

New Jersey Commissioner of Education

Final Decision

M.M. and A.M., on behalf of minor children,
E.M. and I.M.,

Petitioners,

v.

Board of Education of the Township of South Brunswick,
Middlesex County,

Respondent.

Synopsis

In this matter on remand, *pro se* petitioners appealed the determination of the respondent Board that their minor children were not entitled to a free public education in the South Brunswick School District during the 2021-2022 school year. The Board contended that, based on the results of residency investigations, petitioners do not live at the address provided on the children’s school registration. The Board sought reimbursement for the cost of tuition for the period of E.M. and I.M.’s ineligible attendance. In a decision issued on September 21, 2022, the Commissioner determined that petitioners failed to prove that they were domiciled within the district during the 2021-2022 school year and therefore were not entitled to a free public education in the district’s school during that time. However, the Commissioner noted that the record did not provide sufficient information to accurately determine the amount of tuition owed by petitioners for the period of ineligible attendance. Accordingly, the matter was remanded to the OAL for further proceedings to calculate the per diem tuition and number of days of ineligible attendance, as required by *N.J.S.A. 18A:38-1b*.

On remand, the ALJ found that: the petitioners did not sustain their burden of proving that E.M. and I.M. were domiciled in South Brunswick during the period in question; accordingly, the minor children were ineligible to attend school in the district for the entire 2021-22 school year; and the Board submitted a certification setting forth the per diem tuition rate at \$72.01. The ALJ concluded that the Board was entitled to tuition reimbursement in the amount of \$25,922 (\$12,961 for each child) for the 2021-22 school year.

Upon review, the Commissioner adopted the Initial Decision of the OAL as the final decision in this matter, with modification to the total tuition due. Petitioner was directed to reimburse the Board in the amount of \$25,923.60 for tuition costs incurred during the period that E.M. and I.M. were ineligible to attend school in South Brunswick. The petition of appeal was dismissed.

This synopsis is not part of the Commissioner’s decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.

New Jersey Commissioner of Education
Decision on Remand

M.M. and A.M, on behalf of minor children, E.M.
and I.M.,

Petitioners,

v.

Board of Education of the Township of South
Brunswick, Middlesex County,

Respondent.

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed, mindful of the Commissioner's September 26, 2022, decision remanding this residency matter for calculation of the per diem tuition and the number of days of ineligible attendance. The parties did not file exceptions.

In her September 2022 decision, the Commissioner found that petitioners were not domiciled in South Brunswick during the 2021-22 school year and the minor children were, therefore, not entitled to a free public education in the district during that time. With respect to the assessment of tuition, the Commissioner found that the Board may recover tuition "computed on the basis of 1/180 of the total annual per pupil cost to the local district multiplied by the number of days of ineligible attendance." *N.J.S.A. 18A:38-1b*. As the record did not contain sufficient information to calculate the per diem tuition, nor did it contain evidence as to whether the minor children attended school in South Brunswick for the entire 2021-22 school year, the Commissioner remanded this matter for calculation of tuition consistent with *N.J.S.A. 18A:38-1b*.

On remand, the Administrative Law Judge (ALJ) found that the minor children were ineligible to attend school in the district for the entire 2021-22 school year. The ALJ noted that the Board submitted a certification setting forth the per diem rate at \$72.01. Accordingly, the ALJ found that the Board was entitled to tuition reimbursement in the amount of \$25,922 (\$12,961 for each child) for the 2021-22 school year.

Upon review, the Commissioner agrees with the ALJ that the Board is entitled to tuition reimbursement for the entire 2021-22 school year, during which time the minor children were ineligible to attend school in the district. However, the Commissioner finds that the tuition calculation for that period is \$25,923.60 (\$72.01 per day for 180 days, totaling \$12,961.80 for each child).¹

Accordingly, the Initial Decision of the OAL is modified as to the tuition calculation. Petitioner is directed to reimburse the Board in the amount of \$25,923.60 for tuition costs incurred during the period that E.M. and I.M. were ineligible to attend school in South Brunswick. The petition of appeal is hereby dismissed.

IT IS SO ORDERED.²


ACTING COMMISSIONER OF EDUCATION

Date of Decision: March 30, 2023

Date of Mailing: March 31, 2023

¹ The ALJ's annual tuition cost appears to have been rounded down to the nearest dollar.

² 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 08821-22

AGENCY DKT. NO. 47-3/22

(ON REMAND EDU 04264-22)

**M.M. AND A.M. ON BEHALF OF
E.M. AND I.M.,**

Petitioners,

v.

**TOWNSHIP OF SOUTH BRUNSWICK
BOARD OF EDUCATION, MIDDLESEX
COUNTY,**

Respondent.

M.M. and A.M., petitioners, pro se

David L. Disler, Esq., for respondent (Porzio, Bromberg & Newman, P.C.,
attorneys)

Record Closed: December 8, 2022

Decided: January 10, 2023

BEFORE **TRICIA M. CALIGUIRE**, ALJ:

STATEMENT OF THE CASE

Petitioners M.M. and A.M., on behalf of minor children, E.M. and I.M., appeal the decision of respondent Township of South Brunswick Board of Education, Middlesex County (Board) that E.M. and I.M. were not eligible to attend the South Brunswick Township Public Schools in the 2021–2022 school year. Petitioners also seek a ruling that they are not responsible to pay tuition for E.M. and I.M. for the 2021–2022 school year in the amount of \$12,961 for each child.

PROCEDURAL HISTORY

On March 4, 2022, petitioners filed a pro se residency appeal with the Office of Controversies and Disputes of the New Jersey Department of Education. On May 2, 2022, the matter was transmitted to the Office of Administrative Law (OAL) where it was filed 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.

On June 28, 2022, the parties appeared for a prehearing telephone conference, during which the hearing was scheduled for July 20, 2022. A prehearing order was issued on June 30, 2022.

On July 20, 2022, the hearing was conducted using Zoom Communications, Inc., a remote audio/video platform licensed by the OAL for use during the public health emergency in which the Governor of the State of New Jersey issued Emergency Orders mandating stay-at-home protocols for citizens and public employees (COVID-19). Petitioners, who speak Russian and are not fluent in English, were assisted throughout the proceedings, including the hearing, by Natalia Sorokina, a Russian language interpreter. The record closed on July 20, 2022, and on August 15, 2022, an initial decision was issued finding for respondent on all issues.

As set forth in her Decision of September 26, 2022, the Acting Commissioner of Education adopted the findings of fact and conclusions of law of the initial decision and ordered that the matter be remanded to the OAL for the calculation of the total amount of

tuition that petitioners are responsible to pay for their children's attendance in Monmouth Junction Elementary School. On November 30, 2022, respondent submitted the Certification of David Pawlowski to support the tuition assessment. Petitioners responded by letter dated December 7, 2022, received on December 8, 2022, and the record closed.

FACTUAL DISCUSSION AND FINDINGS

The issues in dispute are whether the M. family, mother and two minor children,¹ resided at Bernini Way, Monmouth Junction, New Jersey, within the geographic area served by the South Brunswick Township School District (District), during the 2021–2022 school year and if not, the amount of tuition owed by petitioners to respondent for the 2021–2022 school year.²

To properly address the remand order, it is necessary to clarify the dates in which E.M. and I.M. attended Monmouth Junction Elementary School during the 2021–2022 school year, and the costs of their attendance.

At the hearing, respondent presented three witnesses; A.M. testified on behalf of petitioners. In response to the remand order, respondent submitted the Certification of David Pawlowski (Pawlowski), Business Administrator. The following is not a verbatim recitation of the testimony but a summary of the testimonial and documentary evidence that I found relevant to the above issues.

TESTIMONY

Suzanne Luck-Born (Luck-Born), District Director of Student Assessment and Instructional Support, testified on behalf of respondent. She has been employed by the District for twenty-six years in various positions, the last eleven in her current position. Luck-Born is responsible for the Registration Department, including oversight of two

¹ A.M., the father of the two minor children involved in this matter, stated that he lives in Brooklyn, New York, apart from his wife and children.

² E.M. has attended school in the District continuously since the 2018–2019 school year and I.M. has attended school in the District continuously since the 2020–2021 school year.

Central Registrars who register new families and coordinate registrations with the Transportation and Buildings Departments.

On September 13, 2021, shortly after the school year began, Luck-Born received an email from the Director of Transportation stating that Mickey Guzman (Guzman), the Community Manager of the Villagio South Brunswick Homeowners Association (Villagio HOA), objected to District buses entering the Villagio community as it is an age-restricted community in which school-aged children are not permitted. (R-1.)³ According to the District records, the M. children resided in the Villagio community at Bernini Way, but the lease M.M. had provided to the District as proof of residency had expired. Luck-Born or her staff contacted petitioners and requested updated residency documents, which M.M. hand-delivered on September 14, 2021, including a lease for July 1, 2021, through July 1, 2023, for Bernini Way.

On September 21, 2021, Luck-Born retained a private investigator, Patrick O'Brien (O'Brien), to conduct a residency investigation. Luck-Born identified the report generated by O'Brien, in which he concluded that the M. family was not residing at Bernini Way. (R-2.) Using this report, Luck-Born told her supervisor that as a result of the investigation, the District had no basis to conclude that E.M. and I.M. lived at Bernini Way, but the M. family may have been residing at Drinking Brook Road, another location within the township.⁴ Luck-Born identified the "system-generated" letter sent to petitioners on December 17, 2021, stating that the District does not "accept students" from the Villagio address, but they could provide proof of residency at the alternate location. (R-3.)

³ Luck-Born identified this summary of the residency investigation conducted in this matter, which she wrote. She stated that this document was provided to Board of Education members prior to the M. family hearing. Not all communications described in this document were written but all were corroborated by later writings and/or action taken in response.

⁴ The District operates seven elementary schools. The two addresses at issue here, Bernini Way and Drinking Brook Road, are within the geographic boundaries for different elementary schools. There was no evidence presented as to why the M. family would prefer one school over another, other than because their children were already attending the first school and because they stated that they do not live within the geographic boundaries of the second school. See, P-6.

On January 10, 2022, Luck-Born sent a letter to petitioners stating that E.M. and I.M. are not eligible to attend the District schools because:

- Petitioners failed “to provide requested documentation that satisfies the residency requirements as outlined in N.J.S.A. 18A:38-1[.]”
- “Based upon an investigation by [the District’s] Residency Officer,” the District determined that the M. family “is not residing at Bernini Way[.]”
- “The 55 and Older Community” in which Bernini Way is located “does not use [the District’s] schools due to the age restriction of residents.”

[R-4.]

On January 26, 2022, petitioners sent a letter to Luck-Born disputing the findings of the investigation, claiming that the District was discriminating against them, and stating that if the District was unwilling to permit the children to complete the year in the District, they would “be forced to go to court and appeal your decision, as well as file a lawsuit for persecution and discrimination.” (R-5.) A Board hearing was scheduled and, in the interim, the District hired Prime Source Investigators to obtain a second opinion and more recent information.

On two days in February 2022, the investigator from Prime Source parked outside Bernini Way from 6:00 a.m. to 10:00 a.m., and he reported seeing no activity at the house during those hours. (R-8.) Further, in response to a request from District Superintendent Scott Feder (Feder), Guzman provided excerpts from the Villagio HOA governing documents, which make clear that no children under the age of nineteen are permitted to reside in a home in the community. (R-6.)

On February 10, 2022, respondent held a hearing at which petitioners appeared and gave testimony. On February 14, 2022, Feder sent a final notice of ineligibility to petitioners, which described the basis for the decision of respondent that petitioners’ children are not domiciled at Bernini Way and are not eligible to attend school in the

District. (P-3.) Petitioners were again given the opportunity to provide proof of residency at Drinking Brook Road. In this notice, respondent stated that they would be responsible for tuition for each child in the amount of \$72 per day, or \$12,961 per year.

Petitioners did not provide additional information to respondent. This appeal followed.

David Pawlowski, Business Administrator, certified that the per pupil tuition for a non-resident elementary school student in the District schools during the 2021–2022 school year was \$12,961, and the per diem rate was \$72.01. Certification of David Pawlowski (November 23, 2022), ¶ 2. Both E.M. and I.M. attended Monmouth Junction Elementary School for the entirety of the 2021–2022 school year. Id., ¶ 3. The combined, per pupil non-resident “elementary school tuition rate for both E.M. and I.M. to attend school at Monmouth Junction Elementary School for the entire 2021–2022 school year was \$25,922.” Id., ¶ 5.

Patrick J. O’Brien, testified on behalf of respondent. He spent twenty-five years on the South Brunswick Police Department, five as an investigator. From December 2011, through December 2021, O’Brien served as the District Residency Investigator. During this time, he estimates that he handled over one-hundred residency investigations, in cases in which “the Board had reason to believe that non-resident children were attending school” in the District.

O’Brien identified the report he prepared on his investigation of the M. family who were allegedly living at Bernini Way. (R-2.) He began on September 21, 2021, by conducting internet research. He was able to confirm the house at Bernini Way was purchased in 2009 by Charles and Maria Lichtenstein.⁵

O’Brien stated that on September 24, 2021, he arrived at Bernini Way at 7:30 a.m., and stayed one hour, during which he saw no activity, no cars, no lights on inside the house, and no children or adults leaving the house. (R-2.)

⁵ Maria Lichtenstein is the landlord on the leases M.M. signed for Bernini Way. (P-6, P-7, P-8.) On each lease, Lichtenstein uses Bernini Way as her address for notices.

On October 15, 2021, O'Brien arrived at Bernini Way at 8:15 a.m. and saw an open second floor window. At 8:23 a.m., a silver SUV with New Jersey license plates pulled into the driveway and when the garage door was opened remotely, drove into the garage. O'Brien described the driver as an adult male in his 60's; he stated that A.M., who was present by Zoom during O'Brien's testimony, was not the man he saw driving the SUV. At 8:26 a.m., O'Brien saw an adult female walking inside the house from the first to the second floor. O'Brien described the adult female as in her 60's; he stated that M.M., who was present by Zoom during O'Brien's testimony, was not the woman he saw in the house.

On November 29, 2021, O'Brien arrived at Bernini Way at 7:32 a.m. and saw the same second floor window open. He saw no cars or other activity. He drove to the elementary school where the M. children were attending. While he was told by staff that M.M. usually drove her children to school and parked in the rear lot, he did not see M.M. or the children that morning.

On November 29, 2021, O'Brien drove past Bernini Way at 7:50 a.m., observed no cars, and proceeded to the elementary school. At 8:45 a.m., a woman driving a white SUV with New Jersey license plates parked in a spot in the rear lot. The car came from the direction opposite of where it would travel if coming from Bernini Way. The woman walked two students, one male and one female into the school, returned to her car, and proceeded to Drinking Brook Road, parking in the driveway.

On November 30, 2021, O'Brien arrived at Drinking Brook Road at 8:25 a.m., and observed the same white SUV parked in the driveway. He saw the lights go on in the car at 8:45 a.m. O'Brien drove to the elementary school, saw the same white SUV drive in from the same route and park in the rear lot at 8:54 a.m. O'Brien left and went to Drinking Brook Road. The same white SUV returned at 9:06 a.m. and parked in the driveway. On Saturday, December 11, 2021, O'Brien saw the same white SUV parked in the driveway at Drinking Brook Road.

O'Brien stated that on each occasion he went to Bernini Way, he never saw children, whether at the home or in the neighborhood, and never saw signs of children

such as toys or bicycles. He concluded that based on his investigation, there are no grounds to believe that the M. family resided at Bernini Way.⁶

Austin Lindsay (Lindsay) testified on behalf of respondent. Since 2018, he has been a field investigator with Prime Source Investigators and in this position, has conducted over one thousand investigations. In a typical residency investigation, he is briefed by the client and given an address to surveil, and reports back with a description of the residence, any vehicles present, and any activity that he observes.

Lindsay identified the report he wrote regarding the investigation he conducted on Bernini Way. (R-8.) On February 3, 2022, Lindsay arrived at Bernini Way at 6:00 a.m. Knowing that school started at 8:55 a.m., and that the children involved were young and likely woke up early, Lindsay wanted an early start. He described Bernini Way as a large home with a two-car garage, located in a cul-de-sac in a nice neighborhood. By the time he left at 10:00 a.m., Lindsay had seen no activity at the house, no lights inside the house going on, no doors opening, no vehicles departing.

On February 4, 2022, Lindsay arrived at Bernini Way at 6:00 a.m., and stayed until 10:00 a.m. Again, he saw no activity, no lights going on, no vehicles. As shown on a video Lindsay took of the residence, one light above the interior staircase was on when he arrived, and it turned off at 8:05 a.m., without any other lights going on. (R-10.) Lindsay concluded that this light was on a timer. Lindsay saw no children at Bernini Way, nor in the neighborhood, and saw no school buses (though both February 3 and 4, 2022 were school days). He concluded that the M. family does not live at Bernini Way.

A.M. testified on behalf of petitioners. He stated that he and M.M. decided to live separately⁷ but continue to parent their children together. In 2018, M.M. and the children moved to Monmouth Junction to live with M.M.'s aunt, Maria Lichtenstein (Lichtenstein), and M.M.'s mother.

⁶ O'Brien further concluded that the family resided at Drinking Brook Road, but respondent offered no further evidence to support this theory.

⁷ A.M. did not say whether he and M.M. are divorced.

Lichtenstein lives at Bernini Way with her husband, M.M. and the children. M.M.'s mother, who was not named, lives at Drinking Brook Road. M.M.'s mother is quite old and sickly and cannot be with the children all the time, but the children do stay with her from time to time. The dates chosen by the investigators to surveil Bernini Way are all days on which the children stayed with their grandmother.

In 2018, petitioners took E.M. to register at Monmouth Junction Elementary School. They were told what documents were required for registration and provided all required documents, including the lease between Lichtenstein and M.M. for Bernini Way.⁸ At the same time, petitioners told the registrar that they did not need transportation for E.M. because they lived in the Villagio, and school buses are not allowed in the community.

Each successive year, from 2019 through 2021, petitioners submitted all required documents to the registrar and each year, petitioners told the registrar that they did not need transportation for E.M., and eventually for both children. In 2021, someone in the school system made a mistake and sent the bus to Bernini Way.

A.M. stated that respondent did not prove that M.M. and the children do not live at Bernini Way; just because the HOA rules forbid children does not mean the family does not live there. M.M. pays rent to Lichtenstein, as provided in the lease. When asked to provide proof of payment of rent, A.M. stated that they pay in cash some months and did not have documentary proof of non-cash payments.

DISCUSSION

To the extent that testimony given by petitioner and the other witnesses is in conflict or inconsistent, the credibility of their testimony must be assessed. Credibility is best described as that quality of testimony or evidence which makes it worthy of belief. The Supreme Court of New Jersey considered the issue of credibility in In Re Estate of Perrone, 5 N.J. 514 (1950). The Court pronounced:

⁸ Petitioners also introduced copies of M.M.'s federal tax return, her New Jersey driver's license, and her bank account statements, all of which show her address as Bernini Way. (P-6 through P-20.)

Testimony to be believed must not only proceed from the mouth of a credible witness but must be credible in itself. It must be such as the common experience and observation of mankind can approve as probable in the circumstances.

[ibid. at 522.]

See also, Spagnuolo v. Bonnet, 16 N.J. 546, (1954), State v. Taylor, 38 N.J. Super. 6 (App. Div.1955).

In order to assess credibility, the witness' interest in the outcome, motive or bias should be considered. Furthermore, 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).

Luck-Born, O'Brien and Lindsay were all credible witnesses. They spoke without emotion about routine matters they took on in the course of their employment. While I question the limitations of O'Brien's investigation — he did not have proof that the children he saw with the woman in the white SUV were actually E.M. and I.M. — respondent did not pursue the alternate theory, that the M. family was living at Drinking Brook Road. It was enough that neither investigator saw any children, or even a woman of M.M.'s age, at Bernini Way.

There is no dispute that the Villagio HOA rules forbid children under the age of nineteen, and it should not then be a surprise that by the second week of the 2021–2022 school year, Guzman had had enough of the disruptive school buses and contacted the District to keep them out. A.M. testified that starting in 2018, when E.M. began school, petitioners notified the Transportation Department that they did not need busing, and someone made a mistake in September 2021 and sent a bus to their address. While not all of A.M.'s testimony rang true, this explanation makes sense. Prior to September 2021, Guzman had no reason to complain to the Transportation Department because there were no buses going through the Villagio community. The M. family may have been living at Bernini Way between September 2018 and June 2021, which would explain why M.M.

went to the trouble of opening bank accounts with that address, using that address for her driver's license and her federal tax returns. There was no testimony regarding the apparent willingness of M.M.'s aunt to sign a lease that violates the Villagio's stringent age-restriction rules,⁹ but the question here is not whether the M. family and/or their landlord was breaking the rules by setting up house in a fifty-five and over community.¹⁰ The question is whether they lived in the Villagio community during the 2021–2022 school year.

The credible evidence presented by two investigators is that on five occasions, between October 2021, and February 2022, when school was in session and the M. children were in attendance, the children did not spend the previous night at Bernini Way and did not leave from Bernini Way to go to school. Coincidence is not enough to overcome the preponderance of the credible evidence and accordingly, I **FIND** that petitioners did not prove that during the 2021–2022 school year, E.M. and I.M. resided at Bernini Way.

LEGAL ANALYSIS AND CONCLUSION

Petitioners contend that E.M. and I.M. are entitled to a free education in the District under N.J.S.A. 18A:38-1, which provides that public schools shall be free to persons over five and under twenty years of age who are “domiciled within the school district.” See, V.R. ex rel A.R. v. Hamburg Bd. of Educ., 2 N.J.A.R. 283, 287 (1980), aff'd, State Bd., 1981 S.L.D. 1533, rev'd on other grounds sub nom., Rabinowitz v. N.J. State Bd. of Educ., 550 F. Supp. 481 (D.N.J. 1982) (New Jersey requires local domicile, as opposed to mere residence, for a student to receive a free education). E.M. is nine years old and I.M. is seven years old and, therefore, I **CONCLUDE** they meet the age requirements to be entitled to a free public education.

⁹ There was also no documentary proof that the M. family made lease payments to Lichtenstein.

¹⁰ Given how quickly Guzman reacted when she saw the school buses, it is surprising that she never noticed elementary school-aged children allegedly living in the community for close to four years, a clear violation of HOA rules.

A person who meets age requirements and is domiciled within a school **district** may attend its public schools free of charge. N.J.S.A. 18A:38-1(a). A person may have many **residences** but only one domicile, and a child's domicile is normally that of his or her parents. Somerville Bd. of Educ. v. Manville Bd. of Educ., 332 N.J. Super. 6, 12 (App. Div. 2000), aff'd, 167 N.J. 55 (2001). The domicile of a person is the place where he has his true, fixed, permanent home and principal establishment, and to which whenever he is absent, he has the intention of returning, and from which he has no present intention of moving. In re Unanue, 255 N.J. Super. 362, 374 (Law Div. 1991), aff'd, 311 N.J. Super. 589 (App. Div.), certif. denied, 157 N.J. 541 (1998), cert. denied, 526 U.S. 1051 (1999).

The acts, statements and conduct of the individual, as viewed in the light of all the circumstances, determine a person's true intent. Collins v. Yancey, 55 N.J. Super. 514, 521 (Law Div. 1959). The parents have the burden of proof by a preponderance of the evidence. N.J.S.A. 18A:38-1(b)(2).

Here, the evidence as to E.M. and I.M. being domiciled in the District is mixed. E.M. started school in the District in September 2018, and she and her brother have attended continuously since then. M.M. went to a great deal of trouble to show Bernini Way as her address. Both houses in which M.M.'s relatives reside — Bernini Way and Drinking Brook Road — are in the District, albeit within the geographic boundaries of different elementary schools. Petitioners refused to concede residency at Drinking Brook Drive — either because they did not want their children to change schools in the middle of the school year or because they did not live there and could not prove otherwise.¹¹

Accordingly, in light of all of the facts and circumstances, I **CONCLUDE** that E.M. and I.M. are not entitled to a free public education in the District. I **CONCLUDE** petitioners failed to satisfy the burden of proving that E.M. and I.M. are domiciled at Bernini Way and elected not to submit evidence supporting residency at Drinking Brook Road.

N.J.S.A. 18A:38-1(b)(1) provides that when the evidence does not support the claim of the resident, the resident shall be assessed tuition:

¹¹ In their letter of January 26, 2022, petitioners state that they could enroll their children in private school but prefer for them to complete the current school year at Monmouth Junction Elementary School. (P-2.)

[F]or the student prorated to the time of the student's ineligible attendance in the school district. Tuition shall be computed on the basis of 1/180 of the total annual per pupil cost to the local district multiplied by the number of days of ineligible attendance and shall be collected in the manner in which orders of the commissioner are enforced.

The record reflects that the actual cost of attendance in-District was \$12,961 per year for each student for the 2021–2022 school year and that E.M. and I.M. both attended Monmouth Junction Elementary School for the entire school year.

N.J.A.C. 6A:22-6.3(a) provides that,

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.

Therefore, I **CONCLUDE** that petitioners are responsible to pay tuition to respondent for attendance by E.M. and I.M. at Monmouth Junction Elementary School for the entire 2021–2022 school year in the amount of \$12,961 for each, for a total of \$25,922.

ORDER

I **ORDER** that the decision of respondent South Brunswick Township Board of Education that E.M. and I.M. were not eligible for a free public education in the District during the 2021–2022 school year is **AFFIRMED** and the pro se residency appeal of petitioners M.M. and A.M. on behalf of E.M. and I.M. is **DISMISSED**.

Further, I **ORDER** that petitioners shall pay respondent tuition in the amount of \$25,922.

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 initial decision was mailed to the parties, any party may file written exceptions with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION, ATTN: BUREAU OF CONTROVERSIES AND DISPUTES, 100 Riverview Plaza, 4th Floor, P.O. Box 500, Trenton, New Jersey 08625-0500**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

January 10, 2022
DATE



TRICIA M. CALIGUIRE, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

TMC/nn

APPENDIX

WITNESSES

For petitioners

A.M.

M.M.

For respondent

Suzanne Luck-Born

Patrick J. O'Brien

Austin Lindsay

EXHIBITS

For petitioners

- P-1 Letter from South Brunswick Public Schools to Petitioners regarding ineligibility of children, dated January 10, 2022
- P-2 Letter from Petitioners to Suzanne Luck-Born, dated January 26, 2022
- P-3 South Brunswick Public Schools Final Notice of Ineligibility, dated February 14, 2022
- P-4 Pro Se Residency Appeal, dated March 4, 2022
- P-5 Letter of Counsel for Respondent, dated April 29, 2022
- P-6 Lease dated June 30, 3018
- P-7 Lease dated June 1, 2019
- P-8 Lease dated June 1, 2021
- P-9 PNC Bank Statement
- P-10 PNC Bank Statement
- P-11 PNC Bank Statement
- P-12 Citibank, N.A. Statement
- P-13 Citibank, N.A. Statement
- P-14 Citibank, N.A. Statement
- P-15 Citi Diamond Preferred Card Statement

- P-16 Citi Diamond Preferred Card Statement
- P-17 Citi Diamond Preferred Card Statement
- P-18 Federal 2019 Income Tax Return, Form 1040
- P-19 Federal 2020 Income Tax Return, Form 1040
- P-20 New Jersey State Driver's License Issued to M.M.
- P-21 New York State Driver's License Issued to A.M.

For respondent

- R-1 Summary of Residency Investigation
- R-2 Daily Report Log from Residency Investigation
- R-3 Letter to Petitioners from Scott Feder, dated December 17, 2021
- R-4 Letter to Petitioners from Suzanne Luck-Born regarding Determination of Ineligibility, dated January 10, 2022
- R-5 Letter to Suzanne Luck-Born from Petitioners, dated January 26, 2022
- R-6 Email from the Villagio South Brunswick to Scott Feder regarding Villagio South Brunswick HOA, dated February 1, 2022
- R-7 Respondent's District Policy 5111 – Eligibility of Resident/Non-Resident Pupils
- R-8 Email from Nate Reber to David Pawlowski regarding his Investigation Report Summary, dated February 7, 2022
- R-9 South Brunswick School District's Statements of Assurance
- R-10 Video
- R-11 Certification of David Pawlowski, Business Administrator, dated November 23, 2022