

New Jersey Commissioner of Education

Final Decision

T.B., on behalf of minor children, I.B., H.H.,
and S.H.,

Petitioner,

v.

Board of Education of the Township of Ewing,
Mercer County,

Respondent.

Synopsis

Pro Se petitioner appealed the determination of the respondent Board that her children were not domiciled in Ewing and therefore not legally entitled to a free public education in the Ewing School District (District). Petitioner further appealed the tuition assessment levied upon her for the time the children were deemed ineligible to attend school in the District.

The ALJ found, *inter alia*, that: pursuant to *N.J.S.A.* 18A:38-1(a) and *N.J.A.C.* 6A:22-3.1(a), public schools are free to any person over five and under twenty-five years of age who is domiciled within the school district; T.B. has met her burden of proof to show that she shares custody of S.H. and H.H. with their father, Sa.H., and that Sa.H. is domiciled at an address on Conway Avenue in Ewing; accordingly, S.H. and H.H. were entitled to a free public education in Ewing during the 2018-2019 school year; however, T.B. failed to meet her burden to show that she and I.B. were domiciled at a Ewing address during the 2018-2019 school year. Therefore, as to I.B., the ALJ concluded that the Board demonstrated entitlement to tuition reimbursement in the amount of \$13,714.50 for I.B.'s attendance on 150 days during the 2018-2019 school year. Accordingly, the ALJ granted the Board's assessment of tuition for I.B. for the 2018-2019 school year in the amount of \$13,714.50, but denied the Board's assessment of tuition for S.H. and H.H.

Upon review, the Commissioner concurred with the findings of the ALJ and adopted the Initial Decision of the OAL as the final decision in this matter. The petitioner was ordered to reimburse the District for tuition costs in the amount of \$13,714.50. The petition was dismissed.

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.

January 22, 2020

New Jersey Commissioner of Education
Final Decision

T.B., on behalf of minor children, I.B., H.H.
and S.H.,

Petitioner,

v.

Board of Education of the Township of Ewing,
Mercer County,

Respondent.

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed.¹ The parties did not file exceptions.

Upon review, the Commissioner agrees with the Administrative Law Judge (ALJ) that the petitioner failed to demonstrate that she resided in the District during the 2018-2019 school year and that I.B. had a right to attend school in the District. Further, the Board has demonstrated an entitlement to tuition reimbursement in the amount of \$13,714.50 for the 150 days that I.B. attended school in the District during the 2018-2019 school year. With respect to S.H. and H.H., the Commissioner is also in accord with the ALJ's determination that there is sufficient evidence in the record to demonstrate that S.H. and H.H. resided in Ewing Township and were entitled to attend school in the District during the 2018-2019 school year.

¹ The record does not include a transcript of the August 30, 2019 hearing at the OAL.

Accordingly, the Initial Decision of the OAL is adopted as the final decision in this matter. The petitioner is ordered to reimburse the District for tuition costs in the amount of \$13,714.50.

IT IS SO ORDERED.²

COMMISSIONER OF EDUCATION

Date of Decision: January 22, 2020
Date of Mailing: January 23, 2020

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).

(N.J.S.A.)



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. EDU 04106-19

AGENCY DKT. NO. 32-2/19

**T.B. on behalf of minor children,
I.B., H.H. and S.H.,**

Petitioner,

v.

**BOARD OF EDUCATION OF THE
TOWNSHIP OF EWING, MERCER
COUNTY,**

Respondent.

T.B., petitioner, pro se

Joseph I. Roselle, Esq., for respondent (Schenck, Price, Smith and King, LLP,
attorneys)

Record Closed: November 4, 2019

Decided: December 19, 2019

BEFORE **SUSAN L. OLGATI**, ALJ:

STATEMENT OF THE CASE

Petitioner, T.B., appeals the determination of the Ewing Township Board of Education (Board or respondent) that her children, I.B., S.H., and H.H. were not domiciled

in Ewing and not legally entitled to a free public education in the Ewing School District (District). Petitioner also appeals the resulting tuition assessment for the time the children were deemed ineligible to attend school in the District.

PROCEDURAL HISTORY

By letter, dated January 30, 2019, the Board advised petitioner of its residency hearing determination. The petitioner timely filed a petition of appeal and the Board filed its Answer and Affirmative Defenses. Thereafter, the matter was transmitted to the Office of Administrative Law (OAL), where it was filed on March 25, 2019, as a contested case pursuant to N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13. A hearing was held on August 30, 2019,³ and the record remained open until September 27, 2019, to allow the parties to submit written summations. On October 17, 2019, the record was reopened for clarification purposes and the parties were given additional time for respondent to produce documentation of the address to which the children were registered to attend school and for petitioner to produce proof of residency. The record reclosed on November 4, 2019, following receipt and review of the post hearing submissions.

FACTUAL DISCUSSION AND FINDINGS

Testimony

The following is a summary of the relevant and material testimony given at hearing.

For respondent:

Pete Manetto, (Manetto) is a Residency Investigator for the District. He has held this position for twenty years. He is a retired police officer and private detective. Manetto testified that he conducted a residency investigation of I.B., S.H., and H.H. and prepared a report on same. R-1. He conducted a total of twenty-two (22) surveillances beginning in October 16, 2018. Two (2) surveillances, conducted on October 16, 2018, and

³ Prior hearing dates scheduled for May 9, 2019, June 25, 2019, and August 21, 2019 were adjourned due to witness unavailability and/or medical issues.

December 13, 2018, were initiated at 14xx Parkside Ave., Unit 1x,⁴ (Parkside Avenue), Ewing New Jersey. The subjects were not found at that address on either occasion.

Surveillance was also initiated at 15x Girard Avenue, Trenton, New Jersey (Trenton location). Twelve (12)⁵ surveillances were conducted at the Trenton location beginning on October 18, 2018, and ending on November 26, 2018. During eight (8) of the surveillances conducted at the Trenton location, S.H. and H.H. were observed exiting the location and being driven by an adult black female to a District school or were later confirmed to have been in school. Manetto testified that according to New Jersey Motor Vehicle Commission (NJMVC) records, the “subject” vehicle, a 2013 black Volvo, NJMVC registration number NJN7xxx,⁶ is the property of T.B. The address of record for the subject vehicle is 15x Girard Avenue (the Trenton location). During five (5) of the surveillances conducted at the Trenton location, I.B. was observed exiting the location and being driven by the same individual in the subject vehicle to a different District school or later confirmed to have been in school. Neither the subjects nor the subject vehicle were observed during the remaining surveillances at the Trenton location.

Manetto conducted two (2) surveillances at 4x W. Cleveland Avenue, Morrisville, Pennsylvania. Neither the subjects nor the subject vehicle were observed at that location.

Manetto also conducted one surveillance at a District bus stop located at Grafton and Conway streets. This surveillance was initiated based on information that S.H. and H.H. were being dropped off by a District school bus, proceeding to 2x Conway Avenue, Ewing, New Jersey, and then later picked up and driven to an undetermined location. Neither the subjects nor the subject vehicle were observed during that surveillance.

Manetto, also conducted five (5) after-school surveillances at 2x Conway Avenue, Ewing, New Jersey, beginning on December 19, 2018, and ending on January 16, 2019.

⁴ For purposes of confidentiality, complete address information is not listed herein for any of the locations surveilled during the District’s residency investigation.

⁵ A review of the report reveals that there were eleven surveillances conducted at this location: October 18, 19, 23, 25, and 30, 2018, and November 5, 12, 14, 19, 21, & 26, 2018.

⁶ For purposes of confidentiality, complete vehicle registration information is not listed herein.

On each of these occasions, two individuals fitting the description of S.H. and H.H. were observed exiting the school bus and proceeding to 2x Conway Avenue. Later, the two individuals exited the location and were driven by unidentified person(s) towards the area of Lower Ferry Road. Manetto explained that due to traffic conditions, he lost sight of the vehicles observed at that location. During one of these surveillances, Manetto followed the vehicle transporting the two individuals from that location to the Scudders Falls Bridge and observed it heading towards Pennsylvania. That vehicle, a Lexus SUV, was registered to "M.C."⁷

Manetto took seven (7) photographs, of the subject individuals and/or the subject vehicle at the Trenton location. R-1, Photo legend and attachments. The photographs were taken in low light.

On June 16, 2019, Manetto conducted a supplemental surveillance at 1x Conway Avenue, Ewing.⁸ The subjects were not observed during that surveillance.

Based on his investigation, Manetto concluded that the subjects did not reside in Ewing.

Manetto acknowledged several errors in his report including:

- An entry in his November 26, 2018, report noting: "A check with subject's respective schools indicated all in school on time." He explained that this sentence was information copied from a prior surveillance report entry in this matter.
- An entry in his December 12, 2018, report referencing surveillance location in the area of Conway and "Gladstone." The correct location is "Grafton."
- An entry in his January 7, 2019, report containing the same incorrect reference to "Gladstone."

⁷ For purposes of confidentiality, M.C.'s full name is not used. The address to which this vehicle is registered is 13xx Parkside Avenue in Ewing.

⁸ This surveillance is not reflected in Manetto's report, R-1.

George Cahill, (Cahill), is the Attendance Officer for the District. He conducted a tuition assessment calculation in this matter. R-2. I.B., S.H., and H.H. each attended 150 days of school in the District during the 2018-2019 school year.⁹ Cahill's calculation for S.H. and H.H. is as follows: students in grades one through five cost the District \$14,948 for a full year/180 days. This equals \$83.05 per day. The 150 days attended by S.H. and H.H., multiplied by the daily rate of \$83.05 equals \$12,457 per child or a total of \$24,915. Cahill's calculation for I.B. is as follows: students in grades six through eight cost the District \$16,457 for a full year/180 days. This equals \$91.43 per day. The 150 days attended by I.B., multiplied by the daily rate of \$91.43 equals \$13,714.50. The total tuition assessed for all three children is \$38,629.50.

For petitioner:

T.B. is the mother of I.B. (a girl), S.H., and H.H. (both boys). She testified that she shares custody of the boys with Sa.H., their father, and L.H., their aunt/Sa.H.'s sister. T.B. and Sa.H. went to court to address custody issues. See P-1.¹⁰ L.H. lives at 1x Conway Avenue in Ewing. See, P-8 & R-5. L.H. has lived at this address for approximately four years. Sa.H. lives with L.H. at 1x Conway Avenue. The boys are with their father the majority of the week and with T.B. mainly on the weekends--Friday to Sunday. The boys stay with T.B. during the summer.

2x Conway Avenue, Ewing, New Jersey, is the address of L.H.'s neighbor. The boys go to that address after school because L.H. does not get home from work by the time the boys finish school. T.B. does not know the schedule that Sa.H. or his sister worked out for picking the boys up after school. She does not know M.C., the person to whom the Lexus used to pick up the two individuals from 2x Conway Avenue, was

⁹ The number of school days attended was calculated from the time the Board initiated its residency investigation.

¹⁰ P-1 is an August 23, 2016, Superior Court of New Jersey, Family Part Order in the matter of L.H v. Sa. H. The order addresses visitation and notes in relevant part on page 2, item #23, "The plaintiff/ [L.H.] withdraws her application. The parties consent to the plaintiff/[L.H.] and the defendant/[T.B.] having joint legal and residential custody of the minor children, [H.H. and S.H.] The parties consent to the defendant/[T.B.] having liberal and reasonable parenting time as agreed upon by the parties.

registered. L.H. went to the Board hearing and brought the joint custody document but was not permitted to testify and/or told she was not needed.

T.B. testified that she has lived at the following Ewing addresses:

- 5x Dunmore Avenue, she was living at this address when she went to court with Sa.H. [August 23, 2016.] P-1;
- 1x Ronnet Drive, from there, T.B. moved in with her mother; and
- 14xx Parkside Avenue, her mother's address.

I.B. is the only child who should be registered for school at Parkside Avenue. The boys should both be registered for school at 1x Conway Avenue.

The Trenton location is T.B.'s grandmother's address. T.B. took a Family and Medical Leave Act (FMLA) leave to care for her grandmother, "C.B." P-7¹¹. On the dates T.B. was observed at the Trenton location, she was there caring for her grandmother while her aunt was away. T.B. was not at her grandmother's house every day.

T.B.'s younger sister lived at 4x W. Cleveland Avenue, Morrisville, Pennsylvania. The children never lived at that address. They were not living in Pennsylvania.

In June 2019, T.B. moved to 9xx Poplar Court, Bensalem, Pennsylvania. As of the date of the August 30, 2019, OAL hearing, T.B. had not notified the District of her change of address. T.B. testified that I.B. would not be attending school in the District during the 2019-2020 school year. T.B. testified that I.B. was having problems in the District and would be attending school in Hamilton, New Jersey.

¹¹ October 23, 2018, letter approving petitioner for an intermittent leave of absence to care for her grandmother, C.B., from September 4, 2018, through January 1, 2019.

It is the obligation of the fact finder to weigh the credibility of the witnesses before making a decision. Credibility is the value that a fact finder gives to a witness' testimony. Credibility is best described as that quality of testimony or evidence that makes it worthy of belief. "Testimony to be believed must not only proceed from the mouth of a credible witness but must be credible in itself. It must be such as the common experience and observations of mankind can approve as probable in the circumstances." In re Estate of Perrone, 5 N.J. 514, 522 (1950). To assess credibility, the fact finder should consider the witness' interest in the outcome, motive, or bias. A trier of fact may reject testimony because it is inherently incredible, or because it is inconsistent with other testimony or with common experience, or because it is overborne by other testimony. Congleton v. Pura-Tex Stone Corp., 53 N.J. Super. 282, 287 (App. Div. 1958).

Having had an opportunity to hear the testimony of the witnesses and to observe their demeanor during the hearing, I accept the testimony of investigator Manetto as credible. His testimony as to his actions taken during the course of the investigation including his observations of I.B., S.H., and H.H. and the subject vehicle was straight forward and reasonable. While he acknowledged several errors in his report, these errors were relatively minor and/or administrative in nature and do not affect the reliability of his observations or his testimony.

Similarly, George Cahill's testimony regarding his calculation of the tuition assessment for I.B., S.H., and H.H. was straight forward and reasonable, thus I accept it as credible.

As to petitioner, portions of her testimony relating to her joint custody of S.H. and H.H. and the in-District residence of L.H. was reasonable and supported by the competent documentary evidence in the record. Thus, I accept that portion of her testimony as credible. T.B. testified that the boys stayed with their father during the majority of the week and were with her, mainly on the weekends. While this testimony was called into question by Manetto's observations of the boys at the Trenton location on eight (8) occasions, these limited observations, are insufficient to refute petitioner's testimony and the documentary evidence regarding the custody arrangement. They are also insufficient to refute petitioner's testimony regarding where the boys were living.

In contrast however, T.B.'s testimony regarding her residence/domicile at her mother's Parkside Avenue address, was not fully supported and/or was contradicted by the sparse competent residency evidence presented. As an initial matter, petitioner did not dispute nor explain Manetto's testimony and report indicating that the subject vehicle was registered to T.B. at the Trenton location.

Additionally, T.B.'s explanation that her presence at the Trenton location was due to her FMLA leave to care for her grandmother was contradicted by the fact that the October 23, 2018, leave approval letter sent by or on behalf of her employer was addressed to T.B. at the Trenton location. P-7¹² This letter supports that T.B. was living at the Trenton location during the 2018-2019 school year and not simply there to temporarily care for her grandmother while on leave.

Similarly, petitioner testified that she moved to Bensalem, Pennsylvania in June 2019. Despite this, as part of her post-hearing submission of proof of residency, petitioner provided two October 29, 2019, letters from Navient, Department of Education Loan Servicing regarding: "important loan information" for 2018 and 2017, addressed to her at Parkside Avenue. Aside from the fact that the letters were sent during the 2019-2020 school year, the letters were sent to petitioner after a time she acknowledges moving from the Parkside Avenue address.¹³ Thus, the letters do not support her claim that she was living at that address during the 2018-2019 school year. Rather, they create further doubt as to the truthfulness of petitioner's testimony regarding her residency/domicile during that time.

For these reasons, I do not accept petitioner's testimony regarding her residency at Parkside Avenue during the 2018-2019 school year as credible.

Accordingly, based upon the testimonial and documentary evidence presented, I **FIND** the following as **FACT**:

¹²See copy of envelope/ mailing information accompanying the October 23, 2018, letter provided by petitioner as part of her post-hearing proof of residency.

¹³ Petitioner testified she moved to Bensalem, Pennsylvania in June 2019.

Pursuant to an August 23, 2016, Family Part Order, the petitioner shares joint legal and residential custody of her two children, S.H. and H.H, with Sa.H., their father, and L.H., their aunt/the father's sister. Pursuant to this Order, petitioner is to have liberal and reasonable parenting time as agreed upon by the parties.

The August 2016 Family Part Order does not designate the school district of attendance for S.H. and H.H.

L.H. resides/is domiciled at 1x Conway Avenue, Ewing, New Jersey, and was so during the 2018-2019 school year.

During the 2018-2019 school year, I.B. attended middle school in the District. During that time, S.H. and H.H. attended elementary school in the District.

Investigator Manetto conducted a residency investigation of I.B, S.H., and H.H. During the course of the investigation, beginning on October 16, 2018, through January 16, 2019, Manetto conducted twenty-one surveillances at five separation locations in Ewing and Trenton, New Jersey, and Morrisville, Pennsylvania. In June 2019, Manetto conducted one supplemental surveillance. The location of that surveillance was 1x Conway Avenue in Ewing, New Jersey (L.H.'s address).

Petitioner's grandmother, C.B., lives at 15x Girard Avenue, Trenton, New Jersey.

Petitioner was approved for an intermittent FMLA/NJ-FLA leave from her employment to care for her grandmother beginning on September 4, 2018, and running through January 1, 2019.

Manetto conducted eleven surveillances at the Trenton location beginning on October 18, 2018, through November 26, 2019. Of the surveillances conducted at that location, S.H. and H.H. were observed there on eight occasions. Of the surveillances conducted at this location, I.B. was observed there on five occasions.

On the occasions that the children were observed at the Trenton location they were seen being transported by a black female, in a 2013 Volvo, registered to/owned by petitioner. On these occasions, the children were transported to a District school or later confirmed to have been in school. The address on record, with the New Jersey Motor Vehicle Commission, for the 2013 Volvo is 15x Girard Avenue, Trenton.

Surveillance photos taken by Manetto at the Trenton location on October 25, 2018, and November 14, 2018, are of poor quality and are not self-explanatory. Neither the subject vehicle nor the individuals are clearly identifiable absent Manetto's testimony and/or photo legend contained within his report.

The Parkside Avenue address belonging to petitioner's mother, was surveilled twice during the course of the investigation. On those two occasions, October 16, 2018, and December 13, 2018, no activity was observed.

The tuition assessed for S.H. and H.H.'s attendance of 150 days of school in the District, during the 2018-2019 school year, is \$12,457 per child or a total of \$24,915 for both.

The tuition assessed for I.B.'s attendance of 150 days of school in the District during the 2018-2019 school year is \$13,714.50.

LEGAL ANALYSIS AND CONCLUSION

Any child between the ages of five and twenty years old is entitled to a free public education in the district in which he is a resident. N.J.S.A. 18A:38-1(a); N.J.A.C. 6A:22-3.1(a). A student is a resident of a school district if his parent or guardian has a permanent home in the district such that "the parent or guardian intends to return to it when absent and has no present intent of moving from it, notwithstanding the existence of homes or residences elsewhere." N.J.A.C. 6A:22-3.1(a)(1). A student may attend school in a district in which he is a non-resident, with or without payment of tuition, at the discretion of the school district. N.J.S.A. 18A:38-3(a); N.J.A.C. 6A:22-2.2.

Domicile has been defined as the place where a person has his true, fixed, permanent home and principal establishment, and to which whenever he is absent he has the intention of returning. State v. Benny, 20 N.J. 238, 250 (1955). The domicile of an unemancipated child is that of his or her parent, custodian or guardian. P.B.K. o/b/o minor child E.Y. v. Board of Ed. of Tenafly, 343 N.J. Super 419, 427 (App. Div. 2001). The question of domicile is one of fact and must be determined on a case-by-case basis. Lea v. Lea, 18 N.J. 1, 7 (1955). A person may have multiple residences but may have only one domicile at a time; as such, the residence may coincide with domicile, but does not alone determine domicile. Id.

In M.K. v. Bd. of Educ. of the Bridgewater-Raritan Reg'l Sch. Dist., 2019 N.J. Super. Unpub. LEXIS 1515, the Appellate Division noted that it was legally possible that the petitioner therein and her child could have been found to have had two simultaneous residences, although only one domicile. Id. 6. The court concluded that, “[t]he real question is not where [the child] resides. But where is he domiciled. And that question is answered by examining where [his parents] are domiciled. See NJAC 6A:22-3.1(a)(1).”

The regulations contemplate that parents may not reside in the same school district. N.J.A.C. 6A:22-3.1(a)1.i provides, “When a student’s parents are domiciled in 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.” The regulations also contemplate that a student may live with both of his parents an equal amount of time. N.J.A.C. 6A:22-3.1(a)1.ii provides:

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.

Here, the Board argues that petitioner has failed to meet her burden of proof that she resided/was domiciled in the District or that her children were entitled to a free education there. The Board also argues that petitioner failed to credibly refute the investigation report or its findings.

At the conclusion of the August 30, 2019, OAL hearing in this matter, the undersigned gave petitioner an opportunity to submit post-hearing proof of her residency at the Parkside Avenue address. Thereafter, on October 17, 2019, the record was reopened for clarification purposes and petitioner was provided an additional opportunity to provide proof of her residency. In total, the only proof of residency produced by the petitioner consisted of the following:

- An August 13 – September 12, 2018, phone bill from Verizon. P-2
- A February 13 – March 12, 2019, phone bill from Verizon. Id.
- An October 29, 2019, letter from Navient, Department of Education Loan Servicing regarding: important tax information for 2018, and an October 29, 2019 letter from Navient, Department of Education Loan Servicing regarding: important tax information for 2017. P-3.
- A copy of an envelope from the Ewing Public Schools to the Parent of I.B., date stamped May 28, 2019, a copy of an envelope from Central Registration Office to T.B., date stamped June 16, 2019. P-4.
- An October 28, 2019, letter from T.B.'s mother, F.B-H., stating that T.B. and I.B. lived with her at the Parkside Avenue address during the 2018-2019 school year. P-5.

This information is insufficient to meet petitioner's burden of proof to establish residency/domicile in the District during the 2018-2019 school year. As an initial matter

the two bills from Verizon are for wireless service.¹⁴ As such, the bills could be forwarded to any address and do not demonstrate residency or domicile at the Parkside Avenue address during the 2018-2019 school year.

Next, for the reasons previously set forth in the credibility determination herein, the two October 2019 letters addressed to petitioner from Navient do not establish residency or domicile at the Parkside Avenue address during the 2018-2019 school year.

Similarly, the copies of the envelopes mailed by the District to T.B./the parent of I.B., do not establish residency or domicile at the Parkside Avenue address during the 2018-2019 school year, but rather reflect only address information provided to the District.

Finally, the letter from petitioner's mother, F.B-H., stating that petitioner and I.B. lived with her at the Parkside Avenue address during the 2018-2019 school year does not constitute competent, reliable, unbiased evidence sufficient to establish residency or domicile at that location. Aside from being hearsay, as the mother of T.B. and grandmother of I.B., F.B-H. has an interest in the outcome of this matter, thus her statement is made with motive and bias.

In sum, the sparse evidence produced by petitioner does not establish residency or domicile in the District during the 2018-2019 school year. Nor is it sufficient to overcome petitioner's failure to refute the testimony and investigative finding that her vehicle was registered to the Trenton location. Nor does the documentation overcome the fact that the October 2018 FMLA approval letter was mailed to petitioner at the Trenton location.

For the reasons set forth herein, I **CONCLUDE** that petitioner has failed to meet her burden of proof that she resided/was domiciled in the District during the 2018-2019 school year and that I.B. had a right to a free education there. Therefore, as to I.B., I **CONCLUDE** that the Board has demonstrated an entitlement to tuition reimbursement in the amount of \$13,714.50, for the 150 days attended during the 2018-2019 school year.

¹⁴ The bills direct recipients with questions to "vzw.com." A Google search of this address brings the searcher to Verizonwireless.com.

As to S.H. and H.H., petitioner has through her testimony and the competent evidence in the record established that she shares joint custody of them with their father and L.H. L.H. resides/is domiciled at 2x Conway Avenue, in Ewing. The investigation conducted over the course of twenty-one days beginning on October 16, 2018, and continuing through January 16, 2019, in which S.H. and H.H. were observed at the Trenton location eleven times is insufficient to determine that they were domiciled at the Trenton location or to overcome petitioner's testimony that they stayed with their father the majority of the week. Similarly, the investigative findings that individuals fitting the description of S.H. and H.H. were on six occasions transported from 2x Conway Avenue, in the direction of the New Jersey/Pennsylvania border is wholly insufficient to overcome petitioner's testimony or to establish domicile or residency in Pennsylvania. Moreover, L.H.'s address was surveilled only one time, and at the end of the school year. The fact that the boys were not observed there on that single occasion is similarly insufficient overcome petitioner's testimony or to establish that they were not residing/domiciled there. Finally, T.B.'s testimony that the boys lived with L.H. is supported by the October 29, 2019, letter of L.H. in which she confirms that she shares custody of S.H. and H.H. and that they have lived with her for several years. While the statement is hearsay from an interested party, the investigative findings as to S.H. and H.H. are insufficient to overcome same.

For the reasons set forth herein, I **CONCLUDE** that there is sufficient evidence to demonstrate that S.H. and H.H. resided/were domiciled in the District during the 2018-2019 school year. Thus, I **CONCLUDE** that the Board is not entitled to tuition reimbursement for S.H. or H.H. during the 2018-2019 school year.

Finally, as part of respondent's October 29, 2019, post hearing submission and response, counsel for the District noted that despite petitioner's testimony at hearing that I.B. would not be attending Ewing schools in the 2019-2020 school year, she remains enrolled in and is attending school there. Respondent therefore requested that the undersign consider I.B.'s attendance in the District during the current school year when issuing this Initial Decision. Additionally, respondent also provided emails relating to supplemental surveillances conducted by investigator Manetto on October 4, and 14,

2019. As respondent's residency determination related to the children's attendance in the District during the 2018-2019 school year, and the hearing in this matter addressed only facts and evidence relating to their attendance during that school year, I decline at this time to consider information relating to the 2019-2020 school year. If respondent contends there is reason to believe that the children are not domiciled in the District during the current school year, it should conduct a thorough investigation and render a new residency determination.

ORDER

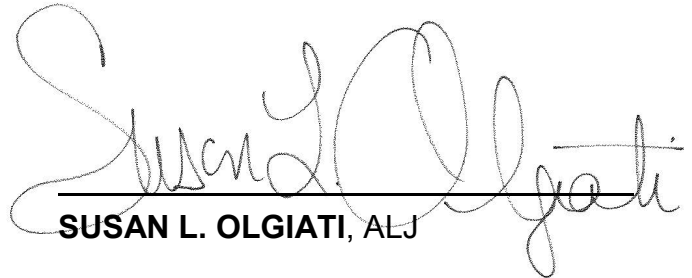
Based on the foregoing, I hereby **ORDER** that the Board's assessment of tuition for I.B. during the 2018-2019 school year in the amount of \$13,714.50 is **GRANTED**. I further **ORDER** that the Board's tuition assessment for S.H. and H.H. during the 2018-2019 school year is **DENIED**.

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.

December 19, 2019
DATE



SUSAN L. OLGATI, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

/vj

APPENDIX

List of Witnesses

For petitioner:

T.B.

For respondent:

Pete Manetto, Investigator

George Cahill, Residency Officer

List of Exhibits

For petitioner:

- P-1 Order of Superior Court of NJ, Family Part in L. H. v. H.S., Docket No# FD-11-001XXX-16, with attachment NJ Uniform Support Notices.
- P-2¹⁵ Verizon bills addressed to T.B. for billing period August to September, 2018, and February to March, 2019.
- P-3 Two letters to T.B. from Navient, Department of Education Loan Servicing, October 29, 2019;
- P-4 Copy of envelope from Ewing Public School addressed to “the Parent of [I.B], May 28, 2019; copy of envelope from Central Registration Office, Ewing Public Schools to T.B., June 17, 2019.
- P-5 Letter from F.B-H to whom it may concern, October 28, 2019.
- P-6¹⁶ Order of Superior Court of NJ, Family Part—L. H. v. H.S. Docket No# FD-11-001XXX-16.
- P-7 Letter from Cigna Leave Solutions with copy of address/mailing

¹⁵ P-2 through P-8 represent petitioner’s post hearing submissions.

¹⁶ Duplicate of Order submitted as P-1.

information, October 23, 2018.

- P-8 NJ Residential Lease Agreement for L.H., Renewal of Lease for August 2018 to July 2019, and October 29, 2019, letter from L.H. regarding joint custody.

For respondent:

- R-1 Investigation report prepared by Pete Manetto with attachments.
- R-2 Tuition Assessment Calculation
- R-3¹⁷ Ewing public school registration system information for I.B. consisting of: registration information FMS Grade 7, two pages; FMS Grade 8, two pages; student contact information Grade 7, two pages; student contact information Grade 8, two pages; Student Daily Attendance Report SY 2019-20; Student Daily Attendance Report SY 2018-19.
- R-4 Ewing public school information for S.H. consisting of: student contact information Grade 4, two pages; student contact information Grade 5, two pages; registration information LES Grade 4, two pages; registration information LES Grade 5, two pages.
- R-5 Ewing public school information for H.H. consisting of: student contact information Grade 5, two pages; student contact information Grade 6, one page; registration information LES Grade 5, two pages; registration information LES Grade 6, two pages.
- R-6 NJ Residential Lease Agreement August 1, 2016 to July 31, 2017 for L.H., copy of envelope/official change of address information from Comcast to L.H., undated; copy of envelope/addressed to L.H. with postal message regarding: "Notify sender of new address," undated.
- R-7 Two emails from Peter Manetto re: Case update report/surveillance conducted on October 4, 2019 and October 14, 2019.

¹⁷ R-3 through R-7 represent respondent's post-hearing submissions.