79-19

New Jersey Commissioner of Education

Final Decision

S.H. and C.H., on behalf of minor children, C.H., S.H., and S.H.,

Petitioner,

v.

Board of Education of the Township of Alloway, Salem County,

Respondent.

Synopsis

Petitioners filed an appeal on behalf of their minor children, C.H., S.H., and S.H., challenging the determination of the respondent Board that they did not reside in Alloway Township after August 25, 2017, and that the children were therefore ineligible to attend school in respondent's school district during the 2017-2018 school year. The Board sought payment of tuition for the number of days that the children attended school in Alloway while ineligible to do so.

The ALJ found, *inter alia*, that: petitioners in this matter are in the business of purchasing, renovating and selling or renting properties, and own nineteen properties in total; from 2007 until August 2017, petitioners resided at a home on Neil Court in Alloway; in July 2017, petitioners moved to a larger house in Elmer, but never disenrolled the children from respondent's school district; the children continued to attend school in Alloway; petitioners represented that the move was temporary pending the completion of renovations to one of their properties in Alloway; petitioners did not move back to Alloway until October 2, 2018; it is undisputed that petitioners did not reside in Alloway between August 25, 2017 and October 2, 2018; the testimony and documentary evidence presented by petitioners herein was not credible, while the testimony of representatives of the Board was consistent and credible; petitioner's children attended school in respondent's district during the 2017-2018 school year, and from September 5, 2018 through October 2, 2018, while domiciled outside of the district; pursuant to *N.J.S.A.* 18A:38-1(b)(1), petitioners shall be assessed tuition for the period of ineligible attendance of their children. The ALJ concluded that petitioners failed to satisfy their burden of proving that their children were entitled to a free public education in the respondent's district during the period at issue herein. Accordingly, the ALJ affirmed the Board's residency determination and ordered petitioners to pay the Board tuition in the total amount of $ 36,333.60 for the unauthorized attendance by their children in Alloway Township schools during the 2017-2018 and 2018-2019 school years.

Upon review, the Commissioner concurred with the findings and conclusions of the ALJ, and – finding petitioners' exceptions wholly unpersuasive – adopted the Initial Decision of the OAL as the final decision in this matter.

March 26, 2019

OAL Dkt. No. EDU 16589-17
Agency Dkt. No. 241-10/17

New Jersey Commissioner of Education

Final Decision

S.H. and C.H., on behalf of minor children, C.H., S.H., and S.H.,

Petitioner,

v.

Board of Education of the Township of Alloway, Salem 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 by petitioner pursuant to *N.J.A.C.* 1:1-18.4, and the Board's reply thereto.

In this matter, petitioners are challenging the Board's determination that they did not reside in Alloway Township after August 25, 2017, and that the minor children were therefore ineligible to attend school in the district. The Administrative Law Judge (ALJ) found that petitioners did not meet their burden of demonstrating that they were residents of Alloway Township during the 2017-18 school year and during the period of September 5, 2018 through October 2, 2018. Accordingly, the ALJ ordered tuition reimbursement in the amount of $36,333.60.

In their exceptions, petitioners argue that the ALJ ordered petitioners to redact personal identification information as part of a protective order, but then held it against them by finding that the redactions were suspect and weighed against their credibility. Petitioners

contend that the ALJ's determination that C.H. was not a credible witness was erroneous, not based on any other factor, and should be set aside.

Petitioners also take exception to the ALJ's conclusion that the Board provided petitioners with due process. Petitioners argue that the ALJ did not address the adequacy of the Board's *ex parte* hearing, in which they failed to call C.H. into a closed session of the Board meeting for the residency hearing. Instead, the ALJ blamed petitioners for not inviting themselves into the closed session and cited no legal support for her conclusion that the Board had provided due process. Petitioners maintain that the Board failed to create a record of the hearing, refused to tell them who was going to testify, and did not permit them to attend, thus violating their due process rights at every juncture. Petitioners urge the Commissioner to therefore reject the Initial Decision because the ALJ disregarded the Board's failure to conduct a proper hearing on the record, as well as the fact that petitioners were not given a chance to present additional evidence.

Additionally, petitioners argue that the ALJ erred in finding that they were not domiciled in Alloway Township. Petitioners maintain that they lived in Alloway Township from 2007 to the present, except for a short period between August 25, 2017 and November 6, 2017. Specifically, petitioners sold their home on Neil Court in Alloway Township on August 25, 2017 and moved into a house that they owned in Elmer. They entered into a contract on September 22, 2017 for another house in Alloway Township but the sale fell through on September 26, 2017. Thereafter, petitioners purchased a house on Aldine Road on November 6, 2017 and another house on Greenwich Street on February 9, 2018, but both Alloway Township properties required extensive renovations. Petitioners moved into the Greenwich house on October 2, 2018. As such, petitioners argue that they paid property and

school taxes for the last 12 years, with the exception of the short gap between selling the Neil Court house and purchasing the Aldine Road house. Accordingly, petitioners maintain that their intent was always to live in Alloway Township, not Elmer, but they were unable to move into their Alloway house until renovations were made to make it habitable.

Finally, petitioners contend that the ALJ erred in ordering reimbursement of $36,333.60 in tuition. One of the minor children, C.H., only attended school for half-day prekindergarten, so petitioners argue that they should not be assessed the full $60.56 per day for C.H. Additionally, petitioners are aware of a student who attends the school and pays tuition at a reduced rate, so they question why their tuition assessment should be $10,900 per year rather than $6,500, the amount paid by the other student. Petitioners point out that the Board Secretary who testified regarding the tuition calculation seemed unsure of the tuition policies. Moreover, petitioners contend that the tuition should be reduced to cover the time that the ALJ took to issue an Initial Decision because "the ALJ's untimely decision deprived [petitioners] of the option to send their children to school in Elmer long before the conclusion of the 2017-18 school [year]." (Petitioners' Exceptions at 16[1])

In reply, the Board contends that petitioners' exceptions do not meet the requirements of *N.J.A.C.* 1:1-18.4(b) as they do not take exception to specific findings of fact or conclusions of law, but rather reiterate the same arguments made before the ALJ. The Board also argues that the ALJ was correct in finding that petitioner's redacted text messages were suspect in that she was purposefully concealing information. Further, the ALJ only used the redacted text messages as one factor when rendering C.H. a non-credible witness.

The Board argues that the residency hearing conducted during the September 26, 2017 Board meeting was proper and did not deprive petitioners of due process.

[1] Citation is to the first set of exceptions filed by petitioners, which were dated February 25, 2019.

The Board explains that extensive testimony was taken at trial regarding the Board meeting, which makes clear that C.H. arrived late to the meeting, sat in the back of the room, and did not sign in until the very end of the meeting when she was leaving. C.H. did not tell anyone she was there, despite numerous opportunities to do so, and did not speak up when the Board announced that it was going into executive session to discuss a student residency matter. The sign in sheet was double checked before executive session, and the Superintendent also came out from executive session to check for petitioners but did not see C.H. in the audience. C.H. did not say anything when the Board announced its decision on the matter after executive session, at the end of the meeting, or in the following days. As such, the Board urges the Commissioner to adopt the ALJ's finding that "C.H.'s refusal to identify her presence at the board meeting resulted in [petitioners'] failing to exercise their due process rights and participate in the hearing." (Initial Decision at 20)

The Board contends that the Initial Decision was well-reasoned and correctly found that petitioners were not domiciled in the district during the dates in question. The Board explains that petitioners are in the business of purchasing investment houses to remodel and either rent or sell, and they have 19 properties. The Board contends that the two foreclosure properties petitioners bought in Alloway Township after selling their Neil Court home were an impractical size for their seven-person family, as they were both significantly smaller than the large house they had moved into in Elmer. Instead, the Board maintains that the Elmer home is where petitioners slept at night, ate their meals, intended to return to when they left, and where they parked their cars and trucks. Accordingly, the Board agrees with the ALJ that petitioners were domiciled in Elmer during the 2017-18 school year and until October 2, 2018.

Finally, the Board contends that the ALJ's assessment of tuition was correct. With respect to petitioners' argument regarding their half-day student being charged for a full day, the Board explains that the Business Administrator testified that the district charges a higher tuition for kindergarten students, whether full day or half day. In this case, the Board instead used the elementary student tuition amount when calculating tuition for petitioners' kindergarten student, so it was assessing a lower amount of tuition than it could have. Further, with respect to the other student who attends school on a tuition contract, the Board argues that petitioners are not privy to the circumstances surrounding that situation, and it is irrelevant to this matter.

Upon review, the Commissioner concurs with the ALJ's finding that petitioners failed to sustain their burden of establishing that they were domiciled in Alloway Township during the 2017-18 school year and until October 2, 2018. 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. It is undisputed that petitioners moved out of Alloway Township on August 25, 2017 and into a property that they owned in Elmer. Although petitioners claim they were domiciled again in Alloway Township as of the date they purchased their Aldine Road house on November 6, 2017, there is no evidence in the record that they ever lived in this house; petitioners admit that they could not move in due to the amount of work the property needed. The record makes clear that petitioners' true, fixed and permanent home was in Elmer – where they ate, slept, and returned each day – until petitioners moved back to Alloway Township and into their Greenwich Street home on October 2, 2018.

In *K.L. v. Board of Education of the Borough of Kinnelon*, 2010 *N.J. Super. Unpub.* LEXIS 11 (App Div. January 4, 2010), the Appellate Division found that although the

petitioners in that case had purchased a home in Kinnelon, they did not reside in the district as they could not occupy the home during renovations. The court explained:

> We think it obvious from these general principles that petitioners and their children were never domiciled in Kinnelon. While they may have possessed a present intention to reside there when the renovations were complete, it is undisputed that petitioners and their children never did reside in the district during the 2007-2008 school year. As such, their intention to do so is irrelevant. They had never established an "actual and physical . . . abode" in Kinnelon, and therefore they lacked the "necessary concurrence of physical presence and an intention to make that place one's home" upon which the legal concept of domicile rests.
>
> *[Id.* at *13-14 (quoting *In re Unanue*, 255 *N.J. Supra.* 362, 376 (Law. Div. 1991), *aff'd,* 311 *N.J. Super.* 589 (App Div.), *certif. denied,* 157 *N.J.* 541 (1998), *cert. denied,* 526 *U.S.* 1051 (1999)).]

As such, petitioners' argument that they "intended" to live in Alloway Township, while actually living in their Elmer home, lacks merit. Whether or not petitioners hoped to return to Alloway Township does not change the fact that they sold their home and moved out of the school district. The mere purchase of additional houses in the district or the payment of property taxes does not establish domiciliary intent, as petitioners had not taken up an actual and physical abode in those houses. Accordingly, petitioners did not meet their burden of demonstrating that they were domiciled in Alloway Township during the 2017-18 school year and during the period from September 5, 2018 through October 2, 2018.

Pursuant to *N.J.S.A.* 18A:38-1b, the Commissioner shall assess tuition against petitioners for the period during which the minor children were ineligible to attend school in Alloway Township. The Board's Business Administrator (BA) testified regarding the tuition rates and indicated that the Board was seeking reimbursement for the minor children in the amount of $60.56 per day, totaling an annual tuition rate of $10,900 each. Evidence in the record shows that the actual annual tuition rate was $11,139 for prekindergarten and

kindergarten, $11,216 for grades 1-5, and $10,949 for grades 6-8, and that the minor children were in 7th grade, 2nd grade, and prekindergarten during the 2017-18 school year. (Est. Tuition Calculated Rates for Regular Programs, Exhibit R-15). The BA testified that the Board took the lowest of those rates and "rounded it down" to establish a tuition rate of $10,900. (Testimony of Rebecca Joyce, T2 at 167) Although petitioners argue that the rate for C.H. should be lower because that child was only in half-day prekindergarten, the BA explained that the tuition rates for grades are an established rate and are not broken down by the hours of attendance. (T2 at 186-187) Accordingly, the Board is entitled to tuition reimbursement in the amount of $36,333.60 – $10,900 each for the 2017-18 school year, and $60.56 each for the 20 school days from September 5, 2018 through October 2, 2018, during which time petitioners' minor children were ineligible to attend school in Alloway Township.

The Commissioner does not find petitioners' additional exceptions to be persuasive. The Commissioner notes that the ALJ had the opportunity to assess the credibility of the witnesses who appeared before her 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. Contrary to petitioners' assertion, the ALJ did not base her finding that C.H. was not credible solely on her unilateral redactions of text messages, but rather on a multitude of reasons that were detailed by the ALJ in the Initial Decision. Additionally, the Commissioner agrees with the ALJ that petitioners were not deprived of their due process rights and instead

failed to exercise their rights and participate in the board hearing. With respect to tuition, any arguments regarding the tuition rate another student has contracted to pay are irrelevant. Finally, tuition should not be reduced by the length of time the ALJ took to issue an Initial Decision. Petitioners were not prohibited from removing their children from the district while their appeal was pending.

Accordingly, the Initial Decision of the OAL is adopted as the final decision in this matter. Petitioner is directed to reimburse the Board in the amount of $36,333.60 for tuition costs incurred during the period in which C.H, S.H., and S.H. were ineligible to attend school in Alloway Township. The petition of appeal is hereby dismissed.

IT IS SO ORDERED.[2]

COMMISSIONER OF EDUCATION

Date of Decision: March 26, 2019
Date of Mailing: March 26, 2019

[2] 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).

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. EDU 16589-17

AGENCY DKT. NO. 241-10/17

S.H AND C.H. ON BEHALF OF C.H.,

S.H. AND S.H.,

Appellants,

v.

TOWNSHIP OF ALLOWAY BOARD

OF EDUCATION, SALEM COUNTY,

Respondent.

Jamie Epstein, Esq.**,** for appellants

Victoria Beck, Esq., for respondent (Parker McCay, P.A., attorneys)

Record Closed: November 13, 2018 Decided: February 11, 2019

BEFORE **DOROTHY INCARVITO-GARRABRANT**, ALJ:

STATEMENT OF THE CASE

Appellants, S.H. and C.H., on behalf of C.H., S.H., and S.H., challenge the determination made by the respondent, Township of Alloway Board of Education, that they did not reside in Alloway Township after August 25, 2017. The respondent seeks

payment of tuition and costs for the number of days C.H., S.H., and S.H. attended school in the district while ineligible to do same.

PROCEDURAL HISTORY

On September 27, 2017, the respondent, through a Final Notice of Ineligibility, advised the appellants that their children, C.H., S.H., and S.H., were unauthorized to attend school in the Alloway Township School district, due to their non-residency. Appellants appealed the decision on October 18, 2017. The Department of Education Bureau of Controversies and Disputes transmitted this case to the Office of Administrative Law (OAL) on November 8, 2017, for a hearing pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14 F-1 et seq. On November 3, 2017, respondent filed an answer and cross-petitioner for tuition reimbursement and costs.

On December 22, 2017, respondent filed a Motion for Summary Decision in its favor relative to the residency issue and tuition and costs reimbursement, on the grounds that appellants had sold their home on August 25, 2017, purchased a new home outside respondent's school district, and did not own any property within its district.

On January 8, 2018, a Prehearing Order was entered which established filing deadlines for appellants' Motion for a Protective Order and respondent's opposition to same. On March 28, 2018, an Order was entered denying appellants' Motion for a Protective Order. Pursuant to that Order, appellants' opposition to respondent's December 22, 2017 Summary Decision Motion was filed by May 15, 2018. Respondent's filed a response to the opposition and appellants filed a sur-reply. Respondent's motion for summary decision was denied.

The hearing in this matter was heard on July 24, 2018 and July 31, 2018.

On July 31, 2018, at the beginning of respondent's presentation of their case, a piece of paper with notes written on it dropped out of the exhibit binder that was presented by appellants to the witnesses for their use during their testimony. (D-1.) The paper was given to the undersigned ALJ, when it fell out of the book. The paper

appeared to have notes regarding questions and testimony presented at the previous hearing by C.H. The ALJ took testimony from C.H. about the paper and allowed counsel for the parties to question C.H.. She admitted it was hers. She had taken the exhibit binders with her after the last day of hearing.[3] She had written notes on pieces of paper and they must have mixed with the binders in her bag after the hearing. She denied utilizing the notes during her testimony. There was insufficient evidence to conclude that C.H. had acted in an inappropriate manner. As a result, a motion for an adverse inference against appellants and specifically C.H.'s testimony was denied. (T 145:23-25, 146-147:1-20, 155-159:1-10.)

After the July 31, 2018 hearing, the record remained open until September 14, 2018.

By correspondence dated October 9, 2018, appellants provided a certification, dated October 8, 2018, indicating that they moved back to Alloway Township on October 2, 2018. Subsequently, the undersigned re-opened the record to allow respondent thirty days to provide a responsive submission. The undersigned indicated the record would close on November 13, 2018. Respondent provided a responsive certification with supporting documentation on November 13, 2018. The appellants objected indicating that the thirty-day deadline expired on November 12, 2018, and therefore, the respondent's submission was untimely. The thirty-day extension and the November 13, 2018, were inadvertently inconsistent. The extension of time was contemplated to end on November 13, 2018. Therefore, respondent's submission was timely.

Respondent's November 13, 2018 submission includes an investigative report in which the children are shown in a photograph at such great distance that their faces are not recognizable. However, appellants objected to the picture being accepted as part of

[3] Curiously, C.H. appears to have prepared the exhibit book. Exhibit R in the appellants' exhibit book is labeled as follows: "3 affidavits by mtg (sic) attendees confirming **my** presence." A review of the exhibit indicates the affiants were confirming C.H.'s presence at the respondent's Board meeting on September 26, 2017. During her testimony about this issue, C.H. stated that she took the exhibit binders home with her after the first day of hearing. While not prohibited, it is odd that C.H. prepared the exhibit book which was utilized on behalf of appellants during trial. This fact coupled with C.H.'s unilateral redaction of content from other evidence admitted during the hearing is troubling.

the record without being redacted. That page of the report is hereby **SEALED** and has been placed in a separate sealed envelope.

On December 28, 2018, an Order for Extension was entered extending the time for filing the initial decision until February 11, 2019.

SUMMARY OF TESTIMONY

For Appellant

Courtney Hitchner (Hitchner) is an acquaintance of C.H. Hitchner's son attends respondent's school with C.H.'s children and the children play together. On September 26, 2017, Hitchner attended the respondent's board meeting because she wanted to be active in the community and keep current with changes at the school. Upon her arrival, she walked into the meeting with C.H. and took a seat in the back of the room near C.H. The meeting had already commenced and Hitchner stated that she missed the meeting's beginning formalities. Hitchner testified that she could observe C.H. throughout the meeting, and that C.H. never left her seat. C.H. never told anyone she was present or arrived late. Hitchner testified that she could hear what the Board was saying throughout the meeting.

When the Board went into executive session they did not announce the purpose of the closed session. Hitchner did not know that the closed session involved C.H.'s children. The students involved were referred to by numbers. No one called for C.H. to join the closed session. The closed session lasted about half an hour. When the Board returned from closed session they announced their decision "[d]enying children coming into the school, or staying in the school." C.H. was also present when this decision was announced. Hitchner denied that C.H. ever asked her about their decision because C.H. could not hear the tuition number. C.H. remained in her seat until the end of the meeting. After the meeting, Hitchner and C.H. walked to the front of the room and signed the sign-in sheet. (P-17.) Hitchner then went home.

C.H., testified on her own behalf. The appellants have five children, to wit: C.H. who is seventeen years old and graduated from Woodstown High School in June 2018;[4] S.H. who is thirteen years old; S.H. who is eight years old; C.H. who is five years old; and S.H. who is two years old. The thirteen, eight, and five years old children are the subjects of this appeal.

Appellants resided at XX Neil Court, Alloway Township, (Alloway), New Jersey for approximately ten years prior to August 25, 2017, at which time they moved out of Alloway.[5] The family moved to XXX Woodstown Deer Town Road in Elmer, New Jersey, (Elmer),[6] which was a property they had purchased in November 2016. Appellants purchased the property for investment and development. C.H. insisted that it was never the family's plan to leave Alloway. C.H. testified that appellants moved their personal belongings to the Elmer home. They entertain at the Elmer home. They use the lake on the property. They park their recreational vehicles (RVs) and their other vehicles at the property.

C.H. alleged that at the time of their move, they were in the process of purchasing another property in Alloway on Main Street. They had been negotiating to buy this property since July 2017. However, the sale fell through eventually. (P-N.) Appellants are engaged in the business of purchasing, renovating, and renting or selling properties. They own nineteen properties. C.H. stated that their mailing address, a post office box, remained the same after they moved. (P-A, pp. 1-37.)[7] They obtained a post office box because they had difficulty receiving their mail at the XX Neil Court residence.

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[4] C.H. was a student at Woodstown High School, which serves as the high school district for Alloway Township. Appellants did not appeal any decision made about C.H. in this matter. However, respondent's business administrator testified that tuition costs were paid by respondent to the high school district for the 2017-2018 school year. (P-U.) Any change in her domicile would result in an adjustment to the number of students sent from Alloway to the high school district and a corresponding change to the number of students sent from C.H.'s new school district to the high school district.

[5] Appellants requested that all address numbers be redacted. Therefore, although public information, the property numbers are not used in this Initial Decision.

[6] This property is designated as being in Elmer but is part of the Upper Pittsgrove school district.

[7] C.H. unilaterally redacted the documents in P-A without the advice of counsel. This made the documents suspect.

C.H. stated that she received a letter from the Alloway superintendent, Kristen Schell, (Schell), on September 5, 2017, two days before the start of the school year, which she understood to say that her children were not allowed to attend respondent's school because they had moved out of the district, although C.H. admitted during cross-examination that this was not stated in that letter. The letter did not advise of a right to appeal this decision or that her children could remain in school while the decision was challenged. When she received the letter, C.H. went to the school and spoke with Schell. C.H. admitted the family had moved out of the district. C.H. stated that she explained that they "had sold their house but were in the process of purchasing a new one with only a couple of days, possibly weeks overlap and that their education shouldn't be disrupted for only a couple of days or a couple of weeks." Schell asked for the address of the property. C.H. refused to provide the address because they were still going through inspections and the contract was not final. C. H. asked to speak with the respondent and Schell said she would check the policy and respond.

On September 6, 2017, Schell responded. C.H. stated that Schell advised her that the children were disenrolled and that their transfer papers were at the school office and ready to be retrieved. C.H. alleged that Schell indicated that if the children showed up to school the next day, then they would be physically removed. Schell did not mention any right to appeal the decision. C.H. immediately contacted her attorney who wrote a letter to the school. (P-G.) Thereafter, C.H. received an email from Schell stating that the children could attend school the next day. C.H. also received a notice of ineligibility from Schell. Appellants requested an appeal hearing from respondent, which was scheduled for the next board hearing on September 26, 2017.

Subsequently, appellants requested a copy of any evidence that the respondent was introducing or considering at the appeal hearing. This information was provided on September 21, 2017. (P-L.) On September 22, 2017, appellants sent a correspondence to each of the board members. (P-M.) Appellants conveyed that they had no desire to leave Alloway. C.H. stated their "house sold quickly" and they temporarily located to another property, which they owned. However, C.H. also testified that their XX Neil Court home had been placed on the market for sale initially in 2007

and continued to be offered in the Multiple Listing Service (MLS) for sale through 2017. C.H. indicated that the "quick sale" reference meant the buyers moved in, in a matter of weeks. They were in the process of purchasing another Alloway property and needed ninety days to complete the purchase. Appellants offered to pay tuition for the time frame during which they did not have a house in Alloway. No response was received from respondent.

On September 26, 2017, C.H. arrived at the board meeting at approximately 6:30 p.m., and waited for Hitchner before entering the meeting. They sat near each other towards the back of the room. C.H. stated that she was present for the roll call at the beginning of the meeting. She heard an award being given to a student for an accomplishment achieved over the summer and the public comment, including a teacher who praised that student.

C.H. texted her husband, S.H., from the meeting. (R-19; P-T.) C.H. printed out the text messages and redacted them before she provided them to her attorney. C.H. alleged she redacted information that did not pertain to the meeting and the names of her children. In this regard, C.H. first blacked out certain information with a black Sharpie marker and then went over it with the redaction produced through the Cute PDF application. C.H. destroyed the paper she marked with the Sharpie. The text messages were deleted by her phone due to storage restrictions without her knowing it would occur.

Thereafter, the board announced their exit to executive session. C.H. heard them read this from the agenda. C.H. alleged that they did not say it related to any student's domicile. Respondent did not invite C.H. into the executive session or call her name. C.H. texted her husband as follows: "Went into executive session as soon as I got here. Not out yet." (R-19.)

When the respondent returned from executive session, C.H. heard the respondent read the resolution regarding the executive session. C.H. testified that the resolution, (P-S), was consistent with what she heard at the meeting, when the board

returned from executive session. The respondent's determination was to disenroll four students because they were not domiciled in Alloway. C.H. alleged that she did not think it was her children because there were four students listed and they were only referred to by numbers. Then, she was "shocked" that she was not part of the hearing.

C.H. also testified that at 7:33 p.m., C.H. texted her husband as follows: "[t]hey said I wasn't here and I didn't participate and voted we are not domiciled." She did not present herself to the respondent at this time. At 7:53 p.m., C.H. texted her husband as follows:

> It's in the resolution, they use numbers to represent the kids, so I was trying to write, I think they said $60 a day, but that can't be right. I couldn't hear. I'm in the back of the library. They are in the front.

In response, S.H. texted C.H. at 7:55 p.m. as follows: "[y]ou should make public that you want it on the record you were there," to which C.H. responded, "[m]aybe leave it alone now."

Several other texts were exchanged between C.H. and S.H. At 7:59 p.m., S.H. texted "[p]art of appeal, I guess," to which, C.H. responded, "[y]ep." (R-19.) C.H. acknowledged that they knew on September 8, 2017, that they could appeal the respondent's decision, if they did not agree with it. She testified that she knew her children would remain in the school district during the pendency of this appeal.

C.H. stated that she signed the respondent's sign-in sheet at the end of the meeting. She then approached one of the board members and said "Hi, how are you?" and had a brief conversation. C.H. did not say to that board member, "Hey by the way I was here." That board member also spoke to Hitchner. After the meeting, C.H. never advised the school she was at the meeting and that an error in procedure might have occurred.

C.H. testified that her family had been surveilled by Schell from September 2017 through December 2017. Schell would park outside their residence in Elmer, take

pictures, and follow the family on their drive to the respondent's school. C.H. felt harassed. (P-BB.) C.H. stated it upset her children.

Relative to appellants' search for a new Alloway residence, C.H. testified that the Main Street property negotiations ended on the third day of attorney review in September 2017. Subsequently, on November 6, 2017, the appellants purchased a property located at XX Alloway Aldine Road, (Aldine), in Alloway, for which they paid property taxes in 2017 and 2018. The contract to purchase this property was signed in the middle of October 2017. Appellants never advised respondent they had purchased a property in Alloway.

The Aldine property was in foreclosure when it was purchased by appellants. When they began working on the property they found that there were major structural and systemic problems, which they had to correct. C.H. alleged the renovation was delayed by permitting issues, inspections, and utility company issues. Appellants had intended to move into the home by January 1, 2018. At the time of the hearing, they had not moved into the Aldine property because it was "not habitable."

Appellants also purchased a property located at XX North Greenwich Street, (Greenwich), in Alloway on January 23, 2017. (P-CC.) This property was also in foreclosure when appellants purchased it. Appellants intended to move into this property temporarily until the Aldine home was ready. Appellants never advised respondent they had purchased a second property in Alloway. At the time of the hearing, appellants had not moved into the Greenwich property.

In addition to the Elmer, Aldine, and Greenwich properties, appellants own nineteen properties, including a tri-plex in North Wildwood, New Jersey. Their vehicles have Florida license plates.

On cross-examination, C.H. stated that their Elmer home is known as the Seabrook Mansion. It has eight bedrooms and six bathrooms and at the time of the hearing, appellants' seven-person family continued to reside there. The Aldine property

had two bedrooms when it was purchased, although appellants' renovation plans include four bedrooms. (R-23.) The Greenwich property has four bedrooms. C.H. acknowledged that the certificate for work at the Greenwich property indicated and use of the property indicated the buyers were S.H. and C.H., "0 children," and "no occupancy." (R-8.)

For Respondent

Kristen Schell, (Schell), is the respondent's chief school administrator, who goes by the title, Superintendent of Schools. Schell testified that she first became aware that the appellants' move out of the school district in the summer when her assistant, Barbara Rishel (Rishel), relayed a couple of conversations and interactions she had relating to the appellants. C.H. advised they had sold their XX Neil Court house. They further indicated that they had purchased a home in Upper Pittsgrove. Rishel said C.H. called the school and said she was changing her mailing address to a post office box because of an issue getting their mail at their XX Neil Court home. Thereafter, C.H. was in the school's main office and was overheard saying the family had outgrown their house and were moving into a new home.

In the Spring of 2017, C.H. registered her pre-K child, at which time Rishel questioned her about the family's move. C.H. denied the move and said, "[w]e have 19 properties and we fix them up and rent them out." In August, a retired teacher shared with Rishel that she had taken a plate of cookies to the appellants' new home in Upper Pittsgove (Elmer property). Then, a district bus driver questioned why the children we on a roster for the bus, despite the fact that they had sold their XX Neil Court property.

To ensure residency, which is one of Schell's duties as superintendent, she wrote a letter to the appellants, dated August 31, 2017, to make an informal attempt to start the transfer process for the appellants' children, so they could start school on the first day in the district in which they live. This is an action the district always takes. In response to this letter, C.H. came into the office and admitted to moving out of Alloway. However, she insisted the move from Alloway was temporary. When Schell asked C.H.

for the address of the property they were purchasing in Alloway, she refused to provide it. C.H. added that their house sold "quickly." Schell stated the real estate sheet indicated the house had been on the market for 427 days. Schell told C.H she would look into the policy and get back to her about the situation.

Schell responded to C.H. and indicated that she would have to provide documentation about their new Alloway purchase. C.H. inquired about what would happen if she had a hardship. Schell indicated that the hardship provisions were inapplicable to the appellants' situation. Schell told C.H. they needed to start the transfer process because it was in the children's best interests to start school on the first day in their new school. (R-I.) Schell advised C.H. that she would pull the children off the rosters, so that no attention would be drawn to the fact that they had moved. Schell advised the appellants that their children could not attend the first day of school. However, Schell never disenrolled the children.

Schell then reversed this decision on September 6, 2017, when she received a letter from appellants' attorney saying they were domiciled in Alloway. (R-2.) At this point, Schell realized her informal attempt to have appellants' transfer their children was not going to occur. As a result, respondent sent the formal notice of ineligibility letter, to Elmer and the appellants' post office box in Alloway, and via email. (R-3.) Schell investigated the appellants' claim of a continuing to be domiciled in Alloway. On the advice of counsel, Schell documented their commute to school from Elmer, on a weekly basis, by observing the family leaving the Elmer residence and driving to school. Schell documented this through photographs. Schell did not park on the appellants' property, and did not photograph the children. Schell explained smaller districts often do this, because they do not have the staff and resources to hire investigator. (R-31.) The respondent then decided to hire an investigator after an uncomfortable incident with S.H. Schell explained a report from Robert Brown, Investigative Services, who was hired to document the fact that the appellants were no longer domiciled in Alloway as they claimed they were.

Schell explained the district's admission policy and what documents are required as proof of eligibility to attend. (R-13 and 14.) Respondent has a policy to accept non-resident tuition students consistent with New Jersey law. (R-32.) Schell explained that domicile is where the family lives, where your children sleep at night and eat their meals, and where they consider their primary residence to be located. Had the appellants had documentation to substantiate their statement that they were moving back to Alloway in days or weeks, Schell would have accepted that they intended to remain domiciled in Alloway.

The appellants asked to postpone the hearing, which was rejected by the respondent. By correspondence, dated September 22, 2017, the appellants made a settlement offer, which included paying tuition until they purchased a home in Alloway. (A-M.) The correspondence stated:

> If the Board gives us the requested reasonable amount of time of 90 days to relocate back into Alloway Township and we do not, then we agree to pay tuition for our three children for the remainder of the school year or until such time as we relocate into a permanent residence in Alloway Township.

On September 26, 2017, the respondent held its board meeting and the residence hearing. Schell testified that she looked for C.H. before the executive session and also asked Becky Joyce, the business administrator, and Cathy Caltabiano, a board member, who is friendly with the appellants, if C.H. was present. That board member replied that C.H. was not present and that C.H. was not coming. Schell checked the sign-in sheet. C.H.'s name was not on it and Schell never saw C.H. enter the meeting.

The closed session began at 6:38 p.m. The board president announced the two matters for executive session. While in executive session, the board's attorney had Schell go out and double check to determine if C.H. had arrived while they were in the session. C.H.'s name was not on the sign-in sheet. The last name was Oliveri and Schell did not see C.H. in the room. After the closed session, respondent took formal action determining that the appellants were no longer domiciled in the district. Schell

explained the executive minutes reflect that there was no residency hearing because only Schell presented documents and the appellants did not participate.

After the meeting, Schell and the board president spoke in the parking lot for a "good amount of time." When Schell started her car to leave, the board president advised that the board member who had said C.H. was not attending, had just let him know that C.H. was there at the meeting. Schell denied knowing what time those texts were exchanged. Appellants did not reach out to Schell about the meeting. Her next contact with them was when she received the appeal information. Appellants never advised Schell they had purchased a property in Alloway subsequent to the hearing.

Rebecca Joyce (Joyce) is employed as the respondent's Business Administrator. In August, Joyce sent an email to Alloway Township inquiring, who owned XX Neill Court, and was advised that the appellants sold it on August 25, 2017. (R-6.) Joyce attended the September 26, 2017, board meeting. There is a sign in the meeting room that instructs members of the public to please sign in and take an agenda. The board went into closed session at the beginning of the meeting. Joyce had never seen C.H. before, so she asked board member Caltabiano if C.H. was in attendance. Caltabiano said "She's not here and she will not be coming." Joyce asked Caltabiano to let her know if C.H. did come into the meeting. Caltabiano stated "I know for a fact that she's not coming."[8]

Approximately ten minutes into the meeting, the board went into executive session for the residency hearing and a separate personnel matter. The board solicitor asked Schell to go back into the library and look at the sign-in sheet to verify that C.H. had not appeared. Schell did that, although Joyce acknowledged she did not see Schell actually do that. The solicitor explained the process and prepared the resolution. Joyce explained the document relating to the established tuition rate and the methodology used to determine the tuition rate of $10,900 per pupil. (R-15.) Respondent took the lowest tuition rate and divided it by 180 days to calculate the daily tuition rate that was

[8] Board Member Caltabiano recused herself from participating in the residency hearing and voting on the issue, because she and the appellants have a personal relationship.

going to be charged to the appellants. The 6th to 8th grades tuition rate was lower than the elementary school rate and the pre-K rate.

In response to cross-examination, Joyce testified that $10,900 was the certified rate per pupil for the 2017-2018 school year per the budget software. Joyce was only aware of one other voluntary tuition contract in the last twenty-three years. It was in 2015 and the rate charged, as determined by the board in that situation, was $6,500.

Joyce testified that she wrote that the appellants did not attend the hearing and so there was no residency hearing on the minutes. (R-18.) Joyce explained that because the appellants did not participate in the hearing Schell presented the documents relating to the residency investigation and the solicitor had to walk the board through the process and facts as if the parents were there. She wrote no residency hearing occurred because it was not a "two-way" hearing.

Joyce stated that the appellants never reached out to the respondent after the meeting to indicate there was a mistake with what occurred. Appellants never advised they purchased a property in Alloway during the 2017-2018 school year.

Barbara Rishel (Rishel), is employed by respondent as an Administrative Secretary to the Superintendent and is familiar with C.H. In the Spring of 2017, Rishel was in the office where C.H. was telling others that they were moving because they had outgrown their house. In June 2017, C.H. brought in her registration papers for her pre-K student. Rishel asked why she was registering the child because they were moving. C.H. insisted they were not moving. Rishel told C.H. that she remembered C.H. speaking about the move in the office. C.H. said she had rental properties and that this house was not necessarily going to be their residence. Rishel then registered the student. Also, during this June meeting, C.H. stated that she was changing her address from Neil Court to a post office box and that she would not need bus service at Neil Court any longer because she was making other transportation arrangements for her children. In July, a former teacher came to visit the school. She advised that the

appellants just became her new neighbors in Upper Pittsgrove, where the Elmer house is located.

After not receiving any additional transfer or moving information, Rishel left the children on the bus roster. The bus driver called Rishel and questioned why the appellants' children were still on the bus runs, because they had moved.

Schell had Rishel mail the Notice of Ineligibility letter, dated September 8, 2017, to the appellant's Elmer property by certified and regular mail, and to their post office box in Alloway by regular mail. (R-3.)

FINDINGS OF FACT

The following facts of this case have been stipulated to by the parties (J-1.) and are not in dispute and as such, I **FIND** the following facts:

A. On August 25, 2017, appellants sold their home located at XX Neil Court Alloway Township;
B. On August 25, 2018, appellants moved into Elmer property which they own;
C. On November 6, 2017, appellants purchased the Aldine property;
D. On February 9, 2018, appellants purchased a second home in Alloway Township located at XX Greenwich Street;
E. Appellants do not allege that they have moved back into the District and admit that they have nor resided in the District since August 25, 2017.

Based on the law, the credible testimonial and documentary evidence, I **FIND** the following as **FACTS** in this matter:

1. Appellants are in the business of purchasing, renovating, and selling or renting properties. They own nineteen properties.

2. Appellants have five children. This seven person family includes three school aged children who attend the respondent's Alloway Township school to wit: S.H. who is thirteen years old; S.H. who is eight years old; C.H. who is five years old.[9]

3. Appellants oldest child, C.H., graduated from Woodstown High School in June, 2018.

4. Appellants resided at XX Neil Court, Alloway Township since 2007.

5. The XX Neil Court property was advertised for sale since 2007, and placed in the MLS.

6. In the Spring of 2017, the appellants' family had admittedly outgrown their home at XX Neil Court, Alloway Township, and had decided to move. C.H. stated this in the school's office in front of Rishel.

7. In June 2017, in contemplation of their move out of the district, appellants changed their mailing address from XX Neil Court to a post office box in Alloway Township and advised they would no longer required school bus transportation from their XX Neil Court address.

8. This was an unsuccessful attempt to maintain the position that they continued to be domiciled in Alloway.

9. In July 2017, appellants moved to Elmer to the Seabrook Mansion property, which has eight bedrooms and six bathrooms, a lake on the property, and grounds large enough to park their vehicles and 2 RVs.

10. In July 2017, a former Alloway teacher told Rishel she had taken cookies to the appellants because they were her new neighbors in Elmer.

11. Appellants sold their XX Neil Court residence on August 25, 2017, having previously moved their personal property and family to the Elmer property.

[9] These were the ages of the children during the 2017-2018 school year.

12. Appellants have resided since at least August 25, 2017 at the Elmer property.

13. Respondent was advised by several independent sources that appellants no longer resided in their district as of August 25, 2017. As a result, Schell and respondent had good cause to initiate a residency investigation.

14. Respondent informally proceeded to determine, through a correspondence to appellants dated August 31, 2017, if appellants had moved out of the district. It was a genuine attempt to ensure that the children could be transferred to their new school district in time for the first day of school. In taking this action, Schell was attempting to act in the best interest of the children, so that their education was not disrupted.

15. In response C.H. admitted they moved out of the district, but refused to transfer her children to the new district. C.H. alleged the move was temporary; however, she refused to produce any documentation substantiating that they were moving back to Alloway in days or weeks or cooperate to provide any documents required by respondent's policies to show they resided in Alloway.

16. When the informal procedure failed to work, Schell followed the formal procedures and conducted a residency investigation, in good faith.

17. Respondent never disenrolled the children from school.

18. Any upset or concern of the children was unnecessarily caused by appellants sharing information about the respondent's position that they had to be enrolled in the Upper Pittsgrove district in which their Elmer home was located.

19. By notice, dated September 8, 2017, respondent initially notified appellants of their ineligibility to continue to enroll their children in Alloway.

20. Appellants requested a hearing before the respondent to contest its residency determination.

21. Schell was directed to document the appellants' commute from their Elmer home to school and continued to do so weekly through the fall of 2017 because C.H. alleged they were moving back into Alloway in days or weeks. Schell did not harass the appellants or their children, and took care to park on the public road, and not appellants' property, and not take photographs of the children.

22. Although they admitted they had moved to Elmer, C.H. put the issue of their relocation back to Alloway in issue, and this necessitated the ongoing residency investigation.

23. Ultimately, respondent hired Investigator Robert Brown to document where appellants resided. The investigation concluded they resided and were domiciled at Elmer.

24. On September 22, 2017, appellants sent correspondence to respondent admitting they no longer resided in Alloway, but arguing that they continued to be and intended to be domiciled in Alloway. Appellants further requested ninety days to move back into Alloway. They offered to pay tuition after the ninety day period, if they had not moved back into Alloway.

25. On September 26,2017, the respondent held its monthly board meeting which included appellants' residency hearing.

26. C.H. knew the appellants' residency hearing was to be conducted at that meeting.

27. Schell asked Joyce and board member Caltabiano to look for C.H. Caltabiano, who is friendly with appellants, indicated before the meeting C.H. was not there and was not coming to the meeting.

28. C.H. is very concerned about protecting the privacy of her children; however, this was not an excuse to fail to identify her presence or to participate in the September 26, 2017 residency hearing.

29. Despite the importance of the meeting, C.H. arrived late to the meeting. Hitchner also separately arrived late. They took seats toward the back of the meeting room. They did not sign in on the sign-in sheet upon entering the meeting.

30. There is a sign in the meeting room that instructs members of the public to please sign in and take an agenda.

31. C.H. did not make her presence known to respondent at any time during the meeting, despite numerous opportunities to do so.

32. There was no issue hearing the board members' announcements or them speaking. C.H. heard the roll call at the beginning of the meeting and an award being given to a student for an accomplishment achieved over the summer. She also heard the public comment, including a teacher who praised that student.

33. C.H. heard the announcement that the board was going into closed session. C.H. did not identify herself to respondent as present.

34. At 7:13 p.m., C.H. texted her husband as follows: "Went into executive session as soon as I got here. Not out yet." (R-19.)

35. Schell left the executive session to double check the sign-in sheet to determine if appellants had come to the meeting late. C.H. did not present herself to Schell and had not signed the sign-in sheet.

36. Based on the evidence presented by Schell and the board's solicitor, the respondent concluded that appellants did not reside and were not domiciled in Alloway and that their children were ineligible to attend the respondent's school.

37. At 7:33 p.m., C.H. texted her husband as follows: “They said I wasn’t here and I didn’t participate and voted we are not domiciled.”

38. C.H. did not present herself to the respondent at this time.

39. At 7:53 p.m., C.H. texted her husband as follows: “It’s in the resolution, they use numbers to represent the kids, so I was trying to write, I think they said $60 a day, but that can’t be right. I couldn’t hear. I’m in the back of the library. They are in the front.”

40. Despite this text, C.H. never asked Hitchner about their decision because C.H. could not hear the tuition number. Hitchner expressed no difficulty hearing anything throughout the meeting.

41. In response, S.H. texted C.H. at 7:55 p.m. as follows: “You should make public that you want it on the record you were there,” to which C.H. responded, “Maybe leave it alone now.”

42. Several other texts were exchanged. At 7:59 p.m., S.H. texted: “[p]art of appeal, I guess,” to which, C.H. responded, “[y]ep.” (R-19.)

43. C.H. never let respondent or the administrators know she was at the September 26, 2017 meeting, despite her husband even advising her she should. By design, C.H. refused to participate, knowing the children would remain enrolled in respondent’s school district pending the outcome of this appeal.

44. On October 18, 2017, petitioner filed an appeal from the respondent’s final determination of ineligibility.

45. Respondent provided appellants with their hearing and due process. Appellants’ failure to participate and C.H.’s refusal to identify her presence at the board meeting resulted in appellants failing to exercise their due process rights and participate in the hearing. C.H.’s testimony that she was not provided with the required residency hearing is not supported by

the facts and is not credible under these circumstances. No pattern of failing to provide due process to appellants or their children existed.

46. Respondent conducted a residency hearing and based on the information presented by Schell appropriately determined that appellants' domicile and residency was at the Elmer property.

47. The documents, including personal bills and mortgage and tax documents, appellants submitted to support their argument that they continued to be domiciled in Alloway Township after their move to Elmer are insignificant because they do not prove actual residency. Moreover, those documents, similar to the text messages, were unilaterally redacted by C.H., without legal advice or direction, and therefore were suspect. No testimony or corroborating information rehabilitated the motive for the redaction or resolved the suspicion.

48. The Elmer property was the property to which appellants intended to return each day, and in which they and their children slept and ate their meals between August 25, 2017 and October 2, 2018. It was their domicile and residence.

49. Consistent with their business, petitioners bought a property with a small two-bedroom house improvement on it which was in foreclosure on Aldine on November 6, 2017.

50. It was not credible that the appellants, who are in the business of purchasing, renovating, and selling or renting the properties, did not know that this property would require extensive renovations to its system and structure. Further it was not credible that the parties intended to move into this home with their family of seven.

51. Appellants purchased the Greenwich property on January 23, 2018. For business purposes they purchased the property, which was also subject to a bank foreclosure. While the Greenwich property has four bedrooms appellant advised Alloway Township that C.H. that they were the buyers

and there would be no children inhabiting the residence and no occupancy. Appellants never intended this to be their residence.

52. C.H.'s statements that the family was going to move into the Greenwich property during the 2017-2018 school year was also not credible.

53. C.H. affirmed in an Affidavit, dated October 8, 2018, that the appellants' family moved into the Greenwich property on October 2, 2018. Therefore, C.H. admitted that from at least August 25, 2017 through October 2, 2018, the family did not reside and was not domiciled in Alloway.

54. Appellants were required to enroll their children in the district in which the Elmer property is located for the 2017-2018 school year, because they were ineligible to attend school in respondent's district. Appellants were required to enroll their children in that district for the period of time between September 5, 2018 and October 2, 2018, which totals twenty school days, because they were ineligible to attend school in the respondent's district.

55. After considering respondent's November 13, 2018 submission, insufficient evidence exists to make a determination, at this time, whether appellants became residents and domiciled in Alloway at the Greenwich property after October 2, 2018. Therefore, no conclusions are determined herein for any period past October 2, 2018. The respondent may take any appropriate action and make any determinations relative to the appellant's residency and domicile. Nothing herein shall bar the respondent from instituting an appropriate residency investigation, proceeding, or action, and seeking allowable appropriate relief including, but not limited to, tuition reimbursement against appellants, for the period of time after October 2, 2018.

56. Tuition for the 2017-2018 school year was $60.56 per day for 180 days, equaling $10,900 per annum.

57. Tuition for the period from September 5, 2018 through October 2, 2018, was $60.56 per day for 180 days equaling $1,211.20

58. Appellants must reimburse respondent $32,700 for tuition for the 2017-2018 school year, plus $3,633.60 for tuition for the period between September 5, 2018 through October 2, 2018.

59. Appellants' oldest child, C.H., who graduated from Woodstown High School in June 2018, was domiciled with her family in Elmer during the 2017-2018 school year.

Credibility

Credibility is the value that a finder of the facts gives to a witness's testimony. It requires an overall assessment of the witness's story in light of its rationality, internal consistency and the manner in which it "hangs together" with the other evidence. Carbo v. United States, 314 F.2d 718, 749 (9th Cir. 1963). "Testimony to be believed must not only proceed from the mouth of a credible witness but must be credible in itself," in that "[i]t must be such as the common experience and observation of mankind can approve as probable in the circumstances." In re Perrone, 5 N.J. 514, 522 (1950). A fact finder "is free to weigh the evidence and to reject the testimony of a witness . . . when it is contrary to circumstances given in evidence or contains inherent improbabilities or contradictions which alone or in connection with other circumstances in evidence excite suspicion as to its truth." Id. at 521–22; see D'Amato by McPherson v. D'Amato, 305 N.J. Super. 109, 115 (App. Div. 1997). A trier of fact may reject testimony as "inherently incredible" and may also reject testimony when "it is inconsistent with other testimony or with common experience" or "overborne" by the testimony of other witnesses. Congleton v. Pura-Tex Stone Corp., 53 N.J. Super. 282, 287 (App. Div. 1958). Similarly, "'[t]he interest, motive, bias, or prejudice of a witness may affect his credibility and justify the . . . [trier of fact], whose province it is to pass upon the credibility of an interested witness, in disbelieving his testimony.'" State v. Salimone, 19 N.J. Super. 600, 608 (App. Div.), certif. denied, 10 N.J. 316 (1952) (citation omitted). The choice of rejecting the testimony of a witness, in whole or in part,

rests with the trier and finder of the facts and must simply be a reasonable one. Renan Realty Corp. v. Cmty. Affairs Dep't, 182 N.J. Super. 415, 421 (App. Div. 1981).

In judging the strength of the evidence, I **FIND** as **FACT** that the testimony presented by Schell, Joyce, and Rishel about their actions, taken in relation to this matter, and their observations of C.H's statements and actions were consistent and credible. Collectively, their testimony of the events and the conclusions and determinations they made sense and hung together to logically describe what occurred. It is undisputed that the appellants did not reside in Alloway Township between August 25, 2017 and October 2, 2018.

Rishel credibly testified relative to her observations about C.H.'s statements about the appellants' family having outgrown their XX Neil Court home and that they were moving in 2017. Rishel credibly testified that C.H. advised she no longer needed bus transportation for the children for the 2017-2018 school year and that the appellants had changed their mailing address in the Spring of 2017 to a post office in Alloway Township from the XX Neil Court residence. Rishel credibly relayed that a former teacher advised her in July 2017 that the appellants had moved to their Elmer residence. Rishel showed no pre-existing issues with or animosity towards C.H. Despite the fact that Rishel, based on the information provided to her, had reason to believe that the appellants no longer resided in Alloway, she took no action to prevent C.H. from registering her child for pre-K in the district. Rishel took no punitive actions against appellants.

Similarly, Joyce and Schell reasonably investigated the issue of the appellants' residency, only after multiple independent sources of information were relayed to them indicating that the appellants had moved from the district. Their version of events relating to the September 26, 2017 board residency hearing were consistent and made sense. Additionally, their rendition of that night's events including their reasonable reliance upon Caltabiano's statement that she knew C.H. was not attending the hearing, the fact that C.H. did not sign the sign-in sheet until after the meeting's conclusion, and the fact that C.H. refused to disclose to them that she was at the hearing, provided a

greater “ring of truth” than the scenario offered by C.H., who plainly had a greater interest in the outcome of this proceeding.

I further **FIND** as **FACT** that C.H.’s version of the events lacked a ring of truth. C.H.’s statement that her house sold quickly was disingenuous and unsupported by the facts and her actions. The residence had been on the market since 2007. Knowing in the spring of 2017 the appellants were relocating to Elmer, C.H. changed the appellants’ address to a post office box. She told others that her seven-person family had outgrown their home and they were moving. She requested the bus service be discontinued for her children, so that the school would not know the location from which they were commuting to school. Consistent with these statements she moved to a larger home in Elmer, which has eight bedrooms and six bathrooms. This was to be the appellants’ residence.

The appellants purchase, renovate, and sell or rent properties for a living. They own nineteen rental properties. When they moved to Elmer they had no property in Alloway under contract to purchase and serve as their new residence, contrary to C.H.’s representations to Schell. This was supported by C.H.’s refusal to provide documentation to support her representations that the family would be moving back into Alloway within days or weeks at the most. Moreover, the testimony presented supported a relocation to Elmer on a date in June or July, when the former teacher took cookies to their Elmer home, and not late in August.

The appellants’ purchase of the Greenwich property was for their business purposes, although appellants allege post October 2, 2018 they reside in the property. The purchase of the Aldine property as a residence makes little sense. It strains credulity to believe that after broadcasting that her family had outgrown their home and were moving to a larger home, appellants were actually intending to occupy a smaller

two bedroom home.[10] It further is not credible that, in light of their business, the appellants were taken by surprise that their Aldine property, a bank foreclosure property, required such extensive work to make it habitable.

Similarly, C.H.'s "shock" that the residency hearing occurred without her participation was not believable. This allegation was undermined by her testimony and her text messages with her husband. C.H. heard the meeting's roll call, the award given by the board to a student and the public comment, during which a teacher praised that student. C.H. knew why she was attending the September 26, 2017 meeting. C.H. heard the board state why they were going into executive session. C.H. heard their decision when then re-entered the meeting after executive session. In fact, Hitchner's testimony contradicted C.H.'s testimony. Hitchner, who was seated next to C.H., could hear the entire meeting. Hitchner denied that C.H. ever asked her about the respondent's decision, because C.H. could not hear the tuition number.

Although C.H.'s text messages are suspect, because she unilaterally redacted parts of them without legal advice to conceal portions of the conversations, the statements she left remaining are inconsistent with her being shocked. There was no such expression of astonishment or startlement that respondent had held the hearing or had rendered a decision without her participation. She chose not to participate or let the respondent know she was at the meeting, even after her husband advised she should make her presence known to them. This created an issue for her appeal and was done so intentionally. C.H.'s actions were calculated and intentional.

Further, C.H.'s positions about what occurred at the meeting showed further inconsistencies in her testimony. First, C.H. indicated that respondent failed to call her into executive session or make clear that the residency hearing was about her children. She believed that was wrong. Later, C.H. indicated that the privacy of her family would

[10] At this time, insufficient evidence exists to find or conclude that after October 2, 2018, the appellants did not commence residing in the Aldine property. Therefore, no conclusions are determined for any period past October 2, 2018. The respondent may take any appropriate action and make any determinations relative to the appellant's residency and domicile. Nothing herein shall bar the respondent from instituting an appropriate residency investigation, proceeding, or action, and seeking allowable appropriate relief including, but not limited to, tuition reimbursement against appellants, for the period of time after October 2, 2018.

have been violated, if they had done that because then everyone there would have known it was about her. That too would have been an issue for C.H. However, C.H. took no actions to rectify this situation. C.H. morphed her testimony as she attempted to cast herself in the best light or predict the line of questioning by respondent.

Finally, C.H. redacted information on the documentation she submitted to support the appellants' position that the mailing address on the family's bills, tax information, and financial information demonstrated they had an intention to remain domiciled in Alloway. Her unilateral redaction of this information, without input from legal counsel, made the evidence completely suspect and rendered their weight insignificant. This concealing of information disabled C.H.'s credibility.

Based on the foregoing, I **FIND** as **FACT** that C.H.'s testimony and appellants' documentary evidence was not credible.

LEGAL DISCUSSION

At issue is whether appellants children, S.H. who is thirteen years old, S.H. who is eight years old, and C.H. who is five years old, were entitled to a free education under N.J.S.A. 18A:38-1, which provides that public schools shall be free to persons over five and under twenty years of age who are "domiciled within the school district." See V.R. ex rel A.R. v. Hamburg Bd. of Educ., 2 N.J.A.R. 283, 287 (1980), aff'd, State Bd., 1981 S.L.D. 1533, rev'd on other grounds sub nom. Rabinowitz v. N.J. State Bd. of Educ., 550 F. Supp. 481 (D.N.J. 1982) (New Jersey requires local domicile, as opposed to mere residence, in order for a student to receive a free education).

A person who meets age requirements and is domiciled within a school **district** may attend its public schools free of charge. N.J.S.A. 18A:38-1(a). A person may have many residences but only one domicile. Somerville Bd. of Educ. v. Manville Bd. of Educ., 332 N.J. Super. 6, 12 (App. Div. 2000), aff'd, 167 N.J. 55 (2001). A child's domicile is normally that of his or her parents. Ibid. The domicile of a person 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, and from which he has no present intention of moving. In re Unanue, 255 N.J. Super. 362, 374 (Law Div. 1991), aff'd, 311 N.J. Super. 589 (App. Div.), certif. denied, 157 N.J. 541 (1998), cert. denied, 526 U.S. 1051, 119 S. Ct. 1357, 143 L. Ed. 2d 518 (1999).

The acts, statements and conduct of the individual, as viewed in the light of all the circumstances, determine a person's true intent. Collins v. Yancey, 55 N.J. Super. 514, 521 (Law Div. 1959). The parent has the burden of proof by a preponderance of the evidence. N.J.S.A. 18A:38-1(b)(2).

The record reflects that appellants' children attended school within the respondent's district during the 2017-2018 school year and from September 5, 2018 through October 2, 2018, while domiciled outside of the District in Elmer. They were not authorized to attend respondent's school.

C.H.'s statements and actions showed a course of conduct designed and engaged in intentionally to keep her children enrolled in Alloway for its free education, when she knew they no longer resided in the district. In this regard, in contemplation of their move in the summer of 2017, appellants changed their mailing address for their bills to an Alloway Township post office box, in the spring, in an attempt to give the appearance that they still resided in Alloway Township. C.H. misrepresented that the sale of the residence was quick. Appellants also removed their children from the bus transportation roster ahead of time, knowing they did not reside in the district. C.H. refused to participate in the September 26, 2017, residency hearing, knowing that her children would remain enrolled in the district for free pending the resolution of this instant appeal.

Appellants' arguments that they intended to remain domiciled in Alloway Township and that their relocation to their Elmer residence was temporary during the 2017-2018 school year was unpersuasive and unsupported by any credible evidence. Given the appellants' business of purchasing, renovating and either selling or renting the properties, appellants' alleged involuntary delays in relocating to the Aldine property

lacked support. The tax payments made by them for properties owned by them within Alloway Township or the bills mailed to a post office box in Alloway were insufficient to establish an intent to remain or be domiciled in Alloway Township.

As indicated above, appellants' arguments that they intended to relocate and reside to the Aldine or Greenwich properties during the 2017-2018 school year were not credible.

The appellants did not reside in the district for the entire 2017-2018 school year. Elmer was their true, fixed, and permanent home. Elmer was the property to which, whenever they were absent, they intended to, and did, return. This is where the family ate, slept, and resided. Elmer was their domicile from which they presented no intention of moving.

Accordingly, in light of all of the facts and circumstances, I **CONCLUDE** that S.H., S.H., and C.H. were not entitled to a free public education in the respondent's district. Appellants failed to satisfy their burden of proof that respondent acted in an arbitrary and capricious manner.

N.J.S.A. 18A:38-1(b)(1) provides that when the evidence does not support the claim of the resident, the resident shall be assessed tuition "for the student prorated to the time of the student's ineligible attendance in the school district. Tuition shall be computed on the basis of 1/180 of the total annual per-pupil cost to the local district multiplied by the number of days of ineligible attendance and shall be collected in the manner in which orders of the commissioner are enforced." The record reflects that the actual cost of each of appellants' child's attendance in-district during the 2017-2018 school year was $60.56 per day equaling $10,900 per annum.

Accordingly, I **CONCLUDE** that the District is entitled to reimbursement for tuition by the appellant in the amount of $10,900 for each of their three children. I **CONCLUDE** the total reimbursement appellants owe to respondent for the 2017-2018 school year is $32,700. I further **CONCLUDE** that the respondent is entitled to

reimbursement for tuition by the appellant in the sum of $1,211.20 for each of their three children for the period of September 5, 2018 through October 2, 2018. I further **CONCLUDE** that the total reimbursement appellants owe to respondent for the period between September 5, 2018 and October 2, 2018 is $3,633.60.

I further **CONCLUDE** that petitioner's appeal should be dismissed.

ORDER

It is **ORDERED** that the determination of the respondent, Alloway Township Board of Education that S.H., S.H., and C.H. were not domiciled in the Alloway Township School District for the 2017-2018 school year and the period between September 5, 2018 through October 2, 2018, is **AFFIRMED.**

It is, therefore, **ORDERED** that appellants pay respondent, Alloway Township Board of Education, tuition in the total amount of $36,333.60 for unauthorized attendance in the District schools for the periods stated above.

It is further **ORDERED** that appellants' oldest child's, C.H.'s domicile be changed from Alloway Township to Upper Pittsgrove for the 2017-2018 school year, so that the proper adjustment may be made for purposes of the tuition paid for her to attend Woodstown High School during that school year.

Petitioner's appeal is **DISMISSED**.

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 (45) 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 (13) 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, 100 Riverview Plaza, 4th Floor, P.O. 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.

2/11/19 _____

DATE **DOROTHY INCARVITO-GARRABRANT**, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

APPENDIX

WITNESSES

For Appellant:

1. Courtney Hitchner
2. C.H., appellant

For Respondent:

1. Kristen Schell, Superintendent
2. Rebecca Joyce, Business Administrator
3. Barbara Rishel, Administrative Assistant to the Superintendent

EXHIBITS

Joint Exhibits:

J-1 Five stipulated facts

For Appellants:

P-A Redacted Domicile Documents
P-B Email regarding ownership of XX Neil Court
P-C Open House School Letter (Not admitted)
P-D School bag tag for pre-K bus/walker (Not admitted)
P-E Schell Informal eligibility letter, dated August 31, 2017
P-F School policy
P-G Attorney letter, dated September 6, 2017
P-H Schell email, dated September 6, 2017
P-I Second Schell email, dated September 6, 2017
P-J Initial Ineligibility Letter, dated September 8, 2017
P-K Email to Schell requesting disclosure of witnesses
P-L Schell email denying request to postpone the hearing

P-M Appellants letter conveying settlement offer, dated September 22, 2017

P-N Email regarding Aldine property sale, dated September 25, 2017

P-O Email to Joyce, dated September 22, 2017

P-P C.W. email to Joyce, dated September 25, 2017

P-Q September 26, 2017 Board Meeting Sign in Sheet

P-R Three affidavits of meeting attendees

P-S Respondent's meeting minutes and resolution

P-T Redacted text messages

P-U Joyce email regarding Appellants' Woodstown High School student

P-V Final Notice of Ineligibility

P-W Record of Deed Transfer Aldine property

P-X taxes paid record for Aldine property

P-Y post office box receipt

P-Z Alloway Township Resolution 18-45

P-AA Executive Session Minutes from September 26, 2017 board meeting

P-BB Attorney correspondence to V. Beck, Esq., dated December 15, 2017

P-CC Record of Deed Transfer Greenwich property

P-DD Letter from appellants to respondent re: public documents case

For Respondent:

R-1 August 31, 2017 letter to from Schell to appellants

R-2 September 6, 2017 letter from J. Epstein, Esq. to Schell

R-3 September 8, 2017 letter from Schell to appellants regarding hearing

R-4 September 28, 2017 letter regarding Notice of Final Ineligibility

R-5 Coldwell Banker Homes.com Website for Elmer property (not admitted)

R-6 September 13, 2017 email exchange between Assessor and Business Administrator

R-7 November 2, 2017 letter from Zoning, Housing Code Office Alloway Township (not admitted)

R-8 Certificate of Continued Occupancy Greenwich property

R-9 Pre-Occupancy Application Information Greenwich property (not admitted)

R-10 Certificate of Occupancy Application Greenwich property(not admitted)

R-11 Alloway Township Housing Ordinance (not admitted)
R-12 Report of Robert M. Browne, Private Investigative Services
R-13 District Policy 5111-Student Admissions
R-14 District Policy 5118-Nonresident Students
R-15 Est. Tuition Calculated Rates for Regular Programs
R-16 Open Session Minutes Board Meeting September 26, 2017
R-17 September 27, 2017 Board Meeting Sign in sheet
R-18 Executive Session Minutes Board Meeting September 26, 2017
R-19 Redacted text messages
R-20 Photo of Elmer residence (not admitted)
R-21 HUD 1, Tax Assessment, Elmer property (not admitted)
R-22 HUD 1, Tax Assessment, Neil Court property (not admitted)
R-23 HUD 1, Tax Assessment, Aldine property (not admitted)
R-24 Floor Plan Aldine Property (not admitted)
R-25 Aldine Construction permits (not admitted)
R-26 Photographs Aldine property (not admitted)
R-27 2016 Tax Returns (not admitted)
R-28 2017 Tax Returns(not admitted)
R-29 NJ Court Public Access Page—14 suits involving appellants
R-30 Motor Vehicle Change of Address Forms(not admitted)
R-31 Surveillance Report
R-32 Respondent's Non-resident tuition student rules and procedures
R-33 Registration Information Inquiry for Vehicle (not admitted)
R-34 Resume of R. Joyce (not admitted)
R-35 Resume of K. Schell(not admitted)

Court Documents

D-1 C.H.'s note found in the exhibit binder