

New Jersey Commissioner of Education

Final Decision

Board of Education of the Township of
Barnegat, Ocean County,

Petitioner,

v.

Board of Education of the Freehold Regional
High School District, Monmouth County,

Respondent.

Synopsis

The petitioner, Board of Education of the Township of Barnegat (Barnegat), sought an order directing the respondent, Board of Education of the Freehold Regional High School District (Freehold), to share responsibility for the cost of providing T.M. with a free public education in an out-of-district placement, including tuition and all other related educational and residential expenses, for the period from October 16, 2018 forward, pursuant to *N.J.A.C.* 6A:22-3.1(a)(1)(ii)(2). Barnegat filed a motion for summary decision, which was opposed by Freehold.

The ALJ found, *inter alia*, that: there are no material facts at issue in this case, and the matter is ripe for summary decision; T.M. resides out-of-state for the majority of the year and splits his time equally between his parents when he is in New Jersey; his parents do not have a written agreement designating the school district of attendance; and, because T.M.'s domicile cannot be determined, the two school districts must share in the cost of his out-of-district placement in accordance with *N.J.A.C.* 6A:22-3.1(a)(1)(ii)(2). The ALJ determined that Freehold is obligated to share T.M.'s educational costs for the 2019-20 school year but denied Barnegat's request that Freehold share costs for the 2018-19 school year because Barnegat failed to request such cost sharing at that time. Accordingly, the ALJ granted Barnegat's motion for summary decision and ordered Freehold to reimburse petitioner for one-half of T.M.'s educational costs beginning with the 2019-20 school year and going forward.

Upon a comprehensive review, the Commissioner found, *inter alia*, that: in analyzing *N.J.A.C.* 6A:22-3.1, it is not possible to determine T.M.'s residence for the 2019-20 school year, and an equitable determination of shared responsibility for the cost of T.M.'s placement is therefore permitted under *N.J.A.C.* 6A:22-3.1(a)(1)(ii)(2); the circumstances in this case are precisely those anticipated by the regulation; and the exceptions raised by Freehold are without merit. Accordingly, the Initial Decision of the OAL was adopted as the final decision in this matter. The Commissioner directed the respondent to reimburse Barnegat for one-half of the cost of T.M.'s out-of-district placement for the 2019-20 school year, and to share equally in the future costs of T.M.'s placement at the American School for the Deaf so long as the present circumstances remain unchanged.

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.

October 6, 2020

New Jersey Commissioner of Education

Final Decision

Board of Education of the Township of
Barnegat, Ocean County,

Petitioner,

v.

Board of Education of the Freehold Regional
High School District, Monmouth 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 respondent Freehold Regional High School District Board of Education (Freehold) pursuant to *N.J.A.C.* 1:1-18.4, and the reply thereto submitted by petitioner Barnegat Township Board of Education (Barnegat).

In this matter, Barnegat seeks an order directing Freehold to share responsibility for the cost of T.M.'s education at an out-of-district residential placement. By way of background, T.M. is a 16-year-old who has been enrolled in the Barnegat School District since April 24, 2017, but has resided year-round at the American School for the Deaf since September 1, 2018.¹ T.M.'s parents are divorced and share custody. H.L. is the designated

¹ Pursuant to an August 24, 2018 settlement agreement between Barnegat and the parents following a petition for due process, Barnegat agreed to be responsible for the cost of T.M.'s placement.

parent of primary residence and lives in Barnegat, while P.M. is the parent of alternate residence² and lives in Marlboro Township.³ The parents split time with T.M. equally during school recesses and holidays. On September 6, 2019, Barnegat requested that Freehold share the cost of T.M.'s out-of-district placement, but Freehold refused.

The Administrative Law Judge (ALJ) found that Freehold is obligated to share in T.M.'s educational costs beginning in the 2019-20 school year.⁴ T.M. resides out-of-state for the majority of the year and splits his time equally between his parents when he is in New Jersey; his parents do not have a written agreement designating the school district of attendance. As such, the ALJ found that, because T.M.'s domicile cannot be determined, the districts must share in the cost of his out-of-district placement in accordance with *N.J.A.C. 6A:22-3.1(a)(1)(ii)*.

In its exceptions, Freehold argues that the ALJ incorrectly determined that T.M.'s domicile could not be determined under *N.J.A.C. 6A:22-3.1*. Freehold maintains that T.M. is domiciled with his mother in Barnegat, as she was designated as the parent of primary residence in the Final Judgment of Divorce, and the residence of a child of divorced parents follows the parent of primary residence. Freehold contends that the ALJ erred in finding that the parents share equal physical custody because, pursuant to the custody arrangement, T.M. resides with H.L. for approximately two-thirds of the year. Additionally, Freehold points out that in the due process petition filed by the parents against Barnegat, the parents indicated that Barnegat was the district of residence, and in a settlement agreement of that matter, Barnegat agreed to be

² The terms “designated parent of primary residence” and “parent of alternate residence” were used in the Final Judgment of Divorce and Property Settlement Agreement between H.L. and P.M

³ The Freehold Regional High School District serves students from Marlboro Township.

⁴ Barnegat also sought that Freehold share costs for the 2018-19 school year. The ALJ denied that request as Barnegat made no demand for cost sharing at that time. The Commissioner agrees and therefore makes no determination as to where T.M. was domiciled for the 2018-19 school year pursuant to *N.J.A.C. 6A:22-3.1*.

financially responsible for the out-of-district placement. As such, Freehold argues that under *N.J.A.C. 6A:22-3.1*, T.M.'s domicile can be determined as Barnegat, and therefore, the ALJ erred in finding that tuition should be shared.

Freehold also takes exception to the Initial Decision's position that an out-of-district placement can eliminate the domicile of a child of divorced parents. According to Freehold, the Department has consistently found that dual domiciles for school district purposes should only occur in very narrow circumstances, which are not found here. As such, Freehold maintains that although T.M. spends time equally with both parents during school recesses, his domicile did not change; he remains domiciled in Barnegat.

Alternatively, Freehold argues that Barnegat was out of time in filing the instant petition because it was filed more than 90 days after the August 2018 settlement agreement that placed T.M. in the out-of-state placement. Additionally, Freehold argues that Barnegat is estopped from seeking payment from Freehold because it failed to involve Freehold in the underlying due process matter with the parents, which ended with Barnegat agreeing to be solely responsible for the cost of T.M.'s placement. Accordingly, Freehold urges the Commissioner to reject the Initial Decision and find that T.M. is domiciled in Barnegat, and – in the alternative – that Barnegat is barred from seeking payment from Freehold.

In reply, Barnegat argues that the ALJ correctly determined that T.M.'s domicile could not be determined by *N.J.A.C. 6A:22-3.1(a)*. Barnegat maintains T.M. resides at his out-of-state placement and visits his parents equally when in New Jersey; therefore, he lived with neither parent. Furthermore, Barnegat contends that the ALJ appropriately found that there is no court order or written agreement between the parties designating the school district of attendance, and that a designation of legal custody does not suffice. As such, Barnegat agrees

with the ALJ that *N.J.A.C. 6A:22-3.1(a)(1)(ii)(2)* permits an equitable determination of shared responsibility in these circumstances.

With respect to the settlement, Barnegat argues that Freehold was not a party and did not need to be involved; the settlement resolved disputes between Barnegat and the parents at that time. Barnegat further notes that the settlement agreement only provided for T.M.'s placement for the 2018-19 school year, and the ALJ concluded that Freehold was not responsible for cost sharing during that school year. Accordingly, Barnegat urges the Commissioner to adopt the Initial Decision.

Upon review, the Commissioner concurs with the ALJ that the circumstances of this matter support an equitable determination of shared responsibility for the cost of T.M.'s out-of-district placement. *N.J.A.C. 6A:22-3.1(a)(1)* provides:

- (a) A student is eligible to attend a school district if he or she is domiciled within the school district.
 - 1. A student is domiciled in the school district when he or she is the child of a parent or guardian whose domicile is located within the school district.
 - i. 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. This subparagraph shall apply regardless of which parent has legal custody.
 - ii. When a student's physical custody is shared on an equal-time, alternating week/month or other similar basis so the student is not living with one parent or guardian for a majority of the school year and there is no court order or written agreement between the parents designating the school district of attendance, the student's domicile is the present domicile of the parent or guardian with whom the student resided

on the last school day prior to the October 16 preceding the application date.

- (1) When a student resided with both parents or guardians, or with neither parent or guardian, on the last school day prior to the preceding October 16, the student's domicile is that of the parent or guardian with whom the parents or guardians indicate the student will be residing on the last school day prior to the ensuing October 16. When the parents or guardians do not designate or cannot agree upon the student's likely residence as of that date, or if on that date the student is not residing with the parent or guardian previously indicated, the student shall attend school in the school district of domicile of the parent or guardian with whom the student actually lives as of the last school day prior to October 16.
- (2) When the domicile of a student with disabilities as defined in *N.J.A.C. 6A:14*, Special Education, cannot be determined pursuant to this section, nothing in this section shall preclude an equitable determination of shared responsibility for the cost of the student's out-of-district placement.

As explained in the Initial Decision, the regulation confirms the “general proposition that a child’s domicile follows that of his parents; it goes on to countenance a variety of factual complications, and resolves each with a formula for determining a single domicile.” *Board of Education of the Borough of Lodi, Bergen County v. Board of Education of the Township of Rochelle Park, Bergen County*, EDU 20236-15, Initial Decision (June 10, 2016), *adopted*, Commissioner’s Decision No. 267-16, decided July 21, 2016. “Where a special education student is placed out-of-district; his parents reside in different districts; and the

regulatory formulas offer no clarity; then, and only then, is a dual domicile assigned for the child.” *Ibid.*

In analyzing *N.J.A.C. 6A:22-3.1*, the Commissioner is unable to determine T.M.’s residence for the 2019-20 school year, and therefore an equitable determination of shared responsibility for the cost of the placement is permitted. First, T.M.’s parents are domiciled in different school districts and there is no “court order or written agreement between the parties designating the school district of attendance.” The regulation’s requirement for a court order or written agreement is explicit. *G.P. and I.R.-P., on behalf of minor child, A.P. v. Board of Education of the Township of Hamilton, Mercer County*, EDU 02621-16, Initial Decision (October 28, 2016), *adopted*, Commissioner Decision No. 422-16, decided December 15, 2016. Additionally, “when there is a consent order or a written agreement between the parents that designates the school district of attendance, the amount of time spent with either parent does not dictate where the children must attend school.” *K.H., on behalf of minor children, A.H. and V.H. v. Board of Education of the Borough of Butler, Morris County*, Commissioner’s Decision No. 70-17, decided March 2, 2017. Although Freehold argues that the custody arrangement in the Final Judgment of Divorce designating the mother as the parent of primary residence qualifies as an agreement determining that Barnegat is the school district of attendance, the regulation’s requirement is explicit. A parenting time arrangement as part of a divorce decree is not equivalent to a designation of the school district of attendance. Moreover, at the time of the divorce, neither parent resided in Barnegat, so a written agreement determining Barnegat as the school district of attendance could not have been contemplated at the time the parents executed the Final Judgment of Divorce, and the record is devoid of any other agreement between the parents designating a district of attendance.

Next, T.M. resides with neither parent for the majority of the school year as he is in an out-of-state housing placement year-round. According to Freehold, T.M.'s residence remains with his mother because the Final Judgment of Divorce designated her the parent of primary residence. While T.M. previously spent more time with his mother in accordance with the established parenting time schedule, his circumstances have changed. He now lives full-time at an out-of-district placement, and – according to the Final Judgment of Divorce – the parties “equally share all recesses from school and utilize the Court Holiday Schedule unless they can agree otherwise.” There is no evidence in the record that the parties have changed that arrangement, so T.M. splits his time equally between his parents when on recesses from his residential placement and lives with neither parent for the majority of the school year.

As T.M.'s residence cannot be determined in the above analysis, the next step is to determine where T.M. resided on the last school day prior to the October 16 preceding the application date or, otherwise, where he will reside on the last school day prior to the ensuing October 16. T.M. resided at his out-of-state placement on October 15 in 2018, 2019 and is expected to be residing there again in 2020.

Since T.M.'s residence cannot be determined under any of the above steps, an equitable determination of shared responsibility is permitted under *N.J.A.C. 6A:22-3.2(a)(1)(ii)(2)*. The circumstances here are precisely those anticipated by the regulation. A student with disabilities resides at an out-of-district placement and the domicile of the student cannot be determined because the parents live in different districts. Accordingly, an equitable determination may be made for the districts to share the responsibility for the cost of the out-of-district placement.

The Commissioner is not persuaded by Freehold's additional exceptions. This matter is not out of time; it was filed within 90 days of Freehold's refusal of Barnegat's request for cost sharing for the 2019-20 school year. Accordingly, this matter was timely filed pursuant to *N.J.A.C. 6A:3-1.3(i)*. Additionally, Barnegat is not estopped from seeking to share costs with Freehold. The due process petition that resulted in T.M.'s out-of-district placement did not involve Freehold because, at the time, T.M. resided in Barnegat. As explained, T.M.'s circumstances have changed such that his domicile is no longer determinable. Therefore, Barnegat is not estopped from seeking financial assistance from Freehold for the cost of T.M.'s placement beginning in the 2019-20 school year.

Accordingly, the Initial Decision of the OAL is adopted as the final decision in this matter. Freehold is directed to reimburse Barnegat for one-half of the cost of T.M.'s out-of-district placement for the 2019-20 school year and to share equally in the future costs of T.M.'s placement at the American School for the Deaf, so long as the present circumstances remain the same.

IT IS SO ORDERED.⁵

INTERIM COMMISSIONER OF EDUCATION

Date of Decision: October 6, 2020
Date of Mailing: October 6, 2020

⁵ 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

SUMMARY DECISION

**BOARD OF EDUCATION OF THE
TOWNSHIP OF BARNEGAT, OCEAN COUNTY,**

Petitioner,

v.

**BOARD OF EDUCATION OF THE
FREEHOLD REGIONAL HIGH SCHOOL
DISTRICT, MONMOUTH COUNTY,**

Respondent.

OAL DKT. NO. EDU 16397-19

AGENCY DKT. NO. 294-11/19'

Jessika Kleen, Esq. for petitioner (Machado Law Group, attorneys)

Mark G. Toscano, Esq., and **Alexandra A. Stulpin**, Esq., for respondent (Comegno Law Group, PC, attorneys)

Record Closed: July 8, 2020

Decided: July 20, 2020

BEFORE **TRICIA M. CALIGUIRE**, ALJ:

STATEMENT OF THE CASE

Petitioner Board of Education of the Township of Barnegat, Ocean County (Barnegat), brings an action against Respondent Board of Education of the Freehold Regional High School District, Monmouth County (Freehold), seeking an order directing Freehold to assume shared responsibility for providing minor child T.M. with a free appropriate public education (FAPE) in an out-of-district placement, including tuition and all other related educational and residential

expenses, from October 16, 2018 or the date on which T.M.'s father resided in the Freehold District, whichever is earlier, pursuant to N.J.A.C. 6A:22-3.1(a)(1)(ii)(2).

PROCEDURAL HISTORY

On November 8, 2019, Barnegat filed a petition with the Department of Education (DOE), Office of Controversies and Disputes. On November 14, 2019, Freehold filed its answer to the petition. The matter was transmitted by the DOE to the Office of Administrative Law (OAL), where it was filed on November 21, 2019, for hearing as a contested case pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13.

An initial prehearing conference scheduled for January 30, 2020, was adjourned at the request of petitioner, and rescheduled for February 4, 2020. A prehearing order was issued on February 18, 2020, setting deadlines for the completion of discovery and the filing of dispositive motions. On March 4, 2020, a consent order was entered to permit the production of relevant, confidential student records in response to discovery requests.

On May 26, 2020, Barnegat filed a motion for summary decision in its favor. On June 29, 2020, Freehold filed a response in opposition to Barnegat's motion. Barnegat replied on July 8, 2020, and the matter is now ripe for decision.

FACTUAL DISCUSSION AND FINDINGS

Based on the documentary evidence filed in this matter, including the certifications of counsel and P.M., father of minor child T.M., I **FIND** the following as **FACTS**:

1. Barnegat is a local public school district in Ocean County, New Jersey, responsible to provide a FAPE, pursuant to 20 U.S.C.A. 1400(d)(1)(A), to students within Barnegat Township.

2. Freehold is a public regional school district in Monmouth County, New Jersey, responsible for providing FAPE to students in ninth through twelfth grades from eight localities, including Marlboro Township.
3. T.M. is a sixteen year old male who is eligible for special education and related services under the classification multiply disabled. T.M.'s disabilities include bilateral severe to profound hearing loss. He is enrolled in the Barnegat School District and resides at the American School for the Deaf (ASD), an out-of-district residential placement.⁶ Certification of Jessika Kleen, Esq., in Support of Petitioner's Motion for Summary Decision (May 26, 2020), Exhibit A (June 24, 2019 Individual Education Program for T.M.).
4. For the 2018-2019 school year and the 2019-2020 school year, Barnegat placed T.M. at ASD and paid all educational and residential costs of T.M.'s placement pursuant to a settlement agreement entered on October 2, 2018, by T.M.'s parents and Barnegat. Kleen Cert., Ex. B.
5. T.M.'s parents, P.M. and H.L. (formerly H.M.), divorced in 2007. They share joint legal and physical custody of T.M.; H.L. is the "designated parent of primary residence" and P.M. is the "parent of alternate residence." Kleen Cert., Ex. C [Final Judgement of Divorce, Ocean County Sup. Ct. Docket No. FM-15-883-07N (December 21, 2007), at 6].
6. At all relevant times, P.M. has resided in Marlboro Township. Certification of P.M. (May 6, 2020), ¶¶ 2, 3.
7. At all relevant times, H.L. has resided in Barnegat Township. Br. of Petitioner in Support of Motion for Summary Decision (May 26, 2020), ¶ 12.

⁶ While Freehold makes much of the Judgement of Divorce designation of H.L. with primary custody of T.M., the exhibits attached to counsel's certification make clear that since September 1, 2018, T.M. has lived at ASD year-round. See, Certification of Alexandra A. Stulpin in Support of Respondent's Opposition to Motion for Summary Decision (June 29, 2020), Exs. F, G and H.

8. On April 24, 2017, H.L. registered T.M. in the Barnegat School District. Br. of Respondent in Opposition to Motion for Summary Decision (June 29, 2020), at 15.
9. Since the 2018-2019 school year, T.M. has lived at ASD year-round and does not reside with either parent. P.M. Cert., ¶¶ 8-9. As provided in the Final Judgement of Divorce, P.M. and H.L. equally share time with T.M. while he is on recess from school. Kleen Cert, Ex. C, at 6; P.M. Cert., ¶ 9.
10. There is no court order or written agreement between P.M. and H.L.. designating T.M.'s school district of attendance. P.M. Cert, ¶ 11.
11. T.M. resided at ASD and not with either parent on the last school day prior to October 16, 2019. P.M. Cert., ¶ 12.
12. According to his father, T.M. will reside at ASD and not with either parent on the last school day prior to October 16, 2020.⁷ Id., ¶ 13.
13. On September 6, 2019, through counsel, Barnegat proposed that the cost of T.M.'s placement be shared by the two districts. Freehold refused, citing the custody arrangement in the Final Judgement of Divorce, and this petition of appeal followed.

LEGAL ANALYSIS AND CONCLUSIONS

It is well-established that if there is no genuine issue as to any material fact, a moving party is entitled to prevail as a matter of law. Brill v. The Guardian Life Insurance Co. of America, 142 N.J. 520, 540 (1995). The purpose of summary decision is to avoid unnecessary hearings and their concomitant burden on public resources. Under the Brill

⁷ Neither party produced any evidence that T.M. will not be in residence at ASD on October 15, 2020.

standard, a fact-finding hearing should be avoided “when the evidence is so one-sided that one party must prevail as a matter of law.” Brill guides us thusly:

[A] determination whether there exists a ‘genuine issue’ of material fact that precludes summary judgment requires the motion judge to consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party.

[Id. at 540.]

I **CONCLUDE** that the parties raise no dispute with respect to material facts and the obligations of Barnegat and Freehold to share in the costs of T.M.’s out-of-district placement can be decided as a matter of law.

New Jersey public schools are required to provide FAPE to children between the ages of five and twenty who are domiciled within the school district. N.J.S.A. 18A:38-1. Typically, a child’s domicile follows that of his or her parent(s). N.J.A.C. 6A:22-3.1(a)(1). The resolution of this dispute will turn on a legal question, specifically how New Jersey regulations define the domicile of a child of divorced parents who reside in different school districts. In this regard, N.J.A.C. 6A:22-3.1(a)(1)(i) provides:

- (a) A student is eligible to attend a school district if he or she is domiciled within the school district.
 - 1. A student is domiciled in the school district when he or she is the child of a parent or guardian whose domicile is located within the school district.
 - i. 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. This subparagraph shall apply regardless of which parent has legal custody.

- ii. When a student's physical custody is shared on an equal-time, alternating week/month or other similar basis so the student is not living with one parent or guardian for a majority of the school year and there is no court order or written agreement between the parents designating the school district of attendance, the student's domicile is the present domicile of the parent or guardian with whom the student resided on the last school day prior to the October 16 preceding the application date.
 - (2) When a student resided with both parents or guardians, or with neither parent or guardian, on the last school day prior to the preceding October 16, the student's domicile is that of the parent or guardian with whom the parents or guardians indicate the student will be residing on the last school day prior to the ensuing October 16. When the parents or guardians do not designate or cannot agree upon the student's likely residence as of that date, or if on that date the student is not residing with the parent or guardian previously indicated, the student shall attend school in the school district of domicile of the parent or guardian with whom the student actually lives as of the last school day prior to October 16.
 - (3) When the domicile of a student with disabilities as defined in N.J.A.C. 6A:14, Special Education, cannot be determined pursuant to this section, nothing in this section shall preclude an equitable determination of shared responsibility for the cost of the student's out-of-district placement.

The above regulation first confirms “the general proposition that a child’s domicile follows that of his parents; it goes on to countenance a variety of factual complications, and resolves each with a formula for determining a single domicile.” Bd. of Educ. of the Borough of Lodi v. Bd. of Educ. of the Twp of Rochelle Park, OAL Dkt. No. EDU 20236-15 (June 10, 2016), http://njlaw.rutgers.edu/collections/oal/html/initial/edu20236-15_1.html., adopted, Comm’r (July 26, 2016), http://njlaw.rutgers.edu/collections/oal/final/edu20236-15_1.pdf. T.M.’s parents are domiciled in different districts and, given that he lives at ASD year-round and did not stay with either parent on October 15, 2019, and is expected to be at ASD on October 15, 2020, the only question left is whether there is a “court order or written agreement between the parents designating the school district of attendance[.]” N.J.A.C. 6A: 22-3.1(a)(1)(ii).

Freehold argues that the 2007 Final Judgment of Divorce dictates custody of T.M. and, since H.L. is designated with primary custody, this document serves as “a written agreement under N.J.A.C. 6A:22-3.1(a)(1)(i), that show [sic] their united intent to confer T.M.’s domicile with his mother in Barnegat.” Br. of Respondent in Opposition to Motion for Summary Decision (June 29, 2020), at 14.⁸ But, the regulations make clear that the designation of legal custody does not suffice for a specific court order or written agreement between the parents designating the school district of attendance for T.M. See, G.P. and I.R.-P. on behalf of A.P. v. Bd. of Educ. of the Tsp. of Hamilton, OAL Dkt. No. EDU 02621-16 (October 28, 2016) (“[R]egulation explicitly calls for a court order or a written agreement,” and in the absence of such documents, the domicile of the minor child “on any given day is to be determined in accordance with the provisions of N.J.A.C. 6A:22-3.1(a)1ii[.]”), http://njlaw.rutgers.edu/collections/oal/html/initial/edu02621-16_1.html, adopted, Comm’r (December 15, 2016), <http://njlaw.rutgers.edu/collections/oal/final/edu02621-16.pdf>.

When, as here, a special education student is placed out-of-district, his parents reside in different districts, and the above regulatory formulas offer no clarity, then, and only then, is a dual domicile assigned for the child. Lodi v. Rochelle Park (cited above). Respondent claims that Barnegat relies too heavily on the finding of dual domicile in Somerville Bd. of Educ. v. Manville Bd. of Educ., 332 N.J. Super 6 (App. Div. 2000), as that case was decided before the current regulations were promulgated and the decision is rarely cited. The dearth of citations may only be because the circumstances supporting use of dual domicile are so rare. In Lodi v. Rochelle Park, ALJ Ellen Bass explained that the current regulations are in fact consistent with both Somerville and the later decision in Cumberland Regional H.S. District Board of Education v Freehold Regional H.S. District Board of Education, 293 Fed. Appx. 900 (3d Cir. 2008):

⁸ Freehold cites an email exchange with P.M. confirming that the Judgment of Divorce remains unchanged. Stulpin Cert. (June 29, 2020), ¶ 33. That is not enough, however, to turn the Judgment into “a court order or written agreement designating the school district of attendance.” Further, it raises the question of whether had the parents so designated a district in 2007, it would have been Barnegat, as H.L. lived in Jackson, New Jersey, at the time of the divorce. See, Kleen Cert, Ex. C at 2.

[In Cumberland,] the special needs child of divorced parents was placed in a residential facility out-of-state. Freehold Regional, the district where the father lived, contended that the home district of the child's mother should share in the cost of the placement. The court agreed, relying on the Somerville decision to direct that the districts share the cost of the placement. Cumberland predates the regulations that now guide thorny domicile determinations but offers a scenario that would result in a dual domicile determination even today. The special education student in Cumberland resided out-of-state and thus in neither parents' home; as a result, her domicile could not 'be determined pursuant to [the regulation].'

The undisputed facts are that T.M. resides out-of-state for the majority of the year and when he is in New Jersey, he divides his time equally at the separate residences of his parents. At the time of their divorce, P.M. and H.L. did not enter into a written agreement designating the school district of attendance for T.M. as Barnegat and why would they have, given that H.L. did not move to Barnegat until approximately ten years later. Neither party has provided any evidence that such a document was executed at any time after the divorce. I **CONCLUDE** that T.M.'s domicile cannot be determined and therefore, pursuant to N.J.A.C. 6A: 22-3.1(a)(1)(ii), Barnegat and Freehold, the districts of domicile of T.M.'s parents, must share in the cost of T.M.'s out-of-district placement.

Barnegat's request for relief included one-half of all costs incurred by Barnegat related to T.M.'s out-of-district placement beginning October 16, 2018. Barnegat made no demand for payment at that time and Freehold should not be responsible to cover costs for which it could not anticipate nor budget. I **CONCLUDE** that Freehold's obligation to share costs began with the 2019-2020 school year, coincident with the September 2019 demand from Barnegat. See I.G. obo L.G. v. Cumberland Regional High School District Bd. of Educ., OAL Dkt. Nos. EDS 2994-02 and EDS 6938-02 (July 27, 2005) (district's shared responsibility for education costs began with notice of litigation).

ORDER

For the foregoing reasons, I **ORDER** that the motion of Petitioner Board of Education of the Township of Barnegat for summary decision in its favor is **GRANTED** and Respondent Board

of Education of the Freehold Regional High School District is **ORDERED** to reimburse petitioner for one-half of the costs of T.M.'s placement at the American School for the Deaf for the 2019-2020 school year, and to share equally in all future costs continuing until such time as T.M. is no longer enrolled at ASD or P.M. no longer resides in Freehold, whichever is earlier.

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.

July 20, 2020

DATE



TRICIA M. CALIGUIRE, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

TMC/nd