

New Jersey Commissioner of Education

Final Decision

M.B., on behalf of minor children,
D.B. and M.B.,

Petitioner,

v.

Board of Education of the Township of Union,
Union County,

Respondent.

Synopsis

Pro se petitioner appealed the determination of the respondent Board that D.B. and M.B. did not reside within the Union Township School District during the 2018-2019 school year. The Board alleged that D.B. and M.B. were not residing at either of the two addresses provided by the petitioner, and sought payment of tuition for the period of their ineligible attendance.

The ALJ found, *inter alia*, that: pursuant to *N.J.S.A.* 18A:38-1(b)(2), petitioner has the burden of proof in a determination of residency; the residency investigation in this matter demonstrated that the children were not present at either of the addresses in Union Township provided by petitioner and were instead seen repeatedly at an address in Roselle; and based on the evidence submitted by the petitioner in support of his residency claim, D.B. and M.B. were not domiciled in the District while attending school there during the 2018-2019 school year. The ALJ concluded that D.B. and M.B. were not entitled to receive a free public education in the Union Township School District; accordingly, the respondent Board is entitled to reimbursement for tuition costs in the amount of \$28,046 for the 2018-2019 school year.

Upon review of the record in this matter, the Commissioner concurred with the ALJ's findings and conclusion. The Initial Decision was adopted as the final decision in this matter, and the petitioner was ordered to reimburse the Board for tuition in the amount of \$28,046; 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.

March 17, 2020

New Jersey Commissioner of Education

Decision

M.B., on behalf of minor children,
D.B. and M.B.,

Petitioner,

v.

Board of Education of the Township
of Union, Union 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 concurs with the Administrative Law Judge's (ALJ) finding that petitioner failed to sustain her burden of establishing that she was a domiciliary of Union for the 2018-2019 school year. The Commissioner further concurs with the ALJ's conclusion that the minor children were, therefore, not entitled to a free public education in the District's schools during that time.

Pursuant to *N.J.S.A.* 18A:38-1b, the Commissioner shall assess tuition against petitioner for the time period during which the minor children were ineligible to attend school in Union. Therefore, the Board is entitled to tuition reimbursement in the amount of \$14,023 for M.B. and \$14,023 for D.B. for the 2018-2019 school year, during which time petitioner's minor children were ineligible to attend school in respondent's district.

¹ The Commissioner was not provided with a transcript of the January 31, 2020 hearing at the OAL.

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 \$28,046 for tuition costs incurred during the time period in which M.B. and D.B. were ineligible to attend school in Union. The petition of appeal is hereby dismissed.

IT IS SO ORDERED.²

COMMISSIONER OF EDUCATION

Date of Decision: March 17, 2020
Date of Mailing: March 17, 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*).



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. EDU 02760-19

AGENCY DKT. NO. 21-1/19

M.B. ON BEHALF OF MINOR CHILDREN D.B AND M.B.,

Petitioner,

v.

BOARD OF EDUCATION OF THE TOWNSHIP

OF UNION, UNION COUNTY,

Respondent.

M.B., for petitioner, pro se

Nashali Amin Rose, Esq., for respondent (Florio Perrucci Steinhardt & Cappelli,
LLC)

Record Closed: February 11, 2020

Decided: February 25, 2020

BEFORE **KIMBERLY A. MOSS**, ALJ:

STATEMENT OF THE CASE

Petitioner M.B. challenges the Board of Education of the Township of Union's (Respondent or Board) residency determination that petitioners do not reside and/or not domiciled in Union.

PROCEDURAL HISTORY

The matter was transmitted to the Office of Administrative Law (OAL) on February 26, 2019, for hearing as a contested case. The hearing was scheduled and heard on January 31, 2020. The respondent submitted a closing brief and certification on February 11, 2020, at which time I closed the record.

FACTUAL DISCUSSION

Testimony

Daniel Hodge

Daniel Hodge is employed by respondent as a residency inspector. On February 23, 2018, he was assigned to investigate whether M.B. and D.B. lived in the Union. The reason for the investigation was that either M.B or D.B. stated that they lived in Roselle.

Hodge began the investigation on February 23, 2018, at the address of XXXX Hawthorne Avenue, Union. This is the address that the Board had on record for petitioners. On February 23 and February 26, 2018, no one exited the Hawthorne Avenue address between 7:15-9:00 a.m. On February 26, 2018, the principal of Hanna Caldwell School, where D.B. and M.B were registered, pointed out the children's father as he was picking them up from school to Hodge. Hodge followed petitioner's car to Roselle. A Honda Odyssey and a Jeep were registered to petitioner. Petitioner drove a white Ford Explorer when he picked up the children. On February 28, 2018, no one exited the Hawthorne Avenue address. On March 1, 2018, the Odyssey dropped the children at school and picked them up. Hodge followed the Odyssey after it picked the children up from school but lost it in traffic.

On March 12, 2018, there were no cars at the Hawthorne Avenue address at 7:30 a.m. The Odyssey driven by the children's mother dropped them at school.

Hodge followed the Odyssey, which made several stops before finally stopping at the Oak Park apartments in Roselle. On March 13, 2018, both cars registered to petitioner were at the Oak Park Apartments. The mother dropped the children at school and returned to the Oak Park apartments. Hodge never saw the children at the Hawthorne Avenue address.

A residency hearing was held which resulted in the children staying in school. Hodge was told to check on the residency. From September 4, 2018, through September 27, 2018, Hodge conducted surveillance to determine if the children lived at the Hawthorne Avenue address. He did no surveillance from September 27, 2018, to May 2, 2019.

In March 2019 petitioner informed the Board that they moved to Vauxhall Road in Union. Hodge did not see the Odyssey or the Explorer at the Vauxhall Road address until May 2, 2019. At that time Hodge questioned the crossing guard on Vauxhall Road, who stated that he had not seen any grammar school aged children coming out of the residence on May 7, 2019. Hodge knocked on the door of the Vauxhall Road residence at 7:00 p.m. There was no answer. He went by at 10:00 p.m. and the house was dark.

On May 13, 2019, May 14, 2019, and May 15, 2019, no cars were at the Vauxhall Road address in the morning. On May 16, 2019, Hodge again questioned the crossing guard at 7:15 a.m. who stated that he had seen high school children coming out of the Vauxhall Road residence, but he believes that they moved. On May 17, 2019, Hodge knocked on the door of the Vauxhall residence at 7:00 p.m. and there was no answer. A college-age neighbor told him that the premises were vacant.

On May 20, 2019, Hodge saw petitioner cutting the grass at the Vauxhall Road address at 10:00 a.m. On May 21, 2019, Hodge saw the Jeep at the Roselle address in the morning. On May 22, 2019, there were no cars at the Vauxhall Road address at 6:00 p.m. On May 23, 2019, the jeep was parked in Roselle at 7:00 a.m. On May 25, 2019, Hodge went past the Vauxhall Road address five different times and no cars were parked at the address.

On May 28, 2019, the Jeep and the Explorer were parked at the Roselle address at 7:15 a.m. On May 29, 2019, Hodge saw the Jeep and Explorer parked at the Roselle address at 7:00 a.m. at 8:15 a.m. the children entered the Explorer, at 3:00 p.m. the children were picked up from school in the Explorer and taken to Roselle. On May 30, 2019, the Jeep and the Explorer were seen at Roselle at 7:30 a.m. The children at 8:20 a.m. came out of the Roselle address and entered the Explorer.

Hodge never saw the children at either Union address. He saw the children at the Roselle address. Hodge never saw the petitioner drive any car other than the Explorer. The Odyssey was driven by the children's mother. Hodge had driven by the Hawthorne Avenue address as late as 10:00 p.m. and did not see the Explorer.

M.B.

M.B. is the father of M.B. and D.B. He stated that he told the Board in March 2018 that they could not stay at the Hawthorne Street address. The children stayed with their mother due to a family issue. When the children were staying in Roselle with their mother, he would take them to school. After school he picked up the children and returned them to their mother in Roselle and went back to work. He drove the Explorer. The children's mother drove the Jeep and the Odyssey.

Petitioner's primary residence was on Hawthorne Avenue in Union. He moved to the Vauxhall Road, Union address in March 2019. If someone is looking in the driveway of the Vauxhall Road address, the yard cannot be seen. He enters and exits through the rear door at the Vauxhall Road address. When he leaves the Vauxhall Road address, he sees the crossing guard coming on duty. He signed the lease for the Vauxhall Road address on March 1, 2019.

FINDINGS OF FACT

In light of the contradictory testimony presented by respondent's witness and petitioner, the resolution of this matter requires that I make credibility determinations with regard to the critical facts. The choice of accepting or rejecting the witness's testimony or credibility rests with the finder of facts. Freud v. Davis, 64 N.J. Super. 242, 246 (App. Div. 1960). In addition, for testimony to be believed, it must not only come from the mouth of a credible witness, but it also has to be credible in itself. It must elicit evidence that is from such common experience and observation that it can be approved as proper under the circumstances. See Spagnuolo v. Bonnet, 60 N.J. 546 (1974); Gallo v. Gallo, 66 N.J. Super. 1 (App. Div. 1961). A credibility determination 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). A fact finder "is free to weigh the evidence and to reject the testimony of a witness even though not contradicted 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." In re Perrone, 5 N.J. 514, 521-22 (1950); see D'Amato by McPherson v. D'Amato, 305 N.J. Super. 109, 115 (App. Div. 1997).

Having had an opportunity to observe the demeanor of the witnesses, I **FIND** Hodge to be credible. He was truthful and accurate. He testified clearly and directly. He did not have a bias against petitioner. I found M.B. to be less credible. He testified that the children could not stay at the Hawthorne Avenue address due to family issues, but he later testified that the children did live at the Hawthorne Avenue address. He was vague on the reason that the children could not stay at the Hawthorne Avenue address. He did not expound on what the family issues were for the children not living at the Hawthorne Avenue address.

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

Petitioner M.B. is the father of M.B and D.B. During the 2017-2018 school year a residency investigation was commenced to determine if M.B and D.B. lived at the

Hawthorne Avenue address in Union. The Board believed that the children lived in Roselle. A hearing was held before the Board on April 10, 2018. At that meeting the Board allowed the children to remain in school for the remainder of the school year.

M.B. primarily drove a Ford Explorer. The children's mother drove a Honda Odyssey or a Jeep. On various dated in July 2019, Hodge saw the Odyssey parked in Roselle. On August 1, 2018, August 8, 2018, and August 22, 2018, Hodge saw the Explorer parked in front of the Hawthorne Avenue address in Union. He did not see the children on any of the July or August surveillances.

On September 4, 2018, and September 10, 2018, Hodge saw the Odyssey parked in Roselle at 7:30 a.m. On September 11, 2018, and September 12, 2018, Hodge saw petitioner drive the children to school from Roselle at 7:30 a.m. and 7:45 a.m. On September 12, 2018, the children's mother picked them up from school and drove them to Roselle. On September 13, 2018, Hodge saw the children in Roselle at approximately 8:15 a.m. The car was parked in a lot near the Roselle address. On September 14, 2018, September 15, 2018, and September 18, 2018, Hodge saw the children enter the Explorer in Roselle at approximately 8:20 a.m. On September 20, 2018, the Odyssey and Explorer were seen at the Roselle address at 8:15 a.m. The children were taken to school at 8:45 a.m. in the Explorer. On September 21, 2018, the Explorer picked the children up from school and took them to Roselle. On September 24, 2018, the Explorer was seen at the Hawthorne address at 6:45 a.m. It was seen at the Roselle address at 7:30 a.m. The children were taken to school on September 25, 2018, from Roselle. On the same date the children were picked up from school and taken to the Roselle address. On September 26, 2018, the Explorer and Odyssey were at the Roselle address at 8:00 a.m. The children were taken to school in the Explorer from Roselle. They were picked up after school and taken to Roselle. Hodge never saw the children at the Hawthorne Avenue, Union address. There was no surveillance from September 27, 2018, to March 2019.

On or about October 29, 2018, petitioner received a letter from the Board stating that the children do not reside in the district because they reside with him in Roselle.

The letter stated that the children would be removed from the district on November 7, 2018. Petitioner appealed the Board's residency decision on or about November 6, 2018. A residency hearing was scheduled for December 11, 2018. On January 3, 2019, the Board determined that the children no longer reside in Union, therefore they are not eligible to attend school in Union. Petitioner filed an appeal on January 23, 2019. On March 15, 2019, signed a one-year lease starting on April 1, 2019, to March 31, 2019, for property located on Vauxhall Road in Union.

In March 2019 petitioner informed the Board that they moved to Vauxhall Road in Union. Hodge did not see the Odyssey or the Explorer at the Vauxhall Road address until May 2, 2019. At that time Hodge questioned the crossing guard on Vauxhall road, who stated that he had not seen any grammar-school-aged children coming out of the residence. On May 7, 2019, Hodge knocked on the door of the Vauxhall Road residence at 7:00 p.m. There was no answer. He went by at 10:00 p.m. and the house was dark. On May 8, 2019, at 7:00 p.m. there was a box truck with the words Brother's Furniture on its side in the driveway at the Vauxhall Road address. The front door was open and there were people inside.

On May 13, 2019, May 14, 2019, and May 15, 2019, no cars were at the Vauxhall Road address in the morning. On May 16, 2019, at 7:50 a.m. Hodge again questioned the crossing guard, who stated that he had seen high school children coming out of the Vauxhall Road residence, but he believes that they moved. On May 17, 2019, Hodge knocked on the door of the Vauxhall residence at 7:00 p.m. and there was no answer. A college-age neighbor told him that the premises were vacant.

On May 20, 2019, Hodge saw petitioner cutting the grass at the Vauxhall Road address. On May 21, 2019, Hodge saw the jeep at the Roselle address in the morning. On May 22, 2019, there were no cars at the Vauxhall residence at 6:00 p.m. On May 23, 2019, the jeep was parked in Roselle at 7:00 a.m. On May 25, 2019, Hodge went past the Vauxhall Road address five different times and no cars were parked at the address.

On May 28, 2019, the Jeep and the Explorer were parked in Roselle at 7:00 a.m. At 8:15 a.m. the students came out of the Roselle address. At 2:45 p.m. Hodge went to the Vauxhall Road address and knocked on the door, but there was no answer. On May 29, 2019, Hodge saw the Jeep and Explorer parked at the Roselle address at 7:00 a.m. At 8:15 a.m. the children entered the Explorer in Roselle at 3:00 p.m. the children were picked up from school in the Explorer and taken to Roselle. On May 30, 2019, the Jeep and the Explorer were seen at Roselle at 7:30 a.m. At 8:20 a.m. the children came out of the Roselle address and entered the Explorer.

Hodge never saw the children at either Union address. He saw the children at the Roselle address. Hodge never saw the petitioner drive any car other than the Explorer. The Odyssey was driven by the children's mother. Hodge had driven by the Hawthorne Avenue address as late as 10:00 p.m. and did not see the Explorer.

M.B. testified that the children did not stay at the Hawthorne Avenue address because of a family issue. He did not address the substance of the family issue and why the children could not live at Hawthorne Avenue address. He also stated that his and the children's residence was at Hawthorne Avenue prior to moving to Vauxhall Road. He stated that he took title to the Vauxhall property on March 1, 2019. He also stated new furniture for the children was purchased for the children. Although he states that he took title to the premises on March 1, 2019, the lease has the April 1, 2019, as the beginning of the lease.

The daily rate for tuition for M.B. for the 2018-2019 school year was \$77.91. The yearly rate for M.B.'s tuition for 2018-2019 was \$14,023. The daily rate for tuition for D.B. for the 2018-2019 school year was \$77.91. The yearly rate for D.B.'s tuition for 2018-2019 was \$14,023.

LEGAL ANALYSIS

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. ex rel. minor child E.Y. v. Board of Educ. of Tenafly, 343 N.J. Super 419, 427 (App. Div. 2001).

Where a local board determines that a child is not properly domiciled in its district, N.J.S.A. 18A:38-1(b)(2) provides a right of appeal to the parents as follows:

The parent or guardian may contest the Board’s decision before the Commissioner within 21 days of the date of the decision and shall be entitled to an expedited hearing before the Commissioner and shall have the burden of proof by a preponderance of the evidence that the child is eligible for a free education under the criteria listed in this section.

In this matter, petitioner provided no documentation that he resided at the Hawthorne Avenue address. There were no bills addressed to him at that address, he did not provide a copy of his driver’s license with the Hawthorne Avenue address. In addition, petitioner stated that he the children resided at the Hawthorne Avenue address yet testified that the children could not stay at the Hawthorne Avenue address because of a family issue. The family issue was never explained in any terms other than there was a family issue. Hodge saw the children on numerous occasions leave from the Roselle address.

The children were never seen at the Vauxhall Road address from March 2019 when the lease was signed through May 30, 2019. On two occasions in May 2019, Hodge knocked on the door of the Vauxhall address at 7 p.m. and there was no answer. On two occasions in May 2019, Hodge drove by the Vauxhall Road address at 10:00 p.m. and there were no lights on in the house. Hodge never saw the children at the Vauxhall Road address in May 2019, but he did see them at the Roselle address in May 2019.

The daily rate for tuition for M.B. for the 2018-2019 school year was \$77.91. The yearly rate for M.B.'s tuition for 2018-2019 was \$14,023. The daily rate for tuition for D.B. for the 2018-2019 school year was \$77.91. The yearly rate for D.B.'s tuition for 2018-2019 was \$14,023.

The Board asserts that it is entitled to be reimbursed for tuition for the 2018-2019 school year for M.B and D.B.'s ineligible enrollment. Whereas here, the evidence does not support the claims of the resident, the Commissioner of Education is authorized to assess tuition pursuant to N.J.A.C. 6A:22-6.2(a), which provides as follows:

If in the judgment of the Commissioner the evidence does not support the claim of the resident, he shall assess the resident 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.

N.J.S.A. 18A: 38-1(b) likewise requires that tuition be calculated on the basis of 1/180 of the total annual per pupil cost to the district multiplied by the number of days of ineligible attendance.

Based upon the facts adduced and the legal principles cited above, I **CONCLUDE** that petitioners were not a domiciliary in the Union School District for the 2018-2019 school year and that respondent is entitled to reimbursement for the costs of tuition in the amount of \$14,023 for M.B. and \$14,023 for D.B. for a total of \$28,046.

ORDER

Based on the foregoing, it is hereby **ORDERED** that respondent's determination that petitioner and her children were not residents and domiciliary in Union, New Jersey, and were not domiciled within its school district during the 2018-2019 school year is hereby **AFFIRMED**. It is further **ORDERED** that respondent be reimbursed tuition from petitioner in the amount of \$28,046.

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, 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.

February 25, 2020



DATE

KIMBERLY A. MOSS, ALJ

Date Received at Agency:

February 25, 2020

Date Mailed to Parties:

ljb

APPENDIX

LIST OF WITNESSES

For Petitioner:

For Respondent:

Daniel Hodge

LIST OF EXHIBITS

For Petitioner:

P-1 Lease Dated April 15, 2019

For Respondent:

R-1(a) Investigation reports of Daniel Hodge dated May 30, 2019, and September 17, 2019, Enrollment Form

R-1(b) Investigation Photos

R-2 Residency Investigation Request Form

R-3 March 26, 2018, Notice of Initial Determination of Ineligibility

R-4 May 1, 2018, Decision to allow D.B. and M.B. to complete the 2017-2018 school year

R-5 October 29, 2018, Notice of Initial Determination of Ineligibility

R-6 November 6, 2018, Letter from petitioner to the Board requesting a hearing

R-7 November 7, 2018, Letter from Board Scheduling the Hearing

R-8 January 3, 2019, Notice of Removal

R-9 Petitioner's Residency Appeal Petition

R-10 Respondent's Answer

R-11(a) Tuition Cost for D.B.

R-11(b) Tuition Cost for M.B.

R-12 Certification of Manuel Viera regarding daily and yearly tuition for M.B. and D.B.