

222-22

OAL Dkt. No. EDU 06696-19

Agency Dkt. No. 71-4/19

New Jersey Commissioner of Education

Final Decision

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

Petitioner,

v.

Board of Education of the City of Newark,
Essex County,

Respondent.

The record of this matter, the Initial Decision of the Office of Administrative Law (OAL), the exceptions filed by respondent, the Newark Board of Education, pursuant to *N.J.A.C. 1:1-18.4* and the reply thereto from petitioner, the Springfield Board of Education, have been reviewed and considered.

This matter involves the question of which board of education is responsible for the educational costs of two siblings, M.P. and Jad. P., during the 2017-2018 and 2018-2019 school years. It is undisputed that the children and their mother were homeless during the 2016-2017 school year and that under *N.J.S.A. 18A:7B-12(c)*, Springfield was responsible for the children's educational costs during the 2016-2017 school year. The Administrative Law Judge (ALJ) found that Newark was responsible for the children's transportation and tuition costs between September 2017 and December 2018. In reaching this conclusion, the ALJ found that the

children and their mother resided in Newark for over a year and therefore the financial obligation for their educational costs shifted from Springfield to Newark.

Upon a comprehensive review of the record, the Commissioner finds that this matter must be remanded to the Office of Administrative Law to address the inconsistent findings outlined in the Initial Decision. Most notably, there are inconsistent findings in regard to the children's educational costs during the 2018-2019 school year. The ALJ found that Newark must reimburse Springfield "\$12,942.84 in tuition costs for the Rutgers Day School for M.P. for the period of November to December 2018." The ALJ also found that Newark must reimburse Springfield "\$12,942.84 in tuition costs for the Rutgers Day School for M.P. for the period of September to October 2018." Additionally, the ALJ found that Newark must reimburse Springfield for transportation costs totaling \$39,918.40¹ for transport of "Jad. P. to Washington Academy, and for M.P. to Rutgers Day School for the period of June 26, 2007 through December 31, 2018." (Initial Decision at 13-14)

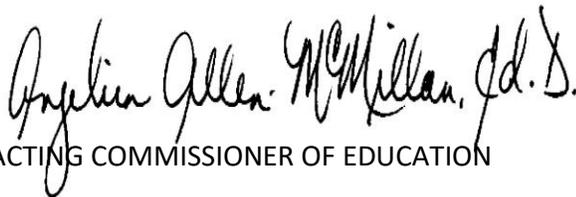
Yet, the ALJ also found that, "Springfield discovered during the summer of 2018 that the P family was living in Dover, NJ. M.P. was enrolled in the Dover district. The transportation contract for M.P. was cancelled. It appeared that Jad. P. had dropped out of school." (*id.* at 13) Moreover, the ALJ concluded that "Jad. P. and M.P., together with their mother, A.I.P., resided at (a street address in) Newark, NJ, from June 30, 2016 until the summer of 2018." (*id.* at 18) The Initial Decision fails to explain why Newark is responsible for M.P.'s tuition and transportation costs from September through December of 2018 in light of the fact that the ALJ appears to find that the P family relocated to Dover during the summer of 2018. It is

¹ A review of the record appears to suggest that this amount actually totaled \$37,918.40.

undisputed that M.P. was ultimately registered in the Dover School District, but it is not clear what address was used at the time of registration. The record only contains an email from A.I.P. indicating that the family was living with her fiancé in Dover as of the summer of 2018. Notably, it is also unclear as to whether transportation was provided for M.P. from the family's new Dover address or whether M.P. was picked up and dropped off at the Newark address. Therefore, it is not possible to ascertain who is responsible for the children's educational costs between September 2018 and December 2018.

Accordingly, this matter is hereby remanded to the OAL for further proceedings consistent with this decision.

IT IS SO ORDERED.


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

Date of Decision: September 7, 2022
Date of Mailing: September 12, 2022



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. EDU 06696-19

AGENCY DKT. NO. 71-4/19

**BOARD OF EDUCATION OF THE
TOWNSHIP OF SPRINGFIELD,**

Petitioner,

vs.

**BOARD OF EDUCATION OF THE
CITY OF NEWARK,**

Respondent.

Janelle Edwards-Stewart, Esq., and Marie-Laurence Fabian, Esq., co-counsel
for Petitioner (Porzio, Bromberg & Newman, P.C., attorneys)

Teresa L. Moore, Esq., for Respondent, Newark Board of Education (Riker,
Danzig, Scherer, Hyland & Perretti, LLP, attorneys)

Sabrina Styza, Esq., co-counsel for Respondent, Newark Board of Education

Record Closed: April 7, 2022

Decided: June 8, 2022

BEFORE: **THOMAS R. BETANCOURT, ALJ:**

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner filed a petition, dated April 10, 2019, with the New Jersey Department of Education, Bureau of Controversies and Disputes, alleging that the Newark Board of Education is responsible for transportation and tuition costs for certain children that have attended school in Petitioner's district.

The matter was transferred to the Office of Administrative Law (OAL), where it was filed on May 15, 2019, as a contested case. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13, bearing OAL Docket No. EDU 06696-19.

A prehearing conference was held on June 5, 2019. A prehearing order, dated June 7, 2019, was entered by the undersigned.

The hearing was held on December 13, 2021, December 14, 2021 and January 24, 2022.

The record remained open for the parties to submit post hearing briefs, which were due thirty days after receipt of the hearing transcripts. Transcripts were received on March 11, 2022. Petitioner submitted their brief on April 6, 2022. Respondent submitted their brief on April 7, 2022. Whereupon the record closed on April 7, 2022.

ISSUES

SUMMARY OF RELEVANT TESTIMONY

Petitioner's Case

Tiffany Boehm testified as follows:

She is employed by the Springfield Board of Education and has been since 2007. Ms. Boehm is the Director of Student Support Services. She went on to describe her job duties, part of which is to oversee the placement of students out of District.

Ms. Boehm described the Board's policy regarding the education of homeless students. She is familiar with the P family, who had a residency issue during the 2015/2016 school year. There were four children in the P family: J.P.; Jas P.; Jad P.; and, M.P. J.P. had graduated.

The principal of the school that M.P. attended reported that she did not show up for school and they were having a difficult time reaching the parent. A resource officer did a welfare check and discovered the family did not live at their address anymore.

Jas P., who was attending the high school told her case manager that the family was residing in Newark. This was also during the 2015/2016 school year, towards the end of the 2015/2016 school year.

Ms. Boehm drafted a letter to the mother, A.I.P., but was not able to send it as she did not have a current address. She contacted the FACT (Families and Communities Together) worker who was assisting the family. The worker did not have a current address. The FACT worker advised that A.I.P. would not provide an address.

A.I.P. was contacted by phone. She informed the school that M.S. would be attending, and that the family was returning to Springfield.

A.I.P. came in with documents on either September 6th or 7th with a lease showing her returning to the same address she previously had in Springfield.

Ms. Boehm received an email from the FACT worker that informed her that the family was living in Newark at 134 Fabyan Place.

Another family was living at the residence A.I.P. provided a lease for. The P family was not living there.

A.I.P. then completed the required paperwork that the family was homeless, which are the McKinney Vento Act Student Resident Information Forms. There were three forms completed, for Jas P., Jad P. and M.P. What stood out to Ms. Boehm on these forms is that A.I.P. claimed being homeless from June 2016, yet provided a lease prior to completing the forms that she would be living in Springfield.

On the forms A.I.P. listed two current addresses: 134 Fabyan Place, Newark, NJ; and, 359 Nesbitt Terrace, Irvington, NJ. The only time Ms. Boehm saw the Irvington address was on the forms.

The three children, Jas, Jad and M, were special needs students. Jas was finishing her education at Jonathan Dayton High School. Jad was placed at Mary Dobbins School by the State and did not require transportation. The District was looking for an out of District placement for M.

As A.I.P. had informed the District the family was homeless, the District continued to provide education for the three children.

Jas and M required transportation, which was provided by the District. Jas was picked up at 134 Fabyan Place in Newark for transportation to the Jonathan Dayton High School in Springfield. M was picked up at the same address for transportation to the Gaudineer Middle School in Springfield. M was changing schools to an out of District placement and was to be transported from the Fabyan Place address to the Rutgers Day School in Piscataway.

The transportation company reported an incident via email where the bus arrived at the Fabyan Place address to transport M. M refused to get on the bus. A.I.P. came out of the house, but was not successful in getting M to go on the bus. M walked off and A.I.P. returned to the Fabyan Place house.

There was never a request by A.I.P. for the District to provide transportation from any other address, other than the Fabyan Place address.

At the end of the 2016/2017 school year Jad was exiting the program at Mary Dobbins and the District would be looking for another placement. Home instruction was offered pending placement and A.I.P. refused to allow home instruction.

Jas graduated from Jonathan Dayton High School at the end of the 2016/2017 school year.

At the end of the 2016/2017 school year the District's homeless liaison sent a letter to Newark to advise them it would be Newark's responsibility to educate the students. Ms. Boehm testified that, to her knowledge, no response was received. She then followed up with an email to Newark's homeless liaison at the start of the 2017/2018 school year. She received a response about one week later, indicating that A.I.P. spoke with Newark about registering her daughter. Ms. Boehm provided the requested information, including IEPs. There were no follow up from Newark. In November 2017 Newark's homeless liaison, Ana Osoria, advised that she met with A.I.P., and that it did not appear A.I.P. was living in Newark consistently for 365 days, and declined educational responsibility. Springfield then re-enrolled Jad and M as Newark was not taking responsibility. Ms. Boehm was unsure what transpired with Jad and M between September and November. Mom met with Ms. Pacheco, the Springfield homeless liaison. The Fabyan Place address was provided. Springfield secured placements for both M and Jad, with transportation from the Fabyan Place address. Prior to the placement for Jad and M, home instruction was offered, and was again declined.

Newark was again contacted to advise that Springfield maintained that Newark was the responsible district and that Springfield may seek reimbursement. Ms. Osoria responded that she would have the residency investigator look into it. This was April 2018.

Emails were continued to be exchanged with Ms. Osoria. The last email received was close to the end of the 2017/2018 school year wherein Ms. Osoria maintained that Newark is not the responsible district.

Springfield had a residency investigator look into the Fabyan Place address. He concluded that A.I.P. and M were residing therein. Regarding Jad no conclusion was reached as she was not regularly attending school. This was done through observation of the location.

In September of 2018, A.I.P. advised that the family moved to Dover and at some point Dover took responsibility for the students. This was in December 2018. By that time Jad had dropped out. Transportation and tuition for M switched to Dover.

Ms. Boehm reviewed the costs for tuition and transportation for the period Springfield maintains Newark was the responsible district. Those costs total \$41,593.18 for tuition, and \$37,918.40 for transportation.

James Post testified as follows:

He is employed by the Springfield Board of Education as the residency investigator. Prior to this he was a police officer with Newark for thirty years.

He described how he conducts a residency investigation, which includes surveillance "99.9 percent" of the time.

He was asked to do a residency investigation for the P family. His investigation included surveillance. He met with Janet Pacheco. He received a Power School report, which contains the child's photo, family member names, mother's name, current address and emergency contact information. He did surveillance of the Fabyan Place address on April 25, 2018. He arrived at 6:00 a.m. He saw M exit the residence and get on the school bus at approximately 7:45 a.m. Prior to that he saw some cars pull in and pull out with adult females. He did not know who the women were. He did see one of the women enter the house, and another women leave the house. He saw no children exit a car and enter the house. He remained until 9:00 a.m. He repeated the surveillance the next day. Again he arrived at 6:00 a.m. He approached the bus driver when the bus arrived. He identified himself to the driver, who told him he picks up M every day at this address. He remained again until 9:00 a.m. He never saw Jad during

his investigation. He again did surveillance the next day, starting at 6:00 a.m. Again M exited the home and got on the bus. Again he remained until 9:00 a.m. This was Friday. He returned on Saturday but saw no activity at all. He returned the following Monday and again saw M exit the house at 7:45 a.m. and enter the school bus. He concluded that the P family was residing at the Fabyan Place address. This was based on M exiting the house four consecutive school days, his conversation with the bus driver, that M never exited a vehicle to enter the house and the A.I.P. reported the Fabyan Place house as her address.

Mr. Post was recalled regarding the Power School paperwork he was provided and testified as follows:

He had received photographs of Jad and M. He also had photographs of Jas and J.P., who were not part of his investigation. He could not at this time locate the photograph of Jad. He was sure he had one when he started the investigation.

On the paperwork M's address is listed as 807 Mountain Avenue, Springfield, NJ. That was the prior address the family lived at prior to the Fabyan Place address in Newark. There is other paperwork in the Power School forms that have the Fabyan Place address. The handwriting on the paperwork is his.

There is also an address of 259 Nesbit Terrace in Irvington. He did not investigate this address as the investigation led him to the Fabyan Place address, and he concluded that was where the family resided.

Ana Osoria testified as follows:

She is employed by the Newark Board of Education as a Program Specialist-3. Prior to that she was a Specialist for Homeless Management from September 2013 to July 2020. It is the same job as before with a different title. She is the McKinney Vento liaison for the Newark School District. Ms. Osoria described her job duties and training received.

Ms. Osoria stated that for a person to be determined not to be homeless they must reside in the District for 365 consecutive days. She maintained that this was based on her McKinney Vento training. Any break in the 365 days resets the clock.

When she was advised by Springfield that the P family was living in Newark she contacted A.I.P. and was able to meet with her on November 14, 2017. Based on that conversation Ms. Osoria determined that the P family was not “fixed or regular” at the Newark address. She notified Springfield of her findings. Newark did not initiate a residency investigation.

An email dated June 27, 2017 was sent to Ms. Osoria’s email, but was not reviewed by her until September 6, 2017. At that time she reached out to A.I.P. She did not meet with her until November 14, 2017. There was no contact with A.I.P. between the first telephone call on June 12, 2017 with her and the day she came in, which was November 14, 2017.

Initially Ms. Osoria intended to register the students in the Newark District. Her position changed after she spoke with A.I.P. in November. Her decision was based upon what A.I.P. told her. A.I.P. indicated to Ms. Osoria that she desired educational continuity.

Ms. Osoria reached out again to A.I.P. in 2018, the aim of which was to have her come in and bring supporting documents that she may have. She communicated this to Ms. Boehm. A meeting was scheduled for April 30, 2018 at 10:00 a.m., but A.I.P. did not attend. She advised Springfield thereafter via email that no further investigation was needed as the students were not Newark’s responsibility.

Susan Giordino was called at the end of Respondent’s case to testify as to certain documents:

She is employed by the Springfield Board of Education and is the secretary to the Director of Special Services. She helped process the student enrollment for M in the beginning of the 2016/2017 school year. A.I.P. came to the office to submit enrollment

paperwork. A.I.P. produced a lease, which seemed to Ms. Giordino to be suspect. She identified a copy of the lease.

Tiffany Boehm was recalled at the end of Respondent's case to testify as to certain documents:

Ms. Boehm reviewed release forms provided by Newark in order to send IEPs for M and Jad P. Newark was requesting the most recent IEP for both students. The address on the form was 134 Fabyan Place, Newark, NJ. A.I.P. was listed as the person completing the forms. This was November 14, 2017. On the same day she corresponded with Ms. Osoria who had determined that A.I.P. was not living in Newark. This was in an email.

Respondent's Case

Ana Osoria testified as follows:

Ms. Osoria reviewed her experience and work as she did on direct examination by Ms. Stewart when she testified as Petitioner's witness.

She reviewed scenarios that could lead to a person being displaced.

Ms. Osoria also reviewed her educational background.

She reviewed how she conducts an interview with a displaced family.

During the meeting with A.I.P. in November 2017 Ms. Osoria did not offer her any of the services or amenities she would normally offer displaced families as A.I.P. indicated she wanted to continue with Springfield.

Ms. Osoria was not advised by anyone from Springfield that an investigator was sent to the Fabyan Place address.

She did not have any contact with A.I.P. from the first telephone call in September 2017 until December 1, 2021. On that date they spoke via telephone. A.I.P. restated what she told Ms. Osoria in September 2017 was correct. There was another telephone call with A.I.P. on December 7, 2021, with Ms. Styza also on the call. On the same date she went to meet with A.I.P. at an address in Dover. She went with Newark Board of Education security and an investigator. The purpose of the visit was to see if her previous statements were consistent.

Timothy Gray testified as follows:

Mr. Gray is a partner with Capital Investigations. He went on to describe his experience as an investigator. He further explained the various types of investigations.

He was retained by Newark to do an investigation regarding Jad and M. He was asked to find if A.I.P. was primarily residing in Newark. He was provided with information about A.I.P. and performed a desk top search, which is a review of online data bases. There was no surveillance done. Based upon the data base search results he produces a profile. The search starts with a name and social security number. He stated that, based on the results, it appeared to him that A.I.P. was going back and forth from different addresses. He reviewed the various addresses revealed from the data base searches. The time frame he reviewed was during 2016 and 2017. He could not determine, with any sense of certainty, where A.I.P. lived during this time frame. She did not file a change of address form with the United States Postal Service.

Mr. Gray stated it would be fair to say that he has no idea whether A.I.P. lived at any of the addresses at all at any time.

FINDINGS OF FACT

1. A.I.P., and her children, Jas. P., Jad. P. and M.P., resided in the Township of Springfield, N.J. until approximately June of 2016.

2. As residents of Springfield the children were entitled to be educated in the Springfield public school system.
3. All three children, above noted, were students with special needs and had Individualized Education Programs (IEPs). (P-20)
4. A welfare check at the Springfield address of the P family by the Springfield Police revealed that they no longer resided at said address. A different family resided therein. (12/13/21 Tr. 26:12 to 27:24)
5. The Springfield Board of Education discovered that the P family was residing in Newark, NJ, through a worker with Families and Communities Together (FACT), however the worker was unable to provide a current address. (P-19)
6. In September 2016, after being contacted by the school social worker, A.I.P. came to the Florence M. Guadineer Middle School to re-register M.P., and provided a lease, dated September 1, 2016, for her prior Springfield address. (P-21)
7. The P family was not living at their previous address in Springfield. They were living with the childrens' grandmother in Newark, NJ, at 134 Fabyan Place.
8. The Springfield Police confirmed that the P family was not living at their previous address. A different family was living there. (12/13/21 Tr. 41:6-17)
9. A.I.P. filled out a McKinney Vento Act Student Information form for Jad. P., Jas. P. and M.P. A.I.P. claimed in the forms that the family was homeless since June 30, 2016, and were residing at 134 Fabyan Place, Newark, NJ. She also listed an Irvington address on the forms. (P-3)
10. Springfield BOE set up transportation from the 134 Fabyan Place, Newark, NJ address to Springfield for Jas. P. and M.P. so they could attend school. Transportation was not required for Jad. P. as she was in a residential facility. Transportation for Jas. P. and M.P. continued through the end of the 2016/2017 school year.
11. Transportation was arranged for M.P. to attend the extended school year program but was subsequently cancelled as M.P. refused to attend the program.

12. The transportation company informed Springfield via email that M.P. would not leave the porch of the 134 Fabyan Place, Newark, NJ address. They also advised that A.I.P. had exited the house after being contacted by telephone that M.P. would not get on the bus. (P-9)

13. During the 2016/2017 school year the only address used to pick up the children for transport to school was the 134 Fabyan Place, Newark, NJ address.

14. An email, dated June 27, 2017, was sent to the Newark Board of Education homeless liaison, Ana Osoria, to advise that the P family was living in Newark from May 2016. Said email provided the names of the children and the Newark address. (J-1)

15. Ms. Osoria did not respond to this email until September 12, 2017, after receiving a follow up email from Tiffany Boehm of Springfield, dated September 6, 2017. (J-2)

16. In response to Ms. Osoria's email of September 12, 2017, the IEPs for the three children were forwarded. (P-23)

17. By email dated November 14, 2017, Ms. Osoria advised Springfield that she met with A.I.P. and determined that A.I.P. did not reside in Newark for 365 days. This was based on representations made by A.I.P. Ms. Osoria determined that the children should be the responsibility of Springfield. (J-3)

18. Springfield then assumed responsibility for the children and arranged for placements and transportation from the 134 Fabyan Place, Newark, NJ address. Jad. P. was placed at Washington Academy, and M.P. was placed at Rutgers Day School. P-10 and P-11)

19. By letter dated April 10, 2018, Springfield advised Newark that it still held the position that Springfield was the responsible district for the 2017/2018 school year. (J-4)

20. Ms. Osoria responded, by email dated April 10, 2018, to said letter on behalf of Newark requesting documents to support Springfield's position and restating Newark's position. (J-5)

21. In response thereto, attendance and transportation records were provided by email dated April 23, 2018. (J-6)
22. Ms. Osoria responded, again reiterating Newark's position, which was based upon a conversation she had with A.I.P. Said email was also to update what had transpired. (J-7)
23. Springfield had their residency investigator investigate the residency situation for the P family. The investigator, James Post, set up surveillance at the 134 Fabyan Place, Newark, NJ address and discovered that M.P. was residing therein. He did not observe Jad. P. He prepared a report as to his findings. (P-4)
24. Newark's position regarding the residency of the P family was based entirely on what A.I.P. told Ms. Osoria without any supporting documentation.
25. Ms. Osoria testified that A.I.P. told her she wanted her children to continue to be educated in the Springfield district.
26. Ms. Osoria, after speaking via telephone with A.I.P. on April 27, 2018, arranged a meeting with her for April 30, 2018. A.I.P. did not attend the meeting. (J-7)
27. Springfield discovered during the summer of 2018 that the P family was living in Dover, NJ. M.P. was enrolled in the Dover district. The transportation contract for M.P. was cancelled. It appeared that Jad. P. had dropped out of school.
28. Newark Board of Education was the responsible district for the education of the P family children, Jad. P., Jas. P. and M.P. from the beginning of the 2017/2018 school year until the time the children became the responsibility of the Dover school district.
29. Springfield expended the sum of \$15,707.50 in tuition for the Rutgers Day School for M.P. for the period of April to June 2018. (P-12)
30. Springfield expended the sum of \$12,942.84 in tuition for the Rutgers Day School for M.P. for the period of September to October 2018. (P-13)

31. Springfield expended the sum of \$12,942.84 in tuition for the Rutgers Day School for M.P. for the period of November to December 2018. (P-14)
32. Total tuition costs expended by Springfield for M.P. are \$41,593,18.
33. Transportation costs paid by Springfield total \$39,918.40 for Jad P. to Washington Academy, and for M.P. to Rutgers Day School, for the period of June 26, 2017 through December 31, 2018. (P-15 and P-15a)
34. Total amount of funds expended by Springfield that the Newark Board of Education is responsible for equal \$79,511.58.

LEGAL ANALYSIS AND CONCLUSION

Right to a Free Public Education

N.J.S.A. 18A:38-1(a) and N.J.A.C. 6A:22-3.1(a) sets forth the right of a student to a free public education, which in pertinent parts states:

Public schools shall be free to the following persons over five and under twenty years of age:

- a. Any person who is domiciled within the school district[.]

Consideration in proving residency for purposes of establishing eligibility for school district placement is found at N.J.A.C. 6A:22-3.4(a),

(a) A district board of education shall accept a combination of any of the following or similar forms of documentation from persons attempting to demonstrate a student's eligibility for enrollment in the school district:

1. Property tax bills, deeds, contracts of sale, leases, mortgages, signed letters from landlords and other evidence of property ownership, tenancy or residency;
2. Voter registrations, licenses, permits, financial account information, utility bills, delivery receipts, and other evidence of personal attachment to a particular location;

...

3. Court orders; State agency agreements; and other evidence of court or agency placements or directives;

4. Receipts; bills; cancelled checks; insurance claims or payments; and other evidence of expenditures demonstrating personal attachment to a particular location or to support the student;

...

6. Affidavits, certifications and sworn attestations pertaining to statutory criteria for school attendance, from the parent, guardian, person keeping an "affidavit student," adult student, person(s) with whom a family is living, or others as appropriate;

...

8. Any other business record or document issued by a governmental entity.

(b) A district board of education may accept forms of documentation not listed in (a) above, and shall not exclude from consideration any documentation or information presented by a person seeking to enroll a student.

(c) A district board of education shall consider the totality of information and documentation offered by an applicant, and shall not deny enrollment based on failure to provide a particular form of documentation, or a particular subset of documents, without regard to other evidence presented.

In the instant matter, it is clear that A.I.P. resided in Newark. The address given to Springfield was the Newark address. Springfield's investigator confirmed that A.I.P. resided in Newark. The only reasonable conclusion is that A.I.P. resided in Newark. The investigation conducted by Newark was nothing more than internet search, with no on-site observation, as was the case with the Springfield investigation. In fact, the investigator for Springfield admitted he could not say whether or not A.I.P. lived at any

of the addresses set forth in his report. (2T172:16-25) He did not do surveillance, as the investigator for Springfield did.

Newark based its decision on residency entirely upon what A.I.P. told them. There was no independent confirmation. There were no documents provided. There was nothing other than hearsay statements provided by Ms. Osoria in her testimony as to what A.I.P. told her. There was not a shred of residuum evidence to support the hearsay statements.

Judicial rules of evidence do not apply to administrative agency proceedings, except for rules of privileges or where required by law. N.J.R.E.101(a)(3). DeBartolomeis v. Board of Review, 341 N.J. Super.80, 82 (App. Div. 2001). N.J.S.A. 52:14B-10(a) and N.J.A.C. 1:1-15.1(c).

Hearsay are statements other than ones made by the declarant while testifying at a hearing, offered into evidence to prove the truth of the matter asserted. N.J.R.E. 801(c). Hearsay is usually not admissible because it is deemed untrustworthy and unreliable (N.J.R.E. 802) unless it falls within an exception enumerated in N.J.R.E 803 or 804. However, hearsay is admissible in an administrative proceeding such as this one subject to the “residuum rule,” which mandates that the administrative decision cannot be predicated on hearsay alone. Weston v. State, 60 N.J. 36 (1972).

[A] fact-finding or 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 competent evidence in the record to support it. [Id. at 51]

The Uniform Administrative Procedure Rules governing administrative agency proceedings codify this doctrine by requiring that “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(c). In assessing hearsay evidence, it should 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. N.J.A.C. 1:1-15.5(a).

In accordance with the residuum rule, I accepted the hearsay evidence. However, no competent evidence was presented to corroborate the hearsay evidence. Accordingly, no weight can be given to the same.

Further, Newark’s position that an individual must reside for 365 consecutive days to not be considered homeless finds no support in the law.

N.J.S.A. 18A:7B-12(c) states: The district of residence for children whose parent or guardian temporarily moves from one school district to another as the result of being homeless shall be the district in which the parent or guardian last resided prior to becoming homeless. For the purpose of this amendatory and supplementary act, “homeless” shall mean an individual who temporarily lacks a fixed, regular and adequate residence.

As A.I.P. claimed homelessness for the 2016/2017 school year, Springfield acted appropriately and registered children, notwithstanding their new address in Newark.

N.J.S.A. 18A:38-1(d) states: Any person whose parent or guardian, even though not domiciled within the district, is residing temporarily therein, but any person who has had or shall have his all-year-round dwelling place within the district for one year or longer shall be deemed to be domiciled within the district for the purposes of this section.

The preponderance of the credible evidence shows that A.I.P., M.P. and Jad. P. resided at 134 Fabyan Place, Newark, NJ for more than one year. Accordingly, they became the responsibility of the Newark school district for the 2017/2018 school year.

N.J.A.C. 6A:22-6.3 states in pertinent part: a) Tuition assessed pursuant to this section shall be calculated on a per-student basis for the period of a student's ineligible enrollment, up to one year, by applicable grade/program category and consistent with the provisions of N.J.A.C. 6A:23A-17.1. The individual student's record of daily attendance shall not affect the calculation.

Springfield expended the sum of \$41,593.18 in tuition costs, and the sum of \$39,918.40 in transportation costs from the time that Newark was the responsible district for the education of M.P. and Jad. P. The total sums expended by Springfield were \$79,511.58.

Based upon the foregoing, I further **CONCLUDE** that Jad. P. and M.P., together with their mother, A.I.P., resided at 134 Fabyan Place, Newark, NJ, from June 30, 2016 until the summer of 2018; and, Newark became the responsible school district for the 2017/2018 school year after the family resided therein for more than one year.

ORDER

Based upon the foregoing it is **ORDERED** that the Newark Board of Education reimburse the Springfield Board of Education the sum of \$79,511.58.

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.

June 8, 2022



DATE

THOMAS R. BETANCOURT, ALJ

Date Received at Agency:

Date Mailed to Parties:

db

APPENDIX

List of Witnesses

For Petitioner:

Tiffany Boehm
James Post
Ana Osoria
Susan Giordino

For Respondent:

Ana Osoria
Timothy Gray

List of Exhibits

For Petitioner:

- P-1 letter from Tiffany Boehm to A.I.P. (parent), dated 6/27/16
- P-2 Email from Kara King to Tiffany Boehm, dated 9/16/16
- P-3 McKinney Vento Act Student Resident Information forms
- P-4 Email report from James Post to Jannett Pacheco, Petitioner's Former Director of Human Resources, dated 5/13/18
- P-5 Request for Coordinated Special Education Transportation form with regard to Jas.P. for the time period ASAP through June 23, 2016, dated 9/22/16
- P-6 Request for Coordinated Special Education Transportation form with regard to M.P. for the time period ASAP through June 23, 2016, dated 9/20/16
- P-7 Request for Coordinated Special Education Transportation form with regard to M.P. for the time period ASAP through June 22, 2017, dated 12/2016
- P-8 Request for Coordinated Special Education Transportation form with regard to M.P. for the time period July 5, 2017, through August 15, 2017, dated 8/15/17
- P-9 Emails from Diana Blajsa from UCESC to Sue Lies, Petitioner's Transportation Coordinator, dated 6/9/17

- P-10 Request for Coordinated Special Education Transportation form with regard to Jad.P. for the time period April 2, 2018 through June 21, 2018, dated 3/26/18
- P-11 Request for Coordinated Special Education Transportation form with regard to M.P. for the time period April 11, 2018 through June 21, 2018, dated 6/1/17
- P-12 Vendor History Printout for April, May and June 2018
- P-13 Vendor History Printout for September and October 2018
- P-14 Springfield Board of Education Purchase Order 901230
- P-15 Springfield Board of Education District Billing Reports
- P-17 Power School Documents
- P-18 emails between Tiffany Boehm and parent dated 11/28 and 29/2021
- P-19 email between Tiffany Boehm and FACT worker
- P-20 IEPs
- P-21 Lease submitted by parent to Springfield
- P-23 email dated 9/17/17 from Tiffany Boehm's secretary, Jessica

For Respondent:

- R-1 Residency Investigation
- R-2 McKinney Vento training manual
- R-3 McKinney Vento questionnaire

Joint Exhibits:

- J-1 Email from Ellyn Atherton to Ana Osoria with the subject "Homeless Students Living in Newark" dated 6/27/17
- J-2 Emails from Tiffany Boehm to Ana Osoria dated 9/6-12/17
- J-3 Emails from Ana Osoria to Tiffany Boehm dated 11/14/17
- J-4 letter from Tiffany Boehm to Ana Osoria dated 4/10/18
- J-5 Email from Ana Osoria to Tiffany Boehm dated 4/10/18
- J-6 Email from Tiffany Boehm to Ana Osoria with attachments dated 4/23/18
- J-7 Email from Ana Osoria to Tiffany Boehm dated 5/15/18