6A:22-3.4(a),

(a) A district board of education shall accept a combination of any of the following or similar forms of documentation from persons attempting to demonstrate a student's eligibility for enrollment in the school district:

1. Property tax bills, deeds, contracts of sale, leases, mortgages, signed letters from landlords and other evidence of property ownership, tenancy or residency;
2. Voter registration, licenses, permits, financial account information, utility bills, delivery receipts, and other evidence of personal attachment to a particular location;
3. Court orders, State agency agreements; and other evidence of court or agency placements or directives;
4. Receipts; bills; cancelled checks; insurance claims or payments; and other evidence of expenditures demonstrating personal attachment to a particular location or to support the student;

. . .

- 6 Affidavits, certifications and sworn attestations pertaining to statutory criteria for school attendance, from the parent, guardian, person keeping an "affidavit student," adult student, person(s) with whom a family is living, or others as appropriate;
8. Any other business record or document issued by a governmental entity.

(a) A district board of education may accept forms of documentation not listed in (a) above, and shall not exclude from consideration any documentation or information presented by a person seeking to enroll a student.

. . .

(c) A district board of education shall consider the totality of information and documentation offered by an applicant, and shall not deny enrollment based on failure to provide a particular form of documentation, or a particular subset of documents, without regard to other evidence presented.

Parents have the burden of establishing domicile in the school district by a preponderance of the evidence. *Y.E. ex rel. E.E. v. State-Operated Sch. Dist. of the City of Newark*, No. A-6009-06T3, 2008 WL 2492258, at *9 (App. Div. 2008). A student is a resident of a school district if his parent or guardian has a permanent home in the district such that “the parent or guardian intends to return to it when absent and has no present intent of moving from it, notwithstanding the existence of homes or residences elsewhere.” N.J.A.C. 6A:22-3.1(a)(1). The regulation further provides:

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.

Thus, the parameters of the law are for the most part clear with respect to what parents and students are entitled to based on their domiciliary.

Though parents and children can have several different residences, according to the law, there can only be one domicile. In order for a residence to qualify as a domicile

There must be

1 in actual and physical picking of an abode;

2. The subjects intention to make his home more permanently or at least indefinitely; and
3. His intention to abandon his old domicile

K.L. and K.L. o/b/o minor child, M.L. v. Board of Education of the Borough of Kinnelon, Morris County 2008 WL2026047, at 5.

The evaluation of the facts of the case determined the distinction between residence and domicile. Where a person has more than one residence, some of the factors to be evaluated are:

The physical characteristics of each place, the time spent and things done in each place, the other person found there, the person's mental attitude toward each place, and whether there is or is not an intention when absent to return. Mercadante v. the City of Paterson, 111 N.J. Super 35, 39-40 (Ch. Div. 1970) aff'd, 58 N.J. 112 (1971).

School Districts have the authority to dis-enroll students who are not domiciled in their district. N.J.S.A. 18A:38-1(b)(2); N.J.A.C. 6A:22-4.3. Procedures to remove a child are proceeded by the issuance of a Notice of Ineligibility, N.J.S.A. 18A:38-1(b)(2); N.J.A.C. 6A:22-4.2, -4.3.

The notices in this matter were appropriately provided to Y.Y. and she did in fact attend several Board meetings. The first one she attended with an attorney, the next two apparently on her own. Nonetheless, there is little doubt that Y.Y. had more than an adequate opportunity to address the Board and she did in fact present them with significant paper documentation though, at her last appearance, she left before the final dis-enrollment meeting.

DISCUSSION

Despite the antagonistic, argumentative and disagreeable relationship between Y.Y. and her neighbor, Ms. Gilmore, the facts in this matter are not in dispute, but the interpretation of those facts is. In other words, there is little doubt that Y.Y. and her

children had at least two residences, the one in Kearny and the one in North Arlington, but the issue of which one was their domicile is the only issue to be resolved.

Though most of the statutory indicia of residence/domicile are met by Y.Y.'s ownership of the property in North Arlington accompanied by her driver's license address, her voter registration and other paper indicia of residence/domicile, more important than all of the periphery paper submitted by Y.Y. is where, in actuality, her two children were living.

The witnesses in this matter on behalf of the respondent testified to many dates in which Y.Y. and/or her husband left the Kearny address and escorted her children either to Bergen County Tech or in D.Y.'s case, prior to his dis-enrollment, attendance at middle school in North Arlington.

This foundation of testimony requires that Y.Y. bear the burden of refuting the allegation that her domicile is Kearny rather than North Arlington. But even this assertion needs some clarification.

Y.Y. contends that she separated from her husband, and after a short period of time renting space in North Arlington, subsequently moved to a three family home in North Arlington in October 2014. Her joint ownership and residency of the third floor attic apartment in this three family house would undoubtedly account for the bills being in her name. Obviously, the deed will also contain her name. None of these facts, however, illuminate the question of where her children were actually domiciled. Though the law indicates that the domicile of the children usually follows the domicile of the parent, when two parents are involved, the domicile can be either location.

Y.Y.'s assertion that she is domiciled in North Arlington is quite evidently no more than pretextual contentions. Though she testified that the children stay with her for most of the week before going to their father on weekends, there is no evidence from the respondent's witnesses that would corroborate that assertion, nor has Y.Y. presented any evidence, other than her oral testimony, that her children live with her during the week. At the first Board meeting which Y.Y. attended with an attorney, the Board sort permission to visit the North Arlington residence claimed by Y.Y. to be her domicile. I

suspect that if Y.Y. considered the residence adequate for her and her two sons to occupy, she would have acceded to this request. Y.Y. and her attorney, however, essentially refused the request seeking the Board to provide them with a definition of "domicile", a request which is a legal conclusion which apparently was not met resulted in Y.Y. withholding permission to the Board to visit her residence.

A review of Y.Y.'s testimony is replete with explanation after explanation for why she and the children must spend significant time at the Kearny residence. Be it piano, the internet access, or the need for her nursing skills for her husband it is apparent that much more time was spent in Kearny than in North Arlington. It strikes the undersigned as quite unlikely that the whole family would eat dinners together on a regular basis and then have Y.Y. transport either one or both of her children back to the North Arlington residence in order to sleep there.

There was a disturbing lack of corroboration of contentions made by Y.Y. that she and her sons/son resided in North Arlington. Testimony from **ANYONE** supporting Y.Y.'s testimony was glaringly absent and quite suspect.

Y.Y.'s motive for separating from her husband was, according to her, to recapture some of her social life and recapture some of her independence. The disparity in their ages and the health difficulties being confronted by her husband apparently led her to establish a secondary residence. And though an analysis of the facts in this matter might lead to the conclusion that Y.Y. has in fact established a domicile for herself in North Arlington, there is absolutely no evidence that her two children ever left their domicile with their father in Kearny. Thus, the domiciliary of the children follow that of the parent. In this case, as a result of an evaluation of the evidence, there is little doubt that the children were never domiciled in North Arlington, but remained with their father in Kearny.

CONCLUSION

Y.Y.'s children were never domiciled in North Arlington and remained domiciliary of Kearny during the crucial time from September 2014 through the present. Any payments made to Bergen County Technical High School on behalf of W.Y. after that

date, are to be reimbursed by Y.Y. to the Township of Kearny. Not enough evidence was presented with respect to tuition due to Kearny for D.Y.'s attendance. If no agreement between the parties can be reached on what, if anything is owed for D.Y.'s attendance, an application to the undersigned for reimbursement can be submitted.

ORDER

Having determined that domicile in this matter is in Kearny, petitioner is **ORDERED** to reimburse tuition paid by respondent to Bergen County Technical School on behalf of W.Y.

I hereby **FILE** this initial decision with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

This recommended decision may be adopted, modified or rejected by the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who by law is authorized to make a final decision in this matter. If the Commissioner of the Department of Education does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION, ATTN: BUREAU OF CONTROVERSIES AND DISPUTES, 100 Riverview Plaza, 4th Floor, PO Box 500, Trenton, New Jersey 08625-0500**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

May 8, 2018



DATE

JEFFREY A. GERSON, ALJ/Ret., on recall)

Date Received at Agency:

May 8, 2018

Date Mailed to Parties:

sej

APPENDIX

WITNESSES:

For Petitioner

Y.Y., petitioner

For Respondent

Anthony Scala

Harry Melber

Carla Gomes

Kathleen Marano

Anitra Gilmore

EXHIBITS:

For Petitioner:

- P-1 Ms. Y.'s North Arlington Deed
- P-2 Ms. Y.'s Property Tax Bill
- P-3 Ms. Y.'s Certificate of Occupancy
- P-4 Photos of North Arlington Residence
- P-5 Ms. Y.'s PSE&G Gas Bill
- P-6 Ms. Y.'s Verizon Bill
- P-7 Communications with Verizon
- P-8 Ms. Y.'s Grand Jury Subpoena
- P-9 Ms. Y.'s Voter Registration
- P-10 Ms. Y.'s HHA License
- P-11 Ms. Y.'s W-2 Statement
- P-12 Ms. Y.'s Financial Statement
- P-13 Kearny Tax Bill
- P-14 U.S. Census 2000 Data
- P-15 OAL Initial Decision
- P-16 North Arlington Enrollment Requirement
- P-17 ACLU Letter to NJ Superintendents
- P-18 Ms. Y.'s Letter to Methfessel

- P-19 North Arlington Police Department
- P-20 Ms. Y.'s Appeal
- P-21 A Letter from Ms. Y.
- P-22 Ms. Gilmore's ADT Alarm Contract
- P-23 Camera Direction
- P-24 Ms. Y.'s Civil Action
- P-25 5/23/14 Police Report
- P-26 2011 Police Report
- P-27 Ms. Y.'s Response to Bergen Tech
- P-28 Certified Attendance
- P-29 Notice of Illegal Trespass
- P-30 Subpoena
- P-31 Subpoena
- P-32 Subpoena
- P-33 Court Opinion
- P-34 Communications Between Schools
- P-35 Notice of Appeal
- P-36 Ms. Y.'s Home Healthcare Bills

For Respondent:

- R-1 Ms. Y.'s Petition
- R-5 6/18/15 Kearny Police Report
- R-6 Notice of Final Ineligibility
- R-7 7/26/16 Kearny Incident Report
- R-8 10/13/16 Surveillance Log
- R-9 Ms. Y.'s Car Registration
- R-10 Photos of Y.'s at Kearny Residence
- R-11 Detective Scala's Report
- R-12 Ms. Y.'s 10/8/15 Letter to School
- R-13 Dr. Stringham's 11/2/15 Letter
- R-18 Ms. Y.'s Proof of Residency Package
- R-19 Documents Submitted for Enrollment
- R-20 Documents
- R-21 Ms. Y.'s Amended Complaint

- R-22 Certificate of Occupancy
- R-23 Verizon Records
- R-24 Pictures of North Arlington Rooms
- R-25 May, 2014 Police Report
- R-26 2011 Police Report
- R-27 2017 Investigative Summary
- R-29 Ms. Y.'s 2/1/17 Letter
- R-30 Notice of Motion
- R-32 North Arlington Tuition Rates
- R-34 Document
- R-35 Flash Drive