

**New Jersey Commissioner of Education  
Final Decision**

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

Petitioner,

v.

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

Respondent.

**Synopsis**

The petitioner, Board of Education of the Township of Freehold Regional High School District (Freehold), sought an order declaring that respondent, Board of Education of the Township of Barnegat (Barnegat), is responsible for the cost of minor child T.M.'s out of district placement and all other related educational and residential expenses for the 2020-2021 school year and going forward. T.M. resides year-round at the American School for the Deaf and splits his time equally between his parents during school breaks; his mother lives in Barnegat, his father lives within the Freehold Regional High School District. 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, and the matter is ripe for summary decision; the question of which district was responsible for T.M.'s educational expenses during the 2019-2020 school year was the subject of a previous case, *Board of Education of the Township of Barnegat, Ocean County v. Board of Education of the Freehold Regional High School District, Monmouth County*, Commissioner's Decision No. 214-20, decided October 6, 2020, in which the Commissioner concluded that Barnegat and Freehold were equally responsible for T.M.'s educational costs, including the out-of-district placement; Freehold was ordered to reimburse Barnegat for the 2019-2020 school year and to share equally in the cost of T.M.'s education going forward; in the instant matter, the circumstances have not changed since the Commissioner's 2020 decision; there is no court order or written agreement between the parties designating the school district of attendance, pursuant to *N.J.A.C. 6A22-3.1(a)(1)(ii)*; as such, the ALJ concluded that Barnegat and Freehold must share equally in the cost of T.M.'s out-of-district placement going forward.

Upon review, the Commissioner, *inter alia*, adopted the Initial Decision of the OAL in part, as it pertains to the matter of T.M.'s out-of-district placement from the start of the 2020-21 school year to October 23, 2020, and from February 1, 2021 through the end of the 2020-21 school year. For that period, the Commissioner directed Freehold to reimburse Barnegat for one-half of the cost of T.M.'s out-of-district placement, 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. The Commissioner remanded the matter to the OAL for further fact finding around the circumstances of an agreement that was entered into by T.M.'s parents on October 23, 2020, but rescinded on February 1, 2021, designating Barnegat as the school district of attendance for T.M.

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.

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v.

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Respondent.

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed, as have the exceptions filed by petitioner 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 respondent Barnegat Township Board of Education (Barnegat).<sup>1</sup>

In this matter, Freehold seeks an order finding that Barnegat is responsible for the cost of T.M.'s education at an out-of-district residential placement for the 2020-21 school year and going forward. T.M. is an 18-year-old who resides year-round at the American School for the Deaf and splits his time equally between his parents during holidays and school recesses. His mother lives in Barnegat, while his father lives in Marlboro Township, which is part of the Freehold Regional High School District.

The issue of responsibility for T.M.'s education costs for the 2019-20 school year was addressed by the Commissioner in *Board of Education of the Township of Barnegat, Ocean County*

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<sup>1</sup> Freehold filed supplemental exceptions that were not considered by the Commissioner because supplemental exceptions are not contemplated by *N.J.A.C. 1:1-18.4*.

*v. Board of Education of the Freehold Regional High School District, Monmouth County*, Commissioner's Decision No. 214-20, decided October 6, 2020, affirmed by the Appellate Division April 1, 2022. In that matter, the Commissioner analyzed *N.J.A.C. 6A:22-3.1* and found that, as T.M.'s residence for the 2019-20 school year could not be determined, an equitable determination of shared responsibility for the cost of the placement is permitted. The Commissioner found that T.M.'s parents were domiciled in different school districts and there was no court order or written agreement designating the school district of attendance. Additionally, T.M. did not reside with either parent for the majority of the school year as he was in an out-of-state housing placement year-round. The regulation then looks to where T.M. resided on the last school day prior to October 16, but the Commissioner noted that he resided at his out-of-state placement. Accordingly, T.M.'s residence could not be determined according to the analysis, and the Commissioner found that an equitable determination of shared responsibility in accordance with *N.J.A.C. 6A:22-3.1(a)(1)(ii)(2)* was warranted. Accordingly, the Commissioner directed that Freehold 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.<sup>2</sup>

Thereafter, on October 23, 2020, the parents executed a Written Agreement for School Attendance indicating that the school district where the mother resides, presently Barnegat, shall be the school district of attendance for T.M. On February 1, 2021, the parents executed a stipulation of settlement with Barnegat regarding T.M.'s educational program. The agreement also

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<sup>2</sup> It appears that Freehold may not have paid Barnegat for half of T.M.'s education costs, and Barnegat has filed an action in Superior Court seeking payment. As this matter concerns the 2020-21 school year, the Commissioner will not address the 2019-20 school year further.

indicated that the written agreement designating Barnegat as the district of attendance is rescinded:

Upon information and belief, the Parents affirm and agree that there is no court order or written agreement between them designating the school district of attendance. The statement signed by P.M. on October 23, 2020 and "H.M." on October 21, 2020 designating Barnegat [as] the "district of attendance" is hereby specifically and intentionally rescinded and revoked. The Parents further affirm and agree that they were requested to sign said statement by Freehold schools, in light of the COVID-19 pandemic. The Parents state they did not intend to legally designate a district of attendance and thought the affidavit referred to physical attendance only.

The settlement agreement, as well as emails between the attorneys, indicate that Freehold was invited to participate in the discussions regarding T.M.'s placement, but that Freehold refused to participate. Freehold then filed the instant petition of appeal, challenging the validity of the settlement and seeking an order finding that Barnegat is responsible for the costs of T.M.'s placement, as the designated district of attendance.

In deciding Barnegat's motion for summary decision, the Administrative Law Judge (ALJ) found that the circumstances had not changed since the Commissioner's 2020 decision. The ALJ found there was no court order or written agreement between the parties designating the school district of attendance, pursuant to *N.J.A.C. 6A22-3.1(a)(1)(ii)*. The ALJ also found that Freehold refused to participate in the IEP process, despite multiple invitations, so their argument that the agreement is invalid because they were not a party to the settlement is meritless. As such, the ALJ found that Barnegat and Freehold should share in the cost of T.M.'s out-of-district placement.

In its exceptions, Freehold argues that the ALJ failed to address that the Final Judgment of Divorce establishes that the mother, as parent of primary residence, is also the parent that should be considered for school attendance. Freehold also argues that that the ALJ incorrectly found that there have been no changes to T.M.'s circumstances since the Commissioner's 2020 decision

because she fails to consider the Written Agreement for School Attendance and whether the stipulation of settlement was the result of undue influence. Freehold maintains that the stipulation of settlement was signed three days prior to T.M.'s scheduled IEP meeting, so a meeting never took place, contrary to the ALJ's factual finding. Additionally, Freehold argues that the parties did not have the opportunity to conduct discovery on whether the Covid-19 pandemic influenced T.M.'s living arrangement.

Freehold contends that the ALJ misapplied the summary decision standard by failing to view the facts in the light most favorable to Freehold. Specifically, Freehold argues that the parents were represented by counsel when they signed the written designation of school attendance, despite what the ALJ found. Freehold further argues that the ALJ conflated residence and domicile, failing to consider the Written Agreement for School Attendance and failing to find that T.M.'s domicile is in Barnegat with his mother, the custodial parent. As such, Freehold urges the Commissioner to reject the Initial Decision and allow discovery to move forward on the issue of domicile, the efficacy of the Written Agreement for School Attendance, and the validity of the February 1, 2021 stipulation of settlement.

In reply, Barnegat argues that Freehold's exceptions are unsupported by the record or are irrelevant to this matter. Specifically, Barnegat contends that the issues regarding the Final Judgment of Divorce have already been raised and rejected. Barnegat points out that the ALJ considered the Written Agreement for School Attendance but found that it did not influence her determination, as it was rescinded, and whether it was obtained with counsel is immaterial. Barnegat maintains that whether the stipulation of settlement was signed prior to the IEP meeting is irrelevant, and Freehold refused to participate in any part of the process. Barnegat also argues that there is no evidence in the record that T.M.'s living situation was altered due to the Covid-19

pandemic. Finally, Barnegat contends that Freehold's argument regarding the difference between domicile and residence is misguided as *N.J.A.C. 6A:22-3.2(a)(1)* is the controlling regulation. As such, Barnegat urges the Commissioner to adopt the Initial Decision.

Upon review, the Commissioner finds that Freehold and Barnegat must share in the cost of T.M.'s out-of-district placement from the start of the 2020-21 school year to October 23, 2020 (the date of the Written Agreement for School Attendance), and from February 1, 2021 (the date of the stipulation of settlement) through the end of the 2020-21 school year and going forward. With respect to the period between October 23, 2020 and February 1, 2021, further fact finding is necessary to determine the intent of the parents in signing the Written Agreement of School Attendance.

*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 the Commissioner found in 2020, T.M.'s parents are domiciled in different school districts. At the time, no "court order or written agreement between the parties designating the school district of attendance" existed to determine T.M.'s domicile. *Barnegat, supra*, at 6. The Commissioner found that the regulation's requirement for a written agreement is explicit, and a custody arrangement or parenting time decree as part of a divorce decree is not the equivalent of a designation of school attendance. *Ibid*. In this matter, an agreement designating Barnegat as the school district of attendance was entered into by the parents on October 23, 2020. As of that date, an agreement did exist designating the school district of attendance. However, the Written

Agreement for School Attendance was rescinded by the parents on February 1, 2021, and accordingly, no such agreement currently exists. For the period that the Written Agreement for School Attendance was in effect, October 23, 2020 to February 1, 2021, the Commissioner is constrained to remand this matter for further fact finding, given the language in the settlement agreement that indicates the parents thought the agreement only referred to physical attendance.

With respect to February 1, 2021 and beyond, the Commissioner agrees with the ALJ that the circumstances remain the same. As in 2020, 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, and the parents share time equally when T.M. is on a school recess or holiday. Further, T.M. resided at his out-of-district placement on the last school day prior to the preceding October 16. As such, and as the Commissioner previously found 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:22-3.1(a)(1)(ii)(2)*.

The Commissioner is not persuaded by Freehold's exceptions. The Final Judgment of Divorce does not establish the designated school district of attendance. Regarding the stipulation of settlement, Freehold indicated that it did not want to participate in the IEP process; accordingly, whether the settlement was signed prior to a scheduled IEP meeting did not affect Freehold's involvement. Additionally, there is no evidence that the Covid-19 pandemic impacted T.M.'s placement, and even if it did, the parents split time evenly when T.M. is on a recess from school. Finally, the ALJ did not conflate residence and domicile, and instead applied the standards set forth in *N.J.A.C. 6A:22-3.1(a)(1)*.

Accordingly, the Initial Decision of the OAL is adopted in part and remanded in part. Freehold is directed to reimburse Barnegat for one-half of the cost of T.M.'s out-of-district



placement from the start of the 2020-21 school year to October 23, 2020, and from February 1, 2021 through the end of the 2020-21 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. This matter is remanded to the OAL for further fact finding and supplementation of the record as warranted with respect to the period between October 23, 2020 and February 1, 2021.

IT IS SO ORDERED.<sup>3</sup>



ACTING COMMISSIONER OF EDUCATION

Date of Decision: April 26, 2022  
Date of Mailing: April 26, 2022

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<sup>3</sup> This decision may be appealed to the Appellate Division of the Superior Court pursuant to *N.J.S.A.* 18A:6-9.1. Under *N.J.Ct.R.* 2:4-1(b), a notice of appeal must be filed with the Appellate Division within 45 days from the date of mailing of this decision.



**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

**SUMMARY DECISION**

OAL DKT. NO. EDU 04819-21

AGENCY DKT. NO. 72-5/21

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

Petitioner,

v.

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

Respondent.

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**John B. Comegno, II, Esq.**, for petitioner (Comegno Law Group, PC, attorneys)

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

Record Closed: January 31, 2022

Decided: February 1, 2022

BEFORE **SARAH G. CROWLEY, ALJ**:

**STATEMENT OF THE CASE**

Petitioner, Board of Education of the Freehold Regional High School District, Monmouth County (Freehold) seeks an order declaring respondent, Barnegat Township Board of Education, Ocean County (Barnegat), responsible for the cost of minor child T.M.'s out-of-district placement, and all other related educational and residential expenses.

### PROCEDURAL HISTORY

The issue of the responsible district for T.M.'s educational expenses was the subject matter of a prior due process proceeding before The Honorable Patricia Caliguire. In that case, Barnegat filed a petition seeking contribution from Freehold for the educational expenses of T.M. On July 20, 2020, Judge Caliguire concluded that Barnegat and Freehold were equally responsible for the education cost of T.M., including the out-of-district residential placement for T.M. Freehold was ordered to reimburse Barnegat for the 2019-2020 school year and to share equally in the cost going forward. This decision was affirmed by the Commissioner of Education on October 6, 2020. A request for a stay of the Commissioner's Order pending an appeal was denied. No payments have been made pursuant to the Commissioner's Order.

On June 2, 2021, Freehold filed a new due process complaint seeking to have Barnegat declared as the designated school district for the minor child T.M. and responsible for all costs related to T.M.'s out-of-district placement. Barnegat filed an answer to the petition, and the matter was transmitted to the Office of Administrative Law (OAL), where it was filed 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. Barnegat filed a Motion for Summary Decision on November 10, 2021. Opposition was filed to the motion and oral argument was requested by Freehold. However, the undersigned having discretion over this issue has determined that there is no need for oral argument and the request for same is denied, and the record closed.

### FACTUAL DISCUSSION AND FINDINGS

Based on the documents and certifications filed in this matter, 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. 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 seventeen-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 resides at the American School for the Deaf (ASD), an out-of-district residential placement. T.M. lives year-round at the ASD.
4. 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., and when T.M. is not at school, his time is split between his parents.
5. At all relevant times, P.M. has resided in Marlboro Township, which is in the Freehold Regional High School District.
6. At all relevant times, H.L. has resided in Barnegat Township.
7. On April 24, 2017, H.L. registered T.M. in the Barnegat School District.
8. Since the 2018-2019 school year, T.M. has lived at ASD year-round and does not reside with either parent. Pursuant to the parent's Judgement of Divorce, P.M. and H.L. equally share time with T.M. while he is on recess from school.
9. There is no court order or valid written agreement between P.M. and H.L. designating T.M.'s school district of attendance.
10. Following the October 2020 decision declaring both districts equally responsible for the education of T.M., Barnegat sent numerous letters and emails attempting to include Freehold in T.M.'s IEP process. Freehold declined to participate in the IEP process with regard to the placement of T.M.

11. Accordingly, the evaluations, child study team and IEP meetings were conducted without any involvement by Freehold. Ultimately, a settlement was reached regarding T.M.'s continued placement at the ASC in February 2021.
12. There have been no changes in the residence or the joint custody of the child by the parents.

### 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 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. Moreover, this issue has been decided by Judge Caliguire and should not be relitigated absent a change in any genuine material facts. I **FIND** that there have been no changes in the material facts in this case.

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](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](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 is expected to remain at ASD, the only remaining question now and when the last decision was entered, 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). There is no such decision or binding agreement.

The decision of Judge Caliguire which was affirmed by the Commissioner of Education ruled that both districts are equally responsible for the cost of T.M.'s education. Freehold's request for a stay of that decision has been denied. There has been no change in circumstances since this Order was entered, and yet, Freehold has failed and refused to comply with the Order. Moreover, notwithstanding the fact that there has been no change in the circumstances, Freehold has filed an identical petition on an issue that has already been ruled on. The undisputed facts are that T.M. resides out-of-state 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.<sup>1</sup> The final issue that the petitioner seeks to raise is that there was a subsequent agreement between Barnegat and the parents relating to placement and they were not a party to it and should not be bound

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<sup>1</sup> Following the decision from the Commissioner of Education in October 2020 and without any change in the child's residence full-time at the ASD, Freehold had the parents, without the benefit of any counsel execute a document purporting to designate Barnegat as the primary residence for the child. The parents later rescinded this action, which the undersigned has determined there has been no change in the residence of T.M.

by it. It is clear and I have found as fact and conclude that Freehold was not a party to the settlement relating to T.M.'s placement because they declined several invitations to participate in the IEP process. Moreover, notwithstanding the denial of a stay, they have failed and refused to comply with the Order from the Commissioner of Education obligating them to contribute to the cost of T.M.'s out-of-district placement. Now, they are refusing to pay their portion on the education on the grounds that they were not a party to the settlement of the due process proceeding which they refused to participate in. There are no genuine issues of material fact. The prior order declared the districts equally responsible for the cost of T.M.'s education and there has been no change in the residence of either of the parents or T.M.

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. I further **CONCLUDE** that this issue has already been determined, and there is no change in circumstances which would render it appropriate to relitigate this issue. I further **CONCLUDE** that it is disingenuous of Freehold to decline to participate in the IEP process and then seek to hold that against Barnegat.

### **ORDER**

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

February 1, 2022 \_\_\_\_\_  
DATE

  
\_\_\_\_\_  
SARAH G. CROWLEY, ALJ

Date Received at Agency: February 1, 2022 \_\_\_\_\_

Date Mailed to Parties: February 1, 2022 \_\_\_\_\_

SGC/sm