

New Jersey Commissioner of Education

Final Decision

D.M., on behalf of minor child, A.H.,

Petitioner,

v.

Board of Education of the Township of
Washington, Gloucester County,

Respondent.

Synopsis

Pro se petitioner appealed the determination of the respondent Board that her grandchild, A.H., is not domiciled within the district, and therefore not entitled to a free public education in Washington Township. In September 2020, petitioner and her husband were awarded joint custody of A.H. and designated as the parents of primary residence for school purposes by order of the Superior Court. Petitioner subsequently enrolled A.H. in Washington Township schools. Thereafter, the Board conducted a residency investigation that determined A.H. was living with his parents in Philadelphia. The Board requested that the Commissioner assess the petitioner the cost of tuition for the period of A.H.'s alleged ineligible attendance.

The ALJ found, *inter alia*, that: the issue here is whether A.H. resided in Washington Township during the 2020-2021 and 2021-2022 school years, and if not, what amount of tuition is due to the Board for the period of A.H.'s ineligible attendance; the testimony of respondent's witness was credible and, together with supporting documents, established that A.H. was not domiciled with petitioner during the period at issue; petitioner's testimony lacked details and, while her responses to interrogatories indicated that A.H. resided full time with D.M. in Washington Township, D.M. testified that she is immunocompromised and was unable to have A.H. in her home until April 2021 when she was able to receive the COVID 19 vaccine; and although the court orders granted petitioner joint custody for school purposes, there was no attempt to have A.H. reside at D.M.'s residence or within the district. The ALJ concluded that petitioner failed to establish that A.H. was domiciled with her during the 2020-2021 and 2021-2022 school years, and A.H. was therefore ineligible to attend school in the district. Accordingly, the ALJ dismissed the petition and ordered the petitioner to reimburse the Board for tuition in the amount of \$23,587.12.

Upon review, the Commissioner disagreed with the ALJ's findings and conclusion in this matter, determining instead that A.H. was eligible to attend school in Washington Township from September 18, 2020 through December 23, 2021. In so deciding, the Commissioner emphasized, *inter alia*, that when there is a court order that designates the school district of attendance, the amount of time a child spends with either party to the order does not dictate where the child must attend school. Further, given the unprecedented circumstances of the COVID 19 pandemic, A.H.'s physical location during the period in question is irrelevant in light of a custody order specifically designating a parent of residence for school purposes. Petitioner owes no tuition reimbursement to the Board.

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.

145-22

OAL Dkt. No. EDU 05034-2021

Agency Dkt. No. 60-4/21

New Jersey Commissioner of Education

Final Decision

D.M., on behalf of minor child, A.H.,

Petitioner,

v.

Board of Education of the Township of
Washington, Gloucester County,

Respondent.

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

Petitioner is the grandmother of minor child A.H. On September 10, 2020, petitioner and her husband were awarded joint custody of A.H. and designated as the parents of primary residence for school purposes.¹ On September 18, 2020, petitioner registered A.H. for school in Washington Township. Thereafter, the Board conducted a residency investigation and concluded that A.H. was domiciled with his parents in Philadelphia, not with petitioner in

¹ The custody order was updated on March 25, 2021 and indicated that the parties would continue to share joint legal custody, and that petitioner and her husband are the parents of primary residence for school purposes only to allow A.H. to continue to attend his elementary school in Washington Township. On August 3, 2021, full custody was granted to petitioner and her husband. The record also contains a custody agreement dated December 27, 2022 – which the Commissioner presumes is a typo for December 27, 2021 – transferring fully custody of A.H. to his mother.

Washington Township. Petitioner appealed the Board's determination.² The Administrative Law Judge (ALJ) found that A.H. was not domiciled in Washington Township and that A.H. was therefore not entitled to attend school in the district. The ALJ ordered that petitioner reimburse the Board for A.H.'s tuition during the period of ineligibility, in the amount of \$23,587.12.

Upon review, the Commissioner disagrees with the ALJ that A.H. was ineligible to attend school in Washington Township. *N.J.S.A. 18A:38-1(a)* provides that public schools shall be free to "[a]ny person who is domiciled within the school district." *N.J.A.C. 6A:22-3.1(a)(1)* provides that 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." In analyzing A.H.'s eligibility to attend school in Washington Township, the ALJ disregarded the implications of a court order on a residency determination.

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.

N.J.A.C. 6A:22-3.1(a)1.i (emphasis added)

Here, A.H.'s parents and his guardians – petitioner and her husband – are domiciled within different school districts. In the absence of a court order, the amount of time A.H. lived with his parents and with petitioner would be relevant. However, the corollary is also true – with the

² Following the appeal, A.H. remained enrolled in the Washington Township school district until December 23, 2021, when he transferred to the Glassboro school district, where his mother apparently resides.

existence of a court order, the court order controls.³ When there is a court order that designates the school district of attendance, the amount of time spent with either party does not dictate where the children must attend school. *K.H., on behalf of minor children, A.H. and V.H. v. Board of Education of the Borough of Butler, Morris County*, Commissioner Decision No. 70-17 (March 2, 2017). It is undisputed that there was a custody order designating D.M. as the parent of residency for school purposes, and it is undisputed that D.M. resides in the Washington Township school district. Therefore – under *N.J.A.C. 6A:22-3.1(a)1.i* – as of September 10, 2020, A.H. was entitled to attend school in the Washington Township school district.⁴

In its summation brief submitted to the ALJ, the Board attempts to suggest that the case of *C.G., on behalf of minor child, G.G. v. Board of Education of the Township of Morris, Morris County*, OAL Dkt. No. EDU 07231-2018 (Nov. 13, 2018), *aff'd*, Commissioner Decision No. 35-19 (Jan. 30, 2019), supports the conclusion that a custody order is not sufficient to establish residency when the evidence demonstrates that the child resides elsewhere. However, the Board misinterpreted the Commissioner's decision in *C.G.* and reached an erroneous conclusion about the holding in that case. The Commissioner found that the student was not domiciled in the district for a time period prior to the entry of the residential custody

³ The ALJ noted that there was no indication as to what testimony or evidence the parties provided the Superior Court judge during the custody proceedings. However, the Commissioner lacks jurisdiction to contradict a Superior Court custody order. The existence of the order is sufficient by itself to establish petitioner as the parent of primary residence for school purposes.

⁴ As this conclusion is reached as a matter of law, the ALJ's credibility determinations regarding the witnesses who testified as to A.H.'s domicile are not relevant.

order.⁵ While the Initial Decision in *C.G.* recounts testimony from the district's residency investigator regarding the child's location following the entry of the residential custody order, the ALJ's and the Commissioner's conclusions about the period of ineligibility are limited to the time prior the custody order and, accordingly, *C.G.* does not constitute relevant precedent for any conclusions regarding A.H.'s residency following the entry of the order granting custody to petitioner.⁶

The Commissioner further notes that all of the Board's evidence pertains to the portion of the 2020-2021 school year during which A.H. attended school virtually due to the COVID-19 pandemic.⁷ In *A.M., on behalf of minor child, A.S. v. Board of Education of the City of Elizabeth, Union County*, OAL Dkt. No. EDU 00255-21 (June 16, 2021), *aff'd*, Commissioner Decision No. 158-21 (Aug. 3, 2021), the parents shared joint custody, with the mother residing in Elizabeth and the father residing in Hillside. During the time that Elizabeth schools were teaching remotely, the child participated in class from her father's residence, as he was the only adult available to assist her due to her mother's work schedule and the inability of a grandparent living with the mother to overcome technology barriers. At one point, both the mother and child stayed with the father in Hillside for two weeks when they were diagnosed with COVID-19, in order to protect the grandmother from the virus. Furthermore, both the

⁵ In *C.G.*, the residential custody order was issued on March 22, 2018, and the period of ineligible attendance was January 18, 2017 through February 2, 2018.

⁶ Nonetheless, to some extent, the *C.G.* matter is similar to the current matter, in that A.H.'s parents have previously been assessed tuition for the period of A.H.'s attendance in Washington Township schools for the period prior to the entry of the custody order. *Board of Education of the Township of Washington, Gloucester County v. J.M. and R.H.*, Commissioner Decision No. 128-21 (June 22, 2021). Just as in *C.G.*, while the assessment of tuition for a period prior to a custody order was appropriate, no tuition is owed for the period after the entry of the custody order.

⁷ The district's surveillance was conducted in September and October 2020, and January and February 2021.

mother and child spent two to three nights at the father's residence in Hillside when the parents resumed their romantic relationship but continued to maintain separate residences. The ALJ found that the "Board's choice to turn a blind eye and deaf ear to A.M.'s reasonable explanations for A.S.'s presence in Hillside for childcare, remote learning, and quarantine purposes during the worst pandemic this world has seen in more than a century was callous, to put it mildly. We have all had to make unforeseen, creative adjustments during this pandemic, and A.M. deserves credit, not punishment, for finding coping mechanisms that work for her family." The ALJ and Commissioner concluded that A.S. was entitled to attend school in Elizabeth and that A.M. did not owe any tuition reimbursement.

Here, D.M. testified that because she is immunocompromised, she was not comfortable having A.H. in her home until she was vaccinated for COVID-19 in April 2021.⁸ The district's own investigator reported that A.H.'s mother took A.H. with her to work every day, and that A.H. completed his online learning from there. Ex. R-12. While these factual circumstances are not precisely the same as those in *A.M.*, the Commissioner nonetheless finds that A.H.'s physical location during these unprecedented events is irrelevant in light of a custody order specifically designating a parent of residence for school purposes.

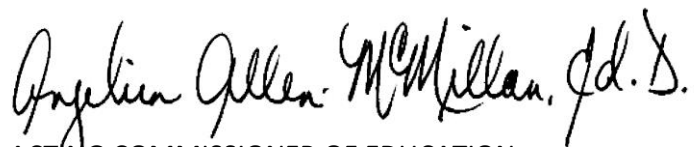
The Commissioner further cautions the Board regarding the statements made to D.M. that falsifying residency information could constitute a disorderly persons offense. *N.J.S.A. 18A:38-1* provides, "Any person who fraudulently allows a child of another person to use his

⁸ The Commissioner notes that while the ALJ found that some of petitioner's testimony was inconsistent with her answers to interrogatories, both the ALJ's summary of the testimony and petitioner's responses to the interrogatories reference her medical condition and her concerns prior to receiving the COVID-19 vaccine in April 2021. Accordingly, because there is no inconsistency in this aspect of petitioner's testimony, the Commissioner presumes that the ALJ's credibility determination does not extend to this information.

residence and is not the primary financial supporter of that child and any person who fraudulently claims to have given up custody of his child to a person in another district commits a disorderly persons offense.” Under no circumstances should petitioner, who was in possession of a valid Superior Court order awarding her joint custody of A.H. and designating her as the parent of primary residence for school purposes, be deemed to have falsified information or to have perpetrated a fraud when she registered A.H. for school in Washington Township. Faced with a difficult family situation, petitioner availed herself of the proper legal channels to obtain custody of A.H., and, as in *A.M.*, her efforts to look out for A.H.’s best interests should be commended, not threatened.

Accordingly, the Initial Decision is reversed. A.H. was entitled to attend school in Washington Township for the period of September 18, 2020 through December 23, 2021, and petitioner owes no tuition reimbursement to the Board.

IT IS SO ORDERED.⁹


ANGELINA ALLEN McMILLAN, J.D.S.
ACTING COMMISSIONER OF EDUCATION

Date of Decision: June 30, 2022
Date of Mailing: July 1, 2022

⁹ 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

OAL DKT. NO. EDU 05034-2021

DOE DKT. NO. 60-4/21

D.M. ON BEHALF OF MINOR CHILD A.H.,

Petitioners,

v.

**BOARD OF EDUCATION OF THE TOWNSHIP
OF WASHINGTON, GLOUCESTER COUNTY,**

Respondent.

D.M., appearing pro se

Geoffrey N. Stark, Esq., for Respondent (Capehart Scatchard, P.A., attorneys)

BEFORE **WILLIAM T. COOPER, III**, ALJ:

Record Closed: February 22, 2022,

Decided: April 5, 2022

STATEMENT OF THE CASE

Petitioner, D.M., filed an Appeal with the Department of Education from the determination of the Board of Education of the Township of Washington ("District"), that her grandchild, A.H., was not domiciled within the district and could not continue to attend school in the district. The Board is demanding tuition repayment for the periods of September 18, 2020, to June 17, 2021 and September 1, 2021, to December 23, 2021.

PROCEDURAL HISTORY

On April 1, 2021, the Board issued a Final Notice of Ineligibility to D.M. that A.H. was ineligible to attend school within the district. The Petitioner filed a notice of appeal on or about April 19, 2021. The Board filed an Answer and requested the Commissioner assess petitioner the cost of tuition.

The matter was transmitted to the Office of Administrative Law (OAL) where it was filed as a contested case on June 7, 2021. N.J.S.A. 52:14 B-1 to-15; N.J.S.A. 52:14 F-1 to-13.

A hearing was conducted on January 26, 2021, and the record remained open for the parties to furnish closing statements by February 22, 2022. The record closed on that date.

TESTIMONY AND EVIDENCE

For Respondent:

Katherine Carey testified that she is the Director of Registration, for the district and her office is responsible for verifying residency of the students. Her office is responsible for keeping residency and registration information up to date for each student to ensure the student resides within the district. She oversees any investigations that are necessary and has a staff that includes a registration coordinator, registration assistant, and two residency officers.

Carey explained that questions as to residency of students typically come from school sources, for example, the chronic tardiness of a student or excessive absences of a student, or student's admission to a teacher or support staff. When this occurs, her staff will review a student's file to confirm residency and, if there are doubts or questions, request an investigation.

Carey was familiar with A.H. as there were previous questions concerning his residency. She was aware that D.M. was A.H.'s grandson and that D.M. resided in the district on M. Drive, Sewell, New Jersey. Beginning in December 2016, when A.H. was in first grade, questions arose concerning his residency triggered by excessive absences. Then in January 2017, two outside school sources advised staff that A.H. was not living at D.M.'s residence.

In 2018, A.H. told a school nurse that he was living in Lindenwold. Formal investigation was conducted and, it was determined that A.H. was not residing at the M. Drive address. In June 2019, the District sent a notice to D.M. as well as A.H.'s mother J.M., and his father R.H., advising them of the preliminary finding and that a formal hearing to determine residency would occur. (R-5).

J.M. responded to the notice by providing proof that she and A.H. resided with D.M. This proof included her driver's license and an affidavit verifying their residency at the M. Drive address. (R-6). Based upon the documents submitted the District reversed its preliminary finding and allowed A.H. to continue to attend school in the District.

In February 2020, Carey received additional information concerning the residency of A.H. and determined that further investigation was necessary. This investigation led the district to conclude that A.H. was living at South M. Street, Philadelphia, Pennsylvania (South M. Street address), with his mother J.M. and father R.H. (R-4).

On April 30, 2020, the district issued a preliminary notice to J.M. advising her that A.H. had not been eligible to attend school in the district since September 15, 2018, that tuition reimbursement would be sought, and that A.H. was no longer eligible to attend school in the district. J.M. verbally advised Carey that she was granting D.M. custody, but no document supporting this claim was submitted prior to the Board hearing scheduled for June 8, 2020. Neither J.M. or D.M. attended the hearing, and a Final Notice was issued by the Board disenrolling A.H.

On September 18, 2020, a new registration package for A.H. was received by the district. It included an Order from the Superior Court, issued by the Honorable Benjamin Morgan, J.S.C., dated September 10, 2020. This order, was entered with the consent of J.M. and R.H., granted D.M. joint custody of A.H. The order acknowledged that D.M. is “the parent of primary residence for school purposes only.” (R-9). Based upon this document A.H. was allowed to re-enroll in the district for the 2020-2021 school year listing M. Drive as his home address. (R-3).

Carey advised that based upon computer login information the staff still had concerns regarding A.H. home address and the formal investigations continued. Surveillance was conducted by School Residency Officer Robert Jones as detailed in his Special Reports dated October 25, 2020, and January 25, 2021.

Jones’ surveillance of J.M. at the South M. Street address was conducted on seventeen occasions between September 24, 2020, to October 22, 2020. He photographed A.H. leaving the location with J.M. on thirteen occasions, observed but did not photograph A.H. leaving the location with J.M. on two occasions, may have observed A.H. on one occasion. leaving one time without J.M.

Jones’ surveillance of J.M. at the South M. Street address continued on twelve occasions between January 28, 2021 and February 18, 2021. During that time, he observed J.M. and A.H. leaving the South M. Street address on eleven occasions. Typically, J.M. and A.H. would travel from the South M. Street address to J.M.’s workplace in Pitman, New Jersey.

As a result of the investigations, the district concluded that A.H. had not been residing within it since the beginning of the 2020 – 2021 school year. A Preliminary Notice of Ineligibility was issued to D.M and her husband on February 26, 2021. No objection was submitted, and a Final Notice of Ineligibility for Continued Enrollment was issued to J.M. and D.M. on April 1, 2021. (R-1).

On April 19, 2021, D.M. filed an appeal of the determination and, as a result, A.H. could not be disenrolled until the appeal was resolved. A.H. continued to attend school in the district until December 23, 2021, when he transferred into the Glassboro School District.

For Petitioner:

D.M. testified that her grandson A.H. had been attending school within the district since he was in kindergarten. Her daughter had a volatile relationship with A.H.'s father, R.H. which, caused them to move regularly. Because of this, she always kept a room at the M. Drive address for A.H. It was important to her that A.H. always had a space he could call home. She considers her home as his primary residence.

She explained that during the summer of 2020, she undertook efforts to obtain joint custody of A.H. Those efforts resulted in the Honorable Benjamin Morgan, J.S.C., granting her joint custody of A.H. on September 10, 2020. The Board accepted this document on September 18, 2020 and allowed A.H. to enroll back into the District.

She admitted that J.M. and R.H. took A.H. to the South M. Street address and did not deny the observations made by the investigators. However, she explained that because she was immunocompromised, she was unable to have A.H. back home until she received the COVID-19 vaccine which she was unable to do so until April 2021. Further, she did not believe this was a problem because classes were virtual, and A.H. did not have to be physically present in school.

D.M. obtained full custody of A.H. in the summer of 2021 after R.H. was incarcerated. She has since started the process of returning custody back to her daughter because J.M. has since moved out of Philadelphia and is now living in Glassboro, N.J.

Documentary Evidence:

In her responses to interrogatories petitioner indicated that as of September 10, 2020, A.H. was residing full time at the M. Drive address. She denied that he was residing full time at the South M. Street address but acknowledged that A.H. regularly visited his father R.H. Petitioner could not specify how often these visits occurred. She also acknowledged that A.H. would travel to his mother's place of work simply because there was no one to watch him during the day.

The interrogatories asked her how many nights A.H. spent at the South M. Street address between September 10, 2020, and October 31, 2020, and January 1, 2021, and January 31, 2021, and D.M. answered those questions as follows;

"I have no idea how many nights. These nights were not planned. He would go and spend the night to see his father at times. No specific date and times."

and

"[A.H.] does reside and always resided at M. Drive address. He goes to Philly most weekends and on nights when he has therapy or other doctors' appointments."

In another response D.M. stated;

"He [A.H.] did stay with his mother during the pandemic. I have Lupus and could not be compromised with him staying at my home and I specifically could not help him with his schoolwork. I got very sick in March of 2021 and then received the covid shot on April 7th. At that time, I felt more comfortable with him being here. Also, during the pandemic I could not keep him from his mother for the whole time, since he could not go back and forth because of my disease."

FACTUAL DISCUSSION AND FINDINGS

For testimony to be believed, it must not only come from the mouth of a credible witness, but it also must be credible. 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, 16 N.J. 546 (1954); Gallo v. Gallo, 66 N.J. Super. 1 (App. Div. 1961). A credibility determination requires an overall assessment of the witnesses' story considering its rationality or internal consistency and the manner in which it "hangs together" with other evidence. Carbo v. United States, 314 F.2d 718, 749 (9th Cir. 1963). Also, "the interest, motive, bias, or prejudice of a witness may affect his credibility and justify the [trier of fact], whose province it is to pass upon the credibility of an interested witness, in disbelieving his testimony." State v. Salimone, 19 N.J. Super. 600, 608 (App. Div.), certif. denied, 10 N.J. 316 (1952) (citation omitted).

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).

As to the credibility of Respondents' witness, I accept the testimony of Carey as credible. She was personally knowledgeable as to this matter and easily detailed the actions taken by her staff to verify A.H.'s residence. Her testimony together with the supporting documents clearly established that A.H. was not domiciled at the M. Drive address.

The documentary evidence submitted by respondent included residency reports prepared by school investigators who did not testify during the hearing. Such out-of-court statements, if offered to prove the truth of the matters stated, are hearsay. While the rules of evidence applicable to proceedings in the Judicial Branch permit certain hearsay to be accepted as competent evidence under recognized exceptions to the general rule excluding hearsay, in administrative hearings the rule governing the admissibility of hearsay evidence is different. That rule is codified at N.J.A.C. 1:1-15.5:

(a) Subject to the judge's discretion to exclude evidence under N.J.A.C. 1:1-15.1(c) or a valid claim of privilege, hearsay evidence shall be admissible in the trial of contested cases. Hearsay evidence which is admitted shall be accorded whatever weight the judge deems appropriate taking into account the nature, character and scope of the evidence, the circumstances of its creation and production, and, generally, its reliability.

(b) Notwithstanding the admissibility of hearsay evidence, some legally competent evidence must exist to support each ultimate finding of fact to an extent sufficient to provide assurances of reliability and to avoid the fact or appearance of arbitrariness.

N.J.A.C. 1:1-15.5 (b) recites what is commonly referred to as the residuum rule, which was best described in Justice Francis' foundational opinion for the New Jersey Supreme Court in Weston v. State, 60 N.J. 36, 50–51 (1972):

It is common practice for administrative agencies to receive hearsay evidence at their hearings. . . . As Judge Learned Hand said for the Court of Appeals for the Second Circuit in NLRB v. Remington Rand, Inc., 94 F.2d 862, 873 (1938), mere rumor would not support a board finding, "but hearsay may do so, at least if more is not conveniently available, and if in the end the finding is supported by the kind of evidence on which responsible persons are accustomed to rely in serious affairs." And see, Goldsmith v. Kingsford, 92 N.H. 442, 32 A.2d 810 (1943) However, in our State as well as in many other jurisdictions the rule is that a fact finding, or a legal determination cannot be based upon hearsay alone. Hearsay may be employed to corroborate competent proof, or competent proof may be supported or given added probative force by hearsay testimony. But in the final analysis for a court to sustain an administrative decision, which affects the substantial rights of a party, there must be a residuum of legal and competent evidence in the record to support it. . . .

In this matter the petitioner consented to the residency reports being entered into evidence. In addition, she admitted to the observations made and stipulated that A.H. was at his parents, J.M. and R.H.'s South M. Street residence as stated in the residency

reports. Therefore, I accept that there was competent evidence to support the hearsay statements contained in the residency reports.

Overall, Petitioner's testimony lacked detail regarding A.H.'s time at the M. Drive address. She did not dispute the observations made by the investigators and did not refute the inference that A.H. was living full time with his parents during the 2020-2021 school year. D.M.'s responses to interrogatories maintained that A.H. resided full time at the M. Drive address. However, she testified that she was immunocompromised, thus, she was unable to have A.H. in the home until April 2021.

The responses to interrogatories were inconsistent with her testimony and as such negatively impacted petitioner's credibility.

Having had the opportunity to examine the documents presented and to hear the witnesses and to assess their credibility, I **FIND**:

1. Student A.H. is the child of parents J.M. and R.H., his maternal grandparents are Petitioner D.M., and her husband D.M.
2. At all relevant times during the 2020-2021 school year D.M. resided at the M. Drive address, within the district borders.
3. At all relevant times during the 2020-2021 school year A.H.'s parents resided at the South M. Street address, outside of the boundaries of the district.
4. A.H. was registered for school using the M. Drive address, even though A.H.'s parents lived in Philadelphia at the South M. Street address.
5. The District began conducting a residency investigation in the Fall of 2019 and issued a Preliminary Notice of Ineligibility to J.M. on October 30, 2019.

6. In response, A.H.'s mother provided several documents to the district, including affidavits signed by both herself and D.M.
7. After several months, the district re-opened its residency investigation to determine whether A.H. was indeed living at the M. Drive Address. The investigation confirmed that A.H. was living at the South M. Street Address in Philadelphia. Subsequently, the district issued another PNI on April 30, 2020.
8. The District Superintendent issued a Final Notice of Ineligibility on June 8, 2020.
9. A.H.'s parents did not appeal the FNI.
10. On September 10, 2020, the Hon. Benjamin Morgan, J.S.C. issued an Order granting joint custody of A.H. to his parents and to D.M. and D.M., and specifically designating D.M. as the parent of primary residence for school purposes only.
11. On September 18, 2020, Petitioner registered A.H. for school in the district listing the M. Drive Address as his home. (R-3).
12. The residency officers conducted surveillance in September and October 2020, and January and February 2021.
13. On October 25, 2020, officer Robert Jones filed a report with Katherine Carey which summarized the following: Jones conducted surveillance on seventeen occasions between September 24, 2020, and October 22, 2020. He photographed A.H. leaving the South M. Street Address with J.M. on thirteen of those occasions, observed, but did not photograph, A.H. leaving the South M. Street Address with J.M. on two additional occasions, and may

have observed him on one additional occasion. Finally, on one occasion he observed J.M. but did not observe A.H

14. In February 2021, in an undated report, Investigator Jones filed another report with Ms. Carey in which he detailed surveillance of A.H. and J.M. leaving the South M. Street address on eleven occasions from January 28, 2021, to February 18, 2021. On an additional date, February 1, 2021, A.H. did not go to school due to inclement weather.
15. Based upon the surveillance and other investigatory results, the District issued a PNI on February 26, 2021, which found that A.H. was not domiciled in the District, and therefore not entitled to attend school in the District. (R-13).
16. On March 25, 2021, Judge Morgan, J.S.C. modified the Joint-Custody Order, making D.M. and her husband D.M. the parents of primary residence for school purposes “only to allow [A.H.] to continue to attend the Birches Elementary School.”
17. Petitioner did not participate in the Board’s hearing into A.H.’s residency and on April 1, 2021, the District issued a FNI finding that A.H. was ineligible to attend school in the district because he did not reside within it.
18. A.H. attended school within the district for a total of 172 days during the 2020-2021 school year.
19. A.H. continued attending school within the district for a total of 73 days during the pendency of D.M.’s appeal, from April 2, 2021, through December 23, 2021.
20. The daily tuition rate for a fifth-grade student in the Washington Township School District during the 2020-2021 school year is \$94.37.

21. The daily tuition rate for a sixth-grade student in the District during the 2021-2022 school year is \$100.76.

LEGAL ANALYSIS AND CONCLUSIONS

ISSUES

The issues here are; did A.H reside in Washington Township, New Jersey, during the 2020–2021 and 2021-2022 school years? If residency is not established, what is the amount of the tuition reimbursement due to respondent from petitioner for 2020-2021 and 2021-2022?

Public schools are required to provide a free education to individuals between the ages of five and twenty years in certain circumstances, including individuals who are domiciled within the school District. N.J.S.A. 18A:38-1(a). 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 the domicile of the parent, custodian, or guardian. P.B.K. ex rel. minor child E.Y. v. Bd. of Educ. of Tenafly, 343 N.J. Super. 419, 427 (App. Div. 2001). Thus, a child would routinely attend school in the District where his or her parents live.

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). The regulation further provides:

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 most of the school year.

The evaluation of the facts of the case determines the distinction between residence and domicile. Where a person has more than one residence, some of the factors to be evaluated are:

The physical characteristics of each place, the time spent and things done in each place, the other person found there, the person's mental attitude toward each place, and whether there is or is not an intention when absent to return. *Mercadante v. the City of Paterson*, 111 N.J. Super 35, 39-40 (Ch. Div. 1970) aff'd, 58 N.J. 112 (1971).

Pursuant to N.J.S.A. 18A:38-1(b)(2) parents have the burden of establishing domicile in the school District by a preponderance of the evidence.

Here, the petitioner has failed to meet her burden as the credible evidence submitted establish that A.H. was residing with his parents J.M. and R.H. at the South M. Street address for the 2020-2021 and the 2021-2022 school years. Petitioner offered the court orders as proof that A.H.'s domicile was her M. Drive address which she considered as A.H.'s permanent home. No other witness was called to support this conclusion.

From the evidence submitted it was clear that A.H.'s parents, J.M. and R.H. had no intention to make the M. Drive address A.H.'s permanent home or that he would abandon the South M. Street address. The court orders granted petitioner joint custody for school purposes but there was no attempt to have A.H. reside at D.M.'s residence or within the district.

Petitioner was obviously mindful of the residency requirement as she went through some efforts to obtain custody orders in September of 2020 and March of 2021.

On September 10, 2020, the Hon. Benjamin Morgan, J.S.C. issued an order granting D.M. and her husband D.M. joint custody as the parent of primary residence for school purposes only. That order was amended on March 25, 2021, wherein joint custody was continued and D.M. and her husband were still parent of primary residence but "only

to allow [A.H.] to attend Birches Elementary School.” Petitioner offered only limited testimony concerning these orders so there was no explanation as to why they were necessary. Crucially, there is no indication as to what testimony and/or evidence petitioner or any of the parties provided Judge Morgan with during the hearings. Regardless, implicit in both orders was the condition that A.H. reside with petitioner and within the district.

Applying the law to the facts of this case I **CONCLUDE** that Petitioner has failed to establish by a preponderance of the evidence that A.H. was domiciled at the M. Drive address. I **CONCLUDE** A.H. was ineligible to attend school within the district.

A.H. attended the fifth grade in the district during the 2020-2021 school year for a total of 172 days and the daily tuition rate is \$94.37. A.H. also attended the sixth grade in the district during the 2021-2022 for 73 days and the daily tuition rate is \$100.76.

I **CONCLUDE** that A.H. was ineligible for 172 days during the 2020-2021 school year resulting in tuition of \$16,231.64 and 73 days during the 2021-2022 school year resulting in tuition of \$7,355.48. Therefore, the total tuition reimbursement due is \$16,231.64 plus \$7,355.48 for a total of \$23,587.12.

ORDER

It is **ORDERED** that the determination of the Washington Township Board of Education that A.H. was not domiciled in the Washington Township School District for the 2020–2021 school year is **AFFIRMED**. The appeal is hereby **DISMISSED**.

Based upon the foregoing, it is hereby **ORDERED** that it is further that D.M. reimburse Respondent the total sum of \$23,587.12 for tuition costs associated with the attendance of A.H. in the Township of Washington school District for the 2020-2021 and 2021-2022 school years.

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.

April 5, 2022
DATE



WILLIAM T. COOPER III, ALJ.

Date Received at Agency: April 5, 2022

Date E-Mailed to Parties:
lr April 5, 2022

APPENDIX

Witnesses

For Appellant:

Katherine Carey

For Respondent:

D.M.

Exhibits

- R-1 Final Notice of Ineligibility ("FN1")- April1, 2021
- R-2 Petition of Appeal – 4/19/21
- R-3 Registration Documents- AH-2020-2021 school year
- R-4 Residential Lease at Mole Street
- R-5 PN1-10/30/19
- R-6 Affidavit in Response to PN1 from J.M. and D.M. re; AH residency
- R-7 PN1- 4/30/20
- R-8 FNI- 6/8/20
- R-9 Shared Custody Order -9/10/20
- R-10 Interactive Sign -Ins, 9-13-20 to 10-13-20
- R-11 Special Report of Residency Officer-February 26, 2021
- R-12 Special Report of Residency Officer-February 26,
- R-13 Preliminary Notice of Ineligibility("PN1")-February 26,2021
- R-14 Facebook post by J.M.- 3/17/21
- R15 Facebook post by D.M.- 3/17/21
- R-16 Shared Custody Order – 3/25/21
- R-17 Full Custody Order August 8, 2021
- R-18 Doctor's Note
- R-19 Photos – 9/24/20
- R-20 Photos – 9/28/20

- R-21 Photos – 9/29/20
- R-22 Photos – 10/2/20
- R-23 Photos – 10/5/20
- R-24 Photos – 10/6/20
- R-25 Photos – 10/7/20
- R-26 Photos – 10/ 8/20
- R-27 Photos – 10/13/20
- R-28 Photos – 10/14/20
- R-29 Photos – 10/15/20
- R-30 Photos – 10/19/20
- R-31 Photos – 10/20/20
- R-32 Photos – 10/21/20
- R-33 Photos – 10/22/20
- R-34 Photos – 1/28/21 AM PHILLY
- R-35 Photos- 1/28/21 AM PITMAN
- R-36 Photos – 1/29/21 AM PHILLY
- R-37 Photos- 1/29/21 AM PITMAN
- R-38 Photos – 2/1/21
- R-39 Photos – 2/3/21 AM PHILLY
- R-40 Photos- 2/3/21 AM PITMAN
- R-41 Photos- 2/4/21 AM PITMAN
- R-42 Photos – 2/5/21 AM PHILLY
- R-43 Photos- 2/5/21 AM PITMAN
- R-44 Photos- 2/5/21 AM PITMAN
- R-45 Photos- 2/8/21 AM PHILLY
- R-46 Photos- 2/8/21 AM PITMAN
- R-47 Photos- 2/8/21 AM PITMAN
- R-48 Photos- 2/9/21 AM PITMAN
- R-49 Photos- 2/10/21 AM PHILLY
- R-50 Photos- 2/10/21 AM PHILLY
- R-51 Photos- 2/11/21 AM PITMAN
- R-42 Photos- 2/12/21 AM PHILLY

- R-53 Photos- 2/12/21 AM PITMAN
- R-54 Photos- 2/12/21 AM PITMAN
- R-55 Photos- 2/15/21 AM PHILLY
- R-56 Photos- 2/15/21 AM PITMAN
- R-57 Photos- 2/15/21 AM PITMAN
- R-58 Photos- 2/16/21 AM PHILLY
- R-59 Photos- 2/16/21 AM PITMAN
- R-60 Photos- 2/17/21 AM PHILLY
- R-61 Photos- 2/17/21 AM PITMAN
- R-62 Interrogatory Responses
- R-63 Supplementary Discovery Responses